

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

In re:

F21 OPCO, LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 25-10469 (MFW)

(Jointly Administered)

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**DEBTORS' JOINT PLAN PURSUANT TO  
CHAPTER 11 OF THE BANKRUPTCY CODE**

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**YOUNG CONAWAY STARGATT &  
TAYLOR, LLP**

Andrew L. Magaziner (No. 5426)

Robert F. Poppiti, Jr. (No. 5052)

Ashley E. Jacobs (No. 5635)

S. Alexander Faris (No. 6278)

Kristin L. McElroy (No. 6871)

Andrew M. Lee (No. 7078)

Sarah E. Gawrysiak (No. 7403)

Rodney Square

1000 North King Street

Wilmington, DE 19801

Telephone: (302) 571-6600

Email: amagaziner@ycst.com

rpoppiti@ycst.com

ajacobs@ycst.com

afaris@ycst.com

kmcelroy@ycst.com

alee@ycst.com

sgawrysiak@ycst.com

*Proposed Counsel to the  
Debtors and Debtors in Possession*

Dated: March 28, 2025

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: F21 OpCo, LLC (8773); F21 Puerto Rico, LLC (5906); and F21 GiftCo Management, LLC (6412). The Debtors' address for purposes of service in these Chapter 11 Cases is 110 East 9th Street, Suite A500, Los Angeles, CA 90079.



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## INTRODUCTION

F21 OpCo, LLC and its Debtor affiliates in the above-captioned Chapter 11 Cases propose this joint chapter 11 plan under section 1121 of the Bankruptcy Code. Capitalized terms used and not otherwise defined shall have the meanings ascribed to such terms in Article I.A. The Plan constitutes a separate chapter 11 plan for each Debtor and, unless otherwise set forth herein, the classification and treatment of Claims and Interests apply to each individual Debtor. Each Debtor is a proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code.

Holders of Claims and Interests should refer to the Disclosure Statement for a discussion of the Debtors' history, business, historical financial information, and liquidation analysis, as well as a summary and description of this Plan and certain related matters.

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

## ARTICLE I. DEFINED TERMS AND RULES OF INTERPRETATION

### A. Definitions

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

1. “ABL Advisors” means (a) Otterbourg P.C., as primary counsel to the ABL Agent, (b) Richards, Layton & Finger, P.A., as Delaware counsel to the ABL Agent, (c) M3 Advisory Partners, LP, as financial advisor to the ABL Agent, and (d) such other professionals as may be retained by or on behalf of the ABL Agent or ABL Lenders, with the consent of the Debtors (such consent not to be unreasonably withheld, delayed or conditioned).

2. “ABL Agent” means Wells Fargo Bank, N.A., in its capacity as administrative agent, and Wells Fargo Bank, N.A. and PNC Bank, N.A., as co-collateral agents under the ABL Credit Agreement.

3. “ABL Claims” means, collectively, all Claims against any Debtor arising under, derived from, or based upon the ABL Credit Agreement.

4. “ABL Credit Agreement” means that certain Credit Agreement, originally dated as of December 7, 2020 (as amended, restated, amended and restated, supplemented, waived, or otherwise modified prior to the Petition Date, including pursuant to that certain Joinder and Third Amendment to Credit Agreement, dated as of December 6, 2024), by and among (a) Penney Holdings LLC, as lead administrative borrower, and the other Loan Parties (as defined in the ABL Credit Agreement) party thereto, (b) the ABL Agent, and (c) the lenders from time to time party thereto.

5. “ABL Lenders” means the lenders with respect to the ABL Loans, party to the ABL Credit Agreement from time to time.

6. “ABL Loans” means, collectively, the Revolving Loans and the FILO Loans.

7. “Administrative Claim” means a Claim against a Debtor for costs and expenses of administration of the Chapter 11 Cases pursuant to sections 503(b), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred on or after the Petition Date until and including the Effective Date of preserving the Estates and operating the Debtors’ business and/or the ongoing liquidation of the Debtors; (b) Allowed Professional Fee Claims; and (c) any superpriority Claim granted pursuant to the Cash Collateral Order.

8. “Administrative Claims Bar Date” means the deadline for Filing all requests for allowance and payment of Administrative Claims (other than (a) Professional Fee Claims, (b) Administrative Claims of employees of the Debtors arising in the ordinary course of business, (c) Claims arising pursuant to section 503(b)(9) of the Bankruptcy Code, which are required to be filed in accordance with the Bar Date Order, (d) Administrative Claims held by the U.S. Trustee, (e) any superpriority Claim granted pursuant to the Cash Collateral Order, or (f) Administrative Claims that have been Allowed on or before the Effective Date), which shall be 30 days after the Effective Date.

9. “Affiliate” means, with respect to any Person, any other Person controlled by, controlling or under common control with such Person. As used in this definition, “control”(including with its correlative meanings, “controlling,” “controlled by,” and “under common control with”) shall mean possession, directly or indirectly, of power to direct or cause the direction of management or policies of a Person (whether through ownership of securities, by contract, or otherwise).

10. “Agents” means, collectively, ABL Agent, the Term Loan Agent, and the Subordinated Loan Agent.

11. “Allowed” means, with respect to any Claim, except as otherwise provided in the Plan: (a) a Claim that is evidenced by a Proof of Claim Filed by the Bar Date (or for which Claim under the Plan, the Bankruptcy Code, or pursuant to a Final Order a Proof of Claim is not or shall not be required to be Filed); (b) a Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed, and for which no Proof of Claim has been Filed; (c) a Claim Allowed pursuant to the Bankruptcy Code, the Plan, or a Final Order of the Bankruptcy Court; or (d) any Claim that is compromised, settled, or otherwise resolved pursuant to the authority of the Debtors or the Plan Administrator, as applicable; *provided* that with respect to a Claim described in clause (a) above, such Claim shall be considered Allowed only if, and to the extent that, with respect to such Claim, no objection to the allowance thereof has been Filed by the Debtors, the Plan Administrator, or any other party in interest within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection was so Filed and the Claim shall have been Allowed by a Final Order. For purposes of determining the amount of an Allowed Claim, there shall be deducted therefrom an amount equal to the amount of any Claim that the Debtors may hold against the Holder thereof, to the extent such Claim may

be offset, recouped, or otherwise reduced under applicable law. Any Claim that has been or is hereafter listed in the Schedules as contingent, unliquidated, or disputed, and for which no Proof of Claim is or has been timely Filed, is not considered Allowed and shall be expunged without further action by the Debtors and without further notice to any party or action, approval, or order of the Bankruptcy Court. For the avoidance of doubt: (x) a Proof of Claim Filed after the Bar Date shall not be Allowed for any purposes whatsoever absent entry of a Final Order allowing such late-filed Claim; and (y) the Debtors may affirmatively determine to deem Unimpaired Claims Allowed to the same extent such Claims would be allowed under applicable non-bankruptcy law. Notwithstanding anything to the contrary herein, no Claim of any Entity subject to section 502(d) of the Bankruptcy Code shall be deemed Allowed unless and until such Entity pays in full the amount that it owes the Debtors to the Debtors or Distribution Co., as applicable. “Allow” and “Allowing” shall have correlative meanings.

12. “Avoidance Actions” means any and all avoidance, equitable subordination, or recovery actions or remedies that may be brought by or on behalf of the Debtors or their Estates under the Bankruptcy Code or applicable non-bankruptcy law, including actions or remedies under sections 105(a), 502(d), 510, 542 through 553 of the Bankruptcy Code.

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

14. “Bankruptcy Court” means the United States Bankruptcy Court for the District of Delaware presiding over the Chapter 11 Cases or, in the event of any withdrawal of reference under 28 U.S.C. § 157, the United States District Court for the District of Delaware.

15. “Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, as applicable to the Chapter 11 Cases and the general, local, and chambers rules of the Bankruptcy Court.

16. “Bar Date” means, as applicable, the Administrative Claims Bar Date, and any other date or dates established by the Bar Date Order.

17. “Bar Date Order” means the order approving the *Debtors’ Motion for Entry of an Order (I) Establishing Bar Dates for Filing Proofs of Prepetition Claims, Including Section 503(b)(9) Claims; (II) Approving the Form and Manner of Notice Thereof; and (III) Granting Related Relief* [Docket No. 41].

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

19. “Cash” or “\$” means cash and cash equivalents in legal tender of the United States of America, including bank deposits and checks.

20. “Cash Collateral Orders” means, collectively, (a) the *Interim Order (I) Authorizing Postpetition Use of Cash Collateral, (II) Granting Adequate Protection to the Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related*



*Relief* [Docket No. 88] and (b) any other order or orders entered in the Chapter 11 Cases authorizing the use of cash collateral.

21. “Causes of Action” means any claims, interests, damages, remedies, causes of action, demands, rights, actions, controversies, proceedings, suits, obligations, liabilities, accounts, defenses, offsets, powers, privileges, licenses, Liens, indemnities, guaranties, and franchises of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, secured or unsecured, asserted or assertable, directly or derivatively, matured or unmatured, suspected or unsuspected, whether arising before, on, or after the Petition Date, in contract, tort, law, equity, or otherwise. For the avoidance of doubt, Causes of Action also include: (a) all rights of setoff, counterclaim, or recoupment and claims under contracts or for breaches of duties imposed by law or in equity; (b) the right to object to or otherwise contest Claims or Interests; (c) claims pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) such claims and defenses as fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; and (e) any Avoidance Actions or state law fraudulent transfer claims.

22. “Chapter 11 Cases” means (a) when used with reference to a particular Debtor, the case pending for that Debtor under chapter 11 of the Bankruptcy Code in the Bankruptcy Court; and (b) when used with reference to all the Debtors, the procedurally consolidated chapter 11 cases pending under case number 25-10469 (MFW) in the Bankruptcy Court.

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

24. “Claims Objection Deadline” means the deadline for objecting to a Claim (other than a Professional Fee Claim), which shall be on the date that is the later of (a) 180 days after the Effective Date and (b) such other deadline as may be fixed by an order of the Bankruptcy Court for objecting to such Claims.

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

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

27. “Committee” means the Official Committee of Unsecured Creditors, appointed in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code by the U.S. Trustee on March 26, 2025 [Docket No. 115], as it may be reconstituted from time to time.

28. “Company Parties” means OpCo and each of its direct and indirect subsidiaries.

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

30. “Confirmation Date” means the date upon which the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Cases within the meaning of Bankruptcy Rules 5003 and 9021.

31. “Confirmation Hearing” means the hearing conducted by the Bankruptcy Court pursuant to section 1128(a) of the Bankruptcy Code to consider Confirmation of the Plan pursuant to section 1129 of the Bankruptcy Code, as such hearing may be adjourned or continued from time to time.

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

33. “Consenting Creditors” means the Holders of ABL Claims, Term Loan Claims, and Subordinated Loan Claims that are party to the Plan Support Agreement.

34. “Consummation” means the occurrence of the Effective Date.

35. “Cure” means all amounts, including an amount of \$0.00, required to cure any monetary defaults under any Executory Contract or Unexpired Lease (or such lesser amount as may be agreed upon by the parties under an Executory Contract or Unexpired Lease) that is to be assumed or assumed and assigned by the Debtors.

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

37. “Debtor” means one or more of the Debtors, each in its respective individual capacity as a debtor and debtor in possession in the Chapter 11 Cases.

38. “Debtor Releases” means the releases set forth in Article IV.A.

39. “Debtors” means, collectively, (a) OpCo, (b) F21 Puerto Rico, LLC, and (c) F21 Giftco Management, LLC.

40. “Definitive Documents” has the meaning set forth in the Plan Support Agreement.

41. “Disbursing Agent” means the Debtors, the Plan Administrator, or the Entity or Entities selected by the Debtors or Plan Administrator, as applicable, to make or to facilitate distributions pursuant to the Plan.

42. “Disclosure Statement” means the *Disclosure Statement for Debtors’ Joint Plan Pursuant to Chapter 11 of the Bankruptcy Code*, dated March 28, 2025, filed contemporaneously herewith (as such may be amended, supplemented, or modified from time to time), including all exhibits and schedules thereto and references therein that relate to this Plan, that is prepared and distributed in accordance with the Bankruptcy Code, the Bankruptcy Rules, and any other applicable law.

43. “Disclosure Statement and Solicitation Procedures Order” means the order approving the *Debtors’ Motion for Entry of an Order (I) Approving (A) the Adequacy of the Disclosure Statement; (B) the Solicitation and Notice Procedures With Respect to Confirmation of the Debtors Joint Chapter 11 Plan; (C) the Forms of Ballots and Notices in Connection*

*Therewith; (II) Scheduling Certain Dates with Respect Thereto; and (III) Granting Related Relief, filed contemporaneously herewith.*

44. “Disputed” means, with respect to any Claim, except as otherwise provided herein, a Claim that is not Allowed and not disallowed under the Plan, the Bankruptcy Code, or a Final Order.

45. “Disputed Claims Reserve” means the portion, if any, of Distribution Co. Assets that is reserved for Disputed Claims, as determined by the Plan Administrator, in its sole discretion.

46. “Distribution Co.” means one or more Entities to be identified in the Plan Supplement which the Distribution Co. Assets will be retained by, or distributed to, on the Effective Date, to be administered by the Plan Administrator for the purposes of effectuating the Liquidation Process.

47. “Distribution Co. Assets” means all of the assets of the Debtors not sold, otherwise transferred, released, or waived on or prior to the Effective Date, including (a) the Plan Administration Amount and (b) any Causes of Action of the Debtors that are not released, waived, or transferred pursuant to the Plan.

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

49. “Effective Date” means the date that is the first Business Day after the entry of the Confirmation Order on which (a) no stay of the Confirmation Order is in effect; (b) all conditions precedent to Consummation, as set forth in Article IX.A, have been satisfied or waived in accordance with the Plan; and (c) the Debtors declare the Plan effective by filing a notice of the occurrence of the Effective Date on the docket of the Chapter 11 Cases.

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

51. “Estate” means the estate of any Debtor created under sections 301 and 541 of the Bankruptcy Code upon the commencement of the applicable Debtor’s Chapter 11 Case.

52. “Excess Amounts” all Cash, if any, held by Distribution Co. after the completion of the Liquidation Process.

53. “Exculpated Parties” means, collectively, and in each case solely in its capacity as such, (a) each Debtor, (b) the Committee and each of its members, and (c) with respect to the Entities in the foregoing clauses (a) and (b), each of their respective current and former directors, managers, officers, attorneys, financial advisors, consultants, or other professionals or advisors that served in such capacity between the Petition Date and Effective Date.

54. “Executory Contract” means a contract to which one or more Debtor is a party and subject to assumption or rejection under section 365 of the Bankruptcy Code.

55. “Existing Equity Interest” any Interest in OpCo.

56. “Federal Judgment Rate” mean the federal judgment interest rate in effect as of the Petition Date calculated as set forth in section 1961 of the Judicial Code.

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

58. “FILO Loans” means the first-in, last-out loans outstanding under the ABL Credit Agreement.

59. “Final Order” means an order or judgment of the Bankruptcy Court or other court of competent jurisdiction with respect to the relevant subject matter that has not been reversed, stayed, modified, or amended, as entered on the docket in any Chapter 11 Case or the docket of any court of competent jurisdiction, and as to which the time to appeal, or seek certiorari or move for a new trial, reargument, or rehearing has expired and 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 or may be timely Filed has been withdrawn 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 will have been denied, resulted in no stay pending appeal of such order, or has otherwise been dismissed with prejudice; *provided* that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order will not preclude such order from being a Final Order.

60. “General Unsecured Claim” means any Claim against a Debtor that is not a Secured Claim and that is not: (a) an Administrative Claim; (b) a Priority Tax Claim; (c) an Other Secured Claim; (d) an Other Priority Claim; (e) an ABL Claim; (f) a Term Loan Claim; (g) a Subordinated Loan Claim; or (h) an Intercompany Claim.

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

62. “Holder” means a Person or Entity, as applicable, holding a Claim against, or an Interest in, the Debtors, as the context requires.

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

64. “Insurance Policies” means all insurance policies that have been issued at any time to or provide coverage to the Debtors and all agreements, documents, or instruments relating thereto, including the D&O Policies.

65. “Intercompany Claim” means any Claim against a Debtor held by another Debtor.

66. “Intercompany Interest” means any Interest in a Debtor held by another Debtor.

67. “Interest” means the shares (or any class thereof), common stock, preferred stock, limited liability company interests, and any other equity, ownership, or profits interests of any

Debtor, and options, warrants, rights, or other securities or agreements to acquire or subscribe for, or which are convertible into, or which are exercisable or exchangeable for, the shares (or any class thereof), common stock, preferred stock, limited liability company interests, or other equity, ownership, or profits interests of any Debtor (in each case whether or not arising under or in connection with any employment agreement).

68. “Judicial Code” means title 28 of the United States Code, 28 U.S.C. §§ 1–4001, as now in effect or hereafter amended, and the rules and regulations promulgated thereunder.

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

70. “Liquidation Process” means the process to effectuate the distributions under the Plan, administer the Claims resolution process, and/or liquidate or otherwise monetize the Debtors’ remaining assets (if not otherwise monetized prior the Effective Date during the Wind Down Process) and wind down the Company Parties.

71. “Net Proceeds” means all Cash held by the Estates as of the Effective Date, minus (a) the Plan Administration Amount and (b) the funding of the Professional Fee Escrow Account.

72. “Notice and Claims Agent” means Kurtzman Carson Consultants, LLC dba Verita Global in its capacity as noticing, claims, and solicitation agent for the Debtors.

73. “OpCo” means F21 OpCo, LLC.

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

75. “Other Secured Claim” means any Secured Claim that is not an ABL Claim, Term Loan Claim, or Subordinated Loan Claim.

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

77. “Petition Date” means March 16, 2025, which is the date on which each Debtor Filed its voluntary petition for relief under chapter 11 of the Bankruptcy Code, thereby commencing the Chapter 11 Cases.

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

79. “Plan Administration Agreement” means the agreement among the Plan Administrator, the Company Parties, and Distribution Co. regarding the administration of the Liquidation Process. The Plan Administration Agreement shall be subject to the consent rights set forth in the Plan Support Agreement.

80. “Plan Administration Amount” means Cash in an amount sufficient to, among other things, (a) fund obligations under the Plan, including payment in full in Cash or such other treatment as to render Unimpaired all Allowed Administrative Claims, Priority Tax Claims, Other Secured Claims, Other Priority Claims, and Transaction Expenses, (b) conduct the Liquidation Process, and (c) fund any reasonable reserves, as determined by the Plan Administrator, in its sole discretion, with respect to disputed Administrative Claims, Priority Tax Claims, Other Secured, and Other Priority Claims.

81. “Plan Administrator” means that person or Entity selected by the Debtors to administer the Liquidation Process. To the extent known, the identity and role of the Plan Administrator shall be set forth in Plan Administration Agreement or otherwise set forth in the Plan Supplement.

82. “Plan Supplement” means the compilation of documents and forms and/or term sheets of documents, agreements, schedules, and exhibits to the Plan (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof, the Plan, the Bankruptcy Code, and the Bankruptcy Rules), the initial version of which shall be Filed by the Debtors no later than seven days before the Voting Deadline, and which will include: (a) the identity of the Plan Administrator, to the extent known; (b) the Plan Administration Agreement; (c) the Schedule of Assumed Executory Contracts and Unexpired Leases (if any); (d) the Schedule of Retained Causes of Action; and (e) other documentation necessary to effectuate the Plan or that is contemplated by the Plan. For the avoidance of doubt, the Debtors shall have the right to amend, supplement, or modify the Plan Supplement through the Effective Date in accordance with this Plan, the Bankruptcy Code, and the Bankruptcy Rules.

83. “Plan Support Agreement” means that certain Plan Support Agreement, made and entered into as of March 16, 2025, by and among the Debtors and the Consenting Creditors, including all exhibits and attachments thereto, and as amended, restated, amended and restated, supplemented, waived, or otherwise modified from time to time in accordance with its terms.

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

85. “Professional” means any Entity retained in the Chapter 11 Cases pursuant to and in accordance with sections 327, 328, 363, or 1103 of the Bankruptcy Code and to be compensated for services pursuant to sections 327, 328, 329, 330, 331, or 363 of the Bankruptcy Code.

86. “Professional Fee Claim” means all Claims for fees and expenses (including transaction and success fees) incurred by a Professional on or after the Petition Date through and including the Confirmation Date to the extent such fees and expenses have not been paid pursuant to an order of the Bankruptcy Court and regardless of whether a monthly fee statement or interim fee application has been Filed for such fees and expenses. To the extent a Bankruptcy Court or higher court of competent jurisdiction denies or reduces by a Final Order any amount of a Professional’s fees or expenses, then the amount by which such fees or expenses are reduced or denied shall reduce the applicable Professional Fee Claim.

87. “Professional Fee Escrow Account” means an account, which may be interest-bearing, funded by the Debtors with Cash prior to the Effective Date in an amount equal to the Professional Fee Escrow Amount, *provided* that the Professional Fee Escrow Account shall be increased with Cash held by Distribution Co. to the extent applications are filed after the Effective Date in excess of the amount of Cash funded into the escrow as of the Effective Date.

88. “Professional Fee Escrow Amount” means the total amount of Professional fees and expenses estimated pursuant to Article II.B.3 of the Plan.

89. “Proof of Claim” means a proof of Claim Filed against any of the Debtors in the Chapter 11 Cases by the applicable Bar Date as established by the Bankruptcy Court.

90. “Related Party” means, with respect to any Person or Entity, such Person’s or Entity’s respective current and former Affiliates, members, directors, managers, officers, equity holders (regardless of whether such interests are held directly or indirectly), predecessors, successors, assigns, direct or indirect subsidiaries, participants, affiliated investment funds or investment vehicles, managed accounts or funds, employees, agents, advisory board members, investment fund advisors or managers, investment managers, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals.

91. “Released Party” means collectively, each of, and in each case solely in its capacity as such: (a) each Debtor; (b) each of the SPARC Parties; (c) Distribution Co. and the Plan Administrator; (d) each Company Party; (e) the Agents; (f) each Consenting Creditor; (g) all Holders of Claims that opt into the releases set forth in Article VIII.C of the Plan; and (h) with respect to each Person or Entity listed or described in any of the foregoing (a) through (g), each such Person’s or Entity’s Related Parties (other than the Debtors in the case of the SPARC Parties).

92. “Releasing Parties” means, collectively, each of, and in each case in its capacity as such: (a) each Debtor; (b) Distribution Co. and the Plan Administrator; (c) each Company Party; (d) the Agents; (e) each Consenting Creditor; and (f) all Holders of Claims that opt into the releases set forth in Article VIII.C of the Plan.

93. “Required Consenting ABL Lenders” has the meaning set forth in the Plan Support Agreement.

94. “Required Consenting Creditors” means, collectively, the Required Consenting ABL Lenders, the Required Consenting Subordinated Loan Lenders, and the Required Consenting Term Loan Lenders.

95. “Required Consenting Subordinated Loan Lenders” has the meaning set forth in the Plan Support Agreement.

96. “Required Consenting Term Loan Lenders” has the meaning set forth in the Plan Support Agreement.

97. “Revolving Loans” means the revolving loans outstanding under the ABL Credit Agreement.

98. “Schedule of Assumed Executory Contracts and Unexpired Leases” means the schedule (including any amendments or modifications thereto), if any, of the Executory Contracts and Unexpired Leases to be assumed or assumed and assigned by the Debtors pursuant to the Plan, as set forth in the Plan Supplement, as amended by the Debtors from time to time in accordance with the Plan.

99. “Schedule of Retained Causes of Action” means the schedule of Causes of Action to be retained by the Debtors and not released pursuant to Article VIII.B, which shall be filed with the Plan Supplement.

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

101. “Secured Claim” means any Claim against a Debtor where, pursuant to section 506 of the Bankruptcy Code, the Claim is secured by a valid, perfected, and enforceable Lien that is not subject to avoidance under applicable bankruptcy or non-bankruptcy law, in or upon any right, title, or interest of the Debtors in and to property of the Estates, to the extent of the value of the Holder’s interest in such property as of the relevant determination date. The term “Secured Claim” includes any Claim that is (a) subject to an offset right under applicable law as of the Petition Date and (b) secured against the Debtors pursuant to sections 506(a) and 553 of the Bankruptcy Code.

102. “SPARC Parties” means SPARC Group Holdings II, LLC; SPARC Group Holdings, LLC; SPARC Group LLC; Copper Retail JV LLC; Simon Property Group, Inc.; Simon JCP Holdings, LLC; Authentic Brands Group LLC; ABG-Aero, LLC; and each of their Related Parties (excluding the Debtors).

103. “SPARC Payable” means the prepetition intercompany payable owing from the Debtors to SPARC Group LLC which, as of the Petition Date, had accrued to approximately \$323 million.

104. “SPARC Settlement” means the settlement between the Debtors and the SPARC Parties set forth in Article IV.B of the Plan.

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

106. “Subordinated Loan Agent” means Simon Blackjack Consolidated Holdings, LLC, in its capacity as the administrative agent and collateral agent under the Subordinated Loan Credit Agreement.

107. “Subordinated Loan Claims” means, collectively, all Claims against any Debtor arising under, derived from, or based upon the Subordinated Loan Credit Agreement.

108. “Subordinated Loan Credit Agreement” means that certain Amended and Restated Term Loan Credit Agreement, dated as of December 19, 2024 (as amended, restated, amended and



restated, supplemented, waived, or otherwise modified prior to the Petition Date), by and among (a) Penney Holdings LLC, as lead administrative borrower, and the other Loan Parties (as defined in the Subordinated Loan Credit Agreement) party thereto, (b) the Subordinated Loan Agent, as administrative and collateral agent, and (c) the lenders from time to time party thereto

109. “Subordinated Loans” means the loans outstanding under the Subordinated Loan Credit Agreement.

110. “Term Loan Advisors” means Riemer & Braunstein LLP and Ashby & Geddes, P.A., each in their capacity as counsel to the Term Loan Agent.

111. “Term Loan Agent” means Pathlight Capital LP, in its capacity as administrative agent and collateral agent under the Term Loan Credit Agreement.

112. “Term Loan Claims” means, collectively, all Claims against any Debtor arising under, derived from, or based upon the Term Loan Credit Agreement.

113. “Term Loan Credit Agreement” means that certain Credit Agreement, originally dated as of December 7, 2020 (as amended, restated, amended and restated, supplemented, waived, or otherwise modified prior to the Petition Date, including pursuant to that certain Joinder and Third Amendment to Credit Agreement, dated as of December 6, 2024), by and among (a) Penney Holdings LLC, as lead administrative borrower, and the other Loan Parties (as defined in the Term Loan Credit Agreement) party thereto, (b) the Term Loan Agent, as administrative and collateral agent, and (c) the lenders from time to time party thereto.

114. “Term Loan Lenders” means the lenders with respect to the Term Loans, party to the Term Loan Credit Agreement from time to time.

115. “Term Loans” means the loans outstanding under the Term Loan Credit Agreement.

116. “Third-Party Releases” means the releases set forth in Article IX.B.

117. “Transaction Expenses” all reasonable and documented fees, costs, and expenses (and retainers) of each of the ABL Advisors and Term Loan Advisors in connection with the Chapter 11 Cases, negotiation, formulation, preparation, execution, delivery, implementation, consummation, and/or enforcement (including, for the avoidance of doubt, enforcement through appellate litigation) of the Plan and/or any definitive documents, and/or the transactions contemplated hereby or thereby, including any amendments, waivers, consents, supplements, or other modifications to any of the foregoing, and, to the extent applicable, consistent with any engagement letters or fee reimbursement letters entered into between the applicable Company Parties, on the one hand, and each ABL Advisor and each Term Loan Advisor, on the other hand, with respect to the fees, costs, and expenses of such ABL Advisor or such Term Loan Advisor.

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

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

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

121. “Voting Deadline” means the date and time established by the Disclosure Statement and Solicitation Procedures Order by which all ballots to accept or reject the Plan must be received in accordance with the Disclosure Statement and Solicitation Procedures Order to be counted.

122. “Wind Down Process” means the process of conducting going out of business sales with respect to all of the Debtors’ store locations to implement an orderly liquidation of the Debtors’ assets.

## **B. Rules of Interpretation**

For the purposes of the Plan, and except as otherwise provided herein, the following rules of interpretation shall apply: (1) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, will include both the singular and the plural; (2) unless otherwise provided in 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; (3) 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; (4) any reference to an Entity as a Holder of a Claim or Interest includes that Entity’s successors and assigns; (5) all references in the Plan to “Articles” and “Exhibits” are references to the articles and exhibits of or to the Plan unless otherwise noted; (6) the words “herein,” “hereunder,” and “hereto” refer to the Plan in its entirety rather than to a particular portion of the Plan; (7) the words “include” or “including,” and variations thereof, will not be deemed to be terms of limitation, and will be deemed to be followed by the words “without limitation;” (8) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (9) unless otherwise specified, references in the Plan to “Docket No.” refer to entries on the Chapter 11 Cases’ docket; (10) subject to the provisions of any contract, certificate of incorporation, by-laws, or similar constituent document, instrument, release, or other agreement or document entered into or delivered in connection with 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, and, to the extent applicable, the laws of the State of Delaware; (11) all references to statutes, regulations, orders, rules of courts, and the like shall mean as amended from time to time, and as applicable to the Chapter 11 Cases, unless otherwise stated; (12) any references herein to actions to be taken on the Effective Date may be taken on or as soon as reasonably practicable thereafter; (13) any effectuating provisions may be interpreted by the Debtors or the Plan Administrator in such a manner that is consistent with the overall purpose and intent of the Plan all without further notice to or action, order, or approval of the Bankruptcy Code or any other Entity, and such interpretation shall be conclusive; (14) all references herein to consent, acceptance, or approval shall be deemed to include the requirement that such consent, acceptance, or approval be evidenced by a writing, which may be conveyed by

counsel for the respective parties that have such consent, acceptance, or approval rights, including by email; (15) the rules of construction set forth in section 102 of the Bankruptcy Code will apply; and (16) all references in the Plan to monetary figures refer to currency of the United States of America, unless otherwise expressly provided.

**C. Computation of Time**

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

**D. Controlling Document**

In the event of an inconsistency between the Plan and the Disclosure Statement, the terms of the Plan shall control in all respects. In the event of an inconsistency between the Plan and the Plan Supplement, the terms of the Plan shall control. In the event of an inconsistency between the Plan or the Plan Supplement and the Confirmation Order, the Confirmation Order shall control.

**E. Consent Rights**

Notwithstanding anything herein to the contrary, any and all consultation, information, notice, and consent rights set forth in the Plan Support Agreement or Cash Collateral Orders with respect to the form and substance of the Plan, the Plan Supplement, and all other Definitive Documents, including any amendments, restatements, amendments and restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in Article I.A) and be fully enforceable as if stated in full herein.

**ARTICLE II.  
ADMINISTRATIVE CLAIMS AND PRIORITY TAX CLAIMS**

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

**A. Administrative Claims**

Unless otherwise agreed to by the Holder of an Allowed Administrative Claim and the Debtors or the Plan Administrator, as applicable, each Holder of an Allowed Administrative Claim (other than Holders of Professional Fee Claims) will receive in full and final satisfaction of its Allowed Administrative Claim an amount of Cash equal to the amount of such Allowed Administrative Claim or otherwise receive treatment in a manner consistent with section 1129(a)(9)(A) of the Bankruptcy Code in accordance with the following: (1) if an Administrative Claim is Allowed on or prior to the Effective Date, on the Effective Date (or, if not then due, when such Allowed Administrative Claim becomes due or as soon as reasonably practicable thereafter); (2) if such Administrative Claim is not Allowed as of the Effective Date, no later than 30 days after the date on which an order allowing such Administrative Claim becomes a Final Order or the

Debtors or the Plan Administrator, as applicable, and the Holder of the Administrative Claim consensually agree to the Allowed amount of such Administrative Claim, or as soon as reasonably practicable thereafter; (3) if such Allowed Administrative Claim is based on liabilities incurred by the Debtors in the ordinary course of their business after the Petition Date, in accordance with the terms and conditions of the particular transaction or course of business giving rise to such Allowed Administrative Claim, without any further action by the Holder of such Allowed Administrative Claim; or (4) at such time and upon such terms as set forth in a Final Order of the Bankruptcy Court.

**Except for Professional Fee Claims, all applications seeking allowance and payment of Administrative Claims must be Filed and served on the Debtors or the Plan Administrator, as applicable, and their counsel no later than the Administrative Claims Bar Date pursuant to the procedures specified in the Plan, the Confirmation Order, and the notice of Effective Date. Any objections to such applications must be Filed and served on the requesting party by the Claims Objection Deadline. Unless otherwise agreed to by the applicant and the Debtors or the Plan Administrator, as applicable, after notice and a hearing, the Allowed amounts, if any, of Administrative Claims shall be determined by, and satisfied in accordance with, a Final Order.**

**Except as otherwise provided in Article II.B, Holders of Administrative Claims that are required to File and serve a request for payment of such Administrative Claims that do not File and serve such a request on or before the Administrative Claims Bar Date shall be forever barred, estopped, and enjoined from asserting Administrative Claims against the Debtors, the Estates, Distribution Co., the Plan Administrator, or the assets or property of any of the foregoing, and any Administrative Claims shall be deemed disallowed as of the Effective Date, without the need for any objection from the Debtors or Plan Administrator or any notice to or action, order, or approval of the Bankruptcy Court or any other Entity.**

**B. Professional Fee Claims**

**1. Final Fee Applications**

All final requests for payment of Professional Fee Claims by Professionals for services rendered and reimbursement of expenses incurred prior to the Effective Date must be Filed no later than 30 days after the Effective Date. Objections to Professional Fee Claims must be Filed and served no later than 14 days after the Filing of the Professional Fee Claim. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims of Professionals after notice and a hearing in accordance with the procedures established by the Bankruptcy Court. The Plan Administrator shall pay the amount of the Allowed Professional Fee Claims owing to the Professionals in Cash to such Professionals, including from funds held in the Professional Fee Escrow Account, promptly after the Professional Fee Claims are Allowed by entry of an order of the Bankruptcy Court.

**2. Professional Fee Escrow Account**

As soon as reasonably practicable after the Confirmation Date and no later than the Effective Date, the Debtors shall establish and fund the Professional Fee Escrow Account with

Cash equal to the Professional Fee Escrow Amount. The Professional Fee Escrow Account shall be maintained in trust solely for the Professionals and for no other Entities until all Professional Fee Claims Allowed by the Bankruptcy Court have been irrevocably paid in full to the Professionals pursuant to one or more Final Orders of the Bankruptcy Court. No Liens, claims, or interests shall encumber the Professional Fee Escrow Account or Cash held in the Professional Fee Escrow Account in any way. Funds held in the Professional Fee Escrow Account shall not be considered property of the Debtors, their Estates, or Distribution Co. If some or all of the Professional Fee Amount is not held in the trust account of one more counsel to the Debtors, the Plan Administrator is charged with administering the Professional Fee Escrow Account after the Effective Date.

The amount of Professional Fee Claims owing to the Professionals shall be paid in Cash to such Professionals by the Debtors or the Plan Administrator, as applicable, from the funds held in the Professional Fee Escrow Account as soon as reasonably practicable after such Professional Fee Claims are Allowed by an order of the Bankruptcy Court; *provided* that the Debtors' and the Plan Administrator's obligations to pay Allowed Professional Fee Claims shall not be limited nor be deemed limited to funds held in the Professional Fee Escrow Account. When all Professional Fee Claims Allowed by the Bankruptcy Court have been irrevocably paid in full to the Professionals pursuant to one or more Final Orders of the Bankruptcy Court, any remaining funds held in the Professional Fee Escrow Account shall promptly be paid to Distribution Co. without any further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.

### 3. Professional Fee Escrow Amount

The Professionals shall provide a reasonable and good-faith estimate of their fees and expenses incurred in rendering services to the Debtors before and as of the Effective Date projected to be outstanding as of the Effective Date, and shall deliver such estimate to the Debtors no later than three days before the anticipated Effective Date; *provided, however*, that such estimate shall not be considered or deemed an admission or limitation with respect to the amount of the fees and expenses that are the subject of the Professional's final request for payment of Professional Fee Claims and such Professionals are not bound to any extent by the estimates. If a Professional does not provide an estimate, the Debtors may estimate the unpaid and unbilled fees and expenses of such Professional. The total aggregate amount so estimated as of the Effective Date shall be utilized by the Debtors to determine the amount to be funded to the Professional Fee Escrow Account, *provided* that the Plan Administrator shall use Cash held by Distribution Co. to increase the amount of the Professional Fee Escrow Account to the extent fee applications are Filed after the Effective Date in excess of the amount held in the Professional Fee Escrow Account based on such estimates.

### 4. Post-Confirmation Date Fees and Expenses

Except as otherwise specifically provided in the Plan, from and after the Confirmation Date, the Debtors shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable and documented legal, professional, or other fees and expenses related to the Chapter 11 Cases that are incurred after the Confirmation Date through and including the Effective Date, in the ordinary course of business. The Debtors and the Plan Administrator, as applicable, shall pay within ten business

days after submission of a detailed invoice to the Debtors or the Plan Administrator, as applicable, such reasonable claims for compensation or reimbursement of expenses incurred by the Professionals of the Debtors, as applicable. If the Debtors dispute the reasonableness of any such invoice, the Debtors or the Plan Administrator, as applicable, or the affected Professional may submit such dispute to the Bankruptcy Court for a determination of the reasonableness of any such invoice, and the disputed portion of such invoice shall not be paid until the dispute is resolved. Upon the Confirmation Date, any requirement that Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code, any orders governing compensation, or otherwise in seeking retention or compensation for services rendered after such date shall terminate, and the Debtors or, after the Effective Date, the Plan Administrator may employ and pay any Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court.

**C. Priority Tax Claims**

Except to the extent a Holder of an Allowed Priority Tax Claim and the Debtors or the Plan Administrator, as applicable, agree to less favorable treatment for such Holder, in full and final satisfaction of the Allowed Priority Tax Claim, each Holder thereof will be paid in full in Cash or otherwise receive treatment in a manner consistent with the provisions of section 1129(a)(9)(C) of the Bankruptcy Code.

**ARTICLE III.**

**CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS**

**A. Classification of Claims and Interests**

The Plan groups the Debtors together solely for the purpose of describing treatment under the Plan, Confirmation of the Plan, and distributions to be made in respect of Claims against and Interests in the Debtors under the Plan. Such groupings shall not affect each Debtor's status as a separate legal entity, change the organizational structure of the Debtors' business enterprise, constitute a change of control of any Debtor for any purpose, cause a merger or consolidation of any legal entities, or cause the transfer of any assets. Except as otherwise provided by or permitted under the Plan, all Debtors shall continue to exist as separate legal entities. The Plan is not premised on, and does not provide for, the substantive consolidation of the Debtors with respect to the Classes of Claims or Interests set forth in the Plan.

The Plan constitutes a separate chapter 11 plan for each Debtor, and the classifications set forth in Classes 1 through 9 shall be deemed to apply to each Debtor, as may be applicable. Except for the Claims addressed in Article II, all Claims and Interests are classified in the Classes set forth below in accordance with sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or an Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest qualifies within the description of such other Classes. A Claim also is classified in a particular Class for the purpose of receiving distributions under the Plan only to the extent that such Claim is an Allowed Claim in that Class and has not been otherwise paid, released, or satisfied at any time. Certain of the Debtors may not have Holders of Claims or Interests in a particular Class or Classes, and such Claims shall be treated as set forth in Article III.D. For all

purposes under the Plan, each Class will contain sub-Classes for each of the Debtors, except that Class 9 shall be vacant at each Debtor other than OpCo.

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

<b>Class</b>	<b>Claim or Interest</b>	<b>Status</b>	<b>Voting Rights</b>
1	Other Secured Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)
2	Other Priority Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)
3	ABL Claims	Impaired	Entitled to Vote
4	Term Loan Claims	Impaired	Entitled to Vote
5	Subordinated Loan Claims	Impaired	Entitled to Vote
6	General Unsecured Claims	Impaired	Entitled to Vote
7	Intercompany Claims	Unimpaired / Impaired	Not Entitled to Vote (Presumed to Accept / Deemed to Reject)
8	Intercompany Interests	Unimpaired / Impaired	Not Entitled to Vote (Presumed to Accept / Deemed to Reject)
9	Existing Equity Interests	Impaired	Not Entitled to Vote (Deemed to Reject)

**B. Treatment of Claims and Interests**

1. Class 1 – Other Secured Claims

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

(b) *Treatment:* On the Effective Date, except to the extent that a Holder of an Allowed Other Secured Claim and the Debtors or the Plan Administrator, as applicable, agree to less favorable treatment for such Holder, in full and final satisfaction, compromise, settlement, and release of and in exchange for such Allowed Other Secured Claim, each Holder of an Allowed Other Secured Claim shall receive, at the Debtors' option, either (i) payment in full in Cash, (ii) delivery of the collateral securing its Allowed Other Secured Claim, or (iii) such other treatment rendering its Allowed Other Secured Claim Unimpaired.

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

2. Class 2 – Other Priority Claims

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

(b) *Treatment:* On the Effective Date, except to the extent that a Holder of an Allowed Other Priority Claim and the Debtors or the Plan Administrator, as applicable, agree to less favorable treatment, in full and final satisfaction, compromise, settlement, and release of and in exchange for such Allowed Other Priority Claim, each Holder of an Allowed Other Priority Claim shall receive payment in full in Cash or otherwise receive treatment rendering such Holder's Claim Unimpaired.

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

3. Class 3 – ABL Claims

(a) *Classification:* Class 3 consists of all ABL Claims against the Debtors.

(b) *Allowance:* On the Effective Date, ABL Claims shall be allowed in the aggregate principal amount of \$1,085,633,778.08 outstanding ABL Loans, comprising \$925,633,778.08 in aggregate principal amount of Revolving Loans and \$160,000,000.00 in aggregate principal amount of FILO Loans, plus unpaid interest, fees (including any attorneys' and financial advisors' fees), premiums, charges, indemnities, and any other obligations, amounts, and expenses arising under or in connection with the ABL Credit Agreement.<sup>2</sup>

(c) *Treatment:* On the Effective Date, except to the extent that a Holder of an ABL Claim agrees to less favorable treatment, in full and final satisfaction, compromise, settlement, and release of and in exchange for such Allowed ABL Claim, each Holder of an Allowed ABL Claim shall receive its pro rata share (based on such Holder's proportionate share of all Allowed ABL Claims) of:

- (i) (A) if Class 6 (General Unsecured Claims) votes to accept the Plan, 94% of the Net Proceeds or (B) if Class 6 (General Unsecured Claims) votes to reject the Plan, 97% of the Net Proceeds; and

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<sup>2</sup> The ABL Claims also include letters of credit in the aggregate undrawn face amount of \$178,273,737.26.



- (ii) following the Liquidation Process, 100% of the Excess Amounts (if any).

(d) *Voting:* Class 3 is Impaired, and Holders of ABL Claims are entitled to vote to accept or reject the Plan.

4. Class 4 – Term Loan Claims

(a) *Classification:* Class 4 consists of all Term Loan Claims against the Debtors.

(b) *Allowance:* On the Effective Date, Term Loan Claims shall be allowed in the aggregate principal amount of \$320,875,000.00 outstanding Term Loans, plus unpaid interest, fees (including any attorneys' and financial advisors' fees), premiums, charges, indemnities, and any other obligations, amounts, and expenses arising under or in connection with the Term Loan Credit Agreement.

(c) *Treatment:* On the Effective Date, except to the extent that a Holder of a Term Loan Claim agrees to less favorable treatment, in full and final satisfaction, compromise, settlement, and release of and in exchange for such Allowed Term Loan Claim, each Holder of an Allowed Term Loan Claim shall be deemed to waive any such Term Loan Claim against the Debtors (but not the non-Debtor Loan Parties (as defined in the Term Loan Credit Agreement)) and will not receive any distribution on account of such Claim in exchange for the releases set forth in the Plan.

(d) *Voting:* Class 4 is Impaired, and Holders of Term Loan Claims are entitled to vote to accept or reject the Plan.

5. Class 5 – Subordinated Loan Claims

(a) *Classification:* Class 5 consists of all Subordinated Loan Claims against the Debtors.

(b) *Allowance:* On the Effective Date, Subordinated Loan Claims shall be allowed in the aggregate principal amount of \$176,147,053.95 outstanding Subordinated Loans, plus unpaid interest, fees (including any attorneys' and financial advisors' fees), premiums, charges, indemnities, and any other obligations, amounts, and expenses arising under or in connection with the Subordinated Loan Credit Agreement.

(c) *Treatment:* On the Effective Date, except to the extent that a Holder of a Subordinated Loan Claim agrees to less favorable treatment, in full and final satisfaction, compromise, settlement, and release of and in exchange for such Allowed Subordinated Loan Claim, each Holder of an Allowed Subordinated Loan Claim shall be deemed to waive any such Subordinated Loan Claim against the Debtors (but not the non-Debtor Loan Parties (as defined in the Subordinated Loan Credit Agreement)) and will not receive any distribution on account of such Claim in exchange for the releases set forth in the Plan.

(d) *Voting:* Class 5 is Impaired, and Holders of Subordinated Loan Claims are entitled to vote to accept or reject the Plan.

6. Class 6 – General Unsecured Claims

(a) *Classification:* Class 6 consists of all General Unsecured Claims against the Debtors.

(b) *Treatment:* Except to the extent that a Holder of an Allowed General Unsecured Claim and the Debtors or the Plan Administrator, as applicable, agree to less favorable treatment for such Holder, in full and final satisfaction, compromise, settlement, and release of and in exchange for such General Unsecured Claim, each Holder of an Allowed General Unsecured Claim shall receive its pro rata share (based on such Holder's proportionate share of the aggregate amount of all Allowed General Unsecured Claims) of:

- (i) interests in (and proceeds of) the remaining unencumbered property of the Debtors (if any); and
- (ii) (A) if Class 6 (General Unsecured Claims) votes to accept the Plan, 6% of the Net Proceeds or (B) if Class 6 (General Unsecured Claims) votes to reject the Plan, 3% of the Net Proceeds.

Notwithstanding anything to the contrary herein, the treatment of the Allowed General Unsecured Claim of SPARC Group LLC on account of the SPARC Payable shall be subject to the terms of the SPARC Settlement.

(c) *Voting:* Class 6 is Impaired, and Holders of the General Unsecured Claims are entitled to vote to accept or reject the Plan.

7. Class 7 – Intercompany Claims

(a) *Classification:* Class 7 consists of all Intercompany Claims against the Debtors.

(b) *Treatment:* On the Effective Date, Intercompany Claims may be Reinstated as of the Effective Date solely for the purpose of facilitating the Liquidation Process or, at the Debtors' option, be cancelled, released, and extinguished without any distribution on account of such Claims.

(c) *Voting:* Class 7 is either Impaired, and Holders of Intercompany Claims are conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code, or Unimpaired, and such Holders are conclusively deemed to have accepted the Plan pursuant to section 1126(f). Therefore, Holders of Class 7 Intercompany Claims are not entitled to vote to accept or reject the Plan.

8. Class 8 – Intercompany Interests

(a) *Classification:* Class 8 consists of all Intercompany Interests in the Debtors.

(b) *Treatment:* On the Effective Date, all Intercompany Interests may be Reinstated as of the Effective Date solely for the purpose of facilitating the Liquidation Process or, at the Debtors’ option, may be cancelled, released, and extinguished, without any distribution on account of such Interest.

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

9. Class 9 – Existing Equity Interests

(a) *Classification:* Class 9 consists of all Existing Equity Interests.

(b) *Treatment:* On the Effective Date, all Existing Equity Interests will be cancelled, released, and extinguished and will be of no further force and effect. No Holders of Existing Equity Interests will receive a distribution under the Plan on account of such Existing Equity Interests.

(c) *Voting:* Class 9 is Impaired, and Holders of Existing Equity Interests are conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, Holders of Class 9 Existing Equity Interests are not entitled to vote to accept or reject the Plan.

**C. Special Provisions Governing Unimpaired Claims**

Except as otherwise provided in the Plan, nothing under the Plan shall affect the Debtors’ or the Plan Administrator’s rights with respect to any Claims that are Unimpaired, including all legal and equitable defenses to or setoffs or recoupments against such Claims that are Unimpaired.

**D. Elimination of Vacant Classes; Presumed Acceptance by Non-Voting Classes**

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

If a Class contains Claims or Interests eligible to vote and no Holders of Claims or Interests eligible to vote in such Class vote to accept or reject the Plan, the Holders of such Claims or Interests in such Class shall be deemed to have accepted the Plan.

**E. Controversy Concerning Impairment**

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

**F. Subordination of Claims**

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

**G. Confirmation Pursuant to Sections 1129(a)(10) and 1129(b) of the Bankruptcy Code**

Section 1129(a)(10) of the Bankruptcy Code shall be satisfied for purposes of Confirmation by acceptance of the Plan by at least one Impaired Class of Claims. The Debtors shall seek Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class of Claims or Interests. The Debtors reserve the right to modify the Plan in accordance with Article X of the Plan to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification, including by modifying the treatment applicable to a Class of Claims or Interests to render such Class of Claims or Interests Unimpaired to the extent permitted by the Bankruptcy Code and the Bankruptcy Rules.

**H. No Substantive Consolidation**

Although the Plan is presented as a joint plan of liquidation for administrative purposes, the Plan does not provide for the substantive consolidation of the Debtors' Estates, and on the Effective Date, the Debtors' Estates shall not be deemed to be substantively consolidated for any reason. Except as expressly provided herein, nothing in the Plan, the Confirmation Order, or the Disclosure Statement shall constitute or be deemed to constitute a representation that any one or all of the Debtors is subject to or liable for any Claims or Interests against or in any other Debtor. Notwithstanding the foregoing, in no case shall the aggregate value of all property received or retained under the Plan on account of any Allowed Claim exceed the amount of the Allowed Claim.

**I. Reservation of Rights Regarding Claims**

Except as otherwise provided in the Plan or in other Final Orders of the Bankruptcy Court, nothing will affect the Debtors' or the Plan Administrator's respective rights and defenses, whether legal or equitable, with respect to any Claim, including all rights with respect to legal and equitable defenses to alleged rights of setoff or recoupment.

**ARTICLE IV.  
MEANS FOR IMPLEMENTATION OF THE PLAN**

**A. General Settlement of Claims and Interests**

As described in the Disclosure Statement and as otherwise provided herein, pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, on the Effective Date, the provisions of the Plan shall constitute and be deemed a good-faith compromise and settlement of all Claims, Interests, Causes of Action, and controversies released, settled, compromised, or otherwise resolved pursuant to the Plan, including with respect to the recoveries waived by the Holders of ABL Claims, Term Loan Claims, and Subordinated Loan Claims and the SPARC Settlement. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of such compromise and settlement under section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, as well as a finding by the Bankruptcy Court that such settlement and compromise is fair, equitable, reasonable, and in the best interests of the Debtors and their Estates. Subject to Article VI, all distributions made to Holders of Allowed Claims in any Class are intended to be and shall be final.

**B. Implementation of the SPARC Settlement**

On the Effective Date, the SPARC Settlement shall be effective and binding pursuant to the Plan and Confirmation Order. Pursuant to the SPARC Settlement:

- (1) the SPARC Payable shall be deemed Allowed as a General Unsecured Claim in the amount of not less than approximately \$323,000,000.00, subject to reconciliation prior to a hearing on the Disclosure Statement;
- (2) on the Effective Date of the Plan, the SPARC Parties shall waive the right to recover from the Debtors as to seventy-five percent (75%) of the SPARC Payable; and
- (3) the SPARC Parties shall be Released Parties under this Plan and receive the Releases specified in Article VIII of the Plan.

The SPARC Settlement is integral to the development and implementation of the Plan. The Plan, taken together with the Disclosure Statement, shall serve as a motion to approve the SPARC Settlement pursuant to Bankruptcy Rule 9019. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the SPARC Settlement, including each of the compromises and settlements provided for in the SPARC Settlement, and the Bankruptcy Court's findings shall constitute its determination that the SPARC Settlement is in the best interests of the Debtors, their Estates, Holders of Claims and Interests, and other parties in interest, is supported by good and valuable consideration, and is fair, equitable, and reasonable.

**C. Sources of Consideration for Plan Distributions**

Subject in all respects to the provisions of the Plan concerning the Professional Fee Escrow Account, the Debtors or the Plan Administrator, as applicable, shall fund distributions under the Plan with Cash on hand on the Effective Date and all other Distribution Co. Assets.

**D. Vesting of Assets**

On the Effective Date, pursuant to sections 1141(b) and 1141(c) of the Bankruptcy Code, the Distribution Co. Assets shall vest in Distribution Co. free and clear of all Claims, Liens, encumbrances, charges, and other interests except as otherwise expressly provided in this Plan or the Confirmation Order. Upon the Effective Date and the vesting of the Distribution Co. Assets in Distribution Co., the Debtors shall have no further duties or responsibilities in connection with implementation of this Plan.

On the Effective Date, Distribution Co. shall: (1) take possession of all books, records, and files of the Debtors and the Estates that were not sold or otherwise transferred prior to the Effective Date and that relate to the operation and business of Distribution Co.; and (2) provide for the retention and storage of such books, records, and files until such time as the Plan Administrator determines, in accordance with the Plan Administration Agreement, that retention of same is no longer necessary or beneficial.

**E. Liquidation Process**

**1. Distribution Co.**

On the Effective Date, in accordance with Article IV.C, the Distribution Co. Assets will be transferred to, or retained by, Distribution Co. without any further action of the Debtors or any managers, employees, officers, directors, members, partners, shareholders, agents, advisors, or representatives of the Debtors. Distribution Co. may be comprised of one or more of the post-Effective Date Debtors. On and after the Effective Date, the Plan Administrator shall effectuate the Liquidation Process in accordance with the provisions of the Plan, the Confirmation Order, the Plan Administration Agreement, and any other applicable Definitive Documents.

**2. Plan Administration Agreement**

On the Effective Date, the Debtors shall execute the Plan Administration Agreement. The Plan Administration Agreement will contain provisions permitting the amendment or modification of the Plan Administration Agreement necessary to effectuate, implement, consummate, and/or further evidence the provisions of the Plan.

**3. Purpose of Distribution Co.**

On and after the Effective Date, except as otherwise provided in the Plan, Distribution Co., at the direction of the Plan Administrator, shall effectuate the Liquidation Process and compromise or settle the Claims, Interests, or Causes of Action remaining against the Debtors, if any, without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. After the Effective Date, pursuant to the Plan, and on

behalf of Distribution Co., the Plan Administrator, in its sole discretion, as part of the Liquidation Process, shall sell, liquidate, use, or dispose of any asset, property, right, liability, debt, or obligation of the Debtors on terms consistent with the Plan without approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

4. Plan Administrator

(a) *Appointment of the Plan Administrator*

Upon the occurrence of the Effective Date, the Plan Administrator shall be deemed appointed to serve as the administrator of the Liquidation Process. The Plan Administrator, subject to the terms and conditions of the Plan, the Plan Supplement, the Confirmation Order, and the Plan Administration Agreement, shall be authorized to execute, deliver, file, or record such documents, contracts, instruments, releases, and other agreements, and to take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan and the Liquidation Process. The Plan Administrator shall have and perform all of the duties, responsibilities, rights, and obligations set forth in the Plan and the Plan Administration Agreement, as applicable.

From and after the Effective Date, the Plan Administrator shall act as the exclusive representative of Distribution Co. for all purposes and as the sole officer and director of each of the post-Effective Date Debtors. Any successor Plan Administrator appointed pursuant to the Plan Administration Agreement shall be bound by and comply with the terms of this Plan, the Confirmation Order, and the Plan Administration Agreement.

The Plan Administrator shall effectuate the Liquidation Process with the Plan Administration Amount. The Plan Administrator shall be compensated as set forth in the Plan Administration Agreement. The Plan Administrator shall fully comply with the terms, conditions, and rights set forth in this Plan, the Plan Supplement, the Confirmation Order, and the Plan Administration Agreement. The Plan Administrator (and any professionals retained by the Plan Administrator) shall not be required to File a fee application to receive compensation and all costs, liabilities, and expenses reasonably incurred by the Plan Administrator following the Effective Date, including any fees, costs, or expenses of the Notice and Claims Agent in connection with the administration of Claims asserted against the Debtors as requested by the Plan Administrator, and any personnel or professionals employed by the Plan Administrator in the performance of the Plan Administrator's duties shall be paid from the Plan Administration Amount.

(b) *Responsibilities, Power, and Authority of the Plan Administrator*

The Plan Administrator shall have the power and authority to perform the acts described in the Plan Administration Agreement, subject to approval by the Court where applicable, in addition to any powers granted by law or conferred to it by any other provision of the Plan, including any set forth herein. The powers of the Plan Administrator shall include: (i) preserving and liquidating the Distribution Co. Assets; (ii) administering and paying taxes, including (A) preparing and filing any tax forms or returns on behalf of the Estates and Distribution Co., including filing final tax returns or otherwise required federal, state, and local tax returns and,

pursuant to section 505(b) of the Bankruptcy Code, requesting, as appropriate, an expedited determination of any unpaid tax liability of any Debtor, the Estate, or Distribution Co. as determined under applicable tax law, and paying taxes required to be paid on behalf of the Debtors and (B) representing the interest and account of Distribution Co. before any taxing authority in all matters including any action, suit, proceeding, or audit; (iii) retaining and paying, without the need for retention or fee applications, professionals in connection with the Plan Administrator's performance of its duties under this Plan and the Plan Administration Agreement; (iv) distributing information statements as required for U.S. federal income tax and other applicable tax purposes; (v) preparing and Filing all monthly operating reports due after the Effective Date and all post-Confirmation reports as required by the U.S. Trustee; (vi) the power to pursue, prosecute, resolve, compromise, and settle any retained Causes of Action, without notice to or approval from the Bankruptcy Court; (vii) the power to object to Claims; (viii) Filing an application or applications for entry by the Bankruptcy Court of a final decree closing one or more of the Chapter 11 Cases, as appropriate; (ix) making distributions to Professionals for Allowed Professional Fee Claims, including from the Professional Fee Escrow Account; (x) making distributions to beneficiaries of Distribution Co. in accordance with the Plan, the Confirmation Order, and the Plan Administration Agreement; (xi) the power and authority to wind down, liquidate, or otherwise dissolve the post-Effective Date Debtors and non-Debtor Company Parties, without the necessity for any other or further actions to be taken by or on behalf of such dissolving Entity or its shareholder or any payments to be made in connection therewith, other than the filing of a certificate of dissolution with the appropriate governmental authorities; (xii) the power to invest funds of Distribution Co., and withdraw, make distributions, and pay taxes and other obligations owed by Distribution Co. from such funds in accordance with this Plan and the Plan Administration Agreement; and (xiii) such other responsibilities and powers as may be vested in the Plan Administrator pursuant to this Plan, the Plan Supplement, the Plan Administration Agreement, or an order of the Bankruptcy Court (including the Confirmation Order), or as may be necessary and proper to carry out the provisions of this Plan. The enumeration of the foregoing powers shall not be considered in any way to limit or control the power and authority of the Plan Administrator to act as specifically authorized by any other provision of this Plan, the Plan Administration Agreement, and/or any applicable law, or to limit the Plan Administrator's ability to act or not take action in any way it may deem necessary or appropriate to discharge all obligations assumed by the Plan Administrator or provided herein and to conserve and protect Distribution Co. and the Distribution Co. Assets or to confer on the creditors the benefits intended to be conferred upon them by this Plan.

##### 5. Debtors' Professionals

After the Effective Date, the Debtors' Professionals will continue to provide services to Distribution Co. with respect to (i) any applications for Professional Fee Claims or expense reimbursements for its Professionals, including preparing, objecting to, defending, and attending any hearing with respect to the same, (ii) any motions or other actions seeking enforcement or implementation of the provisions of the Plan or Confirmation Order, and (iii) any appeal pending as of the Effective Date or filed thereafter, the outcome of which could reasonably be expected to affect in any material way any cases, controversies, suits, or disputes arising in connection with the Consummation, interpretation, implementation, or enforcement of the Plan or the Confirmation Order. Following the Effective Date, the Debtors' Professionals shall be entitled to reasonable compensation for services rendered in connection with the matters identified in clauses (i) through



(iii). Any such payments made in connection therewith shall be made without any further notice to or action, order, or approval of the Bankruptcy Court.

Nothing in the foregoing paragraph shall limit the Plan Administrator's power and authority to retain and compensate professionals on its behalf and for the benefit of Distribution Co. in accordance with the Plan and the Plan Administration Agreement.

**F. Authority to Act**

Prior to, on, or after the Effective Date, as appropriate, all matters contemplated under this Plan, regardless of whether such matters would otherwise require approval of the stockholders, security holders, officers, directors, members, or other owners of the Debtors, shall be deemed to have occurred and shall be in effect prior to, on, or after the Effective Date, as applicable, pursuant to the applicable law of the state in which the Debtors are formed, without any further vote, consent, approval, authorization, or other action by such stockholders, security holders, officers, directors, members, or other owners of the Debtors or notice to, order of, or hearing before, the Bankruptcy Court, and such acts will be deemed authorized and approved in all respects, including: (1) the selection of the Plan Administrator; (2) the entry into the Plan Administration Agreement; (3) the implementation of the Plan and the Liquidation Process; and (4) all other actions contemplated under the Plan.

**G. Dissolution of Debtor Entities**

On or after the Effective Date, one or more of the Debtors shall be dissolved for all purposes unless the Plan Administrator determines that dissolution can have any adverse impact on the Liquidation Process; *provided, however*, that neither the Debtors nor any party released pursuant to Article VIII shall be responsible for any liabilities that may arise as a result of non-dissolution of the Debtors. The Plan Administrator may submit with the appropriate Governmental Units a copy of the Confirmation Order, which Confirmation Order will suffice for purposes of obtaining a Certificate of Dissolution from the Delaware Secretary of State or other applicable authority of the states in which the Debtors are organized. Nothing herein shall limit the obligations of the Plan Administrator to comply with Article XII.E.

**H. Cancellation of Existing Agreements and Securities**

On the Effective Date, except as otherwise specifically provided for in the Plan: (1) the obligations of the Debtors under the ABL Credit Agreement, the Subordinated Loan Credit Agreement, the Term Loan Credit Agreement, and any other certificate, Security, share, note, bond, indenture, purchase right, option, warrant, or other instrument or document directly or indirectly evidencing or creating any indebtedness or obligation of or ownership interest in the Debtors or giving rise to any Claim or Interest (except such certificates, notes, or other instruments or documents evidencing indebtedness or obligation of or ownership interest in the Debtors that are Reinstated pursuant to the Plan) shall be cancelled solely as to the Debtors and their Affiliates, and Distribution Co. shall not have any continuing obligations thereunder; and (2) the obligations of the Debtors pursuant, relating, or pertaining to any agreements, indentures, certificates of designation, bylaws, or certificate or articles of incorporation or similar documents governing the shares, certificates, notes, bonds, indentures, purchase rights, options, warrants, or other

instruments or documents evidencing or creating any indebtedness or obligation of or ownership interest in the Debtors (except such agreements, certificates, notes, or other instruments evidencing indebtedness or obligation of or ownership interest in the Debtors that are specifically Reinstated pursuant to the Plan) shall be released. Notwithstanding the foregoing, no Executory Contract or Unexpired Lease (i) that has been, or will be, assumed pursuant to section 365 of the Bankruptcy Code or (ii) relating to a Claim that was paid in full prior to the Effective Date, shall be terminated or cancelled with respect to the Debtors on the Effective Date, except that (a) the ABL Credit Agreement, the Subordinated Loan Credit Agreement, and the Term Loan Credit Agreement shall continue in effect solely for the purpose of (I) allowing Holders of the ABL Claims to receive the distributions provided for under the Plan, (II) allowing the ABL Agent to receive or direct distributions from the Debtors and to make further distributions to the Holders of such Claims on account of such Claims, and (III) preserving the ABL Agent's, the Subordinated Loan Agent's, and Term Loan Agent's right to indemnification pursuant and subject to the terms of the ABL Credit Agreement, the Subordinated Loan Credit Agreement, and the Term Loan Credit Agreement in respect of any Claim or Cause of Action asserted against the ABL Agent, the Subordinated Loan Agent, or Term Loan Agent, as applicable.

**I. Debtors' Boards or Governance Bodies**

On the Effective Date, all members or managers of existing boards or governance bodies of the Debtors shall be deemed to have resigned and the employees of the Debtors shall be deemed terminated. On and after the Effective Date, the Plan Administrator shall be authorized to act on behalf of the Estates in accordance with the Plan and Plan Administration Agreement.

**J. Plan Transactions**

On the Effective Date, the Debtors and the Plan Administrator, as applicable, may take any and all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate this Plan, including: (1) the execution and delivery of appropriate agreements or other documents of consolidation, conversion, disposition, transfer, or dissolution containing terms that are consistent with the terms of this Plan and that satisfy the requirements of applicable law; (2) the execution and delivery of any appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, duty, or obligation on terms consistent with this Plan; (3) the filing of appropriate documents with the appropriate governmental authorities pursuant to applicable law; and (4) any and all other actions that the Debtors or the Plan Administrator, as applicable, determine are necessary or appropriate to effectuate the Plan.

**K. Effectuating Documents and Further Transactions**

Upon entry of the Confirmation Order, the Debtors and the Plan Administrator, as applicable, shall be authorized to execute, deliver, file, or record such contracts, instruments, releases, consents, certificates, resolutions, programs, and other agreements or documents, and take such acts and actions as may be reasonable, necessary, or appropriate to effectuate, implement, consummate, and/or further evidence the terms and conditions of this Plan and any transactions described in or contemplated by this Plan, the implementation of the Liquidation Process, and the entry into the Plan Administration Agreement. The Debtors, the Plan Administrator, all Holders

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

**L. Exemption from Certain Taxes and Fees**

To the fullest extent permitted by section 1146(a) of the Bankruptcy Code and applicable law, any transfers of property pursuant to the Plan or the Confirmation Order, including (1) any and all transfers in connection with the vesting of the Distribution Co. Assets in Distribution Co., (2) the issuance, distribution, transfer, or exchange of any Cash or other interest in the Debtors to the Holders of Claims, or (3) the making, assignment, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with the Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation all such instruments or other documents governing or evidencing such transfers without the payment of any such tax, recordation fee, or governmental assessment. All filing or recording officers or any other Entity with authority over any of the foregoing, wherever located and by whomever appointed, shall comply with the requirements of section 1146(c) of the Bankruptcy Code, shall forgo the collection of any such tax or governmental assessment, and shall accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

**M. Preservation of Causes of Action**

In accordance with section 1123(b) of the Bankruptcy Code, but subject in all respects to Article VIII, any and all Causes of Action of the Debtors and their Estates, whether arising before or after the Petition Date, including any actions enumerated in the Schedule of Retained Causes of Action and notwithstanding the rejection of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan, shall be preserved and transferred to, or retained by, Distribution Co. on the Effective Date.

The Plan Administrator shall retain and may exclusively enforce any and all Causes of Action of the Debtors and their Estates, as appropriate, other than the Causes of Action released, exculpated, or waived by the Debtors on or before the Effective Date, including pursuant to the releases and exculpations contained in the Plan, including in Article VIII, which shall be deemed released and waived by the Debtors, the Estates, and Distribution Co. as of the Effective Date. The Plan Administrator may pursue such Causes of Action, as appropriate, in accordance with the best interests of Distribution Co. The Plan Administrator shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order, or approval of the Bankruptcy Court.

**No Entity may rely on the absence of a specific reference in the Plan, the Confirmation Order, the Plan Supplement, or the Disclosure Statement to any Cause of Action against it as any indication that the Debtors, Distribution Co., or the Plan Administrator, as applicable, will not pursue any and all available Causes of Action against it, except as otherwise expressly provided in the Plan, including Article VIII of the Plan.** Unless any such Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or pursuant to a Final Order, the Plan Administrator expressly reserves all such Causes of Action, for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of Confirmation or Consummation.

## **ARTICLE V.**

### **TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES, INDEMNIFICATION PROVISIONS, AND INSURANCE POLICIES**

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

On the Effective Date, except as otherwise provided herein, all Executory Contracts or Unexpired Leases not previously assumed, assumed and assigned, or rejected pursuant to an order of the Bankruptcy Court, will be deemed rejected, in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code other than those Executory Contracts or Unexpired Leases that (1) are the subject of a motion to assume or reject that is pending on the Effective Date, (2) are identified on the Schedule of Assumed Executory Contracts and Unexpired Leases, if any, or (3) are a contract, release, or other agreement or document entered into in connection with the Plan.

Entry of the Confirmation Order shall constitute an order of the Bankruptcy Court approving, subject to and upon the occurrence of the Effective Date, the assumptions, assumptions and assignments, or rejections of the Executory Contracts and Unexpired Leases assumed, assumed and assigned, or rejected pursuant to the Plan. Any Filed motions to assume, assume and assign, or reject any Executory Contracts or Unexpired Leases (or Filed objection with respect to the proposed assumption, assumption and assignment, or rejection of such contract) that is pending on the Effective Date shall be subject to approval by the Bankruptcy Court on or after the Effective Date by a Final Order but may be withdrawn, settled, or otherwise prosecuted by the Plan Administrator, with any such disposition to be deemed to effect an assumption, assumption and assignment, or rejection, as applicable, as of the Effective Date.

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

**B. Rejection Damages Claims**

**If the rejection of an Executory Contract or Unexpired Lease pursuant to the Plan and the Confirmation Order results in a Claim, then, unless otherwise ordered by the Court, such Claim shall be forever barred and shall not be enforceable against the Debtors, the Estates, Distribution Co., or any of their respective assets and properties unless a Proof of Claim is Filed with the Notice and Claims Agent within 30 days of the Effective Date.**

The foregoing applies only to Claims arising from the rejection of an Executory Contract or Unexpired Lease under the Plan and the Confirmation Order; any other Claims held by a party to a rejected Executory Contract or Unexpired Lease shall have been evidenced by a Proof of Claim Filed by the applicable Bar Date set forth in the Bar Date Order or shall be barred and unenforceable. Claims arising from the rejection of Executory Contracts or Unexpired Leases under the Plan and the Confirmation Order shall be classified as General Unsecured Claims and shall, if Allowed, be treated in accordance with Article III.B.6.

**C. Preexisting Obligations to Debtors under Executory Contracts or Unexpired Leases**

Rejection of any Executory Contract or Unexpired Lease pursuant to the Plan and the Confirmation Order or otherwise shall not constitute a termination of preexisting obligations owed to the Debtors or Plan Administrator, as applicable, under such Executory Contracts or Unexpired Leases. In particular, notwithstanding any non-bankruptcy law to the contrary, the Debtors and the Plan Administrator, as applicable, expressly reserve and do not waive any right to receive, or any continuing obligation of a counterparty to provide, warranties, indemnity, or continued maintenance obligations.

**D. Indemnification and Insurance Preservation**

Nothing in the Plan, the Confirmation Order, or the Plan Administration Agreement alters the rights and obligations of the Debtors and their Estates or the Debtors' insurers and third-party claims administrators under the Insurance Policies or modifies the coverage or benefits provided thereunder, or the terms and conditions thereof, or diminishes or impairs the enforceability of the Insurance Policies. All of the Debtors' rights and their Estates' rights under any Insurance Policy to which the Debtors and/or the Debtors' Estates may be beneficiaries shall vest with Distribution Co. for the benefit of all beneficiaries of such policies.

Without limiting the foregoing, Distribution Co. will not terminate or otherwise reduce the existing coverage under any D&O Policies in effect on the Effective Date relating to the period prior to the Effective Date, and (1) all members, managers, directors, and officers of the Company Parties who served in such capacity at any time prior to the Effective Date and (2) any other individuals, in each case of (1) and (2), covered by the D&O Policies, will be entitled to the full benefits of any such D&O Policy, to the extent set forth therein, for the full term of such policy regardless of whether such members, managers, directors, officers, or other individuals remain in such positions after the Effective Date.

Nothing in the Plan, the Confirmation Order, the Plan Administration Agreement, or any Definitive Document shall alter any indemnification provisions of the Debtors (whether in the

by-laws, certificates of incorporation or formation, limited liability company agreements, limited partnership agreements, other organizational documents, board resolutions, indemnification agreements, employment contracts, engagement letters, or otherwise) that were in place as of the Petition Date, and such indemnification provisions covering directors, officers, managers, employees, attorneys, accountants, investment bankers, and other professionals of, or acting on behalf of, the Debtors, as applicable, shall be assumed by Distribution Co. and remain intact, irrevocable, and shall survive the Effective Date on terms no less favorable to such directors, officers, managers, employees, attorneys, accountants, investment bankers, and other professionals of, or acting on behalf of, the Debtors, as applicable, than the indemnification provisions in place as of the Petition Date.

**E. Reservation of Rights**

Neither the exclusion nor inclusion of any Executory Contract or Unexpired Lease on the Schedule of Assumed Executory Contracts and Unexpired Leases, nor anything contained in the Plan, the Confirmation Order, the Plan Supplement, or the Disclosure Statement shall constitute an admission by the Debtors that any contract or lease is in fact an Executory Contract or Unexpired Lease or that any of the Debtors has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtors or the Plan Administrator, as applicable, shall have 30 days following entry of a Final Order resolving such dispute to alter its treatment of such contract or lease under the Plan and the Confirmation Order.

**F. Non-Occurrence of the Effective Date**

In the event that the Effective Date does not occur, the Bankruptcy Court shall retain jurisdiction with respect to any request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code.

**ARTICLE VI.  
PROVISIONS GOVERNING DISTRIBUTIONS**

**A. Distribution Record Date**

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

Except as otherwise provided herein, the Disbursing Agent shall make distributions to Holders of Allowed Claims as of the Distribution Record Date at the address for each such Holder as indicated on the Debtors' records as of the date of any such distribution; *provided, however*, that the manner of such distributions shall be determined at the discretion of the Debtors or the Plan Administrator, as applicable; *provided further, however*, that the address for each Holder of

an Allowed Claim shall be deemed to be the address set forth in any Proof of Claim Filed by that Holder and the Debtors or Plan Administrator, as applicable, shall have no obligation to determine alternative or current addresses.

**B. Rights and Powers of Disbursing Agent**

Except as otherwise provided herein, all distributions under the Plan shall be made by the Disbursing Agent on or after the Effective Date. The Disbursing Agent shall not be required to give any bond or surety or other security for the performance of its duties. If the Disbursing Agent is otherwise ordered, all costs and expenses of procuring any such bond or surety shall be borne by Distribution Co. Except as otherwise ordered by the Bankruptcy Court, the amount of any reasonable fees and out-of-pocket expenses incurred by the Disbursing Agent on or after the Effective Date (including taxes) and any reasonable compensation and out-of-pocket expense reimbursement claims (including reasonable attorney fees and expenses) made by the Disbursing Agent shall be paid in Cash from Distribution Co.

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

**C. Delivery of Distributions**

1. Date of Distributions

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

2. Delivery of Distributions

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

If any distribution to a Holder of an Allowed Claim (1) is returned as undeliverable for lack of a current address or otherwise or (2) is unclaimed (as defined below) by the Holder of the Allowed Claim within 60 calendar days after the mailing of such distribution, the Plan Administrator shall be authorized to cancel such distribution check. Additionally, in the event that any distribution to any Holder is returned as undeliverable, no distribution to such Holder shall be made unless and until the Disbursing Agent has determined the then-current address of such Holder, at which time such distribution shall be made to such Holder without interest. For the avoidance of doubt, the Plan Administrator shall have no obligation to determine the correct current address of such Holder. Thirty calendar days after the cancellation of a distribution check

by the Plan Administrator, notwithstanding any applicable federal, provincial, or state escheat, abandoned, or unclaimed property laws to the contrary, (1) the Holder of such Claim shall cease to be entitled to the undeliverable distribution or uncashed distribution, which will revert to Distribution Co. automatically and without need for a further order by the Bankruptcy Court for distribution in accordance with the Plan and the Plan Administration Agreement and (2) the Allowed Claim of such Holder shall be deemed disallowed, released, expunged, and forever barred for purposes of further distributions under the Plan.

A distribution shall be deemed “unclaimed” if a Holder has not: (a) accepted a particular distribution or, in the case of distributions made by check, negotiated such check; (b) given notice to the Plan Administrator of an intent to accept a particular distribution; (c) responded to, as applicable, the Debtors’ or Plan Administrator’s requests for information necessary to facilitate a particular distribution; or (d) taken any other action necessary to facilitate such distribution.

### 3. Manner of Payment

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

### 4. Minimum Distributions

No payment of Cash in an amount of less than \$50.00 shall be required to be made on account of any Allowed Claim. Such undistributed amount may instead be used in accordance with the Plan and the Plan Administration Agreement. Each Claim to which this limitation applies shall be released pursuant to Article VIII and its Holder is forever barred pursuant to Article VIII from asserting such Claim against the Debtors, Distribution Co., the Plan Administrator, or their property.

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

## **D. Surrender of Instruments**

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



**E. Compliance Matters**

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

As a condition precedent to receiving any distribution under this Plan, and without limiting the generality of the foregoing, the Plan Administrator or the Disbursing Agent reserves the right to require from each Holder of an Allowed Claim that is entitled to a distribution under the Plan any necessary information, including related to tax identification. If a Holder of an Allowed Claim fails to provide any required information to effectuate a distribution within 60 days after service (by first class mail) of a formal request for the same by the Plan Administrator, such Allowed Claim shall be deemed disallowed and expunged for purposes of distributions under the Plan. For the avoidance of doubt, neither Distribution Co. nor the Plan Administrator is required to follow up with any Holder of an Allowed Claim if they fail to timely provide required information requested by the Plan Administrator.

Notwithstanding any other provision of the Plan to the contrary, each Holder of an Allowed Claim that is to receive a distribution under this Plan shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed on such Holder by any Governmental Unit, including income and other tax obligations, on account of such distribution.

**F. Distributions on Account of Obligations of Multiple Debtors**

For all purposes associated with distributions under the Plan, all guarantees by any Debtor of the obligations of any other Debtor, as well as any joint and several liability of any Debtor with respect to any other Debtor, shall be deemed eliminated so that any obligation that could otherwise be asserted against more than one Debtor shall result in a single distribution under the Plan, *provided* that Claims held by a single entity at different Debtors that are not based on guarantees or joint and several liability shall be entitled to the applicable distribution for such Claim at each applicable Debtor. Any such Claims shall be released pursuant to Article VIII of the Plan and shall be subject to all potential objections, defenses, and counterclaims, and to estimation pursuant to section 502(c) of the Bankruptcy Code. For the avoidance of doubt, this shall not affect the obligation of each and every Debtor to pay Statutory Fees as set forth in Article XII.E.

**G. Postpetition Interest on Claims**

Unless otherwise expressly provided in the Plan, postpetition interest, penalties, or other fees will not accrue or be payable on account of any Claim and no Holder of a Claim shall be entitled to interest accruing on or after the Petition Date on account of such Claim.

**H. Foreign Currency Exchange Rate**

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

**I. Setoffs and Recoupments**

Except as expressly provided in this Plan, the Debtors or the Plan Administrator, as applicable, may, pursuant to section 553 of the Bankruptcy Code, set off and/or recoup against any Plan distributions to be made on account of any Allowed Claim, any and all claims, rights, and Causes of Action that the Estate may hold against the Holder of such Allowed Claim to the extent such setoff or recoupment is either (1) agreed in amount among the relevant Debtor(s) and Holder of Allowed Claim or (2) otherwise adjudicated by the Bankruptcy Court or another court of competent jurisdiction; *provided, however*, that neither the failure to effectuate a setoff or recoupment nor the allowance of any Claim hereunder shall constitute a waiver or release by a Debtor, its Estate, Distribution Co., or the Plan Administrator of any and all claims, rights, and Causes of Action that such Debtor, Estate, Distribution Co., or Plan Administrator may possess against the applicable Holder.

**J. Allocation of Distributions Between Principal and Interest**

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

**K. Claims Paid or Payable by Third Parties**

**1. Claims Paid by Third Parties**

If a Holder of a Claim receives a payment or other satisfaction of its Claim other than through the Debtors and/or the Plan Administrator, as applicable, on account of such Claim, such Claim shall be reduced by the amount of such payment or satisfaction without an objection to such Claim having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court, and if the Claim was paid or satisfied in full other than through the Debtors and/or the Plan Administrator, as applicable, then such Claim shall be disallowed and any recovery in excess of a single recovery in full shall be paid over to the Debtors or the Plan Administrator, as applicable, without an objection to such Claim having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court. To the extent a Holder of a Claim receives a distribution on account of such Claim and receives payment or satisfaction from a party that is not the Debtors and/or the Plan Administrator, as applicable, on account of such Claim, such

Holder shall, within 14 Business Days of receipt thereof, repay or return the distribution to the Debtors or Plan Administrator, as applicable, to the extent the Holder's total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such distribution under the Plan. The failure of such Holder to timely repay or return such distribution shall result in the Holder owing the applicable Debtor or the Plan Administrator annualized interest at the Federal Judgment Rate on such amount owed for each Business Day after the two-week grace period specified above until the amount is repaid.

2. Claims Payable by Third Parties

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

3. Applicability of Insurance Policies

Except as otherwise provided in the Plan, distributions to Holders of Allowed Claims shall be in accordance with the provisions of any applicable Insurance Policy. Nothing in this Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtors or any Entity, including Distribution Co., may hold against any other Person or Entity, including insurers under any policies of insurance, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

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

**L. Distributions Free and Clear**

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

**ARTICLE VII.**  
**PROCEDURES FOR RESOLVING UNLIQUIDATED AND DISPUTED CLAIMS**

**A. Allowance of Claims**

After the Effective Date, the Plan Administrator shall have and retain any and all rights and defenses that the Debtors and the Estates had with respect to any Claim or Interest immediately prior to the Effective Date.

**B. Claims Administration Responsibilities**

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

**C. Estimation of Claims**

Before or after the Effective Date, the Debtors or the Plan Administrator, as applicable, may (but is not required to) at any time request that the Bankruptcy Court estimate any Disputed Claim that is contingent or unliquidated pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether any party previously has objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any such Claim, including during the litigation of any objection to any Claim or during the appeal relating to such objection.

Notwithstanding any provision otherwise herein, a Claim that has been expunged or disallowed from the Claims Register, but that either is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount shall constitute a maximum limitation on such Claim for all purposes under the Plan (including for purposes of distributions), and the Debtors or the Plan Administrator, as applicable, may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim. Notwithstanding section 502(j) of the Bankruptcy Code, in no event shall any Holder of a Claim that has been estimated pursuant to section 502(c) of the Bankruptcy Code or otherwise be entitled to seek reconsideration of such estimation unless such Holder has Filed a motion requesting the right to seek such reconsideration on or before fourteen days after the date on which such Claim is estimated. All of the aforementioned Claims and objection, estimation, and resolution procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

**D. Adjustment to Claims Without Objection**

Any duplicate Claim or Interest or any Claim or Interest that has been paid or satisfied, or any Claim or Interest that has been amended or superseded, cancelled, or otherwise expunged

(including pursuant to the Plan), may be adjusted or expunged (including on the Claims Register, to the extent applicable) by the Plan Administrator without any objection to such Claim or Interest having to be Filed and without any further notice to or action, order or approval of the Bankruptcy Court.

Additionally, any Claim or Interest that is duplicative or redundant with another Claim against or Interest in the same Debtor or another Debtor, or any Claim or Interest that has been amended or superseded, may be adjusted or expunged on the Claims Register by the Plan Administrator without the Plan Administrator having to File an application, motion, complaint, objection, or any other legal proceeding seeking to object to such Claim or Interest and without any further notice to or action, order, or approval of the Bankruptcy Court.

All Claims Filed on account of an indemnification obligation to a director, officer, or employee shall be deemed satisfied and expunged from the Claims Register as of the Effective Date to the extent such indemnification obligation is assumed (or honored or reaffirmed, as the case may be) pursuant to the Plan, without any further notice to or action, order, or approval of the Bankruptcy Court.

Any Claim that has been paid, satisfied, or assumed by a non-Debtor third party may be adjusted or expunged on the Claims Register by the Debtors or the Plan Administrator, as applicable, without an objection to such Claim having to be Filed following notice filed on the docket (i.e., a notice of satisfaction of claims) in the Bankruptcy Court of such adjustment or expungement.

**E. Time to File Objections to Claims**

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

**F. Disallowance of Late Claims**

**Except as provided herein or otherwise agreed, any and all Proofs of Claim Filed after the applicable Bar Date or the Administrative Claims Bar Date, as appropriate, shall be deemed disallowed and expunged as of the Effective Date without any further notice to or action, order, or approval of the Bankruptcy Court, and Holders of such Claims may not receive any distributions on account of such Claims, unless such late Proof of Claim has been deemed timely Filed by a Final Order.**

**G. Disputed Claims**

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

resolved by a Final Order and any sums due to the Debtors or the Plan Administrator, as applicable, from such Holder have been paid.

#### **H. Amendments to Claims**

Except as otherwise expressly provided for in the Plan or the Confirmation Order, on or after the applicable Bar Date or the Administrative Claims Bar Date, as appropriate, a Claim may not be Filed or amended without the authorization of the Bankruptcy Court or the Plan Administrator. Absent such authorization, any new or amended Claim Filed shall be deemed disallowed in full and expunged without any further notice to or action, order, or approval of the Bankruptcy Court to the maximum extent provided by applicable law.

#### **I. No Distributions Pending Allowance**

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

#### **J. Distributions After Allowance**

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

### **ARTICLE VIII.**

#### **SETTLEMENT, RELEASE, INJUNCTION, AND RELATED PROVISIONS**

##### **A. Settlement, Compromise, and Release of Claims and Interests**

Because the Debtors are liquidating, they are not entitled to a discharge of obligations pursuant to section 1141 of the Bankruptcy Code with regard to any Holders of Claims or Interests. Section 1141(c) nevertheless provides, among other things, that the property dealt with by the Plan is free and clear of all Claims and Interests against the Debtors. As such, no Entity holding a Claim or Interest may receive any payment from, or seek recourse against, any assets that are to be distributed under the Plan other than assets required to be distributed to that Entity under the Plan. All parties are precluded from asserting against any property to be distributed under the Plan any Claims, rights, Causes of Action, liabilities, or Interests based upon any act, omission, transaction, or other activity that occurred before the Effective Date except as expressly provided in the Plan or the Confirmation Order.

The distributions, rights, and treatment that are provided in the Plan shall be in complete satisfaction, compromise, and release, effective as of the Effective Date, of Claims (including any Intercompany Claims resolved or compromised after the Effective Date by the Plan

Administrator), Interests, and Causes of Action of any nature whatsoever, including any interest accrued on Claims or Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and Interests in, the Debtors or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any liability (including withdrawal liability) to the extent such Claims or Interests relate to services performed by current or former employees of the Debtors prior to the Effective Date and that arise from a termination of employment, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not: (1) a Proof of Claim or Proof of Interest based upon such debt, right, or Interest is Filed or deemed Filed pursuant to section 501 of the Bankruptcy Code; (2) a Claim or Interest based upon such debt, right, or Interest is Allowed pursuant to section 502 of the Bankruptcy Code; or (3) the Holder of such a Claim or Interest has accepted the Plan. Any default or “event of default” by the Debtors or their Affiliates with respect to any Claim or Interest that existed immediately prior to or on account of the filing of the Chapter 11 Cases shall be deemed cured on the Effective Date. Therefore, notwithstanding anything in section 1141(d)(3) to the contrary, all Persons or Entities who have held, hold, or may hold Claims or Interests based upon any act, omission, transaction, or other activity of any kind or nature related to the Debtors or the Chapter 11 Cases, that occurred prior to the Effective Date, other than as expressly provided in the Plan, shall be precluded and permanently enjoined on and after the Effective Date from interfering with the use and distribution of the Debtors’ assets in the manner contemplated by the Plan. The Confirmation Order shall be a judicial determination of the settlement, compromise, and release of all Claims and Interests subject to the occurrence of the Effective Date.

#### **B. Releases by the Debtors**

**Notwithstanding anything contained in the Plan to the contrary, pursuant to section 1123(b) of the Bankruptcy Code, in exchange for good and valuable consideration, the adequacy of which is hereby confirmed, on and after the Effective Date, each Released Party is, and is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released by the Debtors, and their Estates, in each case on behalf of themselves and their respective successors, assigns, and representatives, and any and all other Entities who may purport to assert any Cause of Action, directly or derivatively, by, through, for, or because of the foregoing Entities, from any and all claims and Causes of Action, including any derivative claims, asserted or assertable on behalf of the Debtors or their Estates, as applicable, whether known or unknown, foreseen or unforeseen, matured or unmatured, liquidated or unliquidated, fixed or contingent, existing or hereafter arising, in law, equity, contract, tort, or otherwise, that the Debtors or their Estates would have been entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor, their Estates, or other Entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the Debtors’ capital structure, management, ownership, or operation thereof), the purchase, sale, or rescission of any security of the Debtors or of any other real or personal property of the Debtors (including all tangible and intangible personal property of the Debtors), any direct or indirect investment in any Debtor by any Released Party, the subject matter of, or**

the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between or among any Debtor and any Released Party, the ownership and/or operation of the Debtors by any Released Party or the distribution of any Cash or other property of the Debtors directly or indirectly to any Released Party, any other benefit provided by any Debtor to any Released Party, cash management arrangements, the assertion or enforcement of rights and remedies against the Debtors, the Debtors' in- or out-of-court restructuring efforts, intercompany transactions between or among a Debtor or an Affiliate of a Debtor and another Debtor or Affiliate of a Debtor, the Chapter 11 Cases, the Wind Down Process, the formulation, preparation, dissemination, negotiation, or Filing of the Disclosure Statement, the Plan (including, for the avoidance of doubt, the Plan Supplement), any other Definitive Document, or any or any transaction contemplated by the Plan Support Agreement or the Plan, or any contract, instrument, release, or other agreement or document (including any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Released Party on the Plan or the Confirmation Order in lieu of such legal opinion) relating to any of the foregoing, created or entered into in connection with the Wind Down Process, Disclosure Statement, the Plan, the Plan Supplement, before or during the Chapter 11 Cases, any preference, fraudulent transfer, or other avoidance claim arising pursuant to chapter 5 of the Bankruptcy Code or other applicable law (but excluding avoidance actions brought as counterclaims or defenses to Claims asserted against the Debtors by Released Parties), the Filing of the Chapter 11 Cases, the Wind Down Process, the solicitation of votes on the Plan, the pursuit of confirmation of the Plan, the pursuit of Consummation, the administration and implementation of the Plan, including the issuance or distribution of debt and/or securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, or upon any other act or omission, transaction, agreement, event, or other occurrence related or relating to any of the foregoing taking place on or before the Effective Date, other than claims or liabilities primarily arising out of any act or omission of a Released Party that constitutes actual fraud, willful misconduct, or gross negligence, each solely to the extent as determined by a Final Order of a court of competent jurisdiction. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release any post-Effective Date obligations of any party or Entity under each of the Plan, the Confirmation Order, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan, or any Claim or obligation arising under the Plan.

### **C. Third-Party Release**

Except as otherwise expressly set forth in the Plan or the Confirmation Order, on and after the Effective Date, in exchange for good and valuable consideration, the adequacy of which is hereby confirmed, each Released Party is, and is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably and forever, released by each Releasing Party (other than the Debtors and their Estates) from any and all claims and Causes of Action, in each case on behalf of themselves and their respective successors, assigns, and representatives, and any and all Entities who may purport to assert any claim or Cause of Action, directly or derivatively, by, through, for, or because of the foregoing Entities, including any derivative claims, asserted or assertable on behalf of any of the foregoing Entities, whether known or



unknown, foreseen or unforeseen, matured or unmatured, liquidated or unliquidated, fixed or contingent, existing or hereafter arising, in law, equity, contract, tort, or otherwise, including any derivative claims asserted or assertable on behalf of the Debtors or their Estates, that such Entity would have been entitled to assert (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or their Estates or other Entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the capital structure, management, ownership, or operation thereof), the purchase, sale, or rescission of any security of the Debtors or of any other real or personal property of the Debtors (including all tangible and intangible personal property of the Debtors), any direct or indirect, any investment in any Debtor by any Released Party, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between or among any Debtor and any Released Party, the ownership and/or operation of the Debtors by any Released Party or the distribution of any Cash or other property of the Debtors directly or indirectly to any Released Party, any benefit provided to any Released Party, cash management arrangements, the assertion or enforcement of rights or remedies against the Debtors, the Debtors' in- or out-of-court restructuring efforts, any avoidance actions (but excluding avoidance actions brought as counterclaims or defenses to Claims asserted against the Debtors), intercompany transactions between or among a Debtor or an Affiliate of a Debtor and another Debtor or Affiliate of a Debtor, the Chapter 11 Cases, the Wind Down Process, the formulation, preparation, dissemination, negotiation, or Filing of the Disclosure Statement, the Plan (including, for the avoidance of doubt, the Plan Supplement), any other Definitive Document, or any or any transaction contemplated by the Plan Support Agreement or the Plan, or any contract, instrument, release, or other agreement or document (including any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Released Party on the Plan or the Confirmation Order in lieu of such legal opinion) relating to any of the foregoing, created or entered into in connection with the Wind Down Process, Disclosure Statement, the Plan, the Plan Supplement, before or during the Chapter 11 Cases, any preference, fraudulent transfer, or other avoidance claim arising pursuant to chapter 5 of the Bankruptcy Code or other applicable law, the Wind Down Process, the Filing of the Chapter 11 Cases, the solicitation of votes on the Plan, the pursuit of confirmation of the Plan, the pursuit of Consummation, the administration and implementation of the Plan, including the issuance or distribution of debt and/or securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, or upon any other act or omission, transaction, agreement, event, or other occurrence related or relating to any of the foregoing taking place on or before the Effective Date, other than claims or liabilities primarily arising out of any act or omission of a Released Party that constitutes actual fraud, willful misconduct, or gross negligence, each solely to the extent as determined by a Final Order of a court of competent jurisdiction. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release (a) any post-Effective Date obligations of any party or Entity under each of the Plan, the Confirmation Order, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan, or any Claim or obligation arising under the Plan, (b) any non-Debtor Loan Parties (as defined in the ABL Credit Agreement) from claims, causes of action, obligations, rights, or remedies arising under, or in connection with, the ABL Credit

Agreement and related loan documents, (c) any non-Debtor Loan Parties (as defined in the Term Loan Credit Agreement) from claims, causes of action, obligations, rights, or remedies arising under, or in connection with, the Term Loan Credit Agreement and related loan documents, or (d) any non-Debtor Loan Parties (as defined in the Subordinated Loan Credit Agreement) from claims, causes of action, obligations, rights, or remedies arising under, or in connection with, the Subordinated Loan Credit Agreement and related loan documents.

**D. Exculpation**

Notwithstanding anything contained in the Plan to the contrary, to the fullest extent permissible under applicable law and without affecting or limiting either the Debtor Release or Third-Party Release, effective as of the Effective Date, no Exculpated Party shall have or incur liability or obligation for, and each Exculpated Party is hereby released and exculpated from any Cause of Action for any claim related to any act or omission occurring on or after the Petition Date through the Effective Date in connection with, relating to, or arising out of, in whole or in part, the Chapter 11 Cases, the Wind Down Process, the formulation, preparation, dissemination, negotiation, Filing, or termination of the Disclosure Statement, the Plan, the Plan Supplement, Plan Support Agreement, or any transaction contemplated by the Plan Support Agreement or the Plan, any contract, instrument, release, or other agreement or document (including any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Exculpated Party on the Plan or the Confirmation Order in lieu of such legal opinion) relating to any of the foregoing, created or entered into in connection with the Wind Down Process, Disclosure Statement, the Plan, the Plan Supplement, the Filing of the Chapter 11 Cases, the pursuit of confirmation of the Plan, the pursuit of Consummation, the administration and implementation of the Plan, including the issuance or distribution of securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence occurring on or after the Petition Date through the Effective Date, except for Claims related to any act or omission that is determined in a Final Order by a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan.

**E. Injunction**

Except as otherwise provided in the Plan or the Confirmation Order, all Entities who have held, hold, or may hold claims, Interests, Causes of Action, or liabilities that: (1) are subject to compromise and settlement pursuant to the terms of the Plan; (2) have been released pursuant to the Plan; (3) are subject to exculpation pursuant to the Plan; or (4) are otherwise satisfied, stayed, released, or terminated pursuant to the terms of the Plan, are permanently enjoined and precluded, from and after the Effective Date, from commencing or continuing in any manner, any action or other proceeding, including on account of any claims, Interests, Causes of Action, or liabilities that have been compromised or settled against the Debtors or any Person or Entity so released or exculpated (or the property or estate of any Entity, directly or indirectly, so released or exculpated) on account of, or in

connection with or with respect to, any released, settled, compromised, or exculpated claims, Interests, Causes of Action, or liabilities, including being permanently enjoined and precluded, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, Distribution Co., the Released Parties, or Exculpated Parties, as applicable: (a) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such claims, Interests, Causes of Action, or liabilities; (b) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such claims, Interests, Causes of Action, or liabilities; (c) creating, perfecting, or enforcing any lien or encumbrance of any kind against such Entities or the property or the estate of such Entities on account of or in connection with or with respect to any such claims, Interests, Causes of Action, or liabilities; (d) asserting any right of setoff or subrogation of any kind against any obligation due from such Entities or against the property of such Entities on account of or in connection with or with respect to any such claims, Interests, Causes of Action, or liabilities unless such Entity has timely asserted such setoff or subrogation right in a document filed with the Bankruptcy Court explicitly preserving such setoff or subrogation (i.e., a Proof of Claim or motion asserting such rights), and notwithstanding an indication of a Claim or Interest or otherwise that such Person or Entity asserts, has, or intends to preserve any right of setoff or subrogation pursuant to applicable law or otherwise; and (e) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such claims, Interests, Causes of Action, or liabilities released, exculpated, or settled pursuant to the Plan.

Upon the Bankruptcy Court's entry of the Confirmation Order, all Holders of Claims and Interests and other parties in interest, along with their respective present or former employees, agents, officers, directors, or principals, shall be enjoined from taking any actions to interfere with the implementation or Consummation of this Plan by the Debtors, the Plan Administrator, and their respective affiliates, employees, advisors, officers and directors, or agents.

#### **F. Waiver of Statutory Limitations on Releases**

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

RELEASED PARTY, INCLUDING THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542. THE RELEASES CONTAINED IN ARTICLE VIII OF THE PLAN ARE EFFECTIVE REGARDLESS OF WHETHER THOSE RELEASED MATTERS ARE PRESENTLY KNOWN, UNKNOWN, SUSPECTED OR UNSUSPECTED, FORESEEN OR UNFORESEEN.

**G. Release of Liens**

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

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

**H. Term of Injunctions or Stays**

Except as otherwise provided in this Plan, to the maximum extent permitted by applicable law and subject to the Bankruptcy Court's post-Confirmation jurisdiction to modify the injunctions and stays under this Plan (1) all injunctions with respect to or stays against an action against property of the Debtors or the Estates arising under or entered during the Chapter 11 Cases under sections 105 or 362 of the Bankruptcy Code, and in existence on the date the Confirmation Order is entered, shall remain in full force and effect until such property is no longer property of the Debtors or the Estates; and (2) all other injunctions and stays arising under or entered during the Chapter 11 Cases under sections 105 or 362 of the Bankruptcy Code shall remain in full force and effect until the earliest of (a) the date that the Chapter 11 Cases are closed pursuant to a Final Order of the Bankruptcy Court, or (b) the date that the Chapter 11 Cases are dismissed pursuant to a Final Order of the Bankruptcy Court. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect indefinitely.

**I. Reimbursement or Contribution**

If the Bankruptcy Court disallows a Claim for reimbursement or contribution of an Entity pursuant to section 502(e)(1)(B) of the Bankruptcy Code, then to the extent that such Claim is contingent as of the time of allowance or disallowance, such Claim shall be forever disallowed and expunged notwithstanding section 502(j) of the Bankruptcy Code, unless prior to the Confirmation Date: (1) such Claim has been adjudicated as non-contingent or (2) the relevant Holder of a Claim has Filed a non-contingent Proof of Claim on account of such Claim and a Final

Order has been entered prior to the Confirmation Date determining such Claim as no longer contingent.

**J. Subordination Rights**

The classification and manner of satisfying all Claims and Interests under the Plan take into consideration all subordination rights, whether arising under general principles of equitable subordination, contract, section 510(c) of the Bankruptcy Code, or otherwise, that a Holder of a Claim or Interest may have against other Claim or Interest Holders with respect to any distribution made pursuant to the Plan. Except as provided in the Plan, all subordination rights that a Holder of a Claim or Interest may have with respect to any distribution to be made pursuant to the Plan shall be terminated, and all actions related to the enforcement of such subordination rights shall be permanently enjoined.

Pursuant to Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided under the Plan, the provisions of the Plan shall constitute a good faith compromise and settlement of all claims or controversies relating to the subordination rights that a Holder of a Claim or Interest may have with respect to any Allowed Claim or any distribution to be made pursuant to the Plan on account of any Allowed Claim. 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 Debtors, the Estates, their respective property, and Holders of Claims and Interests and is fair, equitable, and reasonable.

**K. Protections Against Discriminatory Treatment**

To the maximum extent provided by section 525 of the Bankruptcy Code and the Supremacy Clause of the U.S. Constitution, all Entities, including Governmental Units, shall not discriminate against the Debtors or Distribution Co. or deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, the Debtors, Distribution Co., or another Entity with whom the Debtors have been associated, solely because each Debtor has been a debtor under chapter 11 of the Bankruptcy Code, has been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases but before the Debtors are granted or denied a discharge), or has not paid a debt that is dischargeable in the Chapter 11 Cases.

**ARTICLE IX.  
CONDITIONS PRECEDENT TO THE EFFECTIVE DATE**

**A. Conditions Precedent**

Consummation of this Plan is subject to each of the following conditions precedent:

1. the Plan Support Agreement and the Cash Collateral Order shall not have terminated and shall continue to be in full force and effect;
2. each document or agreement constituting definitive documents contemplated in the Plan Support Agreement shall (a) be in form and substance consistent with

the Plan Support Agreement, (b) have been duly executed, delivered, acknowledged, filed, and/or effectuated, as applicable, and (c) be in full force and effect, and any conditions precedent related thereto or contained therein shall have been satisfied prior to or contemporaneously with the occurrence of the Effective Date or otherwise waived;

3. the Debtors shall have obtained all authorizations, consents, regulatory approvals, rulings, or documents that are necessary to implement and effectuate the Plan, and all applicable regulatory or government-imposed waiting periods shall have expired or been terminated;

4. all Allowed Professional Fee Claims of Professionals shall have been paid in full or amounts sufficient to pay such fees and expenses in full after the Effective Date shall have been transferred to the Professional Fee Escrow Account;

5. all accrued and unpaid Transaction Expenses shall have been paid in full in Cash;

6. the Bankruptcy Court shall have entered the Confirmation Order in form and substance consistent with the Plan Support Agreement and the consent rights contained therein and the Confirmation Order shall continue to be in full force and effect;

7. all actions, documents, and agreements necessary to implement and Consummate the Plan shall have been effected and executed, and shall be in form and substance consistent with the Plan and Plan Support Agreement;

8. the Plan Administrator shall have been appointed and assumed its rights and responsibilities under the Plan and the Plan Administration Agreement, as applicable;

9. the Plan and the Confirmation Order shall be in form and substance consistent with the SPARC Settlement; and

10. the Debtors shall have funded with Cash the Plan Administration Amount.

#### **B. Waiver of Conditions**

Unless otherwise specifically provided for in this Plan, the conditions set forth in Article VIII.A may be waived in whole or in part by the Debtors with the express prior written consent (which may be via email of counsel) of the Required Consenting Creditors without notice to any other parties in interest or the Bankruptcy Court and without a hearing; *provided that* the condition in Article VIII.A.9 may not be waived without the express prior written consent (which may be via email of counsel) of the SPARC Parties.

#### **C. Substantial Consummation**

“Substantial Consummation” of the Plan, as defined in section 1101(2) of the Bankruptcy Code, with respect to any of the Debtors, shall be deemed to occur on the Effective Date with respect to such Debtor.

**D. Effect of Non-Occurrence of the Confirmation Order**

If the Effective Date does not occur with respect to any Debtor (including if the Confirmation Order is vacated), the Plan will be null and void in all respects, and nothing in the Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any claim by or Claims against or Interests in such Debtors, including with respect to the release of Claims; (2) prejudice in any manner the rights, including any claims or defenses, of any party in interest and distributions for Allowed Claims; (3) constitute an admission, acknowledgement, offer, or undertaking by such Debtors, any Holders, or any other Entity in any respect.

**E. Votes Solicited in Good Faith**

Upon entry of the Confirmation Order, the Debtors will be deemed to have solicited votes on the Plan in good faith and in compliance with the Bankruptcy Code, and pursuant to section 1125(e) of the Bankruptcy Code, the Debtors and each of their respective affiliates, agents, representatives, members, principals, shareholders, officers, directors, employees, advisors, and attorneys will be deemed to have participated in good faith and in compliance with the Bankruptcy Code and, therefore, no such parties will have any liability for the violation of any applicable law, rule, or regulation governing the solicitation of votes on the Plan.

**ARTICLE X.****MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN****A. Modification of the Plan**

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

**B. Other Amendments**

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

**C. Effect of Confirmation on Modifications**

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

**D. Revocation of Plan**

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

**ARTICLE XI.  
RETENTION OF JURISDICTION**

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

1. allow, disallow, determine, liquidate, classify, estimate, or establish the priority, secured or unsecured status, or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the secured or unsecured status, priority, amount, or allowance of Claims or Interests;
2. resolve any cases, controversies, suits, or disputes that may arise in connection with Claims, including Claim objections, allowance, disallowance, subordination, estimation, and distribution;
3. decide and resolve all matters related to the granting and denying, in whole or in part of, any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan;
4. resolve any matters related to: (a) the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease to which one or more Debtors is party or with respect to which the Debtors may be liable and to hear, determine, and, if necessary, liquidate, any cure amount arising therefrom; and/or (b) any dispute regarding whether a contract or lease is or was executory or expired;
5. adjudicate, decide or resolve any motions, adversary proceedings, contested, or litigated matters, and any other matters, and grant or deny any applications involving the Debtors that may be pending on the Effective Date;



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

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

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

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

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

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

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

13. determine any other matters that may arise in connection with or related to the Disclosure Statement, the Plan, the Plan Supplement, and the Confirmation Order;

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

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

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

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

18. hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code (including any request by the Debtors or the Plan Administrator on behalf of Distribution Co., as applicable, for an expedited determination of tax under section 505(b) of the Bankruptcy Code);

19. to recover all assets of the Debtors and property of the Estates, wherever located;

20. enter an order or final decree concluding or closing any of the Chapter 11 Cases;
21. enforce all orders previously entered by the Bankruptcy Court; and
22. hear any other matter over which the Bankruptcy Court has jurisdiction.

**ARTICLE XII.  
MISCELLANEOUS PROVISIONS**

**A. Immediate Binding Effect**

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

**B. Additional Documents**

On or before the Effective Date, the Debtors may File with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtors, the Plan Administrator, all Holders of Claims receiving distributions pursuant to the Plan, and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may reasonably be necessary or advisable to effectuate the provisions and intent of the Plan or the Confirmation Order.

**C. Reservation of Rights**

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

**D. 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, beneficiaries or guardian, if any, of each Person or Entity.

**E. Payment of Statutory Fees**

All Statutory Fees that are due and owing as of the Effective Date shall be paid by the Debtors in full in Cash on the Effective Date. After the Effective Date, Distribution Co. (or the Plan Administrator on behalf of Distribution Co.) shall pay any and all applicable Statutory Fees for each quarter (including any fraction thereof), and shall file with the Bankruptcy Court quarterly reports in a form reasonably acceptable to the U.S. Trustee. Distribution Co. and the Plan Administrator, as applicable, shall remain obligated to pay any applicable Statutory Fees until the earliest of that particular Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code. The U.S. Trustee shall not be required to file any proof of claim or any request for administrative expense for Statutory Fees. The provisions of this paragraph shall control notwithstanding any other provision in the Plan to the contrary.

**F. Dissolution of the Committee**

On the Effective Date, the Committee will dissolve automatically and the members thereof will be released and discharged from all rights, duties, obligations, and liabilities arising on or prior to the Effective Date arising from or related to the Chapter 11 Cases; *provided, however*, that, after the Effective Date, the Committee will continue to exist solely with respect to prosecuting requests for payment of Professional Fee Claims for services or reimbursements of expenses incurred prior to the Effective Date by the Committee and its Professionals. Following the Effective Date, the Committee's Professionals shall be entitled to reasonable compensation for services rendered in connection with such matters and any such payments made in connection therewith shall be made without any further notice to or action, order, or approval of the Bankruptcy Court. Other than the foregoing sentence, the Debtors, Distribution Co., and the Plan Administrator will have no responsibility for paying any fees or expenses incurred by members of or advisors to the Committee after the Effective Date.

**G. Notices**

To be effective, all notices, requests, and demands to or upon the Debtors must be in writing (including by email) and, unless otherwise expressly provided herein, will be deemed to have been duly given or made when actually delivered or, in the case of notice by email, when received, and served on or delivered to the following parties:

**If to the Debtors, to:**

F21 OpCo, LLC, *et al.*  
 110 East 9th Street, Suite A500  
 Los Angeles, California 90079  
 Attn.: Brad Sell, Scott Hampton  
 Email: brad.s@forever21.com; scott.hampton@forever21.com

with copies (which will not constitute notice) to:

Young Conaway Stargatt & Taylor, LLP  
 Rodney Square  
 1000 North King Street

Wilmington, Delaware 19801  
Attn.: Andrew Magaziner; S. Alexander Faris  
Email: amagaziner@ycst.com; afaris@ycst.com

If to the ABL Agent, to:

Otterbourg P.C.  
230 Park Avenue  
New York, NY 10169  
Attention: Daniel F. Fiorillo and Chad B. Simon  
E-mail address: dfiorillo@otterbourg.com; csimon@otterbourg.com

If to the Term Loan Agent, to:

Rierner & Braunstein LLP  
Seven Times Square, Suite 2506  
New York, NY 10036  
Attention: Steven Fox  
E-mail address: sfox@riernerlaw.com

If to the Subordinated Loan Agent, to:

Choate, Hall & Stewart LLP  
Two International Place  
Boston, MA 02110  
Attention: Mark Silva  
E-mail address: msilva@choate.com

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

**H. Entire Agreement**

Except as otherwise indicated, the Plan and the Plan Supplement supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan. If the Effective Date does not occur, nothing herein shall be construed as a waiver by any party in interest of any or all of such party's rights, remedies, claims, and defenses, and such parties expressly reserve any and all of their respective rights, remedies, claims and, defenses. This Plan and the documents comprising the Plan Supplement, including any drafts thereof (and any discussions, correspondence, or negotiations regarding any of the foregoing) shall in no event be construed as, or be deemed to be, evidence of an admission or concession on the part of any party in interest of any claim or fault or liability or damages whatsoever. Pursuant to Federal Rule of Evidence 408 and any applicable state rules of evidence, all negotiations, discussions, agreements, settlements, and compromises reflected in or related to Plan and the documents comprising the

Plan Supplement is part of a proposed settlement of matters that could otherwise be the subject of litigation among various parties in interest, and such negotiations, discussions, agreements, settlements, and compromises shall not be admissible into evidence in any proceeding other than a proceeding to enforce the terms of the Plan and the documents comprising the Plan Supplement.

**I. Plan Supplement Exhibits**

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

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

**J. Governing Law**

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

*[Remainder of Page Intentionally Left Blank]*

**K. Non-Severability of Plan Provision Upon Confirmation**

The provisions of the Plan, including its release, injunction, exculpation, and compromise provisions, are mutually dependent and non-severable. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is the following: (1) valid and enforceable pursuant to its terms; (2) integral to the Plan and may not be deleted or modified without the consent of the Debtors and the Plan Administrator, as applicable, consistent with the terms set forth herein; and (3) non-severable and mutually dependent. Notwithstanding anything to the contrary in the preceding sentence, and for the avoidance of doubt, (a) prior to the Effective Date, each of the documents included in the Plan Supplement may be modified in accordance with the terms of the Plan and (b) following the Effective Date, each of the documents included in the Plan Supplement may be modified in accordance with its terms (to the extent applicable).

Dated: March 28, 2025

Respectfully submitted,

/s/ Stephen Coulombe

By: Stephen Coulombe  
Co-Chief Restructuring Officer  
F21 OpCo, LLC, *et al.*