UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In re: SAM ASH MUSIC CORPORATION, *et al.*, Debtors.[1]	Chapter 11 Case No. 24-14727 (SLM) (Jointly Administered)

DISCLOSURE STATEMENT FOR THE JOINT PLAN OF LIQUIDATION OF SAM ASH MUSIC CORPORATION AND ITS SUBSIDIARY DEBTORS PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE

THIS IS NOT A SOLICITATION OF AN ACCEPTANCE OR REJECTION OF THE PLAN. ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL THIS DISCLOSURE STATEMENT HAS BEEN APPROVED ON AN INTERIM BASIS BY THE BANKRUPTCY COURT. THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR INTERIM APPROVAL BUT HAS NOT BEEN APPROVED BY THE BANKRUPTCY COURT ON AN INTERIM BASIS OR OTHERWISE. THE INFORMATION IN THIS DISCLOSURE STATEMENT IS SUBJECT TO CHANGE. THIS DISCLOSURE STATEMENT IS NOT AN OFFER TO SELL ANY SECURITIES NOR IS IT SOLICITING AN OFFER TO BUY ANY SECURITIES. INFORMATION CONTAINED HEREIN HAS NOT BEEN SUBJECT TO AN AUDIT.

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Proposed Counsel for Debtors and Debtors in Possession

Dated: May 31, 2024

[1] The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number, are: Sam Ash Music Corporation (3915); Samson Technologies Corp. (4062); Sam Ash Megastores, LLC (9955); Sam Ash California Megastores, LLC (3598); Sam Ash Florida Megastores, LLC (7276); Sam Ash Illinois Megastores, LLC (8966); Sam Ash Nevada Megastores, LLC (6399); Sam Ash New York Megastores, LLC (7753); Sam Ash New Jersey Megastores, LLC (8788); Sam Ash CT, LLC (5932); Sam Ash Music Marketing, LLC (2024); and Sam Ash Quikship Corp. (7410). The location of debtor Sam Ash Music Corporation's principal place of business is 278 Duffy Avenue, P.O. Box 9047, Hicksville, NY 11802.

DISCLAIMER

THE DEBTORS ARE PROVIDING THE INFORMATION IN THIS DISCLOSURE STATEMENT[2] IN CONNECTION WITH THE JOINT PLAN OF LIQUIDATION OF SAM ASH MUSIC CORPORATION AND ITS SUBSIDIARY DEBTORS PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE. THE DEBTORS ARE REQUESTING THAT THE BANKRUPTCY COURT CONFIRM THE PLAN PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE. YOU SHOULD NOT RELY ON OR USE THE INFORMATION IN THIS DISCLOSURE STATEMENT FOR ANY PURPOSE OTHER THAN MAKING AN INFORMED JUDGMENT ABOUT VOTING TO EITHER ACCEPT OR REJECT THE PLAN.

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED PURSUANT TO SECTION 1125 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 3016(b) AND NOT TO COMPLY WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER NON-BANKRUPTCY LAWS. THIS DISCLOSURE STATEMENT WAS NOT FILED WITH THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE AUTHORITY AND NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE AUTHORITY HAS DETERMINED THE ACCURACY OR ADEQUACY OF THIS DISCLOSURE STATEMENT OR THE MERITS OF THE PLAN.

THIS DISCLOSURE STATEMENT MAY CONTAIN "FORWARD LOOKING STATEMENTS" WITHIN THE MEANING OF THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995. SUCH STATEMENTS CONSIST OF ANY STATEMENT OTHER THAN A RECITATION OF HISTORICAL FACT AND CAN BE IDENTIFIED BY THE USE OF FORWARD-LOOKING TERMINOLOGY SUCH AS "MAY," "EXPECT," "ANTICIPATE," "ESTIMATE" OR "CONTINUE" OR THE NEGATIVE THEREOF OR OTHER VARIATIONS THEREON OR COMPARABLE TERMINOLOGY. THE READER IS CAUTIONED THAT ALL FORWARD-LOOKING STATEMENTS ARE NECESSARILY SPECULATIVE AND THERE ARE CERTAIN RISKS AND UNCERTAINTIES THAT COULD CAUSE ACTUAL EVENTS OR RESULTS TO DIFFER MATERIALLY FROM THOSE REFERRED TO IN SUCH FORWARD-LOOKING STATEMENTS. THE LIQUIDATION ANALYSIS, DISTRIBUTION PROJECTIONS, AND OTHER INFORMATION CONTAINED HEREIN ARE ESTIMATES ONLY, AND THE TIMING AND AMOUNT OF ACTUAL DISTRIBUTIONS TO HOLDERS OF ALLOWED CLAIMS MAY BE AFFECTED BY MANY FACTORS THAT CANNOT BE PREDICTED. THEREFORE, ANY ANALYSES, ESTIMATES, OR RECOVERY PROJECTIONS MAY OR MAY NOT TURN OUT TO BE ACCURATE.

NO LEGAL OR TAX ADVICE IS PROVIDED TO YOU BY THIS DISCLOSURE STATEMENT. THE DEBTORS URGE EACH HOLDER OF A CLAIM OR AN INTEREST TO CONSULT WITH THEIR OWN ADVISORS WITH RESPECT TO ANY LEGAL, FINANCIAL, SECURITIES, TAX, OR BUSINESS ADVICE IN REVIEWING THIS DISCLOSURE

[2] Unless otherwise defined herein, capitalized terms contained in this Disclosure Statement shall have the same meanings ascribed to them in either the Plan, the Bankruptcy Code, or the Bankruptcy Rules (each as defined herein), as applicable.

STATEMENT, THE PLAN, AND EACH OF THE PROPOSED TRANSACTIONS CONTEMPLATED THEREBY. FURTHERMORE, THE BANKRUPTCY COURT'S INTERIM APPROVAL OF THE ADEQUACY OF THE DISCLOSURES CONTAINED IN THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL OF THE MERITS OF THE PLAN.

THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE, AND MAY NOT BE CONSTRUED AS, AN ADMISSION OF FACT, LIABILITY, STIPULATION, OR WAIVER. RATHER, HOLDERS OF CLAIMS OR INTERESTS AND OTHER ENTITIES SHOULD CONSTRUE THIS DISCLOSURE STATEMENT AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS RELATED TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS, AND/OR OTHER PENDING OR THREATENED LITIGATION OR ACTIONS.

NO RELIANCE SHOULD BE PLACED ON THE FACT THAT A PARTICULAR LITIGATION CLAIM OR POTENTIAL OBJECTION TO A PARTICULAR CLAIM IS, OR IS NOT, IDENTIFIED IN THE DISCLOSURE STATEMENT. THE DEBTORS MAY SEEK TO INVESTIGATE, FILE, AND PROSECUTE CLAIMS AND MAY OBJECT TO CLAIMS BEFORE AND AFTER THE CONFIRMATION OF THE PLAN OR EFFECTIVE DATE THEREOF IRRESPECTIVE OF WHETHER THIS DISCLOSURE STATEMENT IDENTIFIES ANY SUCH CLAIMS OR OBJECTIONS TO CLAIMS.

THIS DISCLOSURE STATEMENT CONTAINS, AMONG OTHER THINGS, SUMMARIES OF THE PLAN, CERTAIN STATUTORY PROVISIONS, CERTAIN EVENTS IN THE DEBTORS' CHAPTER 11 CASES, AND CERTAIN DOCUMENTS RELATED TO THE PLAN THAT ARE ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE. ALTHOUGH THE DEBTORS BELIEVE THAT THESE SUMMARIES ARE FAIR AND ACCURATE, THESE SUMMARIES ARE QUALIFIED IN THEIR ENTIRETY TO THE EXTENT THAT THE SUMMARIES DO NOT SET FORTH THE ENTIRE TEXT OF SUCH DOCUMENTS OR STATUTORY PROVISIONS OR EVERY DETAIL OF SUCH EVENTS. IN THE EVENT OF ANY INCONSISTENCY OR DISCREPANCY BETWEEN A DESCRIPTION IN THIS DISCLOSURE STATEMENT AND THE TERMS AND PROVISIONS OF THE PLAN OR ANY OTHER DOCUMENTS INCORPORATED HEREIN BY REFERENCE, THE PLAN OR SUCH OTHER DOCUMENTS WILL GOVERN FOR ALL PURPOSES. THE DEBTORS DO NOT REPRESENT OR WARRANT THAT THE INFORMATION CONTAINED HEREIN OR ATTACHED HERETO IS WITHOUT ANY MATERIAL OR NON-MATERIAL INACCURACY OR OMISSION.

THE DEBTORS' MANAGEMENT AND THEIR ADVISORS HAVE REVIEWED THE FINANCIAL INFORMATION PROVIDED IN THIS DISCLOSURE STATEMENT. ALTHOUGH THE DEBTORS HAVE USED THEIR REASONABLE BUSINESS JUDGMENT TO ENSURE THE ACCURACY OF THIS FINANCIAL INFORMATION, NO ENTITY HAS AUDITED THE FINANCIAL INFORMATION CONTAINED IN, OR INCORPORATED BY REFERENCE INTO, THIS DISCLOSURE STATEMENT.

THE DEBTORS ARE MAKING THE STATEMENTS AND PROVIDING THE FINANCIAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT AS OF

THE DATE HEREOF, UNLESS OTHERWISE SPECIFICALLY NOTED. ALTHOUGH THE DEBTORS MAY SUBSEQUENTLY UPDATE THE INFORMATION IN THIS DISCLOSURE STATEMENT, THE DEBTORS HAVE NO AFFIRMATIVE DUTY TO DO SO. HOLDERS OF CLAIMS AND INTERESTS REVIEWING THIS DISCLOSURE STATEMENT SHOULD NOT INFER THAT, AT THE TIME OF THEIR REVIEW, THE FACTS SET FORTH HEREIN HAVE NOT CHANGED SINCE THE FILING OF THIS DISCLOSURE STATEMENT. EACH HOLDER OF A CLAIM OR INTEREST MUST RELY ON THEIR OWN EVALUATION OF THE DEBTORS AND THEIR OWN ANALYSIS OF THE TERMS OF THE PLAN, INCLUDING, WITHOUT LIMITATION, ANY RISK FACTORS CITED HEREIN, IN ORDER TO MAKE AN INFORMED JUDGEMENT ABOUT THE PLAN.

THE DEBTORS HAVE NOT AUTHORIZED ANY ENTITY TO GIVE ANY INFORMATION ABOUT OR CONCERNING THE PLAN OTHER THAN THAT WHICH IS CONTAINED IN THIS DISCLOSURE STATEMENT. THE DEBTORS HAVE NOT AUTHORIZED ANY REPRESENTATIONS CONCERNING THE DEBTORS OR THE VALUE OF THEIR PROPERTY OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT.

EACH HOLDER OF A CLAIM OR INTEREST SHOULD CONSIDER CAREFULLY ALL OF THE INFORMATION IN THIS DISCLOSURE STATEMENT, INCLUDING THE RISK FACTORS DESCRIBED IN GREATER DETAIL HEREIN, IN ORDER TO MAKE AN INFORMED JUDGMENT ABOUT VOTING TO EITHER ACCEPT OR REJECT THE PLAN.

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EXECUTIVE SUMMARY

This disclosure statement (this "**Disclosure Statement**") provides information regarding the *Joint Plan of Liquidation of Sam Ash Corporation and Its Subsidiary Debtors Pursuant to Chapter 11 of the Bankruptcy Code* (as may be amended, supplemented, or otherwise modified from time to time, the "**Plan**"), which the Debtors are seeking to have confirmed by the Bankruptcy Court. A copy of the Plan is attached hereto as **Exhibit A**. The rules of interpretation set forth in Article I of the Plan shall govern the interpretation of this Disclosure Statement.

The Debtors believe that the Plan is in the best interests of the Estates. As such, the Debtors recommend that all holders of Claims eligible to vote for the Plan vote to accept the Plan by returning their ballots (each, a "**Ballot**") so as to be **actually** **received** by the Claims, Noticing, and Solicitation Agent (as defined herein) no later than **[July 16, 2024], at 4:00 p.m. (ET**) **]** for Solicitation Packages served by the Initial Solicitation Deadline or [**July 18, 2024] at 4:00 p.m. (ET)** **]** for Solicitation Packages served by the Supplemental Solicitation Deadline. Assuming the requisite acceptances to the Plan are obtained, the Debtor will seek the Bankruptcy Court's approval of the Plan at the Confirmation Hearing.

A. Overview of the Plan

The Debtor proposes to liquidate under chapter 11 of the Bankruptcy Code. Under chapter 11, a debtor may reorganize or liquidate its businesses for the benefit of its stakeholders. After having sold substantially all of their assets other than certain assets that already were liquidated, as described below, the consummation of a chapter 11 plan of liquidation is the principal final objective of these Chapter 11 Cases. A chapter 11 plan sets forth how a debtor will treat claims and equity interests.

The primary objectives of the Plan are to maximize the value of recoveries to all holders of Allowed Claims and Allowed Interests and generally to distribute all property of the Estates that is or becomes available for distribution in accordance with the priorities established by the Bankruptcy Code. The Debtors believe that the Plan accomplishes these objectives and is in the best interest of the Estates.

A bankruptcy court's confirmation of a chapter 11 plan binds the debtors, any entity or person acquiring property under the plan, any creditor of or equity security holder in a debtor, and any other entities and persons to the extent ordered by the bankruptcy court pursuant to the terms of the confirmed plan, whether or not such entity or person is impaired pursuant to the plan, has voted to accept the plan, or receives or retains any property under the plan. Among other things (subject to certain limited exceptions and except as otherwise provided in the Plan or the Confirmation Order), the Confirmation Order will provide for the exclusive treatment of Claims against and Interests in the Debtors, terminate all of the rights and interests of pre-bankruptcy equity security holders, and substitute the obligations set forth in the Plan for those pre-bankruptcy Claims and Interests. Under the Plan, Claims and Interests are divided into Classes according to their relative priority and other criteria.

The Debtors are the proponents of the Plan within the meaning of section 1129 of the Bankruptcy Code.

Generally speaking, to the extent Sale Transaction(s) result in sufficient available funds, the Plan:

- vests all unencumbered Assets and Retained Causes of Action Cash in the Post-Effective Date Debtors, for the purpose of distribution to holders of Allowed Claims;

- provides for the full and final resolution of funded debt obligations;

- designates a Plan Administrator to wind down the Debtors' affairs, prosecute, continue, or settle Retained Causes of Action, pay and reconcile Claims, and administer the Plan; and

- provides for 100 percent recoveries for holders of Administrative Claims, Professional Fee Claims, Secured Tax Claims, Priority Tax Claims, Other Secured Claims, and Other Priority Claims.

The Debtors believe that Confirmation of the Plan will avoid the lengthy delay and significant cost of liquidation under chapter 7 of the Bankruptcy Code.

The Plan classifies holders of Claims and Interests according to the type of the holder's Claim or Interest, as more fully described below. Holders of Claims in Class 4 (General Unsecured Claims) are entitled to vote to accept or reject the Plan.

THERE CAN BE NO ASSURANCE THAT THE ACTUAL CLAIM AMOUNTS WILL NOT BE DIFFERENT, AND PERHAPS SIGNIFICANTLY DIFFERENT, FROM THE ESTIMATES SET FORTH HEREIN.

The table beginning on the following page is only a summary of the classification of treatment of Claims and Interests under the Plan. Reference should be made to the entire Disclosure Statement and Plan for a complete description and understanding of the classification and treatment of Claims and Interests.

SUMMARY OF CLASSIFICATION AND TREATMENT
OF CLAIMS AND INTERESTS UNDER THE PLAN

Claim/Equity Interest	**Estimated Projected Amount of Claims**	**Treatment**	**Estimated Recovery**
Administrative Claims (unclassified)	$3,000,000[3]	Unimpaired	Estimated Recovery Percentage: 100% Form of Recovery: Cash
DIP Claims (unclassified)	$0.00	Unimpaired	Estimated Recovery Percentage: 100% Form of Recovery: Cash
KEIP/KERP Awards (unclassified)	$345,000	Unimpaired	Estimated Recovery Percentage: 100% Form of Recovery: Cash
Priority Tax Claims (unclassified)	$0.00	Unimpaired	Estimated Recovery Percentage: 100% Form of Recovery: Cash
Secured Tax Claims (Class 1)	$60,000	Unimpaired – Deemed to Accept	Estimated Recovery Percentage: 100% Form of Recovery: Cash
Other Secured Claims (Class 2)	$0.00	Unimpaired – Deemed to Accept	Estimated Recovery Percentage: 100% Form of Recovery: Cash
Other Priority Claims (Class 3)	$1,660,000[4]	Unimpaired – Deemed to Accept	Estimated Recovery Percentage: 100% Form of Recovery: Cash
General Unsecured Claims (Class 4)	$21,700,000[5]	Impaired – Entitled to Vote	Estimated Recovery Percentage: Unknown[6] Form of Recovery: Cash
Intercompany Claims (Class 5)	N/A	Impaired – Deemed to Reject	Estimated Recovery Percentage: 0% Form of Recovery: None
Subordinated Claims (Class 6)	$0.00	Impaired – Deemed to Reject	Estimated Recovery Percentage: 0% Form of Recovery: None
Interests (Class 7)	N/A	Impaired – Deemed to Reject	Estimated Recovery Percentage: 0% Form of Recovery: None

[3] Excludes Professional Fee Claims.

[4] Certain PTO Obligations totaling up to $1.5 million, some of which may be considered Other Priority Claims, would be assumed pursuant to the Stalking Horse APA (defined below). In addition, the amount includes a total estimate of known customer deposits. The Debtors have not bifurcated the deposit amounts between priority and non-priority general unsecured and the customer deposit amount may be reduced.

[5] This amount excludes potential claims for rejection damages.

[6] The estimated recovery percentage for Class 4 General Unsecured Claims is entirely dependent on proceeds from recoveries on account of Retained Causes of Action and Sale Transaction(s). The Debtors have not conducted a separate valuation of any of the Retained Causes of Action.

B. **The Plan Structure**

Pursuant to the Plan, the Debtors or Plan Administrator will pay or provide for payments of Claims as follows:

- the Plan Administrator will pay Allowed Administrative Claims, Allowed Professional Fee Claims (to the extent not paid by the Professional Fee Claim Reserve), Allowed Priority Tax Claims, Allowed Secured Tax Claims, Allowed Other Priority Claims, and Allowed Other Secured Claims in full in Cash;

- the Debtors shall fund the Professional Fee Claim Reserve, which Professional Fee Claim Reserve shall be used to pay Allowed Professional Fee Claims;

- the Plan Administrator will pay the holders of Allowed General Unsecured Claims their Pro Rata share of the Net Distributable Proceeds; and

- existing Interests in the Debtors will be cancelled without any distribution to the holders of such Interests.

The Debtors believe that the Plan is in the best interest of the Estates and urge such holders to vote to accept the Plan.

C. **The Adequacy of this Disclosure Statement**

Before soliciting acceptances of a proposed plan, section 1125 of the Bankruptcy Code requires a plan proponent to prepare a written disclosure statement containing information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment regarding acceptance of a plan. The Debtors submit this Disclosure Statement in accordance with such requirements. This Disclosure Statement includes, without limitation, information about:

- the Debtors' corporate history, structure, business operations, and prepetition capital structure and indebtedness (Sections 2.1, 2.2, & 2.3);

- the events leading to the Chapter 11 Cases (Section 2.4);

- the Debtors' prepetition restructuring efforts (Section 2.5);

- the significant pleadings Filed in the Chapter 11 Cases and certain relief granted by the Bankruptcy Court in connection therewith (Section 2.6);

- the classification and treatment of Claims and Interests under the Plan, including identification of the holders of Claims entitled to vote on the Plan, the procedures for voting, and projected recoveries (Section 2.7-2.9);

- the method of distribution of any recoveries that may be available to holders of Claims pursuant to the Plan, the process for resolving Disputed Claims, and other significant aspects of the Plan (Section 3);

- the releases contemplated by the Plan that are integral to the overall settlement of Claims pursuant to the Plan (Section 3.8);

- the statutory requirements for confirming the Plan (Section 1.2);

- certain United States federal income tax consequences of the Plan (Section 6); and

- certain risk factors that holders of Claims should consider before voting to accept or reject the Plan and information regarding alternatives to Confirmation of the Plan (Section 7).

In light of the foregoing, the Debtors believe that this Disclosure Statement contains "adequate information" to enable a hypothetical reasonable investor to make an informed judgment about the Plan and complies with section 1125 of the Bankruptcy Code.

The Plan and all documents to be executed, delivered, assumed, and/or performed in connection with the Consummation of the Plan, including the documents to be included in the Plan Supplement, are subject to revision and modification from time to time prior to the Effective Date (subject to the terms of the Plan).

I. INTRODUCTION

1.1 PURPOSE OF THE DISCLOSURE STATEMENT

The Debtors provide this Disclosure Statement to the Office of the United States Trustee and to all of the Debtors' known Creditors and Interest Holders pursuant to section 1125(b) of the Bankruptcy Code for the purpose of seeking confirmation of the Plan. A copy of the Plan is attached hereto as **Exhibit A**. A hearing on the final approval of the Disclosure Statement and Confirmation of the Plan will be held on **[July 23, 2024 at 11:30 a.m.] (ET)**.

The Debtors strongly urge you to read this Disclosure Statement in its entirety before making any judgment about voting to either accept or reject the Plan because the Disclosure Statement contains a summary of the Plan and important information concerning the Debtors' history and operations. The Disclosure Statement also provides information regarding alternatives to the Plan. Summaries of the Plan are included herein for the purpose of seeking Confirmation of the Plan and soliciting acceptances of the Plan and may not be relied upon for any purpose other than to make a judgment with respect to voting to either accept or reject the Plan.

PLEASE NOTE THAT MUCH OF THE INFORMATION CONTAINED HEREIN HAS BEEN TAKEN, IN WHOLE OR IN PART, FROM INFORMATION CONTAINED IN THE DEBTORS' BOOKS AND RECORDS. STATEMENTS MADE IN THE DISCLOSURE STATEMENT ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE PLAN. ALTHOUGH THE DEBTORS HAVE ATTEMPTED TO BE ACCURATE IN ALL MATERIAL RESPECTS, THE DEBTORS ARE UNABLE TO WARRANT OR REPRESENT THAT ALL OF THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS WITHOUT ERROR. UNLESS OTHERWISE INDICATED, THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE ONLY AS OF THE DATE HEREOF, AND THERE CAN BE NO

ASSURANCE THAT THE STATEMENTS CONTAINED HEREIN WILL BE CORRECT AT ANY TIME AFTER THE DATE HEREOF.

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

1.2 CONFIRMATION OF THE PLAN

1.2.1 Requirements. The requirements for Confirmation of the Plan are set forth in section 1129 of the Bankruptcy Code. The following summarizes some of the pertinent requirements:

i. **Acceptance by Impaired Classes**. Except to the extent that the cram down provisions of section 1129(b) of the Bankruptcy Code may be invoked, each Class of Claims and each Class of Interests must either accept the Plan or be deemed to accept the Plan because the Claims or Interests of such Class are not Impaired.

ii. **Feasibility**. The Bankruptcy Court is required to find that the Plan is likely to be implemented and that parties required to perform or pay monies under the Plan will be able to do so.

iii. **The "Best Interest" Test**. The Bankruptcy Code requires that, in order to confirm the Plan, the Bankruptcy Court find that the Plan is in the "best interest" of all Creditors and Interest holders. To satisfy this requirement, the Bankruptcy Court must determine that each holder of a Claim against, or Interest in, the Debtors: (i) has accepted the Plan; or (ii) will receive or retain under the Plan money or other property which, as of the Effective Date, has a value not less than the amount such holder would receive if the Debtors' property was liquidated under Chapter 7 of the Bankruptcy Code on such date.

iv. **"Cramdown" Provisions**. The Bankruptcy Code contains provisions for confirmation of the Plan even if the Plan is not accepted by all Impaired Classes, as long as at least one Impaired Class of Claims has accepted it. These so-called "cramdown" provisions are set forth in section 1129(b) of the Bankruptcy Code. A plan may be confirmed under the cramdown provisions if, in addition to satisfying all other requirements of section 1129(a) of the Bankruptcy Code, it (i) "does not discriminate unfairly," and (ii) is "fair and equitable," with respect to each class of claims or interests that is impaired under, and has not accepted, such plan. As used by the Bankruptcy Code, the phrases "discriminate unfairly" and "fair and equitable" have specific meanings unique to bankruptcy law.

In general, the cramdown standard requires that a dissenting class receive full compensation for its allowed claim or interests before any junior class receives any distribution. More specifically, section 1129(b) of the Bankruptcy Code provides that a plan can be confirmed under that section if: (a) with respect to a secured class, (i) the holders of such claims retain the liens securing such claims to the extent of the allowed amount of such claims and that each holder of a claim of such class receive deferred cash payments equaling the allowed amount of such claim as of the plan's effective date or (ii) such holders realize the indubitable equivalent of such claims; (b) with respect to an unsecured claim, either (i) the impaired unsecured creditor must receive property of a value equal to the amount of its allowed claim, or (ii) the holders of claims and interests that are junior to the claims of the dissenting class may not receive any property under the plan; or (c) with respect to a class of interests, either (i) each holder of an interest of such class must receive or retain on account of such interest property of a value, equal to the greater of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled or the value of such interest, or (ii) the holder of any interest that is junior to the interest of such class may not receive or retain any property on account of such junior interest.

The "fair and equitable" standard, also known as the "absolute priority rule," requires, among other things, that unless a dissenting unsecured class of claims or a class of interests receives full compensation for its allowed claims or allowed interests, no holder of claims or interests in any junior class may receive or retain any property on account of such claims or interests. With respect to a dissenting class of secured claims, the "fair and equitable" standard requires, among other things, that holders either (i) retain their liens and receive deferred cash payments with a value as of the plan's effective date equal to the value of their interest in property of the estate, or (ii) otherwise receive the indubitable equivalent of these secured claims. The "fair and equitable" standard has also been interpreted to prohibit any class senior to a dissenting class from receiving under a plan more than 100% of its allowed claims. The requirement that a plan not "discriminate unfairly" means, among other things, that a dissenting class must be treated substantially equally with respect to other classes of equal rank.

Because certain Classes are deemed to have rejected the Plan, the Debtors will request confirmation of the Plan, as it may be modified from time to time, under the "cramdown" provisions of section 1129(b) of the Bankruptcy Code. The Debtors will also seek confirmation of the Plan over the objection of individual holders of Claims who are members of an accepting Class.

The Debtors reserve the right to alter, amend, modify, revoke, or withdraw the Plan, any exhibit or schedules thereto, or any Plan document in order to satisfy the requirements of section 1129(b) of the Bankruptcy Code, if necessary. The Debtors believe that the Plan will satisfy the "cramdown" requirements of section 1129(b) of the Bankruptcy Code. However, there can be no assurance that the Bankruptcy Court will determine that the Plan meets the requirements of section 1129(b) of the Bankruptcy Code.

1.2.2 **Procedure**. To confirm the Plan, the Bankruptcy Court must hold a hearing to determine whether the Plan meets the requirements of section 1129 of the Bankruptcy Code. The Bankruptcy Court has set **[July 23, 2024 at 11:30 a.m.] (ET)** for the combined hearing for final approval of this Disclosure Statement and confirmation of the Plan (the "**Confirmation Hearing**").

1.2.3 <u>Objections to Final Approval of the Disclosure Statement and Confirmation of the Plan</u>. Any party-in-interest may object to the final approval of the Disclosure Statement and/or to confirmation of the Plan and appear at the Confirmation Hearing to pursue any such objection. The Court has set **[July 16, 2024] at 4:00 p.m. (ET)**, as the deadline for filing and serving any objections to the final approval of the Disclosure Statement and/or to confirmation of the Plan. Any objections must be filed with the Bankruptcy Court at the following address:

U.S. Bankruptcy Court for the District of New Jersey
Martin Luther King Jr. Building
50 Walnut Street
Newark, New Jersey 07102
With a copy served upon the following parties:

(i) [proposed] counsel to the Debtors, Cole Schotz P.C., 25 Main Street, Hackensack, New Jersey 07601, Attn: Ryan T. Jareck, Esq. and Matteo Percontino, Esq.;

(ii) counsel for Tiger Finance LLC, Riemer & Braunstein LLP, Times Square Tower, Suite 2506, Seven Times Square, New York, NY 10036, Attn: Anthony B. Stumbo, Esq. and Steven E. Fox, Esq. with a copy to local counsel, Mandelbaum Barret PC, Three Becker Farm Road, Suite 105, Roseland, New Jersey 07068, Attn: Vincent J. Roldan, Esq.

(iii) the Office of the United States Trustee, One Newark Center, 1085 Raymond Boulevard, Suite 2100, Newark, NJ 07102, Attn: Fran B. Steele, Esq. and Peter J. D'Auria, Esq.; and

(iv) [proposed] counsel to the Creditors' Committee, Porzio, Bromberg & Newman, P.C., 100 Southgate Parkway, P.O. Box 1997 Morristown, NJ 07962-1997, Attn: Brett S. Moore, Esq., Rachel A. Parisi, Esq., and Kelly D. Curtin, Esq.

Service shall be made through the CM/ECF system, with courtesy copies by email, other electronic form as provided under the Local Rules, or by hard copy via hand delivery, first class or other mail or delivery.

1.2.4 <u>Effect of Confirmation</u>. Except as otherwise provided in the Plan, any Asset Purchase Agreement(s), Sale Order(s), or the Confirmation Order, Confirmation vests title to all property of the Estates, other than the assets sold during the Chapter 11 Cases in the Post-Effective Date Debtors, to the same extent such Assets were held by the Debtors, but free and clear of all Claims, Liens, charges, encumbrances, rights, and Interests of creditors and interest holders, subject to the provisions of the Plan. Confirmation serves to make the Plan binding upon the Debtors, all Creditors, Interest holders, and other parties-in-interest, regardless of whether they cast a Ballot to accept or reject the Plan.

1.3 VOTING ON THE PLAN.[7]

1.3.1 <u>Impaired Claims or Interests</u>. Pursuant to section 1126 of the Bankruptcy Code, only the holders of Claims or Interests in Classes "Impaired" by the Plan may vote on the Plan. Pursuant to section 1124 of the Bankruptcy Code, a Class of Claims or Interests may be "Impaired" if the Plan alters the legal, equitable, or contractual rights of the holders of such Claims or Interests treated in such Class. The holders of Claims or Interests not Impaired by the Plan are deemed to accept the Plan and do not have the right to vote on the Plan. The holders of Claims or Interests in any Class which will not receive any payment or distribution or retain any property pursuant to the Plan are deemed to reject the Plan, unless they have agreed otherwise, and, in either event, do not have the right to vote. This Disclosure Statement is being distributed for informational purposes to all known holders of Claims classified as Class 4 (General Unsecured Claims) (the "**Voting Class**").

1.3.2 <u>Eligibility</u>. In order to vote on the Plan, each holder of a Claim in the Voting Class must have timely filed or been assigned a timely filed proof of Claim, unless it holds a Claim that is scheduled by the Debtor and is not identified as disputed, unliquidated, or contingent on the Schedules and Statements (as defined below).

Only the following holders of Claims in the Voting Class are entitled to vote:

a. holders of Claims for which Proofs of Claim have been filed, as reflected on the claims register as of the Record Date;

b. holders of Claims that are listed in the Schedules and Statements, with the exception of those Claims that are scheduled as contingent, unliquidated, or disputed (excluding such scheduled Claims that have been superseded by a filed Proof of Claim);

c. holders whose Claims arise pursuant to an agreement or settlement with the Debtors, as reflected in a document filed with the Bankruptcy Court, in a Final Order of the Bankruptcy Court, or in a document executed by the Debtors pursuant to authority granted by the Bankruptcy Court, in each case regardless of whether a Proof of Claim has been filed; and

d. the assignee of any transferred or assigned Claim, only if such transfer or assignment: (i) has been fully effectuated pursuant to the procedures dictated by Bankruptcy Rule 3001(e) and (ii) is reflected on the Claims Register on or before the Record Date.

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[7] Capitalized terms used but defined in this Section 1.3 shall have the meanings ascribed to such terms in the *Debtors' Motion for Entry of an Order (I) Approving the Disclosure Statement on an Interim Basis; (II) Scheduling a Combined Hearing on Final Approval of the Disclosure Statement and Plan Confirmation and Deadlines Related Thereto; (III) Approving the Solicitation, Notice, and Tabulation Procedures and the Forms Related Thereto; and (IV) Granting Related Relief* [Docket No. •].

1.3.3 Binding Effect. Whether a Creditor or Interest holder votes on the Plan or not, such Person or Entity will be bound by the terms of the Plan if the Plan is confirmed by the Bankruptcy Court. Absent timely submission of a Ballot in accordance with the solicitation procedures, a Creditor will not be included in the vote: (i) for purposes of accepting or rejecting the Plan or (ii) for purposes of determining the number of Persons voting on the Plan.

1.3.4 Procedure. Members of Class 4 (General Unsecured Claims) may vote to accept or reject the Plan. Members of Class 1 (Secured Tax Claims), Class 2 (Other Secured Claims), and Class 3 (Other Priority Claims) are Unimpaired and deemed to accept the Plan. Members of Class 5 (Intercompany Claims), Class 6 (Subordinated Claims), and Class 7 (Interests) are deemed to reject the Plan. Accordingly, holders of Claims or Interests in Classes 1, 2, 3, 5, 6, and 7 are not entitled to vote on the Plan. In order for your vote to count, holders of Claims in the Voting Class must complete, date, sign and properly mail the enclosed Ballot (please note that envelopes have been included with the Ballot) to:

First-Class Mail
Sam Ash Corporation, Ballot Processing
c/o Epiq Corporate Restructuring, LLC
P.O. Box 4422
Beaverton, OR 976076-4422

Overnight Mail or Hand Delivery
Sam Ash Corporation, Ballot Processing
c/o Epiq Corporate Restructuring, LLC
10300 SW Allen Blvd.
Beaverton, OR 97005

Alternatively, holders of Claims in the Voting Class may submit the Ballot via electronic online transmission solely through the customized online balloting portal on the Debtors' case website, https://dm.epiq.com/SamAsh, and clicking on the "E-Ballot" section of the website (the "**Balloting Portal**") on or before the Voting Deadline. Holders of Claims submitting the Ballot via the Balloting Portal must not submit a ballot by mail.

BALLOTS MUST BE SUBMITTED TO EPIQ CORPORATE RESTRUCTURING, LLC ("EPIQ") BY THE VOTING DEADLINE. BALLOTS SENT BY FACSIMILE, ELECTRONIC MAIL, OR OTHER FORM OF ELECTRONIC TRANSMISSION, EXCEPT FOR THE DEBTORS' BALLOTING PORTAL, ARE NOT ALLOWED AND WILL NOT BE COUNTED. HAVING YOUR BALLOT POST-MARKED BY THE VOTING DEADLINE IS NOT SUFFICIENT. RATHER, IT MUST BE RECEIVED BY THE VOTING DEADLINE.

Pursuant to Bankruptcy Rule 3017, the Bankruptcy Court has ordered that original Ballots for the acceptance or rejection of the Plan must be **received** by mail or overnight delivery by Epiq at the address set forth above on or before (i) **4:00 p.m. (ET) on [July 16, 2024]** for Solicitation Packages served by the Initial Solicitation Deadline and (ii) **4:00 p.m. (ET) on [July 18, 2024]** for any Solicitation Packages served after the Initial Solicitation Deadline. Once you have delivered your Ballot, you may not change your vote, except for cause shown to the Bankruptcy Court after notice and hearing.

In tabulating votes, the following hierarchy will be used to determine the amount of the Claim associated with each vote:

a) if a Claim is deemed Allowed under the Plan, an order of the Court or a stipulated agreement between the parties, such Claim will be temporarily allowed for voting purposes in the deemed allowed amount set forth therein;

b) if a Claim for which a Proof of Claim has been timely filed for unknown or undetermined amounts, or is wholly unliquidated, or contingent (as determined on the face of the Claim or after a reasonable review of the supporting documentation by the Balloting Agent) and such Claim has not been Allowed, such Claim shall be temporarily allowed for voting purposes only, and not for purposes of allowance or distribution, at $1.00;

c) if a Claim, for which a Proof of Claim was timely filed, is listed in the Debtors' filed Schedules as contingent, unliquidated or disputed in part, such Claim is temporarily allowed in the amount that is liquidated, non-contingent, and undisputed for voting purposes only, and not for purposes of allowance or distribution;

d) if a Claim for which a Proof of Claim was timely filed or was listed in the Debtors' filed Schedules in an amount that is liquidated, non-contingent, and undisputed, such Claim is allowed for voting in the amount set forth on the Proof of Claim or the Debtors' filed Schedules;

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

f) if a Claim is listed in the Debtors' Schedules as contingent, unliquidated, disputed or for $0.00 and a Proof of Claim was not (i) filed by the applicable bar date for the filing of Proofs of Claim established by the Court; or (ii) deemed timely filed by an order of the Court prior to the Voting Deadline; such Claim shall be disallowed for voting purposes; provided, however, if the applicable bar date has not yet passed, such Claim shall be entitled to vote at $1.00.

g) Proofs of Claim filed for $0.00 are not entitled to vote;

h) if the Debtors have Filed an objection or request for estimation as to a Claim at least fourteen (14) days before the Voting Deadline, such Claim is temporarily disallowed for voting purposes only and not for purposes of allowance or distribution, except to the extent and in the manner as may be set forth in such objection, or as ordered by the Court before the Voting Deadline;

i) for purposes of the numerosity requirement of section 1126(c) of the Bankruptcy Code, separate Claims held by a single creditor in a particular Class shall be aggregated as if such creditor held one Claim against the Debtors in such Class, and the votes related to such Claims shall be treated as a single vote to accept or reject the Plan;

j) notwithstanding anything to the contrary contained herein, any creditor who has filed or purchased duplicate Claims within the same Voting Class shall be provided with only one Solicitation Package and one Ballot for voting a single Claim in such Class, regardless of whether the Debtors have objected to such duplicate Claims; and

k) If a Proof of Claim has been amended by a later Proof of Claim that is filed on or prior to the Record Date, the later filed amending Claim shall be entitled to vote in a manner consistent with these tabulation rules, and the earlier filed Claim shall be disallowed for voting purposes, regardless of whether the Debtors have objected to such amended Claim. Except as otherwise ordered by the Court, any amendments to Proof of Claim after the Record Date shall not be considered for purposes of these tabulation rules.

To the extent Claims in a Voting Class are subject to an objection other than a "reduce and allow" objection that is filed with the Court on or prior to fourteen (14) days before the Voting Deadline, the holder of such Claims shall not be entitled to vote to accept or reject the Plan unless one or more of the following has occurred no later than two (2) days prior to the Voting Deadline (each, a "**Resolution Event**"):

a) an order of the Bankruptcy Court is entered allowing such Claim pursuant to section 502(b) of the Bankruptcy Code, after notice and a hearing;

b) an order of the Bankruptcy Court is entered temporarily allowing such Claim for voting purposes only pursuant to Bankruptcy Rule 3018(a), after notice and a hearing;

c) a stipulation or other agreement is executed between the holder of such Claim and the Debtor resolving the objection and allowing such Claim in an agreed upon amount;

d) a stipulation or other agreement is executed between the holder of such Claim and the Debtors temporarily allowing the holder of such Claim to vote its Claim in an agreed upon amount; or

e) the pending objection is voluntarily withdrawn by the objecting party.

1.4 ACCEPTANCE OF THE PLAN

1.4.1 **<u>Creditor Acceptance</u>**. As a Creditor, your acceptance of the Plan is important. In order for the Plan to be accepted by an Impaired Class of Claims, a majority in number and two-thirds in dollar amount of the Claims voting (of each Impaired Class of Claims) must accept the Plan, or the Plan must qualify for cramdown of any non-accepting Class of Claims pursuant to section 1129(b) of the Bankruptcy Code. At least one impaired Class of Creditors, excluding the votes of insiders, must actually vote to accept the Plan. To the extent you hold a claim in Class 4 (General Unsecured Claims), you are urged to complete, date, sign, and promptly mail the enclosed Ballot. Please be sure to complete the Ballot properly and legibly identify the exact amount of your Claim and the name of the Creditor.

1.4.2 **<u>Cramdown Election</u>**. As long as at least one Impaired Class votes to accept the Plan, excluding the votes of insiders, the Debtor may attempt to invoke the "cramdown" provisions. Cramdown may be an available remedy, because the Debtors believe that, with respect to each Impaired Class, the Plan is fair and equitable within the meaning of section 1129(b)(2) of the Bankruptcy Code and does not discriminate unfairly.

1.5 SOURCES OF INFORMATION

The information contained in this Disclosure Statement has been obtained from the Debtors' books and records and from pleadings filed by the Debtors and other parties-in-interest. Every reasonable effort has been made to present accurate information and such information is believed to be correct as of the date hereof. Any value given as to the Assets of the Debtors is based upon an estimation of such value. You are strongly urged to consult with your financial, legal, and tax advisors to understand fully the Plan and the Disclosure Statement.

The financial information contained in this Disclosure Statement is given as of the date hereof, unless otherwise specified. The delivery of this Disclosure Statement does not, under any circumstance, imply that there has been no change in the facts set forth herein since such date. This Disclosure Statement is intended, among other things, to summarize the Plan and must be read in conjunction with the Plan and its exhibits, if any. If any conflicts exist between the Plan and the Disclosure Statement, the terms of the Plan shall control.

1.6 ADDITIONAL INFORMATION

Should you have any questions regarding the Plan or this Disclosure Statement, or require clarification of any information presented herein, please contact the following attorneys for the Debtor:

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II. <u>THE DEBTORS</u>

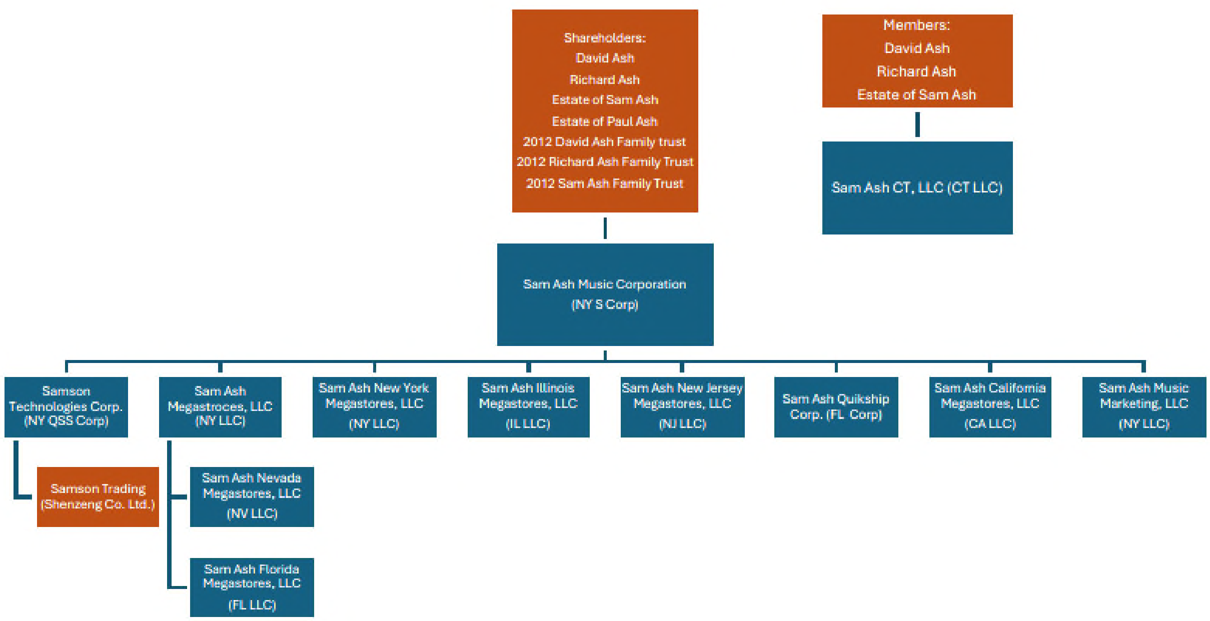
2.1 THE DEBTORS' CORPORATE HISTORY, STRUCTURE, AND BUSINESS OPERATIONS AS OF THE PETITION DATE

2.1.1 Corporate History

The Debtors were established by the Ash family in 1924 and have been family owned through three generations ever since. The Debtors are "The World's Favorite Music Store®" having served thousands of musicians for 100 years. The Debtors' motto, "Come in and Play®," demonstrates their unwavering commitment to support musicians. The Debtors' passion and reason for their success over the last century has been to enrich the musicians' journey with unparalleled service and a personal touch, ensuring every artist feels supported, inspired, and celebrated. Furthermore, their workforce has always carried a reputation to be erudite but also amiable, which has provided the "mom and pop" feeling that is typically lacking at retail chains.

2.1.2 Corporate Structure

Sam Ash Music Corporation is a privately held parent holding company which holds interests in various operating entities generally formed within the states in which they operate. Sam Ash Music Corporation is owned by individuals, trusts or estates affiliated with the Ash family. A chart illustrating the Debtors' organizational structure is below.



*Debtors designated in blue

As of the Petition Date, the Board of Directors of the Debtors (the "**Board**") was composed of David C. Ash, Richard S. Ash, and Benjamin L. Ash. As of the Petition Date, the Debtors also had several officers, including, Jordan Meyers, who was appointed as the Debtors' chief restructuring officer in April, 2024 (the "**Officers**" and together with the Board, the "**D&Os**").

The D&Os work closely with management and advisors to the Debtors to identify and pursue corporate strategic initiatives. From the Petition Date and, thereafter, the D&Os met regularly in order to remain informed as to the Debtors' business affairs and the status of their efforts to address its financial distress, and in order to be able to respond quickly and appropriately to the needs of the Debtors.

2.1.3 Business Operations

As of the Petition Date, the Debtors marketed and distributed musical instruments, accessories, and stage and recording equipment through a chain of retail locations throughout the United States. The Debtors also operated an ecommerce business that primarily conducts sales domestically. Further, the Debtors operated a wholesale business, Samson Technologies Corp. ("Samson"), which designs, markets, and distributes products to musical instrument and consumer electronic retailers, distributors, and sound contractors both domestically and internationally.

In sum, the Debtors business is divided into three segments: (a) brick and mortar retail sales of musical instruments, which generated more than $145 million of revenue in fiscal year 2023; (b) e-commerce retail sales of musical instruments, which generated more than $42 million of revenue in fiscal year 2023; and (c) a whole sale business, Samson, the Debtors' fastest growing segment in recent years, which generated more than $33 million of revenue in fiscal year 2023.[8]

On the retail side, as of the Petition Date, the Debtors operated 42 retail stores, with their largest concentrations of stores located in Florida (5), California (4), Texas (3) and New York (3). The Debtors' stores are primarily located in shopping centers and stand-alone storefronts. The Debtors do not own any real estate. The Debtors' rental expenses total approximately $16 million per year, which amount includes rental costs for their corporate headquarters in Hicksville, New York, as well as their four warehouse and distribution centers located in Hicksville, New York, Tampa, Florida, Las Vegas, Nevada and Indianapolis, Indiana.

The Debtors maintained a supply chain comprised of more than 250 vendors designed to ensure the uninterrupted flow of new merchandise to their brick-and-mortar locations and to their e-commerce customers. The Debtors' largest expense was its merchandise, which totaled approximately $138 million annually. The Debtors' profitability was highly dependent on maintaining strong relationships and favorable trade terms with their key vendors, including many highly regarded musical instrument brands.

As of the Petition Date, the Debtors employed 830 employees consisting of full-time, part-time, and intermittent employees whose hours vary on a seasonal or project-by-project basis. Specifically, the Debtors employ approximately 671 full-time and 159 part-time employees. None of the Debtors' employees are members of a labor union.

2.2 THE DEBTOR'S PREPETITION CAPITAL STRUCTURE

2.2.1 Pre-Petition Secured Debt

Prior to the Petition Date, the Debtors entered into that certain Loan and Security Agreement, dated February 21, 2024 (as amended, restated, supplemented or otherwise modified prior to the Petition Date, the "**Prepetition ABL Loan Agreement**" and collectively with any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, supplemented, or otherwise modified in accordance with the terms thereof, the "**Prepetition ABL Loan Documents**"), by and among the Debtors and Tiger Finance LLC ("**Tiger Finance**"), pursuant to which Tiger Finance made loans, advances and provided other financial accommodations to the Debtors.

[8] Among others, Samson sells branded products and equipment including Samson, Michael Kelly Guitar Co., and Hartke.

As of the Petition Date, the Debtors were jointly and severally indebted and liable to Tiger Finance under the Prepetition ABL Loan Documents in an amount not less than (i) approximately $18.2 million, plus (ii) all costs, fees, expenses (including attorneys' fees and legal expenses) and all other Obligations (as defined in the Prepetition ABL Loan Agreement) accrued, accruing or chargeable in respect thereof or in addition thereto (collectively, the "**Prepetition ABL Obligations**").

2.2.2 General Unsecured Creditors

As of the Petition Date, the Debtors believed that unsecured claims against the Debtors are in excess of $20 million. Unsecured claims against the Debtors include (a) accrued and unpaid trade and other unsecured debt incurred in the ordinary course of the Debtors' business, (b) unpaid amounts owed to the Debtors' vendors, and (c) claims for unpaid rent and other obligations under the Debtors' leases.

2.3 EVENTS LEADING TO THE BANKRUPTCY FILINGS

Between the start of the COVID-19 pandemic and the Petition Date, a confluence of factors contributed to the Debtor's need to commence its chapter 11 case.

Weakened Operating Performance. The Debtors, like many other retail companies, faced a challenging commercial environment over the past several years. The Debtors' challenges were exacerbated by the COVID-19 pandemic and a shift in customer preferences away from physical retail stores and toward online-only stores. Given the Debtors' substantial brick-and-mortar retail presence, their business has been heavily dependent on in-store traffic, which was eliminated during the pandemic and has materially declined in recent years. The Debtors' financial condition is weighed down by a store footprint that is disproportionate to market demands. As a result, the Debtors have seen meaningful revenue decline for the past five years.

Landlord and Vendor Issues. Due to the deterioration of retail operations and insufficient liquidity, the Debtors did not pay any portion of rent on most of their stores for the months of April and May 2024. During this time, the Debtors also significantly curtailed payments to the majority of their vendors. As a result, several vendors held deliveries of merchandise and ultimately conditioned delivery on cash or very short-term payment terms. Moreover, some vendors refused to ship at all until the Debtors paid for all arrearages. The inability to receive a continuous flow of inventory negatively impacted store sales and e-commerce. Although the Debtors' landlords largely were initially understanding of the Debtors' inability to pay rent, as time passed the Debtors' landlords began taking a more aggressive posture. In some instances, the Debtors and their advisors at A&G Real Estate Partners, LLC ("A&G") were able to negotiate consensual modifications to existing leases. Notwithstanding those efforts, it eventually became clear that the Debtors would require the protections afforded by the Bankruptcy Code to prevent landlords from pursing eviction proceedings to judgment and exercising self-help to terminate the Debtors' leases and/or attempt to seize the Debtors' inventory to satisfy rents due. As of the Petition Date, the Debtors are facing a handful of eviction or similar lawsuits resulting from the non-payment of rent. In addition, one landlord locked the Debtors out from operating in a particular location. Lastly, numerous other threats have persisted from landlords, which the Debtors expect would, without the commencement of these Chapter 11 Cases, result in many more landlords formally pursuing their full exercise of rights and remedies.

The Debtors' Attempts to Restructure and Pursuit of Strategic Alternatives.

In November 2023, SierraConstellation Partners LLC ("**Sierra**") was hired to help with a turnaround of the business and pursue other value maximizing alternatives, which was to be focused on closing unprofitable retail locations under the terms of their leases, and growing the Debtors' Samson and e-commerce businesses. That process culminated in a refinancing of the Debtors' asset-based loan with Tiger Finance on February 21, 2024.

Prior to the Petition Date, certain Events of Default occurred under the Prepetition ABL Loan Agreement. On April 16, 2024, the Debtors and Tiger Finance entered into a Forbearance Agreement to address the ongoing events of default ("**Forbearance Agreement**"). Pursuant to the Forbearance Agreement, Tiger Finance agreed to forbear from exercising certain remedies available to it on account of the occurrence and continuation of the Events of Default under the Prepetition ABL Loan Agreement, subject to the terms and conditions contained in the Forbearance Agreement. The Forbearance Agreement expired on May 8, 2024, at 11:59 p.m. (prevailing Eastern Time).

Ultimately, due to the events of default, the Debtors' continuing lagging retail results and revenue declines, the lack of additional financial resources to tap into, and the impending deadline under the Forbearance Agreement, it became immediately obvious that an in-court restructuring was essential to achieve a long-term solution to the Debtors' financial distress.

2.4 PREPETITION RESTRUCTURING EFFORTS

After the 2023 holiday season sales results came in weaker than expected, the Debtors' existing lender at that time recommended the Debtors seek alternative financing on a go-forward basis. The Debtors, therefore, engaged Sierra as an advisor in furtherance of a comprehensive and exhaustive process to recapitalize their balance sheet, including, but not limited to, refinancing their debt. As set forth above, that process resulted in the refinancing of the Debtors' asset-based loan with Tiger Finance on February 21, 2024.

Subsequently, in light of the sustained, soft business performance, the Debtors and Sierra worked diligently to solicit and develop strategic alternatives to maximize the Debtors' value for the benefit of all of their stakeholders and to facilitate discussions with the Debtors' capital structure constituents. At the same time, the Debtors also retained the services of Sierra to conduct a targeted search for potential partners to execute a strategic transaction with the Debtors.

Beginning in late February 2024, Sierra initiated a process that ultimately resulted in it contacting nine (9) prospective financial and/or strategic partners to gauge interest in a strategic transaction with the Debtors. A number of parties executed non-disclosure agreements and began conducting varying levels of diligence at that time.

As the Debtors search for a strategic partner unfolded, the Debtors engaged Tiger Capital Group, LLC ("Tiger Capital"), an affiliate of Tiger Finance, to conduct an inventory monetization and store closing plan at eighteen (18) underperforming stores. That liquidation process commenced on March 1, 2024, was expanded to the Debtors remaining retail locations on May 2, 2024, and is still ongoing.

In addition, leading up to the Petition Date, the Debtors worked diligently to maintain their operations in the face of declining liquidity and increasing financing challenges. In January 2024, the Debtors retained the services of A&G to negotiate consensual exits in connection with the store closings as well as rent concessions from the Debtors' landlords in retail locations where the Debtors' leases were no longer aligned with the commercial real estate market. A&G and the Debtors' other advisors also interfaced with landlords who threatened to exercise rights and remedies in response to the Debtors' inability to pay rents. In addition, the Debtors worked tirelessly with their vendors to maintain the Debtors' access to their domestic and international supply chain of musical products while preserving much needed liquidity and to maintain the Debtors' workforce in the face of ongoing store closings and necessary reductions in force.

On or about March 25, 2024, the Debtors engaged Cole Schotz P.C. ("**Cole Schotz**") as restructuring counsel. In addition, as set forth above, the Debtors, in consultation with Tiger Finance, elected to appoint Jordan Meyers of Sierra as CRO on or about April 4, 2024. Following that appointment, on April 5, 2024, the Debtors engaged Capstone Capital Markets, LLC ("**Capstone**") which took over the Sierra strategic process that was underway and continued to gauge market interest in acquiring a portion of the Debtors' stores as well as their e-commerce and Samson businesses.

Further, consistent with their fiduciary duties to maximize value, shortly before the Petition Date, the Debtors entered into a stalking horse asset purchase agreement (the "**Stalking Horse APA**") pursuant to which an affiliate or designee of Tiger Finance (such affiliate or designee, the "**Stalking Horse Bidder**") proposes to purchase a material portion of the Debtors' business under section 363 of the Bankruptcy Code. Under the Stalking Horse APA, the Stalking Horse Bidder proposes to acquire existing inventory, intellectual property and other assets of the Debtors (other than Merchandise located at any Closing Stores as such terms are defied in the Stalking Horse APA), assume certain liabilities of the Debtors and to fund certain wind-down expenses (collectively, the "**Sale Transaction**"). The Sale Transaction serves as a stalking horse bid that will be subject to higher or otherwise better offers at an auction (to the extent that other qualified bids are submitted in accordance with bidding procedures approved by this Court).

In addition, and integral to the Stalking Horse APA, Tiger Finance and the Debtors entered into a DIP Loan Credit Agreement (the "**DIP Credit Agreement**") pursuant to which Tiger Finance agreed to provide a debtor-in-possession loan to the Debtors in the maximum amount of up to $20 million. The financing (the "**DIP Financing**") proposed under the DIP Credit Agreement is critical to the Debtors' ability to continue to operate in the ordinary course of business pending the auction and consummation of the Sale Transaction or another transaction that may result from the competitive bidding process proposed by the Debtors. Thus, together, the terms and conditions of the Stalking Horse APA and the DIP Financing provide the Debtors with a transaction that appears to be in the best interests of the Debtors' estates, subject only to any higher or otherwise better bids that may be presented at the auction.

The Debtors ultimately commenced these Chapter 11 Cases to consummate a sale of their assets thereby maximize the value of their estates for the benefit of their stakeholders. The Debtors determined that filing for Chapter 11 protection, utilizing cash collateral (with the consent of Tiger Finance), and seeking approval of the DIP Financing and a sale to the Stalking Horse Bidder (subject to higher and better offers) while pursuing an orderly liquidation of their assets was their best available option.

2.5 THE DEBTOR'S BANKRUPTCY PROCEEDINGS

2.5.1 The Petition Date. On May 8, 2024 (the "**Petition Date**"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court.

2.5.2 The First Day Operational Orders. On the Petition Date, the Debtors filed several motions seeking certain operational relief by virtue of so-called first day orders. The first day orders assisted the Debtor in transitioning into operating as debtors-in-possession by approving certain regular business practices that may not be specifically authorized under the Bankruptcy Code or as to which the Bankruptcy Code requires prior court approval. The first day orders in the Chapter 11 Case authorized, among other things:

- the continued maintenance of the Debtors' bank accounts, continued use of existing business forms, and continued use of the Debtors' existing cash management system;
- the appointment of Epiq as the noticing agent in this Chapter 11 Case;
- safeguards to provide assurance to utility providers, thus providing continued utility service during the pendency of this Chapter 11 Cases;
- continued payment of certain prepetition taxes, governmental assessments, and related fees;
- the continued use and maintenance of existing customer programs;
- the continuation of the Debtors' insurance and surety programs; and
- payments to employees for accrued prepetition wages, salaries, and benefits.

2.5.3 The Consulting Agreement. On the Petition Date, the Debtors filed the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Assume and Perform Under the Consulting Agreement Relayed to the Sale of Inventory, (II) Approving Procedures for the Sale of Inventory, (III) Approving Modifications to Certain Customer Programs, and (IV) Related Relief* [Docket No. 14], seeking Bankruptcy Court approval (a) authorizing the Debtors, among other things, to assume its prepetition agreement with Tiger Capital to act as their consultant in the liquidation of certain inventory at their retail stores, (b) approving certain exemptions from state laws and lease restrictions, and (c) approving certain sale and dispute procedures.

2.5.4 The DIP/Cash Collateral Orders. On the Petition Date, the Debtors filed the *Debtors' Motion for Interim and Final Orders (I) Authorizing the Debtors to Obtain*

Postpetition Financing; (II) Authorizing Use of Cash Collateral and Affording Adequate Protection; (III) Granting Liens and Providing Superpriority Administrative Expense Status; (IV) Modifying Automatic Stay; (V) Scheduling a Final Hearing; and (VI) Granting Related Relief [Docket No. 15] (the "**DIP/Cash Collateral Motion**"), seeking Bankruptcy Court approval to utilize cash collateral and enter into the debtor-in-possession financing agreement with Tiger Finance. On May 10, 2024, the Bankruptcy Court granted the DIP/Cash Collateral Motion on an interim basis [Docket No. 49]. A hearing to approve the DIP/Cash Collateral Motion on a final basis is scheduled for June 5, 2024.

As set forth in the proposed final order approving the DIP/Cash Collateral Motion (the "**Final DIP Order**"), Tiger Capital agreed to "carve out" from its collateral certain amounts (the "**Carve Out**") including, among other amounts: (i) all fees payable to the Clerk of the Court and all statutory fees payable to the U.S. Trustee; (ii) fees, expenses and costs of attorneys, accountants and other professionals retained in the Chapter 11 Case by the Debtor or the Creditors' Committee, subject to the Approved Budget (as defined in the Final DIP Order); (iii) post-termination fees of certain professionals; and (iv) fees and expenses incurred by any chapter 7 trustee, not to exceed $50,000, each as more fully set forth in and subject to the Approved Budget. In addition, the Final DIP Order provides that the Carve Out is senior in priority to all of the Debtors' other secured debt. The Final DIP Order, further provided for a challenge period pursuant to which third parties, including the Committee could initiate a Challenge Proceeding as to the Prepetition Lender, Prepetition Lien, or Prepetition Debt (as those terms are defined in the Final DIP Order).

2.5.5 **The Sale Transactions**. As explained above, the Debtors filed these Chapter 11 Cases to engage in a process to sell substantially all of their assets so that they could maximize the value of their Estates for the benefit of all of their constituents and preserve their ongoing business. Accordingly, the Debtors has been involved in a sale processes as part of a concerted effort to maximize the value of their assets.

On the Petition Date, the Debtors filed the the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Assume and Perform Under the Consulting Agreement Relayed to the Sale of Inventory, (II) Approving Procedures for the Sale of Inventory, (III) Approving Modifications to Certain Customer Programs, and (IV) Related Relief* [Docket No. 14] (the "**Store Closing Motion**"), seeking Bankruptcy Court approval (a) authorizing the Debtors, among other things, to assume its prepetition consulting agreement with Tiger Capital to act as their consultant in the liquidation of certain inventory at their retail stores (the "**Closing Stores**") in accordance with certain store closing procedures described therein, (b) approving certain exemptions from state laws and lease restrictions, and (c) approving certain dispute resolution procedures to resolve any disputes with governmental units regarding certain applicable non-bankruptcy laws that regulate liquidation and similar-themed sales. On May 10, 2024, the Bankruptcy Court entered an interim order approving the Store Closing Motion [Docket No. 48]. A hearing to approve the Store Closing Motion on a final basis is scheduled for June 5, 2024. In accordance with the Store Closing Motion, the store closing sales as to certain stores are anticipated to be concluded in May and June 2024, with the entire liquidation process anticipated to be completed by the end of July 2024.

On May 10, 2024, the Debtors filed the Bidding Procedures/Sale Motion [Docket No. 47] seeking, among other things, entry into the Stalking Horse APA, approval of certain bidding procedures to effectuate a sale of certain or substantially all of its assets (the "**Sale**"), the scheduling of a sale hearing (the "**Sale Hearing**"), and approval of a sale to a bidder or bidders submitting the highest and best offer(s) at an auction, if necessary (the "**Auction**"). The Debtors will be filing application to retain Capstone as its investment banker pursuant to their prepetition engagement agreement with Capstone.

[On June 5, 2024, the Bankruptcy Court entered the *Order (A) Approving Bidding Procedures and Breakup Fee, (B) Approving Stalking Horse Purchase Agreement, (C) Scheduling an Auction and a Sale Hearing, (D) Approving the Form and Manner of Notice Thereof, and (E) Establishing Notice and Procedures for the Assumption and Assignment of Contracts and Leases* (the "**Bidding Procedures Order**"). The Bidding Procedures Order, among other things, approved the Stalking Horse APA, specified procedures regarding bidding and the assumption and assignment of the Debtors' executory contracts and unexpired leases (the "**Bidding Procedures**"), and scheduled an Auction for June 20, 2024, if necessary, for the sale of the Debtors' Assets. The Stalking Horse APA was subject to higher or better offers in accordance with the Bidding Procedures. As such, the Bidding Procedures Order required the Debtors, in conjunction with their advisors, to continue to engage in an extensive marketing and diligence process for the sale of the Purchased Assets until June 14, 2024 (the "**Bid Deadline**"). The Bidding Procedures Order further established a complete timeline for the Debtors' sale process, including the following key dates and deadlines:]

Event	Date
Deadline to Serve Cure Notice	May 31, 2024
Delivery of Adequate Assurance Information to Landlords to the Extent Any Bids Include Assumption/Assignment of Non-Residential Real Property Leases	June 7, 2024, as to the Stalking Horse Bidder and June 17, 2024, as to any other Bidder
Bid Deadline	June 14, 2024, at 5:00 p.m., prevailing Eastern Time, as the deadline by which all bids must be actually received
Sale Objection Deadline	June 14, 2024, at 5:00 p.m., prevailing Eastern Time;
Cure Amount Objection Deadline and Adequate Assurance of the Stalking Horse Bidder Objection Deadline	June 14, 2024, at 5:00 p.m., prevailing Eastern Time
Auction (if necessary)	June 20, 2024, at 10:00 a.m., prevailing Eastern Time, if necessary
Supplemental Adequate Assurance Objection Deadline; Deadline to object to (i) conduct of the Auction, and (ii) the proposed Sale Transaction if the Successful Bidder is not the Stalking Horse Bidder.	June 24, 2024, at 5:00 p.m., prevailing Eastern Time

Event	Date
Sale Hearing (No Auction)	June 21, 2024, at 10:00 a.m., prevailing Eastern Time
Sale Hearing (Auction)	June 28, 2024, at 10:00 a.m., prevailing Eastern Time

[Alternative Disclosure 1:] [Upon the expiration of the Bid Deadline, the Debtors, in their reasonable judgment and in accordance with the Bidding Procedures, determined that no qualified bids had been received by the Bid Deadline other than the Stalking Horse APA. Accordingly, on June 15, 2024, the Debtors filed a notice indicating that the Auction was cancelled and the Stalking Horse Bidder was the successful bidder for the Debtors' Assets (the "**Successful Bidder**"). Shortly thereafter, the Stalking Horse Bidder, as the Successful Bidder, provided the Debtors with documentation memorializing the final terms of the Stalking Horse APA, including all of the schedules and/or exhibits thereto.[9]

[Alternative Disclosure 2:] [Due to the Debtors' extensive marketing efforts, on or prior to the Bid Deadline, the Debtors received an additional [●] Qualified Bid[s] for the Purchased Assets. Accordingly, on June 20, 2024, the Debtors conducted the Auction at the offices of Cole Schotz P.C. At the conclusion of the Auction, the Debtors, in their reasonable judgment and in accordance with the Bidding Procedures, determined that [●] (the "**Successful Bidder**") had submitted the highest or best bid for the Debtors' Assets, including an offered aggregate purchase price of approximately $[●] million. Immediately thereafter, the Debtors and the Successful Bidder finalized the terms of an asset purchase agreement (the "**APA**" and, together with the exhibits thereto, the "**Purchase Agreement**," a copy of which has been filed with the Bankruptcy Court [Docket No. [●]]), and on June 21, 2024, in accordance with the Bidding Procedures, the Debtors filed and served a notice informing interested parties of the identity of the Successful Bidder and the terms of the Purchase Agreement.]

[A hearing to consider approval of the Sale Transaction was held on June [28], 2024, and on June [●], 2024 the Bankruptcy Court entered the *Order (A) Authorizing the Debtors to Enter Into an Asset Purchase Agreement, (B) Approving the Asset Purchase Agreement, and (C) Authorizing the Assumption and Assignment of the Assumed Contracts* [Docket No. [●]] (the "**Sale Order**"). The Debtors anticipate that they will consummate the Sale Transaction with the Successful Bidder in the near term.]

2.5.6 The Bar Dates. On May 15, 2024, the Debtors filed the *Debtors' Motion for Entry of an Order (I) Setting Bar Dates for Submitting Proofs of Claim, Including Requests for Payment Under Section 503(b)(9), (II) Establishing Amended Schedules Bar Date, Rejection Damages Bar Date, and Administrative Claims Bar Date, (III) Approving the Form, Manner, and Procedures for Filing Proofs of Claim, (IV) Approving Notice Thereof, and (V) Granting Related*

[9] [The appropriate alternative paragraph will remain in Disclosure Statement sent to solicitation depending on outcome of Auction.]

Relief (the "**Bar Date Motion**") [Docket No. 79] seeking entry of an order (the "**Bar Date Order**"), establishing the following claims bar dates:

General Claims Bar Date	**July 10, 2024, at 5:00 p.m., prevailing Eastern Time**, as the last date and time for all Persons and Entities to submit proofs of claim based on prepetition claims, including requests for payment under section 503(b)(9) of the Bankruptcy Code against any Debtor.
Governmental Bar Date	**November 4, 2024, at 5:00 p.m., prevailing Eastern Time**, as the last date and time for each such Governmental Unit to file Proofs of Claim asserting Claims against any Debtor that arose on or before the Petition Date.
Amended Schedules Bar Date	In the event that the Debtors amend their Schedules and Statements (as defined below), establishing the later of (a) the General Claims Bar Date or the Governmental Bar Date, as applicable, and (b) 5:00 p.m., prevailing Eastern Time, on the date that is thirty (30) days from the date on which the Debtors provide notice of the amendment to the Schedules and Statements, as the last date and time by which claimants holding Claims affected by the amendment must file Proofs of Claim against any Debtor.
Rejection Damages Bar Date	Solely as to Claims arising from the Debtors' rejection of executory contracts and unexpired leases, establishing the later of (a) (i) the General Claims Bar Date or (ii) the Governmental Bar Date, as applicable, and (b) 5:00 p.m., prevailing Eastern Time, on the date that is thirty (30) days following entry of the order approving the Debtors' rejection of the applicable executory contract or unexpired lease as the last date and time by which claimants holding Claims based upon such rejection must file Proofs of Claim against any Debtor, unless otherwise ordered by the Court.
Administrative Claims Bar Date(s)	For any Administrative Claims arising on or prior to June 28, 2024, **establishing July 10, 2024, at 5:00 p.m., prevailing Eastern Time**, as the last date and time by which claimants holding such Administrative Claims must file Proofs of Claim. For any Administrative Claims arising after June 28, 2024, such Claims must be filed by the earlier of: **(a) the 15th day of the month following the month in which the Claim arose and (b) 14 days following any hearing on a plan of liquidation, structured settlement, or other proposed resolution to these chapter 11 cases**

2.5.7 **<u>Schedules and SOFAs</u>**. [On June 12, 2024, the Debtors filed their *Statements of Financial Affairs and Schedules of Assets and Liabilities* [Docket Nos. •] (as amended or modified and together as, the "**Schedules and Statements**").]

2.5.8 **<u>The Creditors' Committee</u>**. On May 22, 2024, the Office of the United States Trustee (the "**U.S. Trustee**") appointed the Official Committee of Unsecured Creditors in the Chapter 11 Case (the "**Creditors' Committee**") consisting of: Yamaha Corporation of America, Bosch Security Systems, Inc., Hoshino USA, Inc., Roland Corporation U.S., and SLJ Realty LLC. *See* Docket No. 107. On [•], 2024, the Bankruptcy Court entered orders [Docket Nos. •] authorizing the Creditors' Committee to employ and retain [•] as its counsel and [•] as its financial advisor, effective as of [•], 2024.

2.5.9 **__Rejection and Assumption of Executory Contracts and Unexpired Leases__**. Prior to the Petition Date and in the ordinary course of business, the Debtors entered into numerous Executory Contracts and Unexpired Leases. The Debtors, with the assistance of their advisors, have reviewed and will continue to review the Executory Contracts and Unexpired Leases to identify contracts and leases to reject pursuant to sections 365 or 1123 of the Bankruptcy Code. The Debtors intend to include information in the Plan Supplement regarding the rejection of the remainder of its Executory Contracts and Unexpired Leases but may also elect to reject various of its Executory Contracts and Unexpired Leases before such time. [Indeed, on June 5], 2024, the Bankruptcy Court entered an order approving procedures for the rejection of Executory Contracts and Unexpired Leases [Docket No. •].

On [May 31], 2024, the Debtor filed a *Notice to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases* [Docket No. •] that informed all known contract counterparties of the cure amounts the Debtors believed were associated with the potential assumption of Executory Contacts and Unexpired Leases.

On the Effective Date, all Executory Contracts and Unexpired Leases shall be deemed rejected as of the Effective Date, unless such Executory Contract or Unexpired Lease(i) was assumed or rejected previously by the Debtors; (ii) previously expired or terminated pursuant to its own terms; (iii) is the subject of a motion to assume Filed on or before the Effective Date; (iv) is identified in the Plan Supplement to be assumed under the Plan; (v) has been assumed and assigned to a Purchaser of the Debtors' assets; or (vi) is subject to designation rights pursuant to the Stalking Horse APA. Entry of the Confirmation Order shall constitute a Bankruptcy Court order approving the rejection of such Executory Contracts or Unexpired Leases pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Unless otherwise indicated, rejection of Executory Contracts and Unexpired Leases pursuant to the Plan shall be effective as of the Effective Date.

Although its analysis is ongoing, the Debtors currently estimate that the aggregate amount of Claims on account of rejection of Executory Contracts and Unexpired Leases may be significant.

2.6 SECURED CLAIMS ENCUMBERING THE DEBTOR'S PROPERTY

2.6.1 **__DIP Claims__.** DIP Claims consist of the DIP Obligations (as defined in the Final DIP Order) owed by the Debtor under the Final DIP/Cash Collateral Order. On the Petition Date, the DIP Claims totaled approximately $18.425 million. During the pendency of these Chapter 11 Cases, the Debtors paid and will continue to pay the DIP Lender through proceeds from operations and the sales under the Store Closing Motion. It is anticipated that the balance of the DIP Claims will have been satisfied pursuant to the Debtors' sale process by way of the DIP Lender's credit bid or other third party Sale Transaction(s).

2.6.2 **__Secured Tax Claims__**. Secured Tax Claims consist of any Secured Claim that, absent its secured status, would be entitled to priority in right of payment under section 507(a)(8) of the Bankruptcy Code (determined irrespective of time limitations), including any related Secured Claim for penalties. As of the Petition Date, the Debtors owed approximately $60,000 on account of Secured Tax Claims.

2.6.3 <u>The Other Secured Claims</u>. Other Secured Claims consist of any Secured Claim that is not a Secured Tax Claim or a Secured Claim. As of the Petition Date, the Debtors owed approximately $0.00 on account of the Other Secured Claims.

2.7 ADMINISTRATIVE CLAIMS.

2.7.1 <u>Administrative Claims</u>. Administrative Claims are among other things, Claims against the Debtors or their Estates for costs and expenses of administration pursuant to sections 503(b) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estates and operating the business of the Debtors (such as wages, salaries, or commissions for services and payments for goods and other services and leased premises) and (b) the value of goods received by the Debtors within twenty (20) days before the Petition Date in which the goods have been sold to the Debtors in the ordinary course of the Debtors' business. **Holders of Administrative Claims that are required to, but do not timely file claims on account of Administrative Claims as set forth in the Bar Date Order establishing the Administrative Claims Bar Dates shall be forever barred, estopped, and enjoined from asserting such Administrative Claims against the Debtors or their estates, and such Administrative Claims shall be deemed satisfied, settled, and released as of the Effective Date.** Subject to the foregoing, the Debtors estimate such Administrative Claims as of the date hereof to be approximately $3,000,000 (excluding Professional Fees).

2.7.2 <u>Professional Fee Claims</u>. Professional Fee Claims are Claims for the compensation of the Debtors' or the Creditors' Committee's professionals or other entities for professional services rendered or expenses incurred in the Debtors' cases on or before the Effective Date. All payments to Professionals for Professional Fee Claims will be made in accordance with the procedures established in the Bankruptcy Code, the Bankruptcy Rules, the U.S. Trustee Guidelines, and the Bankruptcy Court relating to the payment of interim and final compensation for services rendered and reimbursement of expenses. The Bankruptcy Court will review and determine all applications for compensation for services rendered and reimbursement of costs.

2.8 UNSECURED CLAIMS AGAINST THE DEBTOR

2.8.1 <u>Unsecured Priority Claims</u>. The Debtors estimate that they owe approximately $0.00 on account of tax Claims entitled to priority pursuant to section 507(a)(8) of the Bankruptcy Code. The Debtor estimate that Priority Claims outstanding for employee wages and benefits total approximately $1,408,000. The Debtor estimates that it currently owes approximately $252,000 on account of all other Claims entitled to priority pursuant to section 507(a) of the Bankruptcy Code.

2.8.2 <u>Unsecured Nonpriority Claims</u>. Based on the Debtors' records and the Schedules and Statements, the Debtors estimate aggregate unsecured nonpriority Claims against the Debtors in the approximate amount of $21,700,000, plus rejection damage claims to be determined and certain unknown amounts scheduled as contingent, unliquidated, and disputed, but excluding amounts paid pursuant to various Bankruptcy Court orders.

III. SUMMARY OF THE CHAPTER 11 PLAN[10]

3.1 IN GENERAL

If the Plan is confirmed by the Bankruptcy Court and consummated, except to the extent that a holder of an Allowed Administrative Claim and the Debtors agree to less favorable treatment with respect to such holder, each holder of an Allowed Administrative Claim will be paid in full in Cash on the Effective Date. Further, the Plan provides that, the Debtors will pay, in full in Cash, any fees due and owing to the U.S. Trustee as of the Effective Date. The Plan also provides for payment of all Allowed Professional Fee Claims from the Professional Fee Claim Reserve as described in section 3.3.2 below.

With respect to holders of Allowed Priority Tax Claims, and except to the extent that a holder of an Allowed Priority Tax Claim has been paid by the Debtors prior to the Effective Date or agrees to a less favorable treatment, in exchange for full and final satisfaction, settlement, release and discharge of each Allowed Priority Tax Claim, each holder of an Allowed Priority Tax Claim due and payable on or before the Effective Date will receive, on the Distribution Date, at the option of the Debtor, one of the following treatments: (i) Cash in an amount equal to the amount of such Allowed Priority Tax Claim, plus interest at the rate determined under applicable non-bankruptcy law and to the extent provided for by section 511 of the Bankruptcy Code; or (ii) such other treatment as may be agreed upon by such holder and the Debtors or otherwise determined upon an order of the Bankruptcy Court.

All other Allowed Claims and Allowed Interests will receive a distribution only to the extent set forth below in sections 3.2, 3.3 and 3.4.

3.2 CLASSIFICATION OF CLAIMS AND INTERESTS

3.2.1 **Class 1: Secured Tax Claims**. This Class consists of Claims that, absent their Secured status, would be entitled to priority in right of payment under section 507(a)(8) of the Bankruptcy Code (determined irrespective of time limitations), including any related Secured Claim for penalties. Class 1 is Unimpaired by the Plan, and each holder of a Class 1 Secured Tax Claim is conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code.

3.2.2 **Class 2: Other Secured Claims**. This Class consists of any Claim, other than a Secured Claim or a Secured Tax Claim, that is (a) secured by a Lien on property in which the Estates has an interest, which Lien is valid, perfected and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the Creditor’s interest in the Estate’s interests in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) or (b) of the Bankruptcy Code Allowed as such pursuant to the Plan. Class 2 is Unimpaired by the Plan, and each holder of a Class 2 Other Secured Claim is

[10] In the event of any inconsistency or discrepancy between this summary of the Plan, on the one hand, and the actual terms and provisions of the Plan, on the other hand, the terms and provisions of the Plan shall govern for all purposes.

conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code.

3.2.3 Class 3: Other Priority Claims. This Class consists of Claims against the Debtors, other than an Administrative Claim, Professional Fee Claim, or a Priority Tax Claim, entitled to priority in right of payment under section 507(a) of the Bankruptcy Code. Class 3 is Unimpaired by the Plan, and each holder of a Class 3 Other Priority Claim is conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code.

3.2.4 Class 4: General Unsecured Claims. This Class consists of any Claim against the Debtors that is (i) neither Secured nor entitled to priority under the Bankruptcy Code or an order of the Bankruptcy Court and (ii) not an Administrative Claim, a Professional Fee Claim, a DIP Claim, a Priority Tax Claim, a Secured Tax Claim, an Other Priority Claim, an Other Secured Claim, KEIP/KERP Awards, or an Interest. Class 4 is Impaired by the Plan and each Holder of a Class 4 General Unsecured Claim is entitled to vote on the Plan.

3.2.5 Class 5: Intercompany Claims. This Class consists of any Claim against a Debtor held by another Debtor. Class 5 is Impaired by the Plan, and each holder of a Class 5 Claim is deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code.

3.2.6 Class 6: Subordinated Claims. This Class consists of any Claim that is subordinated, pursuant to section 510(b) of the Bankruptcy Code or otherwise, including any Claims arising from rescission of a purchase or sale of a Security of any Debtor or an Affiliate of any Debtor, which Security is not an Interest, for damages arising from the purchase or sale of such a Security, or for reimbursement or contribution allowed under section 502 of the Bankruptcy Code on account of such a Claim; *provided*, for the avoidance of doubt, that no DIP Claim shall be treated as a Subordinated Claim. Class 6 is Impaired by the Plan, and each holder of a Class 6 Claim is deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code.

3.2.7 Class 7: Interests. This Class consists of any equity security in the Debtors as defined in section 101(16) of the Bankruptcy Code, including all issued, unissued, authorized, or outstanding shares of capital stock of the Debtors together with any warrants, options or contractual rights to purchase or acquire such equity securities at any time and all rights arising with respect thereto. Class 7 is Impaired by the Plan, and each holder of a Class 7 Interest is deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code.

3.3 TREATMENT OF UNIMPAIRED CLAIMS AND CLASSES

3.3.1 Administrative Claims. Except to the extent that a holder of an Allowed Administrative Claim and the Debtors agree to less favorable treatment with respect to such Allowed Administrative Claim, each holder of an Allowed Administrative Claim shall be paid in full in Cash on the earlier of the date that is (a) on or as soon as reasonably practicable after the Effective Date if such Administrative Claim is Allowed as of the Effective Date or (b) on or as soon as reasonably practicable after the date such Administrative Claim is Allowed, if such Administrative Claim is not Allowed as of the Effective Date. Claims for payment of Administrative Claims must be or have been Filed on or before the Administrative Claims Bar Dates. Except as otherwise ordered by the Bankruptcy Court, holders of Administrative Claims that are required to, but do not, File and serve a request for payment of such Administrative Claims by such dates shall be forever barred, estopped, and enjoined from asserting such Administrative Claims against the Debtors or their property and such Administrative Claims shall be deemed released against the Debtors as of the Effective Date. For the avoidance of doubt, Governmental Units asserting Administrative Claims pursuant to section 503(b)(1)(D) of the Bankruptcy Code shall not be required to File a request for payment prior to the Administrative Claims Bar Dates.

3.3.2 <u>Professional Fee Claims</u>. Any Person asserting a Professional Fee Claim for services rendered before the Effective Date must File and serve on the parties required in the Interim Compensation Order or any other applicable order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim no later than thirty (30) days after the Effective Date; *provided, however* that any Professional who may receive compensation or reimbursement of expenses pursuant to the Ordinary Course Professional Order may continue to receive such compensation or reimbursement of expenses for services rendered before the Effective Date, without further Bankruptcy Court order, pursuant to the Ordinary Course Professional Order. Objections to any Professional Fee Claim must be Filed and served on the requesting party no later than twenty-one (21) days from the service of an application for final allowance of a Professional Fee Claim. On the Effective Date, the Professional Fee Reserve shall be transferred by the Debtors to the escrow reserve established by the Notice, Claims and Balloting Agent to be held for the distribution of Allowed Professional Fee Claims. Upon entry of a Final Order approving any such application for such Professional Fee Claim, the Notice, Claims, and Balloting Agent shall promptly distribute from the Professional Fee Reserve any unpaid portion of such Allowed Professional Fee Claim. Once payments on account of such Allowed Professional Claims have been made in full, any such excess Cash remaining in the Professional Fee Reserve shall be considered Assets of the Post-Effective Date Debtors' Estates for Distribution by the Plan Administrator in accordance with the terms of the Plan. For the avoidance of doubt, (i) to the extent that the Professional Fee Reserve is not sufficient to satisfy in full all Allowed Professional Claims, the remaining balance of such Allowed Professional Claims shall be paid in full from available Cash of the Post-Effective Date Debtors by the Plan Administrator, and (ii) any reasonable fees and expenses incurred by Professionals in connection with preparing fee applications shall be paid from the Professional Fee Reserve.

3.3.3 <u>Post-Effective Date Fees and Expenses</u>. Upon the Effective Date, any requirement that Professionals comply with sections 327 through 331 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and, subject to the Plan Administrator Agreement, the Plan Administrator may employ and pay any Professional for services rendered or expenses incurred after the Effective Date in the ordinary course of business without any further notice to, or action, Order, or approval of, the Bankruptcy Court.

3.3.4 <u>DIP Claims</u>. To the extent any DIP Claims are outstanding on the Effective Date, the DIP Claims shall be Allowed in the full amount due and owing under the DIP Financing Documents and the Final DIP Order. Except to the extent that a holder of a DIP Claim agrees in writing to a different treatment, each holder of a DIP Claim shall receive, in full satisfaction, settlement, release and discharge of, and in exchange for such DIP Claim, Cash in an amount equal to such Claim on the Effective Date. Upon the indefeasible payment in full in cash of all DIP Claims, all Liens and security interests granted pursuant to the DIP Credit Agreement shall be deemed cancelled and shall be of no further force and effect and each Allowed DIP Claim shall be deemed to be fully satisfied, settled, released, and compromised.

3.3.5 Priority Tax Claims. Except to the extent that a holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, in exchange for full and final satisfaction, settlement, and release of each Allowed Priority Tax Claim, each holder of an Allowed Priority Tax Claim shall receive, at the option of the Debtors, one of the following treatments: (i) Cash in an amount equal to the amount of such Allowed Priority Tax Claim, plus interest at the rate determined under applicable non-bankruptcy law and to the extent provided for by section 511 of the Bankruptcy Code; or (ii) such other treatment (which treatment shall be no more favorable than the treatment set forth in subsection (i) of this section) as may be agreed upon by such holder and the Debtors or otherwise determined upon an order of the Bankruptcy Court. Allowed Priority Tax Claims shall be paid on or as reasonably practicable after the later of (i) the Effective Date, (ii) the date on which such Priority Tax Claim against the Debtors becomes an Allowed Priority Tax Claim, or (iii) such other date as may be ordered by the Bankruptcy Court.

3.3.6 KEIP/KERP Awards. Except to the extent that a holder of a KEIP/KERP Award agrees to a less favorable treatment, each recipient of a KEIP/KERP Award shall receive Cash in an amount equal to the amount of such KEIP/KERP Award within ten (10) days of the Effective Date or as soon as reasonably practicable thereafter in accordance with the order approving the KEIP/KERP Motion.

3.3.7 Statutory Fees. On the Effective Date, the Debtors will pay, in full in Cash, any fees due and owing to the U.S. Trustee as of the Effective Date.

3.3.8 Class 1: Secured Tax Claims. Except to the extent that a holder of an Allowed Other Secured Claim agrees to less favorable treatment, each holder of an Allowed Secured Tax Claim shall receive, at the option of the Plan Administrator: (a) payment in full in Cash of such holder's Allowed Secured Tax Claim; or (b) equal semi-annual Cash payments commencing as of the Effective Date or as soon as reasonably practicable thereafter and continuing for five (5) years, in an aggregate amount equal to such Allowed Secured Tax Claim, together with interest at the applicable non-default rate under non-bankruptcy law, subject to the option of the Plan Administrator to prepay the entire amount of such Allowed Secured Tax Claim during such time period.

3.3.9 Class 2: Other Secured Claims. Except to the extent that a holder of an Allowed Other Secured Claim agrees to less favorable treatment, in exchange for full and final satisfaction, settlement and release of each Allowed Other Secured Claim, then (a) each holder of an Allowed Other Secured Claim will either (i) be paid in full in Cash on the Distribution Date; (ii) receive all Collateral in possession of the Debtors securing the respective holder's Allowed Other Secured Claim plus to the extent applicable and Allowed, any post-petition interest required pursuant to section 506(b) of the Bankruptcy Code; or (iii) receive any other treatment rendering such Claim Unimpaired for purposes of the Bankruptcy Code, or (b) such Allowed Other Secured Claim will be reinstated.

3.3.10 Class 3: Other Priority Claims. Each holder of an Allowed Other Priority Claim shall receive payment in full in Cash of such holder's Allowed Other Priority Claim from the Plan Administrator or such other treatment rendering such holder's Allowed Other Priority Claim Unimpaired.

3.4 TREATMENT OF IMPAIRED CLASSES

3.4.1 **Class 4: General Unsecured Claims**. Except to the extent that a holder of an Allowed General Unsecured Claim agrees to less favorable treatment, in exchange for full and final satisfaction, settlement, and release of each Allowed General Unsecured Claim, each holder of such Allowed General Unsecured Claim shall receive its Pro Rata Share of the Net Distributable Proceeds.

3.4.2 **Class 5: Intercompany Claims**. In full and final satisfaction of each Allowed Intercompany Claim, each Allowed Intercompany Claim, unless otherwise provided for under the Plan, will either be reinstated, distributed, contributed, set off, settled, canceled and released or otherwise addressed at the option of the Debtors; *provided*, that no distributions shall be made on account of any such Intercompany Claims

3.4.3 **Class 6: Subordinated Claims.** On the Effective Date, all Class 6 Subordinated Claims shall be cancelled without any distribution on account of such Claims.

3.4.4 **Class 7: Interests**. Holders of Interests in the Debtors will receive no distribution under the Plan, and all Interests will be cancelled, released, discharged, and extinguished.

3.5 IMPLEMENTATION OF THE PLAN

3.5.1 **Joint Chapter 11 Plan.** The Plan is a joint chapter 11 plan for each of the Debtors, with the Plan for each Debtor being non-severable and mutually dependent on the Plan for each other Debtor.

3.5.2 **General Settlement of Claims.** Pursuant to Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to the Plan, the provisions of the Plan shall constitute a good faith compromise of all Claims, Interests, and controversies relating to the contractual, legal, and subordination rights that a Holder of a Claim or Interest may have with respect to any Allowed Claim or Interest, or any distribution to be made on account of such Allowed Claim or Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims, Interests, and controversies, as well as a finding by the Bankruptcy Court that such compromise or settlement is in the best interests of the Debtors, their respective Estates, and holders of Claims and Interests and is fair, equitable, and reasonable. In accordance with the provisions of the Plan, pursuant to Bankruptcy Rule 9019, without any further notice to or action, order, or approval of the Bankruptcy Court, after the Effective Date, the Plan Administrator may compromise and settle Claims against the Debtors and their respective Estates and Causes of Action against other Entities

3.5.3 **Sources of Consideration for Plan Distribution.** Allowed Claims and any amounts necessary to wind down the Debtors' Estates shall be paid from the Debtors' Assets, including but not limited to any Retained Causes of Action and Sale Transactions.

3.5.4 Preservation of Causes of Action. Any and all Causes of Action that are not expressly released or waived under the Plan or previously sold in any Sale Transaction, are reserved and preserved and vest in the Post-Effective Date Debtors on the Effective Date. No Person may rely on the absence of a specific reference in the Plan or the Plan Supplement to any Cause of Action against it as any indication that the Post-Effective Date Debtors (through the Plan Administrator) will not pursue any and all available Causes of Action against such Person. The Debtors and the Plan Administrator expressly reserve all Causes of Action, 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 of the Plan.

3.5.5 Plan Administrator.

i. *Appointment of Plan Administrator*. On the Effective Date, the Plan Administrator, who shall be selected by the Debtors, upon consultation with the Creditors' Committee, shall be appointed and thereafter serve in accordance with the Plan. The Plan Administrator shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court. As part of the Plan Supplement, the Debtors will identify the Plan Administrator and the terms of the Plan Administrator's compensation.

ii. *Powers of Plan Administrator*. The Plan Administrator shall, in addition to any powers and authority specifically set forth in other provisions of the Plan or the Plan Administrator Agreement, be empowered to:

a. effect all actions and execute all agreements, instruments and other documents necessary to perform its duties under the Plan;

b. establish, as necessary, disbursement accounts for the deposit and distribution of all amounts distributed under the Plan;

c. make Distributions in accordance with the Plan;

d. except to the extent Claims have been previously Allowed, control and effectuate the Claims reconciliation process, including to object to, seek to subordinate, compromise or settle any and all Claims against the Debtor;

e. employ and compensate individuals or professionals to represent it with respect to its responsibilities;

f. assert any of the Debtors' claims, Causes of Action, rights of setoff, or other legal or equitable defenses;

g. exercise reasonable business judgment to direct and control the wind down, liquidation, sale and/or abandoning of the remaining assets of the Debtors under the Plan and in accordance with applicable law as necessary to maximize distributions to holders of Allowed Claims;

h. administer each Debtor's tax obligations, including (i) filing tax returns and paying tax obligations, (ii) requesting, if necessary, an expedited determination of any unpaid tax liability of each Debtor or its estate under section 505(b) of the Bankruptcy Code for all taxable periods of such Debtor ending after the Petition Date through the liquidation of such Debtor as determined under applicable tax laws, and (iii) representing the interest and account of each Debtor or its estate before any taxing authority in all matters including, without limitation, any action, suit, proceeding or audit;

i. prepare and file any and all informational returns, reports, statements, returns or disclosures relating to the Debtors that are required under the Plan, by any Governmental Unit or applicable law; and

j. exercise such other powers as may be vested in the Plan Administrator by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the Plan Administrator to be necessary and proper to implement the provisions hereof.

iii. *Wind-Down of the Debtors.*

a. **Creation of the Plan Administrator Wind-Down and Expense Reserve.** On or before the Effective Date, the Debtors shall establish the Plan Administrator Wind-Down and Expense Reserve, which account shall be administered by the Plan Administrator in his or her sole discretion. The amount used to fund the Plan Administrator Wind-Down and Expense Reserve shall be used to pay for the expenses of winding down the Estates and the non-debtor subsidiary (if necessary) in accordance with the laws of the country under which each is organized and governed. The Plan Administrator, subject to the terms and conditions of the Plan, shall wind-down the Estates and the non-debtor subsidiary as expeditiously as reasonably practicable. After all Estates and the non-debtor subsidiary are wound-down and all expenses of the Plan Administrator have been paid, any remaining Cash in the Plan Administrator Wind-Down and Expense Reserve shall be treated as Net Distributable Proceeds for Distributions pursuant to the Plan.

b. **Payment of Non-Debtor Subsidiary Obligations.** Notwithstanding any other provision contained herein including, but not limited to, the treatment of Intercompany Claims, the Plan Administrator is authorized to effectuate the wind-down of the non-debtor subsidiary in accordance with the laws of the country under which such subsidiary is organized and governed, and to make any payments required under such laws.

iv. *Post-Effective Date Expenses of Plan Administrator.* The Plan Administrator shall receive reasonable compensation for services rendered pursuant to the Plan without further Bankruptcy Court order. In addition, the amount of reasonable fees, costs, and expenses of the Plan Administrator on or after the Effective Date (including, without limitation, reasonable attorney and professional fees and expenses) may be paid without further Bankruptcy Court order. The Plan Administrator shall be paid from any reserves set aside for such fees, costs, and expenses of the Plan Administrator, including the Plan Administrator Wind-Down and Expense Reserve, as further set forth in the Plan Administrator Agreement. Any amounts remaining in the reserves shall be distributed in accordance with the provisions of the Plan.

v. *Plan Administrator Agreement.* A form of the Plan Administrator Agreement shall be filed as part of the Plan

3.5.6 **Cancellation of Existing Securities.** Except as otherwise provided in the Plan or any agreement, instrument, or other document incorporated in the Plan, on the Effective Date, 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, and purchase rights, options, warrants, or other instruments or documents evidencing or creating any indebtedness or obligation of the Debtors related thereto shall be cancelled and deemed null and void; *provided*, *however*, notwithstanding Confirmation or the occurrence of the Effective Date, any such indenture or agreement that governs the rights of the holder of a Claim against the Debtors shall continue in effect solely for purposes of enabling holders of Allowed Claims to receive distributions under the Plan as provided herein; *provided further*, *however*, that the preceding provision shall not result in any expense or liability to the Debtors, except to the extent set forth in or provided for under the Plan

3.5.7 **Cancellation of Liens**. Except as otherwise specifically provided herein, upon the payment of a Secured Claim in accordance with the Plan, any Lien securing such Secured Claim shall be deemed released, and the holder of such Secured Claim shall be authorized and directed to release any collateral or other property of the Debtors held by such holder and to take such actions as may be requested by the Plan Administrator, to evidence the release of such Lien, including the execution, delivery, and filing or recording of such releases as may be requested by the Plan Administrator.

3.5.8 **Vesting of Assets in the Post-Effective Date Debtors**. As of the Effective Date, pursuant to the provisions of sections 1141(b) and (c) of the Bankruptcy Code, all Assets shall vest in the Post-Effective Date Debtors free and clear of all Claims, Liens, encumbrances, charges, Interests, and other interests, except as otherwise expressly provided in the Plan or the Confirmation Order, and subject to the terms and conditions of the Plan and the Confirmation Order.

3.5.9 **Continuing Existence.** From and after the Effective Date, the Post-Effective Date Debtors shall continue in existence for the purposes of (a) winding up their affairs as expeditiously as reasonably possible, (b) liquidating, by conversion to Cash, or other methods, of any remaining Assets as expeditiously as reasonably possible, (c) enforcing and prosecuting claims, interests, rights, and privileges of the Post-Effective Date Debtors including, without limitation, prosecuting Retained Causes of Action, (d) resolving Disputed Claims, (e) administering the Plan, (f) filing appropriate tax returns and refund requests, and (g) performing all such other acts and conditions required by and consistent with consummation of the Plan

3.5.10 **Indemnification**. The Debtors and their Estates, to the extent still in existence, shall indemnify and hold harmless the Plan Administrator, and his or her employees, professionals, agents, and representatives, in each case in their capacity as such, from and against any and all liabilities, losses, damages, claims, costs, and expenses, including, but not limited to, attorneys' fees and expenses, arising out of or due to their acts or omissions related to the performance of his or her duties under the Plan; *provided*, however, that no such indemnification shall be made to such entities for such acts or omissions constituting actual fraud, gross negligence, or willful misconduct.

3.5.11 **Title to Accounts.** Title to all of the Debtors' bank and other accounts shall vest in the Post-Effective Date Debtors, effective as of the Effective Date, without any further order of the Bankruptcy Court or further action on the part of any Person or Entity. On and after the Effective Date, all such accounts shall be deemed to be accounts in the name of the Post-Effective Date Debtors without any further action by any Person or Entity or any further order of the Bankruptcy Court.

3.5.12 **Effectuating Documents; Further Transactions**. On the Effective Date, all matters and actions provided for under the Plan that would otherwise require approval of the directors and officers, or members or managers of the Debtors shall be deemed to have been authorized and effective in all respects as provided herein and shall be taken without any requirement for further action by the directors and officers, members and managers of the Debtors. The Debtors or the Plan Administrator, as applicable, are authorized to execute, deliver, file or record such contracts, instruments, releases, and other agreements or documents and to take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

3.5.13 **Direction to Parties.** From and after the Effective Date, the Plan Administrator may apply to the Bankruptcy Court for an order directing any necessary party to execute or deliver or to join in the execution of delivery of any instruments required to effect a transfer of property contemplated by or necessary to effectuate the Plan, and to perform any other act that is necessary for the consummation of the Plan, pursuant to section 1142(b) of the Bankruptcy Code.

3.5.14 **Exemption from Certain Taxes and Fees**. Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any stamp tax, recording tax, personal property tax, real estate transfer tax, sales tax, use tax, privilege tax, or other similar tax or governmental assessment in the United States, and the Confirmation Order shall direct and be deemed to direct the appropriate federal, state or local government officials or agents to forgo the collection of any such tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such tax or governmental assessment. Such exemption specifically applies, without limitation, to (1) the creation of any mortgage, deed of trust, lien or other security interest; (2) the assuming and assigning any contract, lease or sublease; (3) any transaction authorized by the Plan; (4) any sale of an Asset by the Plan Administrator in furtherance of the Plan, including but not limited to any sale of personal or real property and (5) the making or delivery of any deed or other instrument of transfer under, in furtherance of or in connection with the Plan.

3.5.15 Debtors' Directors, Officers, and Managers. On the Effective Date, all officers, directors, and managers of the Debtors shall be deemed to have resigned and shall be discharged from any further duties and responsibilities in such capacity. On and after the Effective Date, the Plan Administrator shall serve as the sole officer, sole director, or sole manager of the Debtors, but he or she shall retain and enforce Retained Causes of Action as the representative of the Estates in his or her capacity as the Plan Administrator under the Plan pursuant to section 1123(b) of the Bankruptcy Code and not as an officer, director, or manager of the Debtors. Any and all operating agreements, certificates of organization, and related corporate documents are deemed amended by the Plan to permit and authorize such sole appointment.

3.5.16 Closing of the Chapter 11 Cases. After the Chapter 11 Case of a Debtor has been fully administered, the Plan Administrator shall promptly seek authority from the Bankruptcy Court to close such Debtor's Chapter 11 Case in accordance with the Bankruptcy Code and the Bankruptcy Rules.

3.5.17 Deemed Substantive Consolidation. The Plan shall serve as a motion by the Debtors seeking entry of a Bankruptcy Court order deeming the substantive consolidation of the Debtors' Estates into a single Estate for certain limited purposes related to the Plan, including voting, confirmation, and distribution. As a result of the deemed substantive consolidation of the Estates, each Class of Claims and Interests shall be treated as against a single consolidated Estate without regard to the separate legal existence of the Debtors. The Plan shall not result in the merger or otherwise affect the separate legal existence of each Debtor, other than with respect to voting and distribution rights under the Plan, and otherwise in satisfying the applicable requirements of section 1129 of the Bankruptcy Code.

3.5.18 Dissolution of Creditors' Committee. On the Effective Date, (a) the Creditors' Committee shall dissolve automatically and its members shall be released and discharged from all rights, duties, responsibilities, obligations and liabilities arising from or related to the Chapter 11 Cases or the Plan and under the Bankruptcy Code and applicable law; and (b) the retention or employment of the Creditors' Committee's respective professionals and agents shall be terminated, other than with respect to the filing and prosecution of applicable fee applications.

3.5.19 No Discharge. Notwithstanding any other provision of the Plan or Confirmation Order, pursuant to section 1141(d)(3) of the Bankruptcy Code, the Debtors will not receive a discharge.

3.5.20 Corporate Authority. On the Effective Date, the certificates of incorporation, bylaws, operating agreement, and articles of organization, as applicable, of the Debtors shall be deemed amended to the extent necessary to carry out the provisions of the Plan. The entry of the Confirmation Order shall constitute authorization for the Debtors or the Plan Administrator, as applicable, to take or cause to be taken all actions necessary or appropriate to implement all provisions of, and to consummate, the Plan prior to, on, and after the Effective Date and all such actions taken or caused to be taken shall be deemed to have been authorized and approved by the Bankruptcy Court without further approval, act, or action under any applicable law, order, rule, or regulation. Effective as of the Effective Date, all directors, managers, members, and officers of the Debtors shall be discharged, and all such appointments rescinded for all purposes, without any necessity of taking any further action in connection therewith. The Plan Administrator shall act for the Post-Effective Date Debtors in the same fiduciary capacity as applicable to a board of directors and officers, subject to the provisions hereof (and all certificates of incorporation, bylaws, shareholder agreements, and related documents are deemed amended by the Plan to permit and authorize same). On the Effective Date, the authority, power, and incumbency of the persons acting as managers and officers of the Debtors shall be deemed to have resigned, solely in their capacities as such, and the Plan Administrator shall succeed to the powers of the Debtors' directors and officers. From and after the Effective Date, the Plan Administrator shall be the sole representative of, and shall act for, the Post-Effective Date Debtors. For the avoidance of doubt, the foregoing shall not limit the authority of the Post-Effective Date Debtors or Plan Administrator, as applicable, to continue the employment of any former director, officer, employee, or other agent or representative.

3.6 FUNDING AND DISBURSEMENTS

3.6.1 **Cash Payments**. Cash payments made pursuant to the Plan shall be in U.S. funds, by the means agreed to by payor and payee, including by check or wire transfer or, in the absence of an agreement, such commercially reasonable manner as the Plan Administrator shall determine in his or her sole discretion.

3.6.2 **Automatic Disallowance and Expungement of Certain Claims.** On the Effective Date, all Claims filed after the applicable Bar Date that were required to be filed on or in advance of such Bar Date under its terms, shall be expunged and disallowed without any further notice to or action, order, or approval of the Bankruptcy Court.

3.6.3 **Objections to Claims.** Except as expressly provided herein, the Debtors (before the Effective Date) or the Plan Administrator (on or after the Effective Date), as applicable, shall have the exclusive authority and standing to file, settle, compromise, withdraw, or litigate to judgment any objections to Claims or motions to estimate Claims. From and after the Effective Date, the Plan Administrator shall further have the authority to resolve and settle any and all Claims without approval of the Bankruptcy Court.

The Bankruptcy Court shall retain jurisdiction to estimate any Claim, including during the litigation of any objection to such Claim or during the appeal relating to such objection. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount shall constitute a maximum limitation on such Claim for all purposes under the Plan (including for purposes of Distributions), and the Plan Administrator may elect to pursue any supplemental proceedings to object to any ultimate Distribution on such Claim.

Except as otherwise set forth in Article II.A.2 of the Plan with respect to Professional Fee Claims, any objections to Claims shall be filed and served on or before the Claims Objection Deadline, *provided, however*, the Claims Objection Deadline may be extended by the Bankruptcy Court from time to time upon motion and notice by the Plan Administrator.

Except as provided herein or otherwise agreed, any and all holders of Claims Filed after an applicable Bar Date shall not be treated as creditors for purposes of Distribution pursuant to Bankruptcy Rule 3003(c)(2) and the Bar Date Order unless on or before the Confirmation Date such late Claim has been deemed timely Filed by a Final Order. After the Confirmation Date, a proof of claim Filed or amended without the authorization of the Bankruptcy Court shall be automatically Disallowed

3.6.4 Distribution for Allowed Claims. Except as otherwise provided in the Plan or the Confirmation Order, or as otherwise ordered by the Bankruptcy Court, distributions to holders of Allowed Claims shall be made on the Distribution Date. No holder of a Disputed Claim shall be entitled to a distribution from the Plan Administrator, the Post-Effective Date Debtors, the Debtors, or the Estates with respect to such Disputed Claim unless and until such Disputed Claim becomes an Allowed Claim, and no holder of a Disputed Claim shall have any right to interest on such Disputed Claim except as provided in the Plan.

3.6.5 Claims Reserve. On any date that Distributions are to be made under the terms of the Plan, the Plan Administrator shall reserve, in his or her discretion, (i) Cash or property equal to 100% of the Cash or property that would be distributed on such date on account of Disputed Claims as if each such Disputed Claim were an Allowed Claim but for the pendency of a dispute with respect thereto, or (ii) such other amount that the Plan Administrator estimates on account of the Disputed Claim. Such Distribution shall be held in trust for the benefit of the Holders of all such Disputed Claims pending determination of their entitlement thereto

3.6.6 No Recourse. Notwithstanding that the Allowed amount of any particular Disputed Claim is reconsidered under the applicable provisions of the Bankruptcy Code and Bankruptcy Rules or is Allowed in an amount for which after application of the payment priorities established by the Plan there is insufficient value to provide a recovery equal to that received by other holders of Allowed Claims in the respective Class, no Claim holder shall have recourse against the Debtors, Post-Effective Date Debtors, the Estates, the Plan Administrator, or any of their respective professionals, consultants, officers, directors, or members or their successors or assigns, or any of their respective property. Except as specifically stated otherwise in the Plan, nothing in the Plan shall modify any right of a holder of a Claim under section 502(j) of the Bankruptcy Code.

3.6.7 Interest and Charges. No interest shall accrue or be paid on Allowed Claims.

3.6.8 Compliance with Tax Requirements. In connection with the Plan, to the extent applicable, the Plan Administrator shall comply with all tax withholding and reporting requirements imposed on it by any Governmental Unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Plan Administrator shall be authorized to take all actions necessary or appropriate 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, including, without limitation, requiring that the holder of an Allowed Claim complete the appropriate IRS Form W-8 or IRS Form W-9, as applicable to each holder or establishing any other mechanisms they believe are reasonable and appropriate. The Plan Administrator reserves the right to allocate all distributions made under the Plan in compliance with applicable wage garnishments, alimony, child support, and other spousal awards, liens, and encumbrances.

The Plan Administrator shall not be required to make distributions on any Allowed Claim if the holder thereof has not provided all documentation, that in the Plan Administrator's reasonable business judgment, is necessary to determine that all tax withholding and reporting requirements for such Allowed Claim. To the extent such documentation is not provided within thirty (30) days of the respective Distribution Date, the distribution on such Allowed Claim shall be deemed Unclaimed Distribution.

3.6.9 Fractional Dollars: De Minimis Distributions. Notwithstanding any other provision of the Plan, the Plan Administrator shall not be required to make distributions or payments of fractions of dollars, and whenever any payment of a fraction of a dollar under the Plan would otherwise be called for, the actual payment made shall reflect a rounding down of such fraction to the nearest whole dollar. In addition, the Plan Administrator shall not be required to make any distribution in an amount less than $50.00. To the extent that such a distribution shall be called for as part of any interim distribution, the Plan Administrator shall establish a reserve for all distributions in the amount of less than $50.00 and shall, when and if the holder of an Allowed Claim is entitled to a distribution of $50.00 or more, make such distribution at such time. The Plan Administrator shall not be required to make any Final Distribution of less than $50.00 and all monies otherwise payable in such amount shall be paid to the other holders of Allowed Claims, in accordance with the terms of the Plan, the Confirmation Order and the Plan Administrator Agreement.

3.6.10 Delivery of Distributions to Holders of Allowed Claims. Distributions to holders of Allowed Claims shall be made at the address set forth in the Schedules unless such addresses are superseded by proofs of claim or transfers of claims filed pursuant to Bankruptcy Rule 3001 or at the last known address of such holders if the Plan Administrator has been notified in writing of a change of address.

3.6.11 Unclaimed Distributions. Any Cash or other property to be distributed under the Plan shall revert to the Plan Administrator or the Debtors, as applicable, if it is not claimed by the Entity on or before the Unclaimed Distribution Deadline. If such Cash or other property is not claimed on or before the Unclaimed Distribution Deadline, the Distribution made to such Entity shall be deemed to be reduced to zero and such Distributions shall be immediately deemed unclaimed property under section 347(b) of the Bankruptcy Code. After such date, all unclaimed property or interests in property shall revert to the estate automatically and without need for a further order by the Bankruptcy Court (notwithstanding any applicable federal provincial, or state escheat, abandoned, or unclaimed property laws to the contrary), and the Claim of any Holder to such property or Interest in property shall be forever barred. For the avoidance of doubt, in the event of multiple Distributions, an Entity may be entitled to subsequent Distributions if it claims the distributed Cash or other property by the subsequent Unclaimed Distribution Deadline, even if fails to claim certain Cash or other property distributed to it on or before the prior Unclaimed Distribution Deadline

3.6.12 <u>No Penalty Claims</u>. Unless otherwise specifically provided for in the Plan or the Confirmation Order, no holder of any Claim will be entitled to allowance of, or to receive any payment on account of, any penalty arising with respect to or in connection with such Claim and any such penalty shall be deemed disallowed and expunged.

3.6.13 <u>Setoffs and Recoupment</u>. The Debtors or the Plan Administrator, as the case may be, retain the right, subject to any applicable notice provisions under applicable law, to reduce any Claim by way of setoff in accordance with their books and records.

3.6.14 <u>Allocation of Distribution Between Principal and Interest</u>. For Distributions in respect of Allowed General Unsecured Claims, to the extent that any such Allowed Claim entitled to a Distribution under the Plan is comprised of indebtedness and accrued but unpaid interest thereon, such Distribution shall be allocated to the principal amount (as determined for federal income tax purposes) of the Claim first, and then to accrued but unpaid interest.

3.6.15 <u>No Creditor to Receive More than Payment in Full.</u> Notwithstanding any other provision hereof, no creditor shall receive more than full payment of its applicable Allowed Claim including any interest, costs or fees that may be payable with respect thereto under or pursuant to the Plan.

3.6.16 <u>Remaining Cash.</u> If in connection with closing the Chapter 11 Cases, the Cash remaining is less than $20,000, the Plan Administrator in its sole discretion may donate such amount to a 501(c)(3) charity of its choice.

3.6.17 <u>Claims Paid or Payable by Third Parties</u>. No Distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to 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, then immediately upon such insurers' agreement, the applicable portion of such Claim may be expunged without a Claims objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

3.7 TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

3.7.1 **Rejection of Executory Contracts and Unexpired Leases**. On the Effective Date, all Executory Contracts and Unexpired Leases shall be deemed rejected as of the Effective Date, unless such Executory Contract or Unexpired Lease: (i) was assumed or rejected previously by the Debtors; (ii) previously expired or terminated pursuant to its own terms; (iii) is the subject of a motion to assume Filed on or before the Effective Date; (iv) is identified in the Plan Supplement to be assumed under the Plan; (v) has been assumed and assigned to a Purchaser of the Debtors' assets; or (vi) is subject to designation rights pursuant to the Stalking Horse APA. Entry of the Confirmation Order shall constitute a Bankruptcy Court order approving the rejection of such Executory Contracts or Unexpired Leases pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Unless otherwise indicated, rejection of Executory Contracts and Unexpired Leases pursuant to the Plan shall be effective as of the Effective Date.

3.7.2 **Claims Based on Rejection of Executory Contracts or Unexpired Leases**. Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases under the Plan, if any, must be Filed with the Bankruptcy Court within the later of (a) twenty-one (21) days after the service of Notice of the Effective Date, or (b) thirty (30) days after service of notice of entry of an order of the Bankruptcy Court (other than the Confirmation Order) approving the rejection of a particular Executory Contract or Unexpired Lease on the counterparty thereto. The Notice of the Effective Date shall indicate that all Executory Contracts and Unexpired Leases that do not fall into one of the four clauses set forth in Article VI.A of the Plan are deemed rejected as of the Effective Date. The Notice of Effective Date also shall set forth the deadline for filing Proofs of Claim with respect to the same. Absent order of the Bankruptcy Court to the contrary, any Claims arising from the rejection of an Executory Contract or Unexpired Lease not filed by the applicable deadline will not be considered Allowed and such person or entity shall not be treated as a creditor for purposes of distributions under the Plan. Claims arising from the rejection of the Debtors' Executory Contracts or Unexpired Leases shall be classified as General Unsecured Claims and shall be treated in accordance with Class 4 of the Plan, which information shall be included in the Notice of the Effective Date.

3.8 RELEASE, INJUNCTION, AND RELATED PROVISIONS

3.8.1 **Settlement, Compromise, and Release of Claims and Interests**. To the greatest extent permissible under the Bankruptcy Code or applicable non-bankruptcy law, and in consideration of the classification, distributions, releases, and other benefits provided under the Plan, upon the Effective Date, the provisions of the Plan shall constitute a good faith release, compromise, and settlement of all Claims and Interests and controversies resolved pursuant to the Plan. To the greatest extent permissible under the Bankruptcy Code or applicable non-bankruptcy law, the Plan shall be deemed a motion to approve the good faith compromise and settlement of all such Claims, Interests, and controversies, and entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of such compromise and settlement, 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, their Estates, and Holders of Claims and Interests. Subject to Article V of the Plan, all distributions, if any, made to Holders of Allowed Claims and Allowed Interests (as applicable) in any Class are intended to be and shall be final.

3.8.2 Liabilities to, and Rights of, Governmental Units. Notwithstanding anything to the contrary in the Plan or the Confirmation Order, nothing in the Confirmation Order or the Plan discharges, releases, precludes, or enjoins: (1) any liability to any Governmental Unit that is not a Claim; (2) any Claim of a Governmental Unit arising after the Effective Date; (3) any police power or regulatory liability to a Governmental Unit that any Entity would be subject to as the owner or operator of any property after the Effective Date; (4) the rights of any Governmental Unit with respect to the transfer or assignment of any license, permit, registration, authorization, or approval, in each case, to the extent provided under applicable law; and/or (5) any liability to a Governmental Unit on the part of any Entity.

3.8.3 Exculpation. Effective as of the Effective Date, no Exculpated Party shall have or incur, and each Exculpated Party is hereby exculpated from, any Cause of Action or any claim related to any act or omission in connection with, relating to, or arising out of, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, or filing of the DIP Facility, the Disclosure Statement, the Plan, the Plan Supplement and any Sale Transactions, the pursuit of Confirmation, the pursuit of consummation of a Sale Transaction, the administration and implementation of the Plan, the distribution of property under the Plan or any other related agreement, 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. The Exculpated Parties have, and upon confirmation of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable laws with regard to the solicitation of votes on, and distribution of consideration pursuant to, the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan. Notwithstanding anything to the contrary in the foregoing, the exculpation set forth above does not exculpate any Claim relating to any post-Effective Date obligations of any party or Entity under the Plan, any Sale Transaction, or any document, instrument, or agreement (including the other documents, instruments and agreements set forth in the Plan Supplement) executed to implement the Plan.

3.8.4 Releases

i. *Releases by the Debtors*. 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 of the Released Parties will be deemed conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged, by and on behalf of the Debtors, their Estates, and, if applicable, the Post-Effective Date Debtors, in each case on behalf of itself and its respective

successors, assigns, and representatives and any and all other Persons that may purport to assert any Cause of Action directly or derivatively, by, through, for, or because of the foregoing Persons, from any and all claims and Causes of Action whatsoever (including any Avoidance Actions and any derivative claims asserted or assertable on behalf of the Debtors, their Estates, or the Post-Effective Date Debtors), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, asserted or unasserted, accrued or unaccrued, existing or hereafter arising, whether in law or equity, whether sounding in tort or contract, whether arising under federal or state statutory or common law, or any other applicable international, foreign, or domestic law, rule, statute, regulation, treaty, right, duty, requirement or otherwise, that the Debtors, their Estates, the Post-Effective Date Debtors, if applicable, or their Affiliates, heirs, executors, administrators, successors, assigns, managers, accountants, attorneys, representatives, consultants, agents, and any other Persons claiming under or through them would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim, Interest, or Intercompany Claim or other Person, based on or relating to, or in any manner arising from, in whole or in part, the Debtors or the Estates, the Chapter 11 Cases, the purchase, sale, or rescission of the purchase or sale of any Security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim, Interest, or Intercompany Claim that is treated under the Plan, the business or contractual arrangements or interactions between or among the Debtors and any Released Party, the distribution of any Cash or other property of the Debtors to any Released Party, the assertion or enforcement of rights or remedies against the Debtors, the restructuring of any Claim, Interest, or Intercompany Claim before or during the Chapter 11 Cases, the Debtors' in- or out-of-court restructuring efforts, the decision to File the Chapter 11 Cases, any intercompany transactions, the negotiation and consummation of the any sale of the Debtors' assets during the Chapter 11 Cases, the negotiation, formulation, or preparation of the Plan, Disclosure Statement, Plan Supplement, or related agreements, instruments or other documents (including, for the avoidance of doubt, providing 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), the solicitation of votes with respect to the

Plan, the DIP Facility, the DIP Loan Documents, upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date; *provided, however*, that the foregoing releases shall have no effect on the liability of any person or Entity that results from any act or omission based on or arising out of gross negligence, fraud or willful misconduct.

Notwithstanding anything to the contrary in the foregoing, the Debtors do not, pursuant to the releases set forth above, release (i) any Retained Causes of Action and (ii) any post-Effective Date obligations of any party of Entity under the Plan, the Confirmation Order, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Debtor Release, which includes by reference each of the related provisions and definitions contained in the Plan and, further, shall constitute the Bankruptcy Court's finding that the Debtor Release is: (i) in exchange for the good and valuable consideration provided by the Released Parties, including the Released Parties' contributions to implementing the Plan; (ii) a good faith settlement and compromise of the Claims released by the Debtor Release; (iii) in the best interests of the Debtors and all Holders of Claim, Interests, and Intercompany Interests; (iv) fair, equitable, and reasonable; (v) given and made after due notice and opportunity for hearing; and (vi) a bar to any of the Debtors, the Debtors' Estates, or, if applicable, the Post-Effective Date Debtors, asserting any claim or Cause of Action released pursuant to the Debtor Release.

ii. ***Consensual Third-Party Releases*. Except as otherwise expressly set forth in the Plan or the Confirmation Order, on and after the Effective Date, each of the Released Parties, will be deemed conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged, by the Releasing Parties, in each case on behalf of itself and its respective successors, assigns, and representatives and any and all other Persons that may purport to assert any Cause of Action directly or derivatively, by, through, for, or because of the foregoing Persons, in each case solely to the extent of the Releasing Parties' authority to bind any of the foregoing, including pursuant to agreement or applicable non-bankruptcy law, from any and all claims and Causes of Action whatsoever (including any derivative claims, asserted or assertable on behalf of the Debtors or the Estates),**

whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, asserted or unasserted, accrued or unaccrued, existing or hereafter arising, whether in law or equity, whether sounding in tort or contract, whether arising under federal or state statutory or common law, or any other applicable international, foreign, or domestic law, rule, statute, regulation, treaty, right, duty, requirement, or otherwise, that such Holders or their estates, Affiliates, heirs, executors, administrators, successors, assigns, managers, accountants, attorneys, representatives, consultants, agents, and any other Persons claiming under or through them would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim, Interest, or Intercompany Claim or other Person, based on or relating to, or in any manner arising from, in whole or in part, the Debtors or the Estates, the Chapter 11 Cases, the purchase, sale, or rescission of the purchase or sale of any Security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim, Interest, or Intercompany Claim that is treated under the Plan, the business or contractual arrangements or interactions between or among the Debtors and any Released Party, the distribution of any Cash or other property of the Debtors to any Released Party, the assertion or enforcement of rights or remedies against the Debtors, the restructuring of any Claim, Interest, or Intercompany Claim before or during the Chapter 11 Cases, the Debtors' in- or out-of-court restructuring efforts, the decision to File the Chapter 11 Cases, any intercompany transactions, the negotiation and consummation of the any sale of the Debtors' assets during the Chapter 11 Cases, the negotiation, formulation, or preparation of the Plan, Disclosure Statement, Plan Supplement, or related agreements, instruments or other documents (including, for the avoidance of doubt, providing 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), the solicitation of votes with respect to the Plan, the DIP Facility, the DIP Loan Documents, upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date; *provided*, *however*, that the foregoing releases shall have no effect on the liability of any person or Entity that results from any act or omission based on or arising out of gross negligence, fraud or willful misconduct.

Notwithstanding anything to the contrary in the foregoing, the Debtors do not, pursuant to the releases set forth above, release (i) any Retained Causes of Action, (ii) any post-Effective Date obligations of any party of Entity under the Plan, the Confirmation Order, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan, and (iii) the rights of Holders of Allowed Claims to receive distributions under the Plan.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the releases provided in Article VII.D.2. of the Plan, which includes by reference each of the related provisions and definitions contained herein, and, further, shall constitute the Bankruptcy Court's finding that the releases provided in Article VII.D.2. of the Plan. are: (i) consensual; (ii) essential to the Confirmation of the Plan; (iii) given in exchange for good and valuable consideration provided by the Released Parties; (iv) a good faith settlement and compromise of the Claims released by the releases contained in Article VII.D.2. of the Plan; (v) in the best interests of the Debtors and their Estates; (vi) fair, equitable, and reasonable; (vii) given and made after due notice and opportunity for hearing; and (viii) a bar to any of the Releasing Parties asserting any claim or Cause of Action released pursuant to Article VII.D.2. of the Plan.

3.8.5 Injunction.

i. ***Temporary Injunction for Debtors*****. Except as otherwise provided in the Plan or the Confirmation Order, as of the Effective Date, all Entities that have held, hold or may hold any Interest in the Debtors or a Claim, Cause of Action, or other debt or liability against the Debtors are permanently enjoined from taking any of the following actions against the Debtors, the Estates, the Plan Administrator, the Assets, or the Released Parties or their respective financial advisors, attorneys, accounts, investment bankers, consultants, representatives, and other Professionals solely in their respective capacities as such or any property of the same, on account of such Released Claims and Interests: (i) commencing or continuing, in any manner or in any place, any action or other proceeding; (ii) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order; (iii) creating, perfecting, or enforcing any lien or encumbrance; (iv) asserting any right of setoff (other than setoffs exercised prior to the Petition Date), or subrogation of any kind against any debt, liability or obligation on account of or in connection with or with respect to any released Claims or**

Interests; and (v) commencing or continuing in any manner or in any place, any action that does not comply with or is inconsistent with this provision through and until the date upon which all remaining property of the Debtors' Estates has been liquidated and distributed in accordance with the Plan and the Plan has been fully administered; *provided, however*, that the foregoing injunction shall have no effect on the liability of any person or Entity that results from any act or omission based on or arising out of gross negligence, fraud or willful misconduct.

ii. ***<u>Injunction as to Non-Debtor Released Parties</u>*. Except as otherwise provided in the Plan or the Confirmation Order, as of the Effective Date, all Entities that have held, hold or may hold any Interest in the Debtors or a Claim, Cause of Action, or other debt or liability against the Debtors or against any Released Party that have been released and/or exculpated under the the Plan (the "<u>Released Claims and Interests</u>") are permanently enjoined from taking any of the following actions against the, the Plan Administrator, the Assets of the Post-Effective Date Debtors, or the Released Parties (other than the Debtors), or their respective financial advisors, attorneys, accounts, investment bankers, consultants, representatives, and other Professionals solely in their respective capacities as such or any property of the same, on account of such Released Claims and Interests: (i) commencing or continuing, in any manner or in any place, any action or other proceeding; (ii) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order; (iii) creating, perfecting, or enforcing any lien or encumbrance; (iv) asserting any right of setoff (other than setoffs exercised prior to the Petition Date), or subrogation of any kind against any debt, liability or obligation on account of or in connection with or with respect to any Released Claims or Interests; and (v) commencing or continuing in any manner or in any place, any action that does not comply with or is inconsistent with this provision; *provided, however*, that the foregoing injunction shall have no effect on the liability of any person or Entity that results from any act or omission based on or arising out of gross negligence, fraud or willful misconduct.**

3.8.6 <u>Term of Injunctions or Stays</u>. Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to section 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court, and existent on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order), shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.

3.8.7 **<u>Document Retention</u>.** On and after the Effective Date, the Plan Administrator may maintain or dispose of documents in accordance with its discretion; *provided* however, and notwithstanding anything to the contrary herein or in the Plan Administration Agreement, the Plan Administrator shall File a notice with the Bankruptcy Court to dispose, destroy or abandon any documents of the Debtors or their Estates. Parties in interest shall have fourteen (14) days to respond to such notice. If no responses are Filed the Plan Administrator shall be deemed authorized to dispose, destroy or abandon any documents of the Debtors without further notice or Order of the Bankruptcy Court.

3.9 CONDITIONS PRECEDENT TO CONSUMMATION OF THE PLAN

3.9.1 **<u>Conditions Precedent to the Effective Date</u>**. It shall be a condition to the Effective Date of the Plan that the following conditions shall have been satisfied or waived:

a. the Bankruptcy Court shall have entered the Confirmation Order, which order shall have become a Final Order;

b. all documents and agreements necessary to implement the Plan, shall have (a) all conditions precedent to the effectiveness of such documents and agreements satisfied or waived pursuant to the terms of such documents or agreements, (b) been tendered for delivery, and (c) been effected or executed;

c. the Plan Administrator Wind-Down and Expense Reserve and the Professional Fee Claim Reserve shall have been funded consistent with the terms of the Plan;

d. the Plan Administrator shall be duly appointed, qualified and acting in that capacity; and

e. all actions, documents, certificates, and agreements necessary to implement the Plan shall have been effected or executed and delivered to the required parties and, to the extent required, Filed with the applicable Governmental Units in accordance with applicable laws.

3.9.2 **<u>Establishing the Effective Date.</u>** Each of the conditions to the Effective Date may be waived, in whole or in part, by the Debtors, in consultation with the Committee, without notice or an Order of the Bankruptcy Court. The calendar date to serve as the Effective Date shall be a Business Day of, on or promptly following the satisfaction or waiver of all conditions to the Effective Date, which date will be selected by the Debtors, after reasonable consultation with the Committee. On or within two (2) Business Days of the Effective Date, the Debtors shall file and serve a notice of occurrence of the Effective Date. Such notice shall contain, among other things, the Administrative Claims Bar Date, the deadline by which Professionals must file and serve any Professional Claims and the deadline to file a proof of claim relating to damages from the rejection of any Executory Contract (including any unexpired lease) pursuant to the terms of the Plan.

3.9.3 **Substantial Consummation.** "Substantial Consummation" of the Plan, as defined in 11 U.S.C. § 1101(2), shall be deemed to occur on the Effective Date.

3.9.4 **Effect of Failure of Conditions**. Unless expressly set forth in the Plan, if the Consummation of the Plan does not occur on or before the date that is thirty (30) days following the Confirmation Date, the Plan will be null and void in all respects and nothing contained in the Plan or the Disclosure Statement will: (1) constitute a waiver or release of any Claims by the Debtor, any holders or any other Entity; (2) prejudice in any manner the rights of the Debtor, any holders or any other Entity or (3) constitute an admission, acknowledgment, offer or undertaking by the Debtor, any holder of any Claim or any other Entity in any respect.

3.10 MODIFICATION, REVOCATION OR WITHDRAWAL OF THE PLAN

3.10.1 **Modification and Amendments**. Except as otherwise specifically provided in the Plan, the Debtors reserve the right to modify the Plan, whether such modification is material or immaterial, and seek Confirmation consistent with the Bankruptcy Code. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 (as well as those restrictions on modifications set forth in the Plan), the Debtors expressly reserve their rights to revoke or withdraw, to alter, amend, or modify the Plan, one or more times, after Confirmation, and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement or the Confirmation Order, in such matters as may be necessary to carry out the purposes and intent of the Plan.

3.10.2 **Effect of Confirmation on Modifications**. Entry of a 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.

3.10.3 **Revocation or Withdrawal of Plan.** The Debtors reserve the right to revoke or withdraw the Plan before the Confirmation Date. If the Debtors revoke or withdraw the Plan, or if Confirmation or Consummation does not occur, then: (l) the Plan shall be null and void in all respects; (2) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain of the Claims or Interests or Class of Claims or Interests), assumption or rejection of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void and (3) nothing contained in the Plan shall: (a) constitute a waiver or release of any Claim or Interest; (b) prejudice in any manner the rights of the Debtors, any holder of a Claim or Interest, or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtors, any holder or any other Entity.

3.11 RETENTION OF JURISDICTION

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, or related to, the Chapter 11 Cases and the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including, without limitation, jurisdiction to:

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. decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals (including accrued Professional Fee Claims) authorized pursuant to the Bankruptcy Code or the Plan;

3. resolve any matters related to: (a) the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease and to hear, determine, and, if necessary, liquidate, any Claims arising therefrom, including the amount of cure pursuant to section 365 of the Bankruptcy Code; (b) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed; (c) the Post-Effective Date Debtors' amending, modifying, or supplementing, after the Effective Date, pursuant to Article IX of the Plan, any assumed Executory Contracts and Unexpired Leases list or the rejected Executory Contracts and Unexpired Leases list; and (d) any dispute regarding whether a contract or lease is or was executory or expired;

4. adjudicate, decide, or resolve any and all matters related to sections 1141 and 1146 of the Bankruptcy Code;

5. enter and enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;

6. hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan or the Confirmation Order, including disputes arising under agreements, documents, or instruments executed in connection with the Plan;

7. hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

8. enter an order concluding or closing the Chapter 11 Cases;

9. hear and determine all disputes involving the existence, nature, scope, or enforcement of any exculpations, discharges, injunctions and releases granted in the Plan, including under Article VII of the Plan, regardless of whether such termination occurred prior to or after the Effective Date; and

10. enforce all orders previously entered by the Bankruptcy Court.

Notwithstanding the foregoing, nothing in the Plan shall grant the Bankruptcy Court any jurisdiction which it lacked prior to the Effective Date. The Bankruptcy Court shall retain non-exclusive jurisdiction to hear any other matter not inconsistent with the Bankruptcy Code.

3.12 MISCELLANEOUS PROVISIONS

3.12.1 Immediate Binding Effect. Subject to Article VIII.A of the Plan and notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan shall be immediately effective and enforceable and deemed binding upon the Debtors, the Plan Administrator, and any and all present and former holders of Claims or Interests (irrespective of whether their Claims or Interests are deemed to have accepted the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, and injunctions described in the Plan, each Entity acquiring property under the Plan, any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors each of respective successors and assigns of the foregoing persons and Entities.

3.12.2 Retention of Rights and Causes of Action. Except as provided in the Plan, all present or future rights, claims, or Retained Causes of Action, rights of setoff or recoupment, or other legal or equitable defenses that the Debtors held on behalf of the Estates or of the Debtors in accordance with any provision of the Bankruptcy Code or any applicable nonbankruptcy law against any Person or Entity and have not been released or sold on or prior to the Effective Date are preserved for the Post-Effective Date Debtors and the Plan Administrator. On the Effective Date, pursuant to section 1123(b)(3) of the Bankruptcy Code, the Plan Administrator and the Post-Effective Date Debtors shall have possession and control of, and shall retain and have the right to enforce and pursue, any and all present or future rights, claims, or Retained Causes of Action, rights of setoff or recoupment, or other legal or equitable defenses against any Person or Entity and with respect to any rights of the Debtors that arose before or after the Petition Date. The Plan Administrator and the Post-Effective Date Debtors have, retain, reserve, and shall be entitled to assert and pursue all such claims, Retained Causes of Action, rights of setoff, or other legal or equitable defenses, and all legal and equitable rights of the Debtors not expressly released under the Plan may be asserted after the Effective Date. The Post-Effective Date Debtors or the Plan Administrator, as applicable, may abandon, settle, or release any or all such claims, rights or Retained Causes of Action, as it deems appropriate without further order of the Bankruptcy Court. In pursuing any claim, right, or Retained Cause of Action, the Plan Administrator, as the representative of the Estates, shall be entitled to the extensions provided under section 108 of the Bankruptcy Code. Except as otherwise provided in the Plan, all Retained Causes of Action shall survive confirmation and the commencement or prosecution of Retained Causes of Action shall not be barred or limited by any estoppel, whether judicial, equitable, or otherwise. Notwithstanding the foregoing, the Post-Effective Date Debtors shall not retain any Claims or Causes of Action released under the Plan against the Released Parties (except that such Claims or Causes of Action may be asserted as a defense to a Claim in connection with the claims reconciliation and objection procedures pursuant to section 502(d) of the Bankruptcy Code or otherwise).

3.12.3 Preservation and Application of Insurance. The provisions of the Plan shall not diminish or impair in any manner the enforceability of coverage of any insurance policies (and any agreements, documents, or instruments relating thereto) that may cover Claims against the Debtors, any D&O Party, or any other Person, including, without limitation, insurance for the Debtors' directors and officers.

3.12.4 **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 and all holders of Claims or Interests 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 be necessary or advisable to effectuate the provisions and intent of the Plan.

3.12.5 **Reservation of Rights**. Except as expressly set forth in the Plan, the Plan shall have no force or effect unless the Bankruptcy Court enters the Confirmation Order, and the Confirmation Order shall have no force or effect if the Effective Date does not occur. 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 of their respective rights with respect to the holders of Claims and Interests or each other before the Effective Date. In the event that the Plan is not consummated, neither the Plan, the Disclosure Statement nor any statement contained therein may be used or relied upon in any manner in any suit, action, proceeding, or controversy within or outside the Bankruptcy Court involving the Debtors.

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

3.12.7 **Notices**. To be effective, all notices, requests, and demands to or upon the Debtors shall be in writing. Unless otherwise expressly provided herein, notice shall be deemed to have been duly given or made when actually delivered or when received and telephonically confirmed, addressed to the following:

1. The Debtors

Sam Ash Music Corporation
Attention: Jordan Meyers, CRO
Email: jmeyers@scpllc.com

with a mandated copy (which will not constitute notice) to:

Counsel to Debtors and Debtors in Possession
Cole Schotz P.C.
Court Plaza North
25 Main Street
P.O. Box 800
Hackensack, New Jersey 07602-0800
Attention: Michael D. Sirota, Esq. and Ryan T. Jareck, Esq.
Telephone: (201) 489-3000
Facsimile: (201) 489-1536

Email: msirota@coleschotz.com; rjareck@coleschotz.com

2. The Plan Administrator

[•]
Attention: [•]
Email: [•]

with a mandated copy (which will not constitute notice) to:

Counsel to the Plan Administrator
[•]
Attention: [•]
Email: [•]

3.12.8 **Entire Agreement**. Except as otherwise indicated, the Plan, the Plan Supplement, and the Confirmation Order shall 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.

3.12.9 **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. After the exhibits and documents are Filed, copies of such exhibits and documents shall be available upon written request to the Debtors' counsel at the address above, from the Notice, Claims and Balloting Agent's website at https://dm.epiq11.com/SamAsh, or by downloading such exhibits and documents from the Bankruptcy Court's website at http://www.njb.uscourts.gov. To the extent any exhibit or document is inconsistent with the terms of the Plan, unless otherwise ordered by the Bankruptcy Court, the non-exhibit or non-document portion of the Plan shall control.

3.12.10 **Severability of Plan Provisions**. If, before Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall be prohibited from altering or interpreting such term or provision to make it valid or enforceable; *provided*, that at the request of the Debtors, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable, consistent with the original purpose of the term or provision held invalid, void, or unenforceable, and such terms or provisions shall then be applicable as altered or interpreted provided that any such alteration or interpretation shall be acceptable to the Debtors. 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: (1) valid and enforceable pursuant to its terms; (2) integral to the Plan and may not be deleted or modified without the Debtors' consent; and (3) non-severable and mutually dependent.

3.12.11 **No Stay of Confirmation Order.** The Confirmation Order shall contain a waiver of any stay of enforcement otherwise applicable, including pursuant to Bankruptcy Rules 3020(e) and 7062

3.12.12 **Votes Solicited in Good Faith**. Once the Confirmation Order becomes a Final 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 their 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 in the offer, issuance, sale and purchase of Securities offered and sold under the Plan and any previous plan and, therefore, no such parties, individuals or the Debtors will have any liability for the violation of any applicable law, rule or regulation governing the solicitation of votes on the Plan or the offer, issuance, sale or purchase of the Securities offered and sold under the Plan or any previous plan.

3.12.13 **No Waiver**. Except as otherwise specifically provided herein, nothing set forth in the Plan or this Disclosure Statement shall be deemed a waiver or release of any claims, rights or Causes of Action against any Person other than the Debtors.

3.12.14 **Headings**. The article and section headings used in the Plan are inserted for convenience and reference only and neither constitutes a part of the Plan nor any matter affects the terms, provisions or interpretation of the Plan.

3.12.15 **Governing Law**. Except to the extent the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent otherwise provided in the Plan, the rights and obligations arising under the Plan, will be governed by, and construed and enforced in accordance with the laws of New Jersey, without giving any effect to the principles of conflicts of law or such jurisdiction.

3.12.16 **Conflicts**. Except as set forth in the Plan, to the extent that any provision of any other document or any exhibits, schedules, appendices, supplements, or amendments of any document referenced in the Plan (the "**Plan Related Documents**") conflict with or are in any way inconsistent with any provision of the Plan, the Plan shall govern and control; *provided* that, with respect to any conflict or inconsistency between the Plan or the Plan Related Documents on the one hand, and the Confirmation Order on the other, the Confirmation Order shall govern.

IV. FEASIBILITY

4.1 FINANCIAL FEASIBILITY ANALYSIS.

4.1.1 **The Bankruptcy Code Standard**. The Bankruptcy Code requires that, in order to confirm the Plan, the Bankruptcy Court must find that Confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtors unless contemplated by the Plan.

4.1.2 **No Need for Further Reorganization of the Debtor**. The Plan provides for the liquidation or distribution of all of the Debtors' Assets. Accordingly, the Debtors believe that all Plan obligations will be satisfied without the need for further reorganization of the Debtors.

V. ALTERNATIVES TO THE PLAN

5.1 CHAPTER 7 LIQUIDATION

5.1.1 **<u>The Plan is in the Best Interests of Creditors</u>**.

Often called the "best interests" test, section 1129(a)(7) of the Bankruptcy Code requires that a bankruptcy court find, as a condition to confirmation, that a chapter 11 plan provides, with respect to each impaired class, that each holder of a claim or an equity interest in such impaired class either (1) has accepted the plan or (2) will receive or retain under the plan property of a value that is not less than the amount that the non-accepting holder would receive or retain if the debtors liquidated under chapter 7.

The Debtors believe that the Plan will satisfy the best interests test because, among other things, the recoveries expected to be available to Holders of Allowed Claims and Interests under the Plan will be greater than the recoveries expected to be available in a chapter 7 liquidation, as discussed more fully below.

In a typical chapter 7 case, a trustee is elected or appointed to liquidate a debtor's assets and to make distributions to creditors in accordance with the priorities established in the Bankruptcy Code. Generally, secured creditors are paid first from the proceeds of sales of their collateral. If any assets remain in the bankruptcy estate after satisfaction of secured creditors' claims from their collateral, administrative expenses are next to be paid. After accounting for administrative expenses, unsecured creditors (including any secured creditor deficiency claims) are paid from the sale proceeds of any unencumbered assets and any remaining sale proceeds of encumbered assets in excess of any secured claims, according to their respective priorities. Unsecured creditors with the same priority share in proportion to the amount of their allowed claims in relationship to the total amount of allowed claims held by all unsecured creditors with the same priority. Finally, interest holders receive the balance that remains, if any, after all creditors are paid.

All or substantially all of the assets of the Debtors' business will be liquidated through the sales under the Store Closing Motion or Sale Transaction(s), and the Plan effects a wind down of the Debtors' remaining assets not otherwise acquired in the Sale Transaction(s). Although a chapter 7 liquidation would achieve the same goal, the Debtors believe that the Plan provides a greater recovery to Holders of Claims than a chapter 7 liquidation would. Liquidating the Debtors' Estates under the Plan likely provides Holders of Claims with a larger, more timely recovery, primarily due to expected materially lower realized sale proceeds in chapter 7.

A chapter 7 liquidation beginning on what would have been the Effective Date would provide less recovery for creditors than the Plan. The delay of the chapter 7 trustee becoming familiar with the assets could easily cause bids already obtained to be lost, and the chapter 7 trustee will not have the technical expertise and knowledge of the Debtors' businesses that the Debtors had when they proposed to sell their assets and commence wind down efforts. Moreover, the distributable proceeds under a chapter 7 liquidation will be lower because of the chapter 7 trustee's fees and expenses.

Sale proceeds in chapter 7 would likely be significantly lower particularly in light of the time delay associated with the chapter 7 trustee's learning curve for these assets. In addition to the expected material reduction in sale proceeds, recoveries would be further reduced (in comparison with the Plan) due to the expenses that would be incurred in a chapter 7 liquidation, including added expenses for wind down costs and costs incurred by the chapter 7 trustee and any retained professionals in familiarizing themselves with the Debtors' assets, and these specific Chapter 11 Cases, in order to complete the administration of the Estates. *See, e.g.,* 11 U.S.C. § 326(a) (providing for compensation of a chapter 7 trustee up to three percent of the value of the assets); 11 U.S.C. 503(b)(2) (providing administrative expense status for compensation and expenses of a chapter 7 trustee and such trustee's professionals).

The Debtors' Estates would continue to be obligated to pay all unpaid expenses incurred by the Debtors during the Chapter 11 Cases (such as compensation for Professionals), which may constitute Allowed Claims in any chapter 11 case. Moreover, the conversion to chapter 7 would also require entry of a new bar date for filing claims that would be more than ninety (90) days following conversion of the case to chapter 7. *See* Fed. R. Bankr. P. 1019(2); 3002(c). Thus, the amount of Claims ultimately filed and Allowed against the Debtors could materially increase, thereby further reducing creditor recoveries versus those available under the Plan

In light of the foregoing, the Debtors submit that a chapter 7 liquidation would result in materially reduced sale proceeds, increased expenses, delayed distributions, and the prospect of additional claims that were not asserted in the Chapter 11 Cases. Accordingly, the Debtors believe that the Plan provides an opportunity to bring the highest return for creditors.

5.2 ALTERNATIVE PLAN(S)

If the Plan is not confirmed, the Debtors or other Persons could attempt to formulate and propose a different plan. The Debtors believe that the Plan, as described herein, enables holders of Claims or Interests to realize the greatest possible value under the circumstances, and that compared to any alternative plan, the Plan has the greatest chance to be confirmed and consummated.

VI. CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN

6.1 GENERAL

The following discussion is a summary of certain U.S. federal income tax consequences of the consummation of the Plan to the Debtors and to certain U.S. Holders and Non-U.S. Holders (each as defined below) of Claims entitled to vote on the Plan, and it does not address the U.S. federal income tax consequences to Holders of Claims and Equity Interests whose Claims and Equity Interests are unimpaired or otherwise not entitled to vote on the Plan. This summary is based on the Internal Revenue Code of 1986, as amended (the "**IRC**"), the U.S. Treasury Regulations promulgated thereunder (the "**Treasury Regulations**"), judicial decisions, revenue rulings and revenue procedures of the U.S. Internal Revenue Service (the "**IRS**") and any other published administrative rules and pronouncements of the IRS, all as in effect on the date of this Disclosure Statement and all of which are subject to change or differing interpretations of applicable tax law may have retroactive effect and could significantly affect the U.S. federal income tax consequences describe below. Due to the lack of definitive judicial and administrative authority in a number of areas, substantial uncertainty may exist with respect to some of the tax consequences described below. No opinion of counsel has been obtained and the Debtors do not intend to seek a ruling from the IRS as to any of the tax consequences of the Plan discussed below. The discussion below is not binding upon the IRS or the courts. No assurance can be given that the IRS would not assert, or that a court would not sustain, a different position than any position discussed herein.

This summary does not address non-U.S., state, local, or non-income tax consequences of the Plan (including such consequences with respect to the Debtors), nor does it purport to address all aspects of U.S. federal income taxation that may be relevant to a Holder in light of its individual circumstances or to a Holder that may be subject to special tax rules (such as persons who are related to the Debtors within the meaning of the IRC, U.S. Holders whose functional currency is not the U.S. dollar, U.S. expatriates, certain former citizens or long-term residents of the United States, broker-dealers, banks, mutual funds, insurance companies, financial institutions, retirement plans, small business investment companies, regulated investment companies, real estate investment trusts, tax-exempt organizations, controlled foreign corporations, passive foreign investment companies, partnerships (or other entities treated as partnerships or other pass-through entities), beneficial owners of partnerships (or other entities treated as partnerships or other pass-through entities), subchapter S corporations, Holders of Claims as part of a straddle, hedge, conversion transaction, or other integrated investment, persons using a mark-to-market method of accounting, and Holders of Claims who are themselves in bankruptcy). Furthermore, this summary assumes that a Holder of a Claim holds only Claims in a single Class and holds such a Claim only as a "capital asset" (within the meaning of section 1221 of the IRC). This summary also assumes that the Claims against any of the Debtors will be respected for U.S. federal income tax purposes in accordance with their form, and that the Claims constitute interests in the Debtors "solely as a creditor" for purposes of section 897 of the IRC (and thus are not subject to withholding under the Foreign Investment in Real Property Tax Act). This discussion does not address the U.S. federal income tax consequences to Holders (a) whose Claims are unimpaired or otherwise entitled to payment in full under the Plan, or (b) that are deemed to accept or deemed to reject the Plan. Additionally, this discussion does not address any consideration being received other than in a person's capacity as a Holder of a Claim.

For purposes of this discussion, the term "**U.S. Holder**" means a Holder of a Claim (including a beneficial owner of a Claim), that is, for U.S. federal income tax purposes, (i) an individual citizen or resident of the United States, (ii) a corporation, or other entity treated as a corporation, created or organized in or under the laws of the United States or any state thereof or the District of Columbia, (iii) a trust if (a) a court within the United States is able to exercise primary jurisdiction over the trust's administration and one or more U.S. persons (within the meaning of section 7701(a)(30) of the IRC) have the authority to control all substantial decisions of the trust or (b) such trust has made a valid election under applicable Treasury Regulations to be treated as a U.S. person for U.S. federal income tax purposes, or (iv) an estate, the income of which is includible in gross income for U.S. federal income tax purposes regardless of its source.

For purposes of this discussion, a "**Non-U.S. Holder**" is any Holder of a Claim that is neither a U.S. Holder nor a partnership (or other entity treated as a partnership or other pass-through entity for U.S. federal income tax purposes). In the case of a Holder that is classified as a partnership for U.S. federal income tax purposes, the tax treatment of a partner generally will depend upon the status of the partner and the activities of the partner or the partnership. If you are a partner (or other beneficial owner) of a partnership (or other entity treated as a partnership or other pass-through entity) that is, or will be, a Holder of a Claim, then you should consult your own tax advisors.

ACCORDINGLY, THE FOLLOWING SUMMARY OF CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED UPON THE INDIVIDUAL CIRCUMSTANCES PERTAINING TO YOU. ALL HOLDERS OF CLAIMS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS AS TO THE U.S. FEDERAL, STATE, LOCAL, NON-U.S., NON-INCOME, AND OTHER TAX CONSEQUENCES OF THE PLAN.

6.2 CONSEQUENCES TO THE DEBTORS

1. Cancellation of Debt Income. In general, absent an exception, a taxpayer will realize and recognize cancellation of indebtedness income ("**CODI**") upon satisfaction of its outstanding indebtedness for total consideration less than the amount of such indebtedness. The amount of CODI, in general, is the excess of (1) the adjusted issue price of the indebtedness satisfied, over (2) the fair market value of any consideration given in satisfaction of such indebtedness at the time of the exchange.

Under section 108 of the Tax Code, a taxpayer is not required to include CODI in gross income (a) if the taxpayer is under the jurisdiction of a court in a case under chapter 11 of the Bankruptcy Code and the discharge of debt occurs pursuant to that case, or (b), to the extent that the taxpayer is insolvent immediately before the discharge. Instead, as a consequence of such exclusion, a taxpayer-debtor must reduce its tax attributes by the amount of CODI that it excluded from gross income. In general, tax attributes will be reduced in the following order: (a) net operating losses ("**NOLs**"); (b) most tax credits; (c) capital loss carryovers; (d) tax basis in assets (but not below the amount of liabilities to which the debtor remains subject); (e) passive activity loss and credit carryovers; and (f) foreign tax credits. Alternatively, the taxpayer can elect first to reduce the basis of its depreciable assets pursuant to section 108(b)(5) of the Tax Code.

6.3 CONSEQUENCES TO CERTAIN U.S. HOLDERS OF CLAIMS AND INTERESTS

6.3.1 Consequences to Holders of Allowed General Unsecured Claims. A U.S. Holder of Allowed General Unsecured Claims that receives Cash will be treated as receiving payment in a taxable exchange under section 1001 of the IRC. Other than with respect to any amounts received that are attributable to accrued but untaxed interest (or original issue discount), each U.S. Holder of such Claims should recognize gain or loss equal to the difference between the (a) sum of the Cash received in exchange for the Claim, and (b) such U.S. Holder's adjusted basis, if any, in such Claim. A U.S. Holder's ability to deduct any loss recognized on the exchange of its Claims will depend on such U.S. Holder's own circumstances and may be restricted under the IRC.

HOLDERS SHOULD CONSULT THEIR OWN TAX ADVISORS CONCERNING THE RECOGNITION OF GAIN OR LOSS, FOR FEDERAL INCOME TAX PURPOSES, ON THE SATISFACTION OF THEIR CLAIMS.

6.3.2 Accrued Interest and OID. A portion of the payment received by Holders of Allowed Claims may be attributable to accrued interest or original issue discount ("**OID**") on such Claims. Such amount should be taxable to that U.S. Holder as interest income if such accrued interest or OID has not been previously included in the Holder's gross income for United States federal income tax purposes. Conversely, U.S. Holders of Claims may be able to recognize a deductible loss to the extent any accrued interest or OID on the Claims was previously included in the U.S. Holder's gross income but was not paid in full by the Debtors.

If the payment does not fully satisfy all principal and interest or OID on Allowed Claims, the extent to which payment will be attributable to accrued interest or OID is unclear. Under the Plan, the aggregate consideration to be distributed to Holders of Allowed General Unsecured Claims will be allocated first to the principal amount of Allowed Claims, with any excess allocated to unpaid interest or OID that accrued on such Claims, if any. Certain legislative history indicates that an allocation of consideration as between principal and interest provided in a chapter 11 plan is binding for United States federal income tax purposes, while certain Treasury Regulations generally treat payments as allocated first to any accrued but unpaid interest or OID and then as a payment of principal. The IRS could take the position that the payment received by the U.S. Holder should be allocated in some way other than as provided in the Plan

HOLDERS SHOULD CONSULT THEIR OWN TAX ADVISORS CONCERNING THE ALLOCATION OF CONSIDERATION RECEIVED IN SATISFACTION OF THEIR CLAIMS AND THE FEDERAL INCOME TAX TREATMENT OF ACCRUED INTEREST

6.3.3 Market Discount. Under the "market discount" provisions of the IRC, some or all of any gain realized by a U.S. Holder of a Claim who exchanges the Claim for an amount may be treated as ordinary income (instead of capital gain), to the extent of the amount of "market discount" on the debt instruments constituting the exchanged Claim. In general, a debt instrument is considered to have been acquired with "market discount" if it is acquired other than on original issue and if its U.S. Holder's adjusted tax basis in the debt instrument is less than (a) the sum of all remaining payments to be made on the debt instrument, excluding "qualified stated interest" or (b) in the case of a debt instrument issued with original issue discount, its adjusted issue price, in each case, by at least a de minimis amount (equal to 0.25% of the sum of all remaining payments to be made on the debt instrument, excluding qualified stated interest, multiplied by the number of remaining whole years to maturity).

Any gain recognized by a U.S. Holder on the taxable disposition of Allowed Claims (determined as described above) that were acquired with market discount should be treated as ordinary income to the extent of the market discount that accrued thereon while the Allowed Claims were considered to be held by the U.S. Holder (unless the U.S. Holder elected to include market discount in income as it accrued).

6.4 MATTERS RELATED TO THE DISPUTED CLAIMS RESERVE

Debtors intend to create a reserve for Disputed Claims. It is possible the Debtors will treat the reserve for Disputed Claims as a "disputed ownership fund" governed by Treasury Regulation section 1.468B-9 (and make any appropriate elections). In general, property that is subject to disputed ownership fund treatment is subject to taxation within the fund (either at C-corporation or trust rates, depending on the nature of the assets held by the fund). Under disputed ownership fund treatment, a separate federal income tax return would be filed with the IRS for the reserve for Disputed Claims with respect to any income attributable to the account, and any taxes imposed on the reserve for Disputed Claims or its assets shall be paid out of the assets of the reserve.

Although not free from doubt, U.S. Holders should not recognize any gain or loss when amounts are set aside in the reserve for Disputed Claims but should recognize gain or loss in an amount equal to: (i) the amount of Cash actually distributed to such U.S. Holder from the reserve, less (ii) the U.S. Holder's adjusted tax basis of its Claim when and to the extent Cash is actually distributed to such U.S. Holder. The character of such gain or loss as capital gain or loss or as ordinary income or loss will be determined by a number of factors, including the tax status of the U.S. Holder, the nature of the Claim in such U.S. Holder's hands, whether the Claim was purchased at a discount, and whether and to what extent the U.S. Holder previously has claimed a bad debt deduction with respect to its Claim. It is possible that the recognition of any loss realized by a U.S. Holder may be deferred until the reserve for Disputed Claims has made all payments to Holders of Disputed Claims. U.S. Holders are urged to consult their tax advisors regarding the possible application (and the ability to elect out) of the "installment method" of reporting any gain that may be recognized by such Holders in respect of their Claims due to the receipt of cash in a taxable year subsequent to the taxable year in which the reserve is established. The discussion herein assumes that the installment method does not apply.

The timing of the inclusion of income may be subject to alteration for accrual method U.S. Holders that prepare "applicable financial statements" (as defined in Section 451 of the IRC), which may require the inclusion of income no later than the time such amounts are reflected on such financial statement.

6.5 CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES TO NON-U.S. HOLDERS OF CLAIMS

The following discussion includes only certain U.S. federal income tax consequences of the payments to Non-U.S. Holders for Claims. The discussion does not include any non-U.S. tax considerations. The rules governing the U.S. federal income tax consequences to Non-U.S. Holders are complex. Each Non-U.S. Holder should consult its own tax advisor regarding the U.S. federal, state, and local and the foreign tax consequences of the payments to such Non-U.S. Holder.

Whether a Non-U.S. Holder realizes gain or loss on the payment of a Claim and the amount of such gain or loss is generally determined in the same manner as set forth above in connection with U.S. Holders.

6.5.1 Gain Recognition. Any gain realized by a Non-U.S. Holder on the exchange of its Claim generally will not be subject to U.S. federal income taxation unless (i) the Non-U.S. Holder is an individual who was present in the United States for 183 days or more during the taxable year in which the exchange occurs or who otherwise meets the so-called "substantial presence test" under Section 7701(b)(3) of the IRC, or (ii) such gain is effectively connected with the conduct by such non-U.S. Holder of a trade or business in the United States (and if an income tax treaty applies, such gain is attributable to a permanent establishment maintained by such Non-U.S. Holder in the United States).

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

6.5.2 Accrued Interest. The United States generally imposes a 30% U.S. federal withholding tax on payments of interest to Non-U.S. Holders. Subject to the discussion below of an interest effectively connected with the conduct of a trade or business within the United State, a Non-U.S. Holder will not be subject to the 30% U.S. federal withholding tax with respect to payments of interest on the notes, provided that:

i. it does not own, actually or constructively, 10% or more of the total combined voting power of all classes of our stock entitled to vote;

ii. it is not a "controlled foreign corporation" with respect to which we are, directly or indirectly, a "related person"; and

iii. it provides its name and address, and certify, under penalties of perjury, that it is not a U.S. person (on a properly executed IRS Form W-8BEN or W-8BEN-E (or other applicable form)), or it holds its notes through certain foreign intermediaries and the foreign intermediaries satisfy the certification requirements of applicable Treasury Regulations.

If you cannot satisfy the requirements described above, you will be subject to the 30% U.S. federal withholding tax with respect to payments of interest on the notes, unless you provide us (or other applicable withholding agent) with a properly executed IRS Form W-8BEN or W-8BEN-E or other applicable form claiming an exemption from or reduction in withholding under the benefit of an applicable U.S. income tax treaty.

If such interest is effectively connected with the conduct by the Non-U.S. Holder of a trade or business within the United States, provided the Non-U.S. Holder provides a properly executed IRS Form W-8ECI (or successor form) to the withholding agent, the Non-U.S. Holder (x) generally will not be subject to withholding tax, but (y) will be subject to U.S. federal income tax in the same manner as a U.S. Holder (unless an applicable income tax treaty provides otherwise), and a Non-U.S. Holder that is a corporation for U.S. federal income tax purposes may also be subject to a branch profits tax with respect to such Non-U.S. Holder's effectively connected earnings and profits that are attributable to the accrued but untaxed interest at a rate of 30 percent (or at a reduced rate or exemption from tax under an applicable income tax treaty).

6.5.3 FATCA. Under the Foreign Account Tax Compliance Act ("**FATCA**"), foreign financial institutions and certain other foreign entities must report certain information with respect to their U.S. account Holders and investors or be subject to withholding on the receipt of "withholdable payments." For this purpose, "withholdable payments" are generally U.S. source payments of interest on certain types of obligations. FATCA withholding may apply even if the applicable payment would not otherwise be subject to U.S. federal nonresident withholding tax. U.S. Holders that hold Claims through foreign financial institutions and Non-U.S. Holders are encouraged to consult their tax advisors regarding the possible implications of these rules on their Claim

6.6 INFORMATION REPORTING AND BACK-UP WITHHOLDING

Information reporting requirements may apply to payments under the Plan. Additionally, under the backup withholding rules, a Holder of a Claim may be subject to backup withholding (currently at a rate of 24%) with respect to payments made pursuant to the Plan unless that Holder: (a) comes within certain exempt categories (which generally include corporations) and, when required, demonstrates that fact; or (b) timely provides a correct taxpayer identification number and certifies under penalty of perjury that the taxpayer identification number is correct and that the Holder is not subject to backup withholding (generally in the form of a properly executed IRS Form W-9 for a U.S. Holder, and, for a Non-U.S. Holder, in the form of a properly executed applicable IRS Form W-8 (or otherwise establishes such Non-U.S. Holder's eligibility for an exemption)). Backup withholding is not an additional tax but is, instead, an advance payment that may be refunded to the extent it results in an overpayment of tax; provided that the required information is timely provided to the IRS.

The Debtors, or the applicable agent, will withhold all amounts required by law to be withheld from payments of interest and comply with all applicable information reporting requirements.

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

VII. RISK FACTORS

Holders of Claims or Interests should read and carefully consider the following factors, as well as the other information set forth in this Disclosure Statement, before making a judgment with respect to voting to either accept or reject the Plan.

7.1 CERTAIN BANKRUPTCY CONSIDERATIONS

Even if all Impaired voting classes vote to accept the Plan and the requirements for "cramdown" are met, the Court may exercise substantial discretion and may choose not to confirm the Plan. Section 1129 of the Bankruptcy Code requires, among other things, that the value of distributions to dissenting holders of Claims or Interests may not be less than the value such holders would receive if the Debtors were liquidated under Chapter 7 of the Bankruptcy Code. Although the Debtors believe that the Plan will meet such requirement, there can be no assurance that the Court will reach the same conclusion.

Any objection to the Plan by a member of a class of Claims or Interests could also prevent Confirmation of the Plan or delay such Confirmation for a significant period of time.

If the Plan is not confirmed or is confirmed but does not go effective, it is unclear what distribution, if any, holders of Allowed Claims ultimately would receive with respect to their Claims.

7.2 RISKS RELATED TO SALE TRANSACTIONS

Although the Debtors believe that they will be able to consummate the Sale Transaction(s), there can be no assurance that the Bankruptcy Court will approve the Debtors' entry into and performance under any Asset Purchase Agreement(s). Furthermore, the Asset Purchase Agreement(s) may include certain contingencies that would enable the Successful Bidder to not close the Sale Transaction. If either of these scenarios were to occur, the Debtors cannot be certain what proceeds, if any, would be available for distributions under the Plan.

7.3 CLAIMS ESTIMATION & CASH AVAILABLE AFTER DISTRIBUTION

There can be no assurance that the estimated amount of Claims and Interests set forth herein are correct, and the actual allowed amounts of Claims and Interests may differ from the estimates. The estimated amounts are subject to certain risks, uncertainties and assumptions, including, without limitation, that unanticipated proofs of claim are filed against the Estates prior to the Bar Dates and such Claims are either not subject to a valid objection by the Debtors or such objections are overruled by the Bankruptcy Court.

VIII. CONCLUSION

It is important that you exercise your right to vote on the Plan. It is the Debtors' belief and recommendation that the Plan fairly and equitably provides for the treatment of all Claims against and Interests in the Debtors. In the opinion of the Debtors, the Plan is preferable to any potential alternatives described in this Disclosure Statement because the Plan provides for a larger distribution to the holders of Allowed Claims than would otherwise result in a liquidation under chapter 7 of the Bankruptcy Code. In addition, any alternative other than Confirmation of the Plan could result in extensive delays and increased administrative expenses resulting in smaller distributions to holders of Allowed Claims than proposed under the Plan. Accordingly, the Debtors recommend that holders of Claims entitled to vote on the Plan support Confirmation of the Plan and vote to accept the Plan.

Dated: May 31, 2024

Respectfully Submitted,

SAM ASH MUSIC CORPORATION (on
behalf of itself and all other Debtors)

By:

/s/ Jordan Meyers
Jordan Meyers
Chief Restructuring Officer

Exhibit A

Chapter 11 Plan

[Filed at Docket No. 143]