

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

In re:

DIESEL USA, Inc.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 19-10432 (MFW)

**Re: Docket No. 29**

**NOTICE OF FILING OF REVISED DISCLOSURE  
STATEMENT WITH TECHNICAL MODIFICATIONS**

**PLEASE TAKE NOTICE** that on March 5, 2019, the Debtor filed the *Disclosure Statement in Connection With Chapter 11 Plan of Reorganization of Diesel USA, Inc.* [Docket No. 29] (the “Disclosure Statement”).

**PLEASE TAKE FURTHER NOTICE** that attached hereto as **Exhibit 1** is a revised copy of the Disclosure Statement (the “Revised Disclosure Statement”), incorporating certain technical modifications from the U.S. Trustee. For the convenience of the Court and other interested parties, attached hereto as **Exhibit 2** is a blackline comparing the Revised Disclosure Statement to the Disclosure Statement.

[Signature Page Follows]

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<sup>1</sup> The last four digits of the Debtor’s federal tax identification number are 4308. The Debtor’s principal offices are located at 220 West 19th Street, New York, New York 10011.

Dated: March 7, 2019  
Wilmington, Delaware

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**EXHIBIT 1**

**Revised Disclosure Statement**

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

In re:

DIESEL USA, Inc.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 19-10432 (MFW)

**DISCLOSURE STATEMENT IN CONNECTION WITH  
CHAPTER 11 PLAN OF REORGANIZATION OF DIESEL USA, INC**

THIS IS NOT A SOLICITATION OF ACCEPTANCES OR REJECTIONS OF ANY CHAPTER 11 PLAN DESCRIBED HEREIN. THIS DOCUMENT IS PROVIDED FOR INFORMATION PURPOSES ONLY TO ENABLE HOLDERS OF CLAIMS AND INTERESTS TO DETERMINE WHETHER TO OBJECT TO THE CHAPTER 11 PLAN DESCRIBED HEREIN.

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<sup>1</sup> The last four digits of the Debtor's federal tax identification number are 4308. The Debtor's principal offices are located at 220 West 19th Street, New York, NY 10011.

## **DISCLAIMER**

This disclosure/information statement (the “Disclosure Statement”) contains summaries of certain provisions of the Debtor’s proposed *Chapter 11 Plan of Reorganization of Diesel USA, Inc.* dated March 5, 2019 (as may be amended, supplemented, or otherwise modified from time to time, the “Plan”)<sup>2</sup> and certain other documents and financial information. The Debtor is making this Disclosure Statement available to each Holder of Claims against and Interests in the Debtor as a matter of disclosure pursuant to section 1125 of the Bankruptcy Code. All classes of Claims and Interests are unimpaired and therefore deemed to accept the Plan. Accordingly, the Debtor is not soliciting votes to accept or reject the Plan and is making the Disclosure Statement available solely for informational purposes and the information included herein should not be relied upon for any purpose other than to determine whether or not to object to the Plan. The Debtor believes that these summaries are fair and accurate. The summaries of the financial information and the documents which are attached to, or incorporated by reference in, the Disclosure Statement are qualified in their entirety by reference to such information and documents. In the event of any inconsistency or discrepancy between a description in the Disclosure Statement and the terms and provisions of the Plan or the other documents and financial information incorporated in the Disclosure Statement by reference, the Plan or the other documents and financial information, as the case may be, shall govern for all purposes.

The statements contained in this Disclosure Statement are made only as of the date of this Disclosure Statement, and there is no assurance that the statements contained in this Disclosure Statement will be correct at any time after such date. Except as otherwise provided in the Plan or in accordance with applicable law, the Debtor is under no duty to update or supplement this Disclosure Statement. Holders of Claims and Interests reviewing the Disclosure Statement should not assume at the time of such review that there have been no changes in the facts set forth in this Disclosure Statement since the date of this Disclosure Statement. No Holder of a Claim or Interest should rely on any information, representations, or inducements that are not contained in or are inconsistent with the information contained in this Disclosure Statement, the documents attached to this Disclosure Statement, and the Plan. This Disclosure Statement does not constitute legal, business, financial, or tax advice. Any Person or entity desiring any such advice should consult with their own advisors. Neither the United States Securities and Exchange Commission nor any similar federal, state, local, or foreign regulatory agency has approved or disapproved of the Plan or passed upon the accuracy or adequacy of the statements contained in this Disclosure Statement. The Debtor has sought to ensure the accuracy of the financial information provided in this Disclosure Statement, but the financial information contained in, or incorporated by reference into, this Disclosure Statement has not been, and will not be, audited or reviewed by the Debtor’s independent auditors unless explicitly provided otherwise. Counsel to and other advisors retained by the Debtor have relied upon information provided by the Debtor in connection with the preparation of this Disclosure Statement. Although counsel to and other advisors retained by the Debtor have performed certain limited due diligence in connection with the preparation of this Disclosure Statement, they have not independently verified the information contained herein.

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<sup>2</sup> Capitalized terms not otherwise defined in this Disclosure Statement have the meanings ascribed to them in the Plan.

Regarding contested matters, adversary proceedings, and other pending, threatened, or potential litigation or other actions, this Disclosure Statement does not constitute, and may not be construed as, either (a) an admission of fact, liability, stipulation, or waiver by the Debtor or any other party, but rather as a statement made in the context of settlement negotiations in accordance with Rule 408 of the Federal Rules of Evidence and any analogous state or foreign laws or rules.

Confirmation and consummation of the Plan are subject to certain material conditions precedent described in Article VIII of the Plan. There is no assurance that the Plan will be confirmed or, if confirmed, that such material conditions precedent will be satisfied or waived. You are encouraged to read this Disclosure Statement in its entirety, including the Plan and the Section in this Disclosure Statement entitled "Risk Factors," before considering filing an objection to the Plan. The Bankruptcy Court's approval of this Disclosure Statement does not constitute a guarantee of the accuracy or completeness of the information contained in this Disclosure Statement or an endorsement of the merits of the Plan by the Bankruptcy Court.

Except as otherwise expressly set forth herein, all information, representations, or statements contained herein have been provided by the Debtor. No person is authorized by the Debtor in connection with this Disclosure Statement or the Plan to give any information or to make any representation or statement regarding this Disclosure Statement or the Plan other than as contained in this Disclosure Statement and the exhibits attached hereto or as otherwise incorporated herein by reference or referred to herein. If any such information, representation, or statement is given or made, it may not be relied upon as having been authorized by the Debtor.

This Disclosure Statement contains certain forward-looking statements, all of which are based on various estimates and assumptions. Such forward-looking statements are subject to inherent uncertainties and to a wide variety of significant business, economic, and competitive risks, including, but not limited to, those summarized herein. When used in this Disclosure Statement, the words "anticipate," "believe," "estimate," "will," "may," "intend," and "expect" and similar expressions generally identify forward-looking statements. Although the Debtor believes that its plans, intentions, and expectations reflected in the forward-looking statements are reasonable, they cannot be sure that they will be achieved. These statements are only predictions and are not guarantees of future performance or results. Forward-looking statements are subject to risks and uncertainties that could cause actual results to differ materially from those contemplated by a forward-looking statement. All forward-looking statements attributable to the Debtor or Persons or entities acting on its behalf are expressly qualified in their entirety by the cautionary statements set forth in this Disclosure Statement. Forward-looking statements speak only as of the date on which they are made. Except as required by law, the Debtor expressly disclaims any obligation to update any forward-looking statement, whether as a result of new information, future events, or otherwise.

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
ARTICLE I <u>INTRODUCTION, SUMMARY, AND OVERVIEW OF CHAPTER 11</u> .....	1
A. <u>Summary of the Plan</u> .....	3
B. <u>Overview of Chapter 11</u> .....	5
C. <u>Rules of Construction</u> .....	5
ARTICLE II <u>BACKGROUND REGARDING THE DEBTOR</u> .....	6
A. <u>The Debtor’s Operations</u> .....	6
B. <u>Employees</u> .....	7
C. <u>Debt Obligations</u> .....	7
D. <u>Transfer Pricing Matters</u> .....	7
E. <u>The License Agreement</u> .....	8
F. <u>Circumstances Leading to Chapter 11 Filing</u> .....	9
ARTICLE III <u>SIGNIFICANT EVENTS IN THE CHAPTER 11 CASE</u> .....	13
A. <u>Automatic Stay; Administrative Status</u> .....	13
B. <u>First Day Motions</u> .....	13
C. <u>Combined Hearing Motion and Timetable for the Chapter 11 Case</u> .....	16
ARTICLE IV <u>DESCRIPTION OF THE PLAN</u> .....	16
A. <u>Treatment of Unclassified Claims under the Plan</u> .....	16
B. <u>Classification and Treatment of Classified Claims and Interests</u> .....	17
C. <u>No Impairment; No Class Entitled to Vote</u> .....	20
D. <u>Resolution of Claims</u> .....	20
E. <u>Implementation of the Plan</u> .....	20
ARTICLE V <u>EXECUTORY CONTRACTS AND UNEXPIRED LEASES</u> .....	23
A. <u>Assumption and Rejection of Executory Contracts and Unexpired Leases</u> .....	23
B. <u>Procedures Related to Rejection of Executory Contracts or Unexpired Leases</u> .....	24
C. <u>Cure of Defaults for Assumed Executory Contracts and Unexpired Leases</u> .....	25
D. <u>License Agreement</u> .....	26
E. <u>Insurance Policies</u> .....	26
F. <u>Modifications, Amendments, Supplements, Restatements, or Other Agreements</u> .....	27
G. <u>Contracts and Leases Entered into After the Petition Date</u> .....	27
H. <u>General Reservation of Rights</u> .....	27

ARTICLE VI EFFECT OF THE PLAN ON CLAIMS, INTERESTS AND CAUSES OF ACTION ..... 27

    A. Binding Effect..... 27

    B. Vesting of Assets ..... 28

    C. Discharge ..... 28

    D. Term of Injunctions or Stays..... 28

    E. Releases by the Debtor..... 28

    F. **Releases by Holders of Claims**..... 29

    G. **Injunction**..... 29

    H. **Cause of Action Injunction** ..... 30

    I. **Exculpation**..... 30

    J. Preservation and Application of Insurance..... 30

    K. Compromise of Controversies ..... 31

    L. Waiver of Avoidance Actions; Reservation of Rights..... 31

    M. Retention, Reservation and Prosecution of Causes of Action ..... 31

ARTICLE VII CONDITIONS TO OCCURRENCE OF EFFECTIVE DATE..... 32

    A. Conditions to Effectiveness ..... 32

    B. Waiver of Conditions..... 32

    C. Effect of Non-Occurrence of the Effective Date ..... 32

ARTICLE VIII MISCELLANEOUS PROVISIONS OF THE PLAN..... 33

    A. Retention of Jurisdiction..... 33

    B. Effecting Documents; Further Transactions; Timing ..... 34

    C. Governing Law ..... 34

    D. Exemption from Transfer Taxes ..... 35

    E. Post-Effective Date Fees; Final Decree ..... 35

    F. Modification and Amendments..... 35

    G. Method of Payment; Payments, Filings, and Notices Only on Business Days..... 35

    H. Undeliverable or Unclaimed Distributions ..... 35

    I. Time Bar to Cash Payments..... 36

    J. Dissolution of any Statutory Committee..... 36

    K. Revocation, Withdrawal, or Non-Consummation ..... 36

    L. Notices ..... 36

    M. Entire Agreement..... 37

    N. Severability ..... 37

    O. Exhibits..... 38



P. <u>Conflicts</u> .....	38
ARTICLE IX <u>STATUTORY REQUIREMENTS FOR CONFIRMATION OF THE PLAN</u> .....	38
A. <u>Confirmation Hearing</u> .....	38
B. <u>Confirmation Standards</u> .....	38
C. <u>No Need to Solicit Votes and Acceptance Requirements</u> .....	40
D. <u>Feasibility of the Plan</u> .....	41
E. <u>Best Interests Test</u> .....	41
ARTICLE X <u>CERTAIN FEDERAL UNITED STATES INCOME TAX CONSEQUENCES OF THE PLAN</u> .....	41
A. <u>Introduction</u> .....	41
B. <u>Federal Income Tax Consequences to Creditors</u> .....	42
ARTICLE XI <u>PLAN-RELATED RISK FACTORS</u> .....	42
A. <u>Generally</u> .....	42
B. <u>Certain Bankruptcy Considerations</u> .....	42
C. <u>Claims Estimations</u> .....	43
D. <u>Bankruptcy-Specific Risk Factors That Could Negatively Impact the Debtors' Business</u> .....	43
E. <u>Risks Associated with Forward-Looking Statements</u> .....	46
ARTICLE XII <u>ALTERNATIVES TO THE PLAN</u> .....	46
A. <u>Continuation of the Chapter 11 Case</u> .....	47
B. <u>Alternative Plans of Reorganization</u> .....	47
C. <u>Liquidation under Chapter 7</u> .....	47
ARTICLE XIII <u>CONCLUSION</u> .....	48

## ARTICLE I

### **INTRODUCTION, SUMMARY, AND OVERVIEW OF CHAPTER 11**

Pursuant to section 1125 of the Bankruptcy Code, Diesel USA, Inc., as debtor and debtor in possession (the “Debtor”) in the above-captioned case under chapter 11 of the Bankruptcy Code (the “Chapter 11 Case”) submits this Disclosure Statement in connection with confirmation of the Plan. The Debtor filed the Plan and this Disclosure Statement with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) on March 5, 2019. This Disclosure Statement provides information regarding the Plan, which the Debtor is seeking to have confirmed by the Bankruptcy Court. A copy of the Plan is attached hereto as Exhibit A.

The Plan comprises the Debtor’s proposal for a comprehensive reorganization of the Debtor that will (i) restructure certain of the Debtor’s obligations so that the reorganized Debtor will be financially stable and able to fulfill its ongoing business relationships with all of its constituencies, including customers, vendors, suppliers, and employees, (ii) leave all classes of Claims and Interests Unimpaired, and (iii) allow the Debtor to emerge from chapter 11 expeditiously and efficiently.

On March 5, 2019, the Debtor filed the *Debtor’s Motion for Entry of an Order (I) Scheduling Combined Hearing on Adequacy of Disclosure Statement and Confirmation Of Plan On Shortened Notice; (II) Fixing Deadline to Object to Disclosure Statement and Plan; (III) Waiving Solicitation of the Plan and Approving Manner of Notice of Commencement, Combined Hearing, and Objection Deadline; (IV) Approving Notice and Objection Procedures for the Rejection of Executory Contracts and Unexpired Leases; (V) Conditionally (A) Directing the United States Trustee Not to Convene Section 341(A) Meeting of Creditors and (B) Waiving Requirement of Filing Statement of Financial Affairs and Schedules of Assets and Liabilities; and (VI) Granting Related Relief* (the “Combined Hearing Motion”). The Combined Hearing Motion seeks, among other things:

- (a) to schedule a combined hearing (the “Combined Hearing”) on April 12, 2019 to consider approval of the adequacy of the Disclosure Statement and confirmation of the Plan;
- (b) to establish procedures for objecting to the Disclosure Statement and Plan;
- (c) conditionally (i) directing the U.S. Trustee not to convene a meeting of creditors under section 341(a) of the Bankruptcy Code, and (ii) excusing the requirement that the Debtor file a statement of financial affairs and schedules of assets and liabilities;
- (d) approving notice and objection procedures for the rejection of Executory Contracts and Unexpired Leases through the Plan; and
- (e) approval of the form, manner, and sufficiency of notice of the Combined Hearing (the “Combined Hearing Notice”), which would set forth the deadline and procedures for filing objections to the adequacy of the Disclosure Statement and confirmation of the Plan; the manner in which the Disclosure Statement and the Plan and other pleadings filed in this chapter 11 case can be obtained or viewed electronically; and a summary of the treatment of each class under the Plan.

The Debtor is making this Disclosure Statement available solely as a matter of disclosure pursuant to section 1125 of the Bankruptcy Code so that holders of Claims and Interests can determine whether to object to confirmation of the Plan. The Debtor is not soliciting votes to accept or reject the Plan. All Classes of Claims and Interests are Unimpaired under the Plan and therefore deemed to accept the Plan. All capitalized terms used but not otherwise defined in this Disclosure Statement shall have the meanings ascribed to them in the Plan. The rules of interpretation set forth in Article I.B of the Plan shall govern the interpretation of this Disclosure Statement.

The purpose of this Disclosure Statement is to provide Holders of Claims and Interests with adequate information about (i) the Debtor's business and certain historical events, (ii) the Chapter 11 Case, (iii) the rights of Holders of Claims and Interests under the Plan, and (iv) other information necessary to enable each Holder of a Claim to make an informed judgment as to whether or not to object to confirmation of the Plan. The Debtor believes that the Plan is in the best interests of all Holders of Claims and Interests.

### **PRELIMINARY STATEMENT**

The Debtor, a Delaware corporation, is a wholly-owned subsidiary of the Parent, Diesel S.p.A., an Italian corporation (the "Parent"). The Debtor is the United States member of the international family of Diesel brand companies (collectively, "Diesel"). Beginning as a leading pioneer in denim, Diesel continues to specialize in a variety of denim-wear but has expanded its offerings to include a range of casual clothing and accessories for men, women, and children. Diesel has likewise expanded geographically, now operating in approximately 85 countries.

The Debtor is the exclusive distributor of Diesel products in the United States market and, from its 1995 founding until the 2008 recession, was both iconic and profitable. Unfortunately, however, the Debtor was not spared the effects of the recession or the downturn in the retail industry that followed and, in recent years, the Debtor's sales have declined precipitously while its losses mounted. In addition to the factors plaguing retail in general, the Debtor's recent challenges stem in large part from the long-term effects of certain strategic decisions made by prior management in an effort to effect a post-recession turnaround, including the negotiation and entry into several leases for certain stores as well as allocation of capital among the Debtor's operating segments. The Debtor has engaged with landlords in an effort to reduce its fixed costs and is otherwise working to correct prior operational miscues.

New management has recognized the need to address the Debtor's more fundamental issues, which, if allowed to continue, will prevent its ability to continue operating as a going-concern. The Debtor has spent the past year attempting to address these issues outside the context of chapter 11. Unfortunately, those efforts have been unsuccessful. Consequently, the Debtor commenced this chapter 11 case obtain relief from its burdensome unexpired leases and executory contracts in order to revive its brick-and-mortar retail operations. The resulting cost-savings and additional runway will enable the Debtor to implement the Reorganization Business Plan (as defined below), which the Debtor's projections indicate will return the Debtor to stand-alone profitability by 2021, thereby ensuring its ability to continue operating as a going-concern, saving over 300 jobs, and creating new ones through new store openings. The Debtor is currently analyzing all of its executory contracts and unexpired leases to determine which will be rejected through this Chapter 11 Case, which will be accomplished through the Plan. Absent the

ability to utilize the chapter 11 process to obtain such relief, the Debtor's ability to continue operating would be severely threatened and it would be unable to implement the Reorganization Business Plan, which is crucial to its ability to continue operating as a going-concern.

Furthermore, the Debtor's ability to operate depends on its License Agreement with the Parent, pursuant to which the Parent licenses to the Debtor the exclusive right to distribute Diesel products in the United States. As a result, the Debtor's ability to continue operating depends on certain crucial concessions from the Parent as licensor, including its consent to the assumption and renewal of the License Agreement. The Parent is prepared to provide the necessary consent along with funding necessary for implementing the Reorganization Business Plan in the approximate amount of \$36 million, subject to the Debtor's ability to achieve a timely and successful restructuring through this Chapter 11 Case. Accordingly, the Parent has expressly conditioned its concessions on the occurrence of the Plan's Effective Date by June 21, 2019.

A. Summary of the Plan

. The Plan provides for the following key economic terms and mechanics:<sup>3</sup>

1. All ordinary course trade creditors of the Debtor will be Unimpaired and have their Allowed General Unsecured Claims either Reinstated or paid in full in cash with interest. In addition, Interests in the Debtor will be Reinstated to preserve the Debtor's existing corporate structure.
2. Certain executory contracts and unexpired leases will be rejected through the Plan pursuant to section 365 of the Bankruptcy Code. The counterparties for the rejected executory contracts and unexpired leases will also be unimpaired as their Allowed Rejection Damages Claims will be paid in full in cash in accordance with the relevant provisions of the Bankruptcy Code plus interest.
3. Except to the extent specifically rejected or modified through this Chapter 11 Case or the Plan, all executory contracts and unexpired leases will be assumed and all employee benefits, customer concessions, insurance policies, privacy policies, and other ongoing obligations of the Debtor will be honored after the Effective Date.
4. The Debtor will fund distributions under the Plan with currently available cash on hand as of the Plan's Effective Date.
5. On the Effective Date, the Debtor will obtain the Parent Commitment providing for, among other things, funding from the Parent that will be used to fund the Reorganization Business Plan and the Parent's consent to the Debtor's assumption of the License Agreement.

The table below summarizes the classification, treatment, and estimated percentage recoveries of classified Claims and Interests under the Plan. The summaries provided below are qualified in their entirety by reference to the provisions of the Plan. A more detailed description

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<sup>3</sup> Any summaries or descriptions of the Plan are qualified in their entirety by reference to the provisions of the Plan. See Exhibit A hereto.

of the classification and treatment of Claims and Interests is provided in Article IV of this Disclosure Statement.

<u>Class</u>	<u>Proposed Treatment</u>	<u>Estimated Recovery</u>
Class 1 – Other Priority Claims  <b>(unimpaired; deemed to accept the Plan)</b>	Except to the extent that a Holder of an Allowed Other Priority Claim agrees to less favorable treatment, in exchange for full and final satisfaction, settlement, release, and discharge of each Allowed Other Priority Claim, each Holder of such Allowed Other Priority Claim shall receive the following at the option of the Debtor:  A. Payment in full in Cash in the ordinary course of business; B. Reinstatement of such Allowed Other Priority claim; or C. Such other treatment rendering such Allowed Other Priority Claim Unimpaired.	100%
Class 2 – Secured Claims  <b>(unimpaired; deemed to accept the Plan)</b>	Except to the extent that a Holder of an Allowed Secured Claim agrees to less favorable treatment, each holder of an Allowed Secured Claim shall receive, in exchange for full and final satisfaction, settlement, release, and discharge of such Claim, the following, at the option of the Debtor:  A. Payment in full in Cash in the ordinary course of business; B. Reinstatement of such Allowed Secured claim; or C. Such other treatment rendering such Allowed Secured Claim Unimpaired.	100%
Class 3 – General Unsecured Claims  <b>(unimpaired; deemed to accept the Plan)</b>	Except to the extent that a Holder of an Allowed General Unsecured Claim agrees to less favorable treatment, each Holder of an Allowed General Unsecured Claim shall, in exchange for full and final satisfaction, settlement, release, and discharge of such Claim, receive at the sole option of the Debtor either:  A. Reinstatement as of the Effective Date and satisfaction in full in the ordinary course of the Debtor’s or Reorganized Debtor’s business operations in accordance with the terms and conditions of the particular transaction giving rise to such Allowed General Unsecured Claim; B. Payment in Cash in the full amount of its Allowed General Unsecured Claim plus post-petition interest on such Allowed General Unsecured Claim provided by contract or, if no contract exists, at the statutory rate provided by 29 U.S.C. § 1961, from the Effective Date to the date of payment, which payment shall occur on the later of (i) the Effective Date and (ii) the date due in the ordinary course of business in accordance with the terms and conditions of the particular transaction giving rise to such Allowed General Unsecured Claim; or C. Such other treatment as would render such Claim otherwise Unimpaired pursuant to section 1124 of the Bankruptcy Code.	100%
Class 4 – Rejection Damages Claims  <b>(unimpaired; deemed to accept the Plan)</b>	Except to the extent that a Holder of an Allowed Rejection Damages Claim agrees to less favorable treatment, each Holder of an Allowed Rejection Damages Claim shall, in exchange for full and final satisfaction, settlement, release, and discharge of such Claim, receive payment in Cash in the full amount of its Allowed Rejection Damages Claim plus post-petition interest on such Allowed Rejection Damages Claim provided by contract or, if not specified by the contract, at the statutory rate provided by 29 U.S.C. § 1961, from the Effective Date to the date of payment, which payment shall occur on the later of (i) the Effective Date and (ii) thirty (30) days after entry of a Final	100%

<u>Class</u>	<u>Proposed Treatment</u>	<u>Estimated Recovery</u>
	Order rendering such Claim an Allowed Rejection Damages Claim.	
Class 5 – Interests  (unimpaired; deemed to accept the Plan)	All holders of Interests shall retain their Interests.	100%

B. Overview of Chapter 11

Pursuant to chapter 11 of the Bankruptcy Code, a debtor may reorganize for its benefit and the benefit of its creditors and interest holders. In a chapter 11 case, the debtor typically remains in control of the estate as a “debtor-in-possession.” Upon filing a petition for chapter 11 relief and during the pendency of a case, the Bankruptcy Code imposes an automatic stay against creditors’ attempts to collect or enforce, through litigation or otherwise, claims against the debtor. The automatic stay provisions of section 362 of the Bankruptcy Code, unless modified by court order, will generally prohibit or restrict attempts by creditors to collect or enforce any claims against the debtor that arose prior to the commencement of the chapter 11 case.

A chapter 11 plan is the vehicle for implementing the reorganization and satisfying or otherwise addressing the claims against and interests in a debtor. After the chapter 11 plan has been filed, the holders of claims against and interests in a debtor, whose claims or interests are impaired under the Plan, may vote to accept or reject the Plan. Section 1125 of the Bankruptcy Code requires that before soliciting acceptances of the proposed plan, a debtor must prepare a disclosure statement containing adequate information of such kind, and in such detail, as to enable a hypothetical reasonable investor to make an informed judgment about the Plan. **In this case, no class of Claims or Interests is impaired under the Plan and all classes are deemed to have accepted the Plan. Therefore, there are no classes of Claims or Interests that are entitled to vote to accept or reject the Plan. The Debtor is making this Disclosure Statement available solely for informational purposes to enable Holders of Claims and Interests to determine whether to object to the Plan.**

C. Rules of Construction.

1. Generally. For purposes of the Plan: (i) any reference in the Plan to an existing document or exhibit filed or to be filed means such document or exhibit as it may have been or may be amended, modified or supplemented; (ii) unless otherwise specified, all references in the Plan to Sections, Articles, and exhibits are references to Sections, Articles, and exhibits of or to the Plan; and (iii) the rules of construction set forth in section 102 of the Bankruptcy Code and the Bankruptcy Rules shall apply unless superseded in the Plan or in the Confirmation Order.

2. Time Periods. In computing any period of time prescribed or allowed by the Plan, unless otherwise set forth therein or determined by the Bankruptcy Court, the provisions of Bankruptcy Rule 9006 shall apply.

3. Miscellaneous Rules. (i) The words “herein,” “hereof,” “hereunder,” and other words of similar import refer to the Plan as a whole, not to any particular Section, subsection, or clause, unless the context requires otherwise; (ii) whenever it appears appropriate from the context, each term stated in the singular or the plural includes the singular and the plural, and each pronoun stated in the masculine, feminine or neuter includes the masculine, feminine, and the neuter; and (iii) captions and headings to Articles and Sections of the Plan are inserted for convenience of reference only and are not intended to be a part or to affect the interpretation of the Plan.

## ARTICLE II

### **BACKGROUND REGARDING THE DEBTOR**

#### A. The Debtor’s Operations<sup>4</sup>

The Debtor advertises, markets, and distributes Diesel products and other merchandise through retail, e-commerce, and wholesale channels throughout the United States. As is customary for a company of its size and scale, the Debtor maintains business relationships and enters into transactions with the Parent and other foreign affiliates in the ordinary course of its business. Specifically, approximately half of the Debtor’s merchandise are Diesel products, which the Debtor purchases in the ordinary course of business from the Parent for resale in the United States. The Debtor purchases its remaining merchandise from various foreign and United States third-party suppliers. The Debtor leases all of its retail store locations, inventory and storage warehouses, and corporate headquarters, which is located in New York City and owned by a related party. The Debtor does not own any real property. The Debtor sells and distributes its merchandise in three channels: (i) brick-and-mortar retail, (ii) e-commerce, and (iii) wholesale channels.

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<sup>4</sup> For a more detailed description of the Debtor’s background and operations, see *Declaration of Mark G. Samson in Support of Chapter 11 Petition and First Day Pleadings* filed concurrently herewith (the “First Day Declaration”).

1. Brick-and-Mortar Retail: As of the Petition Date, the Debtor's brick-and-mortar retail operations consists of 28 retail store locations in 11 states, comprised of 17 full-price retail stores and 11 factory outlet stores.

2. E-Commerce: The Debtor also retails Diesel products on the internet through the Diesel website: <https://shop.diesel.com/>. The Debtor's online sales are managed by a third-party e-commerce vendor, who receives, fulfills, and ships customer's online orders from the third-party's warehouse and handles customer service related to the online orders.

3. Wholesale: In addition, the Debtor's products are sold through wholesale channels at locations and e-commerce platforms not operated by the Debtor across the United States as well as online with over 200 retailers such as department stores, specialty retailers and boutiques, and other retailers.

#### B. Employees

As of the Petition Date, the Debtor employs approximately 380 employees. Approximately 75 are employed at the corporate level, including roles such as human resources, accounting, wholesale operations, and purchasing. The remaining employees are employed across the Debtor's retail store locations, consisting of store managers and retail sales associates. The Debtor is not a party to any collective bargaining agreement and none of the employees are unionized. The Debtor does not have any pension or retiree obligations.

#### C. Debt Obligations.

As of the Petition Date, the Debtor estimates that it owes approximately \$7.4 million in unsecured trade obligations. The Debtor has been paying all of its trade vendors in the ordinary course of business and is substantially current with respect to its trade obligations. In addition, the Debtor is obligated under an undrawn Irrevocable Standby Letter of Credit dated as of July 2, 2018 (the "Letter of Credit") issued by UniCredit S.p.A. As of the Petition Date, the amount of the Letter of Credit is approximately \$2.5 million. The Letter of Credit is partially cash collateralized in the approximate amount of \$1.2 million and expires on January 31, 2020.

#### D. Transfer Pricing Matters.

The Debtor purchases approximately half of its merchandise from the Parent and also engages in certain other transactions with the Parent and other Diesel affiliates in the ordinary course of the Debtor's business. The Parent is an Italian entity, and thus the Parent and Debtor are subject to different tax jurisdictions (namely, Italy and the United States), the intercompany transactions can give rise to complicated taxation and transfer pricing issues. After the Debtor was audited by the IRS for several tax years prior to 2015, the Debtor voluntarily engaged tax professionals in 2015 to assess the existing transfer pricing policy and to advise and assist the Debtor in formulating and undertaking remedial measures. The purpose of these measures was to implement appropriate adjustments and controls to the transfer pricing policy that would



ensure arm's-length results for the intercompany transactions as well as compliance with U.S. and Italian tax regulations and with the taxation treaty between the two countries (the "Treaty").<sup>5</sup>

The Debtor's tax professionals formulated a solution and in 2016 proposed to the IRS and Italian tax authority a bilateral "Advance Pricing Agreement" ("APA"), an agreement pursuant to the Treaty between the Debtor, the Parent, and each of the IRS and the Italian tax authority that would prospectively define the transfer pricing methodology to be employed during the tax years 2015-2019.<sup>6</sup> The proposed methodology provides for an annual profit adjustment as between the Debtor and Parent if the Debtor's profit (or loss) for a given covered year is above a specified target (in which case, the Debtor pays the Parent a royalty) or below the target (in which case, the Parent pays the Debtor what is referred to as a "Market Contribution"). In either case, the profit adjustment is intended to bring the Debtor's profitability in line with a set of comparable companies. The APA is subject to a lengthy approval process by both the IRS and the Italian tax authority. The Debtor is informed that the authorities concluded an agreement with respect to the APA last month and the Debtor is currently awaiting the final terms of the APA from the IRS, which is expected to be provided soon.

The Debtor's proposed transfer pricing adjustment was fully voluntary and intended to address all concerns with respect to the 2015-2019 period, ensure compliance going forward and avoid further audits, and to avoid harmful double taxation during all relevant periods. The Debtor expects that its proposal will accomplish each of these goals. To the extent it may be considered an executory contract, the Debtor intends to assume the APA in accordance with section 365 of the Bankruptcy Code and fully perform and to comply with the terms of the APA with the IRS and will not seek to cancel, revoke or revise the APA.

#### E. The License Agreement.

The Debtor operates in the United States pursuant to the License Agreement, under which the Parent licenses to the Debtor the exclusive right to use certain trademarks and other intellectual property for the purpose of distributing, advertising, and selling Diesel products in the United States. Under the license agreement in effect prior to 2015, the Debtor paid royalties to the Parent and the Parent would occasionally provide the Debtor with capital infusions. In 2015, the Debtor and the Parent negotiated and entered into a new License Agreement to, among other things, implement certain aspects of the transfer pricing methodology (described above) to be proposed by the Debtor and Parent in the APA for the years 2015-2019. The License Agreement currently expires on December 31, 2019 but will automatically renew for one year absent notice from either party of its intent to terminate six-months prior to expiration, or by June 30, 2019. Based on the proposed method, the Debtor's losses in 2018 would require a

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<sup>5</sup> Known as the *Convention Between The Government Of The United States Of America And The Government Of The Italian Republic For The Avoidance Of Double Taxation With Respect To Taxes On Income And The Prevention Of Fraud Or Fiscal Evasion* (see <https://www.irs.gov/pub/irs-trty/italy.pdf>).

<sup>6</sup> In 2017 the IRS proposed transfer pricing adjustments for 2010-2014 as to the Debtor under the United States tax code and regulations. In 2017, a "Mutual Agreement Procedure" ("MAP") submission was made pursuant to the Treaty that would make retrospective adjustments to the transfer pricing methodology employed during the tax years 2010-2014 to avoid double taxation and ensure they are in compliance with the Treaty. The competent taxing authorities are still negotiating the MAP pursuant to the Treaty.

profit adjustment in the form of a Market Contribution for that period to bring the Debtor's profitability in line with that of certain comparable companies. The Debtor estimates the accrued, unpaid 2018 Market Contribution to be in the approximate amount of \$26.4 million, which amount is subject to final adjustment and reconciliation (as may be further reconciled and adjusted, the "Market Contribution Accrual"). Under the terms of the License Agreement, the Market Contribution Accrual is not due until the end of April 2019 and thus is not currently available to the Debtor.

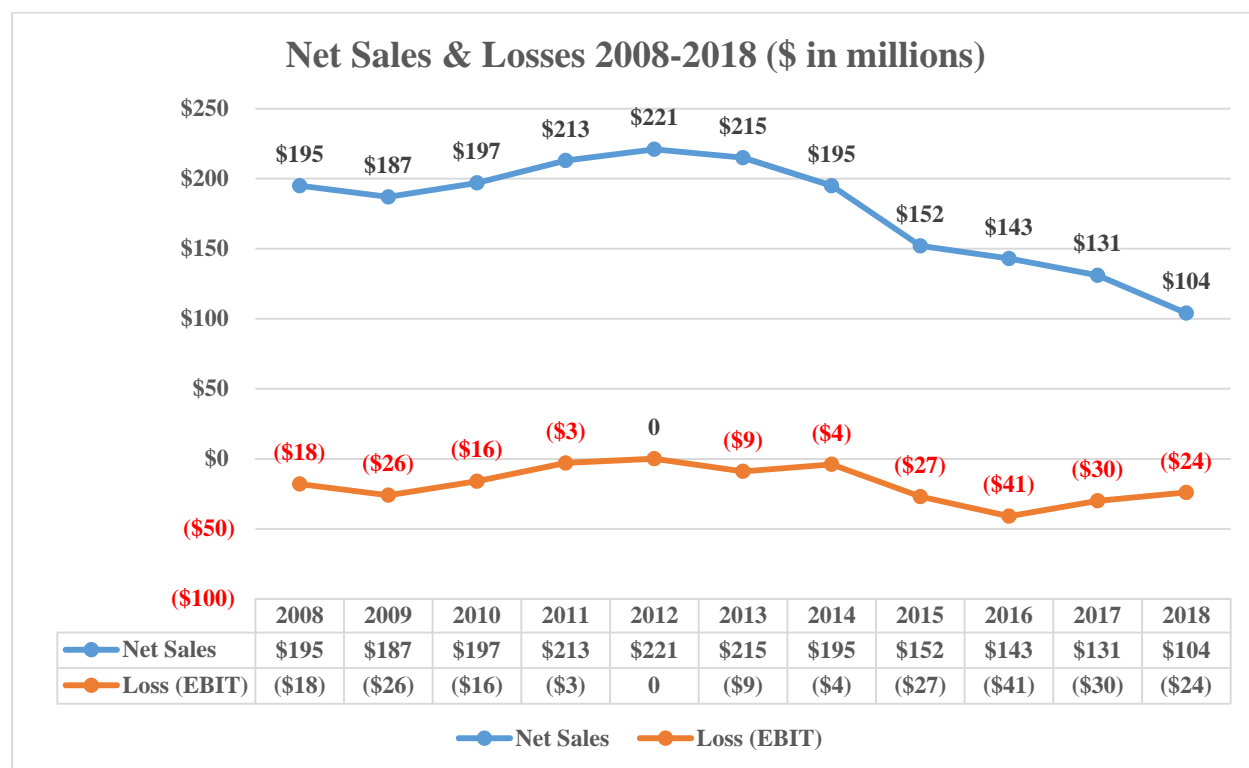
The Parent's obligation to perform under the License Agreement, including granting the license and, if applicable, paying the Market Contribution, are conditioned on, among other things, the Debtor's obligations as licensee. In addition, because the License Agreement includes a license to use intellectual property, the Debtor believes the Parent's consent to its assumption is required under section 365(c) of the Bankruptcy Code. The restructuring initiatives contemplated to be effected through this Chapter 11 Case and, post-emergence, the Reorganization Business Plan, resolves and preempts questions as to the Debtor's ability to comply with the License Agreement and the Parent's obligation to (i) release the accrued but unpaid Market Contribution Accrual, (ii) consent to the Debtor's assumption of the License Agreement, and (iii) agree to renew the License Agreement beyond 2019. The Debtor has shared the Reorganization Business Plan with the Parent and, after discussions with the Parent and its counsel, the parties have agreed to, subject to the occurrence of the Plan Effective Date on or before June 21, 2019, (a) consent to the Debtor's assumption of the License Agreement in accordance with section 365(c)(a) of the Bankruptcy Code; (b) to allow the License Agreement to automatically renew until December 31, 2020 by not providing notice of termination on or before June 30, 2019, which shall be without prejudice to the parties' rights to revise and renegotiate in good faith the terms and conditions of the License Agreement after the Effective Date; (c) consent to the release and payment of the full amount of Market Contribution Accrual for the purpose of funding the Reorganization Business Plan; and (d) provide a commitment of funding for the Reorganization Business Plan in an amount not less than \$10 million (collectively, the "Parent Commitment").

#### F. Circumstances Leading to Chapter 11 Filing

##### 1. 2015-2018: Sustained Operating Losses

The Debtor's operations have suffered from the same challenges that have plagued the retail industry as a whole in recent years, namely the general downturn in the brick-and-mortar retail industry resulting from the drastic shift in consumer preferences. Unfortunately, however, the Debtor's recent hardship is the result not only of macroeconomic trends, but of certain strategic decisions implemented by prior management, including, among other things, (a) between 2008 and 2015, the decision to invest nearly \$90 million in capital expenditures, primarily into its retail operations, in the wake of the recession, (b) in 2015, the decision to enter into several expensive, long-term leases for certain of the Debtor's retail locations, which do not expire by their terms until 2024-2026 and (c) the decision to significantly scale back wholesale operations. In addition, current management has been forced in recent years to further scale back wholesale operations on a temporary basis as a result of the substantial amount of "chargebacks" issued by the Debtor's wholesale customers. Around 2012, the Debtor was beginning to see some improvement from the recession years of 2008-2010. As a result of the foregoing

circumstances, however, the Debtor's operating losses, excluding any contributions from or royalties paid to the Parent, plunged from a manageable \$4 million in 2014 to \$27 million in 2015.<sup>7</sup> As demonstrated below, the losses have continued:



Annual Net Sales by Channel (USD/000)								
	Total Sales		Wholesale		Retail & Outlet		On-line	
2008	194,565	100%	65,762	34%	123,883	64%	4,920	3%
2009	186,921	100%	61,923	33%	119,508	64%	5,490	3%
2010	196,899	100%	67,625	34%	122,656	63%	6,618	3%
2011	212,521	100%	70,547	33%	133,605	63%	8,370	4%
2012	221,279	100%	72,976	33%	138,190	62%	10,112	5%
2013	214,834	100%	65,866	31%	139,320	65%	9,648	4%
2014	195,107	100%	61,569	32%	125,148	64%	8,390	4%
2015	152,246	100%	46,401	30%	97,311	64%	8,534	6%
2016	143,002	100%	38,896	27%	93,208	65%	10,898	8%
2017	131,088	100%	35,506	27%	83,879	64%	11,703	9%
2018	104,212	100%	20,273	19%	72,551	69%	11,388	11%

## 2. New Management and the Reorganization Business Plan

The Debtor revamped its management team with new leadership with extensive experience in both the industry and the global Diesel brand, including the addition of Stefano Rosso as Chief Executive Officer in 2017. As a result of the limited Market Contributions received in prior years from the Parent pursuant to the terms of the License Agreement and

<sup>7</sup> Operating losses discussed herein are calculated prior to accounting for Market Contributions and capital infusions received from the Parent as well as royalties paid to the Parent.

proposed APA, the Debtor has been able to temporarily cover its losses and continue operating in the short-term. The limited Market Contributions have not, however, changed the fact that the Debtor's business is rapidly losing money and it has become increasingly clear that a long-term and more fundamental solution is needed for the Debtor to be able to stem its losses, continue operating, and preserve jobs. Accordingly, the new management team has formulated a new strategic path over the next 3 years (the "Reorganization Business Plan") to restore the Diesel brand in the United States, return the Debtor to its pre-recession profitability, ensure its ability to continue operating in the United States, continue doing business with its vendors and contract and lease counterparties who are not subject to rejection under the Plan, and preserve hundreds of jobs in addition to creating new ones through opening new stores. Specifically, the Reorganization Business Plan entails closing certain underperforming and costly stores with significant terms remaining on their leases (and allowing other leases to expire in the near term by their terms) and reinvesting the resulting cost-savings into:

- a) Optimizing its retail business by (i) relocating certain existing stores and opening new stores in smaller, more cost-effective locations, and (ii) refitting several existing locations to make them more cost-effective by reducing future capital expenditures;
- b) New marketing initiatives aimed at relaunching and consolidating its position as a "5 Pocket" market leader in the United States, including expanding marketing to female customers;
- c) Growing its e-commerce business by, among other things, implementing new marketing initiatives online and improving online product selection; and
- d) Revitalizing its wholesale business and bringing it in line with the new brand marketing direction, including by reintroducing its presence with certain key wholesale partners and improving product buying and placement.<sup>8</sup>

The Debtor's projections indicate that the Reorganization Business Plan will return the Debtor to stand-alone profitability by 2021 and will cost approximately \$36 million over the 3-year period. The Parent has agreed, subject to occurrence of the Effective Date prior to June 21, 2019, to provide the Parent Commitment to fund the Reorganization Business Plan in the manner and amounts previously described.

### 3. Retail Store Optimization Efforts

Over the past year, management has evaluated its brick-and-mortar operations on a store-by-store basis to determine where and how to most effectively employ its capital and, conversely, which locations represent the greatest drag. In an effort to curb costs resulting from its unprofitable leases, the Debtor's management began reaching out to its landlords in January 2018 to attempt to negotiate rent concessions and/or consensual lease terminations. Unfortunately, the Debtor has obtained no early closures and only a single rent concession from one of its landlords.

As a means for implementing the Reorganization Business Plan, management has determined that closing certain expensive, long-term, and underperforming stores as well as obtaining relief from other burdensome executory contracts is crucial to its ability to continue

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<sup>8</sup> See First Day Declaration for a more detailed description of the Reorganization Business Plan.

operating. The Debtor is currently analyzing all of its executory contracts and unexpired leases and will determine which to reject through the Plan. In addition, the leases for several underperforming locations will expire by their terms in 2019 and the Debtor does not intend to renew such leases.

In addition, between 2019 and 2021, retail optimization efforts would involve (a) additional store openings in strategic locations with market-based rents, (b) allowing additional stores to expire by their lease terms (rather than rejecting through chapter 11), (c) “refitting” numerous stores, which involves modifications to and replacements of the furniture and fixtures at the stores to make them more cost-effective, thereby reducing future capital expenditures, and (d) re-branding stores to bring them in line with certain new marketing initiatives. The Debtor’s retail optimization is aimed primarily at reducing costs but will also require significant investment in relocating and refitting existing stores and opening new ones.

#### 4. Preparing for Chapter 11 and Continued Landlord Negotiations

By the end of 2018, faced with another disappointing year and having not made progress with its landlords, the Debtor undertook planning for a chapter 11 filing while continuing to engage with landlords in an effort to avoid a bankruptcy filing. The Debtor engaged Mark G. Samson as Chief Restructuring Officer (the “CRO”) and Arent Fox LLP and Young Conaway Stargatt & Taylor, LLP as bankruptcy counsel. While the Debtor sought concessions from numerous landlords, the Debtor focused on negotiating relief with respect to its most costly and underperforming stores that, due to their underperformance and/or costly leases, are having the most depressive effect on the Debtor’s ongoing ability to operate.

For the past year, the Debtor engaged in good faith negotiations with landlords and is not in default under any of its leases. The Debtor and/or CRO discussed consensual lease terminations and other alternatives directly with the landlords for certain of the Debtor’s stores that are producing the most significant losses and offered, on the Debtor’s behalf, buyout payments for early termination, which were rejected or did not receive a response. Thus, despite good faith efforts, the Debtor has been unable to reach resolutions with its landlords.

Due to the ongoing heavy losses at certain of the Debtor’s stores and lack of concessions from landlords, the Debtor has determined that closing certain unprofitable stores is necessary to its viability going forward. The Debtor’s unprofitable stores represented nearly \$11 million in consolidated negative EBITDA in 2018. In addition, the Debtor’s aggregate annual rent exceeds \$25 million and, given that several of the Debtor’s most unprofitable leases extend as far as 2024-2026, keeping them open through expiration of their lease terms would cost the Debtor significant lease expense over the full life of the leases. Specifically, the Debtor’s unprofitable stores would combine to cost over \$60 million in total lease expense over their remaining terms. By contrast, the Debtor’s rejection of burdensome unexpired leases and executory contracts through this Chapter 11 Case will substantially reduce its annual operating losses.

Absent the ability to obtain such relief through chapter 11, the Debtor will unlikely be able to continue operating as a going-concern. With the relief afforded by the chapter 11 process, however, the Debtor will be able to pay its creditors in full through the Plan, continue operating, and continue to employ the vast majority of its employees. Furthermore, a successful

chapter 11 restructuring will provide necessary runway permitting the Debtor to implement the Reorganization Business Plan, which the Debtor's projections indicate will, assuming closure of underperforming stores through the Plan, return it to stand-alone profitability by 2021. The Reorganization Business Plan is therefore critical to the Debtor's long-term viability. In addition, the Debtor estimates the Reorganization Business Plan will require additional investments of approximately \$36 million over the 3-year period. Accordingly, the Parent has agreed, subject to occurrence of the Effective Date on or before June 21, 2019, to provide the Parent Commitment for the purpose of funding the Reorganization Business Plan.

In addition, pursuant to the Parent Commitment, the Parent has agreed to, subject to occurrence of the Effective Date on or before June 21, 2019, (a) consent to the Debtor's assumption of the License Agreement in accordance with section 365(c)(a) of the Bankruptcy Code and (b) agree to the upcoming annual renewal of the License Agreement.

### **ARTICLE III**

#### **SIGNIFICANT EVENTS IN THE CHAPTER 11 CASE**

##### **A. Automatic Stay; Administrative Status**

The Chapter 11 Case is assigned to the Honorable Mary F. Walrath, United States Bankruptcy Judge for the District of Delaware. Since the Petition Date, the Debtor has operated as a debtor-in-possession under Bankruptcy Code §§ 1107 and 1108. The Debtor hired Arent Fox LLP and Young Conaway Stargatt & Taylor, LLP as its bankruptcy counsel.

An immediate effect of the commencement of the Chapter 11 Case was the imposition of the automatic stay under Bankruptcy Code § 362, which, with limited exceptions, enjoined the commencement or continuation of all collection efforts by creditors, the enforcement of liens against property of the Debtor, and the commencement or continuation of litigation against the Debtor. This relief provided the Debtor with the "breathing room" necessary to pursue its business objectives in the Chapter 11 Case without undue pressure or litigation by Creditors. The automatic stay remains in effect, unless modified by the Bankruptcy Court, until consummation of the Plan.

**B. First Day Motions.** The Debtor does not expect the Chapter 11 Case to be protracted. To expedite emergence from chapter 11, in addition to filing the Plan and this Disclosure Statement, the Debtor has filed motions seeking the relief outlined below, among other relief, from the Bankruptcy Court (the "First Day Motions"). Such relief is designed to ensure a smooth transition of the Debtor's operations into chapter 11 and facilitate the administration of the Chapter 11 Case.

1. Employee Wage Motion

The Debtor filed a motion seeking authority to pay the prepetition wages of its employees and to continue to honor certain other ordinary course employee benefits and other obligations to its employees. The Debtor believes that honoring its obligations to employees is crucial to maintaining a stable workforce and minimizing disruption in this Chapter 11 Case.

2. Motion to Continue Using Existing Cash Management

The Debtor filed a motion seeking to continue to use its existing cash management systems and their respective bank accounts, business forms, and investment practices. The cash management motion further seeks a waiver of certain operating guidelines related to bank accounts.

3. Vendor Motion

The Debtor filed a motion seeking authority to pay certain prepetition claims for goods or services related to the Debtor's operations and other ordinary course claims of creditors, including landlords and providers of services and vendors of goods. The Debtor's retail business depends on the uninterrupted access to merchandise and other goods and services provided by its network of vendors and, thus, believes the relief sought is crucial to its ongoing business operations.

4. Customer Programs Motion

The Debtor filed a motion seeking authority to continue its ordinary course customer programs, including honoring (a) gift cards and (b) programs for returns, refunds, adjustments. The Debtor believes the relief sought in this motion is critical to its ongoing relationships with customers.

5. Insurance Motion

The Debtor filed a motion seeking authority to maintain and honor prepetition obligations under its various insurance policies. The Debtor believes this relief is likewise critical as its insurance policies are essential to the preservation of the value of the Debtor's business, property, and assets.

6. Utilities Motion

To avoid interruption in utilities services at its stores and corporate office, the Debtor filed a motion seeking an order (a) prohibiting utility providers from altering, refusing, or discontinuing services, (b) determining adequate assurance of payment for future utility services, and granting related relief.

7. Tax Motion

The Debtor filed a motion seeking authority to pay certain accrued and outstanding tax obligations and related fees in the ordinary course of business, such as, among other things, sales

and use taxes, personal property taxes, and franchise taxes and fees. The Debtor believes the relief sought in this motion will avoid material disruption in the Debtor's business operations.

8. Noticing Agent Retention.

The Debtor also filed an application for the Debtor's retention of Bankruptcy Management Solutions, Inc. d/b/a Stretto as noticing agent (the "Noticing Agent") for the Debtor in its chapter 11 case effective *nunc pro tunc* to the Petition Date, including assuming full responsibility for the distribution of notices and services related thereto.



C. Combined Hearing Motion and Timetable for the Chapter 11 Case.

On the Petition Date, the Debtor also filed the Combined Hearing Motion schedule a combined hearing to consider approval of the Disclosure Statement and confirmation of the Plan on April 12, 2019, or thirty-eight (38) days after the Petition Date and filing of the Plan and Disclosure Statement. On March 7, 2019, the Bankruptcy Court entered an order approving the Combined Hearing Motion and approving the form, manner, and sufficiency of notice of the Combined Hearing Notice and the following schedule for confirmation of the Plan:

<b>Event</b>	<b>Date/Deadline</b>
Petition Date	March 5, 2019
Plan Supplement Filing Deadline	March 28, 2019
Plan/Disclosure Statement Objection Deadline	April 5, 2019, at 4:00 p.m. (Prevailing Eastern Time)
Assumption or Rejection Objection Deadline	April 5, 2019, at 4:00 p.m. (Prevailing Eastern Time)
Plan/Disclosure Statement Reply Deadline (including, to the extent applicable, replies to any Executory Contract Procedures objections)	April 10, 2019 at 4:00 p.m. (Prevailing Eastern Time)
Deadline to file proposed confirmation order	
Deadline to file brief in support of confirmation	
Second Day Hearing and Combined Hearing	April 12, 2019 at 10:30 a.m. (Prevailing Eastern Time)

At the Combined Hearing, the Bankruptcy Court will consider whether the Plan satisfies the various requirements of the Bankruptcy Code. Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to confirmation of the Plan. Any objection to confirmation of the Plan would have to be made in writing and filed with the Bankruptcy Court and served on all required parties by the objection deadlines set by the Bankruptcy Court. Unless an objection to confirmation is timely served and filed, it may not be considered by the Bankruptcy Court.

#### **ARTICLE IV**

##### **DESCRIPTION OF THE PLAN**

A. Treatment of Unclassified Claims under the Plan

. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Professional Fee Claims, and Priority Tax Claims are not classified and are not entitled to vote on the Plan. The Plan provides for the treatment of such Claims as follows:

1. Administrative Claims. Except to the extent that a Holder of an Allowed Administrative Claim and either the Debtor or Reorganized Debtor, as applicable, agree to less favorable treatment, each Holder of an Allowed Administrative Claim (other than Professional Fee Claims) will, in exchange for full and final satisfaction, settlement, release, and discharge of such Allowed Administrative Claim, be paid the full unpaid amount of such Allowed Administrative Claim in Cash on, or as soon thereafter as is reasonably practicable, (a) the Effective Date or, if payment is not then due, (b) on the due date of such Allowed Administrative Claim; *provided, however*, that Administrative Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due. Any taxes that arose postpetition shall be paid in the ordinary course of business and the taxing authorities that hold Claims on account of such postpetition taxes shall not be required to file a proof of claim for an Administrative Claim in the Chapter 11 Case.

2. Professional Fee Claims. Each Allowed Professional Fee Claim shall be paid in full in Cash on the later of: (a) three days after the Professional Fee Claim is Allowed; and (b) another date on which the holder of the Professional Fee Claim and the Debtor or Reorganized Debtor agree. Each Person seeking an award by the Bankruptcy Court of Professional Fees must file with the Bankruptcy Court and serve on Reorganized Debtor its final application for allowance of compensation for services rendered and reimbursement of expenses incurred through the Effective Date by the Professional Fee Bar Date.

3. Post-Effective Date Professional Fees. All claims of Professionals for services rendered or expenses incurred after the Effective Date in connection with the Chapter 11 Case and the Plan including, but not limited to, those relating to consummation of the Plan, any appeal of the Confirmation Order, the preparation, filing, and review of Professional Fee Claims, the prosecution of Causes of Action, and the resolution of Disputed Claims, shall be paid by the Reorganized Debtor on receipt of an invoice, or on other terms on which the Reorganized Debtor and the Professional agree, without the need for further Bankruptcy Court authorization or entry of a Final Order.

4. Priority Tax Claims. Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to less favorable treatment, in exchange for full and final satisfaction, settlement, release, and discharge of each Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim due and payable on or prior to the Effective Date shall receive the treatment set forth in section 1129(a)(9)(C) of the Bankruptcy Code. To the extent any Allowed Priority Tax Claim is not due and owing on or before the Effective Date, such Claim shall be paid in full in Cash in accordance with the terms of any agreement between the Debtor and such Holder or as may be due and payable under applicable non-bankruptcy law or in the ordinary course of business.

B. Classification and Treatment of Classified Claims and Interests

. The Plan provides that classified Claims and Interests are divided into numbered classes as follows:

<b>Class</b>	<b>Treatment</b>	<b>Entitled To Vote</b>
Class 1 – Other Priority Claims	Unimpaired	No (Deemed to Accept)
Class 2 – Secured Claims	Unimpaired	No (Deemed to Accept)
Class 3 – General Unsecured Claims	Unimpaired	No (Deemed to Accept)
Class 4 – Rejection Damages Claims	Unimpaired	No (Deemed to Accept)
Class 5 – Interests	Unimpaired	No (Deemed to Accept)

1. Class 1: Other Priority Claims

a. Treatment: Except to the extent that a Holder of an Allowed Other Priority Claim agrees to less favorable treatment, in exchange for full and final satisfaction, settlement, release, and discharge of such Claim, each Holder of such Allowed Other Priority Claim shall receive the following at the option of the Debtor:

1. Payment in full in Cash in the ordinary course of business;
2. Reinstatement of such Allowed Other Priority claim; or
3. Such other treatment rendering such Allowed Other Priority Claim Unimpaired.

b. Impairment and Voting: Class 1 is Unimpaired and all Holders of Class 1 Claims are conclusively deemed to have accepted the Plan and are not entitled to vote on the Plan.

2. Class 2: Secured Claims

a. Treatment: Except to the extent that a Holder of an Allowed Secured Claim agrees to less favorable treatment, each holder of an Allowed Secured Claim shall receive, in exchange for full and final satisfaction, settlement, release, and discharge of such Claim, the following, at the option of the Debtor:

1. Payment in full in Cash in the ordinary course of business;
2. Reinstatement of such Allowed Secured claim; or
3. Such other treatment rendering such Allowed Secured Claim Unimpaired.

b. Impairment and Voting: Class 2 is Unimpaired and all Holders of Class 2 Claims are conclusively deemed to have accepted the Plan and are not entitled to vote on the Plan.

3. Class 3: General Unsecured Claims

a. Treatment: Except to the extent that a Holder of an Allowed General Unsecured Claim agrees to less favorable treatment, each Holder of an

Allowed General Unsecured Claim shall, in exchange for full and final satisfaction, settlement, release, and discharge of such Claim, receive at the sole option of the Debtor either:

1. Reinstatement as of the Effective Date and satisfaction in full in the ordinary course of the Debtor's or Reorganized Debtor's business operations in accordance with the terms and conditions of the particular transaction giving rise to such Allowed General Unsecured Claim;
2. Payment in Cash in the full amount of its Allowed General Unsecured Claim plus interest on such Allowed General Unsecured Claim, if any, from the Effective Date to the date of payment at the rate provided by contract or, if no contract exists, at the statutory rate provided by 29 U.S.C. § 1961, which payment shall occur on the later of (i) the Effective Date and (ii) the date due in the ordinary course of business in accordance with the terms and conditions of the particular transaction giving rise to such Allowed General Unsecured Claim; or
3. Such other treatment as would render such Claim otherwise Unimpaired pursuant to section 1124 of the Bankruptcy Code.

b. Impairment and Voting: Class 3 is Unimpaired and all Holders of Class 3 Claims are conclusively deemed to have accepted the Plan and are not entitled to vote on the Plan.

4. Class 4: Rejection Damages Claims

a. Treatment: Except to the extent that a Holder of an Allowed Rejection Damages Claim agrees to less favorable treatment, each Holder of an Allowed Rejection Damages Claim shall, in exchange for full and final satisfaction, settlement, release, and discharge of such Claim, receive payment in Cash in the full amount of its Allowed Rejection Damages Claim plus interest on such Allowed Rejection Damages Claim, if any, from the Effective Date to the date of payment at the rate provided by contract or, if not specified by the contract, at the statutory rate provided by 29 U.S.C. § 1961, which payment shall occur on the later of (i) the Effective Date and (ii) thirty (30) days after entry of a Final Order rendering such Claim an Allowed Rejection Damages Claim.

b. Impairment and Voting: Class 4 is Unimpaired and all Holders of Class 4 Claims are conclusively deemed to have accepted the Plan and are not entitled to vote on the Plan.

5. Class 5: Interests

a. Treatment: All holders of Interests shall retain the Interests.

b. Impairment and Voting: Class 5 is Unimpaired and all Holders of Class 5 Interests are conclusively deemed to have accepted the Plan and are not entitled to vote on the Plan.

C. No Impairment; No Class Entitled to Vote

. No Class is Impaired. Therefore, all Classes are presumed to have accepted the Plan. Nonetheless, all parties are encouraged to carefully review the Plan attached as Exhibit A. All descriptions of the Plan set forth in this Disclosure Statement are subject to the terms and conditions of the Plan.

All classes of Claims and Interests will have received the Combined Hearing Notice setting forth the deadline and procedures for filing objections, the manner in which the Disclosure Statement and the Plan and other pleadings filed in the chapter 11 case can be obtained or viewed electronically, and a summary of the treatment of each class under the Plan.

Copies of the Combined Hearing Notice, this Disclosure Statement, and the Plan may be obtained by (i) visiting the Debtor's Noticing Agent's website at <http://cases.stretto.com/dieselusa>, (ii) writing to the Noticing Agent at 8269 E. 23<sup>rd</sup> Avenue, Suite 275, Denver, CO 80238, (iii) calling the Noticing Agent at 855-236-2466; or (iv) for a fee via PACER.

D. Resolution of Claims

. Except as required by an order of the Bankruptcy Court and except with respect to Rejection Damages Claims as required under Article VI of the Plan, Holders of Claims and Interests need not file a proof of claim with the Bankruptcy Court to be deemed an Allowed Claim or Interest under the Plan and shall retain all their rights under applicable non-bankruptcy law to pursue their Claims in any forum with jurisdiction over the parties and the Debtor or Reorganized Debtor shall have and retain any and all rights and defenses the Debtor had with respect to any Claim or Interest immediately prior to the Effective Date. If the Debtor or Reorganized Debtor disputes any claims, other than Rejection Damage Claims, such disputes shall be determined, resolved, or adjudicated as if the Debtor had not filed the Chapter 11 Case. Except as provided in Article VI of the Plan, all proofs of claim filed in this Chapter 11 Case shall be considered objected to and Disputed without further action by the Debtor. On the Effective Date, all proofs of claim filed against the Debtor (other than as required under Article VI of the Plan), regardless of when such proofs of claim were filed, including proofs of claims filed after the Effective Date, shall be deemed withdrawn, and such creditor that files such proof of claim with the Bankruptcy Court shall retain any right it may have to pursue remedies in a forum other than the Bankruptcy Court in accordance with applicable law.

E. Implementation of the Plan

1. General Settlement of Claims. The Plan provides that, pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan and Plan Supplement, on the Effective Date, the provision of the Plan shall constitute good-faith compromise and settlement of all Claims and controversies resolved pursuant to the Plan.

2. Plan Funding. Distributions under the Plan will be funded from Debtor's Cash on hand as of the Effective Date.

3. Parent Commitment. On the Effective Date, the Parent will provide the Parent Commitment and the Debtor and Reorganized Debtor, as applicable, shall be authorized to take all actions necessary or appropriate to obtain the Parent Commitment and to enter into any transactions contemplated thereunder, including but not limited to the assumption of the License Agreement.

4. Distributions. The Debtor or the Reorganized Debtor, as applicable, shall make all distributions in accordance with the terms of the Plan. In the event that any payment or act under the 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. Holders of Allowed Claims entitled to distributions under the Plan shall provide any information requested by the Debtor necessary for making such distribution.

5. Disputed Rejection Damages Claim Reserve. The Reorganized Debtor must manage Cash distributions to holders of Allowed Rejection Damages Claims so as to reserve sufficient Cash to make appropriate distribution on account of any Disputed Rejection Damages Claim as if that Disputed Rejection Damages Claim were an Allowed Rejection Damages Claim on the Effective Date in the amount Scheduled for such Rejection Damages Claim in the Schedule of Rejected Executory Contracts and Unexpired Leases. If and when any Disputed Rejection Damages Claim becomes an Allowed Rejection Damages Claim, Cash sufficient to make appropriate distribution to the holder that Claim must be made from such reserves. If a Disputed Rejection Damages Claim or any portion thereof becomes Disallowed, all reserved distributions attributable to the Holder of that Disputed Rejection Damages Claim shall revert to the Reorganized Debtor automatically and without need for a further order by the Bankruptcy Court.

6. Continued Reorganized Operations. The Reorganized Debtor will continue to operate with the primary purpose of continuing to conduct the Debtor's businesses through its brick and mortar retail sales, online sales, and wholesale businesses.

7. Corporate Governance. The Reorganized Debtor will continue to be governed by its board of directors, consisting of Stefano Rosso, Carlo Schiavo, and Nicola Marzano. The officers of the Debtor will continue to be Stefano Rosso as Chief Executive Officer, and Matteo Comunalazzi as Chief Financial Officer. Mr. Rosso and Mr. Comunalazzi will continue to be compensated at the same rate as provided in their pre-bankruptcy employment agreements.

8. Section 1145 Exemption. In accordance with section 1145 of the Bankruptcy Code, the retention under the Plan of the Interests is exempt from all federal, state, or local law requiring registration for offer or sale of a security or registration or licensing of an issuer of, underwriter of, or broker dealer in such securities and is not deemed to be a public offer of such securities.

9. Effectuating Documents. On and after the Effective Date, the Reorganized Debtor, and the officers thereof and members of the board thereof, shall be authorized to

and may issue, execute, deliver, file, or record such contracts, instruments, releases, indentures, and other agreements or documents, and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of this Plan, or to otherwise comply with applicable law, in the name of and on behalf of the Reorganized Debtor, without the need for any approvals, authorizations, or consents except for those expressly required pursuant to the Plan.

10. Effectiveness of Instruments and Agreements. On the Effective Date, all instruments, agreements, and documents issued, entered into, delivered, or filed under the Plan are effective, binding, and enforceable in accordance with their respective terms.

11. No Corporate Action Required. As of the Effective Date: (a) the adoption, execution, delivery, and implementation of all contracts, leases, instruments, releases, and other agreements related to or contemplated by the Plan; and (b) the other matters provided for under, or in furtherance of, the Plan involving corporate action required of the Debtor, are deemed to have occurred, are effective as provided in the Plan, and are deemed authorized and approved in all respects without further order of the Bankruptcy Court or any further action by the Debtor's officers, shareholders, members, or managers.

12. Post-Confirmation Management and Indemnification. The day-to-day operations of Reorganized Debtor will continue to be managed by the Debtor's officers, subject to oversight from its board of directors. Reorganized Debtor will provide its officers with indemnification rights and will compensate its officers consistent with compensation provided during the Chapter 11 Case. Reorganized Debtor will assume any pre-Petition Date indemnification obligations to any officers employed with the Debtor as of the Petition Date.

13. Operation Pending Effective Date. Until the Effective Date, the Debtor will continue to operate its business subject to all applicable requirements of the Bankruptcy Code and the Bankruptcy Rules.

14. Employee Benefits. Except as otherwise provided in the Plan, on and after the Effective Date, the Reorganized Debtor may: (1) honor, in the ordinary course of business, any contracts, agreements, policies, programs and plans for, among other things, compensation (other than equity based compensation related to Interests), health care benefits, disability benefits, deferred compensation benefits, travel benefits, savings, severance benefits, retirement benefits, welfare benefits, paid time off, workers' compensation insurance and accidental death and dismemberment insurance for the directors, officers and employees of the Debtor who served in such capacity at any time and (2) honor, in the ordinary course of business, Claims of employees employed as of the Effective Date for accrued vacation time arising before the Petition Date; provided, however, that the Debtor's or Reorganized Debtor's performance under any employment agreement will not entitle any person to any benefit or alleged entitlement under any policy, program or plan that has expired or been terminated before the Effective Date, or restore, reinstate or revive any such benefit or alleged entitlement under any such policy, program or plan. Nothing in the Plan shall limit, diminish or otherwise alter the

Reorganized Debtor's defenses, claims, Causes of Action or other rights with respect to any such contracts, agreements, policies, programs and plans.

## ARTICLE V

### **EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

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

1. Except as otherwise provided in the Plan, each Executory Contract and Unexpired Lease shall be deemed assumed pursuant to sections 365 and 1123 of the Bankruptcy Code as of the Effective Date, unless any such Executory Contract or Unexpired Lease: (1) is identified on the Schedule of Rejected Executory Contracts and Unexpired Leases; (2) was assumed or rejected previously by the Debtor; (3) expired or terminated pursuant to its own terms before the Effective Date; (4) is the subject of a motion to reject pending on the Confirmation Date; or (5) is the subject of a motion to reject an Executory Contract or Unexpired Lease pursuant to which the requested effective date of such rejection is after the Effective Date.

2. Entry of the Confirmation Order shall constitute a Final Order approving the assumptions or rejections of such Executory Contracts or Unexpired Leases as set forth in the Plan, all pursuant to sections 365(a) and 1123 of the Bankruptcy Code. All assumptions or rejections of Executory Contracts and Unexpired Leases pursuant to the Plan shall be effective as of the Effective Date, the date set forth in the Schedule of Rejected Executory Contracts and Unexpired Leases, or such other date agreed to in writing between the Debtor and the applicable counterparty. The Debtor will continue to perform its obligations under any rejected Executory Contract or Unexpired Lease through the effective date of such rejection.

3. All assumed Executory Contracts and Unexpired Leases shall remain in full force and effect for the benefit of the Reorganized Debtor, and be enforceable by the Reorganized Debtor in accordance with their terms, notwithstanding any provision in such assumed Executory Contract or Unexpired Lease that prohibits, restricts or conditions such assumption, assignment or transfer. Any provision in the assumed Executory Contracts and Unexpired Leases that purports to declare a breach or default based in whole or in part on commencement or continuance of this Chapter 11 Case or any successor cases shall be deemed unenforceable. To the extent any provision in any Executory Contract or Unexpired Lease assumed pursuant to the Plan (including, without limitation, any "change of control" provision) restricts or prevents, or purports to restrict or prevent, or is breached or deemed breached by, the Reorganized Debtor's assumption of such Executory Contract or Unexpired Lease, then such provision will be deemed modified such that the transactions contemplated by the Plan will not entitle the non-debtor party thereto to terminate such Executory Contract or Unexpired Lease or to exercise any other default-related rights with respect thereto. Each Executory Contract or Unexpired Lease assumed pursuant to the Plan or by Bankruptcy Court order but not assigned to a third party before the Effective Date shall re-vest in and be fully



enforceable by the Reorganized Debtor in accordance with its terms, except as such terms may have been modified by such order or by applicable law.

4. Notwithstanding anything to the contrary in the Plan, the Debtor reserves the right to alter, amend, modify or supplement the Schedule of Rejected Executory Contracts and Unexpired Leases at any time before the Confirmation Date, including without limitation the right to remove any Executory Contract or Unexpired Lease therefrom. The Debtor further reserves the right to remove any Executory Contract or Unexpired Lease from the Schedule of Rejected Executory Contracts and Unexpired Leases at any time prior to the Effective Date.

B. Procedures Related to Rejection of Executory Contracts or Unexpired Leases

The Debtor will file the Schedule of Rejected Executory Contracts and Unexpired Leases with the Plan Supplement on or before the date that is fifteen (15) days prior to the Confirmation Hearing. Each non-Debtor counterparty to an Executory Contract or Unexpired Lease to be rejected pursuant to the Plan shall have until 4:00 p.m. (Eastern time) on the date that is eight (8) calendar days after service of the Schedule of Rejected Executory Contracts and Unexpired Leases upon such counterparty to file a written objection to the rejection of its Executory Contract or Unexpired Lease and serve it in a manner to be actually received by each of the following: (i) proposed co-counsel to the Debtor: Arent Fox LLP, 1301 Avenue of the Americas, 42nd Floor, New York, NY 10019, Attn: George P. Angelich and David J. Mayo and Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Wilmington, DE 19801, Attn: Pauline K. Morgan and Kenneth J. Enos; and (ii) the U.S. Trustee, 844 North King Street, Room 2207, Lockbox 35, Wilmington, DE 19801, Attn: Linda J. Casey, Esq. Any such objections that cannot be consensually resolved by the Debtor and the objecting non-Debtor counterparty shall be considered by the Bankruptcy Court at the Confirmation Hearing or such other date requested by the Debtor.

1. Abandonment of Personal Property. Any fixtures, furniture, advertising displays, other office and store equipment or any other personal property left by the Debtor on the premises related to Unexpired Leases rejected pursuant to the Plan shall be deemed abandoned pursuant to Section 554 of the Bankruptcy Code. Entry of the Confirmation Order shall constitute authorization by the Bankruptcy Court of such abandonment and the non-Debtor counterparties to such rejected Unexpired Leases may dispose of any such personal property in their sole and absolute discretion without liability to the Debtor.

2. Claim Procedures for Rejection Damages Claim Holders that Agree with Scheduled Claim. The Schedule of Rejected Executory Contracts and Unexpired Leases will set forth the amount of Rejection Damages Claims related to each Executory Contract or Unexpired Lease being rejected. If a counterparty to an Executory Contract or Unexpired Lease does not dispute the Scheduled amount of its Rejection Damages Claim, such party is not required to file a proof of Claim, and will be deemed to have an Allowed Rejection Damages Claim in the amount set forth on the Debtor's Schedule of Rejected Executory Contracts and Unexpired Leases at the expiration of the Rejection Bar Date. Any holder that disputes the Scheduled amount of its Rejection Damages Claim is required to file a proof of Claim, pursuant to the procedures set forth herein.

3. Claim Procedures for Rejection Damages Claim Holders that Disagree with Scheduled Claim. If a counterparty to an Executory Contract or Unexpired Lease disputes the Scheduled amount of its Rejection Damages Claim, or believes it has a Rejection Damages Claim that has not been Scheduled, unless otherwise provided by a Bankruptcy Court order, such counterparty must file with the Bankruptcy Court a proof of Claim asserting what the counterparty believes is the correct Rejection Damages Claim on or before the Rejection Bar Date. **Any Person that disputes the Scheduled amount of its Rejection Damages Claim is required to file a proof of Claim asserting a Rejection Damages Claim and failure to do so on or before the Rejection Bar Date shall result in any Rejection Damages Claim in excess of the Scheduled amount being disallowed automatically and forever barred, estopped, and enjoined from assertion and any such Rejection Damages Claim in excess of the Scheduled amount shall not be enforceable against the Debtor or the Reorganized Debtor, without the need for any objection by the Reorganized Debtor or any further notice to or action, order, or approval of the Bankruptcy Court, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed fully satisfied, released, and discharged, notwithstanding a proof of Claim to the contrary. In addition, any Person that believes it has a Rejection Damages Claim that has not been Scheduled is required to file a proof of Claim asserting a Rejection Damages Claim and failure to do so on or before the applicable Rejection Bar Date shall result in any Rejection Damages Claim being disallowed automatically and forever barred, estopped, and enjoined from assertion and any such Rejection Damages Claim shall not be enforceable against the Debtor or the Reorganized Debtor, without the need for any objection by the Reorganized Debtor or any further notice to or action, order, or approval of the Bankruptcy Court, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed fully satisfied, released, and discharged, notwithstanding a proof of Claim to the contrary.**

4. Time to File Objections and Replies. Any objections to proofs of Claim asserting Rejection Damages Claims shall be filed on or before the Rejection Damages Claim Objection Deadline. Any reply to such an objection shall be filed not later than seven (7) days before the hearing on such objection to a Rejection Damages Claim.

5. No Distributions Pending Allowance. If an objection to a proof of Claim asserting a Rejection Damages Claim, or portion thereof, is filed on or before the Rejection Damages Claim Objection Deadline, no payment or distribution provided under the Plan shall be made on account of such Rejection Damages Claim, or portion thereof, unless and until such Disputed Rejection Damages Claim becomes an Allowed Claim, unless otherwise determined by the Reorganized Debtor. If an objection to a proof Claim asserting a Rejection Damages Claim is not filed by the Rejection Damages Claim Objection Deadline, such Claim shall become an Allowed Rejection Damages Claim in the amount asserted in such proof of Claim upon the expiration of the Rejection Damages Claim Objection Deadline.

C. Cure of Defaults for Assumed Executory Contracts and Unexpired Leases.

1. The proposed Cure amount for all Executory Contracts not identified on the Schedule of Rejected Executory Contracts and Unexpired Leases shall be \$0.00 unless otherwise indicated on the Cure Schedule. The Debtor shall file the Cure Schedule on or before the date that is fifteen (15) days prior to the Confirmation Hearing. The Debtor shall not be required to serve the Cure Schedule on any Executory Contract counterparty not specifically named therein. **For the avoidance of doubt, if an Executory Contract between the Debtor and any non-Debtor counterparty is not listed on either (a) the Schedule of Rejected Executory Contracts and Unexpired Leases or (b) the Cure Schedule as an assumed Executory Contract with a proposed Cure amount, then the Debtor intends to assume such Executory Contract and asserts that the Cure amount for such Executory Contract is \$0.00.**

2. Any counterparty to an Executory Contract or Unexpired Lease that objects to (1) the assumption of such Executory Contract or Unexpired Lease, (2) the proposed Cure amount, (3) the ability of the Reorganized Debtor or any assignee to provide “adequate assurance of future performance” (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed, or (4) any other matter pertaining to assumption, shall file a written objection thereto and serve it in a manner to be actually received by each of the following by no later than 4:00 p.m. (Eastern time) on the date that is seven (7) days prior to the Confirmation Hearing: (i) proposed co-counsel to the Debtor: Arent Fox LLP, 1301 Avenue of the Americas, 42nd Floor, New York, NY 10019, Attn: George P. Angelich and David J. Mayo and Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Wilmington, DE 19801, Attn: Pauline K. Morgan and Kenneth J. Enos; and (ii) the U.S. Trustee, 844 North King Street, Room 2207, Lockbox 35, Wilmington, DE 19801, Attn: Linda J. Casey, Esq. Any timely filed responses or objections will be heard by the Bankruptcy Court at the Confirmation Hearing or on such other date agreed to by the parties or ordered by the Court. Any counterparty to an Executory Contract or Unexpired Lease that fails to timely object to any of the foregoing matters related to assumption will be deemed to have assented and will be deemed to have forever released and waived any such objection. Payment of any Cure amount shall be made following the entry of a Final Order or orders resolving any dispute related thereto and approving the assumption and shall not prevent or delay implementation of the Plan or the occurrence of the Effective Date.

D. License Agreement

. Notwithstanding anything in the Plan to the contrary, as of the Effective Date, the Debtor shall assume (and assign to the Reorganized Debtor if necessary to continue the License Agreement in full force) the License Agreement pursuant to section 365(a) of the Bankruptcy Code. Pursuant to the Parent Commitment, the Parent, as licensor under the License Agreement, has agreed to, subject to the occurrence of the Effective Date on or before June 21, 2019, provide its consent to the Debtor’s assumption of the License Agreement pursuant to section 365(c)(a) of the Bankruptcy Code. Entry of the Confirmation Order shall constitute the Bankruptcy Court’s approval of the Debtor’s foregoing assumption of the License Agreement.

E. Insurance Policies

. Notwithstanding anything in the Plan to the contrary, as of the Effective Date, the Debtor shall assume (and assign to the Reorganized Debtor if necessary to continue the Insurance Policies in full force) all of the Insurance Policies pursuant to section 365(a) of the Bankruptcy Code. Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the Debtor's foregoing assumption of each of the Insurance Policies.

F. Modifications, Amendments, Supplements, Restatements, or Other Agreements

. Unless otherwise provided in the Plan, each Executory Contract or Unexpired Lease that is assumed shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such Executory Contract or Unexpired Lease, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated pursuant hereunder.

Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease, or the validity, priority, or amount of any Claims that may arise in connection therewith.

G. Contracts and Leases Entered into After the Petition Date

. Contracts and leases entered into after the Petition Date by the Debtor, and any Executory Contracts and Unexpired Leases assumed by the Debtor, may be performed by the Reorganized Debtor in the ordinary course of business and in accordance with the terms thereof.

H. General Reservation of Rights

. Neither the exclusion nor inclusion of any contract or lease on the Schedule of Rejected Executory Contracts and Unexpired Leases, nor anything contained in the Plan, shall constitute an admission by the Debtor that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that the Reorganized Debtor, or any of its affiliates, has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtor or the Reorganized Debtor, as applicable, shall have 45 days following entry of a Final Order resolving such dispute to alter its treatment of such contract or lease.

## ARTICLE VI

### **EFFECT OF THE PLAN ON CLAIMS, INTERESTS AND CAUSES OF ACTION**

A. Binding Effect

. Except as otherwise provided in section 1141(d) of the Bankruptcy Code, on and after the Confirmation Date, the provisions of the Plan shall bind any holder of a Claim against the Debtor who held such Claim at any time during the Chapter 11 Case and its respective

successors and assigns, whether or not the Claim of such holder is Impaired under the Plan and whether or not such holder has been deemed to accept the Plan.

B. Vesting of Assets

. Except as otherwise explicitly provided in this Plan, on the Effective Date, all property comprising the Estate (including Causes of Action, but excluding property that has been abandoned pursuant to an order of the Bankruptcy Court) shall vest in the Reorganized Debtor free and clear of all Claims, liens, charges, interests, and encumbrances. As of and following the Effective Date, the Reorganized Debtor may operate its business and use, acquire, and dispose of property and settle and compromise Claims, Interests, or Causes of Action without supervision of the Bankruptcy Court, free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly imposed by this Plan or the Confirmation Order.

C. Discharge

. Except as provided in this Plan or the Confirmation Order, the rights granted under this Plan and the treatment of Claims and Interests under this Plan shall be in full and final satisfaction, discharge, and release of all Claims and Interests. Except as provided in this Plan or the Confirmation Order, confirmation of this Plan discharges the Debtor and Reorganized Debtor from all Claims or other debts that arose before the Confirmation Date, and all debts of the kind specified in Bankruptcy Code §§ 502(g), 502(h), or 502(i), whether or not: (a) a proof of claim based on such debt is filed or deemed filed under Bankruptcy Code § 501; (b) a Claim based on such debt is Allowed under Bankruptcy Code § 502; or (c) the holder of a Claim based on such debt has accepted this Plan. Without limiting the foregoing, the discharge granted under this Plan is granted to the fullest extent allowed under Bankruptcy Code §§ 1141(a), 1141(b), 1141(c), and 1141(d)(1).

D. Term of Injunctions or Stays

. Unless otherwise provided in the Plan, all injunctions or stays provided for in the Chapter 11 Case pursuant to sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Chapter 11 Case is Closed.

E. Releases by the Debtor

. Except as otherwise provided herein, as of the Effective Date, for good and valuable consideration, each of (i) the Debtor's current and former officers, directors, principals, members, professionals, advisors, accountants, attorneys, investment bankers, consultants, employees, agents, and other representatives of the Parent, in each case solely in their capacity as such and (ii) the Parent, its affiliates, and the current and former officers, directors, principals, members, professionals, advisors, accountants, attorneys, investment bankers, consultants, employees, agents, and other representatives of the Parent, in each case solely in their capacity as such, are deemed released and discharged by the Debtor and its Estate from any and all claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action and liabilities, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, arising in law, equity or otherwise that the Debtor or its Estate

would have been legally entitled to assert in their own right or on behalf of the holder of any Claim or other Person, based on or relating to, or in any manner arising from, in whole or in part, the Debtor, the Chapter 11 Case, the Plan or the Disclosure Statement, the negotiation, formulation or preparation of the Plan, the Plan Supplement, or related agreements, instruments, or other documents in connection with the transactions contemplated under the Plan, or any other act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date; *provided* that nothing in the Plan, including this Section, shall release (i) any obligations under the Plan or the Plan Supplement; or (ii) any acts constituting willful misconduct, gross negligence, intentional fraud or criminal conduct as determined by a Final Order.

**F. Releases by Holders of Claims**

. As of the Effective Date, except as otherwise provided in the Plan, all Persons who have held, hold, or may hold Claims, Interests, causes of action, or liabilities that are subject to compromise and settlement pursuant to the terms of the Plan or are otherwise discharged, satisfied, stayed or terminated pursuant to the Plan are deemed to have released the Debtor, Reorganized Debtor, the Estate and each of their affiliates, current and former officers, directors, principals, members, professionals, advisors, accountants, attorneys, investment bankers, consultants, employees, agents, and other representatives (collectively, the “Released Parties”), from any and all claims, interests, obligations, rights, suits, damages, causes of action, remedies and liabilities whatsoever, including any direct claims held by any such Person against each Release Party or derivative claims asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, whether for tort, contract, violations of federal or state securities laws, or otherwise, that each such Person would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtor or its affiliates, the Debtor’s restructuring, the Chapter 11 Case, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between the Debtor and any such Person, the restructuring of Claims and Interests before or in the Chapter 11 Case, the negotiation, formulation, or preparation of the Plan, the Confirmation Order, or related agreements, instruments, or other documents, or upon any other act or omission, transaction, agreement, event, or other occurrence relating to the Debtor taking place on or before the Effective Date. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release any post-Effective Date obligations of any party under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan.

**G. Injunction.**

1. **Generally.** Except as provided in the Plan or the Confirmation Order, as of the Confirmation Date, all entities that have held, currently hold, or may hold a Claim that is unclassified by the Plan or that is classified by Article III of the Plan or that is subject to a distribution under the Plan, or an Interest or other right of an equity holder, are permanently enjoined from taking any

**of the following actions on account of any such Claims or Interests or rights: (i) commencing or continuing in any manner any action or other proceeding against any property to be distributed under the Plan; (ii) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against any property to be distributed under the Plan; (iii) creating, perfecting, or enforcing any lien or encumbrance against any property to be distributed under the Plan; and (iv) commencing or continuing any action, in any manner, in any place, that does not comply with or is inconsistent with the provisions of the Plan or the Bankruptcy Code.**

2. Limited Scope. Nothing in this Plan: (i) extinguishes, prohibits, or otherwise limits the right of any holder of a Claim to assert a right to setoff or recoupment arising in connection with that Claim as part of the resolution and treatment of that Claim under the Plan; (ii) extinguishes, prohibits, or otherwise limits the right of the Estate or Reorganized Debtor to assert and prevail on any Cause of Action; (iii) enjoins or otherwise precludes any party-in-interest from enforcing the terms of the Plan and the Confirmation Order.

#### **H. Cause of Action Injunction**

**. On and after the Effective Date, all Persons other than the Reorganized Debtor will be permanently enjoined from commencing or continuing in any manner any action or proceeding (whether directly, indirectly, derivatively, or otherwise) on account of, or respecting any claim, debt, right, or Cause of Action that the Reorganized Debtor retains authority to pursue in accordance with the Plan.**

#### **I. Exculpation**

**. Neither the Debtor, Reorganized Debtor, nor any of their respective members, officers, directors, trustees, employees, advisors, professionals, or agents has any liability to any holder of a Claim or Interest for any act or omission in connection with, related to, or arising out of, the Chapter 11 Case, the pursuit of confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for willful misconduct or gross negligence. In all respects, the Debtor, Reorganized Debtor, and each of their respective members, officers, directors, trustees, employees, advisors, professionals, and agents are entitled to rely on the advice of counsel with respect to their duties and responsibilities under the Plan.**

#### **J. Preservation and Application of Insurance**

**. The provisions of the Plan shall not diminish or impair in any manner the enforceability of coverage of any insurance policies (and any agreements, documents, or instruments relating thereto) that may cover Claims against the Debtor, any directors, trustees, or officers of the Debtor, or any other Person, including, without limitation, insurance for the Debtor's directors and officers.**

K. Compromise of Controversies

. Pursuant to Bankruptcy Rule 9019, and in consideration for the classification, distribution, and other benefits provided under the Plan, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims and controversies resolved pursuant to the Plan, including, without limitation, all Claims arising prior to the Effective Date, whether known or unknown, foreseen or unforeseen, asserted or unasserted, arising out of, relating to, or in connection with the business or affairs of or transactions with the Debtor. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of each of the foregoing compromises or settlements, and all other compromises and settlements provided for in the Plan, and the Bankruptcy Court's findings shall constitute its determination that such compromises and settlements are in the best interests of the Debtor, the Estate, creditors, and other parties in interest, and are fair, equitable, and within the range of reasonableness.

L. Waiver of Avoidance Actions; Reservation of Rights

. All Avoidance Actions are hereby waived, effective on the Effective Date; provided, however, that the Debtor and the Reorganized Debtor, as applicable, reserve all rights, including the right under section 502(d) of the Bankruptcy Code, to use defensively the abandoned avoidance cause of action as a basis to object to all or any part of a Claim against the Estates asserted by a Holder which remains in possession of, or otherwise obtains the benefit of, an avoidable transfer.

M. Retention, Reservation and Prosecution of Causes of Action

. Except as otherwise provided in the Plan, all Causes of Action other than Avoidance Actions are retained and reserved for the Reorganized Debtor, which is designated as the Estate's representative under Bankruptcy Code § 1123(b)(3)(B) for purposes of the Causes of Action other than Avoidance Actions. The Reorganized Debtor shall have the sole authority to prosecute, defend, compromise, settle, and otherwise deal with any Causes of Action other than Avoidance Actions, and does so in its capacity as a representative of the Estate in accordance with Bankruptcy Code § 1123(b)(3)(B). The Reorganized Debtor shall have sole discretion to determine in its business judgment which Causes of Action to pursue, which to settle, and the terms and conditions of those settlements. In pursuing any claim, right, or Cause of Action, the Reorganized Debtor shall be entitled to the extensions provided under section 108 of the Bankruptcy Code. Except as otherwise provided in the Plan, all Causes of Action shall survive confirmation and the commencement or prosecution of Causes of Action shall not be barred or limited by any estoppel, whether judicial, equitable, or otherwise.



## ARTICLE VII

### CONDITIONS TO OCCURRENCE OF EFFECTIVE DATE

#### A. Conditions to Effectiveness

. The Effective Date does not occur unless and until:

1. The Confirmation Date occurs and the Confirmation Order has become a Final Order, which shall, among other things, provide that the Debtor and Reorganized Debtor, as applicable, shall be authorized to take all actions necessary or appropriate to obtain the Parent Commitment and to enter into any transactions contemplated thereunder, including but not limited to the assumption of the License Agreement;
2. The Debtor shall have obtained the Parent Commitment (and all conditions thereto shall have been satisfied or waived);
3. No request for revocation of the Confirmation Order under Bankruptcy Code section 1144 is pending;
4. Sufficient Cash exists to make all payments required under the Plan to be made on the Effective Date;
5. The Debtor shall have established the reserve for Disputed Rejection Damages Claims in accordance with Article V.E of the Plan;
6. The Debtor shall have surrendered the premises for each Unexpired Lease rejected through the Plan; and
7. All instruments and agreements to be issued, entered into, delivered, or filed under the Plan are issued, entered into, delivered, or filed and are effective.

#### B. Waiver of Conditions

. The Debtor may waive any condition to confirmation or the Effective Date, in whole or in part, at any time without notice, an order of the Bankruptcy Court, or any further action other than proceeding to confirmation and consummation of the Plan.

#### C. Effect of Non-Occurrence of the Effective Date

. If the Effective Date does not occur, the Plan shall be null and void and nothing contained in the Plan shall: (a) constitute a waiver or release of any Claims against the Debtor; (b) prejudice in any manner the rights of the Debtor, including any right to seek a further extension of the exclusivity periods under section 1121(d) of the Bankruptcy Code; (c) constitute an admission, acknowledgement, offer or undertaking by the Debtor.

## ARTICLE VIII

### MISCELLANEOUS PROVISIONS OF THE PLAN

#### A. Retention of Jurisdiction

. Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain non-exclusive jurisdiction of all matters arising out of, and related to, the Chapter 11 Case and the Plan, including jurisdiction to:

1. resolve any matters related to Executory Contracts and Unexpired Leases, including: (i) the assumption, assumption and assignment, or rejection of Executory Contracts or Unexpired Leases to which the Debtor is a party or with respect to which the Debtor may be liable, and to hear and determine the allowance of Claims resulting therefrom including the amount of Cure, if any, required to be paid; (ii) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed; (iii) the Reorganized Debtor's amendment, modification, or supplement after the Confirmation Date, pursuant to Article VI of the Plan, of the Schedule of Executory Contracts and Unexpired Leases; and (iv) any dispute regarding whether a contract or lease is or was executory or expired;

2. adjudicate any and all adversary proceedings, applications, and contested matters that may be commenced or maintained pursuant to the Chapter 11 Case, this Plan, or that were the subject of proceedings before the Bankruptcy Court, prior to the Effective Date, proceedings to adjudicate the allowance of Disputed Claims, and all controversies and issues arising from or relating to any of the foregoing;

3. ensure that distributions to Holders of Allowed Claims are accomplished as provided herein and adjudicate any and all disputes arising from or relating to distributions under the Plan;

4. hear and determine or resolve any and all matters related to Causes of Action;

5. enter and implement such orders as may be appropriate if the Confirmation Order is for any reason stayed, revoked, modified, and/or vacated;

6. issue and implement orders in aid of execution, implementation, or consummation of this Plan;

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

8. hear and determine all applications for allowance of compensation and reimbursement of Professional Fee Claims under this Plan or under sections 330, 331, 503(b), 1103, and 1129(a)(4) of the Bankruptcy Code; determine requests for the payment of Claims entitled to priority under section 507(a)(1) of the Bankruptcy Code, including compensation and reimbursement of expenses of parties entitled thereto;

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

9. hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of this Plan or the Confirmation Order, including disputes arising under agreements, documents, or instruments executed in connection with this Plan and disputes arising in connection with any Person or entity's obligations incurred in connection with the Plan;

10. hear and determine all suits or adversary proceedings to recover assets of the Debtor and property of their Estates, wherever located;

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

12. grant any consensual request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code, or in the event that the Effective Date does not occur, to consider any request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4);

13. hear any other matter not inconsistent with the Bankruptcy Code;

14. hear and determine all disputes involving the existence, nature or scope of the Debtor's discharge;

15. issue a final decree and enter an order closing the chapter 11 case; and

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

After the Effective Date, the Bankruptcy Court shall retain jurisdiction with respect to each of the foregoing items and all other matters that were subject to its jurisdiction prior to the Confirmation Date. Nothing contained herein shall be construed to increase, decrease or otherwise modify the independence, sovereignty or jurisdiction of the Bankruptcy Court.

**B. Effecting Documents; Further Transactions; Timing**

. The Debtor and Reorganized Debtor are authorized and directed as of the Effective Date, without further order of the Bankruptcy Court, to execute, deliver, file, or record all contracts, instruments, releases, and other agreements or documents, and to take all actions necessary or appropriate to effect and further evidence the terms of the Plan. All transactions required to occur on the Effective Date under the terms of the Plan are deemed to have occurred simultaneously.

**C. Governing Law**

. Except to the extent the Bankruptcy Code, Bankruptcy Rules, or other federal laws apply, the laws of the State of New York shall govern the rights and obligations arising under the Plan, without giving effect to principles of conflicts of law of New York.

D. Exemption from Transfer Taxes

. Under Bankruptcy Code § 1146(a): (a) the issuance, distribution, transfer, and exchange of assets or property of the Estate; (b) the execution, assignment, modification, or recording of any lease or sublease; and (c) the execution, delivery, or recording of a deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, the Confirmation Order, or any transaction contemplated above, or any transactions arising out of, contemplated by, or in any way related to, the foregoing are not subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, or real estate transfer tax, or other similar tax or governmental assessment and the appropriate state or local government officials or agents are directed to forego the collection of any such tax or assessment and to accept for filing or recordation any of the foregoing instruments or other documents without the payment of any such tax or assessment.

E. Post-Effective Date Fees; Final Decree

. Notwithstanding anything to the contrary contained in the Plan, all fees payable through the Effective Date pursuant to 28 U.S.C. § 1930 shall be paid on the Effective Date, or as soon as practicable thereafter. The Reorganized Debtor is responsible for paying any post-Effective Date fees under 28 U.S.C. § 1930(a)(6) and filing post-confirmation reports until the Bankruptcy Court enters a final decree, which Reorganized Debtor must seek as soon as feasible after distributions under the Plan have commenced. Notice of application for a final decree need be given only to those holders of Claims and Interests and other parties that, after the Effective Date, specifically request such notice.

F. Modification and Amendments

. The Debtor may alter, amend, or modify the Plan under section 1127(a) of the Bankruptcy Code at any time prior to the Confirmation Date. After the Confirmation Date and prior to substantial consummation of the Plan as defined in section 1101(2) of the Bankruptcy Code, the Debtor may under section 1127(b) of the Bankruptcy Code, institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, and such matters as may be necessary to carry out the purposes and effects of the Plan.

G. Method of Payment; Payments, Filings, and Notices Only on Business Days

. Payments of Cash under the Plan must be made by check drawn on a domestic bank or by wire transfer from a domestic bank. Whenever any payment, distribution, filing, delivery, or notice to be made under the Plan is due on a day other than a Business Day, such payment, distribution, filing, delivery, or notice may instead be made, without interest or penalty, on the immediately following Business Day.

H. Undeliverable or Unclaimed Distributions

. If any distribution to a Holder of an Allowed Claim made in accordance herewith is returned to the Reorganized Debtor as undeliverable, no further distributions shall be made to such Holder unless and until the Reorganized Debtor is notified in writing of such Holder's then-

current address or other necessary information for delivery, at which time such undelivered distribution shall be made to such Holder within ninety (90) days of receipt of such Holder's then-current address or other necessary information; provided that any such undelivered distribution shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of six (6) months from the later of (a) the Effective Date and (b) the date of the initial attempted distribution. After such date, all unclaimed property or interests in property shall revert to the Reorganized Debtor automatically and without need for a further order by the Bankruptcy Court (notwithstanding any applicable non-bankruptcy escheat, abandoned, or unclaimed property laws to the contrary), and the right, title, and interest of any Holder to such property or interest in property shall be discharged and forever barred. Notwithstanding anything to the contrary contained in the Plan, nothing in this provision shall act as a bar to entry of a final decree Closing the Chapter 11 Case.

I. Time Bar to Cash Payments

. Checks issued by the Reorganized Debtor in respect of Allowed Claims shall be null and void if not negotiated within 60 days after the date of issuance thereof. Requests for reissuance of any check shall be in writing to the Reorganized Debtor by the holder of the Allowed Claim to whom such check originally was issued. Any such written claim in respect of such a voided check must be received by the Reorganized Debtor on or before 60 days after the expiration of the 60 day period following the date of issuance of such check. Thereafter, the amount represented by such voided check shall irrevocably revert to the Reorganized Debtor free and clear of any restrictions. Any Claim in respect of such voided check shall be discharged and forever barred from assertion against the Debtor, the Estate, or the Reorganized Debtor.

J. Dissolution of any Statutory Committee

. On the Confirmation Date, any Statutory Committee formed in connection with the Chapter 11 Case shall dissolve automatically and all members thereof shall be released and discharged from all rights, duties and responsibilities arising from or related to the Chapter 11 Case.

K. Revocation, Withdrawal, or Non-Consummation

. The Debtor reserves the right to revoke or withdraw this Plan at any time prior to the Effective Date, which revocation or withdrawal shall occur upon the Debtor's filing of a notice thereof, and to file subsequent chapter 11 plans. If the Debtor revokes or withdraws the Plan, it shall be null and void and, in such event, nothing contained herein shall be deemed to constitute a waiver or release of any Causes of Action or Claims by or against the Debtor or any other Person or to prejudice in any manner the rights of the Debtor or any Person in any further proceedings involving the Debtor.

L. Notices

. After the Effective Date, any pleading, notice, or other document required by the Plan to be served on or delivered on the parties below shall be served as follows:

If to the Reorganized Debtor:

Diesel USA, Inc.  
220 W 19<sup>th</sup> St  
8th Floor  
New York, NY 10011  
Attn: Matteo Comunalazzi, Stefano Rosso

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

Arent Fox LLP  
1301 Avenue of the Americas  
42nd Floor  
New York, NY 10019  
Attn: George P. Angelich, Esq., David J. Mayo, Esq., Phillip Khezri, Esq.

and

Young Conaway Stargatt & Taylor, LLP  
Rodney Square  
1000 North King Street  
Wilmington, DE 19801  
Attn: Pauline K. Morgan, Esq., Kenneth J. Enos, Esq., and Travis G. Buchanan, Esq.

If to U.S. Trustee:  
Office of the United States Trustee for the District of Delaware  
Room 2207, Lockbox 35  
844 North King Street  
Wilmington, DE 19801  
Attn: Linda J. Casey, Esq.

M. Entire Agreement

. Except as otherwise indicated, the Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

N. Severability

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

the Plan, as it may have been altered or interpreted in accordance with the foregoing, is (a) valid and enforceable pursuant to its terms, (b) integral to the Plan and may not be deleted or modified without the Debtor's consent, and (c) nonseverable and mutually dependent.

O. Exhibits

. All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. After the exhibits and documents are filed, copies of such exhibits and documents shall be available upon request to the Debtor's counsel, by contacting Arent Fox LLP, 1301 Avenue of the Americas, 42nd Floor, New York, NY 10019 or Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Wilmington, DE 19801, at the Bankruptcy Court's website at <https://ecf.deb.uscourts.gov/> or at the website of the Noticing Agent, <http://cases.stretto.com/dieselusa>. To the extent any exhibit or document is inconsistent with the terms of the Plan, unless otherwise ordered by the Bankruptcy Court, the non-exhibit or non-document portion of the Plan shall control.

P. Conflicts

. Except as set forth in the Plan, to the extent that any provision of the Disclosure Statement or any other order (other than the Confirmation Order) referenced in the Plan (or any exhibits, schedules, appendices, supplements or amendments to any of the foregoing), conflict with or are in any way inconsistent with any provision of the Plan, the Plan shall govern and control; provided, however, that if there is a conflict between the Plan and a Plan Supplement document, the Plan Supplement document shall govern and control.

## ARTICLE IX

### **STATUTORY REQUIREMENTS FOR CONFIRMATION OF THE PLAN**

The following is a brief summary of the Confirmation process. Holders of Claims and Interests are encouraged to review the relevant provisions of the Bankruptcy Code and to consult with their own advisors.

A. Confirmation Hearing

. Section 1128(a) of the Bankruptcy Code provides that the Bankruptcy Court, after notice, may conduct the Confirmation Hearing to consider Confirmation of the Plan. Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to Confirmation of the Plan.

B. Confirmation Standards.

Among the requirements for Confirmation are that the Plan (a) is accepted by all Impaired Classes of Claims and Interests or, if rejected by an Impaired Class, that the Plan "does not discriminate unfairly" and is "fair and equitable" as to such Class; (b) is feasible; and (c) is in the "best interests" of Holders of Claims and Interests that are Impaired under the Plan.

The following requirements must be satisfied pursuant to section 1129(a) of the Bankruptcy Code before a bankruptcy court may confirm a plan of reorganization. The Debtor believes that the Plan fully complies with all the applicable requirements of section 1129 of the Bankruptcy Code set forth below, other than those pertaining to voting, which is unnecessary as all classes of Claims and Interests are Unimpaired under the Plan and, thus, no class is entitled to vote.

- The Plan complies with the applicable provisions of the Bankruptcy Code.
- The Debtor (or any other proponent of the Plan) has complied with the applicable provisions of the Bankruptcy Code.
- The Plan has been proposed in good faith and not by any means forbidden by law.
- Any payment made or to be made by the Debtor (or any other proponent of the Plan) or by a Person issuing securities or acquiring property under the Plan, for services or for costs and expenses in or in connection with the Chapter 11 Case, in connection with the Plan and incident to the Chapter 11 Case is subject to the approval of the Bankruptcy Court as reasonable.
- The Debtor (or any other proponent of the Plan) has disclosed the identity and affiliations of any individual proposed to serve, after Confirmation, as a director, officer, or voting trustee of the Reorganized Debtor, any Affiliate of the Debtor reorganized under the Plan, or any successor to the Debtor under the Plan, and the appointment to, or continuance in, such office of such individual is consistent with the interests of creditors and equity security holders and with public policy.
- The Debtor (or any other proponent of the Plan) has disclosed the identity of any insider that will be employed or retained by the Reorganized Debtor and the nature of any compensation for such insider.
- With respect to each Holder within an Impaired Class of Claims or Interests, as applicable, each such Holder (a) has accepted the Plan or (b) will receive or retain under the Plan on account of such Claim or Interest property of a value, as of the Effective Date, that is not less than the amount that such Holder would so receive or retain if the Debtor was liquidated under chapter 7 of the Bankruptcy Code on such date.
- With respect to each Class of Claims or Interests, such Class (a) has accepted the Plan or (b) is Unimpaired under the Plan (subject to the “cram-down” provisions discussed below).
- The Plan provides for treatment of Claims, as applicable, in accordance with the provisions of section 507(a) of the Bankruptcy Code.
- If a Class of Claims is Impaired under the Plan, at least one Class of Claims that is Impaired under the Plan has accepted the Plan, determined without including any acceptance of the Plan by any insider.



- Confirmation is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Reorganized Debtor, or any successor to the Debtor under the Plan, unless such liquidation or reorganization is proposed in the Plan.
- All fees payable under 28 U.S.C. § 1930 have been paid or the Plan provides for the payment of all such fees on the Effective Date.
- The Plan provides for the continuation after its effective date of payment of all retiree benefits, as that term is defined in section 1114 of the Bankruptcy Code, at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 of the Bankruptcy Code, at any time prior to Confirmation, for the duration of the period the applicable Debtor has obligated itself to provide such benefits.

C. No Need to Solicit Votes and Acceptance Requirements

Pursuant to the Bankruptcy Code, only classes of claims against or interests of a debtor that are “impaired” (within the meaning of section 1124 of the Bankruptcy Code) under the terms and provisions of a plan of reorganization or liquidation are entitled to vote to accept or reject a plan. A class is “impaired” if the legal, equitable, or contractual rights attaching to the claims or interests of that class are modified, other than by curing defaults and reinstating maturity. Classes of claims and interests that are not impaired are not entitled to vote on a plan and, under section 1126(f) of the Bankruptcy Code, are conclusively presumed to have accepted a plan. Article IV.B of this Disclosure Statement provides a summary of the classification and treatment of Claims under the Plan.

Under the Plan, all holders of Claims and Interests are Unimpaired and therefore are deemed to have accepted the Plan and are not entitled to vote to accept or reject the Plan.

D. Feasibility of the Plan.

Section 1129(a)(11) of the Bankruptcy Code requires that a debtor demonstrate that confirmation of a plan is not likely to be followed by liquidation or the need for further financial reorganization. For purposes of determining whether the Plan meets this requirement, the Debtor has analyzed its ability to meet its obligations under the Plan and retain sufficient liquidity and capital resources to conduct its business. The Debtor intends to include financial projections for the Reorganized Debtor as part of the Plan Supplement, which will show that the Reorganized Debtor will be able to make all payments required by the Plan and will be financially viable after confirmation of the Plan.

E. Best Interests Test

As described above, section 1129(a)(7) of the Bankruptcy Code (often referred to as the “Best Interests Test”) requires that each Holder of an Impaired Claim or Interest either (a) accept the Plan or (b) receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the value such Holder would receive if the Debtor was liquidated under chapter 7 of the Bankruptcy Code. No Claims or Interests are Impaired under the Plan. Accordingly, the Best Interests Test is not applicable.

## ARTICLE X

### **CERTAIN FEDERAL UNITED STATES INCOME TAX CONSEQUENCES OF THE PLAN**

A. Introduction

The following discussion summarizes certain of the material United States federal income tax consequences expected to result from the implementation of the Plan. This discussion is based on current provisions of the Internal Revenue Code of 1986, as amended (the “Tax Code”), applicable Treasury Regulations, judicial authority and current administrative rulings and pronouncements of the Internal Revenue Service (the “IRS”). There can be no assurance that the IRS will not take a contrary view, and no ruling from the IRS has been or will be sought. Legislative, judicial, or administrative changes or interpretations may be forthcoming that could alter or modify the statements and conclusions set forth herein. Any such changes or interpretations may or may not be retroactive and could affect the tax consequences to, among others, the Debtor and the Holders of Claims.

The following summary is for general information only. The federal income tax consequences of the Plan are complex and subject to significant uncertainties. This summary does not address foreign, state, or local tax consequences of the Plan, nor does it purport to address all of the federal income tax consequences of the Plan. This summary also does not purport to address the federal income tax consequences of the Plan to taxpayers subject to special treatment under the federal income tax laws, such as broker-dealers, tax exempt entities, financial institutions, insurance companies, S corporations, small business investment companies, mutual funds, regulated investment companies, foreign corporations, and non-resident alien individuals.

**IRS Circular 230 Notice: To comply with U.S. treasury regulations, be advised that any U.S. federal tax advice included in this communication (and it is not intended that any such advice be given in this Disclosure Statement) is not intended or written to be used, and cannot be used, to avoid any U.S. federal tax penalties or to promote, market, or recommend to another party any transaction or matter.**

B. Federal Income Tax Consequences to Creditors

Given that all Allowed Claims are to be paid in full in Cash or Reinstated under the Plan, the Debtor does not anticipate that the Plan will have material income tax consequences for creditors. The Debtor will not withhold taxes or comply with any applicable reporting requirements, and will issue an IRS Form 1099 to the recipient of a distribution if requested.

**EACH HOLDER OF A CLAIM IS STRONGLY URGED TO CONSULT ITS OWN TAX ADVISOR REGARDING THE POTENTIAL FEDERAL, STATE, LOCAL, OR FOREIGN TAX CONSEQUENCES OF THE PLAN.**

**ARTICLE XI**

**PLAN-RELATED RISK FACTORS**

A. Generally

The following provides a summary of important considerations and risk factors associated with the Plan. However, it is not exhaustive. Holders of Claims against and Interests in the Debtor should read and carefully consider the factors set forth below. The post-confirmation reorganization of the Debtor involves a degree of risk, however small, and this Disclosure Statement and certain of its appendices contain forward-looking statements that involve risks and uncertainty. The Reorganized Debtor's actual results could differ materially from those anticipated in such forward-looking statements as a result of a variety of factors, including those set forth in the following risk factors and elsewhere in this Disclosure Statement. **Holders of Claims or Interests should consider carefully the following factors in addition to the other information contained in this Disclosure Statement.**

B. Certain Bankruptcy Considerations

The Plan sets forth the means for satisfying the Claims against and Interests in the Debtor. Allowed Claims are expected to be paid in full in Cash on the Effective Date or following their Allowance in accordance with the payment terms of the Plan. Certain Allowed Claims will be Reinstated and paid in full in accordance with their terms. Nevertheless, there are some risks to consummation of the Plan. The Plan has been proposed after a careful consideration of all reasonable restructuring alternatives. Despite the risks inherent in the Plan, as described herein, the Debtor believes that the Plan is in the best interests of Creditors and Holders of Interests when compared to all reasonable alternatives.

Section 1129 of the Bankruptcy Code requires, among other things, a showing that confirmation of the Plan will not be followed by liquidation or the need for further financial reorganization of the Debtors, and that the value of distributions to dissenting Holders of Claims

and Interests will not be less than the value such Holders would receive if the Debtor was liquidated under chapter 7 of the Bankruptcy Code. Although the Debtor believes that the Plan will meet such tests, there can be no assurance that the Bankruptcy Court will reach the same conclusion. If a liquidation or protracted reorganization were to occur, there is a significant risk that the value of the Debtor's enterprise would be substantially eroded to the detriment of all stakeholders. The Debtor's future results are dependent upon the successful confirmation and implementation of a plan of reorganization. Failure to obtain this approval in a timely manner could adversely affect the Debtor's operating results since the Debtor's relations with customers and suppliers may be harmed by protracted bankruptcy proceedings. Once a plan of reorganization is approved and implemented, the Debtor's operating results may be adversely affected by the possible reluctance of prospective customers and suppliers to do business with a company that recently emerged from bankruptcy proceedings.

C. Claims Estimations

There can be no assurance that the Debtor's estimated Claim amounts are correct. The actual Allowed amount of Claims likely will differ in some respect from the estimates. The estimated amounts are subject to certain risks, uncertainties, and assumptions. Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, the actual Allowed amount of Claims may vary from those estimated herein.

D. Bankruptcy-Specific Risk Factors That Could Negatively Impact the Debtors' Business

1. The Debtor is subject to the risks and uncertainties associated with the Chapter 11 Case.

For the duration of the Chapter 11 Case, the Debtor's operations and its ability to execute its business strategy will be subject to risks and uncertainties associated with bankruptcy. These risks include, but are not limited to:

- the Debtor's ability to obtain Bankruptcy Court approval with respect to motions filed in the Chapter 11 Case from time to time;
- the Debtor's ability to develop, prosecute, confirm and consummate the proposed Plan;
- the Debtor's ability to meet all conditions precedent to the Effective Date of the Plan;
- the Debtor's ability to obtain and maintain normal payment and other terms with customers, vendors and service providers;
- the Debtor's ability to continue as a going concern;
- the Debtor's ability to retain key vendors or secure alternative supply sources;

- the ability of wholesale customers to cease or limit doing business with the Debtor during or after the Chapter 11 Case;
  - the ability of third parties to seek and obtain court approval to terminate or shorten the exclusivity period for the Debtor to propose and confirm a plan of reorganization, to appoint a Chapter 11 trustee or to convert the Chapter 11 Case to a chapter 7 case;
  - the Debtor's ability to attract, motivate and retain management and other key employees; and
  - the Debtor's ability to fund and execute its Reorganization Business Plan.
2. The Debtor Will Also Be Subject to Risks and Uncertainties with Respect to the Actions and Decisions of its Creditors and other Third Parties Who Have Interests in The Chapter 11 Case that May Be Inconsistent With the Debtor's Plans.

These risks and uncertainties could affect the Debtor's business and operations in various ways. For example, negative events or publicity associated with the Chapter 11 Case could adversely affect the Debtor's relationships with its vendors, employees, and customers, which in turn could adversely affect the Debtor's operations and financial condition. Also, pursuant to the Bankruptcy Code, the Debtor needs Bankruptcy Court approval for transactions outside the ordinary course of business, which may limit the Debtor's ability to respond timely to events or take advantage of opportunities. Because of the risks and uncertainties associated with the Chapter 11 Case, the Debtor cannot predict or quantify the ultimate impact that events occurring during the Chapter 11 Case will have on its business, financial condition and results of operations.

3. The Debtor's business could suffer from a long and protracted restructuring.

The Debtor's future results are dependent upon the successful confirmation and implementation of a plan of reorganization. Failure to obtain this approval in a timely manner could adversely affect its operating results. For instance, the Debtor's wholesale customers may be hesitant to place additional purchase orders from the Debtor during the Chapter 11 Case for fear of the Debtor's ability to fulfill them. If a liquidation or protracted reorganization were to occur, there is a significant risk that the Debtor will eventually run out of cash and/or be forced to cease operating, thereby causing the value of the Debtor's enterprise to be substantially eroded to the detriment of all stakeholders.

4. If the Debtor is unable to close underperforming stores, the Debtor's results would be adversely impacted.

As previously described in the Disclosure Statement, the Debtor's management, in consultation with its advisors, have determined it is necessary to close certain stores. Absent rejection of such leases, the Debtor will continue to be obligated to pay rent. The Debtor's unprofitable stores represented nearly \$11 million in consolidated negative EBITDA in 2018. In addition, the Debtor's aggregate annual rent exceeds \$25 million and, given that several of the

Debtor's most unprofitable leases extend as far as 2024-2026, keeping them open through expiration of their lease terms would cost the Debtor significant lease expense over the full life of the leases. Specifically, the Debtor's unprofitable stores would combine to cost over \$60 million in total lease expense over their remaining terms. By contrast, the Debtor's rejection of certain stores through this Chapter 11 Case will substantially reduce their annual operating losses.

The Debtor believes it has a sound business justification for rejection of certain unprofitable leases pursuant to Section 365 of the Bankruptcy Code and that the rejections through the Plan should be granted by the Bankruptcy Court. The rejections are subject to approval of the Bankruptcy Court, however, and if the Bankruptcy Court denies the rejections, the Debtor's ability to operate as a going concern will be severely harmed.

5. If the Debtor is unable to obtain Confirmation of the Plan, it will likely be unable to fund the Reorganization Business Plan and its ability to continue operating as a going-concern will be severely harmed

The reorganization of the Debtor's business through the Chapter 11 Case and the Plan, including the rejection of certain leases, is integral to the Debtor's ability to finance the Reorganization Business Plan, which is crucial to the Debtor's post-bankruptcy ability to restore the Diesel brand in the United States, return the Debtor to its pre-recession profitability, ensure its ability to continue operating in the United States, and preserve hundreds of jobs in addition to creating new ones through opening new stores. The Debtor's projections indicate that the Reorganization Business Plan will return the Debtor to stand-alone profitability by 2021 and will cost approximately \$36 million over the 3-year period. The Parent has agreed to, subject to the occurrence of the Effective Date on or before June 21, 2019, provide the Parent Commitment to ensure adequate funding for the Reorganization Business Plan in the manner and amounts described in Article II.E of this Disclosure Statement. Without the Parent Commitment, the Debtor will likely be unable to finance the Reorganization Business Plan, thereby precluding its ability to continue operating as a going concern.

6. If the Debtor is unable to obtain Confirmation of the Plan, the Parent will likely not agree to consent to the assumption or renewal of, and may seek to terminate, the License Agreement

The Debtor operates in the United States pursuant to the License Agreement, under which the Parent, as licensor thereunder, licenses to the Debtor the exclusive right to use certain trademarks and other intellectual property for the purpose of distributing, advertising, and selling Diesel brand products in the United States. The Parent has agreed, subject to the occurrence of the Effective Date on or before June 21, 2019, to consent to the Debtor's assumption of the License Agreement through the Plan and, upon the occurrence of the Effective Date, not to exercise its right to provide the six-month termination notice in 2019, thereby allowing for an automatic one-year renewal beyond its current December 31, 2019 expiration date. The foregoing agreements of the Parent are expressly conditioned on the Debtor's consummation of the Plan and its ability to implement the Reorganization Business Plan. Without the License Agreement, the Debtor would be unable to continue operating as a going-concern.

E. Risks Associated with Forward-Looking Statements

1. Financial Information Is Based on the Debtors' Books and Records and, Unless Otherwise Stated, No Audit Was Performed.

The financial information contained in this Disclosure Statement has not been audited. In preparing this Disclosure Statement, the Debtor relied on financial data derived from its books and records that was available at the time of such preparation. Although the Debtor has used its reasonable business judgment to ensure the accuracy of the financial information provided in this Disclosure Statement, and while the Debtor believes that such financial information fairly reflects, in all material respects, the financial results of the Debtor, the Debtor is unable to warrant or represent that the financial information contained herein and attached hereto is without inaccuracies.

2. Financial Projections and Other Forward-Looking Statements Are Not Assured, Are Subject to Inherent Uncertainty Due to Numerous Assumptions Upon Which They Are Based and, as a Result, Actual Results May Vary.

This Disclosure Statement contains various projections concerning the financial results of the Reorganized Debtor's operations, including the Financial Projections that are, by their nature, forward-looking, and which necessarily base projections on certain assumptions and estimates. Should any or all of these assumptions or estimates ultimately prove to be incorrect, the actual future financial results of the Reorganized Debtor may turn out to be different from the Financial Projections.

The Debtor cautions each reader of this Disclosure Statement to carefully consider those factors set forth above and the acknowledgements contained in this "Risk Factors" section of this Disclosure Statement. Such factors have, in some instances, affected and in the future could affect the ability of the Debtor to achieve its projected results and may cause actual results to differ materially from those expressed herein. The Debtor undertakes no obligation to update any forward-looking statements in this Disclosure Statement.

The Liquidation Analysis, distribution projections, and other information contained herein and attached hereto are estimates only, and the timing and amount of actual distributions to Holders of Allowed Claims may be affected by many factors that cannot be predicted. Therefore, any analyses, estimates, or recovery projections may not turn out to be accurate.

## **ARTICLE XII**

### **ALTERNATIVES TO THE PLAN**

The Debtor believes that the Plan affords holders of Claims and Interests the greatest realization on the Debtor's assets and, therefore, is in the best interests of Creditors and Interests. But if the Plan is not confirmed, the theoretical alternatives include (a) continuation of the pending Chapter 11 Case without any immediately available financing; (b) an alternative plan; or (c) liquidation of the Debtor under Chapter 7 of the Bankruptcy Code.

A. Continuation of the Chapter 11 Case

Since the Plan is designed to distribute a relatively fixed sum of Cash, continuing the Chapter 11 Case would serve no purpose other than increasing costs to the Estate and reducing recoveries to holders of Claims or Interests.

B. Alternative Plans of Reorganization

If the Plan is not confirmed, the Debtor, or any party-in-interest upon expiration of exclusivity, could propose a different plan or plans. Those plans might involve either a reorganization and continuation of the Debtor's business, a sale of the Debtor's assets as a going concern, in whole or in part, or some other form of orderly liquidation of the Debtor's assets, or a combination thereof.

C. Liquidation under Chapter 7

If no plan is confirmed, the Debtor's Chapter 11 Case may be converted to a case under Chapter 7 of the Bankruptcy Code. In a Chapter 7 case, a trustee or trustees would be appointed to liquidate the assets of the Debtor. It is impossible to predict precisely how the proceeds of the liquidation would be distributed to the respective holders of Claims against or Interests in the Debtor or how that would differ materially from what the Plan provides. However, the Debtor believes that creditors would lose the materially higher going concern value if the Debtor was forced to liquidate. In addition, the Debtor believes that in liquidation under chapter 7, before creditors received any distribution, additional administrative expenses involved in the appointment of a trustee or trustees and attorneys, accountants and other professionals to assist such trustees would cause a substantial diminution in the value of the Estate. The assets available for distribution to creditors would be reduced by such additional expenses and by claims, some of which would be entitled to priority, which would arise by reason of the liquidation and from the rejection of leases and other executory contracts in connection with the cessation of operations and the failure to realize the greater going concern value of the Debtor's assets. In addition, the Debtor would lose its rights to utilize its licensed intellectual property under the License Agreement.

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**ARTICLE XIII**

**CONCLUSION**

**THE DEBTOR BELIEVES THAT THE PLAN PROVIDES THE BEST AVAILABLE RECOVERY TO ALL OF ITS STAKEHOLDERS AND SHOULD BE CONFIRMED.**

Dated: March 7, 2019

**DIESEL USA, Inc.**

By: /s/ Mark G. Samson

Name: Mark G. Samson

Title: Chief Restructuring Officer

**EXHIBIT A**

**CHAPTER 11 PLAN**

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

In re:

DIESEL USA, Inc.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 19-10432 (MFW)

**CHAPTER 11 PLAN OF REORGANIZATION OF DIESEL USA, INC.**

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<sup>1</sup> The last four digits of the Debtor's federal tax identification number are 4308. The Debtor's principal offices are located at 220 West 19th Street, New York, NY 10011.

## INTRODUCTION

Diesel USA, Inc. (the “Debtor”) proposes the following chapter 11 plan of reorganization (the “Plan”) pursuant to chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). Capitalized terms used in the Plan have the meanings ascribed to such terms in Article I.A of the Plan. Reference is made to the Disclosure Statement for a discussion of the Debtor’s history, as well as a summary and analysis of the Plan and other related matters, including distributions to be made under the Plan. The Debtor is the proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code.

**SUBJECT TO CERTAIN RESTRICTIONS AND REQUIREMENTS SET FORTH IN SECTION 1127 OF THE BANKRUPTCY CODE, FEDERAL RULE OF BANKRUPTCY PROCEDURE 3019 AND THIS PLAN, THE DEBTOR RESERVES THE RIGHT TO ALTER, AMEND, MODIFY, REVOKE, OR WITHDRAW THIS PLAN PRIOR TO ITS EFFECTIVE DATE.**

## ARTICLE I – DEFINITIONS, RULES OF INTERPRETATION, AND CONSTRUCTION

A. Defined Terms. As used herein, the following terms have the respective meanings specified below, except as expressly provided in other Sections of the Plan, unless the context otherwise requires (such meanings to be equally applicable to both the singular and plural, and masculine and feminine, forms of the terms defined). Any capitalized term used in the Plan but not defined herein that is used in the Bankruptcy Code or Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or Bankruptcy Rules.

1. “Administrative Claim” means a Claim for any expense Allowed under Bankruptcy Code §§ 503(b), 507(b), or 546(c)(2) and entitled to priority under Bankruptcy Code § 507(a)(2), including: (a) fees payable under 28 U.S.C. § 1930; (b) actual and necessary costs and expenses incurred in the ordinary course of the Debtor’s business; (c) actual and necessary costs and expenses of preserving the Estate or administering the Chapter 11 Case; and (d) all Professional Fee Claims to the extent Allowed by Final Order under Bankruptcy Code §§ 330, 331, or 503.

2. “Allowed” means, with respect to any Claim or Interest, such Claim or Interest or any portion thereof that the Debtor has assented to the validity of or that has been (a) expressly allowed under the Plan, (b) that is not Disputed, (c) that is either allowed or determined by a Final Order of a court of competent jurisdiction, or (d) that is agreed to by the Debtor or Reorganized Debtor and the holder of such Claim or Interest; provided, however, that, notwithstanding anything herein to the contrary, by treating a Claim as an “Allowed Claim” or an Interest as an “Allowed Interest,” the Debtor does not waive its rights to contest the amount and validity of such Claim or Interest to the extent it is disputed, contingent or unliquidated, in the manner and venue in which such Claim or equity Interest would have been determined, resolved or adjudicated if the Chapter 11 Case had not been commenced; and provided, further that the amount of any Allowed Claim or Allowed Interest shall be determined in accordance with the Bankruptcy Code, including §§ 502(b), 503(b) and 506 of the Bankruptcy Code.

3. “Avoidance Actions” means any and all actual or potential claims and causes of action to avoid a transfer of property or an obligation incurred by the Debtor and its recovery, subordination, or other remedies that may be brought by and on behalf of the Debtor and its Estate under the Bankruptcy Code or applicable non-bankruptcy law, including actions or remedies under §§ 502, 510, 542, 544, 545, 547 through 553, and 724(a) of the Bankruptcy Code.

4. “Bankruptcy Code” means Title 11 of the United States Code as of the Petition Date.

5. “Bankruptcy Court” means the United States Bankruptcy Court for the District of Delaware, which has jurisdiction over the Chapter 11 Case.

6. “Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure and the Official Bankruptcy Forms, as amended, the Federal Rules of Civil Procedure, as amended, as applicable to the Chapter 11 Case or proceedings therein, and the Local Rules of the Bankruptcy Court, as applicable to the Chapter 11 Case or proceedings therein, as the case may be.

7. “Business Day” means any day, excluding Saturdays, Sundays, and “legal holidays” (as defined in Bankruptcy Rule 9006(a)), on which commercial banks are open for business in New York City.

8. “Cash” means currency, checks drawn on a bank insured by the Federal Deposit Insurance Corporation, certified checks, money orders, negotiable instruments, and wire transfers of immediately-available funds.

9. “Causes of Action” means any and all actions, claims, proceedings, causes of action, suits, accounts, demands, controversies, agreements, promises, rights to legal remedies, rights to equitable remedies, rights to payment and claims, whether known, unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured, and whether asserted or assertable directly or derivatively, in law, equity or otherwise, including actions brought prior to the Petition Date, actions under chapter 5 of the Bankruptcy Code, including any Avoidance Action, and actions against any Person or entity for failure to pay for products or services provided or rendered by the Debtor, all claims, suits or proceedings relating to enforcement of the Debtor’s intellectual property rights, including patents, copyrights and trademarks, and all claims or causes of action seeking recovery of the Debtor’s or the Reorganized Debtor’s accounts receivable or other receivables or rights to payment created or arising in the ordinary course of the Debtor’s or the Reorganized Debtor’s businesses, based in whole or in part upon any act or omission or other event occurring prior to the Petition Date or during the course of the Chapter 11 Case, including through the Effective Date.

10. “Chapter 11 Case” means the case under chapter 11 of the Bankruptcy Code for the Debtor pending before the Bankruptcy Court under Case No. 19-10432 (MFW).

11. “Claim” means a claim against the Debtor or its property as defined in Bankruptcy Code § 101(5), including: (a) any right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured arising at any time before the Effective Date; or (b) any right to an equitable remedy for breach of performance if the breach gives rise to a right to payment, whether or not the right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

12. “Class” means a category consisting of holders of Claims or Interests substantially similar in nature to the Claims or Interests of other holders placed in that category, as designated in Article III of the Plan.

13. “Closed” means entry by the Bankruptcy Court of a final decree closing the Chapter 11 Case.

14. “Confirmation Date” means the date the Bankruptcy Court enters the Confirmation Order.

15. “Confirmation Hearing” means the hearing held by the Bankruptcy Court to consider confirmation of the Plan, as such hearing may be adjourned or continued from time to time.

16. “Confirmation Order” means the order(s) confirming the Plan in accordance with the provisions of the Bankruptcy Code.

17. “Cure” means the payment of Cash by the Debtor, or the distribution of other property (as the parties may agree or the Bankruptcy Court may order), as necessary to cure monetary defaults under an Executory Contract or Unexpired Lease of the Debtor and to permit the Debtor to assume that contract or lease under § 365(a) of the Bankruptcy Code.

18. “Cure Schedule” means the schedule of proposed Cure amounts for (i) any Executory Contract proposed to be assumed for which the Debtor proposes a Cure amount other than \$0.00 and (ii) each Unexpired Lease proposed to be assumed, which will be included in the Plan Supplement.

19. “D&O Liability Insurance Policies” means all insurance policies of the Debtor for its directors’, managers’ and officers’ liability, including runoff policies or tail coverage.

20. “Disallowed” means, in reference to a Claim, a Claim or any portion of a Claim that has been disallowed or withdrawn by Final Order.

21. “Disclosure Statement” means the written disclosure statement and any supplements thereto (including the Plan Supplement and all schedules thereto or referenced therein) that relates to this Plan, as such disclosure statement may be amended, modified, or supplemented from time to time.

22. “Disputed” means, as to any Claim (or portion thereof) or Interest against the Debtor, a Claim or Interest to the extent the allowance of such Claim or Interest is the subject of (i) a timely objection or request for estimation in accordance with the Plan, the Bankruptcy Code, the Bankruptcy Rules or the Confirmation Order, and which objection, request for estimation or dispute has not been withdrawn, with prejudice, or determined by an order of the Bankruptcy Court, or (ii) a dispute that is being adjudicated by a court of competent jurisdiction in accordance with non-bankruptcy law.

23. “Effective Date” means the date on which this Plan shall take effect, which date shall be a Business Day on or after the Confirmation Date on which all conditions precedent to the effectiveness of this Plan specified in Article VIII, have been satisfied, or, if capable of being waived, waived, which date shall be specified in a notice filed by the Reorganized Debtor with the Bankruptcy Court.

24. “Estate” means the bankruptcy estate of the Debtor created pursuant to § 541 of the Bankruptcy Code.

25. “Executory Contract” means any contract to which the Debtor is a party that is subject to assumption or rejection under §§ 365 or 1123 of the Bankruptcy Code.

26. “Final Order” means an order as to which the time to appeal, petition for *certiorari*, or move for re-argument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for re-argument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, move for re-argument, or rehearing shall have been waived in writing or, in the event an appeal, writ of *certiorari*, or re-argument or rehearing thereof has been sought, such order shall have been affirmed by the highest court to which such order was appealed, or *certiorari* has been denied, or from which re-argument or rehearing was sought, and the time to take any further appeal, petition for *certiorari*, or motion for re-argument or rehearing shall have expired.

27. “General Unsecured Claim” means any Claim against the Debtor existing as of the Petition Date other than a Rejection Damages Claim, Secured Claim, Administrative Claim, Priority Tax Claim, or Other Priority Claim.

28. “Holder” means a Person or entity holding a Claim or Interest.

29. “Impaired” means impaired within the meaning of § 1124 of the Bankruptcy Code.

30. “Insurance Policy” means any issued policy of insurance and any agreements relating thereto covering the Debtor, the Debtor’s Estate or its assets, directors, officers, members, managers, employees and fiduciaries, or that may be available to provide coverage for Claims against the Debtor or any of the foregoing, including without limitation any general liability, property, workers compensation, casualty, umbrella or excess liability policy(ies), errors and omissions, director and officer or similar executive, fiduciary and organization liability policy(ies) (A, B or C coverage), and any tail with respect thereto.

31. “Interest” means any equity interest in the Debtor represented by any certificated or uncertificated shares or membership interest issued to any Person before the Effective Date, and any warrants, options, or rights to purchase any equity interest.

32. “License Agreement” means that certain License Agreement between the Parent as licensor and the Debtor as licensee dated as of December 30, 2015.

33. “Market Contribution Accrual” means the accrued, unpaid transfer pricing adjustment arising under the License Agreement for the year ended December 31, 2018, which amount is estimated to be in the approximate amount of \$26.4 million.

34. “Noticing Agent” means Bankruptcy Management Solutions, Inc. d/b/a Stretto.

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

36. “Other Priority Claim” means any Claim (or portion of a Claim) entitled to priority under Bankruptcy Code § 507(a) other than Priority Tax Claims and Administrative Claims.

37. “Parent” means Diesel S.p.A., an Italian corporation, the Debtor’s sole shareholder.

38. “Parent Commitment” means the Parent’s agreement, in exchange for the retention of its Interests as provided herein and other good and valuable consideration, subject to the occurrence of the Effective Date on or before June 21, 2019, to (a) consent to the Debtor’s assumption of the License Agreement in accordance with section 365(c)(a) of the Bankruptcy Code; (b) agree to renewal of the License Agreement for another term, which shall be without prejudice to the parties’ rights to revise and renegotiate in good faith the terms and conditions of the License Agreement after the Effective Date; (c) consent to the release and payment of the full amount of the Market Contribution Accrual for the purpose of funding the Reorganization Business Plan; and (d) provide for additional funding for the Reorganization Business Plan in the amount of not less than \$10 million. Confirmation that each of the foregoing terms have been agreed to will be included in the Plan Supplement.

39. “Person” means an individual, corporation, partnership, limited liability company (including its members), joint venture, trust, estate, unincorporated association, unincorporated organization, governmental entity, or political subdivision thereof, or any other entity.

40. “Petition Date” means the date on which the Debtor commenced the Chapter 11 Case.

41. “Plan Supplement” means the supplement to the Plan, if any, which is incorporated fully into the Plan, that will contain the exhibits and Plan documents necessary and appropriate to implement the terms of the Plan, and which shall be filed by



the Debtor no later than fifteen (15) days prior to the Confirmation Hearing or such other date as may be approved by the Bankruptcy Court.

42. “Priority Tax Claim” means any Claim of a Governmental Unit, as defined in § 101(27) of the Bankruptcy Code, entitled to priority under Bankruptcy Code § 507(a)(8).

43. “Professional Fee Claim” means an Administrative Claim for compensation and reimbursement of expenses of a Professional incurred before the Effective Date submitted in accordance with Bankruptcy Code §§ 328, 330, 331, or 503(b).

44. “Professional” means a Person: (a) employed in the Chapter 11 Case pursuant to an order of the Bankruptcy Court under Bankruptcy Code §§ 327, 328, 363, or 1103 and compensated for services under Bankruptcy Code §§ 327, 328, 329, 330, and 331 or order of the Bankruptcy Court; or (b) for whom compensation and reimbursement has been Allowed by a Final Order under Bankruptcy Code § 503(b).

45. “Professional Fee Bar Date” means the first Business Day that is 30 days after the Effective Date.

46. “Pro Rata” means a proportionate share, such that the ratio of the consideration distributed on account of an Allowed Claim in a Class to the amount of that Allowed Claim is the same as the ratio of all consideration distributed on account of all Allowed Claims in that Class to the amount of all Allowed Claims in that Class.

47. “Reinstated” or “Reinstatement” means (a) leaving unaltered the legal, equitable and contractual rights to which a Claim entitles the Holder so as to leave such Claim Unimpaired in accordance with § 1124 of the Bankruptcy Code, or (b) notwithstanding any contractual provision or applicable law that entitles the Claim Holder to demand or receive accelerated payment of such Claim after the occurrence of a default, (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in § 365(b)(2) of the Bankruptcy Code; (ii) reinstating the maturity of such Claim as such maturity existed before such default; (iii) compensating the Claim Holder for any damages incurred as a result of any reasonable reliance by such Claim Holder on such contractual provision or such applicable law; and (iv) not otherwise altering the legal, equitable or contractual rights to which such Claim entitles the Claim Holder; provided, however, that any contractual right that does not pertain to the payment when due of principal and interest on the obligation on which such Claim is based, including, but not limited to, financial covenant ratios, negative pledge covenants, covenants or restrictions on merger or consolidation, “going dark” provisions, and affirmative covenants regarding corporate existence prohibiting certain transactions or actions contemplated by this Plan, or conditioning such transactions or actions on certain factors, shall not be required to be cured or reinstated in order to accomplish Reinstatement.

48. “Rejection Bar Date” means the date that is twenty-one (21) days after the Effective Date.

49. “Rejection Damages Claim” means any Claim on account of the rejection of an Executory Contract or Unexpired Lease pursuant to § 365 of the Bankruptcy Code or the repudiation of such contract.

50. “Rejection Damages Claim Objection Deadline” means (a) the first Business Day that is at least seven (7) days after the Rejection Bar Date or (b) such later date as may be established by the Bankruptcy Court upon request of the Reorganized Debtor without further notice to parties-in-interest.

51. “Reorganization Business Plan” means the Debtor’s three-year business plan for the years 2019-2021, as more fully described in Article II.F.2 of the Disclosure Statement.

52. “Reorganized Debtor” means Diesel USA, Inc., the Debtor herein, upon the Effective Date of this Plan.

53. “Scheduled” means, with respect to any Claim, the status, priority, and amount, if any, of such Claim as set forth in the Schedule of Rejected Executory Contracts and Unexpired Leases.

54. “Schedule of Rejected Executory Contracts and Unexpired Leases” means the schedule of certain Executory Contracts and Unexpired Leases to be rejected by the Debtor, as the same may be amended, modified, or supplemented from time to time, and which will be included in the Plan Supplement.

55. “Secured Claim” means a Claim (a) secured by a Lien on collateral to the extent of the value of such collateral, as determined in accordance with section 506(a) of the Bankruptcy Code or (b) subject to a valid right of setoff pursuant to section 553 of the Bankruptcy Code.

56. “Statutory Committee” means any statutory committee appointed in this Chapter 11 Case.

57. “Unexpired Lease” means a lease of nonresidential real property to which Debtor is a party that is subject to assumption or rejection under §365 of the Bankruptcy Code.

58. “Unimpaired” means, with respect to a Class of Claims, a Class of Claims that is not Impaired.

B. Rules of Construction.

1. Generally. For purposes of the Plan: (i) any reference in the Plan to an existing document or exhibit filed or to be filed means such document or exhibit as it may have been or may be amended, modified or supplemented; (ii) unless otherwise specified, all references in the Plan to Sections, Articles, and exhibits are references to Sections, Articles, and exhibits of or to the Plan; and (iii) the rules of construction set forth in section 102 of the Bankruptcy Code and the Bankruptcy Rules shall apply unless superseded herein or in the Confirmation Order.

2. Time Periods. In computing any period of time prescribed or allowed by the Plan, unless otherwise set forth herein or determined by the Bankruptcy Court, the provisions of Bankruptcy Rule 9006 shall apply.

3. Miscellaneous Rules. (i) The words “herein,” “hereof,” “hereunder,” and other words of similar import refer to the Plan as a whole, not to any particular Section, subsection, or clause, unless the context requires otherwise; (ii) whenever it appears appropriate from the context, each term stated in the singular or the plural includes the singular and the plural, and each pronoun stated in the masculine, feminine or neuter includes the masculine, feminine, and the neuter; and (iii) captions and headings to Articles and Sections of the Plan are inserted for convenience of reference only and are not intended to be a part or to affect the interpretation of the Plan.

## **ARTICLE II – TREATMENT OF UNCLASSIFIED CLAIMS**

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Professional Fee Claims, and Priority Tax Claims are not classified and are not entitled to vote on the Plan.

A. Administrative Claims. Except to the extent that a Holder of an Allowed Administrative Claim and either the Debtor or Reorganized Debtor, as applicable, agree to less favorable treatment, each Holder of an Allowed Administrative Claim (other than Professional Fee Claims) will, in exchange for full and final satisfaction, settlement, release, and discharge of such Allowed Administrative Claim, be paid the full unpaid amount of such Allowed Administrative Claim in Cash on, or as soon thereafter as is reasonably practicable, (a) the Effective Date or, if payment is not then due, (b) on the due date of such Allowed Administrative Claim; *provided, however*, that Administrative Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due. Any taxes that arose postpetition shall be paid in the ordinary course of business and the taxing authorities that hold Claims on account of such postpetition taxes shall not be required to file a proof of claim for an Administrative Claim in the Chapter 11 Case.

B. Professional Fee Claims. Each Allowed Professional Fee Claim shall be paid in full in Cash on the later of: (a) three days after the Professional Fee Claim is Allowed; and (b) another date on which the holder of the Professional Fee Claim and the Debtor or Reorganized Debtor agree. Each Person seeking an award by the Bankruptcy Court of Professional Fees must file with the Bankruptcy Court and serve on Reorganized Debtor its final application for allowance of compensation for services rendered and reimbursement of expenses incurred through the Effective Date by the Professional Fee Bar Date.

C. Post-Effective Date Professional Fees. All claims of Professionals for services rendered or expenses incurred after the Effective Date in connection with the Chapter 11 Case and the Plan including, but not limited to, those relating to consummation of the Plan, any appeal of the Confirmation Order, the preparation, filing, and review of Professional Fee Claims, the prosecution of Causes of Action, and the resolution of Disputed Claims, shall be paid by the

Reorganized Debtor on receipt of an invoice, or on other terms on which the Reorganized Debtor and the Professional agree, without the need for further Bankruptcy Court authorization or entry of a Final Order.

D. Priority Tax Claims. Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to less favorable treatment, in exchange for full and final satisfaction, settlement, release, and discharge of each Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim due and payable on or prior to the Effective Date shall receive the treatment set forth in section 1129(a)(9)(C) of the Bankruptcy Code. To the extent any Allowed Priority Tax Claim is not due and owing on or before the Effective Date, such Claim shall be paid in full in Cash in accordance with the terms of any agreement between the Debtor and such Holder or as may be due and payable under applicable non-bankruptcy law or in the ordinary course of business.

### **ARTICLE III – CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS AND INTERESTS**

A. Classification and Treatment Generally. Pursuant to sections 1122 and 1123 of the Bankruptcy Code, set forth below is a designation of Classes of Claims and Interests, which are placed in a particular Class for all purposes under the Plan, including, without limitation, voting, confirmation, and receiving distributions under the Plan, as set forth herein. In accordance with section 1123(a)(1) of the Bankruptcy Code, Claims arising under sections 507(a)(2) or 507(a)(8) of the Bankruptcy Code are not classified and their treatment is set forth in Article II.

B. Classification and Treatment of Classified Claims and Interests. Classified Claims and Interests are divided into numbered classes as follows:

<b><u>Class</u></b>	<b><u>Treatment</u></b>	<b><u>Entitled To Vote</u></b>
Class 1 – Other Priority Claims	Unimpaired	No (Deemed to Accept)
Class 2 – Secured Claims	Unimpaired	No (Deemed to Accept)
Class 3 – General Unsecured Claims	Unimpaired	No (Deemed to Accept)
Class 4 – Rejection Damages Claims	Unimpaired	No (Deemed to Accept)
Class 5 – Interests	Unimpaired	No (Deemed to Accept)

#### 1. Class 1: Other Priority Claims

a. Treatment: Except to the extent that a Holder of an Allowed Other Priority Claim agrees to less favorable treatment, in exchange for full and final satisfaction, settlement, release, and discharge of such Claim, each Holder of such Allowed Other Priority Claim shall receive the following at the option of the Debtor:

1. Payment in full in Cash in the ordinary course of business;
2. Reinstatement of such Allowed Other Priority claim; or
3. Such other treatment rendering such Allowed Other Priority Claim Unimpaired.

b. Impairment and Voting: Class 1 is Unimpaired and all Holders of Class 1 Claims are conclusively deemed to have accepted the Plan and are not entitled to vote on the Plan.

2. Class 2: Secured Claims

a. Treatment: Except to the extent that a Holder of an Allowed Secured Claim agrees to less favorable treatment, each holder of an Allowed Secured Claim shall receive, in exchange for full and final satisfaction, settlement, release, and discharge of such Claim, the following, at the option of the Debtor:

1. Payment in full in Cash in the ordinary course of business;
2. Reinstatement of such Allowed Secured claim; or
3. Such other treatment rendering such Allowed Secured Claim Unimpaired.

b. Impairment and Voting: Class 2 is Unimpaired and all Holders of Class 2 Claims are conclusively deemed to have accepted the Plan and are not entitled to vote on the Plan.

3. Class 3: General Unsecured Claims

a. Treatment: Except to the extent that a Holder of an Allowed General Unsecured Claim agrees to less favorable treatment, each Holder of an Allowed General Unsecured Claim shall, in exchange for full and final satisfaction, settlement, release, and discharge of such Claim, receive at the sole option of the Debtor either:

1. Reinstatement as of the Effective Date and satisfaction in full in the ordinary course of the Debtor's or Reorganized Debtor's business operations in accordance with the terms and conditions of the particular transaction giving rise to such Allowed General Unsecured Claim;
2. Payment in Cash in the full amount of its Allowed General Unsecured Claim plus interest on such Allowed General Unsecured Claim, if any, from the Effective Date to the date of payment at the rate provided by contract or, if no contract exists, at the statutory rate provided by 29 U.S.C. § 1961, which payment shall occur on the later of (i) the Effective Date and (ii) the date due in the ordinary course of business in accordance with the terms and conditions of the particular transaction giving rise to such Allowed General Unsecured Claim; or
3. Such other treatment as would render such Claim otherwise Unimpaired pursuant to section 1124 of the Bankruptcy Code.

b. Impairment and Voting: Class 3 is Unimpaired and all Holders of Class 3 Claims are conclusively deemed to have accepted the Plan and are not entitled to vote on the Plan.

4. Class 4: Rejection Damages Claims

a. Treatment: Except to the extent that a Holder of an Allowed Rejection Damages Claim agrees to less favorable treatment, each Holder of an Allowed Rejection Damages Claim shall, in exchange for full and final satisfaction, settlement, release, and discharge of such Claim, receive payment in Cash in the full amount of its Allowed Rejection Damages Claim plus interest on such Allowed Rejection Damages Claim, if any, from the Effective Date to the date of payment at the rate provided by contract or, if not specified by the contract, at the statutory rate provided by 29 U.S.C. § 1961, which payment shall occur on the later of (i) the Effective Date and (ii) thirty (30) days after entry of a Final Order rendering such Claim an Allowed Rejection Damages Claim..

b. Impairment and Voting: Class 4 is Unimpaired and all Holders of Class 4 Claims are conclusively deemed to have accepted the Plan and are not entitled to vote on the Plan.

5. Class 5: Interests

a. Treatment: All holders of Interests shall retain the Interests.

b. Impairment and Voting: Class 5 is Unimpaired and all Holders of Class 5 Interests are conclusively deemed to have accepted the Plan and are not entitled to vote on the Plan.

C. Resolution of Claims. Except as required by an order of the Bankruptcy Court and except with respect to Rejection Damages Claims as required under Article VI of the Plan, Holders of Claims and Interests need not file a proof of claim with the Bankruptcy Court to be deemed an Allowed Claim or Interest under the Plan and shall retain all their rights under applicable non-bankruptcy law to pursue their Claims in any forum with jurisdiction over the parties and the Debtor or Reorganized Debtor shall have and retain any and all rights and defenses the Debtor had with respect to any Claim or Interest immediately prior to the Effective Date. If the Debtor or Reorganized Debtor disputes any claims, other than Rejection Damage Claims, such disputes shall be determined, resolved, or adjudicated as if the Debtor had not filed the Chapter 11 Case. Except as provided in Article VI of the Plan, all proofs of claim filed in this Chapter 11 Case shall be considered objected to and Disputed without further action by the Debtor. On the Effective Date, all proofs of claim filed against the Debtor (other than as required under Article VI of the Plan), regardless of when such proofs of claim were filed, including proofs of claims filed after the Effective Date, shall be deemed withdrawn, and such creditor that files such proof of claim with the Bankruptcy Court shall retain any right it may have to pursue remedies in a forum other than the Bankruptcy Court in accordance with applicable law.

**ARTICLE IV – NO CLASS ENTITLED TO VOTE**

A. Voting of Claims and Interests. No Class is Impaired under the Plan. Unimpaired Classes are presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code

## **ARTICLE V – MEANS OF IMPLEMENTATION**

A. General Settlement of Claims. Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, on the Effective Date, the provision of the Plan shall constitute good-faith compromise and settlement of all Claims and controversies resolved pursuant to the Plan.

B. Plan Funding. Distributions under this Plan will be funded from Debtor's Cash on hand as of the Effective Date.

C. Parent Commitment. On the Effective Date, the Parent will provide the Parent Commitment and the Debtor and Reorganized Debtor, as applicable, shall be authorized to take all actions necessary or appropriate to obtain the Parent Commitment and to enter into any transactions contemplated thereunder, including but not limited to the assumption of the License Agreement.

D. Distributions. The Debtor or the Reorganized Debtor, as applicable, shall make all distributions in accordance with the terms of the Plan. In the event that any payment or act under the 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. Holders of Allowed Claims entitled to distributions under the Plan shall provide any information requested by the Debtor necessary for making such distribution.

E. Disputed Rejection Damages Claim Reserve. The Reorganized Debtor must manage Cash distributions to holders of Allowed Rejection Damages Claims so as to reserve sufficient Cash to make appropriate distribution on account of any Disputed Rejection Damages Claim as if that Disputed Rejection Damages Claim were an Allowed Rejection Damages Claim on the Effective Date in the amount Scheduled for such Rejection Damages Claim in the Schedule of Rejected Executory Contracts and Unexpired Leases. If and when any Disputed Rejection Damages Claim becomes an Allowed Rejection Damages Claim, Cash sufficient to make appropriate distribution to the holder that Claim must be made from such reserves. If a Disputed Rejection Damages Claim or any portion thereof becomes Disallowed, all reserved distributions attributable to the Holder of that Disputed Rejection Damages Claim shall revert to the Reorganized Debtor automatically and without need for a further order by the Bankruptcy Court.

F. Continued Reorganized Operations. The Reorganized Debtor will continue to operate with the primary purpose of continuing to conduct the Debtor's businesses through its brick and mortar retail sales, online sales, and wholesale businesses.

G. Corporate Governance. The Reorganized Debtor will continue to be governed by its board of directors, consisting of Stefano Rosso, Carlo Schiavo, and Nicola Marzano. The officers of the Debtor will continue to be Stefano Rosso as Chief Executive Officer, and Matteo Comunalazzi as Chief Financial Officer. Mr. Rosso and Mr. Comunalazzi will continue to be compensated at the same rate as provided in their pre-bankruptcy employment agreements.

H. Section 1145 Exemption. In accordance with section 1145 of the Bankruptcy Code, the retention under the Plan of the Interests is exempt from all federal, state, or local law requiring registration for offer or sale of a security or registration or licensing of an issuer of, underwriter of, or broker dealer in such securities and is not deemed to be a public offer of such securities.

I. Effectuating Documents. On and after the Effective Date, the Reorganized Debtor, and the officers thereof and members of the board thereof, shall be authorized to and may issue, execute, deliver, file, or record such contracts, instruments, releases, indentures, and other agreements or documents, and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of this Plan, or to otherwise comply with applicable law, in the name of and on behalf of the Reorganized Debtor, without the need for any approvals, authorizations, or consents except for those expressly required pursuant to the Plan.

J. Effectiveness of Instruments and Agreements. On the Effective Date, all instruments, agreements, and documents issued, entered into, delivered, or filed under the Plan are effective, binding, and enforceable in accordance with their respective terms.

K. No Corporate Action Required. As of the Effective Date: (a) the adoption, execution, delivery, and implementation of all contracts, leases, instruments, releases, and other agreements related to or contemplated by the Plan; and (b) the other matters provided for under, or in furtherance of, the Plan involving corporate action required of the Debtor, are deemed to have occurred, are effective as provided in the Plan, and are deemed authorized and approved in all respects without further order of the Bankruptcy Court or any further action by the Debtor's officers, shareholders, members, or managers.

L. Post-Confirmation Management and Indemnification. The day-to-day operations of Reorganized Debtor will continue to be managed by the Debtor's officers, subject to oversight from its board of directors. Reorganized Debtor will provide its officers with indemnification rights and will compensate its officers consistent with compensation provided during the Chapter 11 Case. Reorganized Debtor will assume any pre-Petition Date indemnification obligations to any officers employed with the Debtor as of the Petition Date.

M. Operation Pending Effective Date. Until the Effective Date, the Debtor will continue to operate its business subject to all applicable requirements of the Bankruptcy Code and the Bankruptcy Rules.

N. Employee Benefits. Except as otherwise provided herein, on and after the Effective Date, the Reorganized Debtor may: (1) honor, in the ordinary course of business, any contracts, agreements, policies, programs and plans for, among other things, compensation (other than equity based compensation related to Interests), health care benefits, disability benefits, deferred compensation benefits, travel benefits, savings, severance benefits, retirement benefits, welfare benefits, paid time off, workers' compensation insurance and accidental death and dismemberment insurance for the directors, officers and employees of the Debtor who served in such capacity at any time and (2) honor, in the ordinary course of business, Claims of employees employed as of the Effective Date for accrued vacation time arising before the Petition Date; provided, however, that the Debtor's or Reorganized Debtor's performance under any



employment agreement will not entitle any person to any benefit or alleged entitlement under any policy, program or plan that has expired or been terminated before the Effective Date, or restore, reinstate or revive any such benefit or alleged entitlement under any such policy, program or plan. Nothing herein shall limit, diminish or otherwise alter the Reorganized Debtor's defenses, claims, Causes of Action or other rights with respect to any such contracts, agreements, policies, programs and plans.

#### **ARTICLE VI – EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

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

1. Except as otherwise provided herein, each Executory Contract and Unexpired Lease shall be deemed assumed pursuant to sections 365 and 1123 of the Bankruptcy Code as of the Effective Date, unless any such Executory Contract or Unexpired Lease: (1) is identified on the Schedule of Rejected Executory Contracts and Unexpired Leases; (2) was assumed or rejected previously by the Debtor; (3) expired or terminated pursuant to its own terms before the Effective Date; (4) is the subject of a motion to reject pending on the Confirmation Date; or (5) is the subject of a motion to reject an Executory Contract or Unexpired Lease pursuant to which the requested effective date of such rejection is after the Effective Date.

2. Entry of the Confirmation Order shall constitute a Final Order approving the assumptions or rejections of such Executory Contracts or Unexpired Leases as set forth in the Plan, all pursuant to sections 365(a) and 1123 of the Bankruptcy Code. All assumptions or rejections of Executory Contracts and Unexpired Leases pursuant to the Plan shall be effective as of the Effective Date, the date set forth in the Schedule of Rejected Executory Contracts and Unexpired Leases, or such other date agreed to in writing between the Debtor and the applicable counterparty. The Debtor will continue to perform its obligations under any rejected Executory Contract or Unexpired Lease through the effective date of such rejection.

3. All assumed Executory Contracts and Unexpired Leases shall remain in full force and effect for the benefit of the Reorganized Debtor, and be enforceable by the Reorganized Debtor in accordance with their terms, notwithstanding any provision in such assumed Executory Contract or Unexpired Lease that prohibits, restricts or conditions such assumption, assignment or transfer. Any provision in the assumed Executory Contracts and Unexpired Leases that purports to declare a breach or default based in whole or in part on commencement or continuance of this Chapter 11 Case or any successor cases shall be deemed unenforceable. To the extent any provision in any Executory Contract or Unexpired Lease assumed pursuant to the Plan (including, without limitation, any "change of control" provision) restricts or prevents, or purports to restrict or prevent, or is breached or deemed breached by, the Reorganized Debtor's assumption of such Executory Contract or Unexpired Lease, then such provision will be deemed modified such that the transactions contemplated by the Plan will not entitle the non-debtor party thereto to terminate such Executory Contract or Unexpired Lease or to exercise any other default-related rights with respect thereto. Each Executory Contract or Unexpired Lease assumed pursuant to the Plan or by Bankruptcy Court order but not

assigned to a third party before the Effective Date shall re-vest in and be fully enforceable by the Reorganized Debtor in accordance with its terms, except as such terms may have been modified by such order or by applicable law.

4. Notwithstanding anything to the contrary in the Plan, the Debtor reserves the right to alter, amend, modify or supplement the Schedule of Rejected Executory Contracts and Unexpired Leases at any time before the Confirmation Date, including without limitation the right to remove any Executory Contract or Unexpired Lease therefrom. The Debtor further reserves the right to remove any Executory Contract or Unexpired Lease from the Schedule of Rejected Executory Contracts and Unexpired Leases at any time prior to the Effective Date.

B. Procedures Related to Rejection of Executory Contracts or Unexpired Leases. The Debtor will file the Schedule of Rejected Executory Contracts and Unexpired Leases with the Plan Supplement on or before the date that is fifteen (15) days prior to the Confirmation Hearing. Each non-Debtor counterparty to an Executory Contract or Unexpired Lease to be rejected pursuant to the Plan shall have until 4:00 p.m. (Eastern time) on the date that is eight (8) calendar days after service of the Schedule of Rejected Executory Contracts and Unexpired Leases upon such counterparty to file a written objection to the rejection of its Executory Contract or Unexpired Lease and serve it in a manner to be actually received by each of the following: (i) proposed co-counsel to the Debtor: Arent Fox LLP, 1301 Avenue of the Americas, 42nd Floor, New York, NY 10019, Attn: George P. Angelich and David J. Mayo and Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Wilmington, DE 19801, Attn: Pauline K. Morgan and Kenneth J. Enos; and (ii) the U.S. Trustee, 844 North King Street, Room 2207, Lockbox 35, Wilmington, DE 19801, Attn: Linda J. Casey, Esq. Any such objections that cannot be consensually resolved by the Debtor and the objecting non-Debtor counterparty shall be considered by the Bankruptcy Court at the Confirmation Hearing or such other date requested by the Debtor.

1. Abandonment of Personal Property. Any fixtures, furniture, advertising displays, other office and store equipment or any other personal property left by the Debtor on the premises related to Unexpired Leases rejected pursuant to the Plan shall be deemed abandoned pursuant to Section 554 of the Bankruptcy Code. Entry of the Confirmation Order shall constitute authorization by the Bankruptcy Court of such abandonment and the non-Debtor counterparties to such rejected Unexpired Leases may dispose of any such personal property in their sole and absolute discretion without liability to the Debtor.

2. Claim Procedures for Rejection Damages Claim Holders that Agree with Scheduled Claim. The Schedule of Rejected Executory Contracts and Unexpired Leases will set forth the amount of Rejection Damages Claims related to each Executory Contract or Unexpired Lease being rejected. If a counterparty to an Executory Contract or Unexpired Lease does not dispute the Scheduled amount of its Rejection Damages Claim, such party is not required to file a proof of Claim, and will be deemed to have an Allowed Rejection Damages Claim in the amount set forth on the Debtor's Schedule of Rejected Executory Contracts and Unexpired Leases at the expiration of the Rejection Bar Date. Any holder that disputes the Scheduled amount of its Rejection Damages

Claim is required to file a proof of Claim, pursuant to the procedures set forth in this Article VI.B.

3. Claim Procedures for Rejection Damages Claim Holders that Disagree with Scheduled Claim. If a counterparty to an Executory Contract or Unexpired Lease disputes the Scheduled amount of its Rejection Damages Claim, or believes it has a Rejection Damages Claim that has not been Scheduled, unless otherwise provided by a Bankruptcy Court order, such counterparty must file with the Bankruptcy Court a proof of Claim asserting what the counterparty believes is the correct Rejection Damages Claim on or before the Rejection Bar Date. **Any Person that disputes the Scheduled amount of its Rejection Damages Claim is required to file a proof of Claim asserting a Rejection Damages Claim and failure to do so on or before the Rejection Bar Date shall result in any Rejection Damages Claim in excess of the Scheduled amount being disallowed automatically and forever barred, estopped, and enjoined from assertion and any such Rejection Damages Claim in excess of the Scheduled amount shall not be enforceable against the Debtor or the Reorganized Debtor, without the need for any objection by the Reorganized Debtor or any further notice to or action, order, or approval of the Bankruptcy Court, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed fully satisfied, released, and discharged, notwithstanding a proof of Claim to the contrary. In addition, any Person that believes it has a Rejection Damages Claim that has not been Scheduled is required to file a proof of Claim asserting a Rejection Damages Claim and failure to do so on or before the applicable Rejection Bar Date shall result in any Rejection Damages Claim being disallowed automatically and forever barred, estopped, and enjoined from assertion and any such Rejection Damages Claim shall not be enforceable against the Debtor or the Reorganized Debtor, without the need for any objection by the Reorganized Debtor or any further notice to or action, order, or approval of the Bankruptcy Court, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed fully satisfied, released, and discharged, notwithstanding a proof of Claim to the contrary.**

4. Time to File Objections and Replies. Any objections to proofs of Claim asserting Rejection Damages Claims shall be filed on or before the Rejection Damages Claim Objection Deadline. Any reply to such an objection shall be filed not later than seven (7) days before the hearing on such objection to a Rejection Damages Claim.

5. No Distributions Pending Allowance. If an objection to a proof of Claim asserting a Rejection Damages Claim, or portion thereof, is filed on or before the Rejection Damages Claim Objection Deadline, no payment or distribution provided under the Plan shall be made on account of such Rejection Damages Claim, or portion thereof, unless and until such Disputed Rejection Damages Claim becomes an Allowed Claim, unless otherwise determined by the Reorganized Debtor. If an objection to a proof Claim asserting a Rejection Damages Claim is not filed by the Rejection Damages Claim Objection Deadline, such Claim shall become an Allowed Rejection Damages Claim in the amount asserted in such proof of Claim upon the expiration of the Rejection Damages Claim Objection Deadline.

C. Cure of Defaults for Assumed Executory Contracts and Unexpired Leases.

1. The proposed Cure amount for all Executory Contracts not identified on the Schedule of Rejected Executory Contracts and Unexpired Leases shall be \$0.00 unless otherwise indicated on the Cure Schedule. The Debtor shall file the Cure Schedule on or before the date that is fifteen (15) days prior to the Confirmation Hearing. The Debtor shall not be required to serve the Cure Schedule on any Executory Contract counterparty not specifically named therein. **For the avoidance of doubt, if an Executory Contract between the Debtor and any non-Debtor counterparty is not listed on either (a) the Schedule of Rejected Executory Contracts and Unexpired Leases or (b) the Cure Schedule as an assumed Executory Contract with a proposed Cure amount, then the Debtor intends to assume such Executory Contract and asserts that the Cure amount for such Executory Contract is \$0.00.**

2. Any counterparty to an Executory Contract or Unexpired Lease that objects to (1) the assumption of such Executory Contract or Unexpired Lease, (2) the proposed Cure amount, (3) the ability of the Reorganized Debtor or any assignee to provide “adequate assurance of future performance” (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed, or (4) any other matter pertaining to assumption, shall file a written objection thereto and serve it in a manner to be actually received by each of the following by no later than 4:00 p.m. (Eastern time) on the date that is seven (7) days prior to the Confirmation Hearing: (i) proposed co-counsel to the Debtor: Arent Fox LLP, 1301 Avenue of the Americas, 42nd Floor, New York, NY 10019, Attn: George P. Angelich and David J. Mayo and Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Wilmington, DE 19801, Attn: Pauline K. Morgan and Kenneth J. Enos; and (ii) the U.S. Trustee, 844 North King Street, Room 2207, Lockbox 35, Wilmington, DE 19801, Attn: Linda J. Casey, Esq. Any timely filed responses or objections will be heard by the Bankruptcy Court at the Confirmation Hearing or on such other date agreed to by the parties or ordered by the Court. Any counterparty to an Executory Contract or Unexpired Lease that fails to timely object to any of the foregoing matters related to assumption will be deemed to have assented and will be deemed to have forever released and waived any such objection. Payment of any Cure amount shall be made following the entry of a Final Order or orders resolving any dispute related thereto and approving the assumption and shall not prevent or delay implementation of the Plan or the occurrence of the Effective Date.

D. License Agreement. Notwithstanding anything in the Plan to the contrary, as of the Effective Date, the Debtor shall assume (and assign to the Reorganized Debtor if necessary to continue the License Agreement in full force) the License Agreement pursuant to section 365(a) of the Bankruptcy Code. Pursuant to the Parent Commitment, the Parent, as licensor under the License Agreement, has agreed to, subject to the occurrence of the Effective Date on or before June 21, 2019, provide its consent to the Debtor’s assumption of the License Agreement pursuant to section 365(c)(a) of the Bankruptcy Code. Entry of the Confirmation Order shall constitute the Bankruptcy Court’s approval of the Debtor’s foregoing assumption of the License Agreement.

E. Insurance Policies. Notwithstanding anything in the Plan to the contrary, as of the Effective Date, the Debtor shall assume (and assign to the Reorganized Debtor if necessary to continue the Insurance Policies in full force) all of the Insurance Policies pursuant to section 365(a) of the Bankruptcy Code. Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the Debtor's foregoing assumption of each of the Insurance Policies.

F. Modifications, Amendments, Supplements, Restatements, or Other Agreements. Unless otherwise provided in the Plan, each Executory Contract or Unexpired Lease that is assumed shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such Executory Contract or Unexpired Lease, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated pursuant hereunder.

Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease, or the validity, priority, or amount of any Claims that may arise in connection therewith.

G. Contracts and Leases Entered into After the Petition Date. Contracts and leases entered into after the Petition Date by the Debtor, and any Executory Contracts and Unexpired Leases assumed by the Debtor, may be performed by the Reorganized Debtor in the ordinary course of business and in accordance with the terms thereof.

H. General Reservation of Rights. Neither the exclusion nor inclusion of any contract or lease on the Schedule of Rejected Executory Contracts and Unexpired Leases, nor anything contained in the Plan, shall constitute an admission by the Debtor that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that the Reorganized Debtor, or any of its affiliates, has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtor or the Reorganized Debtor, as applicable, shall have 45 days following entry of a Final Order resolving such dispute to alter its treatment of such contract or lease.

## **ARTICLE VII – EFFECT OF THE PLAN ON CLAIMS, INTERESTS AND CAUSES OF ACTION**

A. Binding Effect. Except as otherwise provided in section 1141(d) of the Bankruptcy Code, on and after the Confirmation Date, the provisions of the Plan shall bind any holder of a Claim against the Debtor who held such Claim at any time during the Chapter 11 Case and its respective successors and assigns, whether or not the Claim of such holder is Impaired under the Plan and whether or not such holder has been deemed to accept the Plan.

B. Vesting of Assets. Except as otherwise explicitly provided in this Plan, on the Effective Date, all property comprising the Estate (including Causes of Action, but excluding property that has been abandoned pursuant to an order of the Bankruptcy Court) shall vest in the Reorganized Debtor free and clear of all Claims, liens, charges, interests, and encumbrances. As of and following the Effective Date, the Reorganized Debtor may operate its business and use, acquire,

and dispose of property and settle and compromise Claims, Interests, or Causes of Action without supervision of the Bankruptcy Court, free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly imposed by this Plan or the Confirmation Order.

C. Discharge. Except as provided in this Plan or the Confirmation Order, the rights granted under this Plan and the treatment of Claims and Interests under this Plan shall be in full and final satisfaction, discharge, and release of all Claims and Interests. Except as provided in this Plan or the Confirmation Order, confirmation of this Plan discharges the Debtor and Reorganized Debtor from all Claims or other debts that arose before the Confirmation Date, and all debts of the kind specified in Bankruptcy Code §§ 502(g), 502(h), or 502(i), whether or not: (a) a proof of claim based on such debt is filed or deemed filed under Bankruptcy Code § 501; (b) a Claim based on such debt is Allowed under Bankruptcy Code § 502; or (c) the holder of a Claim based on such debt has accepted this Plan. Without limiting the foregoing, the discharge granted under this Plan is granted to the fullest extent allowed under Bankruptcy Code §§ 1141(a), 1141(b), 1141(c), and 1141(d)(1).

D. Term of Injunctions or Stays. Unless otherwise provided herein, all injunctions or stays provided for in the Chapter 11 Case pursuant to sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Chapter 11 Case is Closed.

E. Releases by the Debtor. Except as otherwise provided herein, as of the Effective Date, for good and valuable consideration, each of (i) the Debtor's current and former officers, directors, principals, members, professionals, advisors, accountants, attorneys, investment bankers, consultants, employees, agents, and other representatives of the Parent, in each case solely in their capacity as such and (ii) the Parent, its affiliates, and the current and former officers, directors, principals, members, professionals, advisors, accountants, attorneys, investment bankers, consultants, employees, agents, and other representatives of the Parent, in each case solely in their capacity as such, are deemed released and discharged by the Debtor and its Estate from any and all claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action and liabilities, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, arising in law, equity or otherwise that the Debtor or its Estate would have been legally entitled to assert in their own right or on behalf of the holder of any Claim or other Person, based on or relating to, or in any manner arising from, in whole or in part, the Debtor, the Chapter 11 Case, the Plan or the Disclosure Statement, the negotiation, formulation or preparation of the Plan, the Plan Supplement, or related agreements, instruments, or other documents in connection with the transactions contemplated under the Plan, or any other act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date; *provided* that nothing in the Plan, including this Article VII.E shall release (i) any obligations under the Plan or the Plan Supplement; or (ii) any acts constituting willful misconduct, gross negligence, intentional fraud or criminal conduct as determined by a Final Order.

F. Releases by Holders of Claims. **As of the Effective Date, except as otherwise provided in the Plan, all Persons who have held, hold, or may hold Claims, Interests, causes of action, or liabilities that are subject to compromise and settlement pursuant to the terms**

of the Plan or are otherwise discharged, satisfied, stayed or terminated pursuant to the Plan are deemed to have released the Debtor, Reorganized Debtor, the Estate and each of their affiliates, current and former officers, directors, principals, members, professionals, advisors, accountants, attorneys, investment bankers, consultants, employees, agents, and other representatives (collectively, the “Released Parties”), from any and all claims, interests, obligations, rights, suits, damages, causes of action, remedies and liabilities whatsoever, including any direct claims held by any such Person against each Release Party or derivative claims asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, whether for tort, contract, violations of federal or state securities laws, or otherwise, that each such Person would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtor or its affiliates, the Debtor’s restructuring, the Chapter 11 Case, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between the Debtor and any such Person, the restructuring of Claims and Interests before or in the Chapter 11 Case, the negotiation, formulation, or preparation of the Plan, the Confirmation Order, or related agreements, instruments, or other documents, or upon any other act or omission, transaction, agreement, event, or other occurrence relating to the Debtor taking place on or before the Effective Date. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release any post-Effective Date obligations of any party under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan.

**G. Injunction.**

1. **Generally.** Except as provided in the Plan or the Confirmation Order, as of the Confirmation Date, all entities that have held, currently hold, or may hold a Claim that is unclassified by the Plan or that is classified by Article III of the Plan or that is subject to a distribution under the Plan, or an Interest or other right of an equity holder, are permanently enjoined from taking any of the following actions on account of any such Claims or Interests or rights: (i) commencing or continuing in any manner any action or other proceeding against any property to be distributed under the Plan; (ii) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against any property to be distributed under the Plan; (iii) creating, perfecting, or enforcing any lien or encumbrance against any property to be distributed under the Plan; and (iv) commencing or continuing any action, in any manner, in any place, that does not comply with or is inconsistent with the provisions of the Plan or the Bankruptcy Code.
2. **Limited Scope.** Nothing in this Plan: (i) extinguishes, prohibits, or otherwise limits the right of any holder of a Claim to assert a right to setoff or recoupment arising in connection with that Claim as part of the resolution and treatment of that Claim under the Plan; (ii) extinguishes, prohibits, or otherwise limits the right of the Estate or Reorganized Debtor to assert and prevail on any Cause of Action;

(iii) enjoins or otherwise precludes any party-in-interest from enforcing the terms of the Plan and the Confirmation Order.

**H. Cause of Action Injunction. On and after the Effective Date, all Persons other than the Reorganized Debtor will be permanently enjoined from commencing or continuing in any manner any action or proceeding (whether directly, indirectly, derivatively, or otherwise) on account of, or respecting any claim, debt, right, or Cause of Action that the Reorganized Debtor retains authority to pursue in accordance with the Plan.**

**I. Exculpation. Neither the Debtor, Reorganized Debtor, nor any of their respective members, officers, directors, trustees, employees, advisors, professionals, or agents has any liability to any holder of a Claim or Interest for any act or omission in connection with, related to, or arising out of, the Chapter 11 Case, the pursuit of confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for willful misconduct or gross negligence. In all respects, the Debtor, Reorganized Debtor, and each of their respective members, officers, directors, trustees, employees, advisors, professionals, and agents are entitled to rely on the advice of counsel with respect to their duties and responsibilities under the Plan.**

**J. Preservation and Application of Insurance. The provisions of this Plan shall not diminish or impair in any manner the enforceability of coverage of any insurance policies (and any agreements, documents, or instruments relating thereto) that may cover Claims against the Debtor, any directors, trustees, or officers of the Debtor, or any other Person, including, without limitation, insurance for the Debtor's directors and officers.**

**K. Compromise of Controversies. Pursuant to Bankruptcy Rule 9019, and in consideration for the classification, distribution, and other benefits provided under the Plan, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims and controversies resolved pursuant to the Plan, including, without limitation, all Claims arising prior to the Effective Date, whether known or unknown, foreseen or unforeseen, asserted or unasserted, arising out of, relating to, or in connection with the business or affairs of or transactions with the Debtor. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of each of the foregoing compromises or settlements, and all other compromises and settlements provided for in the Plan, and the Bankruptcy Court's findings shall constitute its determination that such compromises and settlements are in the best interests of the Debtor, the Estate, creditors, and other parties in interest, and are fair, equitable, and within the range of reasonableness.**

**L. Waiver of Avoidance Actions; Reservation of Rights. All Avoidance Actions are hereby waived, effective on the Effective Date; provided, however, that the Debtor and the Reorganized Debtor, as applicable, reserve all rights, including the right under section 502(d) of the Bankruptcy Code, to use defensively the abandoned avoidance cause of action as a basis to object to all or any part of a Claim against the Estates asserted by a Holder which remains in possession of, or otherwise obtains the benefit of, an avoidable transfer.**

**M. Retention, Reservation and Prosecution of Causes of Action. Except as otherwise provided in the Plan, all Causes of Action other than Avoidance Actions are retained and**



reserved for the Reorganized Debtor, which is designated as the Estate's representative under Bankruptcy Code § 1123(b)(3)(B) for purposes of the Causes of Action other than Avoidance Actions. The Reorganized Debtor shall have the sole authority to prosecute, defend, compromise, settle, and otherwise deal with any Causes of Action other than Avoidance Actions, and does so in its capacity as a representative of the Estate in accordance with Bankruptcy Code § 1123(b)(3)(B). The Reorganized Debtor shall have sole discretion to determine in its business judgment which Causes of Action to pursue, which to settle, and the terms and conditions of those settlements. In pursuing any claim, right, or Cause of Action, the Reorganized Debtor shall be entitled to the extensions provided under section 108 of the Bankruptcy Code. Except as otherwise provided in the Plan, all Causes of Action shall survive confirmation and the commencement or prosecution of Causes of Action shall not be barred or limited by any estoppel, whether judicial, equitable, or otherwise.

### **ARTICLE VIII – CONDITIONS TO OCCURRENCE OF EFFECTIVE DATE**

A. Conditions to Effectiveness. The Effective Date does not occur unless and until:

1. The Confirmation Date occurs and the Confirmation Order has become a Final Order, which shall, among other things, provide that the Debtor and Reorganized Debtor, as applicable, shall be authorized to take all actions necessary or appropriate to obtain the Parent Commitment and to enter into any transactions contemplated thereunder, including but not limited to the assumption of the License Agreement;
2. The Debtor shall have obtained the Parent Commitment (and all conditions thereto shall have been satisfied or waived);
3. No request for revocation of the Confirmation Order under Bankruptcy Code section 1144 is pending;
4. Sufficient Cash exists to make all payments required under the Plan to be made on the Effective Date;
5. The Debtor shall have established the reserve for Disputed Rejection Damages Claims in accordance with Article V.E of the Plan;
6. The Debtor shall have surrendered the premises for each Unexpired Lease rejected through the Plan; and
7. All instruments and agreements to be issued, entered into, delivered, or filed under the Plan are issued, entered into, delivered, or filed and are effective.

B. Waiver of Conditions. The Debtor may waive any condition to confirmation or the Effective Date, in whole or in part, at any time without notice, an order of the Bankruptcy Court, or any further action other than proceeding to confirmation and consummation of the Plan.

C. Effect of Non-Occurrence of the Effective Date. If the Effective Date does not occur, the Plan shall be null and void and nothing contained in the Plan shall: (a) constitute a waiver or

release of any Claims against the Debtor; (b) prejudice in any manner the rights of the Debtor, including any right to seek a further extension of the exclusivity periods under section 1121(d) of the Bankruptcy Code; (c) constitute an admission, acknowledgement, offer or undertaking by the Debtor.

### **ARTICLE IX – MISCELLANEOUS**

A. Retention of Jurisdiction. Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain non-exclusive jurisdiction of all matters arising out of, and related to, the Chapter 11 Case and the Plan, including jurisdiction to:

1. resolve any matters related to Executory Contracts and Unexpired Leases, including: (i) the assumption, assumption and assignment, or rejection of Executory Contracts or Unexpired Leases to which the Debtor is a party or with respect to which the Debtor may be liable, and to hear and determine the allowance of Claims resulting therefrom including the amount of Cure, if any, required to be paid; (ii) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed; (iii) the Reorganized Debtor's amendment, modification, or supplement after the Confirmation Date, pursuant to Article VI of the Plan, of the Schedule of Executory Contracts and Unexpired Leases; and (iv) any dispute regarding whether a contract or lease is or was executory or expired;

2. adjudicate any and all adversary proceedings, applications, and contested matters that may be commenced or maintained pursuant to the Chapter 11 Case, this Plan, or that were the subject of proceedings before the Bankruptcy Court, prior to the Effective Date, proceedings to adjudicate the allowance of Disputed Claims, and all controversies and issues arising from or relating to any of the foregoing;

3. ensure that distributions to Holders of Allowed Claims are accomplished as provided herein and adjudicate any and all disputes arising from or relating to distributions under the Plan;

4. hear and determine or resolve any and all matters related to Causes of Action;

5. enter and implement such orders as may be appropriate if the Confirmation Order is for any reason stayed, revoked, modified, and/or vacated;

6. issue and implement orders in aid of execution, implementation, or consummation of this Plan;

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

8. hear and determine all applications for allowance of compensation and reimbursement of Professional Fee Claims under this Plan or under sections 330, 331, 503(b), 1103, and 1129(a)(4) of the Bankruptcy Code; determine requests for the

payment of Claims entitled to priority under section 507(a)(1) of the Bankruptcy Code, including compensation and reimbursement of expenses of parties entitled thereto; adjudicate, decide, or resolve any and all matters related to section 1141 of the Bankruptcy Code;

9. hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of this Plan or the Confirmation Order, including disputes arising under agreements, documents, or instruments executed in connection with this Plan and disputes arising in connection with any Person or entity's obligations incurred in connection with the Plan;

10. hear and determine all suits or adversary proceedings to recover assets of the Debtor and property of their Estates, wherever located;

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

12. grant any consensual request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code, or in the event that the Effective Date does not occur, to consider any request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4);

13. hear any other matter not inconsistent with the Bankruptcy Code;

14. hear and determine all disputes involving the existence, nature or scope of the Debtor's discharge;

15. issue a final decree and enter an order closing the chapter 11 case; and

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

After the Effective Date, the Bankruptcy Court shall retain jurisdiction with respect to each of the foregoing items and all other matters that were subject to its jurisdiction prior to the Confirmation Date. Nothing contained herein shall be construed to increase, decrease or otherwise modify the independence, sovereignty or jurisdiction of the Bankruptcy Court.

B. Effecting Documents; Further Transactions; Timing. The Debtor and Reorganized Debtor are authorized and directed as of the Effective Date, without further order of the Bankruptcy Court, to execute, deliver, file, or record all contracts, instruments, releases, and other agreements or documents, and to take all actions necessary or appropriate to effect and further evidence the terms of the Plan. All transactions required to occur on the Effective Date under the terms of the Plan are deemed to have occurred simultaneously.

C. Governing Law. Except to the extent the Bankruptcy Code, Bankruptcy Rules, or other federal laws apply, the laws of the State of New York shall govern the rights and obligations arising under the Plan, without giving effect to principles of conflicts of law of New York.

D. Exemption from Transfer Taxes. Under Bankruptcy Code § 1146(a): (a) the issuance, distribution, transfer, and exchange of assets or property of the Estate; (b) the execution, assignment, modification, or recording of any lease or sublease; and (c) the execution, delivery, or recording of a deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, the Confirmation Order, or any transaction contemplated above, or any transactions arising out of, contemplated by, or in any way related to, the foregoing are not subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, or real estate transfer tax, or other similar tax or governmental assessment and the appropriate state or local government officials or agents are directed to forego the collection of any such tax or assessment and to accept for filing or recordation any of the foregoing instruments or other documents without the payment of any such tax or assessment.

E. Post-Effective Date Fees; Final Decree. Notwithstanding anything to the contrary contained in the Plan, all fees payable through the Effective Date pursuant to 28 U.S.C. § 1930 shall be paid on the Effective Date, or as soon as practicable thereafter. The Reorganized Debtor is responsible for paying any post-Effective Date fees under 28 U.S.C. § 1930(a)(6) and filing post-confirmation reports until the Bankruptcy Court enters a final decree, which Reorganized Debtor must seek as soon as feasible after distributions under the Plan have commenced. Notice of application for a final decree need be given only to those holders of Claims and Interests and other parties that, after the Effective Date, specifically request such notice.

F. Modification and Amendments. The Debtor may alter, amend, or modify this Plan under section 1127(a) of the Bankruptcy Code at any time prior to the Confirmation Date. After the Confirmation Date and prior to substantial consummation of this Plan as defined in section 1101(2) of the Bankruptcy Code, the Debtor may under section 1127(b) of the Bankruptcy Code, institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in this Plan, the Disclosure Statement, or the Confirmation Order, and such matters as may be necessary to carry out the purposes and effects of this Plan.

G. Method of Payment; Payments, Filings, and Notices Only on Business Days. Payments of Cash under the Plan must be made by check drawn on a domestic bank or by wire transfer from a domestic bank. Whenever any payment, distribution, filing, delivery, or notice to be made under the Plan is due on a day other than a Business Day, such payment, distribution, filing, delivery, or notice may instead be made, without interest or penalty, on the immediately following Business Day.

H. Undeliverable or Unclaimed Distributions. If any distribution to a Holder of an Allowed Claim made in accordance herewith is returned to the Reorganized Debtor as undeliverable, no further distributions shall be made to such Holder unless and until the Reorganized Debtor is notified in writing of such Holder's then-current address or other necessary information for delivery, at which time such undelivered distribution shall be made to such Holder within ninety (90) days of receipt of such Holder's then-current address or other necessary information; provided that any such undelivered distribution shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of six (6) months from the later of (a) the Effective Date and (b) the date of the initial attempted distribution. After such date, all unclaimed property or interests in property shall revert to the Reorganized Debtor automatically and without need for a further order by the Bankruptcy Court (notwithstanding any applicable

non-bankruptcy escheat, abandoned, or unclaimed property laws to the contrary), and the right, title, and interest of any Holder to such property or interest in property shall be discharged and forever barred. Notwithstanding anything to the contrary contained in the Plan, nothing in this provision shall act as a bar to entry of a final decree Closing the Chapter 11 Case.

I. Time Bar to Cash Payments. Checks issued by the Reorganized Debtor in respect of Allowed Claims shall be null and void if not negotiated within 60 days after the date of issuance thereof. Requests for reissuance of any check shall be in writing to the Reorganized Debtor by the holder of the Allowed Claim to whom such check originally was issued. Any such written claim in respect of such a voided check must be received by the Reorganized Debtor on or before 60 days after the expiration of the 60 day period following the date of issuance of such check. Thereafter, the amount represented by such voided check shall irrevocably revert to the Reorganized Debtor free and clear of any restrictions. Any Claim in respect of such voided check shall be discharged and forever barred from assertion against the Debtor, the Estate, or the Reorganized Debtor.

J. Dissolution of any Statutory Committee. On the Confirmation Date, any Statutory Committee formed in connection with the Chapter 11 Case shall dissolve automatically and all members thereof shall be released and discharged from all rights, duties and responsibilities arising from or related to the Chapter 11 Case.

K. Revocation, Withdrawal, or Non-Consummation. The Debtor reserves the right to revoke or withdraw this Plan at any time prior to the Effective Date, which revocation or withdrawal shall occur upon the Debtor's filing of a notice thereof, and to file subsequent chapter 11 plans. If the Debtor revokes or withdraws the Plan, it shall be null and void and, in such event, nothing contained herein shall be deemed to constitute a waiver or release of any Causes of Action or Claims by or against the Debtor or any other Person or to prejudice in any manner the rights of the Debtor or any Person in any further proceedings involving the Debtor.

L. Notices. After the Effective Date, any pleading, notice, or other document required by the Plan to be served on or delivered on the parties below shall be served as follows:

If to the Reorganized Debtor:

Diesel USA, Inc.  
220 W 19<sup>th</sup> St  
8th Floor  
New York, NY 10011  
Attn: Matteo Comunalazzi, Stefano Rosso

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

Arent Fox LLP  
1301 Avenue of the Americas  
42nd Floor  
New York, NY 10019  
Attn: George P. Angelich, Esq., David J. Mayo, Esq., Phillip Khezri, Esq.

And

Young Conaway Stargatt & Taylor, LLP  
Rodney Square  
1000 North King Street  
Wilmington, DE 19801  
Attn: Pauline K. Morgan, Esq., Kenneth J. Enos, Esq., and Travis G. Buchanan, Esq.

If to U.S. Trustee:

Office of the United States Trustee for the District of Delaware  
Room 2207, Lockbox 35  
844 North King Street  
Wilmington, DE 19801  
Attn: Linda J. Casey, Esq.

M. Entire Agreement. Except as otherwise indicated, the Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

N. Severability. If, prior to the Confirmation Date, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is (a) valid and enforceable pursuant to its terms, (b) integral to the Plan and may not be deleted or modified without the Debtor's consent, and (c) nonseverable and mutually dependent.

O. Exhibits. All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. After the exhibits and documents are filed, copies of such exhibits and documents shall be available upon request to the Debtor's counsel, by contacting Arent Fox LLP, 1301 Avenue of the Americas, 42nd Floor, New York, NY 10019 or Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Wilmington, DE 19801, at the Bankruptcy Court's website at <https://ecf.deb.uscourts.gov/> or at the website of the Noticing Agent, <http://cases.stretto.com/dieselusa>. To the extent any exhibit or document is inconsistent with the terms of the Plan, unless otherwise ordered by the Bankruptcy Court, the non-exhibit or non-document portion of the Plan shall control.

P. Conflicts. Except as set forth in the Plan, to the extent that any provision of the Disclosure Statement or any other order (other than the Confirmation Order) referenced in the Plan (or any exhibits, schedules, appendices, supplements or amendments to any of the foregoing), conflict with or are in any way inconsistent with any provision of the Plan, the Plan

shall govern and control; provided, however, that if there is a conflict between this Plan and a Plan Supplement document, the Plan Supplement document shall govern and control.

*[SIGNATURE ON FOLLOWING PAGE]*

Respectfully submitted, as of March 7, 2019,

**DIESEL USA, Inc.**

By: /s/ Mark G. Samson

Name: Mark G. Samson

Title: Chief Restructuring Officer



**EXHIBIT 2**

**Revised Disclosure Statement Blackline**

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

In re:

DIESEL USA, Inc.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 19-10432 (MFW)

**DISCLOSURE STATEMENT IN CONNECTION WITH  
CHAPTER 11 PLAN OF REORGANIZATION OF DIESEL USA, INC**

THIS IS NOT A SOLICITATION OF ACCEPTANCES OR REJECTIONS OF ANY CHAPTER 11 PLAN DESCRIBED HEREIN. THIS DOCUMENT IS PROVIDED FOR INFORMATION PURPOSES ONLY TO ENABLE HOLDERS OF CLAIMS AND INTERESTS TO DETERMINE WHETHER TO OBJECT TO THE CHAPTER 11 PLAN DESCRIBED HEREIN.

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<sup>1</sup> The last four digits of the Debtor's federal tax identification number are 4308. The Debtor's principal offices are located at 220 West 19th Street, New York, NY 10011.<sup>±</sup>

## **DISCLAIMER**

This disclosure/information statement (the “Disclosure Statement”) contains summaries of certain provisions of the Debtor’s proposed *Chapter 11 Plan of Reorganization of Diesel USA, Inc.* dated March 5, 2019 (as may be amended, supplemented, or otherwise modified from time to time, the “Plan”)<sup>2</sup> and certain other documents and financial information. The Debtor is making this Disclosure Statement available to each Holder of Claims against and Interests in the Debtor as a matter of disclosure pursuant to section 1125 of the Bankruptcy Code. All classes of Claims and Interests are unimpaired and therefore deemed to accept the Plan. Accordingly, the Debtor is not soliciting votes to accept or reject the Plan and is making the Disclosure Statement available solely for informational purposes and the information included herein should not be relied upon for any purpose other than to determine whether or not to object to the Plan. The Debtor believes that these summaries are fair and accurate. The summaries of the financial information and the documents which are attached to, or incorporated by reference in, the Disclosure Statement are qualified in their entirety by reference to such information and documents. In the event of any inconsistency or discrepancy between a description in the Disclosure Statement and the terms and provisions of the Plan or the other documents and financial information incorporated in the Disclosure Statement by reference, the Plan or the other documents and financial information, as the case may be, shall govern for all purposes.

The statements contained in this Disclosure Statement are made only as of the date of this Disclosure Statement, and there is no assurance that the statements contained in this Disclosure Statement will be correct at any time after such date. Except as otherwise provided in the Plan or in accordance with applicable law, the Debtor is under no duty to update or supplement this Disclosure Statement. Holders of Claims and Interests reviewing the Disclosure Statement should not assume at the time of such review that there have been no changes in the facts set forth in this Disclosure Statement since the date of this Disclosure Statement. No Holder of a Claim or Interest should rely on any information, representations, or inducements that are not contained in or are inconsistent with the information contained in this Disclosure Statement, the documents attached to this Disclosure Statement, and the Plan. This Disclosure Statement does not constitute legal, business, financial, or tax advice. Any Person or entity desiring any such advice should consult with their own advisors. Neither the United States Securities and Exchange Commission nor any similar federal, state, local, or foreign regulatory agency has approved or disapproved of the Plan or passed upon the accuracy or adequacy of the statements contained in this Disclosure Statement. The Debtor has sought to ensure the accuracy of the financial information provided in this Disclosure Statement, but the financial information contained in, or incorporated by reference into, this Disclosure Statement has not been, and will not be, audited or reviewed by the Debtor’s independent auditors unless explicitly provided otherwise. Counsel to and other advisors retained by the Debtor have relied upon information provided by the Debtor in connection with the preparation of this Disclosure Statement. Although counsel to and other advisors retained by the Debtor have performed certain limited due diligence in connection with the preparation of this Disclosure Statement, they have not independently verified the information contained herein.

<sup>2</sup> Capitalized terms not otherwise defined in this Disclosure Statement have the meanings ascribed to them in the Plan.

Regarding contested matters, adversary proceedings, and other pending, threatened, or potential litigation or other actions, this Disclosure Statement does not constitute, and may not be construed as, either (a) an admission of fact, liability, stipulation, or waiver by the Debtor or any other party, but rather as a statement made in the context of settlement negotiations in accordance with Rule 408 of the Federal Rules of Evidence and any analogous state or foreign laws or rules.

Confirmation and consummation of the Plan are subject to certain material conditions precedent described in Article VIII of the Plan. There is no assurance that the Plan will be confirmed or, if confirmed, that such material conditions precedent will be satisfied or waived. You are encouraged to read this Disclosure Statement in its entirety, including the Plan and the Section in this Disclosure Statement entitled “Risk Factors,” before considering filing an objection to the Plan. The Bankruptcy Court’s approval of this Disclosure Statement does not constitute a guarantee of the accuracy or completeness of the information contained in this Disclosure Statement or an endorsement of the merits of the Plan by the Bankruptcy Court.

Except as otherwise expressly set forth herein, all information, representations, or statements contained herein have been provided by the Debtor. No person is authorized by the Debtor in connection with this Disclosure Statement or the Plan to give any information or to make any representation or statement regarding this Disclosure Statement or the Plan other than as contained in this Disclosure Statement and the exhibits attached hereto or as otherwise incorporated herein by reference or referred to herein. If any such information, representation, or statement is given or made, it may not be relied upon as having been authorized by the Debtor.

This Disclosure Statement contains certain forward-looking statements, all of which are based on various estimates and assumptions. Such forward-looking statements are subject to inherent uncertainties and to a wide variety of significant business, economic, and competitive risks, including, but not limited to, those summarized herein. When used in this Disclosure Statement, the words “anticipate,” “believe,” “estimate,” “will,” “may,” “intend,” and “expect” and similar expressions generally identify forward-looking statements. Although the Debtor believes that its plans, intentions, and expectations reflected in the forward-looking statements are reasonable, they cannot be sure that they will be achieved. These statements are only predictions and are not guarantees of future performance or results. Forward-looking statements are subject to risks and uncertainties that could cause actual results to differ materially from those contemplated by a forward-looking statement. All forward-looking statements attributable to the Debtor or Persons or entities acting on its behalf are expressly qualified in their entirety by the cautionary statements set forth in this Disclosure Statement. Forward-looking statements speak only as of the date on which they are made. Except as required by law, the Debtor expressly disclaims any obligation to update any forward-looking statement, whether as a result of new information, future events, or otherwise.



**TABLE OF CONTENTS**

	<u>Page</u>
ARTICLE I INTRODUCTION, SUMMARY, AND OVERVIEW OF CHAPTER 11 .....	1
A. Summary of the Plan .....	3
B. Overview of Chapter 11 .....	5
C. Rules of Construction .....	5
ARTICLE II BACKGROUND REGARDING THE DEBTOR .....	6
A. The Debtor’s Operations .....	6
B. Employees .....	7
C. Debt Obligations .....	7
D. Transfer Pricing Matters .....	7
E. The License Agreement .....	8
F. Circumstances Leading to Chapter 11 Filing .....	9
ARTICLE III SIGNIFICANT EVENTS IN THE CHAPTER 11 CASE .....	13
A. Automatic Stay; Administrative Status .....	13
B. First Day Motions .....	13
C. Combined Hearing Motion and Timetable for the Chapter 11 Case .....	15
ARTICLE IV DESCRIPTION OF THE PLAN .....	15
A. Treatment of Unclassified Claims under the Plan .....	15
B. Classification and Treatment of Classified Claims and Interests .....	16
C. No Impairment; No Class Entitled to Vote .....	18
D. Resolution of Claims .....	19
E. Implementation of the Plan .....	19
ARTICLE V EXECUTORY CONTRACTS AND UNEXPIRED LEASES .....	22
A. Assumption and Rejection of Executory Contracts and Unexpired Leases .....	22
B. Procedures Related to Rejection of Executory Contracts or Unexpired Leases .....	23
C. Cure of Defaults for Assumed Executory Contracts and Unexpired Leases .....	24
D. License Agreement .....	25
E. Insurance Policies .....	25
F. Modifications, Amendments, Supplements, Restatements, or Other Agreements .....	25
G. Contracts and Leases Entered into After the Petition Date .....	<del>25</del> 26
H. General Reservation of Rights .....	26

ARTICLE VI EFFECT OF THE PLAN ON CLAIMS, INTERESTS AND CAUSES OF ACTION .....	26
A. Binding Effect .....	26
B. Vesting of Assets .....	26
C. Discharge .....	26
D. Term of Injunctions or Stays .....	<del>26</del> 27
E. Releases by the Debtor .....	27
F. <b>Releases by Holders of Claims</b> .....	27
G. <b>Injunction.</b> .....	28
H. <b>Cause of Action Injunction</b> .....	28
I. <b>Exculpation</b> .....	28
J. Preservation and Application of Insurance .....	29
K. Compromise of Controversies .....	29
L. Waiver of Avoidance Actions; Reservation of Rights .....	29
M. Retention, Reservation and Prosecution of Causes of Action .....	29
ARTICLE VII CONDITIONS TO OCCURRENCE OF EFFECTIVE DATE .....	30
A. Conditions to Effectiveness .....	30
B. Waiver of Conditions .....	30
C. Effect of Non-Occurrence of the Effective Date .....	30
ARTICLE VIII MISCELLANEOUS PROVISIONS OF THE PLAN .....	31
A. Retention of Jurisdiction .....	31
B. Effecting Documents; Further Transactions; Timing .....	32
C. Governing Law .....	32
D. Exemption from Transfer Taxes .....	32
E. Post-Effective Date Fees; Final Decree .....	33
F. Modification and Amendments .....	33
G. Method of Payment; Payments, Filings, and Notices Only on Business Days .....	33
H. Undeliverable or Unclaimed Distributions .....	33
I. Time Bar to Cash Payments .....	34
J. Dissolution of any Statutory Committee .....	34
K. Revocation, Withdrawal, or Non-Consummation .....	34
L. Notices .....	34
M. Entire Agreement .....	35
N. Severability .....	35

O. Exhibits .....	35
P. Conflicts .....	35
ARTICLE IX STATUTORY REQUIREMENTS FOR CONFIRMATION OF THE PLAN .....	36
A. Confirmation Hearing .....	36
B. Confirmation Standards .....	36
C. No Need to Solicit Votes and Acceptance Requirements .....	37
D. Feasibility of the Plan .....	38
E. Best Interests Test .....	38
ARTICLE X CERTAIN FEDERAL UNITED STATES INCOME TAX CONSEQUENCES OF THE PLAN .....	38
A. Introduction .....	38
B. Federal Income Tax Consequences to Creditors .....	39
ARTICLE XI PLAN-RELATED RISK FACTORS .....	39
A. Generally .....	39
B. Certain Bankruptcy Considerations .....	39
C. Claims Estimations .....	40
D. Bankruptcy-Specific Risk Factors That Could Negatively Impact the Debtors' Business .....	40
E. Risks Associated with Forward-Looking Statements .....	43
ARTICLE XII ALTERNATIVES TO THE PLAN .....	43
A. Continuation of the Chapter 11 Case .....	44
B. Alternative Plans of Reorganization .....	44
C. Liquidation under Chapter 7 .....	44
ARTICLE XIII CONCLUSION .....	45



## ARTICLE I

### **INTRODUCTION, SUMMARY, AND OVERVIEW OF CHAPTER 11**

Pursuant to section 1125 of the Bankruptcy Code, Diesel USA, Inc., as debtor and debtor in possession (the “Debtor”) in the above-captioned case under chapter 11 of the Bankruptcy Code (the “Chapter 11 Case”) submits this Disclosure Statement in connection with confirmation of the Plan. The Debtor filed the Plan and this Disclosure Statement with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) on March 5, 2019. This Disclosure Statement provides information regarding the Plan, which the Debtor is seeking to have confirmed by the Bankruptcy Court. A copy of the Plan is attached hereto as Exhibit A.

The Plan comprises the Debtor’s proposal for a comprehensive reorganization of the Debtor that will (i) restructure certain of the Debtor’s obligations so that the reorganized Debtor will be financially stable and able to fulfill its ongoing business relationships with all of its constituencies, including customers, vendors, suppliers, and employees, (ii) leave all classes of Claims and Interests Unimpaired, and (iii) allow the Debtor to emerge from chapter 11 expeditiously and efficiently.

On March 5, 2019, the Debtor filed the *Debtor’s Motion for Entry of an Order (I) Scheduling Combined Hearing on Adequacy of Disclosure Statement and Confirmation Of Plan On Shortened Notice; (II) Fixing Deadline to Object to Disclosure Statement and Plan; (III) Waiving Solicitation of the Plan and Approving Manner of Notice of Commencement, Combined Hearing, and Objection Deadline; (IV) Approving Notice and Objection Procedures for the Rejection of Executory Contracts and Unexpired Leases; (V) Conditionally (A) Directing the United States Trustee Not to Convene Section 341(A) Meeting of Creditors and (B) Waiving Requirement of Filing Statement of Financial Affairs and Schedules of Assets and Liabilities; and (VI) Granting Related Relief* (the “Combined Hearing Motion”). The Combined Hearing Motion seeks, among other things:

- (a) to schedule a combined hearing (the “Combined Hearing”) on April 12, 2019 to consider approval of the adequacy of the Disclosure Statement and confirmation of the Plan;
- (b) to establish procedures for objecting to the Disclosure Statement and Plan;
- (c) conditionally (i) directing the U.S. Trustee not to convene a meeting of creditors under section 341(a) of the Bankruptcy Code, and (ii) excusing the requirement that the Debtor file a statement of financial affairs and schedules of assets and liabilities;
- (d) approving notice and objection procedures for the rejection of Executory Contracts and Unexpired Leases through the Plan; and
- (e) approval of the form, manner, and sufficiency of notice of the Combined Hearing (the “Combined Hearing Notice”), which would set forth the deadline and procedures for filing objections to the adequacy of the Disclosure Statement and confirmation of the Plan; the manner in which the Disclosure Statement and the Plan and other pleadings filed in this chapter 11 case can be obtained or viewed electronically; and a summary of the treatment of each class under the Plan.

The Debtor is making this Disclosure Statement available solely as a matter of disclosure pursuant to section 1125 of the Bankruptcy Code so that holders of Claims and Interests can determine whether to object to confirmation of the Plan. The Debtor is not soliciting votes to accept or reject the Plan. All Classes of Claims and Interests are Unimpaired under the Plan and therefore deemed to accept the Plan. All capitalized terms used but not otherwise defined in this Disclosure Statement shall have the meanings ascribed to them in the Plan. The rules of interpretation set forth in Article I.B of the Plan shall govern the interpretation of this Disclosure Statement.

The purpose of this Disclosure Statement is to provide Holders of Claims and Interests with adequate information about (i) the Debtor's business and certain historical events, (ii) the Chapter 11 Case, (iii) the rights of Holders of Claims and Interests under the Plan, and (iv) other information necessary to enable each Holder of a Claim to make an informed judgment as to whether or not to object to confirmation of the Plan. The Debtor believes that the Plan is in the best interests of all Holders of Claims and Interests.

### **PRELIMINARY STATEMENT**

The Debtor, a Delaware corporation, is a wholly-owned subsidiary of the Parent, Diesel S.p.A., an Italian corporation (the "Parent"). The Debtor is the United States member of the international family of Diesel brand companies (collectively, "Diesel"). Beginning as a leading pioneer in denim, Diesel continues to specialize in a variety of denim-wear but has expanded its offerings to include a range of casual clothing and accessories for men, women, and children. Diesel has likewise expanded geographically, now operating in approximately 85 countries.

The Debtor is the exclusive distributor of Diesel products in the United States market and, from its 1995 founding until the 2008 recession, was both iconic and profitable. Unfortunately, however, the Debtor was not spared the effects of the recession or the downturn in the retail industry that followed and, in recent years, the Debtor's sales have declined precipitously while its losses mounted. In addition to the factors plaguing retail in general, the Debtor's recent challenges stem in large part from the long-term effects of certain strategic decisions made by prior management in an effort to effect a post-recession turnaround, including the negotiation and entry into several leases for certain stores as well as allocation of capital among the Debtor's operating segments. The Debtor has engaged with landlords in an effort to reduce its fixed costs and is otherwise working to correct prior operational miscues.

New management has recognized the need to address the Debtor's more fundamental issues, which, if allowed to continue, will prevent its ability to continue operating as a going-concern. The Debtor has spent the past year attempting to address these issues outside the context of chapter 11. Unfortunately, those efforts have been unsuccessful. Consequently, the Debtor commenced this chapter 11 case obtain relief from its burdensome unexpired leases and executory contracts in order to revive its brick-and-mortar retail operations. The resulting cost-savings and additional runway will enable the Debtor to implement the Reorganization Business Plan (as defined below), which the Debtor's projections indicate will return the Debtor to stand-alone profitability by 2021, thereby ensuring its ability to continue operating as a going-concern, saving over 300 jobs, and creating new ones through new store openings. The Debtor is currently analyzing all of its executory contracts and unexpired leases to determine which will be rejected through this Chapter 11 Case, which will be accomplished through the Plan. Absent the ability to utilize the chapter 11 process to obtain such relief, the Debtor's ability

to continue operating would be severely threatened and it would be unable to implement the Reorganization Business Plan, which is crucial to its ability to continue operating as a going-concern.

Furthermore, the Debtor's ability to operate depends on its License Agreement with the Parent, pursuant to which the Parent licenses to the Debtor the exclusive right to distribute Diesel products in the United States. As a result, the Debtor's ability to continue operating depends on certain crucial concessions from the Parent as licensor, including its consent to the assumption and renewal of the License Agreement. The Parent is prepared to provide the necessary consent along with funding necessary for implementing the Reorganization Business Plan in the approximate amount of \$36 million, subject to the Debtor's ability to achieve a timely and successful restructuring through this Chapter 11 Case. Accordingly, the Parent has expressly conditioned its concessions on the occurrence of the Plan's Effective Date by June 21, 2019.

A. Summary of the Plan

. The Plan provides for the following key economic terms and mechanics:<sup>3</sup>

1. All ordinary course trade creditors of the Debtor will be Unimpaired and have their Allowed General Unsecured Claims either Reinstated or paid in full in cash with interest. In addition, Interests in the Debtor will be Reinstated to preserve the Debtor's existing corporate structure.
2. Certain executory contracts and unexpired leases will be rejected through the Plan pursuant to section 365 of the Bankruptcy Code. The counterparties for the rejected executory contracts and unexpired leases will also be unimpaired as their Allowed Rejection Damages Claims will be paid in full in cash in accordance with the relevant provisions of the Bankruptcy Code plus interest.
3. Except to the extent specifically rejected or modified through this Chapter 11 Case or the Plan, all executory contracts and unexpired leases will be assumed and all employee benefits, customer concessions, insurance policies, privacy policies, and other ongoing obligations of the Debtor will be honored after the Effective Date.
4. The Debtor will fund distributions under the Plan with currently available cash on hand as of the Plan's Effective Date.
5. On the Effective Date, the Debtor will obtain the Parent Commitment providing for, among other things, funding from the Parent that will be used to fund the Reorganization Business Plan and the Parent's consent to the Debtor's assumption of the License Agreement.

The table below summarizes the classification, treatment, and estimated percentage recoveries of classified Claims and Interests under the Plan. The summaries provided below are qualified in their entirety by reference to the provisions of the Plan. A more detailed description of the classification and treatment of Claims and Interests is provided in Article IV of this Disclosure Statement.

<u>Class</u>	<u>Proposed Treatment</u>	<u>Estimated Recovery</u>
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<sup>3</sup> Any summaries or descriptions of the Plan are qualified in their entirety by reference to the provisions of the<sup>1</sup> Plan. See Exhibit A hereto.

<p>Class 1 – Other Priority Claims</p> <p><b>(unimpaired; deemed to accept the Plan)</b></p> <p>D.</p>	<p>Except to the extent that a Holder of an Allowed Other Priority Claim agrees to less favorable treatment, in exchange for full and final satisfaction, settlement, release, and discharge of each Allowed Other Priority Claim, each Holder of such Allowed Other Priority Claim shall receive the following at the option of the Debtor:</p> <p>A. Payment in full in Cash in the ordinary course of business;</p> <p>B. Reinstatement of such Allowed Other Priority claim; or</p> <p>C. Such other treatment rendering such Allowed Other Priority Claim Unimpaired.</p>	<p>100%</p>
<p>Class 2 – Secured Claims</p> <p><b>(unimpaired; deemed to accept the Plan)</b></p> <p>D.</p>	<p>Except to the extent that a Holder of an Allowed Secured Claim agrees to less favorable treatment, each holder of an Allowed Secured Claim shall receive, in exchange for full and final satisfaction, settlement, release, and discharge of such Claim, the following, at the option of the Debtor:</p> <p>A. Payment in full in Cash in the ordinary course of business;</p> <p>B. Reinstatement of such Allowed Secured claim; or</p> <p>C. Such other treatment rendering such Allowed Secured Claim Unimpaired.</p>	<p>100%</p>
<p>Class 3 – General Unsecured Claims</p> <p><b>(unimpaired; deemed to accept the Plan)</b></p> <p>D.</p>	<p>Except to the extent that a Holder of an Allowed General Unsecured Claim agrees to less favorable treatment, each Holder of an Allowed General Unsecured Claim shall, in exchange for full and final satisfaction, settlement, release, and discharge of such Claim, receive at the sole option of the Debtor either:</p> <p>A. Reinstatement as of the Effective Date and satisfaction in full in the ordinary course of the Debtor’s or Reorganized Debtor’s business operations in accordance with the terms and conditions of the particular transaction giving rise to such Allowed General Unsecured Claim;</p> <p>B. Payment in Cash in the full amount of its Allowed General Unsecured Claim plus post-petition interest on such Allowed General Unsecured Claim provided by contract or, if no contract exists, at the statutory rate provided by 29 U.S.C. § 1961, from the Effective Date to the date of payment, which payment shall occur on the later of (i) the Effective Date and (ii) the date due in the ordinary course of business in accordance with the terms and conditions of the particular transaction giving rise to such Allowed General Unsecured Claim; or</p> <p>C. Such other treatment as would render such Claim otherwise Unimpaired pursuant to section 1124 of the Bankruptcy Code.</p>	<p>100%</p>
<p>Class 4 – Rejection Damages Claims</p> <p><b>(unimpaired; deemed to accept the Plan)</b></p>	<p>Except to the extent that a Holder of an Allowed Rejection Damages Claim agrees to less favorable treatment, each Holder of an Allowed Rejection Damages Claim shall, in exchange for full and final satisfaction, settlement, release, and discharge of such Claim, receive payment in Cash in the full amount of its Allowed Rejection Damages Claim plus post-petition interest on such Allowed Rejection Damages Claim provided by contract or, if not specified by the contract, at the statutory rate provided by 29 U.S.C. § 1961, from the Effective Date to the date of payment, which payment shall occur on the later of (i) the Effective Date and (ii) thirty (30) days after entry of a Final Order rendering such Claim an Allowed Rejection Damages</p>	<p>100%</p>

	Claim.	
Class 5 – Interests  (unimpaired; deemed to accept the Plan)	All holders of Interests shall retain their Interests.	100%

#### B. Overview of Chapter 11

Pursuant to chapter 11 of the Bankruptcy Code, a debtor may reorganize for its benefit and the benefit of its creditors and interest holders. In a chapter 11 case, the debtor typically remains in control of the estate as a “debtor-in-possession.” Upon filing a petition for chapter 11 relief and during the pendency of a case, the Bankruptcy Code imposes an automatic stay against creditors’ attempts to collect or enforce, through litigation or otherwise, claims against the debtor. The automatic stay provisions of section 362 of the Bankruptcy Code, unless modified by court order, will generally prohibit or restrict attempts by creditors to collect or enforce any claims against the debtor that arose prior to the commencement of the chapter 11 case.

A chapter 11 plan is the vehicle for implementing the reorganization and satisfying or otherwise addressing the claims against and interests in a debtor. After the chapter 11 plan has been filed, the holders of claims against and interests in a debtor, whose claims or interests are impaired under the Plan, may vote to accept or reject the Plan. Section 1125 of the Bankruptcy Code requires that before soliciting acceptances of the proposed plan, a debtor must prepare a disclosure statement containing adequate information of such kind, and in such detail, as to enable a hypothetical reasonable investor to make an informed judgment about the Plan. **In this case, no class of Claims or Interests is impaired under the Plan and all classes are deemed to have accepted the Plan. Therefore, there are no classes of Claims or Interests that are entitled to vote to accept or reject the Plan. The Debtor is making this Disclosure Statement available solely for informational purposes to enable Holders of Claims and Interests to determine whether to object to the Plan.**

#### C. Rules of Construction.

1. Generally. For purposes of the Plan: (i) any reference in the Plan to an existing document or exhibit filed or to be filed means such document or exhibit as it may have been or may be amended, modified or supplemented; (ii) unless otherwise specified, all references in the Plan to Sections, Articles, and exhibits are references to Sections, Articles, and exhibits of or to the Plan; and (iii) the rules of construction set forth in section 102 of the Bankruptcy Code and the Bankruptcy Rules shall apply unless superseded in the Plan or in the Confirmation Order.

2. Time Periods. In computing any period of time prescribed or allowed by the Plan, unless otherwise set forth therein or determined by the Bankruptcy Court, the provisions of Bankruptcy Rule 9006 shall apply.

3. Miscellaneous Rules. (i) The words “herein,” “hereof,” “hereunder,” and other words of similar import refer to the Plan as a whole, not to any particular Section, subsection, or clause, unless the context requires otherwise; (ii) whenever it appears appropriate from the context, each term stated in the singular or the plural includes the singular and the plural, and each pronoun stated in the masculine, feminine or neuter includes the masculine, feminine, and the neuter; and (iii) captions and headings to Articles and Sections of the Plan are inserted for convenience of reference only and are not intended to be a part or to affect the interpretation of the Plan.

## ARTICLE II

### **BACKGROUND REGARDING THE DEBTOR**

#### A. The Debtor’s Operations<sup>4</sup>

The Debtor advertises, markets, and distributes Diesel products and other merchandise through retail, e-commerce, and wholesale channels throughout the United States. As is customary for a company of its size and scale, the Debtor maintains business relationships and enters into transactions with the Parent and other foreign affiliates in the ordinary course of its business. Specifically, approximately half of the Debtor’s merchandise are Diesel products, which the Debtor purchases in the ordinary course of business from the Parent for resale in the United States. The Debtor purchases its remaining merchandise from various foreign and United States third-party suppliers. The Debtor leases all of its retail store locations, inventory and storage warehouses, and corporate headquarters, which is located in New York City and owned by a related party. The Debtor does not own any real property. The Debtor sells and distributes its merchandise in three channels: (i) brick-and-mortar retail, (ii) e-commerce, and (iii) wholesale channels.

<sup>4</sup> For a more detailed description of the Debtor’s background and operations, see *Declaration of Mark G. Samson in Support of Chapter 11 Petition and First Day Pleadings* filed concurrently herewith (the “First Day Declaration”).<sup>1</sup>

1. Brick-and-Mortar Retail: As of the Petition Date, the Debtor's brick-and-mortar retail operations consists of 28 retail store locations in 11 states, comprised of 17 full-price retail stores and 11 factory outlet stores.

2. E-Commerce: The Debtor also retails Diesel products on the internet through the Diesel website: <https://shop.diesel.com/>. The Debtor's online sales are managed by a third-party e-commerce vendor, who receives, fulfills, and ships customer's online orders from the third-party's warehouse and handles customer service related to the online orders.

3. Wholesale: In addition, the Debtor's products are sold through wholesale channels at locations and e-commerce platforms not operated by the Debtor across the United States as well as online with over 200 retailers such as department stores, specialty retailers and boutiques, and other retailers.

#### B. Employees

As of the Petition Date, the Debtor employs approximately 380 employees. Approximately 75 are employed at the corporate level, including roles such as human resources, accounting, wholesale operations, and purchasing. The remaining employees are employed across the Debtor's retail store locations, consisting of store managers and retail sales associates. The Debtor is not a party to any collective bargaining agreement and none of the employees are unionized. The Debtor does not have any pension or retiree obligations.

#### C. Debt Obligations

As of the Petition Date, the Debtor estimates that it owes approximately \$7.4 million in unsecured trade obligations. The Debtor has been paying all of its trade vendors in the ordinary course of business and is substantially current with respect to its trade obligations. In addition, the Debtor is obligated under an undrawn Irrevocable Standby Letter of Credit dated as of July 2, 2018 (the "Letter of Credit") issued by UniCredit S.p.A. As of the Petition Date, the amount of the Letter of Credit is approximately \$2.5 million. The Letter of Credit is partially cash collateralized in the approximate amount of \$1.2 million and expires on January 31, 2020.

#### D. Transfer Pricing Matters

The Debtor purchases approximately half of its merchandise from the Parent and also engages in certain other transactions with the Parent and other Diesel affiliates in the ordinary course of the Debtor's business. The Parent is an Italian entity, and thus the Parent and Debtor are subject to different tax jurisdictions (namely, Italy and the United States), the intercompany transactions can give rise to complicated taxation and transfer pricing issues. After the Debtor was audited by the IRS for several tax years prior to 2015, the Debtor voluntarily engaged tax professionals in 2015 to assess the existing transfer pricing policy and to advise and assist the Debtor in formulating and undertaking remedial measures. The purpose of these measures was to implement appropriate adjustments and controls to the transfer pricing policy that would

ensure arm's-length results for the intercompany transactions as well as compliance with U.S. and Italian tax regulations and with the taxation treaty between the two countries (the "Treaty").<sup>5</sup>

The Debtor's tax professionals formulated a solution and in 2016 proposed to the IRS and Italian tax authority a bilateral "Advance Pricing Agreement" ("APA"), an agreement pursuant to the Treaty between the Debtor, the Parent, and each of the IRS and the Italian tax authority that would prospectively define the transfer pricing methodology to be employed during the tax years 2015-2019.<sup>6</sup> The proposed methodology provides for an annual profit adjustment as between the Debtor and Parent if the Debtor's profit (or loss) for a given covered year is above a specified target (in which case, the Debtor pays the Parent a royalty) or below the target (in which case, the Parent pays the Debtor what is referred to as a "Market Contribution"). In either case, the profit adjustment is intended to bring the Debtor's profitability in line with a set of comparable companies. The APA is subject to a lengthy approval process by both the IRS and the Italian tax authority. The Debtor is informed that the authorities concluded an agreement with respect to the APA last month and the Debtor is currently awaiting the final terms of the APA from the IRS, which is expected to be provided soon.

The Debtor's proposed transfer pricing adjustment was fully voluntary and intended to address all concerns with respect to the 2015-2019 period, ensure compliance going forward and avoid further audits, and to avoid harmful double taxation during all relevant periods. The Debtor expects that its proposal will accomplish each of these goals. To the extent it may be considered an executory contract, the Debtor intends to assume the APA in accordance with section 365 of the Bankruptcy Code and fully perform and to comply with the terms of the APA with the IRS and will not seek to cancel, revoke or revise the APA.

#### E. The License Agreement.

The Debtor operates in the United States pursuant to the License Agreement, under which the Parent licenses to the Debtor the exclusive right to use certain trademarks and other intellectual property for the purpose of distributing, advertising, and selling Diesel products in the United States. Under the license agreement in effect prior to 2015, the Debtor paid royalties to the Parent and the Parent would occasionally provide the Debtor with capital infusions. In 2015, the Debtor and the Parent negotiated and entered into a new License Agreement to, among other things, implement certain aspects of the transfer pricing methodology (described above) to be proposed by the Debtor and Parent in the APA for the years 2015-2019. The License Agreement currently expires on December 31, 2019 but will automatically renew for one year absent notice from either party of its intent to terminate six-months prior to expiration, or by June 30, 2019. Based on the proposed method, the Debtor's losses in 2018 would require a profit adjustment in the form of a Market Contribution for that period to bring the Debtor's profitability in line with that of certain comparable companies. The Debtor estimates the accrued, unpaid 2018 Market Contribution to be in the approximate amount of \$26.4 million, which amount is subject to final adjustment and reconciliation (as may be further reconciled and adjusted, the

<sup>5</sup> Known as the *Convention Between The Government Of The United States Of America And The Government Of The Italian Republic For The Avoidance Of Double Taxation With Respect To Taxes On Income And The Prevention Of Fraud Or Fiscal Evasion* (see <https://www.irs.gov/pub/irs-trty/italy.pdf>).<sup>1</sup>

<sup>6</sup> In 2017 the IRS proposed transfer pricing adjustments for 2010-2014 as to the Debtor under the United States tax code and regulations. In 2017, a "Mutual Agreement Procedure" ("MAP") submission was made pursuant to the Treaty that would make retrospective adjustments to the transfer pricing methodology employed during the tax years 2010-2014 to avoid double taxation and ensure they are in compliance with the Treaty. The competent taxing authorities are still negotiating the MAP pursuant to the Treaty.



“Market Contribution Accrual”). Under the terms of the License Agreement, the Market Contribution Accrual is not due until the end of April 2019 and thus is not currently available to the Debtor.

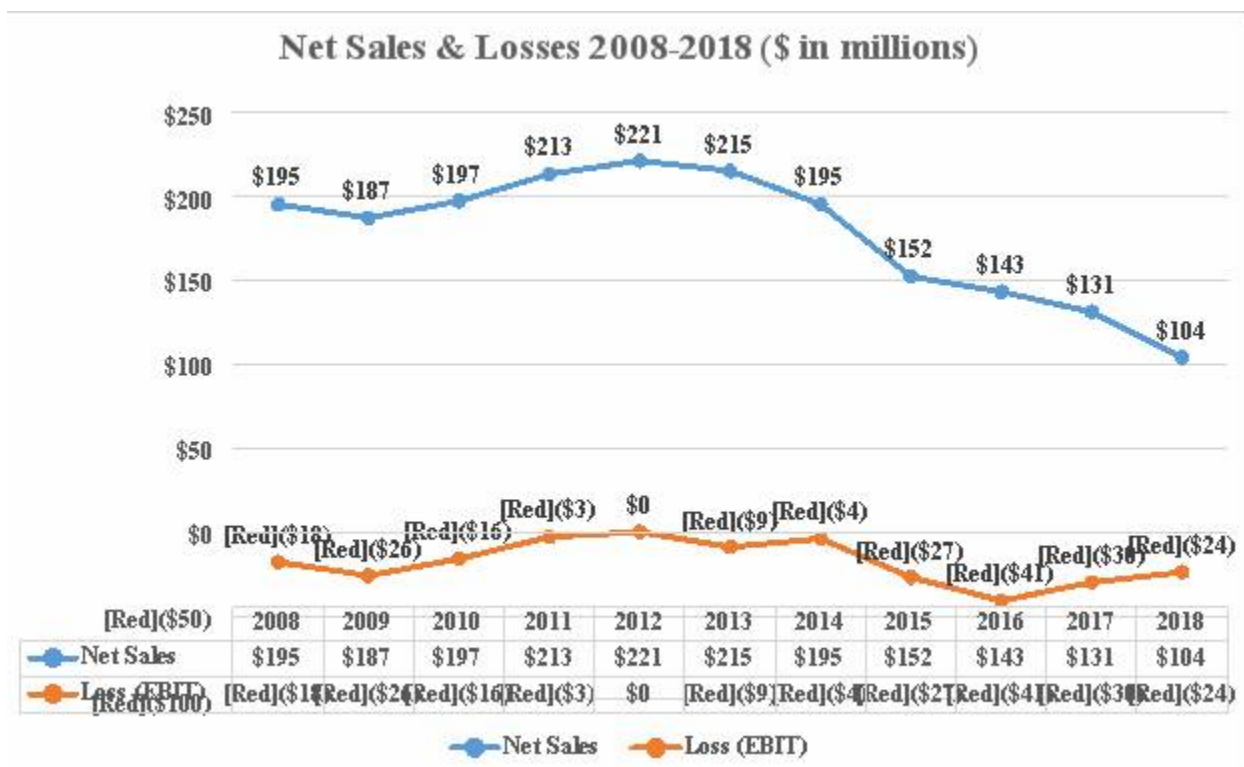
The Parent’s obligation to perform under the License Agreement, including granting the license and, if applicable, paying the Market Contribution, are conditioned on, among other things, the Debtor’s obligations as licensee. In addition, because the License Agreement includes a license to use intellectual property, the Debtor believes the Parent’s consent to its assumption is required under section 365(c) of the Bankruptcy Code. The restructuring initiatives contemplated to be effected through this Chapter 11 Case and, post-emergence, the Reorganization Business Plan, resolves and preempts questions as to the Debtor’s ability to comply with the License Agreement and the Parent’s obligation to (i) release the accrued but unpaid Market Contribution Accrual, (ii) consent to the Debtor’s assumption of the License Agreement, and (iii) agree to renew the License Agreement beyond 2019. The Debtor has shared the Reorganization Business Plan with the Parent and, after discussions with the Parent and its counsel, the parties have agreed to, subject to the occurrence of the Plan Effective Date on or before June 21, 2019, (a) consent to the Debtor’s assumption of the License Agreement in accordance with section 365(c)(a) of the Bankruptcy Code; (b) to allow the License Agreement to automatically renew until December 31, 2020 by not providing notice of termination on or before June 30, 2019, which shall be without prejudice to the parties’ rights to revise and renegotiate in good faith the terms and conditions of the License Agreement after the Effective Date; (c) consent to the release and payment of the full amount of Market Contribution Accrual for the purpose of funding the Reorganization Business Plan; and (d) provide a commitment of funding for the Reorganization Business Plan in an amount not less than \$10 million (collectively, the “Parent Commitment”).

#### F. Circumstances Leading to Chapter 11 Filing

##### 1. 2015-2018: Sustained Operating Losses

The Debtor’s operations have suffered from the same challenges that have plagued the retail industry as a whole in recent years, namely the general downturn in the brick-and-mortar retail industry resulting from the drastic shift in consumer preferences. Unfortunately, however, the Debtor’s recent hardship is the result not only of macroeconomic trends, but of certain strategic decisions implemented by prior management, including, among other things, (a) between 2008 and 2015, the decision to invest nearly \$90 million in capital expenditures, primarily into its retail operations, in the wake of the recession, (b) in 2015, the decision to enter into several expensive, long-term leases for certain of the Debtor’s retail locations, which do not expire by their terms until 2024-2026 and (c) the decision to significantly scale back wholesale operations. In addition, current management has been forced in recent years to further scale back wholesale operations on a temporary basis as a result of the substantial amount of “chargebacks” issued by the Debtor’s wholesale customers. Around 2012, the Debtor was beginning to see some improvement from the recession years of 2008-2010. As a result of the foregoing circumstances, however, the Debtor’s operating losses, excluding any contributions from or royalties paid to the Parent, plunged from a manageable \$4 million in 2014 to \$27 million in 2015.<sup>7</sup> As demonstrated below, the losses have continued:

<sup>7</sup> Operating losses discussed herein are calculated prior to accounting for Market Contributions and capital infusions received from the Parent as well as royalties paid to the Parent.



Annual Net Sales by Channel (USD/000)								
	Total Sales		Wholesale		Retail & Outlet		On-line	
2008	194,565	100%	65,762	34%	123,883	64%	4,920	3%
2009	186,921	100%	61,923	33%	119,508	64%	5,490	3%
2010	196,899	100%	67,625	34%	122,656	63%	6,618	3%
2011	212,521	100%	70,547	33%	133,605	63%	8,370	4%
2012	221,279	100%	72,976	33%	138,190	62%	10,112	5%
2013	214,834	100%	65,866	31%	139,320	65%	9,648	4%
2014	195,107	100%	61,569	32%	125,148	64%	8,390	4%
2015	152,246	100%	46,401	30%	97,311	64%	8,534	6%
2016	143,002	100%	38,896	27%	93,208	65%	10,898	8%
2017	131,088	100%	35,506	27%	83,879	64%	11,703	9%
2018	104,212	100%	20,273	19%	72,551	69%	11,388	11%

## 2. New Management and the Reorganization Business Plan

The Debtor revamped its management team with new leadership with extensive experience in both the industry and the global Diesel brand, including the addition of Stefano Rosso as Chief Executive Officer in 2017. As a result of the limited Market Contributions received in prior years from the Parent pursuant to the terms of the License Agreement and proposed APA, the Debtor has been able to temporarily cover its losses and continue operating in the short-term. The limited Market Contributions have not, however, changed the fact that the Debtor's business is rapidly losing money and it has become increasingly clear that a long-term and more fundamental solution is needed for the Debtor to be able to stem its losses, continue operating, and preserve jobs. Accordingly, the new management team has formulated a new strategic path over the next 3 years (the "Reorganization Business Plan") to restore the Diesel

brand in the United States, return the Debtor to its pre-recession profitability, ensure its ability to continue operating in the United States, continue doing business with its vendors and contract and lease counterparties who are not subject to rejection under the Plan, and preserve hundreds of jobs in addition to creating new ones through opening new stores. Specifically, the Reorganization Business Plan entails closing certain underperforming and costly stores with significant terms remaining on their leases (and allowing other leases to expire in the near term by their terms) and reinvesting the resulting cost-savings into:

- a) Optimizing its retail business by (i) relocating certain existing stores and opening new stores in smaller, more cost-effective locations, and (ii) refitting several existing locations to make them more cost-effective by reducing future capital expenditures;
- b) New marketing initiatives aimed at relaunching and consolidating its position as a “5 Pocket” market leader in the United States, including expanding marketing to female customers;
- c) Growing its e-commerce business by, among other things, implementing new marketing initiatives online and improving online product selection; and
- d) Revitalizing its wholesale business and bringing it in line with the new brand marketing direction, including by reintroducing its presence with certain key wholesale partners and improving product buying and placement.<sup>8</sup>

The Debtor’s projections indicate that the Reorganization Business Plan will return the Debtor to stand-alone profitability by 2021 and will cost approximately \$36 million over the 3-year period. The Parent has agreed, subject to occurrence of the Effective Date prior to June 21, 2019, to provide the Parent Commitment to fund the Reorganization Business Plan in the manner and amounts previously described.

### 3. Retail Store Optimization Efforts

Over the past year, management has evaluated its brick-and-mortar operations on a store-by-store basis to determine where and how to most effectively employ its capital and, conversely, which locations represent the greatest drag. In an effort to curb costs resulting from its unprofitable leases, the Debtor’s management began reaching out to its landlords in January 2018 to attempt to negotiate rent concessions and/or consensual lease terminations. Unfortunately, the Debtor has obtained no early closures and only a single rent concession from one of its landlords.

As a means for implementing the Reorganization Business Plan, management has determined that closing certain expensive, long-term, and underperforming stores as well as obtaining relief from other burdensome executory contracts is crucial to its ability to continue operating. The Debtor is currently analyzing all of its executory contracts and unexpired leases and will determine which to reject through the Plan. In addition, the leases for several underperforming locations will expire by their terms in 2019 and the Debtor does not intend to renew such leases.

In addition, between 2019 and 2021, retail optimization efforts would involve (a) additional store openings in strategic locations with market-based rents, (b) allowing additional stores to expire by their lease terms (rather than rejecting through chapter 11), (c) “refitting”

<sup>8</sup> See First Day Declaration for a more detailed description of the Reorganization Business Plan.

numerous stores, which involves modifications to and replacements of the furniture and fixtures at the stores to make them more cost-effective, thereby reducing future capital expenditures, and (d) re-branding stores to bring them in line with certain new marketing initiatives. The Debtor's retail optimization is aimed primarily at reducing costs but will also require significant investment in relocating and refitting existing stores and opening new ones.

#### 4. Preparing for Chapter 11 and Continued Landlord Negotiations

By the end of 2018, faced with another disappointing year and having not made progress with its landlords, the Debtor undertook planning for a chapter 11 filing while continuing to engage with landlords in an effort to avoid a bankruptcy filing. The Debtor engaged Mark G. Samson as Chief Restructuring Officer (the "CRO") and Arent Fox LLP and Young Conaway Stargatt & Taylor, LLP as bankruptcy counsel. While the Debtor sought concessions from numerous landlords, the Debtor focused on negotiating relief with respect to its most costly and underperforming stores that, due to their underperformance and/or costly leases, are having the most depressive effect on the Debtor's ongoing ability to operate.

For the past year, the Debtor engaged in good faith negotiations with landlords and is not in default under any of its leases. The Debtor and/or CRO discussed consensual lease terminations and other alternatives directly with the landlords for certain of the Debtor's stores that are producing the most significant losses and offered, on the Debtor's behalf, buyout payments for early termination, which were rejected or did not receive a response. Thus, despite good faith efforts, the Debtor has been unable to reach resolutions with its landlords.

Due to the ongoing heavy losses at certain of the Debtor's stores and lack of concessions from landlords, the Debtor has determined that closing certain unprofitable stores is necessary to its viability going forward. The Debtor's unprofitable stores represented nearly \$11 million in consolidated negative EBITDA in 2018. In addition, the Debtor's aggregate annual rent exceeds \$25 million and, given that several of the Debtor's most unprofitable leases extend as far as 2024-2026, keeping them open through expiration of their lease terms would cost the Debtor significant lease expense over the full life of the leases. Specifically, the Debtor's unprofitable stores would combine to cost over \$60 million in total lease expense over their remaining terms. By contrast, the Debtor's rejection of burdensome unexpired leases and executory contracts through this Chapter 11 Case will substantially reduce its annual operating losses.

Absent the ability to obtain such relief through chapter 11, the Debtor will unlikely be able to continue operating as a going-concern. With the relief afforded by the chapter 11 process, however, the Debtor will be able to pay its creditors in full through the Plan, continue operating, and continue to employ the vast majority of its employees. Furthermore, a successful chapter 11 restructuring will provide necessary runway permitting the Debtor to implement the Reorganization Business Plan, which the Debtor's projections indicate will, assuming closure of underperforming stores through the Plan, return it to stand-alone profitability by 2021. The Reorganization Business Plan is therefore critical to the Debtor's long-term viability. In addition, the Debtor estimates the Reorganization Business Plan will require additional investments of approximately \$36 million over the 3-year period. Accordingly, the Parent has agreed, subject to occurrence of the Effective Date on or before June 21, 2019, to provide the Parent Commitment for the purpose of funding the Reorganization Business Plan.

In addition, pursuant to the Parent Commitment, the Parent has agreed to, subject to occurrence of the Effective Date on or before June 21, 2019, (a) consent to the Debtor's

assumption of the License Agreement in accordance with section 365(c)(a) of the Bankruptcy Code and (b) agree to the upcoming annual renewal of the License Agreement.

### ARTICLE III

#### SIGNIFICANT EVENTS IN THE CHAPTER 11 CASE

##### A. Automatic Stay; Administrative Status

The Chapter 11 Case is assigned to the Honorable Mary F. Walrath, United States Bankruptcy Judge for the District of Delaware. Since the Petition Date, the Debtor has operated as a debtor-in-possession under Bankruptcy Code §§ 1107 and 1108. The Debtor hired Arent Fox LLP and Young Conaway Stargatt & Taylor, LLP as its bankruptcy counsel.

An immediate effect of the commencement of the Chapter 11 Case was the imposition of the automatic stay under Bankruptcy Code § 362, which, with limited exceptions, enjoined the commencement or continuation of all collection efforts by creditors, the enforcement of liens against property of the Debtor, and the commencement or continuation of litigation against the Debtor. This relief provided the Debtor with the “breathing room” necessary to pursue its business objectives in the Chapter 11 Case without undue pressure or litigation by Creditors. The automatic stay remains in effect, unless modified by the Bankruptcy Court, until consummation of the Plan.

B. First Day Motions. The Debtor does not expect the Chapter 11 Case to be protracted. To expedite emergence from chapter 11, in addition to filing the Plan and this Disclosure Statement, the Debtor has filed motions seeking the relief outlined below, among other relief, from the Bankruptcy Court (the “First Day Motions”). Such relief is designed to ensure a smooth transition of the Debtor’s operations into chapter 11 and facilitate the administration of the Chapter 11 Case.

##### 1. Employee Wage Motion

The Debtor filed a motion seeking authority to pay the prepetition wages of its employees and to continue to honor certain other ordinary course employee benefits and other obligations to its employees. The Debtor believes that honoring its obligations to employees is crucial to maintaining a stable workforce and minimizing disruption in this Chapter 11 Case.

##### 2. Motion to Continue Using Existing Cash Management

The Debtor filed a motion seeking to continue to use its existing cash management systems and their respective bank accounts, business forms, and investment practices. The cash management motion further seeks a waiver of certain operating guidelines related to bank accounts.

##### 3. Vendor Motion

The Debtor filed a motion seeking authority to pay certain prepetition claims for goods or services related to the Debtor’s operations and other ordinary course claims of creditors,

including landlords and providers of services and vendors of goods. The Debtor's retail business depends on the uninterrupted access to merchandise and other goods and services provided by its network of vendors and, thus, believes the relief sought is crucial to its ongoing business operations.

4. Customer Programs Motion

The Debtor filed a motion seeking authority to continue its ordinary course customer programs, including honoring (a) gift cards and (b) programs for returns, refunds, adjustments. The Debtor believes the relief sought in this motion is critical to its ongoing relationships with customers.

5. Insurance Motion

The Debtor filed a motion seeking authority to maintain and honor prepetition obligations under its various insurance policies. The Debtor believes this relief is likewise critical as its insurance policies are essential to the preservation of the value of the Debtor's business, property, and assets.

6. Utilities Motion

To avoid interruption in utilities services at its stores and corporate office, the Debtor filed a motion seeking an order (a) prohibiting utility providers from altering, refusing, or discontinuing services, (b) determining adequate assurance of payment for future utility services, and granting related relief.

7. Tax Motion

The Debtor filed a motion seeking authority to pay certain accrued and outstanding tax obligations and related fees in the ordinary course of business, such as, among other things, sales and use taxes, personal property taxes, and franchise taxes and fees. The Debtor believes the relief sought in this motion will avoid material disruption in the Debtor's business operations.

8. Noticing Agent Retention

The Debtor also filed an application for the Debtor's retention of Bankruptcy Management Solutions, Inc. d/b/a Stretto as noticing agent (the "Noticing Agent") for the Debtor in its chapter 11 case effective *nunc pro tunc* to the Petition Date, including assuming full responsibility for the distribution of notices and services related thereto.

C. Combined Hearing Motion and Timetable for the Chapter 11 Case.

On the Petition Date, the Debtor also filed the Combined Hearing Motion schedule a combined hearing to consider approval of the Disclosure Statement and confirmation of the Plan on April ~~—,12,~~ 2019, or ~~—thirty-eight (38)~~ days after the Petition Date and filing of the Plan and Disclosure Statement. ~~In addition, On March 7, 2019, the Bankruptcy Court entered an order approving~~ the Combined Hearing Motion ~~requests approval of~~ and approving the form, manner, and sufficiency of notice of the Combined Hearing Notice and the following schedule for confirmation of the Plan:

<b>Event</b>	<b>Date/Deadline</b>
Petition Date	March <del>—,5,</del> 2019
Plan Supplement Filing Deadline	March <del>—,28,</del> 2019
Plan/Disclosure Statement Objection Deadline	April <del>—,5,</del> 2019, at 4:00 p.m.
Assumption or Rejection Objection Deadline	April <del>—,5,</del> 2019, at 4:00 p.m.
Plan/Disclosure Statement Reply Deadline (including, to the extent applicable, replies to any Executory Contract Procedures objections)	April <del>—,10,</del> 2019 at 4:00 p.m. (Prevailing Eastern Time)
Deadline to file proposed confirmation order	
Deadline to file brief in support of	
Second Day Hearing and Combined Hearing	April <del>—,12,</del> 2019 at <del>—:00</del> <u>10:30 a.m.</u> (Prevailing Eastern Time)

At the Combined Hearing, the Bankruptcy Court will consider whether the Plan satisfies the various requirements of the Bankruptcy Code. Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to confirmation of the Plan. Any objection to confirmation of the Plan would have to be made in writing and filed with the Bankruptcy Court and served on all required parties by the objection deadlines set by the Bankruptcy Court. Unless an objection to confirmation is timely served and filed, it may not be considered by the Bankruptcy Court.

## **ARTICLE IV**

### **DESCRIPTION OF THE PLAN**

A. Treatment of Unclassified Claims under the Plan

. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Professional Fee Claims, and Priority Tax Claims are not classified and are not entitled to vote on the Plan. The Plan provides for the treatment of such Claims as follows:

1. Administrative Claims. Except to the extent that a Holder of an Allowed Administrative Claim and either the Debtor or Reorganized Debtor, as applicable, agree to less favorable treatment, each Holder of an Allowed Administrative Claim (other than Professional Fee Claims) will, in exchange for full and final satisfaction, settlement, release, and discharge of such Allowed Administrative Claim, be paid the full unpaid amount of such Allowed Administrative Claim in Cash on, or as soon thereafter as is reasonably practicable, (a) the Effective Date or, if payment is not then due, (b) on the due date of such Allowed Administrative Claim; *provided, however*, that Administrative Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due. Any taxes that arose postpetition shall be paid in the ordinary course of business and the taxing authorities that hold Claims on account of such postpetition taxes shall not be required to file a proof of claim for an Administrative Claim in the Chapter 11 Case.
2. Professional Fee Claims. Each Allowed Professional Fee Claim shall be paid in full in Cash on the later of: (a) three days after the Professional Fee Claim is Allowed; and (b) another date on which the holder of the Professional Fee Claim and the Debtor or Reorganized Debtor agree. Each Person seeking an award by the Bankruptcy Court of Professional Fees must file with the Bankruptcy Court and serve on Reorganized Debtor its final application for allowance of compensation for services rendered and reimbursement of expenses incurred through the Effective Date by the Professional Fee Bar Date.
3. Post-Effective Date Professional Fees. All claims of Professionals for services rendered or expenses incurred after the Effective Date in connection with the Chapter 11 Case and the Plan including, but not limited to, those relating to consummation of the Plan, any appeal of the Confirmation Order, the preparation, filing, and review of Professional Fee Claims, the prosecution of Causes of Action, and the resolution of Disputed Claims, shall be paid by the Reorganized Debtor on receipt of an invoice, or on other terms on which the Reorganized Debtor and the Professional agree, without the need for further Bankruptcy Court authorization or entry of a Final Order.
4. Priority Tax Claims. Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to less favorable treatment, in exchange for full and final satisfaction, settlement, release, and discharge of each Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim due and payable on or prior to the Effective Date shall receive the treatment set forth in section 1129(a)(9)(C) of the Bankruptcy Code. To the extent any Allowed Priority Tax Claim is not due and owing on or before the Effective Date, such Claim shall be paid in full in Cash in accordance with the terms of any agreement between the Debtor and such Holder or as may be due and payable under applicable non-bankruptcy law or in the ordinary course of business.

B. Classification and Treatment of Classified Claims and Interests



The Plan provides that classified Claims and Interests are divided into numbered classes as follows:

<b>Class</b>	<b>Treatment</b>	<b>Entitled To Vote</b>
Class 1 – Other Priority Claims	Unimpaired	No (Deemed to Accept)
Class 2 – Secured Claims	Unimpaired	No (Deemed to Accept)
Class 3 – General Unsecured Claims	Unimpaired	No (Deemed to Accept)
Class 4 – Rejection Damages Claims	Unimpaired	No (Deemed to Accept)
Class 5 – Interests	Unimpaired	No (Deemed to Accept)

1. Class 1: Other Priority Claims

a. Treatment: Except to the extent that a Holder of an Allowed Other Priority Claim agrees to less favorable treatment, in exchange for full and final satisfaction, settlement, release, and discharge of such Claim, each Holder of such Allowed Other Priority Claim shall receive the following at the option of the Debtor:

1. Payment in full in Cash in the ordinary course of business;
2. Reinstatement of such Allowed Other Priority claim; or
3. Such other treatment rendering such Allowed Other Priority Claim Unimpaired.

b. Impairment and Voting: Class 1 is Unimpaired and all Holders of Class 1 Claims are conclusively deemed to have accepted the Plan and are not entitled to vote on the Plan.

2. Class 2: Secured Claims

a. Treatment: Except to the extent that a Holder of an Allowed Secured Claim agrees to less favorable treatment, each holder of an Allowed Secured Claim shall receive, in exchange for full and final satisfaction, settlement, release, and discharge of such Claim, the following, at the option of the Debtor:

1. Payment in full in Cash in the ordinary course of business;
2. Reinstatement of such Allowed Secured claim; or
3. Such other treatment rendering such Allowed Secured Claim Unimpaired.

b. Impairment and Voting: Class 2 is Unimpaired and all Holders of Class 2 Claims are conclusively deemed to have accepted the Plan and are not entitled to vote on the Plan.

3. Class 3: General Unsecured Claims

a. Treatment: Except to the extent that a Holder of an Allowed General Unsecured Claim agrees to less favorable treatment, each Holder of an

Allowed General Unsecured Claim shall, in exchange for full and final satisfaction, settlement, release, and discharge of such Claim, receive at the sole option of the Debtor either:

1. Reinstatement as of the Effective Date and satisfaction in full in the ordinary course of the Debtor's or Reorganized Debtor's business operations in accordance with the terms and conditions of the particular transaction giving rise to such Allowed General Unsecured Claim;
  2. Payment in Cash in the full amount of its Allowed General Unsecured Claim plus interest on such Allowed General Unsecured Claim, if any, from the Effective Date to the date of payment at the rate provided by contract or, if no contract exists, at the statutory rate provided by 29 U.S.C. § 1961, which payment shall occur on the later of (i) the Effective Date and (ii) the date due in the ordinary course of business in accordance with the terms and conditions of the particular transaction giving rise to such Allowed General Unsecured Claim; or
  3. Such other treatment as would render such Claim otherwise Unimpaired pursuant to section 1124 of the Bankruptcy Code.
- b. Impairment and Voting: Class 3 is Unimpaired and all Holders of Class 3 Claims are conclusively deemed to have accepted the Plan and are not entitled to vote on the Plan.
4. Class 4: Rejection Damages Claims
- a. Treatment: Except to the extent that a Holder of an Allowed Rejection Damages Claim agrees to less favorable treatment, each Holder of an Allowed Rejection Damages Claim shall, in exchange for full and final satisfaction, settlement, release, and discharge of such Claim, receive payment in Cash in the full amount of its Allowed Rejection Damages Claim plus interest on such Allowed Rejection Damages Claim, if any, from the Effective Date to the date of payment at the rate provided by contract or, if not specified by the contract, at the statutory rate provided by 29 U.S.C. § 1961, which payment shall occur on the later of (i) the Effective Date and (ii) thirty (30) days after entry of a Final Order rendering such Claim an Allowed Rejection Damages Claim.
  - b. Impairment and Voting: Class 4 is Unimpaired and all Holders of Class 4 Claims are conclusively deemed to have accepted the Plan and are not entitled to vote on the Plan.
5. Class 5: Interests
- a. Treatment: All holders of Interests shall retain the Interests.
  - b. Impairment and Voting: Class 5 is Unimpaired and all Holders of Class 5 Interests are conclusively deemed to have accepted the Plan and are not entitled to vote on the Plan.

C. No Impairment; No Class Entitled to Vote

. No Class is Impaired. Therefore, all Classes are presumed to have accepted the Plan. Nonetheless, all parties are encouraged to carefully review the Plan attached as Exhibit A. All descriptions of the Plan set forth in this Disclosure Statement are subject to the terms and conditions of the Plan.

All classes of Claims and Interests will have received the Combined Hearing Notice setting forth the deadline and procedures for filing objections, the manner in which the Disclosure Statement and the Plan and other pleadings filed in the chapter 11 case can be obtained or viewed electronically, and a summary of the treatment of each class under the Plan.

Copies of the Combined Hearing Notice, this Disclosure Statement, and the Plan may be obtained by (i) visiting the Debtor's Noticing Agent's website at <http://cases.stretto.com/dieselusa>, (ii) writing to the Noticing Agent at 8269 E. 23<sup>rd</sup> Avenue, Suite 275, Denver, CO 80238, (iii) calling the Noticing Agent at 855-236-2466; or (iv) for a fee via PACER.

D. Resolution of Claims

. Except as required by an order of the Bankruptcy Court and except with respect to Rejection Damages Claims as required under Article VI of the Plan, Holders of Claims and Interests need not file a proof of claim with the Bankruptcy Court to be deemed an Allowed Claim or Interest under the Plan and shall retain all their rights under applicable non-bankruptcy law to pursue their Claims in any forum with jurisdiction over the parties and the Debtor or Reorganized Debtor shall have and retain any and all rights and defenses the Debtor had with respect to any Claim or Interest immediately prior to the Effective Date. If the Debtor or Reorganized Debtor disputes any claims, other than Rejection Damage Claims, such disputes shall be determined, resolved, or adjudicated as if the Debtor had not filed the Chapter 11 Case. Except as provided in Article VI of the Plan, all proofs of claim filed in this Chapter 11 Case shall be considered objected to and Disputed without further action by the Debtor. On the Effective Date, all proofs of claim filed against the Debtor (other than as required under Article VI of the Plan), regardless of when such proofs of claim were filed, including proofs of claims filed after the Effective Date, shall be deemed withdrawn, and such creditor that files such proof of claim with the Bankruptcy Court shall retain any right it may have to pursue remedies in a forum other than the Bankruptcy Court in accordance with applicable law.

E. Implementation of the Plan

1. General Settlement of Claims. The Plan provides that, pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan and Plan Supplement, on the Effective Date, the provision of the Plan shall constitute good-faith compromise and settlement of all Claims and controversies resolved pursuant to the Plan.
2. Plan Funding. Distributions under the Plan will be funded from Debtor's Cash on hand as of the Effective Date.

3. Parent Commitment. On the Effective Date, the Parent will provide the Parent Commitment and the Debtor and Reorganized Debtor, as applicable, shall be authorized to take all actions necessary or appropriate to obtain the Parent Commitment and to enter into any transactions contemplated thereunder, including but not limited to the assumption of the License Agreement.
4. Distributions. The Debtor or the Reorganized Debtor, as applicable, shall make all distributions in accordance with the terms of the Plan. In the event that any payment or act under the 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. Holders of Allowed Claims entitled to distributions under the Plan shall provide any information requested by the Debtor necessary for making such distribution.
5. Disputed Rejection Damages Claim Reserve. The Reorganized Debtor must manage Cash distributions to holders of Allowed Rejection Damages Claims so as to reserve sufficient Cash to make appropriate distribution on account of any Disputed Rejection Damages Claim as if that Disputed Rejection Damages Claim were an Allowed Rejection Damages Claim on the Effective Date in the amount Scheduled for such Rejection Damages Claim in the Schedule of Rejected Executory Contracts and Unexpired Leases. If and when any Disputed Rejection Damages Claim becomes an Allowed Rejection Damages Claim, Cash sufficient to make appropriate distribution to the holder that Claim must be made from such reserves. If a Disputed Rejection Damages Claim or any portion thereof becomes Disallowed, all reserved distributions attributable to the Holder of that Disputed Rejection Damages Claim shall revert to the Reorganized Debtor automatically and without need for a further order by the Bankruptcy Court.
6. Continued Reorganized Operations. The Reorganized Debtor will continue to operate with the primary purpose of continuing to conduct the Debtor's businesses through its brick and mortar retail sales, online sales, and wholesale businesses.
7. Corporate Governance. The Reorganized Debtor will continue to be governed by its board of directors, consisting of Stefano Rosso, Carlo Schiavo, and Nicola Marzano. The officers of the Debtor will continue to be Stefano Rosso as Chief Executive Officer, and Matteo Comunalazzi as Chief Financial Officer. Mr. Rosso and Mr. Comunalazzi will continue to be compensated at the same rate as provided in their pre-bankruptcy employment agreements.
8. Section 1145 Exemption. In accordance with section 1145 of the Bankruptcy Code, the retention under the Plan of the Interests is exempt from all federal, state, or local law requiring registration for offer or sale of a security or registration or licensing of an issuer of, underwriter of, or broker dealer in such securities and is not deemed to be a public offer of such securities.
9. Effectuating Documents. On and after the Effective Date, the Reorganized Debtor, and the officers thereof and members of the board thereof, shall be authorized to and may issue, execute, deliver, file, or record such contracts, instruments, releases, indentures, and other agreements or documents, and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of this Plan, or to otherwise comply with applicable law, in the name of and on behalf of the

Reorganized Debtor, without the need for any approvals, authorizations, or consents except for those expressly required pursuant to the Plan.

10. Effectiveness of Instruments and Agreements. On the Effective Date, all instruments, agreements, and documents issued, entered into, delivered, or filed under the Plan are effective, binding, and enforceable in accordance with their respective terms.

11. No Corporate Action Required. As of the Effective Date: (a) the adoption, execution, delivery, and implementation of all contracts, leases, instruments, releases, and other agreements related to or contemplated by the Plan; and (b) the other matters provided for under, or in furtherance of, the Plan involving corporate action required of the Debtor, are deemed to have occurred, are effective as provided in the Plan, and are deemed authorized and approved in all respects without further order of the Bankruptcy Court or any further action by the Debtor's officers, shareholders, members, or managers.

12. Post-Confirmation Management and Indemnification. The day-to-day operations of Reorganized Debtor will continue to be managed by the Debtor's officers, subject to oversight from its board of directors. Reorganized Debtor will provide its officers with indemnification rights and will compensate its officers consistent with compensation provided during the Chapter 11 Case. Reorganized Debtor will assume any pre-Petition Date indemnification obligations to any officers employed with the Debtor as of the Petition Date.

13. Operation Pending Effective Date. Until the Effective Date, the Debtor will continue to operate its business subject to all applicable requirements of the Bankruptcy Code and the Bankruptcy Rules.

14. Employee Benefits. Except as otherwise provided in the Plan, on and after the Effective Date, the Reorganized Debtor may: (1) honor, in the ordinary course of business, any contracts, agreements, policies, programs and plans for, among other things, compensation (other than equity based compensation related to Interests), health care benefits, disability benefits, deferred compensation benefits, travel benefits, savings, severance benefits, retirement benefits, welfare benefits, paid time off, workers' compensation insurance and accidental death and dismemberment insurance for the directors, officers and employees of the Debtor who served in such capacity at any time and (2) honor, in the ordinary course of business, Claims of employees employed as of the Effective Date for accrued vacation time arising before the Petition Date; provided, however, that the Debtor's or Reorganized Debtor's performance under any employment agreement will not entitle any person to any benefit or alleged entitlement under any policy, program or plan that has expired or been terminated before the Effective Date, or restore, reinstate or revive any such benefit or alleged entitlement under any such policy, program or plan. Nothing in the Plan shall limit, diminish or otherwise alter the Reorganized Debtor's defenses, claims, Causes of Action or other rights with respect to any such contracts, agreements, policies, programs and plans.

## ARTICLE V

### **EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

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

1. Except as otherwise provided in the Plan, each Executory Contract and Unexpired Lease shall be deemed assumed pursuant to sections 365 and 1123 of the Bankruptcy Code as of the Effective Date, unless any such Executory Contract or Unexpired Lease: (1) is identified on the Schedule of Rejected Executory Contracts and Unexpired Leases; (2) was assumed or rejected previously by the Debtor; (3) expired or terminated pursuant to its own terms before the Effective Date; (4) is the subject of a motion to reject pending on the Confirmation Date; or (5) is the subject of a motion to reject an Executory Contract or Unexpired Lease pursuant to which the requested effective date of such rejection is after the Effective Date.

2. Entry of the Confirmation Order shall constitute a Final Order approving the assumptions or rejections of such Executory Contracts or Unexpired Leases as set forth in the Plan, all pursuant to sections 365(a) and 1123 of the Bankruptcy Code. All assumptions or rejections of Executory Contracts and Unexpired Leases pursuant to the Plan shall be effective as of the Effective Date, the date set forth in the Schedule of Rejected Executory Contracts and Unexpired Leases, or such other date agreed to in writing between the Debtor and the applicable counterparty. The Debtor will continue to perform its obligations under any rejected Executory Contract or Unexpired Lease through the effective date of such rejection.

3. All assumed Executory Contracts and Unexpired Leases shall remain in full force and effect for the benefit of the Reorganized Debtor, and be enforceable by the Reorganized Debtor in accordance with their terms, notwithstanding any provision in such assumed Executory Contract or Unexpired Lease that prohibits, restricts or conditions such assumption, assignment or transfer. Any provision in the assumed Executory Contracts and Unexpired Leases that purports to declare a breach or default based in whole or in part on commencement or continuance of this Chapter 11 Case or any successor cases shall be deemed unenforceable. To the extent any provision in any Executory Contract or Unexpired Lease assumed pursuant to the Plan (including, without limitation, any “change of control” provision) restricts or prevents, or purports to restrict or prevent, or is breached or deemed breached by, the Reorganized Debtor’s assumption of such Executory Contract or Unexpired Lease, then such provision will be deemed modified such that the transactions contemplated by the Plan will not entitle the non-debtor party thereto to terminate such Executory Contract or Unexpired Lease or to exercise any other default-related rights with respect thereto. Each Executory Contract or Unexpired Lease assumed pursuant to the Plan or by Bankruptcy Court order but not assigned to a third party before the Effective Date shall re-vest in and be fully enforceable by the Reorganized Debtor in accordance with its terms, except as such terms may have been modified by such order or by applicable law.

4. Notwithstanding anything to the contrary in the Plan, the Debtor reserves the right to alter, amend, modify or supplement the Schedule of Rejected Executory Contracts and Unexpired Leases at any time before the Confirmation Date, including without limitation the right to remove any Executory Contract or Unexpired Lease therefrom. The Debtor further reserves the right to remove any Executory Contract or Unexpired Lease from the Schedule of Rejected Executory Contracts and Unexpired Leases at any time prior to the Effective Date.

B. Procedures Related to Rejection of Executory Contracts or Unexpired Leases

The Debtor will file the Schedule of Rejected Executory Contracts and Unexpired Leases with the Plan Supplement on or before the date that is ~~fourteen~~fifteen (~~14~~15) days prior to the Confirmation Hearing. Each non-Debtor counterparty to an Executory Contract or Unexpired Lease to be rejected pursuant to the Plan shall have until 4:00 p.m. (Eastern time) on the date that is ~~seven~~eight (~~7~~8) calendar days after service of the Schedule of Rejected Executory Contracts and Unexpired Leases upon such counterparty to file a written objection to the rejection of its Executory Contract or Unexpired Lease and serve it in a manner to be actually received by each of the following: (i) proposed co-counsel to the Debtor: Arent Fox LLP, 1301 Avenue of the Americas, 42nd Floor, New York, NY 10019, Attn: George P. Angelich and David J. Mayo and Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Wilmington, DE 19801, Attn: Pauline K. Morgan and Kenneth J. Enos; and (ii) the U.S. Trustee, 844 North King Street, Room 2207, Lockbox 35, Wilmington, DE 19801, Attn: Linda J. Casey, Esq. Any such objections that cannot be consensually resolved by the Debtor and the objecting non-Debtor counterparty shall be considered by the Bankruptcy Court at the Confirmation Hearing or such other date requested by the Debtor.

1. Abandonment of Personal Property. Any fixtures, furniture, advertising displays, other office and store equipment or any other personal property left by the Debtor on the premises related to Unexpired Leases rejected pursuant to the Plan shall be deemed abandoned pursuant to Section 554 of the Bankruptcy Code. Entry of the Confirmation Order shall constitute authorization by the Bankruptcy Court of such abandonment and the non-Debtor counterparties to such rejected Unexpired Leases may dispose of any such personal property in their sole and absolute discretion without liability to the Debtor.

2. Claim Procedures for Rejection Damages Claim Holders that Agree with Scheduled Claim. The Schedule of Rejected Executory Contracts and Unexpired Leases will set forth the amount of Rejection Damages Claims related to each Executory Contract or Unexpired Lease being rejected. If a counterparty to an Executory Contract or Unexpired Lease does not dispute the Scheduled amount of its Rejection Damages Claim, such party is not required to file a proof of Claim, and will be deemed to have an Allowed Rejection Damages Claim in the amount set forth on the Debtor's Schedule of Rejected Executory Contracts and Unexpired Leases at the expiration of the Rejection Bar Date. Any holder that disputes the Scheduled amount of its Rejection Damages Claim is required to file a proof of Claim, pursuant to the procedures set forth herein.

3. Claim Procedures for Rejection Damages Claim Holders that Disagree with Scheduled Claim. If a counterparty to an Executory Contract or Unexpired Lease disputes the Scheduled amount of its Rejection Damages Claim, or believes it has a Rejection Damages Claim that has not been Scheduled, unless otherwise provided by a Bankruptcy

Court order, such counterparty must file with the Bankruptcy Court a proof of Claim asserting what the counterparty believes is the correct Rejection Damages Claim on or before the Rejection Bar Date. **Any Person that disputes the Scheduled amount of its Rejection Damages Claim is required to file a proof of Claim asserting a Rejection Damages Claim and failure to do so on or before the Rejection Bar Date shall result in any Rejection Damages Claim in excess of the Scheduled amount being disallowed automatically and forever barred, estopped, and enjoined from assertion and any such Rejection Damages Claim in excess of the Scheduled amount shall not be enforceable against the Debtor or the Reorganized Debtor, without the need for any objection by the Reorganized Debtor or any further notice to or action, order, or approval of the Bankruptcy Court, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed fully satisfied, released, and discharged, notwithstanding a proof of Claim to the contrary. In addition, any Person that believes it has a Rejection Damages Claim that has not been Scheduled is required to file a proof of Claim asserting a Rejection Damages Claim and failure to do so on or before the applicable Rejection Bar Date shall result in any Rejection Damages Claim being disallowed automatically and forever barred, estopped, and enjoined from assertion and any such Rejection Damages Claim shall not be enforceable against the Debtor or the Reorganized Debtor, without the need for any objection by the Reorganized Debtor or any further notice to or action, order, or approval of the Bankruptcy Court, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed fully satisfied, released, and discharged, notwithstanding a proof of Claim to the contrary.**

4. Time to File Objections and Replies. Any objections to proofs of Claim asserting Rejection Damages Claims shall be filed on or before the Rejection Damages Claim Objection Deadline. Any reply to such an objection shall be filed not later than seven (7) days before the hearing on such objection to a Rejection Damages Claim.

5. No Distributions Pending Allowance. If an objection to a proof of Claim asserting a Rejection Damages Claim, or portion thereof, is filed on or before the Rejection Damages Claim Objection Deadline, no payment or distribution provided under the Plan shall be made on account of such Rejection Damages Claim, or portion thereof, unless and until such Disputed Rejection Damages Claim becomes an Allowed Claim, unless otherwise determined by the Reorganized Debtor. If an objection to a proof Claim asserting a Rejection Damages Claim is not filed by the Rejection Damages Claim Objection Deadline, such Claim shall become an Allowed Rejection Damages Claim in the amount asserted in such proof of Claim upon the expiration of the Rejection Damages Claim Objection Deadline.

C. Cure of Defaults for Assumed Executory Contracts and Unexpired Leases.

1. ~~Any objection by a counterparty to an Executory Contract or Unexpired Lease to a proposed assumption must be filed, served, and actually received by the Debtor at least seven (7)~~The proposed Cure amount for all Executory Contracts not identified on the Schedule of Rejected Executory Contracts and Unexpired Leases shall be \$0.00 unless otherwise indicated on the Cure Schedule. The Debtor shall file the Cure Schedule on or before the date that is fifteen (15) days prior to the Confirmation Hearing. Any counterparty to an Executory Contract or Unexpired Lease that fails to object timely to



~~the proposed assumption will be deemed to have assented and will be deemed to have forever released and waived any objection to the proposed assumption other than with respect to any alleged Cure amount. Any monetary defaults under each Executory Contract and Unexpired Lease to be assumed pursuant to the Plan shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the default amount in Cash on the Effective Date or in the ordinary course of business, subject to the limitation described below, or on such other terms as the parties to such Executory Contracts or Unexpired Leases may otherwise agree. In the event of a dispute regarding (1) the amount of any payments to cure such a default, (2) The Debtor shall not be required to serve the Cure Schedule on any Executory Contract counterparty not specifically named therein. For the avoidance of doubt, if an Executory Contract between the Debtor and any non-Debtor counterparty is not listed on either (a) the Schedule of Rejected Executory Contracts and Unexpired Leases or (b) the Cure Schedule as an assumed Executory Contract with a proposed Cure amount, then the Debtor intends to assume such Executory Contract and asserts that the Cure amount for such Executory Contract is \$0.00.~~

2. Any counterparty to an Executory Contract or Unexpired Lease that objects to (1) the assumption of such Executory Contract or Unexpired Lease, (2) the proposed Cure amount, (3) the ability of the Reorganized Debtor or any assignee to provide “adequate assurance of future performance” (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed, or (34) any other matter pertaining to assumption, the Bankruptcy Court shall hear such dispute prior to the assumption becoming effective. The cure payments required by section 365(b)(1) of the Bankruptcy Code shall file a written objection thereto and serve it in a manner to be actually received by each of the following by no later than 4:00 p.m. (Eastern time) on the date that is seven (7) days prior to the Confirmation Hearing: (i) proposed co-counsel to the Debtor: Arent Fox LLP, 1301 Avenue of the Americas, 42nd Floor, New York, NY 10019, Attn: George P. Angelich and David J. Mayo and Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Wilmington, DE 19801, Attn: Pauline K. Morgan and Kenneth J. Enos; and (ii) the U.S. Trustee, 844 North King Street, Room 2207, Lockbox 35, Wilmington, DE 19801, Attn: Linda J. Casey, Esq. Any timely filed responses or objections will be heard by the Bankruptcy Court at the Confirmation Hearing or on such other date agreed to by the parties or ordered by the Court. Any counterparty to an Executory Contract or Unexpired Lease that fails to timely object to any of the foregoing matters related to assumption will be deemed to have assented and will be deemed to have forever released and waived any such objection. Payment of any Cure amount shall be made following the entry of a Final Order or orders resolving the any dispute related thereto and approving the assumption and shall not prevent or delay implementation of the Plan or the occurrence of the Effective Date.

#### D. License Agreement

. Notwithstanding anything in the Plan to the contrary, as of the Effective Date, the Debtor shall assume (and assign to the Reorganized Debtor if necessary to continue the License Agreement in full force) the License Agreement pursuant to section 365(a) of the Bankruptcy Code. Pursuant to the Parent Commitment, the Parent, as licensor under the License Agreement, has agreed to, subject to the occurrence of the Effective Date on or before June 21, 2019, provide

its consent to the Debtor's assumption of the License Agreement pursuant to section 365(c)(a) of the Bankruptcy Code. Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the Debtor's foregoing assumption of the License Agreement.

E. Insurance Policies

. Notwithstanding anything in the Plan to the contrary, as of the Effective Date, the Debtor shall assume (and assign to the Reorganized Debtor if necessary to continue the Insurance Policies in full force) all of the Insurance Policies pursuant to section 365(a) of the Bankruptcy Code. Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the Debtor's foregoing assumption of each of the Insurance Policies.

F. Modifications, Amendments, Supplements, Restatements, or Other Agreements

Unless otherwise provided in the Plan, each Executory Contract or Unexpired Lease that is assumed shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such Executory Contract or Unexpired Lease, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated pursuant hereunder.

Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease, or the validity, priority, or amount of any Claims that may arise in connection therewith.

G. Contracts and Leases Entered into After the Petition Date

. Contracts and leases entered into after the Petition Date by the Debtor, and any Executory Contracts and Unexpired Leases assumed by the Debtor, may be performed by the Reorganized Debtor in the ordinary course of business and in accordance with the terms thereof.

H. General Reservation of Rights

Neither the exclusion nor inclusion of any contract or lease on the Schedule of Rejected Executory Contracts and Unexpired Leases, nor anything contained in the Plan, shall constitute an admission by the Debtor that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that the Reorganized Debtor, or any of its affiliates, has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtor or the Reorganized Debtor, as applicable, shall have 45 days following entry of a Final Order resolving such dispute to alter its treatment of such contract or lease.

## ARTICLE VI

### **EFFECT OF THE PLAN ON CLAIMS, INTERESTS AND CAUSES OF ACTION**

#### A. Binding Effect

Except as otherwise provided in section 1141(d) of the Bankruptcy Code, on and after the Confirmation Date, the provisions of the Plan shall bind any holder of a Claim against the Debtor who held such Claim at any time during the Chapter 11 Case and its respective successors and assigns, whether or not the Claim of such holder is Impaired under the Plan and whether or not such holder has been deemed to accept the Plan.

#### B. Vesting of Assets

Except as otherwise explicitly provided in this Plan, on the Effective Date, all property comprising the Estate (including Causes of Action, but excluding property that has been abandoned pursuant to an order of the Bankruptcy Court) shall vest in the Reorganized Debtor free and clear of all Claims, liens, charges, interests, and encumbrances. As of and following the Effective Date, the Reorganized Debtor may operate its business and use, acquire, and dispose of property and settle and compromise Claims, Interests, or Causes of Action without supervision of the Bankruptcy Court, free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly imposed by this Plan or the Confirmation Order.

#### C. Discharge

Except as provided in this Plan or the Confirmation Order, the rights granted under this Plan and the treatment of Claims and Interests under this Plan shall be in full and final satisfaction, discharge, and release of all Claims and Interests. Except as provided in this Plan or the Confirmation Order, confirmation of this Plan discharges the Debtor and Reorganized Debtor from all Claims or other debts that arose before the Confirmation Date, and all debts of the kind specified in Bankruptcy Code §§ 502(g), 502(h), or 502(i), whether or not: (a) a proof of claim based on such debt is filed or deemed filed under Bankruptcy Code § 501; (b) a Claim based on such debt is Allowed under Bankruptcy Code § 502; or (c) the holder of a Claim based on such debt has accepted this Plan. Without limiting the foregoing, the discharge granted under this Plan is granted to the fullest extent allowed under Bankruptcy Code §§ 1141(a), 1141(b), 1141(c), and 1141(d)(1).

#### D. Term of Injunctions or Stays

Unless otherwise provided in the Plan, all injunctions or stays provided for in the Chapter 11 Case pursuant to sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Chapter 11 Case is Closed.

#### E. Releases by the Debtor

Except as otherwise provided herein, as of the Effective Date, for good and valuable consideration, each of (i) the Debtor's current and former officers, directors, principals, members, professionals, advisors, accountants, attorneys, investment bankers, consultants, employees, agents, and other representatives of the Parent, in each case solely in their capacity as such and (ii) the Parent, its affiliates, and the current and former officers, directors, principals, members, professionals, advisors, accountants, attorneys, investment bankers, consultants, employees, agents, and other representatives of the Parent, in each case solely in their capacity as such, are deemed released and discharged by the Debtor and its Estate from any and all claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action and liabilities, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, arising in law, equity or otherwise that the Debtor or its Estate would have been legally entitled to assert in their own right or on behalf of the holder of any Claim or other Person, based on or relating to, or in any manner arising from, in whole or in part, the Debtor, the Chapter 11 Case, the Plan or the Disclosure Statement, the negotiation, formulation or preparation of the Plan, the Plan Supplement, or related agreements, instruments, or other documents in connection with the transactions contemplated under the Plan, or any other act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date; *provided* that nothing in the Plan, including this Section, shall release (i) any obligations under the Plan or the Plan Supplement; or (ii) any acts constituting willful misconduct, gross negligence, intentional fraud or criminal conduct as determined by a Final Order.

#### F. Releases by Holders of Claims

**As of the Effective Date, except as otherwise provided in the Plan, all Persons who have held, hold, or may hold Claims, Interests, causes of action, or liabilities that are subject to compromise and settlement pursuant to the terms of the Plan or are otherwise discharged, satisfied, stayed or terminated pursuant to the Plan are deemed to have released the Debtor, Reorganized Debtor, the Estate and each of their affiliates, current and former officers, directors, principals, members, professionals, advisors, accountants, attorneys, investment bankers, consultants, employees, agents, and other representatives (collectively, the "Released Parties"), from any and all claims, interests, obligations, rights, suits, damages, causes of action, remedies and liabilities whatsoever, including any direct claims held by any such Person against each Release Party or derivative claims asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, whether for tort, contract, violations of federal or state securities laws, or otherwise, that each such Person would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtor or its affiliates, the Debtor's restructuring, the Chapter 11 Case, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between the Debtor and any such Person, the restructuring of Claims and Interests before or in the Chapter 11 Case, the negotiation, formulation, or preparation of the Plan, the Confirmation Order, or related agreements, instruments, or other documents, or upon any other act or omission, transaction, agreement, event, or other occurrence relating to the Debtor taking place on or before the Effective Date. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release any**

post-Effective Date obligations of any party under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan.

G. **Injunction.**

1. **Generally.** Except as provided in the Plan or the Confirmation Order, as of the Confirmation Date, all entities that have held, currently hold, or may hold a Claim that is unclassified by the Plan or that is classified by **Article III** of the Plan or that is subject to a distribution under the Plan, or an Interest or other right of an equity holder, are permanently enjoined from taking any of the following actions on account of any such Claims or Interests or rights: (i) commencing or continuing in any manner any action or other proceeding against any property to be distributed under the Plan; (ii) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against any property to be distributed under the Plan; (iii) creating, perfecting, or enforcing any lien or encumbrance against any property to be distributed under the Plan; and (iv) commencing or continuing any action, in any manner, in any place, that does not comply with or is inconsistent with the provisions of the Plan or the Bankruptcy Code.
2. **Limited Scope.** Nothing in this Plan: (i) extinguishes, prohibits, or otherwise limits the right of any holder of a Claim to assert a right to setoff or recoupment arising in connection with that Claim as part of the resolution and treatment of that Claim under the Plan; (ii) extinguishes, prohibits, or otherwise limits the right of the Estate or Reorganized Debtor to assert and prevail on any Cause of Action; (iii) enjoins or otherwise precludes any party-in-interest from enforcing the terms of the Plan and the Confirmation Order.

H. **Cause of Action Injunction**

**On and after the Effective Date, all Persons other than the Reorganized Debtor will be permanently enjoined from commencing or continuing in any manner any action or proceeding (whether directly, indirectly, derivatively, or otherwise) on account of, or respecting any claim, debt, right, or Cause of Action that the Reorganized Debtor retains authority to pursue in accordance with the Plan.**

I. **Exculpation**

**Neither the Debtor, Reorganized Debtor, nor any of their respective members, officers, directors, trustees, employees, advisors, professionals, or agents has any liability to any holder of a Claim or Interest for any act or omission in connection with, related to, or arising out of, the Chapter 11 Case, the pursuit of confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for willful misconduct or gross negligence. In all respects, the Debtor, Reorganized Debtor, and each of their respective members, officers,**

**directors, trustees, employees, advisors, professionals, and agents are entitled to rely on the advice of counsel with respect to their duties and responsibilities under the Plan.**

J. Preservation and Application of Insurance

The provisions of the Plan shall not diminish or impair in any manner the enforceability of coverage of any insurance policies (and any agreements, documents, or instruments relating thereto) that may cover Claims against the Debtor, any directors, trustees, or officers of the Debtor, or any other Person, including, without limitation, insurance for the Debtor's directors and officers.

K. Compromise of Controversies

Pursuant to Bankruptcy Rule 9019, and in consideration for the classification, distribution, and other benefits provided under the Plan, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims and controversies resolved pursuant to the Plan, including, without limitation, all Claims arising prior to the Effective Date, whether known or unknown, foreseen or unforeseen, asserted or unasserted, arising out of, relating to, or in connection with the business or affairs of or transactions with the Debtor. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of each of the foregoing compromises or settlements, and all other compromises and settlements provided for in the Plan, and the Bankruptcy Court's findings shall constitute its determination that such compromises and settlements are in the best interests of the Debtor, the Estate, creditors, and other parties in interest, and are fair, equitable, and within the range of reasonableness.

L. Waiver of Avoidance Actions; Reservation of Rights

All Avoidance Actions are hereby waived, effective on the Effective Date; provided, however, that the Debtor and the Reorganized Debtor, as applicable, reserve all rights, including the right under section 502(d) of the Bankruptcy Code, to use defensively the abandoned avoidance cause of action as a basis to object to all or any part of a Claim against the Estates asserted by a Holder which remains in possession of, or otherwise obtains the benefit of, an avoidable transfer.

M. Retention, Reservation and Prosecution of Causes of Action

Except as otherwise provided in the Plan, all Causes of Action other than Avoidance Actions are retained and reserved for the Reorganized Debtor, which is designated as the Estate's representative under Bankruptcy Code § 1123(b)(3)(B) for purposes of the Causes of Action other than Avoidance Actions. The Reorganized Debtor shall have the sole authority to prosecute, defend, compromise, settle, and otherwise deal with any Causes of Action other than Avoidance Actions, and does so in its capacity as a representative of the Estate in accordance with Bankruptcy Code § 1123(b)(3)(B). The Reorganized Debtor shall have sole discretion to determine in its business judgment which Causes of Action to pursue, which to settle, and the terms and conditions of those settlements. In pursuing any claim, right, or Cause of Action, the Reorganized Debtor shall be entitled to the extensions provided under section 108 of the Bankruptcy Code. Except as otherwise provided in the Plan, all Causes of Action shall survive

confirmation and the commencement or prosecution of Causes of Action shall not be barred or limited by any estoppel, whether judicial, equitable, or otherwise.

## ARTICLE VII

### CONDITIONS TO OCCURRENCE OF EFFECTIVE DATE

#### A. Conditions to Effectiveness

The Effective Date does not occur unless and until:

1. The Confirmation Date occurs and the Confirmation Order has become a Final Order, which shall, among other things, provide that the Debtor and Reorganized Debtor, as applicable, shall be authorized to take all actions necessary or appropriate to obtain the Parent Commitment and to enter into any transactions contemplated thereunder, including but not limited to the assumption of the License Agreement;
2. The Debtor shall have obtained the Parent Commitment (and all conditions thereto shall have been satisfied or waived);
3. No request for revocation of the Confirmation Order under Bankruptcy Code section 1144 is pending;
4. Sufficient Cash exists to make all payments required under the Plan to be made on the Effective Date;
5. The Debtor shall have established the reserve for Disputed Rejection Damages Claims in accordance with Article V.E of the Plan;
6. The Debtor shall have surrendered the premises for each Unexpired Lease rejected through the Plan; and
7. All instruments and agreements to be issued, entered into, delivered, or filed under the Plan are issued, entered into, delivered, or filed and are effective.

#### B. Waiver of Conditions

The Debtor may waive any condition to confirmation or the Effective Date, in whole or in part, at any time without notice, an order of the Bankruptcy Court, or any further action other than proceeding to confirmation and consummation of the Plan.

#### C. Effect of Non-Occurrence of the Effective Date

If the Effective Date does not occur, the Plan shall be null and void and nothing contained in the Plan shall: (a) constitute a waiver or release of any Claims against the Debtor; (b) prejudice in any manner the rights of the Debtor, including any right to seek a further

extension of the exclusivity periods under section 1121(d) of the Bankruptcy Code; (c) constitute an admission, acknowledgement, offer or undertaking by the Debtor.

## ARTICLE VIII

### MISCELLANEOUS PROVISIONS OF THE PLAN

#### A. Retention of Jurisdiction

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain non-exclusive jurisdiction of all matters arising out of, and related to, the Chapter 11 Case and the Plan, including jurisdiction to:

1. resolve any matters related to Executory Contracts and Unexpired Leases, including: (i) the assumption, assumption and assignment, or rejection of Executory Contracts or Unexpired Leases to which the Debtor is a party or with respect to which the Debtor may be liable, and to hear and determine the allowance of Claims resulting therefrom including the amount of Cure, if any, required to be paid; (ii) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed; (iii) the Reorganized Debtor's amendment, modification, or supplement after the Confirmation Date, pursuant to Article VI of the Plan, of the Schedule of Executory Contracts and Unexpired Leases; and (iv) any dispute regarding whether a contract or lease is or was executory or expired;
2. adjudicate any and all adversary proceedings, applications, and contested matters that may be commenced or maintained pursuant to the Chapter 11 Case, this Plan, or that were the subject of proceedings before the Bankruptcy Court, prior to the Effective Date, proceedings to adjudicate the allowance of Disputed Claims, and all controversies and issues arising from or relating to any of the foregoing;
3. ensure that distributions to Holders of Allowed Claims are accomplished as provided herein and adjudicate any and all disputes arising from or relating to distributions under the Plan;
4. hear and determine or resolve any and all matters related to Causes of Action;
5. enter and implement such orders as may be appropriate if the Confirmation Order is for any reason stayed, revoked, modified, and/or vacated;
6. issue and implement orders in aid of execution, implementation, or consummation of this Plan;
7. consider any modifications of this Plan, to cure any defect or omission, or to reconcile any inconsistency in any order of the Bankruptcy Court, including the Confirmation Order;
8. hear and determine all applications for allowance of compensation and reimbursement of Professional Fee Claims under this Plan or under sections 330, 331, 503(b), 1103, and 1129(a)(4) of the Bankruptcy Code; determine requests for the payment of Claims entitled to priority under section 507(a)(1) of the Bankruptcy Code, including compensation and reimbursement of expenses of parties entitled thereto; adjudicate, decide, or resolve any and all matters related to section 1141 of the Bankruptcy Code;



9. hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of this Plan or the Confirmation Order, including disputes arising under agreements, documents, or instruments executed in connection with this Plan and disputes arising in connection with any Person or entity's obligations incurred in connection with the Plan;

10. hear and determine all suits or adversary proceedings to recover assets of the Debtor and property of their Estates, wherever located;

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

12. grant any consensual request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code, or in the event that the Effective Date does not occur, to consider any request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4);

13. hear any other matter not inconsistent with the Bankruptcy Code;

14. hear and determine all disputes involving the existence, nature or scope of the Debtor's discharge;

15. issue a final decree and enter an order closing the chapter 11 case; and

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

After the Effective Date, the Bankruptcy Court shall retain jurisdiction with respect to each of the foregoing items and all other matters that were subject to its jurisdiction prior to the Confirmation Date. Nothing contained herein shall be construed to increase, decrease or otherwise modify the independence, sovereignty or jurisdiction of the Bankruptcy Court.

B. Effecting Documents; Further Transactions; Timing

The Debtor and Reorganized Debtor are authorized and directed as of the Effective Date, without further order of the Bankruptcy Court, to execute, deliver, file, or record all contracts, instruments, releases, and other agreements or documents, and to take all actions necessary or appropriate to effect and further evidence the terms of the Plan. All transactions required to occur on the Effective Date under the terms of the Plan are deemed to have occurred simultaneously.

C. Governing Law

Except to the extent the Bankruptcy Code, Bankruptcy Rules, or other federal laws apply, the laws of the State of New York shall govern the rights and obligations arising under the Plan, without giving effect to principles of conflicts of law of New York.

D. Exemption from Transfer Taxes

Under Bankruptcy Code § 1146(a): (a) the issuance, distribution, transfer, and exchange of assets or property of the Estate; (b) the execution, assignment, modification, or recording of any lease or sublease; and (c) the execution, delivery, or recording of a deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, the Confirmation Order, or any transaction contemplated above, or any transactions arising out of, contemplated by, or in any way related to, the foregoing are not subject to any document recording tax, stamp tax,

conveyance fee, intangibles or similar tax, mortgage tax, or real estate transfer tax, or other similar tax or governmental assessment and the appropriate state or local government officials or agents are directed to forego the collection of any such tax or assessment and to accept for filing or recordation any of the foregoing instruments or other documents without the payment of any such tax or assessment.

E. Post-Effective Date Fees; Final Decree

Notwithstanding anything to the contrary contained in the Plan, all fees payable through the Effective Date pursuant to 28 U.S.C. § 1930 shall be paid on the Effective Date, or as soon as practicable thereafter. The Reorganized Debtor is responsible for paying any post-Effective Date fees under 28 U.S.C. § 1930(a)(6) and filing post-confirmation reports until the Bankruptcy Court enters a final decree, which Reorganized Debtor must seek as soon as feasible after distributions under the Plan have commenced. Notice of application for a final decree need be given only to those holders of Claims and Interests and other parties that, after the Effective Date, specifically request such notice.

F. Modification and Amendments

The Debtor may alter, amend, or modify the Plan under section 1127(a) of the Bankruptcy Code at any time prior to the Confirmation Date. After the Confirmation Date and prior to substantial consummation of the Plan as defined in section 1101(2) of the Bankruptcy Code, the Debtor may under section 1127(b) of the Bankruptcy Code, institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, and such matters as may be necessary to carry out the purposes and effects of the Plan.

G. Method of Payment; Payments, Filings, and Notices Only on Business Days

Payments of Cash under the Plan must be made by check drawn on a domestic bank or by wire transfer from a domestic bank. Whenever any payment, distribution, filing, delivery, or notice to be made under the Plan is due on a day other than a Business Day, such payment, distribution, filing, delivery, or notice may instead be made, without interest or penalty, on the immediately following Business Day.

H. Undeliverable or Unclaimed Distributions

If any distribution to a Holder of an Allowed Claim made in accordance herewith is returned to the Reorganized Debtor as undeliverable, no further distributions shall be made to such Holder unless and until the Reorganized Debtor is notified in writing of such Holder's then-current address or other necessary information for delivery, at which time such undelivered distribution shall be made to such Holder within ninety (90) days of receipt of such Holder's then-current address or other necessary information; provided that any such undelivered distribution shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of six (6) months from the later of (a) the Effective Date and (b) the date of the initial attempted distribution. After such date, all unclaimed property or interests in property shall revert to the Reorganized Debtor automatically and without need for a further order by the Bankruptcy Court (notwithstanding any applicable non-bankruptcy escheat, abandoned, or

unclaimed property laws to the contrary), and the right, title, and interest of any Holder to such property or interest in property shall be discharged and forever barred. Notwithstanding anything to the contrary contained in the Plan, nothing in this provision shall act as a bar to entry of a final decree Closing the Chapter 11 Case.

I. Time Bar to Cash Payments

Checks issued by the Reorganized Debtor in respect of Allowed Claims shall be null and void if not negotiated within 60 days after the date of issuance thereof. Requests for reissuance of any check shall be in writing to the Reorganized Debtor by the holder of the Allowed Claim to whom such check originally was issued. Any such written claim in respect of such a voided check must be received by the Reorganized Debtor on or before 60 days after the expiration of the 60 day period following the date of issuance of such check. Thereafter, the amount represented by such voided check shall irrevocably revert to the Reorganized Debtor free and clear of any restrictions. Any Claim in respect of such voided check shall be discharged and forever barred from assertion against the Debtor, the Estate, or the Reorganized Debtor.

J. Dissolution of any Statutory Committee

On the Confirmation Date, any Statutory Committee formed in connection with the Chapter 11 Case shall dissolve automatically and all members thereof shall be released and discharged from all rights, duties and responsibilities arising from or related to the Chapter 11 Case.

K. Revocation, Withdrawal, or Non-Consummation

The Debtor reserves the right to revoke or withdraw this Plan at any time prior to the Effective Date, which revocation or withdrawal shall occur upon the Debtor's filing of a notice thereof, and to file subsequent chapter 11 plans. If the Debtor revokes or withdraws the Plan, it shall be null and void and, in such event, nothing contained herein shall be deemed to constitute a waiver or release of any Causes of Action or Claims by or against the Debtor or any other Person or to prejudice in any manner the rights of the Debtor or any Person in any further proceedings involving the Debtor.

L. Notices

After the Effective Date, any pleading, notice, or other document required by the Plan to be served on or delivered on the parties below shall be served as follows:

If to the Reorganized Debtor:

Diesel USA, Inc.  
220 W 19<sup>th</sup> St  
8th Floor  
New York, NY 10011  
Attn: Matteo Comunalazzi, Stefano Rosso

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

Arent Fox LLP  
1301 Avenue of the Americas  
42nd Floor  
New York, NY 10019  
Attn: George P. Angelich, Esq., David J. Mayo, Esq., Phillip Khezri, Esq.

and

Young Conaway Stargatt & Taylor, LLP  
Rodney Square  
1000 North King Street  
Wilmington, DE 19801  
Attn: Pauline K. Morgan, Esq., Kenneth J. Enos, Esq., and Travis G. Buchanan, Esq.

If to U.S. Trustee:  
Office of the United States Trustee for the District of Delaware  
Room 2207, Lockbox 35  
844 North King Street  
Wilmington, DE 19801  
Attn: Linda J. Casey, Esq.

M. Entire Agreement

Except as otherwise indicated, the Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

N. Severability

If, prior to the Confirmation Date, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is (a) valid and enforceable pursuant to its terms, (b) integral to the Plan and may not be deleted or modified without the Debtor's consent, and (c) nonseverable and mutually dependent.

O. Exhibits

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. After the exhibits and documents are filed,

copies of such exhibits and documents shall be available upon request to the Debtor's counsel, by contacting Arent Fox LLP, 1301 Avenue of the Americas, 42nd Floor, New York, NY 10019 or Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Wilmington, DE 19801, at the Bankruptcy Court's website at <https://ecf.deb.uscourts.gov/> or at the website of the Noticing Agent, <http://cases.stretto.com/dieselusa>. To the extent any exhibit or document is inconsistent with the terms of the Plan, unless otherwise ordered by the Bankruptcy Court, the non-exhibit or non-document portion of the Plan shall control.

P. Conflicts

Except as set forth in the Plan, to the extent that any provision of the Disclosure Statement or any other order (other than the Confirmation Order) referenced in the Plan (or any exhibits, schedules, appendices, supplements or amendments to any of the foregoing), conflict with or are in any way inconsistent with any provision of the Plan, the Plan shall govern and control; provided, however, that if there is a conflict between the Plan and a Plan Supplement document, the Plan Supplement document shall govern and control.

## ARTICLE IX

### STATUTORY REQUIREMENTS FOR CONFIRMATION OF THE PLAN

The following is a brief summary of the Confirmation process. Holders of Claims and Interests are encouraged to review the relevant provisions of the Bankruptcy Code and to consult with their own advisors.

A. Confirmation Hearing

Section 1128(a) of the Bankruptcy Code provides that the Bankruptcy Court, after notice, may conduct the Confirmation Hearing to consider Confirmation of the Plan. Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to Confirmation of the Plan.

B. Confirmation Standards.

Among the requirements for Confirmation are that the Plan (a) is accepted by all Impaired Classes of Claims and Interests or, if rejected by an Impaired Class, that the Plan "does not discriminate unfairly" and is "fair and equitable" as to such Class; (b) is feasible; and (c) is in the "best interests" of Holders of Claims and Interests that are Impaired under the Plan.

The following requirements must be satisfied pursuant to section 1129(a) of the Bankruptcy Code before a bankruptcy court may confirm a plan of reorganization. The Debtor believes that the Plan fully complies with all the applicable requirements of section 1129 of the Bankruptcy Code set forth below, other than those pertaining to voting, which is unnecessary as all classes of Claims and Interests are Unimpaired under the Plan and, thus, no class is entitled to vote.

- The Plan complies with the applicable provisions of the Bankruptcy Code.
- The Debtor (or any other proponent of the Plan) has complied with the applicable provisions of the Bankruptcy Code.
- The Plan has been proposed in good faith and not by any means forbidden by law.
- Any payment made or to be made by the Debtor (or any other proponent of the Plan) or by a Person issuing securities or acquiring property under the Plan, for services or for costs and expenses in or in connection with the Chapter 11 Case, in connection with the Plan and incident to the Chapter 11 Case is subject to the approval of the Bankruptcy Court as reasonable.
- The Debtor (or any other proponent of the Plan) has disclosed the identity and affiliations of any individual proposed to serve, after Confirmation, as a director, officer, or voting trustee of the Reorganized Debtor, any Affiliate of the Debtor reorganized under the Plan, or any successor to the Debtor under the Plan, and the appointment to, or continuance in, such office of such individual is consistent with the interests of creditors and equity security holders and with public policy.
- The Debtor (or any other proponent of the Plan) has disclosed the identity of any insider that will be employed or retained by the Reorganized Debtor and the nature of any compensation for such insider.
- With respect to each Holder within an Impaired Class of Claims or Interests, as applicable, each such Holder (a) has accepted the Plan or (b) will receive or retain under the Plan on account of such Claim or Interest property of a value, as of the Effective Date, that is not less than the amount that such Holder would so receive or retain if the Debtor was liquidated under chapter 7 of the Bankruptcy Code on such date.
- With respect to each Class of Claims or Interests, such Class (a) has accepted the Plan or (b) is Unimpaired under the Plan (subject to the “cram-down” provisions discussed below).
- The Plan provides for treatment of Claims, as applicable, in accordance with the provisions of section 507(a) of the Bankruptcy Code.
- If a Class of Claims is Impaired under the Plan, at least one Class of Claims that is Impaired under the Plan has accepted the Plan, determined without including any acceptance of the Plan by any insider.
- Confirmation is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Reorganized Debtor, or any successor to the Debtor under the Plan, unless such liquidation or reorganization is proposed in the Plan.
- All fees payable under 28 U.S.C. § 1930 have been paid or the Plan provides for the payment of all such fees on the Effective Date.

- The Plan provides for the continuation after its effective date of payment of all retiree benefits, as that term is defined in section 1114 of the Bankruptcy Code, at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 of the Bankruptcy Code, at any time prior to Confirmation, for the duration of the period the applicable Debtor has obligated itself to provide such benefits.

C. No Need to Solicit Votes and Acceptance Requirements

Pursuant to the Bankruptcy Code, only classes of claims against or interests of a debtor that are “impaired” (within the meaning of section 1124 of the Bankruptcy Code) under the terms and provisions of a plan of reorganization or liquidation are entitled to vote to accept or reject a plan. A class is “impaired” if the legal, equitable, or contractual rights attaching to the claims or interests of that class are modified, other than by curing defaults and reinstating maturity. Classes of claims and interests that are not impaired are not entitled to vote on a plan and, under section 1126(f) of the Bankruptcy Code, are conclusively presumed to have accepted a plan. Article IV.B of this Disclosure Statement provides a summary of the classification and treatment of Claims under the Plan.

Under the Plan, all holders of Claims and Interests are Unimpaired and therefore are deemed to have accepted the Plan and are not entitled to vote to accept or reject the Plan.

D. Feasibility of the Plan.

Section 1129(a)(11) of the Bankruptcy Code requires that a debtor demonstrate that confirmation of a plan is not likely to be followed by liquidation or the need for further financial reorganization. For purposes of determining whether the Plan meets this requirement, the Debtor has analyzed its ability to meet its obligations under the Plan and retain sufficient liquidity and capital resources to conduct its business. The Debtor intends to include financial projections for the Reorganized Debtor as part of the Plan Supplement, which will show that the Reorganized Debtor will be able to make all payments required by the Plan and will be financially viable after confirmation of the Plan.

E. Best Interests Test

As described above, section 1129(a)(7) of the Bankruptcy Code (often referred to as the “Best Interests Test”) requires that each Holder of an Impaired Claim or Interest either (a) accept the Plan or (b) receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the value such Holder would receive if the Debtor was liquidated under chapter 7 of the Bankruptcy Code. No Claims or Interests are Impaired under the Plan. Accordingly, the Best Interests Test is not applicable.

## ARTICLE X

### **CERTAIN FEDERAL UNITED STATES INCOME TAX CONSEQUENCES OF THE PLAN**

A. Introduction

The following discussion summarizes certain of the material United States federal income tax consequences expected to result from the implementation of the Plan. This discussion is based on current provisions of the Internal Revenue Code of 1986, as amended (the “Tax Code”), applicable Treasury Regulations, judicial authority and current administrative rulings and pronouncements of the Internal Revenue Service (the “IRS”). There can be no assurance that the IRS will not take a contrary view, and no ruling from the IRS has been or will be sought. Legislative, judicial, or administrative changes or interpretations may be forthcoming that could alter or modify the statements and conclusions set forth herein. Any such changes or interpretations may or may not be retroactive and could affect the tax consequences to, among others, the Debtor and the Holders of Claims.

The following summary is for general information only. The federal income tax consequences of the Plan are complex and subject to significant uncertainties. This summary does not address foreign, state, or local tax consequences of the Plan, nor does it purport to address all of the federal income tax consequences of the Plan. This summary also does not purport to address the federal income tax consequences of the Plan to taxpayers subject to special treatment under the federal income tax laws, such as broker-dealers, tax exempt entities, financial institutions, insurance companies, S corporations, small business investment companies, mutual funds, regulated investment companies, foreign corporations, and non-resident alien individuals.

**IRS Circular 230 Notice: To comply with U.S. treasury regulations, be advised that any U.S. federal tax advice included in this communication (and it is not intended that any such advice be given in this Disclosure Statement) is not intended or written to be used, and cannot be used, to avoid any U.S. federal tax penalties or to promote, market, or recommend to another party any transaction or matter.**

#### B. Federal Income Tax Consequences to Creditors

Given that all Allowed Claims are to be paid in full in Cash or Reinstated under the Plan, the Debtor does not anticipate that the Plan will have material income tax consequences for creditors. The Debtor will not withhold taxes or comply with any applicable reporting requirements, and will issue an IRS Form 1099 to the recipient of a distribution if requested.

**EACH HOLDER OF A CLAIM IS STRONGLY URGED TO CONSULT ITS OWN TAX ADVISOR REGARDING THE POTENTIAL FEDERAL, STATE, LOCAL, OR FOREIGN TAX CONSEQUENCES OF THE PLAN.**

### ARTICLE XI

#### PLAN-RELATED RISK FACTORS

##### A. Generally

The following provides a summary of important considerations and risk factors associated with the Plan. However, it is not exhaustive. Holders of Claims against and Interests in the Debtor should read and carefully consider the factors set forth below. The post-confirmation reorganization of the Debtor involves a degree of risk, however small, and this Disclosure Statement and certain of its appendices contain forward-looking statements that involve risks and uncertainty. The Reorganized Debtor’s actual results could differ materially from those anticipated in such forward-looking statements as a result of a variety of factors, including those



set forth in the following risk factors and elsewhere in this Disclosure Statement.  **Holders of Claims or Interests should consider carefully the following factors in addition to the other information contained in this Disclosure Statement.**

B. Certain Bankruptcy Considerations

The Plan sets forth the means for satisfying the Claims against and Interests in the Debtor. Allowed Claims are expected to be paid in full in Cash on the Effective Date or following their Allowance in accordance with the payment terms of the Plan. Certain Allowed Claims will be Reinstated and paid in full in accordance with their terms. Nevertheless, there are some risks to consummation of the Plan. The Plan has been proposed after a careful consideration of all reasonable restructuring alternatives. Despite the risks inherent in the Plan, as described herein, the Debtor believes that the Plan is in the best interests of Creditors and Holders of Interests when compared to all reasonable alternatives.

Section 1129 of the Bankruptcy Code requires, among other things, a showing that confirmation of the Plan will not be followed by liquidation or the need for further financial reorganization of the Debtors, and that the value of distributions to dissenting Holders of Claims and Interests will not be less than the value such Holders would receive if the Debtor was liquidated under chapter 7 of the Bankruptcy Code. Although the Debtor believes that the Plan will meet such tests, there can be no assurance that the Bankruptcy Court will reach the same conclusion. If a liquidation or protracted reorganization were to occur, there is a significant risk that the value of the Debtor's enterprise would be substantially eroded to the detriment of all stakeholders. The Debtor's future results are dependent upon the successful confirmation and implementation of a plan of reorganization. Failure to obtain this approval in a timely manner could adversely affect the Debtor's operating results since the Debtor's relations with customers and suppliers may be harmed by protracted bankruptcy proceedings. Once a plan of reorganization is approved and implemented, the Debtor's operating results may be adversely affected by the possible reluctance of prospective customers and suppliers to do business with a company that recently emerged from bankruptcy proceedings.

C. Claims Estimations

There can be no assurance that the Debtor's estimated Claim amounts are correct. The actual Allowed amount of Claims likely will differ in some respect from the estimates. The estimated amounts are subject to certain risks, uncertainties, and assumptions. Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, the actual Allowed amount of Claims may vary from those estimated herein.

D. Bankruptcy-Specific Risk Factors That Could Negatively Impact the Debtors' Business

1. The Debtor is subject to the risks and uncertainties associated with the Chapter 11 Case.

For the duration of the Chapter 11 Case, the Debtor's operations and its ability to execute its business strategy will be subject to risks and uncertainties associated with bankruptcy. These risks include, but are not limited to:

- the Debtor's ability to obtain Bankruptcy Court approval with respect to motions filed in the Chapter 11 Case from time to time;
- the Debtor's ability to develop, prosecute, confirm and consummate the proposed Plan;
- the Debtor's ability to meet all conditions precedent to the Effective Date of the Plan;
- the Debtor's ability to obtain and maintain normal payment and other terms with customers, vendors and service providers;
- the Debtor's ability to continue as a going concern;
- the Debtor's ability to retain key vendors or secure alternative supply sources;
- the ability of wholesale customers to cease or limit doing business with the Debtor during or after the Chapter 11 Case;
- the ability of third parties to seek and obtain court approval to terminate or shorten the exclusivity period for the Debtor to propose and confirm a plan of reorganization, to appoint a Chapter 11 trustee or to convert the Chapter 11 Case to a chapter 7 case;
- the Debtor's ability to attract, motivate and retain management and other key employees; and
- the Debtor's ability to fund and execute its Reorganization Business Plan.

2. The Debtor Will Also Be Subject to Risks and Uncertainties with Respect to the Actions and Decisions of its Creditors and other Third Parties Who Have Interests in The Chapter 11 Case that May Be Inconsistent With the Debtor's Plans.

These risks and uncertainties could affect the Debtor's business and operations in various ways. For example, negative events or publicity associated with the Chapter 11 Case could adversely affect the Debtor's relationships with its vendors, employees, and customers, which in turn could adversely affect the Debtor's operations and financial condition. Also, pursuant to the Bankruptcy Code, the Debtor needs Bankruptcy Court approval for transactions outside the ordinary course of business, which may limit the Debtor's ability to respond timely to events or take advantage of opportunities. Because of the risks and uncertainties associated with the Chapter 11 Case, the Debtor cannot predict or quantify the ultimate impact that events occurring during the Chapter 11 Case will have on its business, financial condition and results of operations.

3. The Debtor's business could suffer from a long and protracted restructuring.

The Debtor's future results are dependent upon the successful confirmation and implementation of a plan of reorganization. Failure to obtain this approval in a timely manner could adversely affect its operating results. For instance, the Debtor's wholesale customers may be hesitant to place additional purchase orders from the Debtor during the Chapter 11 Case for

fear of the Debtor's ability to fulfill them. If a liquidation or protracted reorganization were to occur, there is a significant risk that the Debtor will eventually run out of cash and/or be forced to cease operating, thereby causing the value of the Debtor's enterprise to be substantially eroded to the detriment of all stakeholders.

4. If the Debtor is unable to close underperforming stores, the Debtor's results would be adversely impacted.

As previously described in the Disclosure Statement, the Debtor's management, in consultation with its advisors, have determined it is necessary to close certain stores. Absent rejection of such leases, the Debtor will continue to be obligated to pay rent. The Debtor's unprofitable stores represented nearly \$11 million in consolidated negative EBITDA in 2018. In addition, the Debtor's aggregate annual rent exceeds \$25 million and, given that several of the Debtor's most unprofitable leases extend as far as 2024-2026, keeping them open through expiration of their lease terms would cost the Debtor significant lease expense over the full life of the leases. Specifically, the Debtor's unprofitable stores would combine to cost over \$60 million in total lease expense over their remaining terms. By contrast, the Debtor's rejection of certain stores through this Chapter 11 Case will substantially reduce their annual operating losses.

The Debtor believes it has a sound business justification for rejection of certain unprofitable leases pursuant to Section 365 of the Bankruptcy Code and that the rejections through the Plan should be granted by the Bankruptcy Court. The rejections are subject to approval of the Bankruptcy Court, however, and if the Bankruptcy Court denies the rejections, the Debtor's ability to operate as a going concern will be severely harmed.

5. If the Debtor is unable to obtain Confirmation of the Plan, it will likely be unable to fund the Reorganization Business Plan and its ability to continue operating as a going-concern will be severely harmed

The reorganization of the Debtor's business through the Chapter 11 Case and the Plan, including the rejection of certain leases, is integral to the Debtor's ability to finance the Reorganization Business Plan, which is crucial to the Debtor's post-bankruptcy ability to restore the Diesel brand in the United States, return the Debtor to its pre-recession profitability, ensure its ability to continue operating in the United States, and preserve hundreds of jobs in addition to creating new ones through opening new stores. The Debtor's projections indicate that the Reorganization Business Plan will return the Debtor to stand-alone profitability by 2021 and will cost approximately \$36 million over the 3-year period. The Parent has agreed to, subject to the occurrence of the Effective Date on or before June 21, 2019, provide the Parent Commitment to ensure adequate funding for the Reorganization Business Plan in the manner and amounts described in Article II.E of this Disclosure Statement. Without the Parent Commitment, the Debtor will likely be unable to finance the Reorganization Business Plan, thereby precluding its ability to continue operating as a going concern.

6. If the Debtor is unable to obtain Confirmation of the Plan, the Parent will likely not agree to consent to the assumption or renewal of, and may seek to terminate, the License Agreement

The Debtor operates in the United States pursuant to the License Agreement, under which the Parent, as licensor thereunder, licenses to the Debtor the exclusive right to use certain trademarks and other intellectual property for the purpose of distributing, advertising, and selling Diesel brand products in the United States. The Parent has agreed, subject to the occurrence of the Effective Date on or before June 21, 2019, to consent to the Debtor's assumption of the License Agreement through the Plan and, upon the occurrence of the Effective Date, not to

exercise its right to provide the six-month termination notice in 2019, thereby allowing for an automatic one-year renewal beyond its current December 31, 2019 expiration date. The foregoing agreements of the Parent are expressly conditioned on the Debtor's consummation of the Plan and its ability to implement the Reorganization Business Plan. Without the License Agreement, the Debtor would be unable to continue operating as a going-concern.

E. Risks Associated with Forward-Looking Statements

1. Financial Information Is Based on the Debtors' Books and Records and, Unless Otherwise Stated, No Audit Was Performed.

The financial information contained in this Disclosure Statement has not been audited. In preparing this Disclosure Statement, the Debtor relied on financial data derived from its books and records that was available at the time of such preparation. Although the Debtor has used its reasonable business judgment to ensure the accuracy of the financial information provided in this Disclosure Statement, and while the Debtor believes that such financial information fairly reflects, in all material respects, the financial results of the Debtor, the Debtor is unable to warrant or represent that the financial information contained herein and attached hereto is without inaccuracies.

2. Financial Projections and Other Forward-Looking Statements Are Not Assured, Are Subject to Inherent Uncertainty Due to Numerous Assumptions Upon Which They Are Based and, as a Result, Actual Results May Vary.

This Disclosure Statement contains various projections concerning the financial results of the Reorganized Debtor's operations, including the Financial Projections that are, by their nature, forward-looking, and which necessarily base projections on certain assumptions and estimates. Should any or all of these assumptions or estimates ultimately prove to be incorrect, the actual future financial results of the Reorganized Debtor may turn out to be different from the Financial Projections.

The Debtor cautions each reader of this Disclosure Statement to carefully consider those factors set forth above and the acknowledgements contained in this "Risk Factors" section of this Disclosure Statement. Such factors have, in some instances, affected and in the future could affect the ability of the Debtor to achieve its projected results and may cause actual results to differ materially from those expressed herein. The Debtor undertakes no obligation to update any forward-looking statements in this Disclosure Statement.

The Liquidation Analysis, distribution projections, and other information contained herein and attached hereto are estimates only, and the timing and amount of actual distributions to Holders of Allowed Claims may be affected by many factors that cannot be predicted. Therefore, any analyses, estimates, or recovery projections may not turn out to be accurate.

## ARTICLE XII

### ALTERNATIVES TO THE PLAN

The Debtor believes that the Plan affords holders of Claims and Interests the greatest realization on the Debtor's assets and, therefore, is in the best interests of Creditors and Interests. But if the Plan is not confirmed, the theoretical alternatives include (a) continuation of the pending Chapter 11 Case without any immediately available financing; (b) an alternative plan; or (c) liquidation of the Debtor under Chapter 7 of the Bankruptcy Code.

A. Continuation of the Chapter 11 Case

Since the Plan is designed to distribute a relatively fixed sum of Cash, continuing the Chapter 11 Case would serve no purpose other than increasing costs to the Estate and reducing recoveries to holders of Claims or Interests.

B. Alternative Plans of Reorganization

If the Plan is not confirmed, the Debtor, or any party-in-interest upon expiration of exclusivity, could propose a different plan or plans. Those plans might involve either a reorganization and continuation of the Debtor's business, a sale of the Debtor's assets as a going concern, in whole or in part, or some other form of orderly liquidation of the Debtor's assets, or a combination thereof.

C. Liquidation under Chapter 7

If no plan is confirmed, the Debtor's Chapter 11 Case may be converted to a case under Chapter 7 of the Bankruptcy Code. In a Chapter 7 case, a trustee or trustees would be appointed to liquidate the assets of the Debtor. It is impossible to predict precisely how the proceeds of the liquidation would be distributed to the respective holders of Claims against or Interests in the Debtor or how that would differ materially from what the Plan provides. However, the Debtor believes that creditors would lose the materially higher going concern value if the Debtor was forced to liquidate. In addition, the Debtor believes that in liquidation under chapter 7, before creditors received any distribution, additional administrative expenses involved in the appointment of a trustee or trustees and attorneys, accountants and other professionals to assist such trustees would cause a substantial diminution in the value of the Estate. The assets available for distribution to creditors would be reduced by such additional expenses and by claims, some of which would be entitled to priority, which would arise by reason of the liquidation and from the rejection of leases and other executory contracts in connection with the cessation of operations and the failure to realize the greater going concern value of the Debtor's assets. In addition, the Debtor would lose its rights to utilize its licensed intellectual property under the License Agreement.

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]*

**ARTICLE XIII**

**CONCLUSION**

**THE DEBTOR BELIEVES THAT THE PLAN PROVIDES THE BEST AVAILABLE RECOVERY TO ALL OF ITS STAKEHOLDERS AND SHOULD BE CONFIRMED.**

Dated: March ~~5~~<sup>7</sup>, 2019

**DIESEL USA, Inc.**

By: */s/ Mark G. Samson*

Name: Mark G. Samson

Title: Chief Restructuring Officer

**EXHIBIT A**

**CHAPTER 11 PLAN**