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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

|                                                    |   |                         |
|----------------------------------------------------|---|-------------------------|
| In re:                                             | ) |                         |
|                                                    | ) | Chapter 11              |
| NUMBER HOLDINGS, INC. <i>et al.</i> , <sup>1</sup> | ) |                         |
|                                                    | ) | Case No. 24-10719 (JKS) |
| Debtors.                                           | ) |                         |
|                                                    | ) | (Jointly Administered)  |
|                                                    | ) |                         |
|                                                    | ) |                         |

DISCLOSURE STATEMENT FOR JOINT CHAPTER 11 PLAN OF  
NUMBER HOLDINGS, INC., AND ITS DEBTOR AFFILIATES

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Dated: November 27, 2024  
Wilmington, Delaware

<sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, as applicable, are: (i) Number Holdings, Inc. (1463); (ii) 99 Cents Only Stores LLC (1605); (iii) 99 Cents Only Stores Texas, Inc. (1229); (iv) 99 Cents PropCo LLC (7843); (v) 99 Cents HoldCo LLC (3987); and (vi) Bargain Wholesale LLC (8030). The Debtors' mailing address is 10105 E Via Linda, Ste 103 PMB 1207, Scottsdale, AZ 85258.

**IMPORTANT INFORMATION FOR YOU TO READ**

**THE DEADLINE TO VOTE ON THE PLAN IS THE EARLIER OF (I) TWENTY-EIGHT (28) DAYS AFTER ENTRY OF THE ORDER APPROVING THE SOLICITATION PROCEDURES MOTION<sup>2</sup> AND THIS DISCLOSURE STATEMENT ON AN INTERIM BASIS (THE “INTERIM APPROVAL AND PROCEDURES ORDER”) AND (II) JANUARY 17, 2025, AT 4:00 P.M. (PREVAILING EASTERN TIME), UNLESS EXTENDED BY THE DEBTORS (THE “VOTING DEADLINE”).**

**FOR YOUR VOTE TO BE COUNTED, YOUR BALLOT MUST BE ACTUALLY RECEIVED BY THE VOTING AGENT (AS DEFINED BELOW) BEFORE THE VOTING DEADLINE AS DESCRIBED HEREIN.**

**PLEASE BE ADVISED THAT SECTION X OF THE PLAN CONTAINS RELEASE, EXCULPATION, AND INJUNCTION PROVISIONS. YOU SHOULD REVIEW AND CONSIDER THE PLAN CAREFULLY BECAUSE IT MAY AFFECT YOUR RIGHTS.**

The above-captioned debtors in possessions (the “Debtors”) are providing you information in this disclosure statement (the “Disclosure Statement”) because you may be a creditor entitled to vote on the Plan, dated November 27, 2024, attached hereto as Exhibit A.

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The Debtors urge each holder of a Claim to consult with its own advisors with respect to any legal, financial, securities, tax, or business matters in reviewing the Disclosure Statement and the Plan.

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The Disclosure Statement contains, among other things, summaries of the Plan, certain statutory provisions, the events leading up to the commencement of the Debtors’ chapter 11 cases (the “Chapter 11 Cases”), certain events in the Chapter 11 Cases, and certain documents related to the Plan. Although the Debtors believe that these summaries are fair and accurate, they are qualified in their entirety by the relevant documents or statutory provisions or every detail of such events. In the event of any inconsistency or discrepancy between a description in the Disclosure Statement and the terms and provisions of the Plan or any document incorporated herein by reference, the Plan or such other document will govern for all purposes. The statements contained herein are made as of the date of this Disclosure Statement, and there can be no assurance that such statements will be correct at any time after such date. Although the Debtors may subsequently update, amend, or supplement the information in this Disclosure Statement, they have no affirmative duty to do so, and expressly disclaim any duty to publicly update any forward-looking

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<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the *Joint Chapter 11 Plan of Number Holdings, Inc., and its Debtor Affiliates* (as it may be amended, supplemented, or otherwise modified from time to time, the “Plan”) or in the *Debtors’ Motion for Entry of an Order (I) Approving the Disclosure Statement on an Interim Basis for Solicitation Purposes Only; (II) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan; (III) Approving the Form of Ballots and Solicitation Packages; (IV) Establishing the Voting Record Date; (V) Scheduling a Combined Hearing for Final Approval of the Adequacy of Information in the Disclosure Statement and Confirmation of the Plan; and (VI) Granting Related Relief* (the “Solicitation Procedures Motion”), as applicable.

statements, whether as a result of new information, future events or otherwise. The Debtors also reserve the right to file an amended plan and related amended disclosure statement.

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This Disclosure Statement has been prepared in accordance with section 1125 of chapter 11 of title 11 of the United States Code (as amended, the “Bankruptcy Code”) and rule 3016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and not necessarily in accordance with federal or state securities laws or other non-bankruptcy laws. This Disclosure Statement has not been approved or disapproved by the United States Securities and Exchange Commission (the “SEC”), any state securities commission, or any securities exchange or association, nor has the SEC, any state securities commission, or any securities exchange or association passed upon the accuracy or adequacy of the statements contained herein.

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In preparing this Disclosure Statement, the Debtors relied on financial data derived from their books and records or that was otherwise made available to them at the time of such preparation. Although the Debtors believe that such financial information fairly reflects the financial conditions of the Debtors as of the date hereof, no representations or warranties are made as to the accuracy of the financial information contained herein. Except where specifically noted, the financial information contained in this Disclosure Statement and in its exhibits has not been audited by a certified public accountant and has not been prepared in accordance with generally accepted accounting principles in the United States or any other jurisdiction.

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This Disclosure Statement does not constitute, and may not be construed as, an admission of fact, liability, stipulation, or waiver. The Debtors may object to Claims after the Confirmation Date or the Effective Date irrespective of whether this Disclosure Statement identifies any such objection.

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Confirmation and effectiveness of the Plan are subject to certain material conditions precedent described in Section VIII of the Plan. There is no assurance that the Plan will be confirmed or, if confirmed, that the material conditions precedent to its effectiveness will be satisfied or waived. You are encouraged to read this Disclosure Statement in its entirety, including, but not limited to, Section VII hereof entitled “Plan-Related Risk Factors,” before submitting your vote to accept or reject the Plan.

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The Debtors have not authorized any Person or Entity to give any information about or concerning the Plan other than that which is contained in this Disclosure Statement. The Debtors have not authorized any representations concerning the Debtors or the value of their properties other than as set forth in this Disclosure Statement.

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If the Plan is confirmed and the Effective Date occurs, all holders of Claims and Interests (including those holders of Claims or Interests that are not entitled to vote on the Plan) will be bound by the terms of the Plan.

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|---------------------------------------------|
| <b>QUESTIONS AND ADDITIONAL INFORMATION</b> |
|---------------------------------------------|

If you would like to obtain copies of this Disclosure Statement or the Plan or have questions about the solicitation and voting process or these cases generally, please contact Kroll Restructuring Administration LLC (“Kroll”), the Claims and Noticing Agent in these cases (the “Voting Agent”), by (i) visiting its website at <https://cases.ra.kroll.com/99only/>, (ii) calling (844)-712-1933 (U.S./Canada, toll-free) or +1 (646)-777-2513 (International, toll), or (iii) emailing [99onlyInfo@ra.kroll.com](mailto:99onlyInfo@ra.kroll.com) (with “99 Cents Solicitation Inquiry” in the subject line).

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## I. INTRODUCTION AND OVERVIEW OF THE PLAN

### RECOMMENDATION BY THE DEBTORS AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS

It is the Debtors' opinion that confirmation and implementation of the Plan is in the best interests of the Debtors' estates and creditors. Therefore, the Debtors recommend that all creditors whose votes are being solicited submit a ballot to accept the Plan by checking the appropriate box on their Ballots and returning such Ballots so they are actually received by the Voting Agent by the Voting Deadline, which is currently set for the earlier of (i) twenty-eight (28) days after entry of the Interim Approval and Procedures Order and (ii) January 17, 2025, at 4:00 p.m. (prevailing Eastern Time).

The Official Committee of Unsecured Creditors (the "Creditors' Committee") also supports confirmation of the Plan and recommends that all creditors entitled to vote submit a ballot to accept the Plan.

Number Holdings, Inc. ("Numbers") and the other above-captioned debtors and debtors in possession (collectively, the "Debtors" and, together with their non-Debtor affiliates, "99 Cents" or the "Company"), submit this Disclosure Statement, pursuant to section 1125 of the Bankruptcy Code, in connection with soliciting votes to accept or reject the Plan, a copy of which is attached hereto as Exhibit A.

Assuming the requisite acceptances of the Plan are obtained, the Debtors will seek final approval of the adequacy of information of this Disclosure Statement and confirmation of the Plan at a final, combined hearing (the "Combined Hearing") on January 24, 2025, at 10:00 a.m. (prevailing Eastern Time).<sup>3</sup> Should they believe it necessary or appropriate to do so, the Debtors may extend or modify one or more of the foregoing dates.

#### A. The Plan

As described in greater detail in Section III, prior to commencing these Chapter 11 Cases, the Debtors engaged advisors and spent months evaluating potential strategic alternatives for stabilizing their businesses and maximizing value for their stakeholders. After exploring all alternatives, on April 4, 2024, the Company announced it would be closing all of its 371 store locations in order to preserve liquidity and maximize value for all of its stakeholders. On April 7 and 8, 2024 (the "Petition Date"), the Debtors commenced these Chapter 11 Cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

Following the commencement of these Chapter 11 Cases, the Debtors continued to pursue these value maximizing strategies by continuing the store closing sales and pursuing a competitive sale process for all of the Company's assets through the Bidding Procedures and Auction (both defined below). Having now completed the Sales (as defined below), the Debtors and certain of their key stakeholders have engaged in extensive arm's-length, good faith discussions regarding

<sup>3</sup> In the Solicitation Procedures Motion, the Debtors are seeking January 24, 2025, at 10:00 a.m. (prevailing Eastern Time) as the time and date for the Combined Hearing.

the terms set forth in the Plan. The Debtors believe the Plan represents the best available option for all creditors and parties in interest at this juncture.

The Plan designates Classes of Claims and Interests and specifies which Classes are (i) Impaired and Unimpaired by the Plan, (ii) entitled to vote to accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code or (iii) deemed to accept or reject the Plan. Solely for purposes of voting on, and receiving Distributions under, the Plan, the Estates are deemed to be substantively consolidated, *i.e.*, (a) all assets and liabilities of the Debtors will be deemed to be assets and liabilities of a single Estate; (b) all guarantees by one Debtor of the obligations of any other Debtor will be deemed eliminated, (c) any joint or several liability of any Debtors will be deemed to be one obligation of the Debtors; and (d) each Proof of Claim filed in the case of any Debtor will be deemed filed against all Debtors and will be deemed one Claim against, and a single obligation of, the Debtors. This deemed substantive consolidation will not affect (a) the legal and corporate structures of the Debtors; (b) the right of the Holders of Allowed Claims to receive Distributions from any insurance policies or proceeds of such policies; (c) any Liens granted or arising at any time prior to the Effective Date or the priority of those Liens; or (d) the rights of the Debtors to contest alleged setoff or recoupment rights on the grounds of lack of mutuality under section 553 of the Bankruptcy Code and other applicable law.

## **B. The Adequacy of Disclosure**

Section 1125 of the Bankruptcy Code requires that, before soliciting votes on a proposed chapter 11 plan, the plan proponent must prepare a written disclosure statement containing information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment regarding acceptance or rejection of the plan.

The Disclosure Statement complies with section 1125 of the Bankruptcy Code as it includes, without limitation, information about:

- the Debtors' organizational structure, business operations, prepetition indebtedness, and assets and liabilities (Section II hereof);
- the events leading to the filing of these cases (Section III hereof);
- the major events that have occurred during the Chapter 11 Cases (Section IV hereof);
- the classification and treatment of Claims and Interests under the Plan, including identification of the Holders of Claims entitled to vote on the Plan (Section V.A hereof);
- the means for implementation of the Plan (Section V.C hereof);
- the releases, exculpations, and injunctions contemplated by the Plan (Section V.I hereof);
- the statutory requirements for confirming the Plan (Section VI hereof);
- certain risk factors that holders of Claims should consider before voting on the Plan (Section VII hereof); and
- certain U.S. federal income tax consequences of the Plan (Section VIII hereof).

**C. Summary of Classes and Treatment of Claims and Interests Under the Plan**

**1. Unclassified Claims**

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims and Priority Tax Claims are not classified in the Plan. Such Claims will be satisfied as set forth in the Plan and as summarized herein.

**a. Administrative Claims**

Except as otherwise provided in Section II.A of the Plan, or to the extent that a Holder of an Allowed Administrative Claim and the Debtors or Liquidating Trust (as applicable) agree to less favorable treatment with respect to such Allowed Administrative Claim, each Holder of an Allowed Administrative Claim will be paid the full unpaid amount of such Allowed Administrative Claim in Cash: (a) on the Effective Date or as soon as reasonably practicable thereafter or, if not then due, when such Allowed Administrative Claim is due or as soon as reasonably practicable thereafter; (b) if an Administrative Claim is Allowed after the Effective Date, on the date such Administrative Claim is Allowed or as soon as reasonably practicable thereafter or, if not then due, when such Allowed Administrative Claim is due or as soon as reasonably practicable thereafter; (c) at such time and upon such terms as may be agreed upon by such Holder and the Debtors or the Liquidating Trust, as applicable; or (d) at such time and upon such terms as set forth in an order of the Bankruptcy Court.

**b. Priority Tax Claims**

Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, in full and final satisfaction, compromise, settlement, release, and discharge of, and in exchange for, the Allowed Priority Tax Claims, each Allowed Priority Tax Claim will be treated in accordance with section 1129(a)(9)(C) of the Bankruptcy Code.

**c. DIP Claims**

Except to the extent that a Holder of an Allowed DIP Claim agrees to a less favorable treatment, in full and final satisfaction, compromise, settlement, release, and discharge of, and in exchange for, the Allowed DIP Claims, on or prior to the Effective Date each Holder of an Allowed DIP Claim will receive payment in full in cash of such Allowed DIP Claim that has not yet been paid.

**2. Classified Claims**

The table below summarizes the classification, treatment, and projected recoveries (if any) of all classified Claims and Interests under the Plan. **Projected recoveries are estimates and actual recoveries may differ based on, among other things, realizable value of the Debtors' assets and the amount of Claims that are actually Allowed.**

| <b>Class</b> | <b>Designation</b>     | <b>Voting Status</b>                                      | <b>Treatment</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <b>Projected Amount of Claims</b> | <b>Projected Plan Recovery</b> |
|--------------|------------------------|-----------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------|--------------------------------|
| 1            | Other Priority Claims  | Unimpaired<br><br>Deemed to Accept / Not Entitled to Vote | Except to the extent that a Holder of an Allowed Other Priority Claim agrees to less favorable treatment, each Holder thereof will receive, on the later of (i) the Effective Date and (ii) the next Distribution Date following the date on which such Other Priority Claim becomes an Allowed Claim, payment in full in Cash or other treatment rendering such Claim Unimpaired.                                                                                                                                                                                                                                                                             | \$2,876,000 – \$4,090,000         | 100%                           |
| 2            | Other Secured Claims   | Unimpaired<br><br>Deemed to Accept / Not Entitled to Vote | Except to the extent that a Holder of an Allowed Other Secured Claim agrees to less favorable treatment, each Holder thereof will receive, on the later of (i) the Effective Date and (ii) the next Distribution Date following the date on which such Other Secured Claim becomes an Allowed Claim, at the option of the Debtors or Liquidating Trust (as applicable): (a) payment in full in Cash; (b) delivery of the collateral securing such Allowed Other Secured Claim and payment of any interest thereon required to be paid under section 506(b) of the Bankruptcy Code; or (c) such other recovery as is necessary to render such Claim Unimpaired. | \$1,324,000 – \$2,351,000         | 100%                           |
| 3            | Prepetition ABL Claims | Unimpaired<br><br>Deemed to Accept / Not Entitled to Vote | Except to the extent that a Holder of an Allowed Prepetition ABL Claim agrees to less favorable treatment, each Holder thereof will receive from the Debtors on the Effective Date payment in full in Cash of such Allowed Prepetition ABL Claim that has not yet been paid.                                                                                                                                                                                                                                                                                                                                                                                   | N/A                               | 100%                           |
| 4            | Senior Notes Claims    | Impaired<br><br>Entitled to Vote                          | On the Effective Date, to the extent not previously paid pursuant to the Notes Settlement, (i) the Debtors will deliver the Senior Notes Recovery to the Senior Notes Agent; (ii) each Holder of an Allowed Senior Notes Claim will receive, except to the extent such Holder agrees to a less favorable treatment, in full and final satisfaction, settlement, release and discharge and in exchange for such Allowed Senior Notes Claim its pro rata share of the Senior Notes Recovery; and (iii) any deficiency claim on account of Senior Notes Claims will be waived in its entirety. Pursuant to the Notes                                              | \$356,221,000                     | 14.9% <sup>4</sup>             |

<sup>4</sup> The projected plan recovery for Class 4 Senior Notes Claims represents the gross recovery to Class 4 prior to the payment of applicable fees and expenses pursuant to the Notes Settlement.

| Class | Designation              | Voting Status                                       | Treatment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Projected Amount of Claims      | Projected Plan Recovery |
|-------|--------------------------|-----------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|-------------------------|
|       |                          |                                                     | Settlement and the procedures set forth therein, all Notes Settlement Expenses and Senior Notes Agent Fees will be paid from the Notes Reserve concurrently with the distribution of and as part of the Senior Notes Recovery, solely to the extent such Notes Settlement Expenses and Senior Notes Agent Fees are incurred and outstanding prior to the date of distribution of the Senior Notes Recovery. Unless and until the Debtors satisfy their obligations to (1) deliver the Senior Notes Recovery, and (2) pay the Notes Settlement Expenses and Senior Notes Agent Fees incurred and outstanding prior to the date of distribution of the Senior Notes Recovery, the Notes Reserve will not be utilized by the Debtors for any purpose other than satisfying such obligations. Any Notes Settlement Expenses and Senior Notes Agent Fees incurred after distribution of the Senior Notes Recovery will be payable by the Debtors pursuant to the terms of the Notes Settlement and the Plan. |                                 |                         |
| 5     | General Unsecured Claims | Impaired<br>Entitled to Vote                        | Except to the extent that a Holder of an Allowed General Unsecured Claim agrees to less favorable treatment, as soon as practicable after the earlier of (i) the Effective Date and (ii) the date such claim becomes an Allowed Claim, each Holder of an Allowed General Unsecured Claim will receive, in full satisfaction, settlement, release, and discharge, and in exchange for its Allowed General Unsecured Claim, its pro rata share (calculated based on the proportion that such Holder's Allowed General Unsecured Claim bears to the aggregate amount of Allowed General Unsecured Claims) of the Liquidating Trust Interests, which will entitle such Holder to its pro rata share of the Liquidating Trust Assets available for Distribution net of Liquidating Trust Expenses.                                                                                                                                                                                                           | \$650,000,000 – \$1,000,000,000 | 0.5% – 2.0%             |
| 6     | Intercompany Claims      | Impaired<br>Deemed to Reject / Not Entitled to Vote | On the Effective Date, all Intercompany Claims will be, at the option of the Plan Administrator, reinstated, set off, settled, distributed, contributed, cancelled, or released without any distribution on account of such Intercompany Claim, or such other treatment as is reasonably                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | N/A                             | 0%                      |

| Class | Designation            | Voting Status                                           | Treatment                                                                                                                                                                                                                                                                                                                                                          | Projected Amount of Claims | Projected Plan Recovery |
|-------|------------------------|---------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|-------------------------|
|       |                        |                                                         | determined by the Debtors. No Distribution will be made on account of any Intercompany Claims.                                                                                                                                                                                                                                                                     |                            |                         |
| 7     | Intercompany Interests | Impaired<br><br>Deemed to Reject / Not Entitled to Vote | On the Effective Date, all Intercompany Interests will be cancelled, except as may be necessary, as determined by the Plan Administrator, to maintain the corporate structure of the Debtors and Post-Confirmation Debtors pending dissolution thereof under applicable non-bankruptcy law. No Distribution will be made on account of any Intercompany Interests. | N/A                        | 0%                      |
| 8     | Equity Interests       | Impaired<br><br>Deemed to Reject / Not Entitled to Vote | On the Effective Date, all Equity Interests will be cancelled and discharged. No Distribution will be made on account of any Equity Interests.                                                                                                                                                                                                                     | N/A                        | 0%                      |

#### **D. Classes Entitled to Vote on the Plan**

The only Classes entitled to vote to accept or reject the Plan are Classes 4 and 5 (the “Voting Classes”). All other Classes are either (i) conclusively presumed to accept the Plan because their rights are Unimpaired by the Plan, or (ii) conclusively presumed to reject the Plan because they will neither receive nor retain any property under the Plan.

If your Claim is a Class 4 or Class 5 Claim, you should carefully follow the instructions set forth on the Ballot included in your Solicitation Package or otherwise provided to you by Kroll or, in the case of Class 4 Senior Notes Claims, by the bank, broker, or other intermediary, or an agent thereof, through which you hold your Senior Notes Claims in ‘street name’ (each a “Nominee”).

#### **E. Voting on the Plan**

Solicitation and tabulation of votes on the Plan will be conducted in accordance with the Interim Approval and Procedures Order included in the Solicitation Package.

#### **F. Votes Required for Acceptance**

Pursuant to section 1129(a)(8) of the Bankruptcy Code, for the Plan to be confirmed by the Bankruptcy Court, it must be accepted by at least one voting Class of Impaired Claims – in this case, by either Class 4 or Class 5. Class 4 or Class 5 will have accepted the Plan if: (i) the holders of at least two-thirds in dollar amount of the Claims voting in such Class vote to accept the Plan and (ii) the holders of more than one-half in number of the Claims voting in such Class vote to accept the Plan.

**G. Certain Factors to Be Considered Prior to Voting**

There are a variety of factors that Holders of Allowed Claims entitled to vote on the Plan should consider prior to voting to accept or reject the Plan, including:

- the financial information contained in this Disclosure Statement has not been audited and is based on an analysis of data available at the time of preparation of this Disclosure Statement;
- the risk factors set forth in Section VII;
- although the Debtors believe that the Plan complies with all applicable provisions of the Bankruptcy Code, there is no assurance that the Bankruptcy Court will confirm the Plan; and
- any delays of either Confirmation or consummation of the Plan could result in, among other things, increased Administrative Claims, including Fee Claims.

**H. Solicitation Package**

In accordance with the Interim Approval and Procedures Order, the package of materials (the “Solicitation Package”) to be distributed<sup>5</sup> to the holders of Claims in the Voting Classes will include:

- (a) a notice of the Combined Hearing (the “Combined Hearing Notice”);
- (b) the Disclosure Statement and Plan;
- (c) the Interim Approval and Procedures Order (excluding exhibits thereto);
- (d) a Ballot, together with the instructions on how to complete the Ballot and a postage prepaid, pre-addressed business reply envelope;<sup>6</sup> and
- (e) such other materials as the Bankruptcy Court may direct to include in the Solicitation Packages, including any letters in supports of the Plan.

Holders of Claims and Interests in all Classes other than the Voting Classes (the “Non-Voting Classes”) will be mailed the Notice of Non-Voting Status.

The Solicitation Package materials (except for Ballots) are also available free of charge (i) on the Debtors’ case information website (<https://cases.ra.kroll.com/99only/>) or (ii) from the Debtors’ Voting Agent either (a) by contacting them at (844)-712-1933 (U.S./Canada, toll-free) or +1 (646)

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<sup>5</sup> In lieu of distributing paper copies of the Interim Approval and Procedures Order, Disclosure Statement, and Plan, the Debtors propose to include these solicitation materials in electronic format (*i.e.*, flash drive and/or email). Paper copies of solicitation materials delivered in electronic format will be available to members of the Voting Classes upon request to the Voting Agent and will be provided at the Debtors’ expense.

<sup>6</sup> Solicitation of votes from Beneficial Holders of Class 4 Senior Notes Claims by their Nominees may be performed through one of the two methods described in the Interim Approval and Procedures Order.

777-2513 (International, toll) or (b) by writing to: Number Holdings, Inc. Ballot Processing Center, c/o Kroll Restructuring Administration LLC, 850 3rd Avenue, Suite 412, Brooklyn, New York 11232, or [99onlyInfo@ra.kroll.com](mailto:99onlyInfo@ra.kroll.com) (with “99 Cents Solicitation Inquiry” in the subject line). You may also obtain copies of any pleadings filed in the Chapter 11 Cases for a fee via PACER at: <https://ecf.deb.uscourts.gov>.

## **I. Voting Procedures**

If you are entitled to vote to accept or reject the Plan, one or more Ballot(s) have been enclosed in your Solicitation Package for the purpose of voting on the Plan. You should read the materials supplied to you in their entirety, including the instructions set forth in the Ballot. After carefully reviewing these materials, please indicate your acceptance or rejection of the Plan and your opt-in election on the Ballot.

**The deadline to vote on the Plan is the earlier of (i) twenty-eight (28) days after entry of the Interim Approval and Procedures Order and (ii) January 17, 2025, at 4:00 p.m. (prevailing Eastern Time).**

Please vote and return your Ballot(s) to the Voting Agent by first-class mail in the return envelope provided, overnight courier, or hand delivery at Number Holdings, Inc. Ballot Processing Center c/o Kroll Restructuring Administration LLC, 850 3rd Avenue, Suite 412, Brooklyn, NY 11232 so as to be actually received by the Voting Agent by the Voting Deadline (or if you are voting through a Nominee, follow your Nominee’s instruction, including your Nominee’s internal deadline for timely submission of your vote to your Nominee for inclusion on a Master Ballot to be submitted by your Nominee to the Voting Agent by the Voting Deadline). Ballots should not be sent to the Bankruptcy Court, the Debtors or the Creditors’ Committee, or their respective counsel or agents (other than the Voting Agent).

In addition to accepting Ballots via first-class mail, overnight courier and hand delivery, the Voting Agent will accept Class 5 General Unsecured Claims Ballots via electronic, online transmissions, solely through a customized online balloting portal (the “E-Ballot Portal”), which can be accessed at <https://cases.ra.kroll.com/99only/EBallot-Home>. Holders of Class 5 Claims that are eligible to vote may cast an electronic Ballot and electronically sign and submit the Ballot instantly by utilizing the E-Ballot Portal. Instructions for electronic, online transmission are set forth on the Ballots and at the E-Ballot Portal. The encrypted Ballot data and audit trail created by such electronic submission will become part of the record, and the creditor’s electronic signature will be deemed to be immediately legally valid and effective.

Class 4 Senior Notes Claims Beneficial Holder Ballots submitted directly to the Voting Agent will not be counted. Only Class 4 Senior Notes Claims Master Ballots and Pre-Validated Beneficial Holder Ballots may be submitted directly to the Voting Agent either in hard copy by regular mail, overnight courier, or hand delivery to the Voting Agent address above or electronic mail to [99onlyBallots@ra.kroll.com](mailto:99onlyBallots@ra.kroll.com) (with “99 Cents Master Ballot Submission” or “99 Cents Ballot Submission,” as applicable, in the subject line).

## **J. Plan Objection Deadline**

**The deadline to file objections to Confirmation is the earlier of (i) twenty-eight (28) days after entry of the Interim Approval and Procedures Order and (ii) January 17, 2025, at 4:00 p.m. (prevailing Eastern Time) (the “Plan Objection Deadline”).**

Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to Confirmation. All objections to Confirmation must be in writing and must 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. Objections must be filed with the Bankruptcy Court and served on the Debtors and certain other parties in interest in accordance with the Interim Approval and Procedures Order so that they are actually received on or before the Plan Objection Deadline. Parties wishing to reply to any objection to Confirmation must do so by January 22, 2025, at 11:59 p.m. (prevailing Eastern Time).

Holders of Claims and Interests in the Voting Classes will be given an opportunity to opt out of the Plan provisions releasing certain non-Debtors from certain claims and causes of action (the “Third-Party Releases”). Holders of Claims in the Voting Classes can opt out of the Third-Party Releases by checking the appropriate box on the applicable Ballot. If a Holder of any such Claim or Interest does not check the appropriate box on the Ballot, such Holder will be deemed to have granted the Third-Party Releases and will be bound thereby.

## **K. Combined Hearing**

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a hearing to consider Confirmation. The Combined Hearing will commence on January 24, 2025, at 10:00 a.m. (prevailing Eastern Time), before the Honorable J. Kate Stickles at the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 5th Floor, Courtroom 6, Wilmington, Delaware 19801.

The Combined Hearing may be continued from time to time without further notice other than an adjournment announced in open court, or a notice of adjournment filed with the Bankruptcy Court and served on the Persons or Entities that have filed objections to Confirmation, without further notice to other parties in interest. The Bankruptcy Court, in its discretion and before the Combined Hearing, may put in place additional procedures governing the Combined Hearing. The Plan may be modified, if necessary, before, during or as a result of the Combined Hearing, without further notice to parties in interest.

# **II. DEBTORS’ HISTORY, PREPETITION BUSINESS AND CAPITAL STRUCTURE**

## **A. The Debtors’ History and Business**

### **1. Debtors’ Business**

The Company opened its first store in 1982 and expanded from there, opening hundreds of stores over the next several decades across several states in the Southwestern United States, including California, Texas, Arizona, and Nevada. As of the Petition Date, the Company operated 371 “extreme value” retail stores focused on selling merchandise primarily at a price point of 99

cents or less.

The Company offered a wide variety of merchandise, including national brands and other products available as everyday offerings and closeout “treasure hunts.” The Company differentiated itself from traditional dollar stores by offering a wider assortment of food and grocery items, including frozen, dairy, deli, and fresh produce.

The major product categories at the Company’s retail stores consisted of the following:

- fresh merchandise, including fresh produce, dairy, bread, tortillas, deli, and frozen;
- grocery merchandise, including beverages, candies, cookies, grocery-breakfast, grocery-canned, and other snacks;
- consumables products, including baby products, food storage, health & beauty, household cleaning, pet supplies, picnic supplies, and soft lines; and
- general and seasonal merchandise, including bath and bedding, electronics, hardware and audio, home décor, kitchenware, party supplies, plastics, stationary, toys, and recreation.

The Company also operated several warehousing and distribution facilities to service its retail operations. As of the Petition Date, the Company operated four warehousing and distribution facilities in the greater Los Angeles Area and one warehousing and distribution center in Katy, Texas. The Company’s primary distribution practice was to have merchandise delivered from its vendors to its warehouses and then shipped to its store locations, while select product categories were delivered directly to the Company’s stores.

The Company also sold merchandise through its Bargain Wholesale division to retailers, distributors, and exporters. Wholesale operations accounted for approximately 1.8% of the Company’s total sales in the first three quarters ended October 27, 2023.

## **2. Competition**

The discount retail industry is highly competitive. In the years leading up to its filing for Chapter 11 relief, the Company faced increased competition across multiple market segments, including local, regional and national supermarket retailers, convenience stores, retail drug chains, national general merchandisers and discount retailers, membership clubs, warehouse stores, big box retailers, “click and collect,” and on-line retailers.

## **3. Prepetition Corporate Structure**

A chart showing the Debtors’ organizational structure as of the Petition Date is attached as **Exhibit B** to this Disclosure Statement. As reflected in the chart:

- Numbers, a holding company with no active business or operations, owns (i) 100% of the equity interests in 99 Cents Only Stores, LLC, the principal operating company within the Company’s corporate enterprise, and (ii) as of the Petition

Date, 100% of the equity interests in non-Debtor 99 Cents Only Foundation, a charitable foundation which had no active business or operations and which has been dissolved under applicable state law.

- 99 Cents Only Stores LLC owns 100% of the equity interests in (i) 99 Cents Only Stores Texas, Inc., the principal operator of the Company's Texas operations, (ii) 99 Cents HoldCo LLC, a holding company with no active business or operations, and (iii) Bargain Wholesale LLC, a holding company with no active business or operations.
- 99 Cents HoldCo LLC owns 100% of the equity interests in 99 Cents PropCo LLC, a holding company with no active business or operations.
- 99 Cents PropCo LLC held certain real estate assets, including those that serve as collateral for the PropCo Promissory Note, as described in more detail below.
- Bargain Wholesale LLC owns 100% of the equity interests in non-Debtor BW Global Logistics (Hong Kong) Ltd., a Hong Kong company that supported the Company's importing and sourcing of goods to be sold in its stores.

## B. Prepetition Capital Structure

### 1. The Debtors' Debt Obligations

As of the Petition Date, the Debtors had incurred and/or issued debt through (i) a first lien asset based revolving credit facility (the "ABL Facility"), (ii) senior secured notes (the "2026 Notes"), and (iii) a secured promissory note ("PropCo Promissory Note"). A summary of these debt facilities is provided below:

| Funded Debt                     | Maturity         | Interest Rates                                                 | Principal Amount Outstanding as of the Petition Date |
|---------------------------------|------------------|----------------------------------------------------------------|------------------------------------------------------|
| ABL Facility<br>Revolving Loans | May 8, 2025      | Term SOFR +<br>adjustment + margin<br>or<br>Base Rate + margin | \$38,200,000                                         |
| FILO Facility                   | May 8, 2025      | Term SOFR +<br>adjustment + 8.50%<br>or<br>Base Rate + 7.50%   | \$25,000,000                                         |
| Letters of Credit               | May 8, 2025      | Term SOFR +<br>adjustment + margin<br>or<br>Base Rate + margin | \$25,732,858                                         |
| <i>Total ABL Facility:</i>      |                  |                                                                | <i>\$88,932,858</i>                                  |
| 2026 Notes                      | January 15, 2026 | 7.500%                                                         | \$350,000,000                                        |

|                               |             |        |                             |
|-------------------------------|-------------|--------|-----------------------------|
| <b>PropCo Promissory Note</b> | May 6, 2024 | 10.00% | \$18,000,000                |
| <b><i>TOTAL</i></b>           |             |        | <b><i>\$456,932,858</i></b> |

**a. ABL Facility**

As of the Petition Date, 99 Cents Only Stores LLC was the borrower under the ABL Facility, including of a “first-in last-out” term loan facility (the “FILO Facility”), pursuant to that certain Credit Agreement, dated as of January 13, 2012 (as amended, modified, supplemented or restated from time to time, the “ABL Facility Credit Agreement”), among the borrower, Numbers, Royal Bank of Canada, as administrative agent (in such capacity, the “ABL Facility Agent”) and issuer, Sixth Street Specialty Lending, Inc., (formerly, TPG Specialty Lending, Inc.), as FILO agent, and the lenders from time to time party thereto (the “ABL Lenders”). All of the borrower’s obligations under the ABL Facility were guaranteed by Numbers and 99 Cents Only Stores Texas, Inc. (collectively, the “Credit Facilities Guarantors”).

As of the Petition Date, approximately \$38.2 million in borrowings were drawn under the ABL Facility revolver and approximately \$25 million were outstanding under the FILO Facility. The ABL Facility allowed for the issuance of letters of credit (“Letters of Credit”) to support the Debtors’ obligations to landlords, sureties, and other counterparties. There were approximately \$25.7 million in undrawn letters of credit issued as of the Petition Date, reducing the amount otherwise available under the ABL Facility on a dollar-for-dollar basis. Availability under the ABL Facility Credit Agreement was capped by a borrowing base, which was calculated based on certain percentages of the value of the Debtors’ inventory and credit card receivables. As of the Petition Date, the aggregate outstanding principal balance under the ABL Facility was approximately \$63.2 million, plus approximately \$25.7 million of undrawn letters of credit.

The ABL Facility was secured by substantially all of 99 Cents Only Stores LLC’s assets and the assets of the Credit Facility Guarantors, including a first priority security interest in certain current assets, a second priority security interest in certain fixed assets, and a second priority pledge of all of 99 Cents Only Stores LLC’s equity interests and the equity interests in the Credit Facilities Guarantors (other than Numbers).

The ABL Facility (including the FILO Facility) has a maturity date of May 8, 2025.

**b. 2026 Notes**

On December 20, 2020, 99 Cents Only Stores LLC issued \$350 million in aggregate principal amount of the 2026 Notes pursuant to an indenture, dated as of December 22, 2020 (the “2026 Notes Indenture”), among 99 Cents Only Stores LLC, the guarantors thereunder, and Wilmington Trust, National Association, as trustee.

The 2026 Notes were fully and unconditionally guaranteed, jointly and severally (the “Notes Guarantees”) by Numbers and 99 Cents Only Stores LLC’s direct and indirect wholly owned domestic subsidiaries (other than 99 Cents PropCo LLC, 99 Cents HoldCo LLC, Bargain Wholesale LLC and 99 Cents Only Foundation, and subject to other customary exclusions). The 2026 Notes and the Notes Guarantees were secured (i) on a first-priority basis by the Notes Priority

Collateral (as defined in the 2026 Notes Indenture, comprised of equity, fixed assets, investment property, and intercompany indebtedness, except to the extent such indebtedness constituted ABL Priority Collateral (as defined in the 2026 Notes Indenture, primarily comprised of current assets, including, without limitation, accounts, cash, cash equivalents, deposit/securities accounts, and inventory)) and identifiable proceeds of Notes Priority Collateral, and (ii) on a second-priority basis by the ABL Priority Collateral and identifiable proceeds of ABL Priority Collateral, in each case subject to certain exceptions.

**c. PropCo Promissory Note**

On August 3, 2023, 99 Cents PropCo LLC issued the PropCo Promissory Note in favor of RCB Equities #1, LLC (“RCB”), pursuant to which RCB provided a loan (the “PropCo Loan”) to PropCo in the principal amount of \$21.0 million.

The PropCo Promissory Note was funded on August 4, 2023 (the “Funding Date”) and initially bore interest at the rate of 9.0% per annum, payable in arrears in monthly installments beginning on September 1, 2023. The outstanding principal balance on the PropCo Promissory Note was initially due and payable on the date that was three months after the Funding Date, which date was extended by three months upon payment by 99 Cents PropCo LLC, prior to such maturity date, of an extension fee in the amount of 2% of the then-outstanding principal balance of the PropCo Promissory Note.

On February 5, 2024, 99 Cents PropCo LLC and RCB entered into a Loan Modification and Extension Agreement, pursuant to which the maturity date of the PropCo Promissory Note was extended to May 6, 2024 and 99 Cents PropCo LLC agreed to (i) make a principal payment of \$3.0 million to RCB, leaving a remaining principal balance of \$18.0 million, (ii) pay an extension fee to RCB in the amount of 3% of the remaining principal balance, and (iii) pay interest on the remaining principal balance in the amount of 10.0% per annum commencing February 5, 2024.

The obligations of 99 Cents PropCo LLC under the PropCo Promissory Note were secured by deeds of trust for twelve parcels of real property owned by 99 Cents PropCo LLC. The PropCo Loan has been fully satisfied as a result of the Sales discussed below in Section IV.F.

**2. The Debtors’ Common and Preferred Stock**

As of the Petition Date, Numbers had two classes of common stock and six classes of preferred stock outstanding. A summary of such common and preferred stock is provided below:

| Type/Class of Stock         | Liquidation Preference | Quarterly Dividend Entitlement                                      | Amount Outstanding |
|-----------------------------|------------------------|---------------------------------------------------------------------|--------------------|
| <b>Common Stock</b>         |                        |                                                                     |                    |
| Class A Common Stock        | N/A                    | N/A                                                                 | 11,542,288,492     |
| Class B Common Stock        | N/A                    | N/A                                                                 | 11,542,288,492     |
| <b>Preferred Stock</b>      |                        |                                                                     |                    |
| Series AA-1 Preferred Stock | \$202,479,827          | Cash rate: 9.61% per annum<br>and<br>Cash/PIK rate: 2.51% per annum | 187,312            |

| Type/Class of Stock         | Liquidation Preference | Quarterly Dividend Entitlement                                   | Amount Outstanding |
|-----------------------------|------------------------|------------------------------------------------------------------|--------------------|
| Series AA-2 Preferred Stock | \$22,798,099           | Cash rate: 9.00% per annum and<br>Cash/PIK rate: 3.15% per annum | 20,680             |
| Series A Preferred Stock    | \$59,555,789           | Cash/PIK rate: 12.5% per annum                                   | 1,020,000,000      |
| Series B Preferred Stock    | \$50,472,692           | Cash rate: 10% per annum<br>or<br>Cash/PIK rate: 12.5% per annum | 2,155,326,141      |
| Series Z Preferred Stock    | \$18,598,772           | Cash/PIK rate: 12.5% per annum                                   | 12,688             |
| Series Y Capital Stock      | N/A                    | N/A                                                              | 24,187             |

**a. Common Stock**

As of the Petition Date, Numbers had 11,542,288,492 shares of Class A Common Stock and 11,542,288,492 shares of Class B Common Stock outstanding. The Class A Common Stock and the Class B Common Stock are junior to all other existing and future preferred stock of Numbers.

**b. Preferred Stock**

As of the Petition Date, Numbers had:

- 187,312 shares of Series AA-1 Preferred Stock outstanding with a liquidation preference of approximately \$202.5 million. The Series AA-1 Preferred Stock is *pari passu* with the Series AA-2 Preferred stock and Series Z Preferred Stock and senior to all other existing and future common and preferred stock of Numbers.
- 20,680 shares of Series AA-2 Preferred Stock outstanding with a liquidation preference of approximately \$22.8 million. The Series AA-2 Preferred Stock is *pari passu* with the Series AA-1 Preferred Stock and Series Z Preferred Stock and senior to all existing and future common and preferred stock of Numbers.
- 1,020,000,000 shares of Series A Preferred Stock outstanding with a liquidation preference of approximately \$59.6 million. The Series A Preferred Stock is senior to the Series B Preferred Stock, the Class A Common Stock, the Class B Common Stock, and all other existing and future common stock of Numbers.
- 2,155,326,141 shares of Series B Preferred Stock outstanding with a liquidation preference of approximately \$50.5 million. The Series B Preferred Stock is senior to the Class A Common Stock, the Class B Common Stock, and all other existing and future common stock of Numbers.
- 12,688 shares of Series Z Preferred Stock outstanding with a liquidation preference of approximately \$18.6 million. The Series Z Preferred Stock is *pari passu* with the

Series AA-1 Preferred Stock and Series AA-2 Preferred Stock and senior to all other existing and future common and preferred stock of Numbers.

- 24,187 shares of Series Y Capital Stock outstanding. The Series Y Capital Stock is senior to the Class A Common Stock, Class B Common Stock, and all other existing and future common stock of Numbers.

### **III. EVENTS LEADING TO THE CHAPTER 11 CASES**

#### **A. Impact of Adverse Industry Trends and Competition**

The discount retail industry is highly competitive. In recent years, the Company faced increased competition across multiple market segments, including from local, regional and national supermarket retailers, convenience stores, retail drug chains, national general merchandisers and discount retailers, membership clubs, warehouse stores, big box retailers, “click and collect,” and on-line retailers. Some of the Company’s competitors have expanded and remodeled aggressively in recent years, and the Company was disadvantaged by limited financial flexibility and inability to devote greater resources to pursue new store growth. Additionally, some of the Company’s competitors had greater resources and purchasing power than the Company, making it increasingly difficult for the Company to compete while maintaining solid profit margins.

#### **B. Restructuring Transaction in July of 2019**

In an attempt to combat these adverse industry trends, in 2017 and 2018, the Company undertook a number of strategic initiatives, including completing a restructuring transaction in December of 2017 to facilitate the ongoing rollout of a “refresh” program in many of its stores. This restructuring transaction involved, among other things, an exchange of debt for equity by the Company’s equity sponsors in an effort to induce other debt holders to participate in the restructuring. The Company’s equity sponsors exchanged the Company’s high yield notes they held for new preferred equity with a dividend payable in-kind, as a result of which the equity sponsors took a step-down in priority and saved the Company the expense of a dividend payable in cash.

The “refresh” program involved, among other things, (i) upgrading store facilities’ interior and exterior and improving cleanliness, (ii) broadening merchandise assortment, in-stock and fresh grocery offerings, including adding refrigeration equipment and fixtures, (iii) elevating customer service, (iv) implementing targeted marketing campaigns to attract and retain new customers, and (v) lowering shelf heights from 78 inches to 54 inches to create a more open and pleasant shopping experience. By the end of the fiscal year 2018,<sup>7</sup> the Company had completed 71 store refreshes in three markets – San Diego, Phoenix, and Las Vegas. While it required significant capital expenditures to “refresh” each store, the refreshes generally resulted in significant increases in both customer satisfaction and profitability.

Notwithstanding these efforts and the initial success of the refresh program, the increasingly competitive landscape of the discount retail industry continued to take its toll. The

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<sup>7</sup> The Company’s fiscal year is from the beginning of March through the end of January.

Company struggled to turn a profit and suffered operating losses of approximately \$22.5 million in 2017 and \$7 million in 2018.

With reduced cash on hand, in the first half of 2019, the Company made a strategic decision to cut down on capital expenditures by delaying the pace of store refreshes as well as new store openings. The Company continued to focus on cost containment while simultaneously implementing other strategic initiatives dedicated to merchandising improvements, supply chain efficiency, and operational effectiveness.

With continuing operating losses and decreased liquidity to support its operations, the Company faced the prospect of defaulting on certain of its outstanding debt obligations. After months of hard-fought negotiations, the Company completed an out-of-court restructuring in July of 2019. The restructuring transactions, among other things, included an exchange of certain debt for common and preferred shares and an equity rights offering backstopped by one of the Company's equity sponsors, which significantly reduced the Company's debt load and its corresponding interest expense.

### **C. Impact of COVID-19 Pandemic**

With a significant reduction in its funded debt obligations and its business operations trending towards profitability, the Company was positioned for success at the start of 2020. But less than two months into the fiscal year, in March of 2020, the World Health Organization announced that COVID-19 had become a pandemic, and the U.S. government declared a national emergency, as did a number of U.S. state governments. Although the Company, as a designated essential retailer, was allowed to keep its stores open, the Company experienced significant disruptions to its business as a result of COVID-19 related restrictions, most notably in California, where the Company had a high geographic concentration.

Restrictions such as “shelter in place” orders, border closures, mandated social distancing, required metering of customers at store entrances, and reduction in store hours, led to lower customer traffic, consolidation of customer shopping trips, and reduced sales. COVID-19 related restrictions also reduced the number of available closeouts, which impacted the Company's product assortment. While the Company prioritized the health and safety of its customers – including by, among other things, enhancing cleaning protocols, modifying store operating hours, designating elderly shopping hours, social distancing, providing personal protective equipment and hand sanitizer to employees, implementing employee temperature checks, and installing plexiglass barriers at registers – all of this came at a cost.

By the end of 2020, the Company had incurred COVID-19 related expenses of approximately \$15.2 million, primarily associated with additional payroll-related expenses, incremental cleaning and safety costs at its facilities and stores, and costs for protective equipment and supplies. On top of this, with the slowdown in construction, the implementation of remote work, and the closure of small businesses in the shopping centers, the Company began to lose a significant number of its “grab-and-go” customers who regularly purchased a small number of items, such as energy drinks, produce and snacks, on their way to and from home and work or while patronizing small businesses near the Company's stores. These “grab-and-go” customers in large part did not return even after many of the COVID-19 restrictions were lifted.

**D. Restructuring Transactions in December of 2020**

Towards the end of 2020, with its financial performance improving and interest rates still at historic lows, the Company had an opportunity to receive an injection of new capital to support operations, further reduce its debt load, and extend runway on its debt at favorable interest rates. To that end, on December 22, 2020, 99 Cents Only Stores LLC and Numbers completed a series of restructuring transactions that involved, among other things, (i) the issuance of the 2026 Notes in the aggregate principal amount of \$350 million, and (ii) investment from third-party investors and the Company's equity sponsors of \$200 million through the issuance of common and preferred stock. Proceeds from these transactions were used to, among other things, (i) pay down the full \$468.4 million outstanding under a term loan facility due in 2022, (ii) fund the redemption in full of \$11.8 million outstanding under certain notes due in 2022, and (iii) prepay \$7.5 million of the outstanding borrowings under the FILO Facility.

**E. Record Inflation, Increased Cost Pressures, and Continued Inventory Shrinkage in 2021 through 2023**

With the new equity injection, a further reduced debt load and its business operations trending towards profitability, the Company was once again positioned for success at the start of 2021. But just as some of the negative impacts of the pandemic began to subside, inflation began to rise at historic rates, leading to significant increase in the Company's cost of doing business, including the cost of merchandise, distribution, transportation, and employee wages. On top of this, the Company's stores also began to suffer from significant increases in inventory shrinkage in 2022 and to an even greater extent in 2023, primarily due to elevated rates of theft.

Exacerbating the situation was the fact that on February 11, 2023, the Company's distribution center in Katy, Texas experienced an ammonia release while the landlord's third-party contractor was performing services related to the facility's refrigeration. Although the release did not result in any personal injury, it did cause property damage, loss of product, and the temporary closure of the facility. The portions of the distribution center servicing chilled products, dry (ambient) products, and frozen products did not resume normal business operations until late May 2023, September 2023, and October 2023, respectively. The Company recorded charges of approximately \$18.3 million in the first three quarters ended October 27, 2023, in connection with the ammonia release and resulting temporary shutdown of the facility, primarily attributable to third-party remediation costs, inventory transportation costs, and inventory damage.

The Company suffered operating losses of approximately \$60.6 million in 2021, \$30.8 million in 2022 (not including a goodwill and trade name impairment of \$121 million), and \$59.9 million in the first three quarters ended October 27, 2023 (not including a gain on disposal of property and equipment of approximately \$167.8 million).

**F. Exploration of Strategic Alternatives**

With operating losses continuing to mount, in September of 2023, the Company retained Jefferies LLC ("Jefferies") to provide advice and assistance with respect to a potential restructuring transaction. But following further operating losses, by late 2023/early 2024, it became clear that in a matter of months the Company could run out of cash to pay interest on its more than

\$450 million in outstanding debt obligations and timely pay vendors and landlords to maintain its business operations. The Company went to great lengths to evaluate and pursue all reasonably available strategic alternatives. Among other things, Jefferies began advising and assisting the Company with respect to the exploration of strategic alternatives, including a potential sale of all or part of the Company's assets either outside of, or in connection with, a chapter 11 filing.

In February and March of 2024, Jefferies initiated a preliminary marketing process contacting 32 prospective buyers, including 20 potential strategic buyers and 12 private equity companies. The Company executed non-disclosure agreements (NDAs) with 16 prospective buyers, who were then provided access to a virtual data room to evaluate the purchase opportunity. Though the Company received four indications of interest, certain of them were not actionable due to the inability to achieve key stakeholder consents. Ultimately, given its liquidity constraints, there was insufficient time for the Company to implement a strategy to fully explore the possibilities outside of a chapter 11 process.

#### **G. Decision to Wind-Down All Operations**

At the same time that the Company was exploring a potential sale of all or a portion of its assets, it was also considering whether to, outside of and/or in connection with a chapter 11 filing, raise financing to support a going concern restructuring, including a potential wind-down of a significant number of its less profitable stores while continuing to operate its more profitable stores (the "Right Sizing Plan").

Around the same time that these discussions were occurring, Jefferies separately solicited proposals for a potential financing to support the Right Sizing Plan or another going concern restructuring solution from 24 potential third party lenders. The Company signed NDAs with nine potential third-party lenders, and received an indication of interest from one. However, as the month of March progressed, the Company determined that the Right Sizing Plan and other going concern restructuring solutions were not feasible without a significant amount of additional capital that was not supported by the Company's capital structure.

With this strategy off the table, and securing an executable proposal from a strategic buyer on a going concern basis still not available, the Company made the difficult determination that initiating a wind-down of the business in order to immediately preserve liquidity and pursuing Company-wide store closings was the only viable path to maximizing value for its stakeholders.

On March 29, 2024, the Company retained Hilco Merchandise Resources, LLC ("Hilco Merchandise") and Hilco Real Estate, LLC ("Hilco Real Estate") to advise the Company with respect to a potential Company-wide wind-down. On April 4, 2024, the Company announced that it would commence an orderly wind-down of its business, and on April 5, 2024, the Company announced the commencement of the store closing sales at all of its 371 stores.

Within days of the announcement of the store closing sales, the mounting pressure from vendors, landlords, and service providers, threatening to commence litigation, refusing to provide services, and seeking to terminate leases forced the Debtors to commence the Chapter 11 Cases to gain the breathing space offered by chapter 11 to continue their efforts to sell their assets in the most value maximizing way. On April 7, 2024, the Debtors' boards of directors or sole members,

as applicable, unanimously voted to commence voluntary cases under chapter 11 of the Bankruptcy Code for Numbers and each of its subsidiaries, other than 99 Cents Only Foundation and BW Global Logistics (Hong Kong) Ltd.

#### **IV. EVENTS DURING THE CHAPTER 11 CASES**

##### **A. First Day Relief**

Immediately after commencing the Chapter 11 Cases, the Debtors filed various motions and other pleadings seeking relief from the Bankruptcy Court to stabilize their business and ensure a smooth transition into chapter 11. The orders entered by the Bankruptcy Court authorized the Debtors to, among other things:

- continue certain compensation and benefits programs and satisfy related prepetition obligations [Docket Nos. 102 and 443];
- prohibit utility companies from altering, refusing, or discontinuing services and establish procedures for determining adequate assurance for the continued provision of utility services [Docket Nos. 119 and 395];
- pay certain taxes and fees [Docket Nos. 122 and 444];
- continue to operate their cash management system and maintain existing bank accounts [Docket Nos. 104 and 411];
- pay prepetition claims of their critical vendors, including PACA/PASA claimants [Docket Nos. 135 and 418];
- maintain their insurance and surety programs and honor obligations thereunder [Docket Nos. 118 and 412];
- continue customer programs and honor related prepetition obligations [Docket Nos. 102 and 400]; and
- establish procedures to preserve the value of tax attributes for the benefit of the Debtors' estates [Docket Nos. 121 and 391].

##### **B. Postpetition Financing**

Following the Petition Date, the Debtors obtained postpetition financing pursuant to that certain DIP Credit Agreement, by and among 99 Cents Only Stores LLC as borrower, Numbers and other Debtors as guarantors, TC Lending, LLC as administrative agent and collateral agent (the "DIP Agent"), and lenders party thereto from time to time.

The DIP Credit Agreement provides for senior secured postpetition financing on a superiority basis consisting of (i) a new money multi-draw term loan facility in the amount of \$35.5 million (the "New Money Amount"), of which \$20.5 million was available upon entry of the *Interim Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize*

*Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* [Docket No. 134] and \$15.0 million was available upon entry of the *Final Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief* [Docket No. 467] (the “Final DIP Order”), and (ii) upon entry the Final DIP Order, a “roll-up” of Prepetition FILO Secured Obligations (as defined in the Final DIP Order) in the amount of \$11 million plus all accrued interest through the date of entry of the Final DIP Order.

To secure the obligations under the DIP Credit Agreement, the Debtors granted the DIP Agent continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition security interests in and liens on (collectively, the “DIP Liens”) all property of their estates under, including all real and personal property (the “DIP Collateral”). The DIP Liens are senior in priority, and superior to, any security interest, mortgage, collateral interest, lien or claim with respect to the DIP Collateral, subject only to the Carve-Out (as defined in the Final DIP Order).

In addition, under the DIP Credit Agreement, the DIP Agent was granted superpriority administrative expense claims in each Chapter 11 Case and in any case under Chapter 7 of the Bankruptcy Code upon conversion of any of the Chapter 11 Cases, or in any other proceedings superseding or related to any of the foregoing for all obligations under the DIP Credit Agreement, subject solely to the Carve-Out.

### **C. Store Closing Sales**

On March 29, 2024, the Debtors entered into that certain Consulting and Marketing Services Agreement for Multiple Asset Categories (the “Consulting Agreement”) with Hilco Merchant Resources, LLC and Hilco Real Estate, LLC (together, “Hilco”), which was assumed in part upon entry of the *Final Order (I) Authorizing The Debtors to Assume Consulting Agreement, (II) Authorizing Store Closing Sales and Approving Related Procedures, (III) Authorizing Customary Compensation Enhancement, and (IV) Granting Certain Related Relief* [Docket No. 462]. The Consulting Agreement contemplated that Hilco would assist the Debtors to, among other things, conduct store closing sales, sell furniture, fixtures and equipment, evaluate the Debtors’ real estate interests, and prepare the stores for turnover to the applicable landlords and third parties. Hilco conducted the store closing sales from April 5, 2024 to May 27, 2024.

### **D. Appointment of the Creditors’ Committee**

On April 19, 2024, the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”) appointed the Creditors’ Committee consisting of: (i) EMCOR Facilities Services, Inc.; (ii) Eggs Unlimited LLC; (iii) Vistar Corporation; (iv) PepsiCo, Inc.; (v) NewMark Merrill Companies; (vi) Hueneme Bay Center; and (vii) Veronica Segura. Following its appointment, the Creditors’ Committee retained Pachulski Stang Ziehl & Jones LLP as counsel [Docket No. 897], Kelley Drye & Warren LLP as special co-counsel [Docket No. 849], and Genesis Credit Partners LLC as financial advisor [Docket No. 898]. On October 4, 2024, the Creditors’ Committee filed a motion seeking authorization to employ and retain as counsel, ASK LLP to analyze and pursue

avoidance actions effective as of August 8, 2024 [Docket No. 1350]. On November 22, 2024, the Creditors' Committee filed a motion seeking authorization to employ and retain MFSolomon Tax Consulting LLC as special tax counsel [Docket No. 1514].

#### **E. Retention of Professionals**

With Bankruptcy Court approval, the Debtors retained (i) Milbank LLP as counsel [Docket No. 362]; (ii) Morris, Nichols, Arsht & Tunnell LLP as co-counsel [Docket No. 356]; (ii) Alvarez & Marsal North America, LLC to provide certain additional personnel including a Chief Restructuring Officer [Docket No. 435]; (iii) Kroll as claims and noticing agent [Docket No. 117]; (iv) Hilco Real Estate, LLC as real estate consultant [Docket No. 404]; and (v) Jefferies LLC as investment banker [Docket No. 393]. The Bankruptcy Court also authorized the Debtors to retain and compensate certain professionals utilized in the ordinary course of the Debtors' business (the "Ordinary Course Professionals Order") [Docket No. 354].

#### **F. Bidding Procedures Order**

On May 9, 2024, in their effort to maximize value for their stakeholders, the Debtors obtained an order (the "Sale and Bidding Procedures Order") [Docket No. 463] that approved the relief sought in the *Debtors' Motion For Entry Of An Order Approving (I)(A) Bidding Procedures in Connection with the Sale of Substantially All of the Debtors' Remaining Assets, (B) Assumption and Assignment Procedures, (C) Form and Manner of Notice of Sale Hearing, Assumption Procedures, and Auction Results; (II) Auction and Sale Hearing Dates; (III)(A) Debtors' Entry Into One or Multiple Asset Purchase Agreements, (B) Sale(s) Free and Clear of all Encumbrances, and (C) Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (IV) Granting Related Relief* [Docket No. 171]. The Sale and Bidding Procedures Order approved, among other things, (i) the bidding procedures in connection with the sale of substantially all of the Debtors' remaining assets (the "Bidding Procedures"), (ii) assumption and assignment procedures with respect to certain contracts and leases, (iii) the form and manner of notice of the auction and the sale hearing, and (iv) the various deadlines in connection with the sale.

On May 9, 2024, following discussions and negotiations with several parties interested in serving as stalking horse bidders for certain of the Debtors' assets, the Debtors filed the *Debtors' Motion for Entry of an Order (I) Authorizing the Debtors to Enter into the Stalking Horse APA, (II) Approving the Related Bid Protections; and (III) Granting Related Relief*, which was approved on May 15, 2024 (the "Stalking Horse Order") [Docket No. 562]. The Stalking Horse Order authorized the Debtors to enter into the Stalking Horse APA with Ollie's Bargain Outlet, Inc. and OBO Ventures, Inc. (together, "Ollie's") for three owned properties and eight leased properties and approved related bid protections. The Stalking Horse Order and the Stalking Horse APA allowed the Debtors to continue soliciting higher or otherwise better offers at an Auction (as defined below).

#### **G. The Sales**

Following the Petition Date, the Debtors and their advisors began to engage with numerous potential assignees for the leases of the store locations that would no longer be operating as of April 30, 2024 (the "April Leases"). As a result of this process, Dollar Tree Stores, Inc. ("Dollar

Tree”) agreed to purchase the designation rights to 58 of the April Leases (i.e., an option to instruct the Debtors to assume up to 58 of the April Leases on or before May 31, 2024 and assign any of such assumed leases to Dollar Tree). The Bankruptcy Court approved the sale of these designation rights on May 8, 2024 by entering the *Order (I) Approving the Purchase Agreement Among Debtors and Buyer, (II) Authorizing the Sale of Designation Rights to Certain Leases Free and Clear of Liens, Claims, Interests, and Encumbrances, (III) Approving Assignment and Assumption Procedures for the Designated Leases and (IV) Granting Related Relief* [Docket No. 454].

Thereafter, following Court approval of the Bidding Procedures, the Debtors engaged in negotiations with numerous potential bidders and received over 150 Qualified Bids (in addition to the Stalking Horse Bid) for various of their assets. On May 21, 2024, the Debtors held an auction (the “Auction”), online and in Milbank’s office, for the sale of over 300 leased and owned properties. As a result of the Auction, the Debtors sold the designation rights to over 170 leases for \$15.35 million to Dollar Tree, sold intellectual property for \$150,000, and obtained approval of the assignment of approximately 20 leases and the sale of 44 owned properties to various purchasers (collectively, the “Sales”). The Creditors’ Committee was involved in the sale negotiations and supported the Sales.

The Bankruptcy Court approved the Sales on May 24, 2024 by entering (i) the *Order (I) Approving the Purchase Agreement Among Debtors and Buyer, (II) Authorizing the Sale of Designation Rights to Certain Leases Free and Clear of Liens, Claims, Interests, and Encumbrances, (III) Approving Assignment and Assumption Procedures for the Designated Leases and (III) Granting Related Relief* [Docket No. 699]; (ii) the *Order (I) Authorizing the Debtors’ Entry into Asset Purchase Agreements, (II) Authorizing the Sale of the Purchased Assets Free and Clear of All Encumbrances, (III) Approving the Assumption and Assignment of Certain Unexpired Leases and Executory Contracts, and (IV) Granting Related Relief* [Docket No. 707]; (iii) the *Order (I) Authorizing the Sale of Certain Leases Free and Clear of All Encumbrances, (II) Approving the Assumption and Assignment of Certain Unexpired Leases and Executory Contracts, and (III) Granting Related Relief* [Docket No. 709]; and (iv) the *Order (A) Approving the Sale of Certain Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) Authorizing the Debtors to Assume, Assign and Sell Certain Non-Residential Real Property Leases; and (C) Granting Related Relief with Respect to the Asset Purchase Agreement Between Ollie’s Bargain Outlet, Inc. and OBO Ventures, Inc and Debtors Other Than for Store #2831, The Montgomery Plaza Leasehold* [Docket No. 710] (collectively, the “Sale Orders”). Upon closing, the sale of owned properties at the Auction netted the Debtors \$138.27 million of proceeds.

On August 12, 2024, the Debtors obtained the *Order (I) In Aid of the Sale Order; (II) Approving the Alternative Purchase Agreement; and (III) Granting Related Relief* [Docket No. 1158] for two properties for which an asset purchase agreement had been terminated (the “Rosewood Properties”). Through its marketing efforts, the Debtors received a \$3,300,000 offer from Summitrose Investments, LP for the sale of one of the Rosewood Properties (the “Towne Centre Property”) and a \$1,165,000 offer from Russ Group, Inc. for the sale of the other Rosewood Property (the “Holt Property”). The sale of the Towne Centre Property closed on August 23, 2024 and the sale of the Holt Property closed on August 27, 2024, together netting approximately \$4.23 million of sale proceeds.

## **H. Assumption and Rejection of Unexpired Non-Residential Real Property Leases**

On May 8, 2024, the Bankruptcy Court approved procedures for the Debtors' rejection of executory contracts and unexpired leases (the "Rejection Procedures"), (ii) assumption and assignment of executory contracts and unexpired leases (the "Assumption and Assignment Procedures"), and (iii) abandonment of certain personal property (the "Abandonment Procedures") [Docket No. 438]. Pursuant to the Rejection Procedures, the Debtors have filed numerous notices of rejection, and the Bankruptcy Court has entered multiple orders approving the rejection of numerous unexpired leases [Docket Nos. 461, 701, 703, 704, 706, 771, 821, 822, 850, 854, 1014, 1015, 1016, 1026, 1272, 1275, and 1347]. Pursuant to the Assumption and Assignment Procedures, the Debtors have filed several notices of assumption and assignment, and the Bankruptcy Court has entered multiple orders approving the same [Docket Nos. 346, 710, 744, 791, 819, 820, 851, 860, 888, 908, 920, 921, 954, 996, 999, 1007, 1056, 1057, 1077–1084, 1099–1102, 1121, 1144, 1145, and 1153].

## **I. Reporting Requirements**

On May 22, 2024, the Debtors filed their Statements of Financial Affairs and Schedules of Assets and Liabilities (collectively, the "Schedules") [Docket Nos. 650 and 652–688]. The Schedules contain, among other things, information regarding the Debtors' books and records and regarding Claims and Executory Contracts and Unexpired Leases.

On May 28, 2024, the Debtors filed their first Bankruptcy Rule 2015.3 Report (the "2015.3 Report") [Docket No. 737], which contains information about their non-Debtor affiliates, 99 Cents Only Foundation and BW Global Logistics (HK) Ltd.

Since commencing the Chapter 11 Cases, the Debtors have been filing monthly operating reports (each, a "MOR") [Docket Nos. 794–801, 925–930, 1090–1095, 1222–1223, 1225–1228, 1331–1336, and 1440–1445]. Copies of the Schedules, the 2015.3 Report, and the MORs are available for inspection for a fee via PACER at <https://ecf.deb.uscourts.gov/> and on the website maintained by Kroll for these Chapter 11 Cases at <https://cases.ra.kroll.com/99only>.

## **J. Bar Dates**

Pursuant to the order entered at Docket No. 784 (the "Bar Date Order"), the Bankruptcy Court established (i) July 8, 2024, at 5:00 p.m. prevailing Eastern Time for hard copy submissions and at 11:59 p.m. prevailing Eastern Time for electronic submissions, as the Claims Bar Date, *i.e.*, the deadline for filing proofs of claim, including 503(b)(9) Claims; (ii) October 4, 2024, at 5:00 p.m. prevailing Eastern Time, as the Governmental Bar Date, *i.e.*, the deadline for governmental units to file proofs of claim; (iii) the later of (a) the Claims Bar Date or the Governmental Bar Date, as applicable and (b) 5:00 p.m. prevailing Eastern time for hard copy submissions and 11:59 p.m. for electronic submissions on the date that is 30 days from the date on which the Debtors serve notice of an amendment or supplement to the Schedules, as the Amended Schedules Bar Date, *i.e.*, the deadline for filing proofs of claim affected by such filing, amendment, or supplement; (iv) the later of (a) the Claims Bar Date or the Governmental Bar Date, as applicable, and (b) 5:00 p.m. prevailing Eastern Time for hard copy submissions and 11:59 p.m.

prevailing Eastern Time for electronic submissions on the date that is 30 days following entry of an order approving the rejection of any executory contract or unexpired lease of the Debtors or the effective date of a rejection of any executory contract or unexpired lease, as the Rejection Damages Bar Date, *i.e.*, the deadline for filing proofs of claim for damages arising from rejection of an executory contract or unexpired lease; and (v) July 8, 2024, at 5:00 p.m. prevailing Eastern Time for hard copy submissions and at 11:59 p.m. prevailing Eastern Time for electronic submissions, as the First Administrative Claims Bar Date, *i.e.*, the deadline for filing requests for allowance of administrative expense claims arising on or after the Petition Date and prior to June 1, 2024.

The Plan proposes that requests for payment of Administrative Claims (other than Fee Claims and 503(b)(9) Claims) that accrued between June 1, 2024 and the Effective Date must be filed no later than the Supplemental Claims Bar Date, which will be 30 days after the Effective Date. Pursuant to the Plan, the holders of 503(b)(9) Claims will continue to be subject to the Claims Bar Date. Further, the holders of Administrative Claims that have to file a request for payment and that do not timely file such a request will be forever barred from asserting Administrative Claims against the Debtors, the Estates, or their respective assets or property, and such Administrative Claims will be automatically discharged as of the Effective Date. Objections to requests for payment of Administrative Claims (other than Fee Claims) must be filed and served on the Notice Parties and the requesting party no later than the Claims Objection Bar Date, which will be the later of the later of (i) 180 days after the Effective Date and (ii) such other deadline for objecting to particular Claim(s) as may be established by the Plan, the Confirmation Order, or another order of the Bankruptcy Court.

#### **K. Notes Settlement**

On June 21, 2024, the Creditors' Committee filed the *Motion of the Official Committee of Unsecured Creditors for Entry of an Order Granting Standing and Authorizing the Prosecution of Certain Challenge Claims on Behalf of the Bankruptcy Estates* (the "Standing Motion") [Docket No. 857] in which it sought standing to pursue and prosecute (the "Challenge") certain claims and actions with respect to liens securing the \$350 million in aggregate principal amount of 7.500% Senior Secured Notes due 2026 (the "Prepetition Notes"). To resolve the Challenge, the Debtors, the Creditors' Committee, and the Ad Hoc Group of Senior Noteholders engaged in negotiations to resolve the Challenge and other disputed issues and consensually entered into a settlement (the "Notes Settlement") which (i) resolves disputes over the allocation of sale proceeds with respect to assets encumbered by the liens of the Prepetition Notes Agent (as defined in the Final DIP Order) and assets that are otherwise unencumbered and allocation of costs related thereto; (ii) secures the support of the Plan by the Ad Hoc Group of Senior Noteholders, a critical stakeholder in these Chapter 11 Cases, as well as the Creditors' Committee; and (iii) saves the estate unnecessary litigation costs and attendant delays. On November 4, 2024, the Debtors filed a motion seeking Court approval of the Notes Settlement [Docket No. 1450], which order was entered by the Court on November 27, 2024 [Docket No. 1529].

#### **V. SUMMARY OF THE PLAN**

**THE TERMS OF THE PLAN, A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT A, ARE INCORPORATED BY REFERENCE HEREIN. THE STATEMENTS CONTAINED IN THE DISCLOSURE STATEMENT INCLUDE SUMMARIES OF THE**

**PROVISIONS CONTAINED IN THE PLAN AND IN THE DOCUMENTS REFERRED TO THEREIN, WHICH ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE PLAN (AS WELL AS THE EXHIBITS THERETO AND DEFINITIONS THEREIN).**

**THE STATEMENTS CONTAINED IN THE DISCLOSURE STATEMENT DO NOT PURPORT TO BE PRECISE OR COMPLETE STATEMENTS OF ALL THE TERMS AND PROVISIONS OF THE PLAN OR DOCUMENTS REFERRED TO THEREIN, AND REFERENCE IS MADE TO THE PLAN AND TO SUCH DOCUMENTS FOR THE FULL AND COMPLETE STATEMENT OF SUCH TERMS AND PROVISIONS OF THE PLAN OR DOCUMENTS REFERRED TO THEREIN. IN THE EVENT OF ANY CONFLICT BETWEEN THE DISCLOSURE STATEMENT, ON THE ONE HAND, AND THE PLAN, ON THE OTHER HAND, THE TERMS OF THE PLAN CONTROL.**

**HOLDERS OF CLAIMS AGAINST THE DEBTORS AND OTHER INTERESTED PARTIES ARE URGED TO READ THE PLAN AND THE EXHIBITS THERETO IN THEIR ENTIRETY SO THAT THEY MAY MAKE AN INFORMED JUDGMENT CONCERNING THE PLAN.**

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

Except for those Claims addressed in sub-section 1 (“Unclassified Claims”) below, all Claims and Interests are classified for voting and Distribution purposes as set forth below and in the Plan (in accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims are not classified). A Claim or Interest is classified in a particular Class only to the extent that such Claim or Interest fits within the description of that Class and any portion of such Claim or Interest that fits within the description of another Class is classified in such other Class.

For the purposes of voting on the Plan and Distributions under the Plan, the Estates will be deemed substantively consolidated, so that a Holder of a Claim that may be asserted against more than one Debtor will be entitled to a single Distribution as if such Holder had a single Claim against the consolidated Estates. On the Effective Date: (1) all General Unsecured Claim guaranties by a Debtor of the obligations of any other Debtor will be deemed eliminated and extinguished so that (i) any General Unsecured Claim against a Debtor and any guarantee of such General Unsecured Claim executed by any other Debtor and (ii) any General Unsecured Claim on which more than one Debtor is jointly or severally liable, as the case may be, will be deemed to be one obligation; and (2) each and every General Unsecured Claim filed or Allowed in any of the Chapter 11 Cases will be treated as filed against the consolidated Debtors and will be treated as one General Unsecured Claim against and obligation of Number Holdings, Inc.

**1. Unclassified Claims**

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims and Priority Tax Claims are not classified in the Plan. Such Claims will be satisfied as set forth in the Plan and as summarized herein.

**a. Administrative Claims**

**i. Treatment of Administrative Claims**

Except as otherwise provided in Section II.A of the Plan or to the extent that a Holder of an Allowed Administrative Claim and the Debtors or Liquidating Trust (as applicable) agree to less favorable treatment with respect to such Allowed Administrative Claim, each Holder of an Allowed Administrative Claim will be paid the full unpaid amount of such Allowed Administrative Claim in Cash: (a) on the Effective Date or as soon as reasonably practicable thereafter or, if not then due, when such Allowed Administrative Claim is due or as soon as reasonably practicable thereafter; (b) if an Administrative Claim is Allowed after the Effective Date, on the date such Administrative Claim is Allowed or as soon as reasonably practicable thereafter or, if not then due, when such Allowed Administrative Claim is due or as soon as reasonably practicable thereafter; (c) at such time and upon such terms as may be agreed upon by such Holder and the Debtors or the Liquidating Trust, as applicable; or (d) at such time and upon such terms as set forth in an order of the Bankruptcy Court.

**ii. Supplemental Claims Bar Date**

Unless previously filed or as otherwise governed by any order of the Bankruptcy Court, requests for payment of Administrative Claims (other than Fee Claims, Notes Settlement Expenses, and Senior Notes Agent Fees) that accrued between June 1, 2024, and the Effective Date must be filed and served on the Notice Parties no later than the Supplemental Claims Bar Date. Holders of 503(b)(9) Claims will continue to be subject to the Claims Bar Date. **Holders of Administrative Claims that are required to file and serve a request for payment and that do not timely file and serve such a request will be forever barred from asserting such Administrative Claims, and such Administrative Claims will be automatically disallowed as of the Effective Date.** Objections to requests for payment of Administrative Claims (other than Fee Claims, Notes Settlement Expenses, and Senior Notes Agent Fees) must be filed and served on the Notice Parties and the requesting party no later than the Claims Objection Bar Date.

**iii. Statutory Fees**

On or before the Effective Date, all Statutory Fees payable pursuant to 28 U.S.C. § 1930 will be paid in full by the Debtors. Fees payable pursuant to 28 U.S.C. § 1930 after the Effective Date will be paid by the Liquidating Trust until the closing of the applicable case pursuant to section 350(a) of the Bankruptcy Code.

**iv. Professional Fee Reserve**

Professionals will reasonably estimate their unpaid Fee Claims and other unpaid fees and expenses as of the Effective Date. Any such Professionals will deliver their estimates to the Debtors and the Creditors' Committee no later than five days before the Effective Date. Any such estimate will not be deemed, however, to limit the amount of the fees and expenses that are the subject of each Professional's final request for payment in the Debtors' Chapter 11 Cases. If a Professional does not provide an estimate, the Debtors or Post-Confirmation Debtors may estimate the unpaid and unbilled fees and expenses of such Professional.

On or before the Effective Date, the Debtors will establish the Professional Fee Reserve and will fund the Professional Fee Reserve with Cash equal to the aggregate of the estimated Fee Claims. The Professional Fee Reserve and the amounts therein will be used for the sole purpose of paying the accrued and unpaid Allowed Fee Claims. For the avoidance of doubt, such funds will not constitute property of the Debtors, their Estates, the Post-Confirmation Debtors, or the Liquidating Trust provided, that the Liquidating Trust will hold a residual interest in the Professional Fee Reserve and upon the satisfaction of all Allowed Fee Claims, any funds remaining in the Professional Fee Reserve will be transferred to the Liquidating Trust.

**v. Fee Claims**

Professionals asserting Fee Claims for services rendered before the Effective Date must file and serve on the Notice Parties an application for final allowance of such Fee Claims no later than sixty (60) days after the Effective Date. Professionals will also serve any such application on such other Entities as are designated by the Bankruptcy Rules or any order establishing procedures for compensation and reimbursement of expenses of Professionals entered by the Bankruptcy Court (including, but not limited to, the Creditors' Committee). Any Professional whose compensation or reimbursement of expenses is authorized pursuant to the Ordinary Course Professionals Order may continue to receive such compensation and reimbursement of expenses for services rendered before the Effective Date pursuant to the Ordinary Course Professionals Order without further Bankruptcy Court review or approval. Objections to any Fee Claim must be filed and served on the Notice Parties, and the requesting party not later than 90 days after the Effective Date or such other period of limitation as may be established by a Final Order for objecting to such Fee Claim.

Allowed Fee Claims will be satisfied from any remaining retainer held by such Professionals and, once exhausted, from the Professional Fee Reserve. If the amount in the Professional Fee Reserve is insufficient to fund payment in full of all Allowed Fee Claims owing to Professionals, the deficiency will be promptly funded by the Liquidating Trust to the Post-Confirmation Debtors to fund the Professional Fee Reserve without any further action or order of the Bankruptcy Court.

**vi. Notes Settlement Expenses**

The Debtors will reimburse the Notes Settlement Expenses in accordance with the Notes Settlement and the procedures set forth therein. Without limiting the foregoing, to the extent that any Notes Settlement Expenses remain unpaid as of the Business Day prior to the Effective Date, on the Effective Date, the Plan Administrator will pay in full in Cash any outstanding Notes Settlement Expenses that are invoiced. For the avoidance of doubt, the Notes Settlement Expenses will be paid by the Debtors directly to the respective advisors to the Ad Hoc Group of Senior Noteholders without any requirement for the filing of retention applications, fee applications, proofs of claim, or any other applications in the Chapter 11 Cases, and without any requirement for further notice or Bankruptcy Court approval. Any Notes Settlement Expenses invoiced after the Effective Date will be paid promptly, but no later than two (2) Business Days after any applicable objection deadlines have passed pursuant to the Notes Settlement.

**vii. Senior Notes Agent Fees**

The Debtors will reimburse the Senior Notes Agent Fees in accordance with the Notes Settlement and the procedures set forth therein. Without limiting the foregoing, to the extent that any Senior Notes Agent Fees remain unpaid as of the Business Day prior to the Effective Date, on the Effective Date, the Plan Administrator will pay in full in Cash any outstanding Senior Notes Agent Fees that are invoiced. For the avoidance of doubt, the Senior Notes Agent Fees will be paid by the Debtors without any requirement for the filing of retention applications, fee applications, proofs of claim, or any other applications in the Chapter 11 Cases, and without any requirement for further notice or Bankruptcy Court approval. Any Senior Notes Agent Fees invoiced after the Effective Date will be paid promptly, but no later than two (2) Business Days after any applicable objection deadlines have passed pursuant to the Notes Settlement.

**b. Priority Tax Claims**

Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, in full and final satisfaction, compromise, settlement, release, and discharge of, and in exchange for, the Allowed Priority Tax Claims, each Allowed Priority Tax Claim will be treated in accordance with section 1129(a)(9)(C) of the Bankruptcy Code.

**c. DIP Claims**

Except to the extent that a Holder of an Allowed DIP Claim agrees to a less favorable treatment, in full and final satisfaction, compromise, settlement, release, and discharge of, and in exchange for, the Allowed DIP Claims, on or prior to the Effective Date each Holder of an Allowed DIP Claim will receive payment in full in cash of such Allowed DIP Claim that has not yet been paid.

**2. Classification of Claims and Interests**

**a. General**

Pursuant to sections 1122 and 1123 of the Bankruptcy Code, Claims and Interests are classified for voting and distribution purposes as set forth in the Plan. A Claim or Interest will be deemed classified in a particular Class only to the extent that the Claim or Interest fits within the description of that Class and will be deemed classified in a different Class to the extent that any portion of such Claim or Interest fits within the description of such other Class.

Section 1129(a)(10) of the Bankruptcy Code will be satisfied for the purposes of Confirmation by acceptance of the Plan by any Impaired Class of Claims; provided, however, that in the event no Holder of a Claim in a Voting Class timely submits a Ballot in compliance with the Interim Approval and Procedures Order indicating acceptance or rejection of the Plan, such Class will be deemed to have accepted the Plan. The Debtors will seek Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class.

**b. Identification of Classes of Claims and Interests**

The following table: (i) designates the Classes of Claims and Interests for the purposes of voting on the Plan and receiving Distributions; and (ii) specifies which Classes are: (a) Impaired and Unimpaired by the Plan; and (b) entitled to vote to accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code.

| <b>Class</b> | <b>Designation</b>       | <b>Treatment</b> | <b>Voting Status</b>                       |
|--------------|--------------------------|------------------|--------------------------------------------|
| 1            | Other Priority Claims    | Unimpaired       | Deemed to Accept /<br>Not Entitled to Vote |
| 2            | Other Secured Claims     | Unimpaired       | Deemed to Accept /<br>Not Entitled to Vote |
| 3            | Prepetition ABL Claims   | Unimpaired       | Deemed to Accept /<br>Not Entitled to Vote |
| 4            | Senior Notes Claims      | Impaired         | Entitled to Vote                           |
| 5            | General Unsecured Claims | Impaired         | Entitled to Vote                           |
| 6            | Intercompany Claims      | Impaired         | Deemed to Reject /<br>Not Entitled to Vote |
| 7            | Intercompany Interests   | Impaired         | Deemed to Reject /<br>Not Entitled to Vote |
| 8            | Equity Interests         | Impaired         | Deemed to Reject /<br>Not Entitled to Vote |

**3. Treatment of Claims and Interests**

**a. Class 1 – Other Priority Claims**

- i. *Classification.* Class 1 consists of all Other Priority Claims.
- ii. *Treatment.* Except to the extent that a Holder of an Allowed Other Priority Claim agrees to less favorable treatment, each Holder thereof will receive, on the later of (i) the Effective Date and (ii) the next Distribution Date following the date on which such Other Priority Claim becomes an Allowed Claim, payment in full in Cash or other treatment rendering such Claim Unimpaired.
- iii. *Voting.* Claims in Class 1 are Unimpaired. Class 1 is conclusively presumed to have accepted the Plan and its members are, therefore, not entitled to vote on the Plan.

**b. Class 2 – Other Secured Claims**

- i. *Classification.* Class 2 consists of all Other Secured Claims.

- ii. *Treatment.* Except to the extent that a Holder of an Allowed Other Secured Claim agrees to less favorable treatment, each Holder thereof will receive, on the later of (i) the Effective Date and (ii) the next Distribution Date following the date on which such Other Secured Claim becomes an Allowed Claim, at the option of the Debtors or Liquidating Trust (as applicable): (a) payment in full in Cash; (b) delivery of the collateral securing such Allowed Other Secured Claim and payment of any interest thereon required to be paid under section 506(b) of the Bankruptcy Code; or (c) such other recovery as is necessary to render such Claim Unimpaired.
- iii. *Voting.* Claims in Class 2 are Unimpaired. Class 2 is conclusively presumed to have accepted the Plan and its members are, therefore, not entitled to vote on the Plan.

**c. Class 3 – Prepetition ABL Claims**

- i. *Classification.* Class 3 consists of all Prepetition ABL Claims.
- ii. *Treatment.* Except to the extent that a Holder of an Allowed Prepetition ABL Claim agrees to less favorable treatment, each Holder thereof will receive from the Debtors on the Effective Date payment in full in Cash of such Allowed Prepetition ABL Claim that has not yet been paid.
- iii. *Voting.* Claims in Class 3 are Unimpaired. Class 3 is conclusively presumed to have accepted the Plan and its members are, therefore, not entitled to vote on the Plan.

**d. Class 4 – Senior Notes Claims**

- i. *Classification.* Class 4 consists of the Senior Notes Claims.
- ii. *Treatment.* On the Effective Date, to the extent not previously paid pursuant to the Notes Settlement, (i) the Debtors will deliver the Senior Notes Recovery to the Senior Notes Agent; (ii) each Holder of an Allowed Senior Notes Claim will receive, except to the extent such Holder agrees to a less favorable treatment, in full and final satisfaction, settlement, release and discharge and in exchange for such Allowed Senior Notes Claim its *pro rata* share of the Senior Notes Recovery; and (iii) any deficiency claim on account of Senior Notes Claims will be waived in its entirety. Pursuant to the Notes Settlement and the procedures set forth therein, all Notes Settlement Expenses and Senior Notes Agent Fees will be paid from the Notes Reserve concurrently with the

distribution of and as part of the Senior Notes Recovery, solely to the extent such Notes Settlement Expenses and Senior Notes Agent Fees are incurred and outstanding prior to the date of distribution of the Senior Notes Recovery. Unless and until the Debtors satisfy their obligations to (1) deliver the Senior Notes Recovery, and (2) pay the Notes Settlement Expenses and Senior Notes Agent Fees incurred and outstanding prior to the date of distribution of the Senior Notes Recovery, the Notes Reserve will not be utilized by the Debtors for any purpose other than satisfying such obligations. Any Notes Settlement Expenses and Senior Notes Agent Fees incurred after distribution of the Senior Notes Recovery will be payable by the Debtors pursuant to the terms of the Notes Settlement and the Plan.

- iii. *Voting.* Claims in Class 4 are Impaired. Members of Class 4 are entitled to vote on the Plan.

**e. Class 5 – General Unsecured Claims**

- i. *Classification.* Class 5 consists of all General Unsecured Claims.
- ii. *Treatment.* Except to the extent that a Holder of an Allowed General Unsecured Claim agrees to less favorable treatment, as soon as practicable after the earlier of (i) the Effective Date and (ii) the date such claim becomes an Allowed Claim, each Holder of an Allowed General Unsecured Claim will receive, in full satisfaction, settlement, release, and discharge, and in exchange for its Allowed General Unsecured Claim, its pro rata share (calculated based on the proportion that such Holder's Allowed General Unsecured Claim bears to the aggregate amount of Allowed General Unsecured Claims) of the Liquidating Trust Interests, which will entitle such Holder to its pro rata share of the Liquidating Trust Assets available for Distribution net of Liquidating Trust Expenses.
- iii. *Voting.* Claims in Class 5 are Impaired. Members of Class 5 are entitled to vote on the Plan.

**f. Class 6 – Intercompany Claims**

- i. *Classification.* Class 6 consists of all Intercompany Claims.
- ii. *Treatment.* On the Effective Date, all Intercompany Claims will be, at the option of the Plan Administrator, reinstated, set off, settled, distributed, contributed, cancelled, or released without any distribution on account of such Intercompany

Claim, or such other treatment as is reasonably determined by the Debtors. No Distribution will be made on account of any Intercompany Claims.

- iii. *Voting.* Class 6 is Impaired. Class 6 is conclusively presumed to have rejected the Plan and its members are, therefore, not entitled to vote on the Plan.

**g. Class 7 – Intercompany Interests**

- i. *Classification.* Class 7 consists of all Intercompany Interests.
- ii. *Treatment.* On the Effective Date, all Intercompany Interests will be cancelled, except as may be necessary, as determined by the Plan Administrator, to maintain the corporate structure of the Debtors and Post-Confirmation Debtors pending dissolution thereof under applicable non-bankruptcy law. No Distribution will be made on account of any Intercompany Interests.
- iii. *Voting.* Class 7 is Impaired. Each Holder of an Intercompany Interest in Class 7 is conclusively presumed to have rejected the Plan and is, therefore, not entitled to vote on the Plan.

**h. Class 8 – Equity Interests**

- i. *Classification.* Class 8 consists of all Equity Interests.
- ii. *Treatment.* On the Effective Date, all Equity Interests will be cancelled and discharged. No Distribution will be made on account of any Equity Interests.
- iii. *Voting.* Class 8 is Impaired. Class 8 is conclusively presumed to have rejected the Plan and its members are, therefore, not entitled to vote on the Plan.

**4. Reservation of Rights Regarding Claims**

Except as otherwise provided in the Plan or in any Final Order of the Bankruptcy Court, nothing in the Plan will affect the Debtors', the Post-Confirmation Debtors', or the Liquidating Trust's rights and defenses, whether legal or equitable, with respect to any Claim.

**5. Postpetition Interest on Claims**

Except as required by bankruptcy law, postpetition interest will not accrue or be payable on any Claim.

**B. Acceptance or Rejection of the Plan; Effect of Rejection by One or More Classes of Claims or Interests**

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

The Debtors are seeking Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to the Classes of Claims and Interests that vote to reject or are deemed to reject the Plan.

**2. Elimination of Vacant Classes**

Any Class that does not have a Claim or an Interest as of the date of the Confirmation hearing will be deemed eliminated from the Plan for all purposes.

**3. Voting Classes**

If a Class is eligible to vote and no holder of Claims or Interests eligible to vote in such Class votes to accept or reject the Plan, the Plan will be deemed accepted by such Class.

**4. Subordinated Claims and Interests**

Except as expressly provided in the Plan, the allowance, classification, and treatment of all Allowed Claims and Allowed Interests and the respective Distributions and treatments under the Plan take into account and conform to the relative priority and contractual, legal, and equitable subordination rights of the Claims and Interests in each Class, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtors or Liquidating Trust (as applicable) reserves the right to reclassify any Claim in accordance with any contractual, legal, or equitable subordination relating to such Claim.

**C. Means of Implementation of the Plan**

**1. Post-Effective Date Organizational Transactions**

Except as otherwise provided in the Plan, on the Effective Date, each Debtor other than the Post-Confirmation Debtors will be dissolved, consolidated, or merged out of existence without the necessity for any other or further actions to be taken by or on behalf of such dissolving Debtor or its shareholder(s) or any payments to be made in connection therewith, except to the extent that the Plan Administrator determines, in its discretion, that the filing of a certificate of dissolution with the appropriate governmental authorities is required or warranted under the circumstances.

Each Post-Confirmation Debtor will continue to exist after the Effective Date, as a separate legal Entity. Each Post-Confirmation Debtor will have the powers of a corporation, limited liability company, partnership, or other form, as the case may be, pursuant to the applicable laws of the jurisdiction in which such Debtor is incorporated or formed and pursuant to the respective certificate of incorporation and bylaws (or other formation documents) in effect prior to the Effective Date, except to the extent such certificate of incorporation and bylaws (or other formation documents) are amended by the Plan or otherwise. To the extent such documents are amended,

such documents are deemed to be amended pursuant to the Plan and require no further action or approval, with such powers exercisable only by and through the Plan Administrator.

At any time on or after the Effective Date the Debtors, Post-Confirmation Debtors, by and through the Plan Administrator, and/or the Liquidating Trust may effectuate such organizational transactions as may be necessary or appropriate. Without limiting the generality of the foregoing, such transactions may include: (i) the execution and delivery of appropriate instruments of transfer, assignment, assumption or delegation of any asset, property, right, liability, duty or obligation on terms consistent with the terms of the Plan; (ii) execution and delivery of the new or amended organizational documents of the Post-Confirmation Debtor (iii) the merger, dissolution, winding-up, consolidation, or conversion of one or more of the Debtors or the Post-Confirmation Debtor; (iv) the filing of appropriate certificates of dissolution or similar instruments with the applicable governmental authorities; and (v) the taking of all other actions that the Plan Administrator determines to be necessary or appropriate, including making other filings or recordings that may be required by applicable law.

Pursuant to section 1123(a)(6) of the Bankruptcy Code, organizational documents for the Post-Confirmation Debtors will prohibit the issuance of non-voting equity securities, but only to the extent required by section 1123(a)(6) of the Bankruptcy Code. After the Effective Date, the Post-Confirmation Debtors may amend and restate their respective organizational documents and other constituent documents as permitted by the laws of their respective states of incorporation or formation, and their respective organizational documents, without further order of the Bankruptcy Court.

## **2. Plan Administrator**

### **a. Rights of the Plan Administrator**

The Plan Administrator will retain and have all the rights, powers, and duties necessary to carry out its responsibilities under the Plan, and as otherwise provided in the Confirmation Order.

On and after the Plan Effective Date, the Plan Administrator will act for the Post-Confirmation Debtors in the same fiduciary capacity as applicable to a board of managers or directors, or to officers, subject to the provisions of the Plan. All certificates of formation, membership agreements, and related documents are deemed amended by the Plan to permit and authorize the same without further action by any Entity and without Bankruptcy Court approval. From and after the Effective Date, the Plan Administrator will be the sole representative of, and will act for, the Post-Confirmation Debtors. The powers of the Plan Administrator will include any and all powers and authority to administer the Post-Confirmation Debtors Retained Assets and to implement the Plan and wind down the businesses and affairs of the Post-Confirmation Debtors in accordance with the Plan, without the need for further Bankruptcy Court approval. Without limiting the generality of the foregoing, such powers include: (a) selling, disposing, liquidating, receiving, holding, investing, supervising, protecting, and abandoning the Post-Confirmation Debtors' Retained Assets; (b) taking all steps to execute all instruments and documents necessary to effectuate, and to make, the Distributions to be made by the Post-Confirmation Debtors under the Plan; (c) establishing, maintaining or closing bank accounts in the name of any of the Post-Confirmation Debtors; (d) employing, retaining, terminating, or replacing professionals to

represent it with respect to its responsibilities or otherwise effectuating the Plan to the extent necessary; (e) paying Wind-Down Expenses; and (f) filing certificates of dissolution for the Debtors or Post-Confirmation Debtors (as applicable), together with all other necessary corporate and company documents, to effectuate the dissolution of the Debtors or Post-Confirmation Debtors (as applicable) under the applicable laws of the applicable state(s) of formation.

The filing by the Plan Administrator of any of the Debtors' or Post-Confirmation Debtors' certificates of dissolution will be authorized and approved in all respects without further action under applicable law, regulation, order, or rule, including any action by the stockholders, members, board of directors, or board of managers of any of the Debtors, the Post-Confirmation Debtors or any of their Affiliates.

**b. Plan Administrator Exculpation, Indemnification, Insurance, and Liability Limitation**

To the fullest extent permitted by applicable law, rule, regulation, or tenets of professional responsibility, none of the Plan Administrator, its affiliates and agents, or any of its respective officers, directors and employees will be personally liable to any Entity for actions taken under or pursuant to this Plan, except to the extent that its, his or her own acts constitutes gross negligence, actual fraud or willful misconduct. To the fullest extent permitted by applicable law, rule, regulation, or tenets of professional responsibility, the Post-Confirmation Debtors will indemnify and hold harmless (i) the Plan Administrator (in its capacity as such and as sole officer, director and/or manager of the Post-Confirmation Debtors), and (ii) Professionals retained by the Post-Confirmation Debtors (collectively, the "Indemnified Parties"), from and against and with respect to any and all liabilities, losses, damages, claims, costs and expenses. Without limiting the generality of the foregoing, such indemnity will include the costs and expenses of investigating, analyzing and responding to claims, and attorneys' fees arising out of or due to their actions or omissions, or consequences of such actions or omissions, other than acts or omissions resulting from such Indemnified Party's gross negligence, actual fraud or willful misconduct, with respect to the Post-Confirmation Debtors or the implementation or administration of the Plan.

**3. Liquidating Trust**

**a. Establishment of the Liquidating Trust**

On the Effective Date, the Liquidating Trust will be established, and the Debtors will irrevocably transfer, and will be deemed to have irrevocably transferred, all of the Liquidating Trust Assets to the Liquidating Trust in accordance with the terms of the Liquidating Trust Agreement and the Plan (except for any Post-Confirmation Debtors' Retained Assets, which will vest in, and remain the asset of, the applicable Post-Confirmation Debtor) which Liquidating Trust Assets will automatically vest in the Liquidating Trust, free and clear of all Liens, Claims, charges, rights, or other encumbrances subject to and in accordance with the Plan.

The Liquidating Trust will be established to liquidate the Liquidating Trust Assets and make distributions in accordance with the Plan, Confirmation Order, and Liquidating Trust Agreement, and in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably

necessary to, and consistent with, the liquidating purpose of the Liquidating Trust. The Liquidating Trust will be structured to qualify as a “liquidating trust” within the meaning of Treasury Regulations Section 301.7701-4(d) and in compliance with Revenue Procedure 94-45, and thus, as a “grantor trust” within the meaning of Sections 671 through 679 of the Tax Code. Accordingly, Holders of General Unsecured Claims will be treated for U.S. federal income tax purposes (1) as direct recipients of undivided interests in the Liquidating Trust Assets (other than to the extent the Liquidating Trust Assets are allocable to Disputed Claims); (2) as having immediately contributed such assets to the Liquidating Trust; and (3) thereafter, as grantors and deemed owners of the Liquidating Trust and thus, the direct owners of an undivided interest in the Liquidating Trust Assets (other than such Liquidating Trust Assets that are allocable to Disputed Claims).

**b. The Liquidating Trustee and the Liquidating Trust Agreement**

The Liquidating Trust will be governed by the Liquidating Trust Agreement and administered by the Liquidating Trustee. The Liquidating Trustee will be selected by the Creditors’ Committee and identified in a notice to be filed along with the final form of Liquidating Trust Agreement in the Plan Supplement. The Liquidating Trust, acting by and through the Liquidating Trustee, will be the exclusive administrator of the Liquidating Trust Assets for purposes of 31 U.S.C. § 3713(b) and section 6012(b)(4), as well as a party in interest under section 1109(b) of the Bankruptcy Code and representative of the Estates under section 1123(b)(3)(B) of the Bankruptcy Code, solely for purposes of administering the Liquidating Trust Assets (including, but not limited to, Causes of Action) and carrying out the Liquidating Trust’s duties under the Liquidating Trust Agreement with respect to Claims to the extent set forth in the Plan.

The powers, rights, and responsibilities of the Liquidating Trust and Liquidating Trustee will be specified in the Liquidating Trust Agreement and will include (but will not be limited to) the authority and responsibility to investigate, review, reconcile, allow, object to, compromise and settle Administrative Claims, Priority Tax Claims, Other Priority Claims, Other Secured Claims, and General Unsecured Claims, and to take the actions set forth in this section. The Liquidating Trust will hold and distribute the Liquidating Trust Assets in accordance with the provisions of the Plan and the Liquidating Trust Agreement. After the Effective Date, neither the Debtors nor the Post-Confirmation Debtors will have any interest in the Liquidating Trust Assets except as set forth in the Plan, the Confirmation Order, or the Liquidating Trust Agreement.

The Liquidating Trust Agreement will be filed with the Plan Supplement. Among other things, the Liquidating Trust Agreement will provide for: (1) the transfer of the Liquidating Trust Assets to the Liquidating Trust; (2) the payment of certain Liquidating Trust Expenses from the Liquidating Trust Assets; (3) distributions to holders of Allowed Claims, as provided in the Plan and in the Liquidating Trust Agreement; (4) certain cooperation obligations of the Debtors or Post-Confirmation Debtors, as applicable; (5) the identity of the Liquidating Trustee; (6) whether the Liquidating Trustee will be bonded; and (7) reasonable and customary provisions that allow for limitation of liability and indemnification of the Liquidating Trustee and its professionals by the Liquidating Trust to the fullest extent permitted by applicable law, rule, regulation, or tenets of professional responsibility. Any such indemnification will be the sole responsibility of the Liquidating Trust and payable solely from the Liquidating Trust Assets. The Liquidating Trustee will be responsible for all decisions and duties with respect to the Liquidating Trust and the

Liquidating Trust Assets, except as otherwise provided in the Plan, the Confirmation Order, or the Liquidating Trust Agreement.

**c. Liquidating Trust Expenses**

The Liquidating Trust Expenses will be paid from the Liquidating Trust Assets in accordance with the Plan and Liquidating Trust Agreement. On behalf of the Liquidating Trust, the Liquidating Trustee, may employ, without further order of the Bankruptcy Court, professionals to assist in carrying out its duties under the Plan and may compensate and reimburse the reasonable expenses of these professionals without further order of the Bankruptcy Court from the Liquidating Trust Assets in accordance with the Plan and the Liquidating Trust Agreement. For the avoidance of doubt, the Liquidating Trust must satisfy or reserve for all Liquidating Trust Expenses before Distributions of Liquidating Trust Assets on account of Allowed Claims in any Class may be made.

**d. Liquidating Trust Interests**

Any and all Liquidating Trust Interests will be non-transferable other than if transferred by will, intestate succession, or otherwise by operation of law. In addition, the Liquidating Trust Interests will not be registered pursuant to the Securities Act or any applicable state or local securities law pursuant to section 1145 of the Bankruptcy Code. The Liquidating Trust Interests will be exempt from the Investment Company Act of 1940, as amended, pursuant to sections 7(a) and 7(b) of that Act and section 1145 of the Bankruptcy Code.

**e. Certain Tax Matters**

The Liquidating Trustee will file tax returns for the Liquidating Trust as a grantor trust pursuant to Treasury Regulations section 1.671-4(a) and in accordance with the Plan. Other than such items in respect of any assets allocable to, or retained on account of, Disputed Claims, the Liquidating Trust's items of taxable income, gain, loss, deduction, and/or credit will be allocated to each Holder in accordance with their relative ownership of Liquidating Trust Interests.

As soon as practicable after the Effective Date, the Liquidating Trustee will make a good faith valuation of the Liquidating Trust Assets. Such valuation will be used consistently by all parties for all U.S. federal income tax purposes.

The Liquidating Trustee may request an expedited determination of taxes under section 505(b) of the Bankruptcy Code for all tax returns filed by or on behalf of the Liquidating Trust for all taxable periods through the dissolution of the Liquidating Trust. Nothing in the Plan will be deemed to determine, expand, or contract the jurisdiction of the Bankruptcy Court under section 505 of the Bankruptcy Code. The Liquidating Trustee (1) may in its sole discretion timely elect to treat any Liquidating Trust Assets allocable to Disputed Claims as a "disputed ownership fund" governed by Treasury Regulations section 1.468B-9, and (2) to the extent permitted by applicable law, will report consistently for state and local income tax purposes. If a "disputed ownership fund" election is made, all parties (including the Liquidating Trustee and the holders of Liquidating Trust Interests) will report for U.S. federal, state, and local income tax purposes consistently with the foregoing. The Liquidating Trustee will file all income tax returns with respect to any income attributable to a "disputed ownership fund." The Liquidating Trustee will also pay the U.S. federal,

state, and local income taxes attributable to such disputed ownership fund based on the items of income, deduction, credit, or loss allocable thereto.

**f. Dissolution**

The Liquidating Trustee and the Liquidating Trust will be discharged and dissolved at such time as the Liquidating Trustee determines all distributions required to be made by the Liquidating Trustee under the Plan have been made. In no event will the Liquidating Trust be dissolved later than five (5) years from the Effective Date unless extended by an Order of the Bankruptcy Court.

Upon dissolution of the Liquidating Trust, any remaining Liquidating Trust Assets will be distributed to holders of Allowed General Unsecured Claims in accordance with the Plan and the Liquidating Trust Agreement, as appropriate. The Liquidating Trust may abandon any non-Cash assets that the Liquidating Trustee, in its discretion determines to be of inconsequential value or impractical to distribute to Liquidating Trust Beneficiaries. To the extent the Liquidating Trust retains any residual Cash or Liquidating Trust Assets, but such assets, net of Liquidating Trust Expenses, are in the discretion of the Liquidating Trustee insufficient or impractical to effectuate any further distribution pursuant to the Plan or the Liquidating Trust Agreement, the Liquidating Trust is authorized and empowered to donate such residual Liquidating Trust Assets to a Tax Code section 501(c)(3) non-profit organization selected by the Liquidating Trustee in its discretion.

**4. Preservation of Causes of Action**

Except as provided in the Plan or in any contract, instrument, release or other agreement entered into or delivered in connection with the Plan, in accordance with section 1123(b) of the Bankruptcy Code, all Causes of Action that the Debtors or the Estates may hold against any Entity to the extent not released under Section IX.B of the Plan or otherwise, including the Avoidance Actions (and all Privilege Rights with respect to any of the foregoing) are Liquidating Trust Assets that will be deemed to automatically vest in the Liquidating Trust on the Effective Date. Acting by and through the Liquidating Trustee in its sole discretion, the Liquidating Trust will be the representative appointed by the Debtors pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to such Causes of Action and may pursue, settle or decline to pursue any such Causes of Action, as appropriate, in accordance with the best interests of the Liquidating Trust Beneficiaries. A non-exclusive schedule of retained Causes of Action will be filed with the Plan Supplement. The inclusion or failure to include any Cause of Action in the Plan Supplement will not be deemed an admission, denial or waiver of any claims, rights or causes of action that any Debtor or Estate may have against any Entity.

**5. Insurance Matters**

On the Effective Date, provided that the Debtors have paid all applicable premiums, the Debtors' Insurance Contracts will be deemed to continue in full force and effect without any action by an Entity or approval of the Bankruptcy Court so as to continue to provide coverage in accordance with the express terms of the applicable Insurance Contracts. For the avoidance of doubt: (i) on the Effective Date, the Debtors' D&O Insurance Policies (including any "tail policy" and all agreements, documents, or instruments related thereto) will be deemed to continue in full force and effect without any action by any Entity or approval of the Bankruptcy Court;

(ii) confirmation of the Plan will not discharge, impair, or otherwise modify any indemnity obligations under such D&O Insurance Policies; and (iii) the Post-Confirmation Debtors will retain the ability to supplement such D&O Insurance Policies as the Plan Administrator may deem necessary.

In addition, on or after the Effective Date, none of the Liquidating Trust, the Liquidating Trustee, the Post-Confirmation Debtors or the Plan Administrator will terminate or otherwise reduce the coverage under any fully paid or prepaid D&O Insurance Policies (including any “tail policy” and all agreements, documents, or instruments related thereto) in effect on or prior to the Effective Date, with respect to conduct occurring prior thereto. All current and former directors, officers, and managers of the Debtors who served in such capacity at any time prior to the Effective Date will be entitled to the full benefits of any such policies for the full term of such policies regardless of whether such current and former directors, officers, and managers remain in such positions after the Effective Date, all in accordance with the terms and conditions of the D&O Insurance Policies, which will not be altered.

Notwithstanding anything to the contrary in the Plan, if a Claim is subject to coverage under an Insurance Contract, in full or in part, no distributions under the Plan need be made on account of such Claim until a determination is made by a court of competent jurisdiction as to such coverage and, if coverage is available, until payment is first made from proceeds of such applicable Insurance Contract. To the extent of any amounts not covered by the proceeds of an Insurance Contract, if any, such Claim will be treated in accordance with the provisions of the Plan governing the Class applicable to such Claim. No Plan Distributions need be made on account of an Allowed Claim that may be payable pursuant to one or more of the Debtors’ Insurance Contracts until the Holder of such Allowed Claim has exhausted all remedies with respect to such Insurance Contracts. To the extent that one or more of the Debtors’ insurers agrees to satisfy in full or in part a Claim, then immediately upon such insurer’s agreement, the applicable portion of such Claim may be expunged without a Claim objection having to be Filed and without any further notice to or action, order or approval of the Bankruptcy Court. Notwithstanding the provisions of Section IV.D of the Plan, the Liquidating Trustee may, in its sole discretion, in order to facilitate distributions and the completion of its responsibilities under the Plan: (i) make a distribution under the Plan with respect to an Allowed Claim that may be covered by an Insurance Contract; or (ii) seek to estimate a Claim, solely for distribution purposes, that may be covered by an Insurance Contract.

If an applicable Insurance Contract has an SIR, the Holder of an Allowed Claim that is covered by such Insurance Contract will only be entitled to an Allowed General Unsecured Claim against the applicable Debtor’s Estate up to a maximum amount of the applicable SIR. Any such Allowed General Unsecured Claim may be further reduced, or disallowed in full, upon the liquidation of such Claim in an appropriate forum. By and through the Liquidating Trustee, the Liquidating Trust may seek entry of an order of the Bankruptcy Court fixing any such Claim in the maximum amount of the SIR to facilitate Distributions. Any such SIR under an applicable Insurance Contract will be considered satisfied pursuant to the Plan through the allowance of the General Unsecured Claim up to the applicable SIR by stipulation, Bankruptcy Court order or as otherwise provided in the Plan. For the avoidance of doubt, nothing in the Plan obligates the Debtors, the Post-Confirmation Debtors, the Plan Administrator, the Liquidating Trust or the Liquidating Trustee (as applicable) to otherwise satisfy any SIR under any Insurance Contract.

Any recovery on account of an Allowed Claim in excess of the SIR established upon the liquidation of the Claim will be recovered solely from the Debtors insurance coverage, if any, and only to the extent of available insurance coverage and any proceeds thereof.

For the avoidance of doubt, nothing in the Plan or Confirmation Order will (i) be construed to limit, extinguish, expand, or diminish the insurance coverage that may exist under any Insurance Contract, (ii) be a determinative that any Insurance Contract is an executory contract or is capable of assumption or rejection; (iii) be deemed the assumption or rejection of any Insurance Contract; (iv) relieve any Entity from the requirement to timely file a Proof of Claim by the Claims Bar Date or Supplemental Claims Bar Date, as applicable; (v) require any payment on account of a SIR for a Claim that is covered by an Insurance Contract before such Holder pursues recovery in excess of an applicable SIR from any applicable Insurance Contract; or (vi) limit the amount that a Holder of a Claim that is covered by an Insurance Contract can pursue against any applicable Insurance Contract above any applicable SIR.

If, and to the extent applicable, the automatic stay of section 362(a) of the Bankruptcy Code and any injunctions set forth in the Plan will be deemed lifted without further order of the Bankruptcy Court, solely to permit: (i) claimants with valid workers' compensation claims or direct action claims against insurers under applicable non-bankruptcy law to proceed with their claims; (ii) insurers to administer, handle, defend, settle, and/or pay, in the ordinary course of business and without further order of this Bankruptcy Court, (a) workers' compensation claims, (b) claims where a claimant asserts a direct claim against an insurer under applicable non-bankruptcy law, or an order has been entered by the Bankruptcy Court granting a claimant relief from the automatic stay or the injunctions set forth in the Plan to proceed with its claim, and (c) all costs in relation to each of the foregoing; and (iii) insurers to take any other actions relating to the Insurance Contracts (including effectuating a setoff or recoupment).

## **6. Comprehensive Settlement**

Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, in consideration of the Distributions and other benefits provided under the Plan, the provisions of the Plan, including the releases set forth in Section X.B of the Plan, will constitute a good-faith compromise and settlement of all Claims, Interests, disputes and controversies relating to the rights of Holders of Claims and Interests. The entry of the Confirmation Order will constitute the Bankruptcy Court's approval, as of the Effective Date, of such compromise and settlement. The entry of the Confirmation Order will also constitute the Bankruptcy Court's determination that such compromise and settlement is in the best interests of the Debtors, their Estates, creditors and all other parties in interest, and is fair, equitable and within the range of reasonableness. If the Effective Date does not occur, the settlements set forth in the Plan will be deemed to have been withdrawn without prejudice to the respective positions of the parties.

## **7. Release of Preference Claims**

The Debtors release and discharge all Avoidance Actions of the Debtors under section 547 of the Bankruptcy Code with respect to: (i) creditors that vote in favor to accept the Plan; and (ii) parties who are not entitled to vote pursuant to the Plan.

**8. Vesting of Assets in the Post-Confirmation Debtors and the Liquidating Trust**

Pursuant to sections 1141(b) and (c) of the Bankruptcy Code, on the Effective Date the Liquidating Trust Assets and the Post-Confirmation Debtors Retained Assets, will vest or re-vest in the Liquidating Trust or the Post-Confirmation Debtors free and clear of all Liens, Claims, Interests, charges, or other encumbrances except as otherwise provided in the Plan. On and after the Effective Date, except as otherwise provided in the Plan, the Liquidating Trust, acting by and through the Liquidating Trustee, and the Post-Confirmation Debtors, by and through the Plan Administrator, may use, acquire, liquidate, or dispose of property and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Bankruptcy Court, and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

The Plan will be conclusively deemed to be adequate notice that Liens, Claims, interests, charges or other encumbrances are being extinguished. Except as otherwise provided in the Plan, by failing to object to confirmation of the Plan, any person having a Lien, Claim, interest, charge or other encumbrance against or with respect to any of the property vested in accordance with the foregoing paragraph will be conclusively deemed to have consented to the transfer, assignment and vesting of such property to or in the Post-Confirmation Debtors or the Liquidating Trust.

**9. Discharge of Claims and Termination of Interests**

Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise provided in the Plan, effective as of the Effective Date: (i) the treatment of all Claims and Interests will be in exchange for and in complete satisfaction, discharge and release of all Claims and Interests, including any interest accrued on any Claims from and after the Petition Date; (ii) the Plan will bind all Holders of Claims and Interests, notwithstanding whether any such Holder failed to vote to accept or reject the Plan or voted to reject the Plan; (iii) all Claims and Interests will be satisfied, discharged and released in full, and the Debtors' liability with respect thereto will be extinguished completely, including any liability of the kind specified under section 502(g), 502(h), or 502(i) of the Bankruptcy Code; and (iv) all Entities will be precluded from asserting against the Debtors, the Debtors' estates, the Liquidating Trust, the Post-Confirmation Debtors, or their respective successors and assigns and their respective assets and properties any Claims, Interests, or any other liabilities based upon any documents, instruments or any act or omission, transaction or other activity of any kind or nature that occurred on or before the Effective Date.

**10. Cancellation and Surrender of Documents, Instruments and Securities**

Except as provided in the Plan or any contract, instrument or other agreement or document entered into or delivered in connection with the Plan or the Asset Sales, and, subject to receipt of the applicable Distributions made pursuant to Section II of the Plan, all notes, instruments, certificates, securities and other documents evidencing Claims or Interests will be deemed canceled and surrendered and of no further force and effect against the Debtors, the Estates, the Liquidating Trust, the Liquidating Trustee, the Post-Confirmation Debtors or the Plan Administrator without any further action on the part of the Debtors, the Estates, the Liquidating Trust, the Liquidating Trustee, the Post-Confirmation Debtors or the Plan Administrator.

## **11. Release of Liens**

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan and subject to receipt of the applicable Distributions on the Effective Date all Liens on the property of any Estate will be fully released and discharged.

## **12. Corporate and Other Entity Action; Effectuating Documents; Further Transactions**

Upon the Effective Date, all acts or actions contemplated by the Plan or reasonably necessary or appropriate to promptly consummate the transactions contemplated by the Plan will be deemed authorized, approved, and, to the extent taken prior to the Effective Date, ratified without any requirement for further action by Holders of Claims or Interests, directors, managers, or officers of the Debtors, the Liquidating Trust, the Liquidating Trustee, the Post-Confirmation Debtors, the Plan Administrator, or any other Entity. Without limiting the generality of the foregoing, such actions will include: (1) rejection or assumption, as applicable, of Executory Contracts and Unexpired Leases; and (2) the appointment of the Plan Administrator. For the avoidance of doubt, the authorizations, approvals and ratifications contemplated by the foregoing will apply to any actions contemplated by any document in the Plan Supplement, whether such actions are to occur before, on, or after the Effective Date.

All matters provided for in the Plan involving the company structure of the Debtors, and any company action required by the Debtors, the Liquidating Trust, the Liquidating Trustee, the Post-Confirmation Debtors or the Plan Administrator in connection therewith, will be deemed to have occurred on, and will be in effect as of, the Effective Date, without any requirement of further action by the Holders of Claims or Interests, directors, managers, officers, or authorized persons of the Debtors. On or prior to the Effective Date, the appropriate officers, directors, managers, or authorized persons of the Debtors (including any president, vice-president, chief executive officer, treasurer, general counsel, or chief financial officer thereof) will be authorized and directed to issue, execute and deliver the agreements, documents, securities, certificates of incorporation, certificates of formation, bylaws, operating agreements, and instruments contemplated by the Plan (or necessary or desirable to effect the transactions contemplated by the Plan) in the name of and on behalf of the applicable Debtors. The authorizations and approvals contemplated by Section IV.L of the Plan will be effective notwithstanding any requirements under non-bankruptcy law.

Prior to, on, and after the Effective Date, the Debtors and the Post-Confirmation Debtors, as applicable, and their directors, managers, officers, and authorized persons, are authorized to and may issue, execute, deliver, file, or record such contracts, securities, notes, instruments, certificates, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and provisions of the Plan, without the need for any approvals, authorizations, actions, or consents except for those expressly required pursuant to the Plan.

### **13. Dissolution of the Boards of the Debtors or Managers**

On the Effective Date, the authority, power, and incumbency of the persons acting as managers, directors, and officers of the Debtors will be deemed to have terminated, the persons acting as managers, directors, and officers of the Debtors will be deemed to have resigned. Following the terminations and reorganizations, the Plan Administrator will be the sole manager and sole officer of the Post-Confirmation Debtors, and will succeed to the powers of the respective Debtors' managers, directors, and officers.

### **14. Closing the Chapter 11 Cases**

Upon the Effective Date, all Subsidiary Debtors' chapter 11 cases will be deemed closed. All contested matters relating to any of the Subsidiary Debtors, including Claim objections and any adversary proceeding, will be administered and heard in the lead case of Number Holdings, Inc., which will remain open pending entry of an order of the Bankruptcy Court, irrespective of whether such Claims were filed or commenced against a Subsidiary Debtor. Upon administering the Plan in full, either the Plan Administrator or the Liquidating Trust may seek authority from the Bankruptcy Court to close the case of Number Holdings, Inc. in accordance with the Bankruptcy Code and the Bankruptcy Rules, and the requirements set forth in Local Rule 3022-1. Furthermore, the Voting Agent is authorized to destroy all paper/hardcopy records related to this matter one (1) year after the Effective Date has occurred.

#### **D. Treatment of Executory Contracts and Unexpired Leases**

##### **1. Assumption and Rejection of Executory Contracts and Unexpired Leases**

Each of the Executory Contracts and Unexpired Leases not previously assumed, assumed and assigned, or rejected pursuant to an order of the Bankruptcy Court will be deemed rejected as of the Effective Date, except (i) to the extent otherwise provided in the Plan or in connection with any Asset Sale, (ii) is the subject of a separate motion to assume or assume and assign pending as of the Effective Date, or (iii) with respect to an Executory Contract or Unexpired Lease that previously expired or terminated pursuant to its own terms.

Entry of the Confirmation Order will constitute an order, pursuant to sections 365(a) and 1123 of the Bankruptcy Code, approving the rejection of the Executory Contracts and Unexpired Leases as set forth in the preceding paragraph.

##### **2. Claims Based on Rejection of Executory Contracts and Unexpired Leases**

Unless otherwise provided by a Bankruptcy Court order, any Claims arising from the rejection of any Executory Contracts and Unexpired Leases pursuant to the Plan must be filed with the Claims and Noticing Agent by the Supplemental Claims Bar Date. Any Claims arising from the rejection of any Executory Contracts and Unexpired Leases that are not timely filed will be disallowed automatically, without the need for any objection or further notice to or action or approval of the Bankruptcy Court.

**Holders of Claims arising from the rejection of Executory Contracts and Unexpired Leases with respect to which no Proof of Claim is timely asserted will be forever barred from asserting a Claim based on such rejection unless otherwise expressly allowed by the Bankruptcy Court.**

Claims arising from the rejection of Executory Contracts and Unexpired Leases will constitute General Unsecured Claims and will be treated pursuant to Section II of the Plan. The Liquidating Trust will have the right to object to, settle, compromise or otherwise resolve any Claim asserted on account of a rejected Executory Contract or Unexpired Lease.

Rejection of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise will not constitute a termination of the obligations owed by the counterparty to the applicable Debtor(s) under such Executory Contracts or Unexpired Leases. Notwithstanding any applicable non-bankruptcy law to the contrary, the Post-Confirmation Debtors and/or the Liquidating Trust (as applicable) will have the right to receive, and any non-Debtor counterparty to a rejected Executory Contract or Unexpired Lease will retain a continuing obligation to provide, warranties, indemnifications or continued maintenance obligations with respect to such contracts and leases.

**3. Reservation of Rights**

Neither the identification of any contract or lease as assumed, assumed and assigned or rejected in connection with the Plan or any of the Asset Sales will constitute an admission by the Debtors, the Post-Confirmation Debtors, the Plan Administrator, the Liquidating Trust or the Liquidating Trustee that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that any Debtor, Post-Confirmation Debtor, the Plan Administrator, Liquidating Trust or the Liquidating Trustee has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired on the Effective Date, the Liquidating Trust will have 30 days following entry of a Final Order resolving such dispute to determine whether to alter the treatment of such contract or lease under the Plan.

**E. Provisions Governing Distributions**

**1. Method of Distributions**

Except as otherwise provided for in the Plan, all Distributions will be made by the Liquidating Trust in accordance with the terms of the Plan. All Distributions on account of the Allowed DIP Claims, Allowed Prepetition ABL Claims, and Allowed Senior Notes Claims will be made to the applicable agent or trustee, or at such agent's or trustee's direction and will be effected by the Debtors on the Effective Date to the extent not previously satisfied. As soon as practicable, each such agent or trustee, as applicable, will arrange to deliver such Distributions to or to the order of the applicable beneficial Holders. The Debtors may coordinate with the agents or trustee for the DIP Agreement, Prepetition Credit Agreement, and Senior Notes with respect to the applicable Distributions.

Unless the Liquidating Trust otherwise agrees in its sole and absolute discretion, any Distribution to be made in Cash will be made by check drawn on a domestic bank. Unless the

Liquidating Trust otherwise agrees in its sole and absolute discretion, Cash Distributions will be made in U.S. Dollars.

Except as otherwise provided in the Plan, Distributions will be made to the Holders of record of Allowed Claims as of the Distribution Record Date at the latest known address, as identified in: (i) the most recently filed Proof of Claim; (ii) at the address set forth in any written notice of address change delivered to the Debtors and the Claims and Noticing Agent after the date of the most recently filed Proof of Claim; (iii) at the address reflected in the Schedules if no Proof of Claim has been filed and the Debtors and the Claims and Noticing Agent have not received a written notice of a change of address; or (iv) if clauses (i) through (iii) are not applicable, at the last address directed in writing by such Holder, filed with the Bankruptcy Court and delivered to the Liquidating Trust.

## **2. Appointment of a Disbursing Agent**

The Liquidating Trust will have the authority, but not the obligation, to enter into agreements with one or more Disbursing Agents to facilitate the distributions required in the Plan as set forth in Section VI of the Plan. To the extent the Liquidating Trust determines to utilize a Disbursing Agent to facilitate the distributions under the Plan to Holders of Allowed Claims, any such Disbursing Agent would first be required to: (a) affirm its obligation to facilitate the prompt distribution of any documents; (b) affirm its obligation to facilitate the prompt distribution of any recoveries or distributions required under the Plan; (c) waive any right or ability to setoff, deduct from or assert any lien or encumbrance against the distributions required under the Plan to be distributed by such Disbursing Agent; and (d) at the Liquidating Trust's election, post a bond, obtain a surety or provide some other form of security for the performance of its duties, the costs and expenses of procuring which will be borne by the Liquidating Trust. The Liquidating Trust's reasonable costs and expenses in connection with the use of such Disbursing Agent will be treated as a Liquidating Trust Expense.

## **3. Undeliverable Distributions and Time Bar to Cash Payments**

In the event a Distribution is returned as undeliverable, or no address for a particular Holder is found in the Debtors' records, no further Distributions to such Holder will be made unless and until the Liquidating Trust is notified in writing of such Holder's then-current address, at which time a Distribution will be made to such Holder on the next Periodic Distribution Date. In its sole discretion, the Liquidating Trust may attempt to locate the Holders entitled to receive undeliverable Distributions. Any Distributions returned to the Liquidating Trust as undeliverable will remain in the possession of the Liquidating Trust until such time as a Distribution becomes deliverable.

Checks issued in respect of Allowed Claims will be null and void if not negotiated within 90 days after the date of issuance. Requests for reissuance of any voided check will be made directly to the Liquidating Trust by the Entity to whom such check was originally issued. Any claim in respect of a voided check will be made within 30 days after the date upon which such check was deemed void. If no request is made as provided in the preceding sentence, any claims in respect of such voided check will be discharged and forever barred.

Notwithstanding any federal or state escheat laws to the contrary, any Distribution that remains undeliverable for ninety (90) days or is represented by a voided check will be deemed unclaimed property under section 347(b) of the Bankruptcy Code, will revert to and will revest in the Liquidating Trust for all purposes, including, but not limited to, for the purpose of redistribution to other Holders of Allowed Claims, and the corresponding Claim will be deemed disallowed, expunged and forever barred without order of the Bankruptcy Court.

None of the Plan Administrator, the Liquidating Trustee, the Liquidating Trust or the Post-Confirmation Debtors will incur any liability whatsoever on account of any Distributions made or undeliverable under the Plan.

#### **4. Distribution Record Date**

As of 5:00 p.m. (prevailing Eastern Time) on the Distribution Record Date, the transfer registers for Claims will be closed. The Liquidating Trust will have no obligation to recognize the transfer or sale of any Claim that occurs after such date and time and will be entitled for all purposes in the Plan to recognize and make Distributions only to those Holders who are Holders of Claims as of 5:00 p.m. on the Distribution Record Date. For the avoidance of doubt, the Distribution Record Date will not apply to any securities of the Debtors deposited with the Depository Trust Company (“DTC”), the Holders of which will receive a distribution in accordance with the customary procedures of DTC.

#### **5. Minimum Distributions**

No Distribution of less than fifty dollars (\$50.00) will be made by the Plan Administrator or Liquidating Trust. All Cash that would have funded each such Distribution will revert to and will revest in the Liquidating Trust for all purposes, including, but not limited to, for the purpose of redistribution to other Holders of Allowed Claims.

#### **6. Compliance with Tax Requirements**

To the extent applicable, in connection with making Distributions, the Liquidating Trust will comply with all tax withholding and reporting requirements imposed on the Liquidating Trust by any governmental unit. All Distributions will be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Liquidating Trust will be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements. The Liquidating Trust will be authorized to require each Holder of a Claim to provide it with an executed Form W-9, Form W-8 or other appropriate tax form or documentation as a condition precedent to being sent a Distribution. The Liquidating Trust will provide advance written notice of such requirement to each Holder of a Claim. The notice will provide each Holder with a period of no less than ninety (90) days after first request to provide an executed Form W-9, Form W-8 or other tax form or documentation to the Liquidating Trust. If a Holder of any Claim does not provide the Liquidating Trust with an executed Form W-9, Form W-8 or other tax form or documentation within the 90-day time period specified in such notice, or such later time period agreed to by the Liquidating Trust in writing in its sole discretion, then the Liquidating Trust, in its sole discretion, may (i) make a Distribution net of any applicable withholding or (ii) determine that such Holder will be deemed to have forfeited the right to receive

any Distribution. In such event: (i) any Distribution will revert to the Liquidating Trust for all purposes, including but not limited to, for the purpose of Distribution on account of other Allowed Claims; and (ii) the Claim of the Holder originally entitled to such Distribution will be waived, discharged and forever barred without further order of the Bankruptcy Court, notwithstanding any federal, state or provincial escheat, unclaimed or abandoned property law to the contrary. The Liquidating Trust will have the right to allocate all Distributions in compliance with applicable withholding requirements, wage garnishments, alimony, child support and other spousal awards, Liens and encumbrances.

## **7. Setoffs**

Except with respect to Claims released pursuant to the Plan or any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan and pursuant to section 553 of the Bankruptcy Code or applicable non-bankruptcy law, the Liquidating Trust, may set off against any Allowed Claim (and the Distributions to be made on account of such Claim), all counterclaims, rights and causes of action of any nature that the applicable Debtor may have had against such Holder. The failure to effectuate such a setoff will not constitute a waiver or release, however, by the applicable Debtor, Liquidating Trust, Post-Confirmation Debtor or the Plan Administrator of any Causes of Action against any Holder of a Claim.

## **8. Allocation Between Principal and Accrued Interest**

Except as otherwise provided in the Plan, the aggregate consideration paid to Holders with respect to their Allowed Claims pursuant to the Plan will be treated as allocated first to the principal amount of such Allowed Claims (to the extent thereof) and, thereafter, to the interest, if any, accrued through the Petition Date. Unless otherwise provided in the Plan, no post-petition interest will be payable on account of any Claim.

## **9. Distributions to Holders of Disputed Claims**

Notwithstanding any other provision of the Plan: (i) no Distributions will be made on account of a Disputed Claim until such Claim becomes an Allowed Claim, if ever; and (ii) except as otherwise agreed to by the relevant parties, no partial Distributions will be made with respect to a Disputed Claim until all disputes in connection with such Disputed Claim have been resolved by settlement or Final Order.

To the extent that a Disputed Claim ultimately becomes an Allowed Claim, Distributions will be made to the Holder of such Allowed Claim in accordance with the provisions of the Plan. On the Distribution Date that is at least 30 days after a Disputed Claim becomes an Allowed Claim (or such lesser period as the Liquidating Trust may determine), the Holder of such Claim will receive any Distribution to which such Holder would have been entitled under the Plan as of the Effective Date (including any Distribution such Holder would have been entitled to on the Distribution Date on which such Holder is receiving its initial Distribution) if such claim had been Allowed as of the Effective Date, without any interest to be paid on account of such Claim.

## **10. Disputed Claims Reserve**

As soon as practicable following the Effective Date, the Liquidating Trust will establish a Disputed Claims Reserve. The Liquidating Trust will fund the Disputed Claims Reserve with Cash in an amount equal to the estimated aggregate distributable value, measured in reference to the asserted amount, of all Claims that are Disputed as of the Effective Date. To the extent necessary, additional funds will be deposited in the Disputed Claims Reserve in the estimated distributable value, measured in reference to the asserted amount, of any additional Disputed Claims asserted before the Supplemental Claims Bar Date. The funds in the Disputed Claims Reserve will be held in trust for the benefit of Holders of Disputed Claims ultimately determined to be Allowed. Once all Disputed Claims have been resolved and all ultimately Allowed Claims have been paid in accordance with Section II of the Plan, and provided that all Allowed DIP Claims, Allowed Prepetition ABL Claims, Allowed Priority Tax Claims, and Allowed Other Secured Claims have been paid or otherwise satisfied in accordance with the provisions of the Plan, any remaining amount in the Disputed Claims Reserve will re-vest in the Liquidating Trust for all purposes.

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

To the extent that a Holder of an Allowed Claim receives a payment from a third party, including any of the Purchasers, the Liquidating Trust will be authorized to reduce, for the purposes of Distribution, the Allowed amount of such Claim by the amount of such payment. In addition, any such Claim will be disallowed or deemed satisfied to the extent of the third-party payment received without an objection having to be filed and without any further notice to or action, order or approval of the Bankruptcy Court.

Except as otherwise provided by the Releases set forth in the Plan, nothing contained in the Plan will constitute or be deemed a waiver of any Cause of Action that the Debtors or any other Entity may have against any other Entity, including insurers. Nor will anything contained in the Plan constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

## **F. Disputed, Contingent and Unliquidated Claims**

### **1. Allowance of Claims**

After the Effective Date, the Liquidating Trust will have any and all rights and defenses that the Debtors had with respect to any Claim immediately before the Effective Date, except with respect to any Claim deemed Allowed or released under the Plan. All settled Claims approved prior to the Effective Date by a Final Order of the Bankruptcy Court pursuant to Bankruptcy Rule 9019 or otherwise will be binding on all parties.

Any Claim that has been listed in the Schedules as disputed, contingent or unliquidated, and for which no Proof of Claim has been timely filed, will be expunged without further action and without any further notice to or action, order or approval of the Bankruptcy Court.

## **2. Prosecution of Objections to Claims**

### **a. Authority to Prosecute and Settle Claims**

Except as otherwise specifically provided in the Plan, the Debtors, prior to the Effective Date, and the Liquidating Trust, after the Effective Date, will have the sole authority to: (a) file, withdraw or litigate to judgment, objections to Claims; (b) settle or compromise any Disputed Claim (other than a Fee Claim) without any further notice to or action, order or approval by the Bankruptcy Court; and (c) direct the Claims and Noticing Agent to adjust the claims register to reflect any resolutions of Disputed Claims without any further notice to or action, order or approval by the Bankruptcy Court. To the extent that the Debtors have filed an objection to a Claim that remains pending on the Effective Date, the Liquidating Trust will be substituted as the objecting party without further action of the parties or order of the Court.

Except as otherwise provided in the Plan, all Proofs of Claim filed after the Effective Date will be Disallowed and forever barred, estopped, and enjoined from assertion. All such Proofs of Claims will not be enforceable against the Debtors, their Estates, the Liquidating Trust, or the Post-Confirmation Debtors, as applicable, without the need for any objection by the Post-Confirmation Debtors, the Plan Administrator, the Liquidating Trust or the Liquidating Trustee or any further notice to or action, order, or approval of the Bankruptcy Code.

### **b. Omnibus Objections**

To facilitate the efficient resolution of Disputed Claims, the Liquidating Trust will, notwithstanding Bankruptcy Rule 3007(c), be permitted to file omnibus objections to Claims.

### **c. Authority to Amend Schedules**

The Debtors, prior to the Effective Date, and the Liquidating Trust, (acting by and through the Liquidating Trustee), after the Effective Date, will have the authority to amend the Schedules with respect to any Claim and to make Distributions under the Plan based on such amended Schedules (if no Proof of Claim is timely filed in response thereto) without approval of the Bankruptcy Court. If any such amendment to the Schedules reduces the amount of a Claim or changes the nature or priority of a Claim that was previously Scheduled as undisputed, liquidated and not contingent, the Debtors or the Liquidating Trust, as applicable, will provide the Holder of such Claim with notice of such amendment and the opportunity to file a Proof of Claim.

## **3. Estimation of Claims**

The Debtors, prior to the Effective Date, and the Liquidating Trust (acting by and through the Liquidating Trustee), after the Effective Date, as applicable, may at any time request that the Bankruptcy Court estimate any Claim that is contingent or unliquidated pursuant to section 502(c) of the Bankruptcy Code, regardless of whether any party previously has objected to such Claim or whether the Bankruptcy Court has ruled on any such objection. The Bankruptcy Court will retain jurisdiction to estimate any Claim, including during the litigation of any objection to such Claim or during the appeal relating to such objection. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount will constitute a maximum limitation

on such Claim for all purposes under the Plan (including for purposes of Distributions), and the relevant Debtor Liquidating Trust may, but will not be required to, elect to pursue any supplemental proceeding to object to any ultimate Allowance of or Distribution on such Claim.

#### **4. Claims Subject to Pending Actions**

Except as otherwise provided in the Plan, any Claim held by an Entity against which a Debtor, the Post-Confirmation Debtors, the Liquidating Trust, or another party in interest files a complaint seeking to avoid a transfer under sections 522(f), 522(h), 544, 545, 547, 548, or 549 of the Bankruptcy Code or to recover property under sections 542, 543, 550 or 553 of the Bankruptcy Code, will be deemed a Disputed Claim pursuant to section 502(d) of the Bankruptcy Code. The Holder of such Claim will not receive any Distribution on account of such Claim until such time as such Cause of Action has been resolved and, to the extent applicable, all sums due from such Holder have been turned over to the Liquidating Trust.

#### **G. Conditions Precedent to Confirmation and Consummation of the Plan**

##### **1. Conditions to Confirmation**

The Bankruptcy Court will not be requested to enter the Confirmation Order unless and until the following conditions have been satisfied:

- i. The Bankruptcy Court will have entered the Disclosure Statement Order and such order remains in full force and effect; and
- ii. The Plan and the Confirmation Order will be in form and substance acceptable to the Debtors and the Creditors' Committee.

##### **2. Conditions to the Effective Date**

The Effective Date will not occur, and the Plan will not be consummated unless and until the following conditions have been satisfied or duly waived pursuant to Section VIII.C of the Plan:

- i. The Confirmation Order will be in full force and effect, and no stay thereof will be in effect;
- ii. All other documents and agreements necessary to implement the Plan on the Effective Date will have been executed and delivered to the required parties and, to the extent required, filed with the applicable government unit in accordance with applicable laws, and all other actions required to be taken in connection with the Effective Date will have occurred;
- iii. The Debtors will have paid or caused to be paid in Cash all Notes Settlement Expenses and Senior Notes Agent Fees invoiced and due no later than one (1) Business Day prior to the Effective Date.
- iv. All Statutory Fees and obligations then due and payable to the U.S. Trustee will have been paid in full;

v. The Professional Fee Reserve and the Disputed Claims Reserve will have been established and fully funded; and

vi. The Liquidating Trust Agreement, in form and substance acceptable to the Creditors' Committee, has been fully executed.

### **3. Waiver of Conditions to the Effective Date**

The conditions to consummation of the Plan set forth in Section VIII of the Plan may be waived by the Debtors, with the consent of Creditors' Committee and the Ad Hoc Group of Senior Noteholders (but only to the extent such condition affects the treatment or release in the Plan of the Holders of Senior Notes), without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or consummate the Plan.

## **H. Withdrawal and Modification of the Plan**

### **1. Withdrawal of the Plan**

The Debtors reserve the right to seek to withdraw the Plan at any time prior to the Effective Date. If the Plan is withdrawn: (i) each of the Plan and the Confirmation Order will be null and void in all respects, including with respect to (a) the rejection of Executory Contracts and Unexpired Leases and (b) the releases described in Section X.B of the Plan; and (ii) nothing contained in the Plan or the Confirmation Order will (a) constitute a waiver or release of any claims by the Debtors, Claims or Interests or (b) prejudice in any manner the rights of the Debtors or any other Entity.

### **2. Modification of the Plan**

Subject to the restrictions on modifications set forth in section 1127 of the Bankruptcy Code, the Debtors reserve the right, with the consent of the Creditors' Committee, to alter, amend or modify the Plan before the Effective Date. Prior to the Effective Date, the Debtors may make appropriate technical modifications to the Plan with the consent of the Creditors' Committee without further order or approval of the Bankruptcy Court. Any such amendment, alteration, modification or technical modification that affects the treatment of the Holders of Senior Notes (including any release granted to or by such Holder) will be reasonably acceptable to the Ad Hoc Group of Senior Noteholders. Holders of Claims that have accepted the Plan will be deemed to have accepted the Plan, as amended, modified, or supplemented, if the proposed amendment, modification, or supplement does not materially and adversely change the treatment of their Claims. Holders of Claims who were deemed to accept the Plan because their Claims were Unimpaired will continue to be deemed to accept the Plan only if, after giving effect to such amendment, modification or supplement, such Claims continue to be Unimpaired.

**I. Releases, Exculpations and Injunctions**

**1. Exculpation**

From and after the Effective Date, the Exculpated Parties shall neither have nor incur any liability to any Entity. No Holder of a Claim or Interest, no other party in interest and none of their respective Representatives shall have any right of action against any Exculpated Party for any act taken or omitted to be taken on or before the Effective Date in connection with, related to or arising out of the Debtors' chapter 11 cases, the Debtors, the Estates, the negotiation, consideration, formulation, preparation, dissemination, implementation, Confirmation or consummation of the Plan, the Disclosure Statement, the DIP Agreement, the Final DIP Order, the Asset Sales, the Sale Order, or any other transactions proposed or consummated in connection with these cases or the Plan, any Distributions made under or in connection with the Plan or any contract, instrument, release or other agreement or document created or entered into or any other act taken or omitted to be taken in connection with the Plan or the obligations assumed thereunder. The provisions of Section X.A of the Plan shall have no effect, however, on: (i) the liability of any Entity that would otherwise result from the failure to perform or pay any obligation under the Plan or any contract, instrument, release or other agreement or document to be entered into or delivered in connection with the Plan; and (ii) the liability of any Exculpated Party that is the result of any act or omission of such Exculpated Party or its Representative that is determined by a Final Order to have constituted gross negligence, fraud or willful misconduct. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations and any other applicable law or rules protecting the Exculpated Parties from liability.

**2. Releases**

**a. Release by the Debtors**

Without limiting any other applicable provisions of the Plan, as of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, to the fullest extent permitted by law, the Debtors, on behalf of themselves, their Estates, their respective Representatives and any and all persons and Entities who may purport to claim by, through, for, or because of them, shall forever and irrevocably release, waive and discharge all claims and Causes of Action that they have, had or may have against any Released Party based on or relating to, or in any manner arising from, in whole or in part, any of the Debtors, the Estates, the Debtors' chapter 11 cases, or the negotiation, consideration, formulation, preparation, dissemination, implementation, Confirmation or consummation of the Plan, the Disclosure Statement, or any other transactions proposed or consummated in connection with these cases, including the Plan, the Disclosure Statement, the DIP Agreement, the Final DIP Order, the Asset Sales, the Sale Order, the Notes Settlement, and any other transaction implemented pursuant to or consistent with the foregoing, any Distributions, any contract, instrument, release or other agreement or document created or entered into or any other act taken or omitted to be taken in connection with the Plan or the obligations assumed thereunder. The provisions of Section X.B.1 of the Plan shall not affect: (a) the liability of any Released Party that is the result of any act or

omission determined in a Final Order to have constituted gross negligence, fraud or willful misconduct; or (b) any rights to enforce the Plan or any contracts, instruments, releases, agreements or documents entered into or delivered in connection with the Plan.

**b. Release by Holders of Claims**

Without limiting any other applicable provisions of the Plan, as of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, including the services of the Released Parties to facilitate the resolution of these cases, each (i) Releasing Party and (ii) Holder of a Claim that (a) voted in favor of the Plan, or enters into a settlement with the Debtors with respect to their Claim and its treatment under the Plan or (b) votes to reject the Plan and does not opt out of the release contained in Section X.B.2 of the Plan by checking the opt-out box on the Ballot and returning it in accordance with the instructions set forth thereon, indicating that such Holder opts not to grant the releases provided in the Plan, shall be deemed to forever and irrevocably release, waive and discharge all claims or Causes of Action that such Holder has, had or may have against any Released Party based on or relating to, or in any manner arising from, in whole or in part, any of the Debtors, the Estates, the Debtors' chapter 11 cases, or the negotiation, consideration, formulation, preparation, dissemination, implementation, Confirmation or consummation of the Plan, the Disclosure Statement, or any other transaction proposed or consummated connection with these cases, including the Plan, the Disclosure Statement, the DIP Agreement, the Final DIP Order, the Asset Sales, the Sale Order, the Notes Settlement and any other transaction implemented pursuant to or consistent with the foregoing, any Distributions, any contract, instrument, release or other agreement or document created or entered into or any other act taken or omitted to be taken in connection with the Plan or the obligations assumed thereunder. The provisions of Section X.B.2 of the Plan shall not affect: (a) the liability of any Released Party that is the result of any act or omission determined in a Final Order to have constituted gross negligence, fraud or willful misconduct; or (b) any rights to enforce the Plan or any contracts, instruments, releases, agreements or documents entered into or delivered in connection with the Plan.

Nothing in the Plan discharges, releases, precludes, or enjoins: (a) any liability to any governmental unit that is not a Claim; (b) any Claim of a governmental unit arising after the Effective Date; (iii) any police or regulatory liability to a governmental unit on the part of any Entity as the owner or operator of property after the Effective Date; or (iv) any liability to a governmental unit on the part of any Entity other than the Debtors. Nothing in the Plan shall enjoin or otherwise bar a governmental unit from asserting or enforcing, outside this Court, any liability described in the preceding sentence. Nothing in the Plan divests any tribunal of any jurisdiction it may have to adjudicate any defense based on the Plan provision.

Definitions related to the Releases, Exculpations, and Injunctions under the Plan:

- i. **"Exculpated Parties"** means, collectively and individually, (a) the Debtors and (b) the Creditors' Committee and its members, solely in their respective capacities as such.

- ii. **“Released Parties”** collectively and individually, and, in each case, solely in their capacity as such, means: (a) the Debtors; (b) the Estates, (c) the Creditors’ Committee and its members, (d) the DIP Agent and the DIP Lenders, (e) the Prepetition ABL Agent and the Prepetition Lenders, (f) the Prepetition FILO Agent, (g) the Senior Notes Agent, (h) Holders of the Senior Notes, (i) all Holders of Claims who grant the releases provided by the Plan, and (j) the Representatives of each of the parties enumerated in the preceding clauses (a)-(i); provided that any Entity that objects to Confirmation of, or votes to reject, the Plan and any of such Entity’s Representatives shall not be a Released Party.
- iii. **“Releasing Parties”** means, collectively and individually, and, in each case, solely in their capacity as such: (a) the Debtors; (b) the Estates, (c) the Creditors’ Committee and its members, (d) the DIP Agent and the DIP Lenders, (e) the Prepetition ABL Agent and the Prepetition Lenders, (f) the Prepetition FILO Agent, (g) the Senior Notes Agent, (h) the members of the Ad Hoc Group of Senior Noteholders, and (i) the Representatives of each of the parties enumerated in the preceding clauses (a)-(h); provided that any Entity that objects to Confirmation of, or votes to reject, the Plan and any of such Entity’s Representatives shall not be a Released Party.
- iv. **“Representatives”** means, with respect to any Entity, such Entity’s successor, predecessor, officer, director, partner, limited partner, general partner, shareholder, manager, management company, investment manager, Affiliate, employee, agent, attorney, advisor, investment banker, financial advisor, accountant or other professional of such Entity on or after the Petition Date, in each case, solely in their respective capacities as such.

### 3. Injunction

Upon entry of the Confirmation Order, all holders of Claims and Interests and other parties in interest, along with their respective Representatives, shall be enjoined from taking any actions to interfere with the implementation or Consummation of the Plan.

Except as expressly provided in the Plan, the Confirmation Order, or another Final Order of the Bankruptcy Court or as agreed to by the Debtors, the Post-Confirmation Debtors, and/or the Liquidating Trust, and a holder of a Claim or Interest, all Persons and Entities who have held, hold, or may hold Claims, Interests, or Causes of Action that have been released, discharged, or are subject to exculpation pursuant to Section X of the Plan (the **“Released and Exculpated Claims”**) are permanently enjoined, on and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Liquidating Trust, the Liquidating Trustee, the Post-Confirmation Debtors, the Exculpated Parties, the Released Parties, and/or the Plan Administrator: (i) commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) on account of or in connection with or respect to any such Claims, Interests, or Causes of Action; (ii) enforcing, levying, attaching (including, without limitation, any prejudgment attachment), collecting, or otherwise recovering by any manner

or means, whether directly or indirectly, any judgment, award, decree, or order on account of or in connection with or respect to any such Claims, Interests, or Causes of Action; (iii) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind on account of or in connection with or respect to any such Claims, Interests, or Causes of Action; (iv) asserting any right of setoff (except to the extent exercised prepetition), directly or indirectly, against any obligation due from the Debtors, the Liquidating Trust or the Post-Confirmation Debtors, or against property or interests in property of any of the Debtors, Liquidating Trust, or the Post-Confirmation Debtors except as contemplated or allowed by the Plan; and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

The benefit of the injunctions in Section X.C of the Plan shall extend to any successors of the Released Parties, and their respective property and interests in property.

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

Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays arising under or entered during the pendency of these cases under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay.

#### **J. Retention of Jurisdiction**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court will retain jurisdiction over these cases after the Effective Date to the fullest legally permissible extent, including jurisdiction to:

1. Allow, disallow, estimate, determine, liquidate, reduce, classify, re-classify, and establish the priority or secured or unsecured status of any Claim, including any Administrative Claim;
2. Adjudicate any Causes of Action to the extent not released under Section X.B of the Plan or otherwise, including the Avoidance Actions;
3. Resolve any disputes relating to the Asset Sales;
4. Grant or deny any applications for allowance of any Fee Claims for periods ending on or before the Effective Date;
5. Resolve any matters related to the assumption, assumption and assignment or rejection of any Executory Contract or Unexpired Lease and to hear, determine and, if necessary, liquidate any Claims arising therefrom;
6. Ensure that Distributions are accomplished pursuant to the provisions of the Plan, Confirmation Order and Liquidating Trust Agreement;

7. Decide or resolve any motions, adversary proceedings, contested matters and any other matters that may be pending in these cases on the Effective Date or brought against the Post-Confirmation Debtors, the Plan Administrator, the Liquidating Trust or the Liquidating Trustee thereafter;

8. Enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all contracts, instruments, releases and other agreements or documents entered into or delivered in connection with the Plan, the Confirmation Order, or the Asset Sales;

9. Resolve any controversies, suits or disputes that may arise in connection with the consummation, interpretation or enforcement of the Plan, the Confirmation Order or any contract, instrument, release or other agreement or document that is entered into or delivered in connection with the Plan and any Entity's rights arising from or obligations incurred in connection with the Plan;

10. Modify the Plan before or after the Effective Date pursuant to section 1127 of the Bankruptcy Code;

11. Modify the Confirmation Order or any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, or remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court's order, the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document entered into, delivered or created in connection with the Plan, in such manner as may be necessary or appropriate to consummate the Plan and the transactions contemplated thereby;

12. Hear and determine any matter, case, controversy, suit, dispute, or Cause of Action regarding the existence, nature and scope of the releases, injunctions, and exculpation provided under the Plan, issue injunctions, and enforce the injunctions contained in the Plan and the Confirmation Order;

13. Enter and implement orders or take such other actions as may be necessary or appropriate to implement, enforce or restrain interference by any Entity with the consummation, implementation or enforcement of the Plan or the Confirmation Order;

14. Enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason or in any respect modified, stayed, reversed, revoked or vacated, or if Distributions are enjoined or stayed;

15. Determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, the Disclosure Statement, or the Confirmation Order, including the Liquidating Trust Agreement;

16. Grant, under section 505(b) of the Bankruptcy Code, an expedited determination with respect to tax returns filed, or to be filed, on behalf of the Debtors or Post-Confirmation Debtors for any and all taxable periods ending after the Petition Date;

17. Enforce, clarify or modify any orders previously entered in these cases;
18. Determine matters concerning state, local and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code, including any Disputed Claims for taxes;
19. Assist in recovery of all assets of the Debtors and their Estates, wherever located;
20. Enter final decrees closing the Debtors' Chapter 11 Cases; and
21. Hear any other matter over which the Bankruptcy Court has jurisdiction.

If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter, the provisions of Section XI of the Plan will have no effect upon and will not control, prohibit or limit the exercise of jurisdiction by any other court having jurisdiction with respect to such matter.

## **K. Miscellaneous Provisions**

### **1. Dissolution of Creditors' Committee**

Except to the extent provided in the Plan, upon the Effective Date: (i) the Creditors' Committee will be dissolved; (ii) the current and former members of the Creditors' Committee and their respective Representatives will be released and discharged of and from all further authority, duties, responsibilities and obligations related to and arising from and in connection with these cases; and (iii) the Professionals retained by the Creditors' Committee will not be entitled to assert any Fee Claims for any services rendered or expenses incurred after the Effective Date in their capacity as Professionals for the Creditors' Committee, except to the extent necessary to: (a) prepare, File and, if necessary, litigate final applications for compensation; (b) object to final fee applications filed by other Professionals; and (c) appear and be heard in connection with any appeal of the Confirmation Order.

### **2. Inconsistency**

In the event of any inconsistency among the Plan, the Disclosure Statement or any exhibit or schedule to the Disclosure Statement, the provisions of the Plan will govern. In the event of any inconsistency between the Plan and any document or agreement filed as part of the Plan Supplement (including, but not limited to, the Liquidating Trust Agreement), such document or agreement will control. In the event of any inconsistency between the Plan or any document or agreement filed in the Plan Supplement and the Confirmation Order, the Confirmation Order will control.

### **3. Entire Agreement**

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

#### **4. Document Retention**

On and after the Effective Date, the Post-Confirmation Debtors or Liquidating Trust, as applicable, is permitted to either: (i) maintain documents in accordance with the Debtors' existing document retention policy, as it may be altered, amended, modified, or supplemented by the Post-Confirmation Debtors or the Liquidating Trust, as applicable; or (ii) abandon such documents, as determined by the Plan Administrator or the Liquidating Trustee, as applicable, in its reasonable discretion, and the Post-Confirmation Debtors and the Liquidating Trust will have no liability for abandoning such documents.

#### **5. Payment of Statutory Fees and Monthly Operating Reports**

All Statutory Fees that are due and owing as of the Effective Date will be paid by the Debtors in full in Cash on the Effective Date. After the Effective Date, any and all Statutory Fees will be paid in full in Cash when due and payable by the Liquidating Trust. Notwithstanding any substantive consolidation of the Debtors by the Plan, each and every Debtor and Post-Confirmation Debtor will remain obligated to pay Statutory Fees until the earliest of the closure, dismissal, or conversion of its respective Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code.

The Debtors will file all monthly operating reports due prior to the Effective Date, when they become due. After the Effective Date, the Liquidating Trust will file with the Bankruptcy Court UST Form 11-PCR report(s) for each of the Post-Confirmation Debtors when they become due.

#### **6. Exhibits / Schedules**

All exhibits and schedules to the Plan, including the documents and instruments in the Plan Supplement, are incorporated into and constitute a part of the Plan.

#### **7. Severability**

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

#### **8. Governing Law**

Except to the extent that (i) the Bankruptcy Code or other federal law is applicable or (ii) a document or agreement filed in the Plan Supplement provides otherwise (in which case the

governing law specified therein will be applicable to such document or agreement), the rights, duties, and obligations arising under the Plan will be governed by, and construed and enforced in accordance with, the laws of the State of New York, without giving effect to the principles of conflict of laws that would require or permit application of the laws of another jurisdiction.

**9. Successors and Assigns**

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

**10. Service of Documents**

To be effective, any pleading, notice or other document required by the Plan or the Confirmation Order to be served on or delivered to counsel to the Debtors, the Creditors' Committee, the Ad Hoc Group of Senior Noteholders, or the U.S. Trustee must be sent by overnight delivery service, facsimile transmission, courier service, first class mail or messenger to:

**1. The Debtors**

MILBANK LLP  
55 Hudson Yards  
New York, New York 10001  
Telephone: (212) 530-5000  
Facsimile: (212) 530-5219  
Dennis F. Dunne, Esq.  
Michael W. Price, Esq.  
Lauren C. Doyle, Esq.  
Brian Kinney, Esq.

– and –

MORRIS, NICHOLS, ARSHT & TUNNELL LLP  
1201 N. Market Street, 16th Floor  
P.O. Box 1347  
Wilmington, Delaware 19899-1347  
Telephone: (302) 658-9200  
Facsimile: (302) 658-3989  
Robert J. Dehney, Sr.  
Matthew O. Talmo  
Jonathan M. Weyand  
Casey B. Sawyer

**2. The Creditors' Committee**

PACHULSKI STANG ZIEHL & JONES LLP  
919 N. Market Street, 17th Floor  
P.O. Box 8705  
Wilmington, DE 19899-8705 (Courier 19801)  
Telephone: (302) 652-4100  
Facsimile: (302) 652-4400  
Bradford J. Sandler  
Robert J. Feinstein  
Steven W. Golden  
Colin R. Robinson

**3. The Ad Hoc Group of Senior Noteholders**

WEIL, GOTSHAL & MANGES LLP  
767 Fifth Avenue  
New York, NY 10153-0119  
Telephone: (212) 310-8000  
Facsimile: (212) 310-8007  
Jeffrey D. Saferstein  
Chase A. Bentley

**4. The U.S. Trustee**

OFFICE OF THE UNITED STATES TRUSTEE  
J. Caleb Boggs Federal Building  
844 King Street, Suite 2207  
Lockbox 35  
Wilmington, DE 19801  
Telephone: (302) 573-6491  
Facsimile: (302) 573-6497  
Rosa Sierra-Fox, Esq.

**VI. STATUTORY REQUIREMENTS FOR PLAN CONFIRMATION**

The following is a brief summary of the requirements for Confirmation of the Plan. Holders of Claims and Interests are encouraged to consult their own legal advisors with respect to these requirements.

**A. Requirements for Confirmation**

Among the requirements for Confirmation of the Plan pursuant to section 1129 of the Bankruptcy Code are: (1) the Plan is accepted by all Impaired Classes of Claims or Interests, or if rejected by any Impaired Class, provided that at least one Impaired Class of Claims has accepted the Plan without counting the votes of an insider, the Plan “does not discriminate unfairly” and

is “fair and equitable” as to such rejecting Impaired Classes; (2) the Plan is feasible; and (3) the Plan is in the “best interests” of Holders of Claims and Interests.

The Debtors believe that the Plan satisfies, or will satisfy, all of the requirements of section 1129 of the Bankruptcy Code.

### **1. Acceptance by Impaired Classes**

Section 1129(a)(8) of the Bankruptcy Code requires that each “impaired” class of claims accepts the plan. A class that is “unimpaired” under a plan is presumed to have accepted the plan. Pursuant to section 1124 of the Bankruptcy Code, a class is “impaired” unless the plan: (1) leaves unaltered the legal, equitable and contractual rights to which each claim or interest in such class entitles its holder; or (2) cures any default, reinstates the maturity of such claim or interest as it existed before such default and compensates the holder of such claim or interest for any damages incurred.

Under the Plan, the only Classes of Claims or Interests that Impaired and entitled to receive a Distribution are Class 4 and Class 5. Accordingly, these two Classes are entitled to vote to accept or reject the Plan.

Pursuant to section 1126(c) of the Bankruptcy Code, each Voting Class will have accepted the Plan if the Plan is accepted by the holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of Claims in each Class, counting only those holders who actually vote.

### **2. Best Interests of Creditors**

Pursuant to section 1129(a)(7), notwithstanding the requisite acceptance of the Plan, to confirm the Plan, the Bankruptcy Court must still independently determine that the Plan is “in the best interests” of each Holder of a Claim in each Impaired Class that has not voted to accept the Plan.

The Plan is deemed to be in the best interests of such holders if it provides to each such holder a recovery of a value, as of the Effective Date of the Plan, that is at least equal to the value that such holder would have received or retained if the Debtors were liquidated under chapter 7 of the Bankruptcy Code on such date. Accordingly, if Class 4 and Class 5 do not unanimously vote to accept the Plan, the Bankruptcy Court will need to determine whether the Plan provides to each Holder of a Senior Notes Claim in Class 4 and a General Unsecured Claim in Class 5 a recovery on account of such Claim that has a value, as of the Effective Date, at least equal to the value each such Class member would receive if the Debtors were liquidated under chapter 7.

Attached hereto as **Exhibit C** is the analysis prepared by the Debtors and their advisors estimating the recoveries of the Holders of Claims in Impaired Classes in a liquidation under chapter 7 of the Bankruptcy Code on the Effective Date (the “Liquidation Analysis”).

Recoveries in a chapter 7 case, as compared to the distribution provided under the Plan, would be further reduced by (i) the delay necessarily resulting from the appointment of a chapter

7 trustee who will have no familiarity with the Debtors' business and assets, (ii) the fees and expenses of the trustee and any professionals he or she will retain, and (iii) additional Administrative Claims.

As demonstrated by the Liquidation Analysis, the Debtors believe that liquidation under chapter 7 of the Bankruptcy Code would result in substantial diminution in value to be realized by Holders of Claims as compared to distributions contemplated under the Plan. Consequently, the Plan satisfies the best interests of creditors test.

### **3. Feasibility**

Section 1129(a)(11) of the Bankruptcy Code requires that, to confirm a chapter 11 plan, the Bankruptcy Court must find that confirmation of such plan is not likely to be followed by the liquidation or the need for further financial reorganization of the debtor (unless such is contemplated by the plan).

The Debtors believe that the Plan satisfies the feasibility requirement as, following the distribution of the Liquidating Trust Assets in accordance with the Plan, the Debtors will be wound-down.

#### **B. Alternative Plans**

The Debtors do not believe that there are any feasible alternative chapter 11 plans. The Debtors believe that the Plan, as described therein, enables Holders of Claims to realize the greatest possible value under the circumstances and that, compared to any alternative plan, the Plan has the greatest chance to be confirmed and consummated.

#### **C. Combined Hearing**

**As set forth in the Interim Approval and Procedures Order, the Bankruptcy Court has scheduled the Combined Hearing for January 24, 2025, at 10:00 a.m. (prevailing Eastern Time).** The Combined 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 Combined Hearing or the filing of a notice of such adjournment served in accordance with the Interim Approval and Procedures Order.

Any objection to the confirmation of the Plan must comply with the requirements as set forth in the Interim Approval and Procedures Order, including: (1) be in writing; (2) conform to the Bankruptcy Rules; (3) state the name, address, phone number and email address of the objecting party and the amount and nature of the Claim or Interest of such entity, if any; (4) state with particularity the basis and nature of any objection to the Plan and, if practicable, a proposed modification to the Plan that would resolve such objection; and (5) be filed, contemporaneously with a proof of service, with the Bankruptcy Court and served so that it is actually received by the following notice parties set forth below no later than the Objection Deadline. **Unless an objection to the Plan is timely served and filed, it may not be considered by the Bankruptcy Court.**

## **VII. PLAN-RELATED RISK FACTORS**

Holders of Claims entitled to vote on the Plan should read and carefully consider the risk factors set forth below, as well as the other information set forth in this Disclosure Statement and the documents referred to or incorporated by reference in this Disclosure Statement, before voting to accept or reject the Plan. These factors should not be regarded as constituting the only risks present in connection with the Debtors' business or the Plan and its implementation. All of the contingencies described below may or may not occur, and the Debtors are not in a position to express a view on the likelihood of any such contingency occurring.

### **A. Certain Bankruptcy Risks**

#### **1. The Plan May Not Be Confirmed**

As discussed above, section 1129(a)(8) of the Bankruptcy Code requires that each "impaired" class of claims accepts the plan. Nevertheless, section 1129(b) of the Bankruptcy Code allows, under certain circumstances, confirmation of a plan even where not all Impaired Classes accept the Plan so long as, in accordance with section 1129(a)(1), at least one Impaired Class has accepted the Plan, determined without including any acceptance of the Plan by any insider. Accordingly, if no Impaired Class accepts the Plan, the Plan may not be confirmed.

Even if the requisite acceptances are received, there can be no assurance that the Bankruptcy Court will confirm the Plan. Section 1129 of the Bankruptcy Code, which sets forth the requirements for confirmation of a chapter 11 plan, requires, among other things, a finding by the Bankruptcy Court that the plan is "feasible," that all claims and interests have been classified in compliance with the provisions of section 1122 of the Bankruptcy Code, and that the plan satisfies the "best interest of creditors" test, as discussed above. With respect to impaired classes that do not accept a chapter 11 plan, section 1129(b) requires such plan be fair and equitable (including, without limitation the "absolute priority rule") and not discriminate unfairly with respect to such classes. There can be no assurance that the Bankruptcy Court will conclude that the statutory requirements for Confirmation have been met with respect to the Plan.

The Debtors reserve the right to modify the Plan as necessary to achieve Confirmation, including removing certain Debtors from the Plan. Any such modification may result in a less favorable treatment of any Class than the treatment currently provided in the Plan.

Furthermore, in the event the Plan is not confirmed, the Debtors may seek to pursue other strategic alternatives, such as an alternative chapter 11 plan (which, as described above, the Debtors believe would not have as strong a possibility to be confirmed and consummated or would provide as high a recovery to creditors), a dismissal of these cases and an out-of-court dissolution, or a conversion to chapter 7. There can be no assurance that the terms of any such alternative strategy would be as favorable to the holders of Allowed Claims as those proposed in the Plan.

#### **2. Parties In Interest May Object to the Plan**

There is a risk that certain parties could object to either the entirety of the Plan or to specific provisions of the Plan. Although the Debtors believe that the Plan complies with all relevant

Bankruptcy Code provisions, there can be no guarantee that a party in interest will not file an objection to the Plan or that the Bankruptcy Court will not sustain such an objection.

In such an event, the cost of the Chapter 11 Cases and the time needed to confirm the Plan may increase, and the Debtors may need to modify the Plan. Such modification could require re-solicitation of votes on the Plan. All of these delays may further erode the value available for distribution to creditors.

### **3. The Plan May Not Become Effective**

To the extent that the Debtors are unable to satisfy any of the conditions precedent set forth in the Plan, the Debtors may be unable to consummate the Plan, and various parties may withdraw their support, financial or otherwise, for the Plan. Any such loss of support could adversely affect the Debtors' ability to consummate the Plan. Thus, there can be no assurance as to whether the Effective Date will occur.

### **4. Releases, Injunctions and Exculpation Provisions May Not Be Approved**

Section X of the Plan provides for certain releases, injunctions, and exculpations for claims and Causes of Action that may otherwise be asserted against the Released or Exculpated Parties. Parties in interest may object to these releases, injunctions, and exculpations and such provisions may not be approved. If this were to occur, certain parties may withdraw their support for the Plan.

### **5. The Chapter 11 Cases May Be Converted to Cases Under Chapter 7 of the Bankruptcy Code**

If the Bankruptcy Court finds that it would be in the best interest of creditors and/or the debtor in a chapter 11 case, the Bankruptcy Court may convert a chapter 11 bankruptcy case to a case under chapter 7 of the Bankruptcy Code. In such event, a chapter 7 trustee would be appointed or elected to liquidate the debtor's assets for distribution in accordance with the priorities established by the Bankruptcy Code. As previously mentioned, the Debtors believe that liquidation under chapter 7 would result in significantly smaller distributions for Holders of Claims than those provided for in a chapter 11 plan because of (i) the delay resulting from the appointment of a chapter 7 trustee who will have no familiarity with the Debtors' business and assets, (ii) additional fees and expenses of the chapter 7 trustee and any professionals he or she retains, and (iii) Claims that would be generated during the liquidation, including additional Administrative Claims.

## **B. Other Risk Factors**

### **1. The Debtors Cannot Guarantee Recoveries or the Timing of Allowed Claims Under the Plan**

Although the Debtors have made commercially reasonable efforts to project recoveries to the Holders of Allowed Claims, it is possible that the aggregate amounts of Allowed Claims will be materially higher than any range the Debtors have considered to date, and thus recoveries could

be materially reduced or eliminated. In addition, the timing of actual distributions to Holders of Allowed Claims may be affected by many factors that cannot be predicted. Therefore, the Debtors cannot guarantee the timing of any recovery on an Allowed Claim.

**2. The Total Amount of Allowed General Unsecured Claims May Be Higher than Anticipated by the Debtors**

With respect to Holders of Allowed General Unsecured Claims, the claims filed against the Debtors' estates may be materially higher than the Debtors have estimated.

**3. The Total Amount of Allowed Administrative and Priority Tax Claims May Be Higher than Anticipated by the Debtors**

The amount of cash the Debtors ultimately receive prior to and following the Effective Date may be lower than anticipated. Additionally Allowed Administrative Claims and Allowed Priority Tax Claims may be higher than anticipated. Accordingly, there is a risk that the Debtors will not be able to pay in full in cash all Administrative Claims and Priority Tax Claims on the Effective Date as is required to confirm a chapter 11 plan.

**4. The Debtors May Have Liquidity Constraints**

The Debtors face uncertainty regarding the adequacy of their liquidity and capital resources. In addition to the cash necessary to fund the sale process, the Debtors have incurred and expect to continue to incur significant professional fees and other costs in connection with prosecuting these cases. While the Debtors commenced these cases with sufficient liquidity to consummate the sale of their assets, the Debtors cannot guarantee that cash on hand will be sufficient to satisfy ongoing obligations related to these Chapter 11 Cases.

**5. The Debtors May Be Adversely Affected by Potential Litigation**

It is also possible that certain parties will commence litigation with respect to the treatment of their Claims under the Plan or may challenge treatment of their collateral. Litigation can be expensive and time consuming to prosecute or defend and could result in settlements or damages that could significantly affect the distributable value available to the Debtors' creditors. It is not possible to predict the types of potential litigation that the Debtors may become party to, nor the final resolution of any such litigation.

**C. Disclosure Statement Disclaimer**

**1. The Financial Information Contained in This Disclosure Statement Has Not Been Audited**

In preparing this Disclosure Statement, the Debtors and their advisors relied on financial data derived from the Debtors' books and records that was available at the time of such preparation. Although the Debtors have used their reasonable business judgment to ensure the accuracy of the financial information, and any conclusions or estimates drawn from such financial information, provided in this Disclosure Statement, and although the Debtors believe that such financial information fairly reflects the financial condition of the Debtors, the Debtors are unable to warrant

that the financial information contained herein, or any such conclusions or estimates drawn therefrom, is without inaccuracies.

**2. The Disclosure Statement May Contain Forward-Looking Statements**

This Disclosure Statement may contain “forward looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. Such statements consist of any statement other than a recitation of historical fact and can be identified by the use of forward-looking terminology such as “may,” “will,” “might,” “expect,” “believe,” “anticipate,” “could,” “would,” “estimate,” “continue,” “pursue” or the negative thereof or comparable terminology. All forward-looking statements are necessarily speculative, and there are certain risks and uncertainties that could cause actual events or results to differ materially from those referred to in such forward-looking statements. The information contained herein is an estimate only, based upon information currently available to the Debtors.

**3. No Legal or Tax Advice is Provided by this Disclosure Statement**

**This Disclosure Statement and its contents are not and should not be construed to be legal, business, or tax advice.** Each holder of a Claim or an Interest should consult his or her own legal counsel, accountant or other advisor with regard to any legal, tax and other matters concerning their Claim or Interest. This Disclosure Statement may not be relied upon for any purpose other than to determine (i) how to vote on the Plan, (ii) whether or not to opt-out of the releases as set forth in Section X of the Plan, and (iii) whether or not to object to the Plan.

**4. No Admissions Made**

The information contained in this Disclosure Statement will neither (a) constitute an admission of any fact, liability, stipulation or waiver by any Person or Entity (including, without limitation, the Debtors) nor (b) be deemed evidence of the tax or other legal effects of the Plan on the Debtors, Holders of Allowed Claims or Interests or any other parties in interest.

**5. Failure to Identify Objections**

No reliance should be placed on the fact that a projected objection to a particular Claim is, or is not, identified in this Disclosure Statement. The Debtors may object to Claims after the Effective Date irrespective of whether this Disclosure Statement identifies objections to such Claims.

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

Except as specifically set forth in the Plan, the vote by a Holder of a Claim for or against the Plan does not constitute a waiver or release of any claims, Causes of Action or rights of any Person or Entity (including the Debtors) to object to that Holder’s Claim, or recover any preferential, fraudulent or other avoidable transfer of assets, regardless of whether any claims or Causes of Action are specifically or generally identified in this Disclosure Statement.

**7. Information Was Provided by the Debtors and Was Relied Upon by the Debtors' Advisors**

In connection with the preparation of this Disclosure Statement, the Debtors' advisors have relied upon the information provided by the Debtors. Although the Debtors' advisors have performed certain limited due diligence in connection with the preparation of this Disclosure Statement, they have not independently verified the information contained in this Disclosure Statement.

**8. No Representations Outside of this Disclosure Statement are Authorized**

No representations concerning or relating to the Debtors, the Chapter 11 Cases, or the Plan are authorized other than as set forth in this Disclosure Statement. Any representations or inducements made to secure your acceptance or rejection of the Plan other than as contained in this Disclosure Statement should not be relied upon by you in arriving at your decision. You should promptly report unauthorized representations or inducements to counsel to the Debtors and to the U.S. Trustee.

**9. The Debtors Have No Duty to Update**

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

**VIII. CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

**A. Importance of Obtaining Independent Professional Tax Advice**

**The tax consequences of the Plan are complex and subject to significant uncertainties. The following summary does not discuss all aspects of U.S. federal income taxation or other taxation that may be relevant to the Debtors or to any particular Holder of Claims in light of its particular circumstances and income tax situation. This summary is not a substitute for careful tax planning and advice based on individual circumstances that pertain to a particular Holder of a Claim. Each Holder of a Claim should consult with its tax advisors as to the consequences of the transactions contemplated by the Plan, including the application and effect of U.S. federal, state, local, or foreign laws regarding income, estate and other taxation, and of any changes in those laws.**

## **B. Tax Consequences of the Plan**

The following discussion summarizes certain material U.S. federal income tax consequences of the implementation of the Plan to the Debtors and to Holders of Claims. This discussion does not address the U.S. federal income tax consequences to Holders: (i) whose Claims are Unimpaired or otherwise entitled to payment in full in Cash under the Plan or (ii) that are not entitled to vote because they are presumed to accept or deemed to reject the Plan. In addition, this discussion does not address any consideration being received on account of a person's capacity other than as a Holder of a Claim.

The discussion of U.S. federal income tax consequences below is based on the Tax Code, the Treasury Regulations, judicial decisions and published administrative rules and pronouncements of the U.S. Internal Revenue Service (the "IRS"), and other applicable authorities, all as in effect on the date of this Disclosure Statement (collectively, the "Applicable Tax Law"). Changes in Applicable Tax Law may have retroactive effect and could significantly affect the U.S. federal income tax consequences described below. Due to the lack of definitive judicial and administrative authority in a number of areas, substantial uncertainty may exist with respect to some of the tax consequences described below. The Debtors have not requested, and do not intend to request, an opinion of counsel or a ruling or determination from the IRS or any other taxing authority with respect to any of the tax aspects discussed in this Disclosure Statement, and the discussion below is not binding upon the IRS or the courts. No assurance can be given that the IRS will not assert, or that a court will not sustain, a different position than any position discussed in this Disclosure Statement.

This summary does not address foreign, state, local, gift or estate tax consequences of the Plan, nor does it purport to address all aspects of U.S. federal income taxation that may be relevant to a Holder in light of its individual circumstances or to a Holder that may be subject to special tax rules (such as persons who are related to the Debtors within the meaning of the Tax Code, broker-dealers, banks, mutual funds, insurance companies, financial institutions, small business investment companies, real estate investment trusts, regulated investment companies, passive foreign investment companies, controlled foreign corporations, tax-exempt organizations, pass-through entities, beneficial owners of pass-through entities, trusts, governmental authorities or agencies, dealers and traders in securities, subchapter S corporations, persons who hold Claims as part of a straddle, hedge, conversion transaction or other integrated investment, persons using a mark-to-market method of tax accounting, Holders of Claims who are themselves in bankruptcy, persons subject to the alternative minimum tax or the "Medicare" tax on net investment income, U.S. expatriates and accrual method taxpayers that report income on an "applicable financial statement"). In addition, this discussion does not address U.S. federal taxes other than income taxes, unless otherwise provided herein. Furthermore, this summary assumes that a Holder of a Claim holds only Claims and holds the Claims as "capital assets" (within the meaning of section 1221 of the Tax Code).

For the purposes of this discussion, a "U.S. Holder" is a beneficial owner of Claims that, for U.S. federal income tax purposes, is any of the following:

- an individual citizen or resident of the United States for U.S. federal income tax purposes;

- a corporation (or any other entity treated as a corporation for U.S. federal income tax purposes) created or organized in or under the laws of the United States, any state thereof or the District of Columbia;
- an estate the income of which is subject to U.S. federal income taxation regardless of the source of such income; or
- a trust (1) if a court within the United States is able to exercise primary jurisdiction over the trust's administration and one or more United States persons have the authority to control all substantial decisions of the trust or (2) that has a valid election in effect under applicable Treasury Regulations to be treated as a United States person.

For the purposes of this discussion, a “Non-U.S. Holder” is a beneficial owner of Claims that is not a U.S. Holder or a partnership (or other entity or arrangement treated as a partnership or other pass-through entity for U.S. federal income tax purposes).

If a partnership (or other entity or arrangement treated as a partnership or other pass-through entity for U.S. federal income tax purposes) holds Claims, the U.S. federal income tax treatment of a partner (or other beneficial owner) generally will depend upon the status of the partner (or other beneficial owner) and the activities of the partnership (or other pass-through entities) and accordingly, this summary does not apply to partnerships (or other pass-through entities). A partner (or other beneficial owner) of a partnership (or other pass-through entity) holding Claims should consult its own tax advisor regarding the U.S. federal income tax consequences to the partner (or other beneficial owner) of the Plan.

### **C. Certain U.S. Federal Income Tax Consequences to the Debtors**

For U.S. federal income tax purposes, Number Holdings, Inc. is the common parent of an affiliated group of corporations that files a consolidated U.S. federal income tax return (the “Tax Group”), of which the other Debtors and non-Debtors are members or are either foreign corporations or disregarded entities, directly or indirectly, wholly-owned by a member of the Tax Group for U.S. federal income tax purposes. The Debtors estimate that, as of the close of their most recent tax year end, the Tax Group had federal net operating loss (“NOL”) carryforwards of approximately \$240 million and interest expense carryforwards of approximately \$240 million.

#### **1. General Discussion of the Plan**

On the Effective Date, the Debtors will deliver the Senior Notes Recovery to the Senior Notes Agent for distribution to the Holders of Allowed Senior Notes Claims and on or prior to the Effective Date, the Debtors and the Liquidating Trustee will enter into the Liquidating Trust Agreement and the Liquidating Trust Assets will vest or deem to be vested in the Liquidating Trust.

It is intended that the Liquidating Trust be classified for U.S. federal income tax purposes as a “liquidating trust” within the meaning of Treasury Regulation section 301.7701-4(d) and guidance promulgated in respect thereof, including Revenue Procedure 94-45, 1994-2 C.B. 684,

and, thus, as a “grantor trust” within the meaning of sections 671 through 677 of the Tax Code consistent with the terms of the Plan, and accordingly, all Liquidating Trust Assets held by the Liquidating Trust are intended to be deemed for U.S. federal income tax purposes to have been distributed by the Debtors, as applicable, directly to a Holder of an Allowed General Unsecured Claim in respect of such Claims, and then contributed by such Holder of an Allowed General Unsecured Claims to the Liquidating Trust in exchange for their *pro rata* interests in the Liquidating Trust. As such, a transfer of Liquidating Trust Assets to the Liquidating Trust may result in the recognition of gain or loss by the Tax Group, depending in part on the value of such assets on the date of such transfer to the Liquidating Trust relative to the Tax Groups’ tax basis in such assets. If the Debtors’ transfer of Liquidating Trust Assets results in net taxable income for the Tax Group, in the event that the Debtors have an available NOL carryforward, such NOL carryforward should generally be available to offset all or a portion of any such net taxable gain, subject to the potential application of certain limitations on use of NOL carryforwards, including a rule limiting NOL carryforward use to 80% of taxable income.

## **2. Cancellation of Debt and Reduction of Tax Attributes**

In general, absent an exception, a debtor will realize and recognize cancellation of indebtedness income (“COD Income”) upon satisfaction of its outstanding indebtedness for total consideration less than the amount of such indebtedness. The amount of COD Income, in general, is the excess of (a) the adjusted issue price of the indebtedness satisfied, over (b) the sum of: (i) the amount of Cash paid; (ii) the issue price of any new indebtedness of the taxpayer issued; and (iii) the fair market value of any other consideration (including stock of the debtor) given in satisfaction of such satisfied indebtedness at the time of the exchange.

Under section 108 of the Tax Code, a debtor is not, however, required to include any amount of COD Income in gross income if the debtor is under the jurisdiction of a court in a case under chapter 11 of the Bankruptcy Code and the discharge of debt occurs pursuant to that proceeding. Instead, as a consequence of such exclusion, a debtor must reduce its tax attributes (such as current year losses, NOL carryforwards, capital loss carryforwards, tax credits and tax basis in assets) by the amount of COD Income excluded from gross income pursuant to section 108 of the Tax Code. The reduction in tax attributes occurs only after the tax for the year of the debt discharge has been determined. Any excess COD Income over the amount of available tax attributes will generally not give rise to U.S. federal income tax and will generally have no other U.S. federal income tax impact. Where the debtor joins in the filing of a consolidated U.S. federal income tax return, applicable Treasury Regulations require, in certain circumstances, that certain tax attributes of other members of the group also be reduced. In connection with the implementation of the Plan, the Debtors are expected to realize COD Income. The exact amount of any COD Income that will be realized by the Debtors may depend, in part, on the value of the Liquidating Trust Assets and, therefore, will not be determinable until the consummation of the Plan. COD Income recognized by the Debtors in connection with the implementation of the Plan will reduce or possibly eliminate the Debtors’ NOL carryforwards. However, given that pursuant to the Plan, the Debtors, after having transferred the Liquidating Trust Assets to the Liquidating Trust, will liquidate on the Effective Date, the reduction of tax attributes resulting from such COD Income (which, as indicated above, only occurs at the end of the tax year in which the COD Income occurs) generally should not have a material impact on the Debtors as such tax attributes will otherwise become lost in connection with such liquidations.

### **3. Limitation of NOL Carryforwards and Other Tax Attributes**

Under sections 382 and 383 of the Tax Code, if a corporation undergoes an “ownership change,” the amount of any NOLs, interest expense carryforwards, tax credit carryforwards, net unrealized built-in losses, and possibly certain other attributes of the corporation allocable to periods prior to the ownership change (collectively, “Pre-Change Losses”) that may be utilized to offset future taxable income generally are subject to an annual limitation. For this purpose, if a corporation (or consolidated group) has a net unrealized built-in loss at the time of an ownership change (taking into account most assets and items of “built-in” income and deductions), then generally built-in losses (including amortization or depreciation deductions attributable to such built-in losses) recognized during the following five years (up to the amount of the original net unrealized built-in loss) will be treated as Pre-Change Losses and similarly will be subject to the annual limitation. In general, a corporation’s (or consolidated group’s) net unrealized built-in loss will be deemed to be zero unless it is greater than the lesser of (a) \$10,000,000 or (b) 15% of the fair market value of its assets (with certain adjustments) before the ownership change. On September 10, 2019, the IRS issued proposed Treasury Regulations that would significantly modify the calculation and treatment of net unrealized built-in gains and losses; however, the IRS amended the proposed effective date provision of those Treasury Regulations to exempt from the new Treasury Regulations ownership changes pursuant to chapter 11 cases filed prior to the Treasury Regulations becoming effective. Thus, if the Treasury Regulations are finalized in their current form, the proposed Treasury Regulations are not expected to apply to the Debtors and the remainder of this discussion assumes they will not apply.

Because the Plan does not contemplate an issuance of Debtor equity and the Plan provides that the Debtors will liquidate on the Effective Date, the Debtors do not expect section 382 to be relevant.

#### **D. Consequences of the Plan to U.S. Holders of Allowed Claims**

##### **1. U.S. Holders of Allowed Claims**

Pursuant to the Plan, each Holder of an Allowed Senior Notes Claim will receive the Senior Notes Recovery and a Holder of an Allowed General Unsecured Claim will receive interests in the Liquidating Trust, which will entitle such Holders of an Allowed General Unsecured Claim to distributions from the Liquidating Trust Assets in accordance with the Plan and Liquidating Trust Agreement. A U.S. Holder of a Claim should recognize gain or loss on such Claim in an amount equal to the difference between (i) (A) in the case of a Holder of an Allowed Senior Notes Claim, the amount of Cash received, and (B) in the case of a Holder of an Allowed General Unsecured Claim, the fair market value of the Holder’s share of Liquidating Trust Assets, in each case, other than, with respect to a Claim, any amount attributable to accrued but unpaid interest (see subsection D.2, “Accrued Interest and OID”), and (ii) the Holder’s tax basis in its Claim. However, it is possible that a U.S. Holder of an Allowed General Unsecured Claim will be required to defer the recognition of loss resulting from the exchange of an Allowed General Unsecured Claim for Liquidating Trust Assets until the tax year in which the Disputed Claims Reserve is resolved.

As discussed below (see subsection E, “Tax Treatment of the Liquidating Trust and Holders of Liquidating Trust Interests”), each Holder of an Allowed General Unsecured Claim

that receives a Liquidating Trust Interest is expected to be treated for U.S. federal income tax purposes as directly receiving on the date it receives the Liquidating Trust Interest, its respective share of the assets in the Liquidating Trust (consistent with its economic rights in the Liquidating Trust). Pursuant to the Plan, the Liquidating Trustee, will in good faith value the Liquidating Trust Assets, and all parties (including, without limitation, the Debtors, the Post-Confirmation Debtors, the Liquidating Trustee and the Liquidating Trust Beneficiaries) must consistently use such valuation for all U.S. federal income tax purposes. A Holder's tax basis in its respective share of the Liquidating Trust Assets transferred to the Liquidating Trust will equal the fair market value of such interest, and the Holder's holding period generally will begin the day following the establishment of the Liquidating Trust.

## **2. Accrued Interest and OID**

To the extent that any amount received by a U.S. Holder of an Allowed Claim is attributable to accrued but unpaid interest (including original issue discount ("OID")) on its Allowed Claim, the receipt of such amount should be taxable to the U.S. Holder as ordinary interest income (if not previously included in such Holder's gross income). Conversely, a U.S. Holder of an Allowed Claim may be able to recognize a deductible loss (or, possibly, a write off against a reserve for worthless debts) to the extent that any accrued interest (including OID) previously was included in the U.S. Holder's gross income but was not paid in full. Such loss may be ordinary, but the tax law is unclear on this point.

If the fair value of the consideration is not sufficient to fully satisfy all principal of and interest on an Allowed Claim, the extent to which such consideration will be attributable to accrued interest (including OID) is unclear. Under the Plan, the aggregate consideration received in respect of Allowed Claims will be allocated first to the principal amount of such Claims, with any excess allocated to unpaid interest that accrued on such Claims (through the Petition Date), if any. Certain legislative history indicates that an allocation of consideration as between principal and interest provided in a chapter 11 plan is binding for U.S. federal income tax purposes, while certain Treasury Regulations treat payments made under a debt instrument as allocated first to any accrued but unpaid interest. The IRS could take the position that the consideration received by the U.S. Holder should be allocated in some way other than as provided in the Plan. U.S. Holders of Allowed Claims should consult their own tax advisors regarding the proper allocation of the consideration received by them under the Plan.

## **3. Market Discount**

Under the "market discount" provisions of the Tax Code, some or all of any gain realized by a U.S. Holder of an Allowed Claim who receives consideration pursuant to the Plan in satisfaction of its Allowed Claim may be treated as ordinary income (instead of capital gain), to the extent of the amount of "market discount" on the debt instruments constituting the Allowed Claim, as applicable. In general, a debt instrument is considered to have been acquired with "market discount" if it is acquired other than at original issue and if the U.S. Holder's adjusted tax basis in the debt instrument is less than (a) the sum of all remaining payments to be made on the debt instrument, excluding "qualified stated interest", or (b) in the case of a debt instrument issued with OID, its adjusted issue price, in each case, by at least a *de minimis* amount (equal to 0.25%

of the sum of all remaining payments to be made on the debt instrument, excluding qualified stated interest, multiplied by the number of remaining whole years to maturity).

Any gain recognized by a U.S. Holder on the taxable disposition of an Allowed Claim acquired with market discount should generally be treated as ordinary income to the extent of the market discount that accrued thereon while the Allowed Claim, as applicable, was considered to be held by the U.S. Holder (unless the U.S. Holder elected to include market discount in income as it accrued).

U.S. Holders are urged to consult their own tax advisors regarding the tax consequences of the exchange of Allowed Claims that were acquired with market discount pursuant to the Plan.

#### **4. Limitation on Use of Capital Losses**

U.S. Holders who recognize capital losses will be subject to limits on their use of capital losses. For U.S. Holders other than corporations, capital losses may be used to offset any capital gains (without regard to holding periods) plus ordinary income to the extent of the lesser of (i) \$3,000 (or \$1,500 for married individuals filing separate returns), or (ii) the excess of the capital losses over the capital gains. Non-corporate U.S. Holders may carry over unused capital losses and apply them to capital gains and a portion of their ordinary income. For corporate U.S. Holders, capital losses may only be used to offset capital gains. U.S. Holders who have more capital losses than can be used in a tax year may be allowed to carry over the excess capital losses for use in succeeding tax years. For corporate U.S. Holders, unused capital losses may be carried forward for the five years following the capital loss year or carried back to the three years preceding the capital loss year. Non-corporate U.S. Holders may carry over unused capital losses for an unlimited number of years.

### **E. Tax Treatment of the Liquidating Trust and Holders of Liquidating Trust Interests**

#### **1. Classification of the Liquidating Trust**

As noted above (in subsection C.1, “General Discussion of the Plan”), the Liquidating Trust is intended to qualify as a “liquidating trust” for U.S. federal income tax purposes. In general, a liquidating trust is not a separate taxable entity, but rather is treated for U.S. federal income tax purposes as a “grantor trust” (*i.e.*, all income and loss is taxed directly to the liquidating trust beneficiaries). However, merely establishing a trust as a liquidating trust does not ensure that it will be treated as a “grantor trust” for U.S. federal income tax purposes. The IRS, in Revenue Procedure 94-45, 1994-2 C.B. 684, set forth the general criteria for obtaining an IRS ruling as to the grantor trust status of a liquidating trust under a chapter 11 plan. The Liquidating Trust will be structured to comply with such general criteria. Pursuant to the Plan, and in conformity with Revenue Procedure 94-45, all parties (including, without limitation, the Debtors, the Post-Confirmation Debtors, the Liquidating Trustee, and the Liquidating Trust Beneficiaries) will be required to treat, for U.S. federal income tax purposes, the Liquidating Trust as a “grantor trust” of which the Liquidating Trust Beneficiaries are the owners and grantors. The following discussion assumes that the Liquidating Trust will be treated as a grantor trust for U.S. federal income tax purposes. However, no opinion of counsel has been requested regarding the tax status of the Liquidating Trust as a “grantor trust.” Accordingly, there can be no assurance that the IRS

would not take a contrary position. If the IRS were to successfully challenge the tax classification of the Liquidating Trust, the U.S. federal income tax consequences to the Liquidating Trust, the holders of Liquidating Trust Interests and the Debtors could vary from those described herein (including the potential for an entity-level tax on the income of the Liquidating Trust).

## **2. General Tax Reporting by the Liquidating Trust and its Beneficiaries**

For U.S. federal income tax purposes, all parties (including, without limitation, the Debtors, the Post-Confirmation Debtors, the Liquidating Trustee, and the Liquidating Trust Beneficiaries) must treat the transfer of the Liquidating Trust Assets to the Liquidating Trust in accordance with the terms of the Plan. Pursuant to the Plan, any assets transferred to the Liquidating Trust will be treated, for U.S. federal income tax purposes, as having been transferred, subject to any obligations relating to those assets, directly to the beneficial owners of the Liquidating Trust (with each beneficial owner of the Liquidating Trust receiving an undivided interest in such assets in accordance with their economic interest in such assets), followed by the transfer by the holders of such assets to the Liquidating Trust in exchange for the interests in the Liquidating Trust. Accordingly, all parties must treat the Liquidating Trust as a “grantor trust” of which the Liquidating Trust Beneficiaries are the owners and grantors, and thus as the direct owners of an undivided interest in the assets of the Liquidating Trust, consistent with their economic interests therein, for all U.S. federal income tax purposes.

Allocations of taxable income of the Liquidating Trust among the Liquidating Trust Beneficiaries will be determined by reference to the manner in which an amount of cash equal to such taxable income would be distributed (were such cash permitted to be distributed at such time) if, immediately prior to such deemed distribution, the Liquidating Trust had distributed all its assets (valued at their tax book value) to the beneficial owners of the Liquidating Trust in accordance with the Plan and Liquidating Trust Agreement, adjusted for prior taxable income and loss and taking into account all prior and concurrent distributions from the Liquidating Trust. Similarly, taxable loss of the Liquidating Trust will be allocated by reference to the manner in which an economic loss would be borne immediately after a liquidating distribution of the remaining assets of the Liquidating Trust in accordance with the Plan and Liquidating Trust Agreement. The tax book value of the assets of the Liquidating Trust for this purpose will equal their fair market value on the date of the transfer of the Liquidating Trust Assets to the Liquidating Trust, adjusted in accordance with tax accounting principles prescribed under Applicable Tax Law.

As soon as reasonably practicable after the transfer of assets to the Liquidating Trust, the Liquidating Trustee will make a good faith valuation of the Liquidating Trust Assets. All parties (including, without limitation, the Debtors, the Liquidating Trustee, and the Liquidating Trust Beneficiaries) must consistently use such valuation for all U.S. federal income tax purposes. The valuation will be made available, from time to time, as relevant for tax reporting purposes.

Taxable income or loss allocated to a Liquidating Trust Beneficiary will be treated as income or loss with respect to such beneficial owner’s undivided interest in the Liquidating Trust Assets, and not as income or loss with respect to its prior Allowed Claim. The character of any income and the character and ability to use any loss will depend on the particular situation of the Liquidating Trust Beneficiary.

The U.S. federal income tax obligations of a Holder with respect to its Liquidating Trust Interest are not dependent on the Liquidating Trust distributing any cash or other proceeds. Thus, a Holder may incur a U.S. federal income tax liability with respect to its allocable share of Liquidating Trust income even if the Liquidating Trust does not make a concurrent distribution to the holder. In general, a distribution of cash by the Liquidating Trust will not be separately taxable to a Liquidating Trust Beneficiary since the Liquidating Trust Beneficiary is already regarded for U.S. federal income tax purposes as owning the underlying assets (and was taxed at the time the cash was earned or received by the Liquidating Trust).

The Liquidating Trustee will comply with all applicable governmental withholding requirements and will file with the IRS tax returns for the Liquidating Trust consistent with its classification as a “grantor trust” pursuant to Treasury Regulation section 1.671-4(a). The Liquidating Trustee also will send annually or otherwise make available to each Liquidating Trust Beneficiary a separate statement regarding the receipts and expenditures of the Liquidating Trust as relevant for U.S. federal income tax purposes and will instruct all such holders to use such information in preparing their U.S. federal income tax returns or to forward the appropriate information to such holder’s underlying beneficial holders with instructions to utilize such information in preparing their U.S. federal income tax returns.

## **F. Consequences of the Plan to Non-U.S. Holders of Claims**

### **1. Non-U.S. Holders of Allowed Claims and Interests**

The distribution of proceeds with respect to a Non-U.S. Holder’s Allowed Claim will be treated as a taxable transaction, as described above under the discussion relevant to U.S. Holders. Any gain realized by a Non-U.S. Holder with respect to its Allowed Claim generally will not be subject to U.S. federal income taxation unless (a) the Non-U.S. Holder is an individual who was present in the United States for 183 days or more during the taxable year in which the Effective Date occurs and certain other conditions are met or (b) such gain is effectively connected with the conduct by such Non-U.S. Holder of a trade or business within the United States (and, if an income tax treaty applies, such gain is attributable to a permanent establishment maintained by such Non-U.S. Holder in the United States).

If the first exception applies, to the extent that any gain is taxable, the Non-U.S. Holder generally will be subject to U.S. federal income tax at a rate of 30% (or at a reduced rate or exemption from tax under an applicable income tax treaty) on the amount by which such Non-U.S. Holder’s capital gains allocable to U.S. sources exceed capital losses allocable to U.S. sources during the taxable year of the exchange. If the second exception applies, the Non-U.S. Holder generally will be subject to U.S. federal income tax with respect to any gain recognized on the exchange in the same manner as a U.S. Holder. To claim an exemption from (or reduction of) withholding tax, such Non-U.S. Holder will be required to provide a properly executed IRS Form W-8ECI (or applicable successor form). In addition, if such Non-U.S. Holder is a corporation, it may be subject to a branch profits tax equal to 30% (or such lower rate provided by an applicable income tax treaty) of its effectively connected earnings and profits for the taxable year, subject to certain adjustments.

As described above (see subsection E, “Tax Treatment of the Liquidating Trust and Holders of Liquidating Trust Interests”), all parties must treat the beneficial owners of the Liquidating Trust as the direct owners of an undivided interest in the Liquidating Trust Assets, consistent with their economic interests therein, for all U.S. federal income tax purposes. Further, taxable income or loss allocated to a beneficial owner of the Liquidating Trust will be treated as income or loss recognized by such beneficial owner with respect to such beneficial owner’s undivided interest in the assets of the Liquidating Trust, and not as income or loss with respect to its prior Allowed Claim. The character of any income and the character and ability to use any loss will depend on the assets of the Trust and the particular situation of the beneficial owner of the Liquidating Trust. In the case of any beneficial owners of the Liquidating Trust that are Non-U.S. Holders, owning an interest in the Liquidating Trust could impact the Non-U.S. Holder’s tax filing and payment obligations. In addition, the Liquidating Trustee may be required to withhold amounts with respect to the income or proceeds allocable to such persons, depending on the circumstances. Each Non-U.S. Holder should consult its own tax advisor regarding the U.S. federal income tax consequences of the Plan of owning an interest in the Liquidating Trust.

## **2. Accrued Interest and OID**

Subject to the discussions below (see subsection F.3, “FATCA” and subsection G, “Information Reporting and Backup Withholding”), payments to a Non-U.S. Holder, including value associated with the Senior Notes Recovery or the Liquidating Trust interests received by a Non-U.S. Holder, that are attributable to accrued but unpaid interest (including accrued OID) on the debt instruments constituting the surrendered Allowed Claims generally will not be subject to U.S. federal income tax or withholding, provided that the withholding agent has received or receives, prior to payment, appropriate documentation (generally, a properly executed IRS Form W-8BEN or W-8BEN-E (or applicable successor form)) establishing that the Non-U.S. Holder is not a U.S. person, unless:

- the Non-U.S. Holder actually or constructively owns 10% or more of total combined voting power of all classes of Numbers stock entitled to vote;
- the Non-U.S. Holder is a “controlled foreign corporation” that is a “related person” with respect to Numbers (each, within the meaning of the Tax Code);
- the Non-U.S. Holder is a bank receiving interest described in section 881(c)(3)(A) of the Tax Code; or
- such interest (or OID) is effectively connected with the conduct by the Non-U.S. Holder of a trade or business within the United States (in which case, provided the Non-U.S. Holder provides a properly executed IRS Form W-8ECI (or successor form) to the withholding agent, the Non-U.S. Holder (x) generally will not be subject to withholding tax, but (y) will be subject to U.S. federal income tax in the same manner as a U.S. Holder (unless an applicable income tax treaty provides otherwise), and a Non-U.S. Holder that is a corporation for U.S. federal income tax purposes may also be subject to a branch profits tax with respect to such Non-U.S. Holder’s effectively connected earnings and profits that are attributable to the

accrued interest at a rate of 30% (or at a reduced rate or exemption from tax under an applicable income tax treaty)).

In the case of a Non-U.S. Holder that does not qualify for the exemption from withholding tax with respect to accrued but unpaid interest (including accrued OID) on the Allowed Claims described above, any payments attributable to accrued but unpaid interest (including OID) that is not effectively connected income (as described in the fourth bullet above) generally will be subject to withholding of U.S. federal income tax at a 30% rate (or at a reduced rate or exemption from tax under an applicable income tax treaty). For purposes of providing a properly executed IRS Form W-8BEN or W-8BEN-E, special procedures are provided under applicable Treasury Regulations for payments through qualified foreign intermediaries or certain financial institutions that hold customers' securities in the ordinary course of their trade or business. As described above in more detail, the Plan provides that the aggregate consideration to be distributed to Holders of Allowed Claims in each Class will be allocated first to the principal amount of such Allowed Claims, with any excess allocated to unpaid interest that accrued on these Claims, if any, prior to the Effective Date. The IRS could take the position that the consideration received by a Non-U.S. Holder should be allocated in some way other than as provided in the Plan. Non-U.S. Holders of Allowed Claims should consult their own tax advisors regarding the proper allocation of the consideration received by them under the Plan.

### **3. FATCA**

Under the Foreign Account Tax Compliance Act ("FATCA"), foreign financial institutions and certain other foreign entities must report certain information with respect to their U.S. account holders and investors or be subject to withholding at a rate of 30% on the receipt of "withholdable payments". For this purpose, "withholdable payments" are generally U.S. source payments of fixed or determinable, annual or periodical income. FATCA withholding will apply even if the applicable payment would not otherwise be subject to U.S. federal nonresident withholding.

FATCA withholding rules that were previously scheduled to take effect on January 1, 2019, would have applied to payments of gross proceeds from the sale or other disposition of property of a type that can produce U.S. source interest or dividends. However, such withholding has effectively been suspended under proposed Treasury Regulations that may be relied on until final regulations become effective. Nonetheless, there can be no assurance that a similar rule will not go into effect in the future.

Each Non-U.S. Holder should consult its own tax advisor regarding the possible impact of FATCA withholding rules on such Non-U.S. Holder.

### **G. Information Reporting and Backup Withholding**

The Debtors will withhold all amounts required by law to be withheld and will comply with all applicable reporting requirements of the Tax Code. In general, information reporting requirements may apply to distributions or payments made to a Holder of an Allowed Claim under the Plan. Under U.S. federal income tax law, interest, dividends, and other reportable payments may, under certain circumstances, be subject to "backup withholding" at the then applicable withholding rate (currently 24%). Backup withholding generally applies unless, in the case of a

U.S. Holder, such U.S. Holder provides a properly executed IRS Form W-9 (or otherwise establishes such U.S. Holder's eligibility for an exemption) or, in the case of Non-U.S. Holder, such Non-U.S. Holder provides a properly executed applicable IRS Form W-8 (along with appropriate attachments) (or otherwise establishes such Non-U.S. Holder's eligibility for an exemption from withholding). Backup withholding is not an additional tax but is, instead, an advance payment that may entitle the holder to a refund from the IRS to the extent it results in an overpayment of tax, provided that the required information is timely provided to the IRS.

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

**THE U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX. THE FOREGOING SUMMARY DOES NOT DISCUSS ALL ASPECTS OF U.S. FEDERAL INCOME TAXATION THAT MAY BE RELEVANT TO A PARTICULAR HOLDER IN LIGHT OF SUCH HOLDER'S CIRCUMSTANCES AND INCOME TAX SITUATION. ALL HOLDERS OF CLAIMS SHOULD CONSULT WITH THEIR TAX ADVISORS AS TO THE PARTICULAR TAX CONSEQUENCES TO THEM OF THE TRANSACTIONS CONTEMPLATED BY THE PLAN, INCLUDING THE APPLICABILITY AND EFFECT OF ANY STATE, LOCAL, OR FOREIGN TAX LAWS, OR OF ANY CHANGE IN APPLICABLE TAX LAWS.**

## **IX. RECOMMENDATION AND CONCLUSION**

The Debtors believe that the confirmation and consummation of the Plan is preferable to all other alternatives. Consequently, the Debtors urge all Holders of Claims entitled to vote to accept the Plan and to evidence their acceptance by duly completing and returning their Ballots so that they will be received by the Voting Agent on or before the Voting Deadline established by the Interim Approval and Procedures Order.

Dated: November 27, 2024

Respectfully submitted,

Number Holdings, Inc.,  
on behalf of itself and each of the other Debtors

By: /s/ Christopher J. Wells  
Name: Christopher J. Wells  
Title: Chief Restructuring Officer  
Number Holdings, Inc.

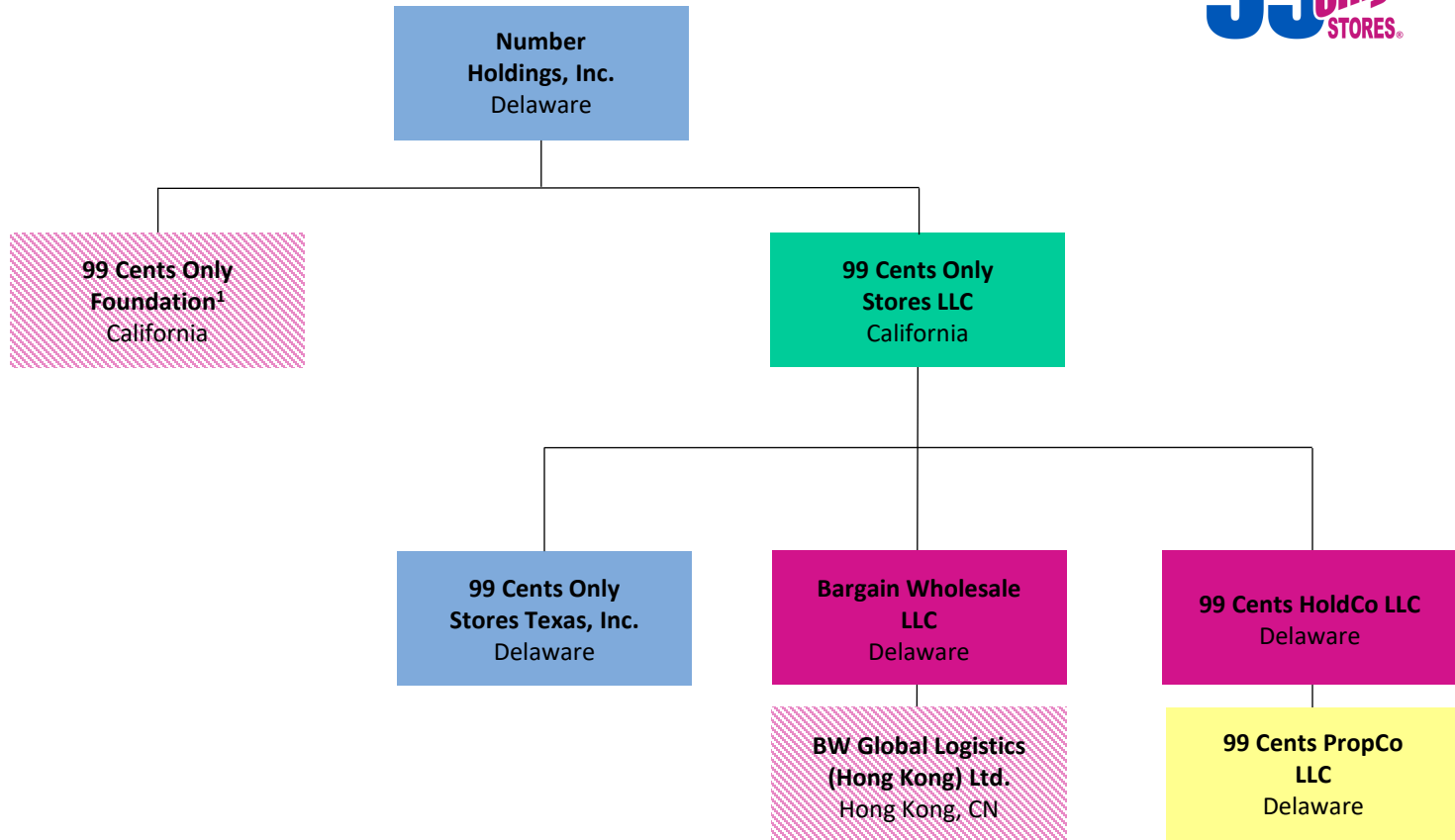
**EXHIBIT A**

**Chapter 11 Plan**

**EXHIBIT B**

**Organizational Structure**

# Organizational Chart



## Key

|                                                                                    |                                                            |
|------------------------------------------------------------------------------------|------------------------------------------------------------|
|  | Borrower under ABL and 7.5% Senior Secured Notes due 2026  |
|  | Guarantor under ABL and 7.5% Senior Secured Notes due 2026 |
|  | Issuer of Promissory Note                                  |
|  | Non-debtor entity                                          |

<sup>1</sup> 99 Cents Only Foundation is a nonprofit entity under 26 U.S.C. § 501(c).

**EXHIBIT C**

**Liquidation Analysis**

*[To come]*