

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

In re:

NORCOLD LLC,¹

Debtor.

Chapter 11

Case No. 25-11933 (TMH)

CHAPTER 11 PLAN OF LIQUIDATION FOR NORCOLD LLC

Dated: November 3, 2025

YOUNG CONAWAY STARGATT & TAYLOR, LLP

Sean M. Beach (No. 4070)
Matthew B. Lunn (No. 4119)
Jared W. Kochenash (No. 6557)
Daniel Trager (No. 7465)
Roger L. Sharp (No. 7454)
Rodney Square
1000 N. King Street
Wilmington, Delaware 19801
Telephone: (302) 571-6600
Emails: sbeach@ycst.com
mlunn@ycst.com
jkochenash@ycst.com
dtrager@ycst.com
rsharp@ycst.com

*Proposed Counsel to the Debtor and
Debtor in Possession*

¹ The Debtor in this chapter 11 case, along with the last four digits of the Debtor's federal tax identification number, is: Norcold LLC (6081). For purposes of this chapter 11 case, the Debtor's service address is 7101 Jackson Road, Ann Arbor, MI 48103.

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Exhibit A – Asset Purchase Agreement

INTRODUCTION

Norcold LLC, as debtor and debtor in possession (the “Debtor”) in the above-captioned chapter 11 case, proposes this chapter 11 plan (this “Plan”) under section 1121 of the Bankruptcy Code. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code. Supplemental agreements and documents referenced in this Plan and the Disclosure Statement are available for review on both the Bankruptcy Court’s docket and on the Debtor’s case information website: <https://cases.stretto.com/Norcold>.

Reference is made to the Disclosure Statement filed contemporaneously with this Plan for a discussion of the Debtor’s history, business, historical financial information, and liquidation analysis, as well as a summary and analysis of this Plan and certain related matters, including distributions to be made under this Plan.

ALL HOLDERS OF CLAIMS ARE ENCOURAGED TO READ THIS PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THIS PLAN.

ARTICLE I. DEFINED TERMS AND RULES OF INTERPRETATION

A. Definitions

The following terms, when used in this Plan, or any subsequent amendments or modifications thereof, have the respective meanings hereinafter set forth and shall be equally applicable to the singular and plural of terms defined.

1. “Acquired Assets” has the meaning set forth in the APA.
2. “Administrative Claim(s)” means a Claim entitled to priority under section 503(b), 507(a)(2), 507(b) or, if applicable, 1114(e)(2) of the Bankruptcy Code, including (a) actual and necessary costs and expenses incurred on or after the Petition Date of preserving the Estate, operating the Debtor’s business, and the ongoing liquidation of the Debtor, (b) Professional Fee Claims (to the extent Allowed by the Bankruptcy Court), and (c) all fees and charges assessed against the Estate under chapter 123 of title 28 United States Code, 28 U.S.C. §§ 1911-1930.
3. “Administrative Claims Bar Date” means the deadline for Filing all requests for allowance and payment of Administrative Claims (other than requests for payment of Professional Fee Claims by Retained Professionals or OCPs or requests for payment of claims pursuant to section 503(b)(9) of the Bankruptcy Code), which shall be the date that is thirty (30) days after the Effective Date.
4. “Allowed” means, with respect to any Claim, except as otherwise provided in this Plan: (a) a Claim that is evidenced by a Filed Proof of Claim (or for which Claim under this Plan, the Bankruptcy Code, or pursuant to a Final Order, a Proof of Claim is not or shall not be required to be Filed); (b) a Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed, and for which no Proof of Claim has been Filed in an amount different than the amount

listed on such Schedules; (c) a Claim Allowed pursuant to the Bankruptcy Code, this Plan, or a Final Order of the Bankruptcy Court; or (d) any Claim that is compromised, settled, or otherwise resolved pursuant to the authority of the Debtor or the Liquidating Trustee, as applicable; *provided* that with respect to a Claim described in clause (a) above, such Claim shall be considered Allowed only if, and to the extent that, with respect to such Claim, no objection or challenge to the allowance, validity, extent or priority thereof has been Filed by the Debtor, the Liquidating Trustee, or any other party in interest within the applicable period of time fixed by this Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection was so Filed and the Claim shall have been Allowed by a Final Order of the Bankruptcy Court. Notwithstanding anything to the contrary herein, no Claim of any Entity subject to section 502(d) of the Bankruptcy Code shall be deemed Allowed unless and until such Entity pays in full the amount that it owes the Debtor to the Debtor or the Liquidating Trust (as applicable). “Allow” and “Allowing” shall have correlative meanings.

5. “Alternative Purchaser” means, as applicable, the purchaser of the Debtor’s assets through the Alternative Sale Transaction, to the extent the Debtor consummates the Alternative Sale Transaction.

6. “Alternative Sale Documents” means any agreements, documents, or instruments related to the Alternative Sale Transaction, to the extent the Debtor consummates the Alternative Sale Transaction.

7. “Alternative Sale Process” means the marketing and sale process conducted by the Debtor concurrently with the solicitation of votes on this Plan pursuant to the Bid Procedures and approved by the Bankruptcy Court through the Bid Procedures Order, for the purpose of soliciting, receiving, and considering offers in connection with the Alternative Sale Transaction, to the extent the Debtor consummates the Alternative Sale Transaction.

8. “Alternative Sale Transaction” means the sale transaction determined by the Debtor to be a higher or otherwise better offer than the Plan Sale following the Alternative Sale Process.

9. “Alternative Sale Transaction Proceeds” means the proceeds derived from the Alternative Sale Transaction.

10. “APA” means that certain agreement dated October 31, 2025 reflecting the sale of substantially all the Debtor’s assets to the Purchaser through the Plan Sale and attached hereto as Exhibit A.

11. “Assumption Schedule” means the Schedule filed with the Plan Supplement evidencing the Executory Contracts and Unexpired Leases assumed by the Debtor and assigned to Purchaser.

12. “Avoidance Actions” means any and all actual or potential avoidance, recovery, subordination, or other similar Causes of Action that may be brought by or on behalf of the Debtor or the Estate or other authorized parties in interest under the Bankruptcy Code or applicable non-bankruptcy law, including Causes of Action or remedies arising under chapter 5 of the Bankruptcy Code or under similar or related local, state, federal, or foreign statutes or common law, including fraudulent transfer laws.

13. “Bankruptcy Code” means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time.

14. “Bankruptcy Court” means the United States Bankruptcy Court for the District of Delaware.

15. “Bankruptcy Rule(s)” means the Federal Rules of Bankruptcy Procedure, as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code.

16. “Bar Date” means, as applicable, the Administrative Claims Bar Date, and any other date or dates established by an order of the Bankruptcy Court by which Proofs of Claim must be Filed, including the general bar date and bar date for Governmental Units, each as determined by order of the Bankruptcy Court. Notwithstanding the foregoing, Professional Fee Claims shall be Filed in accordance with Article II.B herein and shall not otherwise be subject to the Bar Date.

17. “Bid Procedures” means the bid procedures with respect to the Alternative Sale Process approved by the Bankruptcy Court through the Bid Procedures Order.

18. “Bid Procedures Order” means, as applicable, the order of the Bankruptcy Court establishing the Bid Procedures.

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

20. “Cash” means cash and cash equivalents in legal tender of the United States of America.

21. “Causes of Action” means any action, Claim, cross-claim, third-party claim, cause of action, controversy, dispute, demand, right, lien, indemnity, contribution, guaranty, suit, obligation, liability, loss, debt, fee or expense, damage, interest, judgment, cost, account, defense, remedy, offset, power, privilege, proceeding, license, and franchise of any kind or character whatsoever, known, unknown, foreseen or unforeseen, existing or hereafter arising, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively (including any alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law (including under any state or federal securities laws). For the avoidance of doubt, Cause of Action also includes (a) any right of setoff, counterclaim, or recoupment and any Claim for breach of contract or for breach of duties imposed by law or in equity, (b) the right to object to Claims or Interests, (c) any Claim pursuant to section 362 or chapter 5 of the Bankruptcy Code, (d) any Claim or defense including fraud, mistake, duress, and usury and any other defenses set forth in section 558 of the Bankruptcy Code, (e) any Avoidance Action or state law fraudulent transfer claim, (f) any claim based on or relating to, or in any manner arising from, in whole or in part, tort, breach of contract, breach of fiduciary duty, violation of state or federal law or breach of any duty imposed by law or in equity, including securities laws, negligence, and gross negligence, and (g) any state or foreign fraudulent transfer or similar claim.

22. “Chapter 11 Case” means the chapter 11 case Filed by the Debtor under chapter 11 of the Bankruptcy Code in the Bankruptcy Court.

23. “Claim(s)” means any “claim”, as defined in section 101(5) of the Bankruptcy Code, against the Debtor or the Estate.

24. “Claims Objection Deadline” means the deadline for objecting to a Claim, which shall be on the date that is the later of (a) 180 days after the Effective Date and (b) such other deadline as may be fixed by an order of the Bankruptcy Court for objecting to such Claims; *provided, however*, that the Liquidating Trustee or may seek extensions of such date from the Bankruptcy Court at any time; *provided further* that if the Purchaser or Alternative Purchaser is responsible for payment of Claims, the Purchaser or Alternative Purchaser, as applicable, may seek extensions of such date from the Bankruptcy Court at any time.

25. “Claims Register” means the official register of Claims against the Debtor maintained by the Notice and Claims Agent.

26. “Class” means a category of Claims or Interests as established by and set forth in Article III herein pursuant to section 1122(a) of the Bankruptcy Code.

27. “Class 4 Liquidating Trust Interests” means the beneficial interests in the Liquidating Trust, which interests shall be uncertificated, non-transferable (except as expressly provided otherwise in the Liquidating Trust Agreement), and distributed to holders of Allowed General Unsecured Claims, in accordance with Section III.4 of this Plan.

28. “Class 5 Liquidating Trust Interests” means the beneficial interests in the Liquidating Trust, which interests shall be uncertificated, non-transferable (except as expressly provided otherwise in the Liquidating Trust Agreement), and distributed to holders of Allowed General Unsecured Claims, in accordance with Section III.5 of this Plan.

29. “Committee” means the Official Committee of Unsecured Creditors, to the extent appointed by the U.S. Trustee in the Chapter 11 Case, as it may be reconstituted from time to time.

30. “Confirmation” means the entry of the Confirmation Order by the Bankruptcy Court.

31. “Confirmation Date” means the date upon which the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Case.

32. “Confirmation Hearing” means the hearing(s) conducted by the Bankruptcy Court pursuant to section 1128(a) of the Bankruptcy Code to consider Confirmation of this Plan pursuant to section 1129 of the Bankruptcy Code.

33. “Confirmation Order” means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

34. “D&O Policies” means, collectively, the Debtor’s director and officer liability insurance policies along with any other applicable directors’ and officers’ liability insurance policies, including primary insurance, excess insurance, or tail insurance policies.

35. “DCA” means Dave Carter & Associates, Inc.

36. “Debtor” means Norcold LLC as debtor and debtor-in-possession.

37. “DIP Claim(s)” means a Claim of the DIP Lender in connection with the DIP Order and DIP Term Sheet.

38. “DIP Term Sheet” means that certain *Senior Secured Superpriority Debtor-In-Possession Revolving Loan Facility Term Sheet* between Norcold LLC, as borrower, and the DIP Lender, as lender.

39. “DIP Lender” means DCA, in its capacity as lender under the DIP Term Sheet.

40. “DIP Order” means, an interim or final order of the Bankruptcy Court (as may be amended, modified, or supplemented from time to time) authorizing the Debtor to obtain postpetition financing from the DIP Lender and approving the terms of the DIP Term Sheet, as applicable.

41. “Disbursing Agent” means the Debtor, the Liquidating Trustee, or the Entity(ies) selected by the Liquidating Trustee, which Entity(ies) may include the Notice and Claims Agent, as applicable, to make or to facilitate distributions pursuant to this Plan.

42. “Disclosure Statement” means the *Disclosure Statement for the Chapter 11 Plan of Liquidation for Norcold LLC* filed contemporaneously herewith (as such may be amended, supplemented, or modified from time to time), including all exhibits and schedules thereto and references therein that relate to this Plan, that is prepared and distributed in accordance with the Bankruptcy Code, the Bankruptcy Rules, and any other applicable law.

43. “Disputed” means, with respect to any Claim, except as otherwise provided herein, a Claim that is not Allowed and not disallowed under this Plan, the Bankruptcy Code, or a Final Order. To the extent that a Claim is held by a Holder that is or may be liable to the Debtor or the Estate on account of a Retained Cause of Action, such Claim shall be a Disputed Claim unless and until such Retained Cause of Action has been settled or withdrawn or has been determined by a Final Order.

44. “Disputed Claims Reserve” means any Cash that is reserved for Disputed Claims established and maintained by the Liquidating Trustee.

45. “Distribution Record Date” means the date established for determining which Holders of Claims are eligible to receive distributions under this Plan, which date shall be the Effective Date or such other date as designated in a Final Order of the Bankruptcy Court.

46. “Effective Date” means the date that is the first Business Day after the entry of the Confirmation Order on which (a) no stay of the Confirmation Order is in effect; (b) all conditions

precedent to the occurrence of the Effective Date, as set forth in Article VIII.A herein, have been satisfied or waived in accordance with this Plan; and (c) the Debtor declares this Plan effective by filing a notice on the docket of the Chapter 11 Case. Any action to be taken on the Effective Date may be taken on or as soon as reasonably practicable thereafter.

47. “Entity” means any “entity,” as defined in section 101(15) of the Bankruptcy Code.

48. “Estate” means the bankruptcy estate of the Debtor created pursuant to section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

49. “Exculpated Party” or “Exculpated Parties” means, collectively, and in each case in its capacity as such: (i) the Debtor; (ii) the managers of the Debtor and any other person serving as a fiduciary of the Debtor’s Estate, in each case, who served at any time between the Petition Date and the Effective Date; and (iii) all financial advisors, attorneys, accountants, investment bankers, and other professionals retained by the Debtor and the Committee (if appointed) in the Chapter 11 Case.

50. “Executory Contract(s)” means a contract to which the Debtor is a party and subject to assumption or rejection under section 365 of the Bankruptcy Code.

51. “File” or “Filed” means file, filed, or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case, or in the case of a Proof of Claim, the Notice and Claims Agent.

52. “Final Order” means an order or judgment of the Bankruptcy Court or other court of competent jurisdiction with respect to the relevant subject matter that has not been reversed, stayed, modified, or amended, and as to which the time to appeal, seek reconsideration under Rule 59(b) or 59(e) of the Federal Rules of Civil Procedure, seek a new trial, reargument, or rehearing and, where applicable, petition for certiorari has expired and no appeal, motion for reconsideration under Rule 59(b) or 59(e) of the Federal Rules of Civil Procedure, motion for a new trial, reargument or rehearing or petition for certiorari has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been filed has been resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought, or as to which any motion for reconsideration that has been filed pursuant to Rule 59(b) or 59(e) of the Federal Rules of Civil Procedure or any motion for a new trial, reargument, or rehearing shall have been denied, resulted in no modification of such order, or has otherwise been dismissed with prejudice; *provided* that the possibility that a motion pursuant to Rule 60 of the Federal Rules of Civil Procedure or Bankruptcy Rule 9024, or any analogous rule, may be filed relating to such order or judgment shall not cause such order or judgment not to be a Final Order.

53. “General Unsecured Claim(s)” means any Unsecured Claim against the Debtor (other than (a) an Administrative Claim, (b) a Priority Tax Claim, (c) an Other Priority Claim, (d) a Litigation Claim, (e) a Section 510(b) Claim, or (f) an Intercompany Claim), including claims resulting from the rejection of unexpired leases or executory contracts.

54. “Governmental Unit(s)” means a “governmental unit,” as defined in section 101(27) of the Bankruptcy Code.

55. “Holder(s)” means a Person or Entity, as applicable, holding a Claim against, or an Interest in, the Debtor, as the context requires.

56. “Impaired” means “impaired” within the meaning of section 1124 of the Bankruptcy Code.

57. “Independent Manager” means Michael Buenzow.

58. “Insurance Company” means any Entity that issued, or that have any actual, potential, demonstrated, or alleged liabilities, duties, or obligations under, or with respect to, any Insurance Policy, and any third party administrator, parent, subsidiary, affiliate, successor, predecessor, or assign of any of the foregoing, solely in their capacity as such with respect to an Insurance Policy.

59. “Insurance Policies” means all insurance policies that have been issued at any time to provide coverage to the Debtor and all agreements, documents, or instruments relating thereto.

60. “Insurance Rights” means any and all rights, titles, privileges, interests, claims, demands, or entitlements of the Debtor or any Litigation Claimants to any proceeds, payments, benefits, Causes of Action, choses in action, defense or indemnity arising under, or attributable to, any and all Insurance Policies now existing or hereafter arising, accrued or unaccrued, liquidated or unliquidated, matured or unmatured, disputed or undisputed, fixed or contingent, including: (i) any Insurance Company’s failure to provide coverage or otherwise pay under an Insurance Policy; (ii) the refusal of any Insurance Company to compromise and settle any claim or provide defense to any claim; (iii) the interpretation or enforcement of the terms of any Insurance Policy with respect to any Claim; (iv) any conduct by any Insurance Company constituting “bad faith” conduct or that could otherwise give rise to extra-contractual damages, or other wrongful conduct under applicable law; or (v) any right to receive proceeds with respect to any Insurance Policy or a coverage action.

61. “Insurance Rights Transfer” means the transfer, assignment, and vesting of the Insurance Rights described in Section IV.E.3 of this Plan.

62. “Intercompany Claim” shall mean a Claim against the Debtor that is held by a direct or indirect parent or subsidiary of the Debtor.

63. “Interest(s)” means “equity security” (as defined in section 101(16) of the Bankruptcy Code) of the Debtor, including all shares, common stock, preferred stock, or other instrument evidencing any fixed or contingent ownership interest in the Debtor, whether or not transferable, and any option, warrant, or other right, contractual or otherwise, to acquire any such interest in the Debtor, whether fully vested or vesting in the future, including without limitation, equity or equity-based incentives, grants, or other instruments issued, granted, or promised to be granted to current or former employees, directors, officers, or contractors of the Debtor, to acquire any such interest in the Debtor that existed immediately before the Petition Date.

64. “IRS Form” means IRS Form W-9, any acceptable substitute, or any other tax information form that the Disbursing Agent may require from a Holder of a Claim for a distribution under this Plan.

65. “Law” means any federal, state, local, or foreign law (including provincial and common law), statute, code, ordinance, rule, regulation, order, ruling, or judgment, in each case, that is validly adopted, promulgated, issued, or entered by a governmental authority of competent jurisdiction (including the Bankruptcy Court).

66. “Lien” means a “lien,” as defined in section 101(37) of the Bankruptcy Code.

67. “Liquidating Trust” means the liquidating trust established on the Effective Date pursuant to Article IV.D herein and the Liquidating Trust Agreement.

68. “Liquidating Trustee” means the Entity designated by the Debtor, in consultation with the Committee, if appointed, and retained as the trustee of the Liquidating Trust, as of the Effective Date or as soon as reasonably practicable thereafter, as the fiduciary responsible for administering the Liquidating Trust, and taking such other actions as may be authorized under the Liquidating Trust Agreement, and any successor subsequently appointed pursuant to the Liquidating Trust Agreement. The identity and compensation of the Liquidating Trustee shall be disclosed in the Plan Supplement.

69. “Liquidating Trust Agreement” means the agreement included with the Plan Supplement and executed as of the Effective Date that establishes and governs the Liquidating Trust.

70. “Liquidating Trust Assets” means all property of the Debtor’s Estate not transferred pursuant to the Plan Sale or an Alternative Sale Transaction or distributed to holders of Allowed Claims on the Effective Date, including, without limitation, the Sale Proceeds, the Retained Causes of Action, and the Wind-down Amount; *provided, however*, that the following shall not constitute Liquidating Trust Assets: (i) the Debtor’s Cash reserved for payment of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Claims, and Allowed Other Priority Claims and (ii) the Professional Fee Reserve.

71. “Liquidating Trust Beneficiaries” means all Holders of Class 4 Liquidating Trust Interests and Class 5 Liquidating Trust Interests.

72. “Litigation Claim” means any Unsecured Claim, demand, suit, Cause of Action, proceeding, or any other right or asserted right to payment, whether existing heretofore, now, or hereafter, whether known or unknown, based upon or in any manner arising from, related to, or in any way involving bodily injury, wrongful death, and/or property damage occurring prior to the Petition Date, including, without limitation any alleged property damage, product recall, personal injury, wrongful death, emotional distress, or other similar claim based on harms (whether physical, emotional or otherwise and whether or not diagnosable or manifested prior to the Petition Date).

73. “Litigation Claimant” means a party asserting or alleging a Litigation Claim subject to Insurance Rights under any Insurance Policies.

74. “Notice and Claims Agent” means Stretto, Inc. in its capacity as noticing, claims, and solicitation agent for the Debtor.

75. “OCP(s)” means any ordinary course professional whose retention and compensation has been authorized by the Bankruptcy Court in accordance with the OCP Order.

76. “OCP Order” means the order of the Bankruptcy Court authorizing the Debtor to retain and compensate the OCPs for services rendered during the Chapter 11 Case.

77. “Other Priority Claim(s)” means any Claim, other than an Administrative Claim or a Priority Tax Claim, entitled to priority in right of payment under section 507(a) of the Bankruptcy Code.

78. “Person” means a “person,” as defined in section 101(41) of the Bankruptcy Code.

79. “Petition Date” means November 3, 2025, which is the date on which the Debtor Filed its voluntary petition for relief under chapter 11 of the Bankruptcy Code, thereby commencing the Chapter 11 Case.

80. “Plan” means this plan of liquidation under chapter 11 of the Bankruptcy Code, either in its present form or as it may be altered, amended, modified, or supplemented from time to time in accordance with the Bankruptcy Code, the Bankruptcy Rules, or the terms hereof, as the case may be, and the Plan Supplement, which is incorporated herein by reference, including all exhibits and schedules hereto and thereto.

81. “Plan Sale” means the sale of the Acquired Assets to the Purchaser pursuant to the terms of this Plan and the Plan Sale Documents.

82. “Plan Sale Documents” means, collectively, the APA and all agreements, documents, and instruments related thereto or to the Plan Sale.

83. “Plan Supplement” means a supplemental appendix to this Plan containing, among other things, forms of applicable documents, schedules, and exhibits to this Plan to be filed with the Bankruptcy Court, including, but not limited to, the following: (i) the Plan Sale Documents; (ii) the Liquidating Trust Agreement; (iii) the Schedule of Retained Causes of Action; and (iv) the Assumption Schedule.

84. “Post-Effective Date Debtor” means the Debtor and its successor after the Effective Date.

85. “Prepetition Agent” means Cerberus Business Finance Agency, LLC, as Administrative Agent and Collateral Agent under the Prepetition Financing Agreement.

86. “Prepetition Financing Agreement” means that certain Financing Agreement, dated as of December 13, 2021 by and among Yosemite Intermediate I, Inc. as Borrower, Trailblazer IV, Inc. as Parent, the Guarantors party thereto, the lenders from time to time party thereto and Cerberus Business Finance Agency, LLC, as Administrative Agent and Collateral Agent (as amended by that certain Consent and Amendment to Financing Agreement, dated as of December 27, 2021 and that certain Second Amendment to Financing Agreement and First Amendment to Pledge and Security Agreement dated as of June 29, 2023 and that certain Third Amendment to Financing Agreement, dated as of September 29, 2025 and that certain Consent to Financing

Agreement dated as of November 2, 2025 and as may be further amended, restated, amended and restated, supplemented or otherwise modified from time to time).

87. “Prepetition Lenders” mean the lenders under the Prepetition Financing Agreement.

88. “Prepetition Loan Guarantee Claim” means the secured Claims of the Prepetition Agent (on behalf of the Prepetition Lenders) against the Debtor arising under and related to the Debtor’s guarantee under the Prepetition Financing Agreement.

89. “Priority Tax Claim(s)” means a Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

90. “Professional Fee Claim(s)” means a Claim by a professional seeking an award by the Bankruptcy Court of compensation for services rendered or reimbursement of expenses incurred through and including the Effective Date under sections 330, 331, 503(b)(2), 503(b)(3), 503(b)(4), or 503(b)(5) of the Bankruptcy Code.

91. “Professional Fee Claims Estimate” means an estimate of the aggregate unpaid Professional Fee Claims through the Effective Date, including fee estimates from ordinary course professionals.

92. “Professional Fee Claim Reserve” means the reserve established and funded by the Debtor prior to the Effective Date in an amount equal to the Professional Fee Reserve Amount to be held in trust to satisfy the unpaid Professional Fee Claims.

93. “Professional Fee Reserve Amount” has the meaning set forth in Article II.B.4 herein.

94. “Proof of Claim” means a proof of Claim Filed against a Debtor in the Chapter 11 Case.

95. “Purchaser” means DCA.

96. “Purchase Price” means the price paid by (i) the Purchaser for the Acquired Assets in connection with the Plan Sale or (ii) the Alternative Purchaser for the Acquired Assets in connection with the Alternative Sale Transaction.

97. “Related Party” means, with respect to any Person or Entity, such Person’s or Entity’s respective current and former (i) officers; (ii) directors; (iii) employees; (iv) partners; (v) affiliates and subsidiaries; (vi) professionals; (vii) advisors and advisory board members; (viii) agents, (ix) shareholders; (x) principals; (xi) members; (xii) managers; (xiii) managed accounts and funds; (xiv) fund advisors; and (xv) other representatives, including, without limitation, attorneys, accountants, consultants, investment bankers and financial advisors and the predecessors, successors, assigns, estates, nominees or heirs of such Person or Entity (in each case, solely in their respective capacities as such).

98. “Released Party” means, except to the extent such party is included in the Schedule of Retained Causes of Action, each of the following solely in their capacity as such: (i) the Debtor and the Estate; (ii) the DIP Lender; (iii) the Purchaser or Alternative Purchaser, as applicable; (iv) the Committee and its members (solely in their capacity as Committee members); (v) the Prepetition Agent; (vi) the Prepetition Lenders; and (vii) to the extent not included in the foregoing, each of the preceding entities’ respective Related Parties, including the Independent Manager and any professional retained by the Debtor, DIP Lender, the Prepetition Agent, the Prepetition Lenders or the Committee.

99. “Releasing Parties” means, collectively, and in each case, in their respective capacities as such: (i) the Released Parties; (ii) all Holders of Claims that are presumed to accept the Plan and who do not opt out of the releases in the Plan; (iii) all Holders of Claims or Interests who vote to accept the Plan; (iv) all Holders of Claims or Interests that (a) abstain from voting on the Plan and who do not opt out of the releases in the Plan, (b) vote to reject the Plan and who do not opt out of the releases in the Plan, or (c) are deemed to reject the Plan and who do not opt out of the releases in the Plan; and (v) with respect to each Entity in clause (i) through (iv), each such Entity’s current and former subsidiaries, officers, directors, managers, principals, members, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, each in their capacity as such.

100. “Retained Causes of Action” means the Causes of Action identified on the Schedule of Retained Causes of Action and not released pursuant to Article IX.A. herein, if any, which shall be filed with the Plan Supplement.

101. “Retained Professional(s)” means a Person or Entity (other than an OCP) employed in the Chapter 11 Case pursuant to a Final Order in accordance with sections 327, 328, 363, and/or 1103 of the Bankruptcy Code and to be compensated for services rendered prior to the Effective Date pursuant to sections 327, 328, 329, 330, or 331 of the Bankruptcy Code.

102. “Sale Order” means an order entered by the Bankruptcy Court authorizing the Alternative Sale Transaction pursuant to the Alternative Sale Documents, and sections 363 and 365 of the Bankruptcy Code.

103. “Sale Proceeds” means all cash and non-cash proceeds of the Plan Sale or the Alternative Sale Transaction received by the Debtor.

104. “Schedules” means, collectively, the schedules of assets and liabilities and statements of financial affairs required to be Filed by the Debtor pursuant to section 521 of the Bankruptcy Code, the Bankruptcy Rules, and the official bankruptcy forms, as the same may be amended, modified, or supplemented from time to time.

105. “Schedule of Retained Causes of Action” means a schedule of the Causes of Action retained by the Post-Effective Date Debtor and transferred to the Liquidating Trust, which shall be included in the Plan Supplement.

106. “Section 510(b) Claims” means a Claim against the Debtor (i) arising from the rescission of a purchase or sale of a security of the Debtor or an affiliate of the Debtor; (ii) for

damages arising from the purchase or sale of such security; or (iii) for reimbursement or contribution Allowed under section 502 of the Bankruptcy Code on account of such Claim; provided, that, if such security is an Interest, such Claim shall not be a Section 510(b) Claim and shall instead receive the treatment applicable to such Interest.

107. “Secured Claim(s)” means any Claim that is: (a) secured by a lien on property in which the Debtor has an interest, which lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to a valid right of setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in the Debtor’s interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code, or (b) Allowed pursuant to this Plan, or separate order of the Bankruptcy Court, as a secured Claim.

108. “Statutory Fees” means all fees due and payable pursuant to section 1930 of Title 28 of the United States Code, together with the statutory rate of interest set forth in section 3717 of Title 31 of the United States Code, to the extent applicable.

109. “Subordinated Claim(s)” means any Claim that is subject to subordination in accordance with sections 510(b)-(c) of the Bankruptcy Code or otherwise, including, but not limited to, and solely to the extent determined to be Claims and not Interests, Claims for damages arising from alleged non-payment to such Holder of amounts based on such Holder’s status as an Interest Holder, Claims arising from the issuance of founders shares, and Claims arising from, or related to, options.

110. “U.S. Trustee” means the Office of the United States Trustee for the District of Delaware.

111. “Unexpired Lease(s)” means a lease to which the Debtor is a party and subject to assumption or rejection under section 365 of the Bankruptcy Code.

112. “Unimpaired” means, with respect to a Claim or Class of Claims, not “impaired” within the meaning of sections 1123(a)(4) and 1124 of the Bankruptcy Code.

113. “Unsecured Claim” means, with respect to any Claim, a Claim that is not a Secured Claim, an Administrative Claim, a Priority Tax Claim, or an Other Priority Claim.

114. “Voting Deadline” means the date and time by which all ballots to accept or reject this Plan must be received to be counted.

115. “Wind-Down” means the process to (i) wind-down, dissolve, and liquidate the Debtor’s Estate, including, among other things, pursuing the Retained Causes of Action, and (ii) distributing any resulting or remaining assets in accordance with this Plan.

116. “Wind-Down Amount” shall mean \$500,000 to be used in connection with the Wind-Down.

B. Rules of Interpretation

For the purposes of this Plan, and except as otherwise provided herein, the following rules of interpretation shall apply: (1) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, will include both the singular and the plural; (2) unless otherwise provided in this Plan, any reference in this Plan to a contract, instrument, release, or other agreement or document being in a particular form or on particular terms and conditions means that such document will be substantially in such form or substantially on such terms and conditions; (3) any reference in this Plan to an existing document or exhibit Filed or to be Filed means such document or exhibit, as it may have been or may be amended, modified or supplemented pursuant to this Plan or Confirmation Order; (4) any reference to an Entity as a Holder of a Claim or Interest includes that Entity's successors and assigns; (5) all references in this Plan to "Articles" and "Exhibits" are references to the articles and exhibits of or to this Plan unless otherwise noted; (6) the words "herein," "hereunder," and "hereto" refer to this Plan in its entirety rather than to a particular portion of this Plan; (7) the words "includes" or "including" are not limiting; (8) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of this Plan; (9) unless otherwise specified, references in this Plan to "Docket No." refer to entries on the Chapter 11 Case's docket; (10) subject to the provisions of any contract, certificate of incorporation, by-laws, or similar constituent document, instrument, release, or other agreement or document entered into or delivered in connection with this Plan, the rights and obligations arising under this Plan will be governed by, and construed and enforced in accordance with, federal law, including the Bankruptcy Code and the Bankruptcy Rules, and, to the extent applicable, the laws of the State of Delaware; (11) the rules of construction set forth in section 102 of the Bankruptcy Code will apply; and (12) all references in this Plan to monetary figures refer to currency of the United States of America, unless otherwise expressly provided.

C. Computation of Time

In computing any period of time prescribed or allowed by this Plan, the provisions of Bankruptcy Rule 9006(a) will apply. Any references to the Effective Date shall mean the Effective Date or as soon as reasonably practicable thereafter unless otherwise specified herein.

D. Controlling Document

In the event of an inconsistency between this Plan and the Disclosure Statement, the terms of this Plan shall control in all respects. In the event of an inconsistency between this Plan and the Plan Supplement, or any documents included therein, including the Liquidating Trust Agreement, the terms of this Plan shall control. In the event of an inconsistency between this Plan or the Plan Supplement and the Confirmation Order, the Confirmation Order shall control.

ARTICLE II.**ADMINISTRATIVE CLAIMS, PRIORITY TAX CLAIMS, AND STATUTORY FEES**

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims (including Professional Fee Claims) and Priority Tax Claims have not been classified and, thus, are excluded from the Classes of Claims and Interests set forth in Article III herein.

A. Administrative Claims

Unless otherwise agreed to by the Holder of an Allowed Administrative Claim and the Debtor or the Liquidating Trustee (as applicable), each Holder of an Allowed Administrative Claim (other than Holders of Professional Fee Claims, OCPs, and Holders of Claims for Statutory Fees) will receive in full and final satisfaction of its Allowed Administrative Claim an amount of Cash equal to the amount of such Allowed Administrative Claim in accordance with the following: (1) if an Administrative Claim is Allowed on or prior to the Effective Date, on the Effective Date (or, if not then due, when such Allowed Administrative Claim becomes due or as soon as reasonably practicable thereafter); (2) if such Administrative Claim is not Allowed as of the Effective Date, no later than thirty (30) days after the date on which (i) an order allowing such Administrative Claim becomes a Final Order or (ii) the Debtor or the Liquidating Trustee (as applicable) and the holder of the Administrative Claim consensually agree to the Allowed amount of such claim, or as soon as reasonably practicable thereafter; or (3) at such time and upon such terms as set forth in a Final Order of the Bankruptcy Court.

Except for Professional Fee Claims, all applications seeking allowance and payment of Administrative Claims must be Filed and served on the Debtor or the Liquidating Trustee (as applicable) and their counsel no later than the Administrative Claims Bar Date pursuant to the procedures specified in the Confirmation Order and the notice of the occurrence of the Effective Date. The burden of proof for the allowance of Administrative Claims remains on the Holder of the Administrative Claim.

Any objection to such applications must be Filed and served on the requesting party on or before the Claims Objection Deadline. After notice and a hearing, the Allowed amounts, if any, of Administrative Claims shall be determined by, and satisfied in accordance with, a Final Order.

Except as otherwise provided in Articles II.B or II.E herein, Holders of Administrative Claims that do not File and serve an application for payment of administrative expense requesting the allowance of an Administrative Claim no later than the Administrative Claims Bar Date shall be forever barred, estopped, and enjoined from asserting Administrative Claims against the Debtor, the Estate, the Liquidating Trust, the Liquidating Trustee, or their assets and properties, and any Administrative Claims shall be deemed disallowed as of the Effective Date, without further order of the Court, unless otherwise ordered by the Court.

B. Professional Fee Claims and Administrative Claims of OCPs

1. Final Fee Applications

All requests for payment of Professional Fee Claims by Retained Professionals for services rendered and reimbursement of expenses incurred prior to the Effective Date must be Filed no later than thirty (30) days after the Effective Date. Objections to Professional Fee Claims must be Filed and served no later than twenty-one (21) days after the Filing of the Professional Fee Claim. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims of Retained Professionals after notice and a hearing in accordance with the procedures established by the Bankruptcy Court. Unless otherwise agreed to by the Debtor and the Retained Professional,

the Debtor shall pay Professional Fee Claims that are Allowed by Final Order following the Effective Date in Cash from the Professional Fee Claim Reserve within five (5) Business Days of the entry of such Final Order.

2. Administrative Claims of OCPs

All requests for payment of Administrative Claims of OCPs shall be made pursuant to the OCP Order. To the extent any Administrative Claims of OCPs have not been paid pursuant to the OCP Order on or before the Effective Date, the amount of Administrative Claims owing to such OCPs shall be paid in Cash to such OCPs by the Debtor or the Liquidating Trustee (as applicable) as soon as reasonably practicable after such Administrative Claims are authorized in accordance with the OCP Order.

3. Post-Effective Date Fees and Expenses

Except as otherwise specifically provided in this Plan, from and after the Effective Date, the Liquidating Trustee shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable and documented legal, professional, or other fees and expenses related to the Chapter 11 Case that are incurred after the Effective Date. Upon the Effective Date, any requirement that Retained Professionals comply with sections 327 through 331 of the Bankruptcy Code or that OCPs comply with the OCP Order in seeking retention or compensation for services rendered after such date shall terminate, and the Liquidating Trustee may employ and pay any retained professionals in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Code.

4. Professional Fee Reserve Amount

Unless otherwise agreed to prior to the Effective Date by the Debtor and the Retained Professional, to receive payment for (a) unpaid fees and expenses incurred through the Effective Date and (b) unpaid fees and expenses anticipated to be incurred post-Effective Date in connection with the preparation of the Retained Professionals' Professional Fee Claims, the Retained Professionals shall estimate such amounts and shall deliver such estimates to the Debtor and its counsel no later than three (3) Business Days prior to the Effective Date; *provided* that such estimates shall not be binding with respect to the fees and expenses of such Retained Professional. If a Retained Professional does not provide an estimate of its unpaid fees and expenses, the Debtor may estimate such fees and expenses of the Retained Professional. The total amount so estimated hereunder as of the Effective Date shall comprise the "Professional Fee Reserve Amount." The Retained Professionals may submit invoices for their post-Effective Date services, including with respect to the preparation of Professional Fee Claims, to the Liquidating Trust in the ordinary course of business.

5. Professional Fee Reserve

On or before the Effective Date, the Debtor shall fund the Professional Fee Claim Reserve with Cash equal to the Professional Fee Reserve Amount, which shall be held in the trust account of counsel to the Debtor. The Professional Fee Reserve and amounts funded therein are, and shall continue to be, maintained in trust solely for the benefit of each Retained Professional separately on a per-Retained Professional basis until all Allowed Professional Fee Claims have been

irrevocably paid in full pursuant to one or more Final Orders. Such funds shall not be considered property of the Debtor, the Estate, or the Liquidating Trust (as applicable); *provided, however*, that the Liquidating Trust shall have a reversionary interest in any Cash remaining in the Professional Fee Reserve after payment in full of all Allowed Professional Fee Claims without any further notice, action, or order of the Bankruptcy Court.

C. Priority Tax Claims

On the Effective Date, or as soon as reasonably practicable thereafter, except to the extent a Holder of an Allowed Priority Tax Claim and the Debtor or the Liquidating Trustee, as applicable, agree to less favorable treatment for such Holder, in full and final satisfaction of the Allowed Priority Tax Claim, each Holder thereof will be paid in full in Cash or otherwise receive treatment consistent with the provisions of section 1129(a)(9) of the Bankruptcy Code.

D. DIP Claims

In full and final satisfaction, compromise, settlement, and release of and in exchange for all Allowed DIP Claims, (i) if the Debtor consummates the Plan Sale, the Allowed DIP Claims shall be credited and applied to the Purchase Price of the Acquired Assets or (ii) if the Debtor consummates an Alternative Sale Transaction, all Allowed DIP Claims shall be paid in full from Alternative Sale Transaction Proceeds.

E. U.S. Trustee Statutory Fees

All Statutory Fees that are due and owing as of the Effective Date shall be paid by the Debtor, the Post-Effective Date Debtor, or the Liquidating Trust, as applicable, in full in Cash on the Effective Date. The Debtor shall file all monthly operating reports due prior to the Effective Date when they become due, using UST Form 11-MOR. After the Effective Date, the Post-Effective Date Debtor and the Liquidating Trustee, as applicable, shall file with the Bankruptcy Court the final monthly operating reports and separate UST Form 11-PCR reports when they become due. After the Effective Date, the Post-Effective Date Debtor and the Liquidating Trustee shall be jointly and severally liable to pay any and all applicable Statutory Fees in full in Cash when due and payable. The U.S. Trustee shall not be treated as providing any release under this Plan. Statutory Fees are Allowed. The U.S. Trustee shall not be required to file any proof of claim or any request for administrative expense for Statutory Fees. The provisions of this paragraph shall control notwithstanding any other provision(s) in this Plan to the contrary.

ARTICLE III.

CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS

A. Classification of Claims and Interests

Except for the Claims addressed in Article II herein, all Claims and Interests are classified in the Classes set forth below in accordance with sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or an Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest qualifies within the description of such other Classes. A

Claim also is classified in a particular Class for the purpose of receiving distributions under this Plan only to the extent that such Claim is an Allowed Claim in that Class and has not been otherwise paid, released, or satisfied at any time.

The classification of Claims against and Interests in the Debtor pursuant to this Plan is as follows:

Class	Claim or Interest	Status	Voting Rights
1	Other Priority Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)
2	Other Secured Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)
3	Prepetition Loan Guarantee Claims	Impaired	Entitled to Vote
4	General Unsecured Claims	Impaired	Entitled to Vote
5	Litigation Claims	Impaired	Entitled to Vote
6	Intercompany Claims	Impaired	Not Entitled to Vote (Deemed to Reject)
7	Section 510(b) Claims	Impaired	Not Entitled to Vote (Deemed to Reject)
8	Interests	Impaired	Not Entitled to Vote (Deemed to Reject)

B. Treatment of Claims and Interests

1. Class 1 – Other Priority Claims

(a) *Classification:* Class 1 consists of all Other Priority Claims against the Debtor.

(b) *Treatment:* In full and final satisfaction, compromise, settlement, and release of and in exchange for such Claim, on, or as soon as reasonably practicable following the Effective Date, each holder of an Allowed Other Priority Claim shall receive treatment in a manner consistent with section 1129(a)(9) of the Bankruptcy Code.

(c) *Voting:* Class 1 is Unimpaired, and Holders of Other Priority Claims are conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Class 1 Other Priority Claims are not entitled to vote to accept or reject this Plan.

2. Class 2 – Other Secured Claims

(a) *Classification:* Class 2 consists of all Other Secured Claims against the Debtor.

(b) *Treatment:* In full and final satisfaction, compromise, settlement, and release of and in exchange for such Claim, on, or as soon as reasonably practicable following the Effective Date, each holder of an Allowed Other Secured Claim shall receive, at the Debtor's option: (a) payment in full in Cash, (b) the collateral securing its Allowed Other Secured Claim, (c) reinstatement of its Allowed Other Secured Claim, or (d) such other treatment rendering its Allowed Other Secured Claim as Unimpaired in accordance with section 1124 of the Bankruptcy Code.

(c) *Voting:* Class 2 is Unimpaired, and Holders of Other Secured Claims are conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Class 2 Other Secured Claims are not entitled to vote to accept or reject this Plan.

3. Class 3 – Prepetition Loan Guarantee Claims

(a) *Classification:* Class 3 consists of the Prepetition Loan Guarantee Claims.

(b) *Treatment:* In full and final satisfaction, compromise, settlement and release of and in exchange for such Claim, the Holder of the Allowed Prepetition Loan Guarantee Claim shall (i) have such Claim assumed by the Purchaser under the Plan Sale, (ii) receive payment on account of such Claim from the Loan Parties (as defined in the Prepetition Financing Agreement) other than the Debtor in accordance with the terms of the Prepetition Financing Agreement or (iii) receive any distributable Sale Proceeds available after satisfaction of the DIP Claims in connection with an Alternative Sale Transaction (with any deficiency Claim being treated as a General Unsecured Claim).²

(c) *Voting:* Class 3 is Impaired, and Holders of Prepetition Loan Guarantee Claims are entitled to vote to accept or reject this Plan.

4. Class 4 – General Unsecured Claims

(a) *Classification:* Class 4 consists of all General Unsecured Claims.

(b) *Treatment:* On the Effective Date, or as soon as reasonably practicable thereafter, except to the extent that a Holder of an Allowed General Unsecured Claim and the Debtor or the Liquidating Trustee, as applicable, agree to less favorable treatment for such Holder, in full and final satisfaction of the Allowed General Unsecured Claim, each Holder thereof will receive its pro rata share of the Class 4 Liquidating Trust Interests, which Class 4 Liquidating

² For the avoidance of doubt, nothing contained in this Plan or the Confirmation Order shall in any respect amend, modify, restrict or impair the rights of the Prepetition Senior Secured Parties against any Loan Party (other than the Debtor) under the Prepetition Documents.

Trust Interests shall entitle the holders thereof to receive their pro rata share of the distributable proceeds from the Liquidating Trust Assets.

(c) *Voting:* Class 4 is Impaired, and Holders of General Unsecured Claims are entitled to vote to accept or reject this Plan.

5. Class 5 – Litigation Claims

(a) *Classification:* Class 5 consists of all Litigation Claims against the Debtor.

(b) *Treatment:* On the Effective Date, or as soon as reasonably practicable thereafter, except to the extent that a Holder of a Litigation Claim and the Debtor or the Liquidating Trustee, as applicable, agree to less favorable treatment for such Holder, in full and final satisfaction of the Allowed Litigation Claim, each Holder thereof will receive its pro rata share of the Class 5 Liquidating Trust Interests, which Class 5 Liquidating Trust Interests shall entitle the holders thereof to receive their pro rata share of the distributable proceeds from the Liquidating Trust Assets and any Insurance Rights under any Insurance Policies.

(c) *Voting:* Class 5 is Impaired, and Holders of Litigation Claims are entitled to vote to accept or reject this Plan.

6. Class 6 – Intercompany Claims

(a) *Classification:* Class 6 consists of all Intercompany Claims.

(b) *Treatment:* On the Effective Date, except to the extent that an Intercompany Claim is assumed under the Plan, all Intercompany Claims shall be extinguished, subject to any setoff, recoupment, or defense of the Holder of such Intercompany Claim.

(c) *Voting:* Class 6 is Impaired, and Holders of Intercompany Claims are conclusively deemed to have rejected this Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, Holders of Class 6 Intercompany Claims are not entitled to vote to accept or reject this Plan.

7. Class 7 – Section 510(b) Claims

(a) *Classification:* Class 7 consists of all Section 510(b) Claims.

(b) *Treatment:* On the Effective Date, all Section 510(b) Claims, if any, shall be cancelled, released, and extinguished without distribution, and will be of no further force or effect.

(c) *Voting:* Class 7 is Impaired, and Holders of Section 510(b) Claims are conclusively deemed to have rejected this Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, Holders of Class 7 Section 510(b) Claims are not entitled to vote to accept or reject this Plan.

8. Class 8 – Interests

(a) *Classification:* Class 8 consists of all Interests.

(b) *Treatment:* On the Effective Date, all Interests shall be cancelled, released, and extinguished without distribution, and will be of no further force or effect.

(c) *Voting:* Class 8 is Impaired, and Holders of Interests are conclusively deemed to have rejected this Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, Holders of Class 8 Interests are not entitled to vote to accept or reject this Plan.

C. Special Provisions Governing Unimpaired Claims

Except as otherwise provided in this Plan, nothing under this Plan shall affect the Debtor's or the Liquidating Trustee's rights with respect to any Claims, including all legal and equitable defenses to or setoffs or recoupments against any Claims.

D. Elimination of Vacant Classes

Any Class of Claims or Interests that does not have a Holder of an Allowed Claim or Allowed Interest or a Claim or Interest temporarily Allowed by the Bankruptcy Court as of the date of the Confirmation Hearing shall be deemed eliminated from this Plan for purposes of voting to accept or reject this Plan and for purposes of determining acceptance or rejection of this Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

E. Controversy Concerning Impairment

If a controversy arises as to whether any Claim or any Class of Claims or Interests is Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Hearing.

F. Subordination of Claims

The allowance, classification, and treatment of all Allowed Claims and Interests and the respective distributions and treatments under this Plan shall take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, contract, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtor or the Liquidating Trustee (as applicable) reserves the right to seek the Bankruptcy Court's permission to re-classify any Allowed Claim or Allowed Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

G. Reservation of Rights Regarding Claims

Except as otherwise provided in this Plan or in other Final Orders of the Bankruptcy Court, nothing will affect the Debtor's or the Liquidating Trustee's respective rights and defenses,

whether legal or equitable, with respect to any Claim, including, without limitation, all rights with respect to legal and equitable defenses to alleged rights of setoff or recoupment.

H. Postpetition Interest on Claims

Except as required by applicable bankruptcy law or as otherwise expressly provided in this Plan or the Confirmation Order, postpetition interest, penalties, or other fees will not accrue or be payable on account of any Claim.

I. Insurance

Notwithstanding anything to the contrary in this Plan, if any Claim is subject to coverage under an Insurance Policy, payments on account of such Claim will first be made from proceeds of such Insurance Policy in accordance with the terms thereof, with the balance of such Claim, if any, treated in accordance with the provisions of this Plan governing the Class applicable to such Claim.

ARTICLE IV. MEANS FOR IMPLEMENTATION OF THIS PLAN

A. Sources of Consideration for Plan Distributions

Subject in all respects to the provisions of this Plan concerning the Professional Fee Reserve, and except as otherwise provided for herein, the Debtor or the Liquidating Trustee (as applicable) shall fund distributions under this Plan from the Sale Proceeds, Cash on hand as of the Effective Date, and all other Liquidating Trust Assets. For the avoidance of doubt, prior to Closing of the Plan Sale, the Debtor shall fully draw the debtor-in-possession financing facility, and such Cash proceeds shall be used to fund distributions in accordance with the terms of this Plan.

B. Sale Transaction

On the Effective Date and pursuant to the authority and authorizations provided in the Confirmation Order, except as otherwise provided herein, the Debtor shall consummate the Plan Sale pursuant to the APA, and the Acquired Assets shall be transferred to and vest in the Purchaser free and clear of all liens, claims, and encumbrances. Notwithstanding the foregoing, the Debtor shall seek and obtain from the Bankruptcy Court approval of the Alternative Sale Process. The Debtor shall retain the right to consider, approve, or otherwise consummate an Alternative Sale Transaction arising in connection with the Alternative Sale Process if the Debtor determines, in the good faith exercise of its fiduciary duties, that such Alternative Sale Transaction constitutes a higher or otherwise better offer than the Plan Sale.

For the avoidance of doubt, in no event shall the Debtor be obligated to consummate the Plan Sale if, in the reasonable business judgment of the Debtor (and subject to approval of the Bankruptcy Court), consummation of an Alternative Sale Transaction pursuant to the Alternative Sale Process would result in a higher or otherwise better recovery for the stakeholders in the Chapter 11 Case. In the event the Debtor consummates an Alternative Sale Transaction, the Acquired Assets shall be transferred to the Alternative Purchaser free and clear of all liens, claims,

and encumbrances in accordance with the Confirmation Order and the Alternative Sale Documents.

Subject to the terms of the Plan Sale Documents or the Alternative Sale Documents, whichever applicable, the Confirmation Order shall and shall be deemed to, pursuant to sections 363 and 1123 of the Bankruptcy Code, approve the sale of the Acquired Assets and authorize, among other things, all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate this Plan.

C. Wind-Down

Following the occurrence of the Effective Date and subject to the terms of this Plan, the Liquidating Trustee shall wind-down the affairs and operations of the Debtor and the Estate, as applicable, including, but not limited to, (i) expeditiously and efficiently liquidating the Liquidating Trust Assets; (ii) procuring any appropriate insurance to facilitate the Wind-Down, including appropriate D&O Liability Insurance Policies; and (iii) expeditiously and efficiently pursuing, compromising, settling, and/or liquidating the Retained Causes of Actions.

D. Vesting of Assets

On the Effective Date, subject to sections 1141(b) and 1141(c) of the Bankruptcy Code, the Liquidating Trust Assets shall vest in and be transferred to the Liquidating Trust free and clear of all Claims, Liens and interests of creditors, equity security holders and of members of the Debtor, except as otherwise expressly provided in this Plan.

E. Liquidating Trust

1. Establishment of the Liquidating Trust

On the Effective Date, the Liquidating Trust will be established pursuant to the Liquidating Trust Agreement, which will be Filed with the Bankruptcy Court as part of the Plan Supplement. On the Effective Date, all property of the Estate not transferred pursuant to the Plan Sale or Alternative Sale Transaction, whichever applicable, or distributed to holders of Allowed Claims on the Effective Date, including, without limitation, the Retained Causes of Action, shall vest in the Liquidating Trust. Upon establishment of the Liquidating Trust, title to the Liquidating Trust Assets shall be deemed transferred to the Liquidating Trust without any further action of the Debtor or any employees, members, managers, officers, agents, advisors, or representatives of the Debtor.

2. Transfer of the Liquidating Trust Assets

Subject to section 1141 of the Bankruptcy Code, all property vesting in and transferred to the Liquidating Trust shall be made free and clear of all Claims, Liens, and interests of creditors, equity security holders and of general partners in the Debtor, except as may be otherwise provided for in this Plan. Upon completion of the transfer of the Liquidating Trust Assets to the Liquidating Trust, the Debtor will have no further interest in, or with respect to, the Liquidating Trust Assets or the Liquidating Trust. For all U.S. federal income tax purposes, all parties (including, without limitation, the Debtor, the Liquidating Trustee, and the Liquidating Trust Beneficiaries) shall treat the transfer of the Liquidating Trust Assets to the Liquidating Trust in accordance with the terms

herein as a transfer to the Liquidating Trust Beneficiaries, followed by a transfer of such assets by such Liquidating Trust Beneficiaries to the Liquidating Trust, and the Liquidating Trust Beneficiaries will be treated as the grantors and owners thereof.

3. Insurance Rights Transfer

In furtherance of the purpose of the Liquidating Trust:

- a. On the Effective Date, the Debtor shall irrevocably transfer, grant, and assign to the Liquidating Trust, and the Liquidating Trust shall receive and accept the Debtor's Insurance Rights.
- b. The Insurance Rights Transfer is made free and clear of all Claims, Liens, encumbrances, or Causes of Action of any nature whatsoever, except available limits of liability for coverage of certain types of Claims under one or more Insurance Policies that may have been reduced by certain prepetition payments made by an Insurance Company to, or on behalf of, the Debtor.
- c. The Insurance Rights Transfer is made to the maximum extent possible under applicable law.
- d. The Insurance Rights Transfer is absolute and does not require any further action by the Debtor, the Post-Effective Date Debtor, the Liquidating Trust, the Bankruptcy Court, or any other Entity.
- e. The Insurance Rights Transfer shall be governed by, and construed in accordance with, the Bankruptcy Code and the other applicable laws governing the Insurance Policies.

4. Liquidating Trust Agreement

On the Effective Date, the Debtor shall execute the Liquidating Trust Agreement in substantially the same form as set forth in the Plan Supplement. Any nonmaterial modifications to the Liquidating Trust Agreement made by the Debtor or the Liquidating Trustee (as applicable) will be automatically ratified if made in accordance with the terms of the Liquidating Trust Agreement. The Liquidating Trust Agreement shall contain provisions permitting the amendment or modification of the Liquidating Trust Agreement necessary to implement the provisions of this Plan.

5. Purpose of the Liquidating Trust

The Liquidating Trust shall be established for, among other purposes, the purpose of (a) receiving and holding the Liquidating Trust Assets; (b) conducting, administering, and facilitating the Wind-Down; (c) administering, disputing, objecting to, compromising, or otherwise resolving all Claims and Interests; (d) making distributions to the Liquidating Trust Beneficiaries in accordance with this Plan and the Liquidating Trust Agreement; (e) maximizing recoveries for the benefit of the Liquidating Trust Beneficiaries; and (f) commencing and pursuing

the Retained Causes of Action and managing and administering any proceeds thereof, with no objective to continue or engage in the conduct of a trade or business in accordance with Treasury Regulation section 301.7701-4(d). The Liquidating Trust is intended to qualify as a “liquidating trust” under Treasury Regulation section 301.7701-4(d) and a “grantor trust” under section 671 of the Internal Revenue Code (the “Tax Code”), to the extent permitted by applicable law, for state and local income tax purposes, with the Liquidating Trust Beneficiaries treated as grantors and owners of the Liquidating Trust. To the extent permitted by applicable law, all parties, including the Liquidating Trustee and any Liquidating Trust Beneficiaries, shall report consistently with the foregoing for all applicable tax reporting purposes (including consistent reporting for valuation purposes).

6. Liquidating Trustee

(a) *Appointment of the Liquidating Trustee*

Upon the occurrence of the Effective Date, the Liquidating Trustee shall be deemed appointed to serve as the trustee and administrator of the Liquidating Trust established pursuant to this Plan and the Liquidating Trust Agreement. The Liquidating Trustee shall be selected by the Debtor (in consultation with the Committee, as applicable) and, once appointed, the Liquidating Trustee shall be the sole officer and manager of the Post-Effective Date Debtor. The Liquidating Trustee, subject to the terms and conditions of this Plan, the Plan Supplement, the Confirmation Order, and the Liquidating Trust Agreement, shall be authorized to execute, deliver, file, or record such documents, contracts, instruments, releases, and other agreements, and to take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of this Plan, including the Wind-Down. The Liquidating Trustee shall have and perform all of the duties, responsibilities, rights, and obligations set forth in this Plan and the Liquidating Trust Agreement, as applicable.

(b) *Liquidating Trustee as Representative of the Estate*

From and after the occurrence of the Effective Date, the Liquidating Trustee shall act as the exclusive representative of the Estate for all purposes and shall succeed to the rights, powers, and authority that would have been applicable to the Debtor’s officers and managers prior to the Effective Date, including the authority to facilitate the Wind-Down, analyze, preserve, and pursue Insurance Policy proceeds (including the authority to settle with any Insurance Company with respect to an Insurance Policy), and pursue the Retained Causes of Action. The Debtor’s existing managers as of the Effective Date shall be deemed to have resigned on the Effective Date, and all powers of managers shall vest in the Liquidating Trustee on the Effective Date. Upon the occurrence of the Effective Date, the Liquidating Trustee shall have the power to dissolve the Post-Effective Date Debtor, and the Post-Effective Date Debtor shall be dissolved upon the conclusion of the Wind-Down. Any successor Liquidating Trustee appointed pursuant to the Liquidating Trust Agreement shall be bound by and comply with the terms of this Plan, the Confirmation Order, and the Liquidating Trust Agreement.

(c) *Responsibilities and Authority of the Liquidating Trustee*

The responsibilities and authority of the Liquidating Trustee shall be as set forth in the Liquidating Trust Agreement, and shall include, among others, the following rights and responsibilities, which shall be the exclusive rights and responsibilities of the Liquidating Trustee: (i) preserving and liquidating the Liquidating Trust Assets, including the Retained Causes of Action; (ii) facilitating the Wind-Down; (iii) administering and paying taxes, including, among other things, (1) filing tax returns and (2) representing the interest and account of the Liquidating Trust before any taxing authority in all matters including, without limitation, any action, suit, proceeding, or audit; (iv) retaining and paying, without the need for retention or fee applications, professionals in connection with the Liquidating Trustee's performance of its duties under this Plan and the Liquidating Trust Agreement; (v) distributing information statements as required for U.S. federal income tax and other applicable tax purposes; (vi) preparing and filing all monthly operating reports due after the Effective Date and all post-confirmation reports as required by the U.S. Trustee; (vii) Filing an application for entry by the Bankruptcy Court of a final decree closing the Chapter 11 Case; (viii) making distributions to the Liquidating Trust Beneficiaries in accordance with this Plan and Liquidating Trust Agreement; and (ix) such other responsibilities as may be vested in the Liquidating Trustee pursuant to this Plan, the Plan Supplement, the Liquidating Trust Agreement, or an order of the Bankruptcy Court (including, without limitation, the Confirmation Order), or as may be necessary and proper to carry out the provisions of this Plan.

(d) *Powers of the Liquidating Trustee*

The Liquidating Trustee shall have the power and authority to perform the acts described in the Liquidating Trust Agreement (subject to approval by the Court where applicable), in addition to any powers granted by law or conferred to it by any other provision of this Plan, including without limitation any set forth herein, *provided, however*, that enumeration of the following powers shall not be considered in any way to limit or control the power and authority of the Liquidating Trustee to act as specifically authorized by any other provision of this Plan, the Liquidating Trust Agreement, and/or any applicable law, and to act in such manner as the Liquidating Trustee may deem necessary or appropriate to take any act deemed appropriate by the Liquidating Trustee, including, without limitation, to discharge all obligations assumed by the Liquidating Trustee or provided herein and to conserve and protect the Liquidating Trust or to confer on the creditors the benefits intended to be conferred upon them by this Plan.

The powers of the Liquidating Trustee shall be as set forth in the Liquidating Trust Agreement, and shall include, among others, the following: (i) the power to invest funds of the Liquidating Trust, and withdraw, make distributions, and pay taxes and other obligations owed by the Liquidating Trust from such funds in accordance with this Plan and the Liquidating Trust Agreement; (ii) the power to engage and compensate, without prior Bankruptcy Court order or approval, employees and professionals to assist the Liquidating Trustee with respect to its responsibilities; (iii) the exclusive power and authority to investigate, initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any Retained Causes of Action, or to decline to take any of the foregoing actions, in accordance with the best interests of the Liquidating Trust Beneficiaries, *provided*, in each case, the Liquidating Trustee need not obtain the consent or approval of any third party or provide further notice to, or obtain

approval of the Bankruptcy Court; (iv) the power to object to Claims, including, without limitation, the power to seek subordination or recharacterization of Claims by objection, motion, or adversary proceeding, as applicable; (v) the power and authority to conduct, facilitate, and administer the Wind-Down pursuant to the terms of this Plan, without the necessity for any other or further actions to be taken by or on behalf of such dissolving Entity or its members or any payments to be made in connection therewith, other than the filing of a certificate of cancellation with the appropriate governmental authorities, pursuant to Section 18-203 of the Delaware Limited Liability Company Act codified at title 6 of the Delaware Code or other applicable state or foreign law; (vi) the power and authority to pursue Insurance Policy proceeds (including the authority to settle with any Insurance Company with respect to an Insurance Policy); and (vii) such other powers as may be vested in or assumed by the Liquidating Trustee pursuant to this Plan, the Plan Supplement, the Liquidating Trust Agreement, or by an order of the Bankruptcy Court (including, without limitation, the Confirmation Order), or as may be necessary and proper to carry out the provisions of this Plan.

(e) *Compensation of the Liquidating Trustee*

The Liquidating Trustee shall be compensated as set forth in the Liquidating Trust Agreement. The Liquidating Trustee shall fully comply with the terms, conditions, and rights set forth in this Plan, the Plan Supplement, the Confirmation Order, and the Liquidating Trust Agreement. The Liquidating Trustee (and any professionals retained by the Liquidating Trustee) shall not be required to File a fee application to receive compensation.

(f) *Retention and Payment of Professionals*

The Liquidating Trustee shall have the right, without Bankruptcy Court approval, to retain the services of attorneys, accountants, and other professionals that the Liquidating Trustee determines, in his or her sole discretion, are necessary to assist in performing his or her duties. In accordance with the Liquidating Trust Agreement, the Liquidating Trust shall pay from the Wind-Down Assets the reasonable fees and expenses of such professionals upon the monthly submission of statements to the Liquidating Trust without further order of the Bankruptcy Court.

(g) *Payment of Liquidating Trust Expenses*

Any and all reasonable and documented costs and expenses incurred by the Liquidating Trust in connection with the Wind-Down shall be paid from the Liquidating Trust Assets, subject to the Liquidating Trust Agreement.

7. Termination of the Liquidating Trust

The Liquidating Trust shall be dissolved upon the earlier of (a) the distribution of all of the Liquidating Trust Assets to the Liquidating Trust Beneficiaries; and (b) the fifth anniversary of the creation of the Liquidating Trust; *provided* that, if warranted by the facts and circumstances involved in resolving or monetizing any Liquidating Trust Assets, upon application to, and if approved by, the Bankruptcy Court upon a finding that such extension is necessary or appropriate for purposes of resolving or monetizing such Liquidating Trust Assets and distributing the proceeds to Liquidating Trust Beneficiaries, the term of the Liquidating Trust may be extended by the Liquidating Trustee for a specified term in accordance with applicable tax laws and regulations.

This application must be filed with the Bankruptcy Court no earlier than six (6) months before the termination date of the Liquidating Trust.

F. Insurance Provisions

- (a) Except for the transfer of rights to the Liquidating Trust pursuant to the Insurance Rights Transfer, or as otherwise provided by the Bankruptcy Code, applicable law, the findings made by the Bankruptcy Court in the Confirmation Order, or otherwise, nothing in the Plan shall modify, amend, or supplement, or be interpreted as modifying, amending, or supplementing, the terms of any Insurance Policy issued by any Insurance Company, or the rights or obligations under any such Insurance Policy to the extent such rights and obligations are otherwise available under applicable law, and the rights and obligations, if any, of any Insurance Company relating to or arising out of the Plan Documents, including the Plan, the Confirmation Order, or any provision thereof, shall be determined pursuant to the terms and provisions of the Insurance Policies and applicable law.
- (b) Nothing in this Section IV.F of the Plan is intended or shall be construed to preclude otherwise applicable principles of res judicata or collateral estoppel from being applied against any Person.

G. U.S. Federal Income Tax Treatment and Reporting of Liquidating Trust

For all U.S. federal and applicable state, local, and non-U.S. income tax purposes, all parties (including, without limitation, the Debtor, the Liquidating Trustee, and the Liquidating Trust Beneficiaries) shall treat the Liquidating Trust, other than the Disputed Claims Reserve, as a liquidating trust within the meaning of Treasury Regulation section 301.7701-4(d) and Revenue Procedure 94-45, 1994-2 C.B. 684 and as a “grantor trust” within the meaning of sections 671 through 679 of the Tax Code. In furtherance of this objective, the Liquidating Trustee shall, in its business judgment, make continuing best efforts not to unduly prolong the duration of the Liquidating Trust. Moreover, for all U.S. federal and applicable state, local, and non-U.S. income tax purposes, it is intended that (1) the Liquidating Trust Beneficiaries be treated as if they had (i) received a distribution from the Estate of an undivided interest in the Liquidating Trust Assets (to the extent of the value of their respective share in the applicable Assets) and (ii) subsequently contributed such undivided interest to the Liquidating Trust in exchange for an interest in the Liquidating Trust and (2) the Liquidating Trust Beneficiaries be treated as the grantors of the Liquidating Trust and as deemed owners of the Liquidating Trust and Liquidating Trust Assets. The terms of the Liquidating Trust Agreement shall be consistent with the foregoing tax treatment, and no party hereto shall take any position inconsistent herewith.

For all U.S. federal and applicable state and local income tax purposes, all parties (including, without limitation, the Debtor, the Liquidating Trustee, and the Liquidating Trust Beneficiaries) shall treat the Disputed Claims Reserve as a “disputed ownership fund” within the meaning of Treasury Regulation section 1.468B-9. Following the funding of the Liquidating

Trust, Norcold LLC shall provide a “§ 1.468B-9 Statement” in respect of the Disputed Claims Reserve to the Liquidating Trustee in accordance with Treasury Regulation section 1.468B-9(g).

The Liquidating Trustee shall be responsible for filing all tax returns for the Liquidating Trust and the Debtor. The Liquidating Trustee shall be responsible for payment, out of the Liquidating Trust Assets, of any taxes imposed on the Liquidating Trust or in respect of the Liquidating Trust Assets. The Liquidating Trustee may request an expedited determination of taxes of the Debtor under section 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of, the Debtor for all taxable periods through the dissolution of the Liquidating Trust.

The Liquidating Trust shall comply with all withholding and reporting requirements imposed by any federal, state, or local taxing authority, and all distributions made by the Liquidating Trust shall be subject to any such withholding and reporting requirements. The Liquidating Trustee shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements including, without limitation, requiring that, as a condition to the receipt of a distribution, the Holder of an Allowed Claim complete and deliver to the Liquidating Trustee the appropriate IRS Form W-8 or IRS Form W-9, as applicable. Notwithstanding any other provision of this Plan, (i) each Holder of an Allowed Claim that is to receive a distribution from the Liquidating Trust shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed on such Holder by any Governmental Unit, including income and other tax obligations, on account of such distribution and (ii) no distribution shall be made to or on behalf of such Holder under this Plan unless and until such Holder has made arrangements satisfactory to the Liquidating Trustee to allow it to comply with the Liquidating Trustee’s tax withholding and reporting requirements. All Holders of Allowed General Unsecured Claims are deemed to have agreed to use the valuation of the Liquidating Trust Assets transferred to the Liquidating Trust as established by the Liquidating Trustee for all federal income tax purposes.

H. Preservation of Causes of Action

Except as otherwise provided in Article IX herein or in any contract, instrument, release, or agreement entered into in connection with this Plan, in accordance with section 1123(b) of the Bankruptcy Code, all Retained Causes of Action are preserved and shall vest in and be transferred to the Liquidating Trust on the Effective Date.

I. Corporate Action

1. Transfer of Assets and Assumption of Liabilities

On the Effective Date, (a) the Debtor shall, in accordance with this Plan, cause the Liquidating Trust Assets to be transferred to the Liquidating Trust; and (b) the Liquidating Trust shall assume all obligations of the Debtor under this Plan.

2. Removal of Directors and Officers; Termination of Employees and Consultants

On the Effective Date, and upon the Debtor causing the Liquidating Trust Assets to be transferred to the Liquidating Trust, the Debtor shall have no further duties or responsibilities in

connection with implementation of this Plan, and the managers and officers of the Debtor shall be deemed to have resigned, and the engagement of consultants or other professionals of the Debtor shall be deemed to have terminated. From and after the Effective Date, the Liquidating Trustee shall be authorized to act on behalf of the Estate, *provided* that the Liquidating Trustee shall have no duties other than as expressly set forth in this Plan and the Liquidating Trust Agreement (as applicable).

For the avoidance of doubt, after the Effective Date, the Debtor will continue to exist with respect to (i) any applications for Professional Fee Claims or expense reimbursements for its Retained Professionals, including preparing, objecting to, defending, and attending any hearing with respect to the same; (ii) any motions or other actions seeking enforcement or implementation of the provisions of this Plan or Confirmation Order; and (iii) any appeal pending as of the Effective Date or filed thereafter, the outcome of which could reasonably be expected to affect, in any material way, any cases, controversies, suits, or disputes arising in connection with the consummation, interpretation, implementation, or enforcement of this Plan or the Confirmation Order. Following the Effective Date, the Debtor's Retained Professionals shall be entitled to reasonable compensation for services rendered in connection with the matters identified in clauses (i) through (iii). Any such payments made in connection therewith shall be made without any further notice to or action, order, or approval of the Bankruptcy Court subject to the presentment of invoices to the Liquidating Trustee in customary form.

J. Books and Records

On the Effective Date, the Liquidating Trust shall: (a) take possession of all books, records, and files of the Debtor and the Estate that were not sold and transferred pursuant to the Plan Sale or the Alternative Sale Transaction; and (b) provide for the retention and storage of such books, records, and files until such time as the Liquidating Trustee determines, in accordance with the Liquidating Trust Agreement, that retention of the same is no longer necessary or beneficial.

Notwithstanding anything to the contrary in the Liquidating Trust Agreement, prior to disposing of the Debtor's books and records, the Liquidating Trustee shall file a notice of its intent to abandon or destroy such records with a ten (10) business day objection period and serve the notice on counsel to the Post-Effective Date Debtor (if applicable), the Purchaser, the U.S. Trustee, and all other parties requesting notice pursuant to Bankruptcy Rule 2002. If no objections are received by the expiration of the ten (10) business day objection period, the Liquidating Trustee shall be authorized to abandon and/ or destroy the books and records as set forth in the notice.

K. Effectuating Documents and Further Transactions

Upon entry of the Confirmation Order, the Debtor and the Liquidating Trustee (as applicable) shall be authorized to execute, deliver, file, or record such contracts, instruments, releases, consents, certificates, resolutions, programs, and other agreements or documents, and take such acts and actions as may be reasonable, necessary, or appropriate to effectuate, implement, consummate, and/or further evidence the terms and conditions of this Plan and any transactions described in or contemplated by this Plan. The Debtor, the Liquidating Trustee, all Holders of Claims receiving distributions pursuant to this Plan, and all other parties in interest shall, from

time to time, prepare, execute, and deliver any agreements or documents, and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan.

L. Section 1146 Exemption from Certain Taxes and Fees

Pursuant to section 1146(a) of the Bankruptcy Code, as applicable, transfers of property pursuant to this Plan shall not be subject to any stamp tax or other similar tax, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forgo the collection of any such tax and are authorized to accept for filing and recordation all such instruments or other documents governing or evidencing such transfers without the payment of any such tax. Such exemption specifically applies, without limitation, to the transfer of the Liquidating Trust Assets to the Liquidating Trust.

M. Sale Orders

Notwithstanding anything to the contrary herein, nothing in this Plan shall affect, impair, or supersede any Sale Order entered by the Bankruptcy Court, as applicable, which will remain in full force and effect and govern in the event of any inconsistency with this Plan.

N. Authority to Act

Prior to, on, or after the Effective Date (as appropriate), all matters expressly provided for under this Plan that would otherwise require approval of the members, security holders, officers, managers, partners, or other owners of the Debtor shall be deemed to have occurred and shall be in effect prior to, on, or after the Effective Date (as applicable) pursuant to the applicable law of the state in which the Debtor is formed, without any further vote, consent, approval, authorization, or other action by such stockholders, security holders, officers, directors, partners, or other owners of the Debtor or notice to, order of, or hearing before, the Bankruptcy Court.

O. No Revesting of Liquidating Trust Assets

No Liquidating Trust Assets will revest in the Debtor on or after the date such assets vest or are transferred to the Liquidating Trust but will vest upon such transfer in the Liquidating Trust to be administered by the Liquidating Trustee in accordance with this Plan and the Liquidating Trust Agreement.

**ARTICLE V.
TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND
INSURANCE POLICIES**

A. General Treatment

On the Effective Date, except as otherwise provided herein (which exclusion includes the Insurance Policies), all Executory Contracts or Unexpired Leases not previously assumed, assumed and assigned, or rejected pursuant to an order of the Bankruptcy Court, will be deemed rejected in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code, other than those Executory Contracts or Unexpired Leases that are

(i) specifically designated on the Assumption Schedule filed with the Plan Supplement or (ii) the subject of a motion to assume that is pending on the Confirmation Date.

Assumption of any Executory Contract or Unexpired Lease pursuant to this Plan, and payment of any cure amounts relating thereto, shall, upon satisfaction of the applicable requirements of section 365 of the Bankruptcy Code, result in the full, final, and complete release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults or provisions restricting the change in control of ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption.

B. Rejection Damages Claims

If the rejection of an Executory Contract or Unexpired Lease pursuant to this Plan and Confirmation Order results in a Claim, then, unless otherwise ordered by the Court, such Claim shall be forever barred and shall not be enforceable against the Debtor, the Estate, the Liquidating Trustee, Liquidating Trust, or any of their respective assets and properties unless a Proof of Claim is Filed with the Notice and Claims Agent within twenty-one (21) days of the applicable counterparty to an Executory Contract or Unexpired Lease receiving notice of such rejection and the deadline to file any Claims, which notice may be included in the notice of the Effective Date of this Plan.

The foregoing applies only to Claims arising from the rejection of an Executory Contract or Unexpired Lease under this Plan and Confirmation Order; any other Claims held by a party to a rejected Executory Contract or Unexpired Lease shall have been evidenced by a Proof of Claim Filed by the applicable Bar Date or shall be barred and unenforceable unless otherwise ordered by the Bankruptcy Court. Claims arising from the rejection of Executory Contracts or Unexpired Leases under this Plan and Confirmation Order shall be classified as General Unsecured Claims and shall, if Allowed, be treated in accordance with Article III.B.5 herein; *provided, however*, that the foregoing provision shall not limit the rights of any counterparty to an Executory Contract or Unexpired Lease who continued to provide goods or services to the Debtor following the Petition Date to seek to have its Claim(s) Allowed as Administrative Claim(s); *provided, further, however*, that any such Administrative Claims shall be filed no later than the Administrative Claims Bar Date.

ARTICLE VI. PROVISIONS GOVERNING DISTRIBUTIONS

A. Distribution Record Date

As of the close of business on the Distribution Record Date, the various transfer registers for each of the Classes of Claims or Interests as maintained by the Debtor, or its respective agents, shall be deemed closed, and there shall be no further changes in the record Holders of any of the Claims or Interests. The Disbursing Agent shall have no obligation to recognize any ownership transfer of the Claims or Interests occurring on or after the Distribution Record Date. The Disbursing Agent shall be entitled to recognize and deal for all purposes hereunder only with those

record Holders stated on the transfer ledgers as of the close of business on the Distribution Record Date, to the extent applicable.

Except as otherwise provided herein, the Disbursing Agent shall make distributions to Holders of Allowed Claims as of the Distribution Record Date at the address for each such Holder as indicated on the Debtor's records as of the date of any such distribution; *provided, however*, that the manner of such distributions shall be determined at the discretion of the Debtor or the Liquidating Trustee (as applicable); *provided further, however*, that the address for each Holder of an Allowed Claim shall be deemed to be the address set forth in any Proof of Claim Filed by that Holder and the Debtor or Liquidating Trustee (as applicable) shall have no obligation to determine alternative or current addresses.

B. Withholdings

The Liquidating Trustee shall (1) withhold, deduct, and pay over to the appropriate governmental authority any amount required to be withheld under tax laws with respect to any distribution pursuant to the Liquidating Trust Agreement; and (2) comply with any reporting requirements imposed by any federal, state, local, or foreign taxing authority. The Liquidating Trustee may withhold all or the appropriate portion of any distribution due to any Liquidating Trust Beneficiary until such time as such Liquidating Trust Beneficiary provides the necessary information (*i.e.*, IRS Forms) to comply with any withholding requirements of any governmental authority. Any tax withheld shall be treated as distributed and received by the applicable beneficiary for all purposes of the Liquidating Trust Agreement and Plan. If a Liquidating Trust Beneficiary fails to provide the information necessary to comply with any withholding requirements of any governmental authority on or before the day that is six (6) months after the Effective Date of this Plan, then such beneficiary's distribution may be treated as unclaimed property in accordance with the Liquidating Trust Agreement.

C. Date of Distributions

Distributions made after the Effective Date to Holders of Allowed Claims shall be deemed to have been made on the Effective Date, and no interest shall accrue or be payable with respect to such Claims or any distribution related thereto. In the event that any payment or act under this Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on or as soon as reasonably practicable after the next succeeding Business Day but shall be deemed to have been completed as of the required date.

D. Disbursing Agent

Except as otherwise provided herein, all distributions under this Plan shall be made by the Disbursing Agent on or after the Effective Date. The Disbursing Agent shall not be required to give any bond or surety or other security for the performance of its duties. If the Disbursing Agent is otherwise ordered, all costs and expenses of procuring any such bond or surety shall be borne by the Liquidating Trust.

E. Powers of Disbursing Agent

The Disbursing Agent may (1) effect all actions and execute all agreements, instruments, and other documents necessary to carry out the provisions of this Plan; (2) make all distributions contemplated hereby; and (3) perform such other duties as may be required of the Disbursing Agent pursuant to this Plan.

F. Surrender of Instruments

As a condition precedent to receiving any distribution under this Plan, each holder of a certificated instrument or note must surrender such instrument or note held by it to the Disbursing Agent or its designee. Any holder of such instrument or note that fails to (1) surrender the instrument or note; or (2) execute and deliver an affidavit of loss or indemnity reasonably satisfactory to the Disbursing Agent and furnish a bond in form, substance, and amount reasonably satisfactory to the Disbursing Agent within six (6) months of being entitled to such distribution shall be deemed to have forfeited all rights and claims and may not participate in any distribution hereunder.

G. IRS Forms

In connection with this Plan, to the extent applicable, the Debtor and the Liquidating Trustee (as applicable) shall comply with all tax withholding and reporting requirements imposed by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in this Plan to the contrary, the Debtor and the Liquidating Trustee (as applicable) shall be authorized to take all actions necessary to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under this Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms they believe are reasonable and appropriate. The Debtor and the Liquidating Trustee reserve the right to allocate all distributions made under this Plan in compliance with all applicable wage garnishments, alimony, child support, and other spousal awards, Liens, and encumbrances.

As a condition precedent to receiving any distribution under this Plan, each Holder of an Allowed Claim that is entitled to a distribution under this Plan must provide the Liquidating Trustee an executed IRS Form. The Liquidating Trustee shall make an initial request (by first-class mail) to Holders of Allowed Claims for the information required under this section as soon as reasonably practicable after the Effective Date and after such Claims are Allowed for distribution purposes and shall specify a period of sixty (60) days to respond. A second request shall be made after the expiration of the initial sixty (60) day period. Each such request shall specify that (a) the information is being requested for purposes of potential distributions under this Plan, (b) Holders must promptly provide written notice of any change in address to the Liquidating Trustee, otherwise the Liquidating Trustee is authorized to conclusively rely on the address for such Holder listed on the Debtor's books and records or in any Filed Proof of Claim or transfer of Claim, and (c) that the failure to respond will result in disallowance of the Claim in accordance with this section of this Plan, absent further order of the Bankruptcy Court to the contrary.

An Allowed Claim of a Holder that fails to provide an executed IRS Form or provide any other required information to effectuate a distribution within thirty (30) days of service (by first-class mail) of the second request for the same shall be deemed disallowed and expunged for purposes of distributions under this Plan. For the avoidance of doubt, the Liquidating Trust is not required to follow up with any Holder of an Allowed Claim if they fail to timely provide an executed IRS Form following service of the requests set forth above.

H. Delivery of Distributions

Subject to applicable Bankruptcy Rules, all distributions to Holders of Allowed Claims shall be made by the Disbursing Agent, who shall transmit such distributions to the applicable Holders of Allowed Claims or their designees.

If any distribution to a Holder of an Allowed Claim (a) is returned as undeliverable for lack of a current address or otherwise; or (b) is not cashed or otherwise presented for collection by the Holder of the Allowed Claim within sixty (60) calendar days after the mailing of such distribution, the Liquidating Trustee shall be authorized to cancel such distribution check. For the avoidance of doubt, the Liquidating Trustee shall have no affirmative obligation to locate the correct current address of such Holder. Thirty (30) calendar days after the cancellation of a distribution check by the Liquidating Trustee, if the Holder has not provided the Liquidating Trustee with written notice of a change of address, (a) the Holder of such Claim shall cease to be entitled to the undeliverable distribution or uncashed distribution, which will revert to the Liquidating Trust for distribution in accordance with this Plan and the Liquidating Trust Agreement and (b) the Allowed Claim of such Holder shall be deemed disallowed and expunged for purposes of further distributions under this Plan, absent further order of the Bankruptcy Court to the contrary.

I. Manner of Payment

Any distributions to be made by or on behalf of the Debtor or the Liquidating Trustee (as applicable) pursuant to this Plan shall be made by checks drawn on accounts maintained by the Debtor or the Liquidating Trustee (as applicable), or by wire transfer if circumstances justify, at the option of the Debtor or the Liquidating Trustee (as applicable).

J. Foreign Currency Exchange Rate

As of the Effective Date, any Claim asserted in currency other than U.S. dollars shall be automatically deemed converted to the equivalent U.S. dollar value using the exchange rate for the applicable currency as published in *The Wall Street Journal* on the Petition Date.

K. Setoffs and Recoupments

The Debtor or the Liquidating Trustee (as applicable), pursuant to the Bankruptcy Code (including section 553 of the Bankruptcy Code), applicable bankruptcy and/or non-bankruptcy law, without the approval of the Bankruptcy Court and upon no less than fourteen (14) calendar days' notice to the applicable Holder of a Claim, or as may be agreed to by the Holder of a Claim, may, but shall not be required to, set off against or recoup against any Allowed Claim and the distributions to be made pursuant to this Plan on account of such Allowed Claim (before any distribution is to be made on account of such Allowed Claim), any claims of any nature whatsoever

that the Debtor or the Estate may have against the Holder of such Allowed Claim; *provided, however*, that neither the failure to effect such a setoff or recoupment nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor or the Liquidating Trustee (as applicable) of any such claim the Debtor or the Estate may have against the Holder of such Claim. The Liquidating Trustee shall be required to file such notice on the docket of the Chapter 11 Case.

L. Minimum Distributions

No payment of Cash in an amount of less than one-hundred U.S. dollars (\$100.00) shall be required to be made on account of any Allowed Claim. Such undistributed amount may instead be used in accordance with this Plan and the Liquidating Trust Agreement.

If the Cash available for the final distribution is less than the cost to distribute such funds, the Liquidating Trustee may donate such funds to the unaffiliated charity of the Liquidating Trustee's choice.

M. Allocation of Distributions Between Principal and Interest

To the extent that any Allowed Claim entitled to a distribution under this Plan includes both principal and accrued but unpaid prepetition interest, such distribution shall be allocated to the principal amount (as determined for U.S. federal income tax purposes) of the Claim first, and then to accrued but unpaid prepetition interest.

N. Distributions Free and Clear

Except as otherwise provided in this Plan, any distribution or transfer made under this Plan shall be free and clear of any Liens, Claims, encumbrances, charges, and other interests, and no other entity shall have any interest, whether legal, beneficial, or otherwise, in property distributed or transferred pursuant to this Plan.

O. Claims Paid or Payable by Third Parties

1. Claims Paid by Third Parties

If a Holder of a Claim receives a payment or other satisfaction of its Claim other than through the Debtor and/or the Liquidating Trustee (as applicable) on account of such Claim, such Claim shall be reduced by the amount of such payment or satisfaction without an objection to such Claim having to be Filed, and if the Claim was paid or satisfied in full other than through the Debtor and/or the Liquidating Trustee (as applicable), then such Claim shall be disallowed, and any recovery in excess of a single recovery in full shall be paid over to the Debtor or the Liquidating Trustee (as applicable) without an objection to such Claim having to be Filed; *provided, however*, that a notice of satisfaction shall be Filed and served reflecting that a particular Claim has been satisfied. To the extent a Holder of a Claim receives a distribution on account of such Claim and receives payment or satisfaction from a party that is not the Debtor and/or the Liquidating Trustee (as applicable) on account of such Claim, such Holder shall, within fourteen (14) Business Days of receipt thereof, repay or return the distribution to the Debtor or Liquidating Trustee (as applicable), to the extent the Holder's total recovery on account of such Claim from

the third party and under this Plan exceeds the amount of such Claim as of the date of any such distribution under this Plan.

2. Claims Payable by Third Parties

No distributions under this Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtor's Insurance Policies until the Holder of such Allowed Claim has exhausted all remedies with respect to such Insurance Policy. To the extent that one or more of the Debtor's insurers agrees to satisfy in full or in part a Claim (if and to the extent adjudicated by a court of competent jurisdiction), then immediately upon such insurer's payment of such Claim, the applicable portion of such Claim may be expunged (and the Claims Register adjusted accordingly) without an objection to such Claim having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court; *provided*, that the Debtor or the Liquidating Trustee, as applicable, shall serve notice of such satisfaction on the affected Holder of the applicable Claim.

3. Applicability of Insurance Policies

Except as otherwise provided in this Plan, distributions to Holders of Allowed Claims shall take into account payments made in accordance with the provisions of any applicable Insurance Policy. Except as set forth in Article IX herein, nothing in this Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtor or any Entity, including the Liquidating Trust, may hold against any other Person or Entity, including Insurance Companies under any Insurance Policies, nor shall anything contained herein constitute or be deemed a waiver by such Insurance Company of any defenses, including coverage defenses, held by such Insurance Company.

ARTICLE VII.

PROCEDURES FOR RESOLVING UNLIQUIDATED AND DISPUTED CLAIMS

A. Allowance of Claims

After the Effective Date, the Liquidating Trustee shall have and retain any and all rights and defenses that the Debtor had with respect to any Claim or Interest immediately prior to the Effective Date.

B. Claims Administration Responsibilities

Except as otherwise specifically provided in this Plan, after the Effective Date, the Liquidating Trustee shall have the authority to: (1) File, withdraw, or litigate to judgment, objections to Claims or Interests; (2) settle or compromise any Disputed Claim without any further notice to or action, order, or approval by the Bankruptcy Court; and (3) administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court.

C. Estimation of Claims

Before or after the Effective Date, the Debtor or the Liquidating Trustee (as applicable) may (but is not required to) at any time request that the Bankruptcy Court estimate any Disputed

Claim that is contingent or unliquidated pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether any party has previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any such Claim, including during the litigation of any objection to any Claim or during the appeal relating to such objection.

Notwithstanding any provision otherwise herein, a Claim that has been expunged or disallowed from the Claims Register, but that either is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars (\$0.00) unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount shall constitute a maximum limitation on such Claim for all purposes under this Plan (including for purposes of distributions), and the Debtor or the Liquidating Trustee (as applicable) may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim.

D. Adjustment to Claims Without Objection

Any Claim that has been paid, satisfied, or assumed by the Purchaser in the Plan Sale or the Alternative Sale Transaction, whichever applicable, or any Claim that has been amended or superseded, may be adjusted or expunged on the Claims Register by the Debtor or the Liquidating Trustee (as applicable) without an objection to such Claim having to be Filed following a notice filed on the docket (*i.e.*, a notice of satisfaction of claims) in the Bankruptcy Court of such adjustment or expungement.

E. Time to File Objections to Claims

Except as otherwise provided herein, any objections to Claims shall be Filed on or before the Claims Objection Deadline (as such date may be extended upon entry of an order by the Bankruptcy Court).

F. Disallowance of Late Claims

Except as provided in the Plan or otherwise agreed to by the Debtor or the Liquidating Trustee (as applicable), any Holder of a Claim Filed, via proof of claim, after the Bar Date shall not receive any distributions on account of such Claims to the extent such Claim has been disallowed and expunged upon objection on notice to the affected Claimant.

G. Disputed Claims

All Claims held by Persons or Entities against whom or which the Debtor or the Liquidating Trustee (as applicable) has commenced a proceeding asserting a Cause of Action under sections 542, 543, 544, 545, 547, 548, 549, or 550 of the Bankruptcy Code or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 548, 549 or 724(a) of the Bankruptcy Code shall be deemed Disputed Claims pursuant to section 502(d) of the Bankruptcy Code and Holders of such Claims shall not be entitled to vote to accept or reject this Plan. A Claim deemed Disputed pursuant to this Article VII.G shall continue to be Disputed for all purposes until the relevant proceeding against the Holder of such Claim has been settled or resolved by a Final Order and any

sums due to the Debtor or the Liquidating Trustee (as applicable) from such Holder have been paid.

H. No Distributions Pending Allowance

If an objection to a Claim, Proof of Claim, or portion thereof is Filed, no payment or distribution provided under this Plan shall be made on account of such Claim, Proof of Claim, or portion thereof unless and until such Disputed Claim becomes an Allowed Claim.

I. Distributions After Allowance

To the extent that a Disputed Claim ultimately becomes an Allowed Claim, distributions (if any) shall be made to the Holder of such Allowed Claim in accordance with the provisions of this Plan and the Liquidating Trust Agreement (as applicable). As soon as practicable after the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim becomes a Final Order, the Disbursing Agent shall provide to the Holder of such Claim the distribution (if any) to which such Holder is entitled under this Plan as of the Effective Date, without any interest, dividends, or accruals to be paid on account of such Claim. No interest shall accrue or be paid on any Claim with respect to the period from the Effective Date to the date a final distribution is made on account of such Claim.

ARTICLE VIII.

CONDITIONS PRECEDENT TO THE EFFECTIVE DATE

A. Conditions Precedent

The occurrence of the Effective Date of this Plan is subject to each of the following conditions precedent provided, that, notwithstanding when a condition precedent to the Effective Date occurs, for purposes of this Plan, such condition precedent shall be deemed to have occurred simultaneously with the last condition precedent to the Effective Date to occur.

1. The Bankruptcy Court shall have approved the Disclosure Statement as containing adequate information with respect to this Plan within the meaning of section 1125 of the Bankruptcy Code.

2. The Bankruptcy Court shall have entered the Confirmation Order in full force and effect as a Final Order.

3. There shall have been no modification or stay of the Confirmation Order or entry of any other order prohibiting the transactions contemplated by this Plan from being consummated.

4. The Professional Fee Claim Reserve shall have been fully funded in an amount equal to the Professional Fee Claim Reserve Amount pursuant to the terms of this Plan.

5. The Plan Sale Documents or the Alternative Sale Documents, whichever applicable, shall have been approved and executed by the parties thereto.

6. All actions, documents and agreements necessary to implement this Plan shall have been effected, executed, and/or tendered for delivery. All conditions precedent to the effectiveness of such documents and agreements shall have been satisfied or waived pursuant to the terms thereof (or will be satisfied and waived substantially concurrently with the occurrence of the Effective Date).

7. The Liquidating Trust Agreement shall have been approved and executed by the parties thereto.

8. The Liquidating Trustee shall have been appointed and assumed its rights and responsibilities under this Plan and the Liquidating Trust Agreement, as applicable.

9. The Debtor shall have received all authorizations, consents, regulatory approvals, rulings, letters, no-action letters, opinions, or documents necessary to implement this Plan and any transaction contemplated hereby that are required by law, regulation, or order.

B. Waiver of Conditions

Unless otherwise specifically provided for in this Plan, the conditions set forth in Article VIII.A may be waived in whole or in part by the Debtor, in consultation with the Committee, without notice to any parties in interest or the Bankruptcy Court and without a hearing.

C. Effect of Vacatur of the Confirmation Order

If the Confirmation Order is vacated: (1) this Plan will be null and void in all respects, including with respect to the release of Claims and distributions for Allowed Claims; and (2) nothing contained in this Plan will (a) constitute a waiver or release of any Claims by or against, or any Interest in, the Debtor or (b) prejudice in any manner the rights, including any claims or defenses, of any party in interest.

D. Votes Solicited in Good Faith

Upon entry of the Confirmation Order, the Debtor will be deemed to have solicited votes on this Plan in good faith and in compliance with the Bankruptcy Code.

**ARTICLE IX.
RELEASE, INJUNCTION, AND RELATED PROVISIONS**

A. Releases by the Debtor

As of the Effective Date, except as otherwise provided in this Plan or the Confirmation Order, pursuant to section 1123(b) of the Bankruptcy Code and for good and valuable consideration, each Debtor Released Party is deemed conclusively, absolutely, unconditionally, irrevocably, and forever released, to the maximum extent permitted by law, by the Debtor and the Estate from any and all claims and Causes of Action, whether known or unknown, including any claims and Causes of Action that the Debtor or the Estate would have been legally entitled to assert in their own right including any claims or Causes of Action that could be asserted derivatively or on behalf of the Debtor (or the Estate), that such Entity

would have been legally entitled to assert (whether individually or collectively), based on, or relating to, or in any manner arising from, in whole or in part, the Debtor (including the management, ownership, or operation thereof, or otherwise), any securities issued by the Debtor and the ownership thereof, the Debtor's in- or out-of-court restructuring efforts, the payment or satisfaction of prepetition debt or claims, the Chapter 11 Case, the formulation, preparation, dissemination, negotiation, or filing of the Disclosure Statement, documents and pleadings related to the Plan Sale or an Alternative Sale Transaction, the DIP Order, the DIP Credit Agreement, and any related agreement, instruments, and other documents relating thereto, this Plan, the Plan Supplement, or any other transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Plan Sale or an Alternative Sale Transaction, this Plan, the Plan Supplement, the Chapter 11 Case, the filing of the Chapter 11 Case, the pursuit of the Confirmation Order, the pursuit of the Sale Order, the conduct of the sale process, the pursuit of consummation, the administration and implementation of this Plan, including the distribution of property under this Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence or omission taking place on or before the Effective Date; *provided, however*, that this provision shall not operate to waive or release any Claims or Causes of Action related to any act or omission that is determined in a Final Order by a court of competent jurisdiction to have constituted actual intentional fraud, willful misconduct, or gross negligence of such Person. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release (1) any post-Effective Date obligations of any party or Entity under this Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement this Plan; (2) any obligations under or in respect of the Sale Order, the Alternative Sale Documents, or the Plan Sale Documents; or (3) the Retained Causes of Action.

B. Releases by Holders of Claims

As of the Effective Date, except as otherwise provided in this Plan or the Confirmation Order, in exchange for good and valuable consideration, including the obligations of the Debtor under this Plan, to the fullest extent permissible under applicable law, as such law may be extended or integrated after the Effective Date, each Releasing Party shall be deemed to conclusively, absolutely, unconditionally, irrevocably and forever release each Released Party from any and all claims and Causes of Action, whether known or unknown, including any claims and Causes of Action that the Debtor or the Estate would have been legally entitled to assert in their own right including any claims or Causes of Action that could be asserted derivatively or on behalf of the Debtor (or the Estate), that such Entity would have been legally entitled to assert (whether individually or collectively), based on, relating to, or in any manner arising from, in whole or in part, the Debtor (including the management, ownership or operation thereof, or otherwise), any securities issued by the Debtor and the ownership thereof, the Debtor's in- or out-of-court restructuring efforts, the payment or satisfaction of prepetition debt or claims, the Chapter 11 Case, the formulation, preparation, dissemination, negotiation, or filing of the Disclosure Statement, documents and pleadings related to the Plan Sale or an Alternative Sale Transaction, or agreement or document created or entered into in connection with the Plan Sale or any Alternative Sale Transaction, the DIP Order, the DIP Credit Agreement, and any related agreement, instruments, and other documents relating thereto, this Plan, the Plan Supplement, the

Chapter 11 Case, the filing of the Chapter 11 Case, the pursuit of the Confirmation Order, the pursuit of the Sale Order, the conduct of the sale process, the pursuit of consummation, the administration and implementation of this Plan, including the distribution of property under this Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence or omission taking place on or before the Effective Date; *provided, however*, that this provision shall not operate to waive or release any Claims or Causes of Action related to any act or omission that is determined in a Final Order by a court of competent jurisdiction to have constituted actual intentional fraud, willful misconduct, or gross negligence of such Person. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release (1) any post-Effective Date obligations of any party or Entity under this Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement this Plan; or (2) any obligations under or in respect of the (i) Sale Order and (ii) the Alternative Sale Documents or the Plan Sale Documents, whichever applicable.

C. Exculpation

Except as otherwise specifically provided in this Plan, to the maximum extent permitted by applicable law, no Exculpated Party shall have or incur liability for, and each Exculpated Party is hereby released and exculpated from, any Cause of Action for any Claim related to any act or omission arising from the Petition Date through and including the Effective Date in connection with, relating to, or arising out of, the Chapter 11 Case, the formulation, preparation, dissemination, negotiation, or filing of the Debtor's in-court restructuring efforts, the Disclosure Statement, documents and pleadings related to the Plan Sale or an Alternative Sale Transaction, the DIP Orders and any related agreement, instruments, and other documents relating thereto, this Plan, the Plan Supplement, or any other restructuring transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Plan Sale or an Alternative Sale Transaction, this Plan, the Plan Supplement, the Chapter 11 Case, the filing of the Chapter 11 Case, the pursuit of the Confirmation Order, the pursuit of the Sale Order, the conduct of the sale process, the pursuit of consummation, the administration and implementation of this Plan, including the distribution of property under this Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence or omission taking place between the Petition Date and the Effective Date, except for claims related to any act or omission that is determined in a Final Order by a court of competent jurisdiction to have constituted actual intentional fraud, willful misconduct, or gross negligence of such Person, but in all respects such Entities shall be entitled to reasonably rely upon the written advice of counsel with respect to their duties and responsibilities pursuant to this Plan to the extent permitted under applicable law.

D. Injunction

Except as otherwise provided in this Plan or the Confirmation Order, all Entities who have held, hold, or may hold claims, Interests, Causes of Action, or liabilities that: (1) are subject to compromise and settlement pursuant to the terms of this Plan; (2) have been released pursuant to this Plan; (3) are subject to exculpation pursuant to this Plan; or (4) are otherwise satisfied, stayed, released, or terminated pursuant to the terms of this Plan, are permanently enjoined and precluded,

from and after the Effective Date, from taking any actions to interfere with the implementation or consummation of this Plan and from commencing or continuing in any manner, any action or other proceeding on account of any such claims, Interests, Causes of Action, or liabilities that have been compromised or settled against the Debtor or any Person or Entity so released or exculpated (or the property or estate of any Entity, directly or indirectly, so released or exculpated) on account of, or in connection with or with respect to, any released, settled, compromised, or exculpated claims, Interests, Causes of Action, or liabilities, including being permanently enjoined and precluded, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtor Released Parties, the Released Parties, or Exculpated Parties (as applicable): (a) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such claims or Interests; (b) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such claims or Interests; (c) creating, perfecting, or enforcing any lien or encumbrance of any kind against such Entities or the property or the estate of such Entities on account of or in connection with or with respect to any such claims or Interests; (d) asserting any right of setoff or subrogation of any kind against any obligation due from such Entities or against the property of such Entities on account of or in connection with or with respect to any such claims or Interests ((i) other than a setoff exercised prior to the Petition Date, (ii) unless such Entity has filed a motion requesting the right to perform such setoff on or before the Effective Date or has filed a Proof of Claim or proof of Interest indicating that such Entity asserts, has, or intends to preserve any right of setoff pursuant to applicable law; or (iii) otherwise permissible under applicable law, asserted through a timely filed or deemed timely filed proof of claim); and (e) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such claims or Interests released, exculpated, or settled pursuant to this Plan

E. Waiver of Statutory Limitations on Releases

EACH RELEASING PARTY IN EACH OF THE RELEASES CONTAINED IN THIS PLAN (INCLUDING UNDER ARTICLE IX OF THIS PLAN) EXPRESSLY ACKNOWLEDGES THAT ALTHOUGH ORDINARILY A GENERAL RELEASE MAY NOT EXTEND TO CLAIMS WHICH THE RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN THEIR FAVOR, WHICH IF KNOWN BY IT MAY HAVE MATERIALLY AFFECTED ITS SETTLEMENT WITH THE PARTY RELEASED, IT HAS CAREFULLY CONSIDERED AND TAKEN INTO ACCOUNT IN DETERMINING TO ENTER INTO THE ABOVE RELEASES THE POSSIBLE EXISTENCE OF SUCH UNKNOWN LOSSES OR CLAIMS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EACH RELEASING PARTY EXPRESSLY WAIVES ANY AND ALL RIGHTS CONFERRED UPON IT BY ANY STATUTE OR RULE OF LAW WHICH PROVIDES THAT A RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CLAIMANT DOES NOT KNOW OR SUSPECT TO EXIST IN ITS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY IT MAY HAVE MATERIALLY AFFECTED ITS SETTLEMENT WITH THE RELEASED PARTY, INCLUDING THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542. THE RELEASES CONTAINED IN ARTICLE IX OF THIS PLAN ARE EFFECTIVE REGARDLESS OF WHETHER THOSE RELEASED MATTERS ARE PRESENTLY KNOWN, UNKNOWN, SUSPECTED OR UNSUSPECTED, FORESEEN OR UNFORESEEN.

F. No Discharge

Because the Debtor is liquidating, the Debtor is not entitled to a discharge of obligations pursuant to section 1141 of the Bankruptcy Code with regard to any Holders of Claims.

In accordance with section 1141(d)(3) of the Bankruptcy Code, the Plan does not discharge the Debtor. Bankruptcy Code Section 1141(c) nevertheless provides, among other things, that the property dealt with by the Plan is free and clear of all Claims and interests against the Debtor, and Bankruptcy Code Section 1141(a) provides that the Plan, as confirmed, will be binding to the extent provided therein. As such, no Entity holding a Claim against the Debtor may receive any payment from, or seek recourse against, any assets that are to be distributed under the Plan other than assets required to be distributed to that Entity under the Plan. All parties are precluded from asserting against any property to be distributed under the Plan any Claims, rights, Causes of Action, liabilities, or Interests based upon any act, omission, transaction, or other activity that occurred before the Effective Date except as expressly provided in the Plan or the Confirmation Order.

G. Release of Liens

Except as otherwise provided herein or in any contract, instrument, release, or other agreement or document created pursuant to this Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to this Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Debtor's Estate shall be fully released and discharged, and all of the right, title, and interest of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Debtor and its successors and assigns.

If any Holder of a Secured Claim or any agent for such Holder has filed or recorded publicly any Liens and/or security interests to secure such Holder's Secured Claim, as soon as practicable on or after the Effective Date, such Holder (or the agent for such Holder) shall take any and all steps requested by the Liquidating Trustee that are necessary or desirable to record or effectuate the cancellation and/or extinguishment of such Liens and/or security interests, including the making of any applicable filings or recordings, and the Liquidating Trustee shall be entitled to make any such filings or recordings on such Holder's behalf.

**ARTICLE X.
RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain jurisdiction over all matters arising out of, or related to, the Chapter 11 Case, the Sales, the Confirmation Order, the Plan Supplement, and this Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including jurisdiction over, among other items, each of the following:

1. Allow, disallow, determine, liquidate, classify, estimate, or establish the priority, secured or unsecured status, or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the secured or unsecured status, priority, amount, or allowance of Claims or Interests.

2. Resolve any cases, controversies, suits, or disputes that may arise in connection with Claims, including Claim objections, allowance, disallowance, subordination, estimation and distribution.

3. Decide and resolve all matters related to the granting and denying, in whole or in part of, any applications for allowance of compensation or reimbursement of expenses to Retained Professionals authorized pursuant to the Bankruptcy Code or this Plan.

4. Resolve any matters related to: (a) the assumption or assumption and assignment of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor may be liable and to hear, determine, and, if necessary, liquidate, any cure amount arising therefrom; and/or (b) any dispute regarding whether a contract or lease is or was executory or expired.

5. Adjudicate, decide or resolve any motions, adversary proceedings, contested, or litigated matters, and any other matters, and grant or deny any applications involving the Debtor that may be pending on the Effective Date.

6. Adjudicate, decide, or resolve any and all matters related to section 1141 of the Bankruptcy Code.

7. Adjudicate, decide or resolve any motions, adversary proceedings, contested, or litigated matters, and any other matters relating to the Retained Causes of Action.

8. Enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of this Plan and all contracts, instruments, releases, and other agreements or documents created in connection with this Plan or the Disclosure Statement.

9. Resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the interpretation or enforcement of this Plan or any Person's or Entity's obligations incurred in connection with this Plan.

10. Issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Person or Entity with enforcement of this Plan.

11. Resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the releases, injunctions, and other provisions contained in this Plan and enter such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions.

12. Enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated.

13. Determine any other matters that may arise in connection with or related to the APAs or related Sale documents, the Disclosure Statement, this Plan, the Plan Supplement, and the Confirmation Order.

14. Ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of this Plan and adjudicate any and all disputes arising from or relating to distributions under this Plan.

15. Resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the repayment or return of distributions and the recovery of additional amounts owed by any Holder for amounts not timely repaid.

16. Consider any modifications of this Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order.

17. Hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of this Plan, the Plan Supplement, or the Confirmation Order.

18. Hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code (including, without limitation, any request by the Debtor or the Liquidating Trustee on behalf of the Liquidating Trust (as applicable) for an expedited determination of tax under section 505(b) of the Bankruptcy Code.

19. To recover all assets of the Debtor and property of the Estate, wherever located.

20. To consider requests for extensions of the term of the Liquidating Trust as provided herein.

21. Enter an order or final decree concluding or closing the Chapter 11 Case.

22. Enforce all orders previously entered by the Bankruptcy Court.

23. Hear any other matter over which the Bankruptcy Court has jurisdiction.

ARTICLE XI.

MODIFICATION, REVOCATION, OR WITHDRAWAL OF THIS PLAN

A. Modification of this Plan

Subject to the limitations contained in this Plan, the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules (1) to amend or modify this Plan prior to the entry of the Confirmation Order, including amendments or modifications to satisfy section 1129 of the Bankruptcy Code; and (2) after the entry of the Confirmation Order, the Debtor may, upon order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

B. Other Amendments

The Debtor may make appropriate non-material, technical adjustments and modifications to this Plan or the Plan Supplement prior to the Effective Date without further order or approval of the Bankruptcy Court.

C. Effect of Confirmation on Modifications

Entry of the Confirmation Order shall mean that all modifications or amendments to this Plan since the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or re-solicitation under Bankruptcy Rule 3019.

D. Revocation of Plan; Effect of Non-Occurrence of Conditions to the Effective Date

Subject to the conditions to the Effective Date, the Debtor reserves the right to revoke or withdraw this Plan prior to the entry of the Confirmation Order and to File subsequent plans of reorganization or liquidation. If the Debtor revokes or withdraws this Plan, or if entry of the Confirmation Order or the Effective Date does not occur, then (1) this Plan shall be null and void in all respects; (2) any settlement or compromise embodied in this Plan, assumption or rejection of Executory Contracts or Unexpired Leases effected by this Plan, and any document or agreement executed pursuant hereto shall be deemed null and void; and (3) nothing contained in this Plan, the Plan Supplement, the Confirmation Order, or the Disclosure Statement shall (a) constitute a waiver or release of any Claims, Interests, or Causes of Action, (b) prejudice in any manner the rights of the Debtor or any other Person or Entity, or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by the Debtor or any other Person or Entity.

**ARTICLE XII.
MISCELLANEOUS PROVISIONS**

A. Debtor's Operation from Confirmation Hearing Through Effective Date

During the period from the Confirmation Hearing through and until the Effective Date, the Debtor shall continue to operate as a debtor-in-possession, subject to the oversight of the Bankruptcy Court as provided in the Bankruptcy Code, the Bankruptcy Rules, and all orders of the Bankruptcy Court that are then in full force and effect.

B. Immediate Binding Effect

Notwithstanding Bankruptcy Rules 3020(e) or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of this Plan and the documents and instruments contained in the Plan Supplement shall be immediately effective and enforceable and deemed binding upon the Debtor, the Liquidating Trustee, all Holders of Claims against and Interests in the Debtor (regardless of whether any such Holder has voted or failed to vote to accept or reject this Plan and regardless of whether any such Holder is entitled to receive any distribution under this Plan), all Persons or Entities that are parties to or are subject to the settlements, compromises, releases, and injunctions described in this Plan, each Person or Entity acquiring property under this Plan, any and all non-Debtor parties to Executory Contracts and Unexpired Leases, and all parties in interest.

C. Additional Documents

On or before the Effective Date, the Debtor may File with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of this Plan. The Debtor, the Liquidating Trustee, all Holders

of Claims or Interests receiving distributions pursuant to this Plan, and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may reasonably be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order.

D. Substantial Consummation

On the Effective Date, this Plan shall be deemed to be substantially consummated (within the meaning set forth in section 1101 of the Bankruptcy Code) pursuant to section 1127(b) of the Bankruptcy Code.

E. Reservation of Rights

This Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order. None of the Filing of this Plan, any statement or provision contained in this Plan, or the taking of any action by the Debtor with respect to this Plan, the Disclosure Statement, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of the Debtor with respect to the Holders of Claims or Interests prior to the Effective Date.

F. Successors and Assigns

The rights, benefits, and obligations of any Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, beneficiaries or guardian, if any, of each Person or Entity.

G. Determination of Tax Liabilities

As of the Effective Date, the Liquidating Trustee will be responsible for preparing and filing any tax forms or returns on behalf of the Estate and Liquidating Trust; *provided, however*, that the Liquidating Trustee shall not be responsible for preparing or filing any tax forms for Holders of Interests in the Debtor (which Interests shall be cancelled pursuant to this Plan), but shall provide such Holders with any information reasonably required to prepare such forms. The Debtor and the Liquidating Trustee (as applicable) shall have the right to request an expedited determination of any tax liability pursuant to section 505 of the Bankruptcy Code, including on any unpaid liability of the Estate or the Liquidating Trust for any tax incurred during the administration of the Chapter 11 Case.

H. Dissolution of the Committee

On the Effective Date, the Committee (if appointed) will dissolve and the members thereof will be released and discharged from all duties and obligations arising from or related to the Chapter 11 Case; *provided, however*, that, after the Effective Date, the Committee will continue to exist solely with respect to (1) any applications for Professional Fee Claims or expense reimbursements for members of the Committee, including preparing, objecting to, defending, and attending any hearing with respect to the same; (2) any motions or other actions seeking enforcement or implementation of the provisions of this Plan or Confirmation Order; and (3) any appeal pending as of the Effective Date or filed thereafter, the outcome of which could reasonably be expected to affect in any material way the treatment of the Holders of General Unsecured

Claims, including, but not limited to, any cases, controversies, suits or disputes arising in connection with the consummation, interpretation, implementation or enforcement of this Plan, the Plan Supplement, or the Confirmation Order. Following the Effective Date, the Committee's Retained Professionals shall be entitled to reasonable compensation for services rendered in connection with the matters identified in clauses (1) through (3). Any such payments made in connection therewith shall be made without any further notice to or action, order, or approval of the Bankruptcy Court.

I. Notices

In order for all notices, requests, and demands to or upon the Debtor or the Liquidating Trustee, as the case may be, to be effective, such notices, requests and demands shall be in writing (including by electronic mail) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by email, when received, and served on or delivered to the following parties:

Debtor	Counsel to the Debtor
Norcold LLC Attn: Petrus Johannes Adriana Struijs (pstruijs@thetford.eu)	Young Conaway Stargatt & Taylor, LLP Rodney Square 1000 North King Street Wilmington, Delaware 19801 Attention: Sean M. Beach, Esq.; Matthew B. Lunn, Esq.; Jared W. Kochenash, Esq. Email: sbeach@ycst.com; mlunn@ycst.com; jkochenash@ycst.com
Liquidating Trustee	Counsel to the Liquidating Trustee
[•]	[•]

After the Effective Date, Persons or Entities that wish to continue to receive documents pursuant to Bankruptcy Rule 2002 must File a renewed request to receive documents pursuant to Bankruptcy Rule 2002. After the Effective Date, the Liquidating Trustee is authorized to limit the list of Entities receiving documents pursuant to Bankruptcy Rule 2002 to those Persons or Entities that Filed such renewed requests.

J. Term of Injunctions or Stays

Except as otherwise provided in this Plan, to the maximum extent permitted by applicable law and subject to the Bankruptcy Court's post-Confirmation jurisdiction to modify the injunctions and stays under this Plan (1) all injunctions with respect to or stays against an action against property of the Debtor or the Estate arising under or entered during the Chapter 11 Case under sections 105 or 362 of the Bankruptcy Code, and in existence on the date the Confirmation Order

is entered, shall remain in full force and effect until such property is no longer property of the Debtor or the Estate; and (2) all other injunctions and stays arising under or entered during the Chapter 11 Case under sections 105 or 362 of the Bankruptcy Code shall remain in full force and effect until the earliest of (a) the date that the Chapter 11 Case is closed pursuant to a Final Order of the Bankruptcy Court or (b) the date that the Chapter 11 Case is dismissed pursuant to a Final Order of the Bankruptcy Court. All injunctions or stays contained in this Plan or the Confirmation Order shall remain in full force and effect indefinitely.

K. Entire Agreement

On the Effective Date, this Plan and the Plan Supplement supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan.

L. Plan Supplement Exhibits

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of this Plan as if set forth in full in this Plan. Copies of such exhibits and documents shall be made available upon written request to the Debtor's counsel or the Liquidating Trustee's counsel (as applicable) at the address above or by downloading such exhibits and documents free of charge from the Notice and Claims Agent's website.

Unless otherwise ordered by the Bankruptcy Court, to the extent any exhibit or document in the Plan Supplement is inconsistent with the terms of any part of this Plan that does not constitute the Plan Supplement, such part of this Plan that does not constitute the Plan Supplement shall control. The documents in the Plan Supplement are considered an integral part of this Plan and shall be deemed approved by the Bankruptcy Court pursuant to the Confirmation Order.

M. Governing Law

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of Delaware, without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction, and implementation of this Plan, any agreements, documents, instruments, or contracts executed or entered into in connection with this Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control), and corporate governance matters.

N. Non-Severability of Plan Provision Upon Confirmation

If any term or provision of this Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation.

The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is the following: (1) valid and enforceable pursuant to its terms; (2) integral to this Plan and may not be deleted or modified without the consent of the Debtor and the Liquidating Trustee (as applicable); and (3) non-severable and mutually dependent.

O. Closing of the Chapter 11 Case

Following the Effective Date, the Liquidating Trustee shall be permitted, upon notice and a hearing, to close the Chapter 11 Case. After the full administration of the Chapter 11 Case, the Liquidating Trustee shall promptly File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022, a motion pursuant to Local Rule 3022-1(a), and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

[Signature Page Follows]

Dated: November 3, 2025

Respectfully submitted,

/s/ Richard Wu
By: Richard Wu
Chief Restructuring Officer
Norcold LLC

EXHIBIT A

Asset Purchase Agreement

ASSET PURCHASE AGREEMENT

DATED AS OF [●], 2025

BY AND BETWEEN

DAVE CARTER & ASSOCIATES, INC.

AND

NORCOLD, LLC

[THIS DOCUMENT IS INTENDED SOLELY TO FACILITATE DISCUSSIONS BETWEEN THE PARTIES IDENTIFIED HEREIN. IT IS NOT INTENDED, AND WILL NOT BE DEEMED, TO CREATE A LEGALLY BINDING OR ENFORCEABLE OFFER OR AGREEMENT OF ANY TYPE OR NATURE PRIOR TO EXECUTION HEREOF BY ALL OF THE PARTIES HERETO.]

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EXHIBITS

Exhibit A	Form of Assignment and Assumption Agreement
Exhibit B	Bidding Procedures
Exhibit C	Bidding Procedures Order
Exhibit D	Form of Bill of Sale
Exhibit E	Form of Joinder
Exhibit F	Disclosure Schedules

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “Agreement”), dated as of [●], 2025 (the “Execution Date”), is made and entered into by and between Dave Carter & Associates, Inc., a Florida corporation (“Buyer”) and Norcold, LLC, a Delaware limited liability company (“Seller”).

RECITALS

WHEREAS, Seller is engaged in the business of developing, designing, assembling, inspecting, testing, labeling, selling and distributing gas absorption refrigerators and cooling units to original manufacturers and distributors for installation in recreational vehicles and boats throughout the United States (such business of Seller, including any other business currently conducted or proposed to be conducted by Seller, the “Business”);

WHEREAS, on [●], 2025 (the “Petition Date”), Seller commenced a voluntary case under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq* (the “Bankruptcy Code”), in the United States Bankruptcy Court for the [●] (the “Bankruptcy Court”), under Case No. [●] (the “Bankruptcy Case”);

WHEREAS, in accordance with the Bidding Procedures and subject to the terms and conditions set forth in this Agreement and the entry of the Sale Order, Seller desires to sell to Buyer, all of the Acquired Assets, and Buyer desires to purchase from Seller all of the Acquired Assets, and Seller desires to assign, and Buyer desires to assume, all of the Assumed Liabilities, and the Parties intend to effectuate the transactions contemplated by this Agreement (the “Transactions”), upon the terms and conditions hereinafter set forth;

WHEREAS, the Acquired Assets and the Assumed Liabilities shall be purchased and assumed by Buyer, pursuant to the Sale Order, free and clear of any and all Liens (other than Assumed Liens), pursuant to §§ 105, 363 and 365 of the Bankruptcy Code, and Rules 4001, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure; and

WHEREAS, Seller’s ability to consummate the Transactions is subject to, among other things, the entry of the Sale Order by the Bankruptcy Court.

NOW, THEREFORE, in consideration of the premises and the mutual promises herein made, and in consideration of the foregoing and of the representations, warranties, covenants, agreements and conditions herein contained, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound hereby, agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Definitions.

For purposes of this Agreement, the following terms have the meaning specified or referenced below.

“Accounts Payable” means, with respect to the Seller, all obligations for the payment of money, including trade payables, accrued expenses (exclusive of any litigation and product liability reserves), and other amounts due and owing to any third party or to any Affiliate, whether or not invoiced, arising out of or in connection with the conduct of the Business, including

payables in respect of goods or services received, intercompany account balances, employee-related liabilities, and other similar obligations.

“Accounts Receivable” means, with respect to Seller, all accounts receivable, notes receivable, purchase orders, negotiable instruments, completed work or services that have not been billed, chattel paper, notes and other rights to payment, including (a) those consisting of all accounts receivable in respect of services rendered or products sold by Seller, any other miscellaneous accounts receivable of Seller, and any claim, remedy or other right of Seller related to any of the foregoing, together with all unpaid financing charges accrued thereon and any payments with respect thereto, and (b) all accounts and accounts receivable of Seller existing at the Closing Date arising out of the operation of the Business and all rights to bill and receive payment (including all accounts and accounts receivable that have been “written off” or charged against or to any bad debt reserve of Seller), and any security held by Seller for the payment thereof, in each case.

“Action” means any legal action, suit, petition, plea, charge, claim, demand, arbitration, audit, complaint, grievance, summons, litigation, mediation, suit, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding), prosecution, contest, hearing, inquiry, inquest, audit, examination or investigation commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental Authority.

“Affiliate” has the meaning set forth in 11 U.S.C. § 101(2).

“Approved Budget” has the meaning set forth in the DIP Order.

“Assignment and Assumption Agreement” means the Assignment and Assumption Agreement in substantially the form attached hereto as Exhibit A, with any modifications thereto to be acceptable to each of Seller and Buyer.

“Assumed Liens” means (i) Liens for Taxes not yet delinquent or that are being contested in good faith by appropriate proceedings and arising or incurred in the Ordinary Course of Business; (ii) mechanic’s, workmen’s, repairmen’s, warehousemen’s, carrier’s, or other similar Liens, including all statutory liens, arising, or incurred in the Ordinary Course of Business for amounts that are not delinquent and that are not, individually or in the aggregate, material to the business of Seller; (iii) with respect to leased or licensed real or personal property, the terms and conditions of the lease, license, sublease, or other occupancy agreement applicable thereto that are customary; (iv) with respect to any leased real property, usual, and customary zoning, building codes, and other land use laws regulating the use or occupancy of such leased real property or the activities conducted thereon that are imposed by any Governmental Authority having jurisdiction over such leased real property; and (v) all Liens specifically set forth on Section 1.1(a)(i) of the Disclosure Schedules.

“Assumed Taxes” means only (a) Washington state excise taxes arising from the operation of the Business and attributable to Pre-Closing Tax Periods to the extent set forth on Section 2.4(f) of the Disclosure Schedules, (b) customs duties and tariffs arising from the importation of goods for the Business and attributable to Pre-Closing Tax Periods, in each case solely to the extent not included in the Wind-Down Budget, and (c) taxes set forth on Section 1.1(a)(ii) of the Disclosure Schedules.

“Avoidance Action” means any claim, right or cause of action of Seller arising under chapter 5 of the Bankruptcy Code (including sections 544, 545, 547, 548, 549, 550 and 553) and any analogous state law claims relating to the Acquired Assets or the Business.

“Backup Bidder” has the meaning set forth in the Bidding Procedures.

“Benefit Plan” means (a) any “employee benefit plan” within the meaning of Section 3(3) of ERISA, and (b) any other compensation or benefit plan, program, practice, arrangement or agreement, whether or not subject to ERISA, whether or not reduced to writing, and whether covering a single individual or group of individuals, including, but not limited to, any bonus, commission, employment, consulting, equity or equity-based, incentive compensation profit-sharing, deferred compensation, employee loan, life insurance, pension, retirement, supplemental retirement, tax gross-up, expense reimbursement, medical, hospital, disability, “cafeteria” or “flexible” benefit, welfare or fringe benefit, change of control, transaction, severance or retention, post-termination or post-employment health and welfare, salary continuation, paid time-off, or other compensation or benefit policy, practice, program, plan, contract, agreement or arrangement, in each case, (i) under which any current or former employee or service provider (or any of their respective beneficiaries) has any present or future right to benefits, and (ii) with respect to which Seller sponsors, maintains or contributes to, or has any obligation to maintain or contribute to, or has or could reasonably be expected to have any Liability.

“Bidding Procedures” means those certain bidding procedures substantially in the form attached hereto as **Exhibit B**, to be approved by the Bankruptcy Court pursuant to the Bidding Procedures Order, with any modifications thereto to be acceptable to each of Seller and Buyer.

“Bidding Procedures Order” means that certain Order of the Bankruptcy Court substantially in the form attached hereto as **Exhibit C**, with any modifications thereto to be acceptable to Buyer.

“Bill of Sale” means the Bill of Sale substantially in the form attached hereto as **Exhibit D**, with any modifications thereto to be acceptable to each of Seller and Buyer.

“Business Day” means any day of the year on which national banking institutions in New York, New York are open to the public for conducting business and are not required or authorized to close.

“Cash” means all cash and cash equivalents, including checks, commercial paper, treasury bills, certificates of deposit and marketable securities, and any bank accounts, lockbox arrangements, cash in transit (including uncleared checks, ACH payments, and wire transfers) and other liquid investments of Seller as of the Closing. For the avoidance of doubt, any Cash that is an “Excluded Asset” pursuant to this Agreement shall remain subject to all Liens.

“Claim” means a “claim” as defined in section 101(5) of the Bankruptcy Code, against Seller.

“COBRA” means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

“Code” means the Internal Revenue Code of 1986, as amended.

“Contract” means any agreement, contract, obligation, promise, undertaking, lease (including Leases and Lessor Leases), sublease, purchase order, arrangement, license,

commitment, insurance policy or other binding arrangement or understanding (in each case, whether written or oral), and any amendments, modifications or supplements thereto.

“Confirmation Order” means the order of the Bankruptcy Court confirming the Plan.

“Copyrights” means all United States and foreign copyright rights in any original works of authorship, whether registered or unregistered, including all copyright registrations and applications.

“Credit Bid” means a bid made pursuant to section 363(k) of the Bankruptcy Code using some or all of the outstanding obligations under the DIP Term Sheet.

“Cure Costs” means all monetary liabilities as of the effective date of Seller’s assignment of a Contract to Buyer, including pre-petition monetary liabilities, of Seller that must be paid or otherwise satisfied to cure all of Seller’s monetary defaults under the Assigned Contracts pursuant to section 365 of the Bankruptcy Code at the time of the assumption thereof and assignment to Buyer as provided hereunder as such amounts are determined by the Bankruptcy Court.

“DIP Financing” means the senior secured superpriority debtor-in-possession financing provided to Seller pursuant to the DIP Term Sheet, as approved by the DIP Order, including all loans, advances, obligations, fees, interest, expenses and other amounts thereunder, and any amendments, restatements, supplements, modifications, renewals, replacements, refinancings or refundings thereof.

“DIP Term Sheet” means that certain Senior Secured Superpriority Debtor-in-Possession Term Loan Facility Term Sheet, dated as of [●], by and among Seller and the lenders from time to time party thereto, as the same may be amended, restated, supplemented or otherwise modified, together with all annexes, exhibits and schedules thereto.

“DIP Order” means the interim order and the final order entered by the Bankruptcy Court approving, among other things, Seller’s entry into the DIP Term Sheet and the DIP Facility (as defined in the DIP Order).

“Disclosure Schedules” means the Disclosure Schedules attached hereto, dated as of the Execution Date, delivered by Seller to Buyer in connection with the execution of this Agreement.

“Documents” means all of the documents of, generated by, used in, or held for use in the operation of the Business as conducted by Seller.

“Effective Time” means 12:01 a.m. prevailing Eastern Time on the Closing Date.

“Employee Retention Credit” means an estimated amount of approximately \$1,300,000.00, including all rights to claim, receive, or enforce payment thereof.

“Environmental Laws” means any and all Legal Requirements concerning or relating to public health and safety, the protection of worker or occupational health from exposure to Hazardous Substances and employee safety in the workplace, and pollution or protection of the environment, including those relating to the presence, use, manufacturing, refining, production, generation, handling, transportation, treatment, recycling, storage, disposal, distribution,

importing, labeling, testing, processing, discharge, Release, threatened Release, control, cleanup, or other action or failure to act involving Hazardous Substances.

“Equipment” means all furniture, fixtures, equipment, scaffolding and related materials, computers, machinery, tools, molds, vehicles, apparatus, appliances, implements, telephone systems, management information systems (including all software and hardware related thereto), signage, supplies and all other tangible personal property of every kind and description, and improvements and tooling of, used in, or held for use in, the operation of the Business as conducted by Seller, wherever located, including communications equipment, information technology assets, and any attached and associated hardware, routers, devices, panels, cables, manuals, cords, connectors, cards, and vendor documents, and including all warranties of the vendor applicable thereto.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“Estimated Wind-Down Expenses” means the out-of-pocket administrative costs and expenses to be funded by Seller or its Affiliates and which Seller expects to incur in connection with winding down its bankruptcy estate after the Closing Date (whether incurred prior to, at or following Closing), as, and solely to the extent, set forth in the Wind-Down Budget as mutually agreed and as may be adjusted pursuant to Section 2.7; provided, however, that such Estimated Wind-Down Expenses shall include: (i) all disbursements in the Approved Budget that have not been disbursed as of the date of approval of the Wind-Down Budget; (ii) all prepetition claims entitled to priority under section 507(a) of the Bankruptcy Code; and (iii) the amounts in the Professional Fees Escrow (as defined in the DIP Order) on the Closing Date. For the avoidance of doubt, to the extent a cost or expense would fall into multiple of the foregoing categories, it will only be included once in the calculation of the Estimated Wind-Down Expenses.

“Event of Default” has the meaning set forth in the DIP Term Sheet.

“Excess Cash” means all Cash of the Seller or its bankruptcy estate remaining as of the date that is seventy-five (75) days after the Closing Date, after giving effect to (i) the payment or reservation of all Cure Costs, Estimated Wind-Down Expenses, and other expenses permitted or required to be paid by the Seller or its bankruptcy estate pursuant to the Sale Order or otherwise in connection with the Bankruptcy Case, and (ii) the establishment of a reasonable reserve for any remaining wind-down or professional expenses as determined in accordance with Section 2.7(b).

“Excluded Causes of Action” means any and all Actions, claims, causes of action, rights, counterclaims, defenses or assertions against, of, by or on behalf of Seller, whether known or unknown, choate or inchoate, foreseen or unforeseen, contingent or fixed, in law or in equity, arising out of, relating to, or in connection with any act, omission, event, circumstance, condition, product, practice, service, or other conduct occurring, arising, or alleged to have occurred or arisen prior to the Closing Date, including for the avoidance of doubt any such Actions or claims that are asserted under, arise under, or are brought pursuant to any Assigned Contract to the extent based on pre-Closing Date facts, events, or conduct, and including those relating to the matters set forth on Section 1.1(b) of the Disclosure Schedules.

“Final Order” means an Action taken or Order issued by the applicable Governmental Authority as to which: (a) no request for stay of the Action or Order is pending, no such stay is in effect, and, if any deadline for filing any such request is designated by statute or

regulation, it is passed, including any extensions thereof; (b) no petition for rehearing or reconsideration of the Action or Order, or protest of any kind, is pending before the Governmental Authority, and the time for filing any such petition or protest is passed; (c) the Governmental Authority does not have the Action or Order under reconsideration or review on its own motion, and the time for such reconsideration or review has passed; and (d) the Action or Order is not then under judicial review, there is no notice of appeal or other application for judicial review pending, and the deadline for filing such notice of appeal or other application for judicial review has passed, including any extensions thereof; provided, however, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Code, may be filed relating to such order, shall not cause such order not to be a Final Order.

“GAAP” means generally accepted accounting principles in the United States.

“Governmental Authority” means any United States federal, state or local or any foreign government, governmental authority or regulatory or administrative authority, agency or commission or any court, tribunal or judicial body having jurisdiction, including the Bankruptcy Court, or any mediator, arbitrator or arbitral body.

“Governmental Authorization” means any approval, consent, license, Permit, waiver or other authorization issued, granted or otherwise made available by or under the authority of any Governmental Authority.

“Hazardous Substance” means any substance, material or waste (including chemicals, compounds, mixtures, pollutants and contaminants) which is regulated because of its effect or potential effect on public health or the environment, including (a) any substance, material or waste which is defined as a “pollutant”, “contaminant”, “hazardous waste”, “hazardous material” or “hazardous substance” under any Environmental Law; (b) petroleum or any fraction thereof, or petroleum products, (c) natural gas, (d) asbestos and asbestos-containing materials, (e) radioactive material, (f) urea formaldehyde, and (g) polychlorinated biphenyls.

“Improvements” means the buildings, structures, systems, facilities and improvements located on the Real Property.

“Indebtedness” means, at any time and with respect to any Person, all: (a) indebtedness of such Person for borrowed money; (b) indebtedness of such Person for the deferred purchase price of property or services (other than trade payables, other expense accruals and deferred compensation items arising in the Ordinary Course of Business); (c) obligations of such Person evidenced by notes, bonds, debentures or other similar instruments (other than performance, surety and appeal bonds arising in the Ordinary Course of Business in respect of which such Person’s liability remains contingent); (d) indebtedness of such Person created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property); (e) obligations of such Person under leases which have been or should be, in accordance with GAAP, recorded as finance leases, to the extent required to be so recorded; (f) reimbursement, payment or similar obligations of such Person, contingent or otherwise, under acceptance, letter of credit or similar facilities (but only to the extent drawn); (g) vendor financing arrangements; (h) obligations of such Person under interest rate or currency swap transactions or commodity hedges (valued at the termination value thereof); (i) Indebtedness of others referred to in clauses (a) through (h) above guaranteed directly or indirectly by such Person, or in effect

guaranteed directly or indirectly by such Person, through an agreement (i) to pay or purchase such Indebtedness or to advance or supply funds for the payment or purchase of such Indebtedness, (ii) to supply funds to or in any other manner invest in the debtor (including any agreement to pay for property or services irrespective of whether such property is received or such services are rendered), or (iii) otherwise to assure a creditor against loss in respect of such Indebtedness; and (j) Indebtedness referred to in clauses (a) through (i) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in property (including accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness.

“Intellectual Property” means all intellectual property rights, including all Trademarks, service marks, trade names, mask works, inventions, Patents, Trade Secrets, Copyrights, know-how or any other similar type of proprietary intellectual property right and all applications for, and registrations of, any of the foregoing, in each case, owned, used or licensed by Seller and used in, held for use in, or necessary for the operation of the Business or the Acquired Assets.

“IRS” means the United States Internal Revenue Service.

“Joinder” means a joinder substantially in the form attached hereto as **Exhibit E**.

“Klein Settlement Amount” means an estimated amount of \$100,000, including all rights to claim, receive, or enforce payment thereof.

“Knowledge” means, with respect to any matter in question, in the case of Seller, the actual knowledge, as of the Execution Date, of the Richard Wu, the Chief Restructuring Officer of Seller.

“Leased Real Property” means the real property and Improvements let, leased or subleased by Seller, as tenant, subtenant, lessee or sublessee, or in which Seller has been granted a possessory interest or right to use or occupy all or any portion of the same, in each case, which is subject to a written lease to which Seller is a party, which is used in or held for use in the operation of the Business as conducted by Sellers or on which any Improvements that constitute Acquired Assets are located (each such real property lease a “Lease”, and collectively, the “Leases”).

“Legal Requirement” or “Law” means any federal, state, local or foreign law, constitution, treaty, convention, ordinance, code, rule, regulation, order, injunction, judgment, decree, ruling or other similar requirement enacted, adopted, promulgated or applied by a Governmental Authority.

“Liability” means any liabilities, Liens or obligations of any kind or nature whatsoever (whether direct or indirect, known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, matured or unmatured, determined or determinable, disputed or undisputed, liquidated or unliquidated, or due or to become due, and whether in contract, tort, strict liability or otherwise), including all costs and expenses relating thereto (including all fees, disbursements and expenses of legal counsel, experts, engineers and consultants and costs of investigation).

“Lien” means any “interest” as that term is used in section 363(f) of the Bankruptcy Code, mortgage, deed of trust, pledge, assignment, security interest, encumbrance, lien, mechanics lien, charge, hypothecation, deemed trust, action, easement, charge or otherwise, or claim of any

kind or nature whatsoever in respect of any property, including any of the foregoing created by, arising under, or evidenced by any conditional sale or other title retention agreement, the interest of a lessor under a finance lease, any financing lease having substantially the same economic effect as any of the foregoing, or the filing of a financing statement naming the owner of the property as to which such lien relates as the debtor under the Uniform Commercial Code or any comparable Legal Requirement in any other jurisdiction.

“Material Adverse Effect” means any change, effect, event, state of facts, development or occurrence that, individually or in the aggregate (taking into account all other such changes, events, state of facts or occurrences), has had, or would be reasonably expected to have, a material adverse change in or material adverse effect on (a) the Acquired Assets, taken as a whole, or the assets, properties, financial conditions or results of operations of the Business, taken as a whole, or (b) the ability of Seller to consummate the Transactions or to perform any of their obligations under this Agreement, but, with respect to clause (a), excluding any change or effect to the extent that it results from or arises, following the Execution Date, out of (i) the commencement of the Bankruptcy Case or operations of Seller as a debtor and debtor-in-possession; (ii) any global, national, international, foreign, domestic or regional economic, financial, social, military, political or business conditions (including changes therein) or events in general, including the results of any primary or general elections, the appointment, resignation, or removal of any Person or persons at any Governmental Authority, hostilities, acts of war, sabotage or terrorism or military actions or any escalation, worsening or diminution of any such hostilities, acts of war, sabotage or terrorism or military actions existing or underway; (iii) any changes in any financial, credit, debt, capital or banking markets or conditions (including any disruptions thereof), in each case, in the United States of America or anywhere else in the world; (iv) any changes in interest, currency or exchange rates or the price of any commodity, security or market index; (v) any changes in applicable Legal Requirements, GAAP or other accounting principles or requirements, or standards, interpretations or enforcement thereof (including the effect of the implementation of ASC 842); (vi) changes that are the result of factors generally affecting the industries in which the Business operates; (vii) any failure of Seller to meet, any internal or public projections, forecasts, budgets or estimates of or relating to the Business for any period prior to the Closing, including with respect to revenue, earnings, cash flow or cash position (provided that this clause (vii) shall not preclude any change, effect, event, occurrence, state of facts or development that may have contributed to or caused such failures and is not otherwise excluded from this definition of “Material Adverse Effect” from being taken into account in determining whether a Material Adverse Effect has occurred); (viii) any stoppage or shutdown of any Governmental Authority; (ix) earthquakes, floods, tornadoes, food-borne illness, pandemics (including with respect to COVID-19), avalanches, tsunamis, blizzards, hurricanes, tropical storms, mudslides, fires or other natural disasters or any national, international or regional calamity or any man-made disaster and other force majeure events in the United States of America or any other country or region in the world; (x) the imposition of new tariffs or increases in the rate of existing tariffs, or (xi) the taking of any action expressly required by this Agreement or any other Transaction Document; provided, however, that in the case of the foregoing clauses, such effects, changes, conditions, circumstances, developments or events shall be taken into account in determining whether any material adverse effect or material adverse change has occurred solely to the extent that any such effects, changes, conditions, circumstances, developments or events have had, or are reasonably expected to have, a disproportionate effect on the Business (excluding the

Excluded Assets and the Excluded Liabilities) or the Acquired Assets relative to other participants operating in the industries in which Seller operates.

“Material Contract” means any material Contract of the Business, including any Contract to which Seller is a party or bound or otherwise of or related to the Business that constitutes: (a) a Contract for a joint venture, strategic alliance, partnership, licensing arrangement, franchise agreement, or sharing of profits of the Business; (b) a Contract relating to any pending or consummated acquisition of all or a substantial portion of the equity securities, assets or business of any Person where Seller has any continuing contractual obligations; (c) a Contract with respect to Real Property, including any Lessor Leases; (d) a Contract under which Seller is lessee of, or holds or operates, any personal property owned by any other Person, for which the annual rental rate exceeds \$50,000; (e) a Contract under which Seller is lessor of or permits any third party to hold or operate any property, real or personal of Seller, for which the annual rental rate exceeds \$50,000; (f) a license of Intellectual Property (except an Intellectual Property license implied by the sale of goods, or pursuant to which Seller licenses software generally commercially available with a replacement cost or total annual license and maintenances fees of less than \$50,000); (g) a Contract with a customer of the Business which resulted in, or is reasonably expected to result in, aggregate annual payments to Seller in excess of \$50,000 or obligates the customer to make aggregate payments to Seller of more than \$50,000 over the remaining stated term of such Contract (including any renewal or extension that may be effected at a counterparty’s option); (h) a Contract limiting the right of the Business or Seller to (A) engage in or compete with any Person in any business or in any geographical area, or (B) solicit or hire any Person or customers with respect to the Business (other than pursuant to any restriction imposed by any applicable Legal Requirement or Permit); (i) a Contract that is a settlement or similar agreement pursuant to which Seller is obligated to pay consideration after the Execution Date in excess of \$50,000; (j) a Contract or group of related Contracts with the same party or its Affiliates pursuant to which consideration in excess of \$50,000 is paid or payable; (k) a Contract evidencing Indebtedness in excess of \$50,000; (l) a Collective Bargaining Agreement; or (m) a Contract that contains any indemnification, hold harmless, defense, contribution, or reimbursement obligation of the Seller in favor of any distributor, dealer, reseller, sales representative, agent, customer, end user, original equipment manufacturer, component supplier, logistics provider, or other Person involved in the Seller’s distribution, sales, or supply chain (including obligations relating to product liability, warranty, recall, retrofit, repair, replacement, refunds, credits, chargebacks, safety notices, intellectual property infringement, or compliance with Law).

“Multiemployer Plan” means a “multiemployer plan” as defined in Section 3(37) or 4001(a)(3) of ERISA.

“Order” means any award, writ, injunction, judgment, order, ruling, decision, subpoena, mandate, precept, command, directive, decree or similar determination or finding entered, issued, made or rendered by any Governmental Authority, or any arbitrator, mediator, or other quasi-judicial or judicially sanctioned Person or body.

“Ordinary Course of Business” means, with respect to any Person, the ordinary and usual course of normal day to day operations of such Person and its business, consistent with its past practices during the period immediately preceding the Execution Date, in each case taking into consideration Seller’s recent financial distress, insolvency, bankruptcy, or restructuring activities or efforts, including any material changes to operational practices, vendor or supplier

relationships, payment terms, credit policies, inventory management, or cash management practices, resulting from or influenced by such financial distress.

“Other Rights” means easements, rights of way, privileges, licenses, hereditaments, appurtenances and all other rights and benefits appurtenant or in any way related to, or demised under any lease of or other contact or agreement for the use of, the Leased Real Property.

“Parent” means Thetford LLC, a Delaware liability company.

“Party” or “Parties” means, individually or collectively, Buyer, Seller and any Buyer Designee that becomes party hereto pursuant to a Joinder.

“Patents” means United States and foreign patents and patent applications, as well as any continuations, continuations-in-part, divisions, extensions, reexaminations, reissues, renewals and patent disclosures related thereto.

“Permits” means all approvals, permits, licenses, franchises, waivers, filings, consents, certificates, notices, qualifications, authorizations, registrations, clearances and Orders, together with all modifications, amendments, supplements and extensions thereof, of or from any Governmental Authority or any other Person that are necessary for Seller to own the Acquired Assets or operate the Business.

“Permitted Liens” means any: (a) easements, rights of way, restrictive covenants, encroachments and similar non-monetary Liens or non-monetary impediments against any of the Acquired Assets which do not, individually or in the aggregate, materially or adversely affect the operation of the Business; (b) applicable zoning, building and Environmental Laws, ordinances, codes, restrictions and regulations; (c) materialmen’s, mechanics’, artisans’, shippers’, warehouseman’s or other similar common law or statutory liens incurred in the Ordinary Course of Business for sums not yet due and payable or that are due but may not be paid as a result of the commencement of the Bankruptcy Case; (d) statutory liens for current Taxes, assessments or other governmental charges not yet due and payable or the amount or validity of which are being contested in good faith and for which adequate reserves have been established in accordance with GAAP on the Financial Statements; (e) rights granted to any licensee of any Intellectual Property of Seller in the Ordinary Course of Business; (f) Liens that will be and are discharged or released either prior to, or simultaneously with the Closing; (g) such other Liens, title exceptions or imperfections of title as Buyer may approve in writing in its sole discretion; and (h) other Liens specifically set forth on Section 1.1(a)(iii) of the Disclosure Schedules.

“Person” means any individual, corporation (including any non-profit corporation), partnership, limited liability company, joint venture, unincorporated organization, estate, trust, association, organization or other legal entity or Governmental Authority.

“Plan” means the Chapter 11 Plan filed at Docket No. [●].

“Post-Closing COBRA Liabilities” means the continuation coverage requirements of COBRA arising on or following the Closing Date for all individuals who are M&A qualified beneficiaries (as such term is defined in Treasury Regulation Section 54.4980B-9, Q&A-4(a)).

“Pre-Closing Tax Period” means any Tax period or year, or portion thereof, that ends on or before the Closing Date.

“Pre-Closing Taxes” means any all Liabilities with respect to Taxes imposed on the Business or the Acquired Assets that are attributable to any Pre-Closing Tax Period.

“Pre-Paid Expenses” means all deposits (including customer deposits and security deposits (whether maintained in escrow or otherwise) for rent, electricity, telephone or otherwise), advances, pre-paid expenses, prepayments, vendor rebates and other refunds, claims, causes of action, rights of recovery, rights under warranties and guaranties, rights of set off and rights of recoupment of every kind and nature (whether or not known or unknown or contingent or non-contingent), in each case, excluding any deposits or prepayments of Pre-Closing Taxes including, for the avoidance of doubt, any rights to payment, refund or credit in respect of the Employee Retention Credit or similar Tax credit or incentive, whether or not received as of the Closing Date.

“Pre-Petition Debt Documents” means any prepetition credit, loan, indenture, note purchase, or similar agreements of Seller, including any guarantees thereof by Seller and Buyer, as identified on Schedule 1.1(c).

“Qualified Bid” has the meaning set forth in the Bidding Procedures.

“Qualified Bidder” has the meaning set forth in the Bidding Procedures.

“Real Property” means: (a) the Leased Real Property; (b) all strips and gores and any land lying in the bed of any public road, highway or other access way, open or proposed, adjoining such real property to the extent that Seller has a legally recognized interest therein; and (c) all Other Rights.

“Release” means (a) any releasing, spilling, discharging, disposing, leaking, pumping, injecting, pouring, depositing, dispersing, emitting, leaching or migrating into the indoor or outdoor environment, including ambient air, surface water, groundwater and surface or subsurface strata, or into or out of any property, including the movement of Hazardous Substances through or in the air, soil, surface water, groundwater, surface or subsurface strata or property, but excludes (i) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel or pipeline pumping station engine, and (ii) the normal and appropriate application of fertilizer, and (b) the abandonment or discarding of barrels, tanks, containers or receptacles, whether or not sealed or closed, containing, or which formerly contained, Hazardous Substances.

“Representative” means, with respect to a particular Person, any director, officer, manager, employee, agent, consultant, advisor or other representative of such Person, including legal counsel, accountants and financial advisors.

“Sale Hearing” means the hearing to consider the entry of the Sale Order.

“Sale Order” means an Order of the Bankruptcy Court, in form and substance satisfactory to Buyer, pursuant to, *inter alia*, sections 105, 363, and 365 of the Bankruptcy Code authorizing and approving, *inter alia*, the sale of the Acquired Assets to Buyer, on the terms and conditions set forth herein, free and clear of any and all Liens (other than Assumed Liens) and Claims, and the assumption and assignment of the Assigned Contracts to Buyer, and containing findings of fact and conclusions of law that Buyer and its Affiliates have acted in “good faith” within the meaning of section 363(m) of the Bankruptcy Code and are not successors to Seller.

“Stalking Horse Agreement” has the meaning set forth in the Bidding Procedures.

“Stalking Horse Purchaser” has the meaning set forth in the Bidding Procedures.

“Subsidiary” means any entity with respect to which a specified Person (or a Subsidiary thereof) has the power, through the ownership of securities or otherwise, to elect a majority of the directors or similar managing body.

“Successful Bidder” has the meaning set forth in the Bidding Procedures.

“Tax” or “Taxes” means any federal, state, provincial, local, foreign or other income, alternative, minimum, add-on minimum, accumulated earnings, personal holding company, franchise, capital stock, net worth, capital, profits, intangibles, windfall profits, gross receipts, value added, sales, use, goods and services, excise, customs duties, transfer, conveyance, mortgage, registration, stamp, documentary, recording, premium, severance, environmental, natural resources, real property, personal property, ad valorem, intangibles, rent, occupancy, license, occupational, employment, unemployment insurance, social security, disability, workers’ compensation, payroll, health care, withholding, estimated or other similar tax, duty, levy or other governmental charge or assessment or deficiency thereof (including all interest and penalties thereon and additions thereto whether disputed or not), in each case, in the nature of a tax.

“Tax Refund” means any Tax refund (including any interest paid with respect thereto) that is actually realized in cash and relates to any Taxes paid by Seller in any Tax period.

“Tax Return” means any return, declaration, report, claim for refund, information return or other document (including any related or supporting estimates, elections, schedules, statements, or information) filed or required to be filed in connection with the determination, assessment or collection of any Tax or the administration of any laws, regulations or administrative requirements relating to any Tax.

“Trade Payables” means Accounts Payable obligations of Seller incurred at any time, solely to the extent that such obligations (a) relate to the Acquired Assets, and (b) will not be payable by Buyer following the Closing pursuant to any Assigned Contract or Cure Costs.

“Trade Secrets” means trade secrets and other confidential and proprietary information and know-how.

“Trademarks” means United States, state and foreign trademarks, service marks, logos, slogans, trade dress and trade names, Internet domain names and any other similar designations of source of goods or services, whether registered or unregistered, and registrations and pending applications to register the foregoing, and all goodwill related to or symbolized by the foregoing.

“Transaction Documents” means this Agreement, the Assignment and Assumption Agreement, the Bill of Sale and any other agreements, instruments, certification, or documents entered into pursuant to this Agreement.

“Transfer Tax” means all transfer, documentary, sales, use, stamp, registration and other such Taxes, and all conveyance fees, recording charges and other fees and charges (including any penalties and interest) incurred in connection with the consummation of the Transactions that are not exempted under (a) applicable Legal Requirements, or (b) to the extent permitted by applicable Legal Requirements, the Sale Order.

“Transferable Insurance Policies” means any insurance policy of or for the benefit of Seller or the Business (a) which is transferable or assignable as an Acquired Asset pursuant to its terms or, notwithstanding its terms, is transferable or assignable as an Acquired Asset pursuant to the Sale Order, or (b) if not so transferable or assignable, the applicable counterparty has otherwise consented to the transfer or assignment as an Acquired Asset pursuant to the terms of this Agreement and, in each case, excluding any insurance policy providing for the payment of any benefits with respect to, or securing any Liabilities with respect to, any Benefit Plans;

provided, however, that any (i) D&O policy in effect as of the Execution Date, including any tail policy as in effect and (ii) policies providing products liability occurrence based or similar coverage (other than as it relates to the Warranty Claims) shall not, in each case, be considered Transferable Insurance Policies.

“USPTO” means the United States Patent and Trademark Office, or any successor agency or office thereto.

“Warranty Claims” means claims by end-customers or distributors arising from written product warranties covering units sold prior to the Petition Date, solely to the extent such claim amount is equal to the value of a refrigerator or less, determined in accordance with Seller’s prepetition warranty policies as in effect on or prior to the Petition Date, and net of any applicable credits, recoveries or insurance to the extent actually received by Buyer following the Closing Date.

“WARN Act” means the Worker Adjustment and Retraining Notification Act of 1988, as amended, and any similar state or local Legal Requirement and the rules and regulations thereunder.

“Wind-Down Budget” means that certain budget providing for payment in full of the Estimated Wind-Down Expenses, which, pursuant to Section 2.7, shall otherwise be mutually agreed upon by Seller and Buyer prior to the Closing Date.

<u>Additional Terms</u>	<u>Section</u>
“Acquired Assets”	Section 2.2
“Agreement”	Preamble
“Assigned Contracts”	Section 2.6(a)(i)
“Assumed Liabilities”	Section 2.4
“Auction”	Section 2.2(q)
“Bankruptcy Case”	Recitals
“Bankruptcy Code”	Recitals
“Bankruptcy Court”	Recitals
“Business”	Recitals
“Buyer”	Preamble
“Buyer Designee”	Section 4.2(b)
“Closing Date”	Section 4.1
“Collective Bargaining Agreement”	Section 5.8(b)
“Excluded Assets”	Section 2.3
“Excluded Cash”	Section 2.3(i)
“Excluded Insurance Policies”	Section 2.3(e)
“Excluded Liabilities”	Section 2.5
“Execution Date”	Preamble
“Execution Date Contract Schedule”	Section 2.6(a)(i)
“Inventory”	Section 2.2(a)
“Lessor Leases”	Section 5.5(b)
“Outside Date”	Section 11.1(b)
“Petition Date”	Recitals
“Previously Omitted Contract”	Section 2.6(b)

“Previously Omitted Contract Notice”	Section 2.6(b)
“Purchase Price”	Section 3.1(a)
“Rejected Contract”	Section 2.6(b)
“Released Buyer Parties”	Section 12.17(a)
“Releasing Seller Parties”	Section 12.17(a)
“Seller”	Preamble
“Transferred Permit Fees”	Section 7.3(b)
“Transferred Permits”	Section 2.2(e)
“Union(s)”	Section 5.8(b)

1.2 Other Definitions and Interpretive Matters.

(a) Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation shall apply:

(i) when calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a day other than a Business Day, the period in question shall end on the next succeeding Business Day;

(ii) any reference in this Agreement to days (but not Business Days) means to calendar days;

(iii) any reference to “\$” and dollars will be deemed to refer to United States currency unless otherwise specifically provided;

(iv) all Exhibits and Schedules attached or annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein, and any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement;

(v) any reference in this Agreement to gender includes all genders, and words imparting the singular number only include the plural and vice versa;

(vi) the provision of a table of contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in the construction or interpretation of this Agreement;

(vii) all references in this Agreement to any “Section” or “Article” are to the corresponding Section or Article of this Agreement unless otherwise specified;

(viii) words such as “herein”, “hereof” and “hereunder” refer to this Agreement as a whole and not merely to a subdivision in which such words appear, unless the context otherwise requires;

(ix) the word “including” or any variation thereof means without limitation and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it;

(x) the word “and/or” means and includes “or”;

(xi) the words “earned” and “incurred” shall be interpreted in accordance with GAAP standards; and

(xii) capitalized terms used herein shall have the meanings ascribed to them in this Agreement as such terms are identified or defined in the definitions section hereof.

(b) No Strict Construction. Buyer and Seller participated jointly in the negotiation and drafting of this Agreement, and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by Buyer and Seller, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement. Without limiting the foregoing, no rule of strict construction construing ambiguities against the draftsman shall be applied against any Person with respect to this Agreement.

ARTICLE 2

PURCHASE AND SALE

2.1 Purchase and Sale.

Subject to the entry of the Sale Order and upon the terms and subject to the conditions of this Agreement, effective at the time of the Closing (a) Seller shall unconditionally sell, transfer, assign, convey and deliver, or cause to be sold, transferred, assigned, conveyed and delivered, to Buyer, and Buyer shall purchase, acquire and accept from Seller, free and clear of any and all Liens (other than Assumed Liens), all of the Acquired Assets, and (b) Buyer shall unconditionally assume and agree to discharge and perform when due, all of the Assumed Liabilities that are related to, associated with or pertaining to the Business and the Acquired Assets.

2.2 Acquired Assets.

For all purposes of and under this Agreement, the term “Acquired Assets” shall mean all of Seller’s right, title and interest in, to or under the following (other than the Excluded Assets): (i) all of Seller’s properties, rights, claims and assets of every kind and description (wherever situated or located, real, personal or mixed, tangible or intangible, whether identifiable or contingent, owned, leased, licensed) related to, associated with, pertaining to, or presently, historically or prospectively used in or held for use in the operation of the Business as conducted by Seller, whether or not reflected on the books and records of Seller, and (ii) without limiting the generality of Section 2.2(i) above, such Acquired Assets shall include, whether they relate to the Business or not (except where so noted in the following list or in any definition used in the following list), all of Seller’s direct or indirect right, title and interest in, to and under the following (other than the Excluded Assets):

(a) all inventory of any kind or nature, merchandise and goods related to the Business or Acquired Assets and maintained, held or stored by or for Seller on the Closing Date, whether or not prepaid, and wherever located, held or owned, and any prepaid deposits for any of the same, including raw materials, components and other parts, work-in-process, finished goods or products, packaging materials and labels, and other stores, supplies, disposables and consumables used in or held for use in the operation of the Business as conducted by Seller, including any goods or products in transit (“Inventory”);

(b) all Equipment;

(c) all Assigned Contracts;

(d) all (i) Real Property (other than Leased Real Property to the extent the Leases related thereto are not Assigned Contracts) and any such agreements and rights related thereto or under the applicable Leases, and (ii) the Lessor Leases (to the extent the Lessor Lease is an Assigned Contract), in each case, together with all interests in and to all Improvements located thereon or attached thereto, and other appurtenances thereto, and rights in respect thereof;

(e) subject to Section 2.6(c), all Permits and pending applications therefor of Seller used in, held for use in, or necessary for the operation of the Business or the Acquired Assets, including all Permits described in Section 2.2(e) of the Disclosure Schedules, in each case, to the extent transferable under applicable Legal Requirements (the “Transferred Permits”);

(f) all Intellectual Property;

(g) all Accounts Receivable;

(h) all contribution or reimbursement Claims that Seller has or may have against any Affiliate of Buyer;

(i) all Pre-Paid Expenses except for those set forth Section 2.2(i) of the Disclosure Schedules;

(j) all goodwill and intangible property relating to, arising from or associated with any of the Acquired Assets (including the Intellectual Property), the Assumed Liabilities or the Business;

(k) to the extent permitted by Legal Requirements, and except to the extent related to the Excluded Assets or the Excluded Liabilities, all Documents and other books and records (financial, accounting and other), and correspondence, and all customer sales, marketing, advertising, packaging and promotional materials, files, data, owned software (whether written, recorded or stored on disk, film, tape or other media, and including all computerized data), drawings, engineering and manufacturing data and other technical information and data, and all other business and other records, in each case, arising under or relating to the Acquired Assets, the Assumed Liabilities or the Business;

(l) all rights, remedies and benefits of Seller arising under or relating to any of the Acquired Assets, the Assumed Liabilities or the Business, including rights, remedies and benefits arising out of express or implied warranties, representations and guarantees from suppliers, manufacturers, contractors or others to the extent relating to the operation of the Business or affecting the Inventory, Equipment, Real Property, or other tangible Acquired Assets or ordered by Seller prior to the Closing Date (and in any case, any component thereof), and all claims and causes of action arising or existing therefrom, in each case, other than as they relate to any Excluded Cause of Action;

(m) other than as they exclusively relate to any Excluded Causes of Action, which, for the avoidance of the doubt, shall be retained by Seller, and subject to Section 2.2(n) and Section 2.2(p), any and all Actions or other causes of action, and any rights, claims, demands, privileges, set offs, counterclaims, defenses, assertions or rights of any kind as against others (whether by contract or otherwise) of, or on behalf of, Seller with respect thereto, including (A) any and all causes of action, rights, claims, counterclaims, defenses or assertions of Seller against or with respect to any direct or indirect equityholders of Seller, (B) any and all causes of action, rights, claims, counterclaims, defenses or assertions of Seller against or with respect to

any direct or indirect lender to Seller, (C) any and all causes of action, rights, claims, counterclaims, defenses or assertions of Seller against or with respect to any Affiliate of Seller (including any party or Affiliate of a party set forth on Section 2.2(m) of the Disclosure Schedules), and (D) any and all causes of action, rights, claims, counterclaims, defenses or assertions of Seller with respect to any Trade Payables;

(n) all Avoidance Actions, except for Excluded Causes of Action;

(o) after the deduction of all Excluded Cash, (x) to the extent transferable, all bank deposit accounts, control agreements and lockbox accounts of Seller associated with the collection of the Accounts Receivable or other proceeds from the Business, including all bank accounts that receive checks, ACH payments, and electronic payments (a complete list of all such accounts (including any deposit accounts, securities accounts and any sub-accounts) and amounts in such accounts are as set forth on Section 2.2(o) of the Disclosure Schedules); provided, that to the extent any such account is not transferable, at Closing, Seller shall grant access to and control over any such account to allow Buyer to sweep or otherwise withdraw any funds held in any non-transferable account, and (y) all Cash remaining, including (i) any checks, commercial paper, treasury bills, certificates of deposit and other bank deposits, instruments and investments of Seller, and (ii) any Cash held in any escrow account, trust account, or similar account, any rights thereto, any escrow agreements or other Contracts governing such funds and Seller's rights thereunder, and any other interests or rights with respect to any of the foregoing;

(p) all (i) rights under, with respect to, or arising out of any Transferable Insurance Policies relating to the Business or any of the Acquired Assets or Assumed Liabilities, (ii) returns and refunds of any premiums paid, or other amounts due back to Seller, with respect to any cancelled insurance policies, and (iii) third-party property and casualty insurance proceeds, to the extent receivable by Buyer or Seller in respect of the Business or the Acquired Assets after the Closing Date (whether under current or prior policies or under the Transferable Insurance Policies), in each case, other than under, with respect to, or receivable as a result of the Excluded Insurance Policies or with respect to such Transferable Insurance Policies that exclusively relate to Excluded Causes of Action;

(q) all rights, but not obligations, under non-disclosure or confidentiality, non-compete, no-hire or non-solicitation agreements or similar arrangements entered into in connection with or in contemplation of the auction contemplated by the Bidding Procedures (the "Auction"), in each case, to the extent transferrable and related to the Business;

(r) all telephone numbers and other directory listings, e-mail addresses, websites, URLs, internet domain names and social media sites and accounts (including the content contained therein and any usernames and passwords), owned or licensed by Seller;

(s) all other property and assets related to, associated with, pertaining to, or presently, historically or prospectively used in or held for use in the Business as conducted by Seller or the ownership of the Acquired Assets, in each case, of every kind and description and wherever located, and the proceeds thereof and all other tangible and intangible assets but, in each case, to the extent not expressly identified as Excluded Assets;

(t) all assets, if any, listed on Section 2.2(t) of the Disclosure Schedules (regardless of whether such assets are covered by any of the foregoing);

- (u) any and all rights to Tax Refunds of Seller for any tax period, including, for the avoidance of doubt, any and all rights to the Employee Retention Credit; and
- (v) the Tax records, work papers and other records of Seller as they pertain to ownership, organization, qualification to do business or existence of Seller;
- (w) the Klein Settlement Amount;
- (x) all Excess Cash; and
- (y) all proceeds and products of any and all of the foregoing Acquired Assets.

2.3 Excluded Assets.

Notwithstanding anything to the contrary in this Agreement (including Section 2.2), nothing herein shall be deemed to sell, transfer, assign, convey or deliver any of the Excluded Assets to Buyer, and Seller shall retain all right, title and interest to, in and under, the Excluded Assets. For all purposes of and under this Agreement, the term “Excluded Assets” shall consist of only the following:

- (a) the assets, if any, listed on Section 2.3(a) of the Disclosure Schedules;
- (b) any shares of capital stock or other equity interest in or issued by Seller or any securities convertible into, exchangeable or exercisable for shares of capital stock or other equity interest in or issued by Seller;
- (c) all Documents and other books and records (financial, accounting and other), and correspondence, and all customer sales, marketing, advertising, packaging and promotional materials, files, data, software (whether written, recorded or stored on disk, film, tape or other media, and including all computerized data), drawings, engineering and manufacturing data and other technical information and data, and all other business and other records, in each case, (A) that relate exclusively to the Excluded Assets or Excluded Liabilities, (B) that if transferred as an Acquired Asset would violate any Person’s privacy rights under applicable Legal Requirements, or (C) that are subject to any attorney-client, work product or similar privilege with respect to work performed in anticipation of or in connection with the preparation or administration of the Bankruptcy Case, this Agreement or the Transactions;
- (d) any Contract that is not an Assigned Contract;
- (e) all rights of Seller under or arising out of any insurance policy set forth on Section 5.11 of the Disclosure Schedules that is not a Transferable Insurance Policy (the “Excluded Insurance Policies”) or with respect to Excluded Causes of Action under Transferable Insurance Policies;
- (f) Avoidance Actions that have been expressly excluded by Buyer in writing on or after the Effective Time;
- (g) all Excluded Causes of Action;
- (h) except as otherwise set forth herein, any rights, claims or causes of action of Seller arising under this Agreement or any other Transaction Document;

(i) all Cash of Seller in an amount equal to, and not in excess of, (i) the aggregate amount of remaining Cash included in the Wind-Down Budget *less* (ii) the aggregate amount of Estimated Wind-Down Expenses actually paid prior to the Closing, *plus* (iii) any portion of the Purchase Price actually paid by Buyer in Cash (together, the “Excluded Cash”);

(j) all Benefit Plans, together with all funding arrangements related thereto (including all assets, trusts, insurance policies and administrative service Contracts related thereto), and all rights and obligations thereunder;

(k) all insurance policies other than the Transferable Insurance Policies; and

(l) all proceeds and products of any and all of the foregoing Excluded Assets.

2.4 Assumed Liabilities.

Except to the extent that any of the following are specified in Section 2.5 as Excluded Liabilities, the following Liabilities of Seller (and only the following Liabilities expressly set forth in this Section 2.4) shall constitute, without duplication, the “Assumed Liabilities”:

(a) all Liabilities arising out of the ownership, possession or operation of the Acquired Assets; provided, that if an Action is brought after the Closing Date, but is related to conduct prior to the Closing Date, such Liability shall not be an Assumed Liability and shall be deemed an Excluded Liability unless Buyer consents in writing to assume such Action

(b) all Liabilities under the Assigned Contracts;

(c) all Cure Costs;

(d) any Accounts Payable (including Trade Payables) owed by Seller to any Person;

(e) those specific Liabilities of Seller, if any, set forth on Section 2.4(e) of the Disclosure Schedules;

(f) the Assumed Taxes; and

(g) the Warranty Claims.

The assumption by Buyer or Buyer Designee of any Assumed Liabilities shall not, in any way, enlarge the rights of any third parties relating thereto.

2.5 Excluded Liabilities.

Notwithstanding any provision in this Agreement to the contrary, Buyer shall not assume, and shall not be liable for, any of the following Liabilities, whether existing on or prior to the Closing Date or arising thereafter, and whether known or unknown, absolute or contingent, matured or unmatured, direct or indirect (collectively, the “Excluded Liabilities”), all of which shall remain the sole responsibility of Seller:

(a) any and all Liabilities arising under, or otherwise relating to, the Pre-Petition Debt Documents;

(b) all Liabilities relating to the Excluded Causes of Action other than Liabilities relating to the Warranty Claims;

(c) all Liabilities with respect to any Excluded Asset, including Contracts that are not Assigned Contracts;

(d) all Liabilities for costs and expenses: (i) incurred or owed in connection with the administration of the Bankruptcy Case (including all Estimated Wind-Down Expenses); and (ii) incurred in connection with the negotiation, execution and consummation of the Transactions.

(e) all Liabilities of the Seller arising under or in connection with any employee benefit plan providing compensation or benefits to any current or former employee of such Seller and all Liabilities arising out of, relating to, resulting from or with respect to the employment or engagement (or termination of employment or engagement) of any current or former officers, directors, employees, leased employees, managers, independent contractors, applicants or consultants (or their respective representatives or beneficiaries) of Seller, including, without limitation, any Liability under the WARN Act or associated with any claims for wages or other benefits, bonuses, accrued vacation, workers' compensation, or employee deferred compensation, including equity-based plans, grants and agreements, severance, retention, termination, or other payments, in each case, except as otherwise provided in this Agreement or arising out of or relating to workers' compensation benefits, obligations, or liabilities under any applicable workers' compensation statutes; and

(f) all Post-Closing COBRA Liabilities, whenever occurring;

(g) all Liabilities relating to any (x) Multiemployer Plan, pre-closing funding obligation, and penalties assessed by a Governmental Authority and (y) Benefit Plan, in the case of (x) and (y), whether arising prior to, at or after, the Closing Date;

(h) all pre-Closing Liabilities to the extent such Liabilities are not Assumed Liabilities; and

(i) all Liabilities for Taxes other than the Assumed Taxes and Transfer Taxes.

2.6 Assignment and Assumption of Contracts.

(a) Assignment and Assumption at Closing.

(i) Section 2.6(a) of the Disclosure Schedules sets forth a list of all executory Contracts (including all Leases, Lessor Leases and other Material Contracts) to which Seller is party and which are to be included in the Acquired Assets (the "Assigned Contracts") and Seller's good faith estimate of the Cure Costs as of the Execution Date (such Section 2.6(a) of the Disclosure Schedules, as such exists at the time of execution of this Agreement without any additions or deletions, the "Execution Date Contract Schedule"). From and after the Execution Date, Seller shall make such additions and deletions to Section 2.6(a) of the Disclosure Schedules as, and solely to the extent, requested by Buyer in writing. Any such added Contract shall be deemed an Assigned Contract and any such deleted Contract shall be deemed to no longer be an Assigned Contract. All Contracts of Seller that are not listed on Section 2.6(a) of the Disclosure Schedules shall not be considered an Assigned Contract or Acquired Asset and shall be deemed a Rejected Contract.

(ii) Seller shall take all actions required to seek an Order containing a finding that the proposed assumption and assignment of the Assigned Contracts to Buyer satisfies all applicable requirements of section 365 of the Bankruptcy Code; provided, however, that no material monetary amount shall be required to be paid or incurred by Seller in connection with any consent or approval from any Person that is required to assume and assign any Assigned Contract to Buyer.

(iii) At Closing, (x) Seller shall, pursuant to the Sale Order and the Assignment and Assumption Agreement, assume and assign to Buyer, in each case, as and solely to the extent Buyer is assuming (the consideration for which is included in the Purchase Price), each of the Assigned Contracts that is capable of being assumed and assigned and is being assumed and assigned by Buyer, and (y) Buyer shall pay promptly all Cure Costs (if any) as required by the Bankruptcy Code (as determined by the Bankruptcy Court) in connection with such assumption and assignment and assume and perform and discharge as due the Assumed Liabilities (if any) under such applicable Assigned Contracts, pursuant to this Agreement and the applicable Assignment and Assumption Agreement to which such Buyer is a party; provided, however, that, in no event shall Buyer be required to assume, be deemed to assume, or otherwise be liable for any Excluded Liabilities (including with respect to any Cure Costs applicable to any Contract that Buyer is not assuming). Notwithstanding anything in this Agreement, the Sale Order, any Transaction Document or the Disclosure Schedules (including Section 2.6(a)), Buyer is not assuming, and shall not be deemed to assume, any Contract to the extent that, upon assumption of such Contract by Buyer, Buyer shall also be deemed to assume any Liability in respect of any Excluded Cause of Action, and any such Contracts are hereby carved out, severed and excluded from the assumption and assignment to Buyer and shall remain Excluded Liabilities, and shall not be deemed to be “Assigned Contracts” hereunder.

(b) Previously Omitted Contracts. If prior to or following Closing, it is discovered that a Contract should have been listed on Section 2.6(a) of the Disclosure Schedules but was not listed on Section 2.6(a) of the Disclosure Schedules (any such Contract, a “Previously Omitted Contract”), Seller shall promptly following the discovery thereof notify Buyer of such omission and Buyer shall provide written notice to Seller designating such Previously Omitted Contract as “Assumed” or “Rejected”. Seller shall, promptly following Buyer’s written notice, serve a notice (the “Previously Omitted Contract Notice”) on the counterparties to any such Previously Omitted Contract designated as “Assumed” by Buyer, notifying such counterparties of the Cure Costs with respect to such Previously Omitted Contract and Seller’s intention to assume and assign such Previously Omitted Contract in accordance with this Section 2.6. The Previously Omitted Contract Notice shall provide the counterparties to such Previously Omitted Contract with fourteen (14) days to object, in writing to Seller and Buyer, to the Cure Costs or the assumption of its Contract. If the counterparties, Seller and Buyer are unable to reach a consensual resolution with respect to the objection, Seller will seek an expedited hearing before the Bankruptcy Court to determine the Cure Costs and approve the assumption. If no objection is served on Seller and Buyer, Seller shall obtain an order of the Bankruptcy Court fixing the Cure Costs and approving the assumption of the Previously Omitted Contract, and no further order or approval shall be required. Any Previously Omitted Contract that is assumed and assigned pursuant to this Section 2.6(b) shall be deemed an Assigned Contract and Buyer shall be liable for all Cure Costs associated with such Assigned Contract and any Previously Omitted Contract that is not assumed and assigned pursuant to this Section 2.6(b) shall not be considered an Assigned Contract or Acquired Asset and shall be deemed a “Rejected Contract”.

(c) Non-Assignment of Contracts and Permits.

(i) Notwithstanding anything contained in this Agreement to the contrary but subject to the last sentence of this Section 2.6(c), this Agreement shall not constitute an agreement to assign or transfer any Contract or any Permit, if, notwithstanding the provisions of sections 363 and 365 of the Bankruptcy Code, an attempt at assignment or transfer thereof, without the consent or approval required or necessary for such assignment or transfer, would constitute a breach thereof or in any way adversely affect any of the rights of Buyer, as the assignee or transferee of such Contract or Permit (as the case may be), thereunder.

(ii) Nothing in this Agreement shall be construed as an attempt by Seller to assign any Assigned Contract or any other Acquired Asset to the extent that such Assigned Contract or Acquired Asset is not assignable under the Bankruptcy Code or otherwise without the consent of the other party or parties thereto or any Governmental Authority, if applicable Law would require such consent, and the consent of such other party or Governmental Authority has not been given or received, as applicable. With respect to any Assigned Contract or Acquired Asset for which the consent of a party thereto or any Governmental Authority to the assignment thereof shall not have been obtained at or prior to the Closing Date, Seller and Buyer shall use their commercially reasonable efforts for a period not to exceed sixty (60) days after the Closing Date to obtain such consent as expeditiously as reasonably possible. Unless and until any such consent, waiver, confirmation, novation or approval is obtained, upon Buyer's written request, Seller and Buyer shall reasonably cooperate to establish an arrangement reasonably satisfactory to Seller and Buyer under which Buyer would obtain the Claims, rights and benefits and assume the corresponding Liabilities and obligations thereunder (including by means of any subcontracting, sublicensing or subleasing arrangement). In such event, (i) Seller will hold in trust for and promptly pay to Buyer, when received, all moneys received by them under any such Assigned Contract or in respect of any such Acquired Asset, Claim, right or benefit arising thereunder, and (ii) Buyer will promptly pay, perform or discharge, when due, any and all obligations and Liabilities arising thereunder, other than those being contested in good faith. In the event any consent required with respect to any Assigned Contract or Acquired Asset for which the consent of a party thereto or any Governmental Authority to the assignment thereof is not obtained within the sixty (60) day period after the Closing Date, such Assigned Contract or Acquired Asset, as applicable, shall be deemed to be an Excluded Asset.

2.7 Wind-Down Budget.

(a) Seller agrees that no Assumed Liabilities will be included in or reflected on the Wind-Down Budget. At least two (2) Business Days prior to the Bid Deadline (as defined in the Bidding Procedures Order), Seller and Buyer shall mutually agree upon the Wind-Down Budget and the amount required to fund the Wind-Down Budget. Prior to Closing, Buyer may, in its sole and absolute discretion, agree to assume any Liability that is included in the Wind-Down Budget (including any or all of the 503(b)(9) claims set forth therein) by providing written notice to Seller and, in such event, (a) such Liability shall be deemed to be, and shall become, an Assumed Liability subject to the terms and conditions of this Agreement, (b) the Wind-Down Budget and the Estimated Wind-Down Expenses shall be reduced on a dollar-for-dollar basis for any such Liability that has been so assumed, and (c) the Wind-Down Budget shall be amended and restated to reflect such adjustment.

(b) The Seller (or any estate representative, liquidating trustee, or other fiduciary appointed pursuant to the Sale Order, Confirmation Order, or the Plan, the “Trustee, the “Trustee””) shall, in consultation with Buyer, establish a reasonable reserve (the “Wind-Down Reserve”) for the payment of post-Closing wind-down and professional expenses of the Seller and its bankruptcy estate. The amount of the Wind-Down Reserve shall be determined by the Trustee, each acting reasonably in consultation with the Buyer and shall be subject to the Buyer’s consent in its sole discretion.

(c) On the date that is seventy-five (75) days after the Closing Date (or such later date as the Buyer and the Trustee may agree) (the “Excess Cash Payment Date”), the Seller or the Trustee shall pay, or cause to be paid, to Buyer by wire transfer of immediately available funds an amount equal to all Excess Cash then remaining, free and clear of all Liens (other than Permitted Liens) and Claims.

2.8 Further Assurances.

At and after the Closing, and without further consideration therefor, Seller shall execute and deliver to Buyer such further instruments and certificates as shall be necessary (a) to vest, perfect or confirm ownership (of record or otherwise) in Buyer, Seller’s right, title or interest in, to or under any or all of the Acquired Assets and the Business, including the Real Property, free and clear of any and all Liens (other than Assumed Liens), or (b) to otherwise effectuate the purposes and intent of the Transaction Documents or for aiding, assisting, collecting and reducing to possession any of the Acquired Assets and exercising rights with respect thereto. Each of Seller, on the one hand, and Buyer, on the other hand, shall take, or cause to be taken, all actions and shall do, or cause to be done all things as may be reasonably requested by the other Party in order to vest, perfect or confirm any and all right, title and interest in, to and under such rights, properties or assets in Buyer, or otherwise to carry out this Agreement and shall execute and deliver all deeds, bills of sale, instruments of conveyance, powers of attorney, assignments, assumptions and assurances, and as may be reasonably required to consummate the Transactions.

2.9 Withholding.

Buyer and any other applicable withholding agent shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement to any Person such amounts as Buyer or such withholding agent is required to deduct and withhold under the Code, or any Tax law, with respect to the making of such payment. Prior to withholding any amounts (except with respect to compensatory payments to employees) pursuant to this Section 2.9, the Party on behalf of whom such amounts are withheld shall use commercially reasonable efforts to provide prior written notice to the other Party of such withholding.

2.10 Payments Following Closing.

Seller shall hold in trust and promptly pay over to Buyer any monies received by Seller following the Effective Time that is the property of Buyer by virtue of the purchase and sale of the Acquired Assets. Seller shall use reasonable best efforts to assist Buyer in the collection of Accounts Receivable included in the Acquired Assets and the reasonable transition of account information and notifying third parties for the purpose of effecting the transfer of the Business to Buyer in accordance with this Agreement.

ARTICLE 3 **PURCHASE PRICE**

3.1 Consideration.

The aggregate consideration (the “Purchase Price”) for the purchase, sale, assignment and conveyance of Seller’s right, title and interest in, to and under the Acquired Assets shall consist of:

(a) the assumption by Buyer of the Assumed Liabilities from Seller, including the assumption of the obligation to pay to the applicable counterparties of the applicable Assigned Contracts the Cure Costs payable by Buyer under Section 2.6; *plus*

(b) the Credit Bid in an aggregate amount equal to the outstanding obligations under the DIP Term Sheet as of the Closing (which amount shall not be less than \$13,000,000.00 as of the Closing), exercised by Buyer or its designee in accordance with section 363(k) of the Bankruptcy Code and the DIP Order; *plus*

(c) such additional cash consideration, the use, allocation and amount of which shall be determined at the sole discretion of Buyer and by providing written notice to Sellers; provided, however, that if no such notice has been provided, then the amount of such cash consideration under this Section 3.1(a)(iv) shall be \$0.

3.2 Limitation on Buyer Liability.

Except indirectly with respect to any expenses in the Wind-Down Budget that are or become an Assumed Liability pursuant to Section 2.7, neither Buyer nor any Buyer Designees shall have any liability with respect to the Estimated Wind-Down Expenses or with respect to any amounts that would have been such fees or expenses if not for the limitations contained in this Agreement.

ARTICLE 4
CLOSING AND DELIVERIES

4.1 Closing Date.

Upon the terms and subject to the conditions hereof, the closing of the sale of the Acquired Assets and the assumption of the Assumed Liabilities contemplated hereby (the “Closing”, and the date and time as of which the Closing occurs, the “Closing Date”) shall take place at the offices of Ropes & Gray LLP, 1211 Avenue of the Americas, New York, NY, or by exchanging documents and signature pages electronically or by other mutually acceptable means of exchange, on the Business Day that is neither less than three (3) Business Days, nor later than five (5) Business Days, following the date on which all the conditions set forth in ARTICLE 9 and ARTICLE 10 have been satisfied or (if permissible) waived by the Party entitled to waive such condition (other than the conditions which by their nature are to be satisfied at the Closing, but subject to the satisfaction or (if permissible) waiver of such conditions at the Closing), or on such other date and time as Seller and Buyer may mutually agree in writing. Upon consummation of the Closing, the purchase and sale of the Acquired Assets and the assumption of the Assumed Liabilities hereunder shall be deemed to have occurred as of the Effective Time.

4.2 Buyer’s Deliveries.

(a) Subject to satisfaction or (if permissible) waiver of the conditions set forth in ARTICLE 9 and ARTICLE 10, at the Closing, Buyer shall deliver (or cause one or more of its Affiliates to deliver) to Seller:

- (i) the Purchase Price as adjusted pursuant to Section 3.1.
- (ii) one or more Assignment and Assumption Agreements, duly executed by Buyer;
- (iii) each other Transaction Document to which Buyer is a party, duly executed by Buyer or Buyer Designee, as applicable;
- (iv) the certificates of Buyer (signed by a duly authorized officer thereof) to be received by Seller pursuant to Sections 10.1 and 10.3;
- (v) a certificate of an authorized officer, manager or managing member of Buyer, dated the Closing Date, in form and substance reasonably satisfactory to Seller, as to (i) Buyer's and each Buyer Designee's authorization to execute and perform its obligations under the Transaction Documents to which each of them is a party, and (ii) incumbency and signatures of the individuals executing the Transaction Documents on behalf of Buyer and any Buyer Designee;
- (vi) Joinders duly executed by any Buyer Designees designated by Buyer to purchase any of the Acquired Assets or assume any of the Assumed Liabilities pursuant to the terms of this Agreement; and
- (vii) such other documents as Seller may reasonably request that are customary for a transaction of this nature and necessary to evidence or consummate the Transactions.

Any amounts payable in cash pursuant to Section 4.2(a)(i) and 4.2(a)(ii) shall be paid in cash by wire transfer to the account or accounts designated by Seller to Buyer at least one (1) Business Day prior to Closing.

(b) Buyer shall be entitled to designate, in accordance with the terms and subject to the limitations set forth in this Section 4.2(b), one or more Affiliates of Buyer to (i) purchase specified Acquired Assets; or (ii) assume specified Assumed Liabilities, in each case, as of the Closing Date (any Person that shall be properly designated by Buyer in accordance with this clause, a "Buyer Designee"); it being understood and agreed, however, that any such right of Buyer to designate a Buyer Designee is conditioned upon (x) such Buyer Designee being able to perform the applicable covenants under this Agreement in all respects and, as applicable, any other Transaction Document to which Buyer is party, (y) such Buyer Designee being able to demonstrate satisfaction of the requirements of Section 365 of the Bankruptcy Code (to the extent applicable), including the provision of adequate assurance for future performance with respect to the Acquired Assets and Assumed Liabilities, and (z) such designation not, and not being reasonably expected to, cause a delay or prevent or hinder the consummation of the Transactions in any respect. At least five (5) Business Days prior to or at Closing, Buyer shall make any such designations of Buyer Designees by way of a written notice (email to suffice) to be delivered to Seller. No such designation shall relieve Buyer of any of its obligations hereunder and any breach hereof by a Buyer Designee shall be deemed a breach by Buyer. Buyer and Buyer Designees shall be jointly and severally liable for any obligations of Buyer and such Buyer Designees hereunder. For the avoidance of doubt, and notwithstanding anything to the contrary herein, all Buyer Designees appointed in accordance with this Section 4.2(b) shall be included in the definition of "Buyer" for all purposes under this Agreement and all such Buyer Designees shall be deemed to have made all of the representations and warranties of Buyer set forth in this Agreement.

4.3 Seller Deliveries.

At the Closing, Seller shall deliver to Buyer:

- (a) possession of the Acquired Assets (except for Excess Cash which will be delivered on the Excess Cash Payment Date) and the Business;
- (b) the Bills of Sale, the Assignment and Assumption Agreement and each other Transaction Document to which Seller is a party, duly executed by Seller;
- (c) with respect to the Real Property included in the Acquired Assets, possession of such Real Property, together with any and all keys, access cards, security passcodes and combinations, and copies (and originals in Seller's possession) of all instruments, Leases and agreements evidencing Seller's interest in the same, and any existing surveys, legal descriptions and title policies concerning such Real Property that are in the possession of Seller, which shall be deemed to be delivered to the extent located at any Real Property;
- (d) a certified copy of the Sale Order;
- (e) the certificates of Seller (signed by a duly authorized officer thereof) to be received by Buyer pursuant to Sections 9.1, 9.2 and 9.8;
- (f) releases and termination statements sufficient for Buyer to receive the Acquired Assets free and clear of any and all Liens (other than Assumed Liens); provided, however, that releases shall not be required with respect to Liens that are both (i) released by the Sale Order, and (ii) not required to be released at Closing pursuant to releases and termination statements in connection with a financing or debt facility obtained by Buyer; and
- (g) such other documents as Buyer may reasonably request that are customary for a transaction of this nature and necessary to evidence or consummate the Transactions.

ARTICLE 5

REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Buyer as follows, except as disclosed in the Disclosure Schedules attached hereto:

5.1 Organization and Good Standing.

Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization. Seller has all requisite limited liability company power and authority to own or lease and to operate and use its properties and to carry on its business as now conducted, except for such failures to have such power or authority would not, individually or in the aggregate, have a Material Adverse Effect. Seller is duly qualified or licensed to do business and is in good standing in each jurisdiction where the character of its Business or the nature of its properties makes such qualification or licensing necessary, except for such failures to be so qualified or licensed or in good standing as would not, individually or in the aggregate, have a Material Adverse Effect.

5.2 Authority; Validity; Consents.

Seller has, subject to entry of the Sale Order, the requisite limited liability company power and authority necessary to enter into and perform its obligations under this Agreement and

the other Transaction Documents to which Seller is a party and to consummate the transactions contemplated hereby and thereby, and, subject to entry of the Sale Order, the execution, delivery and performance of this Agreement and such other Transaction Documents by Seller and the consummation by Seller of the transactions contemplated hereby and thereby have been duly and validly authorized by all requisite limited liability company action. This Agreement has been duly and validly executed and delivered by Seller, and each other Transaction Document required to be executed and delivered by Seller at the Closing will be duly and validly executed and delivered by Seller at the Closing. Subject to entry of the Sale Order, this Agreement and the other Transaction Documents constitute, with respect to Seller, legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms, except as such enforceability is limited by general principles of equity. Subject to entry of the Sale Order, except, in each case, (a) for entry of the Sale Order, (b) for notices, filings and consents required in connection with the Bankruptcy Case, and (c) for the notices, filings and consents set forth on Section 5.2 of the Disclosure Schedules, Seller is not required to give any notice to, make any registration, declaration or filing with or obtain any consent, waiver or approval from, any Person (including any Governmental Authority) in connection with the execution and delivery of this Agreement and the other Transaction Documents or the consummation or performance of any of the transactions contemplated hereby and thereby. Seller has determined that Buyer and this Agreement meet all of the requirements to be, and constitute, a Qualified Bidder and a Qualified Bid, respectively, pursuant to the terms of the Bidding Procedures.

5.3 Subsidiaries.

Seller does not (a) have any direct or indirect Subsidiaries; (b) have any direct or indirect interest in, and is not under any current or prospective obligation to receive an interest in, any shares or ownership interest in any other Person; or (c) participate in any partnership, joint venture or similar arrangement.

5.4 No Conflict.

Except as set forth in Section 5.4 of the Disclosure Schedules, neither the execution and delivery by Seller of this Agreement or any other Transaction Document to which it is (or will be) a party nor after giving effect to the Sale Order, the consummation of the transactions contemplated hereby or thereby nor, after giving effect to the Sale Order, compliance by it with any of the provisions hereof or thereof will (a) conflict with or result in a violation of (i) any provision of the certificate of formation or limited liability company agreement (or other organizational or governing documents) of Seller, or (ii) any Legal Requirement binding upon Seller or by which the Business or any Acquired Assets are subject or bound, (b) after giving effect to the Sale Order, violate, conflict with, or result in a breach of any of the terms of, or constitute a default under, or give rise to any right of termination, modification, cancellation or acceleration under (i) any Material Contract, or (ii) any Permit or Order, or (c) result in the creation of any Lien upon the properties or assets of Seller being sold or transferred hereunder, except, in each case, of clause (b)(i) and clause (c) above, as would not, individually or in the aggregate, have a Material Adverse Effect.

5.5 Real Property.

(a) Owned Real Property. Except as set forth on Section 5.5(a) of the Disclosure Schedules, Seller does not own any Real Property and has not owned any Real Property during the past three (3) years.

(b) Lessor Leases. Section 5.5(b) of the Disclosure Schedules lists, as of the Execution Date, all unexpired leases, subleases, licenses, occupancy or other agreements to which Seller is a party whereby Seller leases, subleases, licenses or grants an interest in any Leased Real Property to a third party (the “Lessor Leases”).

(c) Leased Real Property. Section 5.5(c) of the Disclosure Schedules contains a list of all Leased Real Property held or used for, or necessary or important to the operation of the Business. To Seller’s Knowledge, the Leases will continue to be legal, valid, binding, enforceable and in full force and effect on the same material terms immediately following the consummation of the Transactions.

5.6 Title to Acquired Assets.

Immediately prior to Closing, Seller will have, and, upon delivery to Buyer on the Closing Date of the instruments of transfer contemplated by Section 4.3, and upon entry of the Sale Order, Seller will thereby transfer to Buyer, and Buyer will (subject to Section 2.6(c)) be vested, to the maximum extent permitted by sections 363 and 365 of the Bankruptcy Code, with good, valid and marketable title to, or, in the case of property leased or licensed by Seller, a valid leasehold or licensed interest in, all of the Acquired Assets, free and clear of any and all Liens, except (a) for the Assumed Liabilities, and (b) for Assumed Liens.

5.7 Compliance with Legal Requirements.

The Permits set forth on Section 2.2(e) of the Disclosure Schedules (a) are all of the material Permits held by Seller with respect to the current operation and conduct of the Business and the Acquired Assets, and (b) constitute all materials Permits necessary for the current operation and conduct of the Business and the Acquired Assets.

5.8 Labor Matters.

(a) Seller does not currently employ, engage, or otherwise retain any employees, independent contractors, consultants, temporary workers, or other service providers, whether full-time, part-time, or otherwise. No individual or entity is entitled to any wages, compensation, benefits, severance, or other payments from Seller in respect of any employment or service relationship, and there are no outstanding offers of employment or engagement made by Seller.

(b) Seller is not party to or subject to any collective bargaining agreements, works council agreements, labor union contracts, trade union agreements or other similar agreements (each, a “Collective Bargaining Agreement”) with any labor union, trade union, works council, labor organization or other employee representative body (each, a “Union” and collectively, “Unions”), nor is any such Collective Bargaining Agreement currently being negotiated by Seller. The consummation of the transactions contemplated by this Agreement will not give rise to, or trigger, any notice, consultation, bargaining, or similar obligations on the part of Seller with respect to any Union. In the past three (3) years, to the Knowledge of Seller, there have been no actual or threatened strikes, lockouts, slowdowns, work stoppages, organizing campaigns or efforts, demands or petitions for recognition, boycotts, handbilling, picketing, walkouts, demonstrations, leafleting, sit-ins, sick-outs or other material forms of organized labor disruption with respect to Seller.

5.9 Employee Benefits.

(a) As of the date hereof, Seller does not sponsor, maintain, contribute to or have any obligation to maintain or contribute to, or have any Liability in respect of any Benefit Plan.

(b) Seller does not maintain, contribute to or have any obligation to maintain or contribute to, or has ever maintained or contributed to, or has or ever had any direct or indirect Liability with respect to, (i) any plan subject to Title IV of ERISA or Section 412 of the Code, (ii) any plan maintained by more than one employer within the meaning of Section 413(c) of the Code, (iii) any plan subject to Sections 4063 or 4064 of ERISA, (iv) a Multiemployer Plan, or (v) a “multiple employer welfare arrangement” as defined in Section 3(40) of ERISA. No Liability under Title IV of ERISA has been incurred by Seller that has not been satisfied in full.

(c) Neither Seller, nor, to Seller’s Knowledge, any other “party in interest” or “disqualified person” with respect to any Benefit Plan has engaged in a nonexempt “prohibited transaction” within the meaning of Section 406 of ERISA or Section 4975 of the Code.

(d) Seller has no obligation to provide or make available post-employment benefits under any Benefit Plan which is a “welfare plan” (as defined in Section 3(1) of ERISA) to any current or former employee or service provider, except as may be required under COBRA and at the sole expense of such individual.

5.10 Contracts.

The Execution Date Contract Schedule sets forth a complete list, as of the Execution Date, of all Material Contracts (including all Leases) to which Seller is a party and sets forth (a) Seller’s good faith estimate of the Cure Costs with respect to each Material Contract listed thereon with respect to each such contract, and (b) the applicable category of such Material Contract. Seller has not assigned, delegated or otherwise transferred to any third party any of its rights or obligations with respect to any such Contract listed on the Execution Date Contract Schedule. Each such Contract listed on the Execution Date Contract Schedule is in full force and effect and is a legal, valid, binding and enforceable obligation of Seller in accordance with its terms and conditions, in each case, except (a) as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditors’ rights generally or general principles of equity, (b) as set forth on Section 5.10 of the Disclosure Schedules, and (c) as would not, individually or in the aggregate, have a Material Adverse Effect. Seller has made available, or, within fifteen (15) Business Days of the Execution Date but in any event no later than four (4) Business Days prior to the Auction, will make available correct and complete copies of all such Contracts set forth on the Execution Date Contract Schedule to Buyer, including any amendments thereto. Upon entry of the Sale Order and payment of the Cure Costs, (i) Seller will not be in material breach or default of its obligations under any Assigned Contract, and (ii) to Seller’s Knowledge, no other party to any Assigned Contract is in material breach or default thereunder. To Seller’s Knowledge, the Contracts set forth on the Execution Date Contract Schedule will continue to be legal, valid, binding and enforceable and in full force and effect on the same terms as immediately following the consummation of the transaction contemplated hereby.

5.11 Insurance.

Seller maintains the insurance policies set forth on Section 5.11 of the Disclosure Schedules, which sets forth all insurance policies covering the Acquired Assets, current (if applicable) or former employees of Seller and operation of the Business (including policies providing property, casualty, professional liability and workers' compensation coverage, but excluding insurance policies with respect to Benefit Plans). Such policies are in full force and effect. To the Knowledge of Seller, Seller has paid all premiums on such policies due and payable prior to the Closing Date. Seller has not done anything by way of action or inaction that invalidates any such policies in whole or in part. To Seller's Knowledge, all insurance policies maintained by Seller provide coverage appropriate in character and amount for the Acquired Assets, employees of Seller (if applicable), and operations of the Business as presently conducted. Furthermore, Seller has not received any written notice of cancellation of, premium increase with respect to, or alteration of coverage under, any such insurance policies. Except as set forth on Section 5.11 of the Disclosure Schedules, there are no claims related to the Business pending under any such insurance policies as to which coverage has been questioned, denied or disputed or in respect of which there is an outstanding reservation of rights.

5.12 "AS IS" Transaction.

Except as specifically provided in Section 5.1 through Section 5.11 above, Seller will convey the Acquired Assets to Buyer on an "As-Is, Where-Is" and "With All Faults" basis, without representations, warranties, or covenants, express or implied, of any kind or nature. Buyer hereby waives and relinquishes all rights and privileges arising out of, or with respect or in relation to, any representations, warranties, or covenants, whether express or implied, that may have been made or given, or that may have been deemed to have been made or given, by Seller or Seller's Representatives, except for those expressly set forth in this Agreement. None of Seller nor any other Person is making any representation or warranty of any kind or nature whatsoever, oral or written, express or implied, relating to Seller (including, but not limited to, any relating to financial condition, results of operations, assets or liabilities of such Seller), except as expressly set forth in this Article 5, and Seller hereby disclaims any such other representations or warranties.

ARTICLE 6

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Seller as follows:

6.1 Organization and Good Standing.

Buyer is a corporation, duly incorporated, validly existing and in good standing under the laws of its jurisdiction of organization. Buyer has the requisite power and authority to own or lease and to operate and use its properties and to carry on its business as now conducted.

6.2 Authority; Validity; Consents.

Buyer has the requisite power and authority necessary to enter into and perform its obligations under this Agreement and the other Transaction Documents to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance of this Agreement by Buyer and the consummation by Buyer of the Transactions have been duly and validly authorized by all requisite limited liability company or corporate actions in respect thereof. This Agreement has been duly and validly executed and delivered by Buyer and each other Transaction Document to which Buyer is a party and will be duly and validly executed

and delivered by Buyer, as applicable, at the Closing. This Agreement and the other Transaction Documents to which Buyer is a party constitute the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with their respective terms, except, in each case, as such enforceability is limited by bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditors' rights generally or general principles of equity. Except as set forth on Section 6.2 of the Disclosure Schedules, Buyer is not and will not be required to give any notice to or obtain any consent from any Person in connection with the execution and delivery of this Agreement and the other Transaction Documents to which it is a party or the consummation or performance of any of the transactions contemplated hereby or thereby, except for such notices, filings and consents, the failure of which to provide, make or obtain, would not, individually or in the aggregate, materially affect Buyer's ability to perform its obligations under this Agreement or any other Transaction Documents to which it is a party or to consummate the transactions contemplated hereby or thereby.

6.3 No Conflict.

Neither the execution and delivery by Buyer of this Agreement or the other Transaction Documents to which it is a party nor the consummation of the transactions contemplated hereby or thereby nor compliance by it with any of the provisions hereof or thereof (a) conflict with or result in a violation of (i) any provision of the organizational documents of Buyer, or (ii) any Legal Requirement binding upon Buyer, or (b) violate, conflict with, or result in a breach of any of the terms of, or constitute a default under, or give rise to any right of termination, modification, cancellation or acceleration under (i) any note, bond, mortgage, indenture, deed of trust, Contract or other instrument or obligation to which Buyer is a party or by which Buyer may be bound or to which any of Buyer's assets may be subject or affected in any material respect and that, in each case, is material to the business of Buyer or that would individually or in the aggregate, materially affect Buyer's ability to perform its obligations under this Agreement or any other Transaction Document to which it is a party or to consummate the transactions contemplated hereby or thereby, or (ii) any material license, permit, authorization, consent, order or approval of, or registration, declaration or filings with, any Governmental Authority.

6.4 Litigation.

There is no Action or Order pending or, to the knowledge of Buyer, threatened in writing against Buyer, whether at law or equity, whether civil or criminal in nature, or by or before any arbitration or Governmental Authority, that would affect Buyer's ability to perform its obligations under this Agreement or any other Transaction Documents or to consummate the transactions contemplated hereby or thereby.

6.5 Brokers or Finders.

Neither Buyer nor any Person acting on behalf of Buyer has paid or become obligated to pay any fee or commission to any broker, finder, investment banker, agent or intermediary for or on account of the Transactions for which Seller is or will become liable.

6.6 "AS IS" Transaction.

BUYER HEREBY ACKNOWLEDGES AND AGREES THAT, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN ARTICLE 5 ABOVE, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH

RESPECT TO ANY MATTER RELATING TO THE ACQUIRED ASSETS INCLUDING EXPENSES TO BE INCURRED IN CONNECTION WITH THE ACQUIRED ASSETS, THE PHYSICAL CONDITION OF ANY PERSONAL PROPERTY COMPRISING A PART OF THE ACQUIRED ASSETS OR THAT IS THE SUBJECT OF ANY OTHER ASSUMED LEASE OR DESIGNATED CONTRACT TO BE ASSUMED BY BUYER AT THE CLOSING, THE ENVIRONMENTAL CONDITION OR OTHER MATTER RELATING TO THE PHYSICAL CONDITION OF ANY LEASED REAL PROPERTY OR IMPROVEMENTS THAT ARE THE SUBJECT OF ANY REAL PROPERTY LEASE TO BE ASSUMED BY BUYER AT THE CLOSING, THE ZONING OF ANY SUCH LEASED REAL PROPERTY OR IMPROVEMENTS, THE VALUE OF THE ACQUIRED ASSETS (OR ANY PORTION THEREOF), THE TRANSFERABILITY OF PROPERTY, THE TERMS, AMOUNT, VALIDITY OR ENFORCEABILITY OF ANY ASSUMED LIABILITIES, THE MERCHANTABILITY OR FITNESS OF THE PERSONAL PROPERTY OR ANY OTHER PORTION OF THE ACQUIRED ASSETS FOR ANY PARTICULAR PURPOSE, OR ANY OTHER MATTER OR THING RELATING TO THE ACQUIRED ASSETS OR ANY PORTION THEREOF. WITHOUT IN ANY WAY LIMITING THE FOREGOING, SELLER HEREBY DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AS TO ANY PORTION OF THE ACQUIRED ASSETS. BUYER FURTHER ACKNOWLEDGES THAT BUYER HAS CONDUCTED AN INDEPENDENT INSPECTION AND INVESTIGATION OF THE PHYSICAL CONDITION OF THE ACQUIRED ASSETS AND ALL SUCH OTHER MATTERS RELATING TO OR AFFECTING THE ACQUIRED ASSETS AS BUYER DEEMED NECESSARY OR APPROPRIATE AND THAT IN PROCEEDING WITH BUYER'S ACQUISITION OF THE ACQUIRED ASSETS, EXCEPT FOR ANY REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN ARTICLE 5, BUYER IS DOING SO BASED SOLELY UPON SUCH INDEPENDENT INSPECTIONS AND INVESTIGATIONS. ACCORDINGLY, BUYER WILL ACCEPT THE ACQUIRED ASSETS AT THE CLOSING "AS IS," "WHERE IS," AND "WITH ALL FAULTS."

ARTICLE 7

ACTIONS PRIOR TO THE CLOSING DATE

7.1 Access and Reports.

Subject to applicable Legal Requirements, during the period from and including the Execution Date through and including the Closing Date or the earlier termination of this Agreement in accordance with the provisions of ARTICLE 11, Seller shall: (a) afford Buyer and its Representatives access upon reasonable notice to its employees (if applicable), customers, suppliers, properties, books, Contracts and records of Seller during normal business hours to the extent such access does not unreasonably interfere with the businesses of Seller, and furnish promptly to Buyer all information as may be reasonably requested concerning (i) the Acquired Assets or the Assumed Liabilities, (ii) any current (if applicable) or former employees or service providers, or (iii) the Business; (b) permit Buyer to make such reasonable inspections and copies as Buyer may require, in each case, during normal business hours to the extent such inspections and making of copies do not unreasonably interfere with the businesses of Seller; and (c) instruct the executive officers and senior business managers, employees (if applicable), counsel, auditors and financing advisors of Seller to cooperate with Buyer and its Representatives regarding the same. No investigation pursuant to this Section 7.1 or by Buyer or its Representatives at any time prior to or following the Execution Date shall affect or be deemed to modify any representation or warranty made by Seller herein. The Parties shall enter into a mutually acceptable common interest agreement with respect to information disclosed pursuant to this Section 7.1, which is subject to attorney-client privilege. Subject to applicable Legal Requirements, following the Closing Date and through and including the closing of the Bankruptcy Case, Buyer shall, and shall cause its

Affiliates, to provide Seller reasonable access to all information and access *mutatis mutandis* as provided in clauses (a) through (c) of this Section 7.1.

7.2 Operations Prior to the Closing Date.

Seller covenants and agrees that, except (i) as expressly contemplated by this Agreement, (ii) as disclosed in Section 7.2 of the Disclosure Schedules, (iii) with the prior written consent of Buyer (which consent shall not be unreasonably withheld or delayed), (iv) as otherwise required by Legal Requirements or the Bankruptcy Court (including any limitations on operations imposed by the Bankruptcy Court or the Bankruptcy Code), (v) as occurring as a result of Seller being in bankruptcy under the Bankruptcy Code, or (vi) as and to the extent permitted in writing by the lenders under the DIP Term Sheet or a Transaction Document, after the Execution Date and prior to the Closing Date:

(a) Seller shall:

(i) carry on the Business in the Ordinary Course of Business and use commercially reasonable efforts to maintain, preserve and protect all of the Acquired Assets in the condition in which they exist on the Execution Date, except for ordinary wear and tear and except for replacements, modifications or maintenance in the Ordinary Course of Business (subject to Seller's compliance with the terms of the DIP Term Sheet, including the Approved Budget contemplated thereby and the funding of loans contemplated thereby, in each case, in accordance with the terms of the DIP Term Sheet);

(ii) maintain its books, accounts and records in accordance with past custom and practice;

(iii) use commercially reasonable efforts to maintain its relationships with and preserve for the Business the goodwill of its key suppliers and customers;

(iv) (A) comply in all material respects with all Legal Requirements applicable to it or having jurisdiction over the Business or any Acquired Asset, (B) comply in all material respects with contractual obligations applicable to or binding upon it pursuant to Assigned Contracts, and (C) maintain in full force and effect all Permits and comply, in all material respects, with the terms of each such Permit;

(v) cause any of its current insurance policies with respect to the Acquired Assets not to be canceled or terminated or any of the coverage thereunder to lapse unless (A) simultaneously with such termination, cancellation or lapse, replacement policies providing coverage equal to or greater than the coverage under the canceled, terminated or lapsed policies are in full force and effect, or (B) adequate provision therefor is not provided for in the Approved Budget;

(vi) use commercially reasonable efforts to maintain, preserve and protect in full force and effect the existence of all material Intellectual Property included in the Acquired Assets;

(vii) use commercially reasonable efforts not to take or agree to or commit to assist any other Person in taking any action that would reasonably be expected (A) to result in a failure of any of the conditions to the Closing, or (B) to impair the ability of Seller or Buyer to consummate the Closing in accordance with the terms hereof or to materially delay such consummation; and

(b) Seller shall not:

(i) except for executory contracts and unexpired leases rejected by Seller pursuant to the Sale Order with the prior written consent of Buyer, assume, reject, assign, terminate, modify or amend any Assigned Contract or, except with respect to breaches that will be cured by the Sale Order or pursuant to Section 2.6(a), or take any action which violates, conflicts with or resulted in a breach of any provision of, or constitutes a default under, any Assigned Contract;

(ii) (A) purchase or otherwise acquire any material properties or assets (tangible or intangible) or sell, lease, transfer or otherwise dispose of any Acquired Assets or otherwise remove any assets, or make any material changes to asset levels, mix, or valuation, except for purchases of materials and sales of Inventory in the Ordinary Course of Business and sales and dispositions of obsolete assets, or (B) remove any material Equipment or other material assets from the Real Property other than in the Ordinary Course of Business or with the prior written consent of Buyer;

(iii) waive or release any claim or rights included in or related to the Acquired Assets or the Business with a value, individually or in the aggregate, in excess of \$50,000 or revalued any of the Acquired Assets, except for downward adjustments to the value of Inventory in the Ordinary Course of Business;

(iv) enter into any contractual relationship with any third party related to the Acquired Assets or the Business, other than (A) in the Ordinary Course of Business, (B) contractual relationships with professionals and advisors entered into in connection with the bankruptcy of Seller and the Transactions, (C) non-disclosure and confidentiality agreements entered into with potential bidders for all or a portion of Seller's assets, and (D) any agreements relating to movement of Inventory;

(v) enter into or renew any Contract having a term of one year or greater or that may require Seller to incur potential liabilities of \$50,000 or greater per year without the consent of Buyer and, to the extent required, the approval of the Bankruptcy Court in accordance with section 363(b) of the Bankruptcy Code;

(vi) make any material commitments for capital expenditures;

(vii) suffer any material damage or destruction to or loss of any material assets or properties whether or not covered by insurance;

(viii) change in any way Seller's accounting methods, principles or practices other than required by changes in GAAP;

(ix) enter into any commitment or transaction or series of commitments or transactions in respect of Indebtedness or paid, discharged or satisfied any claims, liabilities or obligations (absolute, accrued, asserted or unasserted, contingent or otherwise), other than (i) the payment, discharge or satisfaction in the Ordinary Course of Business of Liabilities incurred in the Ordinary Course of Business, and (ii) the DIP Term Sheet and the financing transactions contemplated thereby;

(x) allow any Permit held by Seller to terminate, expire or lapse to the extent that any fees required to be paid in connection with renewal are included in the funds available to Seller under the DIP Term Sheet;

(xi) (A) hire or engage any employees, independent contractors, consultants, or other service providers; (B) enter into or adopt any new severance pay, termination pay, deferred compensation, bonus, or other employee benefit plan with respect to any current (if applicable) or former employee or service provider that would be a Benefit Plan if it existed on the Execution Date (including any employment agreement, consulting agreement, severance agreement, change in control agreement, or transaction or retention bonus agreements); or (C) enter into, amend, extend, terminate or negotiate any Collective Bargaining Agreement, or recognize or certify any Union as the bargaining representative of any employees of Seller (if applicable), except, in the case of each of clauses (A) through (C), as required by applicable Legal Requirements or the terms of any Benefit Plan, as in effect on the Execution Date; or

(xii) agree or commit to do any of the foregoing.

7.3 Governmental Approvals; Cooperation.

(a) Seller and Buyer shall use commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other in doing, all things necessary to consummate and make effective, in the most expeditious manner practicable, the Transactions, including (i) taking all commercially reasonable acts necessary to cause the conditions precedent set forth in ARTICLE 9 and ARTICLE 10 to be satisfied, (ii) obtaining, at the earliest practicable date, all necessary Governmental Authorizations and the making of all necessary registrations, declarations and filings (including registrations, declarations and filings with Governmental Authorities, if any) and taking all commercially reasonable steps as may be necessary to avoid any Action by any Governmental Authority, (iii) defending any Actions challenging this Agreement or the consummation of the Transactions, including seeking to have any stay or temporary restraining order entered by any court or other Governmental Authority vacated or reversed, and (iv) executing and delivering any additional instruments necessary to consummate the Transactions and to fully carry out the purposes of this Agreement.

(b) Buyer and Seller shall take all commercially reasonable actions and do, or cause to be done, all commercially reasonable things necessary under the applicable Legal Requirements with the appropriate Governmental Authorities to put in place, to transfer, to amend, or to acquire all Transferred Permits that are necessary for the operation and conduct of the Acquired Assets by or on the Closing Date, unless the applicable Legal Requirements regarding such a Permit require certain actions to be taken upon or after Closing, and, in that event, Buyer and Seller shall take all commercially reasonable actions and do, or cause to be done, all commercially reasonable things necessary or desirable under the applicable Legal Requirements with the appropriate Governmental Authorities which can only be taken or done after Closing to put in place, transfer, amend or acquire such remaining Permits as promptly as reasonably practicable after the Closing. The fees and expenses paid to Governmental Authorities, in each case, as directed by Buyer and as necessary to put in place, transfer, amend or acquire all Transferred Permits that are necessary for the operation and conduct of the Acquired Assets shall be provided for in the Approved Budget and paid in accordance with the DIP Term Sheet (such fees and expenses, the “Transferred Permit Fees”), and Seller shall not be required to pay any Transferred Permit Fees following the Closing.

(c) Seller and Buyer (i) shall to the extent legally permitted promptly inform each other of any communication from any Governmental Authority concerning this

Agreement, the Transactions, and any filing, notification or request for approval, and (ii) shall permit the other to review in advance any proposed written or material oral communication or information submitted to any such Governmental Authority in response thereto (excluding documents and communications which are subject to preexisting confidentiality agreements or to the attorney-client privilege or work product doctrine). In addition, none of the Parties shall agree to participate in any meeting with any Governmental Authority in respect of any filings, investigation or other inquiry with respect to this Agreement or the Transactions, unless, to the extent legally permitted, such Party consults with the other Parties in advance and, to the extent permitted by any such Governmental Authority, gives the other Parties the opportunity to attend and participate thereat, in each case, to the maximum extent practicable. Subject to restrictions under any Legal Requirements, each of Buyer and Seller shall furnish the other with copies of all correspondence, filings and communications (and memoranda setting forth the substance thereof) between it and its Affiliates and their respective Representatives on the one hand, and the Governmental Authority or members of its staff on the other hand, with respect to this Agreement, the Transactions (excluding documents and communications which are subject to preexisting confidentiality agreements or to the attorney-client privilege or work product doctrine or which refer to valuation of the Business) or any such filing, notification or request for approval. Each Party shall also furnish the other Party with such necessary information and assistance as such other Party and its Affiliates may reasonably request in connection with their preparation of necessary filings, registration or submissions of information to the Governmental Authority in connection with this Agreement, the Transactions and any such filing, notification or request for approval.

7.4 Bankruptcy Court Matters.

(a) Sale Milestones. From and after the Execution Date and until the Closing Date, subject, in each case, to the terms of the Bidding Procedures Order, Seller agrees:

(i) To file a motion in form and substance reasonably acceptable to Buyer seeking approval of the bidding and sale procedures and designating Buyer and this Agreement as the Stalking Horse Purchaser and the Stalking Horse Agreement (the “Bidding Procedures Motion”) for the Transactions within three (3) Business Days after the Petition Date.

(ii) To obtain a hearing to approve the Bidding Procedures Motion on or before thirty-five (35) calendar days following the Petition Date.

(iii) That no later than thirty-five (35) calendar days after the Petition Date, the Bankruptcy Court shall have entered an order with respect to the bidding procedures (the “Bidding Procedures Order”).

(iv) That if multiple Qualified Bids are submitted prior to the Bid Deadline (as defined in the Bidding Procedures Order), commence the Auction on or before eighty (80) days after the Petition Date, subject to the Bidding Procedures Order.

(v) To obtain a Sale Hearing before the Bankruptcy Court to approve the Transactions to be held on or before ninety (90) days following the Petition Date and the Sale Order shall have been entered no later than ninety (90) days following the Petition Date.

(vi) The Closing shall occur no later than 120 days after the Petition Date.

(b) Buyer and Seller acknowledge that this Agreement and the sale of the Acquired Assets and assumption and assignment of the Assigned Contracts are subject to Bankruptcy Court approval. Buyer and Seller acknowledge that (i) to obtain such approval and to satisfy Seller's fiduciary duties to all applicable stakeholders in accordance with applicable Legal Requirements, Seller must demonstrate that it has taken reasonable steps to obtain the highest or otherwise best offer possible for the Acquired Assets, and that such demonstration shall include giving notice of the Transactions to creditors and other interested parties, including as may be ordered by the Bankruptcy Court and, if necessary, conducting the Auction, and (ii) Buyer must provide adequate assurance of future performance as required under the Bankruptcy Code with respect to each Assigned Contract.

(c) Buyer agrees and acknowledges that Seller, including through its representatives, are and may continue soliciting and responding to inquiries, proposals or offers from third parties for all or any part of the Acquired Assets, as contemplated by the Bidding Procedures and such actions as contemplated by the terms of the Bidding Procedures shall not be a breach or violation of this Agreement.

7.5 Notice of Developments.

Seller shall promptly notify Buyer of, and furnish Buyer with, any information it may reasonably request with respect to any event that would reasonably be expected to cause any of the conditions set forth in ARTICLE 9 not to be fulfilled by the Outside Date. Notwithstanding anything to the contrary in this Section 7.5, no schedule, notice, information, or updated item delivered pursuant to this Section 7.5 shall be deemed to supplement, modify or update any Schedule or cure any breach of any such representation or warranty, in each case, for the purpose of determining whether any of the conditions to Closing set forth in ARTICLE 9 have been satisfied or fulfilled.

7.6 Transition of Business.

Seller shall use commercially reasonable efforts to assist Buyer in accomplishing the acquisition of the Acquired Assets of the Business from Seller by Buyer as contemplated herein. Following the Closing, Seller, at no cost or other exposure to Seller, shall cooperate with Buyer in its efforts to continue and maintain for the benefit of Buyer those business and customer relationships of Seller existing prior to the Closing and relating to the Business, including relationships with lessors, current (if any) or former employees, regulatory authorities, licensors, customers, suppliers and others. Seller shall refer to Buyer all inquiries relating to the Acquired Assets. Seller shall not take any action that diminishes, or would reasonably be expected to diminish, the value of the Acquired Assets after the Closing or that would interfere with the business of Buyer to be engaged in after the Closing, including disparaging the name or business of Buyer.

7.7 Sale Free and Clear.

The Sale Order shall provide that, on the Closing Date and concurrently with the Closing, all then existing or thereafter arising Liabilities and Liens (including all successor liability) of, against or created by Seller or its bankruptcy estate shall, to the fullest extent permitted by sections 363 and 365 of the Bankruptcy Code, be fully released from and with respect to the Acquired Assets. On the Closing Date, the Acquired Assets shall be transferred to Buyer free and clear of any and all Liabilities and Liens (including all successor liability), other than the Assumed

Liens and the Assumed Liabilities, to the fullest extent permitted by sections 363 and 365 of the Bankruptcy Code. The Sale Order shall authorize Buyer's exercise of the Credit Bid for any obligations arising under the DIP Term Sheet.

ARTICLE 8

ADDITIONAL AGREEMENTS

8.1 Taxes.

Any Transfer Tax payable in connection with the sale, conveyance, assignments, transfers and deliveries to be made to Buyer hereunder shall be borne by Buyer. Seller and Buyer shall use commercially reasonable efforts and cooperate in good faith to exempt the sale and transfer of the Acquired Assets from any such Transfer Taxes. Buyer and Seller agree to timely sign and deliver (or cause to be timely signed and delivered) such certificates or forms as may be reasonably necessary or appropriate for establishing, and shall otherwise reasonably cooperate to establish, any available exemption from or reduction of any such Transfer Taxes. The party required by applicable Legal Requirements to prepare and file any Tax Returns in respect of such Transfer Taxes shall prepare and file such Tax Returns and the other party (or parties) shall cooperate in full in connection with the preparation of such Tax Returns.

8.2 Payments Received.

Seller and Buyer agree that, after the Closing, each will hold and will promptly transfer and deliver to the other, from time to time as and when received by them, any cash, checks with appropriate endorsements (using commercially reasonable efforts not to convert such checks into cash) or other property that they may receive on or after the Closing which belongs to the other and will account to the other for all such receipts.

8.3 Assigned Contracts: Adequate Assurance and Performance.

Buyer shall use commercially reasonable efforts to provide adequate assurance of the future performance by Buyer of each Assigned Contract as required under section 365 of the Bankruptcy Code. Buyer and Seller agree that they will promptly take all actions reasonably required to assist in obtaining a Bankruptcy Court finding that there has been an adequate demonstration of adequate assurance of future performance under the Assigned Contracts pursuant to section 365 of the Bankruptcy Code, such as furnishing timely requested and factually accurate affidavits, non-confidential financial information and other documents or information for filing with the Bankruptcy Court and making Buyer's and Seller's representatives available to testify before the Bankruptcy Court.

8.4 Post-Closing Books and Records and Personnel.

From and after the Closing Date, each Party shall provide the other Parties (and their respective Representatives) with access, at reasonable times and in a manner so as not to unreasonably interfere with their normal business, to the books, records, systems and any employees of the other Parties so as to enable Buyer and Seller to prepare Tax, financial or court filings or reports, to respond to court orders, subpoenas or inquiries, investigations, audits or other proceedings of Governmental Authorities, and to prosecute and defend legal Actions or for other like purposes, including Claims, objections and resolutions, and with respect to Seller, to wind-up its bankruptcy estate, which shall include the cooperation of the Parties in taking whatever actions are reasonably necessary to effect such winding up. If any party desires to dispose of any such

records, such Party shall, thirty (30) days prior to such disposal, provide the other Party with a reasonable opportunity to remove such records to be disposed of at the removing Party's expense.

8.5 Casualty Loss.

Notwithstanding any provision in this Agreement to the contrary, if, before the Closing, all or any portion of the Acquired Assets is (a) condemned or taken by eminent domain, or (b) is damaged or destroyed by fire, flood or other casualty, Seller shall notify Buyer promptly in writing of such fact, and in the case of (i) condemnation or taking, Seller shall assign or pay, as the case may be, any proceeds thereof to Buyer at the Closing, and (ii) fire, flood or other casualty, Seller shall assign the insurance proceeds therefrom to Buyer at Closing. Notwithstanding the foregoing, the provisions of this Section 8.5 shall not in any way modify Buyer's other rights under this Agreement, including any applicable right to terminate the Agreement if any condemnation, taking, damage or other destruction results or would reasonably be expected to result in a Material Adverse Effect.

8.6 Name Change.

Promptly following the Closing and in any event within ninety (90) Business Days after the Closing Date, Seller shall discontinue the use of its current name (and any other trade names or "d/b/a" names currently utilized by Seller) and file or cause to be filed all documents, including amendments to Seller's organizational documents, and shall take all other steps, that are necessary to change the name of Seller to a name that does not contain the terms "Norcold", or any variation on "Norcold". Further, Seller shall (i) except in connection with administration of the Bankruptcy Case, cease all use of the "Norcold" name and any confusingly similar variations promptly following Closing; (ii) execute and deliver all instruments and take all actions reasonably requested by Buyer to retire, abandon, cancel, or otherwise discontinue the "Norcold" Trademarks and trade names (or to reflect Buyer as owner of record prior to any retirement or cancellation), including any filings with the USPTO and foreign trademark offices; and (iii) not oppose, challenge, or interfere with any action by Buyer to retire, abandon, cancel, or otherwise discontinue the "Norcold" Trademarks or trade names.

8.7 No Successor Liability.

The Parties intend that upon the Closing, Buyer shall not be deemed to (a) be the successor of or successor employer (within the meaning of such term under any Legal Requirement and applicable rules, regulations or legal principles thereunder) to Seller or any of its Affiliates, including with respect to any current (if applicable) or former employees, contractors or consultants, (b) have, *de facto*, or otherwise, merged with or into Seller, (c) be a mere continuation or substantial continuation of Seller or the enterprise(s) of Seller, or (d) except in each case as included in the Assumed Liabilities, be liable for any acts or omissions of Seller in the conduct of the Business or arising under or related to the Acquired Assets other than as set forth in this Agreement. Without limiting the generality of the foregoing, and except as otherwise provided in this Agreement or otherwise required by applicable law, the Parties intend that Buyer shall not be liable for any Liens (other than Assumed Liabilities and Assumed Liens) against Seller or any of its predecessors or Affiliates, and Buyer shall have no successor or vicarious liability of any kind or character whether known or unknown as of the Closing Date, whether now existing or hereafter arising, or whether fixed or contingent, with respect to the Business, the Acquired Assets or any Liabilities of Seller arising prior to the Closing Date. The Parties agree that the provisions substantially in the form of this Section 8.7 shall be reflected in the Sale Order.

ARTICLE 9

CONDITIONS PRECEDENT TO OBLIGATIONS OF BUYER TO CLOSE

The obligations of Buyer to consummate the Transactions are subject to fulfillment, at the Closing, of each of the following conditions, any one or more of which may be waived by Buyer, in its sole and absolute discretion:

9.1 Accuracy of Representations.

The representations and warranties of Seller set forth in (a) ARTICLE 5 (other than the representations and warranties set forth in Section 5.1 and Section 5.2.) shall be true and correct as of the Closing Date as though such representations and warranties had been made on and as of the Closing (provided that representations and warranties which are confined to a specified date shall speak only as of such date), except for those breaches, if any, of such representations and warranties that in the aggregate have not had and would not reasonably be expected to have a Material Adverse Effect, and (b) Section 5.1 and Section 5.2 shall be true and correct in all respects as of the Closing Date with the same effect as though such representations and warranties had been made on and as of the Closing.

9.2 Seller's Performance.

The covenants and agreements that Seller is required to perform or to comply with pursuant to this Agreement at or prior to the Closing shall have been performed and complied with, in all material respects.

9.3 No Order.

No Governmental Authority shall have enacted, issued, promulgated, decreed or entered any final, non-appealable Order, which is in effect and has the effect of restraining or preventing the consummation of or imposing material modifications on the Transactions.

9.4 Governmental Authorizations; Consents.

All material Permits and consents set forth on Section 9.4 of the Disclosure Schedules shall have been made or obtained.

9.5 Seller's Deliveries.

Each of the deliveries required to be made to Seller pursuant to Section 4.3 shall have been so delivered.

9.6 Sale Order.

The Bankruptcy Court shall have entered the Sale Order, and the Sale Order shall have not been stayed, reversed, modified or amended and be in effect on the Closing Date.

9.7 Assigned Contracts.

The Bankruptcy Court shall have approved and authorized the assumption and assignment of each Assigned Contract, except as would not have a material effect on the Business from and after the Closing and except for any Contracts that are removed from Section 2.6(a) of the Disclosure Schedules pursuant to the provisions of Section 2.6.

9.8 Material Adverse Effect.

Since the Execution Date, no Material Adverse Effect shall have occurred.

9.9 Event of Default.

No Event of Default shall have occurred under the DIP Order (a) which gives the secured parties thereunder a termination right, (b) as a result of which, the secured parties thereunder shall have accelerated the repayment obligations of Seller, and (c) which has not been waived.

9.10 Releases and Termination Statements.

Seller shall have delivered to Buyer releases and termination statements sufficient for Buyer to receive the Acquired Assets free and clear of any and all material Liens (other than Assumed Liens); provided, however, that releases shall not be required with respect to Liens that are both (a) released by the Sale Order, and (b) not required to be released at Closing pursuant to releases and termination statements in connection with a financing or debt facility obtained by Buyer.

9.11 Confirmation Order

The Bankruptcy Court shall have entered the Confirmation Order in full force and effect as a Final Order and there shall have been no modification or stay of the Confirmation Order or entry of any other order prohibiting the transactions contemplated by the Plan from being consummated.

ARTICLE 10

CONDITIONS PRECEDENT TO THE OBLIGATION OF SELLER TO CLOSE

The obligations of Seller to consummate the Transactions are subject to fulfillment, at the Closing, of each of the following conditions, any one or more of which may be waived by Seller, in its sole and absolute discretion:

10.1 Accuracy of Representations.

The representations and warranties of Buyer (a) set forth in ARTICLE 6 (other than the representations and warranties set forth in Section 6.1 and Section 6.2) shall be true and correct as of the Closing Date as though such representations and warranties had been made on and as of the Closing (provided that representations and warranties which are confined to a specified date shall speak only as of such date), except for those breaches, if any, of such representations and warranties that in the aggregate have not had and would not reasonably be expected to have a Material Adverse Effect, and (b) set forth in Section 6.1 and Section 6.2 shall be true and correct in all respects as of the Closing Date with the same effect as though such representations and warranties had been made on and as of the Closing.

10.2 Sale Order in Effect.

The Bankruptcy Court shall have entered the Sale Order.

10.3 Buyer's Performance.

The covenants and agreements that Buyer is required to perform or to comply with pursuant to this Agreement at or prior to the Closing shall have been performed and complied with, in all material respects.

10.4 No Order.

No Governmental Authority shall have enacted, issued, promulgated or entered any final, non-appealable Order, which is in effect and has the effect of preventing the consummation of the Transactions.

10.5 Buyer's Deliveries.

Each of the deliveries required to be made to Buyer pursuant to Section 4.2 shall have been so delivered.

ARTICLE 11
TERMINATION

11.1 Termination Events.

Anything contained in this Agreement to the contrary notwithstanding, this Agreement may be terminated at any time prior to the Closing only as follows:

- (a) by mutual written consent of Seller and Buyer;
- (b) by either Seller or Buyer if the Closing shall not have occurred by February 12, 2026 or such later date as chosen by Buyer, in its sole and absolute discretion (the "Outside Date"); provided, however, that Buyer must notify Seller in writing on or prior to February 11, 2026 of any extension of the Outside Date to later than February 12, 2026; provided, further, that the right to terminate this Agreement under this Section 11.1(b) shall not be available to any Party whose willful failure to fulfill any of its obligations under this Agreement shall have been the cause of, or shall have resulted in, the failure of the Closing to occur on or prior to the Outside Date;
- (c) by Buyer:
 - (i) if any of the events set forth in clauses (a) and (b) of Section 7.4 shall not have occurred by the respective dates set forth therein;
 - (ii) if the Bankruptcy Court enters an Order dismissing or converting into cases under chapter 7 of the Bankruptcy Code, any of the cases commenced by Seller under chapter 11 of the Bankruptcy Code and comprising part of the Bankruptcy Case or appointing a trustee in the Bankruptcy Case or appointing a responsible officer or an examiner with enlarged powers relating to the operation of Seller's businesses (beyond those set forth in section 1106(a)(3) or (4) of the Bankruptcy Code) under section 1106(b) of the Bankruptcy Code, or such an order of dismissal, conversion or appointment is entered for any reason and is not be reversed or vacated within fourteen (14) days after the entry thereof or Seller seeks such an Order;
 - (iii) in the event of any material breach of, or material failure to perform, any agreements, covenants, representations or warranties contained herein or in the Sale Order, which breach or failure to perform (A) would result in Seller being unable to satisfy a condition set forth in Section 9.1 or Section 9.2 by the then-applicable Outside Date, and (B) is not capable of being cured or, if capable of being cured, is not cured within fifteen (15) Business Days after Buyer notifies Seller of such breach;
 - (iv) if the Bidding Procedures Order has been amended or rescinded or has been modified in any respect that is detrimental to Buyer, and the Order revoking,

rescinding, or so modifying the Bidding Procedures Order shall not be reversed or vacated within fourteen (14) days after the entry thereof;

(v) if the Sale Order has been amended or rescinded or has been modified in any respect without the prior written consent of Buyer (which shall be in its sole and absolute discretion to provide), and the Order revoking, rescinding, or so modifying the Sale Order shall not be reversed or vacated within fourteen (14) days after the entry thereof;

(vi) if, at the end of the Auction contemplated by the Bidding Procedures, Buyer is not determined by Seller to be the Successful Bidder or the Backup Bidder or if Seller closes on a transaction with a Successful Bidder other than Buyer;

(vii) if a Governmental Authority issues a final, non-appealable ruling or Order permanently restraining, enjoining or otherwise prohibiting the Transactions;

(viii) if any Event of Default shall have occurred and not been waived, subject to any applicable cure period, or the lenders' obligations under the DIP Order are terminated;

(ix) if Seller has sold, leased, transferred or otherwise disposed of any Acquired Assets (or assets that would be Acquired Assets but for such sale, lease, transfer or disposition), in each case, except for (A) purchases of materials and sales of Inventory in the Ordinary Course of Business and sales and dispositions of obsolete assets, and (B) sales, leases, transfers or dispositions with Buyer's prior written consent; or

(x) if the Bankruptcy Court enters any Order that (A) requires any Excluded Cause of Action to be treated as an Acquired Asset or as an Assumed Liability; (B) requires the assumption of any Assigned Contract that could give rise to an Excluded Cause of Action; or (C) otherwise has the effect that any Excluded Cause of Action or any liability arising therefrom becomes an Assumed Liability; and

(d) by Seller:

(i) in the event of any breach of, or failure to perform, any agreements, covenants, representations or warranties contained herein, which breach or failure to perform (A) would result in Buyer being unable to satisfy a condition set forth in Section 10.1 or Section 10.3, and (B) is not capable of being cured or, if capable of being cured, is not cured within ten (10) Business Days after Seller notifies Buyer of such breach;

(ii) if, in accordance with the Bidding Procedures, Buyer is not determined by Seller to be the Successful Bidder or the Backup Bidder and Seller have entered into any material agreement with any such Successful Bidder or Backup Bidder; or

(iii) if the board of managers or similar governing body of Seller determines that terminating the Transactions or terminating this Agreement is required to comply with applicable Legal Requirements or such body's fiduciary duties under applicable Legal Requirements.

Each condition set forth in this Section 11.1, pursuant to which this Agreement may be terminated shall be considered separate and distinct from each other such condition. If more than one of the termination conditions set forth in Section 11.1 are applicable, the applicable party shall have the right to choose the termination condition pursuant to which this Agreement is to be terminated. The Parties acknowledge and agree that no notice of termination or extension of the

Outside Date provided pursuant to this Section 11.1 shall become effective until two (2) days after the delivery of such notice to the other Parties, and only if such notice shall not have been withdrawn during such two (2) day period or otherwise become invalid.

11.2 Effect of Termination.

If this Agreement is terminated by Buyer or Seller pursuant to this ARTICLE 11, it shall become null and void and have no effect and all rights and obligations of the Parties under this Agreement shall terminate without any Liability of any Party to any other Party except (i) nothing herein shall relieve any Party from Liability for any breach of this Agreement occurring prior to such termination, and (ii) the provisions of Section 7.5, and this Section 11.2 (and, to the extent applicable to the interpretation or enforcement of such provisions, ARTICLE 1 and ARTICLE 12), shall expressly survive the termination of this Agreement.

ARTICLE 12
GENERAL PROVISIONS

12.1 Survival.

All covenants and agreements contained herein which by their terms are to be performed in whole or in part, or which prohibit actions, subsequent to the Closing shall, solely to the extent such covenants and agreements are to be performed, or prohibit actions, subsequent to the Closing, survive the Closing in accordance with their terms. All other covenants and agreements contained herein, and all representations and warranties contained herein or in any certificated deliveries hereunder, shall not survive the Closing and shall thereupon terminate, including any Actions for damages in respect of any breach thereof.

12.2 Confidentiality.

Following the Closing, Seller agrees to, and to cause its Affiliates to, treat and hold as confidential, and not use or disclose all or any of the information concerning the Business, the Acquired Assets, the negotiation or existence and terms of this Agreement or the business affairs of Buyer except (a) disclosure of matters that become a matter of public record as a result of the Bankruptcy Case and the filings related thereto, and (b) disclosures permitted under this Agreement.

12.3 Public Announcements.

Unless otherwise required by applicable Legal Requirement or by obligations of Buyer or Seller or their respective Affiliates pursuant to any listing agreement with or rules of any securities exchange, Buyer and Seller shall consult with each other before issuing any press release or otherwise making any public statement with respect to this Agreement, the Transactions or the activities and operations of the other and shall not issue any such release or make any such statement without the prior written consent of the other (such consent not to be unreasonably withheld or delayed).

12.4 Notices.

All notices, requests, demands, waivers and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally or sent by overnight courier or, to the extent listed below, email transmission:

(a) If to Seller, then to:

Norcold, LLC
c/o Alvarez & Marsal North America LLC
600 Brickell Avenue, Suite 2950
Miami, FL 33131
Attn: Richard Wu
Email: rwu@alvarezandmarsal.com

with a copy (which shall not constitute notice) to:

Young Conaway Stargatt & Taylor, LLP
Rodney Square
1000 N. King Street
Wilmington, DE 19801
Attn: Matthew B. Lunn
Craig D. Gear
Email: mlunn@ycst.com
cgear@ycst.com

(b) If to Buyer:

Dave Carter & Associates, Inc.
3530 S.W. 7th St.
Ocala, FL 34474
Attn: Stéphane Pascal Cordeille
Email: scordeille@thetford.eu

with a copy (which shall not constitute notice) to:

Ropes & Gray LLP
1211 Avenue of the Americas
New York, NY 10036
Attention: Patrick S. Dorime
Chris L. Dickerson
Email: Patrick.Dorime@ropesgray.com
Chris.Dickerson@ropesgray.com

or to such other person or address as any party shall specify by notice in writing to the other party. All such notices, requests, demands, waivers and communications shall be deemed to have been received on the date on which so personally-delivered or emailed (with confirmation of transmission) or delivered by overnight courier.

12.5 Waiver.

Neither the failure nor any delay by any Party in exercising any right, power, or privilege under this Agreement or the documents referred to in this Agreement shall operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power, or privilege shall preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. To the maximum extent permitted by Legal

Requirements, (a) no waiver that may be given by a Party shall be applicable except in the specific instance for which it is given, and (b) no notice or demand on one Party shall be deemed to be a waiver of any right of the Party giving such notice or demand to take further action without notice or demand.

12.6 Entire Agreement; Amendment.

This Agreement (including the Disclosure Schedules and the Exhibits) and the other Transaction Documents supersede all prior agreements between Buyer and Seller with respect to its subject matter and constitute a complete and exclusive statement of the terms of the agreements between Buyer and Seller with respect to their subject matter. This Agreement may not be amended, modified or supplemented except by a written agreement executed by each of the Parties.

12.7 Assignment.

This Agreement, and the rights, interests and obligations hereunder, shall not be assigned by any Party by operation of law or otherwise without the express written consent of the other Parties (which consent may be granted or withheld in the sole discretion of such other Party); provided, however, that Buyer shall be permitted to assign all or part of its rights or obligations hereunder to one or more Buyer Designees without the prior consent of Seller as provided in Section 4.2(b).

12.8 Severability.

The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision, and (b) the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability.

12.9 Expenses.

Except as otherwise expressly provided in this Agreement, including Section 11.2, whether or not the Transactions are consummated, the Parties shall bear their own respective expenses (including all compensation and expenses of counsel, financial advisors, consultants, actuaries and independent accountants) incurred in connection with this Agreement and the Transactions. Any and all fees required by any Governmental Authority or any Person to obtain or for the transfer of a Permit shall be the sole responsibility of Buyer.

12.10 Governing Law; Consent to Jurisdiction and Venue; Jury Trial Waiver.

(a) Except to the extent the provisions of the Bankruptcy Code apply, this Agreement shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts made and to be performed entirely in such state without regard to principles of conflicts or choice of laws or any other law that would make the laws of any other jurisdiction other than the State of New York applicable hereto.

(b) Without limitation of any Party's right to appeal any Order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be

connected with, this Agreement, any breach or default hereunder, or the Transactions, and (ii) any and all claims relating to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent and submit to the exclusive jurisdiction and venue of the Bankruptcy Court and irrevocably waive the defense of an inconvenient forum to the maintenance of any such Action; provided, however, that, if the Bankruptcy Case is closed, all Actions arising out of or relating to this Agreement shall be heard and determined in a New York state court or a federal court sitting in the Southern District of the State of New York, and the Parties hereby irrevocably submit to the exclusive jurisdiction and venue of such courts in any such Action and irrevocably waive the defense of an inconvenient forum to the maintenance of any such Action. The Parties consent to service of process by mail (in accordance with Section 12.4) or any other manner permitted by law.

(c) THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF SELLER, BUYER OR THEIR RESPECTIVE REPRESENTATIVES IN THE NEGOTIATION OR PERFORMANCE HEREOF.

12.11 Counterparts.

This Agreement and any amendment hereto may be executed in two or more counterparts, each of which shall be deemed to be an original of this Agreement or such amendment and all of which, when taken together, shall constitute one and the same instrument. Counterparts may be delivered via electronic mail (including PDF or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docuSign.com), or other transmission method and any counterpart so delivered will be deemed to have been duly and validly delivered and be valid and effective and binding on each Party for all purposes.

12.12 Parties in Interest; No Third Party Beneficiaries; No Amendment.

The Transaction Documents (a) shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns, and (b) are for the sole benefit of the Parties and their permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable benefit, claim, cause of action, remedy or right of any kind.

12.13 Remedies.

Neither the exercise of nor the failure to exercise a right of set-off or to give notice of a claim under this Agreement will constitute an election of remedies or limit Seller or Buyer in any manner in the enforcement of any other remedies that may be available to any of them, whether at law or in equity.

12.14 Specific Performance for Post-Closing Covenants.

Solely with respect to the Parties' respective covenants under this Agreement that survive the Closing, and solely to the extent to be performed after the Closing, (a) each Party recognizes that if such Party breaches or refuses to perform any such covenant, monetary damages alone would not be adequate to compensate the non-breaching Party or Parties for their injuries, (b) the non-breaching Party or Parties shall therefore be entitled, in addition to any other remedies that may be available, to obtain specific performance of the terms of such covenants, (c) if any Action is brought by the non-breaching Party or Parties to enforce such covenants, the Party in

breach shall waive the defense that there is an adequate remedy at law, (d) each Party agrees to waive any requirement for the security or posting of any bond in connection with any Action seeking specific performance of such covenants, and (e) each Party agrees that the only permitted objection that it may raise in response to any action for specific performance of such covenants is that it contests the existence of a breach or threatened breach of such covenants. Notwithstanding any other provision of this Agreement to the contrary, no Party shall be entitled to any equitable remedy, including an injunction or order for specific performance, to enforce any provision of this Agreement prior to the Closing.

12.15 No Exemplary, Special, Punitive Damages.

NO PARTY (OR ITS AFFILIATES OR REPRESENTATIVES) SHALL, UNDER ANY CIRCUMSTANCE, BE LIABLE TO THE OTHER PARTY (OR ITS AFFILIATES OR REPRESENTATIVES) FOR ANY EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES CLAIMED BY SUCH OTHER PARTY UNDER THE TERMS OF OR DUE TO ANY BREACH OF THIS AGREEMENT, INCLUDING LOSS OF REVENUE OR INCOME, COST OF CAPITAL, OR LOSS OF BUSINESS REPUTATION OR OPPORTUNITY.

12.16 Non-Recourse.

No past, present or future director, officer, employee, incorporator, member, partner or equityholder of the Parties will have any liability for any obligations or liabilities of Seller or Buyer, as applicable, under this Agreement, or any agreement entered into in connection herewith of or for any claim based on, in respect of, or by reason of, the transactions contemplated hereby and thereby. Any claim or cause of action based upon, arising out of, or related to this Agreement or any agreement, document or instrument contemplated hereby may only be brought against Persons that are expressly named as parties hereto or thereto, and then only with respect to the specific obligations set forth herein or therein. Other than the parties hereto, no party shall have any liability or obligation for any of the representations, warranties, covenants, agreements, obligations or liabilities of any party under this Agreement or the agreements, documents or instruments contemplated hereby or of or for any action or proceeding based on, in respect of, or by reason of, the transactions contemplated hereby or thereby (including breach, termination or failure to consummate such transactions), in each case, whether based on contract, tort, fraud, strict liability, other Legal Requirements or otherwise and whether by piercing the corporate veil, by a claim by or on behalf of a party hereto or another Person or otherwise.

12.17 Release.

Effective as of the Closing and subject to consummation of the Transactions, and except as otherwise expressly provided herein or in the Sale Order, Seller, on behalf of itself, its bankruptcy estate, successors, assigns and any Person claiming by, through, or on behalf of any of the foregoing (collectively, the “Releasing Seller Parties”), hereby fully, finally, irrevocably, and unconditionally releases, waives, acquits, and forever discharges Buyer and each of its current and former officers, directors, managers, employees, agents, attorneys, accountants, consultants, advisors, representatives, and respective successors and assigns thereof, solely in their capacities as such (collectively, the “Released Buyer Parties”), from any and all Actions, Liabilities, and obligations of any kind, nature or description, whether known or unknown, asserted or unasserted, foreseen or unforeseen, accrued or unaccrued, pending or threatened, contingent or fixed, liquidated or unliquidated, matured or unmatured, suspected or unsuspected, at law or in equity, upon contract tort or under any state or federal law or otherwise, which any Releasing Seller Party

has or may have against any Released Buyer Party arising on or prior to the Closing Date and relating to or arising out of (a) the Acquired Assets, (b) the Assumed Liabilities, or (c) the Transactions or the negotiation thereof. The foregoing release shall not apply unless and until the Closing occurs and shall not affect any rights of the Releasing Seller Parties (i) under the Transaction Documents, or (ii) to enforce Buyer's obligations under this Agreement.

[Signature pages follow.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered by their duly authorized representatives, as of the Execution Date.

SELLER:

NORCOLD, LLC

By: _____
Name: Richard Wu
Title: Chief Restructuring Officer

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered by their duly authorized representatives, as of the Execution Date.

BUYER:

DAVE & CARTER ASSOCIATES, INC.

By: _____
Name: Stéphane Pascal Cordeille
Title: Chief Executive Officer