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**UNITED STATES BANKRUPTCY COURT**
**SOUTHERN DISTRICT OF NEW YORK**

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| **In re** | : | **Chapter 11** |
| **CRABTREE & EVELYN, LTD.,** | : | **Case No. 09-14267 (BRL)** |
| **Debtor.** | : | |

**NOTICE OF MOTION OF THE DEBTOR FOR (I) APPROVAL OF THE DISCLOSURE STATEMENT; (II) APPROVAL OF THE NOTICE OF DISCLOSURE STATEMENT HEARING; (III) THE FIXING OF THE VOTING RECORD DATE; (IV) APPROVAL OF THE NOTICE AND OBJECTION PROCEDURES IN RESPECT OF CONFIRMATION OF THE PLAN; (V) APPROVAL OF SOLICITATION PACKAGES AND PROCEDURES FOR DISTRIBUTION THEREOF; (VI) APPROVAL OF THE FORMS OF BALLOTS AND ESTABLISHMENT OF PROCEDURES FOR VOTING ON THE PLAN; (VII) APPROVAL OF THE FORM OF NOTICE TO NON-VOTING CLASSES UNDER THE PLAN; (VIII) THE FIXING OF THE VOTING DEADLINE TO ACCEPT OR REJECT THE PLAN; AND (IX) APPROVAL OF PROCEDURES FOR VOTE TABULATIONS**

**PLEASE TAKE NOTICE** that a hearing on the annexed motion (the "Motion") of Crabtree & Evelyn, Ltd., as debtor and debtor in possession (the "Debtor"), for (I) Approval of the Disclosure Statement; (II) Approval of the Notice of Disclosure Statement Hearing; (III) Fixing the Voting Record Date; (IV) Approval of the Notice and Objection Procedures in Respect of Confirmation of the Plan; (V) Approval of Solicitation Packages and Procedures for Distribution Thereof; (VI) Approval of the Forms of Ballots and Establishment of Procedures for

Voting on the Plan; (VII) Approval of the Form of Notice to Non-Voting Classes Under the Plan; (VIII) Fixing of the Voting Deadline to Accept or Reject the Plan; and (IX) Approval of Procedures for Vote Tabulations, will be held before the Honorable Burton R. Lifland, United States Bankruptcy Judge, at the United States Bankruptcy Court, Alexander Hamilton Custom House, Room 623, One Bowling Green, New York, New York 10004 (the "Bankruptcy Court"), on **November 19, 2009 at 10:00 a.m. (prevailing Eastern Time)** (the "Hearing").

**PLEASE TAKE FURTHER NOTICE** that objections, if any, to the Motion, must be in writing, must conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court for the Southern District of New York, must set forth the name of the objecting party, the nature and amount of claims or interests held or asserted by the objecting party against the Debtor's estate or property, the basis for the objection and the specific grounds therefor, and must be filed with the Bankruptcy Court electronically in accordance with General Order M-242 (General Order M-242 and the User's Manual for the Electronic Case Filing System may be found at www.nysb.uscourts.gov, the official website for the Bankruptcy Court) by registered users of the Bankruptcy Court's case filing system, and by all other parties in interest on a 3.5 inch disk, preferably in Portable Document Format (PDF), WordPerfect, or any other Windows-based word processing format (with a hard copy delivered directly to Chambers), in accordance with General Order M-182, and any objection must further be served upon: (i) the Debtor, 102 Peake Brook Road, Woodstock, CT 06281 (Attn.: Colleen Cording, Esq.), (ii) counsel to the Debtor, Cooley Godward Kronish LLP, 1114 Avenue of the Americas, New York, New York 10036 (Attn: Lawrence C. Gottlieb, Esq. and Richelle Kalnit, Esq.), (iii) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004 (Attn: Serene Nakano, Esq.), (iv) SilvermanAcampora LLP, 100

Jericho Quadrangle, Suite 300, Jericho, New York 11753 (Attn: Ronald J. Friedman, Esq.) as counsel for Kuala Lumpur Kepong Berhad, the Debtor's prepetition and postpetition lender, and (v) Hahn & Hessen LLP, 488 Madison Avenue, 15th Floor, New York, New York 10022 (Attn: Mark Indelicato, Esq.), as counsel for the statutory committee of unsecured creditors, so as to be received no later than **November 11, 2009 at 4:00 p.m. (prevailing Eastern Time)** (the "Objection Deadline").

PLEASE TAKE FURTHER NOTICE that if an objection to the Motion is not received by the Objection Deadline, the relief requested shall be deemed unopposed, and the Bankruptcy Court may enter an order granting the relief sought without a hearing.

PLEASE TAKE FURTHER NOTICE that objecting parties are required to attend the Hearing, and failure to appear may result in relief being granted or denied upon default.

Dated: October 23, 2009
New York, New York

Respectfully submitted,

By: /s/ Lawrence C. Gottlieb
Lawrence C. Gottlieb

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**UNITED STATES BANKRUPTCY COURT**
**SOUTHERN DISTRICT OF NEW YORK**

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| **In re** | : | **Chapter 11** |
| **CRABTREE & EVELYN, LTD.,** | : | **Case No. 09-14267 (BRL)** |
| **Debtor.** | : | |

**MOTION OF THE DEBTOR FOR (I) APPROVAL OF THE DISCLOSURE STATEMENT; (II) APPROVAL OF THE NOTICE OF DISCLOSURE STATEMENT HEARING; (III) THE FIXING OF THE VOTING RECORD DATE; (IV) APPROVAL OF THE NOTICE AND OBJECTION PROCEDURES IN RESPECT OF CONFIRMATION OF THE PLAN; (V) APPROVAL OF SOLICITATION PACKAGES AND PROCEDURES FOR DISTRIBUTION THEREOF; (VI) APPROVAL OF THE FORMS OF BALLOTS AND ESTABLISHMENT OF PROCEDURES FOR VOTING ON THE PLAN; (VII) APPROVAL OF THE FORM OF NOTICE TO NON-VOTING CLASSES UNDER THE PLAN; (VIII) THE FIXING OF THE VOTING DEADLINE TO ACCEPT OR REJECT THE PLAN; AND (IX) APPROVAL OF PROCEDURES FOR VOTE TABULATIONS**

TO THE HONORABLE BURTON R. LIFLAND,
UNITED STATES BANKRUPTCY JUDGE:

Crabtree & Evelyn, Ltd., as debtor and debtor in possession (the "Debtor"),[1] respectfully represents:

[1] The last four digits of the Debtor's federal tax identification number are 1685.

## BACKGROUND

### General

1. On July 1, 2009, the Debtor commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtor is authorized to operate its businesses and manage its properties as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this chapter 11 case.

2. On July 2, 2009, the Court entered an order authorizing the Debtor to retain Epiq Bankruptcy Solutions, LLC ("Epiq") as its claims and noticing agent.[2]

3. On July 10, 2009, as amended on July 14, 2009, the Office of the United States Trustee appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code (the "Committee").

4. On August 20, 2009, the Court entered an order setting October 9, 2009 at 5:00 p.m. Eastern as the deadline for all parties other than governmental units (as defined in section 101(27) of the Bankruptcy Code) to file proofs of claim and December 28, 2009 at 5:00 p.m. Eastern as the deadline for governmental units to file proofs of claim.

### The Debtor's Business

5. Crabtree & Evelyn has evolved from a small, entrepreneurial business, to a company with worldwide manufacturing and distribution capabilities, worldwide distribution channels and 96 retail locations in the United States, making it well-known and respected for its English-style elegance. Through a multi-channel sales strategy, including sales through retail,

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[2] Epiq may act through its affiliate Epiq Financial Balloting Group LLC in connection with the solicitation and tabulation process described herein.

wholesale, export, affiliate and internet channels, the Debtor manufactures and distributes its products worldwide.

6. Founded as a purveyor of fine soaps from around the world, products were first sold under the Crabtree & Evelyn name starting in approximately 1972.[3] During nearly four decades Crabtree & Evelyn has expanded its product offerings from fine soaps to include personal care products and related accessories, fragrances, comestibles (*i.e.*, food products including cookies, teas and jams), products for the home and gift arrangements. The Debtor also sells Vera Bradley (purses and related accessories) products in its retail store locations. Crabtree & Evelyn manufactures and distributes more than twenty-five product lines, including LaSource®, Gardeners, India Hicks Island Living® and Naturals and its products have been frequently mentioned in numerous magazines, including Vogue, Glamour, and Lucky. In 1977, Crabtree & Evelyn opened its first retail store, and its retail business has gradually expanded to include a manufacturing and distribution facility, as well as 96 stores in the United States. In 1996, Kuala Lumpur Kepong Berhad purchased 100 percent of the equity of the Debtor. The Debtor is incorporated in Connecticut, and its headquarters, distribution center, manufacturing facility, and warehouse are located in Woodstock, Connecticut.

7. The Debtor's primary assets include inventory, contract rights, intellectual property rights, and accounts receivable for goods sold. The Debtor also owns its headquarters, manufacturing facility, distribution center and warehouse in Woodstock, Connecticut. In addition, the Debtor leases a significant number of retail stores located in 31 states.

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[3] The name of the Debtor is inspired from (i) the crabapple tree, the original species from which all cultivated apple trees have derived, and (ii) John Evelyn, the seventeenth century renaissance Englishman, who wrote one of the first works on conservation of forests and timber.

## JURISDICTION

8. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

## RELIEF REQUESTED

9. By this Motion, and pursuant to sections 105, 502, and 1128 of the Bankruptcy Code, Bankruptcy Rules 3017, 3020, 9013, 9014 and 9021, and Rules 2002-1, 3017-1, 3018-1, 3020-1, 9013-1 and 9021-1 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York (the "Local Rules"), the Debtor seeks entry of the attached order (the "Disclosure Statement Order") that:

(a) approves the Debtor's proposed disclosure statement under section 1125 of the Bankruptcy Code (the "Proposed Disclosure Statement"), the form of which is annexed to the Disclosure Statement Order as **Exhibit 1**, for the Debtor's Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, dated as of October 23, 2009, and annexed as Exhibit A to the Proposed Disclosure Statement (as the same may be amended or modified, the "Plan");

(b) approves the notice (the "Disclosure Statement Notice") of the hearing on the disclosure statement hearing (the "Disclosure Statement Hearing") in the form annexed to the Disclosure Statement Order as **Exhibit 2**, and procedures for filing objections to the Proposed Disclosure Statement;

(c) fixes a voting record date of November 19, 2009 at 5:00 p.m. (prevailing Eastern Time) (the "Voting Record Date") for purposes of determining the holders of claims against, and interests in, the Debtor;

(d) approves the form of notice and objection procedures in respect of confirmation of the Plan (the "Confirmation Hearing Notice") in the form annexed to the Disclosure Statement Order as **Exhibit 3**, and sets the date for the hearing on confirmation of the Plan as January 14, 2010 at 10:00 a.m. (prevailing Eastern Time);

(e) approves the Solicitation Packages (as defined below) and procedures for distribution thereof;

(f) approves the forms of ballots, annexed as **Exhibit 4 and Exhibit 5** to the Disclosure Statement Order, and establishes procedures for voting on the Plan;

(g) approves the forms of notice to non-voting classes under the Plan, annexed as **Exhibit 6** to the Disclosure Statement Order;

(h) fixes the voting deadline as **January 5, 2010 at 5:00 p.m. (prevailing Eastern Time)** for creditors to accept or reject the Plan; and

(i) approves procedures for tabulating creditor votes.

## BASIS FOR RELIEF REQUESTED

### I. THE PROPOSED DISCLOSURE STATEMENT CONTAINS ADEQUATE INFORMATION AND SHOULD BE APPROVED

10. Pursuant to section 1125 of the Bankruptcy Code, a plan proponent must provide holders of impaired claims with "adequate information" regarding a debtor's proposed plan of reorganization. In that regard, section 1125(a)(1) of the Bankruptcy Code provides:

> "[A]dequate information" means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such hypothetical investor of the relevant class to make an informed judgment about the plan . . . .

11 U.S.C. § 1125(a)(1). Thus, a debtor's disclosure statement must, as a whole, provide information that is "reasonably practicable" to permit an "informed judgment" by impaired creditors entitled to vote on the plan. See Abel v. Shugrue (In re Ionosphere Clubs, Inc.), 179 B.R. 25, 29 (S.D.N.Y. 1995); In re Amfesco Indus., Inc., No. CV-88-2952 (JBW), 1988 WL 141524, at *5 (E.D.N.Y. Dec. 21, 1988) (stating that "[u]nder section 1125 of the Bankruptcy Code, a reasonable and typical creditor or equity security holder must be provided 'adequate information' to make an informed judgment regarding a proposed plan."); BSL Operating Corp. v. 125 E. Taverns, Inc. (In re BSL Operating Corp.), 57 B.R. 945, 950 (Bankr. S.D.N.Y. 1986) (stating that "[s]ection 1125 might be described as a non-rigid 'how-to-inform' section . . . . A

disclosure statement . . . is evaluated only in terms of whether it provides sufficient information to permit enlightened voting by holders of claims or interests."). The bottom-line requirement of a disclosure statement is that it "must clearly and succinctly inform the average unsecured creditor what it is going to get, when it is going to get it, and what contingencies there are to getting its distribution." In re Ferretti, 128 B.R. 16, 19 (Bankr. D.N.H. 1991).[4]

11. The bankruptcy court has broad discretion to determine the adequacy of the information contained in a disclosure statement. See Texas Extrusion Corp. v. Lockheed Corp. (In re Texas Extrusion Corp.), 844 F.2d 1142, 1157 (5th Cir. 1988); In re Worldcom, Inc., No. M-47 HB, 2003 WL 21498904, at *10 (S.D.N.Y. June 30, 2003) ("The determination of what is adequate information is subjective and made on a case by case basis. This determination is largely within the discretion of the bankruptcy court.") (quoting Ionosphere, 179 B.R. at 29); Kirk v. Texaco, Inc., 82 B.R. at 682 ( "The legislative history could hardly be more clear in granting broad discretion to bankruptcy judges under § 1125(a): 'Precisely what constitutes adequate information in any particular instance will develop on a case-by-case basis. Courts will take a practical approach as to what is necessary under the circumstances of each case . . . '") (quoting H.R. REP. NO. 595, at 408-09 (1977), reprinted in 1978 U.S.C.C.A.N. 5787, 6365).

12. The Debtor believes that the Proposed Disclosure Statement contains ample and adequate information to allow parties in interest to make informed judgments to vote, to the extent appropriate, on the Debtor's Plan. The Proposed Disclosure Statement sets forth (i) the history of the Debtor, its businesses, and the significant developments in this Chapter 11 Case, (ii) information concerning the Plan and alternatives thereto, (iii) information for holders of claims and interests regarding treatment of their claims and interests under the Plan, (iv)

[4] Cf. Kirk v. Texaco, Inc.; 82 B.R. 678, 681-82 (S.D.N.Y. 1988) ("whether a disclosure statement required under [section 1125(b)] contains adequate information is *not* governed by otherwise applicable nonbankruptcy law, rule, or regulation") (citing 11 U.S.C. § 1125(d)).

information to assist the holders of claims or interests that are impaired under the Plan in making an informed judgment regarding whether they should vote to accept or reject the Plan, and (v) information to assist the Court in determining whether the Plan complies with the Bankruptcy Code.

13. Accordingly, the Debtor submits that the Proposed Disclosure Statement contains all or substantially all information typically considered by bankruptcy courts and respectfully request that the Court approve the Proposed Disclosure Statement as having adequate information and meeting the requirements of section 1125 of the Bankruptcy Code.

## II. THE NOTICE OF DISCLOSURE STATEMENT HEARING AND PROCEDURES FOR FILING OBJECTIONS TO THE PROPOSED DISCLOSURE STATEMENT SHOULD BE APPROVED

### A. Approval of the Notice of Disclosure Statement Hearing

14. Rule 3017(a) of the Bankruptcy Rules provides that:

> [A]fter a disclosure statement is filed in accordance with Rule 3016(b), the court shall hold a hearing on at least 25 days' notice to the debtor, creditors, equity security holders and other parties in interest as provided in Rule 2002 to consider the disclosure statement and any objections or modifications thereto. The plan and the disclosure statement shall be mailed with the notice of the hearing only to the debtor, any trustee or committee appointed under the Code, the Securities and Exchange Commission and any party in interest who requests in writing a copy of the statement or plan.

Fed. R. Bank. P. 3017(a).

15. Bankruptcy Rules 2002(b) and (d) require notice to all creditors, indenture trustees, and shareholders of the time set for filing objections to, and the hearing to consider the approval of, a disclosure statement. On or before October 23, 2009, the Debtor will have served the Disclosure Statement Notice, annexed to the Disclosure Statement Order as Exhibit 2 and incorporated herein by reference, by electronic and/or first class mail to: (i) the U.S. Trustee; (ii)

counsel for the Committee; (iii) all parties entitled to notice pursuant to this Court's Order, dated July 31, 2009, implementing notice and case management procedures; (the "Case Management Order"); and (iv) any other known holders of claims against or equity interests in the Debtor (collectively, the "Notice Parties").

16. The Debtor has provided the Notice Parties with notice of the time set for filing objections to the Proposed Disclosure Statement as well as notice of the Disclosure Statement Hearing in accordance with the Case Management Order.

17. The Debtor also has provided and will continue to provide copies (either in paper copy or in "PDF" format on a CD-ROM, in the Debtor's discretion) of the Proposed Disclosure Statement and Plan, at the Debtor's expense, to any party in interest who specifically requests such documents in the manner specified in the Disclosure Statement Notice and Bankruptcy Rule 3017(a). Copies of the Proposed Disclosure Statement and Plan also are on file with the Office of the Clerk of the Bankruptcy Court for review during normal business hours and available on Epiq's website at http://chapter11.epiqsystems.com/Crabtree.

18. Because the foregoing procedures provide 27 days' notice of the Disclosure Statement Hearing, the Debtor submits that it is in compliance with Bankruptcy Rule 3017(a) which requires 25 days' notice. Accordingly, the Debtor requests that the Court approve such notice as adequate.

**B. Approval of Procedures for the Filing of Objections to the Proposed Disclosure Statement and Replies Thereto**

19. The Disclosure Statement Notice provides that objections to the Proposed Disclosure Statement, if any, must (a) be in writing; (b) be in the English language; (c) state the name and address of the objecting party and the amount and nature of the claim or interest of such party; (d) state with particularity the basis and nature of any objection to the Proposed

Disclosure Statement; and (e) be filed, together with proof of service, with the Court and served so that they are actually received by the following parties no later than **November 11, 2009 at 5:00 p.m. (prevailing Eastern Time)**: on (i) the Debtor, 102 Peake Brook Road, Woodstock, CT 06281 (Attn.: Colleen Cording, Esq.), (ii) counsel to the Debtor, Cooley Godward Kronish LLP, 1114 Avenue of the Americas, New York, New York 10036 (Attn: Lawrence C. Gottlieb, Esq. and Richelle Kalnit, Esq.), (iii) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004 (Attn: Serene Nakano, Esq.), (iv) SilvermanAcampora LLP, 100 Jericho Quadrangle, Suite 300, Jericho, New York 11753 (Attn: Ronald J. Friedman, Esq.) as counsel for Kuala Lumpur Kepong Berhad, the Debtor's prepetition and postpetition lender, and (v) Hahn & Hessen LLP, 488 Madison Avenue, 15th Floor, New York, New York 10022 (Attn: Mark Indelicato, Esq.), as counsel for the Committee.

20. The Debtor submits that if there are objections to the Proposed Disclosure Statement, it will assist the Court and may expedite the Disclosure Statement Hearing if the Debtor replies to any such objections. Accordingly, the Debtor requests that it be authorized to file and serve replies or an omnibus reply to any such objections no later than **November 17, 2009 at 12:00 noon (prevailing Eastern Time)** (which date is two business days prior to the Disclosure Statement Hearing).

21. Requiring that objections and responses to the Proposed Disclosure Statement be filed and served no later than the date and time described herein will afford the Court, the Debtor, and other parties in interest sufficient time before the Disclosure Statement Hearing to consider objections and responses to the Proposed Disclosure Statement. The Debtor requests that the Court approve, pursuant to Bankruptcy Rule 3017, the procedure for filing

objections to the Proposed Disclosure Statement and replies, if any, thereto, as set forth in the Disclosure Statement Notice.

## III. FIXING THE VOTING RECORD DATE

22. Bankruptcy Rule 3017(d) provides that, for the purposes of soliciting votes in connection with the confirmation of a plan of reorganization, "creditors and equity security holders shall include holders of stock, bonds, debentures, notes and other securities of record on the date the order approving the disclosure statement is entered or another date fixed by the court, for cause, after notice and a hearing." Fed. R. Bankr. P. 3017(d). Bankruptcy Rule 3018(a) contains a similar provision regarding determination of the record date for voting purposes.

23. In accordance with these rules, the Debtor requests that this Court exercise its power under such rules to set **November 19, 2009**, which is the date the Debtor is requesting for the Disclosure Statement Hearing, as the Voting Record Date for purposes of determining which creditors are entitled to vote on the Plan. In addition, the Debtor requests that the Court establish the Voting Record Date as the date for determining which creditors and equity interest holders in non-voting classes are entitled to receive the Notice of Non-Voting Status (as defined below).

24. The Debtor believes that the Voting Record Date (*i.e.*, **November 19, 2009**) is appropriate, as such date facilitates the determination of which creditors are entitled to vote on the Plan or, in the case of non-voting classes of creditors and equity interest holders, to receive the Notice of Non-Voting Status.

25. The Debtor proposes that the following creditors who hold claims against the Debtor as of the Voting Record Date be entitled to vote on the Plan:

(a) record holders, as of the Voting Record Date, of claims listed on the Debtor's schedules of liabilities, filed with the Court on or about August 14, 2009, to the extent that such claims (i) are listed in an amount greater than zero and are not identified as contingent, unliquidated or disputed, (ii) have not been superseded by a filed proof of claim, and (iii) entitle the holder thereof to vote on the Plan; and

(b) record holders as of the Voting Record Date, of claims, to the extent that such claims (i) are the subject of timely filed proofs of claim in an amount greater than zero, (ii) have not been disallowed, expunged, disqualified or suspended prior to the Voting Record Date, (iii) are not the subject of a pending claim objection or request for estimation as of at least ten (10) days before the Voting Deadline, and (iv) entitle the holders thereof to vote on the Plan.

## IV. ESTABLISHING NOTICE AND OBJECTION PROCEDURES IN RESPECT OF CONFIRMATION OF THE PLAN

### A. Setting the Confirmation Hearing

26. Bankruptcy Rule 3017(c) provides that "on or before approval of the disclosure statement, the court shall fix a time within which the holders of claims and interests may accept or reject the plan and may fix a date for the hearing on confirmation." Fed. R. Bankr. P. 3017(c). In accordance with Bankruptcy Rules 2002(b) and 3017(c), and in view of the Debtor's proposed solicitation schedule outlined herein, the Debtor requests that a hearing on confirmation of the Plan (the "Confirmation Hearing") be scheduled for January 14, 2010 at 10:00 a.m. (prevailing Eastern Time), which is 56 days after the date requested for the Disclosure Statement Hearing. The Confirmation Hearing may be adjourned or continued from time to time by the Court or the Debtor without further notice other than adjournments announced in open Court or as indicated in any notice of agenda of matters scheduled for hearing filed with the Court. The proposed date for the Confirmation Hearing is in compliance with the Bankruptcy Rules and the Local Rules and will enable the Debtor to pursue confirmation of the Plan in a timely fashion.

## B. Establishing Procedures for Notice of the Confirmation Hearing and Filing Objections to Confirmation of the Plan

27. Bankruptcy Rules 2002(b) and (d) require not less than 25 days' notice to all creditors and equity security holders of the time fixed for filing objections and the hearing to consider confirmation of a chapter 11 plan. Pursuant to Bankruptcy Rule 3020(b)(1), objections to confirmation of a plan must be filed and served "within a time fixed by the court." Fed. R. Bank. P. 3020(b)(1).

28. In accordance with these procedural rules, the Debtor proposes to provide to all parties that receive a Solicitation Package (as defined below), which will include a copy of the Confirmation Hearing Notice annexed to the Disclosure Statement Order as Exhibit 3 and is incorporated herein by reference, setting forth (i) the Voting Deadline (as defined below), (ii) the time fixed for and procedures for filing objections to confirmation of the Plan, and (iii) the time, date, and place for the Confirmation Hearing. The Confirmation Hearing Notice will be sent contemporaneously with the distribution of the Solicitation Packages by **December 3, 2009**.

29. The Confirmation Hearing Notice provides, and the Debtor requests, that the Court direct that objections to confirmation of the Plan or proposed modifications to the Plan, if any, must (a) be in writing; (b) be in the English language; (c) state the name and address of the objecting party and the amount and nature of the claim or interest of such party; (d) state with particularity the basis and nature of any objection or proposed modification to the Plan; and (e) be filed, together with proof of service, with the Court and served so that they are actually received by the following parties no later than **January 5, 2010 at 4:00 p.m. (prevailing Eastern Time)** (the "Confirmation Objection Deadline"): (i) the Debtor, 102 Peake Brook Road, Woodstock, CT 06281 (Attn.: Colleen Cording, Esq.), (ii) counsel to the Debtor, Cooley Godward Kronish LLP, 1114 Avenue of the Americas, New York, New York 10036 (Attn:

Lawrence C. Gottlieb, Esq. and Richelle Kalnit, Esq.), (iii) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004 (Attn: Serene Nakano, Esq.), (iv) SilvermanAcampora LLP, 100 Jericho Quadrangle, Suite 300, Jericho, New York 11753 (Attn: Ronald J. Friedman, Esq.) as counsel for Kuala Lumpur Kepong Berhad, the Debtor's prepetition and postpetition lender, and (v) Hahn & Hessen LLP, 488 Madison Avenue, 15th Floor, New York, New York 10022 (Attn: Mark Indelicato, Esq.), as counsel for the Committee. The Confirmation Objection Deadline will provide parties in interest with at least 33 days' notice of the Confirmation Objection Deadline and will afford the Debtor and other parties in interest sufficient time to consider the objections and proposed modifications and file any replies, while leaving the Court sufficient time to consider any such objections and replies before the Confirmation Hearing.

30. The Debtor submits that if there are objections to confirmation, it will assist the Court and may expedite the Confirmation Hearing if the Debtor replies to any such objections. Accordingly, the Debtor requests that it be authorized to file and serve replies or an omnibus reply to any such objections no later than **January 12, 2010 at 12:00 noon (prevailing Eastern Time)** (which date is two business days prior to the requested date of the Confirmation Hearing). The Debtor respectfully requests that the Court approve these procedures for filing objections to the Plan and replies thereto pursuant to Bankruptcy Rule 3020.

31. The foregoing procedures will provide parties in interest with more than 25 days' notice of the Confirmation Objection Deadline and Confirmation Hearing, and accordingly, should be approved.

## V. APPROVING SOLICITATION PACKAGES AND PROCEDURES FOR DISTRIBUTION THEREOF

32. Bankruptcy Rule 3017(d) sets forth the materials that must be provided to holders of claims and equity interests for the purpose of soliciting their votes and providing adequate notice of the hearing on confirmation of a plan of reorganization:

> Upon approval of a disclosure statement, — except to the extent that the court orders otherwise with respect to one or more unimpaired classes of creditors or equity security holders — the debtor in possession, trustee, proponent of the plan, or clerk as the court orders shall mail to all creditors and equity security holders, and in a chapter 11 reorganization case shall transmit to the United States trustee,
>
> (1) the plan or a court-approved summary of the plan;
>
> (2) the disclosure statement approved by the court;
>
> (3) notice of the time within which acceptances and rejections of the plan may be filed; and
>
> (4) any other information as the court may direct, including any court opinion approving the disclosure statement or a court-approved summary of the opinion.
>
> In addition, notice of the time fixed for filing objections and the hearing on confirmation shall be mailed to all creditors and equity security holders in accordance with Rule 2002(b), and a form of ballot conforming to the appropriate Official Form shall be mailed to creditors and equity security holders entitled to vote on the plan.

Fed. R. Bankr. P. 3017(d).

33. After the Court has approved the Proposed Disclosure Statement (as approved, the "Disclosure Statement") as containing adequate information under section 1125 of the Bankruptcy Code, the Debtor proposes to mail or cause to be mailed solicitation packages (the "Solicitation Packages") by no later than **December 3, 2009** (the "Solicitation Date"). Solicitation Packages distributed to creditors holding claims in Class 3 and Class 4 (collectively, the "Voting Classes") will contain a copy of (i) the Disclosure Statement Order (excluding the

exhibits thereto); (ii) the Confirmation Hearing Notice; (iii) the appropriate form of ballot to accept or reject the Plan, in substantially the forms set forth in Exhibit 4 and Exhibit 5 to the Disclosure Statement Order and incorporated herein by reference (each, a "Ballot," and collectively, the "Ballots"), with instructions and with a return envelope; (iv) the Disclosure Statement (together with the Plan annexed thereto as Exhibit A), either in paper copy or in "PDF" format on a CD-ROM, in the Debtor's discretion; and (v) such other materials as the Court may direct.

34. Solicitation Packages distributed to holders of claims and interests in the Unimpaired Classes will only contain a copy of (i) the Confirmation Hearing Notice and (ii) a Notice of Non-Voting Status (as defined below).

35. In addition, the Debtor shall distribute, or cause to be distributed by the Solicitation Date, the Disclosure Statement Order (excluding the exhibits thereto), the Confirmation Hearing Notice, the Disclosure Statement (together with the Plan annexed thereto as Exhibit A) and such other materials as the Court may direct to: (i) the U.S. Trustee; (ii) the attorneys for the Committee; and (iii) all parties entitled to notice pursuant to this Court's Case Management Order.

36. Consistent with section 1126(f) of the Bankruptcy Code and Bankruptcy Rule 3017(d), Solicitation Packages for holders of claims against or interests in the Debtor within a class under the Plan that is deemed to accept the Plan under section 1126(f) of the Bankruptcy Code will not include a Ballot, Disclosure Statement, Plan, or the Disclosure Statement Order. Rather, the Solicitation Packages for holders of such claims and interests will include a Notice of Non-Voting Status and the Confirmation Hearing Notice. The Debtor requests that the Court determine that it is not required to distribute copies of the Plan or

Disclosure Statement to holders of such claims and interests, unless a party makes a specific request to the Debtor in writing on or before the Solicitation Date for the same.

37. The Debtor also proposes not to send Solicitation Packages to creditors that have claims that have already been paid in full; provided, however, that if, and to the extent that, any such creditor would be entitled to receive a Solicitation Package for any reason other than by virtue of the fact that such claim had been paid by the Debtor, then such creditor will be sent a Solicitation Package in accordance with the procedures set forth above.

38. The Debtor anticipates that some Disclosure Statement Notices may be returned as undeliverable by the United States Postal Service. The Debtor believes that it would be costly and wasteful to mail Solicitation Packages to the same addresses to which undeliverable Disclosure Statement Notices were mailed. Therefore, the Debtor seeks the Court's approval for a departure from the strict notice rule, excusing the Debtor from mailing Solicitation Packages to those entities listed at such addresses unless the Debtor is provided with accurate addresses for such entities before the Solicitation Date.

39. Although the Debtor has made, and will make, every effort to ensure that the Solicitation Packages described are in final form, the Debtor nonetheless requests that it be authorized to make nonsubstantive changes to the Disclosure Statement, the Plan, and related documents without further order of the Court, including ministerial changes to correct typographical and grammatical errors, and to make conforming changes among the Disclosure Statement, the Plan and any other materials in the Solicitation Packages prior to mailing.

40. The Debtor submits that such materials and manner of service satisfy the requirements of Bankruptcy Rule 3017(d), and that it has shown good cause for implementing the proposed notice and service procedures.

## VI. APPROVING FORMS OF BALLOTS AND ESTABLISHING PROCEDURES FOR VOTING ON THE PLAN

41. Bankruptcy Rule 3017(d) requires the Debtor to mail a form of ballot, which substantially conforms to Official Form No. 14, only to "creditors and equity security holders entitled to vote on the plan." Fed. R. Bankr. P. 3017(d). The Debtor proposes to distribute to certain creditors, as described below, one or more Ballots substantially in the forms annexed to the Disclosure Statement Order as Exhibits 4 and 5, which are incorporated herein by reference. The forms for the Ballots are based on Official Form No. 14 but have been modified to address the particular aspects of this chapter 11 case and to include certain additional information that the Debtor believes is relevant and appropriate for each class of claims entitled to vote. The appropriate Ballot forms will be distributed to holders of claims classified in the Plan as Class 3 and Class 4, which claims are impaired and the holders of such claims are entitled to vote on the Plan. All other classes under the Plan are unimpaired and conclusively presumed to accept the Plan.

## VII. NOTICE TO NON-VOTING CLASSES

### A. Notice of Non-Voting Status to Holders of Claims Deemed to Accept the Plan

42. Bankruptcy Rule 3017(d) further provides, in relevant part, as follows:

> If the court orders that the disclosure statement and the plan or a summary of the plan shall not be mailed to any unimpaired class, notice that the class is designated in the plan as unimpaired and notice of the name and address of the person from whom the plan or summary of the plan and disclosure statement may be obtained upon request and at the plan proponent's expense, shall be mailed to members of the unimpaired class together with the notice of the time fixed for filing objections to and the hearing on confirmation.

Fed. R. Bankr. P. 3017(d).

43. Claims in Class 1, Class 2 and Class 5 (collectively, the "Unimpaired Classes") under the Plan are unimpaired, and therefore, the holders of claims and interests in such classes are conclusively presumed to accept the Plan. See 11 U. S.C. § 1 126(f).

44. The Debtor proposes to send to holders of claims in Unimpaired Classes a notice of non-voting status, substantially in the form annexed to the Disclosure Statement Order as Exhibit 6, which is incorporated herein by reference (the "Notice of Non-Voting Status"). The proposed Notice of Non-Voting Status identifies each respective class as unimpaired and sets forth the manner in which holders of claims in such classes may obtain a copy of the Plan and Disclosure Statement. As requested above, the Debtor requests that the Court determine that it is not required to distribute copies of the Plan or Disclosure Statement to any holder of a claim or equity interest in the Unimpaired Classes except upon request.

45. The Debtor submits that the Notice of Non-Voting Status satisfies the requirements of the Bankruptcy Code and the Bankruptcy Rules. The Debtor requests that the Court determine that it is not required to distribute copies of the Disclosure Statement Order, Plan, or Disclosure Statement to any holder of a claim or interest in the Unimpaired Classes, unless such party makes a request to the Debtor in writing, for copies of such documents.

## VIII. ESTABLISHING VOTING DEADLINE FOR RECEIPT OF BALLOTS

46. Bankruptcy Rule 3017(c) provides that, on or before approval of a disclosure statement, the court shall fix a time within which the holders of claims or equity security interests may accept or reject a plan. The Debtor anticipates completing mailing of the Solicitation Packages by the Solicitation Date (*i.e.*, **December 3, 2009**). Based on such schedule, the Debtor proposes that in order to be counted as a vote to accept or reject the Plan, each Ballot must be properly executed, completed, and delivered to Epiq (i) by first-class mail, in the return envelope provided with each Ballot, (ii) by overnight courier, or (iii) by hand delivery, so that it

is actually received by Epiq no later than **5:00 p.m. (prevailing Eastern Time) on January 5, 2010** (the "Voting Deadline"), which is 33 days after the Solicitation Date. The Debtor submits that such solicitation period is a sufficient period within which creditors can make an informed decision whether to accept or reject the Plan.

## IX. APPROVAL OF PROCEDURES FOR VOTE TABULATION

47. Section 1126(c) of the Bankruptcy Code provides:

> A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of this section, that have accepted or rejected such plan.

11 U.S.C. § 1126(c). Further, Bankruptcy Rule 3018(a) provides that "the court after notice and hearing may temporarily allow the claim or interest in an amount which the court deems proper for the purpose of accepting or rejecting a plan." Fed. R. Bankr. P. 3018(a).

48. Solely for purposes of voting to accept or reject the Plan and not for the purpose of the allowance of, or distribution on account of, any claim, and without prejudice to the rights of the Debtor in any other context, the Debtor proposes that each claim within a class of claims entitled to vote to accept or reject the Plan be temporarily allowed in an amount equal to the amount of such claim as is set forth in the Debtor's schedules of assets and liabilities (the "Schedules"). The foregoing general procedure will be subject to the following exceptions:

(i) If a claim is deemed allowed under the Plan, such claim is allowed for voting purposes in the deemed allowed amount set forth in the Plan;

(ii) If a claim for which a proof of claim has been timely filed is wholly contingent, unliquidated, or disputed, such claim is accorded one vote and valued at one dollar ($1.00) for voting purposes only, and not for purposes of allowance or distribution, unless such claim is disputed as set forth in subparagraph (ix) below;

(iii) If a claim has been estimated or otherwise allowed for voting purposes by order of the Court, such claim is temporarily allowed in the amount so estimated or allowed by the Court for voting purposes only, and not for purposes of allowance or distribution;

(iv) If a proof of claim was timely filed in an amount that is liquidated, non-contingent, and undisputed, such claim is temporarily allowed in the amount set forth on the proof of claim, unless such claim is disputed as set forth in subparagraph (ix) below;

(v) If a claim is listed in the Schedules as contingent, unliquidated, or disputed and a proof of claim was not (a) filed by the applicable bar date for the filing of proofs of claims established by the Court or (b) deemed timely filed by an order of the Court prior to the Voting Deadline, the Debtor proposes that such claim be disallowed for voting purposes and for purposes of allowance and distribution pursuant to Bankruptcy Rule 3003(c);

(vi) If a claim is listed in the Schedules or on a timely filed proof of claim as contingent, unliquidated, or disputed in part, such claim is temporarily allowed in the amount that is liquidated, non-contingent, and undisputed for voting purposes only, and not for purposes of allowance or distribution, unless such claim is disputed as set forth in subparagraph (ix) below;

(vii) If a proof of claim asserts a claim that is not in U.S. dollars, such claim will be treated as unliquidated and allowed for voting purposes only in the amount of $1.00;

(viii) Notwithstanding anything to the contrary contained herein, any creditor who has filed or purchased duplicate claims will be provided with only one Solicitation Package and one Ballot and be permitted to vote only a single claim for numerosity purposes in a dollar amount based on only one of the duplicate claims, regardless of whether the Debtor has objected to such duplicate claims; and

(ix) If the Debtor has served an objection or request for estimation as to a claim at least ten (10) days before the Voting Deadline, such claim is temporarily disallowed for voting purposes only and not for purposes of allowance or distribution, except as ordered by the Court before the Voting Deadline.

49. The Debtor believes that the foregoing proposed procedures provide for a fair and equitable voting process. If any creditor seeks to challenge the allowance of its claim for voting purposes in accordance with the above procedures, the Debtor requests that the Court

direct such creditor to serve on the Debtor and file with the Court (with a copy to chambers) a motion for an order pursuant to Bankruptcy Rule 3018(a) temporarily allowing such claim in a different amount for purposes of voting to accept or reject the Plan on or before the tenth ($10^{th}$) day after the later of (i) service of the Confirmation Hearing Notice and (ii) service of notice of an objection or request for estimation, if any, as to such claim. The Debtor further proposes, in accordance with Bankruptcy Rule 3018, that as to any creditor filing such a motion, such creditor's Ballot should not be counted unless temporarily allowed by an order entered by the Court prior to the Voting Deadline.

50. In addition, the Debtor requests that the following procedures apply with respect to ascertaining the intent of certain creditors who cast Ballots: (i) whenever a creditor casts more than one Ballot voting the same claim(s) before the Voting Deadline, the last Ballot received before the Voting Deadline be deemed to reflect the voter's intent, and thus, to supersede any prior Ballots; and (ii) whenever a creditor casts a Ballot that is properly completed, executed, and timely returned to Epiq, but either (A) does not indicate an acceptance or rejection of the Plan or (B) indicates both an acceptance and a rejection of the Plan, the Ballot shall be deemed to reflect the voter's intent to accept the Plan.

51. The Debtor further proposes that the following Ballots not be counted or considered for any purpose in determining whether the Plan has been accepted or rejected: (i) any Ballot received after the Voting Deadline unless the Debtor shall have granted an extension of the Voting Deadline in writing with respect to such Ballot, (ii) any Ballot that is illegible or contains insufficient information to permit the identification of the claimant, (iii) any Ballot cast by a person or entity that does not hold a claim in a class that is entitled to vote to accept or reject

the Plan, (iv) any unsigned Ballot, or (v) any Ballot transmitted to Epiq by facsimile, telecopy, electronic transmission, or other means not specifically approved herein.

52. To assist in the solicitation process, the Debtor requests that the Court grant Epiq the authority to contact parties that submit incomplete or otherwise deficient ballots to cure such deficiencies. However, this authority shall in no way constitute an affirmative obligation of Epiq to identify deficiencies in ballots for creditors. Furthermore, the Debtor, subject to contrary order of the Court, requests authority to waive any defects or irregularities as to any particular Ballot at any time, either before or after the close of voting, and any such waivers shall be documented in the voting report to be filed with the Court no later than January 8, 2010.

53. With respect to transfers of claims filed pursuant to Bankruptcy Rule 3001, the Debtor proposes that the holder of a claim as of the Voting Record Date shall be the transferor of such claim and entitled to cast the ballot with respect to that claim unless the documentation evidencing such transfer was docketed by the Court on or before twenty (20) days prior to the Voting Record Date and no timely objection with respect to such transfer was filed by the transferor.

54. If a party that is entitled to vote has more than one claim within the same class against the Debtor based upon different transactions, the Debtor proposes that said party shall be entitled to one vote for numerosity purposes in the aggregate dollar amount of all of said claims.

## Notice

55. The Debtor has served notice of this Motion on (i) the Office of the United States Trustee for the Southern District of New York (Attn: Serene Nakano, Esq.), (ii) SilvermanAcampora LLP, 100 Jericho Quadrangle, Suite 300, Jericho, New York 11753 (Attn:

Ronald J. Friedman, Esq.) as counsel for Kuala Lumpur Kepong Berhad, (iii) Hahn & Hessen LLP, 488 Madison Avenue, 15th Floor, New York, New York 10022 (Attn: Mark Indelicato, Esq.), as counsel for the Committee, (iv) parties in interest who have filed notices of appearance in this case, and (v) all other parties required to receive notice pursuant to the Case Management Order. In light of the nature of the relief requested, the Debtor submits that no other or further notice need be provided.

56. No previous request for the relief sought herein has been made by the Debtor to this or any other court.

WHEREFORE, the Debtor respectfully requests that the Court grant the relief requested herein and such other and further relief as is just and appropriate.

Dated: October 23, 2009
New York, New York

Respectfully submitted,

By: /s/ Lawrence C. Gottlieb
Lawrence C. Gottlieb

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Attorneys for Debtor
and Debtor in Possession

**UNITED STATES BANKRUPTCY COURT**
**SOUTHERN DISTRICT OF NEW YORK**

| | | |
|---|---|---|
| **In re** | : | **Chapter 11** |
| **CRABTREE & EVELYN, LTD.,** | : | **Case No. 09-14267 (BRL)** |
| **Debtor.** | : | |

**ORDER (I) APPROVING THE DISCLOSURE STATEMENT; (II) APPROVING THE NOTICE OF DISCLOSURE STATEMENT HEARING; (III) FIXING VOTING RECORD DATE; (IV) APPROVING THE NOTICE AND OBJECTION PROCEDURES IN RESPECT OF CONFIRMATION OF THE PLAN AND FIXING THE DATE OF THE CONFIRMATION HEARING; (V) APPROVING SOLICITATION PACKAGES AND PROCEDURES FOR DISTRIBUTION THEREOF; (VI) APPROVING THE FORMS OF BALLOTS AND ESTABLISHING PROCEDURES FOR VOTING ON THE PLAN; (VII) APPROVING THE FORM OF NOTICE TO NON-VOTING CLASSES UNDER THE PLAN; (VIII) FIXING THE VOTING DEADLINE TO ACCEPT OR REJECT THE PLAN; AND (IX) APPROVING THE PROCEDURES FOR VOTE TABULATIONS**

Upon the motion (the "Motion") dated October 23, 2009 (the "Motion"),[1] of Crabtree & Evelyn, Ltd., as debtor and debtor in possession (the "Debtor"), pursuant to sections 105, 502, and 1128 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 3020, 9013, 9014 and 9021 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rules 2002-1, 3017-1, 3018-1, 3020-1, 9013-1 and 9021-1 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York (the "Local Rules"), for (i) approval of the Debtor's proposed Disclosure Statement (as defined below) for the Debtor's Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, dated as of October 23, 2009 (as it may be further amended, the "Plan"), mailed by the Debtor on October 23, 2009; (ii) approval of the Disclosure Statement; (iii) the fixing of record dates; (iv) approval of the notice of the hearing and objection procedures in respect of confirmation of the Plan and

[1] Capitalized terms used but not defined herein shall have the respective meanings ascribed to them in the Motion.

setting the date for the hearing on confirmation of the Plan; (v) approval of the solicitation packages (the "Solicitation Packages") and procedures for distribution thereof; (vi) approval of the forms of ballots and establishing procedures for voting on the Plan; (vii) approval of the form of the notice to non-voting classes under the Plan; (viii) fixing the voting deadline to accept or reject the plan; and (ix) approving the procedures for vote tabulation, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the Standing Order of Referral of Cases to Bankruptcy Court Judges of the District Court for the Southern District of New York, dated July 19, 1984 (Ward, Acting C. J.); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to: (i) the Office of the United States Trustee for the Southern District of New York (Attn: Serene Nakano, Esq.), (ii) SilvermanAcampora LLP, 100 Jericho Quadrangle, Suite 300, Jericho, New York 11753 (Attn: Ronald J. Friedman, Esq.) as counsel for Kuala Lumpur Kepong Berhad, (iii) Hahn & Hessen LLP, 488 Madison Avenue, 15th Floor, New York, New York 10022 (Attn: Mark Indelicato, Esq.), as counsel for the Committee, (iv) parties in interest who have filed notices of appearance in this case, and (vi) all other parties required to receive notice pursuant to this Court's Order, dated July 31, 2009, implementing notice and case management procedures (collectively, the "Notice Parties"); and it appearing that no other or further notice need be provided; and a hearing having been held before the Court with respect to the Motion (the "Hearing"); and the Debtor having filed on October 23, 2009, the Disclosure Statement for the Plan, a copy of which is annexed hereto as **Exhibit 1** (the "Disclosure Statement"); and the Court having determined that the relief sought in the Motion is in the best

interests of the Debtor, its creditors and all parties in interest; and the Court having determined that the legal and factual bases set forth in the Motion establish cause for the relief granted herein; and upon the record of the Hearing; and all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor

IT IS HEREBY FOUND THAT:

1. The Disclosure Statement contains adequate information within the meaning of section 1125 of the Bankruptcy Code.

2. Actual notice of the Hearing and the deadline for filing objections to the Disclosure Statement (the "Disclosure Statement Notice") was provided to the Notice Parties and any other known holders of claims against or equity interests in the Debtor, and such notice constitutes good and sufficient notice to all interested parties.

3. The form and manner of notice of the time set for filing objections to, and the time, date, and place of, the Hearing to consider the approval of the Disclosure Statement was adequate and comports with due process.

4. The forms of the ballots (the "Ballots"), including all voting instructions provided therein, substantially in the forms annexed hereto as Exhibit 4 and Exhibit 5, are sufficiently consistent with Official Form No. 14 and adequately address the particular needs of this chapter 11 case and are appropriate for each class of claims entitled to vote to accept or reject the Plan.

5. Holders of claims and interests in Class 1, Class 2, and Class 5 are unimpaired (the "Unimpaired Classes"), and therefore, are conclusively presumed to accept the Plan. Accordingly, holders of claims and interests in the Unimpaired Classes shall not be provided with a Ballot.

6. The period, set forth below, during which the Debtor may solicit acceptances to the Plan is a reasonable period of time for entities entitled to vote on the Plan to make an informed decision whether to accept or reject the Plan.

7. The procedures, set forth below, for the solicitation and tabulation of votes to accept or reject the Plan provide for a fair and equitable voting process and are consistent with section 1126 of the Bankruptcy Code.

8. The procedures, set forth below, regarding notice to all parties in interest of the time, date, and place of the hearing to consider confirmation of the Plan (the "Confirmation Hearing") and the distribution and contents of the Solicitation Packages comply with Bankruptcy Rules 2002 and 3017 and constitute sufficient notice to all interested parties.

NOW, THEREFORE, IT IS:

ORDERED that the Motion is GRANTED; and it is further

ORDERED that the Disclosure Statement is APPROVED; and it is further

[ORDERED that all objections to the Disclosure Statement that have not been withdrawn or resolved as provided for in the record of the Hearing are overruled; and it is further]

ORDERED that the Disclosure Statement Notice, substantially in the form annexed hereto as Exhibit 2, of the time set for filing objections to, and the hearing to consider approval of, the Disclosure Statement was proper, adequate, and sufficient notice thereof and of all proceedings in connection therewith; and it is further

ORDERED that, with respect to holders of claims of Class 3 and Class 4 entitled to vote on the Plan, **November 19, 2009 at 5:00 p.m. (prevailing Eastern Time)** is established as the voting record date (the "Voting Record Date"); and it is further

ORDERED that the Voting Record Date is the date for purposes of determining which creditors and equity interest holders in non-voting classes are entitled to receive a Notice of Non-Voting Status (as defined below); and it is further

ORDERED that the Confirmation Hearing will be held on **January 14, 2010 at 10:00 a.m. (prevailing Eastern Time)**; provided, however, that the Confirmation Hearing may be adjourned or continued from time to time by the Court or the Debtor without further notice other than adjournments announced in open Court or as indicated in any notice of agenda of matters scheduled for hearing filed by the Debtor with the Court; and it is further

ORDERED that the notice (the "Confirmation Hearing Notice") of (i) the time fixed for filing objections to confirmation of the Plan and (ii) the time, date, and place of the Confirmation Hearing, substantially in the form annexed hereto as Exhibit 3, is APPROVED; and it is further

ORDERED that objections to confirmation of the Plan or proposed modifications to the Plan, if any, must (a) be in writing; (b) be in the English language; (c) state the name and address of the objecting party and the amount and nature of the claim or interest of such party; (d) state with particularity the basis and nature of any objection or proposed modification to the Plan; and (e) be filed, together with proof of service, with the Court and served so that they are actually received by the following parties no later than **January 5, 2010 at 4:00 p.m. (prevailing Eastern Time)**: (i) the Debtor, 102 Peake Brook Road, Woodstock, CT 06281 (Attn.: Colleen Cording, Esq.), (ii) counsel to the Debtor, Cooley Godward Kronish LLP, 1114 Avenue of the Americas, New York, New York 10036 (Attn: Lawrence C. Gottlieb, Esq. and Richelle Kalnit, Esq.), (iii) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004 (Attn: Serene Nakano,

Esq.), (iv) SilvermanAcampora LLP, 100 Jericho Quadrangle, Suite 300, Jericho, New York 11753 (Attn: Ronald J. Friedman, Esq.) as counsel for Kuala Lumpur Kepong Berhad, the Debtor's prepetition and postpetition lender, and (v) Hahn & Hessen LLP, 488 Madison Avenue, 15th Floor, New York, New York 10022 (Attn: Mark Indelicato, Esq.), as counsel for the Committee; and it is further

ORDERED that objections to confirmation of the Plan that are not timely filed, served, and actually received in the manner set forth above shall not be considered and shall be deemed overruled; and it is further

ORDERED that the Debtor shall complete the mailing of the Solicitation Packages by no later than **December 3, 2009** (the "Solicitation Date"); and it is further

ORDERED that the Solicitation Packages distributed to creditors holding claims in Class 3 and Class 4 (collectively, the "Voting Classes") shall contain a copy of (i) this Order (excluding the exhibits annexed hereto); (ii) the Confirmation Hearing Notice; (iii) the appropriate Ballot (with instructions), together with a return envelope; (iv) the Disclosure Statement (together with the Plan annexed thereto as Exhibit A), either in paper copy or in "PDF" format on a CD-ROM, in the Debtor's discretion; and (v) such other materials as the Court may direct; and it is further

ORDERED that the following creditors who hold claims against the Debtor as of the Voting Record Date shall be entitled to vote on the Plan:

(a) record holders, as of the Voting Record Date, of claims listed on the Debtor's schedules of liabilities, filed with the Court on or about August 14, 2009, to the extent that such claims (i) are listed in an amount greater than zero and are not identified as contingent, unliquidated or disputed, (ii) have not been superseded by a filed proof of claim, and (iii) entitle the holder thereof to vote on the Plan; and

(b) record holders as of the Voting Record Date, of claims, to the extent that such claims (i) are the subject of timely filed proofs of claim in an amount greater than zero, (ii) have not been disallowed, expunged, disqualified or suspended prior to the Voting Record Date, (iii) are not the subject of a pending claim objection or request for estimation as of at least ten (10) days before the Voting Deadline, and (iv) entitle the holder thereof to vote on the Plan;

and it is further

ORDERED that the Solicitation Packages distributed to holders of claims and interests in the Unimpaired Classes shall contain a copy of (i) the Confirmation Hearing Notice and (ii) the Notice of Non-Voting Status; and it is further

ORDERED that, with respect to holders of claims against or interests in the Debtor within a class under the Plan that is deemed to accept the Plan under section 1126(f) of the Bankruptcy Code, the Debtor is not required to distribute copies of the Plan or Disclosure Statement to holders of such claims and interests unless a party makes a specific request to the Debtor in writing for same; and it is further

ORDERED that the Debtor shall not be required to send Solicitation Packages to creditors that have claims that have already been paid in full; provided, however, that if, and to the extent that, any such creditor would be entitled to receive a Solicitation Package for any reason other than by virtue of the fact that such claim had been paid by the Debtor, then the Debtor shall send such creditor a Solicitation Package in accordance with the procedures set forth herein; and it is further

ORDERED that, with respect to addressees from which Disclosure Statement Notices are returned as undeliverable by the United States Postal Service, the Debtor is excused from mailing Solicitation Packages or any other materials related to voting or confirmation of the Plan to those entities listed at such addresses unless the Debtor is provided with accurate

addresses for such entities before the Solicitation Date, and failure to mail Solicitation Packages or any other materials related to voting or confirmation of the Plan to such entities will not constitute inadequate notice of the Confirmation Hearing or the Voting Deadline (as defined below) and shall not constitute a violation of Bankruptcy Rule 3017(d); and it is further

ORDERED that the Debtor is not required to distribute copies of the Plan or Disclosure Statement to any party to an executory contract who holds a claim that is not allowed, filed, or scheduled, or who holds a claim that is listed in the Schedules as contingent, unliquidated or disputed, unless such party makes a specific request in writing for same; and it is further

ORDERED that the Notice of Non-Voting Status, substantially in the form annexed hereto as Exhibit 6, which form is APPROVED, shall be distributed to all known holders of claims and equity interests in the Unimpaired Classes as of the Voting Record Date; and it is further

ORDERED that the Notice of Non-Voting Status satisfies the requirements of the Bankruptcy Code and the Bankruptcy Rules; and it is further

ORDERED that all Ballots must be properly executed, completed, and delivered to the Epiq by first-class mail, overnight courier, or personal delivery, so that they are actually received by Epiq no later than **5:00 p.m. (prevailing Eastern Time) on January 5, 2010** (the "Voting Deadline"); and it is further

ORDERED that, solely for purposes of voting to accept or reject the Plan and not for the purpose of the allowance of, or distribution on account of, a claim, and without prejudice to the rights of the Debtor in any other context, each claim within a class of claims entitled to

vote to accept or reject the Plan is temporarily allowed in an amount equal to the amount of such claim as set forth in the Schedules, provided that:

(i) If a claim is deemed allowed under the Plan, such claim is allowed for voting purposes in the deemed allowed amount set forth in the Plan;

(ii) If a claim for which a proof of claim has been timely filed is wholly contingent, unliquidated, or disputed, such claim is accorded one vote and valued at one dollar ($1.00) for voting purposes only, and not for purposes of allowance or distribution, unless such claim is disputed as set forth in subparagraph (ix) below;

(iii) If a claim has been estimated or otherwise allowed for voting purposes by order of the Court, such claim is temporarily allowed in the amount so estimated or allowed by the Court for voting purposes only, and not for purposes of allowance or distribution;

(iv) If a proof of claim was timely filed in an amount that is liquidated, non-contingent, and undisputed, such claim is temporarily allowed in the amount set forth on the proof of claim, unless such claim is disputed as set forth in subparagraph (ix) below;

(v) If a claim is listed in the Schedules as contingent, unliquidated, or disputed and a proof of claim was not (a) filed by the applicable bar date for the filing of proofs of claims established by the Court or (b) deemed timely filed by an order of the Court prior to the Voting Deadline, unless the Debtor has consented in writing, such claim is disallowed for voting purposes and for purposes of allowance and distribution pursuant to Bankruptcy Rule 3003(c);

(vi) If a claim is listed in the Schedules or on a timely filed proof of claim as contingent, unliquidated, or disputed in part, such claim is temporarily allowed in the amount that is liquidated, non-contingent, and undisputed for voting purposes only, and not for purposes of allowance or distribution, unless such claim is disputed as set forth in subparagraph (ix) below;

(vii) If a proof of claim asserts a claim that is not in U.S. dollars, such claim will be treated as unliquidated and allowed for voting purposes only in the amount of $1.00;

(viii) Notwithstanding anything to the contrary contained herein, any creditor who has filed or purchased duplicate claims will be provided with only one Solicitation Package and one Ballot and be permitted to vote only a single claim for numerosity purposes in a dollar amount based on only one

of the duplicate claims, regardless of whether the Debtor has objected to such duplicate claims; and

(ix) If the Debtor has served an objection to or request for estimation of a claim at least 10 days before the Voting Deadline, such claim is temporarily disallowed for voting purposes only and not for purposes of allowance or distribution, except as ordered by the Court before the Voting Deadline.

and it is further

ORDERED that if any claimant seeks to challenge the allowance or disallowance of its claim for voting purposes in accordance with the above procedures, such claimant is required to serve on the Debtor and the Committee and file with the Court (with a copy to chambers) a motion for an order pursuant to Bankruptcy Rule 3018(a) temporarily allowing such claim in a different amount for purposes of voting to accept or reject the Plan on or before the tenth (10th) day after the later of (i) service of the Confirmation Hearing Notice and (ii) service of notice of an objection or request for estimation, if any, as to such claim; and it is further

ORDERED that each creditor that votes to accept or reject the Plan is deemed to have voted the full amount of its claim therefor; and it is further

ORDERED that any entity that holds a claim in more than one class that is entitled to vote must use separate Ballots for each such claim; and it is further

ORDERED that in the event a creditor casts more than one Ballot voting the same claim(s) before the Voting Deadline, the last Ballot received before the Voting Deadline is deemed to reflect the voter's intent, and thus, supersedes any prior Ballots; and it is further

ORDERED that in the event a creditor casts a Ballot that is properly completed, executed, and timely returned to Epiq, but does not indicate either an acceptance or rejection of the Plan, the Ballot shall be deemed to reflect the voter's intent to accept the Plan; and it is further

ORDERED that in the event a creditor casts a Ballot that is properly completed, executed, and timely returned to Epiq, but indicates both an acceptance and a rejection of the Plan, the Ballot shall be deemed to reflect the voter's intent to accept the Plan; and it is further

ORDERED that the following types of Ballots will not be counted in determining whether the Plan has been accepted or rejected: (i) any Ballot received after the Voting Deadline, unless the Debtor shall have granted an extension of the Voting Deadline in writing with respect to such Ballot, (ii) any Ballot that is illegible or contains insufficient information to permit the identification of the claimant, (iii) any Ballot cast by a person or entity that does not hold a claim in a class that is entitled to vote to accept or reject the Plan, (iv) any unsigned Ballot, or (v) any Ballot transmitted to Epiq by facsimile, telecopy, electronic transmission, or other means not specifically approved herein; and it is further

ORDERED that Epiq is authorized but not directed to contact parties that submit incomplete or otherwise deficient Ballots to cure such deficiencies; and it is further

ORDERED that, subject to contrary order of the Court, the Debtor shall have authority to waive any defects or irregularities as to any particular Ballot at any time, either before or after the close of voting, and any such waivers shall be documented in the voting report to be filed with the Court no later than January 8, 2010; and it is further

ORDERED that the amount of a claim that shall count for voting purposes shall be governed by this Order and not by any amount that may be filled in on any Ballot; and it is further

ORDERED that with respect to transfers of claims filed pursuant to Bankruptcy Rule 3001, the holder of a claim as of the Voting Record Date shall be the transferor of such claim and entitled to cast the ballot with respect to that claim unless the documentation

evidencing such transfer was docketed by the Court on or before twenty (20) days prior to the Voting Record Date and no timely objection with respect to such transfer was filed by the transferor; and it is further

ORDERED that if a party that is entitled to vote has more than one claim within the same class against the Debtor based upon different transactions, said party shall be entitled to one vote for numerosity purposes in the aggregate dollar amount of all of said claims; and it is further

ORDERED that the Debtor is authorized, in its sole discretion, to take or refrain from taking any action necessary or appropriate to implement the terms of and the relief granted in this Order without seeking further order of the Court; and it is further

ORDERED that the Debtor is authorized to make nonsubstantive changes, to the Disclosure Statement, the Plan, and related documents without further order of the Court, including, without limitation, changes to correct typographical and grammatical errors and to make conforming changes among the Disclosure Statement, the Plan and any other materials in the Solicitation Packages prior to mailing; and it is further

ORDERED that all notices to be provided pursuant to the procedures set forth herein are good and sufficient notice to all parties in interest of all matters pertinent hereto and of all matters pertinent to the Confirmation Hearing and no other or further notice need be provided.

Dated: ___________ __, 2009
New York, New York

______________________________
HONORABLE BURTON R. LIFLAND
UNITED STATES BANKRUPTCY JUDGE

# <u>Exhibit 1</u>

# Proposed Disclosure Statement
# (with the Plan annexed thereto as Exhibit A)

THIS IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION OF THE PLAN. ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT. THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL BUT HAS NOT BEEN APPROVED BY THE BANKRUPTCY COURT.

**UNITED STATES BANKRUPTCY COURT**
**SOUTHERN DISTRICT OF NEW YORK**

| | | |
|---|---|---|
| **In re** | : | **Chapter 11** |
| **CRABTREE & EVELYN, LTD.,** | : | |
| **Debtor.** | : | **Case No. 09-14267 (BRL)** |

**DISCLOSURE STATEMENT FOR DEBTOR'S PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

COOLEY GODWARD KRONISH LLP
1114 Avenue of the Americas
New York, New York 10036
(212) 479-6000

Attorneys for Debtor and
Debtor in Possession

Dated: October 23, 2009
New York, New York

**THE DEBTOR BELIEVES THAT THE PLAN WILL MAXIMIZE THE RECOVERY FOR ITS CREDITORS AND ALL PARTIES IN INTEREST AND ACCOMPLISH THE OBJECTIVES OF CHAPTER 11 AND THAT ACCEPTANCE OF THE PLAN IS IN THE BEST INTERESTS OF THE DEBTOR AND ITS CREDITORS. THE DEBTOR URGES HOLDERS OF CLAIMS IN CLASS 3 AND CLASS 4 TO VOTE TO ACCEPT THE PLAN. THE DEBTOR'S PREPETITION LENDER AND DIP LENDER WERE ACTIVELY INVOLVED IN THE FORMULATION OF THE PLAN AND BELIEVE THAT THE PLAN PROVIDES THE HIGHEST AND BEST RECOVERIES FOR ALL OF THE DEBTOR'S CREDITORS.**

## DISCLAIMER

THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS INCLUDED HEREIN FOR PURPOSES OF SOLICITING ACCEPTANCES OF THE PLAN OF REORGANIZATION PROPOSED BY CRABTREE & EVELYN, LTD. AND MAY NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN TO DETERMINE HOW TO VOTE ON THE PLAN. NO PERSON MAY GIVE ANY INFORMATION OR MAKE ANY REPRESENTATIONS, OTHER THAN THE INFORMATION AND REPRESENTATIONS CONTAINED IN THIS DISCLOSURE STATEMENT, REGARDING THE PLAN OR THE SOLICITATION OF ACCEPTANCES OF THE PLAN.

THIS DISCLOSURE STATEMENT SETS FORTH CERTAIN INFORMATION REGARDING THE DEBTOR'S PREPETITION OPERATING AND FINANCIAL HISTORY, THE NEED TO SEEK CHAPTER 11 PROTECTION, SIGNIFICANT EVENTS DURING THE CHAPTER 11 CASE, AND THE ANTICIPATED ORGANIZATION, OPERATIONS AND FINANCING OF THE DEBTOR UPON SUCCESSFUL EMERGENCE FROM CHAPTER 11. THIS DISCLOSURE STATEMENT ALSO DESCRIBES TERMS AND PROVISIONS OF THE PLAN, CERTAIN EFFECTS OF CONFIRMATION OF THE PLAN, CERTAIN RISK FACTORS, AND THE CONFIRMATION PROCESS AND VOTING PROCEDURES THAT HOLDERS OF CLAIMS ENTITLED TO VOTE UNDER THE PLAN MUST FOLLOW FOR THEIR VOTES TO BE COUNTED.

EXCEPT AS OTHERWISE PROVIDED HEREIN, CAPITALIZED TERMS NOT OTHERWISE DEFINED IN THIS DISCLOSURE STATEMENT HAVE THE MEANINGS ASCRIBED TO THEM IN THE PLAN. UNLESS OTHERWISE NOTED, ALL DOLLAR AMOUNTS PROVIDED IN THIS DISCLOSURE STATEMENT AND THE PLAN ARE GIVEN IN UNITED STATES DOLLARS.

ALL CREDITORS ARE ADVISED AND ENCOURAGED TO READ THIS DISCLOSURE STATEMENT AND THE PLAN IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN. PLAN SUMMARIES AND STATEMENTS MADE IN THIS DISCLOSURE STATEMENT ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE PLAN, THE EXHIBITS AND SCHEDULES ANNEXED TO THE PLAN, THE PLAN SUPPLEMENT DOCUMENTS ONCE FILED, AND THIS DISCLOSURE STATEMENT. THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE ONLY AS OF THE DATE HEREOF, AND THERE CAN BE NO ASSURANCE THAT THE STATEMENTS CONTAINED HEREIN WILL BE CORRECT AT ANY TIME AFTER THE DATE HEREOF.

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE UNITED STATES BANKRUPTCY CODE AND RULE 3016(c) OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AND NOT NECESSARILY IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER NON-BANKRUPTCY LAW. THIS DISCLOSURE STATEMENT HAS BEEN NEITHER APPROVED NOR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION (THE "SEC"), NOR HAS THE SEC PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED HEREIN. PERSONS OR ENTITIES

TRADING IN OR OTHERWISE PURCHASING, SELLING OR TRANSFERRING SECURITIES OR CLAIMS OF CRABTREE & EVELYN, LTD. IN THIS CASE SHOULD EVALUATE THIS DISCLOSURE STATEMENT AND THE PLAN IN LIGHT OF THE PURPOSE FOR WHICH THEY WERE PREPARED.

AS TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS AND OTHER ACTIONS OR THREATENED ACTIONS, THIS DISCLOSURE STATEMENT SHALL NOT CONSTITUTE OR BE CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY, STIPULATION OR WAIVER, BUT RATHER AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS PURSUANT TO RULE 408 OF THE FEDERAL RULES OF EVIDENCE AND OTHER APPLICABLE EVIDENTIARY RULES. THIS DISCLOSURE STATEMENT SHALL NOT BE ADMISSIBLE IN ANY NON-BANKRUPTCY PROCEEDING NOR SHALL IT BE CONSTRUED TO BE CONCLUSIVE ADVICE ON THE TAX, SECURITIES OR OTHER LEGAL EFFECTS OF THE PLAN AS TO HOLDERS OF CLAIMS AGAINST, OR INTERESTS IN, CRABTREE & EVELYN, LTD.

TO ENSURE COMPLIANCE WITH TREASURY DEPARTMENT CIRCULAR 230, EACH HOLDER IS HEREBY NOTIFIED THAT (A) ANY DISCUSSION OF U.S. FEDERAL TAX ISSUES IN THIS DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE RELIED UPON, AND CANNOT BE RELIED UPON, BY ANY HOLDER FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON A HOLDER UNDER THE TAX CODE; (B) SUCH DISCUSSION IS INCLUDED HEREBY BY THE DEBTOR IN CONNECTION WITH THE PROMOTION OR MARKETING (WITHIN THE MEANING OF CIRCULAR 230) BY THE DEBTOR OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN; AND (C) EACH HOLDER SHOULD SEEK ADVICE BASED ON ITS PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

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# I. SUMMARY OF PLAN

The following is a brief summary of the Plan of Reorganization Under Chapter 11 of the Bankruptcy Code,[1] dated October 23, 2009 (as may be amended, the "Plan") of Crabtree & Evelyn, Ltd. (the "Debtor"), as debtor and debtor in possession in this chapter 11 case (the "Chapter 11 Case"). The Chapter 11 Case was commenced on July 1, 2009 (the "Petition Date"). This Disclosure Statement describes in detail the Plan and the distributions contemplated thereunder for the Debtor and its creditors.

The Plan designates for each Debtor five (5) classes of Claims and one (1) class of Interests. These Classes take into account the differing nature and priority of the various Claims and Interests under the Bankruptcy Code.

The Debtor believes that the Plan provides the best means currently available for the Debtor's emergence from chapter 11. The following overview of certain material terms of the Plan is qualified in its entirety by reference to the full text of the Plan. For a more detailed description of the terms and provisions of the Plan, see Article VII of this Disclosure Statement.

- The Debtor will be reorganized pursuant to the Plan and will continue in operation, achieving the objectives of chapter 11 for the benefit of its creditors, customers, suppliers, employees, and communities.
- Allowed Administrative Claims, Allowed DIP Claims, Allowed Priority Tax Claims, Allowed Secured Claims and Allowed Priority Non-Tax Claims will be paid in full as required by the Bankruptcy Code, unless otherwise agreed by the Holders of such claims or unless otherwise provided in the Plan.
- Allowed General Unsecured Claims will receive the Distribution Percentage, unless the holder of such Claim agrees to less favorable treatment.
- Allowed Class Action Settlement Claims will receive either (a) if the Potential Class Action Settlement Approval Order is entered by the Bankruptcy Court and such order becomes a Final Order, the Class Action Settlement Claim shall be treated as an Administrative Claim in the reduced amount of $270,000.00 and shall be paid in accordance with the Potential Class Action Settlement Approval Order, or (b) if the Potential Class Action Settlement Approval Order is not entered by the Bankruptcy Court, each holder of an Allowed Class Action Settlement Claim shall receive the same Distribution Percentage as each holder of a Class 3 Claim in an aggregate Claim amount to be determined by entry of a judgment or otherwise agreed by the parties. The allowance of such Claim will result

[1] Capitalized terms used herein but not otherwise defined shall have the meaning ascribed to such terms in the Plan.

in a reduction of the Distribution Percentage in accordance with Section 3.4.2 of the Plan.

- Interests in the Debtor shall be Reinstated and shall remain in full force and effect on the Effective Date and thereafter.

- The Reorganized Debtor will obtain an Exit Facility which is currently contemplated to include amounts sufficient to pay the DIP Claim, support other payments required to be made under the Plan, pay transaction costs, and fund working capital and other general corporate purposes of the Reorganized Debtor following its emergence.

**THE DEBTOR BELIEVES THAT THE PLAN WILL MAXIMIZE THE RECOVERY FOR ITS CREDITORS AND ALL PARTIES IN INTEREST AND ACCOMPLISH THE OBJECTIVES OF CHAPTER 11 AND THAT ACCEPTANCE OF THE PLAN IS IN THE BEST INTERESTS OF THE DEBTOR AND ITS CREDITORS. THE DEBTOR URGES HOLDERS OF CLAIMS IN CLASS 3 AND CLASS 4 TO VOTE TO ACCEPT THE PLAN. THE DEBTOR'S PREPETITION LENDER AND DIP LENDER WERE ACTIVELY INVOLVED IN THE FORMULATION OF THE PLAN AND BELIEVE THAT THE PLAN PROVIDES THE HIGHEST AND BEST RECOVERIES FOR ALL OF THE DEBTOR'S CREDITORS.**

## II. INTRODUCTION

The Debtor submits this Disclosure Statement pursuant to section 1125 of the Bankruptcy Code to holders of Claims against and Interests in the Debtor in connection with (i) the solicitation of acceptances of the Plan filed by the Debtor with the Bankruptcy Court and (ii) the Confirmation Hearing scheduled for January 14, 2010 at 10:00 a.m. (prevailing Eastern Time).

Annexed as Exhibits to this Disclosure Statement are copies of the following documents:

- The Plan (Exhibit A);

- Proposed Order of the Bankruptcy Court (the "Disclosure Statement Order"), approving, among other things, this Disclosure Statement and establishing certain procedures with respect to the solicitation and tabulation of votes to accept or reject the Plan (attached hereto without exhibits) (Exhibit B);

- The Debtor's Liquidation Analysis (Exhibit C); and

- The Debtor's financial projections (Exhibit D).

A Ballot for the acceptance or rejection of the Plan is enclosed with the Disclosure Statement mailed to the holders of Claims that the Debtor believes may be entitled to vote to accept or reject the Plan.

On November [___], 2009, after notice and a hearing, the Bankruptcy Court signed the Disclosure Statement Order, approving this Disclosure Statement as containing adequate information of a kind and in sufficient detail to enable a hypothetical investor of the relevant classes to make an informed judgment whether to accept or reject the Plan. APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT, HOWEVER, CONSTITUTE A DETERMINATION BY THE BANKRUPTCY COURT AS TO THE FAIRNESS OR MERITS OF THE PLAN.

The Disclosure Statement Order, a copy of which is annexed hereto as Exhibit B, sets forth in detail, among other things, the deadlines, procedures and instructions for voting to accept or reject the Plan and for filing objections to confirmation of the Plan, the record date for voting purposes and the applicable standards for tabulating Ballots. In addition, detailed voting instructions accompany each Ballot. Each holder of a Claim entitled to vote on the Plan should read this Disclosure Statement, the Plan, the Disclosure Statement Order and the instructions accompanying the Ballots in their entirety before voting on the Plan. These documents contain important information concerning the classification of Claims and Interests for voting purposes and the tabulation of votes. No solicitation of votes to accept the Plan may be made except pursuant to section 1125 of the Bankruptcy Code.

The Debtor shall pay all U.S. Trustee quarterly fees under 28 U.S.C. § 1930(a)(6) plus accrued interest under 31 U.S.C. § 3717 ("Statutory Fees"), due and owing on the Effective Date of the Plan. The Statutory Fees are unclassified claims in this Disclosure Statement and Plan.

## A. HOLDERS OF CLAIMS ENTITLED TO VOTE

Pursuant to the provisions of the Bankruptcy Code, only holders of allowed claims or equity interests in classes of claims or equity interests that are impaired and that are not deemed to have rejected a proposed plan are entitled to vote to accept or reject a proposed plan. Classes of claims or equity interests in which the holders of claims or equity interests are unimpaired under a chapter 11 plan are deemed to have accepted the plan and are not entitled to vote to accept or reject the plan. For a detailed description of the treatment of Claims and Interests under the Plan, see Section III.B of this Disclosure Statement.

Claims in Class 3 and Class 4 of the Plan are impaired and, to the extent Claims in such Class are Allowed, the holders of such Claims will receive distributions under the Plan. As a result, holders of Claims in Class 3 and Class 4 are entitled to vote to accept or reject the Plan.

Claims in Class 1, Class 2 and Class 5 of the Plan are unimpaired. As a result, holders of Claims in those Classes are conclusively presumed to have accepted the Plan.

The Bankruptcy Code defines "acceptance" of a plan by a class of claims as acceptance by creditors in that class that hold at least two-thirds in dollar amount and more than one-half in number of the claims that cast ballots for acceptance or rejection of the plan. For a more detailed description of the requirements for confirmation of the Plan, see Section IX.B of this Disclosure Statement.

If a Class of Claims entitled to vote on the Plan rejects the Plan, the Debtor reserves the right to amend the Plan or request confirmation of the Plan pursuant to section 1129(b) of the

Bankruptcy Code or both. Section 1129(b) of the Bankruptcy Code permits the confirmation of a chapter 11 plan notwithstanding the rejection of a plan by one or more impaired classes of claims or equity interests. Under that section, a plan may be confirmed by a bankruptcy court if it does not "discriminate unfairly" and is "fair and equitable" with respect to each rejecting class. For a more detailed description of the requirements for confirmation of a nonconsensual plan, see Section IX.B.2 of this Disclosure Statement.

The Debtor is commencing this solicitation after extensive negotiations with the Prepetition Lender and DIP Lender. The Prepetition Lender and DIP Lender are represented by SilvermanAcampora LLP as legal advisor.

**THE DEBTOR, THE PREPETITION LENDER AND THE DIP LENDER RECOMMEND THAT HOLDERS OF CLAIMS IN CLASS 3 AND CLASS 4 VOTE TO ACCEPT THE PLAN.**

The Debtor's legal advisor is Cooley Godward Kronish LLP, and its financial advisors are Clear Thinking Group LLC. They can be contacted at:

| **Cooley Godward Kronish LLP** | **Clear Thinking Group LLC** |
|---|---|
| 1114 Avenue of the Americas<br>New York, New York 10036<br>Attn: Lawrence C. Gottlieb, Esq.<br>Attn: Jeffrey L. Cohen, Esq.<br><br>Phone: (212) 479-6000<br>Facsimile: (212) 479-6275 | 401 Towne Centre Drive<br>Hillsborough, New Jersey 08844<br>Attn: Lee Diercks<br>Attn: Alan Minker<br><br>Phone: (908) 431-2121<br>Facsimile: (908) 359-5940 |

## B. VOTING PROCEDURES

Pursuant to the Bankruptcy Code, only classes of claims against or equity interests in a debtor that are "impaired" under the terms of a plan of liquidation or reorganization, and who receive distributions under such plan, are entitled to vote to accept or reject the plan. Generally, a class is "impaired" under a plan unless such plan leaves unaltered the legal, equitable or contractual rights to which such claim or interest entitles the holder of such claim or interest. Classes of claims and interests that are not impaired are not entitled to vote on the plan and are conclusively presumed to have accepted the plan.

As set forth in the below chart, holders of Claims in Class 3 and Class 4 are entitled to vote on the Plan and holders of Claims in Class 1 and Class 2 are not entitled to vote on the Plan. If holders of Claims in Class 3 or Class 4 vote to reject the Plan, (a) the Debtor may seek to satisfy the requirements for Confirmation of the Plan under the cramdown provisions of section 1129(b) of the Bankruptcy Code and, (b) if required, may amend the Plan to conform to the standards of such section.

Please carefully follow all of the instructions contained on the Ballot or Ballots provided to you with this Disclosure Statement if you are entitled to vote on the Plan. All Ballots must be

completed and returned in accordance with the instructions provided. Ballots should be returned to:

| **If returned by first class mail:** | **If returned via hand delivery or overnight courier:** |
| --- | --- |
| Crabtree & Evelyn, Ltd. Ballot Processing Center<br>c/o Epiq Bankruptcy Solutions, LLC<br>FDR Station, P.O. Box 5014<br>New York, NY 10150-5014 | Crabtree & Evelyn, Ltd. Ballot Processing Center<br>c/o Epiq Bankruptcy Solutions, LLC<br>757 Third Avenue, 3rd Floor<br>New York, NY 10017 |

Do not return any other documents with your Ballot.

TO BE COUNTED, YOUR BALLOT INDICATING ACCEPTANCE OR REJECTION OF THE PLAN MUST BE **RECEIVED** BY NO LATER THAN **5:00 P.M. (PREVAILING EASTERN TIME) ON JANUARY 5, 2010**. ANY EXECUTED BALLOT RECEIVED THAT DOES NOT INDICATE EITHER AN ACCEPTANCE OR A REJECTION OF THE PLAN SHALL NOT BE COUNTED.

Any Claim in an impaired Class as to which an objection or request for estimation is pending or which is listed on the Debtor's schedules of assets and liabilities, schedules of current income and expenditures, schedules of executory contracts and unexpired leases, and statements of financial affairs (collectively, the "Schedules and Statements") as unliquidated, disputed or contingent is not entitled to vote unless the holder of such Claim has obtained an order of the Bankruptcy Court temporarily allowing such Claim for the purpose of voting on the Plan.

Pursuant to the Disclosure Statement Order, the Bankruptcy Court set [November 19, 2009 at 5:00 p.m.] as the record date for holders of Claims entitled to vote on the Plan (the "Record Date"). Accordingly, only holders of record as of the Record Date that otherwise are entitled to vote under the Plan will receive a Ballot and may vote on the Plan.

If you are entitled to vote and did not receive a Ballot, received a damaged Ballot or lost your Ballot, please call the Debtor's voting agent, Epiq Bankruptcy Solutions, LLC, at 646-282-2400. Also, this Disclosure Statement, the Plan and all of the related exhibits and schedules, including Ballots, are available, without charge, to any party in interest at http://chapter11.epiqsystems.com/Crabtree.

Votes cannot be transmitted orally, by facsimile, or by email. Accordingly, you are urged to return your signed and completed Ballot, by hand delivery, overnight service or regular U.S. mail, promptly, so that it is received by the Debtor's voting agent on or before the Voting Deadline.

### C. CONFIRMATION HEARING

Pursuant to section 1128 of the Bankruptcy Code, the Confirmation Hearing will be held on January 14, 2010 at 10:00 a.m. (prevailing Eastern Time) before the Honorable Burton R. Lifland, Room 623, United States Bankruptcy Court for the Southern District of New York,

Alexander Hamilton House, One Bowling Green, New York, New York 10004. The Bankruptcy Court has directed that objections, if any, to confirmation of the Plan must be served and filed so that they are received on or before January 5, 2010 at 4:00 p.m. (prevailing Eastern Time) in the manner described below in Section IX.A of this Disclosure Statement. The Confirmation Hearing may be adjourned from time to time without further notice except for the announcement of the adjournment date made at the Confirmation Hearing or at any subsequent adjourned Confirmation Hearing.

At the Confirmation Hearing, the Bankruptcy Court will confirm the Plan only if all of the applicable requirements of section 1129 of the Bankruptcy Code are met. Among the requirements for confirmation are that a plan: (i) be accepted by the requisite holders of claims and interests in impaired classes of the debtor; (ii) is in the "best interests" of each holder of a claim or interest in each impaired class under a plan for the debtor; and (iii) complies with the applicable provisions of the Bankruptcy Code. In this instance, only holders of Allowed Claims in Class 3 and Class 4 are impaired and therefore entitled to vote on the Plan. See Section IX.B of this Disclosure Statement for a discussion of Bankruptcy Code requirements for Plan confirmation.

THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE HEREOF UNLESS ANOTHER TIME IS SPECIFIED HEREIN, AND THE DELIVERY OF THIS DISCLOSURE STATEMENT SHALL NOT CREATE AN IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE INFORMATION STATED SINCE THE DATE HEREOF. HOLDERS OF CLAIMS SHOULD CAREFULLY READ THIS DISCLOSURE STATEMENT IN ITS ENTIRETY, INCLUDING THE PLAN, PRIOR TO VOTING ON THE PLAN.

FOR THE CONVENIENCE OF HOLDERS OF CLAIMS AND INTERESTS, THIS DISCLOSURE STATEMENT SUMMARIZES THE TERMS OF THE PLAN. IF ANY INCONSISTENCY EXISTS BETWEEN THE PLAN AND THE DISCLOSURE STATEMENT, THE TERMS OF THE PLAN ARE CONTROLLING. THE DISCLOSURE STATEMENT MAY NOT BE RELIED ON FOR ANY PURPOSE OTHER THAN TO DETERMINE WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN, AND NOTHING STATED HEREIN SHALL CONSTITUTE AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY, OR BE ADMISSIBLE IN ANY PROCEEDING INVOLVING THE DEBTOR OR ANY OTHER PARTY, OR BE DEEMED CONCLUSIVE EVIDENCE OF THE TAX OR OTHER LEGAL EFFECTS OF THE PLAN ON THE DEBTOR OR HOLDERS OF CLAIMS OR INTERESTS. CERTAIN OF THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT, BY NATURE, ARE FORWARD-LOOKING AND CONTAIN ESTIMATES AND ASSUMPTIONS. THERE CAN BE NO ASSURANCE THAT SUCH STATEMENTS WILL BE REFLECTIVE OF ACTUAL OUTCOMES.

ALL HOLDERS OF CLAIMS SHOULD CAREFULLY READ AND CONSIDER FULLY THE RISK FACTORS SET FORTH IN ARTICLE VIII OF THIS DISCLOSURE STATEMENT BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.

SUMMARIES OF CERTAIN PROVISIONS OF AGREEMENTS REFERRED TO IN THIS DISCLOSURE STATEMENT DO NOT PURPORT TO BE COMPLETE AND ARE

SUBJECT TO, AND ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO, THE FULL TEXT OF THE APPLICABLE AGREEMENT, INCLUDING THE DEFINITIONS OF TERMS CONTAINED IN SUCH AGREEMENT.

THE DEBTOR BELIEVES THAT THE PLAN WILL ENABLE IT TO REORGANIZE SUCCESSFULLY AND ACCOMPLISH THE OBJECTIVES OF CHAPTER 11 AND THAT ACCEPTANCE OF THE PLAN IS IN THE BEST INTERESTS OF THE DEBTOR AND ITS CREDITORS.

THE DEBTOR URGES CREDITORS TO VOTE TO ACCEPT THE PLAN. THE PREPETITION LENDER AND DIP LENDER ALSO STRONGLY ENCOURAGE ALL HOLDERS OF CLAIMS IN CLASS 3 AND CLASS 4 TO VOTE IN FAVOR OF THE PLAN. THE PREPETITION LENDER AND DIP LENDER WERE ACTIVELY INVOLVED IN THE FORMULATION OF THE PLAN AND BELIEVE THAT THE PLAN PROVIDES THE HIGHEST AND BEST RECOVERIES FOR THE DEBTOR'S CREDITORS.

**IRS CIRCULAR 230 NOTICE:** TO ENSURE COMPLIANCE WITH IRS CIRCULAR 230, HOLDERS OF CLAIMS AND INTERESTS ARE HEREBY NOTIFIED THAT: (A) ANY DISCUSSION OF FEDERAL TAX ISSUES CONTAINED OR REFERRED TO IN THIS DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY HOLDERS OF CLAIMS OR INTERESTS FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON THEM UNDER THE INTERNAL REVENUE CODE; (B) SUCH DISCUSSION IS WRITTEN IN CONNECTION WITH THE PROMOTION OR MARKETING BY THE DEBTOR OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN; AND (C) HOLDERS OF CLAIMS AND INTERESTS SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

## III. OVERVIEW OF THE PLAN[2]

### A. INTRODUCTION

The confirmation of a plan of reorganization, which is the vehicle for satisfying the rights of holders of claims against and equity interests in a debtor, is the overriding purpose of a chapter 11 case. A plan may provide anything from a complex restructuring of a debtor's business and its related obligations to a simple liquidation of assets. In either event, upon confirmation, the plan becomes binding on the debtor and all of its creditors and stakeholders, and the obligations owed by the debtor to those parties are compromised and exchanged for the obligations specified in the plan.

The primary objectives of the Plan are to: (a) maximize the value of the ultimate recoveries for creditors on a fair and equitable basis; and (b) settle, compromise or otherwise dispose of certain claims and interests on terms that the Debtor believes to be fair and reasonable

[2] The overview of the Plan set forth herein is designed to simply provide a summary of the Plan's terms. To the extent that anything set forth in this Disclosure Statement is inconsistent with the terms of the Plan, the Plan will govern.

and in the best interests of the Estate and creditors. The Plan provides for the distribution of cash, after the payment of expenses of the Estate, to the holders of Allowed Claims as and to the extent provided for in the Plan, and the Reinstatement of Interests as provided in the Plan. The Plan also provides for, among other things: (i) the resolution of all claims against the Debtor in the manner set forth below, and in the Plan; (ii) the assumption or rejection of certain Executory Contracts and Unexpired Leases to which the Debtor is a party, and (iii) certain other transactions necessary to effectuate the terms of the Plan.

## B. SUMMARY OF CLASSES AND TREATMENT OF CLAIMS AND INTERESTS

The estimated aggregate amount of claims in each class, and the estimated amount and nature of consideration to be distributed to each class, is summarized in the table below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims have not been classified. Additionally, DIP Claims are unimpaired by the Plan and therefore have not been classified. All other Claims have been classified for all purposes, including voting, confirmation, and distribution pursuant to the Plan.

The estimated amount of Claims shown in the table below is based upon the Debtor's preliminary review of its books and records and may be revised substantially following further analysis. There can be no guaranty that the Debtor's estimates will prove to be accurate.

The amount designated in the table below as "Estimated Percentage Recovery" for each Class is the quotient of the estimated cash to be distributed to holders of Allowed Claims in such Class, divided by the estimated aggregate amount of Allowed Claims in such Class. For a discussion of various factors that could materially affect the amount of cash to be distributed to unsecured creditors under the Plan, see Article VIII of this Disclosure Statement.

| Class | Treatment | Status/ Right to Vote | Estimated Aggregate Amount of Allowed Claims or Interests | Estimated Recovery Percentage |
|---|---|---|---|---|
| Class 1: Secured Claims | Each holder of an Allowed Secured Claim in Class 1 will receive (i) Cash in an amount equal to the Allowed Secured Claim, or (ii) the return of the holder's collateral securing the Allowed Secured Claim, in full satisfaction of its Allowed Secured Claim, unless the holder of such Claim agrees to less favorable treatment, either (a) if the Secured Claim is Allowed as of the Effective Date, on the Initial Distribution Date, (b) if the | **Unimpaired. Not entitled to vote.** | $0 (excluding the $13 Million Obligation) | 100% |

| Class | Treatment | Status/ Right to Vote | Estimated Aggregate Amount of Allowed Claims or Interests | Estimated Recovery Percentage |
|---|---|---|---|---|
| | Secured Claim is not Allowed as of the Effective Date, on the next Interim Distribution Date as set forth in Sections 6.8.2 and 7.3 of the Plan after an order allowing such Secured Claim becomes a Final Order or a Stipulation of Amount and Nature of Claim is executed by the Reorganized Debtor and the holder of the Secured Claim, unless otherwise agreed by the holder of a Secured Claim and the Debtor or Reorganized Debtor. Any Allowed Deficiency Claim of a holder of an Allowed Secured Claim will be entitled to treatment as an Allowed General Unsecured Claim. Notwithstanding anything to the contrary in the Plan, the Disclosure Statement or the Confirmation Order to the contrary, Claims in Class 1 will not include the $13 Million Obligation, which will remain in full force and effect, on the same terms and conditions as existed prior to the Petition Date, on the Effective Date and thereafter, and will become debt of the Reorganized Debtor. | | | |
| Class 2: Priority Non-Tax Claims | Each holder of an Allowed Priority Non-Tax Claim in Class 2 will receive Cash in an amount equal to the Allowed Priority Non-Tax Claim, in full satisfaction of its Allowed Priority Non-Tax Claim, unless the holder of such Claim agrees to less favorable treatment either (a) if the Priority Non-Tax Claim is Allowed as of the Effective Date, on the Initial Distribution Date or (b) if the Priority Non-Tax Claim is not Allowed as of | **Unimpaired. Not entitled to vote.** | $648.54 | 100% |

| Class | Treatment | Status/ Right to Vote | Estimated Aggregate Amount of Allowed Claims or Interests | Estimated Recovery Percentage |
|---|---|---|---|---|
| | the Effective Date, on the next Interim Distribution Date as set forth in Sections 6.8.2 and 7.3 of the Plan after an order allowing such Priority Non-Tax Claim becomes a Final Order or a Stipulation of Amount and Nature of Claim is executed by the Reorganized Debtor and the holder of the Priority Non-Tax Claim, unless otherwise agreed by the holder of a Priority Non-Tax Claim and the Debtor or Reorganized Debtor. | | | |
| Class 3: General Unsecured Claims | Each holder of an Allowed General Unsecured Claim will receive payments in Cash that would, together with any payments previously received by such holder, provide such holder with its Distribution Percentage, in full satisfaction of its Allowed General Unsecured Claim, unless the holder of such Claim agrees to less favorable treatment either (a) if the General Unsecured Claim is Allowed as of the Effective Date, on the Initial Distribution Date or (b) if the General Unsecured Claim is not Allowed as of the Effective Date, on the next Interim Distribution Date as set forth in Sections 6.8.2, 7.1.2 and 7.3 of the Plan. Notwithstanding anything to the contrary in the Plan, the Disclosure Statement or the Confirmation Order to the contrary, Claims in Class 3 will not include the $18 Million Obligation, which will remain in full force and effect, on the same terms and conditions as existed prior to the Petition Date, on the Effective Date and thereafter, and will become debt of | **Impaired. Entitled to vote.** | $9,592,704.04 - 10,592,704.04 (excluding the $18 Million Obligation) | 45%, subject to reduction as set forth below |

| Class | Treatment | Status/ Right to Vote | Estimated Aggregate Amount of Allowed Claims or Interests | Estimated Recovery Percentage |
|---|---|---|---|---|
| | the Reorganized Debtor. | | | |
| Class 4: Class Action Settlement Claims | Claims in Class 4 shall be treated as follows: either (a) if the Potential Class Action Settlement Approval Order is entered by the Bankruptcy Court and such order becomes a Final Order, the Class Action Settlement Claim shall be treated as an Administrative Claim in the reduced Class Action Settlement Amount and shall be paid in accordance with the Potential Class Action Settlement Approval Order, or (b) if the Potential Class Action Settlement Approval Order is not entered by the Bankruptcy Court, each holder of an Allowed Class Action Settlement Claim shall receive the same Distribution Percentage as each holder of a Class 3 Claim in an aggregate Claim amount to be determined by entry of a judgment or otherwise agreed by the parties. The allowance of such Claim will result in a reduction of the Distribution Percentage by between approximately 1.9% and 2.2% for every $500,000 of the Allowed Class Action Settlement Claim. | **Impaired. Entitled to vote.** | $270,000 | 100%[3] |

[3] A recovery of 100% for holders of Class 4 Claims assumes that the Bankruptcy Court enters the Potential Class Action Settlement Approval Order and that such order becomes a Final Order. If the Bankruptcy Court does not enter the Potential Class Action Settlement Approval Order, or if an appeal from such order is taken and such appeal is successful, holders of Class 4 Claims may hold claims in an amount different than $270,000 and the estimated recovery percentage for holders of Class 4 Claims will depend on the Allowed amount of the Class 4 Claims.

| Class | Treatment | Status/ Right to Vote | Estimated Aggregate Amount of Allowed Claims or Interests | Estimated Recovery Percentage |
|---|---|---|---|---|
| Class 5: Interests | Interests in the Debtor shall be Reinstated and shall remain in full force and effect on the Effective Date and thereafter. | **Unimpaired. Not entitled to vote.** | -- | -- |

# IV. GENERAL INFORMATION

## A. OVERVIEW OF CHAPTER 11

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. Under chapter 11 of the Bankruptcy Code, a debtor is authorized to reorganize its business for the benefit of itself, its creditors and its equity interest holders. In addition to permitting the rehabilitation of a debtor, another goal of chapter 11 is to promote equality of treatment for similarly situated creditors and similarly situated equity interest holders with respect to the distribution of a debtor's assets.

The commencement of a chapter 11 case creates an estate that is comprised of all of the legal and equitable interests of the debtor as of the commencement date. The Bankruptcy Code provides that the debtor may continue to operate its business and remain in possession of its property as a "debtor in possession."

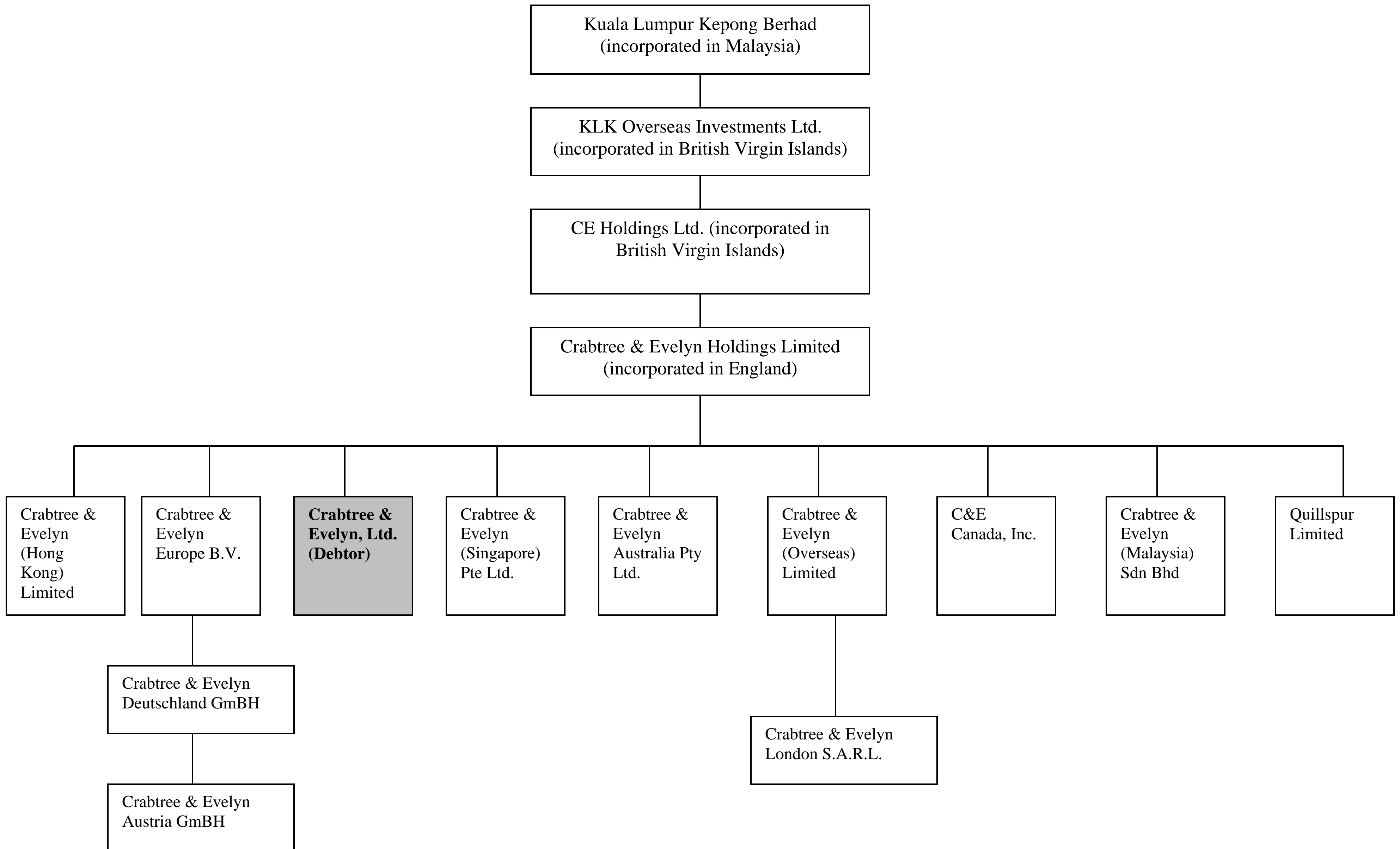
The consummation of a chapter 11 plan is the principal objective of a chapter 11 reorganization case. A chapter 11 plan sets forth the means for satisfying claims against and interests in a debtor. Confirmation of a chapter 11 plan by the bankruptcy court binds the debtor, any issuer of securities under the plan, any person acquiring property under the plan and any creditor or equity interest holder of a debtor. Subject to certain limited exceptions, the order approving confirmation of a plan discharges a debtor from any debt that arose prior to the date of confirmation of the plan and substitutes therefor the obligations specified under the confirmed plan.

Certain holders of claims against and interests in a debtor are permitted to vote to accept or reject the plan. Prior to soliciting acceptances of the proposed plan, however, section 1125 of the Bankruptcy Code requires a debtor to prepare a disclosure statement containing adequate information of a kind, and in sufficient detail, to enable a hypothetical investor of the relevant classes to make an informed judgment regarding the plan. The Debtor is submitting this Disclosure Statement to holders of Claims against and Interests in the Debtor to satisfy the requirements of section 1125 of the Bankruptcy Code.

## B. CORPORATE STRUCTURE

The chart below provides a general overview of the prepetition corporate structure for the Debtor and its non-Debtor affiliates.

## Crabtree & Evelyn, Ltd. Corporate Structure



The Debtor is a direct, wholly-owned subsidiary of Crabtree & Evelyn Holdings Limited ("Crabtree & Evelyn Holdings"), a United Kingdom based investment holding company. Crabtree & Evelyn Holdings owns all of the Crabtree & Evelyn foreign trademarks. Crabtree & Evelyn Holdings is a direct, wholly-owned subsidiary of CE Holdings Ltd. ("CE Holdings"), a British Virgin Islands based investment holding company. CE Holdings is a direct, wholly-owned subsidiary of KLK Overseas Investments Ltd. ("KLKOI"), a British Virgin Islands based investment holding company. KLKOI is a direct, wholly-owned subsidiary of Kuala Lumpur Kepong Berhad ("KLK"). KLK is a Malaysian public limited liability company, the stock of which is publicly traded on the Kuala Lumpur stock exchange. Among other things, KLK owns and operates palm oil and rubber plantations and manufactures oleochemicals (chemicals derived from oils or fats which can be made into, among other things, cooking oil).

The Debtor has eleven affiliates, none of which are based in the United States. All of the Debtor's affiliates are also wholly-owned indirect subsidiaries of KLK.

## C. BUSINESS BACKGROUND

### 1. History

Founded as a purveyor of fine soaps from around the world, products were first sold under the Crabtree & Evelyn name starting in approximately 1972.[4] During nearly four decades Crabtree & Evelyn has expanded its product offerings from fine soaps to include personal care products and related accessories, fragrances, comestibles (*i.e.*, food products including cookies, teas and jams), products for the home and gift arrangements. The Debtor also sells Vera Bradley (purses and related accessories) products in its retail store locations. Crabtree & Evelyn manufactures and distributes more than twenty-five product lines, including LaSource®, Gardeners, India Hicks Island Living® and Naturals and its products have been frequently mentioned in numerous magazines, including Vogue, Glamour, and Lucky. In 1977, Crabtree & Evelyn opened its first retail store, and its retail business has gradually expanded to include a manufacturing and distribution facility, as well as 126 stores in the United States as of the Petition Date. In 1996, KLK purchased 100 percent of the equity of the Debtor. The Debtor is incorporated in Connecticut, and its headquarters, distribution center, manufacturing facility, and warehouse are located in Woodstock, Connecticut.

### 2. Sales Channels

The Debtor sells its products through multiple channels, including its retail stores, wholesale business, export business, affiliate sales, and the internet.[5]

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[4] The name of the Debtor is inspired from (i) the crabapple tree, the original species from which all cultivated apple trees have derived, and (ii) John Evelyn, the seventeenth century renaissance Englishman, who wrote one of the first works on conservation of forests and timber.

[5] The Debtor is also a party to agreements whereby third parties sell the Debtor's products. For example, the Debtor is a party to various license agreements which permit the licensee parties to sell Crabtree & Evelyn products and operate 14 retail stores under the Crabtree & Evelyn name. In addition, the Debtor is a party to an agreement which permits the counterparty to manufacture and sell products bearing the Debtor's trademarks to various hotels, including Hilton hotels.

Retail. As of the Petition Date, the Debtor operated 126 retail stores in 34 states, including stores featuring full-price merchandise and outlet stores. The average retail store leased by the Debtor was approximately 925 square feet, and the average outlet store leased by the Debtor was approximately 1,225 square feet. The Debtor sells larger quantity product, discontinued product and slow-moving product in its outlet stores. For the fiscal year ending September 30, 2009, the retail segment accounted for approximately 47 percent of the Debtor's revenues. To date, the Debtor has closed 30 retail stores as part of its restructuring initiatives, described in further detail below.

Wholesale. The Debtor sells its products through a wide range of wholesale channels, including gift shops, home specialty stores and country stores. The Debtor's wholesale customers include some of the largest gift shops in the United States, including Hallmark. For the fiscal year ending September 30, 2009, the wholesale segment accounted for approximately 9 percent of the Debtor's revenues.

Affiliate. The Debtor's affiliates[6] rely on the Debtor to manufacture the majority of the products they sell. The Debtor sells its products to certain of its affiliates, some of which operate retail stores. Some of the Debtor's affiliates also sell products to other affiliates and licensed distributors, which sell to wholesale accounts and/or operate retail stores. The Debtor's affiliates operate approximately 130 Crabtree & Evelyn retail stores outside of the United States. The majority of the products sold to the Debtor's affiliates are finished goods, although, depending on the product, the affiliate (or an agent thereof) may package the goods. For the fiscal year ending September 30, 2009, sales to the Debtor's affiliates accounted for approximately 27 percent of the Debtor's revenues.

Export. The Debtor also sells its products to various non-affiliate foreign distributors and/or licensees, including: (i) Controladora PGH, S.A. de C.V., a company which operates Crabtree & Evelyn stores in Mexico and distributes the Debtor's products through wholesale channels to various gift stores in Mexico; (ii) Motta Internacional, S.A., a company which operates Crabtree & Evelyn stores in Panama; (iii) House of Rose Co., Ltd., a company which distributes Crabtree & Evelyn products through wholesale channels to various gift stores in Japan; and (iv) Starbright Company Ltd., a company which distributes Crabtree & Evelyn products through wholesale channels to various gift stores in Taiwan. For the fiscal year ending September 30, 2009, the export business accounted for approximately 10 percent of the Debtor's revenues.

Internet. The Debtor sells its products directly to its consumers through its internet site, located at www.crabtree-evelyn.com. The Debtor's website allows the Debtor significant access to its customers, which the Debtor tracks in a database populated with information from approximately 320,000 customers. The Debtor's website offers internet-only promotions, provides customers with the opportunity to sign up to obtain exclusive email-only offers, obtain

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[6] The affiliates consist of Crabtree & Evelyn (Overseas) Limited (United Kingdom), Crabtree & Evelyn Australia Pty Ltd., C&E Canada, Inc., Crabtree & Evelyn (Singapore) Pte Ltd., Crabtree & Evelyn (Malaysia) Sdn Bhd, Crabtree & Evelyn (Hong Kong) Limited, Crabtree & Evelyn Deutschland GmBH, Crabtree & Evelyn Austria GmBH, Crabtree & Evelyn Europe B.V., Crabtree & Evelyn London S.A.R.L. and Quillspur Limited.

internet-only promotions, and provides information about the Debtor's product lines and retail store locations. For the fiscal year ending September 30, 2009, sales from the internet accounted for approximately 7 percent of the Debtor's revenues.

### 3. Employee and Labor Matters

The Debtor currently employs approximately 797 employees, none of which are unionized. Historically, the Debtor has enjoyed favorable relationships with its highly qualified and enthusiastic personnel. The Debtor believes that its labor relations are good, and it has not experienced a work stoppage.

### 4. Properties and Assets

The Debtor's primary assets include inventory, contract rights, intellectual property rights, and accounts receivable for goods sold. The Debtor also owns its headquarters, manufacturing facility, distribution center and warehouse in Woodstock, Connecticut. In addition, the Debtor leases a significant number of retail stores located in 31 states.

### 5. Manufacturing and Sourcing

The majority of Crabtree-branded products distributed worldwide are manufactured and distributed through the Debtor. The Debtor owns and operates a manufacturing facility in Woodstock, Connecticut, where the Debtor manufactures and packages its products. The Debtor also sources certain products from external manufacturers. Of the total value of the Debtor's product sourced in fiscal year 2008, 37 percent was imported from abroad. Approximately 50-60 percent of the core products (*i.e.*, soap, gel, lotion and fragrance) sold by the Debtor are manufactured by the Debtor, and the remainder are manufactured by external manufacturers.

## D. PREPETITION CAPITAL STRUCTURE[7]

The Debtor's prepetition capital structure is described below.

### 1. Secured Debt

The Debtor is a party to that certain Grid Note dated April 6, 2009 (the "Prepetition Note"), in favor of KLKOI (the "Prepetition Lender"). The Prepetition Note provides for a line of credit of up to an aggregate principal amount of $10 million. The Prepetition Note matures on the earlier of (i) December 31, 2010 (or such later date as may be agreed to), and (ii) the occurrence of an Event of Default (as defined in the Prepetition Note). Interest is payable on June 30, 2009 and on a quarterly basis thereafter. As of the Petition Date, the Debtor had drawn a total of approximately $8 million on the Prepetition Note. As of the Petition Date, the balance owed under the Prepetition Note was approximately $8 million.

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[7] The summary of the loan document and security agreement set forth herein is qualified in its entirety by the documents themselves. To the extent there is a discrepancy between the descriptions set forth herein and the documents, the documents control.

The Prepetition Note is secured by security interests in and liens on substantially all assets, including, without limitation, inventory, receivables, an office building with related parking garage, land and fixtures, and certain other assets of the Debtor, and cash and proceeds of the foregoing. The Prepetition Note is oversecured.

Separate and apart from the Prepetition Note, as of the Petition Date, the Debtor was indebted to KLKOI in the amount of $13,731,528.

### 2. Unsecured Debt

The Debtor estimates that it will have Allowed General Unsecured Claims of between $9,592,704.04 and $10,592,704.04 after completion of the reconciliation of General Unsecured Claims.

### 3. Equity

KLK, through its interest in its wholly-owned subsidiaries, owns 100 percent of the equity of the Debtor.

### 4. Recent Financial Information

The Debtor attained revenue of approximately $99.4 million in fiscal year 2009 (year ending September 30, 2009), which represents a decline from fiscal year 2008 revenue, which was approximately $107.5 million.

The Debtor has suffered substantial operating losses for the past several years. The operating loss in fiscal year 2008 was approximately $12.2 million. The operating loss in fiscal year 2009 was approximately $16.5 million.

In addition, the Debtor's sales have declined dramatically in recent months in its two main sales channels. Retail sales in fiscal year 2009 declined by approximately 22.2 percent from the previous fiscal year. Wholesale sales in fiscal year 2009 declined by approximately 29.6 percent from the previous fiscal year. E-commerce sales in fiscal year 2009 have slowed, but have increased by approximately 9.2 percent from the previous fiscal year.

## V. KEY EVENTS LEADING TO THE COMMENCEMENT OF THE CHAPTER 11 CASE

Several internal and external factors recently have severely impacted the Debtor, and, in particular its retail business, ultimately prompting the near-term liquidity pressures that precipitated the decision to commence this chapter 11 case.

### 1. Market Conditions

Over the last 18 months, the decline in the housing market and the tightening of the credit markets have led to a decline in consumer discretionary spending. This decline has had a significant adverse impact on many retail sectors, including in the personal care sector, in the form of decreased sales.

It is well known that the Debtor is not the only retailer and manufacturer to struggle in the current economic climate, the most difficult downturn experienced in the United States in decades. In fact, over the last two years, retailers such as Lenox, Eddie Bauer, Filene's Basement, Fortunoff, KB Toys, Goody's, Steve & Barry's, Mervyn's, Boscov's and Gottschalks have all sought relief under chapter 11.

#### 2. Operational Issues

The Debtor recently has experienced a number of operational challenges which have impacted the performance of its various business sectors. Changes in senior management have resulted in several strategy shifts, including the significant erosion in sales to wholesale accounts. Moreover, retail store transactions have declined concomitantly with the decline in overall customer foot traffic in the regional malls where most of the Debtor's stores are located. These challenges, combined with its recent declining revenues and operating losses, have severely impacted the Debtor's ability to operate successfully in the marketplace.

#### 3. Prepetition Lease Negotiations

Prior to the Petition Date, the Debtor hired KPMG Corporate Finance LLC ("KPMG") as special real estate advisor to assist the Debtor in the negotiation of lease modification agreements for certain of the Debtor's underperforming retail stores. Despite KPMG's diligent and best efforts, the lease modifications that the Debtor required in order for the Debtor to continue to operate certain of the retail stores at a profit proved to be too great for many of the landlords to provide. In addition, prior to the Petition Date, the Debtor negotiated with certain of its landlords with respect to certain leases which it sought to terminate. Although the Debtor was able to terminate certain of its leases, some of the Debtor's landlords were unwilling to entertain the termination of leases on the terms suggested by the Debtor. The Debtor continues to engage in discussions with its landlords to negotiate for rent concessions for certain of its leases.

## VI. THE CHAPTER 11 CASE

### A. FIRST DAY ORDERS

Since the Petition Date, the Debtor has continued to operate its business in the ordinary course as it had prior to the Petition Date, and the Debtor intends to continue to operate in the ordinary course throughout the remainder of its Chapter 11 Case. Accordingly, on the Petition Date, the Debtor filed a series of motions seeking various relief from the Bankruptcy Court designed to minimize any disruption of business operations and to preserve the value of its Estate. Orders with respect to these motions were entered either at the "first day" or "second day" hearing.

#### 1. Case Administration Orders

The Bankruptcy Court issued orders: (i) establishing certain notice and case management procedures, (ii) granting an extension of time to file the Debtor's Schedules and Statements, (iii) authorizing the waiver of the requirement to file a list of creditors, (iv) establishing procedures for the rejection of executory contracts and unexpired leases; (v) establishing procedures for the interim compensation of retained professionals; (vi) permitting the Debtor to employ

professionals utilized in the ordinary course of business; and (vii) granting the Debtor's application to retain Epiq Bankruptcy Solutions, LLC as the claims agent in this Chapter 11 Case.

#### 2. Critical Obligations

The Bankruptcy Court authorized the Debtor to satisfy certain critical business obligations such as those relating to (i) wages, compensation, and employee benefits, (ii) freight forwarding charges, (iii) claims of foreign creditors, and (iv) customer programs.

#### 3. Business Operations

Among other things, the Bankruptcy Court (i) authorized the Debtor to continue certain workers' compensation and other insurance policies, and (ii) prohibited the Debtor's utilities service providers from altering, refusing or discontinuing service and established certain procedures for determining adequate assurance of payment.

#### 4. Financial Operations

The Bankruptcy Court authorized the Debtor to (i) maintain its existing bank accounts and forms, (ii) continue to use existing investment guidelines, and (iii) continue its centralized cash management system.

### B. CREDITORS' COMMITTEE

On July 10, 2009, as amended on July 14, 2009, the U.S. Trustee, pursuant to its authority under section 1102(a)(1) of the Bankruptcy Code, appointed the Committee.

The current members of the Committee are:

Alpha Logica, Inc.
150 East 58th Street
New York, NY 10022

Carole Hochman Design Group
135 Madison Ave.
New York, NY 10016

GGP Limited Partnership
110 N. Wacker Drive
Chicago, IL 60604

Original Bradford Soap Works, Inc.
200 Providence Street
W. Warwick, RI 20893

Orlandi, Inc.
131 Executive Boulevard
Farmingdale, NY 11735

Simon Property Group, Inc.
225 West Washington St.
Indianapolis, IN 46204

Vera Bradley Designs, Inc.
5620 Industrial Road
Fort Wayne, IN 46825

The Committee has the following advisors:

Hahn & Hessen LLP
488 Madison Avenue
New York, New York 10022
Attn: Mark Indelicato, Esq.

Scouler & Company
1800 Century Park East, Suite 600
Los Angeles, California 90067
Attn: John Rudd

## C. CHAPTER 11 FINANCING

### 1. DIP Agreement

Prior to the Petition Date, the Debtor lacked sufficient unencumbered funds with which to preserve, operate and maintain its business and assets during the pendency of this Chapter 11 Case. The Debtor's ability to pay critical preservation, administrative, and operating expenses is essential to the Debtor's ability to survive and maintain its asset value. Accordingly, to provide the Debtor with the funding necessary to fulfill its administrative and operational obligations for the duration of the Chapter 11 Case, the Debtor required a postpetition lending facility and the use of cash collateral of the Prepetition Lender.

Accordingly, prior to the Petition Date, the Debtor and its advisors surveyed various sources of postpetition financing, including financing from KLK and certain unrelated third parties. In exploring its options, the Debtor recognized that the obligations owed to KLK are secured by substantially all of the Debtor's assets, and therefore (i) the liens of KLK would have to be primed to obtain postpetition financing, (ii) the Debtor would have to find a postpetition lender willing to extend credit that would be junior to the liens of KLK, or (iii) postpetition financing would have to be extended on an unsecured basis. It quickly became clear that borrowing from another postpetition lender that required security senior to the Prepetition Lender could only be accomplished on a contested basis. Moreover, given the generally poor retail climate and economic conditions, the Debtor realized that sources of new capital, if available at all, were significantly more expensive than obtaining postpetition financing from the DIP Lender. The Debtor found that the pricing and fee structure of any alternative proposal would be less favorable than that offered by the DIP Lender – which does not require the payment of any fees to the DIP Lender on account of the DIP Facility and includes an extremely low interest rate of 4%.

In view of these circumstances, the DIP Lender was willing to extend postpetition financing on the terms and conditions described herein and thus prime the prepetition security interests of its affiliate, KLKOI. Ultimately, the Debtor concluded that the DIP Agreement proposed by the DIP Lender was desirable and determined that entry into the DIP Agreement would address the Debtor's working capital and liquidity needs.

The DIP Agreement was approved by the Bankruptcy Court on an interim basis by order entered July 2, 2009, as amended on July 8, 2009, and on a final basis by order entered July 31, 2009 (the "Final DIP Order"). Pursuant to its approved terms, the DIP Agreement consists of a superpriority grid note in an aggregate principal amount not to exceed $26.3 million, $8 million of which was used by the Debtor to pay the outstanding amount due under the Prepetition Note, and the remainder of which is being used to fund the Debtor's working capital and general corporate needs in the ordinary course of business and to pay such other amounts as required or permitted to be paid pursuant to the terms of the DIP Agreement, the Final DIP Order and any other orders of the Bankruptcy Court, in each case subject to and in accordance with the 23-week cash flow budget annexed to the Final DIP Order as Exhibit B (the "DIP Facility").

#### 2. Plan Financing

The Plan contemplates that the Reorganized Debtor will obtain exit financing in an amount sufficient to satisfy the DIP Claim, support other required payments under the Plan, and conduct its post-reorganization operations. The Plan provides that the terms of the Exit Facility will be agreed to by the Debtor, which terms will be substantially in accordance with the commitment letter to be included in the Plan Supplement. To that end, the Debtor is currently in negotiations with KLK to secure financing for the Exit Facility. The Exit Facility is expected to be secured by substantially all the assets of the Reorganized Debtor, subject to customary limitations, including without limitation, all accounts, general intangibles, deposit accounts, chattel paper, instruments, investment property, inventory, equipment, fixtures, goods, and the Reorganized Debtor's interests in real property.

### D. RETENTION OF DEBTOR'S PROFESSIONALS

On July 29, 2009, the Bankruptcy Court entered orders granting the Debtor's applications to retain Cooley Godward Kronish LLP, as the Debtor's counsel, Clear Thinking Group LLC, as the Debtor's financial advisors, and KPMG as special real estate advisor.

### E. REJECTION OF CERTAIN NON-RESIDENTIAL REAL PROPERTY LEASES

As part of its efforts to reduce its operating expenses, the Debtor has engaged in an analysis of its various Executory Contracts and Unexpired Leases. On and after the Petition Date, the Debtor determined to reject various Unexpired Leases pursuant to orders of the Bankruptcy Court. Specifically, the Bankruptcy Court has entered orders permitting the Debtor to reject 30 Unexpired Leases, as well as the storage spaces associated with those contracts (Docket Nos. 113, 173 and 204). Pursuant to the Plan, certain Executory Contracts and Unexpired Leases that exist between the Debtor and any Person or entity will be deemed rejected by the Debtor as of the Effective Date, except as provided in the Plan.

## F. RELIEF FROM STAY TO PROCEED WITH POTENTIAL CLASS ACTION SETTLEMENT APPROVAL PROCESS

On or about January 29, 2008, attorneys purporting to represent Manya Devoe ("Devoe"), one of the Debtor's former store managers, contacted the Debtor, alleging that the Debtor had violated the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. (the "FLSA") and various state wage-hour laws (together with the FLSA, the "Wage Laws"). Specifically, such attorneys alleged, among other things, that the Debtor had misclassified its store managers (the "Store Managers") as exempt from the Wage Laws and, accordingly, that the Debtor denied such employees certain overtime wages and compensation (the "Potential Action"). Such attorneys alleged that the Potential Action would involve a class of current and former Store Managers (the "Potential Class"). Thereafter, the parties entered into a tolling agreement which, among other things, provided that, as of January 29, 2008, the statute of limitations for claims under the Wage Laws is tolled.

The Debtor's position is that its Store Managers are and have been correctly classified as exempt employees under the Wage Laws and were properly paid for all hours worked, including overtime. Nevertheless, any litigation bears risk, and the possibility exists that a court could rule against the Debtor and award the Potential Class substantial damages.

On or about June 30, 2009, the Debtor and Devoe entered into that certain Class Action Settlement Agreement and Release (the "Class Action Settlement Agreement"). The Class Action Settlement Agreement contemplates, among other things, that Devoe will file a complaint in state court, that the Debtor will stipulate to certification of a settlement class and, if the state court approves of the Class Action Settlement Agreement, the Debtor will make a payment of $270,000.00 in consideration for a complete and general release.

On July 9, 2009, the Debtor filed a motion seeking, among other things, an order modifying the automatic stay under section 362 of the Bankruptcy Code for the limited purpose of permitting actions contemplated by the Class Action Settlement Agreement to proceed. On July 31, 2009, the Bankruptcy Court entered an order lifting the automatic stay for the sole and limited purpose of permitting the actions explicitly set forth in the Class Action Settlement Agreement to proceed.

## G. SCHEDULES AND STATEMENTS OF FINANCIAL AFFAIRS

On August 15, 2009, the Debtor filed its Schedules and Statements. Among other things, the Schedules and Statements identify the Debtor's known creditors, classify their claims as secured, unsecured priority or general unsecured, list the amount of such claims as they appeared on the Debtor's books and records as of the Petition Date and indicate whether the Debtor disputes such claims or whether they have determined such claims are contingent or unliquidated.

## H. BAR DATES

On August 20, 2009, the Bankruptcy Court entered an order establishing October 9, 2009 at 5:00 p.m. (Eastern Time) (the "General Bar Date") as the last date and time for each person or entity to file proofs of Claim based on prepetition Claims against the Debtor, and December 28,

2009 at 5:00 p.m. (Eastern Time) (the "Governmental Bar Date" and, together with the General Bar Date, the "Bar Dates") as the last date and time for governmental units to file proofs of Claim based upon prepetition Claims against the Debtor. In accordance with this order, the Debtor has mailed a notice of the Bar Dates and a proof of Claim form to all known holders of Claims.

### I. EXTENSION OF EXCLUSIVE PERIODS TO FILE A PLAN AND SOLICIT ACCEPTANCES THEREOF

Pursuant to section 1121 of the Bankruptcy Code, a debtor has the exclusive right to (i) file a plan of reorganization during the first 120 days of its chapter 11 case (the "Exclusive Plan Period") and (ii) solicit acceptances of the plan during the first 180 days of the case (the "Exclusive Solicitation Period" and, together with the Exclusive Plan Period, the "Exclusive Periods"). On September 25, 2009, the Debtor filed a motion (Docket No. 196) seeking to extend the (a) Exclusive Plan Period from October 29, 2009 to January 27, 2010, and (b) Exclusive Solicitation Period from December 28, 2009 to March 29, 2010. On October 19, 2009, the Bankruptcy Court signed an order granting the request for those extensions (Docket No. 203).

### J. EXTENSION OF TIME TO ASSUME OR REJECT UNEXPIRED NON-RESIDENTIAL REAL PROPERTY LEASES

Section 365(d)(4) of the Bankruptcy Code allows a debtor an initial 120-day period for determining whether to assume or reject non-residential real property leases, which period may be extended by order of the bankruptcy court. A failure to assume or reject non-residential real property leases during the period or to obtain an extension of the period results in a deemed rejection of non-residential real property leases. Given the size and complexity of the Chapter 11 Case, and the need to delay decisions as to leased premises until the structure of its reorganization was determined, on September 25, 2009, the Debtor filed a motion (Docket No. 198) to extend the assumption or rejection period from October 29, 2009 to January 27, 2010. On October 19, 2009, the Bankruptcy Court signed an order granting the request for that extension (Docket No. 205).

## VII. THE PLAN

### A. INTRODUCTION

The Debtor believes that (i) through the Plan, holders of Allowed Claims will receive a greater recovery from the Debtor's estate than the recovery that they would receive in a liquidation of the Debtor under chapter 7 of the Bankruptcy Code, and (ii) the Plan will afford the Debtor the opportunity and ability to continue in business as a viable going concern and preserve ongoing employment for the Debtor's employees.

The Plan is annexed hereto as **Exhibit A** and forms a part of this Disclosure Statement.

THIS SECTION PROVIDES A SUMMARY OF THE STRUCTURE AND IMPLEMENTATION OF THE PLAN AND THE CLASSIFICATION AND TREATMENT OF CLAIMS UNDER THE PLAN AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE

TO THE PLAN, WHICH ACCOMPANIES THIS DISCLOSURE STATEMENT, AND TO THE EXHIBITS ATTACHED THERETO.

THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT INCLUDE SUMMARIES OF THE PROVISIONS CONTAINED IN THE PLAN AND IN DOCUMENTS REFERRED TO THEREIN. THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT DO NOT PURPORT TO BE PRECISE OR COMPLETE STATEMENTS OF ALL THE TERMS AND PROVISIONS OF THE PLAN OR DOCUMENTS REFERRED TO THEREIN, AND REFERENCE IS MADE TO THE PLAN AND TO SUCH DOCUMENTS FOR THE FULL AND COMPLETE STATEMENTS OF SUCH TERMS AND PROVISIONS.

THE PLAN ITSELF AND THE DOCUMENTS REFERRED TO THEREIN WILL CONTROL THE TREATMENT OF CLAIMS AGAINST, AND INTERESTS IN, THE DEBTOR UNDER THE PLAN AND WILL, UPON THE EFFECTIVE DATE, BE BINDING UPON HOLDERS OF CLAIMS AGAINST, OR INTERESTS IN, THE DEBTOR, THE REORGANIZED DEBTOR, AND OTHER PARTIES IN INTEREST. IN THE EVENT OF ANY CONFLICT BETWEEN THIS DISCLOSURE STATEMENT AND THE PLAN OR ANY OTHER OPERATIVE DOCUMENT, THE TERMS OF THE PLAN AND/OR SUCH OTHER OPERATIVE DOCUMENT WILL CONTROL.

Statements as to the rationale underlying the treatment of Claims and Interests under the Plan are not intended to, and shall not, waive, compromise or limit any rights, claims or causes of action in the event the Plan is not confirmed.

## B. CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS UNDER THE PLAN

One of the key concepts under the Bankruptcy Code is that only claims and equity interests that are "allowed" may receive distributions under a chapter 11 plan. This term is used throughout the Plan and the descriptions below. In general, an "allowed" claim or "allowed" equity interest simply means that the debtor agrees, or in the event of a dispute, that the Bankruptcy Court determines, that the claim or equity interest, and the amount thereof, is in fact a valid obligation of the debtor. Section 502(a) of the Bankruptcy Code provides that a timely filed claim or equity interest is automatically "allowed" unless the debtor or other party in interest objects. However, section 502(b) of the Bankruptcy Code specifies certain claims that may not be "allowed" in bankruptcy even if a proof of claim is filed. These include, but are not limited to, claims that are unenforceable under the governing agreement between a debtor and the claimant or applicable non-bankruptcy law, claims for unmatured interest, property tax claims in excess of the debtor's equity in the property, claims for services that exceed their reasonable value, real property lease and employment contract rejection damage claims in excess of specified amounts, late-filed claims and contingent claims for contribution and reimbursement. Additionally, Bankruptcy Rule 3003(c)(2) prohibits the allowance of any claim or equity interest that either is not listed on the debtor's schedules or is listed as disputed, contingent or unliquidated, if the holder has not filed a proof of claim or equity interest before the established deadline.

The Bankruptcy Code requires that, for purposes of treatment and voting, a chapter 11 plan divide the different claims against, and equity interests in, the debtor into separate classes based upon their legal nature. Claims of a substantially similar legal nature are usually classified together, as are equity interests of a substantially similar legal nature. Because an entity may hold multiple claims and/or equity interests which give rise to different legal rights, the "claims" and "equity interests" themselves, rather than their holders, are classified.

Under a chapter 11 plan, the separate classes of claims and equity interests must be designated either as "impaired" (affected by the plan) or "unimpaired" (unaffected by the plan). If a class of claims is "impaired," the Bankruptcy Code affords certain rights to the holders of such claims, such as the right to vote on the plan, and the right to receive, under the chapter 11 plan, no less value than the holder would receive if the debtor were liquidated in a case under chapter 7 of the Bankruptcy Code. Under section 1124 of the Bankruptcy Code, a class of claims or interests is "impaired" unless the plan (i) does not alter the legal, equitable and contractual rights of the holders or (ii) irrespective of the holders' acceleration rights, cures all defaults (other than those arising from the debtor's insolvency, the commencement of the case or nonperformance of a non-monetary obligation), reinstates the maturity of the claims or interests in the class, compensates the holders for actual damages incurred as a result of their reasonable reliance upon any acceleration rights, and does not otherwise alter their legal, equitable and contractual rights. Typically, this means that the holder of an unimpaired claim will receive on the later of the consummation date or the date on which amounts owing are actually due and payable, payment in full, in cash, with postpetition interest to the extent appropriate and provided for under the governing agreement (or if there is no agreement, under applicable non-bankruptcy law), and the remainder of the debtor's obligations, if any, will be performed as they come due in accordance with their terms. Thus, other than its right to accelerate the debtor's obligations, the holder of an unimpaired claim will be placed in the position it would have been in had the debtor's case not been commenced.

Pursuant to 1126(f) of the Bankruptcy Code, holders of unimpaired claims or interests are "conclusively presumed" to have accepted the plan. Accordingly, their votes are not solicited. Under the Debtor's Plan, the Claims in Class 1 and Class 2 are unimpaired, and therefore, the holders of such Claims are "conclusively presumed" to have voted to accept the Plan.

Under certain circumstances, a class of claims or equity interests may be deemed to reject a chapter 11 plan. For example, a class is deemed to reject a chapter 11 plan under section 1126(g) of the Bankruptcy Code if the holders of claims or interests in such class do not receive or retain property under the plan on account of their claims or equity interests. Among these are the requirements that the plan be "fair and equitable" with respect to, and not "discriminate unfairly" against, the equity interests in such Class. For a more detailed description of the requirements for confirmation, see Section IX.B.

Consistent with these requirements, the Plan divides the Allowed Claims against, and Interests in, the Debtor into the following Classes:

| Class | Claims |
|---|---|
| 1 | Secured Claims |
| 2 | Priority Non-Tax Claims |
| 3 | General Unsecured Claims |
| 4 | Class Action Settlement Claims |
| 5 | Interests |

## C. PROVISIONS FOR TREATMENT OF ADMINISTRATIVE CLAIMS

### 1. Payment of Administrative Claims.

a. *Administrative Claims in General*. Except as specified in Sections 2.1.2 through 2.1.4 of the Plan and subject to the bar date provisions contained in Section 2.2 of the Plan, unless otherwise agreed to by the holder of an Administrative Claim and the Debtor or Reorganized Debtor, each holder of an Allowed Administrative Claim will receive Cash in an amount equal to the Allowed Administrative Claim, in full satisfaction of its Allowed Administrative Claim, on account of such Allowed Claim from the Reorganized Debtor either (i) if the Administrative Claim is Allowed as of the Effective Date, on the Initial Distribution Date or (ii) if the Administrative Claim is not Allowed as of the Effective Date, on the next Interim Distribution Date as set forth in Sections 6.8.2 and 7.3 of the Plan after an order allowing such Administrative Claim becomes a Final Order or a Stipulation of Amount and Nature of Claim is executed by the Reorganized Debtor and the holder of the Administrative Claim.

b. *Statutory Fees*. On or before the Effective Date, Allowed Administrative Claims for fees payable pursuant to 28 U.S.C. § 1930 plus accrued interest under 31 U.S.C. § 3717, as determined at the Confirmation Hearing by the Bankruptcy Court, will be paid in Cash equal to the amount of such Allowed Administrative Claims by the Debtor or Reorganized Debtor. All fees arising after the Effective Date and payable pursuant to 28 U.S.C. § 1930 plus accrued interest under 31 U.S.C. § 3717 will be paid by the Reorganized Debtor in accordance therewith until the closing of the Chapter 11 Case pursuant to section 350(a) of the Bankruptcy Code.

c. *Ordinary Course Liabilities*. Allowed Administrative Claims based on liabilities incurred by the Debtor in the ordinary course of its business will be satisfied by the Reorganized Debtor pursuant to the terms and conditions of the particular transaction giving rise to such Administrative Claims, without any further action by the holders of such Administrative Claims or further approval of the Bankruptcy Court.

d. *DIP Claims*. On the Effective Date, any Allowed Administrative Claim that is a DIP Claim will receive Cash in an amount equal to the Allowed DIP Claim in full satisfaction of its Allowed Claim.

## 2. Bar Dates for Administrative Claims.

a. *General Bar Date Provisions*. Except as otherwise provided in Section 2.2.2 of the Plan, unless previously filed, requests for payment of Administrative Claims (except for Professional Fee Claims) for the period of **July 1, 2009 through the Effective Date**, must be filed and served on the Reorganized Debtor and, prior to the Effective Date, the Creditors' Committee, pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order, no later than thirty (30) days after the Effective Date. Holders of Administrative Claims that are required to file and serve a request for payment of such Administrative Claims and that do not file and serve such a request by the applicable Bar Date will be forever barred from asserting such Administrative Claims against the Debtor, the Reorganized Debtor or their respective property and such Administrative Claims will be deemed discharged as of the Effective Date. Objections to such requests must be filed and served on the requesting party, the Reorganized Debtor and, prior to the Effective Date, the Creditors' Committee, by the Claims Objection Deadline.

b. *Bar Dates for Certain Administrative Claims*.

1. Professional Compensation. Professionals or other Entities asserting a Professional Fee Claim for services rendered from the Petition Date to the Effective Date must file with the Bankruptcy Court and serve on the Reorganized Debtor and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order, the Fee Order or other order of the Bankruptcy Court a Final Fee Application no later than forty-five (45) days after the Effective Date; provided, however, that any professional who may receive compensation or reimbursement of expenses pursuant to the Ordinary Course Professionals Order may continue to receive such compensation and reimbursement of expenses for services rendered from the Petition Date to the Effective Date, without further Bankruptcy Court review or approval, pursuant to the Ordinary Course Professionals Order. A Professional may include any outstanding, non-filed monthly or interim request for payment of a Professional Fee Claim pursuant to the Fee Order in its Final Fee Application. Objections to any Final Fee Application must be filed with the Bankruptcy Court and served on the requesting party, the Reorganized Debtor, counsel for the Reorganized Debtor, and, prior to the Effective Date, the Creditors' Committee within thirty (30) days after the filing of the applicable Final Fee Application. To the extent necessary, the Confirmation Order or any other order with respect to a Final Fee Application will amend and supersede any previously entered order of the Bankruptcy Court, including the Fee Order, regarding the payment of Professional Fee Claims. Any pending, filed interim requests for a Professional Fee Claim pursuant to the Fee Order will be resolved in the ordinary course in accordance with the Fee Order or, if sooner, in connection with the particular Professional's Final Fee Application.

2. Ordinary Course Liabilities. Holders of Administrative Claims based on liabilities incurred by the Debtor in the ordinary course of its business will not be required to file or serve any request for payment of such Administrative Claims. Such Administrative Claims will be satisfied pursuant to Section 2.1.3 of the Plan.

3. DIP Claims. Holders of Administrative Claims that are DIP Claims will not be required to file or serve any request for payment of such Claims. Such Administrative Claims will be satisfied pursuant to Section 2.1.4 of the Plan.

### 3. Payment of Priority Tax Claims

a. *Priority Tax Claims*. Pursuant to section 1129(a)(9)(C) of the Bankruptcy Code, unless otherwise agreed by the holder of a Priority Tax Claim and the Debtor or Reorganized Debtor, each holder of an Allowed Priority Tax Claim will receive (i) Cash in an amount equal to the Allowed Priority Tax Claim, in full satisfaction of its Allowed Priority Tax Claim either (A) if the Priority Tax Claim is Allowed as of the Effective Date, on the Initial Distribution Date or (B) if the Priority Tax Claim is not Allowed as of the Effective Date, on the next Interim Distribution Date as set forth in Sections 6.8.2 and 7.3 of the Plan after an order allowing such Priority Tax Claim becomes a Final Order or a Stipulation of Amount and Nature of Claim is executed by the Reorganized Debtor and the holder of the Priority Tax Claim; or (ii) if agreed by the Debtor or Reorganized Debtor and the holder of the Priority Tax Claim, payment over a period ending not later than five (5) years after the Petition Date with a total Cash value equal to the Allowed amount of the Priority Tax Claim.

b. *Other Provisions Concerning Priority Tax Claims*. Notwithstanding the provisions of Section 2.3.1 of the Plan, any Claim on account of any penalty arising with respect to or in connection with an Allowed Priority Tax Claim that does not compensate the holder for actual pecuniary loss will be treated as a General Unsecured Claim, and the holder (other than as the holder of a General Unsecured Claim) may not assess or attempt to collect such penalty from the Reorganized Debtor or its property.

## D. CLASSIFICATION OF CLAIMS AND INTERESTS, IMPAIRMENT AND VOTING

**1. Class 1 Claims (Secured Claims).** Secured Claims are Claims, other than a DIP Claim, that are secured by a lien on property in which the Estate has an interest or that are subject to setoff under section 553 of the Bankruptcy Code, to the extent of the value of the Claim holder's interest in the Estate'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.

Each holder of an Allowed Secured Claim in Class 1 will receive (i) Cash in an amount equal to the Allowed Secured Claim, or (ii) the return of the holder's collateral securing the Allowed Secured Claim, in full satisfaction of its Allowed Secured Claim, unless the holder of such Claim agrees to less favorable treatment, either (a) if the Secured Claim is Allowed as of the Effective Date, on the Initial Distribution Date, (b) if the Secured Claim is not Allowed as of the Effective Date, on the next Interim Distribution Date as set forth in Sections 6.8.2 and 7.3 of the Plan after an order allowing such Secured Claim becomes a Final Order or a Stipulation of Amount and Nature of Claim is executed by the Reorganized Debtor and the holder of the Secured Claim, unless otherwise agreed by the holder of a Secured Claim and the Debtor or Reorganized Debtor. Any Allowed Deficiency Claim of a holder of an Allowed Secured Claim will be entitled to treatment as an Allowed General Unsecured Claim. Notwithstanding anything to the contrary in the Plan, the Disclosure Statement or the Confirmation Order to the contrary,

Claims in Class 1 will not include the $13 Million Obligation, which will remain in full force and effect, on the same terms and conditions as existed prior to the Petition Date, on the Effective Date and thereafter, and will become debt of the Reorganized Debtor.

Class 1 is unimpaired by the Plan. Each holder of a Secured Claim is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

**2. Class 2 Claims (Priority Non-Tax Claims).** Priority Non-Tax Claims are Claims that are entitled to priority in payment pursuant to section 507(a) of the Bankruptcy Code that are not Administrative Claims or Priority Tax Claims.

Each holder of an Allowed Priority Non-Tax Claim in Class 2 will receive Cash in an amount equal to the Allowed Priority Non-Tax Claim, in full satisfaction of its Allowed Priority Non-Tax Claim, unless the holder of such Claim agrees to less favorable treatment either (a) if the Priority Non-Tax Claim is Allowed as of the Effective Date, on the Initial Distribution Date or (b) if the Priority Non-Tax Claim is not Allowed as of the Effective Date, on the next Interim Distribution Date as set forth in Sections 6.8.2 and 7.3 of the Plan after an order allowing such Priority Non-Tax Claim becomes a Final Order or a Stipulation of Amount and Nature of Claim is executed by the Reorganized Debtor and the holder of the Priority Non-Tax Claim, unless otherwise agreed by the holder of a Priority Non-Tax Claim and the Debtor or Reorganized Debtor.

Class 2 is unimpaired by the Plan. Each holder of a Priority Non-Tax Claim is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

**3. Class 3 Claims (General Unsecured Claims).** General Unsecured Claims are Claims including any Deficiency Claim, Insured Claim, Reclamation Claim or Rejection Claim, that are not entitled to priority or administrative status under the Bankruptcy Code and are not Secured Claims. For the avoidance of doubt, any Administrative Claim, Cure Amount Claim, Priority Tax Claim, Priority Non-Tax Claim or Secured Claim is not a General Unsecured Claim.

Each holder of an Allowed General Unsecured Claim will receive payments in Cash that would, together with any payments previously received by such holder, provide such holder with its Distribution Percentage, in full satisfaction of its Allowed General Unsecured Claim, unless the holder of such Claim agrees to less favorable treatment either (a) if the General Unsecured Claim is Allowed as of the Effective Date, on the Initial Distribution Date or (b) if the General Unsecured Claim is not Allowed as of the Effective Date, on the next Interim Distribution Date as set forth in Sections 6.8.2, 7.1.2 and 7.3 of the Plan. Notwithstanding anything to the contrary in the Plan, the Disclosure Statement or the Confirmation Order to the contrary, Claims in Class 3 will not include the $18 Million Obligation, which will remain in full force and effect, on the same terms and conditions as existed prior to the Petition Date, on the Effective Date and thereafter, and will become debt of the Reorganized Debtor.

Class 3 is impaired by the Plan. Each holder of a General Unsecured Claim is entitled to vote to accept or reject the Plan.

**4. Class 4 Claims (Class Action Settlement Claims).** Class Action Settlement Claims are Claims covered by proof of claim number 370 filed on behalf of a purported class of current and former employees of the Debtor.

Claims in Class 4 will be treated as follows: either (a) if the Potential Class Action Settlement Approval Order is entered by the Bankruptcy Court and such order becomes a Final Order, the Class Action Settlement Claim will be treated as an Administrative Claim in the reduced Class Action Settlement Amount and will be paid in accordance with the Potential Class Action Settlement Approval Order, or (b) if the Potential Class Action Settlement Approval Order is not entered by the Bankruptcy Court, each holder of an Allowed Class Action Settlement Claim will receive the same Distribution Percentage as each holder of a Class 3 Claim in an aggregate Claim amount to be determined by entry of a judgment or otherwise agreed by the parties. The allowance of such Claim will result in a reduction of the Distribution Percentage by between approximately 1.9% and 2.2% for every $500,000 of the Allowed Class Action Settlement Claim.

Class 4 is impaired by the Plan. Each holder of a Class Action Settlement Claim is entitled to vote to accept or reject the Plan.

**5. Class 5 (Interests).** Interests are any equity securities, within the meaning of section 101(16) of the Bankruptcy Code, in the Debtor, including, but not limited to, the shares of stock of the Debtor.

Interests in the Debtor will be Reinstated and will remain in full force and effect on the Effective Date and thereafter.

Class 5 is unimpaired by the Plan. Each holder of an Interest is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

## E. MEANS FOR IMPLEMENTATION OF THE PLAN

**1. Corporate Existence and Vesting of Assets in the Reorganized Debtor.** Except as otherwise provided in the Plan (and subject to the Restructuring Transaction provisions of Section 4.2 of the Plan), the Debtor will, as a Reorganized Debtor, continue to exist after the Effective Date, with all the powers of a corporation or company under applicable law and without prejudice to any right to alter or terminate such existence (whether by merger, dissolution or otherwise) under applicable state law. Except as otherwise provided in the Plan, as of the Effective Date, all property of the Estate of the Debtor, and any property acquired by the Debtor or Reorganized Debtor under the Plan, will vest in the Reorganized Debtor, free and clear of all Claims, Encumbrances and Interests. On and after the Effective Date, the Reorganized Debtor may operate its businesses and may use, acquire and dispose of property and compromise or settle any Claims without supervision of or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly imposed by the Plan or the Confirmation Order. Without limiting the foregoing, the Reorganized Debtor may pay the charges that it incurs on or after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including fees

relating to the preparation of Final Fee Applications) without application to the Bankruptcy Court.

**2. Restructuring Transactions.** On or after the Confirmation Date, the Debtor or Reorganized Debtor may enter into Restructuring Transactions and may take such actions as the Debtor or Reorganized Debtor may determine to be necessary or appropriate to effect a corporate restructuring of their respective businesses or simplify the overall corporate structure of the Reorganized Debtor, to the extent not inconsistent with any other terms of the Plan. Such Restructuring Transactions may include one or more mergers, consolidations, restructurings, dispositions, liquidations or dissolutions, as may be determined by the Debtor or the Reorganized Debtor to be necessary or appropriate without further order of the Bankruptcy Court. The actions to effect these transactions may include, but will not be limited to: (a) the execution and delivery of appropriate agreements or other documents of merger, consolidation, restructuring, disposition, liquidation or dissolution containing terms that are consistent with the terms of the Plan and that satisfy the requirements of applicable state law and such other terms to which the applicable Entities may agree; (b) the execution and delivery of appropriate instruments of transfer, assignment, assumption or delegation of any asset, property, right, liability, duty or obligation on terms consistent with the terms of the Plan and having such other terms to which the applicable Entities may agree; (c) the filing of appropriate certificates or articles of merger, consolidation, dissolution or change in corporate form pursuant to applicable state law; and (d) the taking of all other actions that the applicable Entities determine to be necessary or appropriate, including making filings or recordings that may be required by applicable state law in connection with such transactions.

In no case will a Restructuring Transaction or any other restructuring or sale relieve the Reorganized Debtor or any successor to the Reorganized Debtor from performing the obligations of the Debtor or the Reorganized Debtor pursuant to the Plan including, without limitation, to pay or otherwise satisfy the Allowed Claims against the Reorganized Debtor.

**3. Certificate of Incorporation and By-Laws of the Reorganized Debtor.** As of the Effective Date, the Certificate of Incorporation and the By-Laws of the Reorganized Debtor will be adopted substantially in the forms of Exhibit A and Exhibit B to the Plan, respectively, with such changes as may be necessary to conform to the applicable law of the state of incorporation. The initial Certificate of Incorporation and By-Laws of the Reorganized Debtor will, among other things, prohibit the issuance of nonvoting equity securities to the extent required by section 1123(a) of the Bankruptcy Code. After the Effective Date or the effective time of any applicable Restructuring Transaction, the Reorganized Debtor may amend and restate its Certificate of Incorporation or By-Laws as permitted by applicable state law, subject to the terms and conditions of such constituent documents. If the Reorganized Debtor is not a new corporate entity, then the Certificate of Incorporation and By-Laws of the Debtor may become the Certificate of Incorporation and By-Laws of the Reorganized Debtor. Notwithstanding anything in the Plan to the contrary, nothing in the Plan will require the Debtor to form a new corporate entity.

**4. Directors and Officers of the Reorganized Debtor.** Subject to any requirement of Bankruptcy Court approval pursuant to section 1129(a)(5) of the Bankruptcy Code, the initial members of the board of directors of the Reorganized Debtor will be set forth on

Exhibit C to the Plan. The initial officers of the Reorganized Debtor will consist of the officers of the Debtor immediately prior to the Effective Date.

Each such director and officer will serve from and after the Effective Date until his or her successor is duly elected or appointed and qualified or until the earlier of his or her death, resignation or removal in accordance with the terms of the Certificate of Incorporation and By-Laws of the Reorganized Debtor and state law.

**5. New Employment, Retirement, Indemnification and Other Related Agreements and Incentive Compensation Programs.** As of the Effective Date, the Reorganized Debtor will have authority, as determined by the Reorganized Debtor's board of directors, to: (a) maintain, amend or revise existing employment, retirement, welfare, incentive, severance, indemnification and other agreements with its active and retired directors, officers and employees, subject to the terms and conditions of any such agreement; and (b) enter into new employment, retirement, welfare, incentive, severance, indemnification and other agreements for active and retired employees.

**6. Corporate Action.** Pursuant to section 1142 of the Bankruptcy Code and applicable state law, the following actions (which will occur and be deemed effective as of the date specified in the documents effectuating the same or, if no date is so specified, the Effective Date) will be authorized and approved in all respects and for all purposes without any requirement of further action by stockholders or directors of the Debtor or the Reorganized Debtor or any other Person or entity: (a) the Restructuring Transactions; (b) the adoption of a new or amended and restated Certificate of Incorporation and By-Laws for the Reorganized Debtor; (c) the initial selection of directors and officers for the Reorganized Debtor; (d) the Distribution of Cash pursuant to the Plan; (e) the filing of any necessary registration statements; (f) the adoption, execution, delivery and implementation of all contracts, leases, instruments, releases and other agreements or documents related to any of the foregoing; (g) the adoption, execution and implementation of employment, retirement and indemnification agreements, incentive compensation programs, retirement income plans, welfare benefit plans and other employee plans and related agreements; and (h) and other matters involving the corporate structure of the Debtor or Reorganized Debtor or corporate action to be taken by or required of the Debtor or Reorganized Debtor.

**7. Obtaining Cash for Plan Distributions.** The Debtor or Reorganized Debtor, as applicable, is authorized to execute and deliver any documents necessary or appropriate to obtain Cash for funding the Plan. All Cash necessary for the Reorganized Debtor to make Distributions and other payments pursuant to the Plan will be obtained through a combination of one or more of the following: (1) the Reorganized Debtor's Cash balances and Cash from operations; (2) the proceeds of the Exit Financing; and (3) any other means of financing or funding that the Debtor or the Reorganized Debtor determines is necessary or appropriate. Cash payments to be made pursuant to the Plan will be made by the Reorganized Debtor.

**8. Authority of the Reorganized Debtor.** On and after the Confirmation Date, the Reorganized Debtor will be empowered and authorized to take or cause to be taken, all actions necessary or appropriate to enable it to effectively implement the provisions of the Plan.

**9. Preservation of Rights of Action by the Debtor and the Reorganized Debtor.** Except as provided in the Plan or in any contract, instrument, release or other agreement entered into or delivered in connection with the Plan, in accordance with section 1123(b) of the Bankruptcy Code and to the fullest extent possible under applicable law, the Reorganized Debtor will retain and may enforce, and will have the sole right to enforce, any claims, demands, rights and causes of action that the Debtor or its Estate holds or may hold against any Entity, including any Recovery Actions and any currently pending actions. The Reorganized Debtor or its successors may pursue such retained claims, demands, rights or causes of action, as appropriate, in accordance with the best interests of the Reorganized Debtor or its successors holding such claims, demands, rights or causes of action. Further, the Reorganized Debtor retains its right to file and pursue, and will have the sole right to file and pursue, any adversary proceedings against any trade creditor or vendor related to debit balances or deposits owed to any Debtor. Notwithstanding the foregoing, on the Effective Date, the Reorganized Debtor will be deemed to waive and release any actions arising under section 547 of the Bankruptcy Code relating to any preference actions held by any Debtor or its Estate or any Reorganized Debtor against any Entity; provided, however, that notwithstanding anything in the Plan, Disclosure Statement or Confirmation Order to the contrary, the Debtor will be permitted to use any available defenses under section 502(d) of the Bankruptcy Code, including the assertion of an action under section 547 of the Bankruptcy Code, to setoff against or otherwise reduce all or part of any General Unsecured Claim asserted against the Debtor's Estate.

**10. Comprehensive Settlement of Claims and Controversies.** Pursuant to Bankruptcy Rule 9019 and in consideration for the Distributions and other benefits provided under the Plan, the provisions of the Plan, including the releases set forth in Section 9.3 of the Plan, will constitute a good faith compromise and settlement of all claims or controversies relating to the rights that a holder of a Claim or Interest may have with respect to any Claim, Interest, or any Distribution to be made pursuant to the Plan on account of any Allowed Claim or Interest. The entry of the Confirmation Order will constitute the Bankruptcy Court's approval, as of the Effective Date, of the compromise or settlement of all such claims or controversies and the Bankruptcy Court's finding that such compromise or settlement is in the best interests of the Debtor, the Reorganized Debtor, and their respective property and Claim and Interest holders, and is fair, equitable and reasonable.

**11. Releases and Satisfaction of Subordination Rights**. All Claims against the Debtor and all rights and claims between or among the holders of Claims relating in any manner whatsoever to any claimed subordination rights will be deemed satisfied by the Distributions under, described in, contemplated by, and/or implemented in Articles II and III of the Plan. Distributions under, described in, contemplated by, and/or implemented by the Plan to the various Classes of Claims and Interests will not be subject to levy, garnishment, attachment, or like legal process by any holder of a Claim or Interest by reason of any claimed subordination rights or otherwise, so that each holder of a Claim or Interest will have and receive the benefit of the Distributions in the manner set forth in the Plan.

**12. Special Provisions Regarding Insured Claims and Insurance Policies.**

Distributions under the Plan to each holder of an Allowed Insured Claim will be in accordance with the treatment provided under the Plan for the Class in which such Allowed

Insured Claim is classified, but solely to the extent that such Allowed Insured Claim is not satisfied from proceeds payable to the holder thereof under any pertinent insurance policies and applicable law. Nothing in Section 4.12.1 of the Plan will constitute a waiver of any claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities that any Entity may hold against any other Entity, including the Debtor's insurance carriers.

From and after the Effective Date, the Debtor's insurance policies in existence as of the Effective Date will be Reinstated and continued in accordance with their terms and, to the extent applicable, will be deemed assumed by the Reorganized Debtor pursuant to section 365 of the Bankruptcy Code and Section 5.1 of the Plan.

Notwithstanding anything to the contrary in the Plan, the Disclosure Statement or the Confirmation Order, nothing in the Plan, the Disclosure Statement or the Confirmation Order (including any other provision that purports to be preemptory or supervening), will in any way operate to, or have the effect of, impairing the insurers' legal, equitable or contractual rights, if any, with respect to any claims. The rights of insurers will be determined under the relevant insurance policies or insurance settlements, as applicable, and under applicable law.

Nothing in the Plan, including the injunction, exculpation and release provisions contained in Sections 9.2, 9.3, 9.4 and 9.5 of the Plan, the Disclosure Statement or Confirmation Order will preclude any Entity from asserting in any proceeding any and all claims, defenses, rights or causes of action that it has or may have under or in connection with any insurance policy or any insurance settlement agreement. Nothing in the Plan, the Disclosure Statement or the Confirmation Order will be deemed to waive any claims, defenses, rights or causes of action that any Entity has or may have under the provisions, terms, conditions, defenses or exclusions contained in such insurance policy or insurance settlement agreements, nor will such documents be construed as, or be a, determination as to coverage with respect to any Insured Claim under any applicable insurance policy.

The Plan, Disclosure Statement or Confirmation Order will not (i) modify the coverage provided under the Debtor's insurance policies, (ii) alter in any way the obligations of the Debtor's insurers under the insurance policies, or (iii) in any way permit any holder of a Workers' Compensation Claim or Insured Claim to any duplicate recovery from the insurers and any other party including, but not limited to, the Debtor or the Reorganized Debtor.

**13. Cancellation and Surrender of Instruments, Securities and Other Documentation.** Except as otherwise provided in the Plan or in any contract, instrument or other agreement or document entered into or delivered in connection with the Plan, on the Effective Date and concurrently with the applicable Distributions made pursuant to Articles II and III, agreements, contracts, instruments and other documents evidencing Secured Claims will be canceled and of no further force and effect, without any further action on the part of the Debtor or Reorganized Debtor, and the obligations of the Debtor under such agreements, contracts, instruments and other documents will be discharged. The holders of or parties to such canceled instruments, securities and other documentation will have no rights arising from or relating to such instruments, securities and other documentation or the cancellation thereof, except the rights provided pursuant to the Plan.

**14. Release of Liens and Escrows.** Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, on the Effective Date and concurrently with the applicable Distributions made pursuant to Articles II and III, all mortgages, deeds of trust, liens or other security interests against the property of the Estate will be fully released and discharged, and all of the right, title and interest of any holder of such mortgages, deeds of trust, liens or other security interests, including any rights to any collateral thereunder, will revert to the Reorganized Debtor and its successors and assigns. In addition, all reserves, escrows and other deposits, held by the Debtor or by another party, for adequate assurance of performance or any similar reason will be released and transferred to the Reorganized Debtor as soon as reasonably practicable after the Effective Date. To the extent that any escrow or deposit held by a third party is not turned over to the Reorganized Debtor within ten (10) days of the Effective Date, and such failure to do so is in contravention of applicable law, the Reorganized Debtor will not make any Distribution on any Claim or Interest held by such third party.

**15. Effectuating Documents; Exemption from Certain Transfer Taxes.** The officers and directors of the Debtor or Reorganized Debtor will be authorized to execute, deliver, file or record such contracts, instruments, releases and other agreements or documents and take such other actions as may be necessary or appropriate to effectuate and implement the provisions of the Plan. The Secretary or any Assistant Secretary of the Debtor or Reorganized Debtor will be authorized to certify or attest to any of the foregoing actions. Pursuant to section 1146(a) of the Bankruptcy Code, the following will not be subject to any stamp tax or similar tax: (1) the creation of any mortgage, deed of trust, lien or other security interest; (2) the making or assignment of any lease or sublease; (3) any Restructuring Transaction; or (4) the making or delivery of any deed or other instrument of transfer under, in furtherance of or in connection with the Plan, including any merger agreements, agreements of consolidation, restructuring, disposition, liquidation or dissolution, deeds, bills of sale or assignments executed in connection with any Restructuring Transaction pursuant to the Plan.

## F. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

### 1. Executory Contracts and Unexpired Leases to Be Assumed or Rejected

a. *Assumption or Rejection of Executory Contracts and Unexpired Leases.* All Executory Contracts and Unexpired Leases that exist between the Debtor and any Person will be deemed rejected by the Debtor, as of the Effective Date, except for any Executory Contract or Unexpired Lease (i) that has been assumed, assumed and assigned, or rejected pursuant to an order of the Bankruptcy Court entered prior to the Effective Date, (ii) as to which a motion or notice for approval of the assumption, assumption and assignment, or rejection of such Executory Contract or Unexpired Lease has been filed and served prior to the Effective Date, or (iii) that is specifically designated as a contract or lease to be assumed on Exhibit D to the Plan, provided, however, that the Debtor reserves the right, on or prior to the Effective Date, to amend Exhibit D to the Plan to delete any Executory Contract or Unexpired Lease therefrom or add any Executory Contract or Unexpired Lease thereto, in which event such Executory Contract(s) or Unexpired Lease(s) will be deemed to be, respectively, assumed or rejected. The

Debtor will provide notice of any amendment to Exhibit D to the Plan to the parties to the Executory Contracts and Unexpired Leases affected thereby. In the event Exhibit D to the Plan has been amended as provided for in Section 5.1.1 of the Plan, the Debtor will file an amended version of Exhibit D to the Plan. The listing of a document on Exhibit D to the Plan will not constitute an admission by the Debtor that such document is an Executory Contract or an Unexpired Lease or that the Debtor has any liability thereunder.

Notwithstanding anything to the contrary in any contract, agreement or lease to which the Debtor or Reorganized Debtor is a party, (i) the transactions contemplated by the Plan and (ii) the consequences of the Plan's implementation will not trigger any change in control or similar provisions and will not be voided by any restraints against assignment in any contract, agreement or lease governed by the Plan.

b. *Approval of Assumption or Rejection of Executory Contracts and Unexpired Leases.* Entry of the Confirmation Order will, subject to and upon the occurrence of the Effective Date, constitute (i) the approval, pursuant to sections 365(a) and 1123(b)(2) of the Bankruptcy Code, of the assumption or assumption and assignment of the Executory Contracts and Unexpired Leases assumed or assumed and assigned pursuant to Section 5.1.1 of the Plan of the Plan, and (ii) the approval, pursuant to sections 365(a) and 1123(b)(2) of the Bankruptcy Code, of the rejection of the Executory Contracts and Unexpired Leases rejected pursuant to Section 5.1.1 of the Plan.

c. *Inclusiveness*. Unless otherwise specified on Exhibit D to the Plan, each Executory Contract and Unexpired Lease listed or to be listed on Exhibit D to the Plan will include modifications, amendments, supplements, restatements, or other agreements made directly or indirectly by any agreement, instrument, or other document that in any manner affects such Executory Contract or Unexpired Lease, without regard to whether such agreement, instrument or other document is listed on Exhibit D to the Plan.

d. *Bar Date for Filing Proofs of Claim Relating to Executory Contracts and Unexpired Leases Rejected Pursuant to the Plan*. Notwithstanding anything in the Bar Date Order to the contrary, if the rejection of an Executory Contract or Unexpired Lease gives rise to a Rejection Claim by the non-Debtor counterparty or counterparties to such contract or lease, such Rejection Claim will be forever barred and will not be enforceable against the Debtor, the Reorganized Debtor, their respective successors or their respective properties unless a proof of Claim is filed and served on the Reorganized Debtor pursuant to the procedures specified in the Confirmation Order and the notice of the entry of the Confirmation Order or another order of the Bankruptcy Court, no later than thirty (30) days after the later of (i) notice of entry of an order approving the rejection of such executory contract or unexpired lease, (ii) entry of the Confirmation Order, and (iii) notice of an amendment to Exhibit D to the Plan.

e. *Assumption Procedures*. The appropriate procedures for assumption of an Executory Contract or Unexpired Lease are as follows:

Any entity wishing to object to (i) the proposed assumption of an Executory Contract or Unexpired Lease under the Plan or (ii) the proposed amount of the related Cure Amount Claim must file with the Bankruptcy Court and serve on counsel to the Debtor or Reorganized Debtor

and, prior to the Effective Date, the Creditors' Committee, a written objection setting forth the basis for the objection three (3) business days after the filing of the Plan Supplement, but no later than January 7, 2010 at 4:00 p.m. (prevailing Eastern time).

If no objection to the proposed assumption or Cure Amount Claim is timely and properly filed with the Bankruptcy Court and served prior to the objection deadline with respect to an Executory Contract or Unexpired Lease: (i) the proposed assumption of the Executory Contract or Unexpired Lease will be approved in accordance with the Plan and the Confirmation Order, effective as of the Effective Date, without further action of the Bankruptcy Court; and (ii) the Cure Amount Claim identified by the Debtor or Reorganized Debtor in Exhibit D to the Plan or any notice filed with the Bankruptcy Court and served on the non-Debtor counterparty to the Executory Contract or Unexpired Lease will be fixed and will be paid in accordance with the Plan on or after the Effective Date, without further action of the Bankruptcy Court, to the appropriate contract or lease party identified on the notice.

If an objection to the proposed assumption or Cure Amount Claim is timely and properly filed with the Bankruptcy Court and served prior to the objection deadline with respect to an Executory Contract or Unexpired Lease, the Debtor or Reorganized Debtor, as applicable, and the objecting party may resolve such objection by stipulation, without further action of the Bankruptcy Court.

If an objection to the proposed assumption or Cure Amount Claim is timely and properly filed with the Bankruptcy Court and served prior to the objection deadline with respect to an Executory Contract or Unexpired Lease and the parties are unable to resolve such objection: (i) the Debtor or Reorganized Debtor may file with the Bankruptcy Court a reply to such objection no later than thirty (30) days after the filing and service of such objection and ask the Bankruptcy Court to schedule a hearing on the particular objection and the related reply at an appropriate time; or (ii) the Debtor or Reorganized Debtor, as applicable, may designate the Executory Contract or Unexpired Lease underlying such objection for rejection pursuant to Section 5.1.1 of the Plan and amend Exhibit D to the Plan accordingly.

**2. Payments Related to the Assumption of Executory Contracts and Unexpired Leases.** To the extent that such Claims constitute monetary defaults, any Cure Amount Claims associated with each Executory Contract and Unexpired Lease to be assumed pursuant to the Plan will be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, at the option of the Debtor or Reorganized Debtor or the assignee of the Debtor or Reorganized Debtor: (1) by payment of the Cure Amount Claim in Cash on the Initial Distribution Date or (2) on such other terms as are agreed to by the Debtor or Reorganized Debtor and the counterparty to such Executory Contract or Unexpired Lease. Pursuant to section 365(b)(2)(D) of the Bankruptcy Code, no Cure Amount Claim will be allowed for a penalty rate or other form of default rate of interest. If there is a dispute regarding: (1) the amount of any Cure Amount Claim; (2) the ability of the Reorganized Debtor or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the contract or lease to be assumed; or (3) any other matter pertaining to assumption of such contract or lease, the payment of any Cure Amount Claim required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order resolving the dispute and approving the assumption and in accordance with the Plan.

**3. Rejection Procedures.** The appropriate procedures for rejection of an Executory Contract or Unexpired Lease are as follows:

Any entity wishing to object to the proposed rejection of an Executory Contract or Unexpired Lease under the Plan must file with the Bankruptcy Court and serve on counsel to the Debtor or Reorganized Debtor and, prior to the Effective Date, the Creditors' Committee, a written objection setting forth the basis for the objection three (3) business days after the filing of the Plan Supplement, but no later than January 7, 2010 at 4:00 p.m. (prevailing Eastern time).

If no objection to the proposed rejection is timely and properly filed and served prior to the objection deadline with respect to an Executory Contract or Unexpired Lease, the proposed rejection of the applicable Executory Contract or Unexpired Lease will be approved in accordance with the Plan and the Confirmation Order, effective as of the Effective Date, without further action of the Bankruptcy Court.

If an objection to the proposed rejection is timely and properly filed and served prior to the objection deadline with respect to an Executory Contract or Unexpired Lease, the Debtor or Reorganized Debtor, as applicable, and the objecting party may resolve such objection by stipulation, without further action of the Bankruptcy Court.

If an objection to the proposed rejection is timely and properly filed and served prior to the objection deadline with respect to an Executory Contract or Unexpired Lease and the parties are unable to resolve such objection, the Debtor or Reorganized Debtor, as applicable, may file a reply to such objection with the Bankruptcy Court no later than thirty (30) days after the filing and service of such objection and ask the Court to schedule a hearing on the particular objection and the related reply at an appropriate time.

**4. Limited Extension of Time to Assume or Reject**

In the event of a dispute as to whether a contract or lease is executory or unexpired, the right of the Debtor or the Reorganized Debtor to move to assume or reject such contract or lease will be extended until the date that is thirty (30) days after entry of a Final Order by the Bankruptcy Court.

In the event the Debtor or the Reorganized Debtor become aware after the Confirmation Date of the existence of an Executory Contract or Unexpired Lease that was not included on Exhibit D to the Plan, the right of the Reorganized Debtor to move to assume such contract or lease will be extended until the date that is thirty (30) days after the date on which the Debtor or the Reorganized Debtor become aware of the existence of such contract or lease.

**5. Postpetition Contracts and Leases**. The Debtor will not be required to assume or reject any contract or lease entered into by the Debtor after the Petition Date. Any such contract or lease will continue in effect in accordance with its terms after the Effective Date, unless the Debtor has obtained a Final Order of the Bankruptcy Court approving rejection or other termination of such contract or lease.

**6. Assumption of Utility Service Agreements**. In the event that there is in effect between the Debtor and any utility immediately prior to the Effective Date, with respect to

any operating facility of the Debtor, any utility service agreement or related agreement providing a reduced rate to the Debtor, which agreement has not been previously assumed, rejected or terminated, but is considered to be an executory contract, such agreement will be deemed to be assumed pursuant to section 365 of the Bankruptcy Code and Section 5.1.1 of the Plan; provided, however, that no Cure Amount Claim will be owed with respect to any such agreement, and in the event that a utility asserts any Cure Amount Claim, at the election of the Debtor, such utility's agreement will not be deemed assumed and will instead be deemed rejected pursuant to section 365 of the Bankruptcy Code under the Plan.

**7. Treatment of Compensation and Benefit Programs**

a. *Employee Compensation and Benefit Programs*. Except to the extent (i) otherwise provided for in the Plan, (ii) previously assumed or rejected by an order of the Bankruptcy Court entered on or before the Confirmation Date, (iii) the subject of a pending motion to reject filed by the Debtor on or before the Confirmation Date, or (iv) previously terminated, all employee compensation and benefit programs of the Debtor in effect during the pendency of the Chapter 11 Case, including all health and welfare plans, 401(k) plans, pension plans within the meaning of Title IV of the Employee Retirement Income Security Act of 1974, as amended, and all benefits subject to sections 1114 and 1129(a)(13) of the Bankruptcy Code, entered into before or after the Petition Date and in effect during the pendency of the Chapter 11 Case, will be deemed to be, and will be treated as though they are, Executory Contracts that are assumed and assigned pursuant to section 365 of the Bankruptcy Code and Section 5.1.1 of the Plan. Nothing contained in the Plan will be deemed to modify the existing terms of such employee compensation and benefit programs, including, without limitation, the Debtor's and the Reorganized Debtor's rights of termination and amendment thereunder.

b. *Vacation Policies*. The Debtor's existing vacation policies will be Reinstated on the Effective Date for any employees of the Debtor employed on the Effective Date that have not received a notice of termination prior to or on the Effective Date. Accordingly, those employees will be entitled to a Cash payment of earned but unused vacation time in the event of a subsequent termination of employment after the Effective Date, if such payment is in accordance with the vacation policies.

**8. Obligations to Indemnify or Provide Advancement to Directors, Officers and Employees.** The obligations of the Debtor or Reorganized Debtor to indemnify or provide advancement to any Person serving as one of its directors, officers or employees prior to or following the Petition Date by reason of such Person's prior or future service in such capacity to the extent provided in the Certificate of Incorporation, By-Laws or similar constituent documents, by statutory law or by written agreement, policies or procedures of or with the Debtor, will be deemed to be, and will be treated as though they are, Executory Contracts that are assumed and assigned pursuant to section 365 of the Bankruptcy Code and Section 5.1.1 of the Plan. Accordingly, such indemnification and advancement obligations will survive and be unaffected by entry of the Confirmation Order, irrespective of whether such indemnification or advancement is owed for an act or event occurring before or after the Petition Date.

**9. Contracts and Leases Entered Into After the Petition Date.** Notwithstanding any other provisions of the Plan, contracts and leases entered into after the

Petition Date by the Debtor, including any Executory Contracts and Unexpired Leases assumed by the Debtor, will be performed by the Debtor or Reorganized Debtor in accordance with the terms and conditions of such contracts and leases in the ordinary course of its business; provided, however, that nothing in this paragraph will affect the limitations on a Rejection Claim for a previously assumed nonresidential real property lease under section 503(b)(7) of the Bankruptcy Code. Accordingly, such contracts and leases and other obligations (including any assumed Executory Contracts and Unexpired Leases) will survive and remain unaffected by entry of the Confirmation Order.

## G. PROVISIONS GOVERNING DISTRIBUTIONS

**1. Distributions for Claims Allowed as of the Effective Date.** Except as otherwise provided in the Plan, Distributions to be made on the Effective Date to holders of Claims that are Allowed Claims as of such date will be deemed made on the Effective Date if made on the Effective Date or as promptly thereafter as practicable, but in any event no later than: (1) the time set forth in Section 6.8.1 of the Plan or (2) such later date when the applicable conditions of Section 5.2 of the Plan (regarding Cure Amount Claims for Executory Contracts and Unexpired Leases being assumed), Section 6.3.2 of the Plan (regarding undeliverable Distributions), or Section 6.8.3 of the Plan (regarding compliance with Tax requirements) are satisfied. Distributions on account of Allowed Claims will be made pursuant to Section 6.8.2 of the Plan. Any Claim that is Disallowed by order of the Bankruptcy Court or for which the underlying liability is found not to be a liability of the Debtor by any other court prior to the Effective Date will be deemed Disallowed (to the extent not already Disallowed) as of the Effective Date without the necessity for further Bankruptcy Court approval and the holder of any such Claim will not be entitled to any Distributions under the Plan.

**2. Method of Distributions to Holders of Claims.** The Reorganized Debtor will make all Distributions of Cash and other instruments or documents required under the Plan.

**3. Delivery of Distributions and Undeliverable or Unclaimed Distributions.**

a. *Delivery of Distributions.* Distributions to holders of Allowed Claims will be made by the Reorganized Debtor (a) to the addresses set forth on the respective proofs of Claim filed by holders of such Claims; (b) to the addresses set forth in any written certification of address change delivered to the Reorganized Debtor (including pursuant to a letter of transmittal delivered to the Reorganized Debtor) after the date of filing of any related proof of Claim; or (c) to the addresses reflected in the Debtor's Schedules if no proof of Claim has been filed and the Reorganized Debtor has not received a written notice of a change of address. The Reorganized Debtor will make reasonable efforts to determine the correct addresses for the Distributions to holders of Allowed Claims.

b. *Undeliverable Distributions Held by the Reorganized Debtor.*

1. Holding and Investment of Undeliverable Distributions. If any Distribution to a holder of an Allowed Claim is returned to the Reorganized Debtor as undeliverable, no further Distributions will be made to such holder unless and until the

Reorganized Debtor is notified in writing of such holder's then-current address. Undeliverable Distributions will remain in the possession of the Reorganized Debtor pursuant to Section 6.3.2(a) of the Plan until such time as a Distribution becomes deliverable, subject to Section 6.3.2(b) of the Plan. Undeliverable Cash Distributions will be held in a segregated bank account in the name of the Reorganized Debtor for the benefit of the potential claimants of such funds. The Reorganized Debtor will invest such Cash in a manner consistent with the Reorganized Debtor's investment and deposit guidelines.

2. After Distributions Become Deliverable. On each Interim Distribution Date, the Reorganized Debtor will make all Distributions that become deliverable to holders of Allowed Claims during the preceding period since the Initial Distribution Date or the last Interim Distribution Date, as applicable, to the extent not distributed earlier at the discretion of the Reorganized Debtor.

3. Failure to Claim Undeliverable Distributions. Any holder of an Allowed Claim that does not assert a claim pursuant to the Plan for an undeliverable Distribution to be made by the Reorganized Debtor within six (6) months after the later of (i) the Effective Date or (ii) the last date on which a Distribution was attempted to be made to such holder will have its claim for such undeliverable Distribution discharged and will be forever barred from asserting any such claim against the Debtor, the Reorganized Debtor or their respective property. Unclaimed Distributions will become property of the Reorganized Debtor, free of any restrictions thereon. Subject to Section 6.3.1 of the Plan, nothing contained in the Plan will require the Debtor or Reorganized Debtor to attempt to locate any holder of an Allowed Claim.

### 4. Distribution Record Date.

The Reorganized Debtor will have no obligation to recognize the transfer of, or the sale of any participation in, any Claim that occurs after the close of business on the Distribution Record Date and will be entitled for all purposes in the Plan to recognize and make Distributions only to those holders of Allowed Claims that are holders of such Claims, or participants therein, as of the close of business on the Distribution Record Date.

As of the close of business on the Distribution Record Date, the respective transfer or Claims registers as maintained by the Debtor or the Claims Agent, as applicable, will be closed and any transfer of any Claim or Interest therein will be prohibited. The Reorganized Debtor will have no obligation to recognize the transfer or sale of any Claim or Interest that occurs after the close of business on the Distribution Record Date and will be entitled for all purposes in the Plan to recognize and make Distributions only to those holders of Claims or Interests who are holders of such Claims or Interests as of the close of business on the Distribution Record Date.

Except as otherwise provided in a Final Order of the Bankruptcy Court, the transferees of Claims that are transferred pursuant to Bankruptcy Rule 3001 on or prior to the Distribution Record Date will be treated as the holders of such Claims for all purposes, notwithstanding that any period provided by Bankruptcy Rule 3001 for objecting to such transfer has not expired by the Distribution Record Date. The Debtor and Reorganized Debtor will not have any liability arising from or related to a dispute between the transferee and transferor of a claim transferred pursuant to Bankruptcy Rule 3001.

**5. Means of Cash Payments.** Except as otherwise specified in the Plan, Cash payments made pursuant to the Plan to holders of Claims will be in U.S. currency by checks drawn on a domestic bank selected by the Reorganized Debtor or, at the option of the Reorganized Debtor, by wire transfer from a domestic bank; provided, however, that Cash payments to foreign holders of Allowed Claims may be made, at the option of the Reorganized Debtor, in such funds and by such means as are necessary or customary in a particular foreign jurisdiction.

**6. De Minimis Distributions.** Notwithstanding anything to the contrary contained in the Plan, the Disclosure Statement or the Confirmation Order, the Reorganized Debtor will not be required to distribute, and will not distribute, Cash or other property to the Holder of any Allowed Claim if the amount of Cash or other property to be distributed on account of such Claim is less than fifty dollars ($50.00). Any Holder of an Allowed Claim on account of which the amount of Cash or other property to be distributed is less than $50.00 will have such Claim discharged and will be forever barred from asserting such Claim against the Debtor, the Reorganized Debtor or their respective property. Any Cash or other property not distributed pursuant to this provision will be the property of the Reorganized Debtor, free of any restrictions thereon.

**7. Withholding, Payment and Reporting Requirements.** In connection with the Plan and all Distributions under the Plan, the Reorganized Debtor will, to the extent applicable, comply with all tax withholding, payment, and reporting requirements imposed by any federal, state, provincial, local, or foreign taxing authority, and all Distributions under the Plan will be subject to any such withholding, payment, and reporting requirements. The Reorganized Debtor will be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding, payment, and reporting requirements. For example, with respect to any employee-related withholding, if the Debtor is obligated by law to withhold amounts from Distributions to a present or former employee to satisfy such present or former employee's tax and other payroll obligations, the Reorganized Debtor may withhold a portion of the Distributions allocated to the holder of an Allowed Claim that is a present or former employee, whether such Distributions are in the form of Cash, in such amount as is determined necessary to satisfy such holder's tax and other payroll obligations with respect to the Distributions. Notwithstanding any other provision of the Plan, (a) each Holder of an Allowed Claim that is to receive a Distribution pursuant to the Plan will have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding, and other tax obligations, on account of such Distribution, and including, in the case of any holder of a Disputed General Unsecured Claim that has become an Allowed General Unsecured Claim, any tax obligation that would be imposed upon the Debtor or the Reorganized Debtor in connection with such Distribution, and (b) no Distribution will be made to or on behalf of such holder pursuant to the Plan unless and until such holder has made arrangements satisfactory to the Reorganized Debtor for the payment and satisfaction of such withholding tax obligations or such tax obligation that would be imposed upon the Debtor or the Reorganized Debtor in connection with such Distribution. Any property to be distributed pursuant to the Plan will, pending the implementation of such arrangements, be treated as an undeliverable Distribution pursuant to Section 6.3.2 of the Plan.

**8. Timing and Calculation of Amounts to Be Distributed.**

a. *Timing of Distributions Under the Plan*. Any Distribution to be made by the Debtor or Reorganized Debtor pursuant to the Plan will be deemed to have been timely made if made within thirty (30) days after the time specified therefor in the Plan. No interest will accrue or be paid with respect to any Distribution as a consequence of such Distribution not having been made on the Effective Date.

b. *Allowed Claims*. On the Initial Distribution Date, each holder of an Allowed Claim will receive the full amount of the Distributions that the Plan provides for Allowed Claims in the applicable Class. On each Interim Distribution Date, Distributions also will be made pursuant to Section 7.3 of the Plan to holders of Disputed Claims in any such Class that were Allowed during the preceding period since the Initial Distribution Date or the last Interim Distribution Date, as applicable, to the extent not distributed earlier at the sole discretion of the Reorganized Debtor. Such Distributions also will be in the full amount that the Plan provides for Allowed Claims in the applicable Class.

c. *Compliance with Tax Requirements*. In connection with the Plan, to the extent applicable, the Reorganized Debtor will comply with all Tax withholding and reporting requirements imposed on it by any governmental unit, and all Distributions pursuant to the Plan will be subject to such withholding and reporting requirements. The Reorganized Debtor will be authorized to take any actions that may be necessary or appropriate to comply with such withholding and reporting requirements.

Without limiting the generality of the foregoing, in accordance with the Internal Revenue Code's backup withholding rules, a holder of a Claim may be subject to backup withholding with respect to Distributions made pursuant to the Plan, unless the holder (i) comes within certain exempt categories (which generally include corporations) and, when required, demonstrates this fact or (ii) provides at the Reorganized Debtor's request a completed IRS Form W-9 (or substitute therefor) on which the holder includes a correct taxpayer identification number and certifies under penalty of perjury that the taxpayer identification number is correct and that the taxpayer is not subject to backup withholding because of a failure to report all dividend and interest income. Non-U.S. holders may be required by the Reorganized Debtor to provide a completed IRS Form W-8 to establish an exemption from withholding or a treaty-reduced rate of withholding on interest distributed pursuant to the Plan. The Reorganized Debtor will provide or make available the necessary forms to comply with Section 6.8.3 of the Plan sufficiently in advance of the Effective Date.

Notwithstanding any other provision of the Plan, each Entity receiving a Distribution of Cash pursuant to the Plan will have sole and exclusive responsibility for the satisfaction and payment of any Tax obligations imposed on it by any governmental unit on account of such Distribution, including income, withholding and other Tax obligations.

**9. Setoffs.** Except with respect to claims of the Debtor or Reorganized Debtor released pursuant to the Plan or any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, the Reorganized Debtor may, pursuant to section 553 of the Bankruptcy Code or applicable nonbankruptcy law, set off against

any Allowed Claim and the Distributions to be made pursuant to the Plan on account of such Claim (before any Distribution is made on account of such Claim) the claims, rights and causes of action of any nature that the Debtor or Reorganized Debtor may hold against the holder of such Allowed Claim; provided, however, that neither the failure to effect a setoff nor the allowance of any Claim pursuant to the Plan will constitute a waiver or release by the Debtor or Reorganized Debtor of any claims, rights and causes of action that the Debtor or Reorganized Debtor may possess against the holder of such a claim.

**10. No Distribution in Excess of Allowed Amounts**. Notwithstanding anything to the contrary in the Plan, no holder of an Allowed Claim will receive in respect of such Claim any Distribution of a value as of the Effective Date in excess of the Allowed amount of such Claim (excluding payments on account of interest due and payable from and after the Effective Date pursuant to the Plan, if any).

**11. Allocation of Payments.** Amounts paid to holders of Claims in satisfaction thereof will be allocated first to the principal amounts of such Claims, with any excess being allocated to interest that has accrued on such Claims but remains unpaid.

**12. No Distributions Pending Allowance.** Notwithstanding any other provision of the Plan, if any Claim or portion thereof is Disputed, no Distribution provided pursuant to the Plan will be made on account of such Claim unless and until such Claim will have become an Allowed Claim through settlement and/or a Final Order of the Bankruptcy Court. The Reorganized Debtor will only make Distributions on account of Claims that have become fully Allowed.

## H. PROCEDURES FOR RESOLVING DISPUTED CLAIMS

### 1. Prosecution of Objections to Claims.

a. *Objections to Claims*. Objections to Claims must be filed and served on the holders of such Claims by the Claims Objection Deadline, and, if filed prior to the Effective Date, such objections will be served on the parties on the then-applicable service list in the Chapter 11 Case. If an objection has not been filed with the Bankruptcy Court to a proof of Claim or an amendment has not been made to the Schedules with respect to a scheduled Claim by the Claims Objection Deadline, the Claim to which the proof of Claim or Schedules relates will be treated as an Allowed Claim if such Claim has not been allowed earlier.

b. *Authority to Prosecute Objections*. Prior to and after the Effective Date, the Debtor or Reorganized Debtor, as applicable, will have the authority to file (if applicable), settle, compromise, withdraw or litigate to judgment objections to all Claims, including pursuant to any alternative dispute resolution, in accordance with the Bankruptcy Code, Bankruptcy Rules or any order approved by the Bankruptcy Court as follows: (i) with respect to a Claim greater than twenty-five thousand dollars ($25,000), after an order allowing such Claim becomes a Final Order or a Stipulation of Amount and Nature of Claim is executed by the Reorganized Debtor and the holder of the Claim and approved by the Bankruptcy Court, or (ii) with respect to a Claim less than or equal to twenty-five thousand dollars ($25,000), without further order of the Bankruptcy Court.

c. *Authority to Amend Schedules*. The Debtor or the Reorganized Debtor will have the authority to amend the Schedules with respect to any Claim and to make Distributions based on such amended Schedules without approval of the Bankruptcy Court through the Claims Objection Deadline. The Debtor or the Reorganized Debtor may amend the Schedules after the Claims Objection Deadline only upon order of the Bankruptcy Court. If any such amendment to the Schedules reduces the amount of a Claim or changes the nature or priority of a Claim, the Debtor or Reorganized Debtor will provide the holder of such Claim with notice of such amendment and such holder will have thirty (30) days to file a proof of Claim with the Claims Agent, with a copy to the Debtor or Reorganized Debtor. If no such proof of Claim is filed, the Debtor or Reorganized Debtor may proceed with Distributions based on such amended Schedules without approval of the Bankruptcy Court.

**2. Enforcement of Bar Date Order.** In accordance with the Bar Date Order and section 502(b)(9) of the Bankruptcy Code, except as otherwise provided in the Plan, any Entity that failed to file a proof of Claim by the applicable Bar Date or was not otherwise permitted to file a proof of Claim after the applicable Bar Date by a Final Order of the Bankruptcy Court is and will be barred, estopped and enjoined from asserting any Claim against the Debtor (1) in an amount that exceeds the amount, if any, that is identified in the Schedules on behalf of such Entity as undisputed, noncontingent and liquidated; or (2) of a different nature or a different classification than any Claim identified in the Schedules on behalf of such Entity.

All Claims filed after the applicable Bar Date and for which no Final Order has been entered by the Bankruptcy Court determining that such Claims were timely filed will be Disallowed and expunged without any further action required by the Debtor, the Reorganized Debtor or the Bankruptcy Court. Any Distribution on account of such Claims will be limited to the amount, if any, listed in the applicable Schedules as undisputed, noncontingent and liquidated. **The Debtor or Reorganized Debtor have no obligation to review and/or respond to any Claim that is not a Timely Claim unless: (i) the filer has obtained a Final Order from the Bankruptcy Court authorizing it to file such Claim after the Bar Date; or (ii) the Reorganized Debtor has consented to the filing of such Claim in writing.**

Nothing in Section 7.2 of the Plan will be construed as preventing the Debtor or the Reorganized Debtor from objecting to any Claim on any grounds permitted by applicable bankruptcy or non-bankruptcy law.

**3. Distributions on Account of Disputed Claims Once Allowed.** On each Interim Distribution Date, the Reorganized Debtor will make all Distributions on account of any Disputed Claim that has become an Allowed Claim during the preceding period since the Initial Distribution Date or the last Interim Distribution Date, as applicable, to the extent not distributed earlier at the sole discretion of the Reorganized Debtor. Such Distributions will be made pursuant to the provisions of the Plan governing the applicable Class.

**4. Estimation.** The Debtor or Reorganized Debtor may at any time, request that the Court estimate any Disputed Claim pursuant to section 502(c) of the Bankruptcy Code regardless of whether the Debtor or the Reorganized Debtor previously objected to such Claim. The Bankruptcy Court will retain jurisdiction to estimate any Claim at any time, including during proceedings concerning any objection to such Claim. In the event that the Bankruptcy Court

estimates any Disputed Claim, such estimated amount may constitute either (i) the Allowed amount of such Claim, or (ii) a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the Debtor or the Reorganized Debtor, as the case may be, may elect to object to ultimate payment of such Claim. All of the aforementioned Claims objection, estimation and resolution procedures are cumulative and not necessarily exclusive of one another.

## I. CONDITIONS PRECEDENT TO CONSUMMATION OF THE PLAN

**1. Conditions to the Effective Date.** The Effective Date will not occur and the Plan will not be consummated unless and until each of the following conditions have been satisfied or duly waived pursuant to Section 8.2 of the Plan:

a. The Bankruptcy Court shall have entered an order (contemplated to be part of the Confirmation Order) approving and authorizing the Debtor and the Reorganized Debtor to take all actions necessary or appropriate to implement the Plan, including completion of the Restructuring Transactions and other transactions contemplated by the Plan and the implementation and consummation of contracts, instruments, releases and other agreements or documents created in connection with the Plan.

b. The Confirmation Order has been entered by the Bankruptcy Court and shall have become a Final Order.

c. The Confirmation Order shall be in full force and effect.

d. Each of the Exhibits to the Plan and any other necessary documents shall be fully executed and delivered to the Debtor and shall be fully enforceable in accordance with their terms.

e. All necessary agreements to provide the Exit Financing have been executed and approved by Final Order of the Bankruptcy Court, if necessary, on terms and conditions satisfactory to the Debtor and Reorganized Debtor.

f. The Debtor shall have filed a notice of the occurrence of the Effective Date.

**2. Waiver of Conditions to Confirmation or the Effective Date.** The conditions to the Effective Date set forth in Section 8.1 of the Plan may be waived in whole or part in writing by the Debtor at any time without an order of the Bankruptcy Court.

**3. Effect of Nonoccurrence of Conditions to the Effective Date.** If each of the conditions to the Effective Date is not satisfied or duly waived in accordance with Sections 8.1 or 8.2 of the Plan, then upon motion by the Debtor made before the time that each of such conditions has been satisfied or duly waived and upon notice to such parties in interest as the Bankruptcy Court may direct, the Confirmation Order will be vacated by the Bankruptcy Court; provided, however, that, notwithstanding the filing of such motion, the Confirmation Order may not be vacated if each of the conditions to the Effective Date is either satisfied or duly waived before the Bankruptcy Court enters an order granting such motion. If the Confirmation Order is

vacated pursuant to Section 8.3 of the Plan, (1) the Plan will be null and void in all respects, including with respect to the discharge of Claims; and (2) nothing contained in the 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 of the Debtor or any other party in interest.

## J. DISCHARGE, INJUNCTION, RELEASE, AND EXCULPATION

**1. Discharge of the Debtor.** The rights afforded in the Plan and the treatment of all Claims and Interests pursuant to the Plan will be in exchange for and in complete satisfaction, discharge, and release of all Claims of any nature whatsoever, including any interest accrued on such Claims from and after the Petition Date, against the Debtor, the Reorganized Debtor or any of their respective assets or properties, arising prior to the Effective Date. Pursuant to section 1141(d) of the Bankruptcy Code and except as otherwise expressly specified in the Plan, upon the Effective Date the Confirmation Order will act as a discharge of all debts of, Claims against, and liens on the Debtor, their respective assets and properties, arising at any time before the Effective Date, regardless of whether a proof of Claim with respect thereto was filed, whether the Claim is Allowed, or whether the holder thereof votes to accept the Plan or is entitled to receive a distribution under the Plan. Except as otherwise expressly specified in the Plan, after the Effective Date, any holder of such discharged Claim will be precluded from asserting against the Debtor, the Reorganized Debtor, or any of their respective assets or properties, any other or further Claim based on any document, instrument, act, omission, transaction, or other activity of any kind or nature that occurred before the entry of the Confirmation Order. Notwithstanding anything in the Plan, Disclosure Statement or Confirmation Order to the contrary, neither the Parent Debt nor Interests will be discharged pursuant to the Plan, Disclosure Statement or the Confirmation Order.

**2. Injunction.** Except as otherwise expressly provided in the Plan, the Confirmation Order, or a separate order of the Court, all Persons or Entities who have held, hold, or may hold a Claim or Claims against the Debtor that arose before or were held as of the Effective Date, are permanently enjoined, on and after the Effective Date, from (i) commencing or continuing in any manner any action or other proceeding of any kind against or affecting the Debtor, its Estate or its assets, with respect to any such Claim, (ii) the enforcement, attachment, collection, or recovery by any manner or means of any judgment, award, decree, or order against the Debtor or the Reorganized Debtor on account of any such Claim, (iii) creating, perfecting, or enforcing any Encumbrance of any kind against the Debtor or the Reorganized Debtor or against the property or interests in property of the Debtor on account of any such Claim, (iv) asserting any right of setoff, or subrogation of any kind against any obligation due from the Debtor or the Reorganized Debtor or against the property or interests in property of the Debtor on account of any such Claim; and (v) 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 or settled pursuant to the Plan. Such injunction will extend to successors of the Debtor (including, without limitation, the Reorganized Debtor) and their respective properties and interests in property. Such injunction will not apply in respect of Administrative Claims incurred in the ordinary course of the Debtor's business.

**3. Releases.**

**a.** *Releases by the Debtor.* **ON THE EFFECTIVE DATE, AND NOTWITHSTANDING ANY OTHER PROVISIONS OF THE PLAN, THE DEBTOR AND THE REORGANIZED DEBTOR, ON BEHALF OF THEMSELVES AND THE ESTATE, WILL BE DEEMED TO RELEASE UNCONDITIONALLY (I) ALL OF THEIR RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, ADVISORS, ATTORNEYS, FINANCIAL ADVISORS, ACCOUNTANTS, AND OTHER PROFESSIONALS, (II) KLK, AS DIP LENDER, ULTIMATE SOLE INTEREST HOLDER AND ULTIMATE PARENT OF THE DEBTOR AND REORGANIZED DEBTOR, (III) THE OFFICERS, DIRECTORS, PRINCIPALS, MEMBERS, EMPLOYEES, PARTNERS, SUBSIDIARIES, AFFILIATES, ADVISORS, ATTORNEYS, FINANCIAL ADVISORS, ACCOUNTANTS, AND OTHER PROFESSIONALS OF KLK, (IV) KLKOI, AS PREPETITION LENDER, (V) THE OFFICERS, DIRECTORS, PRINCIPALS, MEMBERS, EMPLOYEES, PARTNERS, SUBSIDIARIES, AFFILIATES, ADVISORS, ATTORNEYS, FINANCIAL ADVISORS, ACCOUNTANTS, AND OTHER PROFESSIONALS OF KLKOI, (VI) THE MEMBERS OF THE CREDITORS' COMMITTEE, (VII) THE OFFICERS, DIRECTORS, PRINCIPALS, MEMBERS, EMPLOYEES, PARTNERS, SUBSIDIARIES, AFFILIATES, ADVISORS, ATTORNEYS, FINANCIAL ADVISORS, ACCOUNTANTS, AND OTHER PROFESSIONALS OF THE CREDITORS' COMMITTEE, (COLLECTIVELY THE "<u>RELEASED PARTIES</u>," AND EACH A "<u>RELEASED PARTY</u>") FROM ANY AND ALL CLAIMS, OBLIGATIONS, SUITS, JUDGMENTS, DAMAGES, RIGHTS, CAUSES OF ACTION AND LIABILITIES WHATSOEVER, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING OR HEREAFTER ARISING, IN LAW, EQUITY OR OTHERWISE, BASED IN WHOLE OR IN PART UPON ACTIONS TAKEN SOLELY IN THEIR RESPECTIVE CAPACITIES DESCRIBED ABOVE OR ANY OMISSION, TRANSACTION, AGREEMENT, EVENT, OR OTHER OCCURRENCE TAKING PLACE ON OR BEFORE THE EFFECTIVE DATE IN ANY WAY RELATING TO THE DEBTOR, THE CHAPTER 11 CASE, THE PLAN, OR THE DISCLOSURE STATEMENT; <u>PROVIDED</u>, <u>HOWEVER</u>, THAT (A) NO PERSON OR ENTITY WILL BE RELEASED FROM ANY ACT OR OMISSION THAT CONSTITUTES GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, (B) THE REORGANIZED DEBTOR WILL NOT RELINQUISH OR WAIVE THE RIGHT TO ASSERT ANY OF THE FOREGOING AS A LEGAL OR EQUITABLE DEFENSE OR RIGHT OF SET-OFF OR RECOUPMENT AGAINST ANY CLAIMS OF ANY SUCH PERSONS ASSERTED AGAINST THE DEBTOR, (C) THE FOREGOING RELEASE WILL NOT APPLY TO ANY OBLIGATIONS THAT REMAIN OUTSTANDING IN RESPECT OF ANY OBLIGATIONS UNDER THE EXIT FACILITY OUTSTANDING AS OF THE EFFECTIVE DATE, AND (D) THE FOREGOING RELEASE APPLIES TO THE RELEASED PARTIES SOLELY IN THEIR RESPECTIVE CAPACITIES DESCRIBED ABOVE.**

**NOTWITHSTANDING ANYTHING IN THE PLAN TO THE CONTRARY, ON THE EFFECTIVE DATE, THE REORGANIZED DEBTOR WILL BE DEEMED TO WAIVE AND RELEASE ANY ACTIONS ARISING UNDER SECTION 547 OF THE BANKRUPTCY CODE RELATING TO ANY PREFERENCE ACTIONS HELD BY ANY**

**DEBTOR OR ITS ESTATE OR ANY REORGANIZED DEBTOR AGAINST ANY ENTITY; PROVIDED, HOWEVER, THAT NOTWITHSTANDING ANYTHING IN THE PLAN, DISCLOSURE STATEMENT OR CONFIRMATION ORDER TO THE CONTRARY, THE DEBTOR WILL BE PERMITTED TO USE ANY AVAILABLE DEFENSES UNDER SECTION 502(d) OF THE BANKRUPTCY CODE, INCLUDING THE ASSERTION OF AN ACTION UNDER SECTION 547 OF THE BANKRUPTCY CODE, TO SETOFF AGAINST OR OTHERWISE REDUCE ALL OR PART OF ANY GENERAL UNSECURED CLAIM ASSERTED AGAINST THE DEBTOR'S ESTATE.**

b. *Releases by Holders of Claims and Interests.* **ON THE EFFECTIVE DATE, AND NOTWITHSTANDING ANY OTHER PROVISIONS OF THE PLAN, (I) PERSONS WHO DIRECTLY OR INDIRECTLY, HAVE HELD, HOLD, OR MAY HOLD CLAIMS OR INTERESTS WHO VOTED TO ACCEPT THE PLAN, AND (II) TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, AS SUCH LAW MAY BE EXTENDED OR INTERPRETED SUBSEQUENT TO THE EFFECTIVE DATE, ALL PERSONS WHO DIRECTLY OR INDIRECTLY, HAVE HELD, HOLD, OR MAY HOLD CLAIMS OR INTERESTS, WILL BE DEEMED, BY VIRTUE OF THEIR RECEIPT OF DISTRIBUTIONS AND/OR OTHER TREATMENT CONTEMPLATED UNDER THE PLAN, TO HAVE FOREVER RELEASED AND COVENANTED WITH THE REORGANIZED DEBTOR AND THE RELEASED PARTIES NOT TO (Y) SUE OR OTHERWISE SEEK RECOVERY FROM ANY OF THE REORGANIZED DEBTOR OR ANY RELEASED PARTY ON ACCOUNT OF ANY CLAIM, INCLUDING BUT NOT LIMITED TO ANY CLAIM BASED UPON TORT, BREACH OF CONTRACT, VIOLATIONS OF FEDERAL OR STATE SECURITIES LAWS OR OTHERWISE, BASED UPON ANY ACT, OCCURRENCE, OR FAILURE TO ACT FROM THE BEGINNING OF TIME THROUGH THE EFFECTIVE DATE IN ANY WAY RELATED TO THE DEBTOR OR ITS BUSINESS AND AFFAIRS OR (Z) ASSERT AGAINST ANY OF THE REORGANIZED DEBTOR OR ANY RELEASED PARTY ANY CLAIM, OBLIGATION, RIGHT, CAUSE OF ACTION OR LIABILITY THAT ANY HOLDER OF A CLAIM OR INTEREST MAY BE ENTITLED TO ASSERT, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING OR HEREAFTER ARISING, BASED IN WHOLE OR IN PART ON ANY ACT OR OMISSION, TRANSACTION, OR OCCURRENCE FROM THE BEGINNING OF TIME THROUGH THE EFFECTIVE DATE IN ANY WAY RELATING TO THE DEBTOR, THE CHAPTER 11 CASE, OR THE PLAN; PROVIDED, HOWEVER, (I) THE FOREGOING RELEASE WILL NOT APPLY TO OBLIGATIONS ARISING UNDER THE PLAN, (II) THE FOREGOING RELEASE WILL NOT BE CONSTRUED TO PROHIBIT A PARTY IN INTEREST FROM SEEKING TO ENFORCE THE TERMS OF THE PLAN, AND (III) NOTHING IN THE CONFIRMATION ORDER OR THE PLAN WILL EFFECT A RELEASE OF ANY CLAIM BY THE UNITED STATES GOVERNMENT OR ANY OF ITS AGENCIES OR ANY STATE AND LOCAL AUTHORITY ARISING UNDER THE INTERNAL REVENUE CODE, FEDERAL SECURITIES LAWS, THE ENVIRONMENTAL LAWS OR ANY CRIMINAL LAWS OF THE UNITED STATES OR ANY STATE AND LOCAL AUTHORITY AGAINST THE RELEASED PARTIES, NOR WILL ANYTHING IN THE CONFIRMATION ORDER OR THE PLAN ENJOIN THE UNITED STATES OR ANY STATE OR LOCAL AUTHORITY FROM BRINGING ANY CLAIM, SUIT, ACTION OR OTHER**

**PROCEEDINGS AGAINST THE RELEASED PARTIES FOR ANY LIABILITY SO ARISING UNDER THE INTERNAL REVENUE CODE, FEDERAL SECURITIES LAWS, THE ENVIRONMENTAL LAWS OR ANY CRIMINAL LAWS OF THE UNITED STATES OR ANY STATE OR LOCAL AUTHORITY, NOR WILL ANYTHING IN THE CONFIRMATION ORDER OR THE PLAN EXCULPATE ANY PARTY FROM ANY LIABILITY TO THE UNITED STATES GOVERNMENT OR ANY OF ITS AGENCIES OR ANY STATE AND LOCAL AUTHORITY ARISING UNDER THE INTERNAL REVENUE CODE, FEDERAL SECURITIES LAWS, THE ENVIRONMENTAL LAWS OR ANY CRIMINAL LAWS OF THE UNITED STATES OR ANY STATE AND LOCAL AUTHORITY AGAINST THE RELEASED PARTIES (PROVIDED THAT THE FOREGOING WILL IN NO WAY AFFECT OR LIMIT THE DISCHARGE OR INJUNCTION GRANTED TO THE DEBTOR UNDER SECTIONS 524 AND 1141 OF THE BANKRUPTCY CODE). NOTWITHSTANDING ANYTHING IN THE PLAN, DISCLOSURE STATEMENT OR CONFIRMATION ORDER TO THE CONTRARY, HOLDERS OF THE PARENT DEBT OR INTERESTS WILL NOT RELEASE ANY CLAIMS ON ACCOUNT OF THE PARENT DEBT OR INTERESTS IN THE DEBTOR, RESPECTIVELY.**

c. *Exculpation*. **THE DEBTOR, THE REORGANIZED DEBTOR, AND THE RELEASED PARTIES (I) WILL HAVE NO LIABILITY WHATSOEVER TO ANY HOLDER OR PURPORTED HOLDER OF A CLAIM OR INTEREST FOR ANY ACT OR OMISSION IN CONNECTION WITH, OR ARISING OUT OF, THE PLAN, THE DISCLOSURE STATEMENT, THE NEGOTIATION OF THE PLAN, THE NEGOTIATION OF THE DOCUMENTS INCLUDED IN THE PLAN SUPPLEMENT, THE RESTRUCTURING TRANSACTIONS, THE PURSUIT OF APPROVAL OF THE DISCLOSURE STATEMENT OR THE SOLICITATION OF VOTES FOR CONFIRMATION OF THE PLAN, THE CHAPTER 11 CASE, THE CONSUMMATION OF THE PLAN, THE ADMINISTRATION OF THE PLAN OR THE PROPERTY TO BE DISTRIBUTED UNDER THE PLAN, OR ANY TRANSACTION CONTEMPLATED BY THE PLAN OR DISCLOSURE STATEMENT OR IN FURTHERANCE THEREOF EXCEPT FOR ANY ACT OR OMISSION THAT CONSTITUTES WILLFUL MISCONDUCT OR GROSS NEGLIGENCE AS DETERMINED BY A FINAL ORDER, AND (II) IN ALL RESPECTS, WILL BE ENTITLED TO RELY UPON THE ADVICE OF COUNSEL WITH RESPECT TO THEIR DUTIES AND RESPONSIBILITIES UNDER THE PLAN. THIS EXCULPATION WILL BE IN ADDITION TO, AND NOT IN LIMITATION OF, ALL OTHER RELEASES, INDEMNITIES, EXCULPATIONS AND ANY OTHER APPLICABLE LAW OR RULES PROTECTING THE RELEASED PARTIES FROM LIABILITY.**

d. *Injunction With Respect to Released Parties*. Pursuant to section 105 of the Bankruptcy Code, no holder or purported holder of a Claim or Interest will be permitted to commence or continue any action, employment of process, or any act to collect, offset, or recover any Claim against a Released Party that accrued on or prior to the Effective Date and that has been released or waived pursuant to the Plan.

## K. RETENTION OF JURISDICTION

**1. Retention of Exclusive Jurisdiction by the Bankruptcy Court.** Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court will retain such exclusive jurisdiction over the Chapter 11 Case and any matter related to the Chapter 11 Case after the Effective Date as is legally permissible, including exclusive jurisdiction to:

(a) Allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim or the resolution of any objections to the allowance, priority or classification of Claims or Interests;

(b) Grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan for periods ending on or before the Effective Date;

(c) Resolve any matters, related to the assumption, assumption and assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is a party or with respect to which the Debtor or Reorganized Debtor may be liable and to hear, determine and, if necessary, liquidate any Claims arising therefrom, including any Cure Amount Claims;

(d) Ensure that Distributions to holders of Allowed Claims and Interests are accomplished pursuant to the provisions of the Plan;

(e) 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 or brought thereafter;

(f) Enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all contracts, instruments, releases and other agreements or documents entered into or delivered in connection with the Plan, the Disclosure Statement or the Confirmation Order;

(g) Resolve any cases, controversies, suits or disputes that may arise in connection with the consummation, interpretation or enforcement of the Plan or any contract, instrument, release or other agreement or document that is entered into or delivered pursuant to the Plan or any Entity's rights arising from or obligations incurred in connection with the Plan or such documents;

(h) Modify the Plan before or after the Effective Date pursuant to section 1127 of the Bankruptcy Code; modify the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, the Disclosure Statement or the Confirmation Order; or remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court order, the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document entered into, delivered or created in connection with the Plan, the

Disclosure Statement or the Confirmation Order, in such manner as may be necessary or appropriate to consummate the Plan and give effect to the Restructuring Transactions and other transactions contemplated by the Plan;

(i) Issue injunctions, enforce the injunctions contained in the Plan and the Confirmation Order, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with consummation, implementation or enforcement of the Plan or the Confirmation Order;

(j) Enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason or in any respect modified, stayed, reversed, revoked or vacated or Distributions pursuant to the Plan are enjoined or stayed;

(k) Determine such other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, the Disclosure Statement, the Confirmation Order, the Restructuring Transactions or any other transactions contemplated by the Plan;

(l) Determine matters related to requests by counsel for the Creditors' Committee for payment of post-Effective Date reasonable fees and expenses;

(m) Determine matters concerning state, local and federal Taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code, including any Disputed Claims for Taxes; and

(n) Enter a final decree closing the Chapter 11 Case.

To the extent that it is not legally permissible for the Bankruptcy Court to have exclusive jurisdiction over any of the foregoing matters, the Bankruptcy Court will have nonexclusive jurisdiction over such matters to the extent legally permissible.

## L. MISCELLANEOUS PROVISIONS

**1. Dissolution of the Creditors' Committee.** On the Effective Date, the Creditors' Committee will be dissolved and its members will be deemed released of any continuing duties, responsibilities and obligations in connection with the Chapter 11 Case or the Plan and its implementation, and the retention and employment of the Creditors' Committee's attorneys, accountants and other agents will terminate, except with respect to: (i) any matters concerning the Distributions to be made under the Plan through the date upon which the first Distributions are made after the Effective Date; (ii) all Professional Fee Claims through a final hearing on Professional Fee Claims for Professionals; or (iii) any appeals of the Confirmation Order through the date such appeals are finally decided, settled, withdrawn or otherwise resolved. Counsel to the Creditors' Committee will be entitled to reasonable compensation and reimbursement of actual, necessary expenses for post-Effective Date activities authorized under the Plan upon the submission of invoices to be paid by the Reorganized Debtor. Copies of such invoices must be sent to the Reorganized Debtor. The Reorganized Debtor is authorized to pay

such invoices without further order of the Bankruptcy Court. If the Reorganized Debtor disputes the amount of any such invoice, it may bring the matter before the Bankruptcy Court.

**2. Modification of the Plan and Exhibits.** Subject to the restrictions on modifications set forth in section 1127 of the Bankruptcy Code, the Debtor or the Reorganized Debtor, as applicable, reserves the right to alter, amend or modify the Plan and the Exhibits to the Plan at any time before its substantial consummation; provided, however, that after entry of the Confirmation Order, (i) the Plan as modified will meet the requirements of sections 1122 and 1123 of the Bankruptcy Code, (ii) will comply with section 1125 of the Bankruptcy Code, (iii) that circumstances warrant such modifications and (iv) the Bankruptcy Court enters an order confirming the Plan as modified.

**3. Revocation of the Plan.** The Debtor reserves the right to revoke or withdraw the Plan prior to the Confirmation Date. If the Debtor revokes or withdraws the Plan, or if confirmation of the Plan does not occur, the Plan will be null and void in all respects, and nothing contained in the Plan will: (1) constitute a waiver or release of any Claims by or against, or any Interests in, the Debtor; or (2) prejudice in any manner the rights of the Debtor or any other party.

**4. Term of Bankruptcy Injunction or Stays.** All injunctions or stays provided for in the Chapter 11 Case under sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, will remain in full force and effect until the Effective Date.

**5. Headings.** The headings used in the Plan are inserted for convenience only and neither constitute a portion of the Plan nor affect, in any manner, the construction of the provisions of the Plan.

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

**7. Governing Law**. Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules), the laws of (a) the State of Connecticut will govern the construction and implementation of the Plan and (except as may be provided otherwise in any such agreements, documents, or instruments) any agreements, documents, and instruments executed in connection with the Plan, and (b) the laws of the state of incorporation of the Debtor will govern corporate governance matters with respect to the Debtor; in each case without giving effect to the principles of conflicts of law thereof. None of the foregoing will be deemed to preclude the application of the tax laws of states in which the Debtor and Reorganized Debtor does business, to the extent federal law is not controlling.

**8. Plan Supplement and Exhibits**. The Plan Supplement will be filed with the Clerk of the Bankruptcy Court on the Plan Supplement Date. Upon such filing, all documents included in the Plan Supplement may be inspected in the office of the Clerk of the Bankruptcy Court during normal business hours. Holders of Claims or Interests may obtain a copy of any document included in the Plan Supplement upon written request to the Debtor in

accordance with Section 11.10 of the Plan or by downloading any such document from the Bankruptcy Court's website at www.nysb.uscourts.gov or the Claims Agent's website at http://chapter11.epiqsystems.com/Crabtree. To the extent any Exhibit to the Plan is inconsistent with the terms of the Plan, unless otherwise ordered by the Bankruptcy Court, the non-Exhibit portion of the Plan will control. The Debtor reserves the right to modify, amend, supplement, restate or withdraw any of the Exhibits to the Plan after they are filed. The Debtor will file and will make available on the aforementioned websites all modified, amended, supplemented or restated Exhibits to the Plan as promptly as possible.

**9. Waiver of Federal Rule of Civil Procedure 62(a).** The Debtor may request that the Confirmation Order include (a) a finding that Federal Rule of Civil Procedure 62(a) shall not apply to the Confirmation Order, and (b) authorization for the Debtor to consummate the Plan immediately after entry of the Confirmation Order.

**10. Service of Documents.** Any notice, request, or demand required or permitted to be made or provided under the Plan will be (a) in writing, (b) served by (i) certified mail, return receipt requested, (ii) hand delivery, (iii) overnight delivery service, (iv) first class mail, or (v) facsimile transmission, and (c) deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed by the recipient, addressed as follows:

The Debtor and the Reorganized Debtor:

CRABTREE & EVELYN, LTD.
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## VIII. CERTAIN FACTORS AFFECTING THE DEBTOR

### A. RISKS RELATED TO THE DEBTOR'S BUSINESS AND OPERATIONS

#### 1. Ability to Maintain Sufficient Liquidity

The Debtor requires substantial cash flows to fund capital spending and working capital requirements. The Reorganized Debtor's liquidity may be negatively affected by various items, including declines in sales; changes in terms or other requirements by vendors, including the Debtor's credit card payment processor; and unexpected capital requirements. The Debtor has been required to provide letters of credit to support certain vendors, which has reduced the Debtor's available liquidity. Although the Debtor believes that the Reorganized Debtor will have adequate liquidity to pay ordinary course trade and employee obligations, there can be no assurances that the Reorganized Debtor will have sufficient liquidity to meet its debt or other obligations as and when they become due. If sales decrease, expenses increase or a default occurs under the Exit Facility and the Reorganized Debtor does not have or cannot obtain sufficient liquidity to address any such scenario, the Reorganized Debtor would be unable to continue operating its business. Furthermore, pursuant to the Exit Facility, the Reorganized Debtor's depository accounts may be subject to control agreements that give the Exit Lender the right to dominion over the Debtor's cash on deposit in control accounts if an event of default under the Exit Facility occurs and is continuing.

#### 2. Ability to Expand Operations in Wholesale Channels

The financial projections are based, in part, on the Debtor's ability to increase sales through wholesale channels, including expanding attracting new wholesale outlets and increasing

sales per outlet. There can be no assurance that the Debtor's wholesale sales will increase as projected.

### 3. Ability to Remain Competitive

Like the Debtor, the Reorganized Debtor will face intense competition, which could harm its financial condition and results of operations. The Reorganized Debtor must compete based on product quality, variety and price, as well as location, service, convenience, and store condition. The Reorganized Debtor's ability to respond to the entry of new competitors into its markets thus represents an additional risk factor.

### 4. Adverse Publicity

Adverse publicity or news coverage relating to the Reorganized Debtor, including but not limited to publicity or news coverage in connection with the Chapter 11 Case, may negatively impact the Debtor's efforts to establish and promote name recognition and a positive image after the Effective Date.

### 5. Ability to Attract and/or Retain Quality Employees

The Reorganized Debtor's success depends in significant part upon the continuing service and capabilities of its management team. In particular, the successful implementation of the Reorganized Debtor's business plan will be highly dependent upon management. The loss of the services of such individuals or other key personnel could have a material adverse effect upon the implementation of the business plan, including the financial restructuring, and on the Debtor's ability to successfully reorganize and emerge from bankruptcy.

### 6. Misappropriation and Infringement of Intellectual Property

The Debtor attempts to protect its trademarks and trade names through a combination of trademark and copyright laws, as well as licensing agreements. The Reorganized Debtor's failure to obtain or maintain adequate protection of its intellectual property rights for any reason could have a material adverse effect on its business, results of operations and financial condition.

### 7. Risk of Economic Deterioration

In the event that economic conditions in general and specifically in the retail industry decline suddenly and precipitously, the Debtor could potentially be unable to operate its business. Under such circumstances, the Debtor will not be able to confirm the Plan.

### 8. Risk of Inability to Obtain Exit Financing

The Plan contemplates that the Reorganized Debtor will obtain exit financing in an amount sufficient to satisfy the DIP Claims, support other required payments under the Plan, and conduct its post-reorganization operations. As discussed above, the Debtor has made significant progress in its negotiations with KLK to secure such financing. Although the Debtor is hopeful that such exit financing will be obtained in a timely manner, in light of current market conditions it is uncertain whether the Debtor will be able to secure such financing on a timely basis, whether

the amount ultimately obtained will be sufficient to fund the required payments under the Plan as well as the operations of the Reorganized Debtor, and whether the terms of such financing will enable the Debtor to adequately service its debt going forward.

### 9. Inherent Uncertainty of Financial Projections

The projections set forth in the attached Exhibit D cover the operations of the Reorganized Debtor through fiscal year 2012. These projections are based on numerous assumptions, including confirmation and consummation of the Plan in accordance with its terms; realization of the operating strategy of the Reorganized Debtor; industry performance; no material adverse changes in applicable legislation or regulations, or the administration thereof, or generally accepted accounting principles; no material adverse changes in general business and economic conditions; no material adverse changes in competition; the Reorganized Debtor's retention of key management and other key employees; adequate financing; the absence of material contingent or unliquidated litigation, indemnity, or other claims; and other matters, many of which will be beyond the control of the Reorganized Debtor and some or all of which may not materialize.

To the extent that the assumptions inherent in the projections are based upon future business decisions and objectives, they are subject to change. In addition, although they are presented with numerical specificity and are based on assumptions considered reasonable by the Debtor, the assumptions and estimates underlying the projections are subject to significant business, economic, and competitive uncertainties and contingencies, many of which will be beyond the control of the Reorganized Debtor. Accordingly, the projections are only estimates and are necessarily speculative in nature. It can be expected that some or all of the assumptions in the projections will not be realized and that actual results will vary from the projections, which variations may be material and are likely to increase over time. In light of the foregoing, readers are cautioned not to place undue reliance on the projections. The projections were not prepared in accordance with standards for projections promulgated by the American Institute of Certified Public Accountants or with a view to compliance with published guidelines of the SEC regarding projections or forecasts. The projections have not been audited, reviewed, or compiled by the Debtor's independent public accountants. The projected financial information contained in this Disclosure Statement should not be regarded as a representation or warranty by the Debtor, the Debtor's advisors, or any other Person that the projections can or will be achieved.

## B. CERTAIN BANKRUPTCY LAW CONSIDERATIONS

### 1. Risk of Non-Confirmation of the Plan

Although the Debtor believes that the Plan will satisfy all requirements necessary for confirmation by the Bankruptcy Court, there can be no assurance that the Bankruptcy Court will reach the same conclusion or that modifications of the Plan will not be required for confirmation or that such modifications would not necessitate resolicitation of votes.

### 2. Risk of Non-Occurrence of the Effective Date

Although the Debtor believes that the Effective Date may occur during the first calendar quarter of 2010, there can be no assurance as to such timing or that such conditions to the Effective Date contained in the Plan will ever occur.

### 3. Non-Consensual Confirmation

In the event any impaired class of claims or equity interests does not accept a chapter 11 plan, a bankruptcy court may nevertheless confirm such plan at the proponent's request if at least one impaired class has accepted the plan (with such acceptance being determined without including the vote of any "insider" in such class), and as to each impaired class that has not accepted the plan, the bankruptcy court determines that the plan "does not discriminate unfairly" and is "fair and equitable" with respect to the dissenting impaired classes. See Section IX.B.2. If holders of Claims in Class 3 or Class 4 vote to reject the Plan, (a) the Debtor may seek to satisfy the requirements for Confirmation of the Plan under the cramdown provisions of section 1129(b) of the Bankruptcy Code and, (b) if required, may amend the Plan to conform to the standards of such section.

### 4. Risk of Delay of Confirmation

Although the Debtor believes that the Effective Date will occur soon after the Confirmation Date, there can be no assurance as to such timing. Any delay in confirmation and effectiveness of the Plan could result in, among other things, increased Administrative Claims. These or any other negative effects of delays in confirmation or effectiveness of the Plan could endanger the ultimate approval of the Plan by the Bankruptcy Court and reduce recoveries to Claim holders.

## C. ADDITIONAL FACTORS TO CONSIDER

### 1. The Debtor Has No Duty to Update

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

### 2. No Representations Outside This Disclosure Statement are Authorized

No representations concerning or related to the Debtor, the Chapter 11 Case, or the Plan are authorized by the Bankruptcy Court or the Bankruptcy Code, other than as set forth in this Disclosure Statement. Any representations or inducements made to secure your acceptance or rejection of the Plan that are other than as contained in, or included with, this Disclosure Statement should not be relied upon by you in arriving at your decision.

### 3. No Legal or Tax Advice Is Provided to You by This Disclosure Statement

The contents of this Disclosure Statement should *not* be construed as legal, business or tax advice. Each creditor or Interest holder should consult his, her, or its own legal counsel and accountant as to legal, tax and other matters concerning his, her, or its Claim or Interest.

This Disclosure Statement is *not* legal advice to you. This Disclosure Statement may *not* be relied upon for any purpose other than to determine how to vote on the Plan or object to confirmation of the Plan.

### 4. No Admission Made

Nothing contained herein shall constitute an admission of, or be deemed evidence of, the tax or other legal effects of the Plan on the Debtor or on holders of Claims or Interests.

# IX. CONFIRMATION OF THE PLAN

## A. Confirmation Hearing

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after appropriate notice, to hold a hearing on confirmation of a chapter 11 plan. As set forth in the Disclosure Statement Order, the Bankruptcy Court has scheduled the Confirmation Hearing for January 14, 2010 at 10:00 a.m. (prevailing Eastern Time). The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement of the adjourned date made at the Confirmation Hearing or any subsequent adjourned confirmation hearing.

Any objection to confirmation of the Plan must be in writing, must conform to the Bankruptcy Rules, must set forth the name of the objector, the nature and amount of Claims or interests held or asserted by the objector against the Debtor's estate or property, the basis for the objection and the specific grounds therefor, and must be filed with the Bankruptcy Court, with a copy to Chambers, together with proof of service thereof, and served upon: (i) the Debtor, 102 Peake Brook Road, Woodstock, CT 06281 (Attn.: Colleen Cording, Esq.); (ii) Cooley Godward Kronish LLP, 1114 Avenue of the Americas, New York, New York 10036 (Attn: Lawrence C. Gottlieb, Esq. and Richelle Kalnit, Esq.); (iii) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004 (Attn: Serene Nakano, Esq.); (iv) SilvermanAcampora LLP, 100 Jericho Quadrangle, Suite 300, Jericho, New York 11753 (Attn: Ronald J. Friedman, Esq.) as counsel for KLK, and (v) Hahn & Hessen LLP, 488 Madison Avenue, 15th Floor, New York, New York 10022 (Attn: Mark Indelicato, Esq.), as counsel for the Committee, and all parties on the Master Service List pursuant to the Order Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rules 1015(c) and 9007 to Implement Certain Notice and Case Management Procedures (Docket No. 117), so as to be received no later than **4:00 p.m. (prevailing Eastern Time) on January 5, 2010**.

Objections to confirmation of the Plan are governed by Bankruptcy Rule 9014. UNLESS AN OBJECTION TO CONFIRMATION IS TIMELY SERVED AND FILED, IT MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT.

## B. REQUIREMENTS FOR CONFIRMATION OF THE PLAN

### 1. Requirements of Section 1129(a) of the Bankruptcy Code

a. *General Requirements*

At the Confirmation Hearing, the Bankruptcy Court will determine whether the following confirmation requirements specified in section 1129 of the Bankruptcy Code have been satisfied:

1. The plan complies with the applicable provisions of the Bankruptcy Code.

2. The debtor has complied with the applicable provisions of the Bankruptcy Code.

3. The plan has been proposed in good faith and not by any means proscribed by law.

4. Any payment made or promised by the debtor or by a person issuing securities or acquiring property under the plan for services or for costs and expenses in, or in connection with, the chapter 11 case, or in connection with the plan and incident to the chapter 11 case, has been disclosed to the court, and any such payment made before confirmation of the plan is reasonable, or if such payment is to be fixed after confirmation of the plan, such payment is subject to the approval of the court as reasonable.

5. The debtor has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a plan administrator.

6. Any governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor, as applicable, has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval.

7. With respect to each class of claims or equity interests, each holder of an impaired claim or impaired equity interest either has accepted the plan or will receive or retain under the plan on account of such holder's claim or equity interest, property of a value, as of the effective date, that is not less than the amount such holder would receive or retain if the debtor were liquidated on the effective date under chapter 7 of the Bankruptcy Code. See discussion of "Best Interests Test" below.

8. Except to the extent the plan meets the requirements of section 1129(b) of the Bankruptcy Code (discussed below), each class of claims or equity interests has either accepted the plan or is not impaired under the plan.

9. Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that administrative expenses and priority claims other than priority tax claims will be paid in full on the effective date and that priority tax claims will receive on account of such claims deferred cash payments, over a period not exceeding five (5) years after the date of assessment of such claims, of a value, as of the effective date, equal to the allowed amount of such claims.

10. At least one class of impaired claims has accepted the plan, determined without including any acceptance of the plan by any insider holding a claim in such class.

11. Confirmation of the plan is not likely to be followed by the need for further financial reorganization of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan. See discussion of "Feasibility" below.

12. All fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the applicable plan, have been paid or the applicable plan provides for the payment of all such fees on the effective date of the applicable plan.

13. The debtor has not obligated itself to provide such benefits, if any for the continuation, after the effective date, of payment of all "retiree benefits" (as defined in section 1114 of the Bankruptcy Code).

b. *Best Interests Test*

As described above, the Bankruptcy Code requires that each holder of an impaired claim or equity interest either (i) accept the plan or (ii) receive or retain under the plan property of a value, as of the effective date, that is not less than the value such holder would receive or retain if the debtor were liquidated under chapter 7 of the Bankruptcy Code on the effective date.

The first step in meeting this test is to determine the dollar amount that would be generated from the liquidation of the Debtor's assets and properties in the context of a chapter 7 liquidation case. The gross amount of Cash available would be the sum of the proceeds from the disposition of the Debtor's assets and the Cash held by the Debtor at the time of the commencement of the chapter 7 case. The next step is to reduce that total by the amount of any claims secured by such assets, the costs and expenses of the liquidation, and such additional administrative expenses and priority claims that may result from the termination of the Debtor's

business and the use of chapter 7 for the purposes of liquidation. Any remaining net Cash would be allocated to creditors and shareholders in strict priority in accordance with section 726 of the Bankruptcy Code (see discussion below). Finally, taking into account the time necessary to accomplish the liquidation, the present value of such allocations may be compared to the value of the property that is proposed to be distributed under the Plan on the Effective Date.

The Debtor's costs of liquidation under chapter 7 would include the fees payable to a chapter 7 trustee in bankruptcy, as well as those that might be payable to attorneys and other professionals that such a trustee may engage, plus any unpaid expenses incurred by the Debtor during the Chapter 11 Case and allowed in the chapter 7 case, such as compensation for attorneys, financial advisors, appraisers, accountants and other professionals, and costs and expenses of members of any statutory committee of unsecured creditors appointed by the U.S. Trustee pursuant to section 1102 of the Bankruptcy Code and any other committee so appointed. Moreover, in a chapter 7 liquidation, additional claims would arise by reason of the breach or rejection of obligations incurred and executory contracts or leases entered into by the Debtor both prior to, and during the pendency of, the Chapter 11 Case.

The foregoing types of claims, costs, expenses, fees and such other claims that may arise in a liquidation case would be paid in full from the liquidation proceeds before the balance of those proceeds would be made available to pay pre-chapter 11 priority and unsecured claims. Under the absolute priority rule, no junior creditor would receive any distribution until all senior creditors are paid in full, with interest, and no equity holder receives any distribution until all creditors are paid in full, with interest. The Debtor believes that in a chapter 7 case, holders of General Unsecured Claims would receive a smaller distribution that they would receive under the Plan. Accordingly, the Plan satisfies the rule of absolute priority.

After consideration of the effects that a chapter 7 liquidation would have on the ultimate proceeds available for distribution to creditors in a chapter 11 case, including (i) the increased costs and expenses of a liquidation under chapter 7 arising from fees payable to a trustee in bankruptcy and professional advisors to such trustee, (ii) the erosion in value of assets in a chapter 7 case in the context of the expeditious liquidation required under chapter 7 and the "forced sale" atmosphere that would prevail and (iii) substantial increases in claims which would be satisfied on a priority basis, the Debtor has determined that confirmation of the Plan will provide each creditor and equity holder with a recovery that is not less than it would receive pursuant to a liquidation of the Debtor under chapter 7 of the Bankruptcy Code.

Moreover, the Debtor believes that the value of any distributions from the liquidation proceeds to each class of allowed claims in a chapter 7 case would be the same or less than the value of distributions under the Plan because such distributions in a chapter 7 case may not occur for a substantial period of time. In this regard, it is possible that distribution of the proceeds of the liquidation could be delayed for a year or more after the completion of such liquidation in order to resolve the claims and prepare for distributions. In the event litigation were necessary to resolve claims asserted in the chapter 7 case, the delay could be further prolonged and administrative expenses further increased.

**The Debtor's liquidation analysis is an estimate of the proceeds that may be generated as a result of a hypothetical chapter 7 liquidation of the assets of the Debtor.**

**The analysis is based upon a number of significant assumptions which are described. The liquidation analysis does not purport to be a valuation of the Debtor's assets and is not necessarily indicative of the values that may be realized in an actual liquidation.**

c. *Liquidation Analysis*

The Debtor's chapter 7 liquidation analysis and assumptions are set forth in Exhibit C to this Disclosure Statement.

d. *Feasibility*

In connection with confirmation of the Plan, the Bankruptcy Court will be required to determine that the Plan is feasible pursuant to section 1129(a)(11) of the Bankruptcy Code, which means that the confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtor.

To support its belief in the feasibility of the Plan, the Debtor has relied upon the projections, which are annexed to this Disclosure Statement as Exhibit D.

The projections indicate that the Reorganized Debtor should have sufficient cash flow to pay and service its debt obligations and to fund its operations. Accordingly, the Debtor believes that the Plan complies with the financial feasibility standard of section 1129(a)(11) of the Bankruptcy Code.

The projections are based on numerous assumptions, including confirmation and consummation of the Plan in accordance with its terms; realization of the operating strategy of the Reorganized Debtor; industry performance; no material adverse changes in applicable legislation or regulations, or the administration thereof, or generally accepted accounting principles; no material adverse changes in general business and economic conditions; no material adverse changes in competition; the Reorganized Debtor's retention of key management and other key employees; adequate financing; the absence of material contingent or unliquidated litigation, indemnity, or other claims; and other matters, many of which will be beyond the control of the Reorganized Debtor and some or all of which may not materialize.

To the extent that the assumptions inherent in the projections are based upon future business decisions and objectives, they are subject to change. In addition, although they are presented with numerical specificity and are based on assumptions considered reasonable by the Debtor, the assumptions and estimates underlying the projections are subject to significant business, economic, and competitive uncertainties and contingencies, many of which will be beyond the control of the Reorganized Debtor. Accordingly, the projections are only estimates and are necessarily speculative in nature. It can be expected that some or all of the assumptions in the projections will not be realized and that actual results will vary from the projections, which variations may be material and are likely to increase over time. In light of the foregoing, readers are cautioned not to place undue reliance on the projections. The projections were not prepared in accordance with standards for projections promulgated by the American Institute of Certified Public Accountants or with a view to compliance with published guidelines of the SEC regarding projections or forecasts. The projections have not been audited, reviewed, or compiled by the Debtor's independent public accountants. The Debtor will not be required to adopt "fresh start"

accounting upon its emergence from Chapter 11. The projected financial information contained in this Disclosure Statement should not be regarded as a representation or warranty by the Debtor, the Debtor's advisors, or any other Person that the projections can or will be achieved.

The projections should be read together with the information in Article VIII of this Disclosure Statement entitled "Certain Risk Factors Affecting the Debtor", which sets forth important factors that could cause actual results to differ from those in the projections.

The Debtor does not intend to update or otherwise revise the projections, including any revisions to reflect events or circumstances existing or arising after the date of this Disclosure Statement or to reflect the occurrence of unanticipated events, even if any or all of the underlying assumptions do not come to fruition. Furthermore, the Debtor does not intend to update or revise the projections to reflect changes in general economic or industry conditions.

The Debtor will face a number of risks with respect to its continuing business operations upon emergence from Chapter 11, including but not limited to the following: the Debtor's ability to improve profitability and generate positive operating cash flow; the Debtor's ability to sustain sales increases; the Debtor's response to the entry of new competitors into its markets; the Debtor's ability to reduce the level of operating losses experienced in recent years; the Debtor's ability to implement new customer programs; the Debtor's ability to implement effective pricing and promotional programs; the Debtor's ability to reserve appropriately for self insurance liabilities; the Debtor's ability to maintain appropriate sanitation and quality standards in its stores and products; changes in federal, state or local laws or regulations; general economic conditions in the Debtor's operating regions; stability of product costs; increases in labor and employee benefit costs, such as health care expenses; and changes in accounting standards and taxation requirements.

### 2. Requirements of Section 1129(b) of the Bankruptcy Code

The Bankruptcy Court may confirm the Plan over the rejection or deemed rejection of the Plan by a class of claims or equity interests if the Plan "does not discriminate unfairly" and is "fair and equitable" with respect to such class.

*No Unfair Discrimination*. This test applies to classes of claims or equity interests that are of equal priority and are receiving different treatment under a chapter 11 plan. The test does not require that the treatment be the same or equivalent, but that such treatment be "fair."

*Fair and Equitable Test*. This test applies to classes of different priority (e.g., unsecured versus secured) and includes the general requirement that no class of claims receive more than 100% of the allowed amount of the claims in such class. As to the dissenting class, the test sets different standards, depending on the type of claims or interests in such class:

- *Secured Claims.* Each holder of an impaired secured claim either (i) retains its liens on the property (or if sold, on the proceeds thereof) to the extent of the allowed amount of its secured claim and receives deferred cash payments having a value, as of the effective date of the plan, of at least the allowed amount of such claim or (ii) receives the "indubitable equivalent" of its allowed secured claim.

- *Claims*. Either (i) each holder of an impaired unsecured claim receives or retains under the plan property of a value equal to the amount of its allowed unsecured claim or (ii) the holders of claims and interests that are junior to the claims of the dissenting class will not receive or retain any property under the plan of reorganization.

If holders of Claims in Class 3 or Class 4 vote to reject the Plan, (a) the Debtor may seek to satisfy the requirements for Confirmation of the Plan under the cramdown provisions of section 1129(b) of the Bankruptcy Code and, (b) if required, may amend the Plan to conform to the standards of such section.

# X. ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN

If the Plan is not confirmed and consummated, the alternatives to the Plan include (i) liquidation of the Debtor under chapter 7 of the Bankruptcy Code or (ii) an alternative chapter 11 plan.

## A. LIQUIDATION UNDER CHAPTER 7

If no plan can be confirmed, the Debtor's chapter 11 case may be converted to a case under chapter 7 of the Bankruptcy Code, pursuant to which a trustee would be appointed to liquidate the assets of the Debtor for distribution in accordance with the priorities established by the Bankruptcy Code. A discussion of the effects that a chapter 7 liquidation would have on the recovery of holders of claims and equity interests and the Debtor's liquidation analysis are set forth in Section IX.B.1.b. The Debtor believes that liquidation under chapter 7 would result in smaller distributions being made to creditors than those provided for in the Plan because of (i) the likelihood that the assets of the Debtor would have to be sold or otherwise disposed of in a less orderly fashion over a short period of time, (ii) additional administrative expenses involved in the appointment of a trustee and (iii) additional expenses and claims, some of which would be entitled to priority, which would be generated during the liquidation and from the rejection of leases and other executory contracts in connection with a cessation of the Debtor's operations.

## B. ALTERNATIVE PLAN

If the Plan is not confirmed, the Debtor (or, if the Debtor's exclusive period in which to file a chapter 11 plan has expired, any other party in interest) could attempt to formulate a different chapter 11 plan. Such a plan might involve either a reorganization and continuation of the Debtor's business or an orderly liquidation of its assets under chapter 11. With respect to an alternative plan, the Debtor has explored various alternatives in connection with the formulation and development of the Plan. The Debtor believes that the Plan, as described herein, enables creditors and equity holders to realize the most value under the circumstances. In a liquidation under chapter 11, the Debtor's assets would be sold in an orderly fashion over a more extended period of time than in a liquidation under chapter 7, possibly resulting in somewhat greater (but indeterminate) recoveries than would be obtained in chapter 7. Further, if a trustee were not appointed, because such appointment is not required in a chapter 11 case, the expenses for professional fees would most likely be lower than those incurred in a chapter 7 case. Although preferable to a chapter 7 liquidation, the Debtor believes that any alternative liquidation under

chapter 11 is a much less attractive alternative to creditors and equity holders than the Plan because of, among other things, the greater return provided by the Plan.

## XI. CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN

The following discussion summarizes certain U.S. federal income tax consequences of the implementation of the Plan to the Debtor and certain holders of Allowed General Unsecured Claims. The following summary does not address the U.S. federal income tax consequences to creditors whose Claims are unimpaired or otherwise entitled to payment in full in Cash under the Plan (*e.g.,* Secured Claims and Priority Non-Tax Claims). In addition, the following summary does not address the U.S. federal income tax consequences to the holder of Interests and the DIP Claims, as such holder is the Debtor's ultimate parent and is being advised by counsel.

The following summary is based on the Internal Revenue Code of 1986, as amended (the "Tax Code"), Treasury Regulations promulgated thereunder, judicial decisions, and published administrative rules and pronouncements of the Internal Revenue Service ("IRS"), all as in effect on the date hereof. Changes in such rules or new interpretations thereof may have retroactive effect and could significantly affect the U.S. federal income tax consequences described below.

The U.S. federal income tax consequences of the Plan are complex and are subject to significant uncertainties. The Debtor has not requested a ruling from the IRS or an opinion of counsel with respect to any of the tax aspects of the Plan, and no tax opinion is given by this Disclosure Statement. Thus, no assurance can be given as to the interpretation that the IRS will adopt. In addition, this summary addresses neither the foreign, state, or local income or other tax consequences of the Plan, nor the U.S. federal income tax consequences of the Plan to special classes of taxpayers (such as foreign taxpayers, broker dealers, banks, mutual funds, insurance companies, other financial institutions, small business investment companies, regulated investment companies, tax exempt organizations, persons holding Claims as part of a hedge, integrated constructive sale or straddle, persons whose functional currency is not the U.S. dollar, and investors in pass through entities).

This discussion assumes that the various debt and other arrangements to which the Debtor is a party will be respected for U.S. federal income tax purposes in accordance with their form.

**The following summary of certain U.S. federal income tax consequences is for informational purposes only and is not a substitute for careful tax planning and advice based upon the individual circumstances pertaining to a holder of a Claim. Holders of Claims are urged to consult with their own tax advisors regarding the federal, state, local and foreign tax consequences of the Plan.**

**IRS CIRCULAR 230 NOTICE: TO ENSURE COMPLIANCE WITH IRS CIRCULAR 230, HOLDERS OF CLAIMS AND INTERESTS ARE HEREBY NOTIFIED THAT: (A) ANY DISCUSSION OF FEDERAL TAX ISSUES CONTAINED OR REFERRED TO IN THIS DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY HOLDERS OF CLAIMS OR INTERESTS FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE**

**IMPOSED ON THEM UNDER THE TAX CODE; (B) SUCH DISCUSSION IS WRITTEN IN CONNECTION WITH THE PROMOTION OR MARKETING BY THE DEBTOR OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN; AND (C) HOLDERS OF CLAIMS AND INTERESTS SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.**

**The Reorganized Debtor – Corporate Entity**

The Debtor will continue its corporate existence as the Reorganized Debtor. Crabtree & Evelyn Holdings would continue to own all the issued and outstanding stock of the Debtor, as the Reorganized Debtor, and the Debtor and the Reorganized Debtor shall issue no additional stock in connection with the Plan.

**Parent Debt**

The Parent Debt shall remain in full force and effect, on the same terms and conditions as existed prior to the Petition Date, on the Effective Date and thereafter, and shall become debt of the Reorganized Debtor.

## A. CONSEQUENCES TO THE DEBTOR

The Debtor has reported net operating loss carryforwards ("NOLs") of approximately $26 million for U.S. federal income tax purposes as of the end of tax year ending September 30, 2008. The Debtor may incur further operating losses during its taxable year ending September 30, 2009. The amount of any such NOLs and other losses, and the extent to which any limitations might apply, remains subject to audit and adjustment by the IRS. As discussed below, in connection with the Plan, the amount of the Debtor's NOLs may be significantly reduced or eliminated, and other tax attributes of the Debtor (such as tax basis in assets) may be reduced.

### 1. Cancellation of Indebtedness Income

In general, the discharge of a debt obligation for cash and property having a value less than the amount owed gives rise to cancellation of debt ("COD") income which must be included in the debtor's taxable income unless one of various exceptions applies. One such exception is for COD income arising in a bankruptcy proceeding. Under this exception, the taxpayer does not include the COD income in its taxable income, but must instead reduce the following tax attributes, in the following order, by the amount of COD income: (i) NOLs (beginning with the oldest and then next-to-oldest NOLs, and so on), (ii) general business credits, (iii) alternative minimum tax credits, (iii) capital losses, (iv) tax basis of assets (but not below the liabilities remaining after debt cancellation), (v) passive activity losses, and (vi) foreign tax credits. Alternatively, a debtor may elect to reduce the basis of its depreciable and amortizable property prior to the reduction of other tax attributes, with any excess COD income applied next to reduce NOLs and other tax attributes in the order described above. A debtor's tax attributes are not reduced until after determination of the debtor's tax liability for the year of the COD income. The Debtor has not yet determined whether it would be beneficial to elect to reduce the basis of its depreciable property prior to any reduction of NOLs or other tax attributes. Any COD

income in excess of available tax attributes is forgiven. The extent to which NOLs and other tax attributes remain following tax attribute reduction will depend upon the amount of the COD income. Debtor intends to take the position that it has no COD income with respect to the Parent Debt to the extent of Crabtree & Evelyn Holdings' tax basis in the debt.

The Debtor expects to incur substantial COD as a result of the implementation of the Plan, with the result that there may be substantial reductions in the NOLs and/or other tax attributes of the Debtor. Alternatively, the American Recovery and Reinvestment Act of 2009 permits the Debtor to elect to defer the inclusion of COD resulting from the Plan, with the amount of COD becoming includible in its income ratably over a five-taxable year period beginning in the fourth or fifth taxable year after the COD arises (depending on whether the Plan is consummated in 2009 or 2010). The collateral tax consequences of making such election are complex. The Debtor is currently analyzing whether the deferral election would be advantageous.

### 2. Treatment of Parent Debt

The Debtor intends to take the position that the treatment of the Parent Debt results in no U.S. federal tax consequences to the Debtor.

### 3. Alternative Minimum Tax

In general, a U.S. federal alternative minimum tax ("AMT") is imposed on a corporation's alternative minimum taxable income ("AMTI") at a 20% rate to the extent that such tax exceeds the corporation's regular U.S. federal income tax. For purposes of computing AMTI, certain tax deductions and other beneficial allowances are modified or eliminated. In particular, even though a corporation otherwise might be able to offset all of its taxable income for regular tax purposes by available NOLs, only 90% of a corporation's taxable income for AMT purposes may be offset by available NOLs (as computed for AMT purposes). Any AMT that a corporation pays generally will be allowed as a nonrefundable credit against its regular U.S. federal income tax liability in future taxable years when the corporation is no longer subject to the AMT.

## B. CONSEQUENCES TO CERTAIN HOLDERS OF GENERAL UNSECURED CLAIMS

The U.S. federal income tax consequences to certain holders of Allowed General Unsecured Claims arising from the distributions to be made in satisfaction of their claims pursuant to a plan of reorganization may vary, depending upon, among other things: (a) the type of consideration received by the holder of a claim in exchange for the indebtedness it holds; (b) the nature of the indebtedness owed to it; (c) whether the holder has previously claimed a bad debt or worthless security deduction in respect of its claim against the corporation; (d) whether such claim constitutes a security; (e) whether the holder of a claim is a citizen or resident of the United States for tax purposes, or otherwise subject to U.S. federal income tax on a net income basis; (f) whether the holder of a claim reports income on the accrual or cash basis; and (g) whether the holder of a claim receives distributions under the bankruptcy plan in more than one taxable year. For U.S. federal income tax purposes, the modification of a claim may represent an

exchange of the claim for a new claim, even though no actual transfer takes place. In addition, where gain or loss is recognized by a holder, the character of such gain or loss as long-term or short-term capital gain or loss or as ordinary income or loss will be determined by a number of factors, including the tax status of the holder, whether the claim constitutes a capital asset in the hands of the holder and how long it has been held or is treated as having been held, whether the claim was acquired at a market discount, and whether and to what extent the holder previously claimed a bad debt deduction with respect to the underlying claim. A holder who purchased its claim from a prior holder at a market discount may be subject to the market discount rules of the Tax Code. Under those rules, assuming that the holder has made no election to amortize the market discount into income on a current basis with respect to any market discount instrument, any gain recognized on the exchange of its claim (subject to a de minimis rule) generally would be characterized as ordinary income to the extent of the accrued market discount on such claim as of the date of the exchange.

### 1. Accrued but Unpaid Interest

In general, to the extent that any consideration received pursuant to the Plan by a holder of an Allowed General Unsecured Claim is received in satisfaction of accrued interest during its holding period, such amount will be taxable to such holder as interest income (if not previously included in such holder's gross income). Conversely, a holder of an Allowed General Unsecured Claim generally recognizes a deductible loss to the extent any accrued interest or amortized original issue discount ("OID") was previously included in its gross income and is not paid in full.

The Plan provides that consideration received in respect of an Allowed General Unsecured Claim is allocable first to the principal amount of such Allowed General Unsecured Claim and thereafter to accrued but unpaid interest, if any (in contrast, for example, to a pro rata allocation of a portion of the consideration received between principal and interest, or an allocation first to accrued but unpaid interest). There is no assurance that the IRS will respect such allocation for U.S. federal income tax purposes.

Each holder of an Allowed General Unsecured Claim is urged to consult its tax advisor regarding the allocation of consideration and the deductibility of accrued but unpaid interest and accrued OID for U.S. federal income tax purposes.

### 2. Certain Holders of Allowed General Unsecured Claims

A holder of an Allowed General Unsecured Claim who receives deferred Cash payments and realizes gain thereon may be eligible to report gain from such Cash payments under the installment method, which generally will result in the recognition of gain as deferred Cash payments are received, unless such holder affirmatively elects out of the installment method. Additionally, holders reporting under the installment method may be subject to an interest charge with respect to their deferred tax liability. A holder of an Allowed General Unsecured Claim who receives deferred Cash payments and recognizes loss thereon likely would recognize loss equal to the difference between such holder's adjusted tax basis in such Claim and the issue price (in the case of a cash basis taxpayer) or the principal amount (in the case of an accrual basis taxpayer) of the deferred Cash payments.

A portion of any deferred Cash payments received probably should be characterized as interest income. Holders of Allowed General Unsecured Claims who receive deferred Cash payments should consult their tax advisors regarding the application of the installment method, the determination of the amount of gain or loss to be recognized, and the imputed interest rules.

### C. INFORMATION REPORTING AND BACKUP WITHHOLDING

Payments of interest (including accruals of OID) or dividends and any other reportable payments, possibly including amounts received pursuant to the Plan and payments of proceeds from the sale, retirement or other disposition of the exchange consideration, may be subject to "backup withholding" if a recipient of those payments fails to furnish to the payor certain identifying information, and, in some cases, a certification that the recipient is not subject to backup withholding. Backup withholding is not an additional tax. Any amounts deducted and withheld should generally be allowed as a credit against that recipient's U.S. federal income tax, provided that appropriate proof is timely provided under rules established by the IRS. Furthermore, certain penalties may be imposed by the IRS on a recipient of payments who is required to supply information but who does not do so in the proper manner. Backup withholding generally should not apply with respect to payments made to certain exempt recipients, such as corporations and financial institutions. Information may also be required to be provided to the IRS concerning payments, unless an exemption applies. You should consult your own tax advisor regarding your qualification for exemption from backup withholding and information reporting and the procedures for obtaining such an exemption.

Treasury regulations generally require disclosure by a taxpayer on its U.S. federal income tax return of certain types of transactions in which the taxpayer participated, including, among other types of transactions, certain transactions that result in the taxpayer's claiming a loss in excess of certain thresholds. You are urged to consult your own tax advisor regarding these regulations and whether the contemplated transactions under the Plan would be subject to these regulations and require disclosure on your tax return.

***The foregoing summary has been provided for informational purposes only. All holders of Claims receiving a distribution under the Plan are urged to consult their tax advisors concerning the federal, state, local, and foreign tax consequences applicable under the Plan.***

## XII. CONCLUSION

The Debtor believes that confirmation and implementation of the Plan is in the best interests of all creditors, and urges holders of impaired Claims in Class 3 and Class 4 to vote to accept the Plan and to evidence such acceptance by returning their ballots so that they will be received no later than **4:00 p.m. (prevailing Eastern Time) on January 5, 2010**.

Dated: October 23, 2009
New York, New York

Respectfully submitted,

By: /s/ Lawrence C. Gottlieb
Lawrence C. Gottlieb

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Attorneys for Debtor and
Debtor in Possession

# EXHIBIT A TO THE DISCLOSURE STATEMENT

# PLAN OF REORGANIZATION
# UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

**UNITED STATES BANKRUPTCY COURT**
**SOUTHERN DISTRICT OF NEW YORK**

| | | |
|---|---|---|
| **In re** | : | **Chapter 11** |
| **CRABTREE & EVELYN, LTD.,** | : | **Case No. 09-14267 (BRL)** |
| **Debtor.** | : | |

# PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE


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Attorneys for Debtor and
Debtor in Possession


Dated: October 23, 2009
New York, New York

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# INTRODUCTION

Crabtree & Evelyn, Ltd. (the "Debtor") proposes the following Plan for the resolution of the outstanding Claims against and Interests in the Debtor. The Debtor is the proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code. The Plan provides for the reorganization of the Debtor and satisfaction of all outstanding Claims through the Distributions described herein and treatment of Interests in the Debtor. Other agreements and documents that supplement the Plan have been (or will be) filed with the Bankruptcy Court. These supplemental agreements and documents will be available for review.

Reference is made to the Disclosure Statement accompanying the Plan, including the exhibits thereto, for a discussion of the Debtor's history, business, properties, results of operations, and projections for future operations and risk factors, together with a summary and analysis of the Plan. All Claim holders entitled to vote on the Plan are encouraged to consult the Disclosure Statement and to read the Plan carefully before voting to accept or reject the Plan.

The Plan has the support of the Debtor's ultimate parent company, ultimate sole equity holder and largest unsecured creditor, KLK.

NO SOLICITATION MATERIALS, OTHER THAN THE DISCLOSURE STATEMENT AND RELATED MATERIALS TRANSMITTED THEREWITH AND APPROVED BY THE BANKRUPTCY COURT, HAVE BEEN AUTHORIZED BY THE COURT FOR USE IN SOLICITING ACCEPTANCES OR REJECTIONS OF THE PLAN.

# ARTICLE I

## DEFINED TERMS, RULES OF INTERPRETATION AND COMPUTATION OF TIME

**1.1. Defined Terms.** As used in the Plan, capitalized terms have the meanings set forth below. Any term that is not otherwise defined herein, but that is used in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning given to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable.

**1.1.1. "$13 Million Obligation"** means the amount of $13,731,528 owed by the Debtor to KLKOI.

**1.1.2. "$18 Million Obligation"** means the amount of approximately $18 million assumed by KLK under that certain Revolving Demand Note (Grid) dated July 3, 2008 in consideration of payment by KLK to HSBC Bank USA, National Association.

**1.1.3. "503(b)(9) Claim"** means a Claim asserted against the Debtor pursuant to section 503(b)(9) of the Bankruptcy Code.

**1.1.4. "Administrative Claim"** means a Claim for costs and expenses of administration allowed under sections 503(b) or 507(a)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred after the Petition Date of preserving the

Estate and operating the businesses of the Debtor (such as wages, salaries, commissions for services and payments for inventories, leased equipment and premises); (b) compensation for legal, financial advisory, accounting and other services and reimbursement of expenses awarded or allowed under sections 330(a), 331 or 503 of the Bankruptcy Code, including a Professional Fee Claim and any Claim based upon a substantial contribution in the Debtor's Chapter 11 Case; (c) a Cure Amount Claim; and (d) a 503(b)(9) Claim.

**1.1.5. "Allowed"** or **"Allowed Claim"** means or refers to, as dictated by the context in which the definition is used, a Claim (or a portion thereof) to the extent:

(a) such Claim is listed by the Debtor on its Schedules in a liquidated amount and not listed as contingent, unliquidated, zero, undetermined or disputed that:

(i) is not subject to an objection or to an amendment to the Schedules prior to the Claims Objection Deadline,

(ii) has been allowed in a Stipulation of Amount and Nature of Claim executed by the Debtor or Reorganized Debtor and the holder of the Claim, or

(iii) has otherwise been allowed by a Final Order or the terms of the Plan; or

(b) such Claim is a Timely Claim that:

(i) is not subject to an objection prior to the Claims Objection Deadline, in the Debtor's or Reorganized Debtor's sole discretion,

(ii) has been allowed in a Stipulation of Amount and Nature of Claim executed by the Debtor or Reorganized Debtor and the holder of the Claim, or

(iii) has otherwise been allowed by a Final Order or the terms of the Plan.

An Allowed Claim includes a previously Disputed Claim, or a portion thereof, to the extent such Disputed Claim becomes Allowed and shall be net of any valid setoff amount based on a valid offset right. Unless otherwise expressly provided herein, in the Confirmation Order or in another Final Order of the Bankruptcy Court, the term "Allowed or Allowed Claim" shall not, for the purposes of computation of Distributions under the Plan, include: (a) interest on any Claim, (b) any non-compensatory penalties, fines, punitive damages, exemplary damages, multiple damages, treble damages or any other claims or obligations that do not compensate for actual losses incurred, (c) any damages or amounts that arose or resulted from the Claim holder's failure to mitigate as required or obligated under applicable law or (d) any other amounts not allowable under the Bankruptcy Code or applicable law, including, without limitation, any Claim subject to disallowance, in whole or part, in accordance with Section 502(d) of the Code.

**1.1.6. "Allowed . . . Claim"** means an Allowed Claim in the particular Class or category specified.

**1.1.7. "Ballot"** means the form distributed to each holder of an impaired Claim that is entitled to vote to accept or reject the Plan on which is to be indicated, among other things, acceptance or rejection of the Plan.

**1.1.8. "Bankruptcy Code"** means title 11 of the United States Code, as in effect on the Petition Date or thereafter amended with retroactive applicability to the Chapter 11 Case.

**1.1.9. "Bankruptcy Court"** means the United States Bankruptcy Court for the Southern District of New York having jurisdiction over the Chapter 11 Case.

**1.1.10. "Bankruptcy Rules"** means, collectively, the Federal Rules of Bankruptcy Procedure and the local rules of the Bankruptcy Court, as now in effect or hereafter amended with retroactive applicability to the Chapter 11 Case.

**1.1.11. "Bar Date"** means the applicable bar date by which a proof of Claim or a request for payment of Administrative Claim must be or must have been filed, in accordance with the procedures established by an order of the Bankruptcy Court, including the Bar Date Order and the Confirmation Order.

**1.1.12. "Bar Date Order"** means the order of the Bankruptcy Court entered on August 20, 2009, establishing certain Bar Dates for filing proofs of Claim in the Chapter 11 Case, as the same may be amended, modified or supplemented.

**1.1.13. "Business Day"** means any day, other than a Saturday, Sunday or "legal holiday" (as defined in Bankruptcy Rule 9006(a)).

**1.1.14. "By-Laws"** means the by-laws of the Debtor or Reorganized Debtor as amended and restated, if necessary.

**1.1.15. "Cash"** means the legal tender of the United States of America or the equivalent thereof, including without limitation, bank deposits and checks.

**1.1.16. "Certificate of Incorporation"** means the incorporation or formation documents of the Debtor or Reorganized Debtor as amended and restated, if necessary.

**1.1.17. "Chapter 11 Case"** means the chapter 11 case pending for the Debtor in the Bankruptcy Court, administered under Case No. 09-14267 (BRL).

**1.1.18. "Claim"** means a "claim," as that term is defined in section 101(5) of the Bankruptcy Code, against the Debtor.

**1.1.19. "Claims Agent"** means Epiq Bankruptcy Solutions, LLC, the Debtor's claims and noticing agent appointed by the Bankruptcy Court by Final Order dated July 2, 2009.

**1.1.20. "Claims Objection Deadline"** means, for all Claims and Interests, the later of (a) one hundred and eighty (180) days after the Effective Date, (b) such other period as set forth in a Final Order by the Bankruptcy Court for objecting to such Claim or Interest, (c) sixty (60) days after a proof of Claim or request for payment of a Claim is filed with the

Bankruptcy Court and served in accordance with the Bankruptcy Rules, or (d) such other later date the Bankruptcy Court may establish upon a motion by the Reorganized Debtor, which motion may be approved without a hearing and without notice to any party.

**1.1.21. "Class"** means a class of Claims or Interests.

**1.1.22. "Class Action Settlement Amount"** means two hundred and seventy thousand dollars ($270,000.00).

**1.1.23. "Class Action Settlement Claims"** means the Claims covered by proof of claim number 370 filed on behalf of a purported class of current and former employees of the Debtor.

**1.1.24. "Confirmation Date"** means the first date as of which the Confirmation Order is signed by the Bankruptcy Court and entered on its docket.

**1.1.25. "Confirmation Hearing"** means, collectively, the hearing or hearings held by the Bankruptcy Court on confirmation of the Plan, as such hearing or hearings may be continued from time to time.

**1.1.26. "Confirmation Order"** means the order of the Bankruptcy Court that confirms the Plan pursuant to section 1129 of the Bankruptcy Code.

**1.1.27. "Creditors' Committee"** means the Official Committee of Unsecured Creditors of the Debtor appointed by the U.S. Trustee in the Chapter 11 Case pursuant to section 1102 of the Bankruptcy Code and any duly appointed successors, as the same may be amended or reconstituted from time to time.

**1.1.28. "Cure Amount Claim"** means a Claim based upon the Debtor's defaults pursuant to an Executory Contract or Unexpired Lease at the time such Executory Contract or Unexpired Lease is assumed, or assumed and assigned, by the Debtor under section 365 of the Bankruptcy Code. For the avoidance of doubt, the Cure Amount Claim set forth in a previous Final Order of the Bankruptcy Court for any Executory Contract or Unexpired Lease that was assumed, or assumed and assigned is and shall be the sole and single satisfaction for any and all Claims arising under such Executory Contract or Unexpired Lease through the date that the Executory Contract or Unexpired Lease was assumed.

**1.1.29. "Debtor"** has the meaning ascribed to it on the first page of the Plan.

**1.1.30. "Deficiency Claim"** means a General Unsecured Claim for the difference between (a) the aggregate amount of an Allowed Claim and (b) the value received on account of the portion of such Allowed Claim that is a Secured Claim.

**1.1.31. "DIP Agreement"** that certain Amended DIP Grid Note dated as of June 30, 2009, in the amount of $26,300,000, made by KLK in favor of the Debtor.

**1.1.32. "DIP Claim"** means the Claim of the DIP Lender arising under the DIP Agreement.

**1.1.33. "DIP Lender"** means KLK, in its capacity as lender under the DIP Agreement.

**1.1.34. "Disallowed"** or **"Disallowed Claim"** means or refers to, as dictated by the context in which the definition is used, a Claim or any portion thereof that (a) has been disallowed, expunged, barred, estopped or otherwise determined not to be a liability of the Debtor by any order of the Bankruptcy Court, including, for the avoidance of doubt, that portion of a Disputed Claim that was not determined to be an Allowed Claim in any such order; (b) is listed by a Debtor in its Schedules at zero or as contingent, unliquidated, undetermined or disputed and as to which no Timely Claim has been filed; or (c) is not listed by a Debtor in the Schedules and as to which no Timely Claim has been filed.

**1.1.35. "Disclosure Statement"** means that certain disclosure statement dated as of October 23, 2009, relating to the Plan, including, without limitation, all exhibits and schedules thereto, as the same may be amended, supplemented or otherwise modified from time to time, as approved by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code.

**1.1.36. "Disputed"** or **"Disputed Claim"** means or refers to, as dictated by the context in which the definition is used, a Claim that is neither an Allowed Claim, as set forth in Section 1.1.6, nor a Disallowed Claim, as set forth in Section 1.1.34.

**1.1.37. "Distribution"** means the payment or distribution under the Plan of Cash, interests or other property, as applicable, to the holders of Allowed Claims.

**1.1.38. "Distribution Percentage"** means, with respect to any Allowed Claim in Class 3, at any time, a total of forty-five percent (45%) of each Allowed General Unsecured Claim, subject to pro rata reduction based upon allowance of any Class 4 Claims in accordance with Section 3.4.2.

**1.1.39. "Distribution Record Date"** means the Confirmation Date.

**1.1.40. "Effective Date"** means a day, as determined by the Debtor, that is a Business Day on which all conditions to the Effective Date in Section 8.1 have been met or waived pursuant to Section 8.2, which date shall be no later than thirty (30) days after the Confirmation Order becomes a Final Order.

**1.1.41. "Encumbrance"** means, with respect to any asset, any mortgage, lien, pledge, charge, security interest, assignment or encumbrance of any kind or nature with respect to such asset (including any conditional sale or other title retention agreement, any security agreement, and the filing of, or agreement to give, any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction).

**1.1.42. "Entity"** means an individual, corporation, partnership, limited liability company, association, joint stock company, joint venture, estate, trust, unincorporated organization or government or any political subdivision thereof, or other Person or entity.

**1.1.43. "Estate"** means the estate created for the Debtor in its Chapter 11 Case pursuant to section 541 of the Bankruptcy Code.

**1.1.44. "Executory Contract"** means a contract to which the Debtor is a party that is or was subject to assumption or rejection under section 365 of the Bankruptcy Code during the Chapter 11 Case.

**1.1.45. "Exhibit"** means an exhibit to the Plan.

**1.1.46. "Exit Facility"** means the exit loan facility, on substantially the terms set forth on Exhibit E.

**1.1.47. "Exit Financing"** means the Exit Facility sufficient to fund, among other things, the transactions contemplated by the Plan and the working capital requirements of the Reorganized Debtor subsequent to the Effective Date.

**1.1.48. "Fee Order"** means the Order Pursuant to Sections 105(a) and 331 of the Bankruptcy Code and Bankruptcy Rule 2016(a) Establishing Procedures for Interim Monthly Compensation and Reimbursement of Expenses of Professionals entered by the Bankruptcy Court on July 29, 2009.

**1.1.49. "Final Fee Application"** means an application for final allowance of the Professional's aggregate Professional Fee Claim as described in Section 2.2.2(a).

**1.1.50. "Final Order"** means: (a) an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction, as entered on the docket in the Chapter 11 Case, the docket of an adversary proceeding related to the Chapter 11 Case or the docket of any other court of competent jurisdiction, (b) that has not been reversed, stayed, modified or amended, (c) as to which the time to appeal or seek certiorari or move for a new trial, reargument or rehearing has expired, and (d) for which no appeal or petition for certiorari or other proceedings for a new trial, reargument or rehearing has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been timely filed has been withdrawn with prejudice or resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought or the new trial, reargument or rehearing shall have been denied or resulted in no modification of such order.

**1.1.51. "General Unsecured Claim"** means a Claim, including any Deficiency Claim, Insured Claim, Reclamation Claim or Rejection Claim, that is not entitled to priority or administrative status under the Bankruptcy Code and is not a Secured Claim. For the avoidance of doubt, any Administrative Claim, Cure Amount Claim, Priority Tax Claim, Priority Non-Tax Claim or Secured Claim is not a General Unsecured Claim.

**1.1.52. "Initial Distribution Date"** means no later than ninety (90) days after Effective Date.

**1.1.53. "Insured Claim"** means any Claim (other than a Workers' Compensation Claim) arising from an incident or occurrence alleged to have occurred prior to the Effective Date that is covered under an insurance policy applicable to the Debtor or its business that is subject to the provisions of Section 4.12.1.

**1.1.54. "Interest"** means an equity security, within the meaning of section 101(16) of the Bankruptcy Code, in the Debtor, including, but not limited to, the shares of stock of the Debtor.

**1.1.55. "Interim Distribution Date"** means one or more dates designated by the Reorganized Debtor in its sole and reasonable discretion.

**1.1.56. "Internal Revenue Code"** means the Internal Revenue Code of 1986, as amended.

**1.1.57. "IRS"** means the Internal Revenue Service of the United States of America.

**1.1.58. "KLK"** means Kuala Lumpur Kepong Berhad.

**1.1.59. "KLKOI"** means KLK Overseas Investments Ltd.

**1.1.60. "Liability" or "Liabilities"** means any and all claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action and liabilities, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, arising in law, equity or otherwise, that are based in whole or in part on any act, event, injury, omission, transaction, agreement, employment, exposure or other occurrence taking place on or prior to the Effective Date.

**1.1.61. "Ordinary Course Professionals Order"** means the Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Employ Professionals Utilized in the Ordinary Course of Business entered by the Bankruptcy Court on July 29, 2009.

**1.1.62. "Parent Debt"** means (i) the $13 Million Obligation, and (ii) the $18 Million Obligation.

**1.1.63. "Person"** means a "person" within the meaning of Bankruptcy Code section 101(41), as well as any governmental or political entity, subdivision or agency.

**1.1.64. "Petition Date"** means July 1, 2009.

**1.1.65. "Plan"** means this plan of reorganization for the Debtor, and all Exhibits attached hereto or referenced herein, as the same may be amended, modified or supplemented.

**1.1.66. "Plan Supplement"** means the supplement to the Plan containing the Exhibits, which supplement will be filed with the Bankruptcy Court on the Plan Supplement Date. Notwithstanding anything herein to the contrary, the Debtor reserves the right to amend the documents contained in the Plan Supplement at any time prior to the Confirmation Hearing.

**1.1.67. "Plan Supplement Date"** means a date that is at least ten (10) days prior to the Confirmation Hearing or such later date as may be established by order of the Bankruptcy Court.

**1.1.68. "Potential Class Action Settlement Approval Order"** means an order of the Bankruptcy Court granting a motion of the Debtor to take all actions necessary or appropriate to implement the settlement agreement attached as exhibit A to the Motion of the Debtor Pursuant to Sections 105(a), 362, 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002 and 6004 for an Order (I) Granting Assumption of Settlement Agreement, or, Alternatively, Granting Approval to Enter Into Settlement Agreement, (II) Modifying the Automatic Stay for the Limited Purpose of Permitting Actions Contemplated by Settlement Agreement to Proceed, and (III) Upon State Court Approval of Settlement Agreement, Allowing Claim of Potential Class and Permitting Payment Thereof (Docket No. 70).

**1.1.69. "Prepetition Note"** means that certain Grid Note dated April 6, 2009, in favor of KLKOI and other agreements, documents and instruments referred to therein or at any time executed and/or delivered in connection therewith or related thereto.

**1.1.70. "Priority Non-Tax Claim"** means a Claim that is entitled to priority in payment pursuant to section 507(a) of the Bankruptcy Code that is not an Administrative Claim or a Priority Tax Claim.

**1.1.71. "Priority Tax Claim"** means a Claim for Taxes that is entitled to priority in payment pursuant to section 507(a)(8) of the Bankruptcy Code.

**1.1.72. "Professional"** means any professional employed in the Chapter 11 Case pursuant to sections 327, 328, or 363 of the Bankruptcy Code or any professional or other Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to section 503(b)(4) of the Bankruptcy Code.

**1.1.73. "Professional Fee Claim"** means an Administrative Claim under sections 330(a), 331, or 503 of the Bankruptcy Code for compensation of a Professional or other Entity for services rendered or expenses incurred in the Chapter 11 Case.

**1.1.74. "Reclamation Claim"** means a Claim for reclamation in accordance with section 546(c) of the Bankruptcy Code and/or section 2-702 of the Uniform Commercial Code or other applicable state law. Reclamation Claims shall be treated under the Plan as General Unsecured Claims.

**1.1.75. "Recovery Actions"** means, collectively and individually, any and all actions, proceedings, accounts, controversies, agreements, promises, claims, and rights of the Debtor and its Estate to avoid or recover a transfer of property of any of the Estate or an interest of any of the Debtor in property, including, without limitation, actions arising under sections 506, 510, 541, 542, 544, 545, 547, 548, 549, 550 and 553 of the Bankruptcy Code and any other applicable federal or common law, including fraudulent transfers, whether or not litigation has been commenced with respect to such Recovery Action as of the Effective Date.

**1.1.76. "Reinstated"** or **"Reinstatement"** means rendering an Allowed Claim or Interest unimpaired within the meaning of section 1124 of the Bankruptcy Code. Unless the Plan specifies a particular method of Reinstatement, when the Plan provides that an Allowed Claim or Interest will be Reinstated, such Allowed Claim or Interest will be Reinstated, at the Reorganized Debtor's sole discretion, in accordance with one of the following:

(a) The legal, equitable and contractual rights to which such Allowed Claim or Interest entitles the holder will be unaltered; or

(b) Notwithstanding any contractual provision or applicable law that entitles the holder of such Allowed Claim or Interest to demand or receive accelerated payment of such Allowed Claim or Interest after the occurrence of a default:

(i) any such default that occurred before or after the commencement of the Chapter 11 Case, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code, will be cured;

(ii) the maturity of such Allowed Claim or Interest as such maturity existed before such default will be reinstated;

(iii) the holder of such Allowed Claim or Interest will be compensated for any damages incurred as a result of any reasonable reliance by such holder on such contractual provision or such applicable law; and

(iv) the legal, equitable or contractual rights to which such Allowed Claim or Interest entitles the holder of such Allowed Claim or Interest will not otherwise be altered.

**1.1.77.** "**Rejection Claim"** means a Claim arising from the rejection of an Executory Contract or Unexpired Lease pursuant to section 365 of the Bankruptcy Code. All such Claims shall be subject to the limitations set forth in sections 502(b)(6) and 502(b)(7) of the Bankruptcy Code and state law mitigation requirements, if any.

**1.1.78. "Released Parties"** has the meaning assigned to such term in Section 9.3 of the Plan.

**1.1.79. "Reorganized Debtor"** means the Debtor on and after the Effective Date.

**1.1.80. "Restructuring Transactions"** means, collectively, those mergers, consolidations, restructurings, dispositions, liquidations or dissolutions that the Debtor or Reorganized Debtor determines to be necessary or appropriate to effect a corporate restructuring of its business or otherwise to simplify the overall corporate structure of the Reorganized Debtor as contemplated by and consistent with the Plan.

**1.1.81. "Schedules"** means the schedules of assets and liabilities and the statements of financial affairs filed by the Debtor on or about August 14, 2009 with the Bankruptcy Court, as required by section 521 of the Bankruptcy Code, as the same may have been or may be amended, restated, modified or supplemented.

**1.1.82. "Secured Claim"** means a Claim, other than a DIP Claim, that is secured by a lien on property in which the Estate has an interest or that is subject to setoff under section 553 of the Bankruptcy Code, to the extent of the value of the Claim holder's interest in the Estate'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.

**1.1.83. "Stipulation of Amount and Nature of Claim"** means a stipulation or other agreement between the Debtor or Reorganized Debtor and a holder of a Claim or Interest establishing the Allowed amount or nature of such Claim or Interest that is (a) entered into in accordance with any Claim settlement procedures established in this Chapter 11 Case, (b) permitted or contemplated by the Plan, or (c) approved by order of the Bankruptcy Court.

**1.1.84. "Tax"** means (a) any net income, alternative or add-on minimum, gross income, gross receipts, sales, use, ad valorem, value added, transfer, franchise, profits, license, property, environmental or other tax, assessment or charge of any kind whatsoever (together in each instance with any interest, penalty, addition to tax or additional amount) imposed by any federal, state, local or foreign taxing authority; or (b) any liability for payment of any amounts of the foregoing types as a result of being a member of an affiliated, consolidated, combined or unitary group, or being a party to any agreement or arrangement whereby liability for payment of any such amounts is determined by reference to the liability of any other Entity.

**1.1.85. "Timely Claim"** means a Claim for which a proof of Claim or request for payment of Administrative Claim was filed by the applicable Bar Date or is otherwise determined to be timely filed by a Final Order of the Bankruptcy Court.

**1.1.86. "Unexpired Lease"** means a lease to which the Debtor is a party that is or was subject to assumption or rejection under section 365 of the Bankruptcy Code during the Chapter 11 Case.

**1.1.87. "U.S. Trustee"** means the United States Trustee for the Southern District of New York.

**1.1.88. "Workers' Compensation Claim"** means a Claim held by a current or former employee of the Debtor for workers' compensation insurance coverage under the workers' compensation laws applicable in the particular state in which the employee is or was employed by the Debtor.

### 1.2. Rules of Interpretation and Computation of Time

**1.2.1. Rules of Interpretation**. For purposes of the Plan, unless otherwise provided herein: (a) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, shall include both the singular and the plural; (b) unless otherwise provided in the Plan, any reference in the 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; (c) any reference in the 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 the Plan or Confirmation Order; (d) any reference to an Entity as a holder of a Claim or Interest includes that Entity's predecessors, successors, assigns and affiliates; (e) all references in the Plan to Sections, Articles and Exhibits are references to Sections, Articles and Exhibits of or to the Plan; (f) the words "herein," "hereunder" and "hereto" refer to the Plan in its entirety rather than to a particular portion of the Plan; (g) the words "includes" or "including" are not limiting; (h) 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 the Plan; (i) subject to the provisions of any contract, incorporation documents, operating agreements, by-laws, similar constituent documents, instrument, release or other agreement or document entered into or delivered in connection with the Plan, the rights and obligations arising under the Plan will be governed by, and construed and enforced in accordance with, federal law, including the Bankruptcy Code and the Bankruptcy Rules; (j) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; and (k) to the extent not inconsistent with the Plan, terms used in the Plan that are not otherwise defined herein shall be interpreted as such terms are interpreted under the Bankruptcy Code and the Bankruptcy Rules.

**1.2.2. Computation of Time.** In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

## ARTICLE II

## PROVISIONS FOR TREATMENT OF ADMINISTRATIVE CLAIMS

### 2.1. Payment of Administrative Claims.

**2.1.1. Administrative Claims in General.** Except as specified in Sections 2.1.2 through 2.1.4 of the Plan and subject to the bar date provisions contained in Section 2.2, unless otherwise agreed to by the holder of an Administrative Claim and the Debtor or Reorganized Debtor, each holder of an Allowed Administrative Claim shall receive Cash in an amount equal to the Allowed Administrative Claim, in full satisfaction of its Allowed Administrative Claim, on account of such Allowed Claim from the Reorganized Debtor either (i) if the Administrative Claim is Allowed as of the Effective Date, on the Initial Distribution Date or (ii) if the Administrative Claim is not Allowed as of the Effective Date, on the next Interim Distribution Date as set forth in Sections 6.8.2 and 7.3 after an order allowing such Administrative Claim becomes a Final Order or a Stipulation of Amount and Nature of Claim is executed by the Reorganized Debtor and the holder of the Administrative Claim.

**2.1.2. Statutory Fees.** On or before the Effective Date, Allowed Administrative Claims for fees payable pursuant to 28 U.S.C. § 1930 plus accrued interest under 31 U.S.C. § 3717, as determined at the Confirmation Hearing by the Bankruptcy Court, shall be paid in Cash equal to the amount of such Allowed Administrative Claims by the Debtor or Reorganized Debtor. All fees arising after the Effective Date and payable pursuant to 28 U.S.C. § 1930 plus accrued interest under 31 U.S.C. § 3717 shall be paid by the Reorganized Debtor in accordance therewith until the closing of the Chapter 11 Case pursuant to section 350(a) of the Bankruptcy Code.

**2.1.3. Ordinary Course Liabilities**. Allowed Administrative Claims based on liabilities incurred by the Debtor in the ordinary course of its business shall be satisfied by the Reorganized Debtor pursuant to the terms and conditions of the particular transaction giving rise to such Administrative Claims, without any further action by the holders of such Administrative Claims or further approval of the Bankruptcy Court.

**2.1.4. DIP Claims.** On the Effective Date, any Allowed Administrative Claim that is a DIP Claim shall receive Cash in an amount equal to the Allowed DIP Claim in full satisfaction of its Allowed Claim.

**2.2. Bar Dates for Administrative Claims**

**2.2.1. General Bar Date Provisions**. Except as otherwise provided in Section 2.2.2, unless previously filed, requests for payment of Administrative Claims (except for Professional Fee Claims) for the period of **July 1, 2009 through the Effective Date**, must be filed and served on the Reorganized Debtor and, prior to the Effective Date, the Creditors' Committee, pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order, no later than thirty (30) days after the Effective Date. Holders of Administrative Claims that are required to file and serve a request for payment of such Administrative Claims and that do not file and serve such a request by the applicable Bar Date shall be forever barred from asserting such Administrative Claims against the Debtor, the Reorganized Debtor or their respective property and such Administrative Claims shall be deemed discharged as of the Effective Date. Objections to such requests must be filed and served on the requesting party, the Reorganized Debtor and, prior to the Effective Date, the Creditors' Committee, by the Claims Objection Deadline.

**2.2.2. Bar Dates for Certain Administrative Claims.**

(a) **Professional Compensation.** Professionals or other Entities asserting a Professional Fee Claim for services rendered from the Petition Date to the Effective Date must file with the Bankruptcy Court and serve on the Reorganized Debtor and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order, the Fee Order or other order of the Bankruptcy Court a Final Fee Application no later than forty-five (45) days after the Effective Date; provided, however, that any professional who may receive compensation or reimbursement of expenses pursuant to the Ordinary Course Professionals Order may continue to receive such compensation and reimbursement of expenses for services rendered from the Petition Date to the Effective Date, without further Bankruptcy Court review or approval, pursuant to the Ordinary Course Professionals Order. A Professional may include any outstanding, non-filed monthly or interim request for payment of a Professional Fee Claim pursuant to the Fee Order in its Final Fee Application. Objections to any Final Fee Application must be filed with the Bankruptcy Court and served on the requesting party, the Reorganized Debtor, counsel for the Reorganized Debtor, and, prior to the Effective Date, the Creditors' Committee within thirty (30) days after the filing of the applicable Final Fee Application. To the extent necessary, the Confirmation Order or any other order with respect to a Final Fee Application shall amend and supersede any previously entered order of the Bankruptcy Court, including the Fee Order, regarding the payment of Professional Fee Claims. Any pending, filed interim requests for a Professional Fee Claim pursuant to the Fee Order shall be resolved in the ordinary course in accordance with the Fee Order or, if sooner, in connection with the particular Professional's Final Fee Application.

(b) **Ordinary Course Liabilities.** Holders of Administrative Claims based on liabilities incurred by the Debtor in the ordinary course of its business shall not be required to

file or serve any request for payment of such Administrative Claims. Such Administrative Claims shall be satisfied pursuant to Section 2.1.3.

(c) **DIP Claims.** Holders of Administrative Claims that are DIP Claims shall not be required to file or serve any request for payment of such Claims. Such Administrative Claims shall be satisfied pursuant to Section 2.1.4.

### 2.3. Payment of Priority Tax Claims

**2.3.1. Priority Tax Claims.** Pursuant to section 1129(a)(9)(C) of the Bankruptcy Code, unless otherwise agreed by the holder of a Priority Tax Claim and the Debtor or Reorganized Debtor, each holder of an Allowed Priority Tax Claim shall receive (i) Cash in an amount equal to the Allowed Priority Tax Claim, in full satisfaction of its Allowed Priority Tax Claim either (A) if the Priority Tax Claim is Allowed as of the Effective Date, on the Initial Distribution Date or (B) if the Priority Tax Claim is not Allowed as of the Effective Date, on the next Interim Distribution Date as set forth in Sections 6.8.2 and 7.3 after an order allowing such Priority Tax Claim becomes a Final Order or a Stipulation of Amount and Nature of Claim is executed by the Reorganized Debtor and the holder of the Priority Tax Claim; or (ii) if agreed by the Debtor or Reorganized Debtor and the holder of the Priority Tax Claim, payment over a period ending not later than five (5) years after the Petition Date with a total Cash value equal to the Allowed amount of the Priority Tax Claim.

**2.3.2. Other Provisions Concerning Priority Tax Claims.** Notwithstanding the provisions of Section 2.3.1, any Claim on account of any penalty arising with respect to or in connection with an Allowed Priority Tax Claim that does not compensate the holder for actual pecuniary loss shall be treated as a General Unsecured Claim, and the holder (other than as the holder of a General Unsecured Claim) may not assess or attempt to collect such penalty from the Reorganized Debtor or its property.

## ARTICLE III

## CLASSIFICATION OF CLAIMS AND INTERESTS, IMPAIRMENT AND VOTING

The following table designates the classes of Claims against and Interests in the Debtor and specifies which of those classes are impaired or unimpaired by the Plan and entitled to vote to accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code or deemed to reject the Plan.

| Class | Designation | Impairment | Entitled to Vote |
|---|---|---|---|
| Class 1 | Secured Claims | Unimpaired | No (deemed to accept) |
| Class 2 | Priority Non-Tax Claims | Unimpaired | No (deemed to accept) |
| Class 3 | General Unsecured Claims | Impaired | Yes |
| Class 4 | Class Action Settlement Claims | Impaired | Yes |
| Class 5 | Interests | Unimpaired | No (deemed to accept) |

**3.1. Class 1 Claims (Secured Claims).**

**3.1.1. Impairment and Voting.** Class 1 is unimpaired by the Plan. Each holder of a Secured Claim is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

**3.1.2. Distributions.** Each holder of an Allowed Secured Claim in Class 1 shall receive (i) Cash in an amount equal to the Allowed Secured Claim, or (ii) the return of the holder's collateral securing the Allowed Secured Claim, in full satisfaction of its Allowed Secured Claim, unless the holder of such Claim agrees to less favorable treatment, either (a) if the Secured Claim is Allowed as of the Effective Date, on the Initial Distribution Date, (b) if the Secured Claim is not Allowed as of the Effective Date, on the next Interim Distribution Date as set forth in Sections 6.8.2 and 7.3 after an order allowing such Secured Claim becomes a Final Order or a Stipulation of Amount and Nature of Claim is executed by the Reorganized Debtor and the holder of the Secured Claim, unless otherwise agreed by the holder of a Secured Claim and the Debtor or Reorganized Debtor. Any Allowed Deficiency Claim of a holder of an Allowed Secured Claim shall be entitled to treatment as an Allowed General Unsecured Claim. Notwithstanding anything to the contrary in the Plan, the Disclosure Statement or the Confirmation Order to the contrary, Claims in Class 1 shall not include the $13 Million Obligation, which shall remain in full force and effect, on the same terms and conditions as existed prior to the Petition Date, on the Effective Date and thereafter, and shall become debt of the Reorganized Debtor.

**3.2. Class 2 Claims (Priority Non-Tax Claims).**

**3.2.1. Impairment and Voting.** Class 2 is unimpaired by the Plan. Each holder of a Priority Non-Tax Claim is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

**3.2.2. Distributions.** Each holder of an Allowed Priority Non-Tax Claim in Class 2 shall receive Cash in an amount equal to the Allowed Priority Non-Tax Claim, in full satisfaction of its Allowed Priority Non-Tax Claim, unless the holder of such Claim agrees to

less favorable treatment either (a) if the Priority Non-Tax Claim is Allowed as of the Effective Date, on the Initial Distribution Date or (b) if the Priority Non-Tax Claim is not Allowed as of the Effective Date, on the next Interim Distribution Date as set forth in Sections 6.8.2 and 7.3 after an order allowing such Priority Non-Tax Claim becomes a Final Order or a Stipulation of Amount and Nature of Claim is executed by the Reorganized Debtor and the holder of the Priority Non-Tax Claim, unless otherwise agreed by the holder of a Priority Non-Tax Claim and the Debtor or Reorganized Debtor.

**3.3. Class 3 Claims (General Unsecured Claims).**

**3.3.1. Impairment and Voting.** Class 3 is impaired by the Plan. Each holder of a General Unsecured Claim is entitled to vote to accept or reject the Plan.

**3.3.2. Distributions.** Each holder of an Allowed General Unsecured Claim shall receive payments in Cash that would, together with any payments previously received by such holder, provide such holder with its Distribution Percentage, in full satisfaction of its Allowed General Unsecured Claim, unless the holder of such Claim agrees to less favorable treatment either (a) if the General Unsecured Claim is Allowed as of the Effective Date, on the Initial Distribution Date or (b) if the General Unsecured Claim is not Allowed as of the Effective Date, on the next Interim Distribution Date as set forth in Sections 6.8.2, 7.1.2 and 7.3. Notwithstanding anything to the contrary in the Plan, the Disclosure Statement or the Confirmation Order to the contrary, Claims in Class 3 shall not include the $18 Million Obligation, which shall remain in full force and effect, on the same terms and conditions as existed prior to the Petition Date, on the Effective Date and thereafter, and shall become debt of the Reorganized Debtor.

**3.4. Class 4 Claims (Class Action Settlement Claims).**

**3.4.1. Impairment and Voting.** Class 4 is impaired by the Plan. Each holder of a Class Action Settlement Claim is entitled to vote to accept or reject the Plan.

**3.4.2. Distributions**. Claims in Class 4 shall be treated as follows: either (a) if the Potential Class Action Settlement Approval Order is entered by the Bankruptcy Court and such order becomes a Final Order, the Class Action Settlement Claim shall be treated as an Administrative Claim in the reduced Class Action Settlement Amount and shall be paid in accordance with the Potential Class Action Settlement Approval Order, or (b) if the Potential Class Action Settlement Approval Order is not entered by the Bankruptcy Court, each holder of an Allowed Class Action Settlement Claim shall receive the same Distribution Percentage as each holder of a Class 3 Claim in an aggregate Claim amount to be determined by entry of a judgment or otherwise agreed by the parties. The allowance of such Claim will result in a reduction of the Distribution Percentage by between approximately 1.9% and 2.2% for every $500,000 of the Allowed Class Action Settlement Claim.

**3.5. Class 5 Interests (Interests).**

**3.5.1. Impairment and Voting.** Class 5 is unimpaired by the Plan. Each holder of an Interest is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

**3.5.2. Distributions.** Interests in the Debtor shall be Reinstated and shall remain in full force and effect on the Effective Date and thereafter.

## ARTICLE IV

## MEANS FOR IMPLEMENTATION OF THE PLAN

**4.1. Corporate Existence and Vesting of Assets in the Reorganized Debtor.** Except as otherwise provided herein (and subject to the Restructuring Transaction provisions of Section 4.2), the Debtor will, as a Reorganized Debtor, continue to exist after the Effective Date, with all the powers of a corporation or company under applicable law and without prejudice to any right to alter or terminate such existence (whether by merger, dissolution or otherwise) under applicable state law. Except as otherwise provided herein, as of the Effective Date, all property of the Estate of the Debtor, and any property acquired by the Debtor or Reorganized Debtor under the Plan, will vest in the Reorganized Debtor, free and clear of all Claims, Encumbrances and Interests. On and after the Effective Date, the Reorganized Debtor may operate its businesses and may use, acquire and dispose of property and compromise or settle any Claims without supervision of or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly imposed by the Plan or the Confirmation Order. Without limiting the foregoing, the Reorganized Debtor may pay the charges that it incurs on or after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including fees relating to the preparation of Final Fee Applications) without application to the Bankruptcy Court.

**4.2. Restructuring Transactions**

**4.2.1. Restructuring Transactions Generally.** On or after the Confirmation Date, the Debtor or Reorganized Debtor may enter into Restructuring Transactions and may take such actions as the Debtor or Reorganized Debtor may determine to be necessary or appropriate to effect a corporate restructuring of their respective businesses or simplify the overall corporate structure of the Reorganized Debtor, to the extent not inconsistent with any other terms of the Plan. Such Restructuring Transactions may include one or more mergers, consolidations, restructurings, dispositions, liquidations or dissolutions, as may be determined by the Debtor or the Reorganized Debtor to be necessary or appropriate without further order of the Bankruptcy Court. The actions to effect these transactions may include, but shall not be limited to: (a) the execution and delivery of appropriate agreements or other documents of merger, consolidation, restructuring, disposition, liquidation or dissolution containing terms that are consistent with the terms of the Plan and that satisfy the requirements of applicable state law and such other terms to which the applicable Entities may agree; (b) the execution and delivery of appropriate instruments of transfer, assignment, assumption or delegation of any asset, property, right, liability, duty or obligation on terms consistent with the terms of the Plan and having such other terms to which the applicable Entities may agree; (c) the filing of appropriate certificates or articles of merger, consolidation, dissolution or change in corporate form pursuant to applicable state law; and (d) the taking of all other actions that the applicable Entities determine to be necessary or appropriate, including making filings or recordings that may be required by applicable state law in connection with such transactions.

**4.2.2. Obligations of Any Successor Corporation in a Restructuring or Other Transaction.** In no case shall a Restructuring Transaction or any other restructuring or sale relieve the Reorganized Debtor or any successor to the Reorganized Debtor from performing the obligations of the Debtor or the Reorganized Debtor pursuant to the Plan including, without limitation, to pay or otherwise satisfy the Allowed Claims against the Reorganized Debtor.

**4.3. Certificate of Incorporation and By-Laws of the Reorganized Debtor.** As of the Effective Date, the Certificate of Incorporation and the By-Laws of the Reorganized Debtor will be adopted substantially in the forms of Exhibit A and Exhibit B, respectively, with such changes as may be necessary to conform to the applicable law of the state of incorporation. The initial Certificate of Incorporation and By-Laws of the Reorganized Debtor will, among other things, prohibit the issuance of nonvoting equity securities to the extent required by section 1123(a) of the Bankruptcy Code. After the Effective Date or the effective time of any applicable Restructuring Transaction, the Reorganized Debtor may amend and restate its Certificate of Incorporation or By-Laws as permitted by applicable state law, subject to the terms and conditions of such constituent documents. If the Reorganized Debtor is not a new corporate entity, then the Certificate of Incorporation and By-Laws of the Debtor may become the Certificate of Incorporation and By-Laws of the Reorganized Debtor. Notwithstanding anything herein to the contrary, nothing herein shall require the Debtor to form a new corporate entity.

**4.4. Directors and Officers of the Reorganized Debtor.** Subject to any requirement of Bankruptcy Court approval pursuant to section 1129(a)(5) of the Bankruptcy Code, the initial members of the board of directors of the Reorganized Debtor shall be set forth on Exhibit C. The initial officers of the Reorganized Debtor will consist of the officers of the Debtor immediately prior to the Effective Date.

Each such director and officer will serve from and after the Effective Date until his or her successor is duly elected or appointed and qualified or until the earlier of his or her death, resignation or removal in accordance with the terms of the Certificate of Incorporation and By-Laws of the Reorganized Debtor and state law.

**4.5. New Employment, Retirement, Indemnification and Other Related Agreements and Incentive Compensation Programs.** As of the Effective Date, the Reorganized Debtor shall have authority, as determined by the Reorganized Debtor's board of directors, to: (a) maintain, amend or revise existing employment, retirement, welfare, incentive, severance, indemnification and other agreements with its active and retired directors, officers and employees, subject to the terms and conditions of any such agreement; and (b) enter into new employment, retirement, welfare, incentive, severance, indemnification and other agreements for active and retired employees.

**4.6. Corporate Action.** Pursuant to section 1142 of the Bankruptcy Code and applicable state law, the following actions (which will occur and be deemed effective as of the date specified in the documents effectuating the same or, if no date is so specified, the Effective Date) shall be authorized and approved in all respects and for all purposes without any requirement of further action by stockholders or directors of the Debtor or the Reorganized Debtor or any other Person or entity: (a) the Restructuring Transactions; (b) the adoption of a new or amended and restated Certificate of Incorporation and By-Laws for the Reorganized

Debtor; (c) the initial selection of directors and officers for the Reorganized Debtor; (d) the Distribution of Cash pursuant to the Plan; (e) the filing of any necessary registration statements; (f) the adoption, execution, delivery and implementation of all contracts, leases, instruments, releases and other agreements or documents related to any of the foregoing; (g) the adoption, execution and implementation of employment, retirement and indemnification agreements, incentive compensation programs, retirement income plans, welfare benefit plans and other employee plans and related agreements; and (h) and other matters involving the corporate structure of the Debtor or Reorganized Debtor or corporate action to be taken by or required of the Debtor or Reorganized Debtor.

**4.7. Obtaining Cash for Plan Distributions.** The Debtor or Reorganized Debtor, as applicable, is authorized to execute and deliver any documents necessary or appropriate to obtain Cash for funding the Plan. All Cash necessary for the Reorganized Debtor to make Distributions and other payments pursuant to the Plan will be obtained through a combination of one or more of the following: (1) the Reorganized Debtor's Cash balances and Cash from operations; (2) the proceeds of the Exit Financing; and (3) any other means of financing or funding that the Debtor or the Reorganized Debtor determines is necessary or appropriate. Cash payments to be made pursuant to the Plan will be made by the Reorganized Debtor.

**4.8. Authority of the Reorganized Debtor.** On and after the Confirmation Date, the Reorganized Debtor shall be empowered and authorized to take or cause to be taken, all actions necessary or appropriate to enable it to effectively implement the provisions of the Plan.

**4.9. Preservation of Rights of Action by the Debtor and the Reorganized Debtor.** Except as provided in the Plan or in any contract, instrument, release or other agreement entered into or delivered in connection with the Plan, in accordance with section 1123(b) of the Bankruptcy Code and to the fullest extent possible under applicable law, the Reorganized Debtor shall retain and may enforce, and shall have the sole right to enforce, any claims, demands, rights and causes of action that the Debtor or its Estate holds or may hold against any Entity, including any Recovery Actions and any currently pending actions. The Reorganized Debtor or its successors may pursue such retained claims, demands, rights or causes of action, as appropriate, in accordance with the best interests of the Reorganized Debtor or its successors holding such claims, demands, rights or causes of action. Further, the Reorganized Debtor retains its right to file and pursue, and shall have the sole right to file and pursue, any adversary proceedings against any trade creditor or vendor related to debit balances or deposits owed to any Debtor. Notwithstanding the foregoing, on the Effective Date, the Reorganized Debtor shall be deemed to waive and release any actions arising under section 547 of the Bankruptcy Code relating to any preference actions held by any Debtor or its Estate or any Reorganized Debtor against any Entity; <u>provided</u>, <u>however</u>, that notwithstanding anything in the Plan, Disclosure Statement or Confirmation Order to the contrary, the Debtor shall be permitted to use any available defenses under section 502(d) of the Bankruptcy Code, including the assertion of an action under section 547 of the Bankruptcy Code, to setoff against or otherwise reduce all or part of any General Unsecured Claim asserted against the Debtor's Estate.

**4.10. Comprehensive Settlement of Claims and Controversies.** Pursuant to Bankruptcy Rule 9019 and in consideration for the Distributions and other benefits provided under the Plan, the provisions of the Plan, including the releases set forth in Section 9.3, shall

constitute a good faith compromise and settlement of all claims or controversies relating to the rights that a holder of a Claim or Interest may have with respect to any Claim, Interest, or any Distribution to be made pursuant to the Plan on account of any Allowed Claim or Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, as of the Effective Date, of the compromise or settlement of all such claims or controversies and the Bankruptcy Court's finding that such compromise or settlement is in the best interests of the Debtor, the Reorganized Debtor, and their respective property and Claim and Interest holders, and is fair, equitable and reasonable.

**4.11. Releases and Satisfaction of Subordination Rights**. All Claims against the Debtor and all rights and claims between or among the holders of Claims relating in any manner whatsoever to any claimed subordination rights shall be deemed satisfied by the Distributions under, described in, contemplated by, and/or implemented in Articles II and III of the Plan. Distributions under, described in, contemplated by, and/or implemented by the Plan to the various Classes of Claims and Interests hereunder shall not be subject to levy, garnishment, attachment, or like legal process by any holder of a Claim or Interest by reason of any claimed subordination rights or otherwise, so that each holder of a Claim or Interest shall have and receive the benefit of the Distributions in the manner set forth in the Plan.

**4.12. Special Provisions Regarding Insured Claims and Insurance Policies**

**4.12.1. Limitations on Amounts to Be Distributed to Holders of Allowed Insured Claims.** Distributions under the Plan to each holder of an Allowed Insured Claim shall be in accordance with the treatment provided under the Plan for the Class in which such Allowed Insured Claim is classified, but solely to the extent that such Allowed Insured Claim is not satisfied from proceeds payable to the holder thereof under any pertinent insurance policies and applicable law. Nothing in this Section 4.12.1 shall constitute a waiver of any claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities that any Entity may hold against any other Entity, including the Debtor's insurance carriers.

**4.12.2. Reinstatement and Continuation of Insurance Policies.** From and after the Effective Date, the Debtor's insurance policies in existence as of the Effective Date shall be Reinstated and continued in accordance with their terms and, to the extent applicable, shall be deemed assumed by the Reorganized Debtor pursuant to section 365 of the Bankruptcy Code and Section 5.1.

**4.12.3. Insurance Neutrality.**

(a) Notwithstanding anything to the contrary in the Plan, the Disclosure Statement or the Confirmation Order, nothing in the Plan, the Disclosure Statement or the Confirmation Order (including any other provision that purports to be preemptory or supervening), shall in any way operate to, or have the effect of, impairing the insurers' legal, equitable or contractual rights, if any, with respect to any claims. The rights of insurers shall be determined under the relevant insurance policies or insurance settlements, as applicable, and under applicable law.

(b) Nothing in the Plan, including the injunction, exculpation and release provisions contained in Sections 9.2, 9.3, 9.4 and 9.5, the Disclosure Statement or Confirmation Order shall preclude any Entity from asserting in any proceeding any and all claims, defenses, rights or causes of action that it has or may have under or in connection with any insurance policy or any insurance settlement agreement. Nothing in the Plan, the Disclosure Statement or the Confirmation Order shall be deemed to waive any claims, defenses, rights or causes of action that any Entity has or may have under the provisions, terms, conditions, defenses or exclusions contained in such insurance policy or insurance settlement agreements, nor shall such documents be construed as, or be a, determination as to coverage with respect to any Insured Claim under any applicable insurance policy.

(c) The Plan, Disclosure Statement or Confirmation Order shall not (i) modify the coverage provided under the Debtor's insurance policies, (ii) alter in any way the obligations of the Debtor's insurers under the insurance policies, or (iii) in any way permit any holder of a Workers' Compensation Claim or Insured Claim to any duplicate recovery from the insurers and any other party including, but not limited to, the Debtor or the Reorganized Debtor.

**4.13. Cancellation and Surrender of Instruments, Securities and Other Documentation.** Except as otherwise provided in the Plan or in any contract, instrument or other agreement or document entered into or delivered in connection with the Plan, on the Effective Date and concurrently with the applicable Distributions made pursuant to Articles II and III, agreements, contracts, instruments and other documents evidencing Secured Claims shall be canceled and of no further force and effect, without any further action on the part of the Debtor or Reorganized Debtor, and the obligations of the Debtor under such agreements, contracts, instruments and other documents shall be discharged. The holders of or parties to such canceled instruments, securities and other documentation shall have no rights arising from or relating to such instruments, securities and other documentation or the cancellation thereof, except the rights provided pursuant to the Plan.

**4.14. Release of Liens and Escrows.** Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, on the Effective Date and concurrently with the applicable Distributions made pursuant to Articles II and III, all mortgages, deeds of trust, liens or other security interests against the property of the 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 or other security interests, including any rights to any collateral thereunder, shall revert to the Reorganized Debtor and its successors and assigns. In addition, all reserves, escrows and other deposits, held by the Debtor or by another party, for adequate assurance of performance or any similar reason shall be released and transferred to the Reorganized Debtor as soon as reasonably practicable after the Effective Date. To the extent that any escrow or deposit held by a third party is not turned over to the Reorganized Debtor within ten (10) days of the Effective Date, and such failure to do so is in contravention of applicable law, the Reorganized Debtor shall not make any Distribution on any Claim or Interest held by such third party.

**4.15. Effectuating Documents; Exemption from Certain Transfer Taxes.** The officers and directors of the Debtor or Reorganized Debtor shall be authorized to execute, deliver, file or record such contracts, instruments, releases and other agreements or documents

and take such other actions as may be necessary or appropriate to effectuate and implement the provisions of the Plan. The Secretary or any Assistant Secretary of the Debtor or Reorganized Debtor shall be authorized to certify or attest to any of the foregoing actions. Pursuant to section 1146(a) of the Bankruptcy Code, the following shall not be subject to any stamp tax or similar tax: (1) the creation of any mortgage, deed of trust, lien or other security interest; (2) the making or assignment of any lease or sublease; (3) any Restructuring Transaction; or (4) the making or delivery of any deed or other instrument of transfer under, in furtherance of or in connection with the Plan, including any merger agreements, agreements of consolidation, restructuring, disposition, liquidation or dissolution, deeds, bills of sale or assignments executed in connection with any Restructuring Transaction pursuant to the Plan.

## ARTICLE V

## TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

### 5.1. Executory Contracts and Unexpired Leases to Be Assumed or Rejected

**5.1.1. Assumption or Rejection of Executory Contracts and Unexpired Leases**. All Executory Contracts and Unexpired Leases that exist between the Debtor and any Person shall be deemed rejected by the Debtor, as of the Effective Date, except for any Executory Contract or Unexpired Lease (i) that has been assumed, assumed and assigned, or rejected pursuant to an order of the Bankruptcy Court entered prior to the Effective Date, (ii) as to which a motion or notice for approval of the assumption, assumption and assignment, or rejection of such Executory Contract or Unexpired Lease has been filed and served prior to the Effective Date, or (iii) that is specifically designated as a contract or lease to be assumed on Exhibit D to the Plan, provided, however, that the Debtor reserves the right, on or prior to the Effective Date, to amend Exhibit D to delete any Executory Contract or Unexpired Lease therefrom or add any Executory Contract or Unexpired Lease thereto, in which event such Executory Contract(s) or Unexpired Lease(s) shall be deemed to be, respectively, assumed or rejected. The Debtor shall provide notice of any amendment to Exhibit D to the parties to the Executory Contracts and Unexpired Leases affected thereby. In the event Exhibit D has been amended as provided for in this Section 5.1.1, the Debtor shall file an amended version of Exhibit D. The listing of a document on Exhibit D shall not constitute an admission by the Debtor that such document is an Executory Contract or an Unexpired Lease or that the Debtor has any liability thereunder.

Notwithstanding anything to the contrary in any contract, agreement or lease to which the Debtor or Reorganized Debtor is a party, (i) the transactions contemplated by the Plan and (ii) the consequences of the Plan's implementation shall not trigger any change in control or similar provisions and shall not be voided by any restraints against assignment in any contract, agreement or lease governed by the Plan.

**5.1.2. Approval of Assumption or Rejection of Executory Contracts and Unexpired Leases**. Entry of the Confirmation Order shall, subject to and upon the occurrence of the Effective Date, constitute (i) the approval, pursuant to sections 365(a) and 1123(b)(2) of the Bankruptcy Code, of the assumption or assumption and assignment of the Executory Contracts

and Unexpired Leases assumed or assumed and assigned pursuant to Section 5.1.1 of the Plan, and (ii) the approval, pursuant to sections 365(a) and 1123(b)(2) of the Bankruptcy Code, of the rejection of the Executory Contracts and Unexpired Leases rejected pursuant to Section 5.1.1 of the Plan.

**5.1.3. Inclusiveness**. Unless otherwise specified on Exhibit D, each Executory Contract and Unexpired Lease listed or to be listed on Exhibit D shall include modifications, amendments, supplements, restatements, or other agreements made directly or indirectly by any agreement, instrument, or other document that in any manner affects such Executory Contract or Unexpired Lease, without regard to whether such agreement, instrument or other document is listed on Exhibit D.

**5.1.4. Bar Date for Filing Proofs of Claim Relating to Executory Contracts and Unexpired Leases Rejected Pursuant to the Plan**. Notwithstanding anything in the Bar Date Order to the contrary, if the rejection of an Executory Contract or Unexpired Lease gives rise to a Rejection Claim by the non-Debtor counterparty or counterparties to such contract or lease, such Rejection Claim shall be forever barred and shall not be enforceable against the Debtor, the Reorganized Debtor, their respective successors or their respective properties unless a proof of Claim is filed and served on the Reorganized Debtor pursuant to the procedures specified in the Confirmation Order and the notice of the entry of the Confirmation Order or another order of the Bankruptcy Court, no later than thirty (30) days after the later of (i) notice of entry of an order approving the rejection of such executory contract or unexpired lease, (ii) entry of the Confirmation Order, and (iii) notice of an amendment to Exhibit D.

**5.1.5. Assumption Procedures.** The appropriate procedures for assumption of an Executory Contract or Unexpired Lease are as follows:

(a) Any entity wishing to object to (i) the proposed assumption of an Executory Contract or Unexpired Lease under the Plan or (ii) the proposed amount of the related Cure Amount Claim must file with the Bankruptcy Court and serve on counsel to the Debtor or Reorganized Debtor and, prior to the Effective Date, the Creditors' Committee, a written objection setting forth the basis for the objection three (3) business days after the filing of the Plan Supplement, but no later than January 7, 2010 at 4:00 p.m. (prevailing Eastern time).

(b) If no objection to the proposed assumption or Cure Amount Claim is timely and properly filed with the Bankruptcy Court and served prior to the objection deadline with respect to an Executory Contract or Unexpired Lease: (i) the proposed assumption of the Executory Contract or Unexpired Lease shall be approved in accordance with the Plan and the Confirmation Order, effective as of the Effective Date, without further action of the Bankruptcy Court; and (ii) the Cure Amount Claim identified by the Debtor or Reorganized Debtor in Exhibit D or any notice filed with the Bankruptcy Court and served on the non-Debtor counterparty to the Executory Contract or Unexpired Lease shall be fixed and shall be paid in accordance with the Plan on or after the Effective Date, without further action of the Bankruptcy Court, to the appropriate contract or lease party identified on the notice.

(c) If an objection to the proposed assumption or Cure Amount Claim is timely and properly filed with the Bankruptcy Court and served prior to the objection deadline

with respect to an Executory Contract or Unexpired Lease, the Debtor or Reorganized Debtor, as applicable, and the objecting party may resolve such objection by stipulation, without further action of the Bankruptcy Court.

(d) If an objection to the proposed assumption or Cure Amount Claim is timely and properly filed with the Bankruptcy Court and served prior to the objection deadline with respect to an Executory Contract or Unexpired Lease and the parties are unable to resolve such objection: (i) the Debtor or Reorganized Debtor may file with the Bankruptcy Court a reply to such objection no later than thirty (30) days after the filing and service of such objection and ask the Bankruptcy Court to schedule a hearing on the particular objection and the related reply at an appropriate time; or (ii) the Debtor or Reorganized Debtor, as applicable, may designate the Executory Contract or Unexpired Lease underlying such objection for rejection pursuant to Section 5.1.1 and amend Exhibit D accordingly.

**5.2. Payments Related to the Assumption of Executory Contracts and Unexpired Leases.** To the extent that such Claims constitute monetary defaults, any Cure Amount Claims associated with each Executory Contract and Unexpired Lease to be assumed pursuant to the Plan shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, at the option of the Debtor or Reorganized Debtor or the assignee of the Debtor or Reorganized Debtor: (1) by payment of the Cure Amount Claim in Cash on the Initial Distribution Date or (2) on such other terms as are agreed to by the Debtor or Reorganized Debtor and the counterparty to such Executory Contract or Unexpired Lease. Pursuant to section 365(b)(2)(D) of the Bankruptcy Code, no Cure Amount Claim shall be allowed for a penalty rate or other form of default rate of interest. If there is a dispute regarding: (1) the amount of any Cure Amount Claim; (2) the ability of the Reorganized Debtor or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the contract or lease to be assumed; or (3) any other matter pertaining to assumption of such contract or lease, the payment of any Cure Amount Claim required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order resolving the dispute and approving the assumption and in accordance with this Plan.

**5.3. Rejection Procedures.** The appropriate procedures for rejection of an Executory Contract or Unexpired Lease are as follows:

(a) Any entity wishing to object to the proposed rejection of an Executory Contract or Unexpired Lease under the Plan must file with the Bankruptcy Court and serve on counsel to the Debtor or Reorganized Debtor and, prior to the Effective Date, the Creditors' Committee, a written objection setting forth the basis for the objection three (3) business days after the filing of the Plan Supplement, but no later than January 7, 2010 at 4:00 p.m. (prevailing Eastern time).

(b) If no objection to the proposed rejection is timely and properly filed and served prior to the objection deadline with respect to an Executory Contract or Unexpired Lease, the proposed rejection of the applicable Executory Contract or Unexpired Lease shall be approved in accordance with the Plan and the Confirmation Order, effective as of the Effective Date, without further action of the Bankruptcy Court.

(c) If an objection to the proposed rejection is timely and properly filed and served prior to the objection deadline with respect to an Executory Contract or Unexpired Lease, the Debtor or Reorganized Debtor, as applicable, and the objecting party may resolve such objection by stipulation, without further action of the Bankruptcy Court.

(d) If an objection to the proposed rejection is timely and properly filed and served prior to the objection deadline with respect to an Executory Contract or Unexpired Lease and the parties are unable to resolve such objection, the Debtor or Reorganized Debtor, as applicable, may file a reply to such objection with the Bankruptcy Court no later than thirty (30) days after the filing and service of such objection and ask the Court to schedule a hearing on the particular objection and the related reply at an appropriate time.

**5.4. Limited Extension of Time to Assume or Reject**

**5.4.1.** In the event of a dispute as to whether a contract or lease is executory or unexpired, the right of the Debtor or the Reorganized Debtor to move to assume or reject such contract or lease shall be extended until the date that is thirty (30) days after entry of a Final Order by the Bankruptcy Court.

**5.4.2.** In the event the Debtor or the Reorganized Debtor become aware after the Confirmation Date of the existence of an Executory Contract or Unexpired Lease that was not included on Exhibit D, the right of the Reorganized Debtor to move to assume such contract or lease shall be extended until the date that is thirty (30) days after the date on which the Debtor or the Reorganized Debtor become aware of the existence of such contract or lease.

**5.5. Postpetition Contracts and Leases**. The Debtor shall not be required to assume or reject any contract or lease entered into by the Debtor after the Petition Date. Any such contract or lease shall continue in effect in accordance with its terms after the Effective Date, unless the Debtor has obtained a Final Order of the Bankruptcy Court approving rejection or other termination of such contract or lease.

**5.6. Assumption of Utility Service Agreements**. In the event that there is in effect between the Debtor and any utility immediately prior to the Effective Date, with respect to any operating facility of the Debtor, any utility service agreement or related agreement providing a reduced rate to the Debtor, which agreement has not been previously assumed, rejected or terminated, but is considered to be an executory contract, such agreement shall be deemed to be assumed pursuant to section 365 of the Bankruptcy Code and Section 5.1.1; provided, however, that no Cure Amount Claim shall be owed with respect to any such agreement, and in the event that a utility asserts any Cure Amount Claim, at the election of the Debtor, such utility's agreement shall not be deemed assumed and shall instead be deemed rejected pursuant to section 365 of the Bankruptcy Code under the Plan.

**5.7. Treatment of Compensation and Benefit Programs**

**5.7.1. Employee Compensation and Benefit Programs**. Except to the extent (i) otherwise provided for in the Plan, (ii) previously assumed or rejected by an order of the Bankruptcy Court entered on or before the Confirmation Date, (iii) the subject of a pending motion to reject filed by the Debtor on or before the Confirmation Date, or (iv) previously

terminated, all employee compensation and benefit programs of the Debtor in effect during the pendency of the Chapter 11 Case, including all health and welfare plans, 401(k) plans, pension plans within the meaning of Title IV of the Employee Retirement Income Security Act of 1974, as amended, and all benefits subject to sections 1114 and 1129(a)(13) of the Bankruptcy Code, entered into before or after the Petition Date and in effect during the pendency of the Chapter 11 Case, shall be deemed to be, and shall be treated as though they are, Executory Contracts that are assumed and assigned pursuant to section 365 of the Bankruptcy Code and Section 5.1.1. Nothing contained herein shall be deemed to modify the existing terms of such employee compensation and benefit programs, including, without limitation, the Debtor's and the Reorganized Debtor's rights of termination and amendment thereunder.

**5.7.2. Vacation Policies**. The Debtor's existing vacation policies will be Reinstated on the Effective Date for any employees of the Debtor employed on the Effective Date that have not received a notice of termination prior to or on the Effective Date. Accordingly, those employees will be entitled to a Cash payment of earned but unused vacation time in the event of a subsequent termination of employment after the Effective Date, if such payment is in accordance with the vacation policies.

**5.8. Obligations to Indemnify or Provide Advancement to Directors, Officers and Employees.** The obligations of the Debtor or Reorganized Debtor to indemnify or provide advancement to any Person serving as one of its directors, officers or employees prior to or following the Petition Date by reason of such Person's prior or future service in such capacity to the extent provided in the Certificate of Incorporation, By-Laws or similar constituent documents, by statutory law or by written agreement, policies or procedures of or with the Debtor, shall be deemed to be, and shall be treated as though they are, Executory Contracts that are assumed and assigned pursuant to section 365 of the Bankruptcy Code and Section 5.1.1. Accordingly, such indemnification and advancement obligations shall survive and be unaffected by entry of the Confirmation Order, irrespective of whether such indemnification or advancement is owed for an act or event occurring before or after the Petition Date.

**5.9. Contracts and Leases Entered Into After the Petition Date.** Notwithstanding any other provisions of the Plan, contracts and leases entered into after the Petition Date by the Debtor, including any Executory Contracts and Unexpired Leases assumed by the Debtor, shall be performed by the Debtor or Reorganized Debtor in accordance with the terms and conditions of such contracts and leases in the ordinary course of its business; provided, however, that nothing in this paragraph shall affect the limitations on a Rejection Claim for a previously assumed nonresidential real property lease under section 503(b)(7) of the Bankruptcy Code. Accordingly, such contracts and leases and other obligations (including any assumed Executory Contracts and Unexpired Leases) shall survive and remain unaffected by entry of the Confirmation Order.

## ARTICLE VI

## PROVISIONS GOVERNING DISTRIBUTIONS

**6.1. Distributions for Claims Allowed as of the Effective Date.** Except as otherwise provided in the Plan, Distributions to be made on the Effective Date to holders of Claims that are

Allowed Claims as of such date shall be deemed made on the Effective Date if made on the Effective Date or as promptly thereafter as practicable, but in any event no later than: (1) the time set forth in Section 6.8.1 or (2) such later date when the applicable conditions of Section 5.2 (regarding Cure Amount Claims for Executory Contracts and Unexpired Leases being assumed), Section 6.3.2 (regarding undeliverable Distributions), or Section 6.8.3 (regarding compliance with Tax requirements) are satisfied. Distributions on account of Allowed Claims shall be made pursuant to Section 6.8.2. Any Claim that is Disallowed by order of the Bankruptcy Court or for which the underlying liability is found not to be a liability of the Debtor by any other court prior to the Effective Date shall be deemed Disallowed (to the extent not already Disallowed) as of the Effective Date without the necessity for further Bankruptcy Court approval and the holder of any such Claim shall not be entitled to any Distributions under the Plan.

**6.2. Method of Distributions to Holders of Claims.** The Reorganized Debtor shall make all Distributions of Cash and other instruments or documents required under the Plan.

**6.3. Delivery of Distributions and Undeliverable or Unclaimed Distributions.**

**6.3.1. Delivery of Distributions.** Distributions to holders of Allowed Claims shall be made by the Reorganized Debtor (a) to the addresses set forth on the respective proofs of Claim filed by holders of such Claims; (b) to the addresses set forth in any written certification of address change delivered to the Reorganized Debtor (including pursuant to a letter of transmittal delivered to the Reorganized Debtor) after the date of filing of any related proof of Claim; or (c) to the addresses reflected in the Debtor's Schedules if no proof of Claim has been filed and the Reorganized Debtor has not received a written notice of a change of address. The Reorganized Debtor shall make reasonable efforts to determine the correct addresses for the Distributions to holders of Allowed Claims.

**6.3.2. Undeliverable Distributions Held by the Reorganized Debtor**

(a) **Holding and Investment of Undeliverable Distributions.** If any Distribution to a holder of an Allowed Claim is returned to the Reorganized Debtor as undeliverable, no further Distributions shall be made to such holder unless and until the Reorganized Debtor is notified in writing of such holder's then-current address. Undeliverable Distributions shall remain in the possession of the Reorganized Debtor pursuant to this Section 6.3.2(a) until such time as a Distribution becomes deliverable, subject to Section 6.3.2(b). Undeliverable Cash Distributions shall be held in a segregated bank account in the name of the Reorganized Debtor for the benefit of the potential claimants of such funds. The Reorganized Debtor shall invest such Cash in a manner consistent with the Reorganized Debtor's investment and deposit guidelines.

(b) **After Distributions Become Deliverable.** On each Interim Distribution Date, the Reorganized Debtor shall make all Distributions that become deliverable to holders of Allowed Claims during the preceding period since the Initial Distribution Date or the last Interim Distribution Date, as applicable, to the extent not distributed earlier at the discretion of the Reorganized Debtor.

(c) **Failure to Claim Undeliverable Distributions.** Any holder of an Allowed Claim that does not assert a claim pursuant to the Plan for an undeliverable Distribution to be made by the Reorganized Debtor within six (6) months after the later of (i) the Effective Date or (ii) the last date on which a Distribution was attempted to be made to such holder shall have its claim for such undeliverable Distribution discharged and shall be forever barred from asserting any such claim against the Debtor, the Reorganized Debtor or their respective property. Unclaimed Distributions shall become property of the Reorganized Debtor, free of any restrictions thereon. Subject to Section 6.3.1, nothing contained in the Plan shall require the Debtor or Reorganized Debtor to attempt to locate any holder of an Allowed Claim.

**6.4. Distribution Record Date.**

(a) The Reorganized Debtor shall have no obligation to recognize the transfer of, or the sale of any participation in, any Claim that occurs after the close of business on the Distribution Record Date and shall be entitled for all purposes herein to recognize and make Distributions only to those holders of Allowed Claims that are holders of such Claims, or participants therein, as of the close of business on the Distribution Record Date.

(b) As of the close of business on the Distribution Record Date, the respective transfer or Claims registers as maintained by the Debtor or the Claims Agent, as applicable, shall be closed and any transfer of any Claim or Interest therein shall be prohibited. The Reorganized Debtor shall have no obligation to recognize the transfer or sale of any Claim or Interest that occurs after the close of business on the Distribution Record Date and shall be entitled for all purposes herein to recognize and make Distributions only to those holders of Claims or Interests who are holders of such Claims or Interests as of the close of business on the Distribution Record Date.

(c) Except as otherwise provided in a Final Order of the Bankruptcy Court, the transferees of Claims that are transferred pursuant to Bankruptcy Rule 3001 on or prior to the Distribution Record Date shall be treated as the holders of such Claims for all purposes, notwithstanding that any period provided by Bankruptcy Rule 3001 for objecting to such transfer has not expired by the Distribution Record Date. The Debtor and Reorganized Debtor shall not have any liability arising from or related to a dispute between the transferee and transferor of a claim transferred pursuant to Bankruptcy Rule 3001.

**6.5. Means of Cash Payments.** Except as otherwise specified herein, Cash payments made pursuant to the Plan to holders of Claims shall be in U.S. currency by checks drawn on a domestic bank selected by the Reorganized Debtor or, at the option of the Reorganized Debtor, by wire transfer from a domestic bank; provided, however, that Cash payments to foreign holders of Allowed Claims may be made, at the option of the Reorganized Debtor, in such funds and by such means as are necessary or customary in a particular foreign jurisdiction.

**6.6. De Minimis Distributions.** Notwithstanding anything to the contrary contained in the Plan, the Disclosure Statement or the Confirmation Order, the Reorganized Debtor shall not be required to distribute, and shall not distribute, Cash or other property to the Holder of any Allowed Claim if the amount of Cash or other property to be distributed on account of such Claim is less than fifty dollars ($50.00). Any Holder of an Allowed Claim on account of which

the amount of Cash or other property to be distributed is less than $50.00 shall have such Claim discharged and shall be forever barred from asserting such Claim against the Debtor, the Reorganized Debtor or their respective property. Any Cash or other property not distributed pursuant to this provision shall be the property of the Reorganized Debtor, free of any restrictions thereon.

**6.7. Withholding, Payment and Reporting Requirements.** In connection with the Plan and all Distributions under the Plan, the Reorganized Debtor shall, to the extent applicable, comply with all tax withholding, payment, and reporting requirements imposed by any federal, state, provincial, local, or foreign taxing authority, and all Distributions under the Plan shall be subject to any such withholding, payment, and reporting requirements. The Reorganized Debtor shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding, payment, and reporting requirements. For example, with respect to any employee-related withholding, if the Debtor is obligated by law to withhold amounts from Distributions to a present or former employee to satisfy such present or former employee's tax and other payroll obligations, the Reorganized Debtor may withhold a portion of the Distributions allocated to the holder of an Allowed Claim that is a present or former employee, whether such Distributions are in the form of Cash, in such amount as is determined necessary to satisfy such holder's tax and other payroll obligations with respect to the Distributions. Notwithstanding any other provision of the Plan, (a) each Holder of an Allowed Claim that is to receive a Distribution pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding, and other tax obligations, on account of such Distribution, and including, in the case of any holder of a Disputed General Unsecured Claim that has become an Allowed General Unsecured Claim, any tax obligation that would be imposed upon the Debtor or the Reorganized Debtor in connection with such Distribution, and (b) no Distribution shall be made to or on behalf of such holder pursuant to the Plan unless and until such holder has made arrangements satisfactory to the Reorganized Debtor for the payment and satisfaction of such withholding tax obligations or such tax obligation that would be imposed upon the Debtor or the Reorganized Debtor in connection with such Distribution. Any property to be distributed pursuant to the Plan shall, pending the implementation of such arrangements, be treated as an undeliverable Distribution pursuant to Section 6.3.2.

**6.8. Timing and Calculation of Amounts to Be Distributed**

**6.8.1. Timing of Distributions Under the Plan.** Any Distribution to be made by the Debtor or Reorganized Debtor pursuant to the Plan shall be deemed to have been timely made if made within thirty (30) days after the time specified therefor in the Plan. No interest shall accrue or be paid with respect to any Distribution as a consequence of such Distribution not having been made on the Effective Date.

**6.8.2. Allowed Claims.** On the Initial Distribution Date, each holder of an Allowed Claim shall receive the full amount of the Distributions that the Plan provides for Allowed Claims in the applicable Class. On each Interim Distribution Date, Distributions also shall be made pursuant to Section 7.3 to holders of Disputed Claims in any such Class that were Allowed during the preceding period since the Initial Distribution Date or the last Interim Distribution Date, as applicable, to the extent not distributed earlier at the sole discretion of the

Reorganized Debtor. Such Distributions also shall be in the full amount that the Plan provides for Allowed Claims in the applicable Class.

**6.8.3. Compliance with Tax Requirements.** In connection with the Plan, to the extent applicable, the Reorganized Debtor shall comply with all Tax withholding and reporting requirements imposed on it by any governmental unit, and all Distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. The Reorganized Debtor shall be authorized to take any actions that may be necessary or appropriate to comply with such withholding and reporting requirements.

Without limiting the generality of the foregoing, in accordance with the Internal Revenue Code's backup withholding rules, a holder of a Claim may be subject to backup withholding with respect to Distributions made pursuant to the Plan, unless the holder (i) comes within certain exempt categories (which generally include corporations) and, when required, demonstrates this fact or (ii) provides at the Reorganized Debtor's request a completed IRS Form W-9 (or substitute therefor) on which the holder includes a correct taxpayer identification number and certifies under penalty of perjury that the taxpayer identification number is correct and that the taxpayer is not subject to backup withholding because of a failure to report all dividend and interest income. Non-U.S. holders may be required by the Reorganized Debtor to provide a completed IRS Form W-8 to establish an exemption from withholding or a treaty-reduced rate of withholding on interest distributed pursuant to the Plan. The Reorganized Debtor shall provide or make available the necessary forms to comply with this Section sufficiently in advance of the Effective Date.

Notwithstanding any other provision of the Plan, each Entity receiving a Distribution of Cash pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any Tax obligations imposed on it by any governmental unit on account of such Distribution, including income, withholding and other Tax obligations.

**6.9. Setoffs.** Except with respect to claims of the Debtor or Reorganized Debtor released pursuant to the Plan or any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, the Reorganized Debtor may, pursuant to section 553 of the Bankruptcy Code or applicable nonbankruptcy law, set off against any Allowed Claim and the Distributions to be made pursuant to the Plan on account of such Claim (before any Distribution is made on account of such Claim) the claims, rights and causes of action of any nature that the Debtor or Reorganized Debtor may hold against the holder of such Allowed Claim; provided, however, that neither the failure to effect a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor or Reorganized Debtor of any claims, rights and causes of action that the Debtor or Reorganized Debtor may possess against the holder of such a claim.

**6.10. No Distribution in Excess of Allowed Amounts**. Notwithstanding anything to the contrary herein, no holder of an Allowed Claim shall receive in respect of such Claim any Distribution of a value as of the Effective Date in excess of the Allowed amount of such Claim (excluding payments on account of interest due and payable from and after the Effective Date pursuant to the Plan, if any).

**6.11. Allocation of Payments.** Amounts paid to holders of Claims in satisfaction thereof shall be allocated first to the principal amounts of such Claims, with any excess being allocated to interest that has accrued on such Claims but remains unpaid.

**6.12. No Distributions Pending Allowance.** Notwithstanding any other provision of the Plan, if any Claim or portion thereof is Disputed, no Distribution provided hereunder shall be made on account of such Claim unless and until such Claim shall have become an Allowed Claim through settlement and/or a Final Order of the Bankruptcy Court. The Reorganized Debtor shall only make Distributions on account of Claims that have become fully Allowed.

## ARTICLE VII

## PROCEDURES FOR RESOLVING DISPUTED CLAIMS

### 7.1. Prosecution of Objections to Claims

**7.1.1. Objections to Claims.** Objections to Claims must be filed and served on the holders of such Claims by the Claims Objection Deadline, and, if filed prior to the Effective Date, such objections shall be served on the parties on the then-applicable service list in the Chapter 11 Case. If an objection has not been filed with the Bankruptcy Court to a proof of Claim or an amendment has not been made to the Schedules with respect to a scheduled Claim by the Claims Objection Deadline, the Claim to which the proof of Claim or Schedules relates shall be treated as an Allowed Claim if such Claim has not been allowed earlier.

**7.1.2. Authority to Prosecute Objections.** Prior to and after the Effective Date, the Debtor or Reorganized Debtor, as applicable, shall have the authority to file (if applicable), settle, compromise, withdraw or litigate to judgment objections to all Claims, including pursuant to any alternative dispute resolution, in accordance with the Bankruptcy Code, Bankruptcy Rules or any order approved by the Bankruptcy Court as follows: (i) with respect to a Claim greater than twenty-five thousand dollars ($25,000), after an order allowing such Claim becomes a Final Order or a Stipulation of Amount and Nature of Claim is executed by the Reorganized Debtor and the holder of the Claim and approved by the Bankruptcy Court, or (ii) with respect to a Claim less than or equal to twenty-five thousand dollars ($25,000), without further order of the Bankruptcy Court.

**7.1.3. Authority to Amend Schedules.** The Debtor or the Reorganized Debtor shall have the authority to amend the Schedules with respect to any Claim and to make Distributions based on such amended Schedules without approval of the Bankruptcy Court through the Claims Objection Deadline. The Debtor or the Reorganized Debtor may amend the Schedules after the Claims Objection Deadline only upon order of the Bankruptcy Court. If any such amendment to the Schedules reduces the amount of a Claim or changes the nature or priority of a Claim, the Debtor or Reorganized Debtor shall provide the holder of such Claim with notice of such amendment and such holder shall have thirty (30) days to file a proof of Claim with the Claims Agent, with a copy to the Debtor or Reorganized Debtor. If no such proof of Claim is filed, the Debtor or Reorganized Debtor may proceed with Distributions based on such amended Schedules without approval of the Bankruptcy Court.

**7.2. Enforcement of Bar Date Order.** In accordance with the Bar Date Order and section 502(b)(9) of the Bankruptcy Code, except as otherwise provided herein, any Entity that failed to file a proof of Claim by the applicable Bar Date or was not otherwise permitted to file a proof of Claim after the applicable Bar Date by a Final Order of the Bankruptcy Court is and shall be barred, estopped and enjoined from asserting any Claim against the Debtor (1) in an amount that exceeds the amount, if any, that is identified in the Schedules on behalf of such Entity as undisputed, noncontingent and liquidated; or (2) of a different nature or a different classification than any Claim identified in the Schedules on behalf of such Entity.

All Claims filed after the applicable Bar Date and for which no Final Order has been entered by the Bankruptcy Court determining that such Claims were timely filed shall be Disallowed and expunged without any further action required by the Debtor, the Reorganized Debtor or the Bankruptcy Court. Any Distribution on account of such Claims shall be limited to the amount, if any, listed in the applicable Schedules as undisputed, noncontingent and liquidated. **The Debtor or Reorganized Debtor have no obligation to review and/or respond to any Claim that is not a Timely Claim unless: (i) the filer has obtained a Final Order from the Bankruptcy Court authorizing it to file such Claim after the Bar Date; or (ii) the Reorganized Debtor has consented to the filing of such Claim in writing.**

Nothing in this Section 7.2 shall be construed as preventing the Debtor or the Reorganized Debtor from objecting to any Claim on any grounds permitted by applicable bankruptcy or non-bankruptcy law.

**7.3. Distributions on Account of Disputed Claims Once Allowed.** On each Interim Distribution Date, the Reorganized Debtor shall make all Distributions on account of any Disputed Claim that has become an Allowed Claim during the preceding period since the Initial Distribution Date or the last Interim Distribution Date, as applicable, to the extent not distributed earlier at the sole discretion of the Reorganized Debtor. Such Distributions shall be made pursuant to the provisions of the Plan governing the applicable Class.

**7.4. Estimation.** The Debtor or Reorganized Debtor may at any time, request that the Court estimate any Disputed Claim pursuant to section 502(c) of the Bankruptcy Code regardless of whether the Debtor or the Reorganized Debtor previously objected to such Claim. The Bankruptcy Court will retain jurisdiction to estimate any Claim at any time, including during proceedings concerning any objection to such Claim. In the event that the Bankruptcy Court estimates any Disputed Claim, such estimated amount may constitute either (i) the Allowed amount of such Claim, or (ii) a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the Debtor or the Reorganized Debtor, as the case may be, may elect to object to ultimate payment of such Claim. All of the aforementioned Claims objection, estimation and resolution procedures are cumulative and not necessarily exclusive of one another.

## ARTICLE VIII

## CONDITIONS PRECEDENT TO CONSUMMATION OF THE PLAN

**8.1. Conditions to the Effective Date.** The Effective Date shall not occur and the Plan shall not be consummated unless and until each of the following conditions have been satisfied or duly waived pursuant to Section 8.2:

(a) The Bankruptcy Court shall have entered an order (contemplated to be part of the Confirmation Order) approving and authorizing the Debtor and the Reorganized Debtor to take all actions necessary or appropriate to implement the Plan, including completion of the Restructuring Transactions and other transactions contemplated by the Plan and the implementation and consummation of contracts, instruments, releases and other agreements or documents created in connection with the Plan.

(b) The Confirmation Order has been entered by the Bankruptcy Court and shall have become a Final Order.

(c) The Confirmation Order shall be in full force and effect.

(d) Each of the Exhibits and any other necessary documents shall be fully executed and delivered to the Debtor and shall be fully enforceable in accordance with their terms.

(e) All necessary agreements to provide the Exit Financing have been executed and approved by Final Order of the Bankruptcy Court, if necessary, on terms and conditions satisfactory to the Debtor and Reorganized Debtor.

(f) The Debtor shall have filed a notice of the occurrence of the Effective Date.

**8.2. Waiver of Conditions to Confirmation or the Effective Date.** The conditions to the Effective Date set forth in Section 8.1 may be waived in whole or part in writing by the Debtor at any time without an order of the Bankruptcy Court.

**8.3. Effect of Nonoccurrence of Conditions to the Effective Date.** If each of the conditions to the Effective Date is not satisfied or duly waived in accordance with Sections 8.1 or 8.2, then upon motion by the Debtor made before the time that each of such conditions has been satisfied or duly waived and upon notice to such parties in interest as the Bankruptcy Court may direct, the Confirmation Order shall be vacated by the Bankruptcy Court; provided, however, that, notwithstanding the filing of such motion, the Confirmation Order may not be vacated if each of the conditions to the Effective Date is either satisfied or duly waived before the Bankruptcy Court enters an order granting such motion. If the Confirmation Order is vacated pursuant to this Section 8.3, (1) the Plan shall be null and void in all respects, including with respect to the discharge of Claims; and (2) nothing contained in the Plan shall (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 of the Debtor or any other party in interest.

## ARTICLE IX

## DISCHARGE, INJUNCTION, RELEASE, AND EXCULPATION

**9.1. Discharge of the Debtor.** The rights afforded herein and the treatment of all Claims and Interests herein shall be in exchange for and in complete satisfaction, discharge, and release of all Claims of any nature whatsoever, including any interest accrued on such Claims from and after the Petition Date, against the Debtor, the Reorganized Debtor or any of their respective assets or properties, arising prior to the Effective Date. Pursuant to section 1141(d) of the Bankruptcy Code and except as otherwise expressly specified in the Plan, upon the Effective Date the Confirmation Order shall act as a discharge of all debts of, Claims against, and liens on the Debtor, their respective assets and properties, arising at any time before the Effective Date, regardless of whether a proof of Claim with respect thereto was filed, whether the Claim is Allowed, or whether the holder thereof votes to accept the Plan or is entitled to receive a distribution hereunder. Except as otherwise expressly specified in the Plan, after the Effective Date, any holder of such discharged Claim shall be precluded from asserting against the Debtor, the Reorganized Debtor, or any of their respective assets or properties, any other or further Claim based on any document, instrument, act, omission, transaction, or other activity of any kind or nature that occurred before the entry of the Confirmation Order. Notwithstanding anything in the Plan, Disclosure Statement or Confirmation Order to the contrary, neither the Parent Debt nor Interests shall be discharged pursuant to the Plan, Disclosure Statement or the Confirmation Order.

**9.2. Injunction.** Except as otherwise expressly provided in the Plan, the Confirmation Order, or a separate order of the Court, all Persons or Entities who have held, hold, or may hold a Claim or Claims against the Debtor that arose before or were held as of the Effective Date, are permanently enjoined, on and after the Effective Date, from (i) commencing or continuing in any manner any action or other proceeding of any kind against or affecting the Debtor, its Estate or its assets, with respect to any such Claim, (ii) the enforcement, attachment, collection, or recovery by any manner or means of any judgment, award, decree, or order against the Debtor or the Reorganized Debtor on account of any such Claim, (iii) creating, perfecting, or enforcing any Encumbrance of any kind against the Debtor or the Reorganized Debtor or against the property or interests in property of the Debtor on account of any such Claim, (iv) asserting any right of setoff, or subrogation of any kind against any obligation due from the Debtor or the Reorganized Debtor or against the property or interests in property of the Debtor on account of any such Claim; and (v) 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 or settled pursuant to the Plan. Such injunction shall extend to successors of the Debtor (including, without limitation, the Reorganized Debtor) and their respective properties and interests in property. Such injunction shall not apply in respect of Administrative Claims incurred in the ordinary course of the Debtor's business.

**9.3. Releases.**

**(a) Releases by the Debtor. ON THE EFFECTIVE DATE, AND NOTWITHSTANDING ANY OTHER PROVISIONS OF THE PLAN, THE DEBTOR AND THE REORGANIZED DEBTOR, ON BEHALF OF THEMSELVES AND THE**

**ESTATE, SHALL BE DEEMED TO RELEASE UNCONDITIONALLY (I) ALL OF THEIR RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, ADVISORS, ATTORNEYS, FINANCIAL ADVISORS, ACCOUNTANTS, AND OTHER PROFESSIONALS, (II) KLK, AS DIP LENDER, ULTIMATE SOLE INTEREST HOLDER AND ULTIMATE PARENT OF THE DEBTOR AND REORGANIZED DEBTOR, (III) THE OFFICERS, DIRECTORS, PRINCIPALS, MEMBERS, EMPLOYEES, PARTNERS, SUBSIDIARIES, AFFILIATES, ADVISORS, ATTORNEYS, FINANCIAL ADVISORS, ACCOUNTANTS, AND OTHER PROFESSIONALS OF KLK, (IV) KLKOI, AS PREPETITION LENDER, (V) THE OFFICERS, DIRECTORS, PRINCIPALS, MEMBERS, EMPLOYEES, PARTNERS, SUBSIDIARIES, AFFILIATES, ADVISORS, ATTORNEYS, FINANCIAL ADVISORS, ACCOUNTANTS, AND OTHER PROFESSIONALS OF KLKOI, (VI) THE MEMBERS OF THE CREDITORS' COMMITTEE, (VII) THE OFFICERS, DIRECTORS, PRINCIPALS, MEMBERS, EMPLOYEES, PARTNERS, SUBSIDIARIES, AFFILIATES, ADVISORS, ATTORNEYS, FINANCIAL ADVISORS, ACCOUNTANTS, AND OTHER PROFESSIONALS OF THE CREDITORS' COMMITTEE, (COLLECTIVELY THE "RELEASED PARTIES," AND EACH A "RELEASED PARTY") FROM ANY AND ALL CLAIMS, OBLIGATIONS, SUITS, JUDGMENTS, DAMAGES, RIGHTS, CAUSES OF ACTION AND LIABILITIES WHATSOEVER, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING OR HEREAFTER ARISING, IN LAW, EQUITY OR OTHERWISE, BASED IN WHOLE OR IN PART UPON ACTIONS TAKEN SOLELY IN THEIR RESPECTIVE CAPACITIES DESCRIBED ABOVE OR ANY OMISSION, TRANSACTION, AGREEMENT, EVENT, OR OTHER OCCURRENCE TAKING PLACE ON OR BEFORE THE EFFECTIVE DATE IN ANY WAY RELATING TO THE DEBTOR, THE CHAPTER 11 CASE, THE PLAN, OR THE DISCLOSURE STATEMENT; PROVIDED, HOWEVER, THAT (A) NO PERSON OR ENTITY SHALL BE RELEASED FROM ANY ACT OR OMISSION THAT CONSTITUTES GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, (B) THE REORGANIZED DEBTOR SHALL NOT RELINQUISH OR WAIVE THE RIGHT TO ASSERT ANY OF THE FOREGOING AS A LEGAL OR EQUITABLE DEFENSE OR RIGHT OF SET-OFF OR RECOUPMENT AGAINST ANY CLAIMS OF ANY SUCH PERSONS ASSERTED AGAINST THE DEBTOR, (C) THE FOREGOING RELEASE SHALL NOT APPLY TO ANY OBLIGATIONS THAT REMAIN OUTSTANDING IN RESPECT OF ANY OBLIGATIONS UNDER THE EXIT FACILITY OUTSTANDING AS OF THE EFFECTIVE DATE, AND (D) THE FOREGOING RELEASE APPLIES TO THE RELEASED PARTIES SOLELY IN THEIR RESPECTIVE CAPACITIES DESCRIBED ABOVE.**

**NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, ON THE EFFECTIVE DATE, THE REORGANIZED DEBTOR SHALL BE DEEMED TO WAIVE AND RELEASE ANY ACTIONS ARISING UNDER SECTION 547 OF THE BANKRUPTCY CODE RELATING TO ANY PREFERENCE ACTIONS HELD BY ANY DEBTOR OR ITS ESTATE OR ANY REORGANIZED DEBTOR AGAINST ANY ENTITY; PROVIDED, HOWEVER, THAT NOTWITHSTANDING ANYTHING IN THE PLAN, DISCLOSURE STATEMENT OR CONFIRMATION ORDER TO THE CONTRARY, THE DEBTOR SHALL BE PERMITTED TO USE ANY AVAILABLE DEFENSES UNDER SECTION 502(d) OF THE BANKRUPTCY CODE, INCLUDING**

**THE ASSERTION OF AN ACTION UNDER SECTION 547 OF THE BANKRUPTCY CODE, TO SETOFF AGAINST OR OTHERWISE REDUCE ALL OR PART OF ANY GENERAL UNSECURED CLAIM ASSERTED AGAINST THE DEBTOR'S ESTATE.**

(b) **Releases by Holders of Claims and Interests. ON THE EFFECTIVE DATE, AND NOTWITHSTANDING ANY OTHER PROVISIONS OF THE PLAN, (I) PERSONS WHO DIRECTLY OR INDIRECTLY, HAVE HELD, HOLD, OR MAY HOLD CLAIMS OR INTERESTS WHO VOTED TO ACCEPT THE PLAN, AND (II) TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, AS SUCH LAW MAY BE EXTENDED OR INTERPRETED SUBSEQUENT TO THE EFFECTIVE DATE, ALL PERSONS WHO DIRECTLY OR INDIRECTLY, HAVE HELD, HOLD, OR MAY HOLD CLAIMS OR INTERESTS, WILL BE DEEMED, BY VIRTUE OF THEIR RECEIPT OF DISTRIBUTIONS AND/OR OTHER TREATMENT CONTEMPLATED UNDER THE PLAN, TO HAVE FOREVER RELEASED AND COVENANTED WITH THE REORGANIZED DEBTOR AND THE RELEASED PARTIES NOT TO (Y) SUE OR OTHERWISE SEEK RECOVERY FROM ANY OF THE REORGANIZED DEBTOR OR ANY RELEASED PARTY ON ACCOUNT OF ANY CLAIM, INCLUDING BUT NOT LIMITED TO ANY CLAIM BASED UPON TORT, BREACH OF CONTRACT, VIOLATIONS OF FEDERAL OR STATE SECURITIES LAWS OR OTHERWISE, BASED UPON ANY ACT, OCCURRENCE, OR FAILURE TO ACT FROM THE BEGINNING OF TIME THROUGH THE EFFECTIVE DATE IN ANY WAY RELATED TO THE DEBTOR OR ITS BUSINESS AND AFFAIRS OR (Z) ASSERT AGAINST ANY OF THE REORGANIZED DEBTOR OR ANY RELEASED PARTY ANY CLAIM, OBLIGATION, RIGHT, CAUSE OF ACTION OR LIABILITY THAT ANY HOLDER OF A CLAIM OR INTEREST MAY BE ENTITLED TO ASSERT, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING OR HEREAFTER ARISING, BASED IN WHOLE OR IN PART ON ANY ACT OR OMISSION, TRANSACTION, OR OCCURRENCE FROM THE BEGINNING OF TIME THROUGH THE EFFECTIVE DATE IN ANY WAY RELATING TO THE DEBTOR, THE CHAPTER 11 CASE, OR THE PLAN; PROVIDED, HOWEVER, (I) THE FOREGOING RELEASE WILL NOT APPLY TO OBLIGATIONS ARISING UNDER THE PLAN, (II) THE FOREGOING RELEASE WILL NOT BE CONSTRUED TO PROHIBIT A PARTY IN INTEREST FROM SEEKING TO ENFORCE THE TERMS OF THE PLAN, AND (III) NOTHING IN THE CONFIRMATION ORDER OR THE PLAN SHALL EFFECT A RELEASE OF ANY CLAIM BY THE UNITED STATES GOVERNMENT OR ANY OF ITS AGENCIES OR ANY STATE AND LOCAL AUTHORITY ARISING UNDER THE INTERNAL REVENUE CODE, FEDERAL SECURITIES LAWS, THE ENVIRONMENTAL LAWS OR ANY CRIMINAL LAWS OF THE UNITED STATES OR ANY STATE AND LOCAL AUTHORITY AGAINST THE RELEASED PARTIES, NOR SHALL ANYTHING IN THE CONFIRMATION ORDER OR THE PLAN ENJOIN THE UNITED STATES OR ANY STATE OR LOCAL AUTHORITY FROM BRINGING ANY CLAIM, SUIT, ACTION OR OTHER PROCEEDINGS AGAINST THE RELEASED PARTIES FOR ANY LIABILITY SO ARISING UNDER THE INTERNAL REVENUE CODE, FEDERAL SECURITIES LAWS, THE ENVIRONMENTAL LAWS OR ANY CRIMINAL LAWS OF THE UNITED STATES OR ANY STATE OR LOCAL AUTHORITY, NOR SHALL ANYTHING IN THE CONFIRMATION ORDER OR THE PLAN EXCULPATE ANY PARTY FROM ANY LIABILITY TO THE UNITED STATES**

**GOVERNMENT OR ANY OF ITS AGENCIES OR ANY STATE AND LOCAL AUTHORITY ARISING UNDER THE INTERNAL REVENUE CODE, FEDERAL SECURITIES LAWS, THE ENVIRONMENTAL LAWS OR ANY CRIMINAL LAWS OF THE UNITED STATES OR ANY STATE AND LOCAL AUTHORITY AGAINST THE RELEASED PARTIES (PROVIDED THAT THE FOREGOING SHALL IN NO WAY AFFECT OR LIMIT THE DISCHARGE OR INJUNCTION GRANTED TO THE DEBTOR UNDER SECTIONS 524 AND 1141 OF THE BANKRUPTCY CODE). NOTWITHSTANDING ANYTHING IN THE PLAN, DISCLOSURE STATEMENT OR CONFIRMATION ORDER TO THE CONTRARY, HOLDERS OF THE PARENT DEBT OR INTERESTS SHALL NOT RELEASE ANY CLAIMS ON ACCOUNT OF THE PARENT DEBT OR INTERESTS IN THE DEBTOR, RESPECTIVELY.**

**9.4. Exculpation. THE DEBTOR, THE REORGANIZED DEBTOR, AND THE RELEASED PARTIES (I) SHALL HAVE NO LIABILITY WHATSOEVER TO ANY HOLDER OR PURPORTED HOLDER OF A CLAIM OR INTEREST FOR ANY ACT OR OMISSION IN CONNECTION WITH, OR ARISING OUT OF, THE PLAN, THE DISCLOSURE STATEMENT, THE NEGOTIATION OF THE PLAN, THE NEGOTIATION OF THE DOCUMENTS INCLUDED IN THE PLAN SUPPLEMENT, THE RESTRUCTURING TRANSACTIONS, THE PURSUIT OF APPROVAL OF THE DISCLOSURE STATEMENT OR THE SOLICITATION OF VOTES FOR CONFIRMATION OF THE PLAN, THE CHAPTER 11 CASE, THE CONSUMMATION OF THE PLAN, THE ADMINISTRATION OF THE PLAN OR THE PROPERTY TO BE DISTRIBUTED UNDER THE PLAN, OR ANY TRANSACTION CONTEMPLATED BY THE PLAN OR DISCLOSURE STATEMENT OR IN FURTHERANCE THEREOF EXCEPT FOR ANY ACT OR OMISSION THAT CONSTITUTES WILLFUL MISCONDUCT OR GROSS NEGLIGENCE AS DETERMINED BY A FINAL ORDER, AND (II) IN ALL RESPECTS, SHALL BE ENTITLED TO RELY UPON THE ADVICE OF COUNSEL WITH RESPECT TO THEIR DUTIES AND RESPONSIBILITIES UNDER THE PLAN. THIS EXCULPATION SHALL BE IN ADDITION TO, AND NOT IN LIMITATION OF, ALL OTHER RELEASES, INDEMNITIES, EXCULPATIONS AND ANY OTHER APPLICABLE LAW OR RULES PROTECTING THE RELEASED PARTIES FROM LIABILITY.**

**9.5. Injunction With Respect to Released Parties.** Pursuant to section 105 of the Bankruptcy Code, no holder or purported holder of a Claim or Interest shall be permitted to commence or continue any action, employment of process, or any act to collect, offset, or recover any Claim against a Released Party that accrued on or prior to the Effective Date and that has been released or waived pursuant to the Plan.

## ARTICLE X

## RETENTION OF JURISDICTION

**10.1. Retention of Exclusive Jurisdiction by the Bankruptcy Court.** Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain such exclusive jurisdiction over the Chapter 11 Case and any

matter related to the Chapter 11 Case after the Effective Date as is legally permissible, including exclusive jurisdiction to:

(a) Allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim or the resolution of any objections to the allowance, priority or classification of Claims or Interests;

(b) Grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan for periods ending on or before the Effective Date;

(c) Resolve any matters, related to the assumption, assumption and assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is a party or with respect to which the Debtor or Reorganized Debtor may be liable and to hear, determine and, if necessary, liquidate any Claims arising therefrom, including any Cure Amount Claims;

(d) Ensure that Distributions to holders of Allowed Claims and Interests are accomplished pursuant to the provisions of the Plan;

(e) 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 or brought thereafter;

(f) Enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all contracts, instruments, releases and other agreements or documents entered into or delivered in connection with the Plan, the Disclosure Statement or the Confirmation Order;

(g) Resolve any cases, controversies, suits or disputes that may arise in connection with the consummation, interpretation or enforcement of the Plan or any contract, instrument, release or other agreement or document that is entered into or delivered pursuant to the Plan or any Entity's rights arising from or obligations incurred in connection with the Plan or such documents;

(h) Modify the Plan before or after the Effective Date pursuant to section 1127 of the Bankruptcy Code; modify the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, the Disclosure Statement or the Confirmation Order; or remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court order, the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document entered into, delivered or created in connection with the Plan, the Disclosure Statement or the Confirmation Order, in such manner as may be necessary or appropriate to consummate the Plan and give effect to the Restructuring Transactions and other transactions contemplated by the Plan;

(i) Issue injunctions, enforce the injunctions contained in the Plan and the Confirmation Order, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with consummation, implementation or enforcement of the Plan or the Confirmation Order;

(j) Enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason or in any respect modified, stayed, reversed, revoked or vacated or Distributions pursuant to the Plan are enjoined or stayed;

(k) Determine such other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, the Disclosure Statement, the Confirmation Order, the Restructuring Transactions or any other transactions contemplated by the Plan;

(l) Determine matters related to requests by counsel for the Creditors' Committee for payment of post-Effective Date reasonable fees and expenses;

(m) Determine matters concerning state, local and federal Taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code, including any Disputed Claims for Taxes; and

(n) Enter a final decree closing the Chapter 11 Case.

To the extent that it is not legally permissible for the Bankruptcy Court to have exclusive jurisdiction over any of the foregoing matters, the Bankruptcy Court shall have nonexclusive jurisdiction over such matters to the extent legally permissible.

## ARTICLE XI

## MISCELLANEOUS PROVISIONS

**11.1. Dissolution of the Creditors' Committee.** On the Effective Date, the Creditors' Committee shall be dissolved and its members shall be deemed released of any continuing duties, responsibilities and obligations in connection with the Chapter 11 Case or the Plan and its implementation, and the retention and employment of the Creditors' Committee's attorneys, accountants and other agents shall terminate, except with respect to: (i) any matters concerning the Distributions to be made under the Plan through the date upon which the first Distributions are made after the Effective Date; (ii) all Professional Fee Claims through a final hearing on Professional Fee Claims for Professionals; or (iii) any appeals of the Confirmation Order through the date such appeals are finally decided, settled, withdrawn or otherwise resolved. Counsel to the Creditors' Committee shall be entitled to reasonable compensation and reimbursement of actual, necessary expenses for post-Effective Date activities authorized hereunder upon the submission of invoices to be paid by the Reorganized Debtor. Copies of such invoices shall be sent to the Reorganized Debtor. The Reorganized Debtor is authorized to pay such invoices without further order of the Bankruptcy Court. If the Reorganized Debtor disputes the amount of any such invoice, it may bring the matter before the Bankruptcy Court.

**11.2. Modification of the Plan and Exhibits.** Subject to the restrictions on modifications set forth in section 1127 of the Bankruptcy Code, the Debtor or the Reorganized Debtor, as applicable, reserves the right to alter, amend or modify the Plan and the Exhibits to the Plan at any time before its substantial consummation; provided, however, that after entry of the Confirmation Order, (i) the Plan as modified shall meet the requirements of sections 1122 and 1123 of the Bankruptcy Code, (ii) shall comply with section 1125 of the Bankruptcy Code, (iii) that circumstances warrant such modifications and (iv) the Bankruptcy Court enters an order confirming the Plan as modified.

**11.3. Revocation of the Plan.** The Debtor reserves the right to revoke or withdraw the Plan prior to the Confirmation Date. If the Debtor revokes or withdraws the Plan, or if confirmation of the Plan does not occur, the Plan shall be null and void in all respects, and nothing contained in the Plan shall: (1) constitute a waiver or release of any Claims by or against, or any Interests in, the Debtor; or (2) prejudice in any manner the rights of the Debtor or any other party.

**11.4. Term of Bankruptcy Injunction or Stays.** All injunctions or stays provided for in the Chapter 11 Case under sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date.

**11.5. Headings.** The headings used in the Plan are inserted for convenience only and neither constitute a portion of the Plan nor affect, in any manner, the construction of the provisions of the Plan.

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

**11.7. Governing Law**. Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules), the laws of (a) the State of Connecticut shall govern the construction and implementation of the Plan and (except as may be provided otherwise in any such agreements, documents, or instruments) any agreements, documents, and instruments executed in connection with the Plan, and (b) the laws of the state of incorporation of the Debtor shall govern corporate governance matters with respect to the Debtor; in each case without giving effect to the principles of conflicts of law thereof. None of the foregoing shall be deemed to preclude the application of the tax laws of states in which the Debtor and Reorganized Debtor does business, to the extent federal law is not controlling.

**11.8. Plan Supplement and Exhibits**. The Plan Supplement shall be filed with the Clerk of the Bankruptcy Court on the Plan Supplement Date. Upon such filing, all documents included in the Plan Supplement may be inspected in the office of the Clerk of the Bankruptcy Court during normal business hours. Holders of Claims or Interests may obtain a copy of any document included in the Plan Supplement upon written request to the Debtor in accordance with Section 11.10 of the Plan or by downloading any such document from the Bankruptcy Court's website at www.nysb.uscourts.gov or the Claims Agent's website at http://chapter11.epiqsystems.com/Crabtree. To the extent any Exhibit is inconsistent with the terms of the Plan, unless otherwise ordered by the Bankruptcy Court, the non-Exhibit portion of

the Plan shall control. The Debtor reserves the right to modify, amend, supplement, restate or withdraw any of the Exhibits after they are filed. The Debtor shall file and shall make available on the aforementioned websites all modified, amended, supplemented or restated Exhibits as promptly as possible.

**11.9. Waiver of Federal Rule of Civil Procedure 62(a).** The Debtor may request that the Confirmation Order include (a) a finding that Federal Rule of Civil Procedure 62(a) shall not apply to the Confirmation Order, and (b) authorization for the Debtor to consummate the Plan immediately after entry of the Confirmation Order.

**11.10. Service of Documents.** Any notice, request, or demand required or permitted to be made or provided under the Plan shall be (a) in writing, (b) served by (i) certified mail, return receipt requested, (ii) hand delivery, (iii) overnight delivery service, (iv) first class mail, or (v) facsimile transmission, and (c) deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed by the recipient, addressed as follows:

The Debtor and the Reorganized Debtor:

CRABTREE & EVELYN, LTD.
102 Peake Brook Road
Woodstock, Connecticut 06281-0167
Telephone: (860) 928-2761
Facsimile: (860) 928-5685
Attn.: Colleen Cording, Esq.

-and-

COOLEY GODWARD KRONISH LLP
1114 Avenue of the Americas
New York, New York 10036
Telephone: (212) 479-6000
Facsimile: (212) 479-6275
Attn.: Lawrence C. Gottlieb, Esq.
Jeffrey L. Cohen, Esq.
Richelle Kalnit, Esq.

The Creditors' Committee:

HAHN & HESSEN LLP
488 Madison Avenue
New York, New York 10022
Telephone: (212) 478-7320
Facsimile: (212) 478-7400
Attn.: Mark Indelicato, Esq.
Janine Cerbone, Esq.

The U.S. Trustee:

OFFICE OF THE UNITED STATES TRUSTEE
33 Whitehall Street
21st Floor
New York, New York 10004
Telephone: (212) 510-0500
Facsimile: (212) 668-2255
Attn.: Serene Nakano, Esq.

Dated: October 23, 2009
New York, New York

Respectfully submitted,

**CRABTREE & EVELYN, LTD.**

By: /s/ Stephen W. Bestwick
Name: Stephen W. Bestwick
Title: Acting President

COUNSEL:

COOLEY GODWARD KRONISH LLP
1114 Avenue of the Americas
New York, New York 10036
Telephone: (212) 479-6000
Lawrence C. Gottlieb (LG 2565)
Jeffrey L. Cohen (JC 2556)
Richelle Kalnit (RK 3728)

Attorneys for Debtor and
Debtor in Possession

## EXHIBIT A TO THE PLAN OF REORGANIZATION

### Certificate of Incorporation of the Reorganized Debtor

(To Be Filed With the Plan Supplement to the
Debtor's Plan of Reorganization Under Chapter 11 of the Bankruptcy Code)

## EXHIBIT B TO THE PLAN OF REORGANIZATION

**By-Laws of the Reorganized Debtor**

(To Be Filed With the Plan Supplement to the
Debtor's Plan of Reorganization Under Chapter 11 of the Bankruptcy Code)

**EXHIBIT C TO THE PLAN OF REORGANIZATION**

**Directors of the Reorganized Debtor**

(To Be Filed With the Plan Supplement to the
Debtor's Plan of Reorganization Under Chapter 11 of the Bankruptcy Code)

## EXHIBIT D TO THE PLAN OF REORGANIZATION

**Executory Contracts and Unexpired Leases to Be Assumed and Proposed Cure Amounts**

(To Be Filed With the Plan Supplement to the
Debtor's Plan of Reorganization Under Chapter 11 of the Bankruptcy Code)

# EXHIBIT E TO THE PLAN OF REORGANIZATION

## Exit Facility

(To Be Filed With the Plan Supplement to the
Debtor's Plan of Reorganization Under Chapter 11 of the Bankruptcy Code)

## EXHIBIT B TO THE DISCLOSURE STATEMENT

## DISCLOSURE STATEMENT ORDER

(To Be Provided)

# EXHIBIT C TO THE DISCLOSURE STATEMENT

## CHAPTER 7 LIQUIDATION ANALYSIS

Introduction

The liquidation analysis (the "Liquidation Analysis") reflects the estimated cash proceeds, net of liquidation-related costs that would be realized if the Debtor were liquidated in accordance with Chapter 7 of the Bankruptcy Code. The Liquidation Analysis is based on a number of estimates and assumptions that, although considered reasonable by management, are inherently subject to significant business, economic and competitive uncertainties and contingencies beyond the Debtor's control, and which could be subject to material change.

ACCORDINGLY, THERE CAN BE NO ASSURANCE THAT THE RECOVERIES FROM THE LIQUIDATION OF ASSETS REFLECTED IN THE LIQUIDATION ANALYSIS WOULD BE REALIZED IF THE DEBTOR WERE LIQUIDATED UNDER CHAPTER 7 AND ACTUAL RESULTS COULD VARY MATERIALLY FROM THOSE ESTIMATED IN THE LIQUIDATION ANALYSIS.

The Liquidation Analysis illustrates that in a Chapter 7 liquidation, holders of Claims in Class 3 would receive a mid-point recovery of 8.9% and that holders of Claims in Class 4 would receive the Class Action Settlement Amount. The Liquidation Analysis assumes that the Debtor would commence a Chapter 7 liquidation on October 30, 2009.

The Liquidation Analysis assumes the liquidation of the Debtor would commence under the direction of a Bankruptcy Court appointed trustee (the "Chapter 7 Trustee") and would continue for a period of approximately six months, during which time all of the Debtor's significant assets would either be sold or conveyed to the respective lien holders, and the cash proceeds, net of liquidation related costs, would then be distributed to creditors. Although some assets could be liquidated in less than six months, other assets would be more difficult to collect or sell, thus requiring a liquidation period substantially longer than six months. During the liquidation, the Chapter 7 Trustee would generally undertake: (i) the orderly collection of existing accounts receivable and future receivables during the wind-down, (ii) the orderly sale of inventory/equipment and other fixed assets, and (iii) the orderly wind-down of daily operations. For certain other assets, liquidation values were estimated for each asset or were assessed for assets in similar categories by estimating the percentage recoveries that a Chapter 7 Trustee might obtain for that category of asset.

The Liquidation Analysis assumes that the Chapter 7 Trustee would be able to negotiate a charging lien against the assets which are subject to the claims of secured creditors. Under the Final DIP Order, liens were granted to the DIP Lender against all of the Debtor's assets (as further described in Section VI.C.1 of the Disclosure Statement). It is assumed that without an agreement as to a charging lien between the Chapter 7 Trustee and the DIP Lender that the Chapter 7 Trustee would likely abandon many of the assets in favor of the DIP Lender.

The Liquidation Analysis also assumes that the gross amount of assets and the cash available for distribution would be the sum of the proceeds from the disposition of the Debtor's assets, recovery on preference claims and the cash held by the Debtor at the commencement of the Chapter 7 case. Such amount then would be reduced by the costs and expenses of the Chapter 7 liquidation to arrive at net proceeds available for distribution to creditors. The Liquidation Analysis assumes that liquidation proceeds would be distributed in accordance with the priorities required by sections 726 and 507 of the Bankruptcy Code. Specifically, net value from the liquidation of assets after the payment of fees associated with the liquidation generally would be distributed first to satisfy secured claims to the extent of the collateral value securing such claims, in order of priority. Next, value would flow to unsecured claims and, finally, to Interests. Since the Debtor's business operations would cease in a Chapter 7 liquidation, all of the Debtor's major executory contracts and leases would be rejected by the Chapter 7 Trustee. Based on exercising their right of set-off, certain vendors are assumed to offset some of their outstanding unsecured claims against amounts that are owed to the Debtor (in the form of prepetition receivables). The Liquidation Analysis does not include an estimate for other unsecured claims, such as claims of customers and other agreements arising from failure of the Debtor to perform and render services. These types of claims are difficult to estimate but are presumed to occur in a liquidation context due to the cessation of the Debtor's business operations and the resulting rejection of contracts and lease agreements. These claims are likely substantial and would further dilute any recovery estimated for unsecured creditors in the Liquidation Analysis.

The Liquidation Analysis includes an estimate of the amount of claims that could ultimately be allowed claims. Estimates for the various types of claims are based solely on the Debtor's estimates and do not constitute an admission of liability by the Debtor. Unless otherwise noted herein, no order or finding has been entered by the Bankruptcy Court estimating or otherwise fixing the amount of claims at the projected levels set forth in this Liquidation Analysis.



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Crabtree & Evelyn LTD

Liquidation Analysis

Prepared by Clear Thinking Group LLC

| | Recoverable Assets | Estimated Value as of | $ Amount | | Liquidation Analysis Scenarios LOW | MID | HIGH |
|---|---|---|---|---|---|---|---|
| a | Cash | 30-Sep-09 | $ 1,959,340 | | $ 1,959,340 | $ 1,959,340 | $ 1,959,340 |
| b | Accounts Receivable - Trade | 30-Sep-09 | $ 10,758,042 | | $ 8,498,524 | $ 9,036,426 | $ 9,574,328 |
| | | | *Recovery Rate* | | *79.0%* | *84.0%* | *89.0%* |
| c | Inventory (Recovery on Cost) | 30-Sep-09 | $ 21,406,299 | | $ 8,039,016 | $ 9,887,001 | $ 11,734,986 |
| | | | *Recovery Rate* | | *37.6%* | *46.2%* | *54.8%* |
| d | Non-trade A/R - C&E Group | 30-Sep-09 | $ 1,880,426 | | $ 1,880,426 | $ 1,880,426 | $ 1,880,426 |
| | | | *Recovery Rate* | | *100.0%* | *100.0%* | *100.0%* |
| e | Real Estate (Buildings and Land) | 30-Sep-09 | $ 6,910,220 | | $ 2,971,395 | $ 4,353,439 | $ 5,735,483 |
| | | | *Recovery Rate* | | *43.0%* | *63.0%* | *83.0%* |
| f | Furniture, Fixtures & Equipment | 30-Sep-09 | $ 4,439,650 | | $ 331,911 | $ 663,822 | $ 1,161,079 |
| | | | *Recovery Rate* | | *7.5%* | *15.0%* | *26.2%* |
| g | Interllectual Property (Patents, Trademarks, URL's, etc.) | 30-Sep-09 | $ 5,000,000 | | $ 2,500,000 | $ 3,250,000 | $ 4,000,000 |
| | | | Recovery Rate | | *50.0%* | *65.0%* | *80.0%* |
| h | FF&E Recovery Fee | *-20%* | | | *$ (66,382)* | *$ (132,764)* | *$ (232,216)* |
| i | Accounts Receivable Collection Fees | -10% | | | $ (849,852) | $ (903,643) | $ (957,433) |
| j | IP Recovery Fee | -25% | | | $ (625,000) | $ (812,500) | $ (1,000,000) |
| | **Net Recovery before Wind DownExpenses, Professional Fees, and Return to Shareholders** | | | | **$ 24,639,380** | **$ 29,181,550** | **$ 33,855,998** |
| | **Operating and Administrative Expenses, Professional Fees and Other Expenses:** | | | | | | |
| k | Company Operating Costs During Orderly Wind Down | | | | 3,708,287 | 3,708,287 | 3,708,287 |
| l | Admin Expenses per open A/P plus accrued | 30-Sep-09 | | | 4,178,916 | 4,178,916 | 4,178,916 |
| m | Professional Fees & Expenses | | | | 2,000,000 | 2,000,000 | 2,000,000 |
| | **Gross $ Available to Creditors** | | | | **$ 14,752,177** | **$ 19,294,348** | **$ 23,968,795** |
| n | Amount due to secured creditor - KLK | Prepetition | 8,000,000 | | 14,500,000 | 14,500,000 | 14,500,000 |
| | | Postpetition | 6,500,000 | | | | |
| | **Funds Available to Unsecured Creditors** | | | | **$ 252,177** | **$ 4,794,348** | **$ 9,468,795** |
| | **Funds as % of total unsecured claims** | | | | **0.5%** | **8.9%** | **17.6%** |
| o | Property Lease Liabilities | 30-Sep-09 | $ 14,900,000 | 1 | $ 14,900,000 | $ 14,900,000 | $ 14,900,000 |
| p | Other Leases and Contracts Liabilities | 30-Sep-09 | $ 100,000 | 1 | $ 100,000 | $ 100,000 | $ 100,000 |
| r | Accounts Payable & Accrued expenses payable | 30-Sep-09 | $ 6,727,489 | 1 | $ 6,727,489 | $ 6,727,489 | $ 6,727,489 |
| s | KLK Loan - unsecured | 30-Sep-09 | $ 31,799,245 | 1 | $ 31,799,245 | $ 31,799,245 | $ 31,799,245 |
| t | Consumer claims (G.C.) | 30-Sep-09 | $ 353,922 | 1 | $ 353,922 | $ 353,922 | $ 353,922 |
| | sub-total Unsecured claims | | | | $ 53,880,656 | $ 53,880,656 | $ 53,880,656 |
| | **Net Available for Shareholders** | | | | $ - | $ - | $ - |

Clear Thinking Group LLC has relied on information provided by Crabtree & Evelyn LTD and its officers. Clear Thinking Group LLC has not audited any of the information provided to us.

**Assumptions:**

a Cash on hand as of 9/30/09 less outstanding checks, and excluding $270k reserve for class action
b Accounts receivables from trade (wholesale) activities including C&E group - as of 9/30
c Inventory on hand at cost as of 9/30. Assumes guarantee liquidation deal.
d Represents operating charges to holding company for administrative and brand management activities. Actual balance as of 9/30
e Represents sale of Woodstock, CT properties net of selling costs and commissions.
f NBV from 9/30/09 balance sheet and includes FF&E, computer equipment, autos, and lab equipment.
g Assumes company Intellectual Property has some value in the marketplace.
h Assumes a liquidator recovery fee of 20% of gross FF&E sales, net of sales tax
i Assumes company uses a collection agency to collect the last 20% of accounts receivable. Collection fee of -10% of recovered receivables
j Assumes the use of an IP broker at 25% of net sales.
k Assumes corporate expenses under aggressive wind-down of operations. Assumes wind-down completed in 6 months after filing
l Open post-petition A/P as of 9/30, including inventory receipts received but not "vouched".
m Assumes approx. $700k for debtor legal counsel, $500k for debtor FA, $500k for creditor legal counsel and FA plus other pro fees for lender legal counsel, noticing agent, tax, litigation, employement counsel, etc.
n Secured debt due to KLK - balance at 9/30
o Estimated real estate lease liability based on info as of 9/30/09.; per 502b(6) analysis.
p Estimated other contracts and leases liabilities.
r Pre-petition AP
s Loans - unsecured.
t Outstanding gift cards as of 9/30.

# EXHIBIT D TO THE DISCLOSURE STATEMENT

# FINANCIAL PROJECTIONS

**Crabtree & Evelyn Ltd**
**FY2009 to FY2012**

| ($000's) | **FY2009** | % sales | **FY2010** | % sales | **FY2011** | % sales | **FY2012** | % sales |
|---|---|---|---|---|---|---|---|---|
| **Sales** | **99,757** | 100.0% | **94,813** | 100.0% | **96,748** | 100.0% | **98,633** | 100.0% |
| **Gross Profit** | **45,362** | 45.5% | **45,757** | 48.3% | **46,036** | 47.6% | **46,131** | 46.8% |
| Selling Expenses | 22,173 | 22.2% | 18,050 | 19.0% | 17,099 | 17.7% | 16,481 | 16.7% |
| Admin Expenses | 36,703 | 36.8% | 28,056 | 29.6% | 26,320 | 27.2% | 25,405 | 25.8% |
| **Operating Results** | **(13,514)** | **-13.5%** | **(349)** | **-0.4%** | **2,618** | **2.7%** | **4,245** | **4.3%** |
| Other (inc)/exp & interest | (3,147) | -3.2% | (401) | -0.4% | (101) | -0.1% | (101) | -0.1% |
| **Pre-Tax Results** | **(10,367)** | **-10.4%** | **52** | **0.1%** | **2,719** | **2.8%** | **4,346** | **4.4%** |

## Crabtree & Evelyn
**Balance Sheet-Presentation**

| | FY 2009 | FY 2010 Balance Sheet | | | |
|---|---|---|---|---|---|
| | Q4 | Q1 | Q2 | Q3 | Q4 |
| **Assets** | | | | | |
| Cash | 3,097,632.1 | 3,111,998.6 | 2,594,546.9 | 2,033,060.6 | 2,310,008.8 |
| Accounts Receivable | 11,686,748.4 | 9,082,230.5 | 8,587,480.5 | 8,942,430.5 | 13,778,180.5 |
| Inventory | 24,050,655.1 | 19,894,071.2 | 19,436,618.1 | 20,347,245.5 | 19,759,549.9 |
| Other Current | 698,283.1 | 980,261.6 | 1,215,598.7 | 1,468,647.3 | 1,692,716.8 |
| Total Current Assets | 39,533,318.6 | 33,068,561.9 | 31,834,244.1 | 32,791,383.8 | 37,540,456.0 |
| Net Property, Plant & Equipment | 12,364,813.0 | 11,864,105.3 | 11,631,359.7 | 12,108,095.6 | 11,958,946.1 |
| Other Long Term Assets | 1,710,838.0 | 1,710,838.0 | 1,710,838.0 | 1,710,838.0 | 1,710,838.0 |
| **Total Assets** | **53,608,969.6** | **46,643,505.2** | **45,176,441.8** | **46,610,317.5** | **51,210,240.1** |
| **Liabilities** | | | | | |
| Accounts Payable & Accrued Exp | 16,409,799.5 | 14,300,916.1 | 13,265,378.0 | 13,953,951.8 | 13,815,263.4 |
| Other Current Liabilities | 597,031.2 | 394,140.3 | 451,694.6 | 295,208.3 | 527,413.4 |
| Total Current Liabilities | 17,006,830.6 | 14,695,056.3 | 13,717,072.6 | 14,249,160.1 | 14,342,676.8 |
| Notes Payable | 44,736,543.9 | 36,693,190.0 | 38,457,627.5 | 40,943,349.0 | 44,949,507.5 |
| **Total Liabilities** | 61,743,374.6 | 51,388,246.3 | 52,174,700.1 | 55,192,509.1 | 59,292,184.2 |
| **Stockholder's Equity** | | | | | |
| Paid-In Capital | 284,402.0 | 284,402.0 | 284,402.0 | 284,402.0 | 284,402.0 |
| Common Stock, no par value | 28,485,936.0 | 28,485,936.0 | 28,485,936.0 | 28,485,936.0 | 28,485,936.0 |
| Retained Earnings | (36,904,743.0) | (33,515,079.1) | (35,768,596.3) | (37,352,529.7) | (36,852,282.1) |
| **Total Stockholder's Equity** | (8,134,405.0) | (4,744,741.1) | (6,998,258.3) | (8,582,191.7) | (8,081,944.1) |
| **Total Liabilities and Stockholder's Equity** | **53,608,969.6** | **46,643,505.2** | **45,176,441.8** | **46,610,317.5** | **51,210,240.1** |

**<u>Exhibit 2</u>**

# Disclosure Statement Notice

**UNITED STATES BANKRUPTCY COURT**
**SOUTHERN DISTRICT OF NEW YORK**

| | | |
|---|---|---|
| **In re** | : | **Chapter 11** |
| **CRABTREE & EVELYN, LTD.,** | : | **Case No. 09-14267 (BRL)** |
| **Debtor.** | : | |

**NOTICE OF HEARING TO CONSIDER APPROVAL OF DISCLOSURE STATEMENT WITH RESPECT TO DEBTOR'S PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

TO PARTIES IN INTEREST IN THE FOLLOWING CHAPTER 11 CASE:

**Name of Debtor Entity and Case Number**

Crabtree & Evelyn, Ltd., Case No. 09-14267 (BRL)

PLEASE TAKE NOTICE THAT on October 23, 2009, Crabtree & Evelyn, Ltd., as debtor and debtor in possession (the "Debtor"), filed a Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (as it may be amended, the "Plan") and a Disclosure Statement for Debtor's Plan Under Chapter 11 of the Bankruptcy Code (as it may be amended, the "Disclosure Statement") with respect to the Plan, pursuant to section 1125 of title 11 of the United States Code (the "Bankruptcy Code").

PLEASE TAKE FURTHER NOTICE that:

1. A hearing will be held before the Honorable Burton R. Lifland, United States Bankruptcy Judge, in Room 623 of the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), One Bowling Green, New York, New York, on **November 19, 2009 at 10:00 a.m. (prevailing Eastern Time)** (the "Hearing") to consider the entry of an order, among other things, determining that the Disclosure Statement contains "adequate information" within the meaning ascribed to such term in section 1125 of the Bankruptcy Code and approving the Disclosure Statement.

2. If you wish to obtain a copy of the Disclosure Statement and the Plan, or if you received the Disclosure Statement and the Plan in CD-ROM format and desire paper copies, you should telephone Epiq Bankruptcy Solutions, LLC at **646-282-2400**. Interested parties may also examine the Disclosure Statement and the Plan free of charge at http://chapter11.epiqsystems.com/Crabtree. In addition, the Disclosure Statement and Plan are on file with the Court and may be examined by accessing the Court's website: http://www.nysb.uscourts.gov. Note that a PACER password and login are needed to access

documents on the Court's website. A PACER password can be obtained at: www.pacer.psc.uscourts.gov.

3. Objections, if any, to approval of the Disclosure Statement must (a) be in writing; (b) be in the English language; (c) state the name and address of the objecting party and the amount and nature of the claim or interest of such party; (d) state with particularity the basis and nature of any objection to the Disclosure Statement; and (e) be filed, together with proof of service, with the Court and served **so that they are actually received by the following parties no later than November 11, 2009 at 4:00 p.m. (prevailing Eastern Time)**: (i) the Debtor, 102 Peake Brook Road, Woodstock, CT 06281 (Attn.: Colleen Cording, Esq.), (ii) counsel to the Debtor, Cooley Godward Kronish LLP, 1114 Avenue of the Americas, New York, New York 10036 (Attn: Lawrence C. Gottlieb, Esq. and Richelle Kalnit, Esq.), (iii) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004 (Attn: Serene Nakano, Esq.), (iv) SilvermanAcampora LLP, 100 Jericho Quadrangle, Suite 300, Jericho, New York 11753 (Attn: Ronald J. Friedman, Esq.) as counsel for Kuala Lumpur Kepong Berhad, the Debtor's prepetition and postpetition lender, and (v) Hahn & Hessen LLP, 488 Madison Avenue, 15th Floor, New York, New York 10022 (Attn: Mark Indelicato, Esq.), as counsel for the official committee of unsecured creditors. **IF AN OBJECTION TO THE DISCLOSURE STATEMENT IS NOT FILED AND SERVED STRICTLY AS PRESCRIBED HEREIN, THE OBJECTING PARTY MAY BE BARRED FROM OBJECTING TO THE DISCLOSURE STATEMENT OR THE ADEQUACY THEREOF AND MAY NOT BE HEARD AT THE HEARING.**

4. Upon approval of the Disclosure Statement by the Bankruptcy Court, any party in interest that is entitled to vote on the Plan will receive a copy of the Disclosure Statement, the Plan and various documents related thereto, unless otherwise ordered by the Bankruptcy Court.

5. The Hearing may be adjourned from time to time without further notice to parties in interest other than by an announcement in Bankruptcy Court of such adjournment on the date scheduled for the Hearing or as indicated in any notice of agenda of matters scheduled for hearing filed by the Debtor with the Court.

**The Plan contains an injunction which prevents, among other things, any holder of any claim or equity interest or any other party in interest in the Debtor's chapter 11 case from commencing or continuing, in any manner, any action or other proceeding of any kind against the Debtor, enforcing judgments or encumbrances relating to such claims or interests, or asserting rights of setoff, recoupment or subrogation against the Debtor on and after the effective date under the Plan. In addition, except as provided in the Plan, the Debtor will not have any liability for any claim against or equity interest in the Debtor that arose prior to the effective date under the Plan.**

DATED: October 23, 2009
New York, New York

# <u>Exhibit 3</u>

# Confirmation Hearing Notice

**UNITED STATES BANKRUPTCY COURT**
**SOUTHERN DISTRICT OF NEW YORK**

| | | |
|---|---|---|
| **In re** | : | **Chapter 11** |
| **CRABTREE & EVELYN, LTD.,** | : | **Case No. 09-14267 (BRL)** |
| **Debtor.** | : | |

**NOTICE OF (I) APPROVAL OF DISCLOSURE STATEMENT; (II) ESTABLISHMENT OF VOTING RECORD DATE; (III) HEARING ON CONFIRMATION OF THE PLAN AND PROCEDURES FOR OBJECTING TO CONFIRMATION OF THE PLAN; AND (IV) PROCEDURES AND DEADLINE FOR VOTING ON THE PLAN**

TO PARTIES IN INTEREST IN THE FOLLOWING CHAPTER 11 CASE:

**Name of Debtor Entity and Case Number**

Crabtree & Evelyn, Ltd., Case No. 09-14267 (BRL)

PLEASE TAKE NOTICE that:

1. ***Approval of Disclosure Statement.*** On November [___], 2009, the United States Bankruptcy Court for the Southern District of New York (the "Court") entered an order (the "Order"), approving the Disclosure Statement for the Debtor's Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, dated as of October 23, 2009 (as it may be amended, the "Disclosure Statement") filed by Crabtree & Evelyn, Ltd., as debtor and debtor in possession (the "Debtor"). The Order authorizes the Debtor to solicit votes to accept or reject the Debtor's Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, dated as of October 23, 2009 (as it may be further amended, the "Plan"), a copy of which is annexed as Exhibit A to the Disclosure Statement.

2. ***Confirmation Hearing.*** A hearing (the "Confirmation Hearing") to consider the confirmation of the Plan will be held on **January 14, 2010 at 10:00 a.m. (prevailing Eastern Time)**, before the Honorable Burton R. Lifland, United States Bankruptcy Judge, in Room 623 of the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004. The Confirmation Hearing may be adjourned or continued from time to time without further notice other than the announcement by the Debtor of the adjourned date(s) at the Confirmation Hearing or any continued hearing or as indicated in any notice of agenda of matters scheduled for hearing filed by the Debtor with the Court. The Plan may be modified, if necessary, prior to, during, or as a result of the Confirmation Hearing.

3. ***Record Date for Voting Purposes.*** The following creditors who hold claims against the Debtor on November 19, 2009 (the "Record Date") are entitled to vote on the Plan:

    a) record holders, as of the Record Date, of claims listed on the Debtor's schedules of liabilities, filed with the Court on or about August 14, 2009, to the extent that such claims (i) are listed in an amount greater than zero and are not identified as contingent, unliquidated or disputed, (ii) have not been superseded by a filed proof of claim, and (iii) entitle the holder thereof to vote on the Plan; and

    b) record holders as of the Record Date, of claims, to the extent that such claims (i) are the subject of timely filed proofs of claim in an amount greater than zero, (ii) have not been disallowed, expunged, disqualified or suspended prior to the Record Date, (iii) are not the subject of a pending claim objection or request for estimation as of as of at least ten (10) days before the Voting Deadline, and (iv) entitle the holders thereof to vote on the Plan.

4. ***Voting Deadline.*** All votes to accept or reject the Plan must be actually received by the Debtor's voting and tabulation agent, Epiq Bankruptcy Solutions, LLC by no later than 5:00 p.m. (prevailing Eastern Time) on **January 5, 2010** (the "Voting Deadline"). Any failure to follow the voting instructions included with your Ballot may disqualify your Ballot and your vote.

5. ***Parties in Interest Not Entitled to Vote.*** Holders of unimpaired claims and holders of equity interests are not entitled to vote. Holders of unimpaired claims and holders of equity interests will receive a Notice of Non-Voting Status rather than a Ballot. If you have timely filed a proof of claim and disagree with the Debtor's classification of, objection to, or request for estimation of, your claim and believe that you should be entitled to vote on the Plan, then you must serve on the parties identified in paragraph 6 below and file with the Court (with two copies to Chambers) a motion (a "Rule 3018(a) Motion") for an order pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") temporarily allowing your claim in a different amount or in a different class for purposes of voting to accept or reject the Plan. All Rule 3018(a) Motions must be filed on or before the 10th day after the later of (i) service of this Notice and (ii) service of notice of an objection or request for estimation, if any, as to your claim. As to any creditor filing a Rule 3018(a) Motion, such creditor's Ballot will not be counted except as may be otherwise ordered by the Court. Creditors may contact Epiq Bankruptcy Solutions, LLC at **646-282-2400** to receive an appropriate Ballot for any claim for which a proof of claim has been timely filed and a Rule 3018(a) Motion has been granted. Rule 3018(a) Motions that are not timely filed and served in the manner set forth above shall not be considered.

6. ***Objections to Confirmation.*** Objections, if any, to confirmation of the Plan must (a) be in writing; (b) be in the English language; (c) state the name and address of the objecting party and the amount and nature of the claim or interest of such party; (d) state with particularity the basis and nature of any objection to the Plan; and (e) be filed, together with proof of service, with the Court and served **so that they are actually received by the following parties no later than January 5, 2010 at 4:00 p.m. (prevailing Eastern Time)**: (i) the Debtor, 102 Peake Brook Road, Woodstock, CT 06281 (Attn.: Colleen Cording, Esq.), (ii)

counsel to the Debtor, Cooley Godward Kronish LLP, 1114 Avenue of the Americas, New York, New York 10036 (Attn: Lawrence C. Gottlieb, Esq. and Richelle Kalnit, Esq.), (iii) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004 (Attn: Serene Nakano, Esq.), (iv) SilvermanAcampora LLP, 100 Jericho Quadrangle, Suite 300, Jericho, New York 11753 (Attn: Ronald J. Friedman, Esq.) as counsel for Kuala Lumpur Kepong Berhad, the Debtor's prepetition and postpetition lender, and (v) Hahn & Hessen LLP, 488 Madison Avenue, 15th Floor, New York, New York 10022 (Attn: Mark Indelicato, Esq.), as counsel for the official committee of unsecured creditors. **IF ANY OBJECTION TO CONFIRMATION OF THE PLAN IS NOT FILED AND SERVED STRICTLY AS PRESCRIBED HEREIN, THE OBJECTING PARTY MAY BE BARRED FROM OBJECTING TO CONFIRMATION OF THE PLAN AND MAY NOT BE HEARD AT THE HEARING.**

7. ***Parties Who Will Not Be Treated as Creditors.*** Any holder of a claim that is scheduled in the Debtor's schedules of assets and liabilities, statements of financial affairs and schedules of executory contracts and unexpired leases at $0, or in an unknown amount, or as disputed, contingent, or unliquidated, and that has not filed a timely proof of claim, shall not be treated as a creditor with respect to such claim for purposes of (a) receiving notices regarding, or distributions under, the Plan, or (b) voting on the Plan.

8. ***Additional Information.*** If you wish to obtain information about the solicitation procedures or copies of the Disclosure Statement or the Plan, or if you received the Disclosure Statement and the Plan in CD-ROM format and desire paper copies, you should telephone the Debtor's voting agent, Epiq Bankruptcy Solutions, LLC at **646-282-2400**. Interested parties may also examine the Disclosure Statement and the Plan free of charge at http://chapter11.epiqsystems.com/Crabtree. In addition, the Disclosure Statement and Plan are on file with the Court and may be examined by accessing the Court's website: http://www.nysb.uscourts.gov. Note that a PACER password and login are needed to access documents on the Court's website. A PACER password can be obtained at: www.pacer.psc.uscourts.gov.

**The Plan contains an injunction which prevents, among other things, any holder of any claim or equity interest or any other party in interest in the Debtor's chapter 11 case from commencing or continuing, in any manner, any action or other proceeding of any kind against the Debtor, enforcing judgments or encumbrances relating to such claims or interests, or asserting rights of setoff, recoupment or subrogation against the Debtor on and after the effective date under the Plan. In addition, except as provided in the Plan, the Debtor will not have any liability for any claim against or equity interest in the Debtor that arose prior to the effective date under the Plan.**

DATED: [____________], 2009
New York, New York

# Exhibit 4

## Ballot for Class 3
## (General Unsecured Claims)

**UNITED STATES BANKRUPTCY COURT**
**SOUTHERN DISTRICT OF NEW YORK**

| | | |
|---|---|---|
| **In re** | : | **Chapter 11** |
| **CRABTREE & EVELYN, LTD.,** | : | **Case No. 09-14267 (BRL)** |
| **Debtor.** | : | |

# BALLOT FOR CLASS 3

# (GENERAL UNSECURED CLAIMS)

Crabtree & Evelyn, Ltd., as debtor and debtor in possession (the "Debtor"), is soliciting votes with respect to the Debtor's Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, dated as of October 23, 2009 (as it may be further amended, the "Plan"), from the holders of certain impaired claims against the Debtor. The Plan is attached as Exhibit A to the Disclosure Statement for the Plan (as it may be further amended, the "Disclosure Statement"). All capitalized terms used but not defined herein or in the enclosed voting instructions have the meanings ascribed to such terms in the Plan.

If you are, as of November 19, 2009, the holder of a General Unsecured Claim (as defined in the Plan), please use this Ballot to cast your vote to accept or reject the Plan. The United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") has approved the Disclosure Statement, which provides information to assist you in deciding how to vote on the Plan. Bankruptcy Court approval of the Disclosure Statement does not indicate approval of the Plan by the Bankruptcy Court. If you have any questions on how to properly complete this Ballot, please call Epiq Bankruptcy Solutions, LLC (the "Voting Agent") at 646-282-2400.

**IMPORTANT**

**You should review the Disclosure Statement and the Plan before you vote. You may wish to seek legal advice concerning the Plan and the classification and treatment of your claim or claims under the Plan.**

**All of your General Unsecured Claims against the Debtor have been placed in Class 3 under the Plan. If you hold claims in more than one class under the Plan, you will receive a Ballot for each class in which you are entitled to vote and must complete a separate Ballot for each class of claims.**

**VOTING DEADLINE: 5:00 P.M. (prevailing Eastern Time) ON JANUARY 5, 2010.**

**In order for your vote to be counted, the Ballot must be properly completed, signed, and returned so that it is actually received by the Voting Agent, Epiq Bankruptcy Solutions, LLC by no later than 5:00 p.m. (prevailing Eastern Time) on January 5, 2010, unless such time is extended by the Debtor. If sending your Ballot by regular mail, please mail to: Crabtree & Evelyn, Ltd. Ballot Processing Center, c/o Epiq Bankruptcy Solutions, LLC, FDR Station, P.O. Box 5014, New York, New York 10150-5014. If you are sending your Ballot by hand delivery or overnight courier, please deliver your Ballot to Crabtree & Evelyn, Ltd. Ballot Processing Center, c/o Epiq Bankruptcy Solutions, LLC, 757 Third Avenue, 3rd Floor, New York, New York 10017. Ballots will not be accepted by telecopy, facsimile, e-mail or other electronic means of transmission.**

**If your ballot is not received by the Voting Agent on or before the Voting Deadline and such deadline is not extended by the Debtor, your vote will not count as either an acceptance or rejection of the Plan.**

**If the Plan is confirmed by the Bankruptcy Court, the Plan will be binding on you whether or not you vote.**

**Your receipt of this ballot does not signify that your claim(s) has been or will be allowed.**

**IF YOU VOTE TO ACCEPT THE PLAN, YOU ARE SPECIFICALLY CONSENTING TO THE RELEASES CONTAINED IN THE PLAN. SUCH RELEASES INCLUDE, BUT ARE NOT LIMITED TO, THE RELEASES CONTAINED IN ARTICLE IX OF THE PLAN, WHICH INCLUDE THE RELEASE OF CLAIMS AND CAUSES OF ACTION AGAINST CERTAIN NON-DEBTOR ENTITIES.**

**HOW TO VOTE (AS MORE FULLY SET FORTH IN THE ATTACHED VOTING INSTRUCTIONS):**

1. COMPLETE ITEM 1.
2. COMPLETE ITEM 2.
3. REVIEW THE CERTIFICATIONS CONTAINED IN ITEM 3.
4. **SIGN THE BALLOT.**
5. RETURN THE ORIGINAL BALLOT IN THE PRE-ADDRESSED POSTAGE-PAID ENVELOPE (SO THAT IT IS RECEIVED BY THE VOTING AGENT ON OR BEFORE THE VOTING DEADLINE).
6. YOU MUST VOTE THE FULL AMOUNT OF THE ALLOWED PREPETITION GENERAL UNSECURED CLAIM COVERED BY THIS BALLOT EITHER TO ACCEPT OR TO REJECT THE PLAN. YOU MAY NOT SPLIT YOUR VOTE.
7. ANY EXECUTED BALLOT RECEIVED THAT (A) DOES NOT INDICATE EITHER AN ACCEPTANCE OR REJECTION OF THE PLAN, OR (B) THAT INDICATES BOTH AN ACCEPTANCE AND A REJECTION OF THE PLAN, WILL BE DEEMED TO REFLECT THE VOTER'S INTENT TO ACCEPT THE PLAN.

This Ballot is *not* a letter of transmittal and may *not* be used for any purpose other than to cast votes to accept or reject the Plan.

ITEM 1. **Amount of General Unsecured Claim.** The amount of your claim for voting purposes is:

$ ________________________________________________

ITEM 2. **Vote on the Plan.** The undersigned holder of a General Unsecured Claim in the amount identified in Item 1 above hereby votes to:

Check one box: ❑ Accept the Plan

❑ Reject the Plan

ITEM 3. **Acknowledgements and Certification.** By signing this Ballot, the undersigned acknowledges that the undersigned has been provided with a copy of the Disclosure Statement, including all exhibits thereto. The undersigned certifies that (i) it is the holder of the General Unsecured Claim identified in Item 1 above as of November 19, 2009 and (ii) it has full power and authority to vote to accept or reject the Plan. The undersigned further acknowledges that the Debtor's solicitation of votes is subject to all terms and conditions set forth in the Disclosure Statement and the order of the Bankruptcy Court approving the Disclosure Statement and the procedures for the solicitation of votes to accept or reject the Plan contained therein.

Print or Type Name of Claimant: ______________________________

Social Security or Federal Tax I.D. No. of Claimant: ______________________________

Signature: ______________________________

Name of Signatory (if different than claimant): ______________________________

If by Authorized Agent, Title of Agent: ______________________________

Street Address: ______________________________

City, State and Zip Code: ______________________________

Telephone Number: ______________________________

Date Completed: ______________________________

## VOTING INSTRUCTIONS FOR COMPLETING THE BALLOT

## FOR HOLDERS OF CLAIMS IN CLASS 3 (GENERAL UNSECURED CLAIMS)

1. This Ballot is submitted to you to solicit your vote to accept or reject the Plan. **PLEASE READ THE PLAN AND THE DISCLOSURE STATEMENT CAREFULLY BEFORE COMPLETING THIS BALLOT.**

2. The Plan will be accepted by Class 3 if it is accepted by the holders of two-thirds in amount and more than one-half in number of Claims in Class 3 voting on the Plan. In the event that Class 3 rejects the Plan, the Bankruptcy Court may nevertheless confirm the Plan and thereby make it binding on you if the Bankruptcy Court finds that the Plan does not unfairly discriminate against, and accords fair and equitable treatment to, the holders of Claims in Class 3 and all other Classes of Claims rejecting the Plan, and otherwise satisfies the requirements of section 1129(b) of the Bankruptcy Code. If the Plan is confirmed by the Bankruptcy Court, all holders of Claims against and Equity Interests in the Debtor (including those holders who abstain from voting or reject the Plan, and those holders who are not entitled to vote on the Plan) will be bound by the confirmed Plan and the transactions contemplated thereby.

3. **Complete, sign, and return this Ballot to Epiq Bankruptcy Solutions, LLC so that it is received by the Voting Agent by no later than 5:00 p.m. (prevailing Eastern Time) on January 5, 2010 (the "Voting Deadline"), unless such time is extended in writing by the Debtor.** Ballots must be delivered either by mail with the enclosed envelope or by hand delivery or overnight courier to the Voting Agent at the following address:

| If sent via first class mail: | If sent via hand delivery or overnight courier: |
|---|---|
| Crabtree & Evelyn, Ltd. Ballot Processing Center<br>c/o Epiq Bankruptcy Solutions, LLC<br>FDR Station, P.O. Box 5014<br>New York, NY 10150-5014 | Crabtree & Evelyn, Ltd. Ballot Processing Center<br>c/o Epiq Bankruptcy Solutions, LLC<br>757 Third Avenue, 3rd Floor<br>New York, NY 10017 |

**Ballots will not be accepted by telecopy, facsimile, e-mail or other electronic means of transmission.**

4. To properly complete the Ballot, you must follow the procedures described below:

   a. if you have a Claim in Class 3, cast one vote to accept or reject the Plan by checking the appropriate box in Item 2;

   b. if you are completing this Ballot on behalf of another person or entity, indicate your relationship with such person or entity and the capacity in which you are

signing and submit satisfactory evidence of your authority to so act (e.g., a power of attorney or a certified copy of board resolutions authorizing you to so act);

c. if you also hold Claims in a Class other than Class 3, you may receive more than one Ballot, labeled for a different Class of Claims. Your vote will be counted in determining acceptance or rejection of the Plan by a particular Class of Claims only if you complete, sign, and return the Ballot labeled for that Class of Claims in accordance with the instructions on that Ballot;

d. if you believe that you have received the wrong Ballot, please contact the Voting Agent immediately;

e. provide your name and mailing address;

f. sign and date your Ballot; and

g. return your Ballot using the enclosed pre-addressed return envelope (or in the manner specified above) such that it is actually received by the Voting Agent on or before the Voting Deadline.

IF YOU HAVE ANY QUESTIONS REGARDING THE BALLOT, OR IF YOU DID NOT RECEIVE A RETURN ENVELOPE WITH YOUR BALLOT, OR IF YOU DID NOT RECEIVE A COPY OF THE DISCLOSURE STATEMENT OR PLAN, OR IF YOU RECEIVED THE DISCLOSURE STATEMENT AND THE PLAN IN CD-ROM FORMAT AND DESIRE PAPER COPIES, OR IF YOU NEED ADDITIONAL COPIES OF THE BALLOT OR OTHER ENCLOSED MATERIALS, PLEASE CONTACT THE DEBTOR'S VOTING AGENT, EPIQ BANKRUPTCY SOLUTIONS, LLC AT 646-282-2400. COPIES OF THE PLAN AND DISCLOSURE STATEMENT CAN BE ACCESSED ON THE VOTING AGENT'S WEBSITE AT: HTTP://CHAPTER11.EPIQSYSTEMS.COM/CRABTREE. PLEASE DO NOT DIRECT ANY INQUIRIES TO THE BANKRUPTCY COURT.

# Exhibit 5

## Ballot for Class 4
## (Class Action Settlement Claims)

**UNITED STATES BANKRUPTCY COURT**
**SOUTHERN DISTRICT OF NEW YORK**

| | | |
|---|---|---|
| **In re** | : | **Chapter 11** |
| **CRABTREE & EVELYN, LTD.,** | : | **Case No. 09-14267 (BRL)** |
| **Debtor.** | : | |

# BALLOT FOR CLASS 4

# (CLASS ACTION SETTLEMENT CLAIMS)

Crabtree & Evelyn, Ltd., as debtor and debtor in possession (the "Debtor"), is soliciting votes with respect to the Debtor's Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, dated as of October 23, 2009 (as it may be further amended, the "Plan"), from the holders of certain impaired claims against the Debtor. The Plan is attached as Exhibit A to the Disclosure Statement for the Plan (as it may be further amended, the "Disclosure Statement"). All capitalized terms used but not defined herein or in the enclosed voting instructions have the meanings ascribed to such terms in the Plan.

If you are, as of November 19, 2009, the holder of a Class Action Settlement Claim (as defined in the Plan), please use this Ballot to cast your vote to accept or reject the Plan. The United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") has approved the Disclosure Statement, which provides information to assist you in deciding how to vote on the Plan. Bankruptcy Court approval of the Disclosure Statement does not indicate approval of the Plan by the Bankruptcy Court. If you have any questions on how to properly complete this Ballot, please call Epiq Bankruptcy Solutions, LLC (the "Voting Agent") at 646-282-2400.

**IMPORTANT**

**You should review the Disclosure Statement and the Plan before you vote. You may wish to seek legal advice concerning the Plan and the classification and treatment of your claim or claims under the Plan.**

**All of your Class Action Settlement Claims against the Debtor have been placed in Class 4 under the Plan. If you hold claims in more than one class under the Plan, you will receive a Ballot for each class in which you are entitled to vote and must complete a separate Ballot for each class of claims.**

**VOTING DEADLINE: 5:00 P.M. (prevailing Eastern Time) ON JANUARY 5, 2010.**

**In order for your vote to be counted, the Ballot must be properly completed, signed, and returned so that it is actually received by the Voting Agent, Epiq Bankruptcy Solutions, LLC by no later than 5:00 p.m. (prevailing Eastern Time) on January 5, 2010, unless such time is extended by the Debtor. If sending your Ballot by regular mail, please mail to: Crabtree & Evelyn, Ltd. Ballot Processing Center, c/o Epiq Bankruptcy Solutions, LLC, FDR Station, P.O. Box 5014, New York, New York 10150-5014. If you are sending your Ballot by hand delivery or overnight courier, please deliver your Ballot to Crabtree & Evelyn, Ltd. Ballot Processing Center, c/o Epiq Bankruptcy Solutions, LLC, 757 Third Avenue, 3rd Floor, New York, New York 10017. Ballots will not be accepted by telecopy, facsimile, e-mail or other electronic means of transmission.**

**If your ballot is not received by the Voting Agent on or before the Voting Deadline and such deadline is not extended by the Debtor, your vote will not count as either an acceptance or rejection of the Plan.**

**If the Plan is confirmed by the Bankruptcy Court, the Plan will be binding on you whether or not you vote.**

**Your receipt of this ballot does not signify that your claim(s) has been or will be allowed.**

**IF YOU VOTE TO ACCEPT THE PLAN, YOU ARE SPECIFICALLY CONSENTING TO THE RELEASES CONTAINED IN THE PLAN. SUCH RELEASES INCLUDE, BUT ARE NOT LIMITED TO, THE RELEASES CONTAINED IN ARTICLE IX OF THE PLAN, WHICH INCLUDE THE RELEASE OF CLAIMS AND CAUSES OF ACTION AGAINST CERTAIN NON-DEBTOR ENTITIES.**

**HOW TO VOTE (AS MORE FULLY SET FORTH IN THE ATTACHED VOTING INSTRUCTIONS):**

1. COMPLETE ITEM 1.
2. COMPLETE ITEM 2.
3. REVIEW THE CERTIFICATIONS CONTAINED IN ITEM 3.
4. **SIGN THE BALLOT.**
5. RETURN THE ORIGINAL BALLOT IN THE PRE-ADDRESSED POSTAGE-PAID ENVELOPE (SO THAT IT IS RECEIVED BY THE VOTING AGENT ON OR BEFORE THE VOTING DEADLINE).
6. YOU MUST VOTE THE FULL AMOUNT OF THE ALLOWED PREPETITION CLASS ACTION SETTLEMENT CLAIM COVERED BY THIS BALLOT EITHER TO ACCEPT OR TO REJECT THE PLAN. YOU MAY NOT SPLIT YOUR VOTE.
7. ANY EXECUTED BALLOT RECEIVED THAT (A) DOES NOT INDICATE EITHER AN ACCEPTANCE OR REJECTION OF THE PLAN, OR (B) THAT INDICATES BOTH AN ACCEPTANCE AND A REJECTION OF THE PLAN, WILL BE DEEMED TO REFLECT THE VOTER'S INTENT TO ACCEPT THE PLAN.

This Ballot is *not* a letter of transmittal and may *not* be used for any purpose other than to cast votes to accept or reject the Plan.

ITEM 1. **Amount of Class Action Settlement Claim.** The amount of your claim for voting purposes is:

$ ______________________________________________

ITEM 2. **Vote on the Plan.** The undersigned holder of a Class Action Settlement Claim in the amount identified in Item 1 above hereby votes to:

Check one box: ❑ Accept the Plan

❑ Reject the Plan

ITEM 3. **Acknowledgements and Certification.** By signing this Ballot, the undersigned acknowledges that the undersigned has been provided with a copy of the Disclosure Statement, including all exhibits thereto. The undersigned certifies that (i) it is the holder of the Class Action Settlement Claim identified in Item 1 above as of November 19, 2009 and (ii) it has full power and authority to vote to accept or reject the Plan. The undersigned further acknowledges that the Debtor's solicitation of votes is subject to all terms and conditions set forth in the Disclosure Statement and the order of the Bankruptcy Court approving the Disclosure Statement and the procedures for the solicitation of votes to accept or reject the Plan contained therein.

Print or Type Name of Claimant: ______________________________

Social Security or Federal Tax I.D. No. of Claimant: ______________________________

Signature: ______________________________

Name of Signatory (if different than claimant): ______________________________

If by Authorized Agent, Title of Agent: ______________________________

Street Address: ______________________________

City, State and Zip Code: ______________________________

Telephone Number: ______________________________

Date Completed: ______________________________

## VOTING INSTRUCTIONS FOR COMPLETING THE BALLOT

## FOR HOLDERS OF CLAIMS IN CLASS 4 (CLASS ACTION SETTLEMENT CLAIMS)

5. This Ballot is submitted to you to solicit your vote to accept or reject the Plan. **PLEASE READ THE PLAN AND THE DISCLOSURE STATEMENT CAREFULLY BEFORE COMPLETING THIS BALLOT.**

6. The Plan will be accepted by Class 4 if it is accepted by the holders of two-thirds in amount and more than one-half in number of Claims in Class 4 voting on the Plan. In the event that Class 4 rejects the Plan, the Bankruptcy Court may nevertheless confirm the Plan and thereby make it binding on you if the Bankruptcy Court finds that the Plan does not unfairly discriminate against, and accords fair and equitable treatment to, the holders of Claims in Class 4 and all other Classes of Claims rejecting the Plan, and otherwise satisfies the requirements of section 1129(b) of the Bankruptcy Code. If the Plan is confirmed by the Bankruptcy Court, all holders of Claims against and equity Interests in the Debtor (including those holders who abstain from voting or reject the Plan, and those holders who are not entitled to vote on the Plan) will be bound by the confirmed Plan and the transactions contemplated thereby.

7. **Complete, sign, and return this Ballot to Epiq Bankruptcy Solutions, LLC so that it is received by the Voting Agent by no later than 5:00 p.m. (prevailing Eastern Time) on January 5, 2010 (the "Voting Deadline"), unless such time is extended in writing by the Debtor.** Ballots must be delivered either by mail with the enclosed envelope or by hand delivery or overnight courier to the Voting Agent at the following address:

| If sent via first class mail: | If sent via hand delivery or overnight courier: |
|---|---|
| Crabtree & Evelyn, Ltd. Ballot Processing Center<br>c/o Epiq Bankruptcy Solutions, LLC<br>FDR Station, P.O. Box 5014<br>New York, NY 10150-5014 | Crabtree & Evelyn, Ltd. Ballot Processing Center<br>c/o Epiq Bankruptcy Solutions, LLC<br>757 Third Avenue, 3rd Floor<br>New York, NY 10017 |

**Ballots will not be accepted by telecopy, facsimile, e-mail or other electronic means of transmission.**

8. To properly complete the Ballot, you must follow the procedures described below:

    a. if you have a Claim in Class 4, cast one vote to accept or reject the Plan by checking the appropriate box in Item 2;

    b. if you are completing this Ballot on behalf of another person or entity, indicate your relationship with such person or entity and the capacity in which you are

signing and submit satisfactory evidence of your authority to so act (e.g., a power of attorney or a certified copy of board resolutions authorizing you to so act);

c. if you also hold Claims in a Class other than Class 4, you may receive more than one Ballot, labeled for a different Class of Claims. Your vote will be counted in determining acceptance or rejection of the Plan by a particular Class of Claims only if you complete, sign, and return the Ballot labeled for that Class of Claims in accordance with the instructions on that Ballot;

d. if you believe that you have received the wrong Ballot, please contact the Voting Agent immediately;

e. provide your name and mailing address;

f. sign and date your Ballot; and

g. return your Ballot using the enclosed pre-addressed return envelope (or in the manner specified above) such that it is actually received by the Voting Agent on or before the Voting Deadline.

IF YOU HAVE ANY QUESTIONS REGARDING THE BALLOT, OR IF YOU DID NOT RECEIVE A RETURN ENVELOPE WITH YOUR BALLOT, OR IF YOU DID NOT RECEIVE A COPY OF THE DISCLOSURE STATEMENT OR PLAN, OR IF YOU RECEIVED THE DISCLOSURE STATEMENT AND THE PLAN IN CD-ROM FORMAT AND DESIRE PAPER COPIES, OR IF YOU NEED ADDITIONAL COPIES OF THE BALLOT OR OTHER ENCLOSED MATERIALS, PLEASE CONTACT THE DEBTOR'S VOTING AGENT, EPIQ BANKRUPTCY SOLUTIONS, LLC AT 646-282-2400. COPIES OF THE PLAN AND DISCLOSURE STATEMENT CAN BE ACCESSED ON THE VOTING AGENT'S WEBSITE AT: HTTP://CHAPTER11.EPIQSYSTEMS.COM/CRABTREE. PLEASE DO NOT DIRECT ANY INQUIRIES TO THE BANKRUPTCY COURT.

# <u>Exhibit 6</u>

## Notice of Non-Voting Status

**UNITED STATES BANKRUPTCY COURT**
**SOUTHERN DISTRICT OF NEW YORK**

| | | |
|---|---|---|
| **In re** | : | **Chapter 11** |
| **CRABTREE & EVELYN, LTD.,** | : | **Case No. 09-14267 (BRL)** |
| **Debtor.** | : | |

## NOTICE OF NON-VOTING STATUS TO UNIMPAIRED CLASSES[1]

PLEASE TAKE NOTICE THAT on November [___], 2009, the United States Bankruptcy Court for the Southern District of New York (the "Court") entered an order (the "Order") approving the Disclosure Statement for the Debtor's Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, dated as of October 23, 2009 (as it may be amended, the "Disclosure Statement") filed by Crabtree & Evelyn, Ltd., as debtor and debtor in possession (the "Debtor"). The Order authorizes the Debtor to solicit votes to accept or reject the Debtor's Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, dated as of October 23, 2009 (as it may be further amended, the "Plan"), a copy of which is annexed as Exhibit 1 to the Disclosure Statement.

**UNDER THE TERMS OF THE PLAN, YOUR CLAIM(S) AGAINST THE DEBTOR IS/ARE NOT IMPAIRED, AND THEREFORE, PURSUANT TO SECTION 1126(f) OF TITLE 11 OF THE UNITED STATES CODE, YOU ARE (i) DEEMED TO HAVE ACCEPTED THE PLAN AND (ii) NOT ENTITLED TO VOTE ON THE PLAN. IF YOU HAVE ANY QUESTIONS ABOUT THE STATUS OF YOUR CLAIM(S), OR YOU WANT TO REQUEST A COPY OF THE PLAN AND DISCLOSURE STATEMENT, YOU SHOULD CONTACT THE DEBTOR'S VOTING AGENT, EPIQ BANKRUPTCY SOLUTIONS, LLC, BY WRITING TO CRABTREE & EVELYN, LTD. BALLOT PROCESSING CENTER, C/O EPIQ BANKRUPTCY SOLUTIONS, LLC, FDR STATION, P.O. BOX 5014, NEW YORK, NY 10150-5014, OR BY TELEPHONE AT 646-282-2400. COPIES OF THE PLAN AND DISCLOSURE STATEMENT CAN ALSO BE ACCESSED ONLINE AT: HTTP://CHAPTER11.EPIQSYSTEMS.COM/CRABTREE.**

**PLEASE DO NOT DIRECT ANY INQUIRIES TO THE BANKRUPTCY COURT.**

Dated: [__________], 2009
New York, New York

[1] Unimpaired Classes consist of Class 1, Class 2 and Class 5.