

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

In re:	)	
	)	Chapter 11
Morris   Schneider   Wittstadt Va., PLLC, a	)	
Virginia professional limited liability	)	Case No. 15-33370-KLP
company, <u>et al.</u> ,	)	
	)	(Jointly Administered)
Debtors. <sup>1</sup>	)	

**PLAN OF LIQUIDATION**

Dated: May 17, 2016

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Morris | Schneider | Wittstadt Va., PLLC (1651), Morris | Schneider | Wittstadt, PLLC (1589), Wittstadt Title & Escrow Company, L.L.C. (3831), Morris | Schneider | Wittstadt, LLC (1589), MSWLAW, Inc. (6994), Teays Valley Trustees, LLC (9830), and York Trustee Services, LLC (8058).

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## **INTRODUCTION**

Pursuant to Section 1121(c) of the Bankruptcy Code, the Debtors, after consultation with the Committee, hereby respectfully propose this Plan (as defined herein) for the resolution of the outstanding claims against and any equity interests in the Debtors. The Plan is a plan of Liquidation and contemplates the appointment of the Liquidating Trustee to marshal the Debtors' assets, including any Causes of Action, review claims, and make distributions on account of any Allowed Claims. The Debtors are each a proponent of the Plan within the meaning of § 1129 of the Bankruptcy Code. Reference is made to the Disclosure Statement (as defined herein), distributed contemporaneously herewith, for a discussion of the Debtors' history, business, properties, and operations; a summary and analysis of this Plan; and certain related matters.

Nothing contained herein shall constitute an offer, an acceptance, or a legally binding obligation of any party in interest. This Plan is subject to approval of the Bankruptcy Court and other customary conditions. This Plan is not an offer with respect to any securities. This is not a solicitation of acceptances or rejections of the Plan. Acceptances or rejections with respect to this Plan may not be solicited until a disclosure statement has been approved by the United States Bankruptcy Court for the Eastern District of Virginia in accordance with Section 1125 of the Bankruptcy Code. Such a solicitation will only be made in compliance with applicable provisions of securities and bankruptcy laws. **YOU SHOULD NOT RELY ON THE INFORMATION CONTAINED IN, OR THE TERMS OF, THIS PLAN FOR ANY PURPOSE (INCLUDING IN CONNECTION WITH THE PURCHASE OR SALE OF THE DEBTORS' SECURITIES) PRIOR TO THE CONFIRMATION OF THIS PLAN BY THE BANKRUPTCY COURT.**

## **ARTICLE I.**

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

#### **A. Rules of Interpretation.**

For purposes of the Plan: (a) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference in the Plan to a contract, instrument, release, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions; (c) any reference in the Plan to an existing document or exhibit Filed, or to be Filed, shall mean such document or exhibit, as it may have been or may be amended, modified, supplemented or restated; (d) 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; (e) the words "hereof", "herein", "hereto", "hereunder" and comparable terms refer to the Plan in its entirety rather than to a particular portion of the Plan; (f) the words "include", "includes" and "including" shall not be limiting and shall be deemed to be followed by "without limitation" whether or not they are, in fact, followed by such words or words of like import; (g) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (h) the rules of construction set

forth in Section 102 of the Bankruptcy Code shall apply; (i) any capitalized term used in the Plan that is not defined herein but that is defined in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to such term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; (j) in the event of any inconsistency between the terms of the Plan and the terms of the Disclosure Statement, the terms of the Plan shall control and (k) in the event of any inconsistency between the terms of the Plan and the terms of the Liquidating Trust Agreement, the terms of the Plan shall control.

**B. Computation of Time.**

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

**C. Reference to the Monetary Figures**

All references in the Plan to monetary figures shall refer to currency of the United States of America, unless otherwise expressly provided herein

**D. Defined Terms.**

When used in capitalized form in the Plan, the following terms shall have the respective meanings assigned to such terms below. Terms defined in the Disclosure Statement (and not otherwise defined herein) shall have the same meanings when used herein. Any term used in the Plan, whether or not capitalized, that is not defined in the Plan or Disclosure Statement, but is defined in the Bankruptcy Code or Bankruptcy Rules, has the meaning set forth in the Bankruptcy Code or the Bankruptcy Rules.

**“Accounts Receivable”** means the Debtors’ right to payment of a monetary obligation, whether or not earned by performance or for services rendered, excluding any Recoupment Claims and recoveries therefrom.

**“Administrative Claim”** means a Claim for payment of an administrative expense of a kind specified in Section 503(b) of the Bankruptcy Code and entitled to priority in payment under Sections 507(a)(2), 507(b) or 1114(e)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred after the Petition Date of preserving the Estates and operating the businesses of the Debtors (such as wages, salaries or commissions for services and payments for goods and other services and leased premises); (b) any indebtedness or obligations incurred or assumed by the Debtors after the Petition Date in the ordinary course of business in connection with the conduct of their business; (c) any Professional Fees incurred before the Effective Date; (d) all fees and charges assessed against the Estates under Chapter 123 of title 28 of the United States Code, Sections 1911-30; (e) obligations designated as Allowed Administrative Claims pursuant to an order of the Bankruptcy Court and (f) Claims under Section 503(b)(9) of the Bankruptcy Code.

**“Administrative Claim Bar Date”** means the bar date or last date for the filing any request for payment of Administrative Claims, exclusive of Professional Fee Claims, for Administrative Claims that have accrued between the Petition Date and the Effective Date of this Plan, and shall be the first Business Day which is thirty (30) days after the Effective Date.

“**Allowed**” means, with reference to any Claim, except as otherwise provided herein:

(a) a Claim that has been Scheduled by a Debtor in its Schedules as other than disputed, contingent or unliquidated and as to which such Debtor, Liquidating Trustee or any other party in interest has not timely Filed an objection in accordance with Article VII.A of the Plan;

(b) a Claim that is not a Disputed Claim or has been allowed by a Final Order;

(c) a Claim that is allowed (i) in any stipulation with a Debtor concerning the amount and nature of such Claim executed prior to the Confirmation Date and approved by the Bankruptcy Court upon proper notice to the Debtors and other parties in interest; (ii) in any stipulation with a Debtor concerning the amount and nature of such Claim executed on or after the Confirmation Date and, to the extent necessary, approved by the Bankruptcy Court or (iii) in any contract, instrument, indenture or other agreement entered into or assumed pursuant to the Plan;

(d) a Claim relating to a rejected executory contract or unexpired lease that (i) is not a Disputed Claim or (ii) has been allowed by a Final Order, in either case only if a Proof of Claim has been timely Filed by the Bar Date or in accordance with Article V.B of the Plan or has otherwise been deemed timely Filed under applicable law;

(e) a Claim that is allowed pursuant to the terms of the Plan; provided, however, unless otherwise specified herein or by order of the Bankruptcy Court, the term “Allowed Claim” shall not, for any purpose under the Plan, include interest, penalties, premiums or late charges on such Claim from and after the Petition Date; or

(f) a Claim for which a proof of claim has been Filed and to which no party in interest has timely objected.

Any Claim that has been or is hereafter listed in the Schedules as contingent, unliquidated, or disputed, and for which no Proof of Claim is or has been timely Filed, is not considered Allowed and shall be expunged without further action by the Debtors and without further notice to any party or action, approval, or order of the Bankruptcy Court. Except for any Claim Allowed pursuant to the Plan, no Claim of any Entity subject to Section 502(d) of the Bankruptcy Code shall be deemed Allowed unless and until such Entity pays in full the amount that it is determined to the Debtors, pursuant to a Final Order or an agreement between such Entity and the Debtors or the Liquidating Trustee, as applicable. “Allow” and “Allowing” shall have correlative meanings.

“**Allowed Collection Commission**” means the Collection Commission that is accrued and due to the Wittstadts as of the date of the approval of the Disclosure Statement, which shall be paid in accordance with the provisions of Article II.A of this Plan.

“**Amegy/Assignee Settlement Order**” means the Order dated November 2, 2015, approving (i) the settlement between the Amegy Bank, Debtors, the Wittstadts, and the



Committee and (ii) the settlement between Amegy Bank, Butler & Hosch, P.A., the assignee for B&H Butler & Hosch, P.A., the Wittstadts, and the Debtors.

**“Amegy Bank”** means Amegy Bank National Association.

**“Assets”** means all property that is Property of the applicable Debtor and that Debtor’s estate under Section 541 of the Bankruptcy Code of every kind and character, whether such Property is now existing or hereafter arising or acquired, wherever located and whether real, personal, tangible or intangible including, without limitation, all Cash, Accounts Receivable, and proceeds thereof to which the Estates are entitled under the Amegy/Assignee Settlement Order, all work in progress amounts, Causes of Action, Insurance Policies and all proceeds of and recoveries on Causes of Action, tax refunds, and Unclaimed Escrow Funds, all accounts, contract rights, chattel paper, general intangibles, instruments, securities, furniture, fixtures, machinery, equipment, inventory intellectual property, domain names, interest in real estate. For the avoidance of any doubt, the term “Asset” shall exclude any and all Recoupment Claims and any recoveries therefrom, and the Default Escrow Funds, except to the extent that such funds include money that would otherwise be paid to the Debtors in the ordinary course of the Debtors’ business for services provided.

**“Avoidance Actions”** means (a) any and all actions that are Filed or that may be Filed pursuant to the provisions of Sections 502(d), 542, 544, 545, 547, 548, 549, 550, 551 and 553 of the Bankruptcy Code, or applicable nonbankruptcy law that may be incorporated or brought under the foregoing Sections of the Bankruptcy Code; or (b) any other similar actions or proceedings filed to recover property for or on behalf of the Estates or to avoid a lien or transfer, excluding Recoupment Claims.

**“Ballot”** means the ballot distributed to each eligible Creditor, on which ballot such Creditor may, among other things, vote to accept or reject this Plan and make any other elections for treatment of such Claim as provided under the Plan.

**“Bankruptcy Cases”** means, collectively, the Debtors’ bankruptcy cases under Chapter 11 of the Bankruptcy Code pending in the Bankruptcy Court and jointly administered under Case No. 15-33370 (KLP).

**“Bankruptcy Code”** means the Bankruptcy Reform Act of 1978, as amended from time to time, as codified in title 11 of the United States Code, Sections 101-1330 and applicable portions of titles 18 and 28 of the United States Code.

**“Bankruptcy Court”** means the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division.

**“Bankruptcy Rules”** means the Federal Rules of Bankruptcy Procedure and the Official Bankruptcy Forms, as amended from time to time, as applicable to the Bankruptcy Cases, promulgated under 28 U.S.C. § 2075 and the Local Rules of the Bankruptcy Court.

**“Bar Date”** means the dates established pursuant to Order Establishing Deadline for Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof [Doc. No. 239].

**“Books and Records”** means any and all books and records including computer generated or computer maintained books and records and computer data, as well as electronically generated, stored, or maintained books and records, data or information, along with books and records of any Debtor maintained by or in the possession of third parties, wherever located.

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

**“Cash”** means legal tender of the United States of America and equivalents thereof.

**“Causes of Action”** mean all of the Debtors’ and the Estates’ causes of action, claims, choses in action, liabilities, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, third-party claims, counterclaims, and crossclaims, whether known or unknown, reduced to judgment or not reduced to judgment, liquidated or unliquidated, contingent or non-contingent, matured or unmatured, disputed or undisputed, secured or unsecured, assertable directly or derivatively, existing or hereafter arising, in law, equity or otherwise, 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 Bankruptcy Cases, through and including the Effective Date, including, but not limited to, the Avoidance Actions, causes of action, to the extent not otherwise assigned or released, against any former officer, director, partner or member of the Debtors (excluding Recoupment Claims), and whether asserted or assertable directly or derivatively, in contract or in tort, in law, equity or otherwise and whether asserted or unasserted as of the Effective Date, excluding Recoupment Claims.

**“Claim”** means a “claim” against the Debtor, as defined in Section 101(5) of the Bankruptcy Code, whether or not asserted.

**“Claims Agent”** means UpShot Services LLC, the entity designated by order of the Bankruptcy Court to process Proofs of Claim.

**“Claim Objection Bar Date”** means the deadline for objecting to a Claim, which shall be the date that is the later of (a) 180 days after the Effective Date and (b) such later date as may be specifically fixed by an order of the Bankruptcy Court for cause shown pursuant to Bankruptcy Rule 9006(b)(1), which may be further extended from time to time by Order of the Bankruptcy Court.

**“Claims Register”** means the official register of Claims maintained by the Claims Agent.

**“Class”** means a category of Claims or Equity Interests described in Article III.B of the Plan.

**“Class A Interest”** means the uncertificated beneficial class A interests in the Liquidating Trust to be distributed *pro rata* among Holders of Allowed General Unsecured Claims and Allowed Third Party Provider Claims.

**“Class B Interests”** means the uncertificated beneficial class B interests in the Liquidating Trust to be distributed *pro rata* among Holders of Allowed Subordinated Partner Claims, which interests are subordinate to Class A Interests in all respects.

**“Collection Commissions”** shall mean any commissions to which the Wittstadts are entitled pursuant to the Amegy/Assignee Settlement Order with respect to Collections.

**“Committee”** means the official committee of unsecured creditors appointed by the United States Trustee in the Bankruptcy Cases pursuant to Section 1102 of the Bankruptcy Code.

**“Committee Members”** means (a) Fidelity National Title Group, (b) Branch Banking & Trust Company, (c) ProVest LLC, (d) 100 Commerce, LLC, and (e) Premier Process, Inc., each solely in its representative capacity as a member of the Committee and not as individual creditors.

**“Confirmation”** means the entry of the Confirmation Order.

**“Confirmation Date”** means the date of entry of the Confirmation Order on the docket of the Bankruptcy Cases within the meaning of Bankruptcy Rules 5003 and 9021.

**“Confirmation Hearing”** means the hearing held by the Bankruptcy Court pursuant to Section 1128(a) of the Bankruptcy Code to consider Confirmation of the Plan in accordance with Section 1129 of the Bankruptcy Code, as such hearing may be adjourned or continued from time to time.

**“Confirmation Hearing Date”** means the date on which the Confirmation Hearing is first commenced.

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

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

**“Covered Persons”** means (i) all directors and officers of the Debtors, whenever serving, but solely in the amount and to the extent covered by the Debtors’ directors and officers insurance policies and (ii) employees employed by or serving the Debtors as of the Petition Date who are entitled to indemnification, reimbursement, or limitation of liability pursuant to the Debtors’ certificates of incorporation, bylaws, policy of providing employee indemnification, or applicable state law, with respect of any claims, demands, suits, causes of action, or legal proceedings.

**“Creditor”** means the Holder of a Claim against any Debtor or its Estate.

**“Debtor”** means any one of the Debtors, in its individual capacity, as a debtor and debtor in possession in the Bankruptcy Cases.

**“Debtors”** means Morris Schneider Wittstadt Va., PLLC, Morris Schneider Wittstadt, PLLC, Wittstadt Title & Escrow Company, L.L.C., Morris Schneider Wittstadt, LLC,

MSWLAW, Inc., Teays Valley Trustees, LLC, and York Trustee Services, LLC, each of which is a debtor and debtor-in-possession in the Bankruptcy Cases.

**“Default Escrow Funds”** shall have the meaning ascribed thereto in Article IV.D of the Plan

**“Disallowed Claim”** means (a) a Claim, or any portion thereof, that has been disallowed by a Final Order, (b) a Claim that is Scheduled as zero or as contingent, disputed, or unliquidated and as to which no Proof of Claim has been timely Filed or deemed timely Filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy Court or other applicable bankruptcy law, (c) a Claim that has not been Scheduled and as to which no Proof of Claim has been timely Filed or deemed timely Filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy Court or other applicable bankruptcy law or (d) a Claim disallowed in accordance with Section 502(d) of the Bankruptcy Code pursuant to Article VII.F of the Plan.

**“Disbursing Agent”** means the Liquidating Trustee, or the entity (or entities) chosen by the Liquidating Trustee to make or facilitate distributions pursuant to the Plan.

**“Disclosure Statement”** means the written disclosure statement (including all exhibits and schedules thereto) that relates to the Plan, as the same may be amended, supplemented, revised or modified from time to time, as approved by the Bankruptcy Court pursuant to the Disclosure Statement Approval Order.

**“Disclosure Statement Approval Order”** means the Final Order approving, among other things, the adequacy of the Disclosure Statement pursuant to Section 1125 of the Bankruptcy Code.

**“Disputed”** means with respect to any Claim or Interest, or any portion thereof (including, when appropriate, the whole), that such Claim or Interest is not yet Allowed or deemed Allowed pursuant to this Plan.

**“Disputed Claims Reserve”** means a segregated account for the payment of any Claims that become Allowed Claims after the Effective Date, which reserve shall be held in trust and maintained by the Liquidating Trustee for the benefit of the Holders of Claims whose claims become Allowed after the Effective Date.

**“Distribution”** means the distributions to be made in accordance with the Plan in the form of: (a) Cash or (b) any other consideration or residual value distributed to Holders of Allowed Claims under the terms and provisions of the Plan. For the purpose of clarification, payments made to Amegy on account of collections of Accounts Receivable shall not constitute a Distribution, and shall be made in accordance with the Amegy/Assignee Settlement Order.

**“Distribution Date”** means a date on which a Distribution occurs.

**“Endurance”** means Endurance American Specialty Insurance Co.

**“Effective Date”** means that date following the Confirmation Date on which all conditions to consummation to the Plan shall have been satisfied or waived as provided in Article VIII hereof.

**“Entity”** means an “entity,” as defined in Section 101(15) of the Bankruptcy Code.

**“Equity Interest”** means, with respect to a Debtor, as of the Petition Date, any capital stock or other ownership interest in such Debtor, whether or not transferable, and any option, call, warrant or right to purchase, sell or subscribe for an ownership interest or other equity security in such Debtor, and any redemption, conversion, exchange, voting, participation, dividend rights, and liquidation preferences relating to such capital stock or other ownership interest.

**“Escrow Bar Date”** means the date established in the Disclosure Statement Approval Order for any Person to assert an interest in the Unclaimed Escrow Funds in accordance with the procedures in the Disclosure Statement Approval Order.

**“Estate”** means the estate of each of the Debtors created by Section 541 of the Bankruptcy Code upon the commencement of the Bankruptcy Cases.

**“Exculpated Parties”** mean, collectively, each of the following parties in their respective capacities as such: (a) the Debtors and the Wittstadts, solely as it relates to their post-petition conduct; (b) the Committee; (c) the Committee Members only in their capacities as such, along with the Members’ respective professionals; and (d) the Debtors’ and the Committee’s respective financial advisors, restructuring advisors, attorneys whose retentions were authorized by order of the Bankruptcy Court.

**“File”** or **“Filed”** means file or filed on the Bankruptcy Court’s docket for the Bankruptcy Cases or, in the case of a proof of claim, filed with the Claims Agent.

**“Final Decree”** means an Order entered by the Bankruptcy Court closing the Bankruptcy Cases.

**“Final Order”** means an order of the Bankruptcy Court (x) as to which the time to appeal, petition for certiorari, or move for reargument, rehearing or new trial has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument, rehearing or new trial shall then be pending; (y) as to which any right to appeal, petition for certiorari, reargue, rehear or retry shall have been waived in writing; or (z) in the event that an appeal, writ of certiorari, reargument, rehearing or new trial has been sought, as to which (i) such order of the Bankruptcy Court shall have been affirmed by the highest court to which such order is appealed, (ii) certiorari has been denied as to such order, or (iii) reargument or rehearing or new trial from such order shall have been denied, and the time to take any further appeal, petition for certiorari or move for reargument, rehearing or new trial shall have expired without such actions having been taken.

**“Former Partner”** means any former partners, members, owners, shareholders, equity holders, Interest Holders of any of the Debtors, specifically excluding the Wittstadts but

specifically including Nathan E. Hardwick IV, Randolph Schneider and Arthur Morris and any affiliates thereof.

**“General Unsecured Claim”** means any Claim against the Debtors that is not an Administrative Claim, a Secured Claim, a Priority Tax Claim, a Priority Non-Tax Claim, or an Equity Interest.

**“Holder”** means any Entity holding a Claim, an Equity Interest or a Liquidating Trust Interest.

**“Impaired Class”** means a Class that is impaired within the meaning of Section 1124 of the Bankruptcy Code.

**“Insurance Policies”** means all of the Debtors’ insurance policies existing as of the Effective Date, including but not limited to the Lawyers Professional Liability and the Employment Practices policies issued by Endurance and Torus Specialty Insurance Company but excluding the Recoupment Insurance Claims.

**“Internal Revenue Code”** means title 26 of the United States Code, as amended from time to time.

**“Intercompany Claims”** means any Claim, Cause of Action, remedy or Administrative Claim asserted by a Debtor against the other Debtor, as applicable.

**“Interest”** means, with respect to a Debtor, as of the Petition Date, any capital stock or other ownership interest in such Debtor, whether or not transferable, and any option, call, warrant or right to purchase, sell or subscribe for an ownership interest or other equity security in such Debtor, and any redemption, conversion, exchange, voting, participation, dividend rights, and liquidation preferences relating to such capital stock or other ownership interest.

**“Interim Distribution”** means a Distribution pursuant to Article IV.E.8 of the Plan.

**“IRS”** means the Internal Revenue Service.

**“Johnson”** means Dustin Johnson, in his individual capacity.

**“Johnson Settlement Agreement”** means the settlement agreement and release dated May 3, 2016 by and between Morris Schneider Wittstadt, LLC f/k/a Morris Hardwick Schneider LLC, MSWLaw, Inc., Mark Wittstadt and Gerard Wm. Wittstadt, Jr., and Dustin Johnson. The Settlement Agreement is attached as **Exhibit D** to the Disclosure Statement and will be included in the Plan Supplement.

**“Landcastle”** means Landcastle Acquisition Corp. and its successors and assigns.

**“Landcastle Agreements”** means the agreements listed and defined in the Landcastle Agreements Order.

**“Landcastle Amended Agreements Order”** shall mean the Stipulation and Agreed Order Amending Certain Agreement Between Debtors and Landcastle Acquisition Corp. entered by the Bankruptcy Court on \_\_\_\_, 2016 [Doc. No. \_\_\_\_].

**“Landcastle Agreements Order”** means the Stipulation and Agreed Order Regarding Agreements Between Certain Debtors and Landcastle entered by the Bankruptcy Court on October 2, 2015 [Doc. No. 425].

**“Landcastle Payment”** means the amount of Three Hundred Thousand Dollars (\$300,000) paid by Landcastle to the Debtors pursuant to the terms of the Landcastle Amended Agreements Order.

**“Liquidating Trust”** means the trust described in Article IV.E of the Plan to be established under Delaware trust law that will marshal the Liquidating Trust Assets, make distributions pursuant to the terms of the Plan and Liquidating Trust Agreement, and take such other and further actions as set forth in the Liquidating Trust Agreement. With respect to any action required or permitted to be taken by the Liquidating Trust, the term includes the Liquidating Trustee or any other person authorized to take such action in accordance with the Liquidating Trust Agreement.

**“Liquidating Trust Account”** means the account to be established by the Liquidating Trustee pursuant to and in compliance with Section 346 of the Bankruptcy Code, at a depository institution listed as an approved institution by the United States Trustee for the Eastern District of Virginia.

**“Liquidating Trust Agreement”** means that certain Liquidating Trust Agreement that is to govern the Liquidating Trust, in substantially the form of such document included in the Plan Supplement, pursuant to which, among other things, the Liquidating Trust Assets shall initially be conveyed to the Liquidating Trust and shall ultimately be distributed pursuant to the terms of this Plan.

**“Liquidating Trust Assets”** means all Assets of any of the Debtors that have neither been previously abandoned nor sold, including without limitation, all Cash and Cash equivalents, all Causes of Action, all Insurance Policies, all Accounts Receivables, all Unclaimed Escrow Funds held by the Debtors on the Effective Date and not used in accordance with the Plan, all Third Party Escrow Amounts held by the Debtors on the Effective Date and not distributed to Holders of Allowed Third Party Provider Claims, Books and Records, and other remaining assets of the Debtors, but excluding Recoupment Claims and any recoveries therefrom, and excluding the Default Escrow Funds, except to the extent that such funds include money that would otherwise be paid to the Debtors in the ordinary course of the Debtors’ business for services provided.

**“Liquidating Trust Budget”** means (i) the initial budget for the six (6) month period following the Effective Date, setting forth in reasonable detail the anticipated Liquidating Trust Expenses, together with any amendments or modifications thereto, as prepared by the Debtors and approved by the Trust Oversight Committee, and (ii) any budget for a subsequent six (6) month period, setting forth in reasonable detail the anticipated Liquidating Trust Expenses,

together with any amendments or modifications thereto, as prepared by the Liquidating Trustee and approved by the Trust Oversight Committee pursuant to the Liquidating Trust Agreement.

**“Liquidating Trust Expenses”** means any reasonable expenses and fees incurred in connection with the administration of the Liquidating Trust, by the Liquidating Trustee, including, but not limited to, reimbursement of Trust Oversight Committee members as set forth in the Liquidating Trust Agreement, claims for fees and expenses of professionals and other Entities or Persons employed by the Liquidating Trustee and quarterly fees due to the Office of the United States Trustee, and costs relating to the completion of the liquidation of the Liquidating Trust Assets including, without limitation, the resolution of all Claims not Allowed as of the Effective Date.

**“Liquidating Trust Interests”** means collectively the Class A Interests and the Class B Interests.

**“Liquidating Trustee”** means the trustee of the Liquidating Trust as selected by the Committee and who shall be identified in the Plan Supplement.

**“Official Bankruptcy Forms”** means the Official Bankruptcy Forms, prescribed by the Judicial Conference of the United States, the observance and use of which is required pursuant to Bankruptcy Rule 9009, as such forms may be amended, revised or supplemented from time to time.

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

**“Petition Date”** means July 5, 2015.

**“Plan”** means this chapter 11 plan, including all exhibits and schedules annexed hereto or otherwise incorporated herein, and the documents contained in the Plan Supplement, either in its present form or as it may be altered, amended, modified, revised or supplemented from time to time.

**“Plan Supplement”** means the compilation of documents and forms of documents, schedules and exhibits to the Plan, including the Settlement Agreements which shall be Filed no later than five (5) business Days in advance of the Voting Deadline.

**“Priority Non-Tax Claim”** means any Claim accorded priority in right of payment under Section 507(a) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

**“Priority Tax Claim”** means a Claim of a “governmental unit” (as such term is defined in Section 101(27) of the Bankruptcy Code) of the kind specified in, and entitled to priority under Sections 502(i) and 507(a)(8) of the Bankruptcy Code.

**“Pritchard”** means James A. Pritchard, III, in his individual capacity.

**“Pritchard Settlement Agreement”** means the settlement agreement dated May \_\_, 2016, between Morris Schneider Wittstadt, LLC f/k/a Morris Hardwick Schneider LLC,



MSWLaw, Inc., Mark Wittstadt and Gerard Wm. Wittstadt, Jr., Arthur Morris, Randolph Schneider, Frederick Boynton, Endurance Insurance Company, and James A. Pritchard, III. The Pritchard Settlement Agreement is attached as **Exhibit C** to the Disclosure Statement and will be included in the Plan Supplement.

**“Privilege”** means all attorney-client privileges, work product protections and other immunities or protections from disclosure held by any of the Debtors, including the Debtors’ attorney-client privilege with the Debtors’ former clients.

**“Professional”** means a Person or Entity (a) employed by the Debtors or the Committee pursuant to a Final Order in accordance with Sections 327, 328 or 1103 of the Bankruptcy Code and to be compensated for services rendered prior to the Effective Date pursuant to Sections 327, 328, 330 or 331 of the Bankruptcy Code, for whom or for which compensation and reimbursement of expenses has been allowed by the Bankruptcy Court or is sought pursuant to Section 503(b) of the Bankruptcy Code or (b) for whom or for which compensation and reimbursement has been allowed by the Bankruptcy Court or is sought pursuant to Section 503(b)(4) of the Bankruptcy Code.

**“Professional Fees”** means the fees for professional services rendered and expenses incurred in connection with such services by Professionals on and after the Petition Date and prior to and including the Effective Date.

**“Proof of Claim”** means a proof of Claim Filed against any of the Debtors in the Bankruptcy Cases.

**“Property”** means the applicable Debtor’s legal, possessory, equitable, or other interests in any property or Assets, whether real, personal, tangible, intangible or mixed, as defined in Section 541 of the Bankruptcy Code excluding the Recoupment Claims.

**“Pro Rata Share”** means, with reference to any Distribution on account of any Allowed Claim, the ratio (expressed as a percentage) of (i) the amount of any Allowed Claim in a particular class to (ii) the sum of (x) the aggregate amount of Allowed Claims in such class and (y) the aggregate amount of Disputed Claims in such class.

**“Protocol Order”** means the Order Granting Motion for a Protocol Regarding Preservation, Production, Access, Abandonment and Destruction of Documents, Electronically Stored Information, Information Technology Equipment Containing Confidential Information and Related Property of the Debtors’ Estates Pursuant to 11 U.S.C. §§ 105(a), 363(a), 541 and 554(a), and Federal Rule of Bankruptcy Procedure 6007, entered November 19, 2015 [Doc. No. 661].

**“Recoupment Claims”** means those claims assigned to Landcastle Acquisition Corp. pursuant to the Landcastle Agreements and as defined in the Landcastle Agreements Order, which include, without limitation, the Recoupment Insurance Claims. For the avoidance of doubt, the Recoupment Claims do not include any claims, causes of action or Causes of Action against the Wittstadts.

**“Recoupment Insurance Claims”** means certain claims arising under the Insurance Policies which constitute Recoupment Claims, including Claim No. 338871 for Bond No. 8221-5472 issued by Federal Insurance Company, a member of the CHUBB Insurance Companies, and Claim No. 7710PE058298 for Policy No. ACPBPOK2353921632 issued by Nationwide Property and Casualty Ins. Co.

**“Released Parties”** or **“Releasing Parties”** means, collectively, each of the following parties in their respective capacities as such: (a) the Debtors and their successors and assigns, including the Liquidating Trust and the Liquidating Trustee, (b) the Wittstadts, (c) all financial advisors, restructuring advisors and attorneys of the Debtors retained pursuant to an order of the Bankruptcy Court and serving on or after the Petition Date, (d) the Committee, (e) each Committee Member and their respective professionals, solely in their representative capacities as and not as individual creditors, and (f) the Committee’s financial advisors, restructuring advisors, attorneys and representatives. For the avoidance of doubt, except for the Wittstadts, “Released Parties” or “Releasing Parties” does not include any Former Partner, Holder of an Equity Interest, or employee.

**“Schedules”** mean the schedules of assets and liabilities, schedules of executory contracts, and the statements of financial affairs Filed by each Debtor pursuant to Section 521 of the Bankruptcy Code, Bankruptcy Rule 1007 and the Official Bankruptcy Forms of the Bankruptcy Rules, as such schedules and statements have been or may be supplemented or amended from time to time through the Confirmation Date in accordance with Bankruptcy Rule 1009.

**“Scheduled”** means an entry that appears on the Schedules.

**“Secured”** means when referring to a Claim: (a) secured by a Lien on property in which the applicable Estate has an interest, which Lien is valid, perfected and enforceable under applicable law or by reason of a Final Order, or that is subject to setoff under Section 553 of the Bankruptcy Code, to the extent of the value of the Holder’s interest in the Estate’s interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to Section 506(a) of the Bankruptcy Code or (b) otherwise Allowed pursuant to the Plan as a Secured Claim.

**“Secured Claim”** means a Claim against the Debtors to the extent it is Secured.

**“Securities Act”** means the Securities Act of 1933, as amended.

**“Security”** means a “security,” as defined in Section 101(49) of the Bankruptcy Code.

**“Server Stipulation and Order”** means the Stipulation and Agreed Order Between Debtors and Landcastle Acquisition Corp. Regarding Payment of Claims of Certain Rental and Information Technology Expenses, entered December 18, 2015 [Doc. No. 738].

**“Settlement Agreements”** has the meaning set forth in Article IV.C of the Plan.

**“Subordinated Partner Claims”** means all Claims of any kind asserted by or on behalf of any of the Wittstadts or any Former Partner except for (i) the Claim asserted by the Wittstadts

on behalf of Holabird Abstracts, Inc., which will be classified and receive the treatment of an Allowed Third Party Provider Claim set forth in Class 4 of the Plan; (ii) the Wittstadt Indemnification Claims; and (iii) Allowed Collection Commissions.

**“Tax” or “Taxes”** means all income, gross receipts, sales, use, transfer, payroll, employment, franchise, profits, property, excise or other similar taxes, estimated import duties, fees, stamp taxes and duties, value added taxes, assessments or charges of any kind whatsoever (whether payable directly or by withholding), together with any interest and any penalties, additions to tax or additional amounts imposed on the Debtors or the Estates by any taxing authority with respect thereto.

**“Third Party Escrowed Amounts”** means those funds segregated by the Debtors pursuant to the Amegy/Assignee Settlement Order on account of claims by providers of trade services to the Debtors, including advertisers, auctioneers, court reporters, filing companies, newspapers, process servers, recorders, and title providers who may assert a claim for trust funds. To the extent any funds remain as Third Party Escrowed Amounts after making Distributions to Holders of Allowed Third Party Provider Claims or provided for in this Plan, such amounts shall be transferred to the Liquidating Trust for use in accordance with the Liquidating Trust Agreement.

**“Third Party Providers”** means providers of trade services to MSW, including advertisers, auctioneers, court reporters, filing companies, newspapers, process servers, recorders, and title providers whose invoices were specifically itemized on the Debtors’ invoices to their clients.

**“Third Party Provider Claim”** means any Allowed Claim of a Third Party Provider in Class 4.

**“Trust Oversight Committee”** means the oversight committee of general unsecured creditors appointed pursuant to the terms of the Liquidating Trust Agreement, which members will be identified in the Plan Supplement.

**“Unclaimed Escrow Funds”** means all funds held in bank accounts established by the Debtors in which customer funds were deposited for real estate closings pursuant to the operation of the Debtors’ real estate closing business, which funds are no longer required for pending real estate closings and have remained unclaimed for a period of no less than one hundred twenty (120) days prior to the Petition Date and subject to a period of no less than thirty (30) days’ notice to parties purporting to have an interest in such funds to object to the Plan. For the avoidance of any doubt, no Subordinated Partner Claim or any other Claim asserted by the Wittstadts (except for the Claim asserted on behalf of Holabird Abstracts, Inc., claims for the Wittstadt Indemnification Claims and claims for Allowed Collection Commission or any other Former Partner shall be entitled to receive any payment from the Unclaimed Escrow Funds on account of any Claims asserted against any of the Debtors until all General Unsecured Claims and Third Party Provider Claims are paid in full as provided for under this Plan. A list of the escrow accounts in which the Unclaimed Escrow Funds are held is attached as **Exhibit D** to the Disclosure Statement and shall be contained in the Plan Supplement.

**“Unimpaired”** means a Claim or Equity Interest that is unimpaired within the meaning of Section 1124 of the Bankruptcy Code.

**“Unimpaired Class”** means a Class that is unimpaired within the meaning of Section 1124 of the Bankruptcy Code.

**“United States Trustee”** means the United States Trustee appointed under 28 U.S.C. § 591 to serve in the Eastern District of Virginia, Richmond Division.

**“Voting Deadline”** means 4:00 p.m., prevailing Eastern Time, on July 21, 2016.

**“Wittstadts”** means and includes Mark Wittstadt and Gerard Wm. Wittstadt, Jr., in their individual capacities and in their capacities as partners, officers, directors and members of the Debtors.

**“Wittstadt Affiliate”** means Holabird Abstracts, Inc., Wittstadt Insurance Services, LLC and Lawyers Title Exchange, LLC.

**“Wittstadt Indemnification Claims”** means the Wittstadt Indemnification Proofs of Claim, which shall be reduced by (i) upon approval of the Settlement Agreements, the Claims asserted by Johnson and Pritchard and (ii) the amounts of any other Allowed Claims (to the extent set forth in the Wittstadt Indemnification Proofs of Claim), which are satisfied pursuant to the Plan or by any other means. The Wittstadt Indemnification Claims shall be Allowed General Unsecured Claims and shall receive the treatment set forth in Class 3 of this Plan; *provided, however*, the Liquidating Trustee shall reserve sufficient amounts to make a Distribution but shall not make such Distribution until resolution of all Claims against the Debtors.

**“Wittstadt Indemnification Proofs of Claim”** means Proofs of Claim Nos. 203, 204, 205, 206, 207, 208, 209, 211, 212, 213, 214, 215, 216 and 217.

## ARTICLE II.

### PAYMENT OF ADMINISTRATIVE CLAIMS AND PRIORITY TAX CLAIMS

#### A. Administrative Claims

On, or as soon as reasonably practicable after (i) the Initial Distribution Date, if such Administrative Claim is an Allowed Administrative Claim as of the Effective Date or (ii) the date on which such Administrative Claim becomes an Allowed Administrative Claim, as applicable, each Holder (other than a Professional) of an Allowed Administrative Claim shall receive, in full settlement, satisfaction and release of, and in exchange for, such Allowed Administrative Claim, (a) Cash in an amount equal to the unpaid amount of such Allowed Administrative Claim or (b) such other treatment as may be agreed upon in writing by such Holder and the Debtors or the Liquidating Trustee, as applicable. The Wittstadts and any Wittstadt Affiliate may assert Administrative Claims; however, such Claims, shall not be paid in accordance with the provisions of this Article II.A, but shall only receive a distribution upon payment in full of all General Unsecured Claims and Third Party Provider Claims in accordance with the terms of this Plan. Notwithstanding the foregoing, all Allowed Administrative Claims

of the Wittstadts for accrued but Allowed Collection Commissions that remain unpaid as of the Effective Date shall be paid in accordance with the provisions of this Article II.A.

The Administrative Claim Bar Date is the deadline for all holders of Administrative Claims (except for Professional Fees) to file Administrative Claims in the Bankruptcy Cases. Any Holder of an Administrative Claim that is required to File a request for payment of such Administrative Claim and that does not File a request by the aforesaid bar date shall be forever barred from asserting such Administrative Claim against a Debtor, an Estate, their respective successors or their respective property, and such Administrative Claim shall not be entitled to any distribution from the Debtors, the Debtors' Estates, or the Liquidating Trust. Subject to any request by the Liquidating Trustee to extend the deadline to object to Administrative Expenses for cause, all objections to Administrative Expenses must be Filed and served on the requesting party by the later of (i) ninety (90) days after the Effective Date or (ii) thirty (30) days after the Filing of the applicable request for payment of an Administrative Claim. Unless the Debtors or Liquidating Trustee, as applicable, or another party in interest objects to a request for payment of an Administrative Claim within such time period, such Administrative Claim shall be deemed Allowed in the amount requested. In the event that the Debtors, Liquidating Trustee or another party in interest objects to a request for payment of an Administrative Claim, the Bankruptcy Court shall determine the Allowed amount of such Administrative Claim.

The United States Trustee shall not be required to file any proof of claim or request for an Administrative Claim for quarterly fees under 28 U.S.C. § 1930.

#### **B. Professional Fees**

Notwithstanding any other provision of this Plan concerning Administrative Claims, any Professional seeking an award by the Bankruptcy Court of an Allowed Administrative Claim on account of Professional Fees incurred from the Petition Date through and including the Effective Date shall, no later than forty-five (45) days after the Effective Date, file a final application for allowance of compensation for services rendered and reimbursement of expenses incurred through and including the Effective Date.

Professional Fees shall not be paid on the Effective Date, but paid with other Professional Fees by the Liquidating Trustee at the time of entry of an Final Order allowing such Professional Fees on a final basis or paid as otherwise agreed to by the Professionals. The Liquidating Trustee shall satisfy all Claims for Professional Fees from Cash obtained from the Liquidating Trust Assets.

#### **C. Priority Tax Claims**

On, or as soon as reasonably practicable after (i) the Initial Distribution Date, if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim against a Debtor shall receive, (1) Cash in an amount equal to the amount of such Allowed Priority Tax Claim, or (2) such other treatment as may be agreed upon in writing by such Holder and the Debtors or the Liquidating Trust, as applicable, without any further notice to or action, order, or approval of the Bankruptcy Court.

### **ARTICLE III.**

#### **CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS AND EQUITY INTERESTS**

##### **A. Summary**

The categories of Claims and Interests listed below classify Claims and Interests that are required to be designated in classes pursuant to Sections 1122 and 1123(a)(1) of the Bankruptcy Code. In accordance with Section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims have not been classified and their treatment is set forth in Article II hereof. Classification of Claims and Interests in this Plan is for all purposes, including voting, confirmation and distribution pursuant to the Plan.

A Claim or Interest shall be deemed classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and shall be deemed classified in a different Class only to the extent that any portion of such Claim or Interest qualifies within the description of such different Class. A Claim or Interest is placed in a particular Class only to the extent that such Claim or Interest is Allowed in that Class and has not been paid, released or otherwise settled prior to the Effective Date. Notwithstanding any Distribution provided for in the Plan, no Distribution on account of any Claim or Interest is required or permitted unless and until such Claim or Interest becomes an Allowed Claim or Allowed Interest, as the case may be, which might not occur, if at all, until after the Effective Date.

This Plan provides for the substantive consolidation of the Debtors' Estates for the purposes of this Plan, including voting on this Plan by the Holders of Allowed Claims and making any Distributions to Holders of Allowed Claims. The Debtors propose limited substantive consolidation to avoid the inefficiency of proposing and voting in respect of entity-specific Claims and Interests for which there would be no impact on distributions. On the Effective Date, (i) all assets and liabilities of the Debtors will be treated as if they were merged for voting and Distribution purposes; (ii) each Claim against the Debtors will be deemed a single Claim against and a single obligation of the Debtors; (iii) any Claims filed or to be filed in the Bankruptcy Cases will be deemed single Claims against all of the Debtors; (iv) all guarantees of any Debtor of the payment, performance, or collection of obligations of any other Debtor shall be eliminated and canceled; (v) all transfers, disbursements and Distributions on account of Claims made by or on behalf of any Debtor hereunder will be deemed to be made by or on behalf of all of the Debtors; and (vi) any obligation of the Debtors as to Claims will be deemed to be one obligation of all of the Debtors.

Holders of Allowed Claims entitled to Distributions under this Plan shall be entitled to their share of the Liquidating Trust available for Distribution on account of such Claim without regard to which Debtor was originally liable for such Claim. Except as set forth herein, such limited substantive consolidation shall not (other than for purposes related to this Plan) affect the legal and corporate structures of the Debtors.

Summary of Classification and Treatment of Classified Claims and Equity Interests			
Class	Claim	Status	Voting Rights
1	Secured Claims	Unimpaired	Deemed to Accept
2	Priority Non-Tax Claims	Unimpaired	Deemed to Accept
3	General Unsecured Claims	Impaired	Entitled to Vote
4	Third Party Provider Claims	Impaired	Entitled to Vote
5	Subordinated Partner Claims	Impaired	Entitled to Vote
6	Equity Interests	Impaired	Not Entitled to Vote Due to Status as Insiders

**B. Classification and Treatment of Claims and Equity Interests**

1. Class 1 — Secured Claims

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

(b) **Treatment:** All Creditors in Class 1 holding Allowed Secured Claims will be paid in full, except to the extent that a Holder of an Allowed Secured Claim agrees to a different treatment, on the later of the Effective Date or within thirty (30) days of the Claim becoming Allowed, each Holder of an Allowed Secured Claim shall receive, in full and final satisfaction of such Claim, in the sole discretion of the Debtors or the Liquidating Trustee, as the case may be:

(i) the collateral securing such Allowed Secured Claim;

(ii) Cash in an amount equal to the value of the collateral securing such Allowed Secured Claim; or

(iii) such other treatment required under Section 1124(2) of the Bankruptcy Code for such Claim to be rendered Unimpaired.

(c) **Voting:** Class 1 is Unimpaired and Holders of Secured Claims are conclusively deemed to have accepted the Plan.

2. Class 2 — Priority Non-Tax Claims

(a) **Classification:** Class 2 consists of Priority Non-Tax Claims.

(b) **Treatment:** On the later of the Initial Distribution Date or within seven (7) days of the claim becoming Allowed, all Creditors in Class 2 holding Allowed Priority Non-Tax Claims shall receive, in full and final satisfaction of such Claim, one of the following treatments, in the sole discretion of the Debtors or the Liquidating Trustee, as the case may be: (a) full payment in Cash of its Allowed Priority Non-Tax Claim, (b) treatment of its Allowed Priority Non-Tax Claim in a manner that leaves such Claim Unimpaired, or such other treatment as agreed to by the Holder of an Allowed Priority Non-Tax Claim and the Debtors or the Liquidating Trustee, as applicable.

(c) **Voting:** Class 2 is Unimpaired and Holders of Priority Non-Tax Claims are conclusively deemed to have accepted the Plan.

3. Class 3 — General Unsecured Claims

(a) **Classification:** Class 3 consists of General Unsecured Claims.

(b) **Treatment:** Each Holder of an Allowed General Unsecured Claim in Class 3 shall receive, in full and final satisfaction of such Claim, a Pro Rata Share of the Class A Interests on account of its Allowed Claim.

(c) **Voting:** Class 3 is Impaired and Holders of General Unsecured Claims are entitled to vote to accept or reject the Plan.

4. Class 4 — Third Party Provider Claims.

(a) **Classification:** Class 4 consists of Third Party Provider Claims.

(b) **Treatment:** On the later of the Initial Distribution Date or within seven (7) days of the claim becoming Allowed, in full and final satisfaction of such Claim, each Holder of an Allowed Third Party Provider Claim in Class 4 shall receive, in full and final satisfaction of such Allowed Claim, (i) a pro rata distribution of ten percent (10%) of the Third Party Escrow Amount plus (ii) a Pro Rata Share of the Class A Interests on account of the balance of its Allowed Third Party Provider Claim. Further, the Estates will waive all objections to the Third Party Provider Claims on the basis that such claims they are obligations of Butler & Hosch, P.A., although all other bases for objections the Class 4 Claims will remain.

(c) **Voting:** Class 4 is Impaired and Holders of Third Party Provider Claims are entitled to vote to accept or reject the Plan.

5. Class 5 — Subordinated Partner Claims

(a) **Classification:** Class 5 consists of Subordinated Partner Claims.

(b) **Treatment:** Each Holder of an Allowed Subordinated Partner Claim in Class 5 shall receive, in full and final satisfaction of such Claim, a Pro Rata Share of the Class B Interests on account of its Allowed Claim and, as a result, will receive no distribution under the Plan unless Holders of Allowed Claims in Classes 3 and 4 are paid in full, with interest, as provided for under the Plan.

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

6. Class 6. — Interests

(a) **Classification:** Class 6 consists of Interests in each of the Debtors.



(b) **Treatment:** All Interests in all Debtors shall be cancelled as of the Effective Date and Holders thereof shall receive no distributions under the Plan unless Holders of Allowed Claims in Classes 3, 4 and 5 are paid in full, with interest, as provided for under the Plan.

(c) **Voting:** Class 6 is Impaired, however as the Holders of Interests are insiders of the Debtors, they are not entitled to vote to accept or reject the Plan.

**C. Non-Consensual Confirmation**

In the event that any Impaired Class of Claims entitled to vote does not accept the Plan by the requisite majorities required by Section 1126(c) of the Bankruptcy Code, the Proponents reserve the right to (i) modify the Plan in accordance with Article XI.B of the Plan and/or (ii) request that the Court confirm the Plan in accordance with Section 1129(b) of the Bankruptcy Code notwithstanding such lack of acceptance.

**D. Elimination of Vacant Classes**

Any Class or sub-Class of Claims or Equity Interests that is not occupied as of the date of the commencement of the Confirmation Hearing by at least one Allowed Claim or Allowed Equity Interest, as applicable, or at least one Claim or Equity Interest, as applicable, temporarily Allowed under Bankruptcy Rule 3018, shall be deemed deleted from the Plan for purposes of (i) voting on the acceptance or rejection of the Plan and (ii) determining acceptance or rejection of the Plan by such Class under Section 1129(a)(8) of the Bankruptcy Code.

**ARTICLE IV.**

**MEANS FOR IMPLEMENTATION OF THE PLAN**

**A. Substantive Consolidation**

Upon the Effective Date, the Debtors' Estates shall be deemed substantively consolidated for purposes of administration, as well as distribution to Creditors and Holders of Equity Interests under the Plan. Specifically, pursuant to the Confirmation Order, the Bankruptcy Court will approve the limited administrative consolidation of the Debtors for the purpose of implementing the Plan, including for purposes of voting, assessing whether Confirmation standards have been met, calculating and making Distributions under the Plan and filing post-Confirmation reports and paying quarterly fees to the Office of the United States Trustee.

Further, as of the Effective Date: (i) all assets and liabilities of the Debtors will be deemed merged; (ii) all guarantees by one Debtor of the obligations of any other Debtor will be deemed eliminated so that any Claim against any Debtor and any guarantee thereof executed by any other Debtor and any joint or several liability of any of the Debtors will be deemed to be one obligation of the consolidated Debtors; (iii) each and every Claim Filed or to be Filed in the Chapter 11 Case of any Debtor will be deemed Filed against the consolidated Debtors and will be deemed one Claim against and a single obligation of the consolidated Debtors, and the Debtors may file and the Bankruptcy Court will sustain objections to Claims for the same

liability that are Filed against multiple Debtors; and (iv) intercompany Claims between Debtors, if any, will be eliminated and extinguished. Such administrative consolidation (other than for the purpose of implementing the Plan) shall not affect (a) the legal and corporate structures of the Debtors, subject to the right of the Liquidating Trustee to dissolve any or all of the Debtors; (b) the vesting of the Estates' assets in the Liquidating Trust; (c) the right to any distributions from any Insurance Policies or proceeds of such policies; or (d) the rights of the Debtors or the Liquidating Trustee to contest alleged setoff or recoupment efforts by creditors on the grounds of lack of mutuality under Section 553 of the Bankruptcy Code and otherwise applicable law.

## **B. Intercompany Claims**

By virtue of the compromises and settlements of the issues set forth herein and as more fully described in the Disclosure Statement, on the Effective Date, (i) each Debtor shall waive any defense, including, without limitation, defenses arising under Sections 502(d) and 553(a) of the Bankruptcy Code, to Intercompany Claims asserted by another Debtor and such claims shall be deemed Allowed Claims, (ii) Intercompany Claims between Debtors shall be deemed to be mutual claims arising prior to the Petition Date for purposes of setoff, (iii) each Debtor shall waive its right to receive any distribution on any Causes of Action such Debtor may have against another Debtor, and (iv) each Debtor shall waive and forever release any right, Claim or Cause of Action which has been or could have been asserted by such Debtor against any other Debtor.

## **C. Settlements**

The Plan is deemed to be a motion pursuant to Sections 363, 502 and 1123 of the Bankruptcy Code and Rule 9019 of the Federal Rules of Bankruptcy Procedure between the Debtors and certain of their major creditors, including settlements with James A. Pritchard, III and Dustin Johnson, which settlements are annexed to the Disclosure Statements as **Exhibits C and D**, respectively and will be included in the Plan Supplement (collectively, the "**Settlement Agreements**") and which will be contained in the Plan Supplement. The Settlement Agreements shall be approved and incorporated by reference into the Plan and the Confirmation Order and deemed effective upon the occurrence of the Effective Date. Articles IV.C.1 and IV.C.2 are only summaries of the settlements with Pritchard and Johnson which shall be governed by the terms of the respective Settlement Agreements. To the extent any conflicts exist between the summary provided in this Article IV.C and the Settlement Agreements, the Settlement Agreements shall control.

### **1. Johnson Settlement Agreement**

On May 3, 2016, after mediation at which the Debtors, the Committee, the Wittstadts, Endurance, Johnson, and Roy Anthony Adams ("**Adams**") and Alliance of Financial Professionals, LLC (the "**Alliance**") were all in attendance, the parties were able to enter into the Johnson Settlement Agreement, subject to approval of the Bankruptcy Court. The approval of the Johnson Settlement Agreement is a condition of confirmation of the Plan.

The Johnson Settlement Agreement provides, among other things, that (i) Johnson will be entitled to an Allowed General Unsecured Claim in the amount of Three Million Dollars (\$3,000,000) (the "**Allowed Johnson Claim**") and (ii) in full and final satisfaction of the Allowed

Johnson Claim, Johnson shall receive a cash settlement payment of Two Million Dollars (\$2,000,000) to be paid by Endurance to Johnson from the proceeds of the applicable Policy issued by Endurance. Johnson will be entitled to no other Distribution under the Plan or from the Liquidating Trust on account of the Johnson Allowed Claim but Johnson shall be entitled to vote such Claim to accept the Plan. In addition, the Johnson Settlement Agreement provides for releases in connection with certain disputes among the parties as follows: Johnson agrees to a general release of all claims against (i) the Debtors, the Wittstadts, the Committee, Endurance, and all other parties falling within the definition of “insured” under the applicable Insurance Policy issued by Endurance; (ii) the Debtors and the Wittstadts agree to a general release of all claims against Johnson, subject to certain reservations as provided therein; (iii) the Debtors and the Wittstadts agree to a limited release of Endurance; and (iv) the Debtors, Endurance, the Wittstadts, on the one hand, and Adams and the Alliance, on the other, agree to partial releases, subject to certain reservations as provided therein. Finally, the Johnson Settlement Agreement provides for disposition of pending litigation involving Mr. Johnson and withdrawal of the proofs of claim filed by Mr. Johnson.

## 2. Pritchard Settlement Agreement

After mediation at which the Debtors, the Committee, the Wittstadts, Endurance, Pritchard, and Adams and the Alliance of Financial Professionals, LLC were all in attendance, the parties have entered into the Pritchard Settlement Agreement,<sup>2</sup> subject to approval of the Bankruptcy Court. The approval of the Pritchard Settlement Agreement is a condition of confirmation of the Plan.

The Pritchard Settlement Agreement provides, among other things, that (i) Pritchard will be entitled to an Allowed General Unsecured Claim in the amount of Two Million, Seven Hundred Thousand Dollars (\$2,700,000) (the “Allowed Pritchard Claim”) and (ii) in full and final satisfaction of the Allowed Pritchard Claim, Pritchard shall receive a cash settlement payment in the amount of Seven Hundred, Sixty Two Thousand, Five Hundred Dollars (\$762,500) from Endurance pursuant to the applicable Endurance Policy. Pritchard will be entitled to no other Distribution under the Plan or from the Liquidating Trust on account of the Pritchard Allowed Claim but Pritchard shall be entitled to vote such Claim to accept the Plan. In consideration for the settlement, Pritchard shall dismiss all litigation against the Debtors, Mr. Hardwick, the Wittstadts, Frederick Boynton, and any other insured party under the applicable Insurance Policy issued by Endurance. In addition, the Pritchard Settlement Agreement provides for releases in connection with certain disputes among the parties as follows: Pritchard agrees to release (i) the Debtors, the Committee, the Wittstadts, Nathan Hardwick, Mr. Boynton, Mr. Schneider, Mr. Morris, Endurance, and all other parties falling within the definition of “insured” under the applicable Insurance Policy issued by Endurance; (ii) the Debtors, the Wittstadts, Jr., Mr. Hardwick, Mr. Schneider and Mr. Morris agree to release all claims against Pritchard, subject to certain reservations as provided therein; (iii) the Debtors, the Wittstadts, Mr. Schneider, and Mr. Morris agree to release Endurance; and (iv) the Debtors, the Wittstadts agree to a partial release of Mr. Adams and Alliance, subject to certain reservations as provided

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<sup>2</sup> As of the time of the time of this filing, the settlement with Pritchard has been substantially resolved, subject to finalizing documentation and execution of the Pritchard Settlement Agreement. The Debtors intend to File the Pritchard Settlement Agreement once fully executed.

therein.

### 3. Landcastle Settlement

As set forth in the Disclosure Statement, the Debtors have certain rights and claims against Landcastle to, among other things, share in the recovery obtained on any Recoupment Claims. In compromise of those rights, Landcastle has agreed to pay the Debtors the Landcastle Payment that will satisfy any rights or obligations that Landcastle may have to the Debtors to share a portion of recovery from the Recoupment Claims. The payment of the Landcastle Payment will not relieve the Debtors of their obligations to cooperate with Landcastle as set forth in Section IV.H of this Plan, and the Landcastle Amended Agreements Order, however nothing herein shall release any claims that the Debtors, their Estates, the Liquidating Trust, the Liquidating Trustee, or the Wittstadts may have against any Former Partner or any affiliate thereof or any other Person not otherwise released under this Plan.

#### **D. Escrow Funds**

As more fully set forth in the Disclosure Statement, prior to the Petition Date, the Debtor's operations, were divided into two divisions: closings, which addressed primarily real estate closings (the "Closing Business"), and default, which was primarily focused upon real estate foreclosures (the "Default Business"). The Debtors maintained a number of escrow accounts for both the Closing Business and the Default Business parts of the business. The Debtors have fully reconciled all of the escrow accounts of the Default Business (most of which are held awaiting court-approved disbursements from foreclosure sales handled by the attorneys in the Default Business), but the Debtors have not been able to reconcile the funds held in the escrow accounts of the Closing Business, due to the embezzlement by Mr. Hardwick, the former managing partner of the firm, and Asha Maurya, MSW's former CFO, and the subsequent commingling of funds from sources, including MSW's operating accounts.

Pursuant to the Disclosure Statement, Approval Order, the Court established procedures relating to the Unclaimed Escrow Funds, including the Escrow Bar Date, and to the extent that the Unclaimed Escrow Funds are held in an account used by the Closing Business to which the Debtors do not have any information, and to which no party has asserted a Claim prior to the Escrow Bar Date, all such funds will be transferred to the Liquidating Trust.

Further, all funds held in escrow accounts used by the Default Business of the Debtors' business (the "Default Escrow Funds") will be maintained as currently maintained by the Debtors and will be administered by the Wittstadts, in their capacities as substitute trustee, so that the Wittstadts can comply with applicable rules of professional conduct, fulfill their obligations to any former clients of the Debtors, and/or fulfill their obligations under applicable state laws. Nothing herein shall affect or impair the Estates' right to any portion of those Default Escrow Funds that is attributable to work performed by the Debtors (or any predecessor or successor thereto), and the Wittstadt shall promptly provide the Liquidating Trustee with reasonable information, including a monthly reconciliation of the Default Escrow Funds, upon written request by the Liquidating Trustee, and the Wittstadts shall promptly remit any payments to the Liquidating Trustee that would otherwise be paid to the Debtors in the ordinary course of the Debtors' business. Any work performed by the Wittstadts with respect to the Default Escrow

Funds shall not be subject to the Hours Cap, however any amounts incurred by the Wittstadts for out of pocket costs, including employee expenses, in connection with the Default Escrow Funds shall be reimbursed by the Liquidating Trust in the manner provided in Article IV.I of the Plan.

**E. The Liquidating Trust**

**1. Establishment and Administration of Liquidating Trust**

(a) On or before the filing of the Plan Supplement, the Liquidating Trustee shall be selected by the Committee. Prior to the Confirmation Date, the person(s) designated as Liquidating Trustee shall file an affidavit demonstrating that such person is disinterested. If approved, by the Bankruptcy Court in the Confirmation Order, the person so designated shall become the Liquidating Trustee of the respective Liquidating Trust on the Effective Date.

(b) The Liquidating Trustee shall be empowered and authorized to perform all of the duties, responsibilities, rights and obligations set forth in this Plan, subject to the approval of the Trust Oversight Committee, as set forth in the Liquidating Trust Agreement.

(c) On the Effective Date, the Liquidating Trust shall be established pursuant to the Liquidating Trust Agreement for the purpose of, among other things, (i) investigating and, if appropriate, pursuing all Causes of Action, (ii) administering the Liquidating Trust Assets, and (iii) reviewing, and as necessary, objecting to Claims, including Administrative Expenses, and (iv) making all Distributions from the Liquidating Trust as provided for in the Plan and the Liquidating Trust Agreement. The Liquidating Trust Agreement, a copy of which is included in the Plan Supplement, is incorporated herein in full and is made a part of this Plan as if set forth herein.

(d) Upon execution of the Liquidating Trust Agreement, the Liquidating Trustee shall be authorized to take all steps necessary to complete the formation of the Liquidating Trust; provided, that, prior to the Effective Date, the Liquidating Trustee may act as organizer of the Liquidating Trust and take such steps in furtherance thereof as may be necessary, useful or appropriate under applicable law to ensure that the Liquidating Trust shall be formed and in existence as of the Effective Date. The Liquidating Trust shall be administered by the Liquidating Trustee in accordance with the Liquidating Trust Agreement. The Liquidating Trust shall have authority to incur indebtedness in furtherance of its objectives.

(e) Subject to the Liquidating Trust Agreement, as soon as practicable after the Effective Date, the Liquidating Trustee shall provide the Liquidating Trust Budget to the Trust Oversight Committee.

(f) It is intended that the Liquidating Trust be classified for federal income tax purposes as a "liquidating trust" within the meaning of Treasury Regulations Section 301.7701-4(d) and as a "grantor trust" within the meaning of Sections 671 through 679 of the Internal Revenue Code. In furtherance of this objective, the Liquidating Trustee shall, in its business judgment, make continuing best efforts not to unduly prolong the duration of the Liquidating Trust. All assets held by the Liquidating Trust on the Effective Date shall be deemed for federal income tax purposes to have been distributed by the Debtors on a Pro Rata

Share basis to Holders of Allowed Class 3, Class 4 Claims, and Class 5 Claims and then contributed by such Holders to the Liquidating Trust in exchange for the Liquidating Trust Interests. All Holders of Allowed Class 3 Claims, Allowed Class 4 Claims and Allowed Class 5 Claims have agreed to use the valuation of the assets transferred to the Liquidating Trust as established by the Liquidating Trustee for all federal income tax purposes. The beneficiaries under the Liquidating Trust will be treated as the deemed owners of the Liquidating Trust. The Liquidating Trust will be responsible for filing information on behalf of the Liquidating Trust as grantor trust pursuant to Treasury Regulation Section 1.671-4(a).

## 2. Assets of the Liquidating Trust

(a) On the Effective Date, or as soon as reasonably practicable thereafter, the Debtors will transfer and assign, and are authorized to transfer and assign, free and clear of all Liens, Claims, encumbrances and Interests, the Liquidating Trust Assets to the Liquidating Trust, which shall be deemed vested in the Liquidating Trust. A non-exclusive list of the Liquidating Trust Assets is attached hereto as **Exhibit B**. On and after the Effective Date, the Liquidating Trustee shall have discretion with respect to the distribution of the transfers of Liquidating Trust Assets.

(b) The entry of the Confirmation Order shall constitute approval to transfer the Unclaimed Escrow Funds to the Liquidating Trust free and clear of all Liens, Claims, encumbrances and interests, of any person or entity whatsoever.

(c) Notwithstanding anything to the contrary contained herein, nothing in this Plan including but not limited to Article IX herein, shall constitute a transfer of any Recoupment Claim to the Liquidating Trust or otherwise. Nothing herein shall determine whether a Cause of Action constitutes a Recoupment Claim, and in the event a dispute exists whether a Cause of Action is an Recoupment Claim, such dispute shall be determined by the Bankruptcy Court. For the avoidance of any doubt, the Pending Recoupment Claims, as defined in the Landcastle Amended Agreements Order, and the Recoupment Insurance Claims are Recoupment Claims.

## 3. Funding of the Liquidating Trust

The Liquidating Trust will be funded initially by a contribution to the Liquidating Trust Account by the Debtors equal to Cash and other assets held by the Debtors on the Effective Date including all Unclaimed Escrow Funds and the Landcastle Payment, less any payments made on the Initial Distribution Date to the Holders of (i) Allowed Administrative Claims, (ii) Allowed Professional Fee Claims, (iii) Allowed Priority Tax Claims, (iv) Allowed Secured Claims, (v) Allowed Priority Non-Tax Claims, and (vi) Allowed Third Party Provider Claims as treated under Class 4 of the Plan. The Liquidating Trust shall subsequently be funded from any amounts recovered from the other proceeds of the Assets, including all Causes of Action.

## 4. Rights and Powers of the Liquidating Trust and the Liquidating Trustee

(a) The Liquidating Trustee shall be deemed the representative of all Holders of Allowed Claims in Classes 3, 4, and 5, the Liquidating Trustee shall have all the rights and powers set forth in the Liquidating Trust Agreement, including, without limitation, the exclusive

right to prosecute, settle, abandon or compromise any Liquidating Trust Asset; (ii) making Distributions contemplated by this Plan and the Liquidating Trust Agreement, (iii) establishing and administering any necessary reserves for Disputed Claims that may be required; (iv) objecting to Disputed Claims and prosecuting, settling, compromising, withdrawing or resolving in any manner approved by the Bankruptcy Court such objections; (v) employing and compensating professionals (including professionals previously retained by the Debtors and/or the Committee), provided, however, that any such compensation shall be made only out of the Liquidating Trust Assets; (vi) file all federal, state and local tax returns of the Liquidating Trust, if necessary; and (viii) seek entry of a Final Decree closing the Bankruptcy Cases.

(b) The Liquidating Trust shall assume all obligations for payment of Claims arising prior to the Effective Date consistent with the terms of this Plan, however the Liquidating Trust shall not assume any obligations for any Claims arising after the Effective Date, and the Liquidating Trust shall have no responsibilities for the administration of the Debtors' estates or the Debtors, except as set forth in the under this Plan and in the Liquidating Trust Agreement.

(c) The Liquidating Trustee shall have the full authority to take any lawful, appropriate and good-faith steps necessary to administer the Liquidating Trust Agreement, including without limitation, the duty and obligation to liquidate Liquidating Trust Assets, to make Distributions therefrom in accordance with the provisions of this Plan and to pursue, settle or abandon any Causes of Action in accordance with the Liquidating Trust Agreement.

(d) The Liquidating Trustee shall be bound to the terms of the Amegy/Assignee Settlement Order (except to the extent modified by this Plan), the Landcastle Agreements, the Server Stipulation and Order, Landcastle Agreements Order, Landcastle Amended Agreements Order, and Protocol Order, in the same manner and extent as the Debtors. With respect to the Landcastle Agreements Order and the Landcastle Amended Agreements Order, the Liquidating Trustee, on behalf of the Debtors, their respective predecessors, predecessors-in-interest, successors, successors-in-interest, parents, affiliates, subsidiaries, present or former shareholders, members, directors, officers, employees, representatives, agents, and assigns, shall provide to Landcastle upon request, an executed release, settlement agreement or similar documentation, in form and substance solely acceptable to Landcastle, necessary to effectuate a settlement or resolution of any claim Landcastle is authorized to assert pursuant to the Landcastle Agreements, including but not limited to, any Recoupment Claim.

## 5. Liquidating Trust Interests

(a) On the Effective Date, each Holder of an Allowed General Unsecured Claim shall, by operation of the Plan, receive its Pro Rata Share of the Liquidating Trust Interests. Liquidating Trust Interests shall be reserved for Holders of Disputed General Unsecured Claims and issued by the Liquidating Trust to, and held by the Liquidating Trustee in, the Disputed Claims Reserve pending allowance or disallowance of such Claims. No other entity, shall have any interest, legal, beneficial, or otherwise, in the Liquidating Trust, its Assets or Causes of Action upon their assignment and Transfer to the Liquidating Trust, however, all rights to a Distribution on account of Allowed Class 3 Claims, Allowed Class 4 Claims, and Allowed Class 5 Claims shall be subordinate to the payment of Professional Fees.

(b) The Liquidating Trust Interests shall be uncertificated and shall be non-transferable except upon death of the Holder or by operation of law. Holders of Liquidating Trust Interests, in such capacity, shall have no voting rights with respect to such interests. The Liquidating Trust shall have a term of six (6) years from the Effective Date, without prejudice to the rights of the Trust Oversight Committee to extend such term conditioned upon the Liquidating Trust not becoming subject to the Securities Exchange Act of 1934 (as now in effect or hereafter amended).

6. Limitation of Liability for Liquidating Trustee

Upon the Effective Date and execution of the Liquidating Trust Agreement, the Liquidating Trustee as trustee of the Liquidating Trust, and not personally, shall be vested in all right, title and interest in all Liquidating Trust Assets, and all rights to enforce orders of the Bankruptcy Court entered in this Bankruptcy Proceeding. The Liquidating Trustee shall, in his business judgment, liquidate the Liquidating Trust Assets and distribute the proceeds thereof in accordance with this Plan and the Liquidating Trust Agreement.

7. Establishment of a Trust Oversight Committee

(a) Prior to the Effective Date, a committee of up to three (3) creditors shall be appointed by the Committee to serve as the Trust Oversight Committee. Members of the Trust Oversight Committee shall have the duties set forth in the Liquidating Trust Agreement and in this Plan and shall be identified in the Plan Supplement.

(b) Subject to the terms of the Liquidating Trust Agreement, the Liquidating Trustee shall serve at the direction of the Trust Oversight Committee, provided that the Trust Oversight Committee may not direct the Liquidating Trustee or the members of the Trust Oversight Committee to act in a manner inconsistent with the Liquidating Trustee's duties under the Liquidating Trust Agreement and the Plan. The Trust Oversight Committee may terminate the Liquidating Trustee at any time in accordance with the provisions of the Liquidating Trust Agreement or upon the determination of the Bankruptcy Court on a motion for cause shown.

(c) Nothing herein or in the Liquidating Trust Agreement shall prevent the Liquidating Trustee from taking, or failing to take, any action that, based upon the advice of counsel, it is obligated to take (or fail to take) in the performance of any fiduciary or similar duty which the Trustee owes to the beneficiaries of the Liquidating Trust or any other person, including actions contrary to, or in the absence of, instruction by the Trust Oversight Committee.

(d) The Liquidating Trustee, the members of the Trust Oversight Committee and their professionals shall be exculpated and indemnified pursuant to and in accordance with the terms of the Plan and the Liquidating Trust Agreement.

(e) The members of the Trust Oversight Committee shall serve without compensation, however they shall be entitled to reimbursement for actual and reasonable out-of-pocket expenses, as provided for in the Plan and the Trust Agreement, including without limitation reasonable and documented expenses, including out-of-pocket expenses relating to airfare, hotel, meals and other travel costs, and postage, telephone and facsimile charges, for



work performed on behalf of or relating to the administration of the Liquidating Trust or the Trust Oversight Committee, and other necessary expenses. Further, members of the Trust Oversight Committee may not be reimbursed by the Liquidating Trust for counsel in connection with their duties as members of the Trust Oversight Committee, unless first authorized pursuant to an Order of the Bankruptcy Court for cause shown.

(f) Members of the Trust Oversight Committee cannot vote on any matter in which they have a direct pecuniary interest: In the event of a tie, the Liquidating Trustee shall cast the deciding vote.

(g) The duties and powers of the Trust Oversight Committee shall terminate upon the later to occur of (i) the entry of the Final Decree, (ii) the dissolution of the Liquidating Trust, and (iii) the payment of the final distribution to Holders of Allowed General Unsecured Claims, and, if applicable, Allowed Interests.

#### 8. Liquidating Trust Distributions

(a) **Initial Distributions.** On the Initial Distribution Date, the Liquidating Trustee shall make, or shall make adequate reserves in the Disputed Claims Reserve for, the Distributions required to be made under the Plan to Holders of Allowed Claims entitled to Distributions on the Effective Date and shall reserve sufficient amounts for payment of Professional Fees.

(b) **Interim Distributions.** On a semi-annual basis or at such times as the Liquidating Trustee believes in his business judgment to be appropriate, the Liquidating Trustee may make interim Distributions of available Cash (i) to Holders of the Liquidating Trust Interests solely in accordance with this Plan and the Liquidating Trust Agreement and (ii) from the Disputed Claims Reserve in accordance with this Article IV.E.5. Such Interim Distribution shall be subject to the Liquidating Trust Reserve as set forth in Article IV.U.

(c) **Final Distributions.** The Liquidating Trust shall be dissolved and its affairs wound up and the Liquidating Trustee shall make the Final Distributions, upon the earlier of (i) the date which is six (6) years after the Effective Date, and (ii) that date when, (A) in the reasonable judgment of the Liquidating Trustee, after consultation with the Trust Oversight Committee, substantially all of the assets of the Liquidating Trust have been liquidated and there are no substantial potential sources of additional Cash for Distribution; and (B) there remain no substantial Disputed Claims. Notwithstanding the foregoing, on or prior to a date not less than six (6) months prior to such termination, the Bankruptcy Court, upon motion by a party in interest, including, but not limited to, the Trust Oversight Committee, may extend the term of the Liquidating Trust for one or more finite terms based upon the particular facts and circumstances at that time, if an extension is necessary to the liquidating purpose of the Liquidating Trust. The date on which the Liquidating Trustee determines, after consultation with the Trust Oversight Committee, that all obligations under the Plan and the Liquidating Trust Agreement have been satisfied is referred to as the "Trust Termination Date". On the Trust Termination Date, the Liquidating Trustee shall promptly request the Bankruptcy Court enter an order closing the Bankruptcy Cases (unless this has already been done).

After Final Distributions have been made in accordance with the terms of the Plan and the Liquidating Trust Agreement, if the amount of remaining cash is less than \$10,000, the Liquidating Trustee may donate such amount to a charity of the Liquidating Trustee's selection.

(d) For the purpose of clarification only, payments made to Amegy on account of collections of Accounts Receivable shall not constitute a Distribution, and shall be made in accordance with the Debtors' settlement with Amegy and the Amegy/Assignee Settlement Order.

#### 9. Reporting Requirement of Liquidating Trust

In an effort to conserve estate assets, the Liquidating Trustee is not required to provide annual financial statements or similar reports of the Liquidating Trust to all Holders of Liquidating Trust Interests on an annual basis, however the Liquidating Trustee may produce an annual financial statement or similar report to be provided upon request by a Holder of a Liquidating Trust Interests.

#### 10. Privileges

All Privileges shall be transferred, assigned and delivered to the Liquidating Trust, without waiver or release, and shall vest with the Liquidating Trustee. The Liquidating Trustee shall hold and be the beneficiary of all Privileges and entitled to assert all Privileges. No Privilege shall be waived by disclosures to the Liquidating Trustee of the Debtors' documents, information or communications subject to attorney-client privileges, work product protections or immunities or protections from disclosure jointly held by the Debtors and the Committee.

Accordingly, to the extent that documents are requested from current counsel to the Debtors by any Person, after the Effective Date, only the Liquidating Trustee shall have the ability to waive such attorney-client or other privileges. In addition, current counsel to the Debtors shall have no obligation to produce any documents currently in its possession as a result of or arising in any way out of its representation of the Debtors unless (i) the Person requesting such documents serves its request on the Liquidating Trustee; (ii) the Liquidating Trustee consents in writing to such production and any waiver of the attorney-client or other privilege such production might cause; and (iii) the Liquidating Trustee or the Person requesting such production agrees to pay the reasonable costs and expenses incurred by current counsel for the Debtors in connection with such production.

Unless the Court orders otherwise, upon the second (2nd) anniversary of the termination of the Liquidating Trust Agreement, any and all documents in the possession of the Debtors' currently retained bankruptcy counsel and the Committee's current counsel as a result of or arising in any way out of their representation of the Debtors and/or the Committee, respectively, shall be deemed destroyed and no Person shall be entitled to obtain such documents, subject, however, to the Protocol Order and the Server Stipulation and Order, as applicable, which shall remain in full force and effect until the earlier of (i) termination pursuant to their respective terms, or (ii) entry of the Final Decree.

**F. Operations of the Debtors Between the Confirmation Date and the Effective Date**

During the period from the Confirmation Date through and until the Effective Date, the Debtors shall continue to remain in possession of their assets, subject to the oversight of the Bankruptcy Court as provided in the Bankruptcy Code, the Bankruptcy Rules, and all orders of the Bankruptcy Court that are then in full force and effect.

**G. Term of Injunctions or Stays**

Unless otherwise provided, all injunctions or stays provided for in the Bankruptcy Cases and in existence on the Confirmation Date shall become permanent and shall remain in full force and effect from and after the Effective Date to the greatest extent allowed by the Bankruptcy Code or otherwise.

**H. Payment of Fees to United States Trustee**

On and after the Effective Date, all fees payable to the United States Trustee shall be paid as and when due by the Liquidating Trustee, which payments shall be considered a reasonable expense of the Liquidating Trust.

**I. The Wittstadts' and Debtors' Continued Cooperation**

On or after the Effective Date, the Debtors and the Wittstadts shall provide such reasonable cooperation to effectuate the provisions of the Plan that the Liquidating Trustee might reasonably request, including, but not limited to, executing such documents as might be reasonably requested to carry out the terms of the Plan, provided that to the extent any cooperation or assistance may be required of the Wittstadts after they are no longer employed and paid by the Debtors, their obligations to provide cooperation or assistance are limited as set forth below.

At the request of the Liquidating Trustee, the Wittstadts shall collectively provide up to eighty (80) total hours of cooperation or assistance to the Liquidating Trustee at no cost to the Liquidating Trust (the "Hours Cap") and, to the extent necessary and only at the request of the Liquidating Trustee, the Wittstadts shall provide services to the Liquidating Trust in excess of the Hours Cap and shall be compensated by the Liquidating Trust at a rate of One Hundred Dollars (\$100) per hour, which compensation shall only be paid by the Liquidating Trustee after receipt of a detailed time records from the Wittstadts. The Liquidating Trustee shall also reimburse the Wittstadts for all reasonable out-of-pocket expenses incurred in connection with any tasks performed by the Wittstadts at the request of the Liquidating Trustee (including expenses for the payment of any hourly wage, plus taxes and benefits of any employee of the Wittstadts who spends any time assisting the Wittstadts with their obligations herein, provided that any such expenses, hourly wages, taxes and benefits are approved in advance by the Liquidating Trustee and are not separately compensated by the Liquidating Trustee) so long as the Wittstadts provide reasonable supporting documentation of such out-of-pocket expenses to the Liquidating Trustee. In addition, on the Initial Distribution Date, the Liquidating Trust is authorized and directed to pay to Mark Wittstadt and Gerard Wittstadt, Jr. an amount equal to

one (1) years' worth of health premiums on their current health plans from available Liquidating Trust Assets.

**J. Survival of Certain Orders**

The terms of the Amegy/Assignee Settlement Order (except to the extent modified by this Plan), the Server Stipulation and Order, Landcastle Agreements Order, the Landcastle Amended Agreements Order, and Protocol Order, shall survive confirmation of this Plan and shall remain in full force and effect. Notwithstanding the foregoing, the terms of the Amegy/Assignee Settlement Order are modified to provide that the Wittstadts shall not be entitled any Collection Commission should the Liquidating Trustee or any other party authorized to recover Accounts Receivable reduce such Accounts Receivable to Cash without any assistance of either of the Wittstadts, and the Wittstadts hereby waive their right to the Collection Commission for work involving collections as set forth in the Amegy/ Assignee Settlement Order solely to the extent that collections are made by the Estates or the Liquidating Trustee without the Wittstadts' material assistance. For the avoidance of doubt, any Allowed Collection Commissions that are unpaid at the time of the Effective Date are not waived and shall be treated and paid as an Administrative Claim and shall receive the treatment set forth in Article II.A of the Plan. All Collection Commissions earned after the Effective Date shall be treated and paid as a Liquidating Trust Expense.

**K. Debtors' Continued Existence**

From and after the Effective Date, the Debtors shall remain in existence for the sole purpose of winding up the Debtors' businesses, transferring the Assets to the Liquidating Trust, and providing reasonable cooperation with the Liquidating Trustee as set forth in Article IV.J above and cooperating with the Recoupment Claims pursuant to the Landcastle Agreement. Upon the completion of such liquidation and the entry of the Final Decree, the Liquidating Trustee may, in an exercise of his business judgment, file a certificate of dissolution as to each of the Debtors. The Liquidating Trustee shall not be compelled to dissolve any Debtor if to do so would unduly burden the Liquidating Trust. On the Effective Date, the officers, the directors, the members and the partners of the Debtors shall cease to serve, and the Liquidating Trustee or his designee shall be deemed the sole director and officer of each Debtor for all purposes.

Notwithstanding the liquidation and dissolution of the Debtors after the Effective Date, nothing in this Plan shall prevent one or more of the current or former partners, members, managers, officers, directors, or employed attorneys of any of the Debtors from continuing the practice of law, representing or being retained by any current or former client of the Debtors, or forming or joining a new law firm (whether or not such new law firm performs the same or similar practices as any of the Debtors) at any time. No such lawyer or law firm shall be deemed a successor, alter ego, or continuation of the Debtors, and such lawyer or law firm shall not be deemed to assume any liability of or claim against the Debtors except as expressly agreed in writing. Neither the Debtors nor the Liquidating Trustee are obligated in any way to assist such current or former partners, members, managers, officers, directors, or employed attorneys with respect to the foregoing.

**L. Debtors' Books and Records**

On the Effective Date, the Debtors' Books and Records, in any form, including all electronic records, shall be transferred to the Liquidating Trust. The Liquidating Trustee shall continue to be bound by the terms of the Server Stipulation and Order and Protocol Order to the same extent and manner as the Debtors. Except as otherwise provided in the Server Stipulation and Order and Protocol Order, the Liquidating Trustee shall be permitted, in his or her discretion, to abandon, destroy, or otherwise dispose of those books and records in compliance with applicable non-bankruptcy law, *provided, however*, that, in the Liquidating Trustee's discretion, these books and records may be destroyed or disposed of beginning two (2) years after the Effective Date notwithstanding any applicable laws, rules, or regulations that would have required the Debtors to retain such books and records. Notwithstanding the foregoing, the Liquidating Trustee shall continue to be bound by the terms of the Server Stipulation and Order and Protocol Order to the same extent and manner as the Debtors.

The Liquidating Trustee shall provide Landcastle and the Wittstadts and such other parties as required in the Server Stipulation and Order and Protocol Order with notice of any proposed destruction or disposal of the Debtors' books and records and shall otherwise comply with such Orders. At all times, the Liquidating Trustee shall provide the Wittstadts with ongoing reasonable access to all files of the Debtors, both in hard copy and electronic form, solely for the purposes of allowing them to comply with applicable rules of professional conduct, to fulfill their obligations to any former clients of the Debtors, and/or to fulfill their obligations as substitute trustees under applicable state laws.

Further, the Liquidating Trustee shall preserve and maintain all documents, data and information responsive to any subpoena, litigation hold, or discovery request to which the Debtors, relating to Recoupment Claims or otherwise, are subject on or after the Effective Date.

**M. Employee Agreements**

On or before the Plan Supplement Filing Date, the Debtors will negotiate employment or consulting contracts with any current employees necessary to wind down the Debtors' Estates, such contracts to be reasonably acceptable to the Committee. On the Effective Date, the Debtors' remaining employees will receive a payment equal to one (1) months' salary, which payment shall be in satisfaction of any prior arrangements, agreement or employment policies with the Debtors. For the avoidance of doubt, the Wittstadts shall not be entitled to any payments under this provision.

**N. Closing of Debtors' Cases**

After the Debtors' Estates have been fully administered, the Liquidating Trustee shall file the final account and report with the Bankruptcy Court. At such time, the Liquidating Trustee shall move for the Bankruptcy Court to enter a Final Decree closing the Bankruptcy Cases pursuant to Section 350 of the Bankruptcy Code and Bankruptcy Rule 3022.

**O. Corporate Action**

The entry of the Confirmation Order shall constitute the approval of the authorization for the Debtors to take or cause to be taken all corporate actions necessary or appropriate to implement all provisions of, and to consummate, the Plan and any documents contemplated to be executed therewith, prior to, on and after the Effective Date, and all such actions taken or caused to be taken shall be deemed to have been authorized and approved by the Bankruptcy Court without further approval, act or action under any applicable law, order rule or regulation.

**P. Authorization of Plan-Related Documentation**

(a) All documents, agreements and instruments entered into and delivered on or as of the Effective Date contemplated by or in furtherance of the Plan, including, but not limited to, the Plan Supplement documents, the Johnson Settlement Agreement, the Pritchard Settlement Agreement, and any other agreement or document related to or entered into in connection with the Plan or Plan Supplement documents, shall become, and shall remain, effective and binding in accordance with their respective terms and conditions upon the parties thereto, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order or rule or the vote, consent, authorization or approval of any Person (other than as expressly required by such applicable agreement).

(b) A responsible officer, director, partner, member or shareholder of the Debtors shall be authorized to 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 and further evidence the terms and conditions of the Plan.

(c) After the Effective Date, the Liquidating Trustee may, in the name of the Debtors and their Estates, take such actions as may be necessary or appropriate to accomplish the purposes of the Liquidating Trust without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules, except as provided in the Plan, the Confirmation Order, the Liquidating Trust Agreement.

**Q. Dissolution of Committee**

The Committee shall continue in existence through and including the Effective Date to exercise those powers and perform those duties specified in Bankruptcy Code Section 1103 and shall perform such other duties as it may have been assigned by the Bankruptcy Court or in this Plan or the Confirmation Order prior to the Effective Date. On the Effective Date, the Committee shall be deemed dissolved, and its members shall be deemed released of all their duties, responsibilities and obligations in connection with the Bankruptcy Cases or the Plan and its implementation, and the retention or employment of the Committee's Professionals shall terminate, except with respect to any Claim for Professional Fee Claim. After the Effective Date, the Committee, the Committee's Professionals, shall be entitled to compensation or reimbursement of expenses from the Liquidating Trust Assets for any services incurred after the Effective Date relating to Professional Fees sought and the implementation and enforcement of this Plan.

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

Pursuant to Bankruptcy Code Section 1146(a), any transfers of property pursuant to this Plan shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax or other similar tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forego the collection of any such tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such tax or governmental assessment.

**S. Liquidating Trust Reserve**

Subject to any limitations set forth in the Liquidating Trust Agreement, the Liquidating Trustee is authorized to maintain a reserve in such amount reasonably necessary to pay the Liquidating Trust Expenses as set forth in Articles IV.V and XII.M. At no time may the Liquidating Trust reserve exceed \$250,000 without the Liquidating Trustee making an Interim Distribution on account of Allowed Claims.

**T. Liquidating Trust Expenses**

Subject to any limitations set forth in the Liquidating Trust Agreement, all accrued, outstanding and unpaid Liquidating Trust Expenses shall be paid from the Liquidating Trust Assets from time to time at the Liquidating Trustee's discretion without the need for a further order of the Bankruptcy Court. All expenses accrued after the Effective Date relating to the Protocol Order and/or the Server Stipulation and Order, including but not limited to the administrative expense claim granted to Landcastle therein, shall be treated as a Liquidating Trust Expense.

**ARTICLE V.**

**TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

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

Any executory contract or unexpired lease which has not expired by its own terms on or prior to the Effective Date, which has not been assumed, assumed and assigned, or rejected with the approval of the Bankruptcy Court, or which the Debtors have obtained the authority to reject but have not rejected as of the Effective Date, or which is not the subject of a motion to assume the same pending as of the Effective Date, shall be deemed rejected by the Debtors on the Confirmation Date, and the entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such rejection pursuant to Bankruptcy Code Sections 365E and 1123(b)(2).

Notwithstanding the foregoing, all leases, agreements, contracts and similar arrangements necessary to preserve the Books and Records and otherwise satisfy the Debtors' obligations under the terms of the Landcastle Agreements Order, Protocol Order, and Server Stipulation and Order, a list of which shall be included in the Plan Supplement, shall be maintained by the Liquidating Trustee for so long as required by such orders.

**B. Termination of the Debtors' 401(k) Plan**

On the Petition Date, the Debtors filed a motion for authority to terminate their 401(k) plan, and on September 1, 2015, the Bankruptcy Court entered an Order granting the Debtors' motion, and authorizing the Debtors to take all and any actions necessary to terminate the 401(k) plan. The Debtors have since effectuated the termination of the 401(k) plan, and nothing in the Plan shall amend or modify any rights of any parties to their rights under the terminated 401(k) plan.

**C. Rejection Damages Claims**

Proofs of all Claims arising out of the rejection of an executory contract or an unexpired lease pursuant to the Plan shall be filed with the Claims Agent in accordance with the Order Establishing Deadline for Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof [Doc. No. 239] on or before thirty (30) days after the Effective Date.

**D. Indemnification Obligations**

Except with respect to the Wittstadt Indemnification Claims, any obligations of the Debtors pursuant to their corporate charters and bylaws or agreements, including amendments, entered into any time prior to the Effective Date, to indemnify, reimburse, or limit the liability of any Covered Persons (as defined therein) pursuant to the Debtors' certificates of incorporation, bylaws, policy of providing employee indemnification, applicable state law, or specific agreement in respect of any claims, demands, suits, causes of action, or proceedings against such Covered Persons based upon any act or omission related to such Covered Persons' service with, for, or on behalf of the Debtors prior to the Effective Date with respect to all present and future actions, suits, and proceedings relating to the Debtors shall not survive Confirmation of the Plan and shall be deemed cancelled and discharged as of the Effective Date. Any Claims relating to such obligations, other than Wittstadt Indemnification Claims, shall be filed with the Claims Agent on or before thirty (30) dates after the Effective Date. For the avoidance of doubt, any policies, agreements or bonds relating to the Recoupment Insurance Claims are specifically excluded from this paragraph and shall not be cancelled or discharged and shall survive Confirmation of the Plan.

**ARTICLE VI.**

**PROVISIONS GOVERNING DISTRIBUTIONS**

**A. Manner of Payment under the Plan**

At the option of the Debtors or the Liquidating Trustee, as applicable, any Cash payment to be made hereunder may be made by a check or wire transfer or as otherwise required or provided in applicable agreements. Cash payments made pursuant to this Plan in the form of checks issued by the Debtors or Liquidating Trustee shall be null and void if not cashed within 120 days of the date of the issuance thereof. Requests for reissuance of any check shall be made directly to the Liquidating Trustee.



**B. Timing of Distributions**

Except as otherwise provided herein or as may be ordered by the Bankruptcy Court, Distributions to be made on account of Claims that are Allowed Claims as of the Effective Date and that are entitled to receive Distributions under the Plan shall be made on the Initial Distribution Date. If any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, 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. Distributions on account of Claims that become Allowed after the Effective Date shall be made pursuant to Article VII.D herein.

**C. Distributions by Disbursing Agent**

The Liquidating Trustee, or its agent, shall serve as disbursing agent on behalf of each of the Estates (on and after the Effective Date) under the Plan and shall make all Distributions required under the Plan.

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

Except as otherwise provided in the Plan, subject to Bankruptcy Rule 9010, all distributions to any Holder of an Allowed Claim shall be made at the address of such Holder as set forth on the Schedules filed with the Bankruptcy Court or on the books and records of the Debtors or their agents, as applicable, unless the Debtors have been notified in writing of a change of address, including, without limitation, by the filing of a Proof of Claim by such Holder that contains an address for such Holder different from the address reflected on the Schedules. In the event that any Distribution to any Holder is returned as undeliverable, the Liquidating Trustee shall use commercially reasonable efforts to determine the current address of such Holder, but no Distribution to such Holder shall be made unless and until the Liquidating Trustee has determined the then-current address of such Holder, at which time such distribution shall be made to such Holder without interest; provided that such Distributions shall be deemed unclaimed property under Bankruptcy Code Section 347(b) upon the expiration of the later of three (3) months from the Effective Date and the date such Distribution was returned undeliverable. After such date, all unclaimed property or interest in property shall revert to the Liquidating Trust for distribution on account of other Allowed Claims, and the Claim of the Holder originally entitled such unclaimed property or interest in property shall be forever barred from seeking a distribution on account of such Claim from the Debtors, the Debtors' estates, or the Liquidating Trust.

**E. Allocation of Plan Distributions between Principal and Interest.**

To the extent that any Allowed Claim entitled to a Distribution under the Plan is comprised of indebtedness and accrued but unpaid interest thereon, such Distribution shall, for federal income tax purposes, be allocated to the principal amount of the Claim first and then, to the extent the Distribution exceeds the principal amount of the Claim, to the portion of such Claim representing accrued but unpaid interest.

**F. Fractional Dollars; De Minimis Distributions**

Notwithstanding any other provision of the Plan to the contrary, (a) the Disbursing Agent shall not be required to make Distributions or payments of fractions of dollars, and whenever any Distribution of a fraction of a dollar under the Plan would otherwise be required, the actual Distribution made shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down and (b) the Disbursing Agent shall have no duty to make a Distribution on account of any Allowed Claim (i) if the Liquidating Trustee determines, in the reasonable exercise of the Liquidating Trustee's discretion, that the amount available for Distribution at such time is insufficient to justify the cost of effecting the Distribution, in which case such Distributions shall be deferred to the next Distribution date or (ii) if the amount to be distributed to that Holder on the particular Distribution date is less than \$10.00, unless such Distribution constitutes the final Distribution to such Holder.

**G. No Distribution in Excess of Allowed Amount of Claim**

Notwithstanding anything to the contrary herein, no Holder of an Allowed Claim shall receive in respect of such Claim any Distributions, which individually or in the aggregate, exceed of the Allowed amount of such Claim.

**H. Setoffs**

The Debtors or the Liquidating Trust may, but shall not be required to, set-off against, or recoup from, any Claim (for purposes of determining the Allowed amount of such Claim on which a distribution shall be made), any claims of any nature whatsoever that the Debtors or the Liquidating Trust may have against the Holder of such Claim, but neither the failure to do so nor the allowance of any Claim under the Plan shall constitute a waiver or release by the Debtors or the Liquidating Trust of any such claim the Debtors or the Liquidating Trust may have against the Holder of such Claim.

**I. Compliance with Tax Requirements**

In connection with the Plan and all Distributions hereunder, to the extent applicable, the Debtors and the Liquidating Trustee are authorized to take any and all actions that may be necessary or appropriate to comply with all tax withholding and reporting requirements imposed by any federal, state, local or foreign taxing authority, and all Distributions pursuant to the Plan shall be subject to any such withholding and reporting requirements. The Liquidating Trustee shall be authorized to require each Creditor to provide it with an executed Form W-9 or similar tax form as a condition precedent to being sent a Distribution. If a Holder of an Allowed Unsecured Claim does not provide the Liquidating Trustee with an executed Form W-9 or similar form within 90 days of written request, said Creditor shall be deemed to have forfeited their Distribution.

**J. Release of Liens**

Except as otherwise provided by Article III of the Plan or in any contract, instrument, release or other agreement or document created or assumed in connection with the Plan, on the Effective Date and concurrently with the applicable Distributions made pursuant to this Article

VI, all mortgages, deeds of trust, liens, pledges or other security interests against the Assets shall be fully released and barred, and all of the right, title and interest of any Holder of such mortgages, deeds of trust, liens, pledges or other security interests shall be forever extinguished.

**K. Subordination**

1. Preservation of Subordination Rights by Estates

Except as otherwise provided herein, all subordination rights and claims relating to the subordination by the Debtors or the Liquidating Trustee of any Allowed Claim shall remain valid, enforceable and unimpaired in accordance with Bankruptcy Code Section 510 or otherwise.

2. Waiver by Creditors of all Subordination Rights

Except as otherwise ordered by the Bankruptcy Court, each Holder of a Claim shall be deemed to have waived all contractual, legal and equitable subordination rights that they may have against the Debtors, their Estates, or the Liquidating Trust, whether arising under general principles of equitable subordination, any Section under the Bankruptcy Code or otherwise, with respect to any and all Distributions to be made under the Plan, and all such contractual, legal or equitable subordination rights that each Holder has individually and collectively with respect to any such Distribution made pursuant this Plan shall be terminated and barred, **and all actions related to the enforcement of such subordination rights will be permanently enjoined.** For the avoidance of any doubt, the foregoing does not waive any subordination claims or rights of Landcastle.

**L. Books and Records; Privilege Matters**

1. Legal Representation of the Debtors After the Effective Date

Upon the Effective Date, the attorney-client relationship between (i) the Debtors and their current counsel, Morris James, LLP and Christian & Barton LLP and (ii) the Committee and its current counsel Arent Fox LLP, shall be deemed terminated. Subject only to the applicable ethical rules governing attorneys, their receipt of confidential information and their relationship with former clients, current counsel for the Debtors shall not be precluded from representing any party in any action that might be brought by or against the Liquidating Trust. Similarly, subject only to the applicable ethical rules governing attorneys, their receipt of confidential information and their relationship with former clients, current counsel and other professionals for the Committee shall not be precluded from representing the Liquidating Trust or any other party in any action that might be brought by or against any former individual members of the Committee.

2. Transfer of Debtors' Books and Records

On or before the Effective Date, the Debtors shall transfer and deliver their Books and Records to the Liquidating Trust subject to the Protocol Order and the Server Stipulation and Order, as applicable.

## **ARTICLE VII.**

### **PROCEDURES FOR RESOLVING DISPUTED CLAIMS**

#### **A. Prosecution of Objections to Claims on and after the Effective Date**

On and after the Effective Date, objections to, and requests for estimation of any Claims may be interposed and prosecuted only by the Liquidating Trust. Such objections and requests for estimation shall be served on the respective claimant and filed with the Bankruptcy Court on or before the Claim Objection Bar Date. On the Effective Date, all outstanding objections filed by the Debtors or Committee to, and requests for estimation of Claims by the Debtors or Committee will vest in the Liquidating Trust except that the U.S. Trustee shall have the right to object to any Administrative Expenses, including Professional Fees.

#### **B. Estimation of Claims**

The Liquidating Trustee may, at any time, request that the Bankruptcy Court estimate any contingent or unliquidated Claim pursuant to Bankruptcy Code Section 502(c) regardless of whether the Debtor or the Liquidating Trustee previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection. The Bankruptcy Court shall retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including during the pendency of any appeal relating to any such objection. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, such estimated amount will constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the Liquidating Trustee may elect to pursue any supplemental proceedings to object to any ultimate allowance of such Claim. All of the aforementioned Claims objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court.

#### **C. No Distributions Pending Allowance**

Notwithstanding any other provision hereof, if any portion of a Claim is a Disputed Claim, no payment or distribution provided hereunder shall be made on account of such Claim unless and until such Disputed Claim becomes Allowed. To the extent that all or a portion of a Disputed Claim is disallowed, the Holder of such Claim shall not receive any Distribution on account of the portion of such Claim that is disallowed and any property withheld pending the resolution of such Claim shall be reallocated pro rata to the Holders of Allowed Claims in the same Class.

#### **D. Distributions After Allowance**

To the extent that a Disputed Claim becomes an Allowed Claim, Distributions (if any) shall be made to the Holder of such Allowed Claim in accordance with the provisions of the Plan and Liquidating Trust Agreement. As soon as practicable after the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim becomes a Final Order, the

Liquidating Trustee shall provide to the Holder of such Claim the Distribution (if any) to which such Holder is entitled under the Plan.

**E. Preservation of Rights to Settle**

In accordance with Bankruptcy Code Section 1123(b), the Liquidating Trust shall retain and may enforce, sue on, settle, or compromise (or decline to do any of the foregoing) all claims, rights, Causes of Action, suits, and proceedings, whether in law or in equity, whether known or unknown, that the Debtors or their Estates may hold against any person or entity without the approval of the Bankruptcy Court (subject to the provisions of the Liquidating Trust Agreement, this Plan, the Confirmation Order, and any contract, instrument, release, indenture, or other agreement entered into in connection with the Plan). The Liquidating Trust and the Liquidating Trustee or their successor(s) may pursue such retained claims, rights, Causes of Action, suits, or proceedings, as appropriate, in accordance with the best interests of the Liquidating Trust, the Liquidating Trustee or their successor(s) who hold such rights. Notwithstanding the foregoing, and solely for purposes of clarity, the Recoupment Claims shall continue to be owned solely by Landcastle and prosecuted in the respective names of MSW, MSWLAW, Landcastle Title, Lastcastle and/or Landcastle's assignees in the sole discretion of Landcastle or its assignees.

**F. Disallowed Claims**

Any Claim held by a Person or Entity against whom any Debtor or the Liquidating Trust has commenced a proceeding asserting an Avoidance Action shall be deemed a Disallowed Claim pursuant to Bankruptcy Code Section 502(d) and the Holder of such Claim shall not be entitled to vote to accept or reject the Plan. Claims that are deemed Disallowed Claims shall continue to be Disallowed Claims for all purposes until such Cause of Action has been settled or resolved by Final Order and any sums due to the Debtors or the Liquidating Trust from such party have been paid.

**ARTICLE VIII.**

**CONDITIONS PRECEDENT TO CONFIRMATION AND EFFECTIVE DATE OF THE PLAN**

**A. Condition Precedent to Confirmation**

The Plan shall not be confirmed, and the Confirmation Date shall not be deemed to occur, unless and until the Confirmation Order and Liquidating Trust Agreement, in form and substance satisfactory to the Debtors and the Committee, have been entered on the docket maintained by the Clerk of the Bankruptcy Court.

**B. Conditions Precedent to the Effective Date**

The Effective Date shall not occur and the Plan shall not become effective unless and until the following conditions have been satisfied in full:

1. the Confirmation Order, in form and substance satisfactory to the Debtors and the Committee, shall be entered by the Bankruptcy Court, shall become a Final Order, shall be in full

force and effect and shall not be subject to a stay or an injunction which would prohibit the transactions under the Plan;

2. The process for use of the Unclaimed Escrow Funds shall be approved and contained in the Confirmation Order,

3. The occurrence of the Escrow Account Bar Date;

4. the Confirmation Order shall, among other things, provide that all transfers of Assets by the Debtors (a) to the Liquidating Trust (i) are or shall be legal, valid, and effective transfers of property, (ii) vest or shall vest the Liquidating Trust with good title to such property free and clear of all Liens, Claims, encumbrances or interests, except as expressly provided in the Plan or Confirmation Order, including but not limited to the Unclaimed Escrow Funds, (iii) do not and shall not constitute voidable transfers under the Bankruptcy Code or under applicable non-bankruptcy law, (iv) shall be exempt from any transfer, sales, stamp or other similar tax (which exemption shall also apply to the transfers by the Liquidating Trust) and (v) do not and shall not subject the Liquidating Trustee or Holders of Claims to any liability by reason of such transfer under the Bankruptcy Code or under applicable non-bankruptcy law, including, without limitation, any laws affecting successor or transferee liability and (b) to Holders of Claims under the Plan are for good consideration and value;

5. the final version of the Plan, the Plan Supplement, the Liquidating Trust Agreement and all of the documents, schedules and exhibits contained therein shall have been Filed and in a form and substance satisfactory to the Debtors and the Committee;

6. all actions and transfers and all agreements, instruments, or other documents necessary to implement the terms and provisions of the Plan, including all transfers to the Liquidating Trust, shall have been effected or executed and delivered, as applicable, in form and substance satisfactory to the Debtors and the Committee; and

7. all authorizations, consents, and regulatory approvals, if any, required by the Debtors in connection with the Consummation of the Plan shall have been obtained and not revoked.

#### **C. Waiver of Conditions**

Any of the conditions to Confirmation of the Plan and/or to the Effective Date set forth in Articles VIII.A and VIII.B hereof, other than entry of the Confirmation Order in form and substance satisfactory to the Debtors and the Committee, may be waived with the express written consent of both the Debtors and the Committee without leave or order of the Bankruptcy Court, and without any formal action.

#### **D. Satisfaction of Conditions**

Any actions required to be taken on the Effective Date shall take place and shall be deemed to have occurred simultaneously, and no such action shall be deemed to have occurred prior to the taking of any other such action. If the Debtors or the Committee determines that one of the conditions precedent set forth in Articles VIII.A and VIII.B of the Plan cannot be satisfied

and the occurrence of such condition is not waived or cannot be waived, then the Debtors or the Committee shall file a notice of the failure of the Effective Date with the Bankruptcy Court

**E. Effect of Nonoccurrence of Conditions**

If each of the conditions to occurrence of the Effective Date set forth in Article VIII.B has not been satisfied or duly waived on or before the first Business Day that is 180 days after the Confirmation Date, or such later date as shall be determined by the Debtors or the Committee, the Confirmation Order may be vacated by the Bankruptcy Court. If the Confirmation Order is so vacated, the Plan shall be null and void in all respects, and nothing contained in the Plan shall constitute a waiver or release of any Claims or Interests against any of the Debtors or release of any claims or interests by the Debtors or the Estates.

**ARTICLE IX.**

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

**A. Compromise and Settlement of Claims, Interests and Controversies**

Pursuant to Bankruptcy Code Section 1123 and Bankruptcy Rule 9019 and in consideration for the classification, distributions, releases, and other benefits provided pursuant to the Plan, on the Effective Date, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims, Interests, and controversies resolved pursuant to the Plan or relating to the contractual, legal, and subordination rights that a Holder of a Claim or Interest may have with respect to any Claim or Interest, or any distribution to be made on account of such Claim or Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims, Interests, and controversies, as well as a finding by the Bankruptcy Court that such compromise or settlement is in the best interests of the Debtors, their Estates, and Holders of Claims and Interests and is fair, equitable, and reasonable after notice and an opportunity for hearing. In accordance with the provisions of the Plan, pursuant to Bankruptcy Rule 9019, without any further notice to or action, order, or approval of the Bankruptcy Court, after the Effective Date, the Liquidating Trustee may compromise and settle Claims against the Debtors and their Estates and Causes of Action against other Entities.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Releases by the Debtors in Article IX.C.1 and the Releases among Releasing Parties in Article IX.C.2 (collectively, the "Releases"), which include by reference each of the related provisions and definitions contained therein, and further, shall constitute the Bankruptcy Court's finding that the Releases are: (1) in exchange for the good and valuable consideration provided by the Releases Parties as set forth herein; (2) a good faith settlement and compromise of the claims releases; (3) in the best interests of the Debtors and all holders of Claims and Interests; (4) fair, equitable, reasonable; (5) given and made after due notice and an opportunity for hearing; and (6) a bar to any of the Releasing Parties asserting any claim of Cause of Action released pursuant to the Releases.

## **B. Preservation of Causes of Action**

In accordance with Section 1123(b) of the Bankruptcy Code, and except where such Causes of Action have been expressly released, the Liquidating Trustee shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Causes of Action, including, but not limited to, collections of Accounts Receivable, Avoidance Actions and any claims under applicable non-bankruptcy law, whether arising before or after the Petition Date and the Liquidating Trustee's rights to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date. The Liquidating Trustee may pursue (and has standing to pursue) such Causes of Action, as appropriate, in accordance with the best interests of the Liquidating Trust beneficiaries. No Entity may rely on the absence of a specific reference in the Plan, or the Disclosure Statement to any Cause of Action against them as any indication that the Debtors or the Liquidating Trustee, as applicable, will not pursue any and all available Causes of Action against them. Except with respect to Causes of Action as to which the Debtors have released any Entity on or prior to the Effective Date, the Liquidating Trustee, as applicable, expressly reserve all rights to prosecute any and all Causes of Action against any Entity, except as otherwise expressly provided in the Plan. Unless any Causes of Action against an Entity is expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Bankruptcy Court order, the Liquidating Trustee expressly reserves all Causes of Action, for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppels (judicial, equitable or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation. Nothing contained in this Plan, the Plan Supplement, the Confirmation Order, the Liquidating Trust Agreement or any documents related thereto shall effect or impair the pursuit of the Recoupment Claims by Landcastle Acquisition Corp. pursuant to the Landcastle Agreements and Landcastle Agreements Order.

## **C. Releases**

### **1. Releases by the Debtors.**

**AS OF THE EFFECTIVE DATE, THE DEBTORS, THEIR ESTATES, AND THE LIQUIDATING TRUST WILL BE DEEMED TO FOREVER RELEASE, WAIVE, AND DISCHARGE ALL CLAIMS, OBLIGATIONS, SUITS, JUDGMENTS, DAMAGES, DEMANDS, DEBTS, RIGHTS, CAUSES OF ACTION, AND LIABILITIES WHETHER DIRECT OR DERIVATIVE, LIQUIDATED OR UNLIQUIDATED, FIXED OR CONTINGENT, MATURED OR UNMATURED, DISPUTED OR UNDISPUTED, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, THEN EXISTING OR THEREAFTER ARISING, IN LAW, EQUITY, OR OTHERWISE THAT ARE BASED IN WHOLE OR IN PART ON ANY ACT, OMISSION, TRANSACTION, EVENT, OR OTHER OCCURRENCE TAKING PLACE ON OR PRIOR TO THE EFFECTIVE DATE IN ANY WAY RELATING SOLELY TO THE DEBTORS' BANKRUPTCY CASES, THE PLAN, OR THE DISCLOSURE STATEMENT, THAT COULD HAVE BEEN ASSERTED AT ANY TIME, PAST, PRESENT, OR FUTURE, BY OR ON BEHALF OF THE DEBTORS, OR THEIR ESTATES, SOLELY AGAINST (A) ANY OF THE DEBTORS' COUNSEL FOR OR OTHER PROFESSIONALS EMPLOYED BY THE DEBTORS PURSUANT TO AN ORDER OF THE BANKRUPTCY COURT IN**



THESE BANKRUPTCY CASES; (B) THE COMMITTEE, ITS COUNSEL AND PROFESSIONALS EMPLOYED BY THE COMMITTEE PURSUANT TO AN ORDER OF THE BANKRUPTCY COURT IN THESE BANKRUPTCY CASES, (C) THE MEMBERS OF THE COMMITTEE AND COUNSEL THERETO, AND (D) THE WITTSTADTS, WITH RESPECT TO THAT PERSON'S POST-PETITION CONDUCT OR WHILE ACTING IN THESE BANKRUPTCY CASES, AS SUCH; PROVIDED, HOWEVER, THAT THE FOREGOING SHALL NOT AFFECT THE LIABILITY OR RELEASE OF ANY PERSON THAT OTHERWISE WOULD RESULT FROM ANY SUCH ACT OR OMISSION TO THE EXTENT SUCH ACT OR OMISSION IS DETERMINED BY A FINAL ORDER TO HAVE CONSTITUTED FRAUD, WILLFUL MISCONDUCT, GROSS NEGLIGENCE, BAD FAITH, SELF-DEALING OR BREACH OF THE DUTY OF LOYALTY; PROVIDED FURTHER, HOWEVER, THAT THE FOREGOING SHALL NOT BE A WAIVER OF ANY DEFENSE, OFFSET OR OBJECTION TO ANY CLAIM FILED AGAINST THE DEBTORS AND THEIR ESTATES BY ANY PERSON. NOTHING HEREIN SHALL BE DEEMED TO BE A RELEASE OF ANY CLAIM HELD BY THE DEBTORS, THEIR ESTATES AND THE LIQUIDATING TRUST OF ANY CLAIM AGAINST ANY OFFICER, DIRECTOR, EMPLOYEE OR PROFESSIONAL, BASED ON THAT OFFICER, DIRECTOR, EMPLOYEE OR PROFESSIONAL'S PRE-PETITION CONDUCT.

2. Releases among the Releasing Parties

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, ON THE EFFECTIVE DATE, IN CONSIDERATION FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY THE RELEASING PARTIES, THE ADEQUACY OF WHICH IS HEREBY CONFIRMED, THE RELEASING PARTIES, TO THE MAXIMUM EXTENT PERMISSIBLE UNDER APPLICABLE LAW, DISCHARGE AND RELEASE AND SHALL BE DEEMED TO HAVE PROVIDED A FULL DISCHARGE AND RELEASE TO EACH OF THE OTHER RELEASING PARTIES (AND EACH OF THE OTHER RELEASING PARTIES SHALL BE DEEMED FULLY RELEASED AND DISCHARGED BY THE RELEASING PARTIES) AND THEIR RESPECTIVE PROPERTY FROM ANY AND ALL CLAIMS, INTERESTS, OBLIGATIONS, DEBTS, RIGHTS, SUITS, DAMAGES, REMEDIES, CAUSES OF ACTION, LIABILITIES WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, LIQUIDATED OR UNLIQUIDATED, CONTINGENT OR NON-CONTINGENT, EXISTING AS OF THE EFFECTIVE DATE IN LAW, EQUITY OR OTHERWISE, WHETHER FOR TORT, CONTRACT, VIOLATIONS OF FEDERAL OR STATE SECURITIES LAWS, OR OTHERWISE, ARISING FROM OR RELATED IN ANY WAY TO THE DEBTORS, THE TRANSACTIONS CONTEMPLATED BY THE PLAN, THE BANKRUPTCY CASES, 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 ANY OF THE DEBTORS AND ANY OF THE OTHER RELEASING PARTIES, THE RESTRUCTURING OF CLAIMS AND INTERESTS PRIOR TO OR IN THE BANKRUPTCY CASES, THE NEGOTIATION, FORMULATION, OR PREPARATION OF THE PLAN, THE DISCLOSURE STATEMENT, THE PLAN SUPPLEMENT, THE LIQUIDATING TRUST AGREEMENT, OR RELATED AGREEMENTS,

**INSTRUMENTS, OR OTHER DOCUMENTS RELATED TO THE BANKRUPTCY CASES, OR ANY OTHER ACT OR OMISSION, TRANSACTION, AGREEMENT, EVENT, OR OTHER OCCURRENCE TAKING PLACE ON OR BEFORE THE EFFECTIVE DATE, INCLUDING THOSE THAT ANY OF THE RELEASING PARTIES WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT IN THEIR OWN RIGHT (WHETHER INDIVIDUALLY OR COLLECTIVELY) OR THAT ANY HOLDER OF A CLAIM OR AN INTEREST OR OTHER ENTITY WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT ON BEHALF OF ANY OF THE RELEASING PARTIES; PROVIDED, HOWEVER, THAT THE FOREGOING SHALL NOT BE A WAIVER OF ANY DEFENSE, OFFSET OR OBJECTION TO ANY CLAIM FILED AGAINST THE DEBTORS AND THEIR ESTATES BY ANY PERSON; AND SHALL NOT BE A RELEASE OF CLAIMS AGAINST ANY OFFICER, DIRECTOR EMPLOYEE, OR OTHER PERSON THAT IS NOT A RELEASING PARTY.**

**D. Exculpation**

**THE EXCULPATED PARTIES SHALL NEITHER HAVE, NOR INCUR, ANY LIABILITY TO ANY ENTITY FOR ANY ACT TAKEN OR OMITTED TO BE TAKEN IN CONNECTION WITH, RELATING TO, OR ARISING OUT OF, THE BANKRUPTCY CASES, FORMULATING, NEGOTIATING, SOLICITING, PREPARING, DISSEMINATING, IMPLEMENTING, CONFIRMING, OR EFFECTING THE CONSUMMATION OF THE PLAN, THE DISCLOSURE STATEMENT, THE ADMINISTRATION OF THE PLAN OR THE PROPERTY TO BE DISTRIBUTED UNDER THE PLAN OR RELATED TO THE ISSUANCE, DISTRIBUTION, AND/OR SALE OF ANY SECURITY, OR ANY CONTRACT, INSTRUMENT, RELEASE, OR OTHER AGREEMENT OR DOCUMENT CREATED OR ENTERED INTO IN CONNECTION WITH THE PLAN; PROVIDED, HOWEVER, THAT THE FOREGOING SHALL NOT AFFECT THE LIABILITY OF ANY PERSON THAT OTHERWISE WOULD RESULT FROM ANY SUCH ACT OR OMISSION TO THE EXTENT SUCH ACT OR OMISSION IS DETERMINED BY A FINAL ORDER TO HAVE CONSTITUTED FRAUD, WILLFUL MISCONDUCT, OR GROSS NEGLIGENCE.**

**E. Exclusion of Recoupment Claims**

Notwithstanding anything to the contrary contained herein, nothing in this Plan, including but not limited to Article IX hereof, the Confirmation Order or the Plan Supplement, shall constitute a release of any person or entity, their respective counsel, current and former shareholders, members, agents, employees, and insurers predecessors, successors, assignees, heirs, executors, and administrators from any Recoupment Claims

## **ARTICLE X.**

### **RETENTION OF JURISDICTION**

#### **A. Retention of Bankruptcy Court Jurisdiction**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain jurisdiction over all matters arising in, arising under or related to the Bankruptcy Cases for, among other things, the following purposes:

1. Allow, disallow, determine, liquidate, classify, estimate, or establish the priority, Secured or unsecured status, or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the Secured or unsecured status, priority, amount, or allowance of Claims or Interests;

2. Decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan;

3. Resolve any matters related to: (i) the assumption, assignment, or rejection of any executory contract or unexpired lease to which a Debtor is party or with respect to which a Debtor may be liable in any manner and to hear, determine, and, if necessary, liquidate, any Claims arising therefrom, including Claims related to the rejection of an executory contract or unexpired lease, cure obligations pursuant to Section 365 of the Bankruptcy Code, or any other matter related to such executory contract or unexpired lease; (ii) any potential contractual obligation under any executory contract or unexpired lease that is assumed and/or assigned and (iii) any dispute regarding whether a contract or lease is or was executory or expired;

4. Ensure that Distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;

5. Adjudicate any disputes with respect to any claim to the Unclaimed Escrow Funds or the Default Escrow Funds;

6. Adjudicate, decide, or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any applications involving a Debtor that may be pending in the Bankruptcy Cases on the Effective Date;

7. Adjudicate, decide, or resolve any and all matters related to Causes of Action;

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

9. Enter and enforce any order for the sale of property pursuant to Sections

363, 1123, or 1146(a) of the Bankruptcy Code;

10. Resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the Consummation, interpretation, or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan, including whether any Causes of Action constitute Recoupment Claims, except as provided for in this Plan and the Landcastle Amended Agreements Order;

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

12. Resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the settlements, compromises, releases, injunctions, exculpations, and other provisions contained in Article IX and enter such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions;

13. Resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the repayment or return of Distributions;

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

15. Determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, indenture, or other agreement or document created in connection with the Plan, the Disclosure Statement or Liquidating Trust Agreement;

16. Adjudicate any and all disputes arising from or relating to Distributions under the Plan or any transactions contemplated therein;

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

18. Determine requests for the payment of Claims and Interests entitled to priority pursuant to Section 507 of the Bankruptcy Code;

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

20. Hear and determine matters concerning state, local, and federal taxes in accordance with Sections 346, 505, and 1146 of the Bankruptcy Code;

21. Hear and determine all disputes involving the existence, nature, or scope of any of Releasing Parties' releases, including any dispute relating to any liability arising out of the termination of employment or the termination of any employee or retiree benefit program, regardless of whether such termination occurred prior to or after the Effective Date;

22. Enforce all orders previously entered by the Bankruptcy Court, including, without limitation, the Amegy/Assignee Settlement Order, the Landcastle Agreements Order, the Landcastle Amended Agreements Order, the Protocol Order, and the Server Stipulation and Order;

23. Hear any other matter not inconsistent with the Bankruptcy Code;

24. Enter an order concluding or closing the Bankruptcy Cases; and

25. Enforce the injunction, release, and exculpation provisions set forth in Article IX.

## **ARTICLE XI.**

### **MODIFICATION AND REVOCATION OF THE PLAN**

#### **A. Immediate Binding Effect**

Notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan, the Plan Supplement, Liquidating Trust Agreement and the Confirmation Order shall be immediately effective and enforceable and deemed binding upon the Debtors and any and all Holders of Claims against or Equity Interests in the Debtors (regardless of whether such Claims or Interests are deemed to have accepted or rejected the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, and injunctions described in the Plan, each Entity acquiring property under the Plan or the Confirmation Order, and any and all non-Debtor parties to executory contracts and unexpired leases with the Debtors. All Claims and debts shall be fixed, adjusted or compromised, as applicable, pursuant to the Plan regardless of whether any Holder of a Claim or debt has voted on the Plan.

Confirmation of the Plan does not result in a discharge with respect to any debt as provided in §1141(d)(3) of the Code.

#### **B. Modification of the Plan**

Subject to the limitations contained herein, the Debtors and the Committee, reserve the right to modify the Plan as to material terms and seek Confirmation consistent with Section 1127(a) of the Bankruptcy Code and, as appropriate, not resolicit votes on such modified Plan. Subject to certain restrictions and requirements set forth in Section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in the Plan, the Debtors upon consultation with the Committee expressly reserve their rights to alter, amend, or modify materially the Plan one or more times after Confirmation and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, in such matters as may be necessary to carry out the purposes and intent of the Plan. Any such modification or supplement shall be considered a modification of the Plan and shall be made in accordance with this Article XI.

Any modification to the Plan made post-confirmation shall comply with Section 1127(b) of the Bankruptcy Code.

Entry of a Confirmation Order shall mean that all modifications or amendments to the Plan occurring after the solicitation thereof and prior to the Confirmation Date are approved pursuant to Section 1127(a) of the Bankruptcy Code and do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

**C. Revocation or Withdrawal of the Plan**

The Debtors upon consultation with the Committee, reserve the right to revoke or withdraw the Plan prior to the Confirmation Date or the Effective Date and to file subsequent plans. If the Debtors revoke or withdraw the Plan, or if Confirmation or Consummation does not occur, then: (1) the Plan shall be null and void in all respects; (2) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain of any Claim or Interest or Class of Claims or Interests), assumption and assignment or rejection of executory contracts or unexpired leases effected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void and (3) nothing contained in the Plan shall: (a) constitute a waiver or release of any Claims or Interests; (b) prejudice in any manner the rights of the Debtors or any other Entity; or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by the Debtors or any other Entity.

**ARTICLE XII.**

**MISCELLANEOUS PROVISIONS**

**A. Payment of Statutory Fees**

All fees payable pursuant to 28 U.S.C. § 1930, as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid on or before the Effective Date. After the Effective Date, the Liquidating Trustee shall pay, prior to the closing of the Bankruptcy Cases all fees payable pursuant to 28 U.S.C. § 1930 which accrue after the Effective Date through and including the closing of the Bankruptcy Cases.

**B. Governing Law**

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent a schedule or exhibit hereto or instrument, agreement or other document executed under the Plan provides otherwise, this Plan, the rights, duties and obligations arising under this Plan, and any claim or controversy directly or indirectly based upon or arising out of this Plan or the transactions contemplated by this Plan (whether based on contract, tort, or any other theory), including all matters of construction, validity and performance, shall be governed by and interpreted, construed and determined in accordance with, the internal laws of the State of Virginia (without regard to any conflicts of law provision that would require the application of the law of any other jurisdiction).

**C. Continued Cooperation**

Subject to the provisions of Article IV.J of this Plan, after the Effective Date, the Debtors' officers, directors, managers, members, partners, and employees shall each continue to provide information to the Liquidating Trust, including providing testimony and documents related to any objections to Claims, Causes of Action, and other matters under the Plan, without the need for a subpoena.

**D. Corporate Action**

Prior to, on and after the Effective Date, all matters provided for under the Plan that otherwise would require approval of the shareholders or directors of any of the Debtors shall be deemed to have occurred and shall be in effect prior to, on and after the Effective Date pursuant to the applicable general corporation law of the jurisdiction in which the Debtors are organized without any requirement of further action by the shareholders or directors of the Debtors.

**E. Severability of Plan Provisions**

If, prior to Confirmation, any term or provision of this Plan is held by the Bankruptcy Court or other court of competent jurisdiction to be invalid, void or unenforceable, the Bankruptcy Court will 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 then will 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 will constitute a judicial determination and will provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

**F. Successors and Assigns**

The Plan shall be binding on, and shall inure to the benefit of the Debtors, and their respective successors and assigns. The rights, benefits and obligations of any Person or Entity named or referred to in the Plan shall be binding upon, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of such Person or Entity.

**G. Reservation of Rights**

Except as expressly set forth herein, this Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order and the Effective Date shall have occurred. Neither the filing of this Plan, nor any statement or provision contained herein, nor the taking of any action by the Debtors with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of the Debtors prior to the Effective Date. If the Plan is not confirmed by a Final Order, or if the Plan is confirmed and does not become effective, the rights of all parties in interest in the Bankruptcy Cases are and shall be reserved in full. Any concessions or settlements reflected herein, if any, are made for purposes of the Plan only, and if the Plan does

not become effective, no party in interest in the Bankruptcy Cases shall be bound or deemed prejudiced by any such concession or settlement.

#### **H. Further Assurances**

The Debtors are authorized to execute, deliver, file or record such contracts, agreements, instruments, releases and other documents and take or cause to be taken such action as may be necessary or appropriate to effectuate, implement and further evidence the terms, provisions and intent of this Plan and to consummate the transactions and transfers contemplated by the Plan.

#### **I. Notice and Service of Documents**

Except as set forth herein, as of the Effective Date, all parties having Filed entries of appearance or requests for service in the Bankruptcy Cases, shall not be provided with further notices. With the exception of the Debtors and the United States Trustee, any Person desiring to remain on the Debtors' Bankruptcy Rule 2002 service list shall be required to file a request for continued service and to serve such request upon counsel to the Plan Administrator and the Debtors within 30 days subsequent to the Effective Date. Persons shall be notified of such continued notice requirements in the notice of entry of the Confirmation Order. Persons who do not file a request for continued service shall be removed from the Debtors' Bankruptcy Rule 2002 service list upon Effective Date without further notice pursuant to Bankruptcy Rule 2002 and any applicable local Bankruptcy Rules, notice of all post-Confirmation matters for which notice is required to be given shall be deemed sufficient if served upon counsel for the U.S. Trustee's Office, counsel to the Debtor, the Liquidating Trustee, counsel to the Liquidating Trustee, and all persons on the Debtors' Bankruptcy Rule 2002 service list.

All notices, requests and demands required or permitted to be provided to the Debtors, Liquidating Trustee, the Committee or the Claims Agent under the Plan shall be in writing and shall be deemed to have been duly given or made (a) when actually delivered (i) by certified mail, return receipt requested, (ii) by hand delivery or (iii) by U.S. mail, postage prepaid or, (b) in the case of notice by facsimile transmission, when received and confirmed, addressed as follows:

#### ***If to the Debtors:***

Jeffrey R. Waxman, admitted pro hac vice  
Eric J. Monzo, admitted pro hac vice  
Morris James LLP  
500 Delaware Avenue, Suite 1500  
Wilmington, DE 19801-1494  
Attn: Jeffrey R. Waxman  
Facsimile: (302) 571-1750

-and-

Augustus C. Epps, Jr. (VSB No. 13254)  
Jennifer M. McLemore (VSB No. 47164)



CHRISTIAN & BARTON, LLP  
909 East Main Street, Suite 1200  
Richmond, Virginia 23219-3095  
Telephone: (804) 697-4100  
Facsimile: (804) 697-6112

***If to the Committee:***

Jeffrey Rothleder, admitted *pro hac vice*  
Jackson D. Toof (VSB No. 48842)  
Manuel G. Arreaza, admitted *pro hac vice*  
ARENT FOX LLP  
1717 K Street NW  
Washington, DC 20006-5344  
Telephone: (202) 857-6000  
Fax: (202) 857-6395

***If to the Claims Agent:***

UpShot Services LLC  
7808 Cherry Creek South Dr., Suite 112  
Denver, CO 80231  
(855) 812-6112  
[info@upshotservices.com](mailto:info@upshotservices.com)

**J. Conflicts**

To the extent any provision of the Disclosure Statement or any instrument, document or agreement executed in connection with the Plan or the Confirmation Order (or any exhibits, schedules, appendices, supplements or amendments to the foregoing) conflicts with or is in any way inconsistent with the terms of the Plan, the terms and provisions of the Plan shall govern and control.

**K. Section 1145 Exemption**

Under Section 1145 of the Bankruptcy Code, the issuance of the Liquidating Trust Interests under the Plan shall be exempt from registration under the Securities Act of 1933, as amended, and all applicable state and local laws requiring registration of securities. If the Liquidating Trustee determines, with the advice of counsel, that the Liquidating Trust is required to comply with the registration and reporting requirements of the Securities and Exchange Act of 1934, as amended, or the Investment Company Act of 1940, as amended, then the Liquidating Trustee shall take any and all actions to comply with such reporting requirements and file necessary periodic reports with the Securities and Exchange Commission.

**L. Determination of Tax Liability**

The Debtors are authorized, but not required, to request an expedited determination under Section 505(b) of Bankruptcy Code of the tax liability of the Debtors for all taxable periods ending after the Petition Date through and including the Effective Date.

**M. Post-Effective Date Fees and Expenses**

From and after the Effective Date, the Liquidating Trustee, on behalf of the Liquidating Trust, shall, in the ordinary course of business and without the necessity for any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Liquidating Trust, and any professionals retained by such Liquidating Trust, related to the Consummation and to the implementation of this Plan, and those expenses provided in Article IV.V of the Plan, except as otherwise provided in the Liquidating Trust Agreement.

**N. Entire Agreement**

This Plan and the Plan Supplement supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings and representations on such subjects, all of which have become merged and integrated in to this Plan

**O. Change of Control Provisions**

Any acceleration, vesting or similar change of control rights under any employment, benefit or other arrangements triggered by the Consummation of this Plan shall be waived or otherwise cancelled under this Plan.

**P. Substantial Consummation**

On the Effective Date, the Plan shall be deemed to be substantially consummated under Bankruptcy Code Sections 1101 and 1127(b).

**Q. Termination of the Claims Agent**

Within sixty (60) days after the Effective Date, the services of the Claims Agent shall be terminated, and the Claims Agent shall remit to the Liquidating Trustee and its counsel, a copy of the claims register and copies of all Proofs of Claim that it has received in connection with the Cases. No later than ninety (90) days after the Effective Date, the Claims Agent shall provide the Liquidating Trustee with an invoice for all services rendered.

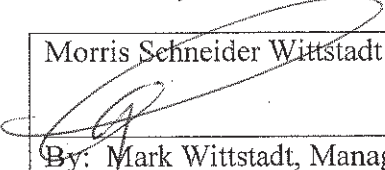
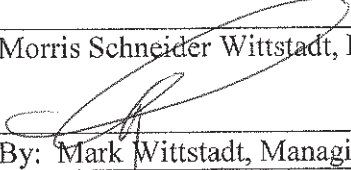
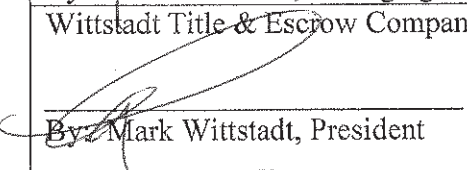
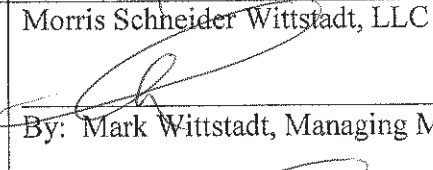
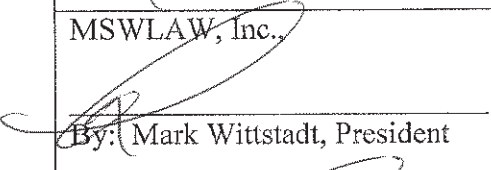
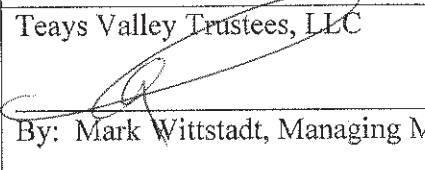
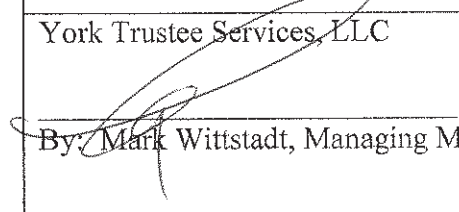
**R. No Admission Against Interest**

Neither the filing of this Plan, the Disclosure Statement, nor any statement contained therein, is or shall be deemed an admission against interest. In the event that this Plan is not consummated, neither this Plan, the Disclosure Statement nor any statement contained therein may be used or relied upon in any manner in any suit, action, proceeding or controversy within or outside the Bankruptcy Court involving the Debtor or any of its former or present officers, directors or Interest holder.

**S. Post Confirmation Notice**

Pursuant to Bankruptcy Rule 2002 and any applicable local Bankruptcy Rules, notice of all post-Confirmation matters for which notice is required to be given shall be deemed sufficient if served upon the U.S. Trustee's Office, counsel to the Liquidating Trustee, and any creditor that has a direct pecuniary interest in the relief sought by the pleading. . With the exception of the United States Trustee, any Person desiring to remain on the Debtors' Bankruptcy Rule 2002 service list shall be required to file a request for continued service and to serve such request upon counsel to the Liquidating Trustee. Parties who do not file a request for continued service shall be removed from the Debtors' Bankruptcy Rule 2002 service list upon the Effective Date and shall be served with pleadings only where they have a direct pecuniary interest in the relief sought by the pleading.

Dated: May 17, 2016

Morris Schneider Wittstadt Va., PLLC  By: Mark Wittstadt, Managing Member	Morris Schneider Wittstadt, PLLC  By: Mark Wittstadt, Managing Member
Wittstadt Title & Escrow Company, L.L.C.,  By: Mark Wittstadt, President	Morris Schneider Wittstadt, LLC  By: Mark Wittstadt, Managing Member
MSWLAW, Inc.,  By: Mark Wittstadt, President	Teays Valley Trustees, LLC  By: Mark Wittstadt, Managing Member
York Trustee Services, LLC  By: Mark Wittstadt, Managing Member	

**EXHIBIT B**

**LIQUIDATING TRUST ASSETS**

Except as otherwise expressly set forth in the Plan and subject to the limitation that the Debtors shall not be required to pay more than all actual and reasonable expenses including legal fees of the Liquidating Trustee, all Allowed Administrative Expenses, and all Allowed Claims in full, including interest as allowed at the federal judgment rate set forth at 28 U.S.C. § 1961, on the Effective Date, all of the Debtors' rights in the Assets shall vest in the Liquidating Trust, including but not limited to the following,

1. All Causes of Action, including without limitation, all Avoidance Actions;
2. One hundred percent (100%) of all Unclaimed Escrow Funds;
3. The proceeds of all Accounts Receivable under the Amegy/Assignee Settlement Order;
4. Ninety percent (90%) of all Third Party Provider Escrow Funds.
5. The proceeds of the sale of any assets of the Debtors' estates.
6. The Landcastle Payment.
7. All rights under any Insurance Policy, including any proceeds therefrom.
8. All rights of the Debtors' or the Estates' to any Default Escrow Funds.
9. Any tax refunds or credits to which the Debtors are or will become entitled

**EXHIBIT A**

LIQUIDATING TRUST AGREEMENT