

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

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|                                 |   |                          |
|---------------------------------|---|--------------------------|
| <b>In re:</b>                   | § |                          |
|                                 | § | <b>CHAPTER 11</b>        |
| <b>FRANKIE V'S KITCHEN, LLC</b> | § |                          |
|                                 | § |                          |
| <b>Debtor.</b>                  | § | <b>CASE NO. 19-31717</b> |
|                                 | § |                          |

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**FIRST AMENDED DISCLOSURE STATEMENT IN SUPPORT OF  
PLAN OF LIQUIDATION FILED BY FRANKIE V'S KITCHEN, LLC**

Dated: September 13, 2019

**FOLEY GARDERE  
FOLEY & LARDNER LLP**

*/s/ Mark C. Moore*

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Stephen A. McCartin  
State Bar No. 13374700  
Mark C. Moore  
State Bar No. 24074751  
Melina T. Bales  
State Bar No. 24106851  
2021 McKinney Ave., Suite 1600  
Dallas, TX 75201  
Telephone: (214) 999-3000  
Facsimile: (214) 999-4667  
smccartin@foley.com  
mmoore@foley.com  
mbales@foley.com

**COUNSEL TO DEBTOR  
FRANKIE V'S KITCHEN, LLC**

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**ARTICLE I  
INTRODUCTION AND SUMMARY**

As more fully described herein, Frankie V's Kitchen, LLC (the "**Debtor**") is soliciting votes for the acceptance or rejection of the Plan with respect to all of the Debtor's Classes of Claims and Interests.

**IMPORTANT NOTICE TO UNSECURED CREDITORS REGARDING  
YOUR RELEASE OPT OUT OPTION.**

If you hold an allowed unsecured claim against the Debtor and you are not a Released Party, you will receive a Pro Rata share in the distribution from the \$1 million settlement fund provided by the Debtor's and Committee's settlement with Agneto Holdings, LLC and Jeffrey D. Franco conditioned on you agreeing to allow Agneto, Franco and the other "Released Parties" in Plan Section 1.1 to receive the Third Party Release detailed in Plan Section 10.6(b). The settlement fund is the primary source of recoveries to unsecured creditors in the Plan. You may elect to be excluded from this release; however, if you opt-out of the release, you will NOT share in any of the \$1 million settlement fund and your recovery under the Plan will be significantly reduced and possibly zero. If you agree to provide the Third-Party Release, there is nothing you need to do.

**How to opt-out:** You will receive an Opt-Out Form with this Disclosure Statement to permit you to elect to be an Opt-Out Party and affirmatively opt out of the Third-Party Releases. You must return the completed Opt-Out Form to the Debtor on or before October 21, 2019 per the detailed instructions on the Opt-Out Form.

**Effect of opting-out:** If you return an Opt-Out Form you will not be bound by the Third-Party Release; however, by opting-out of this release, you will not share in the \$1 million settlement fund and may receive nothing under the Plan.

**Effect of NOT opting-out:** Any holders of Claims or Interests that do not return an Opt-Out Form affirmatively opting out of the Third-Party Releases are conclusively deemed to have approved the releases and will be Third-Party Releasing Parties that provide full releases to the Released Parties. You do not have to take any action to be included in the Third-Party Releases, but the Debtor encourages you to vote in favor of the Plan.

The Debtor encourages all unsecured creditors to support and vote in favor of the Plan. The Debtor also encourages all unsecured creditors to support the settlement by not opting-out.

## 1.1 *Overview and Purpose of Disclosure Statement*

On May 20, 2019 (the “*Petition Date*”), Frankie V’s filed a voluntary petition under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (“*Bankruptcy Court*”). Contemporaneously with this Disclosure Statement, the Debtor filed a Plan of Liquidation (the “*Plan*”), pursuant to which the Debtor proposes to liquidate its assets and distribute the proceeds.

The Debtor furnishes this Disclosure Statement (“*Disclosure Statement*”) and the accompanying Ballots to the holders of Claims against the Debtor pursuant to § 1125 of the Bankruptcy Code in connection with the solicitation of votes for the acceptance of the Debtor’s Plan. Capitalized terms used in this Disclosure Statement and not defined have their respective meanings set forth in the Plan or, if not defined in the Plan, as defined in § 101 of the Bankruptcy Code.

This Disclosure Statement enables those persons who hold Claims against the Debtor entitled to vote under the Plan, to make an informed decision with respect to the Plan before exercising their rights to vote to accept or reject the Plan. On September 19, 2019, after notice and a hearing, the Court approved this Disclosure Statement as containing information of a kind and in sufficient detail to enable persons whose votes are being solicited to make an informed judgment with respect to acceptance or rejection of the Plan.

Holders of Claims and Interests should read this Disclosure Statement and the Plan in their entirety before voting to accept or reject the Plan. No solicitation of votes with respect to the Plan may be made except pursuant to this Disclosure Statement. No statement or information concerning the Debtor (particularly as to operations, financial condition, or distributions to be made under the Plan), or any of its respective assets, properties or business, that is given for the purpose of soliciting acceptances or rejections of the Plan is authorized, other than as set forth in this Disclosure Statement. In the event of any inconsistency between a provision of the Plan and this Disclosure Statement, the Plan shall control. A copy of the Plan is attached hereto as **Exhibit “A”** to this Disclosure Statement.

After carefully reviewing this Disclosure Statement and all exhibits and schedules attached hereto, please indicate your acceptance or rejection of the Plan by voting in favor of or against the Plan on the enclosed Ballot.

**THE DEBTOR BELIEVES THAT ACCEPTANCE OF THE PLAN IS IN THE BEST INTERESTS OF ALL HOLDERS OF CLAIMS OF THE DEBTOR AND, CONSEQUENTLY, THE DEBTOR URGES ALL HOLDERS OF CLAIMS TO VOTE TO ACCEPT THE PLAN IN ITS ENTIRETY.**

Any Ballots received after the Voting Deadline will not be counted (unless otherwise ordered by the Court). Ballots that are received after the Voting Deadline may not be used in connection with the Debtor’s request for confirmation of the Plan or any modification thereof, except to the extent allowed by the Court.

The Debtor prepared this Disclosure Statement to accompany the Plan based upon information compiled by the Debtor over the course of this Chapter 11 Case. The factual statements, projections, financial information, and other information contained in this Disclosure Statement have been taken from documents prepared by the Debtor and/or its professionals, both before and after the Petition Date, pleadings filed in the Chapter 11 Case, and information obtained in the Chapter 11 Case. Nothing contained in this Disclosure Statement shall have any preclusive effect against the Debtor (whether by waiver, admission, estoppel or otherwise) in any cause or proceeding that may exist or occur in the future. This Disclosure Statement shall not be construed or deemed to constitute an acceptance of fact or an admission by the Debtor with respect to any of the statements made herein, and all rights and remedies of the Debtor are expressly reserved in this regard.

Certain of the information contained in this Disclosure Statement, by its nature, is forward looking, contains estimates and assumptions that may prove to be inaccurate, and contains projections that may prove to be wrong, or that may be materially different from actual future results. Each holder of a Claim or Interest should independently verify and consult its individual attorney and accountant as to the effect of the Plan on such individual holder of a Claim.

For convenience of all parties, material terms of the Plan are summarized in this Disclosure Statement. Although the Debtor believes that this Disclosure Statement accurately describes the material provisions of the Plan, all summaries of the Plan contained in this Disclosure Statement are qualified by the Plan itself, the exhibits thereto, and the documents described therein, which control in the event of any inconsistency or incompleteness. Accordingly, the Debtor strongly urges each claimant entitled to vote on the Plan to review carefully the contents of this Disclosure Statement, the Plan, and the other documents that accompany or are referenced in this Disclosure Statement in their entirety before making a decision to accept or reject the Plan.

IT IS OF THE UTMOST IMPORTANCE THAT YOU VOTE PROMPTLY TO ACCEPT THE PLAN BY COMPLETING AND SIGNING THE BALLOT ENCLOSED HERewith AND RETURNING IT TO THE DEBTOR, AT THE ADDRESS SET FORTH IN THE BALLOT INSTRUCTIONS THAT ACCOMPANY THE BALLOT.

The Order approving this Disclosure Statement fixes **October 28, 2019 at 1:30 p.m. Central Daylight Time**, in the Courtroom of the Honorable Stacy G.C. Jernigan, United States Bankruptcy Court for the Northern District of Texas, Earle Cabell Federal Building, 1100 Commerce St., 14th Floor, Courtroom #1, Dallas, TX 75242, as the date, time and place for the hearing on confirmation of the Plan, and fixes **October 21, 2019 at 5:00 p.m.** Central Daylight Time as the date and time by which all objections to confirmation of the Plan must be filed with the Court and received by counsel for the Debtor. The Debtor will request Confirmation of the Plan at the Confirmation Hearing.

## 1.2 *Explanation of Chapter 11*

Chapter 11 is the principal reorganization chapter of the Bankruptcy Code. Upon the commencement of a chapter 11 case, § 362 of the Bankruptcy Code provides for an automatic stay of all attempts to collect upon claims against a debtor that arose prior to the bankruptcy filing. Generally speaking, the automatic stay prohibits interference with a debtor's property or business.

Under chapter 11, a debtor attempts to either reorganize its business for the benefit of the debtor and its creditors and shareholders or to liquidate its assets in an orderly fashion for the benefit of its creditors. Confirmation of a plan is the primary purpose of a case under chapter 11 of the Bankruptcy Code. A plan sets forth the means for satisfying all claims against, and interests in, a debtor. Generally, a claim against a debtor arises from a normal debtor/creditor transaction, such as a promissory note or a trade credit relationship but may also arise from other contractual arrangements or from alleged torts. An interest in a debtor is held by a party that owns all or part of the debtor, such as a shareholder.

After a plan has been filed with a bankruptcy court, it must be accepted by holders of impaired claims against, or interests in, the debtor. A plan proponent must fully disclose to creditors and shareholders sufficient information about the debtor, its assets and the terms of the plan before acceptances of that plan may be solicited under § 1125 of the Bankruptcy Code. This Disclosure Statement is being provided to the holders of claims against, or interests in, the Debtor to satisfy such requirements of § 1125 of the Bankruptcy Code.

The Bankruptcy Code provides that a plan group creditors and shareholders into classes and for voting to accept or reject a plan by class. Generally, creditors with similar legal rights and interests are placed together in the same class and those shareholders with similar legal rights and interests are placed together in the same class.

The Bankruptcy Code does not require that each claimant or shareholder vote in favor of the plan for the Court to confirm the plan. Rather, the plan must be accepted by each class of claimants (subject to an exception discussed below). A class of claimants accepts the plan if, of the claimants in the class who actually vote on the plan, such claimants holding at least two-thirds in dollar amount and more than one-half in number of allowed claims vote to accept the plan. For example, if a hypothetical class has ten creditors that vote and the total dollar amount of those ten creditors' claims is \$1,000,000.00, then for such class to have accepted the plan, six or more of those creditors must have voted to accept the plan (a simple majority), and the claims of the creditors voting to accept the plan must total at least \$666,667.00 (a two-thirds majority).

The Court may confirm the plan even though fewer than all classes of claims and interests vote to accept the plan. In this instance, the plan must be accepted by at least one "impaired" class of claims, without including any acceptance of the plan by an insider. Bankruptcy Code § 1124 defines "impairment" and generally provides that a claim as to which legal, equitable or contractual rights are altered under a plan. **The Plan impairs Classes 2, 4 and 5.**

If all impaired classes of claims and interests under the plan do not vote to accept the plan, the debtor is entitled to request that the Court confirm the plan pursuant to the "cramdown"

provisions of § 1129(b) of the Bankruptcy Code. These “cramdown” provisions permit a plan to be confirmed over the dissenting votes of classes of claims and/or interests if at least one impaired class of claims votes to accept the plan and the Court determines that the plan does not discriminate unfairly and is fair and equitable with respect to each impaired, dissenting class of claims and interests. Because the Plan is a plan of liquidation, the Debtor believes the Plan may be confirmed by cramdown.

Independent of the acceptance of the Plan as described above, to confirm the Plan the Court must determine that the requirements of § 1129(a) of the Bankruptcy Code have been satisfied.

THE DEBTOR BELIEVES THAT THE PLAN SATISFIES EACH OF THE CONFIRMATION REQUIREMENTS OF § 1129(a) AND, IF NECESSARY, § 1129(b) OF THE BANKRUPTCY CODE.

Confirmation of the Plan makes the Plan binding upon the Debtor, its creditors and shareholders, and other parties in interest irrespective of whether they have filed proofs of claim or voted to accept or reject the Plan.

### **1.3 *Voting and Confirmation Procedures***

This Disclosure Statement is accompanied by, among other things, copies of (i) the Plan, which is attached as **Exhibit “A;”** (ii) the Notice of the time for submitting Ballots to accept or reject the Plan, the date, time and place of the Confirmation Hearing and related matters, and the time for filing objections to the confirmation of the Plan (the “**Confirmation Hearing Notice**”); (iii) if you are entitled to vote, one or more Ballots (and return envelopes) to be used by you in voting on the Plan which also include an Opt-Out Form, by which you may opt out of the Third-Party Releases in the Plan and waive any distribution from the Agneto Settlement Reserve.

#### **(a) Who May Vote**

Under the Bankruptcy Code, only impaired classes of claims or interests are entitled to vote to accept or reject a plan of reorganization. A class that is not impaired under a plan is deemed to have accepted a plan and, therefore, does not vote. Under the Bankruptcy Code and the Plan, unclassified Administrative Claims are unimpaired and, therefore, not entitled to vote.

A Class is “impaired” under the Bankruptcy Code when the legal, equitable and contractual rights of the holders of claims or interests in that class are modified or altered. Holders of Claims in Class 2 (Agneto Secured Claim) and Class 4 (General Unsecured Claims) are impaired and, therefore, are entitled to vote to accept or reject the Plan. Holders of Interests in Class 5 (Equity Interests), while impaired, will receive no distribution under the Plan and are not entitled to vote on, and are deemed to have rejected the Plan.

**Holders of Claims and Interests will receive an Opt-Out Form to permit them to elect to be an Opt-Out Party and affirmatively opt out of the Third-Party Releases, should they timely elect to do so. Any holders of Claims or Interests that do not timely return an Opt-**

**Out Form affirmatively opting out of the Third-Party Releases are conclusively deemed to be Third-Party Releasing Parties.**

If you are the holder of a Claim entitled to vote on the Plan but there is a pending objection with respect to your Claim, you will be required to seek temporary allowance by the Bankruptcy Court of your Claim for voting purposes. Rule 3018 of the Federal Rules of Bankruptcy Procedure provides that the Bankruptcy Court may after notice and hearing temporarily allow a Claim in an amount that the Bankruptcy Court deems proper for the purpose of accepting or rejecting the Plan. If the Debtor has filed an objection with respect to your Claim, you are urged to seek the assistance of your own attorney.

Assuming that any Class opposes or any Creditor, Interest holder, or other party in interest objects to the Plan, the Debtor intends to confirm the Plan notwithstanding such objection.

(b) Voting Instructions

All votes to accept or reject the Plan must be cast by using the appropriate form of Ballot enclosed with this Disclosure Statement. No votes other than ones using the Ballots will be counted, except to the extent the Bankruptcy Court orders otherwise. All Ballots must be actually received by counsel for the Debtor, Foley & Lardner, LLP, 2021 McKinney Ave., Suite 1600, Dallas, Texas 75201, no later than **October 21, 2019 at 5:00 p.m. Central Daylight Time** (the “***Voting Deadline***”), unless the Bankruptcy Court extends such date.

After carefully reviewing the Plan, this Disclosure Statement, the Opt-Out Form, and (if you are entitled to vote) the detailed instructions accompanying your Ballot, please indicate your acceptance or rejection of the Plan by checking the appropriate box on the enclosed Ballot. Please complete and sign your original Ballot and return it in the envelope provided. You must provide all of the information requested by the appropriate Ballot. Failure to do so may result in the disqualification of your vote. Each Ballot has been coded to reflect the Class it represents. Accordingly, in voting to accept or reject the Plan, you must use only the coded Ballot or Ballots sent to you with this Disclosure Statement.

For your vote to count, your Ballot must be properly completed as set forth above and according to the voting instructions on the Ballot and received on or before the Voting Deadline by the Voting Agent.

**BALLOTS RECEIVED AFTER THE VOTING DEADLINE WILL NOT BE COUNTED. BALLOTS SHOULD NOT BE DELIVERED DIRECTLY TO THE COURT, THE DEBTOR, THE COMMITTEE, OR COUNSEL TO THE COMMITTEE.**

**1.4** Questions About Voting Procedures

If (i) you have any questions about (a) the procedures for voting, (b) the packet of materials that you have received, or (c) the amount of your Claim or holdings, or (ii) you wish to obtain an additional copy of the Plan, this Disclosure Statement, or any exhibits to such documents, please contact:

Foley & Lardner, LLP  
Attention: Mark C. Moore  
2021 McKinney Ave., Suite 1600  
Dallas, TX 75201  
Telephone: (214) 999-4945  
[mmoore@foley.com](mailto:mmoore@foley.com)

### **1.5 *Acceptance or Rejection of the Plan***

Under the Bankruptcy Code, a Class of Claims entitled to vote is deemed to have accepted the Plan if it is accepted by claimants in such Class who hold at least two-thirds in amount and more than one-half in number of the Allowed Claims of such class of those actually voting on the Plan. A Class of Interests entitled to vote is deemed to have accepted the Plan if it is accepted by holders of Interests who hold at least two-thirds in amount of the Allowed Interests of such Class that have actually voted on the Plan.

If any Impaired Class of Allowed Claims or Interests rejects the Plan, the Plan may still be confirmed by the Bankruptcy Court pursuant to § 1129(b) of the Bankruptcy Code if: (a) the Plan has been accepted by at least one Impaired Class of Claims; and (b) the Bankruptcy Court determines, among other things, that the Plan “does not discriminate unfairly” and is “fair and equitable” with respect to each non-accepting Impaired Class (the “*Cramdown Provisions*”). If the Plan is not accepted by all Impaired Classes, the Debtor requests the Bankruptcy Court to confirm the Plan under the Cramdown Provisions.

### **1.6 *Confirmation Hearing, Objections***

The Bankruptcy Court, after notice, is required under § 1128(a) of the Bankruptcy Code to hold the Confirmation Hearing. Under § 1128(b) of the Bankruptcy Code, any party in interest may object to Confirmation of the Plan. Pursuant to section 1128 of the Bankruptcy Code and Bankruptcy Rule 3017:

#### **(a) Confirmation Hearing**

The Bankruptcy Court has scheduled a Confirmation Hearing to be held before the Honorable Stacy G.C. Jernigan, United States Bankruptcy Court for the Northern District of Texas, Earle Cabell Federal Building, 1100 Commerce St., 14th Floor, Courtroom #1, Dallas, TX 75242 on **October 28, 2019 at 1:30 p.m. Central Daylight Time.**

The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice, except for an announcement of such adjourned hearing date by the Bankruptcy Court in open court at such hearing.

At the Confirmation Hearing, the Bankruptcy Court will consider the terms of the Plan and determine whether the terms of the Plan satisfy the requirements set out in § 1129 of the Bankruptcy Code.

(b) Objections to Confirmation

Any objection to Confirmation of the Plan must be in writing, must comply with the Bankruptcy Rules and the local rules of the Bankruptcy Court, and must be filed and served by **October 21, 2019 at 5:00 p.m. Central Daylight Time.**

Bankruptcy Rule 9014 governs objections to confirmation of the Plan. UNLESS AN OBJECTION TO CONFIRMATION OF THE PLAN IS TIMELY SERVED UPON THE DEBTOR AND FILED WITH THE BANKRUPTCY COURT, IT MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT IN DETERMINING CONFIRMATION OF THE PLAN.

**ARTICLE II  
BACKGROUND AND HISTORY OF THE DEBTOR**

**2.1 Business Overview**

Established by Frankie Valdez in 2012, the Debtor's business focused on the manufacturing of shelf-stable and fresh or refrigerated products such as soups, hot sauces, salad dressings, pico de gallo, condiments, and other spreads. The Debtor would develop or acquire a recipe for a food product, design the manufacturing process to scale up production, and then package and label the produce under its own brands for distribution through distributors or directly to stores.

The Debtor's experience with its own products prompted it to approach other brands seeking to scale their production, leading to the second aspect of the Debtor's business: services focused on assisting third parties with the manufacturing and distribution of their own recipes. The services included consulting the third party on its proposed recipes, manipulating the recipes for production, packaging the final product with the third party's branding, and ultimately, distribution.

**2.2 Pre-Petition Debt**

Initially, the Debtor was capitalized through the sale of membership units to approximately thirty-three investors. In 2018, the Debtor sought additional financing through the issuance of Series A preferred stock. Six investors, some of which are related and/or affiliated with the Debtor's initial investors, purchased Series A preferred stock.

On April 13, 2017, Zions Bancorporation N.A. d/b/a Amegy Bank ("**Amegy**") agreed to loan the Debtor approximately \$1,500,000 through a variable-rate revolving line of credit with an original maturity date of October 13, 2018 pursuant to a Business Loan Agreement. On November 19, 2018 Amegy and the Debtor executed a Change in Terms Agreement (together with the Business Loan Agreement, and as otherwise amended, modified and restated from time to time, the "**Pre-Petition Loan Documents**") that increased the amount of the revolving line of credit to \$2,500,000 (the "**Pre-Petition Obligations**"). Mr. Jeffery D. Franco ("**Franco**") guaranteed the Pre-Petition Obligations. As of the Petition Date, the Debtor owed Amegy approximately

\$2,500,000.00 under the Pre-Petition Obligations, secured by a first priority, property perfected lien in substantially all of the Debtor's assets ("**Pre-Petition Lien**").

In addition to the Pre-Petition Obligations to Amegy, the Debtor also borrowed approximately \$5,764,190.29 pursuant to a series of twenty-two unsecured promissory loan agreements (the "**Unsecured Notes**") held by ten separate noteholders, most of whom are also investors holding membership units in the Debtor.

### **ARTICLE III THE CHAPTER 11 CASE**

#### **3.1 Events Precipitating the Chapter 11 Filing**

The Debtor believes the fresh and shelf-stable food manufacturing business has a bright future; however, under Valdez's leadership the Debtor posted dramatic losses year after year. Valdez served as the Debtor's sole manager until late 2018. As a result of mismanagement, the Debtor's growth failed to offset its overall negative performance.

Though the Debtor's books and records reflect increased sales from \$3.2 million in 2017 to approximately \$5.1 million in 2018, that growth did little to offset the Debtor's overall negative performance, and the Debtor lost approximately \$8.6 million in 2018 alone. Through April 30, 2019 the Debtor has lost approximately \$2.5 million this calendar year, an improvement in terms of overall trend but still not good enough to survive outside of chapter 11.

The Debtor terminated Mr. Valdez in April 2019 and restructured its management team; however, the significant accumulated losses noted above forced the Debtor to file this Chapter 11 Case to stabilize and sell its operations. The Debtor hired Steven B. Solomon ("**Solomon**") as its Chief Restructuring Officer to guide its restructuring efforts.

#### **3.2 Significant Events During the Chapter 11 Case**

On May 20, 2019 (the "**Petition Date**"), the Debtor filed its voluntary petition under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**") in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "**Court**"). The Debtor continues to operate as a debtor in possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Case.

On May 20, 2019, the Debtor filed its filed its *Motion for Interim and Final Orders (I) Authorizing Debtor to Obtain Post-Petition Financing; (II) Granting Liens, Security Interests and Superpriority Administrative Expense Status; (III) Authorizing the Use of Cash Collateral; (IV) Scheduling a Final Hearing; and (V) Modifying the Automatic Stay* [Docket No. 9]. On July 2, 2019 Amegy assigned the Pre-Petition Loan Documents, Pre-Petition Obligations and Pre-Petition Liens to Agneto Holdings, L.P. ("**Agneto**") and filed a Notice of the Assignment on July 3, 2019 [Docket No. 82]. As a result, Agneto became the Debtor's senior secured lender and stepped into Amegy's position as to the Debtor's Cash Collateral. After entry of interim orders, on August 9, 2019, the Court entered its *Final Order (I) Granting Liens, Security Interests and Superpriority*

*Administrative Expense Status; (II) Authorizing the use of Cash Collateral; (III) Affording Adequate Protection; and (IV) Modifying the Automatic Stay* (the “**Cash Collateral Order**”). The Cash Collateral Order also approved the Debtor’s final budget for use of Agneto’s Cash Collateral (the “**Budget**”).

On June 3, 2019 the U.S. Trustee appointed the Committee comprising of Dianne Betts, Liberty Carton Co., and Tomas Max Nygaard McNutt IV Trust. On June 20, 2019, the Committee filed its Application to Employ Munsch Hardt Kopf & Harr, P.C. as counsel for the Committee. After a hearing on July 24, 2019, the Court approved the employment of Munsch Hardt Kopf & Hart, P.C. as Committee counsel.

The Debtor filed Applications to Employ Foley & Lardner LLP as counsel and RGP as accountants. On July 2, 2019, the Debtor filed its Application to Employ Mr. Solomon as Chief Restructuring Officer. After a hearing on July 24, 2019, the Court approved the employment of Foley & Lardner, LLP as Debtor’s counsel, RGP as Debtor’s accountants, and Mr. Solomon as Debtor’s Chief Restructuring Officer.

On Sunday, June 9, 2019, a storm hit North Texas, knocking out power for hundreds of thousands of buildings and homes and damaging the Debtor’s building in northeast Dallas. The storm compromised the roof covering the Debtor’s main production facility. The storm also interrupted power to the Debtor’s freezers, spoiling the Debtor’s inventory of food stock and finished products. This damage and loss of inventory compromised the Debtor’s going concern efforts and focused the Debtor on immediate sale efforts to preserve value for creditors.

The Committee filed a Motion to Appoint Trustee (the “**Trustee Motion**”). The Debtor objected to the Trustee Motion and the Court set the Trustee Motion for hearing on July 3, 2019.

On July 3, 2019, Casa Verde Foods, LLC offered to purchase the Debtor’s business assets (the “**Sale**”) for \$2.5 million (the “**Sale Proceeds**”). On the same day, the Debtor filed a motion to approve the Sale. The Court entered its order approving the Sale on July 23, 2019 and the Sale closed on July 24, 2019.

On July 3, 2019, the Committee, Agneto, Franco, and the Debtor engaged in extensive arms-length negotiations and reached a settlement to resolve the Trustee Motion, the Debtor’s objection, and to facilitate the expedited closing of the Sale. The Parties announced the basic terms of the settlement on the record, subject to documentation and the Court’s approval. The parties finalized and memorialized the settlement (the “**Settlement Agreement**”), which is attached to this Disclosure Statement as **Exhibit “B”**.

The Settlement Agreement compromised, settled, and released all causes of action owned by or that could have been asserted by the Debtor or the Committee against Agneto and Mr. Franco, allowed for the expedited Sale closing, and funded the administration of the Estate. Importantly, the Settlement also provides a substantial recovery for priority and general unsecured creditors that agree to provide a third-party release to Agneto and Franco, through Agneto’s funding of a \$1 million settlement reserve from its Cash Collateral. The Settlement Agreement is described in more detail in Section 8.1 of this Disclosure Statement. The Court approved the Settlement

Agreement after notice and hearing on July 31, 2019 and entered its Order Granting Motion to Compromise Controversy on August 9, 2019 [Docket No. 142]. The Plan incorporates and implements the remaining terms of the Settlement Agreement.

In addition, the parties agreed to pay holders of Claims subject to the Perishable Agricultural Commodities Act, 7 U.S.C. § 449a, *et seq.* (“**PACA**”) [Docket No. 133]. On August 9, 2019, the Debtor filed its Motion for Order Establishing Bar Date for PACA Claims, seeking an order from the Court establishing a bar date for the filing of any claims from creditors asserting additional protections under PACA (“**Motion to Establish PACA Bar Date**”). [Docket No. 144]. The Court established **September 30, 2019** as the PACA Bar Date by order entered at Docket No. 157.

#### **ARTICLE IV THE PLAN**

**THIS SECTION PROVIDES A SUMMARY OF THE STRUCTURE, CLASSIFICATION, TREATMENT AND IMPLEMENTATION OF THE PLAN AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE FULL TEXT OF THE PLAN, WHICH ACCOMPANIES THIS DISCLOSURE STATEMENT AS EXHIBIT “A”. THE PLAN ITSELF AND THE DOCUMENTS REFERENCED THEREIN WILL CONTROL THE TREATMENT OF CREDITORS, INTEREST HOLDERS AND OTHER PARTIES-IN-INTEREST UNDER THE PLAN AND WILL, UPON THE EFFECTIVE DATE, BE BINDING UPON ALL HOLDERS OF CLAIMS AGAINST, AND INTERESTS IN, THE DEBTOR.**

##### **4.1 Previous Sale of Assets**

As discussed above, the Debtor sold substantially all of its assets for \$2.5 million. The Creditors Committee objected to the proposed sale and filed a motion requesting the Court appoint a Chapter 11 Trustee.

##### **4.2 Settlement Agreement**

On August 9, 2019, the Court approved the Settlement Agreement between the Debtor, the Committee and Agneto, the owner of the Debtor’s secured indebtedness, pursuant to which Agneto agreed, in essence, to provide unsecured creditors a shared recovery of \$1 million (conditioned on the recipients giving the Agneto related parties a Plan release), in exchange for the Committee agreeing:

- to support the proposed sale of substantially all of the Debtor’s assets (which was approved and closed on July 24, 2019);
- to withdraw its motion to appoint a Chapter 11 trustee;
- for the Committee and the Debtor to provide Agneto and related parties a release from any and all potential claims and causes of action; and

- to support the terms of this Plan (described below).

#### 4.3 *Plan Settlements*

The Plan is intended to implement the terms of the Settlement Agreement and generally provides:

(a) *Plan Agent Payments*

The Plan Agent shall pay in full:

- Allowed Administrative Expense Claims (including claims made under § 503(b)(9) of the Bankruptcy Code);
- Allowed Priority Secured Tax Claims;
- Allowed Other Secured Claims, other than those of Agneto; and
- Any remaining funds shall be paid to Agneto on account of the Agneto Secured Claim.

(b) *Unsecured Creditor Trust*

The Unsecured Creditor Trust shall be formed and shall receive from the Debtor's Estate:

- The \$1,000,000.00 "Agneto Settlement Reserve;"
- Avoidance Actions against non-insiders; and
- A ten percent (10%) beneficial interest in the Litigation Trust.

The Agneto Settlement Reserve shall be used to pay all expenses and obligations of the Unsecured Creditor Trust and the Allowed Priority Unsecured Claims in full. The remaining funds from the Agneto Settlement Reserve will be used to make Pro Rata distributions to holders of Allowed General Unsecured Claims who agree to release the Agneto-related parties (*i.e.*, who do not Opt-Out of the Third-Party Releases) and who are not Released Parties. All holders of Allowed General Unsecured Claims, including those Opt-Out Parties who do not elect to release the Agneto-related parties, are entitled to a Pro Rata distribution of the net proceeds from the Unsecured Creditor Trust Avoidance Actions and the ten percent (10%) beneficial interest in the Litigation Trust.

(c) *Litigation Trust*

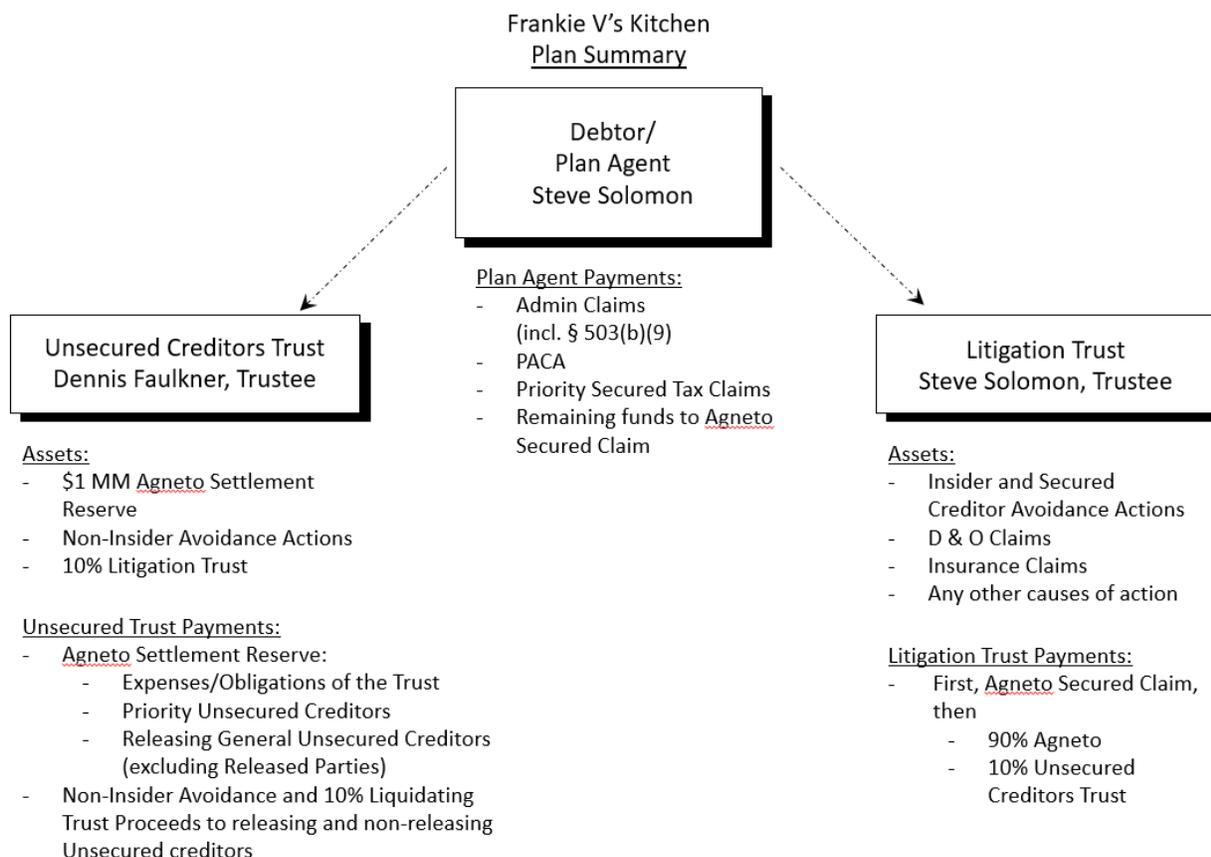
A Litigation Trust shall be formed for the benefit of Agneto (which shall hold a 90% beneficial interest in the Litigation Trust) and the Unsecured Creditor Trust (which shall hold a 10% beneficial interest in the Litigation Trust). The Debtor and its Estate shall transfer the following assets to the Litigation Trust:

- All Claims and Causes of Action against officers and directors of the Debtor;
- All proceeds and Claims under the Debtor’s insurance policies, including, but not limited to, Director and Officer insurance claims and business disruption insurance claims;
- Avoidance Actions against insiders and parties asserting secured claims; and
- Any and all other Causes of Action of the Debtor and/or its Estate that are not otherwise transferred to the Unsecured Creditor Trust.

The Litigation Trust will distribute its assets as follows: first, to pay the expenses of the Litigation Trust; second, to pay the Agneto Secured Claim; and third, any remaining funds shall be distributed 90% to Agneto and 10% to the Unsecured Creditor Trust.

#### 4.4 Summary of the Plan

The Plan provides for the Debtor’s Assets to be managed and distributed as follows:



#### **4.5 *Brief Overview of Chapter 11 Liquidation***

Chapter 11 is the chapter of the Bankruptcy Code primarily used for business reorganization. With this purpose in mind, businesses sometimes use chapter 11 as a means to conduct asset sales and other forms of liquidation. Whether the aim is reorganization or liquidation, a chapter 11 plan sets forth and governs the treatment and rights afforded to creditors and unitholders with respect to their claims against and equity interests in a debtor's bankruptcy case.

Here, the Plan proposes to liquidate the Debtor's remaining assets and to implement the remaining terms of the Settlement Agreement through the formation of the two trusts noted above. Through one trust, the "FVK Unsecured Creditor Trust", Unsecured Creditors with Allowed Claims that do not opt-out of providing a third-party release to the Released Parties (which includes Agneto, Franco and Solomon) will receive a significant distribution from the \$1 million Agneto Settlement Reserve in exchange for this third-party release. In addition, Unsecured Creditors with Allowed claims will share in recoveries from the trust's prosecution of certain causes of action. The Plan also sets up a separate trust, the "FVK Litigation Trust" to pursue causes of action against the Debtor's former officers, directors and other parties, including insurance claims.

The Court's confirmation of the Plan binds the Debtor and its creditors and equity interest holders. The confirmation of the Plan generally substitutes the obligations specified under the confirmed Plan for any claims or equity interests that arose prior to the date of the confirmation of the Plan. A general discussion of the Plan's treatment of unclassified claims follows.

#### **4.6 *Statutory Fees***

The Plan provides for payment in full of all Allowed required statutory fees. The Debtor or Plan Agent, as applicable, shall pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930(a)(6) within ten (10) days after the Confirmation Date for the period ending on the Confirmation Date.

The Plan Agent, Litigation Trustee, and Unsecured Creditor Trustee, as applicable, shall further pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930(a)(6) for the period after the Confirmation Date within the time period set forth in 28 U.S.C. § 1930(a)(6) based upon disbursements made by the Plan Agent, Liquidation Trustee, and Unsecured Creditor Trustee, as applicable, after the Confirmation Date.

#### **4.7 *Professional Claims***

All Professionals seeking awards of Professional Claims by the Bankruptcy Court shall (a) file, on or before the Professional Claims Bar Date, their respective applications for final allowances of compensation for services rendered and reimbursement of expenses incurred and (b) be paid by the Debtor or Plan Agent, as applicable, in Cash and in such amounts as are Allowed by Final Order of the Bankruptcy Court. Payments to Professionals for the Committee shall not exceed the amount of the Carve-Out under the Cash Collateral Order applicable to Committee Professional or Committee Professional Claim unless otherwise agreed in writing between the Debtor or Plan Agent, as applicable, and the Committee Professional.

Any objections to Professional Claims shall be served and filed (a) no later than twenty-one (21) days after the filing of the final application for compensation or reimbursement or (b) such later date as ordered by the Bankruptcy Court upon a motion of the Debtor or the Plan Agent or agreed to by the holder of the Professional Claim.

**4.8 *Deadline for Filing Administrative Claims***

Administrative Claims, other than Professional Claims, must be filed no later than the Administrative Claims Bar Date. Objections to any such Administrative Claims (other than Professional Claims) must be filed and served on the claimant on or before the later of (a) the first Business Day that is 21 days after the Administrative Claims Bar Date, (b) the first Business Day that is 21 days after such Administrative Claim is filed, or (c) such other extended date granted by the Bankruptcy Court upon request of the Debtor or Litigation Trustee, as applicable, or agreed to by the holder of the Administrative Claim.

Holders of Administrative Claims that are required to file a request for payment of such Claims and that do not file such requests on or before the Administrative Claims Bar Date, are forever barred from asserting such Claims against the Debtor, its Estate, the Litigation Trust, the Unsecured Creditor Trust, any other Person, or any of their respective Assets.

**ARTICLE V  
CLASSIFICATION OF CLAIMS AND INTERESTS**

**5.1 *Classification in General***

A Claim or Interest is placed in a particular Class for all purposes, including voting, confirmation, and distribution under the Plan and under §§ 1122 and 1123(a)(1) of the Bankruptcy Code; *provided* that a Claim or Interest is placed in a particular Class for the purpose of receiving distributions under the Plan only to the extent that such Claim or Interest is an Allowed Claim or Allowed Interest in that Class and such Claim or Interest has not been satisfied, released, or otherwise settled prior to the Effective Date.

The Bankruptcy Code also excludes certain types of Claims that receive payment priority as administrative claims from Class inclusion and treatment. The following table designates the Claims treated under the Plan that are not included in a Class:

| CLASS | DESCRIPTION   | ESTIMATED SIZE | ESTIMATED RECOVERY                    |
|-------|---|----------------|---------------------------------------|
| N/A   | <b>Administrative Claims:</b> any Claim asserted or arising under §§ 503, 507(a)(1) and (2), or 507(b) of the Bankruptcy Code, except a Professional Claim. | \$0.00         | 100% - Paid in full by the Plan Agent |

| CLASS | DESCRIPTION   | ESTIMATED SIZE            | ESTIMATED RECOVERY   |
|-------|---|---------------------------|--|
| N/A   | <b>Professional Claims:</b> any Claim of a Professional for compensation or reimbursement of costs and expenses relating to services incurred after the Petition Date and prior to and including the Effective Date.  | \$200,000.00 <sup>1</sup> | 100% - Paid in full by the Plan Agent, Committee Professionals limited to the agreed Carve-Out |
| N/A   | <b>Secured Priority Tax Claims:</b> any Secured Claim of a governmental unit (as defined in § 101(27) of the Bankruptcy Code) of the kind entitled to priority in payment under §§ 502(i), 507(a)(8) and 507(c) of the Bankruptcy Code.                       | \$0.00                    | 100% - Paid in full by the Plan Agent  |
| N/A   | <b>Unsecured Priority Tax Claims:</b> any Claim of a governmental unit (as defined in § 101(27) of the Bankruptcy Code) of the kind entitled to priority in payment under §§ 502(i), 507(a)(8) and 507(c) of the Bankruptcy Code that is not a Secured Claim. | \$0.00                    | 100% - Paid in full by the Unsecured Creditor Trustee  |

The following table designates the Classes of Claims against and Interests in the Debtor and specifies which Classes are (a) Impaired and Unimpaired under the Plan; (b) entitled to vote to accept or reject the Plan in accordance with § 1126 of the Bankruptcy Code; (c) deemed to accept or reject the Plan; and the estimated recovery under the Plan:

| Class   | Description             | Status     | Voting Rights         | Estimated Class Size | Estimated Recovery |
|---------|-------------------------|------------|-----------------------|----------------------|--------------------|
| Class 1 | Priority Non-Tax Claims | Unimpaired | No (deemed to accept) | nominal              | 100%               |
| Class 2 | Agneto Secured Claim    | Impaired   | Yes                   | \$1,650,000.00       | TBD                |
| Class 3 | Other Secured Claims    | Unimpaired | No (deemed to accept) | \$0.00               | 100%               |

<sup>1</sup> Estimate includes only remaining unpaid fees.

|         |                          |          |                       |                 |  |
|---------|--------------------------|----------|-----------------------|-----------------|--|
| Class 4 | General Unsecured Claims | Impaired | Yes                   | \$9,000,000.00  | Approximately 10% (unless holder is an Opt-Out Party, then less than 1%) |
| Class 5 | Equity Interests         | Impaired | No (deemed to reject) | \$25,000,000.00 | All equity interests shall be cancelled on the Effective Date            |

**5.2 Voting; Presumptions; Solicitation**

(a) *Acceptance by Certain Impaired Classes.*

Only holders of Allowed Claims in Classes 2 and 4 are entitled to vote to accept or reject the Plan. An Impaired Class of Claims shall have accepted the Plan if (i) the holders of at least two-thirds (2/3) in amount of the Allowed Claims or Interests actually voting in such Class have voted to accept the Plan and (ii) the holders of more than one-half (1/2) in number of the Allowed Claims actually voting in such Class have voted to accept the Plan. Holders of Claims in Classes 2 and 4 will receive ballots containing detailed voting instructions.

(b) *Deemed Acceptance by Unimpaired Classes.*

Holders of Claims in Classes 1 and 3 are Unimpaired and are conclusively deemed to have accepted the Plan. Accordingly, such holders are not entitled to vote to accept or reject the Plan; however, holders of Claims in Classes 1 and 3 will receive an Opt-Out Form to permit them to elect to be an Opt-Out Party and affirmatively opt-out of the Third-Party Releases, should they timely elect to do so. Any holders of Claims in Classes 1 and 3 that do not timely return an Opt-Out Form affirmatively opting out of the Third-Party Releases are conclusively deemed to be Third-Party *Releasing Parties*.

(c) *Deemed Rejection by Class 5.*

Holders of Interests in Class 5 receive nothing under the Plan and are conclusively deemed to have rejected the Plan. Accordingly, such holders are not required to vote to accept or reject the Plan. Holders of Interests in Class 5 that also hold or held a Claim in Class 1 or Class 4 will receive an Opt-Out Form to permit them to elect to be an Opt-Out Party and affirmatively opt-out of the Third-Party Releases, should they timely elect to do so. Any holders of Interests in Class 5 that receive and do not timely return an Opt-Out Form affirmatively opting out of the Third-Party Releases are conclusively deemed to be Third-Party *Releasing Parties*.

### 5.3 Cramdown

If any Class of Claims or Interests is deemed to reject the Plan or is entitled to vote on the Plan and does not vote to accept the Plan, the Debtor (a) hereby seeks confirmation of the Plan under § 1129(b) of the Bankruptcy Code and (b) may amend or modify the Plan in accordance with the Bankruptcy Code. If a controversy arises as to whether any Claims or Interests, or any Class of Claims or Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

## ARTICLE VI TREATMENT OF CLAIMS AND INTERESTS

### 6.1 Treatment of Claims and Interests under the Plan

Allowed Claims and Interests under the Plan shall be treated as follows:

| CLASS NO. | CLAIMANTS                          | TREATMENT   |
|-----------|------------------------------------|---|
| N/A       | <b>ADMINISTRATIVE CLAIMS</b>       | Each holder of an Allowed Administrative Claim shall (to the extent not previously paid) be paid in full <u>by the Plan Agent</u> on or as soon as reasonably practicable after the later of (1) the Effective Date, (2) ten (10) Business Days after the date such expense is Allowed, and (3) as otherwise agreed by the parties.   |
| N/A       | <b>PROFESSIONAL CLAIMS</b>         | Each holder of an Allowed Professional Claim (to the extent not previously paid) will be paid by the Debtor or Plan Agent as applicable in Cash and in such amounts as are Allowed by Final Order of the Bankruptcy Court. Payments to Professionals for the Committee shall not exceed the amount of the Carve-Out under the Cash Collateral Order applicable to Committee Professional or Committee Professional Claim unless otherwise agreed in writing between the Debtor or Plan Agent, as applicable, and the Committee Professional |
| N/A       | <b>SECURED PRIORITY TAX CLAIMS</b> | Each holder of an Allowed Secured Priority Tax Claim shall (to the extent not previously paid) be paid in full <u>by the Plan Agent</u> on or as soon as reasonably practicable after the later of (1) the Effective Date, (2) ten (10) Business Days after the date such expense is Allowed, and (3) as otherwise agreed by the parties.   |

| CLASS NO. | CLAIMANTS                            | TREATMENT  |
|-----------|--------------------------------------|--|
| N/A       | <b>UNSECURED PRIORITY TAX CLAIMS</b> | Each holder of an Allowed Unsecured Priority Tax Claim shall be paid in full <u>by the Unsecured Creditor Trustee</u> on or as soon as reasonably practicable after the later of (1) the Effective Date, and (2) ten (10) Business Days after the date such Claim becomes an Allowed Claim.  |
| 1.        | <b>PRIORITY NON-TAX CLAIMS</b>       | Each holder of an Allowed Priority Non-Tax Claim shall be paid in full by the <u>Unsecured Creditor Trustee</u> on or as soon as reasonably practicable on the later of (1) the Effective Date, and (2) ten (10) Business Days after the date such Claim is Allowed.   |
| 2.        | <b>AGNETO SECURED CLAIM</b>          | Agneto shall receive: (i) payment of Cash <u>from the Plan Agent</u> of all funds remaining in the Estate after payment of all Allowed Administrative Expense Claims, Allowed Secured Priority Tax Claims, and all Allowed Other Secured Claims, (ii) a secured claim on the assets of the Litigation Trust, (iii) a ninety percent (90%) beneficial interest in the Litigation Trust and (iv) releases from the Releasing Parties and the Third-Party Releases.   |
| 3.        | <b>OTHER SECURED CLAIMS</b>          | On or as soon as reasonably practicable after the Effective Date, each holder of an Allowed Secured Claim, other than Agneto, shall <u>from and at the option of the Plan Agent</u> , (1) receive cash in the full amount of its Allowed Secured Claim, (2) have its Allowed Claim reinstated such that the legal, equitable, and contractual rights to which such Allowed Claim entitles such holder are unaltered so as to leave such Allowed Claim Unimpaired in accordance with Section 1124 of the Bankruptcy Code or (3) return of the applicable Collateral in satisfaction of the Allowed Secured Claim. |
| 4.        | <b>GENERAL UNSECURED CLAIMS</b>      | The holders of Allowed General Unsecured Claims shall each receive <u>from the Unsecured Creditor Trustee</u> : (i) to the extent the holder of the Allowed General Unsecured Claim is not an Opt-Out Party or a Released Party, a Pro Rata share in the distribution of the Agneto Settlement Reserve after payment in full of (a) all expenses and obligations related to the administration of the Unsecured Creditor Trust, (b) Allowed Unsecured Priority Tax Claims and (c) Allowed Priority Non-Tax Claims  |

| CLASS NO. | CLAIMANTS               | TREATMENT   |
|-----------|-------------------------|---|
|           |                         | (excluding any Allowed Claim under § 503(b)(9) of the Bankruptcy Code); and (ii) as to all holders of Allowed General Unsecured Claims, regardless of whether or not they are an Opt-Out Party, a Pro Rata share in the net distributions of the Unsecured Creditor Trust Assets other than the Agneto Settlement Reserve. No Opt-Out Party or Released Party will receive any share, distribution or beneficial interest from the Agneto Settlement Reserve. Also, neither Agneto nor Franco will share in the distribution of the Unsecured Creditor Trust Assets until after all other Allowed General Unsecured Claims are paid in full. Unless otherwise stated in the Plan, the distributions to holders of an Allowed General Unsecured Claim shall be made pursuant to the terms of the Unsecured Creditor Trust Agreement. |
| 5.        | <b>EQUITY INTERESTS</b> | All Equity Interests shall be cancelled on the Effective Date.  |

**6.2 Opt-Out Forms**

(a) *Class 1: Priority Non-Tax Claims:*

Allowed Priority Non-Tax Claims are Unimpaired, are conclusively presumed to accept the Plan, and *are* not entitled to vote to accept or reject the Plan. Holders of Claims in Class 1 will receive an Opt-Out Form to permit them to elect to be an Opt-Out Party and affirmatively opt out of the Third-Party Releases, should they timely elect to do so. Any holders of Claims in Class 1 that do not timely return an Opt-Out Form affirmatively opting out of the Third-Party Releases are conclusively deemed to be Third-Party Releasing Parties.

(b) *Class 3: Other Secured Claims:*

The holders of Other Secured Claims are Unimpaired, conclusively presumed to accept the Plan, and are not entitled to vote to accept or reject the Plan. Holders of Claims in Class 3 that also hold or held a Claim in Class 1 or Class 4 will receive an Opt-Out Form to permit them to elect to be an Opt-Out Party and affirmatively opt out of the Third-Party Releases, should they timely elect to do so. Any holders of Claims in Class 3 that do not timely return an Opt-Out Form affirmatively opting out of the Third-Party Releases are conclusively deemed to be Third-Party Releasing Parties.

(c) *Class 4: General Unsecured Claims:*

Allowed General Unsecured Claims are Impaired. Therefore, holders of General Unsecured Claims are entitled to vote to accept or reject the Plan. Holders of Claims in Class 4 will receive an Opt-Out Form to permit them to elect to be an Opt-Out Party and affirmatively opt out of the Third-Party Releases should they timely elect to do so. Any holders of Claims in Class 4 that do not timely return an Opt-Out Form affirmatively opting out of the Third-Party Releases are conclusively deemed to be Third-Party Releasing Parties.

(d) *Class 5: Equity Interests:*

Holders of Equity Interests are Impaired, will receive no distribution under the Plan, and are deemed to have rejected the Plan. Holders of Interests in Class 5 that also hold or held a Claim under Class 1 or Class 4 will receive an Opt-Out Form to permit them to elect to be an Opt-Out Party and affirmatively opt-out of the Third-Party Releases, should they timely elect to do so. Any holders of Interests in Class 5 that receive and do not timely return an Opt-Out Form affirmatively opting out of the Third-Party Releases are conclusively deemed to be Third-Party Releasing Parties.

**ARTICLE VII  
EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**7.1 *Approval of Rejection; Rejection Damages Claims Bar Date***

The Confirmation Order constitute a Final Order approving rejection of all executory contracts and unexpired leases as of the Effective Date, except (i) insurance policies and (ii) any executory contract or unexpired lease specifically assumed by Final Order as of the Effective Date. Any Claim for damages arising from any such rejection must be filed within thirty (30) days after the mailing of notice of the entry of the Confirmation Order or such Claim shall be forever barred, shall not be enforceable against the Debtor, its Estate, the Unsecured Creditor Trust, or Litigation Trust, or any of their respective properties and shall receive no distribution under the Plan or otherwise on account of such Claim.

**7.2 *No Effect on Insurance***

The rejection of executory contracts shall not apply to, and shall have no effect upon, any insurance policy which the Debtor owns or pursuant to which the Debtor is an insured party, beneficiary, claimant or in which the Debtor has any interest (together, the “**Insurance Policies**”). All Insurance Policies to which the Debtor is a party as of the Effective Date shall be deemed to be and treated as executory contracts and shall be assumed by the Debtor, assigned to the Litigation Trust and shall continue in full force and effect thereafter in accordance with their respective terms.

**ARTICLE VIII**  
**MEANS FOR EXECUTION AND IMPLEMENTATION OF THE PLAN**

**8.1     *Settlement Agreement and Plan Settlement***

The Plan implements the Settlement Agreement and shall constitute a settlement under Bankruptcy Rule 9019 and section 1123 of the Bankruptcy Code between the Releasing Parties and the Third-Party Releasing Parties on the one hand and the Released Parties and the Third-Party Released Parties on the other hand in complete and final resolution of all claims the Releasing Parties and the Third-Party Releasing Parties may have against the Released Parties and the Third-Party Releasing (the “*Plan Settlement*”). Alleged claims which are being settled include, without limitation, all claims and causes of action with respect to (i) Franco’s service as a member of the Debtor’s board, (ii) Franco’s, Agneto’s and Steven B. Solomon’s involvement in the Debtor’s management, funding and operations; (iii) Franco’s and Agneto’s investments in, lending of funds to, guarantee and purchase of the Pre-Petition Obligations, (iv) Franco’s and Agneto’s proposals to guarantee or provide debtor in possession financing, and (v) the Debtor, the Chapter 11 Case or any Claim or Interest. Franco, Agneto and Solomon dispute that any such claims are or would be valid or have any merit and would contest them. The Plan Settlement resolves such claims consistent with the Settlement Agreement.

The Court already approved the Releasing Parties’ release of the Released Parties, which was effectuated by the Court’s Order Grant Motion to Approve Settlement Agreement [Docket No. 142]. Only holders of Priority Non-Tax Claims and General Unsecured Claims (and to the extent such holder also holds or held an Other Secured Claim or Interest, then such holder of an Other Secured Claim or Interest) that agree, by not opting out, to release the Third-Party Released Parties shall be bound by the Third-Party Releases under the Plan and the Plan Settlement. The Disclosure Statement shall include notification to all holders of General Unsecured Claims of their option to opt-out of the Plan Settlement by completing an Opt-Out Form and become an Opt-Out Party on no less than twenty-one (21) calendar days’ notice. Any holders of General Unsecured Claims that do not opt-out of the Plan Settlement by returning a properly completed Opt-Out Form to the Debtor on or before the Voting Deadline shall be bound by the Plan Settlement, including the Third-Party Releases. The amount of the Agneto Settlement Reserve shall not be reduced on account of Opt-Out Parties. If any holders opt-out of the Plan Settlement, the portion of the Agneto Settlement Reserve that would have otherwise been distributed to the Opt-Out Parties will instead be distributed on a Pro Rata basis among those holders of Allowed General Unsecured Claims that did not opt-out of the Plan Settlement.

**8.2     *Establishment and Funding of Litigation and Unsecured Creditor Trusts***

On the Effective Date, the Litigation Trust and Unsecured Creditor Trust shall be established. The Litigation Trust and Unsecured Creditor Trust shall be funded in accordance with the Plan and the Litigation Trust Agreement and Unsecured Creditor Trust Agreement, respectively.

### **8.3 *Plan Agent***

On July 2, 2019, the Debtor filed its Application Authorizing the Debtor to Employ and Retain Steven B. Solomon to Serve as Chief Restructuring Officer as of the Petition Date [Docket No. 78], which the Court approved on July 24, 2019. Upon the Effective Date, Mr. Solomon shall become Plan Agent to assist the Debtor in the performance of its duties and obligations under the Plan, as set forth in the Plan and Confirmation Order, and shall serve as Plan Agent until such time as needed to dissolve the Debtor and close the Chapter 11 Case.

#### **(a) *Plan Agent Compensation***

The Plan Agent shall not be compensated for his services as Plan Agent, except for reimbursement of out of pocket expenses, which shall be paid without application to or order from the Bankruptcy Court.

### **8.4 *Officers and Boards of Directors***

On the Effective Date, the members of the board of directors of the Debtor prior to the Effective Date, in their capacities as such, shall be deemed to have resigned or shall otherwise cease to be a director of the Debtor on the Effective Date.

### **8.5 *Dissolution of the Committee***

On the Effective Date, the Committee shall be dissolved and members of the Committee shall no longer have any duties or obligations with respect to their constituents or in conjunction with the Chapter 11 Case; *provided*, that after the Effective Date, any Professional retained by the Committee shall have the right to file and prosecute Professional Claims and to prosecute and defend any appeal regarding such Professional Claims.

### **8.6 *Dissolution of the Debtor***

After the Plan Agent distributes all Assets of the Estate pursuant to the Plan, and upon written approval of the Litigation Trustee and Unsecured Creditor Trustee and the filing of a certification to that effect with the Bankruptcy Court, the Debtor will be dissolved without the necessity for any other or further actions to be taken by or on behalf of the Debtor or payments to be made in connection therewith. However, the Debtor shall file with the official public office for keeping corporate records in its state of incorporation or organization a certificate of dissolution or equivalent document any and all such documents necessary to note its dissolution.

### **8.7 *Closing of the Chapter 11 Case***

Notwithstanding anything to the contrary in the Bankruptcy Rules providing for earlier closing of the Chapter 11 Case, when all Disputed Claims against the Debtor have become Allowed Claims or have been Disallowed by Final Order, and all remaining Assets of the Debtor, Litigation Trust, and Unsecured Creditor Trust have been liquidated and converted into Cash (other than those Assets abandoned by the Plan Agent, Litigation Trustee, or Unsecured Creditor Trustee, as

applicable), or at such earlier time as the Plan Agent, the Litigation Trustee, and Unsecured Creditor Trustee deem appropriate, the Plan Agent shall seek authority from the Bankruptcy Court to close the Chapter 11 Case in accordance with the Bankruptcy Code and Bankruptcy Rules.

### **8.8 *Claims Resolution Process***

The Litigation Trustee shall be authorized and have the power to review and object to Litigation Trust Claims. The Unsecured Creditor Trustee shall be authorized and have the power to review and object to Unsecured Creditor Trust Claims. The Plan Agent shall be authorized and have the power to review and object to all other Claims.

## **ARTICLE IX RETENTION OF CAUSES OF ACTION**

The Debtor's Estate, through the Litigation Trust and Unsecured Creditor Trust, as applicable, shall retain all rights, claims, defenses and causes of action including, but not limited to the Causes of Action, Litigation Trust Causes of Action, Unsecured Creditor Trust Avoidance Actions, and those claims and causes of action set forth in Sections 10.1(d) and 10.2(c). The Litigation Trustee and Unsecured Creditor Trustee, as applicable, shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order, or approval of the Bankruptcy Court. The Plan Agent shall have the right to identify any additional Causes of Action prior to the Effective Date of the Plan.

Except as otherwise provided in the Plan, nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any rights, claims, Causes of Action, rights or setoff or recoupment, or other legal or equitable defenses that the Debtor had immediately prior to the Effective Date on behalf of the Estate or itself in accordance with any provision of the Bankruptcy Code or any applicable non-bankruptcy law, including, but not limited to, those claims set forth in Sections 10.1(d) and 10.2(c). The Debtor and its Estate, through the Litigation Trust and Unsecured Creditor Trust, as applicable, shall have, retain, reserve, and be entitled to assert all such claims, Causes of Action, rights of setoff or recoupment, and other legal or equitable defenses as fully as if the Chapter 11 Case had not been commenced and all of the Debtor's legal and equitable rights in respect of any Unimpaired Claim may be asserted after the Confirmation Date and Effective Date to the same extent as if the Chapter 11 Case had not been commenced.

The failure to list or describe any Causes of Action in this Article IX or in Sections 10.1(d) or 10.2(c) is not intended to limit the rights of the Litigation Trust or Unsecured Creditor Trust to pursue any known or unknown Cause of Action. Unless a Cause of Action against a Person is expressly waived, relinquished, released, compromised, or settled herein or in any Final Order, the Debtor and its Estate expressly reserve all Causes of Action (including unknown Causes of Action) for later adjudication through the Litigation Trust or Unsecured Creditor Trust and therefore, no preclusion doctrine of res judicata, collateral estoppel, issue preclusions, claim preclusion, estoppel (judicial, equitable or otherwise) or laches shall apply to such Causes of Action upon, after, or as a result of the confirmation or Effective Date of the Plan, or the Confirmation Order. No Person

may rely on the absence of a specific reference in the Plan, the Litigation Trust Agreement, the Unsecured Creditor Trust Agreement, or this Disclosure Statement to any Cause of Action against them as any indication that the Litigation Trustee or Unsecured Creditor Trustee, on behalf of the Debtor or its Estate, will not pursue any and all available Causes of Action against them. The Debtor and its Estate expressly reserve all rights to prosecute, through the Litigation Trust and Unsecured Creditor Trust, any and all Causes of Action other than those settled, resolved, or released pursuant to the Settlement Agreement, Cash Collateral Order, or Plan.

For the avoidance of doubt, the Debtor and its Estate, through the Litigation Trust and Unsecured Creditor Trust, reserve and shall retain all Causes of Action notwithstanding the rejection or repudiation of any Executory Contract or Unexpired Lease and will continue to review payments made by and transactions involving the Debtor prior to the Petition Date to determine whether preference and other actions to avoid such payments and transactions should be brought.

**IN REVIEWING THIS DISCLOSURE STATEMENT AND THE PLAN, AND IN DETERMINING WHETHER TO VOTE IN FAVOR OF OR AGAINST THE PLAN, HOLDERS OF CLAIMS AND INTERESTS (INCLUDING PARTIES THAT RECEIVED PAYMENTS FROM THE DEBTOR WITHIN NINETY (90) DAYS PRIOR TO THE PETITION DATE) SHOULD CONSIDER THAT A CAUSE OF ACTION MAY EXIST AGAINST THE, THAT THE PLAN PRESERVES ALL CAUSES OF ACTION, AND THAT THE PLAN AUTHORIZES THE LITIGATION TRUSTEE OR UNSECURED TRUSTEE TO PROSECUTE THE SAME.**

## **ARTICLE X LITIGATION AND UNSECURED TRUSTS**

### **10.1 *Litigation Trust***

#### **(a) *Creation of the Litigation Trust and Appointment of Litigation Trustee***

On the Effective Date, the Litigation Trust will be created and shall be governed and administered pursuant to the Litigation Trust Agreement. The Litigation Trust shall be administered by the Litigation Trustee, Steven B. Solomon or an entity wholly owned by Mr. Solomon. The Litigation Trustee's expenses shall be paid from the Litigation Trust Assets. Compensation owed to the Litigation Trustee shall be paid from the Litigation Trust Assets attributable or distributable to Agneto only.

On the Effective Date, all of the Litigation Trust Assets shall transfer to and vest in the Litigation Trust free and clear of all Claims, Liens, interests, rights, and encumbrances, but subject to the Agneto Secured Liens, without the need for any action by the Debtor or the Bankruptcy Court. To the extent the Committee has the right to assert any claims, causes of action, or interest in any Litigation Trust Assets, the Committee hereby assigns such rights and causes of action to the Litigation Trust (other than the Unsecured Creditor Trust Avoidance Actions) without the need for any action by the Committee or the Bankruptcy Court.

(b) *Purpose of the Litigation Trust*

On the Effective Date, the Litigation Trust will be established and become effective for the benefit of the Litigation Trust Beneficiaries and for the primary purpose of liquidating all Litigation Trust Assets, including the investigation and prosecution of the Causes of Action pursuant to the Plan, and (ii) distribute the proceeds of the Litigation Trust Assets to the Litigation Trust Beneficiaries.

(c) *Powers of the Litigation Trustee*

The Litigation Trustee shall have the sole power to administer the Litigation Trust Assets in a manner consistent with the Litigation Trust Agreement, and the Litigation Trustee shall be the Estate's representative designated to prosecute the Causes of Action transferred to the Litigation Trust and have all rights and powers that a chapter 11 trustee, creditors' committee, or similar official would have in pursuit of such Causes of Action. Without limiting the generality of the foregoing, the Litigation Trustee shall have the sole power, without further notice or Bankruptcy Court approval, to: (i) hold, administer, and prosecute the Litigation Trust Assets and any proceeds thereof; (ii) object to Litigation Trust Claims; (iii) compromise controversies; (iv) retain, as an expense of the Litigation Trust, attorneys, advisors, other professionals, and employees as may be appropriate to perform the duties required of the Litigation Trustee, including on a contingency fee basis, hereunder or in the Litigation Trust Agreement; (v) make distributions to the Litigation Trust Beneficiaries; and (vi) take such other actions, as may be necessary and proper to fulfil his/her duties under the Plan and the Litigation Trust Agreement.

(d) *Litigation Trust Causes of Action*

The Litigation Trustee or any successors may pursue such litigation claims in accordance with the best interests of the Litigation Trust or any successor holding such rights of action. At this time, the Debtor believes the Litigation Trustee may assert causes of action against Frankie Valdez, Jordan Valdez, Taylor Valdez, Kenneth Johnson, Kevin Patton, Time Equipment Sales, David Hughes, Absolute Self Storage, Great Value Storage, Star Point Self Storage, Cynthia Kraus and the Debtor's current and former officers and directors (except for the Released Parties), including those listed on the Debtor's Schedules, including Statement of Financial Affairs [Docket No. 60], Part 2, Question 3, Exhibit B (excluding those parties that are Released Parties, Third-Party Released Parties or included in the definition of Unsecured Creditor Trust Avoidance Actions under the Plan), and that such claims may provide a significant recovery to the Litigation Trust. **No Person may rely on the absence of a specific reference in the Plan, the Plan Documents, or the Disclosure Statement to any Litigation Trust Cause of Action against them as any indication that the Litigation Trust will not pursue any and all available Litigation Trust Causes of Action against them. The Litigation Trust expressly reserves all rights to prosecute any and all Litigation Trust Causes of Action against any Person, except as otherwise provided in the Plan.** The Estate and the Debtor as debtor in possession, through the Litigation Trust, shall specifically reserve all rights to prosecute causes of action against directors, officers, employees, other insiders of the Debtor, Frankie Valdez, Jordan Valdez, Taylor Valdez, Kenneth Johnson, Kevin Patton, Time Equipment Sales, David Hughes, Absolute Self Storage, Great Value Storage, Star Point Self Storage, and Cynthia Kraus, including, but not limited to, causes of action

based on breach of fiduciary duty, aiding and abetting breach of fiduciary duty, negligence, negligent misrepresentation, unjust enrichment, breach of contract, tortious interference, malpractice, fraud, theft, conversion, and violations of security laws. Unless any Litigation Trust Causes of Action against a Person are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan, the Settlement Agreement or a Final Order of the Bankruptcy Court, the Debtor and its Estate, through the Litigation Trust, expressly reserve all Litigation Trust Causes of Action for later adjudication and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Litigation Trust Causes of Action upon, after, or as a consequence of, confirmation or consummation of the Plan.

(e) *Termination of the Litigation Trust*

The Litigation Trust shall continue to exist until the later of the time the Litigation Trustee has (i) administered the Litigation Trust Assets and made a final distribution to Litigation Trust Beneficiaries in accordance with the terms of the Plan and Litigation Trust Agreement; and (ii) performed all other duties required by the Plan and the Litigation Trust Agreement. As soon as reasonably practical after the final distribution, the Litigation Trustee shall dissolve the Litigation Trust pursuant to the Litigation Trust Agreement. Upon dissolution, the Litigation Trustee's duties under the Litigation Trust Agreement and the Plan shall terminate.

**10.2 Unsecured Creditor Trust**

(a) *Creation of the Unsecured Creditor Trust Agreement and Appointment of Unsecured Creditor Trustee*

On the Effective Date, the Unsecured Creditor Trust will be created and shall be governed by the Unsecured Creditor Trust Agreement and administered by the Unsecured Creditor Trustee with oversight by the Unsecured Creditor Trust Advisory Board. Any successor Unsecured Creditor Trustee or member of the Unsecured Creditor Trust Advisory Board shall be appointed pursuant to the terms of the Unsecured Creditor Trust Agreement.

On the Effective Date, all of the Unsecured Creditor Trust Assets shall transfer to and vest in the Unsecured Creditor Trust free and clear of all Claims, Liens, interests, rights, and encumbrances, without the need for any action by the Debtor or the Bankruptcy Court. On the Effective Date, the Plan Agent shall transfer the Agneto Settlement Reserve to the Unsecured Creditor Trust to be administered by the Unsecured Creditor Trustee pursuant to the terms of the Plan and the Plan Settlement, including the restriction on distributions to Opt-Out Parties.

(b) *Purpose of the Unsecured Creditor Trust*

On the Effective Date, the Unsecured Creditor Trust will be established and become effective for the benefit of the Unsecured Creditor Trust Beneficiaries and for the primary purpose of liquidating its assets in accordance with Treas. Reg. § 301.7701-4(d) with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Unsecured Creditor Trust. The Debtor, all

holders of Claims, and all holders of Interests shall be deemed to have adopted and approved the Unsecured Creditor Trust Agreement. The purpose of the Unsecured Creditor Trust is (i) liquidate all Unsecured Creditor Trust Assets, the investigation and prosecution of the Unsecured Creditor Trust Avoidance Actions pursuant to the Plan, (ii) distribute the Agneto Settlement Reserve (other than the Released Parties and Opt-Out Parties); and (iii) distribute the proceeds of the Unsecured Creditor Trust Assets to the Unsecured Creditor Trust Beneficiaries. The Unsecured Creditor Trust shall not be deemed a successor-in-interest of the Debtor for any purpose other than as specifically set forth herein or in the Unsecured Creditor Trust Agreement. The Unsecured Creditor Trust is intended to qualify as a “grantor trust” for federal income tax purposes, with the holders of interests in the Unsecured Creditor Trust treated as grantors and owners of the Unsecured Creditor Trust. As soon as practicable after the Effective Date, the Unsecured Creditor Trustee (to the extent that the Unsecured Creditor Trustee deems it necessary or appropriate in his or her sole discretion) shall value the assets of the Unsecured Creditor Trust based on the good faith determination of the Unsecured Creditor Trustee. The valuation shall be used consistently by all parties for all federal income tax purposes. The Bankruptcy Court shall resolve any dispute regarding such valuation.

(c) *Powers of the Unsecured Creditor Trustee*

The Unsecured Creditor Trustee shall have the power to administer the Unsecured Creditor Trust Assets in a manner consistent with the Unsecured Creditor Trust Agreement, and the Unsecured Creditor Trustee shall be the Debtor’s and the Estate’s representative designated to prosecute the Causes of Action assigned to the Unsecured Creditor Trust pursuant to § 1123(b)(3)(B) and otherwise. Without limiting the generality of the foregoing, the Unsecured Creditor Trustee shall have the sole power, without further notice or Bankruptcy Court approval, to: (i) hold, administer, and prosecute the Unsecured Creditor Trust Assets and any proceeds thereof; (ii) object to Unsecured Creditor Trust Claims; (iii) compromise controversies; (iv) retain, as an expense of the Unsecured Creditor Trust, attorneys, advisors, other professionals, and employees as may be appropriate to perform the duties required of the Unsecured Creditor Trustee, including on a contingency fee basis, hereunder or in the Unsecured Creditor Trust Agreement; (v) make distributions to the Unsecured Creditor Trust Beneficiaries; and (vi) take such other actions, as may be necessary and proper to fulfil his/her duties under the Plan and the Unsecured Creditor Trust Agreement. The Bankruptcy Court shall retain jurisdiction over the Unsecured Creditor Trust Avoidance Actions to the extent permissible under applicable law, to resolve any disputes regarding the Unsecured Creditor Trust, hear objections to Claims, and otherwise address such additional matters brought by the Unsecured Creditor Trustee in the fulfillment of his/her duties pursuant to the Plan and the Unsecured Creditor Trust Agreement. For avoidance of doubt, the Unsecured Creditor Trustee shall, as of the Effective Date, have standing to (a) object to Unsecured Creditor Trust Claims, (b) continue to prosecute any objections or adversary proceedings filed or commenced by the Debtor prior to the Effective Date to the extent the claims asserted there are transferred to the Unsecured Creditor Trust, and (c) initiate and pursue the Unsecured Creditor Trust Avoidance Actions.

(d) *Unsecured Creditor Trust Avoidance Actions*

Unsecured Creditor Trust Assets shall exclude any action released or settled pursuant to this Plan or an order of the Bankruptcy Court.

The Unsecured Creditor Trustee or any successors may pursue such litigation claims in accordance with the best interests of the Unsecured Creditor Trust or any successor holding such rights of action. At this time, the Debtor and Committee believe the Unsecured Creditor Trustee may assert Unsecured Creditor Trust Avoidance Actions against various third-party unsecured goods and service providers, including those listed on the Debtor's Schedules, including Statement of Financial Affairs [Docket No. 60], Part 2, Question 3, Exhibit B (excluding those parties that are Released Parties, Third-Party Released Parties or otherwise excluded from the definition of Unsecured Creditor Trust Avoidance Actions under the Plan), and that such claims may provide a recovery to the Unsecured Creditor Trust. **No Person may rely on the absence of a specific reference in this Plan, the Plan Documents, or the Disclosure Statement to any Unsecured Creditor Trust Avoidance Action against them as any indication that the Unsecured Creditor Trust will not pursue any and all available Unsecured Creditor Trust Avoidance Actions against them. The Unsecured Creditor Trust expressly reserves all rights to prosecute any and all Unsecured Creditor Trust Avoidance Actions against any Person, except as otherwise provided in this Plan.** Unless any Unsecured Creditor Trust Avoidance Action against a Person are expressly waived, relinquished, exculpated, released, compromised, or settled in this Plan or an order of the Bankruptcy Court, the Unsecured Creditor Trustee expressly reserves all Unsecured Creditor Trust Avoidance Actions for later adjudication and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Unsecured Creditor Trust Avoidance Actions upon, after, or as a consequence of, confirmation or consummation of this Plan.

(e) *Compensation of the Unsecured Creditor Trustee and Unsecured Creditor Trust's Professionals*

All compensation for the Unsecured Creditor Trustee shall be paid by the Unsecured Creditor Trust in accordance with this Plan and the Unsecured Creditor Trust Agreement. All costs, fees, expenses, and obligations incurred by the Unsecured Creditor Trustee in administering the Unsecured Creditor Trust, or in any manner connected or related thereto (including compensation to the Unsecured Creditor Trustee, the Unsecured Creditor Trustee's retained professionals and agents, and the reimbursement of their expenses), shall be charged against the Unsecured Creditor Trust Assets. Bankruptcy Court approval shall not be required for the fees and expenses of the Unsecured Creditor Trustee or his professionals.

(f) *Termination of the Unsecured Creditor Trust*

The Unsecured Creditor Trust shall continue to exist until the earlier of the time the Unsecured Creditor Trustee has (i) administered the Unsecured Creditor Trust Assets and made a final distribution to Unsecured Creditor Trust Beneficiaries in accordance with the terms of the Plan and Unsecured Creditor Trust Agreement; and (ii) performed all other duties required by the Plan and the Unsecured Creditor Trust Agreement. As soon as reasonably practical after the final distribution, the Unsecured Creditor Trustee shall notify the Plan Agent of the final distribution and dissolve the Unsecured Creditor Trust pursuant to the Unsecured Creditor Trust Agreement. Upon dissolution, the Unsecured Creditor Trustee's duties under the Unsecured Creditor Trust Agreement and the Plan shall terminate.

## **ARTICLE XI DISTRIBUTIONS**

### **11.1 *Distributions Generally***

Distributions to holders of Allowed Claims shall be made: (a) at the addresses set forth in the proofs of Claim filed by such holders; (b) at the addresses set forth in the most recent written notices of address change filed in the Chapter 11 Case and delivered to the Debtor, Plan Agent, Litigation Trustee, or Unsecured Creditor Trustee, if the address differs from a proof of Claim; or (c) at the addresses reflected in the Schedules relating to the applicable Allowed Claim if no proof of Claim has been filed and the Debtor, Plan Agent, Litigation Trustee, or Unsecured Creditor Trustee has not received a written notice of change of address.

Distributions under the Plan shall be made by the Plan Agent, the Litigation Trustee, or the Unsecured Creditor Trustee, as applicable. All payments shall be made in accordance with the priorities established in the Bankruptcy Code unless otherwise provided in the Plan, the Cash Collateral Order, the Litigation Trust Agreement, or the Unsecured Creditor Trust Agreement. For example, no Opt-Out Parties shall share in any distributions from the Agneto Settlement Reserve.

As soon as practicable after the Effective Date, the Plan Agent shall make distributions from the Estate's Cash for Allowed Administrative Claims, Allowed Professional Claims, Allowed Secured Priority Tax Claims, and Allowed Other Secured Claims, and any other post-confirmation administrative and wind-down expenses as provided for and in accordance with the Cash Collateral Order and Final Budget. The Plan Agent shall reserve for any Disputed Administrative Claims, Professional Claims, Secured Priority Tax Claims and Other Secured Claims and then distribute all remaining Cash to Agneto.

## **ARTICLE XII EFFECT OF CONFIRMATION**

### **12.1 *Vesting of Assets***

Except as otherwise provided in the Plan, on and after the Effective Date, all Assets of the Estate (other than the Litigation Trust Assets, the Agneto Settlement Reserve, and Unsecured Creditor Trust Assets) shall vest in the Debtor subject to the provisions in the Settlement Agreement and Cash Collateral Order. The Debtor or Plan Agent may use, acquire, and dispose of the Debtor's Cash only to the extent authorized under the Cash Collateral Order, Final Budget, the Plan, or Confirmation Order.

### **12.2 *Discharge of Claims and Interests in the Debtor***

Upon the Effective Date and in consideration of the distributions to be made under the Plan, except as otherwise provided in the Plan or in the Confirmation Order, each holder (as well as any trustee or agent on behalf of such holder) of a Claim or Interest, where such Claim or Interest has been fully paid or otherwise satisfied in accordance with the Plan, and any affiliate of such holder shall be deemed to have forever waived, released, and discharged the Debtor, to the fullest

extent permitted under § 1141 of the Bankruptcy Code, of and from any and all Claims, Interests, rights, and liabilities that arose prior to the Effective Date. Except as otherwise provided in the Plan, all such holders of Claims and Interests, and their affiliates shall be forever precluded and enjoined, pursuant to §§ 105, 525, and 1141 of the Bankruptcy Code, from prosecuting or asserting any such discharged Claim against or terminated Interest in the Debtor.

### **12.3 *Injunction against Interference with Plan***

Upon the entry of the Confirmation Order, all holders of Claims and Interests and all other parties in interest, along with their respective present and former affiliates, employees, agents, officers, directors, and principals, shall be enjoined from taking any action to interfere with the implementation or the occurrence of the Effective Date.

### **12.4 *Plan Injunction***

Except as otherwise provided in the Plan or the Confirmation Order, all Persons who have held, hold, or may hold Claims or Interests are, with respect to any such Claim or Interest, permanently enjoined after the entry of the Confirmation Order from: (a) commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind (including, without limitation, any proceeding in a judicial arbitral, administrative, or other forum) against or affecting, directly or indirectly, the Debtor, the Committee, the members of the Committee, the Plan Agent, the Litigation Trust, the Unsecured Creditor Trust, the Unsecured Creditor Trustee, the Unsecured Creditor Trust Advisory Board, the Litigation Trustee, the Estate, or the property of any of the foregoing, or direct or indirect transferee of, or direct or indirect successor in interest to, any of the foregoing Persons mentioned in this subsection (a) or any property of any such transferee or successor; (b) enforcing, levying, attaching (including without limitation, any prejudgment attachment), collecting, or otherwise recovering in any manner or by any means, whether directly or indirectly, any judgment, award, decree, or order against the Estate, the Litigation Trust, the Unsecured Creditor Trust, or their property, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, any of the foregoing Persons mentioned in this subsection (a) or any property of any such transferee or successor; (c) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Estate, the Litigation Trust, Unsecured Creditor Trust, or any of their property, or any direct or indirect transferee of any property of, or successor in interest to, any of the foregoing Persons mentioned in this subsection (c) or any property of such transferee or successor; (d) acting or proceeding in any manner whatsoever, that does not conform to or comply with the provisions of the Plan, to the full extent permitted by applicable law; and (e) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of the Plan; *provided* that nothing contained herein shall preclude such Persons who have held, hold, or may hold Claims against or Interests in the Estate, the Litigation Trust, or the Unsecured Creditor Trust from exercising their rights and remedies, or obtaining benefits, pursuant to and consistent with the terms of the Plan.

By accepting distributions under the Plan, each holder of an Allowed Claim or Interest will be deemed to have affirmatively and specifically consented to be bound by the Plan, including without limitation, the injunctions set forth in this section.

## 12.5 *Releases*

### (a) *Releases by the Debtor and Estate*

As of the Effective Date, except for the rights and remedies that remain in effect from and after the Effective Date to enforce the Plan, for good and valuable consideration, the adequacy of which is hereby confirmed, including without limitation, the Settlement Agreement, the service of the Released Parties to facilitate the administration of the Estate, a substantial recovery for holders of Allowed Claims, and the implementation of the Plan, and except as otherwise provided in the Plan or in the Confirmation Order, the Released Parties are deemed forever released and discharged by the Debtor and the Estate on behalf of itself and its successors, assigns, and representatives and any and all other entities that may purport to assert any causes of action derivatively, by or through the foregoing entities (together, the “**Releasing Parties**”), from any and all claims, interests, obligations, suits, judgments, damages, demands, debts, rights, causes of action, losses, remedies, or liabilities, whatsoever, including any derivative claims, asserted or assertable on behalf of the Debtor or its Estate, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, that the Debtor or its Estate would have been legally entitled to assert in its own right, or on behalf of the holder of any Claim or Interest or other entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtor, the Estate, the Chapter 11 Case, the Sale, the Settlement Agreement, the subject matter of, or the transactions or events giving rise to, any Claim or Interest, the business or contractual arrangements between the Debtor and any Released Party, the restructuring of any Claim or Interest before or during the Chapter 11 Case, the restructuring transactions, the negotiation, formulation, or preparation of the Disclosure Statement and the Plan and related agreements, instruments, and other documents, the solicitation of votes with respect to the Plan, or any other act or omission, transaction, agreement, event, or other occurrence, other than claims or causes of action arising out of or related to any act or omission of a Released Party that is a criminal act or constitutes intentional fraud, gross negligence, or willful misconduct.

### (b) *Releases by Holders of Claims and Interests*

**As of the Effective Date, except for the rights and remedies that remain in effect from and after the Effective Date to enforce the Plan, for good and valuable consideration, the adequacy of which is hereby confirmed, including without limitation, the Settlement Agreement, the service of the Released Parties to facilitate the administration of the Estate, a substantial recovery for holders of Claims, and the implementation of the Plan, and except as otherwise provided in the Plan or in the Confirmation Order, the Released Parties are deemed forever released and discharged by the holders of all Claims and Interests and their successors and assigns (other than the Opt-Out Parties, the “Third-Party Releasing Parties”) from any and all claims, interests, obligations, suits, judgments, damages, demands, debts, rights, causes of action, losses, remedies, and liabilities whatsoever, including any derivative claims, asserted or assertable on behalf of the holder of the Claim or Interest, or the Debtor or Estate, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, that such holders or their affiliates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim or Interest or other entity, based on or relating to, or in any**

manner arising from, in whole or in part, the Debtor, the Chapter 11 Case, the purchase, sale, or rescission of the purchase or sale of any security of or investment in the Debtor, the Sale, the Settlement Agreement, the subject matter or, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any holder of a Claim or Interest, and the Debtor or any Released Party, the restructuring of any Claim or Interest before or during the Chapter 11 Case, the negotiation, formulation, or preparation of the Disclosure Statement, the Plan, the Settlement Agreement, and related agreement, instruments, and other documents, the solicitation of votes with respect to the Plan, or any other act or omission, (the “Third-Party Releases”) other than the claims or causes of action arising out of or related to any act or omission of a Released Party or Settlement Released Party that is a criminal act or constitutes intentional fraud, gross negligence, or willful misconduct.

With regard to holders of Claims or Interests that are Unimpaired under the Plan and holders of Claims or Interests whose vote to accept or reject the Plan was solicited, or who were deemed to reject the Plan but who did not return a ballot or Opt-Out Form (and thus did not opt out of this release), if such holder of Claims or Interests wishes to pursue a claim or cause of action against any Released Party, such holder must first petition this Court for a determination of whether this release applies to such holder. If the Court determines that such holder’s claim is not released by this provision, such holder must bring any claim or cause of action in the United States Bankruptcy Court for the Northern District of Texas or must obtain leave of this Court to bring such claim or cause of action before a court of another jurisdiction.

#### **12.6 *Non-Released Parties***

For the avoidance of doubt, except as set forth in the Plan but otherwise notwithstanding anything to the contrary in the Plan or the Confirmation Order, none of the Debtor’s past or current employees, officers or directors (except Franco and Steven B. Solomon) shall constitute Released Parties or are deemed to be released by any of the Plan or the Confirmation Order. For example, nothing in the Plan or the Confirmation Order releases any Cause of Action against Frankie Valdez, Jordan Valdez, Taylor Valdez, Kenneth Johnson, Kevin Patton, Time Equipment Sales, David Hughes, Absolute Self Storage, Great Value Storage, Star Point Self Storage, and Cynthia Kraus. Moreover, notwithstanding any language to the contrary contained in the Disclosure Statement, the Plan, and/or the Confirmation Order, no provision of the Disclosure Statement, the Plan, or the Confirmation Order shall (a) preclude any governmental regulatory agency from enforcing its police or regulatory powers or (b) enjoin, limit, impair, or delay any governmental regulatory agency from pursuing, in the appropriate forum, any claims, causes of action, proceedings, or investigations against any non-debtor Person.

#### **12.7 *Injunction Related to Releases and Exculpations***

The Confirmation Order shall permanently enjoin the commencement or prosecution by any Person, whether directly, derivatively, or otherwise, of any claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, losses, or liabilities released

pursuant to the Plan, including, without limitation, the claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, and liabilities released or exculpated in the Plan.

#### **12.8 *Retention of Causes of Action and Reservation of Rights***

Except as otherwise provided in the Plan, including, without limitation, section 12.5(a) of the Plan, nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any rights, claims, Causes of Action, rights or setoff or recoupment, or other legal or equitable defenses that the Debtor had immediately prior to the Effective Date on behalf of the Estate or itself in accordance with any provision of the Bankruptcy Code or any applicable nonbankruptcy law. The Debtor shall have, retain, reserve, and be entitled to assert all such claims, Causes of Action, rights of setoff or recoupment, and other legal or equitable defenses as fully as if the Chapter 11 Case had not been commenced and all of the Debtor's legal and equitable rights in respect of any Unimpaired Claim may be asserted after the Confirmation Date and Effective Date to the same extent as if the Chapter 11 Case had not been commenced.

#### **12.9 *Claims against Directors and Officers***

As of the Effective Date, the Debtor shall not terminate, effect, limit, or otherwise reduce the coverage under any directors and officers' insurance policies (including any "tail policy") in effect as of the Petition Date, and all members, managers, employees, agents, directors, and officers of the Debtor who serve in such capacity at any time prior to the Effective Date will be entitled to the full benefits of any such policy for the full term of such policy regardless of whether such members, managers, employees, agents, directors, or officers remain in such positions after the Effective Date. Notwithstanding any provision herein to the contrary, no claim that would be covered by any such directors' and officers' insurance policies is being released by the Plan, the Confirmation Order, or otherwise.

### **ARTICLE XIII RETENTION OF JURISDICTION**

#### **13.1 *Exclusive Jurisdiction of Bankruptcy Court***

Pursuant to §§ 105(c) and 1142 of the Bankruptcy Code and notwithstanding 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, pursuant to 28 U.S.C. §§ 1334 and 157 over all matters arising in or related to the Chapter 11 Case, including those detailed in Plan Section 11.1.

### **ARTICLE XIV MISCELLANEOUS PROVISIONS**

#### **14.1 *Modification of the Plan***

The Debtor may alter, amend, or modify the Plan under § 1127 of the Bankruptcy Court or as otherwise permitted at any time before the Confirmation Date. After the Confirmation Date and

before the substantial consummation of the Plan, and in accordance with the provisions of § 1127(b) of the Bankruptcy Code and the Bankruptcy Rules, the Debtor, Committee, and any party in interest may, so long as the treatment of holders of Claims under the Plan is not adversely affected, institute proceedings in the Bankruptcy Court to remedy any defect or omission or to reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation order and any other matters as may be necessary to carry out the purposes and effect of the Plan. However, prior notice of such proceedings shall be served in accordance with Bankruptcy Rule 2002.

Prior to the Effective Date, the Debtor may make appropriate technical adjustments and modifications to the Plan without further order or approval of the Bankruptcy Court; *provided* that such technical adjustments and modifications may not adversely affect in any material way the treatment of holders of Claims or Interests under the Plan.

#### **14.2 *Filing of Additional Documents***

On or before substantial consummation of the Plan, the Debtor shall issue, execute, deliver, and file with the Bankruptcy Court or record any agreements and other documents, and take any action as may be necessary or appropriate to effectuate, consummate and further evidence the terms and conditions of the Plan, including making such supplemental disclosures or notices as the Debtor deems useful.

#### **14.3 *No Admissions***

Notwithstanding anything herein to the contrary, nothing contained in the Plan or this Disclosure Statement shall be deemed an admission of the Debtor with respect to any matter set forth herein, including, without limitation, liability on any Claim or Interest or the proprietary of any classification of any Claim or Interest.

#### **14.4 *Entire Agreement***

The Plan sets forth the entire agreement and undertaking relating to the subject matter hereof and supersedes all prior discussions and documents, except the Settlement Agreement. The Debtor, the Committee, the Plan Agent, the Unsecured Creditor Trustee, and the Litigation Trustee shall not be bound by any terms, conditions, definitions, warranties, understandings, or representations with respect to the subject matter hereof, other than as expressly provided for herein or as may hereafter be agreed to by the applicable parties in writing. Holders of Claims and Interests are not relying on any representation made by or on behalf of the Debtor, the Committee, Agneto, Franco, the Plan Agent, the Litigation Trustee, or Unsecured Creditor Trustee that is not specified in the Cash Collateral Order, Settlement Agreement, Litigation Trust Agreement, Unsecured Creditor Trust Agreement, Plan, or Confirmation Order. The Cash Collateral Order, Settlement Agreement, Litigation Trust Agreement, Unsecured Creditor Trust Agreement, Plan, and Confirmation Order represent the entire agreement between the holders of Claims and Interests and the Debtor, its Estate, Agneto, Franco, the Litigation Trust, and the Unsecured Creditor Trust regarding the subject matter therein and replace any prior oral or written communications.

**ARTICLE XV  
RISKS AND CONSIDERATIONS**

**ALL HOLDERS OF IMPAIRED CLAIMS AND IMPAIRED INTERESTS SHOULD READ AND CAREFULLY CONSIDER THE RISK FACTORS SET FORTH BELOW AS WELL AS THE OTHER INFORMATION SET FORTH IN THIS DISCLOSURE STATEMENT (AND THE EXHIBITS HERETO) PRIOR TO DETERMINING WHETHER AND HOW TO VOTE ON THE PLAN.**

**BEFORE DETERMINING WHETHER AND HOW TO VOTE ON THE PLAN, YOU SHOULD CAREFULLY CONSIDER ALL OF THE INFORMATION SET FORTH IN THIS DISCLOSURE STATEMENT AND, IN PARTICULAR, THE RISKS DESCRIBED BELOW. IF ANY OF THE FOLLOWING RISKS ACTUALLY OCCURS, THE DEBTOR'S BUSINESS, FINANCIAL CONDITION OR RESULTS OF OPERATIONS COULD BE HARMED. THE RISKS AND UNCERTAINTIES BELOW ARE NOT THE ONLY ONES THE DEBTOR FACES BUT REPRESENT THE RISKS THAT THE DEBTOR BELIEVES ARE MATERIAL. HOWEVER, THERE MAY BE ADDITIONAL RISKS THAT THE DEBTOR CURRENTLY CONSIDER NOT TO BE MATERIAL OR OF WHICH THE DEBTOR IS NOT CURRENTLY AWARE, AND ANY OF THESE RISKS COULD HAVE THE EFFECTS SET FORTH ABOVE.**

There can be no assurance that the requisite acceptances to confirm the Plan will be received. Even if the requisite acceptances are received, there can be no assurance that the Court will confirm the Plan. The requirements for confirmation are set forth in § 1129 of the Bankruptcy Code, which requires, among other things, a finding by the Court that confirmation of the Plan is not likely to be followed by a liquidation or need for further financial reorganization, and that the value of the distributions to non-accepting holders of Claims and Interest holders will not be less than the value of the distributions that such creditors or interest holders would receive if the Debtor were liquidated under chapter 7 of the Bankruptcy Code. Although the Debtor believes that these requirements will be satisfied, there can be no assurance that the Court will concur.

The Debtor has no duty to update the information contained in this Disclosure Statement as of the date hereof, unless otherwise specified herein, or unless the Debtor is required to do so pursuant to an order of the Bankruptcy Court. Delivery of the Disclosure Statement after the date hereof does not imply that the information contained herein has remained unchanged.

Various factors will impact the amount of recoveries that are received from the Unsecured Creditor Trust (other than the Agneto Settlement Reserve) and the Litigation Trust and, at this time, other than the amounts under the Agneto Settlement Reserve, the Debtor cannot estimate the amount of such recoveries with any degree of certainty. The Unsecured Creditor Trust Assets, other than the Agneto Settlement Reserve, will consist primarily of Unsecured Creditor Trust Avoidance Actions and the Litigation Trust Assets will consist primarily of the Litigation Trust Causes of Action. Accordingly, due to the uncertainty of litigation, it is difficult to predict how much the Unsecured Creditor Trust or Litigation Trust will recover on account of such claims.

## **ARTICLE XVI ALTERNATIVES TO CONFIRMATION**

Although this Disclosure Statement is intended to provide information to assist the holder of a Claim or Interest in determining whether to vote for or against the Plan, a summary of the alternatives to confirmation of the Plan may be helpful.

If the Plan is not confirmed, the following alternatives are available: (a) confirmation of another chapter 11 plan; (b) conversion of the Chapter 11 Case to one under chapter 7 of the Bankruptcy Code; or (c) dismissal of the Chapter 11 Case leaving holders of Claims and Interests to pursue available non-bankruptcy remedies. Since the Debtor will have substantially completed the process of liquidating its assets through the Sale, these alternatives to the Plan are very limited and not likely to benefit creditors. Although the Debtor could theoretically file a new plan, under the terms of the Settlement Agreement any plan must contain terms similar to the ones in the Plan. Although any party in interest could theoretically file a new plan, the most likely result if the Plan is not confirmed is that the Chapter 11 Case will be converted to one under chapter 7 of the Bankruptcy Code. The Debtor believes that conversion of the Chapter 11 Case to a chapter 7 case would result in (i) significant delay in distributions to all creditors who would have received a distribution under the Plan and (ii) diminished recoveries for certain classes of creditors due to an increase in administrative expenses. If the Chapter 11 Case is dismissed, creditors would be free to pursue non-bankruptcy remedies in their attempts to satisfy claims against the Debtor. However, in that event, creditors would be faced with the costs and difficulties of attempting, each on its own, to collect claims from a non-operating entity. Further, under either a dismissal or conversion to Chapter 7, any creditor that fails to provide a third-party release to the Released Parties is not permitted to share in the Agneto Settlement Reserve, significantly reducing their recoveries.

## **ARTICLE XVII LIQUIDATION ANALYSIS AND FEASIBILITY**

### (a) Liquidation Analysis

The Debtor believes that any liquidation analysis is speculative, as such an analysis is necessarily premised on assumptions and estimates, which are inherently subject to significant uncertainties and contingencies, many of which would be beyond the control of the Debtor. Thus, there can be no assurances as to values that would be actually realized in a chapter 7 liquidation, nor can there be any assurance that a Bankruptcy Court would accept the Debtor's conclusions or concur with such assumptions in making its determination under § 1129(a)(7). However, the Debtor believes that, under the proposed terms of the Plan, all holders of Impaired Claims and Interests will receive property with a value not less than the value such holders would receive in a chapter 7 liquidation of the Debtor's assets. The Debtor's belief is based primarily on consideration of the effect that a chapter 7 liquidation would have on the ultimate proceeds available for distribution to holders of Impaired Claims, including (i) the increased costs and expenses of a liquidation under chapter 7 arising from fees payable to a chapter 7 trustee and professional advisors to the trustee, (ii) the substantial increases in claims, and (iii) the substantial delay in distributions to holders of Impaired Claims and Interests that will likely ensue in a chapter 7

liquidation. In addition, the Debtor believes that creditors will receive more under the Plan than they would in a chapter 7 liquidation, due to the following factors:

- Because the Agneto Secured Liens will not be satisfied in a chapter 7 liquidation, Agneto would be entitled to superpriority claims and liens pursuant to the terms of the Cash Collateral Order and Settlement Agreement. Therefore, Agneto would have priority to any assets, including proceeds from claims or causes of action, on account of its superpriority claims and Liens.
- The amount of claims in a chapter 7 liquidation will be more than the amount of claims that are paid under the Plan, due to the fact that the Agneto Secured Claim will be higher in a chapter 7 liquidation and the chapter 7 trustee will hire new professionals with priority over existing creditors. The greater amount of claims in a chapter 7 liquidation would therefore cause creditor recoveries to be diluted.
- Outside the Agneto Settlement Reserve, funding to pursue or prosecuted Causes of Action would not be available to a chapter 7 trustee, which would make it difficult for a chapter 7 trustee to recover as much as would be recovered under the Plan and, such litigation expenses would dilute the recoveries creditors would otherwise be entitled to from the Agneto Settlement Reserve.

(b) *Feasibility*

Pursuant to § 1129(a)(11) of the Bankruptcy Code, a debtor must demonstrate that a bankruptcy court's confirmation of a plan is not likely to be followed by the liquidation or need for further financial reorganization of the debtor or its successor under the plan, unless such liquidation or reorganization is proposed under the Plan. Because the Plan liquidates all the Debtor's assets, the Plan complies with this provision. Further, distributions from the Litigation Trust and Unsecured Creditor Trust do not depend on future operations of the Debtor; thus, the Debtor reasonably believes the Litigation Trustee and Unsecured Creditor Trustee will be able to make all such distributions under the Plan. In any event, the Debtor believes that the Litigation Trust and Unsecured Creditor Trust will be profitable and well capitalized, as a result of the funding that will be provided by Agneto under the Settlement Agreement and the Plan. Therefore, the Bankruptcy Court's confirmation of the Plan is not likely to be followed by liquidation of the Debtor or the need for further reorganization.

**ARTICLE XVIII  
CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

**18.1 *In General***

A summary description of certain U.S. federal income tax consequences of the Plan is provided below. The description of tax consequences below is for informational purposes only and

is subject to significant uncertainties. Only the principal consequences of the Plan for the Debtor and for the holders of Claims who are entitled to vote to confirm or reject the Plan are described below. No opinion of counsel has been sought or obtained with respect to any tax consequences of the Plan, and no tax opinion is being given in this Disclosure Statement. No rulings or determinations of the Internal Revenue Service (“*IRS*”) or any other tax authorities have been obtained or sought with respect to the Plan, and the description below is not binding upon the IRS or such other authorities.

The following discussion of U.S. federal income tax consequences is based on the Internal Revenue Code of 1986, as amended (the “*Tax Code*”), regulations promulgated and proposed thereunder and judicial decisions and administrative rulings and pronouncements of the IRS as in effect on the date hereof. Legislative, judicial or administrative changes or interpretations enacted or promulgated in the future could alter or modify the analyses and conclusions set forth below. It cannot be predicted at this time whether any tax legislation will be enacted or, if enacted, whether any tax law changes contained therein would affect the tax consequences to holders. Any such changes or interpretations may be retroactive and could significantly affect the U.S. federal income tax consequences discussed below.

**THIS DISCUSSION DOES NOT ADDRESS FOREIGN, STATE OR LOCAL TAX CONSEQUENCES OF THE PLAN, NOR DOES IT PURPORT TO ADDRESS THE U.S. FEDERAL TAX CONSEQUENCES OF THE PLAN TO SPECIAL CLASSES OF TAXPAYERS (SUCH AS FOREIGN ENTITIES, NONRESIDENT ALIEN INDIVIDUALS, PASS-THROUGH ENTITIES SUCH AS PARTNERSHIPS AND HOLDERS THROUGH SUCH PASS-THROUGH ENTITIES, S CORPORATIONS, MUTUAL FUNDS, INSURANCE COMPANIES, FINANCIAL INSTITUTIONS, SMALL BUSINESS INVESTMENT COMPANIES, REGULATED INVESTMENT COMPANIES, CERTAIN SECURITIES TRADERS, BROKER-DEALERS AND TAX-EXEMPT ORGANIZATIONS). FURTHERMORE, ESTATE AND GIFT TAX ISSUES ARE NOT ADDRESSED HEREIN AND TAX CONSEQUENCES RELATING TO THE ALTERNATIVE MINIMUM TAX ARE GENERALLY NOT DISCUSSED HEREIN.**

**NO REPRESENTATIONS ARE MADE REGARDING THE PARTICULAR TAX CONSEQUENCES OF THE PLAN TO ANY HOLDER OF A CLAIM OR INTEREST. EACH HOLDER OF A CLAIM OR INTEREST IS STRONGLY URGED TO CONSULT ITS OWN TAX ADVISOR REGARDING THE U.S. FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE TRANSACTIONS DESCRIBED HEREIN AND IN THE PLAN.**

## **18.2 *Federal Income Tax Consequences to the Debtor***

Generally, the discharge of a debt obligation by a debtor for an amount less than the adjusted issue price (in most cases, the amount the debtor received on incurring the obligation, with certain adjustments) gives rise to cancellation of debt (“*COD*”) income, which must be included in the debtor’s income. The Debtor may have COD income as a result of the Plan, however, the Debtor should be able to utilize a special tax provision which excludes from income debts discharged in a chapter 11 case. If debts are discharged in a chapter 11 case, however, certain

tax attributes otherwise available must be reduced by the amount of COD income that is excludable from income. Tax attributes subject to reduction generally include net operating losses and net operating loss carryovers (collectively, “*NOLs*”). Any *NOLs* would be reduced (assuming the Debtor does not make an election pursuant to section 108(b)(5) of the Tax Code to first reduce the tax basis of depreciable property) to the extent of the COD income exclusion. The Debtor believes it is likely that the COD income generated by the debt cancellation occurring pursuant to the Plan may eliminate all available *NOLs* generated prior to the Effective Date (although such *NOLs*, which may be subject to usage limitations under section 382 of the Tax Code, would first be permitted to offset any taxable income generated in the tax year that includes the Effective Date). The Debtor’s remaining *NOLs* may have a value, and that value is presently undergoing analysis.

U.S. federal income taxes generally must be satisfied before most other claims may be paid. To the extent the Debtor has taxable income after the Effective Date, the Debtor may have *NOLs* to offset such income.

### **18.3 *Federal Income Tax Consequences to Holders of Claims***

Holders of Claims should generally recognize gain (or loss) to the extent the amount realized under the Plan (generally the amount of cash received) in respect of their Claims exceeds (or is exceeded by) their respective tax bases in their Claims. The tax treatment of holders of Claims and the character and amount of income, gain or loss recognized as a consequence of the Plan and the distributions provided for by the Plan will depend upon, among other things, (a) the nature and origin of the Claim, (b) the manner in which a holder acquired a Claim, (c) the length of time a Claim has been held, (d) whether the Claim was acquired at a discount, (e) whether the holder has taken a bad debt deduction in the current or prior years, (f) whether the holder has previously included in income accrued but unpaid interest with respect to a Claim, (g) the method of tax accounting of a holder, and (h) whether a Claim is an installment obligation for U.S. federal income tax purposes. Therefore, holders of Claims should consult their own tax advisors for information that may be relevant to their particular situations and circumstances and the particular tax consequence to such holders as a result thereof.

The tax treatment of a holder of a Claim that receives distributions in different taxable years is uncertain. If such a holder treats the transaction as closed in the taxable year it first receives (or is deemed to have received) a distribution of cash and/or other property, it should recognize gain or loss for such tax year in an amount equal to the cash and the value of other property actually (and deemed) received in such tax year (other than that received in respect of accrued interest) with respect to its Claim (other than any portion of the Claim that is attributable to accrued interest) plus the estimated value of future distributions (if any) less its tax basis in its Claim (except to the extent its Claim is for accrued interest). A holder should then subsequently recognize additional income or loss when additional property distributions are actually received in an amount equal to the cash and/or value of such other property (other than that received in respect of accrued interest) less the holder’s allocable tax basis in its Claim with respect to such subsequent distribution. A holder may have to treat a portion of any such subsequent distribution as imputed interest recognizable as ordinary income in accordance with the holder’s method of tax accounting. If instead the open transaction doctrine applies as a result of the value of the subsequent distributions that a holder may receive not being ascertainable on the closing date or the Effective Date, such

holder should not recognize gain (except to the extent the value of the cash and/or other property already received exceeds such holder's adjusted tax basis in its Claim (other than any Claim for accrued interest)) or loss with respect to its Claim until it receives the final distribution thereon. It is the position of the IRS that the open transaction doctrine only applies in rare and extraordinary cases. The Debtor believes that the open transaction doctrine should not apply and that holders may be entitled to take the position that on the closing date and on the Effective Date no value should be assigned to the right to receive any subsequent distributions. Holders of Claims are urged to consult their own tax advisors regarding the application of the open transaction doctrine and how it may apply to their particular situations, whether any gain recognition may be deferred under the installment method, whether any loss may be disallowed or deferred under the related party rules and the tax treatment of amounts that certain holders of Claims may be treated as paying to other holders of Claims.

Holders of Allowed Claims will be treated as receiving a payment of interest (in addition to any imputed interest as discussed in the preceding paragraph) includible in income in accordance with the holder's method of accounting for tax purposes, to the extent that any cash and/or other property received pursuant to the Plan is attributable to accrued but unpaid interest, if any, on such Allowed Claims. The extent to which the receipt of cash and/or other property should be attributable to accrued but unpaid interest is unclear. The Plan provides, and the Debtor intends to take the position, that such cash and/or other property distributed pursuant to the Plan will first be allocable to the principal amount of an Allowed Claim and then, to the extent necessary, to any accrued but unpaid interest thereon. Each holder should consult its own tax advisor regarding the determination of the amount of consideration received under the Plan that is attributable to interest (if any) and whether any such interest may be considered to be foreign source income. A holder generally will be entitled to recognize a loss to the extent any accrued interest was previously included in its gross income and is not paid in full.

#### **18.4 *Information Reporting and Backup Withholding***

Certain payments, including the payments of Claims pursuant to the Plan, are generally subject to information reporting by the payor to the IRS. Moreover, such reportable payments are subject to backup withholding under certain circumstances. Under the backup withholding rules, a holder of a Claim may be subject to backup withholding at the applicable tax rate with respect to distributions or payments made pursuant to the Plan, unless the holder: (a) comes within certain exempt categories (which generally include corporations) and, when required, demonstrates this fact or (b) provides a correct taxpayer identification number and certifies under penalty of perjury as to the correctness of its taxpayer identification number and certain other tax matters. Backup withholding is not an additional tax. Rather, the U.S. federal income tax liability of persons subject to backup withholding will be reduced by the amount of tax withheld. If withholding results in an overpayment of U.S. federal income taxes, a holder may obtain a refund of any excess amounts withheld under the backup withholding rules by timely filing the appropriate claim for refund with the IRS.

**18.5 Importance of Obtaining Professional Tax Assistance**

**THE FOREGOING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE ABOVE DISCUSSION IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES OF THE PLAN ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A HOLDER'S INDIVIDUAL CIRCUMSTANCES. ACCORDINGLY, HOLDERS OF CLAIMS AND INTERESTS ARE URGED TO CONSULT WITH THEIR OWN TAX ADVISORS ABOUT THE U.S. FEDERAL, STATE, LOCAL AND FOREIGN INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.**

**ARTICLE XIX  
RECOMMENDATION AND CLOSING**

The Debtor and its professional advisors have explored various alternative scenarios and they believe that the Plan enables the holders of Claims to realize the maximum recovery under the circumstances. The Debtor believes that the Plan is in the best interest of the Debtor, its creditors, equity interest holders, and other parties in interest and believes that the Plan will provide for a more valuable distribution to holders of Allowed Claims and Interests than all other alternatives.

The Plan has the Debtor's support. Any alternative to Confirmation of the Plan could result in extensive delays and increased administrative expenses resulting in potentially diminished distributions to the holders of Claims. Accordingly, the Debtor recommends the Confirmation of the Plan and urge all holders of Claims and Interests to vote to accept the Plan and to indicate such acceptance by returning the Ballots so as to be received no later than October 21, 2019 at 5:00 p.m. Central Daylight Time.

Submitted by:

**FOLEY GARDERE  
FOLEY & LARDNER LLP**

*/s/ Mark C. Moore*

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Stephen A. McCartin  
State Bar No. 13374700  
Mark C. Moore  
State Bar No. 24074751  
Melina T. Bales  
State Bar No. 24106851  
2021 McKinney Ave., Suite 1600  
Dallas, TX 75201  
Telephone: (214) 999-3000  
Facsimile: (214) 999-4667

smccartin@foley.com  
mmoore@foley.com  
mbales@foley.com

**COUNSEL TO DEBTOR  
FRANKIE V'S KITCHEN, LLC**

# **Exhibit A to the Disclosure Statement**

## **First Amended Plan of Liquidation**

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

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|                                 |   |                          |
|---------------------------------|---|--------------------------|
| <b>In re:</b>                   | § |                          |
|                                 | § | <b>CHAPTER 11</b>        |
| <b>FRANKIE V'S KITCHEN, LLC</b> | § |                          |
|                                 | § |                          |
| <b>Debtor.</b>                  | § | <b>CASE NO. 19-31717</b> |
|                                 | § |                          |

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**FIRST AMENDED PLAN OF LIQUIDATION  
FILED BY FRANKIE V'S KITCHEN, LLC**

Dated September 13, 2019

**FOLEY GARDERE  
FOLEY & LARDNER LLP**

*/s/ Mark C. Moore*

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Stephen A. McCartin  
State Bar No. 13374700  
Mark C. Moore  
State Bar No. 24074751  
Melina T. Bales  
State Bar No. 24106851  
2021 McKinney Ave., Suite 1600  
Dallas, TX 75201  
Telephone: (214) 999-3000  
Facsimile: (214) 999-4667  
smccartin@foley.com  
mmoore@foley.com  
mbales@foley.com

**COUNSEL TO DEBTOR  
FRANKIE V'S KITCHEN, LLC**

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**EXHIBITS**

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| Unsecured Creditor Trust Agreement | Exhibit B |

## SUMMARY OF THE PLAN

Frankie V's Kitchen, LLC proposes the following chapter 11 plan of liquidation under § 1121(a) of the Bankruptcy Code. Capitalized terms used herein shall have the meanings set forth in Section 1.1 below.

### **A. Summary.**

The following is a brief summary of the general terms of the Plan. This summary is intended to provide a more understandable general overview of the Plan but it does not form a part of the Plan. This summary is qualified in its entirety by reference to the provisions of the Plan itself. Capitalized terms included in this summary are defined in Article I.

### **B. Previous Sale of Assets.**

On July 3, 2019, the Debtor filed a motion requesting authority to sell substantially all of its assets for \$2.5 million. The Creditors Committee objected to the proposed sale and filed a motion requesting the Court appoint a Chapter 11 Trustee.

### **C. Settlement Agreement.**

On August 9, 2019, the Court approved a Settlement Agreement between the Debtor, the Committee and Agneto, the owner of the Debtor's secured indebtedness, pursuant to which Agneto agreed, in essence, to provide allowed unsecured creditors that provide the Agneto related parties a Plan release, with a pro-rata share of \$1 million of the sale proceeds from its Collateral, in exchange for the Committee agreeing:

1. to support the proposed sale of substantially all of the Debtor's assets (which was approved and closed on July 24, 2019);
2. to withdraw its motion to appoint a Chapter 11 trustee;
3. for the Committee and the Debtor to provide Agneto and related parties a release from any and all potential claims and causes of action; and
4. to support the terms of this Plan (described below).

### **D. Plan Settlements.**

The Plan is intended to implement the terms of the Settlement Agreement and generally provides:

#### **1. Plan Agent Payments:**

The Plan Agent shall pay in full:

- a. Allowed Administrative Expense Claims (including claims made under § 503(b)(9) of the Bankruptcy Code);

- b. Allowed Secured Priority Tax Claims;
- c. Allowed Other Secured Claims, other than those of Agneto; and
- d. Any remaining funds shall be paid to Agneto on account of the Agneto Secured Claim.

## **2. Unsecured Creditor Trust:**

The Unsecured Creditor Trust shall be formed and shall receive from the Debtor's Estate:

- a. The \$1,000,000.00 "Agneto Settlement Reserve;"
- b. Avoidance Actions against non-insiders; and
- c. A ten percent (10%) beneficial interest in the Litigation Trust.

The Agneto Settlement Reserve shall be used to pay all expenses and obligations of the Unsecured Creditor Trust and the Allowed Priority Unsecured Claims in full. The remaining funds from the Agneto Settlement Reserve will be used to make *pro rata* distributions to holders of Allowed General Unsecured Claims who agree to release the Agneto-related parties (*i.e.*, who do not opt-out of the Third-Party Releases). All holders of Allowed General Unsecured Claims, including those Opt-Out Parties who do not elect to release the Agneto-related parties, are entitled to a *pro rata* distribution of the net proceeds from the Unsecured Creditor Trust Avoidance Actions and the ten percent (10%) beneficial interest in the Litigation Trust.

## **3. Litigation Trust**

A Litigation Trust shall be formed for the benefit of the Unsecured Creditor Trust (which shall hold a 10% beneficial interest in the Litigation Trust) and Agneto (which shall hold a 90% beneficial interest in the Litigation Trust). The Debtor and its Estate shall transfer the following assets to the Litigation Trust, which will remain subject to the liens securing the Agneto Secured Claim:

- a. All Claims and Causes of Action against officers and directors of the Debtor;
- b. All proceeds and Claims under the Debtor's insurance policies, including, but not limited to, director and officer insurance claims and business disruption insurance claims;
- c. Avoidance Actions against insiders, parties that received transfers for the benefit of insiders and parties asserting secured claims; and
- d. Any and all other Causes of Action of the Debtor and/or its Estate that are not otherwise transferred to the Unsecured Creditor Trust.

The Litigation Trust will distribute its assets as follows: first, to pay the expenses of the Litigation Trust; second, to pay the Agneto Secured Claim to release the liens securing it; and third, any remaining funds shall be distributed 10% to the Unsecured Creditor Trust and 90% to Agneto.

#### 4. Distributions under the Plan

The distributions under the Plan will be made as follows:

| CLASS NO. | CLAIMANTS  | TREATMENT  |
|-----------|--|--|
| N/A       | <b>ADMINISTRATIVE CLAIMS</b><br>(Est. -0-)         | Each holder of an Allowed Administrative Claim shall (to the extent not previously paid) be paid in full <u>by the Plan Agent</u> on or as soon as reasonably practicable after the later of (1) the Effective Date, (2) ten (10) Business Days after the date such expense is Allowed, and (3) as otherwise agreed by the parties.  |
| N/A       | <b>PROFESSIONAL CLAIMS</b><br>(Est. \$150,000)     | Each holder of an Allowed Professional Claim (to the extent not previously paid) will be paid by the Debtor or Plan Agent as applicable in Cash and in such amounts as are Allowed by Final Order of the Bankruptcy Court. Payments to Professionals for the Committee shall not exceed the amount of the Carve-Out under the Cash Collateral Order applicable to Committee Professional or Committee Professional Claim unless otherwise agreed in writing between the Debtor or Plan Agent, as applicable, and the Committee Professional. |
| N/A       | <b>SECURED PRIORITY TAX CLAIMS</b><br>(Est. -0-)   | Each holder of an Allowed Secured Priority Tax Claim shall (to the extent not previously paid) be paid in full <u>by the Plan Agent</u> on or as soon as reasonably practicable after the later of (1) the Effective Date, (2) ten (10) Business Days after the date such expense is Allowed, and (3) as otherwise agreed by the parties.  |
| N/A       | <b>PRIORITY UNSECURED TAX CLAIMS</b><br>(Est. -0-) | Each holder of an Allowed Unsecured Priority Tax Claim shall be paid in full <u>by the Unsecured Creditor Trustee</u> on or as soon as reasonably practicable after the later of (1) the Effective Date, and (2) ten (10) Business Days after the date such Claim becomes an Allowed Claim.  |
| 1.        | <b>PRIORITY NON-TAX CLAIMS</b><br>(Est. nominal)   | Each holder of an Allowed Priority Non-Tax Claim shall be paid in full <u>by Unsecured Creditor Trustee</u> on or as soon as reasonably practicable on the later of (1) the Effective Date, and (2) ten (10) Business Days after the date such Claim is Allowed.   |

|    |   |  |
|----|---|--|
| 2. | <b>AGNETO SECURED CLAIMS</b><br>(Est. \$1,650,000)    | Agneto shall receive: (i) payment of Cash <u>from the Plan Agent</u> of all funds remaining in the Estate after payment of all Allowed Administrative Expense Claims, Allowed Secured Priority Tax Claims, and all Allowed Other Secured Claims, (ii) a secured claim on the assets of the Litigation Trust, (iii) a ninety percent (90%) beneficial interest in the Litigation Trust and (iv) releases from the Releasing Parties and the Third Party Releases.   |
| 3. | <b>OTHER SECURED CLAIMS</b><br>(Est. -0-)             | On or as soon as reasonably practicable after the Effective Date, each holder of an Allowed Secured Claim, other than Agneto, shall <u>from and at the option of the Plan Agent</u> , (1) receive cash in the full amount of its Allowed Secured Claim, (2) have its Allowed Claim reinstated such that the legal, equitable, and contractual rights to which such Allowed Claim entitles such holder are unaltered so as to leave such Allowed Claim Unimpaired in accordance with Section 1124 of the Bankruptcy Code or (3) return of the applicable Collateral in satisfaction of the Allowed Secured Claim.   |
| 4. | <b>GENERAL UNSECURED CLAIMS</b><br>(Est. \$9,000,000) | The holders of Allowed General Unsecured Claims shall each receive <u>from the Unsecured Creditor Trustee</u> : (i) to the extent the holder of the Allowed General Unsecured Claim is not an Opt-Out Party or a Released Party, a Pro Rata share in the distributions of the Agneto Settlement Reserve after payment in full of (a) all expenses and obligations related to the administration of the Unsecured Creditor Trust, (b) Allowed Unsecured Priority Tax Claims and (c) Allowed Priority Non-Tax Claims (excluding any Allowed Claim under § 503(b)(9) of the Bankruptcy Code); and (ii) as to all holders of Allowed General Unsecured Claims, regardless of whether or not they are an Opt-Out Party, a Pro Rata share in the net distributions of the Unsecured Creditor Trust Assets other than the Agneto Settlement Reserve. No Opt-Out Party or Released Party will receive any share, distribution or beneficial interest from the Agneto Settlement Reserve. Also, neither Agneto nor Franco will share in the distributions of the Unsecured Creditor Trust Assets until after all other Allowed General Unsecured Claims are paid in full. |
| 5. | <b>EQUITY INTERESTS</b><br>(Est. \$25,000,000)        | All Equity Interests shall be cancelled on the Effective Date.   |

**ARTICLE I**  
**DEFINITIONS, INTERPRETATIONS, AND EXHIBITS**

**1.1 Definitions.**

For the purposes of this Plan, and to the extent not otherwise provided herein, the terms below shall have the respective meanings specified below and capitalized terms shall refer to the terms as defined in this Article 1.

**“Administrative Claim”** means any Claim asserted or arising under §§ 503, 507(a)(1) and (2), or 507(b) of the Bankruptcy Code, except a Professional Claim.

**“Administrative Claims Bar Date”** means ten (10) Business Days after the Effective Date.

**“Agneto”** means Agneto Holdings, L.P. and its successors and assigns.

**“Agneto Adequate Protection Lien”** means the valid, binding, first priority, enforceable and fully perfected replacement Lien in all of the Debtor’s post-petition assets the Cash Collateral Order provides Agneto, including, a Lien on the Litigation Trust Causes of Action and the products and proceeds thereof, subject and junior only to (a) the Carve-Out (defined below), (b) the Agneto Settlement Reserve, and (c) any validly perfected Lien senior to the Prepetition Liens with respect to the Debtor’s pre-petition assets in existence as of the Petition Date.

**“Agneto Assignment”** means the Notice of Amegy Bank Regarding Assignment of Claim(s) [Docket No. 82], and all related assignment, transfer and allonge documents pursuant to which, on July 2, 2019, Amegy assigned the Pre-Petition Obligations and Pre-Petition Liens, among other rights and Claims, to Agneto.

**“Agneto Secured Claim”** means the Secured Claims of Agneto, including the Pre-Petition Obligations, the Pre-Petition Adequate Protection Superpriority Claim, together with all rights, claims, and interests.

**“Agneto Secured Liens”** means the Liens, including the Agneto Adequate Protection Lien and the Pre-Petition Liens, securing the Agneto Secured Claim, including, pursuant to the Cash Collateral Order, the Pre-Petition Loan Documents and section 552(b) of the Bankruptcy Code, a valid, duly perfected, first-priority lien upon and security interest in (a) all of the Cash of the Debtor, whether obtained on, prior to, or after the Petition Date (b) the Pre-Petition Collateral and the proceeds of the Prepetition Collateral (whether such proceeds were obtained on, prior to, or after the Petition Date) and (c) the Litigation Trust Causes of Action and the products and proceeds thereof.

**“Agneto Settlement Reserve”** means the one million dollars (\$1,000,000) the Debtor holds in escrow pursuant to Settlement Agreement Section 2(a) for the benefit of the Debtor’s priority and general unsecured creditors that are not Opt-Out Parties.

**“Allowed”** means, with respect to any Claim, any Claim or portion thereof against the Debtor (a) that is evidenced by a proof of claim filed by the Bar Date, a request for payment of an Administrative Claim filed by the Administrative Claims Bar Date or Professional Claim filed by the Professional Claims Bar Date, as to which the deadline to object has passed without an objection being filed; (b) that the Debtor, the Plan Agent, the Unsecured Creditor Trustee, or the Litigation Trustee, as

applicable, and the holder of the Claim agree to the amount of the Claim or a court of competent jurisdiction has determined the amount of the Claim by Final Order; (c) that is compromised, settled, or otherwise resolved pursuant to the authority of the Debtor, the Plan Agent, the Unsecured Creditor Trustee, or the Litigation Trustee, as applicable, or in a Final Order of the Bankruptcy Court; (d) that is listed in the Schedules as liquidated, non-contingent, and undisputed; (e) that arises from the recovery of property under §§ 550 or 553 of the Bankruptcy Code and is allowed under § 502(h) of the Bankruptcy Code; or (f) that is expressly allowed in this Plan.

**“Allowed Administrative Claim”** means all or that portion of any Administrative Claim that is or has become an Allowed Claim.

**“Amegy”** means Zions Bancorporation, N.A. d/b/a Amegy Bank.

**“Assets”** means all of the right, title, and interest of the Debtor or Estate in and to property of whatever type or nature (including, without limitation, real, personal, mixed, intellectual, tangible, and intangible property), including any claim or Cause of Action.

**“Avoidance Action”** means any and all causes of action which a trustee, debtor-in-possession, estate, or other legal representative or appropriate party-in-interest, including the Unsecured Creditor Trustee or Litigation Trustee, may assert under §§ 510, 542, 543, 544, 545, 547, 548, 549, 550, 551, 553, and 724(a) of the Bankruptcy Code.

**“Bankruptcy Code”** means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as in effect on the Petition Date, together with all amendments and modification thereto, to the extent applicable to the Chapter 11 Case or proceedings therein, as the case may be.

**“Bankruptcy Court”** means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, which has jurisdiction over the Chapter 11 Case.

**“Bankruptcy Rules”** means (a) the Federal Rules of Bankruptcy Procedure and the Official Bankruptcy Forms, as amended and promulgated under § 2075 of title 28 of the United States Code; (b) the Federal Rules of Civil Procedure, as amended and promulgated under § 2075 of title 28 of the United States Code; (c) the Local Rules of the United States District Court for the Northern District of Texas; (d) the Local Rules of the United States Bankruptcy Court for the Northern District of Texas; and (e) any standing orders governing practices and procedure issued by the Bankruptcy Court, each as in effect on the Petition Date, together with all amendments and modifications thereto, to the extent applicable to this Chapter 11 Case or proceedings therein, as the case may be.

**“Bar Date”** means September 26, 2019, the deadline established by the Bankruptcy Court under Bankruptcy Rule 3003(c)(3), after which any proof of claim may not be timely filed, except claims held by governmental entities.

**“Business Day”** means any day that is not a Saturday, Sunday, or one of the legal holidays listed in Bankruptcy Rule 9006(a).

**“Carve Out”** shall have the meaning as set forth in the Cash Collateral Order.

**“Cash”** means money, currency and coins, negotiable checks, balances in bank accounts and other lawful currency of the United States of America and its equivalents.

**“Cash Collateral”** means all Cash and cash equivalents of the Debtor and its Estate, including, the proceeds of loans or other financial accommodations which Amegy (as predecessor and assignor to Agneto) provided to the Debtor under the Pre-Petition Loan Documents, proceeds of the Pre-Petition Collateral, proceeds of any Litigation Trust Causes of Action, and any other “cash collateral” (as defined in section 363 and/or section 552 of the Bankruptcy Code).

**“Cash Collateral Order”** means the *Final Order (I) Granting Liens, Security Interests and Superpriority Administrative Expense Status; (II) Authorizing the Use of Cash Collateral; (III) Affording Adequate Protection; and (IV) Modifying the Automatic Stay* [Docket No. 141].

**“Causes of Action”** means any action, proceeding, obligation, appeal, liability, cause of action, suit, account, controversy, agreement, promise, right to legal remedies, right to equitable remedies, right to payment, and claim (as defined by Bankruptcy Code § 101(5)), whether known or unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured, unsecured and whether asserted or assertable directly or indirectly or derivatively, in law, equity or otherwise or as a defense, setoff, counterclaim or cross-claim (and any rights to or interests in any of the foregoing) that belong to the Debtor or the Estate or the Committee as of the Effective Date, including (a) Avoidance Actions; (b) claims involved in civil actions identified in the Schedules; (c) other damages (general, exemplary or statutory) relating to or based on (i) fraud, negligence, gross negligence, willful misconduct, conversion or any tort actions, (ii) violations of federal or state securities laws, (iii) violations of applicable corporate or partnership laws, (iv) breaches of fiduciary or agency duties, (v) breaches of contract, warranty or other obligations, (vi) causes of action based on the Texas Deceptive Trade Practices Act, the Texas Uniform Commercial Code or other state or federal statutory scheme (vii) causes of action based on alter ego, conspiracy, aiding and abetting, or other liability theories; or (viii) based on any other claim of the Debtor, to the extent not specifically compromised or released pursuant to this Plan or the Settlement Agreement; (d) any claims of the Debtor for equitable subordination under Bankruptcy Code § 510(c) or under other applicable laws; and (e) any claim of the Debtor or the Estate to recharacterize any other party’s Claim.

**“Chapter 11 Case”** means the case under chapter 11 of the Bankruptcy Code commenced by the Debtor in the Bankruptcy Court on the Petition Date assigned Case No. 19-31717.

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

**“Claim Objection Deadline”** means the first Business Day that is ninety (90) days after the Effective Date, or such other date set by Bankruptcy Court order for objecting to Claims against the Estate.

**“Class”** means a group of Claims or Interests as classified under this Plan pursuant to § 1122(a) of the Bankruptcy Code.

**“Collateral”** means any Asset of the Estate that is subject to a Lien securing the payment or performance of a Claim, which Lien is not invalid and has not been avoided under the Bankruptcy Code or applicable nonbankruptcy law.

**“Committee”** means the statutory committee of unsecured creditors appointed in the Chapter 11 Case under § 1102 of the Bankruptcy Code on June 3, 2019.

**“Confirmation Date”** means the order of the Bankruptcy Court confirming this Plan under § 1129 of the Bankruptcy Code.

**“Confirmation Hearing”** means the hearing held before the Bankruptcy Court to consider confirmation of this Plan under § 1128 of the Bankruptcy Code, as it may be adjourned or continued from time to time.

**“Confirmation Order”** means the Bankruptcy Court’s order confirming this Plan under § 1129 of the Bankruptcy Code.

**“Cure Amount”** means the payment of Cash or the distribution of other property (as the parties may agree or the Bankruptcy Court may order) as necessary to (a) cure a monetary default by the Debtor in accordance with the terms of an executory contract or unexpired lease of the Debtor and (b) permit the Debtor to assume such executory contract or unexpired lease under § 365(a) of the Bankruptcy Code.

**“Debtor”** means Frankie V’s Kitchen, LLC, including in its capacity as debtor-in-possession under §§ 1107 and 1108 of the Bankruptcy Code and the Estate.

**“Disallowed”** means a Claim or any portion thereof that (a) has been disallowed by a Final Order, including the Confirmation Order; (b) has been listed on the Schedules as zero or as contingent, disputed, or unliquidated and as to which Bar Date has been established but no proof of claim or interest has been timely filed or deemed timely filed; or (c) is not listed on the Schedules and as to which the Bar Date has been set and no proof of claim or interest has been timely filed or deemed timely filed.

**“Disclosure Statement”** means the document entitled “Disclosure Statement in Support of Plan of Liquidation Filed by Frankie V’s Kitchen, LLC” and dated August 30, 2019 and filed in connection with the Chapter 11 Case under § 1125 of the Bankruptcy Code and approved by the Bankruptcy Court as containing “adequate information” as that term is defined in § 1125(a)(1) of the Bankruptcy Code, any exhibits annexed thereto, and any documents delivered in connection therewith, as such may be amended or modified from time to time.

**“Disputed”** means, with respect to a Claim, (a) any Claim as to which the Debtor, Plan Agent, Unsecured Creditor Trustee, or Litigation Trustee, as applicable, has interposed and not withdrawn an objection or request for estimation that has not been determined by a Final Order; (b) any Claim evidenced by a proof of claim that, on its face, is contingent or unliquidated; (c) any Claim that is listed in the Schedules as unliquidated, contingent, or disputed; or (d) any Claim that is otherwise disputed by the Debtor, Plan Agent, Unsecured Creditor Trustee, or Litigation Trustee, as applicable, in accordance with applicable law or contract, which dispute has not been withdrawn, resolved, or overruled by a Final Order. Without limiting any of the above, a Claim that is the subject of a pending objection, motion, complaint, counterclaim, setoff, Avoidance Action or other defense, or any other proceeding seeking to disallow, subordinate, or estimate such Claim, shall be deemed to constitute a Disputed Claim. To the extent that only a portion of a Claim is Disputed, such Claim shall be determined Allowed in the amount that is not Disputed and Disputed as to the balance of such Claim.

**“Effective Date”** means the first Business Day on which (a) all conditions to the effectiveness of this Plan set forth in ARTICLE IX have occurred or been satisfied or waived in accordance with the terms of the Plan, and (b) no stay of the Confirmation Order is in effect.

**“Estate”** means the Debtor’s bankruptcy estate created in the Chapter 11 Case under § 541 of the Bankruptcy Code.

**“Final Budget”** means the budget attached to and approved under the Cash Collateral Order, as modified from time to time.

**“Final Order”** means an order, ruling, or judgment of the Bankruptcy Court (or other court of competent jurisdiction) that: (a) is in full force and effect; (b) is not stayed; and (c) is no longer subject to review, reversal, vacatur, modification, or amendment, whether by appeal or by writ of certiorari; provided that the possibility of a motion under Rules 50 or 60 of the Federal Rules of Civil Procedure or any analogous Bankruptcy Rule (or any analogous rules applicable in such other court of competent jurisdiction) may be filed relating to such order, ruling, or judgment shall not cause such order, ruling, or judgment not to be a Final Order.

**“Franco”** means Mr. Jeffrey D. Franco.

**“General Unsecured Claim”** means any Claim which is not an Administrative Claim, Secured Claim, Professional Claim, Priority Tax Claim, Priority Non-Tax Claim or Interest.

**“Impaired”** means, with respect to a Claim, Interest, or a Class of Claims or Interests, “impaired” as that term is defined in § 1124 of the Bankruptcy Code.

**“Interest”** means any membership interest or equity security (as defined in § 101(16) of the Bankruptcy Code) of the Debtor, including all memberships, shares, common stock, preferred stock, or other instrument evidencing any fixed or contingent ownership interest in the Debtor, including any option, warrant, or other right, contractual or otherwise, to acquire any such interest in a Debtor, whether or not transferable and whether fully vested or vesting in the future, that existed immediately before the Effective Date.

**“Lien”** means any charge against or interest in property to secure payment of debt or performance of an obligation and includes a judicial lien, security interest, deed of trust, mortgage, and property tax lien.

**“Litigation Trust”** means the “FVK Litigation Trust”, the trust formed under the Plan, Confirmation Order, and the Litigation Trust Agreement.

**“Litigation Trustee”** the trustee of the Litigation Trust, Steven B. Solomon or an entity wholly owned by Steven B. Solomon, who has the powers and responsibilities set forth in the Plan, Confirmation Order, and Litigation Trust Agreement, and who, pursuant to Bankruptcy Code § 1123(b)(3)(B) shall have all rights and powers that the Estate, the Debtor, a trustee, a chapter 11 trustee, creditors committee, or similar representative of the Estate or official would have, and shall be deemed to be acting in the capacity of a trustee under sections 704 and 1106 of the Bankruptcy Code, as to the Litigation Trust Assets, or any successor trustee appointed pursuant to the Litigation Trust Agreement.

**“Litigation Trust Agreement”** means the agreement by which the Litigation Trust is outlined, established, empowered, and/or limited, as contemplated by the Plan, in substantially the same form as the document attached to this Plan as Exhibit A, as may be amended, supplemented, restated, or otherwise modified from time to time.

**“Litigation Trust Assets”** means all Assets of the Litigation Trust, including, but not limited to, (a) the Litigation Trust Causes of Action; (b) any proceeds of such Litigation Trust Causes of Action; (c) the proceeds or right to collect from any and all available insurance policy, including without limitation, any directors’ and officers’ insurance policies and any business interruption insurance policies; (d) any other assets of the Debtor not assigned to the Unsecured Creditor Trust or administered by the Plan Agent; and (e) any proceeds from the above-listed Assets in (a) through (c) that the Debtor receives prior to the Effective Date.

**“Litigation Trust Beneficiaries”** means (i) Agneto (with a ninety percent [90%] beneficial interest), and (ii) the Unsecured Creditor Trust (with a ten percent [10%] non-voting beneficial interest). For avoidance of doubt, the Debtor is not a Litigation Trust Beneficiary.

**“Litigation Trust Causes of Action”** means any Cause of Action other than the Unsecured Creditor Trust Avoidance Actions, as described with specificity in Section 7.1(d) of the Plan. For avoidance of doubt, the Plan preserves and assigns to the Litigation Trust all Causes of Action not (a) specifically identified as an Unsecured Creditor Trust Avoidance Action or (b) expressly released by the Settlement Agreement or Plan.

**“Litigation Trust Claims”** Claims to be paid by the Litigation Trustee out of the Litigation Trust Assets.

**“Opt-Out Form”** means the provision on the ballot or other applicable Bankruptcy Court-approved form providing notice of the Third-Party Releases and ability to opt-out of such Third-Party Releases.

**“Opt-Out Parties”** means any holder of a Claim or Interest that timely completes and returns an Opt-Out Form, affirmatively opting out of the Third-Party Releases in Section 10.6(b) and waiving the right to a distribution from the Agneto Settlement Reserve; however, the Debtor, the Estate, and the Committee cannot be Opt-Out Parties.

**“Other Secured Claim”** means a Claim that is a Secured Claim, but excluding (a) the Agneto Secured Claim and (b) any Secured Priority Tax Claim.

**“Person”** means an individual, corporation, partnership, joint venture, association, joint stock company, limited liability company, limited liability partnership, trust, estate, unincorporated organization, governmental unit (as defined in § 101(27) of the Bankruptcy Code) or any other entity (as defined in § 101(15) of the Bankruptcy Code).

**“Petition Date”** means May 20, 2019, the date on which the Debtor commenced the Chapter 11 Case.

**“Plan”** means this chapter 11 plan, including all appendices, exhibits, schedules, and supplements hereto, as may be modified from time to time in accordance with the Bankruptcy Code and terms hereof.

**“Plan Agent”** means Steven B. Solomon, appointed as Plan Agent pursuant to this Plan, whose function shall be to take all other steps required, and when appropriate, take all actions authorized under this Plan, including, resolving Disputed Claims that are Administrative Claims, Professional Claims, Secured Priority Tax Claims and Other Secured Claims.

**“Plan Document”** means any of the documents, other than this Plan, to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date, including without limitation, the Litigation Trust Agreement, the Unsecured Creditor Trust Agreement, and the Opt-Out Form, as may be modified or amended from time to time.

**“Pre-Petition Collateral”** means all assets of the Debtor encumbered by the Pre-Petition Liens as of the Petition Date.

**“Pre-Petition Adequate Protection Superpriority Claim”** means the post-petition superpriority administrative expense claim against the Debtor the Cash Collateral Order provide to Agneto, with recourse to all pre-petition and post-petition property of the Debtor and all proceeds thereof, (subject to the terms of the Settlement Agreement) under Bankruptcy Code sections 503 and 507 against the Estate to the extent the Agneto Adequate Protection Lien does not adequately protect against the diminution in value of the Pre-Petition Collateral (including Cash Collateral), which shall have priority in payment over any other indebtedness and/or obligations now in existence or incurred hereafter by the Debtor or its Estate and over all other Administrative Expenses of any kind, including, without limitation, those specified in Bankruptcy Code sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, or 1114, or otherwise, and including those resulting from the conversion of the Chapter 11 Case pursuant to Bankruptcy Code section 1112; subject and junior only to the Carve-Out and the Agneto Settlement Reserve.

**“Pre-Petition Liens”** means the first priority, fully perfected liens in substantially all of the Debtor’s assets securing the Pre-Petition Obligations.

**“Pre-Petition Loan Documents”** means those certain Loan Agreements and the other applicable Loan Documents pursuant to which the Debtor was indebted to Amegy (which Amegy assigned to Agneto through the Agneto Assignment).

**“Pre-Petition Obligations”** means all of the Debtor’s obligations to Amegy (which Amegy assigned to Agneto through the Agneto Assignment) pursuant to the Pre-Petition Loan Documents without defense, counterclaim, recoupment, or offset of any kind, in the approximate non-contingent liquidated amount of no less than \$2,500,000.00, plus prepetition interest, fees, and expenses.

**“Priority Non-Tax Claim”** means any Claim (other than a Professional Claim, Administrative Claim, or Priority Tax Claim) that is entitled to priority in payment as specified in § 507(a) of the Bankruptcy Code.

**“Priority Tax Claim”** means any Claim of a governmental unit (as defined in § 101(27) of the Bankruptcy Code) of the kind entitled to priority in payment under §§ 502(i), 507(a)(8) and 507(c) of the Bankruptcy Code.

**“Pro Rata”** means the proportion that an Allowed Claim in a particular Class bears to the aggregate amount of Allowed Claims in that Class.

**“Professional”** means any Person retained by order of the Bankruptcy Court in connection with this Chapter 11 Case under §§ 327, 328, 330, 331, 503(b), or 1103 of the Bankruptcy Code, excluding any ordinary course professional retained pursuant to an order of the Bankruptcy Court.

**“Professional Claim”** means a Claim of a Professional for compensation or reimbursement of costs and expenses relating to services incurred after the Petition Date and prior to and including the Effective Date.

**“Professional Claims Bar Date”** means the first Business Day that is twenty Business Days after the Effective Date.

**“Rejection Claim”** means a Claim arising from the Debtor’s rejection of an executory contract or a real property lease that is unexpired as of the Petition Date.

**“Released Parties”** means, collectively: (a) Franco; (b) the Committee; (c) Agneto; (d) Steven B. Solomon and (e) with respect to each of the foregoing entities set forth in (a) through (d), such entities’ predecessors, successors, assigns, subsidiaries, affiliates, current and former officers and directors, principals, shareholders, members, partners, managers, employees, subcontractors, agents, advisory board members, financial advisors, attorneys, investment bankers, consultants, representatives, management companies, fund advisors, and other professionals, and such entities’ respective heirs, executors, estates, servants, and nominees. For the avoidance of doubt, except as to Franco, Agneto and Steven B. Solomon, none of the Debtor’s past or current officers, employees, directors, or insiders shall constitute Released Parties or be deemed to be released by any provision of this Plan, Plan Document, or Confirmation Order.

**“Releasing Parties”** means the Debtor and the Estate on behalf of itself and its successors, assigns, and representatives and any and all other entities that may purport to assert any cause of action derivatively, by or through the foregoing entities, as set forth in Plan section 10.6(a).

**“Sale”** means the sale of substantially all of the Debtor’s business assets to Casa Verde Foods, LLC, as authorized by the Bankruptcy Court’s Order dated July 23, 2017 [Docket No. 120] and which closed on July 24, 2019.

**“Schedules”** means the schedules of assets and liabilities, statement of financial affairs, list of holders of Claims and Interests, and all amendments or supplements thereto filed by the Debtor with the Bankruptcy Court.

**“Secured Claim”** means a Claim to the extent secured by a Lien on property of the Debtor or the Estate, the amount of which is equal to or less than the value of such property, (i) as set forth in this Plan, (ii) as agreed to by the holder of such Claim and the Debtor, Plan Agent, or Litigation Trustee, as applicable, or (iii) as determined by a Final Order of the Bankruptcy Code.

**“Secured Priority Tax Claim”** means a Priority Tax Claim (or portion of a Priority Tax Claim) to the extent it is also a Secured Claim.

**“Settlement Agreement”** means the Settlement Agreement and Stipulation between the Debtor, the Committee, Agneto, and Franco, as approved by the Bankruptcy Court’s order dated August 9, 2019 [Docket No. 142].

**“Solicitation Package”** means those materials to be distributed by or on behalf of the Debtor to each record and beneficial holder of a Claim or Interest entitled to vote on this Plan.

**“Third-Party Releases”** means the releases provided by Plan section 10.6(b).

**“Third-Party Releasing Parties”** means the holders of all Claims and Interests and their successors and assigns, other than the Opt-Out Parties, as provided in Plan section 10.6(b).

**“Unclaimed Property”** means any distribution of Cash or other property made to the holder of an Allowed Claim under the Plan that (a) is returned to the Debtor, the Plan Agent, the Unsecured Creditor Trustee, or Litigation Trustee, as applicable, as undeliverable and no appropriate forwarding address is received within the later of (i) 90 days after the Effective Date and (ii) 90 days after such distribution is made to such holder or (b) in the case of a distribution made in the form of a check, is not negotiated within 90 days and no request for reissuance is made within the 90-day period. After the expiration of the 90-day period, Unclaimed Property shall become Cash for distribution by the Unsecured Creditor Trustee or Litigation Trustee, as applicable, in accordance with the terms of this Plan and the applicable trust agreement.

**“Unimpaired”** means any Claim that is not Impaired.

**“Unsecured Priority Tax Claim”** means a Priority Tax Claim (or portion of a Priority Tax Claim) to the extent it is not a Secured Claim.

**“Unsecured Creditor Trust”** means the “FVK Unsecured Creditor Trust”, the trust formed under the Plan, Confirmation Order, and the Unsecured Creditor Trust Agreement.

**“Unsecured Creditor Trust Advisory Board”** means the advisory board that shall oversee the Unsecured Creditor Trust in accordance with the Unsecured Creditor Trust Agreement, the initial compensation of which shall consist of the three members currently serving on the Committee. After the Effective Date, the members of the Unsecured Creditor Trust Advisory Board shall be appointed in accordance with the terms of the Unsecured Creditor Trust Agreement.

**“Unsecured Creditor Trust Agreement”** means the agreement by which the Unsecured Creditor Trust is outlined, established, empowered, and/or limited, as contemplated by the Plan, in substantially the same form as the document attached to this Plan as Exhibit B, as may be amended, supplemented, restated, or otherwise modified from time to time.

**“Unsecured Creditor Trust Assets”** means (a) the Agneto Settlement Reserve, subject to the limitations set forth in the Settlement Agreement and this Plan; (b) the Unsecured Creditor Trust Avoidance Actions; and (c) a non-voting beneficial interest (net of the Litigation Trust’s expenses, including attorneys’ fees, and the Agneto Secured Claim) in ten percent (10%) of the Litigation Trust.

**“Unsecured Creditor Trust Avoidance Action”** means any Avoidance Action against a prepetition non-insider of the Debtor; *provided, however*, that the Unsecured Creditor Trust Avoidance Actions do not include any Avoidance Action against (a) any Lien or Secured Claim holder, (b) any current or former officer, director, employee or insider of the Debtor as “insider” is defined by the Bankruptcy Code; and (c) any third party that (i) is the initial, immediate or subsequent transferee of a transfer to or for the benefit of an insider of the Debtor, or (ii) otherwise received a transfer of an interest of the Debtor in property on behalf of or for the benefit of an insider of the Debtor.

**“Unsecured Creditor Trust Beneficiaries”** means the holders of Allowed unsecured Priority Tax Claim, Allowed Priority Non-Tax Claim, or Allowed General Unsecured Claim.

**“Unsecured Creditor Trust Claims”** means the Claims to be paid by the Unsecured Creditor Trustee out of the Unsecured Creditor Trust Assets.

**“Unsecured Creditor Trustee”** means Dennis Faulkner, who has the powers and responsibilities set forth in the Plan, Confirmation Order, and Unsecured Creditor Trust Agreement, or any successor trustee appointed pursuant to the Unsecured Creditor Trust Agreement.

**“U.S. Trustee”** means the United States Trustee appointed under § 581(a)(3) of title 28 of the United States Code to serve in the Northern District of Texas.

**“Voting Deadline”** means the date the Bankruptcy Court established by which ballots to vote to accept or reject this Plan must be received.

## **1.2 Rules of Interpretation**

Unless otherwise specified, all article, section, or exhibit references in this Plan are to the respective article in, section in, or exhibit to this Plan, as the same may be amended, waived, or modified from time to time in accordance with the terms hereof. The words “herein,” “hereof,” “hereto,” “hereunder,” and other words of similar import refer to this Plan as a whole and not to any particular section, subsection, or clause contained therein and have the same meaning as “in this Plan,” “of this Plan,” “to this Plan,” and “under this Plan,” respectively. The words “includes” and “including” are not limiting. The headings in this Plan are for convenience of reference only and shall not limit or otherwise affect the provisions hereof. For purposes herein: (a) in the appropriate context, each term, whether stated in the singular or plural, shall include both the singular and plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender; (b) any reference herein to a contract, lease, release, or other agreement or document being in a particular form or on particular terms and conditions means that the reference document shall be substantially in that form or substantially on those terms and conditions; (c) the rules of construction set forth in § 102 of the Bankruptcy Code shall apply; and (d) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or Bankruptcy Rules, as the case may be.

## **1.3 Computing Time**

In computing any period of time prescribed or allowed by this Plan, the provisions of Bankruptcy Rule 9006(a) shall apply. In the event that any payment or act under this Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

## **1.4 Controlling Document**

In the event of inconsistency between this Plan and the Litigation Trust Agreement, the terms of the Litigation Trust Agreement shall control unless otherwise specified in the Litigation Trust Agreement. In the event of inconsistency between this Plan and the Unsecured Creditor Trust Agreement, the terms of the Unsecured Creditor Trust Agreement shall control unless otherwise specified in the Unsecured Creditor Trust Agreement. In the event of inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan

and the Disclosure Statement, this Plan shall control. The provisions of this Plan and of the Confirmation Order shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided*, if there is determined to be any inconsistency between any provision of this Plan and any provision of the Confirmation Order that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern and any such provisions of the Confirmation Order shall be deemed a modification of this Plan.

### **1.5 Exhibits**

All Exhibits to this Plan are incorporated into and are part of this Plan as if set forth in full herein, regardless of when filed.

## **ARTICLE II TREATMENT OF UNCLASSIFIED, UNIMPAIRED CLAIMS**

### **2.1 Administrative Claims**

Subject to the allowance procedures and deadlines provided herein, on the later of the Effective Date and the date that is ten (10) Business Days after the date such Administrative Claim becomes an Allowed Claim, or as soon thereafter as reasonably practicable, the holder of an Allowed Administrative Claim shall receive from the Debtor or the Plan Agent, as applicable, on account of such Allowed Administrative Claim and in full satisfaction, settlement, release and discharge of and in exchange for such Allowed Administrative Claim, (a) Cash equal to the unpaid portion of such Allowed Administrative Claim or (b) such other treatment as to which the Debtor or the Plan Agent, as applicable, and the holder of such Allowed Administrative Claim have agreed upon in writing.

### **2.2 Statutory Fees**

Notwithstanding any other provisions of this Plan to the contrary, the Debtor or Plan Agent, as applicable, shall pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930(a)(6) within ten (10) days after the Confirmation Date for the period ending on the Confirmation Date.

The Plan Agent shall further pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930(a)(6) for the period after the Confirmation Date within the time period set forth in 28 U.S.C. § 1930(a)(6) based upon disbursements made by the Plan Agent after the Confirmation Date, until the earlier of the closing of the Chapter 11 Case by the issuance of a Final Order by the Bankruptcy Court, or upon the entry of a Final Order by the Bankruptcy Court dismissing the Chapter 11 Case or converting the Chapter 11 Case to another chapter under the Bankruptcy Code.

The Liquidating Trustee shall further pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930(a)(6) for the period after the Confirmation Date within the time period set forth in 28 U.S.C. § 1930(a)(6) based upon disbursements made by the Liquidating Trust after the Confirmation Date, until the earlier of the closing of the Chapter 11 Case by the issuance of a Final Order by the Bankruptcy Court, or upon the entry of a Final Order by the Bankruptcy Court dismissing the Chapter 11 Case or converting the Chapter 11 Case to another chapter under the Bankruptcy Code.

The Unsecured Creditor Trustee shall further pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930(a)(6) for the period after the Confirmation Date within the time period set forth in 28 U.S.C. § 1930(a)(6) based upon disbursements made by the Unsecured Creditor Trust after the Confirmation Date, until the earlier of the closing of the Chapter 11 Case by the issuance of a Final Order by the Bankruptcy Court, or upon the entry of a Final Order by the Bankruptcy Court dismissing the Chapter 11 Case or converting the Chapter 11 Case to another chapter under the Bankruptcy Code.

### **2.3 Professional Claims**

All Professionals seeking awards of Professional Claims by the Bankruptcy Court shall (a) file, on or before the Professional Claims Bar Date, their respective applications for final allowances of compensation for services rendered and reimbursement of expenses incurred and (b) be paid by the Debtor or Plan Agent as applicable in Cash and in such amounts as are Allowed by Final Order of the Bankruptcy Court. Payments to Professionals for the Committee shall not exceed the amount of the Carve-Out under the Cash Collateral Order applicable to Committee Professional or Committee Professional Claim unless otherwise agreed in writing between the Debtor or Plan Agent, as applicable, and the Committee Professional. Funds held in the Carve-Out under the Cash Collateral Order shall not be considered property of the Estate, however, shall be transferred to Agneto pursuant to Section 4.2 only after all Professional Claims Allowed by the Bankruptcy Court have been paid in full up to the amount of the Carve-Out applicable to the Professional or Professional Claim.

Any objections to Professional Claims shall be served and filed (a) no later than twenty-one (21) days after the filing of the final application for compensation or reimbursement or (b) such later date as ordered by the Bankruptcy Court upon a motion of the Debtor or Plan Agent or agreed to by the holder of the Professional Claim.

As of the Effective Date, any requirement that Professionals comply with §§ 327 through 331 of the Bankruptcy Code in seeking retention or compensation for services rendered after the Effective Date shall terminate.

### **2.4 Priority Tax Claims**

Except to the extent that the holder of an Allowed Priority Tax Claim agrees to a different treatment, on the later of the Effective Date and the date that is ten (10) Business Days after the date such Priority Tax Claim becomes an Allowed Claim, or as soon thereafter as reasonably practicable: (i) the holder of an Allowed Secured Priority Tax Claim shall receive Cash from the Debtor or Plan Agent in an amount equal to the Allowed amount of such Secured Claim; or (ii) the holder of an Allowed Unsecured Priority Tax Claim shall receive Cash from the Unsecured Creditor Trustee funded by the Agneto Settlement Reserve in an amount equal to the Allowed amount of such Unsecured Priority Tax Claim.

### **2.5 Deadline for Filing Administrative Claims**

Administrative Claims, other than Professional Claims, must be filed no later than the Administrative Claims Bar Date. Objections to any such Administrative Claims (other than Professional Claims) must be filed and served on the claimant on or before the later of (a) the first Business Day that is 21 days after the Administrative Claims Bar Date, (b) the first Business Day that is 21 days after such Administrative Claim is filed, or (c) such other extended date granted by the

Bankruptcy Court upon request of the Debtor or Litigation Trustee, as applicable or agreed to by the holder of the Administrative Claim.

Holders of Administrative Claims that are required to file a request for payment of such Claims and that do not file such requests on or before the Administrative Claims Bar Date, are forever barred from asserting such Claims against the Debtor, its Estate, the Litigation Trust, the Unsecured Creditor Trust, any other Person, or any of their respective Assets.

**ARTICLE III  
CLASSIFICATION OF CLAIMS AND INTERESTS**

**3.1 Classification in General**

A Claim or Interest is placed in a particular Class for all purposes, including voting, confirmation, and distribution under the Plan and under §§ 1122 and 1123(a)(1) of the Bankruptcy Code; *provided* that a Claim or Interest is placed in a particular Class for the purpose of receiving distributions under this Plan only to the extent that such Claim or Interest is an Allowed Claim or Allowed Interest in that Class and such Claim or Interest has not been satisfied, released, or otherwise settled prior to the Effective Date.

The following table designates the Classes of Claims against and Interests in the Debtor and specifies which Classes are (a) Impaired and Unimpaired under this Plan; (b) entitled to vote to accept or reject this Plan in accordance with § 1126 of the Bankruptcy Code; and (c) deemed to accept or reject the Plan.

| <b>Class</b> | <b>Description</b>       | <b>Status</b> | <b>Voting Rights</b>  |
|--------------|--------------------------|---------------|-----------------------|
| Class 1      | Priority Non-Tax Claims  | Unimpaired    | No (deemed to accept) |
| Class 2      | Agneto Secured Claim     | Impaired      | Yes                   |
| Class 3      | Other Secured Claims     | Unimpaired    | No (deemed to accept) |
| Class 4      | General Unsecured Claims | Impaired      | Yes                   |
| Class 5      | Equity Interests         | Impaired      | No (deemed to reject) |

**3.2 Elimination of Vacant Classes**

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one holder of a Claim or Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from this Plan for purposes of voting to accept or reject this Plan, and disregarded for purposes of determining whether this Plan satisfied § 1129(a)(8) of the Bankruptcy Code with respect to such Class.

**3.3 Voting; Presumptions; Solicitation**

(a) *Acceptance by Certain Impaired Classes.* Only holders of Allowed Claims in Classes 2 and 4 are entitled to vote to accept or reject this Plan. An Impaired Class of Claims shall have

accepted this Plan if (i) the holders of at least two-thirds (2/3) in amount of the Allowed Claims or Interests actually voting in such Class have voted to accept this Plan and (ii) the holders of more than one-half (1/2) in number of the Allowed Claims actually voting in such Class have voted to accept this Plan. Holders of Claims in Classes 2 and 4 will receive ballots containing detailed voting instructions.

(b) *Deemed Acceptance by Unimpaired Classes.* Holders of Claims in Classes 1 and 3 are Unimpaired and are conclusively deemed to have accepted this Plan pursuant to § 1126(f) of the Bankruptcy Code. Accordingly, such holders are not entitled to vote to accept or reject this Plan; however, holders of Claims in Classes 1 and 3 will receive an Opt-Out Form to permit them to elect to be an Opt-Out Party and affirmatively opt-out of the Third-Party Releases, should they timely elect to do so. Any holders of Claims in Classes 1 and 3 that do not timely return an Opt-Out Form affirmatively opting out of the Third-Party Releases are conclusively deemed to be Third-Party Releasing Parties.

(c) *Deemed Rejection by Class 5.* Holders of Claims in Class 5 receive nothing and are conclusively deemed to have rejected this Plan pursuant to § 1126(g) of the Bankruptcy Code. Accordingly, such holders are not required to vote to accept or reject this Plan. Holders of Interests in Class 5 that also hold or held a Claim in Class 1 or Class 4 will receive an Opt-Out Form to permit them to elect to be an Opt-Out Party and affirmatively opt-out of the Third-Party Releases, should they timely elect to do so. Any holders of Interests in Class 5 that receive and do not timely return an Opt-Out Form affirmatively opting out of the Third-Party Releases are conclusively deemed to be Third-Party Releasing Parties.

### **3.4 Cramdown**

If any Class of Claims or Interests is deemed to reject this Plan or is entitled to vote on this Plan and does not vote to accept this Plan, the Debtor (a) hereby seeks confirmation of this Plan under § 1129(b) of the Bankruptcy Code and (b) may amend or modify this Plan in accordance with the Bankruptcy Code. If a controversy arises as to whether any Claims or Interests, or any Class of Claims or Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

### **3.5 No Waiver**

Nothing contained in this Plan shall be construed to waive the Debtor's, Agneto's, the Plan Agent's, the Liquidating Trustee's or the Unsecured Creditor Trustee's right to object on any basis to any Claim or Interest, except for the Agneto Secured Claim, which is deemed Allowed by the Cash Collateral Order, the Settlement Agreement and the Plan.

## **ARTICLE IV TREATMENT OF CLAIMS AND INTERESTS**

### **4.1 Class 1: Priority Non-Tax Claims**

(a) *Treatment:* Except to the extent that a holder of an Allowed Priority Non-Tax Claim agrees to different treatment, on the later of the Effective Date and the date that is ten (10) Business Days after the date such Priority Non-Tax Claim becomes an Allowed Claim, or as soon thereafter as reasonably practicable, each holder of an Allowed Priority Non-Tax Claim shall receive from the Unsecured Creditor Trustee, on account of such Allowed Claim, and, at the option of the Unsecured

Creditor Trustee: (i) Cash in an amount equal to the Allowed amount of such Claim from the Agneto Settlement Reserve, or (ii) other treatment consistent with the provisions of § 1129(a)(9).

(b) *Voting:* Allowed Priority Non-Tax Claims are Unimpaired. In accordance with § 1126(f) of the Bankruptcy Code, the holders of Allowed Priority Non-Tax Claims are conclusively presumed to accept this Plan and are not entitled to vote to accept or reject this Plan. Holders of Claims in Class 1 will receive an Opt-Out Form to permit them to elect to be an Opt-Out Party and affirmatively opt-out of the Third-Party Releases, should they timely elect to do so. Any holders of Claims in Class 1 that do not timely return an Opt-Out Form affirmatively opting out of the Third-Party Releases are conclusively deemed to be Third-Party Releasing Parties.

#### **4.2 Class 2: Agneto Secured Claim**

(a) *Treatment:* The Agneto Secured Claim shall receive on the Effective Date, on account of its Allowed Agneto Secured Claim: (i) payment of Cash from the Debtor or Plan Agent, as applicable, of all funds remaining in the Estate and other Cash Collateral remaining after payment of all Allowed Administrative Claims, all Allowed Secured Priority Tax Claims and all Allowed Other Secured Claims and reserve for payment of any Disputed Administrative Claims, Professional Claims, Secured Priority Tax Claims and Other Secured Claims; (ii) payment from the Debtor or Plan Agent, as applicable, of all funds held in the Carve-Out under the Cash Collateral Order after all Allowed Professional Claims have been paid in full; (iii) the attachment of its Liens to all of the Litigation Trust Assets as a first priority perfected Lien until the Agneto Secured Claim is paid in full; (iv) a beneficial interest in the Litigation Trust entitling Agneto to ninety percent (90%) share of all net proceeds and distributions of the Litigation Trust; and (v) the releases from the Releasing Parties and the Third Party Releases.

(b) *Voting:* The Agneto Secured Claim is Impaired. The holder of the Agneto Secured Claim is entitled to vote on this Plan.

(c) *Allowance:* The Agneto Secured Claim is deemed allowed by the Plan in the amount that equals \$2,500,000 minus all Cash paid to Agneto under the Cash Collateral Order and Sections 4.2(a)(i) and (ii) of this Plan.

#### **4.3 Class 3: Other Secured Claims**

(a) *Treatment:* The legal, equitable, and contractual rights of the holders of Allowed Other Secured Claims are unaltered by this Plan. Except to the extent that a holder of an Allowed Other Secured Claim agrees to different treatment, on the later of the Effective Date and the date that is ten (10) Business Days from the date such Other Secured Claim becomes an Allowed Claim, or as soon thereafter as is reasonably practicable, each holder of an Allowed Other Secured Claim shall receive, at the option of the Debtor or Plan Agent: (i) Cash from in an amount equal to the Allowed Other Secured Claim; (ii) reinstatement or such other treatment sufficient to render such holder's Allowed Other Secured Claim Unimpaired pursuant to § 1124 of the Bankruptcy Code; or (iii) return of the applicable Collateral in satisfaction of the Allowed amount of such Other Secured Claim.

(b) *Voting:* The holders of Other Secured Claims are Unimpaired. In accordance with § 1126(f) of the Bankruptcy Code, the holders of Other Secured Claims are conclusively presumed to accept this Plan and are not entitled to vote to accept or reject this Plan. Holders of Claims in Class 3 that also hold or held a Claim in Class 1 or Class 4 will receive an Opt-Out Form to permit them to

elect to be an Opt-Out Party and affirmatively opt-out of the Third-Party Releases, should they timely elect to do so. Any holders of Claims in Class 3 that do not timely return an Opt-Out Form affirmatively opting out of the Third-Party Releases are conclusively deemed to be Third-Party Releasing Parties.

#### **4.4 Class 4: General Unsecured Claims**

(a) *Treatment:* The holders of Allowed General Unsecured Claims shall each receive from the Unsecured Creditor Trustee: (i) to the extent the holder of the Allowed General Unsecured Claim is not an Opt-Out Party or a Released Party, a Pro Rata share in the distributions of the Agneto Settlement Reserve after payment in full of (a) all expenses and obligations related to the administration of the Unsecured Creditor Trust, (b) Allowed Unsecured Priority Tax Claims and (c) Allowed Priority Non-Tax Claims; and (ii) as to all holders of Allowed General Unsecured Claims, regardless of whether or not they are an Opt-Out Party, a Pro Rata share in the net distributions of the Unsecured Creditor Trust other than the Agneto Settlement Reserve. No Opt-Out Party or Released Party will receive any share, distribution or beneficial interest from the Agneto Settlement Reserve. Also, neither Agneto nor Franco will share in the distributions of the Unsecured Creditor Trust Assets until after all other Allowed General Unsecured Claims are paid in full.

(b) *Voting:* Allowed General Unsecured Claims are Impaired. Therefore, holders of General Unsecured Claims are entitled to vote to accept or reject this Plan. Holders of Claims in Class 4 will receive an Opt-Out Form to permit them to elect to be an Opt-Out Party and affirmatively opt-out of the Third-Party Releases and as a result waive any share of the Agneto Settlement Reserve, should they timely elect to do so. Any holders of Claims in Class 4 that do not timely return an Opt-Out Form affirmatively opting out of the Third-Party Releases are conclusively deemed to be Third-Party Releasing Parties.

#### **4.5 Class 5: Equity Interests**

(a) *Treatment:* On the Effective Date, the Equity Interests shall be cancelled without further action by or order of the Bankruptcy Court.

(b) *Voting:* Holders of Equity Interests are Impaired. However, because holders of Equity Interests will receive no distribution under this Plan, they are deemed to have rejected this Plan pursuant to § 1126(g) of the Bankruptcy Code. Holders of Interests in Class 5 that also hold or held a Claim under Class 1 or Class 4 will receive an Opt-Out Form to permit them to elect to be an Opt-Out Party and affirmatively opt-out of the Third-Party Releases, should they timely elect to do so. Any holders of Interests in Class 5 that receive and do not timely return an Opt-Out Form affirmatively opting out of the Third-Party Releases are conclusively deemed to be Third-Party Releasing Parties.

#### **4.6 Debtor's Rights in Respect of Unimpaired Claims**

Except as otherwise provided in this Plan, nothing under this Plan shall affect the rights of the Plan Agent, Litigation Trustee or Unsecured Creditor Trustee in respect of any Unimpaired Claim, including, without limitation, all rights in respect of legal and equitable defenses to, or setoffs or recoupments against, any such Unimpaired Claim.

**ARTICLE V**  
**EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**5.1 Approval of Rejection; Rejection Damages Claims Bar Date**

The Confirmation Order shall constitute a Final Order of the Bankruptcy Court approving rejections of all executory contracts and unexpired leases pursuant to § 365 of the Bankruptcy Code as of the Effective Date, except (i) insurance policies pursuant to Section 5.2 below and (ii) any executory contract or unexpired lease specifically assumed by Final Order as of the Effective Date. Any Claim for damages arising from any such rejection must be filed within thirty (30) days after the Effective Date or such Claim shall be forever barred, shall not be enforceable against the Debtor, its Estate, the Unsecured Creditor Trust, or Litigation Trust, or any of their respective properties and shall receive no distribution under this Plan or otherwise on account of such Claim.

**5.2 No Effect on Insurance**

The rejection of executory contracts shall not apply to, and shall have no effect upon, any insurance policy which the Debtor owns or pursuant to which the Debtor is an insured party, beneficiary, claimant or in which the Debtor has any interest, including any directors and officers' insurance policies (together, the "**Insurance Policies**"). All Insurance Policies to which the Debtor is a party as of the Effective Date shall be deemed to be and treated as executory contracts and shall be assumed by the Debtor, assigned to the Litigation Trust and shall continue in full force and effect thereafter in accordance with their respective terms. All Insurance Policies shall vest in the Litigation Trust as of the Effective Date, including the right to (a) control any Insurance Policy that provides or may provide coverage for the Litigation Trust Causes of Action or may become available to provide such coverage; (b) pursue and receive the benefits and proceeds of the Insurance Policies; (c) pursue and receive recovery from or as a result of any Litigation Trust Causes of Action, including consequential, contractual, extracontractual and/or statutory damages, or other proceeds, distributions, awards or benefits; and (d) pursue and receive any other recovery related to the Litigation Trust Causes of Action, including negotiations relating thereto and settlements thereof. Nothing in this paragraph nor the Plan limits, excuses or in any way affects or impairs any coverage to which the Debtor's current and/or former officers and directors are entitled to with respect to any and all insurance or other applicable Insurance Policies of the Debtors.

**ARTICLE VI**  
**MEANS FOR EXECUTION AND IMPLEMENTATION OF THE PLAN**

**6.1 Settlement Agreement and the Plan Settlement**

This Plan implements the Settlement Agreement and shall constitute a settlement under Bankruptcy Rule 9019 and section 1123 of the Bankruptcy Code between the Releasing Parties and the Third-Party Releasing Parties on the one hand and the Released Parties and the Third-Party Released Parties on the other hand in complete and final resolution of all claims the Releasing Parties and the Third-Party Releasing Parties may have against the Released Parties and the Third-Party Released Parties (the "**Plan Settlement**"). Alleged claims which are being settled include, without limitation, all claims and causes of action with respect to (i) Franco's service as a member of the Debtor's board, (ii) Franco's, Agneto's and Steven B. Solomon's involvement in the Debtor's management, funding and operations; (iii) Franco's and Agneto's investments in, lending of funds to, guarantee and purchase of the Pre-Petition Obligations, (iv) Franco's and Agneto's proposals to

guarantee or provide debtor in possession financing, and (v) the Debtor, the Chapter 11 Case or any Claim or Interest. Franco, Agneto and Solomon dispute that any such claims are or would be valid or have any merit and would contest them. The Plan Settlement resolves such claims consistent with the Settlement Agreement.

The Court already approved the Releasing Parties' release of the Released Parties, which was effectuated by the Court's Order Grant Motion to Approve Settlement Agreement [Docket No. 142]. Only holders of Priority Non-Tax Claims and General Unsecured Claims (and to the extent such holder also holds or held an Other Secured Claim or Interest, then such holder of an Other Secured Claim or Interest) that agree, by not opting out, to release the Third-Party Released Parties shall be bound by the Third-Party Releases under this Plan and the Plan Settlement. The Disclosure Statement shall include notification to all holders of General Unsecured Claims of their option to opt-out of the Plan Settlement by completing an Opt-Out Form and become an Opt-Out Party on no less than twenty-one (21) calendar days' notice. Any holders of General Unsecured Claims that do not opt-out of the Plan Settlement by returning a properly completed Opt-Out Form to the Debtor on or before the Voting Deadline shall be bound by the Plan Settlement, including the Third-Party Releases. The amount of the Agneto Settlement Reserve shall not be reduced on account of Opt-Out Parties. If any holders opt-out of the Plan Settlement, the portion of the Agneto Settlement Reserve that would have otherwise been distributed to the Opt-Out Parties will instead be distributed on a Pro Rata basis among those holders of Allowed General Unsecured Claims that did not opt-out of the Plan Settlement.

## **6.2 Establishment and Funding of Liquidation and Unsecured Creditor Trusts**

On the Effective Date, the Litigation Trust and Unsecured Creditor Trust shall be established in accordance with ARTICLE VII hereof. The Litigation Trust and Unsecured Creditor Trust shall be funded in accordance with this Plan and the Litigation Trust Agreement and Unsecured Creditor Trust Agreement, respectively.

## **6.3 Plan Agent**

On July 2, 2019, the Debtor filed its Application Pursuant to 11 U.S.C. §§ 327, 328, and/or 363(b) and 105(a) Authorizing the Debtor to Employ and Retain Steven B. Solomon to Serve as Chief Restructuring Officer as of the Petition Date [Docket No. 78], which the Court approved on July 24, 2019. Upon the Effective Date, Mr. Solomon shall become Plan Agent to assist the Debtor in the performance of its duties and obligations under this Plan and shall serve as Plan Agent until such time as needed to dissolve the Debtor and close the Chapter 11 Case as set forth in Section 6.7.

### **(a) *Plan Agent's Duties***

During the term of the Plan, the Plan Agent shall serve without bond and shall have, without further notice or Bankruptcy Court approval, full and complete authority to: (a) control all operations and transactions of the Debtor; (b) control all bank accounts of the Debtor; (c) control all payments or transfers by or for the benefit of the Debtor whether by check, wire transfer, or otherwise, prior to any such payment or transfer being made; (d) pay and discharge any costs, expenses, or obligations of the Debtor as provided by this Plan, including the payment of Allowed Administrative Claims, Allowed Professional Claims, Allowed Secured Priority Tax Claims and Allowed Other Secured Claims and to issue distributions on account of the Agneto Secured Claim as provided by the Cash Collateral Order and the Plan; (e) object to Claims or seek subordination; (f) compromise controversies; (g) withhold or make payments on any employment, income, or other taxes as is appropriate; (h) file all required

post-confirmation reports with the Bankruptcy Court; and (i) take such other actions, as may be necessary and proper to consummate the Plan.

(b) *Plan Agent Compensation*

The Plan Agent shall not be compensated for his services as Plan Agent except for reimbursement of out of pocket expenses, which shall be paid without application to or order from the Bankruptcy Court.

(c) *Limitation on Plan Agent Liability*

The Plan Agent shall not be liable for any act he may do or omit to do as Plan Agent hereunder or acting in good faith in the exercise of his best judgment, nor shall the Plan Agent be liable in any event except for his own gross negligence or willful default or misconduct.

(d) *Replacing the Plan Agent*

In the event of the death, resignation, or dismissal of the Plan Agent, a successor Plan Agent shall be appointed by the Litigation Trust.

**6.4 Officers and Boards of Directors**

On the Effective Date, the members of the board of directors of the Debtor prior to the Effective Date, in their capacities as such, shall be deemed to have resigned or shall otherwise cease to be a director of the Debtor on the Effective Date.

**6.5 Post-Confirmation Operations**

Following Confirmation and until the Debtor's dissolution as set forth in Section 6.7, the Plan Agent shall execute such documents and take such other action as are necessary to effectuate the transactions provided for in this Plan.

**6.6 Dissolution of the Committee**

On the Effective Date, the Committee shall be dissolved and members of the Committee shall no longer have any duties or obligations with respect to their constituents or in conjunction with the Chapter 11 Case; *provided*, that after the Effective Date, any Professional retained by the Committee shall have the right to file and prosecute Professional Claims and to prosecute and defend any appeal regarding such Professional Claims.

**6.7 Dissolution of the Debtor**

Upon the distribution of all Assets of the Estate by the Plan Agent, including the transfer of any amounts held in reserve, pursuant to this Plan, and the written approval of the Litigation Trustee and the Unsecured Creditor Trustee and the filing by or on behalf of the Plan Agent, the Liquidating Trustee and the Unsecured Creditor Trustee of a certification to that effect with the Bankruptcy Court, the Debtor will be dissolved without the necessity for any other or further actions to be taken by or on behalf of the Debtor or payments to be made in connection therewith. However, the Debtor shall file with the official public office for keeping corporate records in its state of incorporation or organization a certificate of dissolution or equivalent document and all such documents necessary to note its

dissolution. Such documents and/or certificate of dissolution may be executed by the Plan Agent without need for any action by the Debtor. From and after the Effective Date, the Debtor for all purposes shall be deemed to have withdrawn its business operations from any state in which the Debtor was previously conducting or is registered or licensed to conduct, its business operations, and shall not be required to file any document, pay any sum, or take any other action, in order to effectuate such withdrawal.

#### **6.8 Closing of the Chapter 11 Case**

Notwithstanding anything to the contrary in the Bankruptcy Rules providing for earlier closing of the Chapter 11 Case, when all Disputed Claims against the Debtor have become Allowed Claims or have been Disallowed by Final Order, and all remaining Assets of the Debtor, Litigation Trust, and Unsecured Creditor Trust have been liquidated and converted into Cash (other than those Assets abandoned by the Plan Agent, Litigation Trustee, or Unsecured Creditor Trustee, as applicable), or at such earlier time as the Plan Agent, the Liquidating Trustee and Unsecured Creditor Trustee deem appropriate, the Plan Agent shall seek authority from the Bankruptcy Court to close the Chapter 11 Case in accordance with the Bankruptcy Code and Bankruptcy Rules.

#### **6.9 Claims Resolution Process**

The Litigation Trustee shall be authorized and have the power to review and object to Litigation Trust Claims. The Unsecured Creditor Trustee shall be authorized and have the power to review and object to Unsecured Creditor Trust Claims. The Plan Agent shall be authorized and have the power to review and object to all other Claims.

### **ARTICLE VII UNSECURED AND LITIGATION TRUSTS**

#### **7.1 Litigation Trust**

##### **(a) *Creation of the Litigation Trust and Appointment of Litigation Trustee***

On the Effective Date, the Litigation Trust will be created and shall be governed and administered pursuant to the Liquidating Trust Agreement. The Litigation Trust shall be administered by the Litigation Trustee, Steven B. Solomon or an entity wholly owned by Mr. Solomon. The Litigation Trustee's expenses shall be paid from the Litigation Trust Assets. Compensation owed to the Litigation Trustee shall be paid from the Litigation Trust Assets attributable or distributable to Agneto only and may be paid on a contingency fee basis.

On the Effective Date, all of the Litigation Trust Assets shall transfer to and vest in the Litigation Trust free and clear of all Claims, Liens, Interests, rights, and encumbrances, but subject to the Agneto Secured Liens, without the need for any action by the Debtor or the Bankruptcy Court. To the extent the Committee has the right to assert any claims, causes of action or interest in any Litigation Trust Assets, the Committee hereby assigns such rights and causes of action to the Litigation Trust (other than the Unsecured Creditor Trust Avoidance Actions) without the need for any action by the Committee or the Bankruptcy Court.

(b) *Purpose of the Litigation Trust*

On the Effective Date, the Litigation Trust will be established and become effective for the benefit of the Litigation Trust Beneficiaries and for the primary purpose of liquidating its assets in accordance with Treas. Reg. § 301.7701-4(d) with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Litigation Trust. The Debtor, all holders of Claims, and all holders of Interests shall be deemed to have adopted and approved the Litigation Trust Agreement. The purpose of the Litigation Trust is (i) liquidate all Litigation Trust Assets, including the investigation and prosecution of the Litigation Trust Causes of Action pursuant to the Plan, and (ii) distribute the proceeds of the Litigation Trust Assets to the Litigation Trust Beneficiaries. The Litigation Trust shall not be deemed a successor-in-interest of the Debtor for any purpose other than as specifically set forth herein or in the Litigation Trust Agreement. The Litigation Trust is intended to qualify as a “grantor trust” for federal income tax purposes, with the holders of interests in the Litigation Trust treated as grantors and owners of the Litigation Trust. As soon as practicable after the Effective Date, the Litigation Trustee (to the extent that the Litigation Trustee deems it necessary or appropriate in his or her sole discretion) shall value the assets of the Litigation Trust based on the good faith determination of the Litigation Trustee. The valuation shall be used consistently by all parties for all federal income tax purposes. The Bankruptcy Court shall resolve any dispute regarding such valuation.

(c) *Powers of the Litigation Trustee*

The Litigation Trustee shall have the sole power to administer the Litigation Trust Assets in a manner consistent with the Litigation Trust Agreement, and the Litigation Trustee shall be the Estate’s representative designated to prosecute the Causes of Action transferred to the Litigation Trust pursuant to § 1123(b)(3)(B) and have all rights and powers that a chapter 11 trustee, creditors committee, or similar official would have in pursuit of such Causes of Action and shall be deemed to be acting in the capacity of a trustee under sections 704 and 1106 of the Bankruptcy Code. Without limiting the generality of the foregoing, the Litigation Trustee shall have the sole power, without further notice or Bankruptcy Court approval, to: (i) hold, administer, and prosecute the Litigation Trust Assets and any proceeds thereof; (ii) object to Litigation Trust Claims; (iii) compromise controversies; (iv) retain, as an expense of the Litigation Trust, attorneys, advisors, other professionals, and employees as may be appropriate to perform the duties required of the Litigation Trustee, including on a contingency fee basis, hereunder or in the Litigation Trust Agreement; (v) make distributions to the Litigation Trust Beneficiaries; and (vi) take such other actions, as may be necessary and proper to fulfil his/her duties under the Plan and the Litigation Trust Agreement. The Bankruptcy Court shall retain jurisdiction over the Causes of Action to the extent permissible under applicable law, to resolve any disputes regarding the Litigation Trust, hear objections to Claims, and otherwise address such additional matters brought by the Litigation Trustee in the fulfillment of his/her duties pursuant to the Plan and the Litigation Trust Agreement.

(d) *Litigation Trust Causes of Action*

The Litigation Trustee or any successors may pursue such litigation claims in accordance with the best interests of the Litigation Trust or any successor holding such rights of action. At this time, the Debtor believes the Litigation Trust may assert causes of action against Frankie Valdez, Jordan Valdez, Taylor Valdez, Kenneth Johnson, Kevin Patton, Time Equipment Sales, David Hughes, Absolute Self Storage, Great Value Storage, Star Point Self Storage, Cynthia Kraus and the Debtor’s current and former officers and directors (except for the Released Parties), including those listed on

the Debtor's Schedules, including Statement of Financial Affairs [Docket No. 60], Part 2, Question 3, Exhibit B (excluding those parties that are Released Parties, Third-Party Released Parties or included in the definition of Unsecured Creditor Trust Avoidance Actions under the Plan), and that such claims may provide a recovery to the Litigation Trust. **No Person may rely on the absence of a specific reference in this Plan, the Plan Documents, or the Disclosure Statement to any Litigation Trust Cause of Action against them as any indication that the Litigation Trust will not pursue any and all available Litigation Trust Causes of Action against them. The Litigation Trust expressly reserves all rights to prosecute any and all Litigation Trust Causes of Action against any Person, except as otherwise provided in this Plan.** The Estate, the Debtor as a debtor in possession, through the Litigation Trust, shall specifically reserve all rights to prosecute causes of action against directors, officers, employees, and other insiders of the Debtor, Frankie Valdez, Jordan Valdez, Taylor Valdez, Kenneth Johnson, Kevin Patton, Time Equipment Sales, David Hughes, Absolute Self Storage, Great Value Storage, Star Point Self Storage, and Cynthia Kraus, including, but not limited to, causes of action based on breach of fiduciary duty, aiding and abetting breach of fiduciary duty, negligence, negligent misrepresentation, unjust enrichment, breach of contract, tortious interference, malpractice, and fraud. Unless any Litigation Trust Causes of Action against a Person are expressly waived, relinquished, exculpated, released, compromised, or settled in this Plan, the Settlement Agreement or a Final Order of the Bankruptcy Court, the Litigation Trustee expressly reserves all Litigation Trust Causes of Action for later adjudication and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Litigation Trust Causes of Action upon, after, or as a consequence of, confirmation or consummation of this Plan.

(e) *Termination of the Litigation Trust*

The Litigation Trust shall continue to exist until the later of the time the Litigation Trustee has (i) administered the Litigation Trust Assets and made a final distribution to Litigation Trust Beneficiaries in accordance with the terms of the Plan and Litigation Trust Agreement; and (ii) performed all other duties required by the Plan and the Litigation Trust Agreement. As soon as reasonably practical after the final distribution, the Litigation Trustee shall dissolve the Litigation Trust pursuant to the Litigation Trust Agreement. Upon dissolution, the Litigation Trustee's duties under the Litigation Trust Agreement and the Plan shall terminate.

**7.2 Unsecured Creditor Trust**

(a) *Creation of the Unsecured Creditor Trust Agreement and Appointment of Unsecured Creditor Trustee*

On the Effective Date, the Unsecured Creditor Trust will be created and shall be governed by the Unsecured Creditor Trust Agreement and administered by the Unsecured Creditor Trustee with oversight by the Unsecured Creditor Trust Advisory Board. Any successor Unsecured Creditor Trustee or member of the Unsecured Creditor Trust Advisory Board shall be appointed pursuant to the terms of the Unsecured Creditor Trust Agreement.

On the Effective Date, all of the Unsecured Creditor Trust Assets shall transfer to and vest in the Unsecured Creditor Trust free and clear of all Claims, Liens, interests, rights, and encumbrances, without the need for any action by the Debtor or the Bankruptcy Court. On the Effective Date, the Plan Agent shall transfer the Agneto Settlement Reserve to the Unsecured Creditor Trust to be administered

by the Unsecured Creditor Trustee pursuant to the terms of this Plan and the Plan Settlement, including the restriction on distributions to Opt-Out Parties.

(b) *Purpose of the Unsecured Creditor Trust*

On the Effective Date, the Unsecured Creditor Trust will be established and become effective for the benefit of the Unsecured Creditor Trust Beneficiaries and for the primary purpose of liquidating its assets in accordance with Treas. Reg. § 301.7701-4(d) with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Unsecured Creditor Trust. The Debtor, all holders of Claims, and all holders of Interests shall be deemed to have adopted and approved the Unsecured Creditor Trust Agreement. The purpose of the Unsecured Creditor Trust is (i) liquidate all Unsecured Creditor Trust Assets, the investigation and prosecution of the Unsecured Creditor Trust Avoidance Actions pursuant to the Plan, (ii) distribute the Agneto Settlement Reserve (other than the Released Parties and Opt-Out Parties); and (iii) distribute the proceeds of the Unsecured Creditor Trust Assets to the Unsecured Creditor Trust Beneficiaries. The Unsecured Creditor Trust shall not be deemed a successor-in-interest of the Debtor for any purpose other than as specifically set forth herein or in the Unsecured Creditor Trust Agreement. The Unsecured Creditor Trust is intended to qualify as a “grantor trust” for federal income tax purposes, with the holders of interests in the Unsecured Creditor Trust treated as grantors and owners of the Unsecured Creditor Trust. As soon as practicable after the Effective Date, the Unsecured Creditor Trustee (to the extent that the Unsecured Creditor Trustee deems it necessary or appropriate in his or her sole discretion) shall value the assets of the Unsecured Creditor Trust based on the good faith determination of the Unsecured Creditor Trustee. The valuation shall be used consistently by all parties for all federal income tax purposes. The Bankruptcy Court shall resolve any dispute regarding such valuation.

(c) *Powers of the Unsecured Creditor Trustee*

The Unsecured Creditor Trustee shall have the power to administer the Unsecured Creditor Trust Assets in a manner consistent with the Unsecured Creditor Trust Agreement, and the Unsecured Creditor Trustee shall be the Debtor’s and the Estate’s representative designated to prosecute the Causes of Action assigned to the Unsecured Creditor Trust pursuant to § 1123(b)(3)(B) and otherwise. Without limiting the generality of the foregoing, the Unsecured Creditor Trustee shall have the sole power, without further notice or Bankruptcy Court approval, to: (i) hold, administer, and prosecute the Unsecured Creditor Trust Assets and any proceeds thereof; (ii) object to Unsecured Creditor Trust Claims; (iii) compromise controversies; (iv) retain, as an expense of the Unsecured Creditor Trust, attorneys, advisors, other professionals, and employees as may be appropriate to perform the duties required of the Unsecured Creditor Trustee, including on a contingency fee basis, hereunder or in the Unsecured Creditor Trust Agreement; (v) make distributions to the Unsecured Creditor Trust Beneficiaries; and (vi) take such other actions, as may be necessary and proper to fulfil his/her duties under the Plan and the Unsecured Creditor Trust Agreement. The Bankruptcy Court shall retain jurisdiction over the Unsecured Creditor Trust Avoidance Actions to the extent permissible under applicable law, to resolve any disputes regarding the Unsecured Creditor Trust, hear objections to Claims, and otherwise address such additional matters brought by the Unsecured Creditor Trustee in the fulfillment of his/her duties pursuant to the Plan and the Unsecured Creditor Trust Agreement. For avoidance of doubt, the Unsecured Creditor Trustee shall, as of the Effective Date, have standing to (a) object to Unsecured Creditor Trust Claims, (b) continue to prosecute any objections or adversary proceedings filed or commenced by the Debtor prior to the Effective Date to the extent the claims

asserted there are transferred to the Unsecured Creditor Trust, and (c) initiate and pursue the Unsecured Creditor Trust Avoidance Actions.

(d) *Unsecured Creditor Trust Avoidance Actions*

Unsecured Creditor Trust Assets shall exclude any action released or settled pursuant to this Plan or an order of the Bankruptcy Court.

The Unsecured Creditor Trustee or any successors may pursue such litigation claims in accordance with the best interests of the Unsecured Creditor Trust or any successor holding such rights of action. At this time, the Debtor and Committee believe the Unsecured Creditor Trustee may assert Unsecured Creditor Trust Avoidance Actions against various third-party unsecured goods and service providers, including those listed on the Debtor's Schedules, including Statement of Financial Affairs [Docket No. 60], Part 2, Question 3, Exhibit B (excluding those parties that are Released Parties, Third-Party Released Parties or otherwise excluded from the definition of Unsecured Creditor Trust Avoidance Actions under the Plan), and that such claims may provide a recovery to the Unsecured Creditor Trust. **No Person may rely on the absence of a specific reference in this Plan, the Plan Documents, or the Disclosure Statement to any Unsecured Creditor Trust Avoidance Action against them as any indication that the Unsecured Creditor Trust will not pursue any and all available Unsecured Creditor Trust Avoidance Actions against them. The Unsecured Creditor Trust expressly reserves all rights to prosecute any and all Unsecured Creditor Trust Avoidance Actions against any Person, except as otherwise provided in this Plan.** Unless any Unsecured Creditor Trust Avoidance Action against a Person are expressly waived, relinquished, exculpated, released, compromised, or settled in this Plan or an order of the Bankruptcy Court, the Unsecured Creditor Trustee expressly reserves all Unsecured Creditor Trust Avoidance Actions for later adjudication and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Unsecured Creditor Trust Avoidance Actions upon, after, or as a consequence of, confirmation or consummation of this Plan.

(e) *Compensation of the Unsecured Creditor Trustee and Unsecured Creditor Trust's Professionals*

All compensation for the Unsecured Creditor Trustee shall be paid by the Unsecured Creditor Trust in accordance with this Plan and the Unsecured Creditor Trust Agreement. All costs, fees, expenses, and obligations incurred by the Unsecured Creditor Trustee in administering the Unsecured Creditor Trust, or in any manner connected or related thereto (including compensation to the Unsecured Creditor Trustee, the Unsecured Creditor Trustee's retained professionals and agents, and the reimbursement of their expenses), shall be charged against the Unsecured Creditor Trust Assets. Bankruptcy Court approval shall not be required for the fees and expenses of the Unsecured Creditor Trustee or his professionals.

(f) *Termination of the Unsecured Creditor Trust*

The Unsecured Creditor Trust shall continue to exist until the earlier of the time the Unsecured Creditor Trustee has (i) administered the Unsecured Creditor Trust Assets and made a final distribution to Unsecured Creditor Trust Beneficiaries in accordance with the terms of the Plan and Unsecured Creditor Trust Agreement; and (ii) performed all other duties required by the Plan and the Unsecured Creditor Trust Agreement. As soon as reasonably practical after the final distribution, the Unsecured

Creditor Trustee shall notify the Plan Agent of the final distribution and dissolve the Unsecured Creditor Trust pursuant to the Unsecured Creditor Trust Agreement. Upon dissolution, the Unsecured Creditor Trustee's duties under the Unsecured Creditor Trust Agreement and the Plan shall terminate.

### **7.3 Indemnification and Exculpation**

The Litigation Trustee, the Unsecured Creditor Trustee, and each of their agents and professionals shall not be liable for actions taken or omitted in the capacity as, or on behalf of the Litigation Trust or Unsecured Creditor Trust, as applicable, except those acts arising out of its or their own willful misconduct or gross negligence, and each shall be entitled to indemnification and reimbursement for fees and expenses in defending any and all of its actions or inactions in its capacity as, or on behalf of, the Litigation Trust or Unsecured Creditor Trust, as applicable, except for any actions or inactions involving willful misconduct or gross negligence. The Litigation Trustee and Unsecured Creditor Trustee shall be entitled to rely, in good faith, on the advice of their retained professionals.

### **7.4 Preservation of Privilege and Defenses**

No action taken by the Debtor in connection with this Plan shall be (or be deemed to be) a waiver of any privilege or immunity of the Debtor including any attorney-client privilege or work-product privilege attaching to any documents or communications (whether written or oral). The Confirmation Order shall provide that, notwithstanding the Debtor's providing any privileged information to the Plan Agent, the Litigation Trustee, Litigation Trust, Unsecured Creditor Trustee, Unsecured Creditor Trust, or any party or person associated with the Litigation Trust or Unsecured Creditor Trust, such privileged information shall be without waiver.

### **7.5 No Bonding of Trusts**

There shall be no bonding required of either the Litigation Trustee or Unsecured Creditor Trustee; however, should either choose to obtain bonding, they may do so and the respective trust shall pay the costs associated with such bond.

## **ARTICLE VIII DISTRIBUTIONS**

### **8.1 Distributions Generally**

Distributions to holders of Allowed Claims shall be made: (a) at the addresses set forth in the proofs of Claim filed by such holders; (b) at the addresses set forth in the most recent written notices of address change filed in the Chapter 11 Case and delivered to the Debtor, Plan Agent, Litigation Trustee or Unsecured Creditor Trustee, if the address differs from a proof of Claim; or (c) at the addresses reflected in the Schedules relating to the applicable Allowed Claim if no proof of Claim has been filed and the Debtor, Plan Agent, Litigation Trustee or Unsecured Creditor Trustee has not received a written notice of change of address.

Distributions under this Plan shall be made by the Plan Agent, the Litigation Trustee, or the Unsecured Creditor Trustee, as applicable. All payments shall be made in accordance with the priorities established in the Bankruptcy Code unless otherwise provided in this Plan, the Cash Collateral Order,

the Litigation Trust Agreement, or the Unsecured Creditor Trust Agreement. For example, no Opt-Out Parties shall share in any distributions from the Agneto Settlement Reserve.

As soon as practicable after the Effective Date, the Plan Agent shall make distributions from the Estate's Cash for Allowed Administrative Claims, Allowed Professional Claims, Allowed Secured Priority Tax Claims and Allowed Other Secured Claims, and any other post-confirmation administrative and wind-down expenses as provided for and in accordance with the Cash Collateral Order and Final Budget. The Plan Agent shall reserve for any Disputed Administrative Claims, Professional Claims, Secured Priority Tax Claims and Other Secured Claims and then distribute all remaining Cash to Agneto.

## **8.2 Cash Payments**

Cash payments to be made pursuant to this Plan shall be made by checks drawn on a domestic bank or by wire transfer from a domestic bank, at the option of the Debtor, the Plan Agent, the Litigation Trustee, or the Unsecured Creditor Trustee.

## **8.3 No De Minimis Distributions**

No payment of Cash in an amount less than fifty dollars (\$50.00) shall be made on account of any Allowed Claim. Such undistributed amount will instead be made part of the Estate, Litigation Trust, or Unsecured Creditor Trust, as applicable, for use in accordance with this Plan, the Litigation Trust Agreement, or Unsecured Creditor Trust Agreement, and any unused and undistributed amount shall be distributed to a charity of the Plan Agent's, Litigation Trustee's, or Unsecured Creditor Trustee's choice, as applicable.

## **8.4 Failure to Negotiate Checks**

Checks issued in respect of distributions under this Plan shall be null and void if not negotiated within ninety (90) days after the date of issuance. Any funds returned to the Debtor, Plan Agent, Litigation Trustee, or Unsecured Creditor Trustee by reason of non-negotiated checks shall be held by the Plan Agent, Litigation Trustee, or Unsecured Creditor Trustee, as applicable, until such time as they qualify for Unclaimed Property, or if earlier, a request for reissuance is received by the Debtor, Plan Agent, Litigation Trustee, or Unsecured Creditor Trustee, as applicable. Requests for reissuance of any such check shall be made in writing within the 90-day period, directly to the Plan Agent, Litigation Trustee, or Unsecured Creditor Trustee, by the holder of the Allowed Claim with respect to which the check originally was issued. All Claims for which void checks were issued will be forever barred from asserting the Claim against the Debtor, Estate, Litigation Trust, or Unsecured Creditor Trust.

## **8.5 Unclaimed Property**

All property distributed on account of Claims must be claimed within the later of (a) ninety (90) days after the Effective Date or (b) ninety (90) days after such distribution is made to the holder or, in the case of a distribution made in the form of a check, must be negotiated or a request for reissuance made as provided for in this Plan. All Unclaimed Property will be deposited back into the Estate, Unsecured Creditor Trust, or Litigation Trust, as applicable. All full or partial payments made by the Debtor and received by the holder of a Claim before the Effective Date shall be deemed to be payments under this Plan for purposes of satisfying the obligations of the Debtor pursuant to this Plan.

Nothing contained in this Plan shall require the Debtor, Plan Agent, Unsecured Creditor Trustee, or Litigation Trustee to attempt to locate any holder of an Allowed Claim other than by reviewing the proofs of Claim and records of the Debtor. After the expiration of the 90-day period, all Claims for Unclaimed Property shall be deemed Disallowed and the holder of any Claim Disallowed will be forever barred from asserting the Claim Disallowed in any manner against the Debtor, Estate, the Unsecured Creditor Trust, or the Litigation Trust.

#### **8.6 Compliance with Tax Requirements**

In connection with this Plan and the distributions made in accordance thereto, the distributing party may require a holder of an Allowed Claim to complete and return a Form W-8 or W-9, as applicable. Notwithstanding the above, each holder of an Allowed Claim or Interest that is to receive a distribution under this Plan shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed on such holder by any governmental unit, including income, withholding, and other tax obligations, on account of such Plan distribution. The Debtor, Plan Agent, Litigation Trustee, or Unsecured Creditor Trustee may withhold any distribution under the Plan to any Person that has not provided the Debtor, Plan Agent, Litigation Trustee, or Unsecured Creditor Trustee, with tax identification numbers or social security numbers, as applicable to such Person.

### **ARTICLE IX CONDITIONS TO THE EFFECTIVE DATE AND CONFIRMATION**

#### **9.1 Conditions to Effective Date**

This Plan shall not become effective and the Effective Date shall not occur unless and until:

- (a) the Plan Documents contain terms and conditions consistent in all material respects with this Plan and the Settlement Agreement;
- (b) the Bankruptcy Court has entered the Confirmation Order in form and substance satisfactory to the Debtor, the Committee, and Agneto; and
- (c) the Confirmation Order has become a Final Order and has not been stayed, modified, or vacated on appeal.

#### **9.2 Waiver of Conditions Precedent**

The conditions precedent to the occurrence of the Effective Date under section 9.1 may be waived in writing by the Debtor (with consent of Agneto and the Committee).

The stay of the Confirmation Order pursuant to Bankruptcy Rule 3020(e) shall be deemed waived by and upon the entry of the Confirmation Order, and the Confirmation Order shall take effect immediately upon its entry.

#### **9.3 Notice of Effective Date**

On the Effective Date, or as soon thereafter as is practicable, the Debtor shall file with the Bankruptcy Court a "Notice of Effective Date," which notice shall constitute appropriate and adequate notice that this Plan has become effective.

**ARTICLE X**  
**EFFECT OF CONFIRMATION**

**10.1 Binding Effect of Plan**

Except as otherwise provided in § 1141(d)(3) of the Bankruptcy Code, and subject to the occurrence of the Effective Date, on and after entry of the Confirmation Order, the provisions of this Plan and Confirmation Order shall be binding upon and inure to the benefit of the Debtor, the Estate, the Released Parties, any holder of any Claim or Interest, or any Person named or referred to in this Plan, and each of their respective heirs, executors, administrators, representatives, predecessors, successors, assigns, agents, officers and directors, and, as to the binding effect, to the fullest extent permitted under the Bankruptcy Code and other applicable law, each other Person affected by this Plan and Confirmation Order.

**10.2 Vesting of Assets**

Except as otherwise provided in this Plan, on and after the Effective Date, all Assets of the Estate (other than the Litigation Trust Assets, the Agneto Settlement Reserve, and Unsecured Creditor Trust Assets) shall vest in the Debtor subject to the provisions in the Settlement Agreement and Cash Collateral Order. The Debtor or Plan Agent may use, acquire, and dispose of the Debtor's Cash only to the extent authorized under the Cash Collateral Order, Final Budget, this Plan, or Confirmation Order.

**10.3 Discharge of Claims and Interests in the Debtor**

Upon the Effective Date and in consideration of the distributions to be made under this Plan, except as otherwise provided in this Plan or in the Confirmation Order, each holder (as well as any trustee or agent on behalf of such holder) of a Claim or Interest, where such Claim or Interest has been fully paid or otherwise satisfied in accordance with this Plan, and any affiliate of such holder shall be deemed to have forever waived, released, and discharged the Debtor, to the fullest extent permitted under § 1141 of the Bankruptcy Code, of and from any and all Claims, Interests, rights, and liabilities that arose prior to the Effective Date. Except as otherwise provided in this Plan, all such holders of Claims and Interests, and their affiliates shall be forever precluded and enjoined, pursuant to §§ 105, 525, and 1141 of the Bankruptcy Code, from prosecuting or asserting any such discharged Claim against or terminated Interest in the Debtor.

**10.4 Injunction against Interference with Plan**

Upon the entry of the Confirmation Order, all holders of Claims and Interests and all other parties in interest, along with their respective present and former affiliates, employees, agents, officers, directors, and principals, shall be enjoined from taking any action to interfere with the implementation or the occurrence of the Effective Date.

**10.5 Plan Injunction**

Except as otherwise provided in this Plan or the Confirmation Order, all Persons who have held, hold, or may hold Claims or Interests are, with respect to any such Claim or Interest, permanently enjoined after the entry of the Confirmation Order from: (a) commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind (including,

without limitation, any proceeding in a judicial arbitral, administrative, or other forum) against or affecting, directly or indirectly, the Debtor, the Committee, the members of the Committee, the Plan Agent, the Litigation Trust, the Unsecured Creditor Trust, the Unsecured Creditor Trustee, the Unsecured Creditor Trust Advisory Board, the Litigation Trustee, the Estate, or the property of any of the foregoing, or direct or indirect transferee of, or direct or indirect successor in interest to, any of the foregoing Persons mentioned in this subsection (a) or any property of any such transferee or successor; (b) enforcing, levying, attaching (including without limitation, any prejudgment attachment), collecting, or otherwise recovering in any manner or by any means, whether directly or indirectly, any judgment, award, decree, or order against the Estate, the Litigation Trust, the Unsecured Creditor Trust, or their property, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, any of the foregoing Persons mentioned in this subsection (a) or any property of any such transferee or successor; (c) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Estate, the Litigation Trust, Unsecured Creditor Trust, or any of their property, or any direct or indirect transferee of any property of, or successor in interest to, any of the foregoing Persons mentioned in this subsection (c) or any property of such transferee or successor; (d) acting or proceeding in any manner whatsoever, that does not conform to or comply with the provisions of this Plan, to the full extent permitted by applicable law; and (e) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of this Plan; *provided* that nothing contained herein shall preclude such Persons who have held, hold, or may hold Claims against or Interests in the Estate, the Litigation Trust, or the Unsecured Creditor Trust from exercising their rights and remedies, or obtaining benefits, pursuant to and consistent with the terms of this Plan.

By accepting distributions under this Plan, each holder of an Allowed Claim or Interest will be deemed to have affirmatively and specifically consented to be bound by this Plan, including without limitation, the injunctions set forth in this section.

## **10.6 Releases**

### **(a) *Releases by the Debtor and Estate***

As of the Effective Date, except for the rights and remedies that remain in effect from and after the Effective Date to enforce this Plan, for good and valuable consideration, the adequacy of which is hereby confirmed, including without limitation, the Settlement Agreement, the service of the Released Parties to facilitate the administration of the Estate, a substantial recovery for holders of Allowed Claims, and the implementation of this Plan, and except as otherwise provided in this Plan or in the Confirmation Order, the Released Parties are deemed forever released and discharged by the Debtor and the Estate on behalf of itself and its successors, assigns, and representatives and any and all other entities that may purport to assert any cause of action derivatively, by or through the foregoing entities (together, the “*Releasing Parties*”), from any and all claims, interests, obligations, suits, judgments, damages, demands, debts, rights, causes of action, losses, remedies, or liabilities, whatsoever, including any derivative claims, asserted or assertable on behalf of the Debtor or its Estate, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, that the Debtor or its Estate would have been legally entitled to assert in its own right, or on behalf of the holder of any Claim or Interest or other entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtor, the Estate, the Chapter 11 Case, the Sale, the Settlement Agreement, the subject matter of, or the transactions or events giving rise to, any Claim or Interest, the business or contractual arrangements between the Debtor and any Released Party, the restructuring of any Claim or Interest before or during the Chapter 11 Case, the restructuring transactions, the

negotiation, formulation, or preparation of the Disclosure Statement and this Plan and related agreements, instruments, and other documents, the solicitation of votes with respect to this Plan, or any other act or omission, transaction, agreement, event, or other occurrence, other than claims or causes of action arising out of or related to any act or omission of a Released Party that is a criminal act or constitutes intentional fraud, gross negligence, and willful misconduct.

(b) *Releases by Holders of Claims and Interests*

**As of the Effective Date, except for the rights and remedies that remain in effect from and after the Effective Date to enforce this Plan, for good and valuable consideration, the adequacy of which is hereby confirmed, including without limitation, the Settlement Agreement, the service of the Released Parties to facilitate the administration of the Estate, a substantial recovery for holders of Claims and Interests, and the implementation of this Plan, and except as otherwise provided in this Plan or in the Confirmation Order, the Released Parties are deemed forever released and discharged by the holders of all Claims and Interests and the successors and assigns (other than the Opt-Out Parties, the “Third-Party Releasing Parties”) from any and all claims, interests, obligations, suits, judgments, damages, demands, debts, rights, causes of action, losses, remedies, and liabilities whatsoever, including any derivative claims, asserted or assertable on behalf of the holder of the Claim or Interest, or the Debtor or Estate, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, that such holders or their affiliates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim or Interest or other entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtor, the Chapter 11 Case, the purchase, sale, or rescission of the purchase or sale of any security of or investment or interest in the Debtor, the Sale, the Settlement Agreement, the subject matter or, or the transactions or events giving rise to, any Claim or Interest that is treated in this Plan, the business or contractual arrangements between any holder of a Claim or Interest, and the Debtor or any Released Party, the restructuring of any Claim or Interest before or during the Chapter 11 Case, the negotiation, formulation, or preparation of the Disclosure Statement, this Plan, the Settlement Agreement, and related agreements, instruments, and other documents, the solicitation of votes with respect to this Plan, or any other act or omission (the “Third-Party Releases”), other than the claims or causes of action arising out of or related to any act or omission of a Released Party that is a criminal act or constitutes intentional fraud, gross negligence, or willful misconduct.**

**With regard to holders of Claims or Interests that are Unimpaired under this Plan and holders of Claims or Interests whose vote to accept or reject this Plan was solicited, or who were deemed to reject the Plan but who did not return a ballot or Opt-Out Form (and thus did not opt-out of this release), if such holder of Claims or Interests wishes to pursue a claim or cause of action against any Released Party, such holder must first petition this Court for a determination of whether this release applies to such holder. If the Court determines that such holder’s claim is not released by this provision, such holder must bring any claim or cause of action in the United States Bankruptcy Court**

**for the Northern District of Texas or must obtain leave of this Court to bring such claim or cause of action before a court of another jurisdiction.**

#### **10.7 Non-Released Parties**

For the avoidance of doubt, except as set forth in section 10.6 of this Plan but otherwise notwithstanding anything to the contrary in this Plan or the Confirmation Order, none of the Debtor's past or current employees, officers or directors (except Franco and Steven B. Solomon) shall constitute Released Parties or are deemed to be released by any of this Plan or the Confirmation Order. For example, nothing in this Plan or the Confirmation Order releases any Cause of Action against Frankie Valdez, Jordan Valdez, Taylor Valdez, Kenneth Johnson, Kevin Patton, Time Equipment Sales, David Hughes, Absolute Self Storage, Great Value Storage, Star Point Self Storage, and Cynthia Kraus. Moreover, notwithstanding any language to the contrary contained in the Disclosure Statement, this Plan, and/or the Confirmation Order, no provision of the Disclosure Statement, this Plan, or the Confirmation Order shall (a) preclude any governmental regulatory agency from enforcing its police or regulatory powers or (b) enjoin, limit, impair, or delay any governmental regulatory agency from pursuing, in the appropriate forum, any claims, causes of action, proceedings, or investigations against any non-debtor Person.

#### **10.8 Injunction Related to Releases and Exculpations**

The Confirmation Order shall permanently enjoin the commencement or prosecution by any Person, whether directly, derivatively, or otherwise, of any claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, losses, or liabilities released pursuant to this Plan, including, without limitation, the claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, and liabilities released or exculpated in this Plan.

#### **10.9 Retention of Causes of Action and Reservation of Rights**

Except as otherwise provided herein, including, without limitation, section 10.6(a), nothing contained in this Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any rights, claims, Causes of Action, rights or setoff or recoupment, or other legal or equitable defenses that the Debtor had immediately prior to the Effective Date on behalf of the Estate or itself in accordance with any provision of the Bankruptcy Code or any applicable nonbankruptcy law. The Debtor shall have, retain, reserve, and be entitled to assert all such claims, Causes of Action, rights of setoff or recoupment, and other legal or equitable defenses as fully as if the Chapter 11 Case had not been commenced and all of the Debtor's legal and equitable rights in respect of any Unimpaired Claim may be asserted after the Confirmation Date and Effective Date to the same extent as if the Chapter 11 Case had not been commenced.

#### **10.10 Ipsa Facto and Similar Provisions Ineffective**

Any term of any prepetition policy, prepetition contract, or other prepetition obligation applicable to the Debtor shall be void and of no further force or effect with respect to any Debtor to the extent that such policy, contract, or other obligation is conditioned on, creates an obligation of the Debtor as a result of, or gives rise to a right of any Person based on any of the following: (a) the insolvency or financial condition of the Debtor on or before the Effective Date; (b) the commencement of the Chapter 11 Case; or (c) the confirmation or consummation of this Plan.

### **10.11 Claims against Directors and Officers**

As of the Effective Date, the Debtor shall not terminate, effect, limit or otherwise reduce the coverage under any directors and officers' insurance policies (including any "tail policy") in effect as of the Petition Date, and all members, managers, employees, agents, directors, and officers of the Debtor who served in such capacity at any time prior to the Effective Date will be entitled to the full benefits of any such policy for the full term of such policy regardless of whether such members, managers, employees, agents, directors, or officers remain in such positions after the Effective Date. Notwithstanding any provision herein to the contrary, no claim that would be covered by any such directors' and officers' insurance policies is being released by this Plan, the Confirmation Order, or otherwise.

## **ARTICLE XI RETENTION OF JURISDICTION**

### **11.1 Exclusive Jurisdiction of Bankruptcy Court**

Pursuant to §§ 105(c) and 1142 of the Bankruptcy Code and notwithstanding 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, pursuant to 28 U.S.C. §§ 1334 and 157 over all matters arising in or related to the Chapter 11 Case for, among other things, the following purposes:

- (a) to determine any motion, adversary proceeding, application, contested matter, and other litigated matter pending on or commenced after the entry of the Confirmation Order, including any Causes of Action which may be asserted by the Unsecured Creditor Trustee or Litigation Trustee;
- (b) to hear and resolve any disputes arising from or related to (i) any orders of the Bankruptcy Court granting relief under Bankruptcy Rule 2004 or (ii) any protective orders entered by the Bankruptcy Court in connection with the foregoing;
- (c) to ensure that distributions to holders of Allowed Claims are accomplished as provided in this Plan and Confirmation Order;
- (d) to consider Claims or the allowance, classification, priority, compromise, estimation or payment of any Claim, including any Administrative Claim, and to subordinate any Claim or Interest in accordance with any contractual, legal, or equitable subordination principles;
- (e) to enter, implement, or enforce such orders as may be appropriate in the event that the Confirmation Order is for any reason stayed, reversed, revoked, modified, or vacated;
- (f) to issue and enforce injunctions, enter and implement other orders, and take such other actions as may be necessary or appropriate to restrain interference by any Person or other entity with the consummation, implementation, or enforcement of this Plan, the Confirmation Order, or any other order of the Bankruptcy Court;
- (g) to hear and determine any application to modify this Plan in accordance with § 1127 of the Bankruptcy Code to remedy any defect or omission or reconcile any inconsistency in this Plan, the Disclosure Statement, the Litigation Trust Agreement, the Unsecured Creditor Trust Agreement,

or any order of the Bankruptcy Court, including the Confirmation Order, in such a manner as may be necessary to carry out the purposes and effects thereof;

(h) to hear and determine all Professional Claims;

(i) to resolve disputes concerning any reserves with respect to Disputed Claims or the administration thereof;

(j) to hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of this Plan, the Confirmation Order, the Unsecured Creditor Trust Agreement, the Litigation Trust Agreement, any transactions or payments in furtherance of either, or any agreement, instrument, or other document governing or related to any of the foregoing;

(k) to take any action and issue such orders, including any such action or orders as may be necessary after entry of the Confirmation Order or the occurrence of the Effective Date, as may be necessary to construe, enforce, implement, execute, and consummate this Plan, including any release, exculpation, or injunction provisions set forth in this Plan, or to maintain the integrity of this Plan following the occurrence of the Effective Date;

(l) to determine such other matters and for such other purposes as may be provided in the Confirmation Order;

(m) to hear and determine any other matters related to the Chapter 11 Case and not inconsistent with the Bankruptcy Code or title 28 of the United States Code;

(n) to hear and determine matters concerning state, local, and federal taxes in accordance with §§ 346, 505, 1146 of the Bankruptcy Code;

(o) to resolve any disputes concerning whether a Person or entity had sufficient notice of the Chapter 11 Case, the Settlement Agreement, the Disclosure Statement, any solicitation conducted in connection with the Chapter 11 Case, any bar date established in the Chapter 11 Case, or any deadline for responding or objecting to a Cure Amount, in each case, for the purpose of determining whether a Claim or Interest is discharged hereunder or for any other purpose;

(p) to recover all Assets of the Debtor and property of the Estate, wherever located; and

(q) to enter a final decree closing the Chapter 11 Case.

## **11.2 Failure of Bankruptcy Court to Exercise Jurisdiction**

If the Bankruptcy Court abstains from exercising or declines to exercise jurisdiction over any matter arising under, arising in, or related to the Debtor, the Estate, the Unsecured Creditor Trust, or the Litigation Trust, including with respect to those matters set forth in this ARTICLE XI shall not prohibit or limit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such subject matter.

**ARTICLE XII  
MISCELLANEOUS PROVISIONS**

**12.1 Modification of this Plan**

The Debtor may alter, amend, or modify this Plan under § 1127 of the Bankruptcy Code or as otherwise permitted at any time before the Confirmation Date. After the Confirmation Date and before the substantial consummation of this Plan, and in accordance with the provisions of § 1127(b) of the Bankruptcy Code and the Bankruptcy Rules, the Debtor and any party in interest may, so long as the treatment of holders of Claims under this Plan is not adversely affected, institute proceedings in the Bankruptcy Court to remedy any defect or omission or to reconcile any inconsistencies in this Plan, the Disclosure Statement, or the Confirmation order and any other matters as may be necessary to carry out the purposes and effect of this Plan. However, prior notice of such proceedings shall be served in accordance with Bankruptcy Rule 2002.

Prior to the Effective Date, the Debtor may make appropriate technical adjustments and modifications to this Plan without further order or approval of the Bankruptcy Court; *provided* that such technical adjustments and modifications may not adversely affect in any material way the treatment of holders of Claims or Interests under this Plan.

**12.2 Severability of Plan Provisions**

If prior to Confirmation any term or provision of this Plan that does not govern on appeal the treatment of Claims or Interests, or the terms are held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such terms or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions in this Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term or provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

**12.3 Governing Law**

EXCEPT TO THE EXTENT THAT THE BANKRUPTCY CODE OR BANKRUPTCY RULES OR OTHER FEDERAL LAWS ARE APPLICABLE, AND SUBJECT TO THE PROVISIONS OF ANY OTHER AGREEMENT OR DOCUMENT ENTERED INTO IN CONNECTION WITH THIS PLAN, THE CONSTRUCTION, IMPLEMENTATION, AND ENFORCEMENT OF THIS PLAN AND ALL RIGHTS AND OBLIGATIONS ARISING UNDER THIS PLAN SHALL BE GOVERNED BY AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT GIVING EFFECT TO CONFLICT OF LAW PRINCIPLES WHICH WOULD APPLY IN THE LAW OF A JURISDICTION OTHER THAN THE STATE OF TEXAS OR THE UNITED STATES OF AMERICA.

#### **12.4 Filing of Additional Documents**

On or before substantial consummation of this Plan, the Debtor shall issue, execute, deliver, and file with the Bankruptcy Court or record any agreements and other documents, and take any action as may be necessary or appropriate to effectuate, consummate and further evidence the terms and conditions of this Plan, including making such supplemental disclosures or notices as the Debtor deems useful.

#### **12.5 Immediate Binding Effect**

Notwithstanding Bankruptcy Rules 3020(e), 6004(h), 7062, or otherwise, upon the occurrence of the Effective Date, the terms of this Plan shall be immediately effective and enforceable and deemed binding upon and inure to the benefit of the Debtor, the holders of Claims and Interests, the Released Parties, the Settlement Released Parties, and each of their respective successors and assigns.

#### **12.6 Successors and Assigns**

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

#### **12.7 No Injunctive Relief**

No holder of any Claim or Interest shall under any circumstances be entitled to specific performance or other injunctive, equitable or other prospective relief.

#### **12.8 No Admissions**

Notwithstanding anything herein to the contrary, nothing contained in the Plan shall be deemed an admission of the Debtor with respect to any matter set forth herein, including, without limitation, liability on any Claim or Interest or the proprietary of any classification of any Claim or Interest.

#### **12.9 Entire Agreement**

This Plan sets forth the entire agreement and undertaking relating to the subject matter hereof and supersedes all prior discussions and documents, except the Settlement Agreement. The Debtor, the Plan Agent, the Unsecured Creditor Trustee, and the Litigation Trustee shall not be bound by any terms, conditions, definitions, warranties, understandings, or representations with respect to the subject matter hereof, other than as expressly provided for herein or as may hereafter be agreed to by the applicable parties in writing. Holders of Claims and Interests are not relying on any representation made by or on behalf of the Debtor, the Committee, Agneto, Franco, the Plan Agent, the Litigation Trustee, or Unsecured Creditor Trustee that is not specified in the Cash Collateral Order, Settlement Agreement, Litigation Trust Agreement, Unsecured Creditor Trust Agreement, Plan, or Confirmation Order. The Cash Collateral Order, Settlement Agreement, Litigation Trust Agreement, Unsecured Creditor Trust Agreement, Plan, and Confirmation Order represent the entire agreement between the holders of Claims and Interests and the Debtor, its Estate, Agneto, Franco, the Litigation Trust, and the Unsecured Creditor Trust regarding the subject matter therein and replace any prior oral or written communications.

## **12.10 Notices**

All notices, requests, and demands to or upon the Debtor shall be in writing (including by facsimile transmission) and, unless otherwise provided herein, shall be deemed to have been duly given or made only when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

Frankie V's Kitchen, LLC  
11035 Switzer Ave  
Dallas, Texas 75238  
Attn: Steven B. Solomon (ssolomon.dallas@gmail.com)

- and-

Foley & Lardner LLP  
2021 McKinney Ave., Suite 1600  
Dallas, Texas 75201  
Attn: Stephen McCartin (smccartin@foley.com)  
Mark C. Moore (mmoore@foley.com)

## **12.11 Reservation of Rights**

Except as otherwise provided herein, this Plan shall be of no force or effect unless the Bankruptcy Court enters the Confirmation Order. None of the filing of this Plan, any statement or provision of this Plan, or the taking of any action by the Debtor with respect to this Plan, shall be deemed to be an admission or waiver of any rights of the Debtor with respect to any Claims or Interests prior to the Effective Date.

**Exhibit A to the Plan of Liquidation**

**Litigation Trust Agreement**

**LITIGATION TRUST AGREEMENT AND  
DECLARATION OF TRUST FOR FRANKIE V'S KITCHEN LLC**

This Litigation Trust Agreement and Declaration of Trust (the “**Agreement**”) is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2019 (“**Effective Date**”), by and among Frankie V’s Kitchen, LLC, debtor in possession in Bankruptcy Case No. 19-31717 (“**Debtor**”) and Steven B. Solomon (or a wholly owned entity to be designated by Solomon prior to formation of the Trust) in his capacity as trustee (the “**Litigation Trustee**”).

WHEREAS, Frankie V’s Kitchen, LLC filed for bankruptcy protection under Chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) on May 20, 2019 (the “**Petition Date**”) commencing the bankruptcy case of *Frankie V’s Kitchen LLC*, Case No 19-31717 (“**Bankruptcy Case**” in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (“**Bankruptcy Court**”).

WHEREAS, the Bankruptcy Court entered an order confirming the Plan of Reorganization for the Debtor, together with any amendments thereto (the “**Plan**”) on \_\_\_\_\_, 2019 in the Bankruptcy Case;

WHEREAS, the Plan provides for the creation of a Litigation Trust, to hold certain assets defined by the Plan as the “Litigation Trust Assets” for the benefit of certain creditors of the bankruptcy estate;

NOW THEREFORE, in order to effectuate and comply with the terms and conditions of the Plan, the parties hereto agree as follows:

**ARTICLE I  
CREATION OF THE TRUST**

**1.1     Appointment of the Litigation Trustee**

In accordance with the provisions of the Plan, Steven B. Solomon (or an entity wholly owned by Solomon, which Solomon will designate prior to formation of the Trust) is hereby named as Litigation Trustee to hold, manage, and distribute the Litigation Trust Assets for the benefit of the Litigation Trust Beneficiaries pursuant to the terms of this Agreement and the Plan.

**1.2     Acceptance by the Litigation Trustee**

The Litigation Trustee is willing and does hereby accept the appointment to serve as trustee and hereby agrees to administer the Litigation Trust Assets pursuant to the terms of this Agreement and the Plan.

**1.3     Name of the Trust**

The Litigation Trust hereby established shall bear the name “FVK Litigation Trust.” In connection with the exercise of his powers as trustee, the Litigation Trustee may use such name or such variation thereon as he sees fit, or may use his own name, as Litigation Trustee, or otherwise.

#### **1.4**     Beneficiaries of the Trust

The Litigation Trust Beneficiaries shall be certain Creditors defined as follows: (i) the Unsecured Creditor Trust, as defined in the Plan; and (ii) Agneto Holdings, LLC (“**Agneto**”). The Unsecured Creditor Trust’s interest shall be a non-voting beneficial interest (net of Litigation Trust expenses, attorney’s fees, and the Agneto Secured Claim) in 10% of the Litigation Trust in accordance with their treatment under the terms of the Plan and this Agreement, but only to the extent provided in the Plan. Agneto shall have a voting beneficial interest (net of Litigation Trust expenses, attorney’s fees, and the Agneto Secured Claim) in 90% of the Litigation Trust in accordance with its treatment under the terms of the Plan. The Debtor is not a beneficiary of the Litigation Trust nor are there any other beneficiaries of the Litigation Trust other than the two creditor groups defined herein.

#### **1.5**     The Assets of the Trust

The “Litigation Trust Assets” are defined in the Plan and that definition is incorporated herein by reference. The Litigation Trust Assets shall consist of (i) the Litigation Trust Causes of Action; (ii) any proceeds of the Litigation Trust Causes of Action; (iii) the proceeds or right to collect from any and all available insurance policy, including without limitation, any directors’ and officers’ insurance policies and any business interruption insurance policies; and (iv) any other assets of the Debtor not assigned to the Unsecured Creditor Trust. As provided by Plan Section 4.2, the Agneto Secured Liens (as defined in the Plan) will automatically attach to all of the Litigation Trust Assets as a first priority perfected Lien until the Agneto Secured Claim is paid in full.

#### **1.6**     Assignment and Transfer of the Trust Assets to the Trust

In accordance with the provisions of the Plan, right, title and interest in and to the Litigation Trust Assets are hereby assigned to and thereby vested in the Litigation Trust and preserved for the benefit of the Litigation Trust Beneficiaries. From and after the Effective Date of this Agreement, the Litigation Trust Assets shall be administered by the Litigation Trustee on behalf of the Litigation Trust Beneficiaries. Prior to or contemporaneously with the execution of this Agreement, the Debtor shall have executed and delivered to, or to the order or, the Litigation Trustee any and all documents and other instruments as may be necessary or useful to conform title to the Litigation Trust Assets, including access to the Debtor’s books and records relating to the Litigation Trust Assets. As provided by Section 4.2 of the Plan and Section 1.5 of this Agreement, the Agneto Secured Liens will attach to all of the Litigation Trust Assets as a first priority perfected Lien until the Agneto Secured Claim is paid in full. As set forth in the Plan, the Litigation Trust Assets include, but are not limited to, Causes of Action assigned by the Debtor and the Committee.

#### **1.7**     Funding of the Trust

The activities of the Litigation Trust will be funded by the proceeds from the Litigation Trust Causes of Action and other Litigation Trust Assets, Cash from the Plan Agent from funds remaining in the Administrative Cash Reserve or other Cash Collateral remaining after payment of all Allowed Administrative Claims under the Plan, and/or any financial agreements which the

Litigation Trustee, in his sole discretion, determines are necessary for the funding of the Litigation Trust.

### **1.8**     Resolution of the Trust Causes of Action

The Litigation Trustee shall pursue, in his sole discretion, on behalf of the Litigation Trust as the assignee and designated representative of the Estate pursuant to Bankruptcy Code § 1123(b)(3)(B), with all rights and powers that the Estate, the Debtor, a trustee, a chapter 11 trustee, creditors committee, or similar representative of the Estate or official would have, and acting in the capacity of a trustee under sections 704 and 1106 of the Bankruptcy Code, to either judgment, order, compromise or settlement, the Litigation Trust Causes of Action assigned or otherwise transferred to the Litigation Trust pursuant to the Plan.

### **1.9**     Appointment of Successor Litigation Trustee

The Litigation Trustee may resign upon thirty (30) days written notice. In that event, or in the event of the death or the removal provided herein, a substitute or successor trustee, as the case may be, will be appointed by the Litigation Trust Beneficiary(ies) holding the majority of the beneficial interests (by percentage of interest, not number) in the Litigation Trust to perform the duties, functions and obligations and to exercise the rights and authority of trustee as described in the Plan.

### **1.10**    Reserve

Prior to the distribution of cash or proceeds, the Litigation Trustee may in his discretion establish adequate reserves for the continuing operation of the Litigation Trust.

### **1.11**    Distribution

The Litigation Trustee shall distribute the Litigation Trust's proceeds in the following priority: (i) first to pay the expenses of the Litigation Trust until paid in full; (ii) second to the Agneto Secured Claim until paid in full to release the Agneto Secured Liens; (iii) third, the remaining funds shall be split as follows: (a) ten percent (10%) to the Unsecured Creditor Trust on account of its beneficial interest and (b) all remaining interest and funds to Agneto, its successors, and assigns.

The Litigation Trustee may make such interim and final distributions as the Litigation Trustee deems appropriate in his sole and absolute discretion; provided that the Litigation Trustee shall maintain an amount deemed necessary by the Litigation Trustee to be a sufficient reserve as required in Section 1.10. All distributions shall be made in accordance with the Plan Article VIII.

## **ARTICLE II BENEFICIAL INTEREST OF THE TRUST BENEFICIARIES**

### **2.1**     Interests Beneficial Only

The Litigation Trust Beneficiaries shall have a beneficial interest in the Litigation Trust Assets only to the extent specified in the Plan. The Litigation Trust Beneficiaries' proportionate

beneficial interest in the Litigation Trust Assets as thus determined may be freely assigned, in whole or in part, without consent of the Litigation Trustee, but a beneficiary shall promptly notify the Litigation Trustee in writing of such assignment. The beneficial interests held by the Litigation Trust Beneficiaries hereunder shall not entitle any Litigation Trust Beneficiary to any title or direct ownership interest in or to any of the Litigation Trust Assets as such, or to any right to call for a partition or division of the same, or to require an accounting except as specially required by the terms hereof. The Unsecured Creditor Trust's interest shall be a non-voting beneficial interest (net of Litigation Trust expenses, attorney's fees, and the Agneto Secured Claim) in ten percent (10%) of the Litigation Trust in accordance with its treatment under the terms of the Plan and this Agreement, but only to the extent provided in the Plan.

## **2.2 Evidence of Beneficial Interest**

Ownership of a beneficial interest in the Litigation Trust Assets hereunder shall not be evidenced by any certificate, security, or receipt or in any other form or manner whatsoever.

## **2.3 Relationship Creates no Partnership or the Like**

The only relationship created by this Agreement is the trustee-beneficiary relationship between the Litigation Trustee and the Litigation Trust Beneficiaries. No other relationship or liability is created. This Agreement is not intended to create and shall not be interpreted as creating any association, partnership, or joint venture of any kind.

## **2.4 Effect of Death, Incapacity, or Bankruptcy**

The death, incapacity or bankruptcy of any of the Litigation Trust Beneficiaries during the term of this Litigation Trust shall not operate to terminate the Litigation Trust, nor shall it entitle the representatives or creditors of the deceased to an accounting, or to take any action in the Bankruptcy Court or elsewhere for the distribution of the Litigation Trust Assets or for a partition thereof, nor shall it otherwise affect the rights and obligations of the other Litigation Trust Beneficiaries under the Litigation Trust.

# **ARTICLE III RIGHTS, POWERS AND DUTIES OF TRUSTEE**

## **3.1 Powers of Litigation Trustee**

Except as otherwise provided in the Plan, the Litigation Trustee shall, as the assignee and designated representative of the Estate pursuant to Bankruptcy Code § 1123(b)(3)(B), with all rights and powers that the Estate, the Debtor, a trustee, a chapter 11 trustee, creditors committee, or similar representative of the Estate or official would have, and acting in the capacity of a trustee under sections 704 and 1106 of the Bankruptcy Code, have the sole authority to exercise and perform the following rights and powers:

- a. Receive and hold, to have exclusive possession and control thereof as permissible under applicable law, maintain and administer the Litigation Trust Causes of Action;

- b. Employ, retain, or replace professional persons, including attorneys, accountants, appraisers, investment advisors, expert witnesses, insurance adjustors, or other persons whose services may be necessary or advisable, in the judgment of the Litigation Trustee, to advise or assist him in the discharge of the duties as Litigation Trustee, or otherwise in the exercise of any powers vested in the Litigation Trustee subject to the provisions of this Agreement and the Plan, and to pay such professionals reasonable compensation;
- c. Collect, compromise, settle or discharge any claim of the Litigation Trust and pursue, in his discretion, on behalf of the Litigation Trust as the assignee and designated representative of the Debtor, debtor in possession, and/or the Committee, to either judgment, order, compromise or settlement, any of the Litigation Trust Causes of Action, except to the extent that any such claims have been specifically compromised, settled or released pursuant to the Plan and to defend any counterclaims, cross-actions or other offsets;
- d. Collect, compromise, settle, discharge and pursue, in the Litigation Trustee's sole discretion, on behalf of the Litigation Trust as the assignee and designated representative, any claim or right of the Litigation Trust to collect from any and all insurance policies, including, without limitation, any directors' and officers' insurance policies and any business interruption insurance policies;
- e. Distribute the Litigation Trust Assets, including but not limited to the proceeds from the settlement, prosecution, or other disposition of the Litigation Trust Causes of Action, to Litigation Trust Beneficiaries;
- f. Seek a determination from the Court of the Allowed amount of any Litigation Trust Claim, including filing objections thereto and pursuing any contest or adversary proceeding with regard thereto and entering into any compromise or settlement thereof, and to execute any contract, including, without limitation, any release in connection with any such compromise or settlement. However, any claim which is compromised, settled, and/or released in connection with any such compromise or settlement as set forth in the Plan, the Settlement Agreement, or this Agreement is excluded;
- g. Pay all expenses incurred in connection with the administration of the Litigation Trust;
- h. With regard to the Litigation Trust Causes of Action, sue and be sued, including filing and defending contested matters and adversary proceedings in the Court and actions or other proceedings in any other court or before any administrative agency and to pursue or defend any appeal from any judgment or order therefrom, including, without limitation, pursuing claims of the Litigation Trust, filing suit or adversary proceedings or contested matters in connection therewith and defending any counterclaims, cross-

actions, or other offsets in connection therewith, and entering into any compromise, settlement, release, discharge, or dismissal of any of the claims, without Court approval or notice to any party, at any time, and for any consideration that the Litigation Trustee believes to be in the best interests of the Litigation Trust Beneficiaries;

- i. Enter into contracts binding upon the Litigation Trust (but not the Litigation Trustee), including financial agreements, which are reasonably incident to the administration of the Litigation Trust and which the Litigation Trustee, in the exercise of his best judgment, believes to be in the best interests of the Litigation Trust.
- j. Pay taxes and excises lawfully owing or chargeable against the Litigation Trust or property in the possession or control of the Litigation Trustee and to take any action necessary or advisable to obtain the prompt determination of any such tax liability; and
- k. Provide periodic reports and updates to the Plan Agent regarding the status of the administration of the Litigation Trust, including but not limited to the notice of final distribution.

### **3.2 Representative of the Estate**

The Litigation Trustee is appointed as the representative of the Estate, Debtor, and debtor in possession pursuant to § 1123(b)(3) of the Bankruptcy Code to pursue the Litigation Trust Causes of Action and all claims of the Litigation Trust assigned or otherwise transferred to the Litigation Trust pursuant to the Plan and shall be the only entity authorized to pursue the Litigation Trust Causes of Actions and other claims assigned or otherwise transferred to the Litigation Trust. With regard to the prosecution of the Litigation Trust Causes of Action, the Litigation Trustee shall be a statutory representative of the Estate, Debtor, and the debtor in possession pursuant to 11 U.S.C. § 1123(b)(3)(B) and is acting in the capacity of a trustee under sections 704 and 1106 of the Bankruptcy Code, with all rights and powers that a chapter 11 trustee, creditors' committee, or similar official would have in pursuit of such Litigation Trust Causes of Action. Unless the Litigation Trustee consents, or unless otherwise ordered by the Court, no other party shall have the right or obligation to pursue any such actions.

### **3.3 Compromise and Settlement**

The Litigation Trustee shall have the right to pursue, compromise, or settle any Litigation Trust Claim or Litigation Trust Causes of Action, and any such compromise and settlement of the Litigation Trust Claim or Litigation Trust Causes of Action may be effected without the necessity of Bankruptcy Court proceedings under Bankruptcy Rule 9019 or otherwise.

### **3.4 Payment of Trust Fees and Expenses**

The Litigation Trustee may establish additional reserves and accounts at banks and other financial institutions, in a clearly specified fiduciary capacity, into which cash and property may be deposited and checks drawn or withdrawals made to pay or distribute such amounts as permitted

or required for fees, expenses and Litigation Trust liabilities pursuant to the Plan and Agreement. Such funds shall not be subject to any claim by any entity except as provided under the Plan and this Agreement as to the Agneto Secured Liens and Agneto Secured Claim. All fees and expenses of the Litigation Trust, and its agents and employees incurred in connection with (i) the objection to, and settlement, litigation and payment of claims and interests; (ii) the Litigation Trust Causes of Action; or (iii) administering the Litigation Trust, shall, subject to the review and approval of the Litigation Trustee, be paid.

### **3.5 Compensation of the Litigation Trustee and Persons Employed by the Trust**

The Litigation Trustee shall be compensated with a percentage of the assets of the Litigation Trust distributable to the Agneto, as agreed between Agneto and the Litigation Trustee. The Litigation Trustee's compensation shall be paid only from the assets distributed to Agneto and will not be paid from or otherwise reduce any distribution to the Unsecured Creditor Trust. All persons or entities employed by the Litigation Trustee shall be entitled to compensation from the Litigation Trust and such compensation shall be subject to the review and approval of the Litigation Trustee. In no event shall any Court approval be required for payment of the compensation of the Litigation Trustee or his professionals.

### **3.6 Exculpation**

The Litigation Trustee shall be entitled to rely upon advice and opinions of counsel concerning legal matters, the authenticity of affidavits, letters, facsimiles, and other methods of communication in general use and usually accepted by businesspersons as genuine and what they purport to be, and upon the Plan and any schedule, certificate, statement, report, notice or other writing which he believes to be genuine or to have been presented by a proper entity. Except for their own gross negligence or intentional misconduct, neither the Litigation Trustee nor any of his employees, attorneys, or agents shall (a) be responsible for any recitals, representations or warranties contained in, or for the execution, validity, genuineness, effectiveness or enforceability of the Plan, (b) be under any duty to inquire into or pass upon any matter or to make any inquiry concerning the validity of any representation or warranty of the Debtor or the performance of the Debtor of their obligation; or (c) in any event, be liable as such for any action taken or omitted by the Debtor.

### **3.7 Liability of Litigation Trustee**

No recourse shall ever be had, directly or indirectly against the Litigation Trustee by legal or equitable proceedings or by virtue of any statute or otherwise, or by virtue of any deed of trust, mortgage, pledge or note, or by virtue of any promises, contract, instrument, undertaking, obligation, covenant or agreement whatsoever executed by the Litigation Trustee for any purposes authorized, it being expressly understood and agreed that all such liabilities, covenants and agreements of the Litigation Trustee, whether in writing or otherwise, shall be enforceable only against and be satisfied only by the Litigation Trust, and every undertaking, contract, covenant or agreement entered into in writing by the Litigation Trustee may provide expressly against the personal liability of the Litigation Trustee. The Litigation Trustee shall not be liable in any event except for his own gross negligence or willful fraud or misconduct. This provision does not

eliminate the Litigation Trustee's responsibilities and obligations regarding the filing of federal tax returns, as applicable, and the payment of any taxes that are due.

### **3.8**    No Liability for Acts of Predecessors

No successor trustee shall be in any way responsible for the acts or omissions of any trustee in office prior to the date on which he or she becomes a trustee, unless a successor trustee expressly assumes such responsibility. Delegation of Powers

### **3.9**    Delegation of Authority

The Litigation Trustee shall be entitled to delegate such authority to his employees and agents as he shall reasonably deem necessary to perform his responsibilities under the Plan and this Agreement.

### **3.10**   Resignation, Death or Removal

The Litigation Trustee or any successor trustee may resign upon thirty (30) days written notice. In that event, or in the event of the death of the Litigation Trustee or a successor trustee, a successor trustee shall be selected by the Litigation Trust Beneficiaries holding the majority of the beneficial interest (by percentage of interest, not number) in the Litigation Trust.

### **3.11**   Investment of Funds

All proceeds and other cash (except for amounts which the Litigation Trustee determines, in his sole discretion, are needed for immediate payments and distributions) shall be invested and reinvested by the Litigation Trust in United States Treasury Bills or in certificates of deposits, demand deposit, or interest-bearing accounts of banking institutions acceptable to the Litigation Trust or such other investments as shall be prudent and appropriate under the circumstances, in such amounts and upon such terms as a reasonable and prudent fiduciary would select and with a view toward sufficient liquidity to make the distributions contemplated by the Plan. All interest earned on such proceeds and other shall be retained by the Litigation Trust and distributed in accordance with the Plan and this Agreement.

### **3.12**   Tax Treatment

The Litigation Trust shall be treated as a grantor trust in accordance with the provisions of the Internal Revenue Code. The Litigation Trust Beneficiaries will be treated as the grantors of the Litigation Trust Assets to the Litigation Trust and deemed the owners of such Litigation Trust. Any valuation of the Litigation Trust Assets by the Litigation Trust Beneficiaries shall be consistent with the valuation of the Litigation Trust Assets used by the Litigation Trust.

### **3.13**   Termination

The Litigation Trust shall terminate once the Litigation Trustee has (i) administered the Litigation Trust Assets and made a final distribution to Litigation Trust Beneficiaries in accordance with the terms of the plan and Agreement; and (ii) performed all other duties required by the Plan

and Agreement, including, providing the Plan Agent with notice of the final distribution of the Litigation Trust.

## **ARTICLE IV CONSTRUCTION OF THIS AGREEMENT**

### **4.1 Applicable Law**

The Litigation Trust created herein shall be construed, regulated and administered under the laws of the State of Texas and the United States of America. The Litigation Trustee agrees and consents that the Bankruptcy Court shall retain jurisdiction to enforce: (i) this Agreement in order to effectuate the provisions of the Plan; (ii) the Litigation Trust Claims; and (iii) any Litigation Trust Causes of Action brought by or on behalf of the Litigation Trust.

### **4.2 Amendment of Agreement**

The Agreement may be amended, modified, terminated, revoked or altered only upon consent of the Litigation Trustee and the Debtor or as otherwise ordered by the Bankruptcy Court.

### **4.3 Interpretation and Capitalized Terms**

The enumeration and headings contained in this Agreement are for convenience of reference only and are not intended to have any substantive significance in interpreting the same. Unless the context otherwise requires, whenever used in this Agreement the singular shall include the plural and the plural shall include the singular. Capitalized terms herein are ascribed the meanings assigned to them in the Plan unless otherwise specifically defined herein.

### **4.4 Severability**

If any provision of this Agreement shall for any reason be held invalid or unenforceable by any court, governmental agency or arbitrator of competent jurisdiction, such invalidity or unenforceability shall not affect any other provision hereof, but this Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.

### **4.5 Entire Agreement**

This Agreement (including the recitals) constitutes the entire agreement by and among the parties and there are no representations, warranties, covenants, or obligations except as set forth herein. This Agreement supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, written or oral, of the parties hereto, relating to any transaction contemplated hereunder. Except as otherwise specifically provided herein and in the Plan, nothing in this Agreement is intended or shall be construed upon or to give any person other than the parties hereto and the Litigation Trust Beneficiaries any rights or remedies against the Litigation Trust, Litigation Trustee, or the Litigation Trust Assets. The parties to this Agreement and the Litigation Trust Beneficiaries expressly disclaim reliance on any representation not contained in writing herein.

**4.6**    Notices

Any notice or other communication by the Litigation Trustee to any of the Trust Beneficiaries shall be deemed to have been sufficiently given, for all purposes, when mailed by first class, postage prepaid, and addressed to such Beneficiary at its address as shown in the records of the Litigation Trustee, which records shall be initially based upon records provided by the Debtor. Any notice or other communication which may be or is required to be given, served, or sent to the Litigation Trustee shall be in writing and shall be mailed by registered or certified mail, return receipt requested, postage prepaid, or transmitted by hand delivery, addressed to the Litigation Trustee at his address set forth on the signature page hereof. A Litigation Trust Beneficiary may designate by notice in writing a new address to which any distribution, notice, demand, request, or communication shall be mailed or delivered in the manner described above and such change shall be effective from and after receipt by the Litigation Trustee.

**4.7**    Court Supervision

Notwithstanding any provision in the Plan or this Agreement to the contrary, the Bankruptcy Court shall retain jurisdiction of, and be the sole arbiter of, the following matters: (i) disputes regarding the interpretation of the Plan; (ii) disputes regarding the settlement of any Litigation Trust Causes of Action assigned or otherwise transferred to the Litigation Trust pursuant to the Plan; (iii) disputes regarding the settlement of any Litigation Trust Claims; and (iv) such other and further matters relating to the Litigation Trust that are necessary and appropriate to effectuate the provisions of the Plan and protect the interests of all Creditors.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of day and year first written above.

\_\_\_\_\_  
Steven B. Solomon (or an entity wholly owned by Mr. Solomon),  
Litigation Trustee  
Address:  
Date:

\_\_\_\_\_  
Frankie V's Kitchen, LLC, Debtor in Possession  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date:

**Exhibit B to the Plan of Liquidation**

**Unsecured Creditor Trust Agreement**

## **FVK UNSECURED CREDITOR TRUST AGREEMENT**

THIS FVK UNSECURED CREDITOR TRUST AGREEMENT (this “Trust Agreement”) dated as of the date of complete execution by all parties hereto, by and among Frankie V’s Kitchen, LLC (the “Debtor”), and Dennis S. Faulkner as trustee (in such capacity as trustee of the Unsecured Creditor Trust, the “Unsecured Creditor Trustee”), is executed to facilitate the implementation of the Plan of Liquidation Filed by Frankie V’s Kitchen, LLC dated [REDACTED], 2019 (as amended, modified and supplemented from time to time, the “Plan”). All capitalized terms used and not otherwise defined in this Trust Agreement but defined in the Plan have the meanings ascribed to them in the Plan.

**WHEREAS**, on May 20, 2019 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Bankruptcy Court”);

**WHEREAS**, the Plan provides for, among other things, (i) the transfer of all Unsecured Creditor Trust Assets to the trust to be known as the FVK Unsecured Creditor Trust (the “Unsecured Creditor Trust”), (ii) the management of the Unsecured Creditor Trust Assets by the Unsecured Creditor Trustee, and (iii) the making of payments and distributions, as applicable, by the Unsecured Creditor Trust to the Unsecured Creditor Trust Beneficiaries pursuant to the terms of the Plan; and

**WHEREAS**, the Unsecured Creditor Trust is intended to qualify as a liquidating trust treated as a grantor trust within the meaning of Treasury Regulations Section 301.7701-(4)(d) and is established for the purpose of liquidating and distributing the Unsecured Creditor Trust Assets for the benefit of the Unsecured Creditor Trust Beneficiaries in accordance therewith;

**NOW, THEREFORE**, in consideration of the premises and mutual covenants and agreements contained herein and in the Plan, the parties hereto agree as follows:

### **ARTICLE I.**

#### **ESTABLISHMENT OF THE LIQUIDATING TRUST**

1.1 **Establishment of Unsecured Creditor Trust.** Pursuant to the Plan, the Debtor and the Unsecured Creditor Trustee hereby establish the Unsecured Creditor Trust on behalf of the Unsecured Creditor Trust Beneficiaries. The Unsecured Creditor Trustee accepts and will hold the Unsecured Creditor Trust Assets in trust for the Unsecured Creditor Trust Beneficiaries subject to the terms of the Plan and this Trust Agreement. The Unsecured Creditor Trust is established as a liquidating trust treated as a grantor trust within the meaning of Treasury Regulations Section 301.7701-(4)(d) with no objective or authority to carry on or conduct a trade or business, or to accept an assignment of any claim or right of action from, or assume any liabilities of, any person or entity other than the Debtor, and no part of the Unsecured Creditor Trust Assets or the proceeds, revenue, or income from the Unsecured Creditor Trust Assets may be used or disposed of by the Unsecured Creditor Trustee in furtherance of any trade or business.

1.2 **Purpose of Unsecured Creditor Trust.** The sole purpose of the Unsecured Creditor Trust is to liquidate the Unsecured Creditor Trust Assets in a manner calculated to conserve, protect, and maximize the value of the Unsecured Creditor Trust Assets. In exercising this purpose, in addition to the powers listed in Section 4.1 of this Trust Agreement, as set forth in the Plan, the Unsecured Creditor Trustee is authorized to, among other things, (i) investigate and prosecute the Non-Insider Avoidance Actions, (ii) file all federal state and local tax returns of the Unsecured Creditor Trust and furnish appropriate tax reporting information to the Unsecured Creditor Trust Beneficiaries, (iii) establish reserves and open, maintain, and administer bank accounts as necessary to discharge the duties of the Unsecured Creditor Trustee, (iv) represent the Unsecured Creditor Trust before the Bankruptcy Court or other courts of competent jurisdiction with respect to matters concerning the Unsecured Creditor Trust and Unsecured Creditor Trust Assets; and (v) make distributions to the Unsecured Creditor Trust Beneficiaries in accordance with the Plan.

1.3 **No Additional Beneficiaries.** The Unsecured Creditor Trust exists solely for the benefit of the Unsecured Creditor Trust Beneficiaries.

1.4 **Transfer of Unsecured Creditor Trust Assets and Rights to the Unsecured Creditor Trust.** As of the Effective Date, the Debtor hereby conveys, transfers, assigns, and delivers to the Unsecured Creditor Trust (a) all of its rights, title, and interests in the Unsecured Creditor Trust Assets; and (b) all of its rights with respect to the Unsecured Creditor Trust Assets, including the attorney-client privilege and the protections afforded by the work product doctrine, and hereby waives its rights and the rights of any legal, financial, or other advisors to assert such rights as a defense or otherwise except to the extent authorized by the Unsecured Creditor Trustee.

1.5 **Title to Unsecured Creditor Trust Assets.** On the Effective Date, the Unsecured Creditor Trust Assets will be vested in, and transferred to, the Unsecured Creditor Trust pursuant to the Plan for the benefit of the Unsecured Creditor Trust Beneficiaries. As of the Effective Date, the Unsecured Creditor Trust will hold legal title to all Unsecured Creditor Trust Assets and will succeed to all of the Debtor' right, title, and interest in and to the Unsecured Creditor Trust Assets, and the Debtor will have no further interest in or with respect to the Unsecured Creditor Trust Assets or the Unsecured Creditor Trust, except as provided in the Plan. The Unsecured Creditor Trustee hereby declares that he will hold the Unsecured Creditor Trust Assets in trust to be administered and disposed of pursuant to the terms of this Trust Agreement and the Plan.

1.6 **Reliance.** The Unsecured Creditor Trustee may rely upon the bankruptcy schedules and all other information provided by the Debtor or its representatives concerning Claims against the Debtor, as well as such Persons' reconciliations and documents supporting such reconciliations.

1.7 **Valuation of Trust Assets.** The fair market value of the Unsecured Creditor Trust Assets as of the Effective Date will be determined by the Unsecured Creditor Trustee. As soon as practicable after the Effective Date, the Unsecured Creditor Trustee must inform the Unsecured Creditor Trust Beneficiaries in writing of the agreed upon value of the Unsecured Creditor Trust Assets transferred to the Unsecured Creditor Trust. Such valuation must be used

consistently by all parties, including, without limitation, the Debtor, the Unsecured Creditor Trustee and the Unsecured Creditor Trust Beneficiaries, for all federal income tax purposes.

1.8 **Governance of the Unsecured Creditor Trust.** The Unsecured Creditor Trust will be governed by the Unsecured Creditor Trustee. The Unsecured Creditor Trustee's powers are exercisable solely in a fiduciary capacity consistent with, and in furtherance of, the purposes of this Trust Agreement and the Plan but not otherwise. Subject to the terms and conditions of this Trust Agreement, the Unsecured Creditor Trustee may delegate responsibility for discrete issues or decisions to one or more third parties subject to continued oversight by the Unsecured Creditor Trustee and the Trust Advisory Board.

1.9 **Appointment of the Unsecured Creditor Trustee.** As of the date hereof, the Unsecured Creditor Trustee is Dennis S. Faulkner. The Unsecured Creditor Trustee accepts the trust imposed on him by this Trust Agreement and agrees to observe and perform that trust on and subject to the terms and conditions set forth in this Trust Agreement and the Plan.

1.10 **Unsecured Creditor Trust Interests; Transferability.**

(a) Unsecured Creditor Trust Interests will be issued by the Unsecured Creditor Trustee to the Unsecured Creditor Trust Beneficiaries. In lieu of certificates evidencing Unsecured Creditor Trust Interests, the Unsecured Creditor Trustee will maintain a register of the names, addresses, and interest percentages of the Unsecured Creditor Trust Beneficiaries based upon the provisions of the Plan that designate the Persons whom are entitled to receive the Unsecured Creditor Trust Interests.

(b) The Unsecured Creditor Trust Interests may not be transferred, sold, pledged, or otherwise disposed of, nor offered for transfer, sale, or pledge, except for transfers that occur by operation of law.

## ARTICLE II.

### **DURATION AND TERMINATION OF LIQUIDATING TRUST**

2.1 **Duration.** The duties, responsibilities, and powers of the Unsecured Creditor Trustee will terminate after all Unsecured Creditor Trust Assets, including Non-Insider Avoidance Actions transferred and assigned to the Unsecured Creditor Trust, are fully resolved, abandoned, or liquidated and the cash and other amounts held in reserve have been distributed in accordance with the Plan and this Trust Agreement. Except in the circumstances set forth below, the Unsecured Creditor Trust will terminate no later than five (5) years after the Effective Date. However, if warranted by appropriate facts and circumstances as determined by the Unsecured Creditor Trustee, and subject to the approval of the Bankruptcy Court upon a finding that an extension is necessary for the purposes of the Unsecured Creditor Trust, the term of the Unsecured Creditor Trust may be extended one or more times (not to exceed a total of five extensions, unless the Unsecured Creditor Trustee received a favorable ruling from the Internal Revenue Service that any further extension would not adversely affect the state of the Unsecured Creditor Trust as a grantor trust for federal income tax purposes) for a finite period, not to exceed six months each, based on the particular circumstances at issue. Each such extension must be

approved by the Bankruptcy Court with notice thereof to all of the unpaid Unsecured Creditor Trust Beneficiaries. Upon the termination of the Unsecured Creditor Trust, the Unsecured Creditor Trustee must file with the Bankruptcy Court a report thereof, seeking an order discharging the Unsecured Creditor Trustee.

2.2 **Continuance of Unsecured Creditor Trust for Winding Up.** After the termination of the Unsecured Creditor Trust and for the purpose of liquidating and winding up the affairs of the Unsecured Creditor Trust, the Unsecured Creditor Trustee will continue to act as such until all duties under the Plan and this Trust Agreement have been fully performed. Upon distribution of all of the Unsecured Creditor Trust Assets, or the proceeds thereof, the Unsecured Creditor Trustee must hold the books, records, and files delivered to or created by the Unsecured Creditor Trustee for a period of four (4) years after the last distribution of Unsecured Creditor Trust Assets. All costs and expenses associated with the storage of such documents will be paid by the Unsecured Creditor Trust. At the Unsecured Creditor Trustee's discretion, all such records and documents may be destroyed at any time after four years from the last distribution of the Unsecured Creditor Trust Assets. Except as otherwise specifically provided herein, upon the distribution of all of the Unsecured Creditor Trust Assets, the Unsecured Creditor Trustee will have no further duties or obligations hereunder except (a) to account and report as provided in Sections 2.3 and 3.9 hereof, and (b) to perform such other acts as may be required by law.

2.3 **Final Accounting.** In the event the Chapter 11 Case is open at the time of the termination of the Unsecured Creditor Trust, the Unsecured Creditor Trustee shall file an accounting with the Bankruptcy Court setting forth the amount he has collected and disbursed, and the fees and expenses incurred in administering the Unsecured Creditor Trust, including the fees and expenses incurred by the Unsecured Creditor Trustee and his professionals. The Unsecured Creditor Trustee may seek the issuance and entry of any orders necessary to approve such accounting and discharge him from any and all liability for acting as Trustee under the Plan and this Trust Agreement. The Unsecured Creditor Trust's professionals are required to maintain accurate time and expense records.

### ARTICLE III.

#### **ADMINISTRATION OF TRUST ESTATE**

3.1 **Payment of Expenses.** The Unsecured Creditor Trustee may pay all Unsecured Creditor Trust expenses and the costs associated with winding up the Unsecured Creditor Trust from the Unsecured Creditor Trust Assets or the proceeds thereof.

3.2 **Sequestration of Agneto Settlement Reserve.** As set forth in the Plan, not all Unsecured Creditor Trust Beneficiaries are entitled to distributions from the Agneto Settlement Reserve. Accordingly, the Unsecured Creditor Trustee shall separately account for the Agneto Settlement Reserve as distinguished from all other Unsecured Creditor Trust Assets.

3.3 **Payments and distributions to Holders of Allowed Claims.** Except as otherwise provided in the Plan or as ordered by the Bankruptcy Court, distributions and

payments, whether cash, Unsecured Creditor Trust Interests, or otherwise, to be made on account of Allowed Claims, will be made on or as soon as practicable after the Effective Date.

3.4 **Disbursement to Unsecured Creditor Trust Beneficiaries.** The Unsecured Creditor Trustee must disburse funds to the Unsecured Creditor Trust Beneficiaries in accordance with the Plan. Distributions may be made as frequently as the Unsecured Creditor Trustee determines to be practicable when the Unsecured Creditor Trustee determines that sufficient cash exists to make a distribution in accordance with the Plan. In the event that the Unsecured Creditor Trustee does not have sufficient cash to make the distributions called for or permitted under the Plan, then the Unsecured Creditor Trustee may, from time to time, make interim distributions consistent with the provisions of the Plan. Distributions to holders of Allowed Claims shall be made by the Unsecured Creditor Trustee: (a) at the addresses set forth in the proofs of Claim filed by such holders; (b) at the addresses set forth in the most recent written notices of address change filed in the Chapter 11 Case and delivered to the Unsecured Creditor Trustee, if the address differs from a proof of Claim; or (c) at the addresses reflected in the Schedules relating to the applicable Allowed Claim if no proof of Claim has been filed and the Unsecured Creditor Trustee has not received a written notice of change of address.

3.5 **Fractional Cents/De Minimis distributions.** Payments of fractions of cents will not be made by the Unsecured Creditor Trustee. Whenever a Unsecured Creditor Trust Beneficiary's Pro Rata share of a distribution would be a fraction of a cent, actual payment made will reflect a rounding of such fraction down to the nearest whole cent. The Unsecured Creditor Trustee will not make any payment of less than fifty dollars (\$50.00).

3.6 **Creditors Must Provide Identifying Information.** In order to receive distributions or payments, upon the Unsecured Creditor Trustee's written request, all Unsecured Creditor Trust Beneficiaries must provide to the Unsecured Creditor Trustee, at the address set forth in Section 9.4 below, a notice identifying such holder's name, address, federal tax identification number, and any other information requested by the Unsecured Creditor Trustee to facilitate the filing of tax returns, within ten (10) days after requested in writing by the Unsecured Creditor Trustee. The Unsecured Creditor Trustee is empowered to withhold distributions from any Unsecured Creditor Trust Beneficiaries who do not provide such information upon request. In the event an Unsecured Creditor Trust Beneficiary continues to fail to provide such information for sixty (60) days after the second written request from the Unsecured Creditor Trustee, then such Unsecured Creditor Trust Beneficiary's Claim will be deemed disallowed and any withheld distributions will be available for distribution to other Unsecured Creditor Trust Beneficiaries in accordance with the Plan.

3.7 **Failure to Negotiate Checks.** In accordance with section 8.4 of the Plan, Checks issued in respect of distributions under the Plan are null and void if not negotiated within ninety (90) days after the date of issuance. Any funds returned to the Unsecured Creditor Trustee for any reason will be held by the Unsecured Creditor Trustee until such time as they qualify as Unclaimed Property, or if earlier, a request for reissuance is received by the Unsecured Creditor Trustee. Requests for reissuance of any such check must be made in writing within such 90-day period, directly to the Unsecured Creditor Trustee, by the holder of the Allowed Claim with respect to which the check originally was issued, so as to be received by the Unsecured Creditor Trustee. All Claims for which void checks were issued will be forever barred from asserting the

Claim against the Unsecured Creditor Trust. All Unclaimed Property will be deposited back into the Unsecured Creditor Trust for distribution to other Unsecured Creditor Trust Beneficiaries in accordance with the Plan.

3.8 **Unclaimed Property.** In accordance with section 8.5 of the Plan, all property distributed by the Unsecured Creditor Trustee on account of Allowed Claims must be claimed within the later of (a) ninety (90) days after the Effective Date or (b) ninety (90) days after such distribution is made to the holder or, in the case of a distribution made in the form of a check, must be negotiated or a request for reissuance made as provided for in this Plan. All Unclaimed Property will be deposited back into the Unsecured Creditor Trust. Nothing contained in the Plan or Trust Agreement shall require Unsecured Creditor Trustee to attempt to locate any holder of an Allowed Claim other than by reviewing the proofs of Claim and records provided to the Unsecured Creditor Trustee. After the expiration of the 90-day period, the Claim being paid by the for Unclaimed Property shall be deemed Disallowed and the holder of the Disallowed Claim shall be forever barred from asserting the Disallowed Claim in any manner against the Unsecured Creditor Trust.

### 3.9 **Reports.**

(a) The Unsecured Creditor Trustee must maintain good and sufficient books and records of account relating to the Unsecured Creditor Trust Assets, the management thereof, all transactions undertaken by the Unsecured Creditor Trustee, all expenses incurred by or on behalf of the Unsecured Creditor Trust, and all distributions either contemplated or effectuated under the Plan or this Trust Agreement.

(b) No later than 35 days after the end of each fiscal year, the Unsecured Creditor Trustee must furnish to each Unsecured Creditor Trust Beneficiary a written statement indicating (i) the assets and liabilities of the Unsecured Creditor Trust at the end of such fiscal year and the receipts and disbursements of the Unsecured Creditor Trust for such fiscal year, and (ii) any changes in the Unsecured Creditor Trust Assets or to the allowance of Claims that have not been previously reported.

(c) The fiscal year of the Unsecured Creditor Trust will end on the last day of December of each year unless some other fiscal year-end date is required by applicable law and is permissible under the Internal Revenue Code.

## ARTICLE IV.

### **POWERS OF AND LIMITATIONS ON THE TRUSTEE**

4.1 **General Powers of Trustee.** Subject to the express limitations contained in this Trust Agreement or the Plan, the Unsecured Creditor Trustee has, in addition to any powers conferred by other provisions of this Trust Agreement or the Plan, the power to take any and all actions necessary or advisable to effectuate the purpose of the Unsecured Creditor Trust, including the following powers, which he may exercise without the approval of the Bankruptcy Court, except to the extent otherwise required under the provisions of the Plan or this Trust Agreement:

(a) To hold legal title to any and all rights of the Unsecured Creditor Trust Beneficiaries in or arising from the Unsecured Creditor Trust Assets, including, without limitation, the right to collect and receive any and all money and other property belonging to the Unsecured Creditor Trust;

(b) To invest or reinvest Unsecured Creditor Trust Assets as provided in Section 4.3 hereof and to cause such investments, or any part thereof, to be registered and held in his name, as Trustee, or in the names of nominees;

(c) To establish and maintain such bank accounts as may be necessary or appropriate, to draw checks on such bank accounts, and to perform such other necessary and appropriate duties with respect to such accounts, or designate individuals as signatories therefor, as the Unsecured Creditor Trustee may direct and authorize;

(d) To engage employees, agents, and professional persons, including, without limitation, former employees or professionals of the Debtor or the Committee, to assist the Unsecured Creditor Trustee with respect to his responsibilities;

(e) To perform all of the Unsecured Creditor Trustee's obligations under the Plan and this Trust Agreement, including making all required distributions and payments to holders of Allowed Claims and Unsecured Creditor Trust Interests, as applicable;

(f) To pay all expenses of the Unsecured Creditor Trust;

(g) To avoid and recover transfers of the Debtor's property as may be permitted by the Bankruptcy Code, applicable state law, and the Plan, to the extent the right to avoid and recover such transfers are Unsecured Creditor Trust Assets under the Plan;

(h) To exercise setoffs, offsets, and recoupments against Claims as permitted under the Plan, to the extent such rights are Unsecured Creditor Trust Assets under the Plan;

(i) To object to the allowance of any Claims that are not Allowed under the Plan, by Court Order, or for any other reason, and to compromise and settle Disputed Claims, both as set forth in and subject to the conditions of the Plan;

(j) To pursue, prosecute, settle, and/or compromise all Non-Insider Avoidance Actions;

(k) To institute, join, or defend actions or other requests for relief and to take such other actions, including settlements thereof, on any terms deemed reasonable by the Unsecured Creditor Trustee, in his discretion, to enforce or collect upon the Non-Insider Avoidance Actions and any other Unsecured Creditor Trust Assets;

(l) To file or cause to be filed all required federal, state, local, and foreign tax filings of the Unsecured Creditor Trust, make tax elections, if any, available to the Unsecured Creditor Trust under federal, state, local, or foreign law, and prepare applications for rulings or other administrative determinations from federal, state, local, and foreign tax authorities as may

be reasonably necessary to determine the tax liabilities of the Unsecured Creditor Trust or the Unsecured Creditor Trust Beneficiaries;

(m) To request any appropriate tax determination with respect to the Unsecured Creditor Trust, including, without limitation, a determination pursuant to section 505 of the Bankruptcy Code;

(n) To obtain insurance coverage with respect to his liabilities and obligations as Trustee under this Trust Agreement (in the form of an errors and omissions policy or otherwise);

(o) To assert any privilege on behalf of the Debtor, or on behalf of the Unsecured Creditor Trust; and

(p) To exercise such other powers as may be vested in or assumed by the Unsecured Creditor Trustee pursuant to the Plan, this Trust Agreement, or the Confirmation Order or as may be necessary and desirable to carry out the provisions of this Trust Agreement and applicable law.

4.2 **Limitations on Trustee.** The Unsecured Creditor Trustee must carry out the purposes of the Unsecured Creditor Trust and the directions contained herein, and must not at any time, on behalf of the Unsecured Creditor Trust or the Unsecured Creditor Trust Beneficiaries, (a) enter into or engage in any business or (b) accept an assignment of any right of action from, or assume any liabilities of, any person or entity other than the Debtor, and no part of the Unsecured Creditor Trust Assets or the proceeds, revenue, or income therefrom may be used or disposed of by the Unsecured Creditor Trustee in furtherance of any business other than as contemplated by the Plan. This limitation applies irrespective of whether the conduct of any such business activities is deemed by the Unsecured Creditor Trustee to be necessary or proper for the conservation and protection of the Unsecured Creditor Trust. The Unsecured Creditor Trustee must make continuing efforts to liquidate the Unsecured Creditor Trust Assets, make timely distributions, and not unduly prolong the duration of the Unsecured Creditor Trust. The Unsecured Creditor Trustee may not hold a controlling interest in the stock of, or be a partner, an officer, or a director of any of the Unsecured Creditor Trust Beneficiaries.

4.3 **Investment Power.** The investment power of the Unsecured Creditor Trustee, other than that reasonably necessary to maintain the value of the Unsecured Creditor Trust Assets and to further the liquidating purpose of the Unsecured Creditor Trust, is limited to the power to invest (a) in demand and time deposits, such as short-term certificates of deposit, (b) in banks or other savings institutions, or (c) in other temporary, liquid investments such as Treasury bills. Once funds are so invested, the Unsecured Creditor Trustee may not sell or otherwise liquidate the investment until such time as such funds are (a) needed to pay expenses incurred pursuant to this Trust Agreement or the Plan, or (b) to be distributed pursuant to this Trust Agreement; *provided, however,* that the Unsecured Creditor Trustee may liquidate such investments if the Unsecured Creditor Trustee determines in his discretion that such liquidation is necessary to protect the Unsecured Creditor Trust from loss on the amounts invested. For the avoidance of doubt, the Unsecured Creditor Trustee may not make any investments that would cause the Unsecured Creditor Trust to fail to be treated as a “liquidating trust” for purposes of

Treasury Regulation Section 301.7701-4(d). The Unsecured Creditor Trustee is restricted to the holding and collection of the Unsecured Creditor Trust Assets and the payment and distribution thereof for the purposes set forth herein and in the Plan and to the conservation, protection, and maximization of the Unsecured Creditor Trust Assets and to the administration thereof in accordance with the provisions of this Trust Agreement. The Unsecured Creditor Trustee must keep all Unsecured Creditor Trust Assets segregated from and must not commingle any Unsecured Creditor Trust Assets with any assets of any other Person, including any of the Unsecured Creditor Trustee's own assets.

4.4 **Additional Powers of Trustee.** Subject to the express limitations contained herein, the Plan, or the Confirmation Order, the Unsecured Creditor Trustee has, and may exercise with respect to the Unsecured Creditor Trust Assets or any part thereof, including the administration and distribution of the Unsecured Creditor Trust Assets, all powers now or hereafter conferred on trustees by the laws of the State of Texas. The powers conferred by this Section 4.4 in no way limit any power conferred on the Unsecured Creditor Trustee by any other section of this Trust Agreement, but are in addition thereto; *provided, however*, that the powers conferred by this Section 4.4 are conferred and may be exercised only and solely within the limitations and for the limited purposes imposed and expressed in the Plan and this Trust Agreement.

4.5 **Tax and Reporting Duties of the Unsecured Creditor Trustee.** The Unsecured Creditor Trustee is responsible for all tax and other matters as set forth in Article V of this Trust Agreement.

4.6 **Establishment and Maintenance of Accounts and Reserves.** On or after the Effective Date, the Unsecured Creditor Trustee (i) may establish and maintain such accounts and reserves as may be required by applicable law or by order of the Bankruptcy Court and (ii) may establish and maintain such additional accounts and reserves as he deems necessary or desirable to carry out the provisions of the Plan and this Trust Agreement.

4.7 **Disputed Claims Reserve.** The Unsecured Creditor Trustee must establish the Disputed Claims Reserve for the sole benefit of the holders of Claims subject to an objection. The Unsecured Creditor Trustee shall separately account for the Disputed Claims Reserve and this reserve shall be equal to the Pro Rata share of the distributions allocable to Disputed Claims, in accordance with the distribution scheme contemplated in the Plan, as if such Claims were Allowed Claims. The Disputed Claims Reserve will be held in trust for the benefit of the holders of Disputed Claims pending a determination of their entitlement thereto under the terms of the Plan. Once a Disputed Claim is determined by Final Order or settlement to be an Allowed Claim, the Unsecured Creditor Trustee is authorized to pay the Allowed Amount of such Claim, in accordance with the Plan.

## ARTICLE V.

### TAX MATTERS

5.1 **Classification of the Unsecured Creditor Trust.** For all federal and applicable state and local income tax purposes, all Persons (including, without limitation, the Debtor, the

Unsecured Creditor Trustee and the Unsecured Creditor Trust Beneficiaries) will treat the transfer and assignment of the Unsecured Creditor Trust Assets to the Unsecured Creditor Trust for the benefit of the Unsecured Creditor Trust Beneficiaries as (a) a deemed transfer of title and interest in the Unsecured Creditor Trust Assets directly to the Unsecured Creditor Trust Beneficiaries (as creditors) followed by (b) a deemed transfer of title and interest in the Unsecured Creditor Trust Assets by the Unsecured Creditor Trust Beneficiaries to the Unsecured Creditor Trust. The Unsecured Creditor Trust will be treated as a grantor trust subject to the provisions of Section 671 of the Internal Revenue Code and as a liquidating trust under Treasury Regulation Section 301.7701-4(d) for United States federal income tax purposes and, to the extent permitted under applicable law, for state and local income tax purposes. The Unsecured Creditor Trustee must perform his duties and obligations hereunder consistent with the foregoing and must not take any action or inaction which would cause the Unsecured Creditor Trust not to be treated as a liquidating trust for United States federal income tax purposes. The Unsecured Creditor Trust Beneficiaries will be treated as the grantors and deemed owners of their allocable portion of the Unsecured Creditor Trust Assets for federal income tax purposes.

The fair market value of the portion of the Unsecured Creditor Trust Assets that is treated for U.S. federal income tax purposes as having been transferred to each Unsecured Creditor Trust Beneficiary, as described in the preceding paragraph, will be determined by the Unsecured Creditor Trustee in a manner consistent with Section 1.7 of this Trust Agreement, and all parties (including, without limitation, the Unsecured Creditor Trustee and the Unsecured Creditor Trust Beneficiaries) must utilize such fair market values determined by the Unsecured Creditor Trustee for federal and applicable state and local income tax purposes.

The Unsecured Creditor Trust's taxable income, gain, loss, deduction, or credit will be allocated to the Unsecured Creditor Trust Beneficiaries in accordance with their relative beneficial interests in the Unsecured Creditor Trust during the applicable taxable period. Such allocation will be binding on all parties for federal and applicable state and local income tax purposes, and the parties will be responsible for the payment of any federal, state, and local income tax due on the income and gain so allocated to them.

## **5.2 General Tax Reporting by the Unsecured Creditor Trust and the Unsecured Creditor Trust Beneficiaries.**

(a) The Unsecured Creditor Trustee must prepare, consistent with Section 5.1 hereof, and file on behalf of the Unsecured Creditor Trust, at the time and in the manner prescribed by the Internal Revenue Code and applicable state and local law, such tax returns and reports as may be required, including but not limited to returns and reports required by Treasury Regulations Section 1.671-4(a), and must promptly furnish copies of such returns and reports as filed to the Unsecured Creditor Trust Beneficiaries upon their written request. The Unsecured Creditor Trustee must pay or cause to be paid any and all taxes imposed on the Unsecured Creditor Trust from the Unsecured Creditor Trust Assets. The Unsecured Creditor Trustee must also file or cause to be filed, all appropriate tax returns with respect to any Unsecured Creditor Trust Assets allocable to Disputed Claims as set forth in Section 5.2(c) hereof, and pay or cause to be paid any and all taxes imposed with respect to the Disputed Claims.

(b) As soon as practicable after the close of each fiscal year, the Unsecured Creditor Trustee must mail to each of the Unsecured Creditor Trust Beneficiaries a statement setting forth the beneficiary's share of items of the Unsecured Creditor Trust's income, gain, loss, deduction, or credit and must instruct all such beneficiaries to report such items on their federal income tax returns. The Unsecured Creditor Trust's taxable income, gain, loss, deduction, or credit will be allocated (subject to subsection (c) hereof, related to Disputed Claims) to the Unsecured Creditor Trust Beneficiaries in accordance with their relative beneficial interests in the Unsecured Creditor Trust. Such items are subject to tax to the Unsecured Creditor Trust Beneficiaries on a current basis, even if no cash distributions are made to the Unsecured Creditor Trust Beneficiaries.

(c) Absent definitive guidance from the IRS or a court of competent jurisdiction to the contrary, the Unsecured Creditor Trustee must:

(i) treat all Unsecured Creditor Trust Assets allocable to, or retained on account of, Disputed Claims of Unsecured Creditor Trust Beneficiaries, as a discrete trust for federal income tax purposes, consisting of separate and independent shares to be established in respect of each Disputed Claim;

(ii) treat as taxable income or loss of this separate trust with respect to any given taxable year the portion of the taxable income or loss of the Unsecured Creditor Trust that would have been allocated to the holders of such Disputed Claims had such claims been Allowed on the Effective Date (but only for the portion of the taxable year with respect to which such claims are unresolved);

(iii) treat as a distribution from this separate trust any increased amounts distributed by the Unsecured Creditor Trust as a result of any Disputed Claim resolved earlier in the taxable year, to the extent such distribution relates to taxable income or loss of this separate trust determined in accordance with the provisions hereof, and

(iv) to the extent permitted by applicable law, report consistently for state and local income tax purposes.

(d) The Unsecured Creditor Trustee is responsible for payments, out of the Unsecured Creditor Trust Assets, of any taxes imposed on the Unsecured Creditor Trust or its assets. In the event and to the extent any cash retained on account of Disputed Claims in any such reserve is insufficient to pay the portion of any such taxes attributable to the taxable income arising from the assets allocable to, or retained on account of, Disputed Claims, such taxes paid by the Unsecured Creditor Trustee will be (i) reimbursed from any subsequent cash amount retained on account of Disputed Claims or (ii) to the extent such Disputed Claims have subsequently been resolved, deducted from any amounts distributable by the Unsecured Creditor Trustee as a result of the resolutions of such Disputed Claims.

(e) The Unsecured Creditor Trustee may retain professionals to perform the Unsecured Creditor Trustee's duties under this Section 5.2 and, subject to Section 6.6, may rely upon the performance and advice of such professionals with respect to such duties.

(f) The Unsecured Creditor Trustee may request an expedited determination of taxes of the Unsecured Creditor Trust, including with respect to the Disputed Claims under section 505(b) of the Bankruptcy Code, for all returns filed for, or on behalf of, the Unsecured Creditor Trust for all taxable periods through the dissolution of the Unsecured Creditor Trust.

5.3 **Withholding of Taxes and Other Charges.** To the extent that the Unsecured Creditor Trustee is required by applicable law to withhold or otherwise deduct any taxes, fees, levies, assessments, or other governmental charges in respect of any distributions, payments, or allocations made pursuant to the Plan and this Trust Agreement, the Unsecured Creditor Trustee is entitled to withhold or deduct the amount of such taxes, fees, levies, assessments, or other governmental charges from the gross amounts of such distributions, payments, or allocations and remit such amounts to the applicable taxing or other governmental authorities. The Unsecured Creditor Trustee, in the exercise of his discretion and judgment, may enter into agreements with taxing or other authorities for the payment of such amounts as may be withheld in accordance with the provisions of this Section 5.3.

5.4 **Other.** The Unsecured Creditor Trustee must file, or cause to be filed, any other statements, returns, or disclosures relating to the Unsecured Creditor Trust that are required by any governmental unit or applicable law.

## ARTICLE VI.

### **THE TRUSTEE**

#### 6.1 **Trustee's Compensation and Reimbursement.**

(a) The Unsecured Creditor Trustee's compensation, on a post-Effective Date basis, will be incurred and paid on an hourly basis. The Unsecured Creditor Trustee's hourly rate, on the Effective Date will be \$450.00 per hour, subject to yearly reasonable annual adjustments after ten (10) day's prior written notice to the Trust Advisory Board (defined below). The payment of the fees of the Unsecured Creditor Trustee and any professionals retained by the Unsecured Creditor Trustee will be made by the Unsecured Creditor Trustee from the Unsecured Creditor Trust Assets in accordance with the Plan and this Trust Agreement.

(b) The Unsecured Creditor Trustee has the right to retain the services of attorneys, accountants, and other professionals who, in the discretion of the Unsecured Creditor Trustee, are necessary to assist the Unsecured Creditor Trustee in performing his duties. The reasonable fees and expenses of such professionals will be paid by the Unsecured Creditor Trustee from the Unsecured Creditor Trust Assets upon the monthly submission of statements to the Unsecured Creditor Trustee. The payment of the reasonable fees and expenses of the Unsecured Creditor Trustee's retained professionals will not be subject to the approval of the Bankruptcy Court; *provided, however*, the Unsecured Creditor Trustee shall provide five (5) day's prior written notice to the Trust Advisory Board (defined below) prior to paying any such professional. Professionals of the Committee are eligible for retention by the Unsecured Creditor Trustee, and former employees of the Debtor are eligible for retention by the Unsecured Creditor Trustee.

(c) Subject to the provisions of this Trust Agreement, all costs, expenses, and obligations incurred by the Unsecured Creditor Trustee in administering the Unsecured Creditor Trust Assets, the Unsecured Creditor Trust, or in any manner connected, incidental, or related thereto, in effectuating distributions from the Unsecured Creditor Trust thereunder (including the reimbursement of reasonable expenses) will be a charge against the Unsecured Creditor Trust Assets remaining from time to time in the hands of the Unsecured Creditor Trustee. Such expenses will be paid as they are incurred without the need for Bankruptcy Court approval.

6.2 **Resignation.** The Unsecured Creditor Trustee may resign as trustee hereunder by giving not less than thirty (30) days' prior written notice thereof to the Trust Advisory Board (as defined herein). Such resignation will become effective on the later to occur of: (a) the day specified in such notice or (b) the appointment of a successor Unsecured Creditor Trustee pursuant to Section 6.4 of this Trust Agreement and the acceptance of such successor Unsecured Creditor Trustee of such appointment. If a successor Unsecured Creditor Trustee is not appointed or does not accept his appointment within thirty (30) days following delivery of notice of resignation, the Trust Advisory Board may petition the Bankruptcy Court for the appointment of a successor Unsecured Creditor Trustee.

6.3 **Removal.** The Unsecured Creditor Trustee (and his successors) may be removed by an order of the Bankruptcy Court for cause shown and upon notice and a hearing, and the Bankruptcy Court will retain jurisdiction for this purpose under the Plan and this Trust Agreement, and the Unsecured Creditor Trustee consents to such jurisdiction and waives any right that may otherwise exist to a trial by jury.

6.4 **Appointment of Successor Trustee.** In the event of the resignation, removal, or incapacity of the Unsecured Creditor Trustee, the Trust Advisory Board must designate a successor Unsecured Creditor Trustee. The successor Unsecured Creditor Trustee must give written notice of his or her appointment to the Unsecured Creditor Trust Beneficiaries as soon thereafter as is practicable. Any successor Unsecured Creditor Trustee appointed hereunder must execute, acknowledge, and deliver to the Trust Advisory Board an instrument duly accepting such appointment and agreeing to be bound by the terms of this Trust Agreement and thereupon such successor Unsecured Creditor Trustee, without further act, deed, or conveyance, will become vested with all the rights, powers, trusts, and duties of the Unsecured Creditor Trustee under this Trust Agreement. All fees and expenses of the Unsecured Creditor Trustee will be paid by the Unsecured Creditor Trust unless disputed by the successor Unsecured Creditor Trustee, in which case such dispute will be resolved by the Bankruptcy Court.

6.5 **Unsecured Creditor Trust Continuance.** The resignation or removal of the Unsecured Creditor Trustee does not operate to terminate the Unsecured Creditor Trust or to revoke any existing agency created pursuant to the terms of this Trust Agreement or invalidate any action theretofore taken by the Unsecured Creditor Trustee or any prior Unsecured Creditor Trustee. In the event of the resignation or removal of the Unsecured Creditor Trustee, such Unsecured Creditor Trustee must promptly execute and deliver such documents, instruments, and other writings as may be reasonably requested by the successor Unsecured Creditor Trustee to effectuate the termination of the Unsecured Creditor Trustee's capacity under this Trust Agreement and the conveyance of the Unsecured Creditor Trust Assets then held by the Unsecured Creditor Trustee to such Unsecured Creditor Trustee's successor; deliver to the

successor Unsecured Creditor Trustee all documents, instruments, records, and other writings related to the Unsecured Creditor Trust as may be in the possession of the Unsecured Creditor Trustee; and otherwise assist and cooperate in effectuating the assumption of his obligations and functions by such successor Unsecured Creditor Trustee.

6.6 **Reliance by Trustee.** The Unsecured Creditor Trustee may rely, and is fully protected personally in acting, upon any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order, or other instrument or document which the Unsecured Creditor Trustee believes to be genuine and to have been signed or presented by the proper party or parties or, in the case of facsimile transmissions or electronic mail, to have been sent by the proper party or parties, in each case without obligation to satisfy himself that the same was given in good faith and without responsibility for errors in delivery, transmission, or receipt. In the absence of fraud, willful misconduct, or gross negligence on the Unsecured Creditor Trustee's part, the Unsecured Creditor Trustee may rely as to the truth of any statements contained therein in acting thereon. The Unsecured Creditor Trustee may consult with and rely on the advice of legal counsel and such other experts, advisors, consultants, or other professionals as have been retained pursuant to this Trust Agreement and is fully protected in respect of any action taken or suffered in accordance with the written opinion of legal counsel. Notwithstanding such authority, the Unsecured Creditor Trustee is under no obligation to consult with attorneys, accountants, or his agents, and his determination not to do so should not result in imposition of liability on the Unsecured Creditor Trustee unless such determination is based on willful misconduct, gross negligence, or fraud.

6.7 **Standard of Care.** Except in the case of fraud, willful misconduct, or gross negligence, the Unsecured Creditor Trustee is not liable for any loss or damage by reason of any action taken or omitted by the Unsecured Creditor Trustee pursuant to the discretion, power, and authority conferred on the Unsecured Creditor Trustee by this Trust Agreement, the Plan, or the Confirmation Order.

6.8 **No Liability for Acts of Predecessor Trustees.** No successor Trustee is in any way liable for the acts or omissions of any predecessor Trustee unless a successor Trustee expressly assumes such responsibility.

6.9 **Insurance.** The Unsecured Creditor Trustee may purchase, at the expense of the Unsecured Creditor Trust, errors and omissions insurance with regard to any liabilities, losses, damages, claims, costs, and expenses he may incur, including but not limited to attorneys' fees, arising out of or due to his actions or omissions or consequences of such actions or omissions, other than as a result of his fraud, gross negligence, or willful misconduct, with respect to the implementation of this Trust Agreement, the Plan, or the Confirmation Order.

6.10 **No Implied Obligations.** No Trustee is liable for any duties or obligations except for the performance of such duties and obligations as are specifically set forth herein, and no implied covenants or obligations may be read into this Unsecured Creditor Trust.

6.11 **No Personal Liability.** Persons dealing with the Unsecured Creditor Trust must look solely to the Unsecured Creditor Trust or the Unsecured Creditor Trust Assets for the enforcement of any claims against the Unsecured Creditor Trust or to satisfy any liability

incurred by the Unsecured Creditor Trustee to such Persons in carrying out the terms of this Trust Agreement, and neither the Unsecured Creditor Trustee nor the Debtor or any other Person has any personal liability or individual obligation to satisfy any such liability.

6.12 **Liability; Indemnification.** The Unsecured Creditor Trustee is not liable for any act or omission taken or omitted to be taken in his capacity as the Unsecured Creditor Trustee, other than acts or omissions resulting from willful misconduct, gross negligence, or fraud. The Unsecured Creditor Trustee may, in connection with the performance of his functions, and in his sole and absolute discretion, consult with attorneys, accountants, and agents, and he is not liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such professionals. Notwithstanding such authority, the Unsecured Creditor Trustee is under no obligation to consult with attorneys, accountants, or agents, and his determination not to do so should not result in imposition of liability on the Unsecured Creditor Trustee unless such determination is based on willful misconduct, gross negligence, or fraud. The Unsecured Creditor Trust will indemnify and hold harmless the Unsecured Creditor Trustee and his agents, representatives, professionals, and employees from and against and in respect of any and all liabilities, losses, damages, claims, costs, and expenses, including but not limited to attorneys' fees and costs arising out of or due to their actions or omissions, or consequences of such actions or omissions, with respect to the Unsecured Creditor Trust or the implementation or administration of the Plan; *provided, however*, that no such indemnification will be made to such Persons for such actions or omissions as a result of willful misconduct, gross negligence, or fraud.

## ARTICLE VII.

### **TRUST ADVISORY BOARD**

#### 7.1 **Creation of Trust Advisory Board; Replacement of Members.**

(a) Upon the Effective Date, the Unsecured Creditor Trust Advisory Board (the "Trust Advisory Board") shall consist of Dianne Betts, Craig Ritter (in his capacity as a representative of Liberty Carton Co.), and Bob McNutt (in his capacity as trustee of the Thomas Max Nygaard McNutt IV Trust).

(b) If a member of the Trust Advisory Board resigns or is otherwise removed, a replacement Trust Advisory Board member may be selected by a majority vote of the remaining Trust Advisory Board members. If a majority vote is unable to occur, the Unsecured Creditor Trustee shall select the replacement Trust Advisory Board member.

7.2 **Function, Duties, and Responsibilities.** Subject to the Plan, the Trust Advisory Board has the following function, duties, and responsibilities:

(a) to periodically consult with the Unsecured Creditor Trustee regarding the activities of the Unsecured Creditor Trust, including but not limited to:

- (i) pursuit and resolution of claims and Unsecured Creditor Trust Avoidance Actions against third parties;

- (ii) resolution of Claims filed by creditors against the Debtor;
  - (iii) administration of the trust estate; and
  - (iv) distributions and payments to Unsecured Creditor Trust Beneficiaries;
- (b) review the books and records of the Unsecured Creditor Trust at no expense;
- (c) file a motion with the Bankruptcy Court, on behalf of the Unsecured Creditor Trust, requesting discharge of the Unsecured Creditor Trustee in the event that the Trust Advisory Board determines, after reasonable investigation, that the Unsecured Creditor Trustee has taken certain actions, or failed to take certain actions, or failed to take certain actions, constituting malfeasance or gross negligence in relation to the administration of the Unsecured Creditor Trust; and
- (d) be reasonably informed of proceedings, strategy, assets, liquidation, management and status of the Unsecured Creditor Trust.

7.3 **Duration.** The Trust Advisory Board will remain in existence until the Unsecured Creditor Trust is terminated in accordance with the terms of the Plan and this Trust Agreement.

7.4 **Compensation and Expenses.** The members of the Trust Advisory Board are not entitled to any compensation or reimbursement of expenses from the Unsecured Creditor Trust.

7.5 **Liability; Indemnification.** Neither the Trust Advisory Board, nor any of its members or designees, nor any duly designated agent or representative of the Trust Advisory Board, or their respective employees, is liable for the act or omission of any other member, designee, agent or representative of the Trust Advisory Board, nor shall any member of the Trust Advisory Board be liable for any act or omission taken or omitted to be taken in its capacity as a member of the Trust Advisory Board, other than acts or omissions resulting from such member's willful misconduct, gross negligence, or fraud. The Trust Advisory Board may, in connection with the performance of its functions, and in its sole and absolute discretion, consult with attorneys, accountants, and its agents, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such professionals. Notwithstanding such authority, the Trust Advisory Board is under no obligation to consult with attorneys, accountants, or its agents, and its determination not to do so should not result in imposition of liability on the Trust Advisory Board, or its members and/or designees, unless such determination is based on willful misconduct, gross negligence, or fraud. The Unsecured Creditor Trust shall indemnify and hold harmless the Trust Advisory Board and its members, designees, and professionals, and any duly assigned agent or representative thereof (in their capacity as such), from and against and in respect to any and all liabilities, losses, damages, claims, costs, and expenses, including, but not limited to attorneys' fees and costs arising out of or due to their actions or omissions, or consequences of such actions or omissions, with respect to the Unsecured Creditor Trust or the implementation or administration of the Plan; *provided,*

however, that no such indemnification will be made to such Persons for such actions or omissions as a result of willful misconduct, gross negligence, or fraud.

7.6 **Privilege.** All communication between the Unsecured Creditor Trustee and the Trust Advisory Board is confidential and privileged by the attorney-client and the joint-interest privilege, unless a majority of the Trust Advisory Board waives the same for any given issue or actual litigation ensues between the Unsecured Creditor Trustee and the Trust Advisory Board.

7.7 **Approval of Certain Settlements.** Notwithstanding anything in this Trust Agreement to the contrary, the Trust Advisory Board must approve any settlement of a Disputed Claim or Unsecured Creditor Trust Avoidance Action the face value of which is \$100,000.00 or more.

## ARTICLE VIII.

### AMENDMENTS

8.1 **Amendments.** The parties hereto may make and execute written amendments to this Trust Agreement; *provided, however,* that in no event may this Trust Agreement be amended (a) so as to change the purpose of the Unsecured Creditor Trust as set forth in Article I hereof, (b) so as to allow funds constituting Unsecured Creditor Trust Assets to be invested in a manner other than as permitted in Section 4.3 hereof, (c) so as to adversely affect the distributions or payments to be made under this Trust Agreement to any Unsecured Creditor Trust Beneficiaries, or (d) so as to adversely affect the U.S. Federal income status of the Unsecured Creditor Trust in accordance with Article I hereof.

## ARTICLE IX.

### MISCELLANEOUS PROVISIONS

9.1 **Applicable Law.** The Unsecured Creditor Trust created herein shall be construed, regulated, and administered under the laws of the State of Texas without regard to principles of conflicts of law; *provided, however,* that, the Unsecured Creditor Trust and any interpretation or enforcement of the provisions of this Trust Agreement are subject to the jurisdiction of the Bankruptcy Court.

9.2 **No Association, Partnership or Joint Venture.** This Trust Agreement is not intended to create and must not be interpreted as creating an association, partnership, or joint venture of any kind.

9.3 **Partial Invalidity.** If any term or provision of this Trust Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Trust Agreement, such term or provision is fully severable, and this Trust Agreement must be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Trust Agreement; and the remaining terms and provisions of this Trust Agreement will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Trust Agreement, and this Trust Agreement must be construed so as to limit any term or provision in order to make it a legal,

valid, and enforceable provision, provided that such construction, to the maximum extent possible, gives effect to the purposes of the Plan.

9.4 **Notices.** All notices, requests, consents and other communications hereunder must be in writing and must be addressed (i) if to the Unsecured Creditor Trustee, to *Dennis S. Faulkner, Lain, Faulkner & Co., P.C., 400 N. St. Paul St., Ste. 600, Dallas Texas 75201* or such other address as such Trustee or any successor will have furnished; and (ii) if to any Unsecured Creditor Trust Beneficiary, at the address stated in the proof of claim it filed in the Chapter 11 Case, or in the event that the Unsecured Creditor Trust Beneficiary did not file a proof of claim, at the address specified in the Debtor' schedules. To the extent a Liquidating Trust Beneficiary desires to receive notice at a different address, it is such Person's obligation to notify the Unsecured Creditor Trustee in writing. All such notices, requests, consents, and other communications must be given to the Unsecured Creditor Trustee by hand delivery or overnight delivery, or, to a Unsecured Creditor Trust Beneficiary, by first-class mail, postage prepaid, and will be deemed given when actually delivered (with respect to the Unsecured Creditor Trustee), or three (3) business days after deposit in the U.S. mail if mailed (with respect to a Unsecured Creditor Trust Beneficiary).

9.5 **Counterparts.** This Trust Agreement may be executed in any number of counterparts, each of which constitutes an original, but such counterparts together constitute one and the same instrument.

9.6 **Headings.** The section headings contained in this Trust Agreement are solely for convenience of reference and do not affect the meaning or interpretation of this Trust Agreement or of any term or provision hereof.

9.7 **Confidentiality.** The Unsecured Creditor Trustee must, during the period that he serves in such capacity under this Trust Agreement and following either the termination of this Trust Agreement or such Trustee's removal, incapacity, or resignation hereunder, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any entity to which any of the Unsecured Creditor Trust Assets relates or of which he has become aware in his capacity as Trustee.

9.8 **Retention of Jurisdiction.** The Bankruptcy Court shall retain jurisdiction as set forth in Article XI of the Plan over issues related to the enforcement or interpretation of this Trust Agreement, including the determination of claims, controversies, disputes, and issues arising under or in connection with the Unsecured Creditor Trust or this Trust Agreement and the management and administration of the Unsecured Creditor Trust and for all of the purposes contemplated herein.

9.9 **Relationship to Plan.** The principal purpose of this Trust Agreement is to aid in the implementation of the Plan, and therefore this Trust Agreement incorporates and is subject to the provisions of the Plan. In the event any provision of this Trust Agreement is found to be inconsistent with a provision of the Plan or the Confirmation Order, the provision of the Plan or the Confirmation Order controls.

IN WITNESS WHEREOF, the parties hereto have executed this Trust Agreement or caused this Trust Agreement to be duly executed as of the day and year last written.

**FRANKIE V'S KITCHEN, LLC**

By: Steve Solomon, Chief Restructuring  
Officer

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**TRUSTEE**

By: Dennis S. Faulkner

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

# **Exhibit B to the Disclosure Statement**

## **Settlement Agreement**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**In re:**

**FRANKIE V'S KITCHEN, LLC,**

**Debtor.**

**Case No. 19-31717**

**Chapter 11**

**SETTLEMENT AGREEMENT AND STIPULATION**

**I. Recitals**

1. On May 20, 2019 (the "Petition Date"), Frankie V's Kitchen, LLC (the "Debtor") filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Court").

2. Prepetition, Zions Bancorporation, N.A. d/b/a Amegy Bank ("Amegy") loaned the Debtor approximately \$2,500,000 (the "Senior Loan") secured by a first priority, fully perfected lien in substantially all of the Debtor's assets (the "Senior Lien"). Mr. Jeffrey Franco, the Debtor's largest investor and the Chairman of its Board, guaranteed the Senior Loan. Post-petition, the Court entered three interim orders authorizing the Debtor's use of cash collateral subject to the Senior Lien, which granted Amegy post-petition certain replacement liens and other adequate protection [Docket Nos. 33, 70, and 94] (together, the "Cash Collateral Orders").

3. On July 2, 2019, Amegy assigned the Senior Loan, the Senior Lien, and Amegy's rights and protections under the Cash Collateral Orders to Agneto Holdings, LP ("Agneto") [Docket No. 82]. Accordingly, Agneto now holds the Senior Loan, the Senior Lien and related secured claims and rights to adequate protection, including the Adequate Protection Lien (as defined in the Cash Collateral Orders) and the Prepetition Adequate Protection Superpriority Claim (as defined in the Cash Collateral Orders) (together with all rights, claims and interests, the "Agneto Secured Debt" secured by the "Agneto Secured Liens").

4. On June 3, 2019, the U.S. Trustee appointed the Official Committee of Unsecured Creditors (the "Committee") comprising of Dianne Betts, Liberty Carton Co., and Thomas Max Nygaard McNutt IV Trust. On June 27, 2019, the Committee filed a Motion to Appoint Trustee [Docket No. 67] (the "Trustee Motion"). The Debtor objected to the Trustee Motion. The Court set the Trustee Motion and the Debtor's objection for hearing on July 3, 2019 (the "Trustee Hearing").

5. On July 3, 2019, Casa Verde Foods LLC presented the Debtor with an offer to purchase the Debtor's business assets (the "Sale") for a total purchase price of \$2.5 million (the "Sale Proceeds"). On the same day, the Debtor filed a motion to approve the Sale [Docket No. 83] (the "Sale Motion"). The Court set the Sale Motion for hearing on July 17, 2019.

6. On July 3, 2019, the Committee, Agneto, Mr. Franco and the Debtor (together, the “Parties”) engaged in extensive arms-length negotiations and reached a proposed settlement to resolve the Trustee Motion, the Debtor’s objection, and to facilitate the expedited closing on the Sale. The Parties announced the basic terms of the settlement on the record during the Trustee Hearing, subject to documentation and the Court’s approval. This Settlement Agreement and Stipulation (the “Agreement”) documents the terms of the Parties’ settlement, subject to approval of the Court under Federal Rule of Bankruptcy Procedure 9019.

7. On July 23, 2019, the Court entered the order [Docket No. 120] (the “Sale Order”) granting the Sale Motion.

8. On July 24, 2019, the Sale closed and Casa Verde Foods, LLC tendered the Debtor \$2.5 million in Sale Proceeds.

## II. Terms

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, the Parties hereby agree as follows:

1. **Trustee Motion.** The Committee shall continue any further hearing on the Trustee Motion until after final Court approval or denial of this Agreement. Upon final Court approval of the Agreement, the Committee shall withdraw the Trustee Motion and agree not to reassert it. The Committee agrees to not oppose the Debtor’s retention of Steve Solomon as Chief Restructuring Officer.

2. **Sale Approval and Closing.** The Agneto Secured Liens attached to the Sale Proceeds, which Sale Proceeds constitute Agneto’s Cash Collateral (as such term is defined in the Cash Collateral Orders), to be used as follows under this Agreement:

- a. Contingent upon the execution of the releases set forth in section 2(d) below, \$1,000,000.00 (one million dollars) shall be escrowed by the Debtor in a separate DIP account (the “Agneto Settlement Reserve”). As consideration for the releases provided in sections 2(d), 3(e) and 3(f) below, the Agneto Settlement Reserve will become unencumbered property of the Debtor’s estate transferred by Agneto to, and earmarked for the benefit of, general unsecured creditors of the Debtor, excluding Released Parties (defined below) and the OptOut Parties (defined below), to either be distributed under the Plan (defined below) or otherwise treated and distributed as may be appropriate for the exclusive benefit of general unsecured creditors of the Debtor, excluding the Released Parties and the OptOut Parties (and, in the event of a conversion of the Bankruptcy Case, for potential Chapter 7 administrative claims);
- b. \$909,000.00 (nine-hundred-nine-thousand dollars) shall be distributed to Agneto to be applied to reduce the Agneto Secured Debt balance;
- c. The remaining Sale Proceeds will be held by the Debtor subject to the Agneto Secured Liens as Agneto’s cash collateral to be used in accordance with this Agreement (the “Administrative Cash Collateral Reserve”); and

- d. In partial consideration of and in exchange for the Agneto Settlement Reserve in subsection (a), the Debtor, its estate, and the Committee shall execute a release to the fullest extent allowed by law, of Agneto, Mr. Franco and each of their affiliates, members, officers, partners, directors, agents, employees, successors and attorneys.

3. **Confirmation of a Liquidating Plan.** The Parties agree to support expeditious confirmation of a joint chapter 11 plan of liquidation (the “Plan”) that will provide as follows (the “Plan Terms”):

- a. The payment to Agneto of all funds remaining in the Administrative Cash Collateral Reserve and any remaining Cash Collateral, including any unspent “Carve-Out” (as defined in the Cash Collateral Orders) funds, after payment in full of all agreed expenses in any Cash Collateral Order and related budget, to the extent allowed and subject to all rights to contest the same;
- b. The formation of a post-confirmation unsecured creditor trust (the “Unsecured Trust”) to be administered by a trustee (the “Unsecured Trustee”) selected by the Committee. The Unsecured Trustee will administer the Unsecured Trust for the benefit of all prepetition priority (excluding Bankruptcy Code § 503(b)(9)) and non-priority unsecured Claims (as defined in the Bankruptcy Code) allowed against the Debtor subject to the restrictions on the distribution of the Agneto Settlement Reserve set forth in section 2(a). The Plan shall assign and transfer to the Unsecured Trust, pursuant to Bankruptcy Code § 1123(b), free and clear of all liens, claims and encumbrances: (i) the Agneto Settlement Reserve (subject to the prohibition on distributions to the OptOut Parties [defined below]), (ii) a non-voting beneficial interest (net of expenses and secured claims) in ten percent (10%) of the Liquidation Trust; and (iii) the Debtor’s and estate’s avoidance actions under Chapter 5 of the Bankruptcy Code, excluding any such claims against (1) the Released Parties (defined below); (2) any current or former officer or director of the Debtor; and (3) any claims to avoid liens or security interests. The Agneto Settlement Reserve is in partial consideration for third party releases of the Released Parties; therefore, because the OptOut Parties have affirmatively opted out of providing such release, the OptOut Parties shall not share in any distribution from the Agneto Settlement Reserve. Agneto and Franco agree to subordinate any unsecured claims they hold such that these claims will not share in the Unsecured Trust until all other allowed unsecured claims are paid in full.
- c. The formation of a post-confirmation liquidating trust (the “Liquidation Trust”) to be administered by Mr. Solomon as trustee (the “Liquidation Trustee”) with sole authority. The Committee will not oppose the appointment of Mr. Solomon as Liquidation Trustee. The Plan shall assign and transfer to the Liquidation Trust, pursuant to Bankruptcy Code § 1123(b) and subject to

the Agneto Secured Liens, the following assets: (i) all Causes of Action<sup>1</sup>; (ii) any proceeds of any Causes of Action; (iii) the proceeds or right to collect from any and all available insurance policy, including without limitation, any directors' and officers' insurance policies and any business interruption insurance policies; and (iv) any other assets of the Debtor not assigned to the Unsecured Trust. With regard to the prosecution of the Causes of Action, the Liquidation Trustee shall be a statutory representative of the Estate pursuant to 11 U.S.C. § 1123(b)(3)(B) and have all rights and powers that a chapter 11 trustee, creditors committee, or similar official would have in pursuit of such Causes of Action. If the Debtor receives any proceeds from any of the assets listed in Section 3(c)(i), (ii), or (iii) prior to the Plan's effective date, the Debtor shall hold these proceeds as Agneto's Cash Collateral pending the Plan's effective date or as otherwise directed by a Cash Collateral Order.

- d. The Liquidation Trustee shall distribute the Liquidation Trust's proceeds in the following priority: (i) first to pay the expenses of the Liquidation Trust, (ii) second, to pay for the release and settlement of the Agneto Secured Liens; (iii) third, split as follows: ten percent (10%) to the Unsecured Trust on account of its beneficial interest, and all remaining interest and funds to Agneto, its successors and assigns.
- e. A Plan release, exculpation and injunction, to the fullest extent allowed by law, by the Debtor, its estate, and the Committee of Agneto, Mr. Franco, Mr. Solomon and each of their affiliates, members, officers, partners, directors, agents, employees, successors and attorneys (the "Released Parties").
- f. A Plan release, exculpation and injunction, to the fullest extent allowed by law for the Released Parties by the "Additional Releasing Parties" defined as: (i) all holders of Claims who do not timely opt out of the releases on the ballot or other applicable Court-approved release optout notice (together, an "OptOut Form"), (ii) holders of Claims that are unimpaired under the Plan; (iii) holders

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<sup>1</sup> "Causes of Action" means any action, cause of action, suit, account, controversy, agreement, promise, right to legal remedies, right to equitable remedies, right to payment, and Claim, whether known or unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured, unsecured and whether asserted or assertable directly or indirectly or derivatively, in law, equity or otherwise, including (a) avoidance action or other Claims under chapter 5 of the Bankruptcy Code against (i) any lien or secured Claim holder and (ii) any "insider" of the Debtor as defined by the Bankruptcy Code other than those insiders released pursuant to the Plan and any non-insider secured claims; (b) Claims involved in civil actions identified in the Debtor's Statement of Financial Affairs; (c) other damages (general, exemplary, or both) relating to or based on (i) fraud, negligence, gross negligence, willful misconduct, or any tort actions, (ii) violations of federal or state securities laws, (iii) violations of applicable corporate or partnership laws, (iv) breaches of fiduciary or agency duties, or (v) causes of action based on alter ego or other liability theories; (vi) based on any other Claim of the Debtor, to the extent not specifically compromised or released pursuant to this Agreement; (d) any claims of the Debtor for equitable subordination under Bankruptcy Code § 510(c) or under other applicable laws; and (e) any Claim of the Debtor to recharacterize any other party's Claim. To the extent the Committee has the right to assert any such Causes of Action as defined herein, the Committee shall assign such rights and Causes of Action to the Liquidation Trust (other than the avoidance actions under chapter 5 of the Bankruptcy Code as described in section 3(b)(iii)).

of Claims whose vote to accept or reject the Plan is solicited but who do not timely vote to either accept or reject the Plan; (iv) holders of Claims who vote to accept the Plan but do not opt out of the releases on an OptOut Form; and (v) holders of Claims who vote to reject the Plan but do not opt out of the releases on an OptOut Form. Any holder of a Claim that does not timely return a completed OptOut Form as set forth herein and the Plan shall be bound as an Additional Releasing Party.

- g. Any holder of a Claim that timely completes and returns an OptOut Form (an “OptOut Party”) affirmatively opting out of the Additional Releasing Party release shall be exempted from the Plan’s third party release of the Released Parties; however, the provisions herein shall not affect or otherwise impair the releases provided by the Debtor, the Estate, and the Committee set forth in sections 2(d) and 3(e). Any OptOut Party that is or becomes a beneficiary of the Unsecured Trust shall not be entitled to any distribution or share of the Agneto Settlement Reserve, and any share to which they otherwise would have been entitled shall be distributed pro rata to the other Unsecured Trust beneficiaries that are not an OptOut Party.

4. **Cash Collateral.** Agneto will permit the Debtor’s use of the Administrative Cash Collateral Reserve, plus any other Cash Collateral (apart from the proceeds of Causes of Action) in accordance with the Cash Collateral budgets approved by Agneto and Cash Collateral Orders of the Court; however, the Parties agree the final order authorizing the use of Cash Collateral in this Bankruptcy Case and the budget thereto shall include, and the Parties agree to seek approval of same simultaneously with any motion seeking approval of this Agreement:

- a. A Carve Out (as defined in the Cash Collateral Orders) for the Court approved professional fees and expenses of the Committee in the total cumulative amount of \$100,000.00 (one hundred thousand dollars);
- b. A Carve Out for the Court approved professional fees and expenses of the Debtor in the total cumulative amount of \$320,000.00 (three hundred twenty thousand dollars);
- c. A PACA Carve-Out (as defined in the Cash Collateral Order) up to \$250,000.00 (two hundred fifty thousand dollars) as provided by the Cash Collateral Orders;
- d. Payment in full of all statutory U.S. Trustee fees;
- e. A waiver of the right to challenge the validity, perfection, extent or priority of the Agneto Secured Claims and the Agneto Secured Liens; and
- f. A lien in favor of Agneto on the Causes of Action (as defined in this Agreement) assigned and transferred to the Liquidation Trust, and all proceeds thereof.

5. **Effect of Adverse Event.** In the event of a failure to confirm the Plan, or a conversion or dismissal of the Debtor's bankruptcy case, the Parties acknowledge this Agreement should be binding on their respective successors and assigns, and they agree that they will, to the extent they can, work to effectuate the terms of this Agreement in all circumstances and to effectuate the benefits this Agreement and Plan Terms provide to each Party and their constituents, including all economic and legal benefits and consideration. The Parties agree to request the Court to make this Agreement, including the Plan Terms, binding on any chapter 7 or 11 trustee appointed over the Debtor. Under no circumstances shall any termination of this Agreement alter, change, or affect the provisions of section 2(a) or (d) hereof. Further, under no circumstance, including conversion of the Debtor's bankruptcy case to one under chapter 7, shall any holder of a Claim against the Debtor receive a recovery from the Agneto Settlement Reserve unless and until such holder of the Claim has provided, or been deemed by the Court to have provided, a release to the Released Parties consistent with section 3(f) above.

6. **Merger and Integration.** This document sets forth the entire agreement of the Parties and all prior and contemporaneous conversations, agreements, understandings, covenants, representations, and negotiations with respect to the subject matter hereof are merged herein and superseded hereby. No other agreements, covenants, representations, or warranties, express or implied, oral or written, have been made by any of the Parties with respect to the subject matter hereof. This Agreement may not be amended except by written consent of the Parties. The Parties specifically disclaim reliance on any representation or statement not contained in writing herein.

7. **Counterparts.** This Agreement can be signed in facsimile or PDF counterparts.

8. **Jurisdiction.** The Bankruptcy Court shall retain jurisdiction to enforce and construe the terms and provisions of this Agreement.

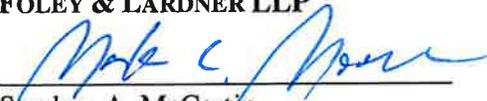
9. **Governing Law.** This Agreement is made and entered into under the laws of the State of Texas and Title 11 of the United States Code, and shall be interpreted, applied, and enforced under those laws. The Parties hereto agree that any litigation concerning this Agreement shall be held in the Court.

10. **No Presumption.** There shall be no drafting inference in connection with this Agreement.

11. **Cooperation and Reasonable Efforts.** Each Party shall use its commercially reasonable, good faith efforts to perform its obligations under this Agreement and to take, or cause to be taken, and do, or cause to be done, all things necessary, proper or advisable under applicable law, to obtain all consents required, to satisfy all conditions to its obligations hereunder and to cause the transactions contemplated herein to be effected as soon as practicable, in accordance with the terms of this Agreement and shall cooperate fully with each other Party and its officers, directors, employees, agents, counsel, accountants and other designees in connection with any step required to be taken as a part of its obligations under this Agreement.

[SIGNATURE PAGE FOLLOWS]

**FOLEY GARDERE  
FOLEY & LARDNER LLP**



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Stephen A. McCartin  
State Bar No. 13374700  
Mark C. Moore  
State Bar No. 24074751  
Melina T. Bales  
State Bar No. 24106851  
2021 McKinney Ave., Suite 1600  
Dallas, TX 75201  
Telephone: (214) 999-3000  
Facsimile: (214) 999-4667  
smccartin@foley.com  
mmoore@foley.com  
mbales@foley.com

**COUNSEL TO DEBTOR  
FRANKIE V'S KITCHEN, LLC**

**WICK PHILLIPS GOULD & MARTIN,  
LLP**

---

Jason M. Rudd  
State Bar No. 24028786  
Lauren K. Drawhorn  
State Bar No. 24074528  
J. Robertson Clarke  
State Bar No. 24108098  
3131 McKinney Ave., Suite 100  
Dallas, TX 75204  
Telephone: (214) 692-6200  
Facsimile: (214) 692-6255  
jason.rudd@wickphillips.com  
lauren.drawhorn@wickphillips.com  
robbie.clarke@wickphillips.com

**COUNSEL TO SECURED CREDITOR,  
AGNETO HOLDINGS, LP**

**MUNSCH HARDT KOPF & HARR, P.C.**

---

Kevin M. Lippman  
State Bar No. 00784479  
Davor Rukavina  
State Bar No. 24030781  
Thomas D. Berghman  
State Bar No. 24082683  
500 N. Akard St., Suite 3800  
Dallas, TX 75201  
Telephone: (214) 855-7500  
Facsimile: (214) 855-7584  
klippman@munsch.com  
drukavina@munsch.com  
tberghman@munsch.com

**COUNSEL TO OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS**

**FOLEY GARDERE  
FOLEY & LARDNER LLP**

---

Stephen A. McCartin  
State Bar No. 13374700  
Mark C. Moore  
State Bar No. 24074751  
Melina T. Bales  
State Bar No. 24106851  
2021 McKinney Ave., Suite 1600  
Dallas, TX 75201  
Telephone: (214) 999-3000  
Facsimile: (214) 999-4667  
smccartin@foley.com  
mmoore@foley.com  
mbales@foley.com

**COUNSEL TO DEBTOR  
FRANKIE V'S KITCHEN, LLC**

**WICK PHILLIPS GOULD & MARTIN,  
LLP**



---

Jason M. Rudd  
State Bar No. 24028786  
Lauren K. Drawhorn  
State Bar No. 24074528  
J. Robertson Clarke  
State Bar No. 24108098  
3131 McKinney Ave., Suite 100  
Dallas, TX 75204  
Telephone: (214) 692-6200  
Facsimile: (214) 692-6255  
jason.rudd@wickphillips.com  
lauren.drawhorn@wickphillips.com  
robbie.clarke@wickphillips.com

**COUNSEL TO SECURED CREDITOR,  
AGNETO HOLDINGS, LP**

**MUNSCH HARDT KOPF & HARR, P.C.**

---

Kevin M. Lippman  
State Bar No. 00784479  
Davor Rukavina  
State Bar No. 24030781  
Thomas D. Berghman  
State Bar No. 24082683  
500 N. Akard St., Suite 3800  
Dallas, TX 75201  
Telephone: (214) 855-7500  
Facsimile: (214) 855-7584  
klippman@munsch.com  
drukavina@munsch.com  
tberghman@munsch.com

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UNSECURED CREDITORS**

**FOLEY GARDERE  
FOLEY & LARDNER LLP**

---

Stephen A. McCartin  
State Bar No. 13374700  
Mark C. Moore  
State Bar No. 24074751  
Melina T. Bales  
State Bar No. 24106851  
2021 McKinney Ave., Suite 1600  
Dallas, TX 75201  
Telephone: (214) 999-3000  
Facsimile: (214) 999-4667  
smccartin@foley.com  
mmoore@foley.com  
mbales@foley.com

**COUNSEL TO DEBTOR  
FRANKIE V'S KITCHEN, LLC**

**WICK PHILLIPS GOULD & MARTIN,  
LLP**

---

Jason M. Rudd  
State Bar No. 24028786  
Lauren K. Drawhorn  
State Bar No. 24074528  
J. Robertson Clarke  
State Bar No. 24108098  
3131 McKinney Ave., Suite 100  
Dallas, TX 75204  
Telephone: (214) 692-6200  
Facsimile: (214) 692-6255  
jason.rudd@wickphillips.com  
lauren.drawhorn@wickphillips.com  
robbie.clarke@wickphillips.com

**COUNSEL TO SECURED CREDITOR,  
AGNETO HOLDINGS, LP**

**MUNSCH HARDT KOPF & HARR, P.C.**



---

Kevin M. Lippman  
State Bar No. 00784479  
Davor Rukavina  
State Bar No. 24030781  
Thomas D. Berghman  
State Bar No. 24082683  
500 N. Akard St., Suite 3800  
Dallas, TX 75201  
Telephone: (214) 855-7500  
Facsimile: (214) 855-7584  
klippman@munsch.com  
drukavina@munsch.com  
tberghman@munsch.com

**COUNSEL TO OFFICIAL COMMITTEE OF  
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