Docket #0012 Date Filed: 10/18/2022

BTXN 099 (rev. 12/14)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

In Re: Highland Capital Management, L.P. Debtor(s)	§	Case No.: 19−34054−sgj11 Chapter No.: 11 Civil Case No.: 3:22−CV−02051−B
CLO HoldCo, Ltd. Appellant(s)	§	
vs.	§	
Marc Kirschner, the Litigation Trustee for the Highland Litigation SubTrust Appellee(s)	§	

TRANSMITTAL AND CERTIFICATION OF RECORD ON APPEAL

Pursuant to Federal Rules of Bankruptcy Procedure 8010, the appeal filed on 8/31/2022 regarding [3457] Order denying motion motion to ratify second amended proof of claim and expunging claim (related document # 3178) Entered on 8/17/2022 by CLO HoldCo, Ltd. in the above styled bankruptcy case is hereby transmitted to the U.S. District Court for the Northern District of Texas.

This record on appeal contains all items listed on the attached index, and is in compliance with Rule 8010 of the Federal Rules of Bankruptcy Procedure.

All further pleadings or inquiries regarding this matter should be directed to the U.S. District Clerk's Office until such time as the appeal is fully processed in the U.S. District Court.

The above referenced record was delivered to the U.S. District Clerk's Office on October 18, 2022.

DATED: 10/18/22

FOR THE COURT:
Robert P. Colwell, Clerk of Court

by: /s/J. Blanco, Deputy Clerk

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

In Re: Highland Capital Management, L.P.	§	Case No.	**19-34054-sgj11**
CLO HoldCo, Ltd.	§		
Appellant	§		
vs.	§		
Marc Kirschner	§		
Appellee	§		**3:22-CV-02051-B**

[3457] Order denying motion motion to ratify second amended proof of claim and expunging claim (related document # 3178) Entered on 8/17/2022

APPELLEE RECORD
VOLUME 12

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., [1] Debtor.	Case No. 19-34054-sgj11
CLO HOLDCO, LTD., Appellant, v. MARC S. KIRSCHNER, AS LITIGATION TRUSTEE OF THE LITIGATION SUB-TRUST, Appellee.	Case No. 3:22-cv-02051-B

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APPELLEE'S SUPPLEMENTAL DESIGNATION OF RECORD ON APPEAL PURSUANT TO FED. R. BANKR. P. 8009(a)(2)

[1] The last four digits of the Reorganized Debtor's taxpayer identification number are (8357). The Reorganized Debtor is a Delaware limited partnership. The Reorganized Debtor's headquarters and service address are 100 Crescent Court, Suite 1850, Dallas, TX 75201.

Pursuant to Rule 8009(a)(2) of the Federal Rules of Bankruptcy Procedure, Marc Kirschner, as Litigation Trustee for the Litigation Sub-Trust ("Appellee"), created by Highland Capital Management, L.P.'s *Fifth Amended Plan of Reorganization*, by and through his undersigned counsel, hereby submits his supplemental designation of items to be included in the record on appeal filed by CLO Holdco, Ltd. ("Appellant") from the *Order Denying Motion to Ratify Second Amended Proof of Claim and Expunging Claim* [Dkt. No. 3457] (the "Order"), entered by the above named Bankruptcy Court in the above captioned Bankruptcy Case on August 17, 2022. Appellee respectfully reserves the right to supplement and/or amend the record on appeal designated herein.

I. Supplemental Items from the Docket in the Bankruptcy Case

Appellee designates the following additional items from the docket in the Bankruptcy Case, in addition to the items previously designated by the Appellant:

Vol. 12

Date	Docket No.	Description
12/04/2019	11	Affidavit/ Declaration by Frank Waterhouse in Support of First Day Motion filed by Highland Capital Management, L.P.
03/02/2020	488	Order Granting Motion Establishing Bar Dates for Filing Claims
09/23/2020	1090	Declaration of John Morris (and all exhibits and attachments thereto) in support of Dkt. No. 1089, Motion to Compromise with the Redeemer Committee
09/29/2020	1113	Certificate of Service of Dkt. No. 1089, Motion to Compromise with the Redeemer Committee
11/06/2020	1339	Notice of appeal by UBS AG London Branch from Dkt. No. 1273, the Motion to Compromise Controversy with the Redeemer Committee
11/24/2020	1472	Debtor's Amended Chapter 11 Plan
11/24/2020	1473	Debtor's Amended Disclosure Statement to Amended Chapter 11 Plan
12/23/2020	1625	Debtor's Motion to Compromise Controversy with HarbourVest

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01/08/2021	1707	Objection by CLO Holdco to Dkt. No. 1625, the Motion to Compromise Controversy with HarbourVest
02/22/2021	1943	Order confirming Debtor's Fifth Amended Chapter 11 Plan, Dkt. No. 1472, as modified
05/14/2021	2309	Order to Show Cause
11/09/2021	3000	Objection to Claim of Creditor Jean-Paul Sevilla
12/09/2021	3091	Stipulation between Litigation Trustee and Creditors Scott Ellington, Jean-Paul Sevilla, Isaac Leventon, and Frank Waterhouse, re: Dkt. Nos. 3000 and 3001
12/15/2021	3121	Notice of hearing re: Dkt. No. 3001
01/07/2022	3164	Order Approving Dkt. No. 3091, Stipulation between Litigation Trustee and Sevilla, Ellington, Leventon, and Waterhouse
01/11/2022	3178	CLO Holdco's Motion to Ratify Second Amended Proof of Claim No. 198
02/01/2022	3220-1	Exhibit 1, Declaration by Deborah Newman (and all attachments or exhibits thereto), in support of Dkt. No. 3220, the Trustee's Opposition to Dkt. No. 3178, CLO Holdco's Motion to Ratify
1/17/2021	1765	Transcript regarding hearing held on 1/14/2021 re: Dkt. No. 1707
08/28/2021	2794	Transcript regarding Hearing Held 08/19/2021 RE: Motion to Extend the Stay in Trustee's Adversary Proceeding

II. Supplemental Items Not on Bankruptcy Case Docket

Appellee designates the following items not found on the docket but pertinent to this appeal:

003618
003625
003627

Date	**Description**
10/16/2019	Hearing Transcript, *Redeemer Comm. Of the Highland Crusader Fund v. Highland Capital Mgmt., L.P.*, C.A. No. 12533-VCZ (Del. Ch. Oct. 16, 2019) (attached hereto as **Exhibit 1**)
06/14/2021	Electronic Order, *UBS Securities LLC et al. v. Highland Capital Management LP*, Case No. 3:20-cv-03408-G (N.D. Tex. 2020) (attached hereto as **Exhibit 2**)
08/02/2022	Email dated Aug. 2, 2022 to Traci Ellison (attached hereto as **Exhibit 3**)

Appellee reserves the right to designate additional items depending on the arguments made by Appellant on appeal.

Dated: September 28, 2022

Respectfully submitted,

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Counsel for Marc S. Kirschner, as Litigation Trustee of the Highland Litigation Sub-Trust

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a true and correct copy of the above and foregoing document and all attachments thereto were sent via electronic mail via the Court's ECF system to all parties authorized to receive electronic notice in this case on this 28th day of September, 2022.

/s/ Paige Holden Montgomery
Paige Holden Montgomery

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-12239 (CSS)
Debtor.	)	

DECLARATION OF FRANK WATERHOUSE
IN SUPPORT OF FIRST DAY MOTIONS

I, Frank Waterhouse, hereby declare that the following is true and correct to the best of my knowledge, information, and belief:

1. I hold the job title of Chief Financial Officer of the above-captioned debtor and debtor in possession (the "Debtor"). I am also a Partner of the Debtor and Treasurer of the Debtor's general partner, Strand Advisors, Inc.

2. I initially joined the Debtor as a corporate accountant in October 2006. Since then, I have held various accounting and finance positions with the Debtor and assumed the job title of Chief Financial Officer in December 2011. Prior to joining the Debtor, I was employed with PricewaterhouseCoopers in its Technology Assurance practice. I have had a diverse career spanning cancer research with M.D. Anderson Cancer Center to financial consulting with Salomon Smith Barney. I received an M.P.A. from the University of Texas at Austin, an M.B.A. from the University of Houston and a B.S. in Microbiology and a B.S. in

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

Molecular Biology from the University of Texas at Austin. I am a licensed Certified Public Accountant

3. I submit this declaration (the "Declaration") in support of the Debtor's petition and "first day" motions, as described further below (collectively, the "First Day Motions"). Except as otherwise indicated, all statements in this Declaration are based upon my personal knowledge, my review of the Debtor's books and records, relevant documents, and other information prepared or collected by the Debtor's representatives, or my opinion based on my experience with the Debtor's operations and financial condition. In making my statements based on my review of the foregoing, I have relied upon the Debtor's representatives accurately recording, preparing, or collecting such documentation and other information. I am authorized to submit this Declaration on behalf of the Debtor.

4. Part I of this Declaration describes the Debtor's business and the developments that led to the filing for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). Part II discloses certain ordinary course transactions that the Debtor intends to continue postpetition. Part III sets forth the relevant facts in support of the First Day Motions filed by the Debtor concurrently herewith in support of its chapter 11 case. Capitalized terms not defined herein shall have the same meanings as set forth in each relevant First Day Motion.

PART I

BACKGROUND

A. Description and History of the Debtor's Business

5. Highland Capital Management, L.P. (together with its affiliates, "Highland") is a multibillion-dollar global alternative investment manager founded in 1993 by James Dondero and Mark Okada. A pioneer in the leveraged loan market, the firm has evolved over 25 years, building on its credit expertise and value-based approach to expand into other asset classes.

6. Today, Highland operates a diverse investment platform, serving both institutional and retail investors worldwide. In addition to high-yield credit, Highland's investment capabilities include public equities, real estate, private equity and special situations, structured credit, and sector- and region-specific verticals built around specialized teams. Additionally, Highland provides shared services to its affiliated registered investment advisors.

7. Highland is headquartered in Dallas, Texas and maintains offices in Buenos Aires, Rio de Janeiro, Singapore, and Seoul.

8. The Debtor itself is a Delaware limited partnership and one of the principal operating arms of the Highland business. The Debtor employs approximately 76 people, including executive-level management employees, finance and legal staff, investment professionals, and back-office accounting and administrative personnel. The Debtor also leases office space, contracts with third party vendors, and maintains banking and brokerage relationships. Pursuant to various contractual arrangements, the Debtor provides money management and advisory services for approximately $2.5 billion of assets under management. Separately, the Debtor provides shared services for approximately $7.5 billion of assets managed by a variety of affiliated and unaffiliated entities, including other affiliated registered investment advisors. None of these affiliates are filing for Chapter 11 protection.

9. The Debtor primarily generates revenue from fees collected for the management and advisory services provided to funds that it manages, plus fees generated for services provided to its affiliates. For additional liquidity as and when needed, the Debtor intends to sell liquid securities in the ordinary course held through its prime brokerage account at Jefferies, LLC ("Jefferies"), as described in additional detail below. The Debtor may also supplement its liquidity by selling assets at non-Debtor subsidiaries and distributing those proceeds to the Debtor in the ordinary course of business. During calendar year 2018, the Debtor's stand-alone annual revenue totaled approximately $50 million. Through August 31, 2019, the Debtor's stand-alone revenue for the year to date totaled approximately $24 million.

10. The Debtor's organizational chart is attached hereto as **Exhibit A**. The organizational chart is not all inclusive and certain entities have been excluded for the sake of brevity. As noted above, the Debtor is a Delaware limited partnership.

B. The Debtor's Prepetition Capital Structure

i. Jefferies Margin Borrowings (Secured)

11. The Debtor is party to that certain *Prime Brokerage Customer Agreement* with Jefferies dated May 24, 2013 (the "Brokerage Agreement"). Pursuant to the terms of the Brokerage Agreement and related documents, the Debtor maintains a prime brokerage account with Jefferies (the "Prime Account").

12. A prime brokerage account is a unique type of brokerage account that allows sophisticated investors to, among other things, borrow both money on margin to purchase securities and common stock to facilitate short positions. A prime brokerage account also serves as a custodial account and holds client securities in the prime broker's street name.

As of October 11, 2019, the Debtor held approximately $87 million in liquid and illiquid equity and debt securities (the "Securities") in the Prime Account and had borrowed approximately $30 million on margin from Jefferies secured by the Securities. Pursuant to the Brokerage Agreement, the Debtor granted a lien in favor of Jefferies in the Securities and all of the proceeds thereof. As of October 11, 2019, the Debtor had approximately $9.6 million of excess margin in the Prime Account. The Debtor does not intend to borrow any additional amounts on margin, absent the approval of this Court. As reflected in the Budget, the Debtor intends to liquidate certain of the Securities for cash and to use such cash in the Debtor's operations and to satisfy ongoing chapter 11 administrative expenses. The Debtor may also supplement its liquidity by selling assets at non-Debtor subsidiaries and distributing those proceeds to the Debtor in the ordinary course of business.

ii. The Frontier Bank Loan (Secured)

13. The Debtor and Frontier State Bank ("Frontier Bank") are parties to that certain *Loan Agreement* dated as of August 17, 2015 (the "Original Frontier Loan Agreement"), pursuant to which Frontier Bank loaned to the Debtor the aggregate principal amount of $9.5 million. On March 29, 2018, the Debtor and Frontier Bank entered into that certain *First Amended and Restated Loan Agreement* (the "Amended Frontier Loan Agreement"), amending and superseding the Original Frontier Loan Agreement. Pursuant to the Amended Frontier Loan Agreement, Frontier Bank made an additional $1 million loan to the Debtor (together with the borrowings under the Original Frontier Loan Agreement, the "Frontier Loan"). The Frontier Loan matures on August 17, 2021.

14. Pursuant to that certain *Security and Pledge Agreement* dated August 17, 2015, between Frontier Bank and the Debtor, as amended by the Amended Frontier Loan Agreement, the Debtor's obligations under the Frontier Loan are secured by 171,724 shares of voting common stock of MGM Holdings, Inc. (collectively, the "Frontier Prepetition Collateral"). For the avoidance of doubt, the Debtor does not seek authority to liquidate any portion of the Frontier Prepetition Collateral and is not requesting the use of the Frontier Prepetition Collateral.

15. As of the Petition Date, the aggregate principal balance of the Frontier Loan was approximately $5.2 million.

iii. The CLO Purchase Agreement (Unsecured)

16. On October 7, 2016, the Debtor and Acis Capital Management L.P. ("Acis") entered into that certain *Agreement for Purchase and Sale of CLO Participation Interests* (the "CLO Purchase Agreement" and the promissory note therein, the "CLO Note"). Previously, Acis managed certain collateralized loan obligations ("CLOs") identified in the CLO Purchase Agreement and was entitled to fee compensation in connection therewith (the "Servicer Fees").[2] The Debtor's obligations under the CLO Purchase Agreement and CLO Note are unsecured.

17. Pursuant to the CLO Purchase Agreement, Acis sold a portion of its future Servicer Fees to the Debtor in exchange for cash flows from the Debtor, as evidenced in the CLO Note (such Servicer Fees to be paid to the Debtor, the "Debtor Stabilization Fees" and such cash flows from the Debtor, the "Stabilization Payment").

[2] Acis was subsequently the subject of an involuntary bankruptcy filing in 2018.

18. Pursuant to that certain *Agreement for Assignment and Transfer of Promissory Note* dated as of November 3, 2017 (the "CLO Assignment Agreement"), Acis assigned all of its right, title, and interests in the CLO Note, including the right to any and all Stabilization Payments not yet paid to Acis, to Highland CLO Management, Ltd. ("HCLOM"). The Debtor does not have any beneficial ownership interest in HCLOM.

19. Pursuant to that certain *Amended and Restated Forbearance Agreement* dated as of May 31, 2019, by and between the Debtor and HCLOM, HCLOM agreed not to demand payment of the Stabilization Payments under the CLO Note for a period of one year (*i.e.*, until June 1, 2020).

20. As of the Petition Date, the aggregate principal balance of the CLO Note was approximately $9.5 million.

iv. Other Unsecured Obligations

21. The Debtor has various substantial litigation claims asserted against it, including a recent arbitration award in the purported amount of approximately $189 million.

22. In addition, the Debtor has ordinary course trade debt totaling less than $10 million, accrued and unaccrued employee bonus obligations totaling approximately $30 million, and contractual commitments to various affiliated and unaffiliated non-Debtor entities for capital calls, contributions, and other potential reimbursement or funding obligations that could total in the tens of millions of dollars.

C. Events Leading to the Debtor's Bankruptcy Filing and Commencement of the Chapter 11 Case

26. The Debtor's filing was precipitated by an arbitration award (the "Award") initially issued against the Debtor in March 2019, as subsequently modified and finalized, by a panel of the American Arbitration Association, in favor of a Committee of Redeemers in the Highland Crusader Fund (the "Redeemer Committee").

27. The Debtor was formerly the investment manager for the Highland Crusader Fund (the "Crusader Fund") that was formed between 2000 and 2002. In September and October 2008, as the financial markets in the United States began to fail, the Debtor was flooded with redemption requests from Crusader Fund investors, as the Crusader Fund's assets lost significant value.

28. On October 15, 2008, the Debtor placed the Crusader Fund in wind-down, thereby compulsorily redeeming the Crusader Fund's limited partnership interests. The Debtor also declared that it would liquidate the Crusader Fund's remaining assets and distribute the proceeds to investors.

29. However, disputes concerning the distribution of the assets arose among certain investors. After several years of negotiations, a *Joint Plan of Distribution of the Crusader Fund* (the "Crusader Plan"), and the *Scheme of Arrangement* between Highland Crusader Fund and its Scheme Creditors (the "Crusader Scheme"), were adopted in Bermuda and became effective in August 2011. As part of the Crusader Plan and the Crusader Scheme, the Redeemer Committee was elected from among the Crusader Fund's investors to oversee the Debtor's management of the Crusader Fund.

30. Between October 2011 and January 2013, in accordance with the Crusader Plan and the Crusader Scheme, the Debtor distributed in excess of $1.2 billion to the Crusader Fund investors. The Debtor distributed a further $315.3 million through June 2016.

31. However, disputes subsequently arose between the Redeemer Committee and the Debtor. On July 5, 2016, the Redeemer Committee (a) terminated and replaced the Debtor as investment manager of the Crusader Fund, (b) commenced an arbitration against the Debtor (the "Arbitration"), and (c) commenced litigation in Delaware Chancery Court, *inter alia*, to obtain a status quo order in aid of the arbitration, which order was subsequently entered.

32. In September 2018, the Debtor and the Redeemer Committee participated in a multi-day evidentiary hearing. In March 2019, following post-trial briefing, the arbitration panel issued its Award, as subsequently modified and finalized, finding in favor of the Redeemer Committee on a variety of claims and requiring the Debtor to pay a gross amount of $189 million, which later would be partially netted against certain assets and deferred cash to be sent back to Debtor. The Redeemer Committee set a hearing in the Delaware Chancery Court for October 8, 2019, in order to obtain entry of a judgment with respect to the Award. The hearing was subsequently continued to October 16, 2019. The Debtor has sought to vacate certain aspects of the Award.

33. The Debtor believes that it has substantial liquid and illiquid assets, which include interests in a large number of subsidiaries and contractual rights to receive management fees and other forms of compensation from affiliated and unaffiliated entities. Although the Debtor believes that the aggregate value of its assets exceeds the amount of its liabilities, the Debtor filed this chapter 11 case because it does not have sufficient liquidity to immediately

satisfy the Award or post a supersedeas bond necessary to pursue an appeal. The Debtor intends to utilize the breathing spell provided by the automatic stay to consider all of its restructuring options with the goal of ultimately proposing a chapter 11 plan that will maximize the value of the estate's assets for the benefit of all constituents. To assist and coordinate the restructuring process, the Debtor retained Bradley D. Sharp as Chief Restructuring Officer of the Debtor (the "CRO") on October 7, 2019.

PART II

ORDINARY COURSE ACTIVITIES

34. During the pendency of the chapter 11 case, the Debtor intends to continue operating its business in the ordinary course. Part of that business includes the purchase and sale of securities held through the Prime Account. In order to raise cash for its ordinary course operations and other projected chapter 11 administrative expenses, the Debtor intends to liquidate certain securities held in the Prime Account on a postpetition basis in the ordinary course. Additionally, Debtor is the majority owner and investment manager of a non-Debtor affiliate called Highland Select Equity Fund, L.P. (the "Select Fund").[3] Ordinary course operations of Select Fund include the purchase and sale of securities. With respect to any trades in either the Prime Account or the Select Equity Fund, the Debtor will follow the following protocol: (i) all trades will be with unaffiliated third parties; (ii) all securities will be traded through either a public or over-the-counter exchange; and (iii) all trades will be fully disclosed to

[3] The Select Fund is a Delaware limited partnership whose limited partnership interests are majority-owned by the Debtor. The balance of such interests are held directly or indirectly by affiliates of the Debtor, including James Dondero. The Select Fund is managed by its general partner, Highland Select Equity Fund GP, L.P., a Delaware limited partnership (the "Select Fund GP"). The Select Fund GP is directly and indirectly wholly-owned by the Debtor. The Debtor, through the Select Fund GP, can cause the Select Fund to buy and sell assets under its Investment Management Agreement.

the CRO.

35. Further, in the ordinary course of business, the Debtor may be the named counterparty with various broker dealers through which the Debtor trades securities on behalf of its clients. Any transactions that the Debtor executes on behalf of its clients are settled through non-Debtor client accounts pursuant to a standardized internal allocation system. As such, the Debtor has no property interest in any such assets, nor is the Debtor likely to have any liability if any trade fails.[4] The Debtor simply as a matter of convenience interacts in its own name with the various broker dealers on behalf of its clients. Certain dealers have suggested that the Debtor should no longer be the named counterparty now that the Debtor is in bankruptcy and, instead, that a non-Debtor entity act as the "street name" on the trades. The Debtor is considering this request and intends to comply to the extent necessary.

36. Although the Debtor believes that it has the authority to conduct its business going forward in the ordinary course, the Debtor will file a precautionary motion with the Court, out of an abundance of caution, as soon as practicable after the Petition Date seeking approval to continue conducting its business in the ordinary course pursuant to section 363(c)(1) and, to the extent necessary, section 363(b) of the Bankruptcy Code (the "Ordinary Course Motion").

37. In addition, and as will be set forth more fully in the Ordinary Course Motion, the Debtor also intends to seek authority to continue the operation of its three primary business lines: (i) proprietary trading; (ii) investment management; and (iii) the provision of

[4] Under the Debtor's internal policies and procedures, liability for payment on unsettled trades rests solely with the managed funds on whose behalf the trade was executed.

certain middle and back office services to other registered investment advisors (collectively, the "Ordinary Course Services"). Generally speaking, the Ordinary Course Services are as follows:

a. **Proprietary Trading.** The Debtor buys and sells securities for its own account through the Prime Account and the Select Fund and has invested, in its own name, as a limited partner in two unaffiliated private equity style funds (the "PE Entities"). The Debtor has certain obligations to fund capital calls made by the PE Entities, which it intends to continue following the Petition Date.

b. **Investment Management.** The Debtor provides investment management and advisory services to its clients, which include hedge funds, private equity style funds, separately managed accounts, and collateralized loan obligations. As part of these services, the Debtor, in most cases, has the authority to cause its clients to buy or sell assets if the Debtor believes such purchases or sales would be advantageous. With certain exceptions, the clients pay the Debtor a fee for providing these services, which generally consists of a management fee based on the total amount of assets managed and, for certain funds, an incentive fee based on the returns generated for the client.

c. **Shared Services.** The Debtor provides certain middle and back office support to other registered investment advisors pursuant to shared services agreements. The Debtor receives a fee for providing these shared services.

38. The fees and investment returns generated from the foregoing three business lines are the Debtor's primary source of income and are necessary for the Debtor's successful reorganization. Although the Debtor believes that it has the authority to continue operating its business in the ordinary course without Court approval, the Debtor intends to file

the Ordinary Course Motion out of an abundance of caution in order to provide clarity to its customers – as well as its creditors – that the Debtor can continue operating as a going concern and generating positive returns. If the Debtor is not able to continue providing such services or is required to seek prior approval from this Court to buy or sell assets in every instance, the Debtor's ability to generate positive returns for its clients and creditors in this fast moving marketplace will be severely compromised.

PART III

FIRST DAY MOTIONS

39. In order to enable the Debtor to minimize the adverse effects of the commencement of the chapter 11 case, the Debtor has requested various types of relief in the First Day Motions filed simultaneously with this Declaration. A summary of the relief sought in each First Day Motion is set forth below.

40. I have reviewed each of these First Day Motions (including the exhibits and schedules thereto). The facts stated therein are true and correct to the best of my knowledge, information, and belief. I believe that the type of relief sought in each of the First Day Motions: (a) is necessary to enable the Debtor to operate in chapter 11 with minimal disruption; and (b) is essential to maximizing the value of the Debtor's assets for the benefit of its estate and creditors.

A. Motion of Debtors for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Authorizing the Liquidation of Securities, (D) Modifying the Automatic Stay, and (E) Scheduling a Final Hearing (the "Cash Collateral Motion")

41. Through the Cash Collateral Motion, the Debtor seeks the entry of interim and final orders: (a) authorizing the Debtor to use cash collateral, (b) providing adequate

protection to the Debtor's prepetition broker and margin creditor, Jefferies LLC ("Jefferies"), (c) authorizing the liquidation of securities by the Debtor, and to cause its non-Debtor affiliates to do the same, in the ordinary course of business, and (d) modifying the automatic stay.

42. The Debtor has a prime brokerage account with Jefferies (*i.e.*, the Prime Account) that contains approximately $87 million of the Debtor's liquid and illiquid securities. Through the Prime Account, the Debtor has borrowed approximately $30 million on margin from Jefferies. Such margin balance is secured by the Debtor's securities in the Prime Account and any proceeds thereof. The Debtor submits that the collateral pledged to secure the margin debt to Jefferies far exceeds the amount due. Nonetheless, the Debtor anticipates that Jefferies may assert an interest in any cash in the Prime Account. Although the Cash Collateral Motion is filed on a non-consensual basis, the Debtor will endeavor to negotiate the terms of a consensual cash collateral order with Jefferies in advance of the interim hearing on the Cash Collateral Motion.

43. The Debtor has an urgent and immediate need for the use of cash, including the Cash Collateral. The Debtor has not obtained postpetition financing and, without the use of Cash Collateral, the Debtor will not be able to operate as a going concern or preserve its assets for the benefit of its creditors.

44. The Debtor itself is the operating arm of the Highland business. The Debtor employs approximately 76 people, including executive-level management employees, finance and legal staff, investment professionals, and back-office accounting and administrative personnel. Pursuant to various contractual arrangements, the Debtor provides money

management and advisory services to a variety of affiliated and unaffiliated entities with respect to a wide range of asset classes. The Debtor also leases office space, contracts with third party vendors, and maintains banking and brokerage relationships.

45. As set forth in the Budget, the Debtor anticipates funding this Chapter 11 Case with cash on hand, postpetition receipts on account of management services and sales of liquid assets, including the Securities in the Prime Account, and projected distributions from subsidiaries. Proceeds of the Securities in the Prime Account comprise collateral of Jefferies and, pursuant to the Cash Collateral Motion, the Debtor seeks authority to use such Cash Collateral in the ordinary course of business to preserve its operations and thereby maximize the value of the Debtor's assets for the benefit of its creditors.

46. Notably, Jefferies will be adequately protected by a substantial equity cushion in the Prime Account and the Replacement Lien, the Adequate Protection Lien, and the Adequate Protection Claim.

47. Without immediate access to Cash Collateral, the repercussions to the Debtor's restructuring efforts will be catastrophic and likely irreparable, ending its ability to maximize value for the benefit of all constituents. The Debtor needs to fund, among other things, payroll obligations, payments to vendors for ongoing goods, services, and rent, and other administrative obligations.

48. If the Motion is not approved, the Debtor's only alternative would be a piecemeal liquidation that would substantially handicap recoveries by creditors and eliminate the Debtor's going concern value. Hence, the relief sought in the Cash Collateral Motion should be granted as soon as possible, at least on an interim basis.

B. Motion of Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System and Brokerage Relationships, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief (the "Cash Management Motion")

49. Pursuant to the Cash Management Motion, the Debtor seeks the entry of an order authorizing: (a) the Debtor to continue using its existing cash management system and brokerage relationships in the ordinary course of business; (b) the Debtor to make intercompany transactions; and (c) a limited waiver of section 345(b) deposit and investment requirements.

50. The Debtor's cash management system (the "Cash Management System") facilitates the timely and efficient collection, management, and disbursement of funds used in the Debtor's business. The Cash Management System currently consists of six accounts (collectively, the "Bank Accounts") held in the name of the Debtor at BBVA USA ("BBVA") and NexBank, SSB ("NexBank"). BBVA and NexBank are together referenced herein as the "Banks."

51. BBVA is a bank regulated by the Federal Reserve, and its deposits are insured by the Federal Deposit Insurance Corporation (the "FDIC"). NexBank is Texas-based savings bank that is regulated by the FDIC, and its deposits are FDIC-insured. NexBank is indirectly owned by James Dondero and Mark Okada. Mr. Dondero is an insider of the Debtor and the owner of 100% of the equity in the Debtor's general partner, Strand Advisors, Inc. Mr. Dondero also has an indirect interest in the Debtor's Class A limited partnership interests. Mr. Okada is an insider of the Debtor and has an interest in the Debtor's Class A limited partnership interests.

52. The following chart sets forth the Bank Accounts and their balances as of the close of business on October 15, 2019:

Bank	Account Type	Account No.	Balance
NexBank	Checking Account	XXXX735	$1,435.40
NexBank	Checking Account	XXXX668	$0.00
NexBank	Checking Account	XXXX513	$291,309.27
NexBank	Certificate of Deposit	XXXXX891	$135,205.21
NexBank	Money Market Deposit Account	XXXX130	$190.82
BBVA	Checking Account	XXXXXXX342	$2,125,975.28

53. Master Operations Account. The Debtor's main operating account is its account at BBVA (Account No. 342) (the "Master Account"). Except for payment of certain intercompany expenses discussed below, all proceeds from the Debtor's operations flow into the Master Account and, on average, the Debtor receives approximately $8 million in deposits into the Master Account every month though deposits can vary significantly on a month-to-month basis. Virtually all of the Debtor's expenses, including payroll expenses, are paid from the Master Account either through the issuance of paper checks or via wire or other electronic transfers. As described below, the Debtor also uses the Master Account to fund certain Intercompany Transactions (as defined below).

54. Money Market Account. The Debtor maintains a money market deposit account at NexBank (Account No. 130) (the "Money Market Account"). Although the Debtor does not have a specific policy governing the Money Market Account, the Debtor generally sweeps excess cash from the Master Account into the Money Market Account in order to earn

additional interest.[5] Conversely, if the Debtor needs additional funds to pay expenses, it will transfer money from the Money Market Account to the Master Account. The Debtor also receives payments into the Money Market Account from certain of its non-Debtor affiliates in consideration for providing certain services, such as back office support, pursuant to the terms of various contracts. The Debtor generally does not pay expenses from the Money Market Account, except for employee bonuses with respect to newly-granted awards paid each February.

55. Insurance Account. The Debtor maintains a self-funded health insurance plan for its employees and the employees of certain of its affiliates. To facilitate this plan, the Debtor maintains an account with NexBank (Account No. 513) (the "Insurance Account"). The Debtor transfers the monthly insurance premiums for its employees from the Master Account to the Insurance Account, and certain of the Debtor's affiliates that participate in the health insurance plan also fund money into the Insurance Account. The amounts held in the Insurance Account are then used to pay health insurance claims made by the Debtor's or its affiliates' employees. If a claim is made against the Insurance Account by an employee of a Debtor affiliate, the Debtor affiliate is billed for the amount of the claim. Besides health insurance claims, the only payments made from the Insurance Account are those made to Blue Cross Blue Shield, which administers the health insurance plan.

56. Certificate of Deposit. The Debtor has a certificate of deposit (Account No. 891) at NexBank (the "Certificate of Deposit"). The Certificate of Deposit was originally

[5] The Money Market Account is a money market deposit account, not a money market fund. As such, amounts deposited in the Money Market Account are not invested in any other securities, like certificates of deposits. Rather, the Money Market Account is a demand deposit account with a higher interest rate than a regular checking or savings account.

opened in June 2008 with a principal balance of $1,400,000. The current balance is $135,205.21. The Certificate of Deposit is renewed every June and currently accrues interest at a rate of 2.67% per annum.

57. The Debtor's remaining two accounts at NexBank – Account No. 735 and Account No. 668 – are legacy accounts that have not been utilized in many years. Account No. 735 holds a *de minimis* amount of cash and is accruing interest. Account No. 668 has a balance of zero dollars.

i. Prime Brokerage Account

58. As described in Part I above, the Debtor maintains the Prime Account with Jefferies. As of October 11, 2019, the Debtor held approximately $87 million in Securities in the Prime Account and had borrowed approximately $30 million on margin from Jefferies against the Securities.

ii. Intercompany Transactions.

59. As noted above, the Debtor occasionally engages in intercompany cash transactions with certain of its affiliates. These transfers include (a) the movement of cash to and from the Insurance Account to fund the payment of health insurance claims and (b) the receipt of cash in the Master Account in connection with the provision of services to certain non-Debtor affiliates. In addition to the foregoing, the Debtor also funds the following using the Master Account:

a. **Highland Multi Strategy Credit Fund, L.P.** The Debtor serves as the investment manager for Highland Multi Strategy Credit Fund, L.P. ("MSCF") and is also a limited partner in MCSF. MCSF invests in and holds life settlement policies that require regular

payment of premiums (generally monthly) to keep the policies from lapsing. If the policies were to lapse, MCSF would be unable to collect when the proceeds of such policies become realizable and, consequently, its ability to make distributions to the Debtor as a limited partner or pay amounts owed to the Debtor as the investment manager would be impaired. Because MSCF has limited liquidity, the Debtor provides MSCF the funding required to pay the premiums on its life settlement policies, among other expenses, in the amount of approximately $1 million per month. In return, MSCF issues on demand, zero interest notes to the Debtor, which will be repaid once MSCF's investments become liquid.

b. **Highland Capital Management Korea Limited.** Highland Capital Management Korea Limited ("HCM Korea") is a wholly-owned subsidiary of the Debtor and an affiliated investment advisor domiciled in South Korea. HCM Korea is the advisor for, and minority limited partner in, an investment fund (the "HCM Korea Fund"). Each limited partner in the HCM Korea Fund, including HCM Korea, is required to provide capital when called by the HCM Korea Fund, and the failure to fund capital calls could lead to a default under the HCM Korea Fund's partnership agreement. Because of HCM Korea's limited liquidity, the Debtor has provided HCM Korea with a revolving note pursuant to which the Debtor has extended up to $20 million in credit for HCM Korea to use to fund its commitments to the HCM Korea Fund. The note is at zero percent interest, and there is currently approximately $3.06 million outstanding on the note. The Debtor anticipates that HCM Korea will draw an additional $3 million on the note over the next one to two years and will repay the note as the HCM Korea Fund realizes gains on its portfolio and distributes those gains to its investors.

c. **Highland Capital Management Latin America, L.P.** Highland Capital Management Latin America, L.P. ("HCM Latin America") is a wholly owned subsidiary of the Debtor and an affiliated investment advisor domiciled in the Cayman Islands. HCM Latin America is the advisor for an investment fund investing primarily in Argentina (the "SA Fund"). HCM Latin America employs several consultants to assist in advising and marketing the SA Fund. However, because of the recent instability in the Argentinian market, the value of the SA Fund dropped precipitously and consequently, the SA Fund does not currently generate sufficient fees to cover the cost of these consultants. In addition to its original equity contribution, the Debtor has been contributing equity to HCM Latin America to help cover its costs during the downturn. To date, the Debtor has provided approximately $0.7 million in additional equity to cover such operating costs. The Debtor anticipates that HCM Latin America will require additional equity contributions of between $1 million to $1.5 million per year until the Argentinian market recovers. However, because of HCM Latin America's fee structure, there are opportunities for HCM Latin America to make outsized returns depending on the SA Fund's performance, and, in the event of an Argentinian recovery and a concomitant uptick in the SA Fund, HCM Latin America's fee revenue and profitability will also increase. Consequently, the Debtor believes that contributing equity now will lead to increased returns on its investment in HCM Latin America going forward.

d. **Highland Capital Management (Singapore) Pte Ltd.** Highland Capital Management (Singapore) Pte Ltd. is a wholly owned subsidiary of the Debtor based in Singapore ("HCM Singapore"). Historically, HCM Singapore has been a marketing office that has solicited investments in the Debtor's managed funds from Asian-based institutional

investors. To facilitate HCM Singapore's marketing efforts, the Debtor agreed to cover HCM Singapore's costs. The Debtor agreed to this arrangement as any capital raised by HCM Singapore would directly increase the management fees – and potentially long-term incentive fees – earned by the Debtor. The Debtor believes such increased revenue, should it materialize, would more than offset the costs paid by the Debtor.

e. **Expense Allocations.** As is customary among investment advisors, the Debtor tasks its employees with researching and evaluating potential investments and opportunities for the Debtor's clients. The Debtor also provides certain back office support for its clients from time to time. In order to provide such services, the Debtor has directly contracted with various service providers and is required to pay for such services. However, pursuant to the Debtor's expense allocation policy, such expenses are then allocated amongst the Debtor and its various clients either pro rata based on the assets owned by a client or otherwise in a manner consistent with the policy. Consequently, although the Debtor fronts these costs, the Debtor is reimbursed for a portion of such costs by its clients. On a monthly basis, the Debtor generally expects to pay approximately $450,000 for such services and is reimbursed for a substantial majority of such costs by its clients or affiliates.

60. The transactions described in the foregoing paragraphs are referred to collectively as the "Intercompany Transactions."

61. By Cash Management Motion, and out of an abundance of caution, the Debtor seeks authority to make the Intercompany Transactions and to satisfy postpetition obligations associated with the Intercompany Transactions. Moreover, the Debtor seeks

authority, to the extent required, to transfer funds between the Bank Accounts as described above.

62. The Debtor seeks a waiver of the United States Trustee's requirement for the closure of the Bank Accounts (and potentially the Prime Account) and opening of new postpetition bank accounts at depositories authorized by the United States Trustee. If strictly enforced in this chapter 11 case, the requirement to close and open new bank accounts could cause a severe disruption in the Debtor's activities and could impair the Debtor's ability to operate under chapter 11 of the Bankruptcy Code. Maintenance of the Bank Accounts, the Prime Account, and the Cash Management System generally will greatly facilitate the Debtor's operations for the duration of this chapter 11 case.

63. If the Bank Accounts were closed, the Debtor would need to undertake the laborious effort of opening new bank accounts and, with respect to the Prime Account, establishing a new brokerage account to hold and maintain the Securities, which would require the satisfaction of any outstanding margin balances. Any disruption to the Debtor's operations would severely impact its ability to operate at this critical juncture. If the Debtor were required to close the Bank Accounts and the Prime Account, and open new debtor in possession accounts, the Debtor would be forced to reconstruct its cash management system in its entirety. Moreover, as noted above, the closure of the Prime Account would trigger the repayment of the approximately $30 million that has been borrowed against the Securities.

64. In the ordinary course of the operation and maintenance of the Cash Management System, the Debtor incurs routine charges and fees relating to the administration of the Cash Management System. While it is difficult to readily determine the aggregate amount of

unpaid prepetition account fees and charges as of the Petition Date, on average, the Debtor pays BBVA approximately $4,500 in quarterly fees and charges. The Debtor does not pay fees to NexBank. The Debtor seeks authority, in its sole discretion, to pay any such routine and ordinary course prepetition fees and charges, and to continue the postpetition payment of such fees and charges in the ordinary course of business.

65. As addressed above, the Debtor may utilize the Cash Management System for the Intercompany Transactions. Other than as described herein, no other Intercompany Transactions occur. The Debtor believes that the Intercompany Transactions described herein are beneficial to its estate and creditors and other parties in interest and, therefore, should be authorized by the Court.

66. In sum, the Debtor submits that the relief requested in the Cash Management Motion is necessary to avoid immediate and irreparable harm and should be granted by this Court.

C. Motion of Debtor for Entry of Order (I) Authorizing the Debtor to (A) Pay and Honor Prepetition Compensation, Reimbursable Business Expenses, and Employee Benefit Obligations, and (B) Maintain and Continue Certain Compensation and Benefit Programs Postpetition; and (II) Granting Related Relief (the "Wage Motion")

67. Pursuant to the Wage Motion, the Debtor seeks the entry of an order authorizing: (a) authorizing the Debtor to (i) to pay all prepetition Workforce Compensation and all costs related to the prepetition Benefit Programs, as set forth in the Wage Motion; and (ii) maintain and continue to honor the Benefit Programs as they were in effect as of the Petition Date and as such may be modified, amended, or supplemented from time to time in the ordinary course of business; and (b) authorizing the Banks to honor and process checks and electronic

transfer requests for payment of prepetition obligations with respect to the Workforce Compensation and Benefit Programs. The Debtor does not seek authority to pay any Employees on account of Wages in excess of the statutory cap of $13,650.

i. The Debtor's Workforce

68. The Debtor employs approximately 76 employees (the "Employees"), all but one of whom are full-time Employees. Approximately 55 Employees are salaried workers, while approximately 21 are hourly Employees. Except as otherwise noted, the Debtor provides the Benefit Programs (discussed below) to all of its Employees.

69. In addition to the Employees, the Debtor also periodically retains specialized individuals as independent contractors and temporary workers (the "Independent Contractors") to complete certain projects or tasks. As of the Petition Date, the Debtor retained approximately six (6) Independent Contractors. The Independent Contractors are a critical supplement to the efforts of the Employees and integral to the Debtor's operations and business.

70. Typically, the Employees, as well as the Independent Contractors, rely on their compensation and benefits (as applicable) to pay their daily living expenses and to support their families. If the Debtor is not permitted to continue to pay wages and salaries, provide employee benefits, and maintain benefit programs in the ordinary course of business, many of the Employees may be exposed to significant financial constraints. Consequently, the Debtor respectfully submits that the relief requested herein is necessary and appropriate under the facts and circumstances of this chapter 11 case.

71. As explained in more detail below, the Debtor seeks authority to pay, in its discretion, any prepetition amounts owed for the programs and benefits described in the Wage

Motion up to the cap amounts set forth in the chart below. The Debtor also seeks authority to continue to pay amounts related to the programs described in the Wage Motion in the ordinary course of business.

BENEFIT/PROGRAM	CAP AMOUNT[6]
Wages	$50,000
Independent Contractor Compensation	$40,000
Payroll Processor	$2,500
Medical Plan/FSA	$200,000
Dental Plan	$15,000
Life and Disability Plans	$15,000
Workers Compensation Plan	$5,000
COBRA	$2,500
401(k) Plan	$25,000
Other Employee Benefits	$20,000
Reimbursable Expenses	$110,000
Independent Contractor Compensation	$40,000s

ii. Employee and Contractor Compensation

72. Employee compensation is comprised primarily of wages and salaries ("Wages").[7] The current average payroll of the Debtor is approximately $240,000 per calendar week on account of Wages.

[6] Unless otherwise noted, the dollar caps included in the table above and in the proposed order include reasonable cushions in the event that the Debtor's estimates herein are understated.

[7] In addition to Wages, most Employees are eligible to receive bonuses under certain ordinary course programs. No commissions are paid to Employees. The Debtor will file a separate motion relating to ordinary course Employee

73. Employees are paid Wages on a semi-monthly payroll schedule (*i.e.*, on the 15th day of each month, or the business day immediately preceding the 15th day if that day falls on a weekend or holiday, and the last business day of the month). Per the Debtor's direction, payrolls are processed by a third party service provider, Paylocity (the "Payroll Processor"), and are generally funded with money in the Debtor's operating account one (1) business day prior to the applicable payroll date. Although the Payroll Processor typically withdraws funds from the Debtor's operating account using ACH, in some cases where the aggregate amount exceeds $1,000,000 or the employee needs to be paid off-cycle as in the case of severance payments, the Debtor wires the money to the Payroll Processor or applicable employee recipient. The Payroll Processor then makes the applicable payroll distributions to Employees on the applicable payday.

74. The Debtor's last payroll was paid to Employees on October 11, 2019 (four days early in light of the Debtor's anticipated bankruptcy filing), on account of Wages earned from October 1, 2019, through October 15, 2019. The next payroll date is October 31, 2019, with employees to be paid concurrently. Although the last payroll was paid a few days early, it is nonetheless possible that certain Employees did not receive payment of their prepetition Wages. Accordingly, the Debtor requests authority to pay up to $50,000 to Employees in the aggregate on account of Wages for prepetition services (excluding any vacation or other paid-time-off, reimbursable expenses, or other compensation).[8]

bonuses. The Debtor further reserves the right to seek approval of an additional bankruptcy-related key employee incentive plan and key employee retention plan.

[8] As noted, unless stated otherwise, the dollar caps set forth herein include reasonable cushions in the event that the Debtor's estimates are understated.

iii. Payroll Administration Fees

75. As noted above, the Debtor uses the Payroll Processor to administer its payroll. The Debtor estimates that it owes no more than $2,500 to the Payroll Processor on account of prepetition costs and fees for administrative services as of the Petition Date. The Debtor seeks authority to pay any and all prepetition amounts owing to the Payroll Processor up to the cap requested herein and to continue to make payments on account of such fees and charges in the ordinary course of business postpetition.

iv. Employee Benefits & Insurance Plans

76. The Debtor provides eligible Employees with several Benefit Programs, including (a) medical, dental, life, disability, and other insurance plans, (b) a 401(k) plan, and (c) other benefit programs.

(i) Medical Plan

77. The Debtor offers eligible Employees and their dependents 100% employer-paid PPO health insurance coverage (the "Medical Plan") through BlueCross BlueShield of Texas ("BCBS"). The Medical Plan is self-insured, but the Debtor maintains a stop-loss insurance policy with BCBS to cover catastrophic medical claims (the "Stop-Loss Insurance"). The total premiums cost of the Medical Plan, including the Stop-Loss Insurance, is approximately $102,000 per month, paid by the Debtor each month in advance into a bank account used to pay medical/dental plan administrative fees and claims. From the total premiums of approximately $102,000 per month, the Debtor pays approximately $85,000 per month on average on medical claims asserted under the self-insured Medical Plan. Without the

Medical Plan, the Employees and their dependents would be forced to either forego health insurance coverage entirely or obtain themselves potentially expensive out-of-pocket insurance coverage, which would likely adversely affect the Employees' morale.

78. Relatedly, the Debtor provides Employees who participate in the Medical Plan with access to flexible spending accounts (the "FSA"), administered by Discovery Benefits, which can be used to cover incidental medical costs and dependent childcare. The Debtor pays Discovery Benefits, on average, $300 per month for the administration of the FSAs. The Debtor does not make any contributions to any Employee's FSA.

79. The Debtor believes that, as of the Petition Date, no more than $200,000 will be owed on account of obligations associated with the Medical Plan and the FSA. By the Wage Motion, the Debtor seeks authorization to pay any prepetition amounts due on account of or related to the Medical Plan and FSAs (including any medical claims that may have accrued prepetition) up to the cap requested herein and to continue the Medical Plan and the FSA in the ordinary course of business postpetition.

(ii) Dental Plan

80. The Debtor offers eligible Employees a PPO dental insurance plan (the "Dental Plan") administered by BlueCross BlueShield of Texas. The Dental Plan premiums for eligible Employees and their dependents are paid by the Debtor. The average cost to the Debtor of maintaining the Dental Plan, including administrative costs and premiums, is approximately $6,600 per month. As of the Petition Date, the Debtor estimates that no more than $15,000 will be owed on account of obligations associated with the Dental Plan. By the Wage Motion, the Debtor seeks authorization to pay any prepetition amounts due on account of the Dental Plan up

to the cap requested herein and to continue the Dental Plan in the ordinary course of business postpetition.

(iii) Life and Disability Plans

81. The Debtor provides all of its full-time Employees with basic life insurance, accidental death and dismemberment insurance, and short-term and long-term disability insurance (collectively, the "Standard Life and Disability Plans"), which are provided by Lincoln Financial; *provided, however*, the Debtor's short-term disability insurance coverage is self-insured by the Debtor and administered by Lincoln Financial. Additionally, the Debtor offers its eligible senior personnel with additional life insurance and long-term disability insurance coverage (collectively, the "Executive Life and Disability Plans" and together with the Standard Life and Disability Plans, the "Life and Disability Plans") provided by Brighthouse/MetLife and The Standard, respectively.

82. The Life and Disability Plans are fully paid for by the Debtor (except with respect to any supplemental coverage that is paid by the Employees through paycheck withholding deductions). In the aggregate, the Debtor's average annual cost of maintaining the Life and Disability Plans, including administrative costs and premiums, is approximately $140,000.[9] As of the Petition Date, the Debtor estimates that no more than $15,000 in prepetition obligations associated with the Life and Disability Plans will be owed. By the Wage Motion, the Debtor seeks authorization to pay any and all prepetition amounts due on account of the Life and Disability Plans (including, without limitation, any Employee claims payable under

[9] This aggregate amount excludes any claim amounts that may be paid by the Debtor to recipients under the self-insured short-term disability insurance coverage.

the self-insured short-term disability insurance plan) up to the cap requested herein, and to continue the Life and Disability Plans in the ordinary course of business postpetition.

(iv) Paid Time Off and Sick Time

83. The Debtor grants paid time off to all Employees, which includes vacation and sick time ("PTO"), ranging from 15 to 24 days based on certain factors, in addition to holiday pay. Employees are able to carry forward up to 10 days of PTO for each year of service into a subsequent year (*e.g.*, after two years of service, an Employee can potentially roll over 20 days of PTO). In accordance with applicable state law, the Debtor pays all accrued PTO to Employees upon termination. As of the Petition Date, the accrued liabilities of the Debtor with respect to PTO are estimated to total approximately $940,000. The Debtor seeks authority to allow Employees to use accrued prepetition PTO time after the Petition Date in the ordinary course. The Debtor further seeks authority to pay out any PTO owed to Employees who become separated from the Debtor postpetition to the extent required under the Debtor's policies and applicable state law.

(v) Workers' Compensation Plan

84. The Debtor provides all eligible Employees with workers' compensation insurance (the "Workers' Compensation Plan") as required by federal and state law. The Workers' Compensation Plan is a policy-based, fully insured plan provided by Chubb. The average annual cost of maintaining the Workers' Compensation Plan, including administrative costs and premiums, is approximately $11,000 in the aggregate. The Debtor makes payments to Chubb monthly in arrears. As of the Petition Date, the Debtor believes that no more than $5,000 will be owed on account of prepetition obligations under the Workers' Compensation Plan. By

the Wage Motion, the Debtor seeks authorization to satisfy all obligations related to the Workers' Compensation Plan, including, without limitation, premiums and any related fees, costs, and expenses up to the cap requested herein, and to continue its Workers' Compensation Plan in the ordinary course.

85. The Debtor submits that the continuance of the Workers' Compensation Plan is appropriate in the ordinary course of business, but out of abundance of caution, seeks authority to maintain the Workers' Compensation Plan in accordance with applicable law postpetition. The Debtor also seeks authority for relief from the automatic stay solely to allow holders of workers' compensation claims to proceed with their claims in accordance with the Workers' Compensation Plan and to allow the Workers Compensation Plan insurer to administer, handle, defend, settle and/or pay a claim covered by the Workers' Compensation Plan and the cost related hereto in accordance with such plan.

(vi) COBRA

86. Pursuant to the requirements of the Consolidated Omnibus Budget Reconciliation Act of 1986 ("COBRA"), the Debtor provides temporary continuation of healthcare benefits at group rates to former Employees after their termination, retirement, or disability leave. The former Employee or the Debtor bears the costs associated with COBRA, depending on the terms of the separation agreement between the former Employee and the Debtor. As of the Petition Date, the Debtor was responsible for COBRA related costs of approximately $2,300 per month. The Debtor requests that former Employees and eligible dependents retain the right to coverage under the Medical Plan in accordance with the

requirements of the terms of COBRA and requests authorization to pay obligations arising under such plans, regardless of when such obligations accrued, up to $2,500.

(vii) 401(k) Plan

87. The Debtor allows eligible Employees to participate in a 401(k) plan (the "401(k) Plan") administered by an independent third party, BOK Financial (the "401(k) Administrator"). The 401(k) Plan is funded by participating Employees through payroll withholding deductions, and the Debtor makes matching contributions up to 4% of the applicable Employee's compensation (subject to certain annual caps of $5,000 for highly compensated employees and $11,000 for other employees). The Debtor estimates that it will fund approximately $400,000 in total matching contributions in 2019; more than $300,000 has been funded by the Debtor for this year to date. The Debtor intends to continue to make ordinary course matching contributions to the 401(k) Plan on a going forward basis.

88. The Debtor also has a discretionary profit sharing plan (the "Profit Sharing Plan") administered by the 401(k) Administrator. For a given calendar year, Employees who are enrolled in the 401(k) Plan and employed by the Debtor as of December 31 of that year are eligible to participate in the Profit Sharing Plan. If profit sharing is approved for a given year, each eligible Employee would receive a percentage of his or her cash compensation based on various factors, and capped at a certain amount. The profit sharing contribution typically ranges from 4% to 7.5% of eligible compensation (for 2019, the maximum eligible compensation is $280,000). The award is then paid into the 401(k) Plan for the Employee's benefit as a Debtor contribution; this award vests upon three (3) years of service (with a year defined as 1,000 hours in a calendar year), but once the initial three (3) years of service has been met, all future awards

vest immediately. The approved profit sharing contributions for 2018 (approximately $854,000) were previously funded by the Debtor prepetition. No profit sharing for year 2019 has been calculated or approved by the Debtor as yet, but would typically be approved in the ordinary course in February 2020 and would be payable no later than September 15, 2020. The Debtor will be filing a separate motion to seek authority to continue the Profit Sharing Plan on a postpetition basis in the ordinary course.

89. In the aggregate, with respect to 401(k) Plan, the Debtor annually pays approximately $82,000 in administrative costs to the 401(k) Administrator (typically funded in part out of 401(k) Plan forfeitures), actuarial and legal costs of approximately $50,000, and audit costs of approximately $7,000 (audit cost is for 2018 audit which is nearly complete; 2019 audit has not yet been commenced).

90. The Debtor believes that, as of the Petition Date, all of Q3 2019 administrative costs and only a relatively *de minimis* amount of prepetition Q4 2019 administrative costs is owed relating to the 401(k) Plan. The Debtor seeks authorization to continue to pay any prepetition amounts due on account of the 401(k) Plan, including any administrative, audit or advisory fees, up to a cap of $25,000 and to continue to pay postpetition costs of the 401(k) Plan in the ordinary course of business.

(viii) Other Employee Benefits

91. The Debtor provides eligible Employees with a number of other miscellaneous benefits (the "Other Employee Benefits"), which include, without limitation, (i) flexible spending accounts; (ii) daily catered lunches (the Debtor pays $16 maximum per workday through GrubHub, *etc.*); (iii) cell phone service reimbursement (the Debtor provides

each eligible Employee $100 per month in reimbursement); (iv) gym memberships (the Debtor pays gym dues of approximately $25 per month for each eligible Employee); (v) paid office parking; and (vi) access to stocked office kitchens.

92. As the foregoing descriptions suggest, the aggregate cost of maintaining the Other Employee Benefits is relatively *de minimis*. The Debtor seeks authorization to pay any prepetition amounts that may be due on account of the Other Employee Benefits up to $20,000, and to continue the Other Employee Benefits in the ordinary course of business postpetition.

v. Reimbursable Expenses

93. Prior to the Petition Date, the Debtor reimbursed Employees for Reimbursable Expenses incurred on behalf of the Debtor in the scope of their duties. The Reimbursable Expenses are incurred in the ordinary course of the Debtor's business operations and include, without limitation, reasonable expenses for business meals, travel, relocation, car rentals, and other business-related expenses. As of the Petition Date, the Debtor estimates that it owes no more than $110,000 in Reimbursable Expenses. Although the Debtor has requested that Employees submit reimbursement requests promptly, Employees may nonetheless submit reimbursement requests for prepetition Reimbursable Expenses after the Petition Date. Absent authority to pay the Reimbursable Expenses incurred prepetition, the Employees could be obligated to pay such amounts out of their personal funds. The Debtor therefore seeks authority to pay all outstanding prepetition Reimbursable Expenses, and to continue its expense reimbursement policies in the ordinary course of business.

vi. Withholding Obligations

94. The Debtor routinely deducts amounts from Employees' compensation with respect to certain Withholding Obligations, including, but not limited to, various federal, state, and local income taxes, wage garnishments, flexible spending account contributions, dependent daycare account contributions, and 401(k) contributions (the "Employee Withholdings").

95. The Debtor is also responsible for remitting to third parties, for their own account, various taxes and fees associated with payroll pursuant to the Federal Insurance Contributions Act and federal and state laws regarding unemployment and disability taxes (the "Payroll Taxes"). On average, the Debtor pays approximately $15,000 in the aggregate for employer-obligated Payroll Taxes each pay period.

96. The Debtor does not believe that any prepetition Withholding Obligations remain to be remitted to the appropriate parties. However, out of caution, the Debtor seeks authority to deduct and remit any outstanding prepetition Employee Withholdings and Payroll Taxes, and to continue to deduct and remit all owed Employee Withholdings and all owed Payroll Taxes to the appropriate third party recipients in the ordinary course of business.

vii. Independent Contractors

97. As noted above, the Debtor also uses and depends on various Independent Contractors. The Debtor makes payments to Independent Contractors ("Independent Contractor Compensation" and together with Wages, "Workforce Compensation") for the performance of certain specialized services important to the Debtor's business and operations, including, among other things, investment management, tax/legal, real estate advisory, executive recruiting, life settlements valuation / actuary, and other miscellaneous consulting services. On average, the

Debtor pays approximately $80,000 per month in Independent Contractor Compensation. As of the Petition Date, the Debtor estimates that it may owe up to $40,000 on account of accrued, unpaid Independent Contractor Compensation.

98. Importantly, the Debtor relies on the continuous support of Independent Contractors to handle and/or assist with projects and matters in furtherance of the Debtor's business. The Debtor believes the authority to continue paying the Independent Contractor Compensation, including any prepetition amounts, is critical to minimize disruption of the Debtor's operations. Accordingly, the Debtor seeks authority to satisfy any prepetition accrued but unpaid Independent Contractor Compensation up to $40,000 and continue to pay the Independent Contractor Compensation on a postpetition basis in the ordinary course of business and consistent with past practices.

viii. Direction to Banks and Financial Institutions

99. The Debtor also seeks an order authorizing its banks and other financial institutions (collectively, the "Banks") to receive, process, honor, and pay all of the Debtor's prepetition checks and fund transfers on account of any prepetition amounts owed on account of or relating to Workforce Compensation or the Benefit Programs, including all checks issued with regard to any Workforce Compensation and Benefit Programs, and prohibiting the Banks from placing any holds on, or attempting to reverse, any automatic transfers to any account of an Employee or other party for prepetition Workforce Compensation and Benefit Programs obligations. The Debtor also seeks an order authorizing the issuance of new postpetition checks or new postpetition funds transfers on account of prepetition Workforce Compensation and Benefit Program obligations to replace any prepetition checks or funds transfer requests that may

be dishonored or rejected, and to reimburse Employees or other applicable party for any fees or expenses incurred in connection with any rejected checks as a result of the Debtor's bankruptcy filing.

D. Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing Debtors to Pay Prepetition Claims of Critical Vendors and (B) Granting Related Relief (the "Critical Vendor Motion")

100. Through the Critical Vendor Motion, the Debtor seeks the entry of interim and final orders (a) authorizing, but not directing, the Debtor to pay certain prepetition claims (each a "Critical Vendor Claim" and, collectively, the "Critical Vendor Claims") of certain essential vendors and service providers (each, a "Critical Vendor" and, collectively, the "Critical Vendors") on an interim basis not to exceed $250,000 (the "Interim Critical Vendor Cap"), representing the critical expenditures the Debtor will need to make to Critical Vendors during the first four weeks of this case, and, on a final basis, not to exceed $1,000,000 (the "Critical Vendor Cap") and (b) granting related relief.

101. The Debtor's business relies on continuing access to and relationships with various vendors and service providers. Any disruption in the Debtor's access to the provision of critical goods and services to the Debtor would have a far-reaching and adverse economic and operational impact on its business.

102. The bulk of the remaining goods and services that the Debtor depends on are provided by a critical network of vendors and service providers that, for the most part, conduct business with the Debtor on an invoice by invoice or purchase order by purchase order basis, and not pursuant to long-term contracts. These vendors typically supply their customers with services and products on trade terms based on their experience with and perceived risk of

conducting business with such customers. The Debtor believes that it would be extremely difficult, if not impossible, to replace the Critical Vendors within a reasonable time without severe disruption to the Debtor's business. Such harm would likely far outweigh the cost of payment of the Critical Vendor Claims.

103. Hence, it is essential to the success of the Debtor's restructuring effort that it be able to maintain the flow of goods, and services to its business.

104. Further, as discussed in the Cash Management, the Debtor will be reimbursed for a substantial amount of the payments made to Critical Vendors from the Critical Vendor Cap.

105. The Debtor undertook a process to identify the Critical Vendors using the following criteria: (i) whether certain specifications prevent the Debtor from obtaining a vendor's goods or services from alternative sources within a reasonable timeframe; and (ii) if a vendor is not a sole-source or primary provider of services or products, whether the Debtor can continue to operate in the ordinary course while a replacement vendor is secured. As a result of their critical review and evaluation, the Debtor has identified a narrow subset of vendors as Critical Vendors.

106. The Debtor's Critical Vendors generally fall into the following categories:

a. Back Office Support Services. The Debtor contracts with certain services to assist in maintaining their back office and supporting the Debtor's investment team. These services consist of, for example, data providers that provide and manage intranet portals necessary to streamline information flow and data accuracy and other service providers that supply telephone services or warehouse necessary files or data.

b. Research Services. The Debtor's business consists of advising its clients on potential investments. To do that, the Debtor subscribes to various services that provide access to real-time data and analytics. These services enable the Debtor to provide accurate analysis of the investments they manage and to satisfy their fiduciary and other obligations to their clients as a registered investment advisor.

107. As of the Petition Date, the Debtor will owe amounts to certain Critical Vendors (a) that have been billed and invoiced and/or (b) that have accrued immediately prior to the Petition Date for which they have not yet been invoiced or payment is not yet due. The Debtor anticipates the total amount of Critical Vendor Claims will not exceed $1,000,000 of which $250,000 is being requested on an interim basis. As discussed above, a portion of that amount will also be reimbursed to the Debtor through the ordinary course of the Debtor's business.

108. Given the importance of the goods, and services provided by the Critical Vendors, it is imperative that the Debtor be granted, on an emergency basis, the flexibility and authority to satisfy the prepetition claims of the Critical Vendors up to the Interim Critical Vendor Cap and, if approved on a final basis, the Critical Vendor Cap.

E. Debtor's Motion for Entry of an Order (I) Extending Time to File Schedules of Assets and Liabilities, Schedules of Executory Contracts and Unexpired Leases, and Statements of Financial Affairs, and (II) Granting Related Relief (the "Schedules Extension Motion")

109. Through the Schedules Extension Motion, the Debtor seeks the entry of an order extending the deadline by which it must file its schedules of assets and liabilities, schedules of executory contracts and unexpired leases, and statement of financial affairs (collectively, the

"Schedules and Statements") by an additional thirty (30) days, for a total of fifty-eight (58) days from the Petition Date.

110. To prepare the Schedules and Statements, the Debtor must compile information from books, records, and documents relating to creditor claims, as well as the Debtor's various assets and contracts.

111. Given the amount of work entailed in completing the Schedules and Statements, the Debtor requires more time to complete the Schedules and Statements within the required time period. Accordingly, the Debtor requests that the Court grant the Schedules Extension Motion.

F. Motion of Debtor for Entry of Interim and Final Orders Authorizing Debtor to File Under Seal Portions of Its Creditor Matrix Containing Employee Address Information (the "Motion to Redact Employee Addresses")

112. Through the Motion to Redact Employee Addresses, the Debtor seeks the entry of an interim order and a final order: (a) authorizing the Debtor to file a redacted version of its creditor matrix without publicly disclosing employee address information, (b) authorizing the Debtor to file under seal an unredacted version of its creditor matrix, and (c) granting such other relief as the Court deems just and proper.

113. In the present case, the Debtor respectfully submits that cause exists to authorize the Debtor to redact the address information of individual employees from the creditor matrix because such information: (a) is private and confidential, (b) could be used to perpetrate identity theft – which has occurred in the past with certain of the Debtor's employees, (c) would potentially allow competitors to poach the Debtor's employees at the expense of this estate; and (d) could pose other risks to employees.

114. The benefit of including such information on the publicly filed matrix is far outweighed by the potential risks for the Debtor's individual employees.

115. If the relief requested in the Motion to Redact Employee Addresses is granted, the unredacted matrix will be filed and remain under seal until further order of the Court. The Debtor will share the unredacted matrix with the Office of the United States Trustee upon request and the Debtor proposes that any party-in-interest who seeks to review the unredacted matrix may submit a request in writing to the Debtor. If the Debtor and the party seeking access to the unredacted matrix are unable to reach agreement on the terms of reviewing the unredacted matrix, the party may seek the assistance of this Court by filing a motion and make an appropriate showing for the Court to evaluate whether or not the unredacted matrix should be made available and under what terms. Upon any such motion seeking access to the unredacted matrix, the Debtor could continue to try and resolve the matter or present its opposition to the Court for consideration at a hearing on appropriate notice.

116. Accordingly, the Debtor requests that the Court grant the Motion to Redact Employee Addresses.

[*Remainder of page intentionally left blank*]

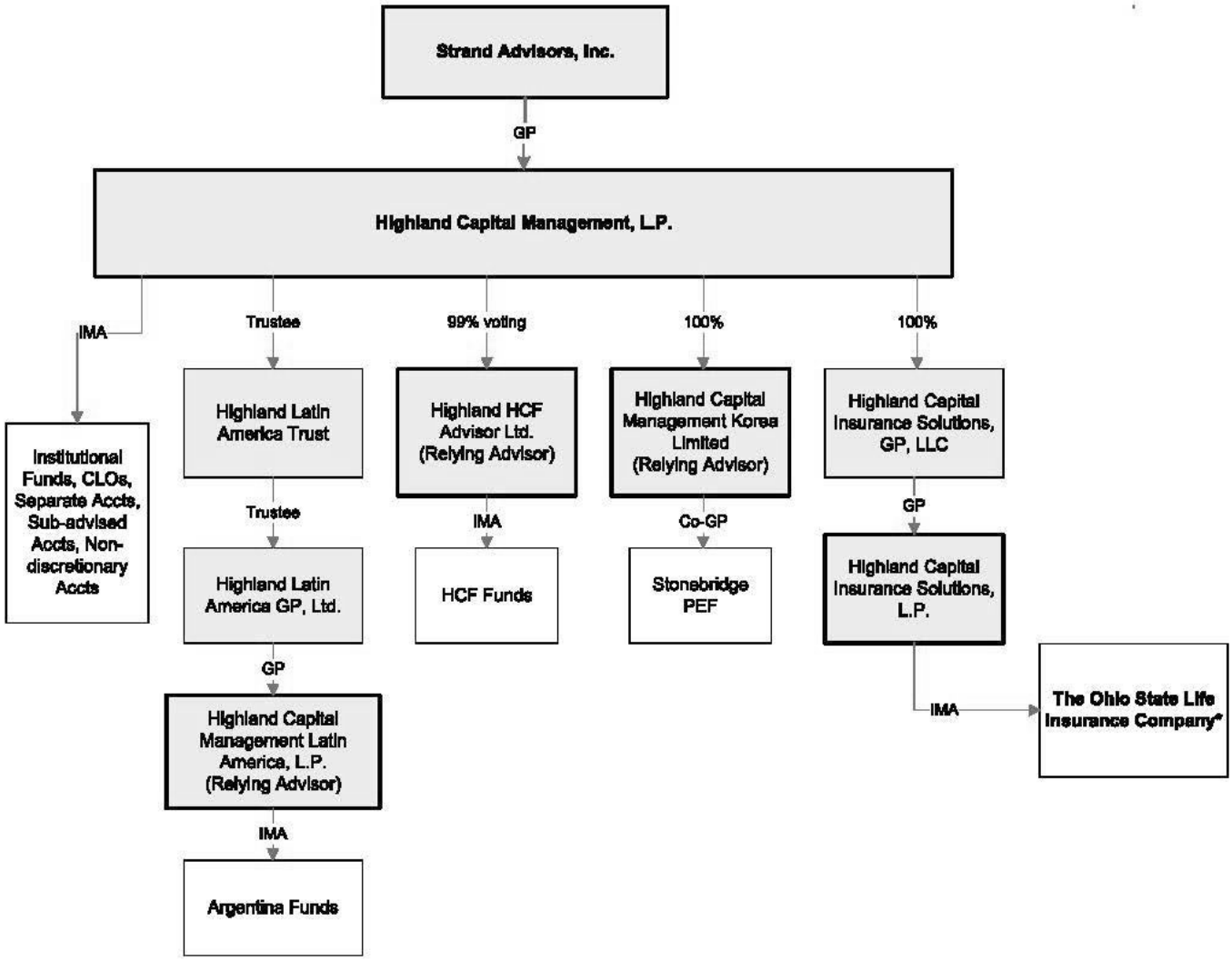
I declare under penalty of perjury under the United States of America that the foregoing is true and correct.

Executed this 16 day of October, 2019 at Dallas, Texas.

Frank Waterhouse

EXHIBIT A

Organizational Chart



The following constitutes the ruling of the court and has the force and effect therein described.

Signed March 2, 2020

United States Bankruptcy Judge

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	**Re: Docket No. 421**

ORDER (I) ESTABLISHING BAR DATES FOR FILING CLAIMS AND (II) APPROVING THE FORM AND MANNER OF NOTICE THEREOF

This matter coming before the Court on the *Debtor's Motion for an Order (i) Establishing Bar Dates for Filing Claims and (ii) Approving the Form and Manner of Notice Thereof* (the "Motion"),[2] filed by the above-captioned debtor (the "Debtor"); the Court having reviewed the Motion and having heard the statements of counsel regarding the relief requested in the Motion at a hearing, if any, before the Court (the "Hearing"); the Court finding that (i) the Court has

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

[2] Capitalized terms not otherwise defined herein have the meanings given to them in the Motion.

jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and (iii) notice of the Motion and the Hearing was sufficient under the circumstances; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Motion is **GRANTED** as set forth herein.

2. As used herein, (a) the term "claim" has the meaning given to it in section 101(5) of the Bankruptcy Code, (b) the term "entity" has the meaning given to it in section 101(15) of the Bankruptcy Code, and (c) the term "governmental units" has the meaning given to it in section 101(27) of the Bankruptcy Code.

3. The forms of the Bar Date Notice, the Publication Notice, the Proof of Claim Form, and the manner of providing notice of the Bar Dates proposed in the Motion, are approved in all respects. The form and manner of notice of the Bar Dates approved herein satisfy the notice requirements of the Bankruptcy Code and the Bankruptcy Rules. As such, the Debtor is authorized to serve the Bar Dates Notice Package in the manner described below.

4. The General Bar Date. Except as described below, all entities holding claims against the Debtor that arose before October 16, 2019 (the "Petition Date") shall file proofs of claim by the General Bar Date of **April 8, 2020 at 5:00 p.m. Central Time**. The General Bar Date applies to **all types of claims** against the Debtor that **arose prior to the Petition Date**, regardless of whether the claim would be legally classified as administrative, secured, priority (including, without limitation, claims entitled to priority under sections 503(b)(9), 507(a)(4), or 507(a)(5) of the Bankruptcy Code), or unsecured nonpriority claims.

5. The Fund Investor Bar Date. Except as described below, all investors in funds managed by the Debtor (the "Fund Investors") holding claims against the Debtor that arose before Petition Date shall file proofs of claim by the General Bar Date of **April 23, 2020 at 5:00 p.m. Central Time**. The Fund Investor Bar Date applies to **all types of claims** held by Fund Investors against the Debtor that **arose prior to the Petition Date**, regardless of whether the claim would be legally classified as administrative, secured, priority (including, without limitation, claims entitled to priority under sections 503(b)(9), 507(a)(4), or 507(a)(5) of the Bankruptcy Code), or unsecured nonpriority claims.

6. The Governmental Bar Date. Pursuant to section 502(b)(9) of the Bankruptcy Code, except as described below, all governmental units holding claims (whether secured, priority, or unsecured nonpriority) against the Debtor that arose before the Petition Date shall file proofs of claim by the Governmental Bar Date of April 13, 2020 at 5:00 p.m. Central Time.

7. The Rejection Bar Date. Any entity whose claims arise out of the Court-approved rejection of an executory contract or unexpired lease in accordance with section 365 of the Bankruptcy Code or any other order of the Court in this case, the Rejection Bar Date for such a claim will be the later of (a) the General Bar Date; (b) for executory contracts and unexpired leases rejected pursuant to a rejection motion or notice, twenty-one (21) days after the later of (i) the date of the rejection motion or notice, (ii) the date of the surrender of the leased property to the affected lessor, and (iii) any alternative date provided in the rejection motion or notice; or (c) any other date set by an order of the Court. The later of these dates is referred to in this order as the "Rejection Bar Date."

8. The Amended Schedules Bar Date. If the Debtor amends or supplements the Schedules (such Schedules, the "Amended Schedules") after the Service Date, the Debtor shall

give notice pursuant to Local Rule 1009-1(b) of any Amended Schedules to the holders of claims affected thereby, including notice of the Amended Schedules Bar Date to file proofs of claim in response to the amendment or supplement to the Schedules. If the Debtor amends or supplements its Schedules to reduce the undisputed, non-contingent, and liquidated amount, to change the nature, classification, or characterization of a claim against the Debtor, or to add a new claim in the Amended Schedules, any affected entities that dispute such changes must, by the Amended Schedules Bar Date, file a proof of claim or amend any previously filed proof of claim in respect of the Amended Schedules claim in accordance with the procedures described herein. The Amended Schedules Bar Date shall be the later of: (a) the General Bar Date; and (b) 30 days after the date that the notice of the Amended Schedules is served on the entity. The later of these dates is referred to in this order as the "Amended Schedules Bar Date."

9. Subject to the terms described in paragraphs 4, 5, 6, and 7 for holders of claims subject to the General Bar Date, Fund Investor Bar Date, Governmental Bar Date, Rejection Bar Date, and the Amended Schedules Bar Date, the following entities must file proofs of claim on or before the General Bar Date:

a. any entity (i) whose prepetition claim against the Debtor is not listed in the Debtor's Schedules or is listed as any of disputed, contingent, or unliquidated and (ii) that desires to share in any distribution in any of this case; and

b. any entity whose prepetition claim against the Debtor is included within the Debtor's Schedules but believes that its prepetition claim is improperly classified in the Schedules or is listed in an incorrect amount and that desires to have its claim allowed in a classification or amount different from the classification or amount identified in the Schedules.

10. The following entities, whose claims otherwise would be subject to the General Bar Date, the Fund Investor Bar Date or the Governmental Bar Date, need not file proofs of claim in this case:

a. any entity that already has filed a signed proof of claim against the Debtor in a form substantially similar to Official Bankruptcy Form No. 410 with: (i) the Clerk of the Bankruptcy Court for the District of Delaware and/or the Clerk of the Bankruptcy Court for the Northern District of Texas (Dallas) (ii) the Debtor's claims and noticing agent, Kurtzman Carson Consultants LLC (the "Claims Agent");

b. any entity (i) whose claim against the Debtor is not listed as "disputed", "contingent", or "unliquidated" in the Schedules or Amended Schedules and (ii) agrees with the nature, classification, and amount of its claim as identified in the Schedules or Amended Schedules; and

c. any entity whose claim against the Debtor previously has been allowed by, or paid pursuant to, an order of the Court.

11. Parties asserting claims against the Debtor that accrued before the Petition Date shall use either (a) the modified proof of claim form provided by the Debtor, as described in the Motion, (b) Official Bankruptcy Form No. 410, or (c) a form substantially similar to Official Bankruptcy Form No. 410 (each a "Proof of Claim Form").

12. The filing of a Proof of Claim Form shall be deemed to satisfy the procedural requirements for the assertion of administrative priority claims under section 503(b)(9) of the Bankruptcy Code.

13. The following procedures for the filing of a Proof of Claim Form (the "Form") shall apply:

a. Entities shall file each Proof of Claim Form so they are received on or before the applicable Bar Dates either

1. electronically with the Claims Agent via the interface available at www.kccllc.net/HCMLP;

or

2. via U.S. mail or other hand delivery method to the following address:

HCMLP Claims Processing Center
c/o KCC

222 N. Pacific Coast Highway, Suite 300
El Segundo, CA 90245

b. Forms will be deemed filed when actually received by the Debtor's Claims Agent. Forms may not be delivered via facsimile or electronic mail transmission.

c. Forms will be collected, docketed, and maintained by the Claims Agent.

d. All Forms shall be signed by the claimant or, if the claimant is not an individual, by an authorized agent of the claimant. The Form shall be written in English and be denominated in United States currency. Claimants should attach to the completed form any documents on which the claim is based (or, if such documents are voluminous, attach a summary) or an explanation as to why the documents are not available.

14. Any entity holding an interest in the Debtor (an "Interest Holder"), which interest is based exclusively upon the ownership of: (a) common or preferred stock in the Debtor; or (b) warrants or rights to purchase, sell, or subscribe to such a security or interest of the Debtor (any such security or interest being referred to herein as an "Interest"), need not file a proof of claim or proof of interest on or before the General Bar Date on account of such Interest; provided, however, Interest Holders who want to assert claims against the Debtor that arise out of or relate to the ownership or purchase of an Interest, including claims arising out of or relating to the sale, issuance, or distribution of the Interest, shall file a claim by the applicable Bar Dates, unless another exception identified in this order applies.

15. The Debtor shall retain the right to: (a) dispute, or assert offsets or defenses against, any filed proofs of claim, or any claim listed or reflected in the Schedules, as to nature, amount, liability, classification, or otherwise; (b) subsequently designate any scheduled claim as disputed, contingent, or unliquidated; and (c) otherwise amend or supplement the Schedules. If the Debtor subsequently amends or supplements the Schedules, the Debtor shall give notice of any Amended Schedules to the holders of claims affected thereby, including notice of the Amended Schedules

Bar Date to file proofs of claim in response to the Amended Schedules. Notwithstanding the foregoing, nothing contained herein shall preclude the Debtor from objecting to any claim, whether scheduled or filed, on any grounds.

16. Any entity that is required to file a Proof of Claim Form but fails to so properly by the applicable Bar Date, shall not be treated as a creditor with respect to such claim for purposes of voting upon, or receiving distributions under, any chapter 11 plan in this case.

17. No later than three (3) business days after the entry of this Order, the Debtor shall serve the Bar Dates Notice Package, including a copy of the Bar Date Notice attached hereto as **Exhibit 1**, and a Proof of Claim Form, either (1) by first-class mail, postage prepaid (unless specified otherwise herein) means on:

a. all known holders of claims or potential claims, including all entities listed in the Schedules as potentially holding claims;

b. Fund Investors by electronic means through fund administrators; provided further that the Bar Dates Notice Package to Fund Investors shall also include a cover letter in the form attached hereto as **Exhibit 2**.

c. the Office of the United States Trustee for the Northern District of Texas (Dallas);

d. counsel to the Committee of Unsecured Creditors;

e. all parties that have requested notice in this case pursuant to Bankruptcy Rule 2002 as of the date of the entry of the Bar Dates Order;

f. all counterparties to executory contracts and unexpired leases of the Debtor;

g. all parties to litigation with the Debtor;

h. the District Director of Internal Revenue for the Northern District of Texas (Dallas) and all other taxing authorities for the jurisdictions in which the Debtor conducts business;

i. all relevant state attorneys general;

j. all holders of record of any Interests in any of the Debtor as of the date of the Bar Date Order (although copies of the Proof of Claim Form will not be provided to them); and

k. such additional persons and entities as deemed appropriate by the Debtor.

18. The Proof of Claim Form mailed to such entities will indicate how the Debtor has scheduled the creditor's claim in the Schedules, including: (a) the identity of the Debtor against which the entity's claim is scheduled; (b) the amount of the claim, if any; (c) whether the claim is listed as disputed, contingent, or unliquidated; and (d) whether the claim is listed as a secured, unsecured non-priority, or unsecured priority claim. The Proof of Claim Form will also include a section for 503(b)(9) claims. Any entity that relies on the information in the Schedules will bear responsibility for determining that its claim is accurately listed therein.

19. Pursuant to Bankruptcy Rules 2002(l) and 9008, as soon as practicable after the Service Date, the Debtor shall publish notice of the Bar Dates substantially in the form attached to the Motion as Exhibit B (the "Publication Notice") two (2) times each in (a) the national edition of either *The New York Times* or *The Wall Street Journal* and (b) *The Dallas Morning News* as a means to provide notice of the Bar Dates to such unknown potential claimants.

20. The Debtor and the Claims Agent are authorized and empowered to take such steps and perform such acts as may be necessary to implement and effectuate the terms of this order.

21. The entry of this order is without prejudice to the right of the Debtor to seek a further order of this Court fixing a date by which holders of claims or interests not subject to the Bar Dates established herein shall file proofs of claim or interest.

22. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this order.

END OF ORDER

EXHIBIT 1

[Bar Date Notice]

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	

NOTICE OF BAR DATES FOR FILING CLAIMS

A HOLDER OF A POSSIBLE CLAIM AGAINST THE DEBTOR SHOULD CONSULT AN ATTORNEY REGARDING ANY MATTERS NOT COVERED BY THIS NOTICE, SUCH AS WHETHER THE HOLDER SHOULD FILE A PROOF OF CLAIM.

TO ALL KNOWN CREDITORS OF THE ABOVE-CAPTIONED ENTITY (THE "DEBTOR"):

On [_____], 2020, the United States Bankruptcy Court for the Northern District of Texas (Dallas) (the "Court") entered an order (the "Bar Date Order") in the above-captioned chapter 11 case establishing certain claims bar dates.

Pursuant to the Bar Date Order, the Court has established April 8, 2020 at 5:00 p.m., Central Time as the general bar date (the "General Bar Date") for filing claims in the Debtor's chapter 11 case.

As used in this Notice, the term "entity" has the meaning given to it in section 101(15) of the Bankruptcy Code, 11 U.S.C. §§ 101, et seq. (the "Bankruptcy Code"), and includes all persons, estates, trusts, governmental units, and the United States Trustee. In addition, the terms "persons" and "governmental units" are defined as set forth in sections 101(41) and 101(27) of the Bankruptcy Code, respectively.

As used in this notice, the term "claim" means, as to or against the Debtor and in accordance with section 101(5) of the Bankruptcy Code: (i) any right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (ii) any right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

THE BAR DATES

The Bar Date Order established the following bar dates for filing proofs of claim in this case (collectively, the "Bar Dates"):

a. The General Bar Date. Pursuant to the Bar Date Order, except as described below, all entities holding claims, whether administrative, secured, priority (including, without limitation, claims entitled to priority under sections 503(b)(9), 507(a)(4), or 507(a)(5) of the Bankruptcy Code), or unsecured nonpriority claims against the Debtor that arose before October 16, 2019 (the "Petition Date") must file proofs of claim by the General Bar Date of **April 8, 2020 at 5:00 p.m. Central Time**.

b. The Fund Investor Bar Date. Pursuant to the Bar Date Order, all investors in funds managed by the Debtor (the "Fund Investors") holding claims (whether secured, unsecured, priority, or unsecured nonpriority) against the Debtor that arose before the Petition Date shall file proofs of claim by the Fund Investor Bar Date of **April 23, 2020 at 5:00 p.m. Central Time**.

c. The Governmental Bar Date. Pursuant to the Bar Date Order, except as described below, all governmental units holding claims (whether secured, unsecured, priority, or unsecured nonpriority) against the Debtor that arose before the Petition Date must file proofs of claim by the Governmental Bar Date of **[_____], 2020 at 5:00 p.m. Central Time**.

d. The Rejection Bar Date. Any entity whose claims arise out of the Court-approved rejection of an executory contract or unexpired lease, or as authorized by any order of the Court in this case, the Rejection Bar Date for such a claim will be the later of (a) the General Bar Date; (b) for executory contracts and unexpired leases rejected pursuant to a rejection motion, twenty-one (21) days after the later of (i) the date of the rejection motion, (ii) the date of the surrender of the leased property to the affected lessor, and (iii) any alternative date provided in the rejection motion; and (c) any other date set by an order of the Court. The later of these dates is referred to in this notice as the "Rejection Bar Date."

e. The Amended Schedules Bar Date. If, subsequent to the mailing date of this notice, the Debtor amends or supplements its Schedules of Assets and Liabilities (the "Schedules") to reduce the undisputed, non-contingent, and liquidated amount or to change the nature, classification, or characterization of a claim against the Debtor reflected therein, any affected entities that dispute such amendments or supplements to the Schedules (such Schedules, the "Amended Schedules") are required to file a proof of claim or amend any previously filed proof of claim in respect of the Amended Schedules claim on or before the later of: (a) the General Bar Date; and (b) 30 days after the date that notice of the applicable Amended Schedules is served on the claimant. The later of these dates is referred to in this notice as the "Amended Schedules Bar Date."

FILING CLAIMS

1. WHO MUST FILE

Subject to the terms described above for holders of claims subject to the General Bar Date, the Fund Investor Bar Date, Governmental Bar Date, Rejection Bar Date, and the Amended Schedules Bar Date, the following entities must file proofs of claim on or before the General Bar Date:

a. any entity (i) whose prepetition claim against the Debtor is not listed in the Debtor's Schedules or is listed as any of disputed, contingent, or unliquidated and (ii) that desires to share in any distribution in any of this case; and

b. any entity whose prepetition claim against the Debtor is included within the Debtor's Schedules but believes that its prepetition claim is improperly classified in the Schedules or is listed in an incorrect amount and that desires to have its claim allowed in a classification or amount different from the classification or amount identified in the Schedules.

2. WHAT TO FILE

The Debtor is enclosing a proof of claim form for use in this case, or you may use another proof of claim form that conforms substantially to Official Bankruptcy Form No. 410. If your claim is scheduled by the Debtor, the attached proof of claim form also sets forth: (i) the amount of your claim (if any) as scheduled; (ii) the Debtor against which the claim is scheduled; (iii) whether your claim is scheduled as disputed, contingent, or unliquidated; and (iv) whether your claim is listed as a secured, unsecured priority, or unsecured nonpriority claim. You will receive a different proof of claim form for each claim scheduled in your name by the Debtor. You may utilize the proof of claim form(s) provided by the Debtor to file your claim. Additional proof of claim forms may be obtained at the following websites: www.kccllc.net/HCMLP (the "Claim Agent Website") or http://www.uscourts.gov/forms/bankruptcy-forms/proof-claim-0.

3. WHEN AND WHERE TO FILE

Entities must file each Proof of Claim Form so they are received on or before the applicable Bar Dates either (a) electronically with Kurtzman Carson Consultants LLC (the "Claims Agent") via the interface available at www.kccllc.net/HCMLP or (b) via U.S. mail or other hand delivery method to the following address:

HCMLP Claims Processing Center
c/o KCC
222 N. Pacific Coast Highway, Suite 300
El Segundo, CA 90245

Proof of Claim Forms will be deemed filed when **actually received** by the Claims Agent on or before the applicable Bar Date. **Proof of Claim Forms may not be delivered via facsimile or electronic mail transmission**.

Proof of Claim Forms will be collected, docketed, and maintained by the Claims Agent. If you want to receive acknowledgement of the Claims Agent's receipt of a Proof of Claim Form, you must submit by the applicable Bar Date, and concurrently with submitting your original Proof of Claim Form, (i) a copy of the original Proof of Claim Form and (ii) a self-addressed, postage prepaid return envelope.

All forms must be **signed** by the claimant or, if the claimant is not an individual, by an authorized agent of the claimant. The form must be written in English and be denominated in United States currency. You should attach to your completed form any documents on which the claim is based (or, if such documents are voluminous, attach a summary) or an explanation as to why the documents are not available.

4. ENTITIES NOT REQUIRED TO FILE A CLAIM

The Bar Date Order further provides that the following entities, whose claims otherwise would be subject to the General Bar Date, the Fund Investor Bar Date or the Governmental Bar Date, need not file claims in this case:

a. any entity that already has filed a signed proof of claim against the Debtor in a form substantially similar to Official Bankruptcy Form No. 410 with: (i) the Clerk of the Bankruptcy Court for the District of Delaware and/or Clerk of the Bankruptcy Court for the Northern District of Texas (Dallas) (ii) the Debtor's Claims Agent;

b. any entity (i) whose claim against the Debtor is not listed as "disputed", "contingent", or "unliquidated" in the Schedules or Amended Schedules and (ii) agrees with the nature, classification and amount of its claim as identified in the Schedules or Amended Schedules; and

c. any entity whose claim against the Debtor previously has been allowed by, or paid pursuant to, an order of the Court.

NO REQUIREMENT FOR STOCKHOLDERS TO FILE PROOFS OF INTEREST

Any entity holding an interest in the Debtor (an "Interest Holder"), which interest is based exclusively upon the ownership of: (i) common or preferred stock in the Debtor; or (ii) warrants or rights to purchase, sell, or subscribe to such a security or interest of the Debtor (any such security or interest being referred to herein as an "Interest"), need not file a proof of claim or proof of interest on or before the General Bar Date on account of such Interest; provided, however, Interest Holders who want to assert claims against the Debtor that arise out of or relate to the ownership or purchase of an Interest, including claims arising out of or relating to the sale, issuance, or distribution of the Interest, must file a claim by the applicable Bar Dates, unless another exception identified in the Motion applies.

CONSEQUENCES OF FAILURE TO FILE A CLAIM

Any entity that is required to file a Proof of Claim Form but fails to do so properly by the applicable Bar Date shall not be treated as a creditor with respect to such claim for purposes of voting upon, or receiving distributions under, any chapter 11 plan in this case.

RESERVATION OF RIGHTS

The Debtor retains the right to: (i) dispute, or assert offsets or defenses against, any filed proofs of claim, or any claim listed or reflected in the Schedules, as to nature, amount, liability, classification, or otherwise; (ii) subsequently designate any scheduled claim as disputed, contingent, or unliquidated; and (iii) otherwise amend or supplement the Schedules. Notwithstanding the foregoing, nothing contained herein shall preclude the Debtor from objecting to any claim, whether scheduled or filed, on any grounds.

ADDITIONAL INFORMATION

If you require additional information regarding the filing of a claim, you may contact the Claims Agent at 877-573-3984 (310-751-1829 for international calls) or by submitting an inquiry at www.kccllc.net/HCMLP. Copies of the Bar Date Order and other information regarding the Debtor's chapter 11 case are available for inspection free of charge on the Claims Agent's website at: www.kccllc.net/HCMLP.

The Claims Agent cannot advise you how to file, or whether you should file, a claim. You may wish to consult an attorney regarding this matter.

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Dated: February __, 2020.

PACHULSKI STANG ZIEHL & JONES LLP

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Counsel and Proposed Counsel for the Debtor and Debtor-in-Possession

EXHIBIT 2

[Cover Letter]

HIGHLAND CAPITAL MANAGEMENT

February ___, 2020

ATTENTION CUSTODIANS: THIS CORRESPONDENCE CONTAINS CLAIM DEADLINE INFORMATION. PLEASE FORWARD THIS LETTER, THE ATTACHED NOTICE AND CLAIM FORM TO YOUR CLIENTS WITHIN FIVE (5) BUSINESS DAYS OF RECEIPT.

To Investors in funds managed by Highland Capital Management, L.P.

On October 16, 2019, Highland Capital Management, L.P. (the "Company") filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Company's bankruptcy case is pending in the United States Bankruptcy Court for the Northern District of Texas Dallas Division (the "Bankruptcy Court") at Case No. 19-34054-sgj11.

On February___, 2020, the Bankruptcy Court entered an order (the "Bar Date Order") establishing certain deadlines for filing claims against the Company. Included with this letter is a Notice of Bar Dates for Filing Claims (the "Notice"). Please review the Notice carefully.

The Notice provides additional information about how to file a claim. A Proof of Claim form is also included.

The Bankruptcy Court set **April 8, 2020** as the **General Bar Date** and **April 23, 2020** as the bar date for investors in funds managed by the Company ("**Fund Investor Bar Date**"). These are the deadlines to file claims against the Company that arose before October 16, 2020. Please take note that the claim bar dates are applicable to claims you may have against Highland Capital Management, L.P. and not against any other party. It is not necessary to file a claim based exclusively on your ownership interest in funds unless you believe you have a claim against Highland Capital Management, L.P.

HIGHLAND CAPITAL MANAGEMENT

I

If you require additional information regarding the filing of a claim, you may contact the Claims Agent at 877-573-3984 (310-751-1829 for international calls) or by submitting an inquiry at www.kccllc.net/HCMLP. Copies of the Bar Date Order and other information regarding the Debtor's chapter 11 case are available for inspection free of charge on the Claims Agent's website at: www.kccllc.net/HCMLP.

The Claims Agent cannot advise you how to file, or whether you should file, a claim. You may wish to consult an attorney regarding this matter.

Investor Relations

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No.143717) (*admitted pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)
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Counsel for the Debtor and Debtor-in-Possession

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	

DECLARATION OF JOHN A. MORRIS IN SUPPORT OF THE DEBTOR'S MOTION FOR ENTRY OF AN ORDER APPROVING SETTLEMENTS WITH (A) THE REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND (CLAIM NO. 72), AND (B) THE HIGHLAND CRUSADER FUNDS (CLAIM NO. 81), AND AUTHORIZING ACTIONS CONSISTENT THEREWITH

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

I, John A. Morris, pursuant to 28 U.S.C. § 1746(a), under penalty of perjury, declare as follows:

1. I am a partner in the law firm Pachulski, Stang, Ziehl & Jones LLP, counsel to the above-referenced Debtor, and I submit this Declaration in support of the *Debtor's Motion for Entry of an Order Approving Settlement with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith* being filed concurrently with this Declaration. I submit this Declaration based on my personal knowledge and review of the documents listed below.

2. Attached as **Exhibit 1** is a true and correct copy of a Stipulation entered between and among (i) Highland Capital Management, L.P. ("HCMLP"), (ii) Eames, Ltd., (iii) the Redeemer Committee of the Highland Crusader Fund (the "Redeemer Committee"), and (iv) Highland Crusader Offshore Partners, L.P., Highland Crusader Fund, L.P., Highland Crusader Fund, Ltd., and Highland Crusader Fund II, Ltd. (together, the "Crusader Funds").

3. Attached as **Exhibit 2** is a true and correct copy of a *Partial Final Award*, dated March 6, 2019, and rendered in the arbitration between the Redeemer Committee and HCMLP, Case No. 1-16-0002-6927 (the "Arbitration").

4. Attached as **Exhibit 3** is a true and correct copy of a *Disposition of Application of Modification of Award*, dated March 14, 2019, and rendered in the Arbitration.

5. Attached as **Exhibit 4** is a true and correct copy of a *Final Award*, dated as of April 29, 2019, and rendered in the Arbitration.

6. Attached as **Exhibit 5** is a true and correct copy of a proof of claim filed by the Redeemer Committee on April 3, 2020 and denoted by the Debtor's claims agent as claim number 72.

7. Attached as **Exhibit 6** is a true and correct copy of a proof of claim filed by the Crusader Funds on April 6, 2020 and denoted by the Debtor's claims agent as claim number 81.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Dated: September 23, 2020.

/s/ John A. Morris
John A. Morris

EXHIBIT 1

This stipulation (the "Stipulation") is made and entered into by and among (i) Highland Capital Management, L.P., as debtor and debtor-in-possession (the "Debtor"), (ii) Eames, Ltd., ("Eames"), (iii) the Redeemer Committee of the Highland Crusader Fund (the "Redeemer Committee"), (iv) Highland Crusader Offshore Partners, L.P., Highland Crusader Fund, L.P., Highland Crusader Fund, Ltd., and Highland Crusader Fund II, Ltd. (collectively, the "Crusader Funds" and together with the Debtor, Eames, and the Redeemer Committee, the "Parties"), (v) solely with respect to paragraphs 10 through 15 of this Stipulation, Hockney, Ltd., Strand Advisors, Inc., Highland Special Opportunities Holding Company ("SOHC"), Highland CDO Opportunity Master Fund, L.P., Highland Financial Partners, L.P. ("HFPLP" and together with SOHC, the "Contingent Parties"), Highland Credit Strategies Master Fund, L.P., and Highland Credit Opportunities CDO, L.P. (collectively, the "Highland Additional Release Parties"), and (vi) solely with respect to paragraphs 10 through 15 of this Stipulation, House Hanover, LLC, and Alvarez & Marsal CRF Management, LLC, (collectively, the "Crusader Additional Release Parties," and together with the Highland Additional Release Parties, the "Additional Release Parties"). This Stipulation provides for the allowance of general unsecured claims against the Debtor, for the Debtor and Eames to consent to the Redeemer Committee and the Crusader Funds implementing certain terms of the Arbitration Award (as defined below), and for the Debtor to take certain actions in connection with such implementation.

RECITALS

WHEREAS, on October 16, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief under title 11 of the United States Code (the "Bankruptcy Code"). The Debtor is managing and operating its business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, the Debtor's chapter 11 case is pending in the Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court");

WHEREAS, the Debtor served as the investment manager for the Crusader Funds until August 4, 2016, as of which date the Redeemer Committee, as set forth in a letter and notice dated July 5, 2016, terminated the Debtor;

WHEREAS, on July 5, 2016, the Redeemer Committee commenced an arbitration against the Debtor by filing a Notice of Claim with the American Arbitration Association in which it asserted various claims arising from the Debtor's service as the investment manager for the Crusader Funds (the "Arbitration");

WHEREAS, following an evidentiary hearing during the Arbitration, the panel of arbitrators issued (a) a *Partial Final Award,* dated March 6, 2019 (the "March Award"), (b) a *Disposition of Application for Modification of Award,* dated March 14, 2019 (the "Modification Award"); and (c) a *Final Award,* dated May 9, 2019 (the "Final Award," and together with the March Award and the Modification Award, the "Arbitration Award");

WHEREAS, as of the Petition Date, the aggregate amount of the damages awarded under the Arbitration Award, including the accrual of pre-judgment interest but before applying any offsets, was $190,824,557, which amount includes the Debtor's obligation to purchase the shares of Cornerstone Healthcare Group ("Cornerstone") that are held by the Crusader Funds in exchange for the sum of (a) $48,070,407 million in cash, and (b) accrued pre-judgment interest on such amount;

WHEREAS, in addition to awarding monetary damages, the Arbitration Award also provided for, among other things, (i) the cancellation of all limited partnership interests or shares in the Crusader Funds that are held by the Debtor, Eames, and Charitable DAF Fund, L.P.

("Charitable DAF"), respectively, and (ii) the Crusader Fund to disburse the funds held in the Deferred Fee Account[1] to the Consenting Compulsory Redeemers;

WHEREAS, on April 3, 2020, the Redeemer Committee filed a proof of claim in respect of the Arbitration Award, Proof of Claim number 72 ("Claim 72");

WHEREAS, on April 6, 2020, the Crusader Funds filed a proof of claim, Proof of Claim number 81 ("Claim 81") that asserted a claim in the alternative to the Redeemer Committee Proof of Claim for at least $23,483,446 in respect of certain fees that the Crusader Funds had paid to the Debtor prior to the Debtor being terminated (the "Crusader Funds Fee Claim");

WHEREAS, the Debtor has asserted that it is entitled to certain credits or offsets with respect to the damages provided in the Arbitration Award, and that it is has certain meritorious defenses with respect to the Crusader Funds Fee Claim;

WHEREAS, the Parties have agreed to settle and resolve all claims and disputes between and among them, including Claim 72 and Claim 81, and for the Redeemer Committee and the Crusader Funds to implement certain relief granted in the Arbitration Award on the terms and conditions set forth in this Stipulation, and the Parties and the Additional Release Parties have agreed to exchange the mutual releases set forth herein:

AGREEMENT

NOW, THEREFORE, after good-faith, arms-length negotiations, in consideration of the foregoing, it is hereby stipulated and agreed that:

1. Claim 72 shall be allowed in the amount of $137,696,610 as a general unsecured claim.

[1] All capitalized terms not defined herein shall have the meanings given to such terms in (i) the Arbitration Award and (ii) the Joint Plan of Distribution of the Crusader Funds, and the Scheme of Arrangement between Highland Crusader Fund II, Ltd. and its Scheme Creditors (together, the "Crusader Plan").

2. Claim 81 shall be allowed in the amount of $50,000 as a general unsecured claim.

3. The Debtor and Eames each consent to the Crusader Funds, on or after the date an order of the Bankruptcy Court approving this Stipulation pursuant to Federal Rule of Bankruptcy Procedure 9019 and section 363 of the Bankruptcy Code becomes a final and non-appealable order (the "Stipulation Effective Date"), cancelling or extinguishing all of the limited partnership interests and shares in the Crusader Funds held by each of them respectively (collectively, the "Cancelled Highland and Eames Interests"), as provided for in the Arbitration Award. Each of the Debtor and Eames represents solely for itself that (a) it has the authority to consent to the cancellation or extinguishment of the Cancelled Highland and Eames Interests that it holds, and (b) upon the occurrence of the Stipulation Effective Date, no other actions by or on behalf of it are necessary for such cancellation or extinguishment. Each of the Debtor and Eames agrees that it will not object to the Crusader Funds, on or after the Stipulation Effective Date, cancelling or extinguishing the limited partnership interests or shares in the Crusader Funds held by Charitable DAF (the "Cancelled DAF Interests," and together with the Cancelled Highland and Eames Interests, the "Cancelled LP Interests"). Each of the Debtor and Eames acknowledges that the cancellation or extinguishment of the Cancelled LP Interests is intended to implement Sections F.a.v and F.a.x.2 of the Final Award.[2]

4. The Parties acknowledge that the limited partnership interests or shares in the Crusader Funds held by the following entities and individuals shall not be extinguished pursuant to this Stipulation: Highland Capital Management Multi-Strategy Insurance Dedicated Fund, L.P.; Highland Capital Management Services; Highland 401(k) Plan; Highland 401(k) Plan Retirement Plan and Trust; Highland 401(k) Plan Retirement Plan and Trust II; James Dondero;

[2] *See also* March Award §§ III(H)(25), VII(C)(2).

and Mark Okada (collectively, the "Retained LP Interests").

5. Each of the Debtor and Eames acknowledges and agrees that (a) the Crusader Funds have reserved (i) distributions that, absent the Arbitration Award, would have been payable in respect of the Cancelled LP Interests, (ii) funds in respect of Deferred Fees and the Deferred Fee Account that, absent the Debtor's termination as investment manager for the Crusader Funds and the Arbitration Award, may have been payable to the Debtor in accordance with the Crusader Plan and (iii) certain other monies as to which the Debtor and Eames may have had an interest in the absence of this Stipulation (the reserved distributions and funds described in subparagraphs (i), (ii) and (iii), collectively, the "Reserved Distributions"); (b) the Crusader Funds, after the Stipulation Effective Date, intend to distribute in accordance with the Crusader Plan to the applicable holders of limited partnership interests or shares in the Crusader Funds the Reserved Distributions, and that the Debtor, Eames, and Charitable DAF shall not receive any part of such distribution; and (c) after giving effect to the cancellation or extinguishment of the Cancelled LP Interests, none of the Debtor, Eames, or Charitable DAF shall receive any further distributions, payments or fees from the Crusader Funds, including without limitation the Reserved Distributions, on account of any of the Cancelled LP Interests or any other role or position of the Debtor with respect to the Crusader Funds (including but not limited to its role as the investment manager for the Crusader Funds until August 4, 2016). The Debtor acknowledges and agrees that, beginning as of the Stipulation Effective Date, it will not receive any payments from the Crusader Funds in respect of any Deferred Fees, Distribution Fees, or Management Fees. Without limiting the foregoing, the Parties acknowledge and agree that the funds described in the first sentence of this paragraph include monies held in reserve with respect to the Reserved Distributions, the Deferred Fee Account, any Deferred Fees currently accrued or that might have

accrued in the future, any Distribution Fees, and any Management Fees.

6. The Debtor represents that, to its actual knowledge and subject to paragraph 4 above, it does not control any fund, or hold any equity interest in any entity, that holds a claim against the Crusader Funds or the Redeemer Committee (including any claims in respect of the Cornerstone shares held by the Crusader Funds, but excluding, with respect to the Crusader Funds, the right to receive distributions with respect to the Retained LP Interests).

7. On the Stipulation Effective Date, the Amended and Restated Shareholders Agreement, substantially in the form attached as Exhibit A, which shall have been executed by all parties thereto, shall be jointly released by the Parties from escrow and become effective (as executed, the "Cornerstone Shareholders Agreement"). In the event that such fully executed agreement is not released from escrow on the Stipulation Effective Date for any reason other than the Redeemer Committee or the Crusader Funds not authorizing such agreement's release from escrow, then this Stipulation shall be of no force and effect, and this Stipulation (including the agreements and settlements incorporated herein) may not be used by any Party for any purpose.

8. Except as otherwise provided in a plan of reorganization proposed by the Debtor and or other entities and agreed to by the Redeemer Committee, the Debtor shall, in good faith, use commercially reasonable efforts to monetize all shares of capital stock of Cornerstone held by the Debtor, any funds that the Debtor manages, and the Crusader Funds (collectively, the "Cornerstone Shares"), in accordance with the schedule attached hereto as Exhibit B (the "Schedule"), in order to maximize, to the extent possible under the circumstances, the proceeds of such monetization to each such entity. [redacted]

[redacted]

9. The Debtor shall instruct the claims agent in the Debtor's chapter 11 case to adjust the claims register in accordance with this Stipulation.

10. On the Stipulation Effective Date, the following releases shall take effect:

A. To the maximum extent permitted by applicable law, the Debtor, and each Highland Additional Release Party, irrevocably releases, acquits, exonerates, and forever discharges (i) the Redeemer Committee, each of the Crusader Funds, and each of the Crusader Additional Release Parties, and (ii) with respect to each such person set forth in (i) above, such person's predecessors, successors, assigns and affiliates (whether by operation of law or otherwise), and each of their respective present and former members, officers, directors, employees, managers, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, employees, subsidiaries, divisions, management companies, and other representatives, in each case acting in such capacity, from all manner of actions, whether in law, in equity, or statutory, and whether presently known or unknown, matured or contingent, liquidated or unliquidated, including any claims, defenses, and affirmative defenses which were or could have been asserted

[redacted]

with respect to: (a) the Crusader Funds, including but not limited to any claims, defenses, and affirmative defenses which were or could have been brought, or which otherwise concern or are related to: (i) the Arbitration, (ii) the Debtor's service as investment manager or General Partner for the Crusader Funds, (iii) Alvarez & Marsal CRF Management, LLC's service as replacement manager of the Crusader Funds, (iv) House Hanover, LLC, as General Partner of the Crusader Funds, (v) the Cancelled LP Interests, and (vi) any distributions or payments with respect to the Deferred Fee Account, Deferred Fees, Management Fees, Distribution Fees, or Reserved Distributions, and (b) the alleged fraudulent transfers and all other claims asserted by UBS Securities LLC and UBS AG, London Branch (collectively, "UBS") in *UBS Securities LLC, et al v. Highland Capital Mgmt., L.P., et al*, No. 650097-2009 (N.Y. Sup. Ct.) or by UBS in the Debtor's chapter 11 case (collectively, the "UBS Claims"), including but not limited to claims that the Debtor or any Additional Highland Release Party could assert for contribution, indemnity or joint tortfeasor liability in connection with the UBS Claims; provided, however, that such release shall not apply with respect to the obligations of the Redeemer Committee, each of the Crusader Funds, or each of the Crusader Additional Release Parties pursuant to this Stipulation, including Exhibit B hereto, and the Cornerstone Shareholders Agreement.

B. To the maximum extent permitted by applicable law, the Redeemer Committee, each of the Crusader Funds, and each Crusader Additional Release Party irrevocably releases, acquits, exonerates, and forever discharges (i) the Debtor, Eames, and each Highland Additional Release Party, and (ii) with respect to each such person set forth in (i) above, such person's predecessors, successors, assigns and affiliates (whether by operation of law or otherwise), and each of their respective present and former members, officers, directors, employees, managers, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, employees, subsidiaries, divisions, management companies, and other representatives, in each case acting in such capacity, from all manner of actions, whether in law, in equity, or statutory, and whether presently known or unknown, matured or contingent, liquidated or unliquidated, including any claims, defenses, and affirmative defenses which were or could have been asserted with respect to: (a) the Crusader Funds, including but not limited to any claims, defenses, and affirmative defenses which were or could have been brought, or which otherwise concern or are related to: (i) the Arbitration, (ii) the Debtor's service as investment manager or General Partner for the Crusader Funds, (iii) the Cancelled LP Interests, and (iv) any distributions or payments with respect to the Deferred Fee Account, Deferred Fees, Management Fees, Distribution Fees, or Reserved Distributions, and (b) the alleged fraudulent transfers and all other claims

asserted by UBS Securities LLC and UBS AG, London Branch (collectively, "UBS") in *UBS Securities LLC, et al v. Highland Capital Mgmt., L.P., et al*, No. 650097-2009 (N.Y. Sup. Ct.) or by UBS in the Debtor's chapter 11 case (collectively, the "UBS Claims"), including but not limited to claims that the Redeemer Committee, the Crusader Funds, or any Additional Crusader Release Party could assert for contribution, indemnity or joint tortfeasor liability in connection with the UBS Claims; provided, however, that (I) such release shall not apply with respect to the obligations of the Debtor, Eames, or each of the Highland Additional Release Parties under this Stipulation, including Exhibit B hereto, the allowance of or distributions in respect of Claim 72 and Claim 81, and the Cornerstone Shareholders Agreement; (II) notwithstanding anything to the contrary herein, neither James Dondero nor Mark Okada, nor any entities owned or controlled by either of them, other than the Debtor, Eames, and any Highland Additional Release Party solely with respect to such entities and not as to any capacity in which James Dondero or Mark Okada had an interest in or served with respect to such entities, is released from any claims, including without limitation any claims arising from obligations owed to the Debtor; and provided further, and solely for the avoidance of doubt, that none of the releases set forth herein shall impair the right or ability of the applicable holders of Claim 72 or Claim 81 to receive distributions of any kind from the Debtor's estate in satisfaction of such respective claims in the amounts and on such terms as are provided for herein; and (III) in the event any of the Highland Additional Release Parties fails to execute this Stipulation, this Release is null, void and of no legal effect as to that non-signing Highland Additional Release Party.

11. At present, certain of the Parties are engaged in one or more of the following pending lawsuits and actions: (a) *Redeemer Committee of the Highland Crusader Fund v. Highland Capital Management, L.P.*, Chancery Court, Delaware, C.A. No. 12533-VCG (the "Delaware Action"); (b) *Redeemer Committee of the Highland Crusader Fund and Highland Capital Management, L.P.*, Supreme Court of Bermuda, Civil Jurisdiction, Case No. 01-16-0002-6927 ("Bermuda Action No. 1"); (c) *Highland Capital Management, L.P. and Redeemer Committee of the Highland Crusader Fund*, Supreme Court of Bermuda, Civil Jurisdiction (Commercial Court), 2017: No. 308 ("Bermuda Action No. 2"); and (d) *Redeemer Committee of the Highland Crusader Fund and Highland Capital Management, L.P.*, Grand Court of Cayman

Islands, Financial Services Division, Cause No. 153 of 2019 (CRJ) (the "Grand Cayman Action" and together with the Delaware Action and Bermuda Action No. 1, the "Redeemer Actions"). The Parties agree that (1) as of the Stipulation Effective Date, the Redeemer Committee and each of the Crusader Funds covenants not to prosecute, and shall refrain from prosecuting, any of the Redeemer Actions against the Debtor, Eames, or any of the Highland Additional Release Parties, and (2) as soon as reasonably practicable after the Stipulation Effective Date, the Debtor shall cause Bermuda Action No. 2 to be dismissed with prejudice.

12. This Stipulation, together with the Cornerstone Shareholders Agreement and the Schedule, contains the entire agreement between and among the Parties and the Additional Release Parties as to its subject matter and supersedes and replaces any and all prior agreements and undertakings between and among the Parties and the Additional Release Parties relating thereto.

13. This Stipulation may not be modified other than by a signed writing executed by the Parties; provided, however, that paragraphs 10 through 15 may not be modified other than by a signed writing that is also executed by the Additional Release Parties.

14. Each person who executes this Stipulation represents that he or she is duly authorized to do so on behalf of the respective Party or Additional Release Party and that each Party or Additional Release Party has full knowledge and has consented to this Stipulation, provided, however, that (a) the effectiveness of the Debtor's execution of this Stipulation shall be subject to entry of an order of the Bankruptcy Court approving this Stipulation and authorizing the Debtor's execution thereof, and (b) the Redeemer Committee represents and warrants to the Debtor, Eames, and each of the Highland Additional Release Parties that, in conformity with the Redeemer Committee's corporate governance documents, at least the minimum number of

members of the Redeemer Committee have executed this Stipulation to cause it to be legally binding on the Redeemer Committee.

15. The Debtor shall use commercially reasonable efforts to cause each of the Contingent Parties to execute this Stipulation not later than the date on which the Bankruptcy Court enters an order confirming a plan of reorganization or liquidation. Notwithstanding the foregoing, the Parties acknowledge and agree that the failure of either or both of the Contingent Parties to execute this Stipulation shall not affect (a) the rights, obligations, or duties of any of the Parties or (b) the enforceability of this Stipulation.

16. Not later than September 23, 2020, the Debtor shall file with the Bankruptcy Court a motion for an order approving this Stipulation, which motion shall be in form and substance satisfactory to the Crusader Funds and the Redeemer Committee, pursuant to Federal Rule of Bankruptcy Procedure 9019 and section 363 of the Bankruptcy Code.

17. This Stipulation may be executed in counterparts (including facsimile and electronic transmission counterparts), each of which will be deemed an original but all of which together constitute one and the same instrument, and shall be effective against a Party or Additional Release Party upon the Stipulation Effective Date.

18. This Stipulation will be exclusively governed by and construed and enforced in accordance with the laws of the State of New York, without regard to its conflicts of law principles, and all claims relating to or arising out of this Stipulation, or the breach thereof, whether sounding in contract, tort, or otherwise, will likewise be governed by the laws of the State of New York, excluding New York's conflicts of law principles. The Bankruptcy Court will retain exclusive jurisdiction over all disputes relating to this Stipulation.

[Remainder of page intentionally left blank]

In witness whereof, the parties hereto, intending to be legally bound, have executed this Stipulation as of the day and year set forth below:

Dated:

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: _____
Name: James P. Seery, Jr.
Title: Authorized Signatory

REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND

Dated:

Grosvenor Capital Management, L.P.

By: _____
Name: Eric Felton, designated Representative of Grosvenor Capital Management, L.P.

Dated:

Grosvenor Capital Management, L.P.

By: _____
Name: Tom Rowland, designated Representative of Grosvenor Capital Management, L.P.

Dated:

Grosvenor Capital Management, L.P.

By: _____
Name: Burke Montgomery, designated Representative of Grosvenor Capital Management, L.P.

Dated:

Grosvenor Capital Management, L.P.

By: _____
Name: Brian Zambie, designated Representative of Grosvenor Capital Management, L.P.

In witness whereof, the parties hereto, intending to be legally bound, have executed this Stipulation as of the day and year set forth below:

Dated: HIGHLAND CAPITAL MANAGEMENT, L.P.

By: _____
Name:
Title:

REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND

Dated: Grosvenor Capital Management, L.P.

By: /s/ Eric Felton
Name: Eric Felton, designated Representative of Grosvenor Capital Management, L.P.

Dated: Grosvenor Capital Management, L.P.

By: /s/ Tom Rowland
Name: Tom Rowland, designated Representative of Grosvenor Capital Management, L.P.

Dated: Grosvenor Capital Management, L.P.

By: /s/ Burke Montgomery
Name: Burke Montgomery, designated Representative of Grosvenor Capital Management, L.P.

Dated: Grosvenor Capital Management, L.P.

By: /s/ Brian Zambie
Name: Brian Zambie, designated Representative of Grosvenor Capital Management, L.P.

Dated:

Concord Management, LLC

By: /s/ Brant Behr
Name: Brant Behr, designated Representative of Concord Management, LLC

Dated:

Baylor University

By: /s/ David Morehead
Name: David Morehead, designated Representative of Baylor University

Dated:

Seattle Fund SPC

By: /s/ Stuart Robertson
Name: Stuart Robertson, designated Representative of Seattle Fund SPC

Dated:

Man Solutions Limited

By: /s/ Michael Buerer
Name: Michael Buerer, designated Representative of Man Solutions Limited

Dated:

Army and Air Force Exchange Service

By: /s/ James Jordan
Name: James Jordan, designated Representative of Army and Air Force Exchange Service

Dated:

HIGHLAND CRUSADER OFFSHORE PARTNERS, L.P.

By: House Hanover, Its General Partner

By: /s/ Mark S. DiSalvo
Name: Mark S. DiSalvo
Title: Authorized Signatory

Dated:

HIGHLAND CRUSADER FUND, L.P.

By: House Hanover, Its General Partner

By: /s/ Mark S. DiSalvo
Name: Mark S. DiSalvo
Title: Authorized Signatory

Dated:

HIGHLAND CRUSADER FUND, LTD.

By: /s/ Mark S. DiSalvo
Name: Mark S. DiSalvo
Title: Authorized Signatory

Dated:

HIGHLAND CRUSADER FUND II, LTD.

By: /s/ Mark S. DiSalvo
Name: Mark S. DiSalvo
Title: Authorized Signatory

Dated:

HOUSE HANOVER, LLC

By: /s/ Mark S. DiSalvo
Name: Mark S. DiSalvo
Title: Authorized Signatory

Dated:

ALVAREZ & MARSAL CRF MANAGEMENT, LLC

By: /s/ Steven Varner
Name: Steven Varner
Title: Managing Director

Dated:

EAMES, LTD.

By: _____
Name: Abali Hoilett
Title: Authorised Signatory of the Director MaplesFS Directors Limited

Dated:

HOCKNEY, LTD.

By: _____
Name: Abali Hoilett
Title: Authorised Signatory of the Director MaplesFS Directors Limited

Dated:

STRAND ADVISORS, INC.

By: _____
Name:
Title:

Dated:

HIGHLAND SPECIAL OPPORTUNITIES HOLDING COMPANY

By: _____
Name:
Title:

Dated:

HIGHLAND CDO OPPORTUNITY MASTER FUND, L.P.

By: _____
Name:
Title:

Dated:

HIGHLAND FINANCIAL PARTNERS, L.P.

By: _____
Name:
Title:

Dated:

HIGHLAND CREDIT STRATEGIES MASTER FUND, L.P.

By: _____
Name:
Title:

Dated: EAMES, LTD.

By: _____
Name:
Title:

Dated: HOCKNEY, LTD.

By: _____
Name:
Title:

Dated: STRAND ADVISORS, INC.

By: _____
Name: James P. Seery, Jr.
Title: Authorized Signatory

Dated: HIGHLAND SPECIAL OPPORTUNITIES HOLDING COMPANY

By: _____
Name:
Title:

Dated: HIGHLAND CDO OPPORTUNITY MASTER FUND, L.P.

By: _____
Name: James P. Seery, Jr.
Title: Authorized Signatory

Dated: HIGHLAND FINANCIAL PARTNERS, L.P.

By: _____
Name:
Title:

Dated: HIGHLAND CREDIT STRATEGIES MASTER FUND, L.P.

By: _____
Name: James P. Seery, Jr.
Title: Authorized Signatory

Dated:

HIGHLAND CREDIT OPPORTUNITIES CDO, L.P.

By: _____
Name: James P. Seery, Jr.
Title: Authorized Signatory

EXHIBIT A

CORNERSTONE HEALTHCARE GROUP HOLDING, INC.

AMENDED & RESTATED STOCKHOLDERS' AGREEMENT

[●], 2020

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AMENDED & RESTATED STOCKHOLDERS' AGREEMENT

THIS AMENDED & RESTATED STOCKHOLDERS' AGREEMENT (the "***Agreement***") is made as of the [●] day of [●], 2020 by and among (i) Cornerstone Healthcare Group Holding, Inc., a Delaware corporation (the "***Company***"), (ii) certain holders of the Company's common stock (the "***Common Stock***") (each of which is referred to herein as a "***Stockholder***" and collectively as the "***Stockholders***"), and (iii) Highland Capital Management, L.P., a Delaware limited partnership ("***HCMLP***"). HCMLP (if and to the extent it is or becomes a Stockholder) and the Stockholders that are affiliates of HCMLP, including any investment funds controlled by or under common control with, or managed directly or indirectly by, HCMLP are collectively referred to herein as "***Highland Capital***" and are set forth on Schedule A, as it may be updated from time to time. Individual Stockholders that are part of the Highland Capital group of Stockholders are sometimes referred to as a "***Highland Capital Stockholders***." Any Stockholders other than Highland Capital Stockholders are collectively referred to herein as the "***Remaining Stockholders***" and are set forth on Schedule B, as it may be updated from time to time. All references in this Agreement to "***Crusader***" shall mean and include, as the case may be, (x) Highland Crusader Holding Corp., (y) any of its successors or assigns and (y) any purchaser or transferee of any Securities that at any time were held by Highland Crusader Holding Corp. (*i.e.,* any purchaser or transferee of Securities from Highland Crusader Holding Corp. and any subsequent purchasers or transferees of any such Securities).

RECITALS:

WHEREAS, the Company, the Stockholders and HCMLP are parties to that certain Stockholders' Agreement of the Company, dated as of March 24, 2010 (as the same may have been amended, modified or supplemented in accordance with its terms, the "***First Stockholders' Agreement***").

WHEREAS, the Stockholders hold shares of Common Stock of the Company, and the Stockholders, the Company and HCMLP desire to enter into this Agreement to (i) provide certain rights to, and impose certain restrictions on, the Stockholders and HCMLP with respect to the Common Stock held by them and (ii) amend and modify certain provisions in the First Stockholders' Agreement.

AGREEMENT:

NOW, **THEREFORE**, in consideration of the foregoing premises, the mutual promises and covenants set forth herein, and certain other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

TRANSFER RESTRICTIONS; RIGHT OF FIRST REFUSAL

Section 1.1 Restrictions on Transfer.

(a) Generally. During the term of this Agreement, all of the Common Stock and any other equity securities (collectively, "***Securities***") now owned or hereafter acquired by

any Stockholder shall be subject to the terms and conditions of this Agreement. No transfer, whether voluntary or involuntary, of the Securities shall be valid unless it is made pursuant to the terms and conditions of this Agreement; and, accordingly, any proposed transfer not made in compliance with the requirements of this Agreement shall be null and void ab initio, shall not be recorded on the books of the Company or its transfer agent, and shall not be recognized by the Company.

(b) Permitted Transfers. Notwithstanding the foregoing, the first refusal rights and co-sale rights of the Company and Highland Capital, as set forth below in this Article I, shall not apply to (i) any transfer of Securities by a Stockholder to any such Stockholder's spouse, parents, siblings (by blood, marriage or adoption) or lineal descendants (by blood, marriage or adoption); (ii) any transfer of Securities by a Stockholder to a trust, partnership, corporation, limited liability company or other similar entity owned exclusively by such Stockholder and/or such Stockholder's spouse, parents, siblings (by blood, marriage or adoption) or lineal descendants (by blood, marriage or adoption) for the benefit of such Stockholder or such Stockholder's spouse, parents, siblings or lineal descendants; (iii) any transfer of Securities by a Stockholder, or upon a Stockholder's death to the executors, administrators, testamentary trustees, legatees or beneficiaries of such Stockholder; (iv) any transfer of Securities by a Stockholder to any person who controls, is controlled by or is under common control with such Stockholder (within the meaning of the Securities Act of 1933, as amended (the "***Securities Act***")); (v) any transfer of Securities by a Stockholder pursuant to a bona fide loan transaction which creates a mere security interest in the Securities; (vi) the Securities held Crusader; *provided*, *however*, that in each such case, each transferee, pledgee, donee, heir or distributee shall, as a condition precedent to such transfer, become a party to this Agreement by executing an Adoption Agreement substantially in the form attached as Annex A and shall have all of the rights and obligations set forth hereunder, and all interests in any trust, partnership, corporation, limited liability company or other similar entity to which any Securities are transferred shall themselves be deemed Securities and shall be subject to all of the provisions hereof. Such transferred Securities shall remain "***Securities***" hereunder, and such transferee shall be treated as a "***Stockholder***" for the purposes of this Agreement. Any purported transfers made in violation of this Section 1.1(b) shall be void.

(c) Company Repurchase or Public Offering. The provisions of this Agreement shall not apply to the sale of any Securities (i) to the public pursuant to a registration statement filed with, and declared effective by, the Securities and Exchange Commission (the "***SEC***") under the Securities Act or (ii) to the Company.

(d) Prohibited Transferees. Notwithstanding any other provision of this Agreement to the contrary, no Remaining Stockholder shall transfer any Target Shares to (a) any entity which, in the good faith and reasonable determination of the Company's Board of Directors, directly competes with the Company or (b) any customer, distributor or supplier of the Company, if the Company's Board of Directors should determine in good faith and reasonably that such transfer would result in such customer, distributor or supplier receiving information that would place the Company at a material competitive disadvantage with respect to such customer, distributor or supplier.

Section 1.2 Right of First Refusal.

(a) Grant of Right of First Refusal. Subject to the terms hereof, the Company and, to the extent such right is waived by the Company, HCMLP, on behalf of itself and Highland Capital (and, as provided below, each ROFR Participant) are each hereby granted a right of first refusal with respect to any proposed disposition of any Securities held by any Remaining Stockholder (except for a permitted transfer of the Securities under Section 1.1(b) hereof), in the following order of priority:

(i) The Company shall have the first right to purchase any Target Shares (as defined below). In the event the Company elects not to exercise first refusal rights with respect to all or any portion of such Target Shares, the Company agrees to waive such rights with respect to such portion of Target Shares in favor of Highland Capital's first refusal rights under this Agreement.

(ii) If the Company waives its first refusal rights pursuant to Section 1.2(a)(i), Highland Capital shall have the next right to purchase any remaining Target Shares. HCMLP, in its sole discretion, shall have the right to assign and apportion the rights of first refusal hereby granted among itself and investment funds comprising Highland Capital, which need not be Stockholders or parties to this Agreement at that time, in any proportion it deems suitable (the actual participants, including any individuals or entities assigned such rights, each being a "***Highland ROFR Participant***" and, together with the Company, each a "***ROFR Participant***"); *provided* that each such Highland ROFR Participant is an "***accredited investor***" within the meaning of Rule 501 of Regulation D of the Securities Act; and provided further that any Highland ROFR Participant that is not then a party to this Agreement shall be required to become a party to this Agreement by executing an executing an Adoption Agreement in the form attached hereto as Exhibit A. In the event that HCMLP does not specify an allocation for ROFR Participants, then each Highland Capital Stockholder shall have the right to purchase up to that number of remaining Target Shares equal to the product of (A) the number of remaining Target Shares multiplied by (B) a fraction, (x) the numerator of which shall be the number of shares of Common Stock owned by such Highland Capital Stockholder (assuming full conversion and exercise of all convertible and exercisable securities into Common Stock held by such Highland Capital. Stockholder) and (y) the denominator of which shall be the number of shares of Common Stock owned by all of the Highland Capital Stockholders (assuming full conversion and exercise of all convertible and exercisable securities into Common Stock).

(iii) In the event that HCMLP (or the Highland ROFR Participants as its designated assignee(s)) elects not to exercise first refusal rights with respect to all or any portion of such Target Shares, Highland Capital agrees to waive such rights with respect to such portion.

(b) Notice of Intended Disposition. In the event a Remaining Stockholder desires to accept a written, bona fide third-party offer for the transfer of any or all of the Securities held by such Remaining Stockholder (in such capacity such Remaining Stockholder shall be referred to as a "***Selling Stockholder***" and the shares subject to such offer to be referred to as the "***Target Shares***"), the Selling Stockholder shall promptly deliver to the Company and HCMLP written notice of the intended disposition ("***Disposition Notice***") and the basic terms and conditions thereof, including the identity of the proposed purchaser.

(c) Exercise of First Refusal Right. The Company shall, for a period of thirty (30) days following receipt of the Disposition Notice, have the right to purchase all or any portion of the Target Shares:

(i) The Company's right shall be exercisable by written notice (the "***Exercise Notice***") delivered to the Selling Stockholder and HCMLP prior to the expiration of the thirty (30) day exercise period. If such right is exercised with respect to all the Target Shares specified in the Disposition Notice, then the Company shall effect the purchase of such Target Shares, including payment of the purchase price, not more than five (5) business days after the delivery of the Exercise Notice. At such time, the Selling Stockholder shall deliver to the Company the certificates representing the Target Shares to be purchased, each certificate to be properly endorsed for transfer.

(ii) Alternatively, if the Company exercises such rights with respect to only a portion of the Target Shares specified in the Disposition Notice, the Company shall notify HCMLP of its intent to purchase only a portion of the Target Shares within the thirty (30) day exercise period above defined. The Company's purchase of such Target Shares shall be consummated at the time of HCMLP's exercise of its purchase rights in accordance with Section 1.2(e) hereof, if such rights are exercised. In the event HCMLP does not elect to purchase any of the remaining Target Shares, the Company's purchase of that portion of the Target Shares that it desires to purchase shall be consummated not more than five (5) business days after the date of expiration of HCMLP's first refusal right. The purchasing party under this Section 1.2 is referred to herein as the "***ROFR Purchaser***."

(iii) Should the purchase price specified in the Disposition Notice be payable in property other than cash or evidences of indebtedness, the ROFR Purchaser shall have the right to pay the purchase price in the form of cash equal in amount to the value of such property. It the Selling Stockholder and the ROFR Purchaser cannot agree on such cash value within fifteen (15) days after receipt of the Disposition Notice (or, in the event HCMLP is the ROFR Purchaser, within fifteen (15) days after the Company's waiver of its first refusal rights hereunder, the valuation shall be determined by the Company's Board of Directors (the "***Board***") in its good faith discretion. The closing shall then be held on the later of (A) the fifth business day following the delivery of the Exercise Notice, or (B) the fifth business day after such cash valuation shall have been made.

(d) Non-Exercise of Right by the Company. In the event the Exercise Notice is not given to the Selling Stockholder and HCMLP within thirty (30) days following the date of the Company's receipt of the Disposition Notice, the Company shall be deemed to have waived its right of first refusal with respect to such proposed disposition.

(e) Exercise of Right by HCMLP. Subject to the rights of the Company, for a period ending on the earlier of (a) sixty (60) days following receipt of the Disposition Notice or (b) thirty (30) days following receipt of written notice of the Company's election either to waive its right of first refusal or to purchase only a portion of the Target Shares, HCMLP (and/or its designee(s) as provided in Section 1.2(a)(a)(ii)) shall have the right to purchase all, or any portion of the remaining balance after the Company's purchase, of the Target Shares, upon the terms and conditions specified in the Disposition Notice. The Highland ROFR Participants shall

exercise this right of first refusal in the same manner and subject to the same rights and conditions as the Company, as more specifically set forth in Section 1.2(c) above.

(f) Non-Exercise of Right by HCMLP: Subsequent Sales, Void Transfers. In the event an Exercise Notice with respect to all of the Target Shares is not given to the Selling Stockholder by the Company and/or HCMLP within sixty (60) days following the date of receipt of the Disposition Notice, the Selling Stockholder shall have a period of sixty (60) days thereafter in which to sell the portion of the Target Shares that the ROFR Participants have not elected to purchase upon terms and conditions (including the purchase price and the form of consideration therefor) no more favorable to the third-party transferee than those specified in the Disposition Notice; *provided*, *however*, that the Selling Stockholder must first offer the Target Shares for co-sale pursuant to Section 1.3 hereof. Any transfer in violation of this Section 1.2 shall be void. Such transferred Securities shall remain "***Securities***" hereunder, and such transferee shall be treated as a "***Stockholder***" for the purposes of this Agreement, in the capacity of Highland Capital or a Remaining Stockholder, as applicable. In the event the Selling Stockholder does not notify the Company or consummate the sale or disposition of the Target Shares within such sixty (60) day period, HCMLP's and the Company's first refusal rights shall continue to be applicable to any subsequent disposition of the Target Shares by the Selling Stockholder until such right lapses or terminates in accordance with Section 6.1 hereof.

(g) Violation of First Refusal Right. If any Selling Stockholder becomes obligated to sell any Target Shares to the Company or HCMLP (and/or its designee(s) as provided in Section 1.2(a)(ii)) under this Agreement and fails to deliver such Target Shares in accordance with the terms of this Agreement, the Company and/or HCMLP (and/or its designee(s) as provided in Section 1.2(a)(ii)) may, at its option, in addition to all other remedies it may have, send to such Selling Stockholder the purchase price for such Target Shares as is herein specified and transfer to the name of the Company or HCMLP (and/or its designee(s) as provided in Section 1.2(a)(ii)) (or request that the Company effect such transfer in the name of HCMLP (and/or its designee(s) as provided in Section 1.2(a)(ii)) on the Company's books the certificate or certificates representing the Target Shares to be sold. Such Selling Stockholder shall also reimburse HCMLP and each ROFR Participant for any and all reasonable and documented out-of-pocket fees and expenses, including reasonable legal fees and expenses, incurred pursuant to the exercise or the attempted exercise of the ROFR Participants' rights under this Section 1.3.

(h) Application of Co-Sale Right. Notwithstanding anything to the contrary in this Section 1.2 Target Shares may be sold to a third party transferee (other than the Company or Highland Capital) if and only if the Selling Stockholder first complies with the co-sale procedures set forth in Section 1.3, and some or all of the Target Shares remain available for sale following the application of Section 1.3.

Section 1.3 Co-Sale Rights.

(a) Notice of Offer. The provisions of Section 1.2(b) requiring the Selling Stockholder to give notice of any intended transfer of the Securities are incorporated in this Section 1.3.

(b) Grant of Co-Sale Rights.

(i) If (i) any such proposed disposition of Target Shares is being made by the Selling Stockholder and (ii) the rights of first refusal of the Company and HCMLP have been waived or have lapsed, in full or in part with respect to such proposed disposition, the Co-Sale Participant (as defined herein) shall have the right, exercisable upon written notice to the Selling Stockholder within thirty (30) days after receipt of the Disposition Notice, to participate in such sale of the Target Shares on the same terms and conditions as those set forth in the Disposition Notice. As used herein, "***Co-Sale Participant***" shall mean (x) in the event Highland Capital holds or otherwise controls a majority of the issued and outstanding shares of Common Stock of the Company, the Highland Capital entities designated by HCMLP as provided below, or (y) in the event Highland Capital does not hold or otherwise control a majority of the issued and outstanding shares of Common Stock of the Company, each non-Selling Stockholder. To the extent any Co-Sale Participant exercises such right of participation, the number of shares of Target Shares that the Selling Stockholder may sell in the transaction shall be correspondingly reduced. The right of participation of the Co-Sale Participants shall be subject to the terms and conditions set forth in this Section 1.3.

(ii) Each Co-Sale Participant may sell all or any part of a number of shares of the capital stock of the Company held by such Co-Sale Participant equal to the product obtained by multiplying (i) the aggregate number of Target Shares covered by the Disposition Notice that neither the Company nor Highland Capital have elected to purchase pursuant to Section 1.2 by (ii) a fraction, the numerator of which is the number of shares of Common Stock of the Company at the time owned by such Co-Sale Participant (assuming for the purposes of this calculation that all shares held by Highland Capital are held by HCMLP) and the denominator of which is the combined number of shares of Common Stock of the Company at the time deemed owned by the Selling Stockholder and all of the Co-Sale Participants that desire to exercise their rights of co-sale. Notwithstanding the foregoing, HCMLP, in its sole discretion, shall have the right to assign and apportion the rights of first refusal hereby granted among itself and investment funds comprising Highland Capital, which need not be Stockholders or parties to this Agreement at that time, in any proportion it deems suitable; *provided* that each such Highland Capital Co-Sale Participant is an "***accredited investor***" within the meaning of Rule 501 of Regulation D of the Securities Act; and provided further that any Highland Capital Co-Sale Participant that is not then a party to this Agreement shall be required to become a party to this Agreement by executing an Adoption Agreement in the form attached hereto as Exhibit A.

(iii) Each Co-Sale Participant may effect its participation in the sale by delivering to the Selling Stockholder for transfer to the purchase offeror one or more certificates, properly endorsed for transfer, which represent the number of shares of Common Stock that it elects to sell pursuant to this Section 1.3(h).

(c) Payment of Proceeds. The stock certificates that the Co-Sale Participants deliver to the Selling Stockholder pursuant to Section 1.3(b) shall be transferred by the Selling Stockholder to the purchase offeror in consummation of the sale of the Common Stock pursuant to the terms and conditions specified in the notice to the Company and HCMLP (and, if applicable, the Remaining Stockholders) pursuant to Section 1.2(b), and the Selling Stockholder shall promptly thereafter remit to the Co-Sale Participants that portion of the sale proceeds to

which the Investors are entitled by reason of their participation in such sale. To the extent that any prospective purchaser or purchasers refuses to purchase shares or other securities from an Co-Sale Participant exercising its rights of co-sale hereunder, the Selling Stockholder shall not sell to such prospective purchaser or purchasers any Securities unless and until, simultaneously with such sale, the Selling Stockholder purchases such shares or other securities from such Co-Sale Participant for the same consideration and on the same terms and conditions as the proposed transfer described in the Disposition Notice.

(d) Non-exercise. The exercise or non-exercise of the rights of the Co-Sale Participants hereunder to participate in one or more sales of Common Stock made by the Selling Stockholder shall not adversely affect their rights to participate in subsequent Common Stock sales by any Selling Stockholder.

(e) Violation of Co-Sale Right. If any Selling Stockholder purports to sell any Target Shares in contravention of this Section 1.3 (a "***Prohibited Transfer***"), each Co-Sale Participant may, in addition to such remedies as may be available by law, in equity or hereunder, require Selling Stockholder to purchase from such Co-Sale Participant the type and number of Securities that such Co-Sale Participant would have been entitled to sell under Section 1.3(b)(ii) had the Prohibited Transfer been effected pursuant to and in compliance with the terms of Section 1.3. The sale will be made on the same terms and subject to the same conditions as would have applied had the Selling Stockholder not made the Prohibited Transfer, except that the sale (including, without limitation, the delivery of the purchase price) must be made within ninety (90) days after the Co-Sale Participant learns of the Prohibited Transfer. Such Selling Stockholder shall also reimburse HCMLP and each Co-Sale Participant for any and all reasonable and documented out-of-pocket fees and expenses, including reasonable legal fees and expenses, incurred pursuant to the exercise or the attempted exercise of the Co-Sale Participants' rights under this Section 1.3.

Section 1.4 Market Stand-Off Agreement.

(a) In connection with any underwritten public offering by the Company of its equity securities pursuant to an effective registration statement filed under the Securities Act, including the first bona fide firm commitment underwritten public offering of the Company's Common Stock registered under the Securities Act on Form S-1 or Form SB-2 (or any successor form designated by the SEC) (the "***Initial Public Offering***"), the Remaining Stockholders (each, an "***Owner***") shall not (i) lend, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any securities of the Company, including (without limitation) shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock (whether now owned or hereafter acquired) or (ii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of any securities of the Company, including (without limitation) shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock (whether now owned or hereafter acquired), whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of securities, in cash or otherwise without the prior written consent of the Company or its underwriters; *provided* that all executive officers, directors and greater than 5% stockholders (including, if applicable, HCMLP

and Highland Capital) are subject to similar restrictions. Such restriction (the "***Market Stand-Off***") shall be in effect for such period of time from and after the effective date of the final prospectus for the offering as may be requested by the Company or such underwriters. In no event, however, shall such period exceed one hundred eighty (180) days (the "***Lock-Up Period***"), and the Market Stand-Off shall in no event be applicable to any underwritten public offering effected more than two (2) years after the effective date of the Company's initial public offering.

(b) Any new, substituted or additional securities which are by reason of any recapitalization or reorganization distributed with respect to the Common Stock to be registered shall be immediately subject to the Market Stand-Off, to the same extent the Common Stock is at such time covered by such provisions.

(c) In order to enforce the Market Stand-Off, the Company may impose stop-transfer instructions with respect to the Common Stock until the end of the applicable stand-off period.

ARTICLE II

RIGHTS OF FIRST OFFER

Section 2.1 **Grant of Right of First Offer**. Each time the Company proposes to offer (i) any shares of, or securities convertible into or exercisable for any shares of, any class of its capital stock ("***equity securities***"), or (ii) any debt securities (collectively, the "***First Offer Securities***"), the Company shall first offer to Highland Capital the right and opportunity (but not the obligation) to purchase the First Offer Securities proposed to be issued in such offering in accordance with the provisions of this Article IV. HCMLP, in its sole discretion, shall have the right to assign and apportion the rights of first refusal hereby granted among itself and investment funds comprising Highland Capital, which need not be parties to this Agreement at that time (the actual participants, including any individuals or entities assigned such rights, each being a "***Purchaser***"); *provided* that each such Purchaser is an "***accredited investor***" within the meaning of Rule 501 of Regulation D of the Securities Act; and *provided further* that any such Purchaser that is not then a party to this Agreement shall be required to become a party to this Agreement by executing an Adoption Agreement in the form attached hereto as Exhibit A.

Section 2.2 **Procedure for Exercise**. The Company shall deliver notice (the "***Offer Notice"***) to HCMLP stating (a) the number and description of the First Offer Securities to be offered in the applicable offering and (b) the price and terms, if any, upon which it proposes to offer such First Offer Securities. Within 30 days after giving of the Offer Notice, the Purchasers may elect to purchase, at the price and on the terms specified in the Offer Notice, such First Offer Securities, in the amounts designated by HCMLP. The Purchasers shall exercise the rights under this section by paying the purchase price for the First Offer Securities elected to be purchased in cash or by wire transfer of immediately available funds. As promptly as practicable on or after the purchase date, the Company shall issue and deliver to the Purchasers a certificate or certificates for the number of full shares or amount, whichever is applicable, of First Offer Securities.

Section 2.3 **Excluded Issuances**. The rights of first offer set forth in this section shall not be applicable to the following (collectively, the "***Excluded Issuances***"): (A) in the case of equity securities, (i) the issuance of shares of capital stock (or any cash-settled "phantom units" or similar equity-linked or equity-based incentive plans or agreement structures, the value of which is based on the Company's Common Stock (collectively, "***phantom units***")) of the Company issued or issuable solely for compensatory purposes, to directors, officers, employees or consultants of the Company, whether directly (as Common Stock, options or phantom units) or pursuant to an equity incentive plan or agreement or a restricted stock plan or agreement, in each case approved by the Board; (ii) the issuance of shares of capital stock of the Company in connection with stock splits, stock dividends, recapitalizations or the like; (iii) the issuance of shares of capital stock in connection with a bona fide business acquisition or license of technology of or by the Company, whether by license, merger, consolidation, sale of assets, sale or exchange of stock or otherwise that are not issued primarily for equity financing purposes, in each case as approved by the Board; (iv) the issuance of shares of capital stock of the Company in connection with corporate partnering transactions, business relationships and similar transactions that are not issued primarily for equity financing purposes, in each case as approved by the Board; or (v) the issuance of shares of capital stock to financial institutions in connection with bona fide Commercial Debt (as defined below) arrangements (including issuances, extensions, renewals, modifications and waivers), in each case approved by the Company's Board of Directors; and (B) in the case of debt securities, shall not be deemed to include debt issued to NexBank, SSB and other banks, commercial finance lenders, insurance companies, leasing or equipment financing institutions or other lending institutions regularly engaged in the business of lending money (excluding venture capital, private equity, investment banking or similar institutions which sometimes engage in lending activities but which are primarily engaged in investments in equity securities), which is for money borrowed, or purchase or leasing of equipment in the case of lease or other equipment financing, whether or not secured, and in any such instance is not primarily for equity financing purposes ("***Commercial Debt***"), in each such case approved by the Board of Directors of the Company,

Section 2.4 **Sale to Third Parties**. The Company shall, after complying with its obligations under Section 2.1, be free at any time prior to 90 days after the date of the Offer Notice, to offer and sell to any third party or parties the remainder of such First Offer Securities proposed to be issued by the Company at a price and on payment terms no less favorable to the Company than those specified in the Offer Notice. However, if such third party sale or sales are not consummated within such 90-day period, or if the terms of any such proposed sale are modified in a manner more favorable to the proposed purchaser (whether with respect to price or any other term) than offered to HCMLP pursuant to Section 2.1, the Company shall not sell such First Offer Securities as shall not have been purchased within such period without again complying with Section 2.1 hereof.

ARTICLE III

REGISTRATION RIGHTS

Section 3.1 **Definitions**. For purposes of this Article III.

(a) "***Certificate of Incorporation***" shall mean the Company's Certificate of Incorporation as in effect as of the date hereof and as amended and restated from time to time.

(b) "***Change in Control***" shall mean (A) the acquisition of the Company by means of any transaction or series of related transactions (including, without limitation, any stock purchase transaction, merger, consolidation or other form of reorganization in which outstanding shares of the Company are exchanged for securities or other consideration issued, or caused to be issued, by the acquiring entity or its subsidiary, but excluding (i) any transaction effected for the purpose of changing the Company's jurisdiction of incorporation and (ii) the sale by the Company of shares of its capital stock to investors in bona fide equity financing transactions), unless securities representing more than fifty percent (50%) of the total combined voting power of the voting securities of the surviving or acquiring entity or its direct or indirect parent entity are immediately thereafter beneficially owned, directly or indirectly and in substantially the same proportion, by the Company's stockholders of record as constituted immediately prior to such transaction or series of related transactions and (B) a sale of all or substantially all of the assets of the Company in a single transaction or series of related transactions. In no event shall any public offering of the Company's securities be deemed to constitute a Change in Control.

(c) "***Exchange Act***" shall mean the Securities Exchange Act of 1934, as amended.

(d) "***Form S-3***" shall mean such form under the Securities Act as in effect on the date hereof or any registration forms under the Securities Act subsequently adopted by the SEC that permit inclusion or incorporation of substantial information by reference to other documents filed by the Company with the SEC.

(e) "***Holder***" shall mean any person owning or having the right to acquire Registrable Securities or any assignee thereof in accordance with Section 3.13 hereof.

(f) The terms "***register***," "***registered***" and "***registration***" refer to a registration effected by preparing and filing a registration statement or similar document in compliance with the Securities Act, and the declaration or ordering of effectiveness of such registration statement or document.

(g) "***Registrable Securities***" shall mean, only with respect to equity securities held by Highland Capital, the Common Stock and any shares of Common Stock of the Company issued as (or issuable upon the conversion or exercise of any warrant, right or other security which is issued as) a dividend or other distribution with respect to, or in exchange for or in replacement of such shares; excluding in all cases, however, any Registrable Securities sold by a Holder in a transaction in which his rights under this Article III are not assigned.

(h) The number of shares of "***Registrable Securities then outstanding***" shall be equal to the number of shares of Common Stock then issued and outstanding which are, and the number of shares of Common Stock then issuable pursuant to then exercisable or convertible securities which are, Registrable Securities.

(i) "***Rule 144***" means Rule 144 as promulgated by the SEC under the Securities Act, as such Rule may be amended from time to time, or any similar successor rule that may be promulgated by the SEC.

(j) "***Rule 145***" means Rule 145 as promulgated by the SEC under the Securities Act, as such Rule may be amended from time to time, or any similar successor rule that may be promulgated by the SEC.

Section 3.2 Request for Registration.

(a) At any time, HCMLP, on behalf of Highland Capital, may request that the Company effect a registration under the Securities Act of all or any part of the Registrable Securities held by Highland Capital (each, a "***Demand Registration***"), subject to the terms and conditions of this Agreement. Any request (a "***Registration Request***") for a Demand Registration shall specify (A) the approximate number of shares of Registrable Securities requested to be registered and (B) the intended method of distribution of such shares. Within twenty (20) days of the receipt of the Registration Request, the Company will use its best efforts to effect as soon as practicable (and in any event within ninety (90) days of the date such request is given) the registration under the Securities Act requested and will include in such registration all shares of Registrable Securities that holders of Registrable Securities request the Company to include in such registration by written notice given to the Company within twenty (20) days after the Company's sends such notice (subject to underwriter cut-backs as provided in this Agreement).

(b) Without the prior written consent of HCMLP, the Company will not include in any Demand Registration any securities other than (a) Registrable Securities, (b) shares of stock pursuant to Section 3.3 hereof, and (c) securities to be registered for offering and sale on behalf of the Company. If the managing underwriter(s) advise the Company in writing that in their opinion the number of shares of Registrable Securities and, if permitted hereunder, other securities in such offering, exceeds the number of shares of Registrable Securities and other securities, if any, which can be sold in an orderly manner in such offering within a price range acceptable to the holders of a majority of the shares of Registrable Securities held by Holders initially requesting registration, the Company will include in such registration, prior to the inclusion of any securities which are not shares of Registrable Securities, the number of shares of Registrable Securities requested to be included that in the opinion of such underwriters can be sold in an orderly manner within the price range acceptable to the Holders of a majority of the shares of Registrable Securities initially requesting registration, subject to the following order of priority: (A) first, the securities requested to be included therein by the Holders, pro rata among the holders thereof on the basis of the number of shares of Registrable Securities such holders requested to be included in such registration or apportioned among them in any other manner in which HCMLP determines to be appropriate in its sole discretion; (B) second, the securities requested to be included therein by the Company; and (C) third, among persons not contractually entitled to registration rights under this Agreement.

(c) If HCMLP indicates that the Holders on whose behalf it is initiating the Registration Request hereunder (the "***Initiating Holders***") intend to distribute the Registrable Securities covered by their request by means of an underwriting, they shall so advise the Company as a part of their request made pursuant to Section 3.2 and the Company shall include

such information in the written notice referred to in Section 3.2. The underwriter will be selected by HCMLP and shall be reasonably acceptable to the Board, which approval shall not be unreasonably withheld, conditioned or delayed. All Holders proposing to distribute their securities through such underwriting shall (together with the Company as provided in Section 3.4(e)) enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting.

(d) Notwithstanding the foregoing, if the Company shall furnish to HCMLP a certificate signed by the President of the Company stating that in the good faith judgment of the Board of Directors of the Company it would be seriously detrimental to the Company and its stockholders for such registration statement to be filed and it is, therefore, essential to defer the filing of such registration statement, the Company shall have the right to defer taking action with respect to such filing for a period of not more than one hundred twenty (120) days after receipt of the request of the Initiating Holders; *provided*, *however*, that the Company may not utilize this right more than once in any twelve (12) month period.

(e) In addition, the Company shall not be obligated to effect, or to take any action to effect, any registration pursuant to this Section 3.2:

(i) after the Company has effected three (3) Demand Registrations pursuant to this Section 3.2 and such registrations have been declared or ordered effective;

(ii) during the period starting with the date sixty (60) days prior to the Company's good faith estimate of the date of filing of, and ending on a date one hundred eighty (180) days after the effective date of, a registration subject to Section 3.3 or Section 3.11 hereof, provided that the Company is actively employing its commercially reasonable efforts to cause such registration statement to become effective; *provided*, *however*, that the Company may not utilize this right more than once in any twelve-month period;

(iii) if the Initiating Holders propose to dispose of shares of Registrable Securities that may be immediately registered on Form S-3 pursuant to a request made pursuant to Section 3.11 below; or

(iv) in any particular jurisdiction in which the Company would be required to qualify to do business or to execute a general consent to service of process in effecting such registration, qualification or compliance unless the Company is already subject to service in such jurisdiction and except as may be required by the Securities Act.

Section 3.3 Company Registration.

(a) If, but without any obligation to do so, the Company proposes to register (including for this purpose a registration initiated by the Company for itself or for the Holders or stockholders other than the Holders) any of its stock or other securities under the Securities Act in connection with the public offering of such securities solely for cash (other than a registration relating solely to employee benefit plans, or a registration relating solely to a SEC Rule 145 transaction, or a registration on any registration form which does not permit secondary sales or does not include substantially the same information as would be required to be included in a registration statement covering the Registrable Securities) the Company shall, at such time,

promptly give each Holder written notice of such registration. Upon the written request of HCMLP given within fifteen (15) days after delivery of such notice by the Company, the Company shall cause to be registered under the Securities Act all of the Registrable Securities that HCMLP has requested to be registered on behalf of Highland Capital.

(b) If a registration subject to Section 3.3 relates to an underwritten public offering of equity securities and the managing underwriters advise the Company that in their opinion the number of securities requested to be included in such registration exceeds the number that can be sold in an orderly manner in such offering within a price range acceptable to the Holders initially requesting such registration, the Company will include in such registration (i) first, the Registrable Securities requested to be included in such registration by Highland Capital, allocated pro rata among the holders thereof on the basis of the total number of shares of Registrable Securities such Holder requested to be included in such registration or apportioned among them in any other manner in which HCMLP determines to be appropriate in its sole discretion; (ii) second, the securities requested to be included therein by the Company if the Company has initiated the registration; and (iii) third, among persons not contractually entitled to registration rights under this Agreement. Notwithstanding the foregoing, the amount of Registrable Securities of Highland Capital included in the offering shall not be reduced below thirty percent (30%) of the total amount of securities included in such offering. In connection with any offering involving an underwriting of shares of the Company's capital stock, the Company shall not be required to include any of the Holders' securities in such underwriting unless they accept the terms of the underwriting as agreed upon between the Company and the underwriters selected by it (or by other persons entitled to select the underwriters). All Holders proposing to distribute their securities through such underwriting shall (together with the Company as provided in Section 3.4(e)) enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting.

Section 3.4 Obligations of the Company. Whenever required under this Article III to effect the registration of any Registrable Securities, the Company shall, as expeditiously as reasonably possible:

(a) Prepare and file with the SEC a registration statement with respect to such Registrable Securities and use its commercially reasonable efforts to cause such registration statement to become effective within sixty (60) days of a request for registration pursuant to Section 3.2 and Section 3.11 and such registration statement shall remain effective until the earlier to occur of (i) one-hundred-eighty (180) days after the date such registration statement was declared effective or (ii) until the distribution contemplated in such registration statement has been completed; *provided*, *however*, that such one-hundred-eighty (180) day period shall be extended for a period of time equal to the period the Holder refrains from selling any securities included in such registration at the request of an underwriter of Common Stock (or other securities) of the Company.

(b) Prepare and file with the SEC such amendments and supplements to such registration statement and the prospectus used in connection with such registration statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement.

(c) Furnish to the Holders such numbers of copies of a prospectus, including a preliminary prospectus, in conformity with the requirements of the Securities Act, and such other documents as they may reasonably request in order to facilitate the disposition of Registrable Securities owned by them.

(d) Use its best efforts to register and qualify the securities covered by such registration statement under such other securities or blue sky laws of such jurisdictions as shall be reasonably requested by the Holders; *provided* that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions.

(e) In the event of any underwritten public offering, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the managing underwriter of such offering. Each Holder participating in such underwriting shall also enter into and perform its obligations under such an agreement.

(f) Notify each Holder of Registrable Securities covered by such registration statement at any time when a prospectus relating thereto is required to be delivered under the Securities Act of the happening of any event as a result of which the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein of misleading in the light of the circumstances then existing.

(g) Cause all such Registrable Securities registered pursuant hereunder to be listed on each securities exchange or nationally recognized quotation system on which similar securities issued by the Company are then listed.

(h) Provide a transfer agent and registrar for all Registrable Securities registered pursuant hereunder and a CUSIP number for all such Registrable Securities not later than the effective date of such registration.

(i) Use its best efforts to cause to be furnished, at the request of at least a majority of the Holders participating in the registration, on the date that such Registrable Securities are delivered to the underwriters for sale, if such securities are being sold through underwriters, or, if such securities are not being sold through underwriters, on the date that the registration statement with respect to such securities becomes effective, (i) an opinion, dated such date, of the counsel representing the Company for purposes of such registration, in form and substance as is customarily given to underwriters in an underwritten public offering, addressed to the underwriters, if any, and (ii) a letter dated such date, from the independent certified public accountants of the Company, in form and substance as is customarily given by independent certified public accountants to underwriters in connection with an underwritten public offering, addressed to the underwriters, if any.

(j) Make available for inspection by each Holder of Registrable Securities, any underwriter and any attorney, accountant, or other agent retained by such Holder or underwriter, all financial and other records, pertinent corporate documents and properties of the Company and cause the Company's officers, directors, and employees to supply all information

reasonably requested by such Holder, underwriter, attorney, accountant, or agent in connection with such registration statement.

Section 3.5 Furnish Information. It shall be a condition precedent to the obligations of the Company to take any action pursuant to this Article III with respect to the Registrable Securities of any selling Holder that such Holder shall furnish to the Company such information regarding such Holder, the Registrable Securities held by such Holder, and the intended method of disposition of such securities as shall be required by the Company or the managing underwriters, if any, to effect the registration of such Holder's Registrable Securities.

Section 3.6 Expenses of Demand Registration. All expenses, other than underwriting discounts and commissions, incurred in connection with registrations, filings or qualifications pursuant to Section 3.2(a), including (without limitation) all registration, filing and qualification fees, printers' and accounting fees, fees and disbursements of counsel for the Company and the reasonable fees and disbursements of counsel for the selling Holders shall be borne by the Company, including, without limitation, all such expenses incurred with respect to a registration request subsequently withdrawn by the Holders, regardless of whether such withdrawal was a result of a material adverse change in the condition (financial or otherwise), business or prospects of the Company from that known to the Holders at the time of the request or otherwise.

Section 3.7 Expenses of Company Registration. All expenses, other than underwriting discounts and commissions relating to Registrable Securities, incurred in connection with registrations, filings or qualifications pursuant to Section 3.3 for each Holder, including (without limitation) all registration, filing and qualification fees, printers' and accounting fees, fees and disbursements of counsel for the Company and the reasonable fees and disbursements of counsel for the selling Holders shall be borne by the Company.

Section 3.8 Delay of Registration. No Holder shall have any right to obtain or seek an injunction restraining or otherwise delaying any such registration as the result of any controversy that might arise with respect to the interpretation or implementation of this Article III.

Section 3.9 Indemnification. In the event any Registrable Securities are included in a registration statement under this Article III:

(a) To the extent permitted by law, the Company will indemnify and hold harmless each Holder, the partners, members, officers, and directors of each Holder (including HCMLP), any underwriter (as defined in the Securities Act) for such Holder and each person, if any, who controls such Holder or underwriter within the meaning of the Securities Act or the Exchange Act, against any losses, claims, damages, or liabilities (joint or several) to which they may become subject under the Securities Act, the Exchange Act or other federal or state law, insofar as such losses, claims, damages, or liabilities (or actions in respect thereto) arise out of or are based upon any of the following statements, omissions or violations (each, a "***Violation***"): (i) any untrue statement or alleged untrue statement of a material fact contained in such registration statement, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto, (ii) the omission or alleged omission to state therein a material fact required to be stated therein, or necessary to make the statements therein not misleading, or (iii) any violation or alleged violation by the Company of the Securities Act, the

Exchange Act, any state securities taw or any rule or regulation promulgated under the Securities Act, the Exchange Act or any state securities law; and the Company will pay to each such Holder, underwriter or controlling person, as incurred, any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability, or action; *provided*, *however*, that the indemnity agreement contained in this Section 3.9(a) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability, or action if such settlement is effected without the consent of the Company (which consent shall not be unreasonably withheld, conditioned or delayed), nor shall the Company be liable in any such case for any such loss, claim, damage, liability, or action to the extent that it arises out of or is based upon a Violation which occurs in reliance upon and in conformity with written information furnished by any such Holder, underwriter or controlling person expressly for use in connection with such registration.

(b) To the extent permitted by law, each selling Holder will indemnify and hold harmless the Company, each of its directors, each of its officers who has signed the registration statement, each person, if any, who controls the Company within the meaning of the Securities Act, any underwriter, any other Holder selling securities in such registration statement and any controlling person of any such underwriter or other Holder, against any losses, claims, damages, or liabilities (joint or several) to which any of the foregoing persons may become subject, under the Securities Act, the Exchange Act or other federal or state law, insofar as such losses, claims, damages, or liabilities (or actions in respect thereto) arise out of or are based upon any Violation, in each case to the extent (and only to the extent) that such Violation occurs in reliance upon and in conformity with written information furnished by such Holder expressly for use in connection with such registration; and each such Holder will pay, as incurred, any legal or other expenses reasonably incurred by any person intended to be indemnified pursuant to this Section 3.9(b), in connection with investigating or defending any such loss, claim, damage, liability, or action; *provided*, *however*, that the indemnity agreement contained in this Section 3.9(b), shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the Holder (which consent shall not be unreasonably withheld, conditioned or delayed); *provided*, *however*, that in no event shall any indemnity under this Section 3.9(b) exceed the net proceeds from the offering received by such Holder.

(c) Promptly after receipt by an indemnified party under this Section 3.9 of notice of the commencement of any action (including any governmental action), such indemnified party will, if a claim in respect thereof is to be made against any indemnifying party under this Section 3.9, deliver to the indemnifying party a written notice of the commencement thereof and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume the defense thereof with counsel mutually satisfactory to the parties; *provided*, *however*, that an indemnified party (together with all other indemnified parties which may be represented without conflict by one counsel) shall have the right to retain separate counsel, with the fees and expenses to be paid by the indemnifying party, if representation of such indemnified party by the counsel retained by the indemnifying party would be inappropriate due to actual or potential differing interests between such indemnified party and any other party represented by such counsel in such proceeding. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action, if materially prejudicial to its ability

to defend such action, shall relieve such indemnifying party of any liability to the indemnified party under this Section 3.9, but the omission so to deliver written notice to the indemnifying party will not relieve it of any liability that it may have to any indemnified party otherwise than under this Section 3.9.

(d) If the indemnification provided for in this Section 3.9 is held by a court of competent jurisdiction to be unavailable to an indemnified party with respect to any loss, liability, claim, damage, or expense referred to therein, then the indemnifying party, in lieu of indemnifying such indemnified party hereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such loss, liability, claim, damage, or expense in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and of the indemnified party on the other hand in connection with the statements or omissions that resulted in such loss, liability, claim, damage, or expense as well as any other relevant equitable considerations; *provided*, *however*, that in no event shall any contribution under this Section 3.9 exceed the net proceeds from the offering received by such Holder. The relative fault of the indemnifying party and of the indemnified party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information, and opportunity to correct or prevent such statement or omission.

(e) Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with the underwritten public offering are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control as to any Investor that is a party thereto.

(f) The obligations of the Company and Holders under this Section 3.9 shall survive the completion of any offering of Registrable Securities in a registration statement under this Article III, and otherwise. No indemnifying party, in the defense of any such claim or litigation, shall, except with the consent of each other indemnified party, consent to entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect to such claim or litigation.

Section 3.10 Reports Under Securities Exchange Act. With a view to making available to the Holders the benefits of Rule 144 and any other rule or regulation of the SEC that may at any time permit a Holder to sell securities of the Company to the public without registration or pursuant to a registration on Form S-3, the Company agrees to:

(a) make and keep public information available, as those terms are understood and defined in Rule 144, at all times after the effective date of the first registration statement filed by the Company for the offering of its securities to the general public;

(b) take such action, including the voluntary registration of its Common Stock under Section 5.12 of the Exchange Act, as is necessary to enable the Holders to utilize Form S-3 for the sale of their Registrable Securities, such action to be taken as soon as practicable after the

end of the fiscal year in which the first registration statement filed by the Company for the offering of its securities to the general public is declared effective;

(c) file with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act; and

(d) furnish to any Holder, so long as the Holder owns any Registrable Securities, forthwith upon request from such Holder (i) a written statement by the Company that it has complied with the reporting requirements of Rule 144 (at any time after 90 days after the effective date of the first registration statement filed by the Company), the Securities Act and the Exchange Act (at any time after it has become subject to such reporting requirements), or that it qualifies as a registrant whose securities may be resold pursuant to Form S-3 (at any time after it so qualifies), (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company, and (iii) such other information as may be reasonably requested in availing any Holder of any rule or regulation of the SEC which permits the selling of any such securities without registration or pursuant to Form S-3.

Section 3.11 Form S-3 Registrations. In the event that the Company shall receive from HCMLP on behalf of the Holders of at least 10% of the Registrable Securities then outstanding a written request that the Company effect a registration on Form S-3, and any related qualification or compliance with respect to all or a part of the Registrable Securities owned by such Holder or Holders, the Company will:

(a) promptly give written notice of the proposed registration, and any related qualification or compliance, to all other Holders; and

(b) use its commercially reasonable efforts to, as soon as practicable, effect such registration and all such qualifications and compliances as may be so requested and as would permit or facilitate the sale and distribution of all or such portion of such Holder's or Holders' Registrable Securities as are specified in such request, together with all or such portion of the Registrable Securities of any other Holder or Holders joining in such request as are specified in a written request given within fifteen (15) days after receipt of such written notice from the Company; *provided*, *however*, that the Company shall not be obligated to effect any such registration, qualification or compliance, pursuant to this Section 3.11:

(i) if Form S-3 is not available for such offering by the Holders;

(ii) if the Holders, together with the holders of any other securities of the Company entitled to inclusion in such Form S-3, propose to sell Registrable Securities at an aggregate price to the public (net of underwriting discounts and commissions) of less than $500,000;

(iii) if the Company shall furnish to Holders requesting a registration statement pursuant to this Section 3.11 a certificate signed by the President of the Company stating that in the good faith judgment of the Board of Directors it would be seriously detrimental to the Company and its stockholders for such registration statement to be filed and it is, therefore, essential to defer the filing of such registration statement, the Company shall have the right to defer taking action with respect to such filing for a period of not more than one-hundred-

twenty (120) days after receipt of the request of the Initiating Holders; *provided*, *however*, that the Company may not utilize this right more than once in any twelve (12) month period;

(iv) in any particular jurisdiction in which the Company would be required to qualify to do business or to execute a general consent to service of process in effecting such registration, qualification or compliance;

(v) if the Company has, within the twelve (12) month period preceding the date of such request, already effected one (1) registration on Form S-3 for the Holders pursuant to this Section 3.11; or

(vi) during the period starting with the date sixty (60) days prior to the Company's good faith estimate of the date of filing of, and ending on a date one-hundred-eighty (180) days after the effective date of, any registration statement pertaining to a public offering of securities for the Company's account; *provided*, *however*, that the Company is actively employing its commercially reasonable efforts to cause such registration statement to be effective.

(c) Subject to the foregoing, the Company shall file a registration statement covering the Registrable Securities and other securities so requested to be registered as soon as practicable after receipt of the request or requests of the Holders. All expenses incurred in connection with a registration requested pursuant to this Section 3.11, including, without limitation, all registration, filing, qualification, printer's and accounting fees and the reasonable fees and disbursements of counsel for the selling Holder or Holders and counsel for the Company, shall be borne by the Company. Registrations effected pursuant to this Section 3.11 shall not be counted as demands for registration or registrations effected pursuant to Section 3.2 or Section 3.3, respectively.

(d) If the Holders initiating a registration pursuant to this Section 3.11 intend to distribute the Registrable Securities covered by their request by means of an underwriting, they shall so advise the Company as a part of their request made pursuant to this Section 3.11 and the Company shall include such information in the written notice referred to in Section 3.11(a). The underwriter will be selected by HCMLP and shall be reasonably acceptable to the Company, which approval shall not be unreasonably withheld or delayed. In such event, the right of any Holder to include such Holder's Registrable Securities in such registration shall be conditioned upon such Holder's participation in such underwriting and the inclusion of such Holder's Registrable Securities in the underwriting (unless otherwise mutually agreed by a majority in interest of the Initiating Holders and such Holder) to the extent provided herein. All Holders proposing to distribute their securities through such underwriting shall (together with the Company as provided in Section 3.4(e)) enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting. Notwithstanding any other provision of this Section 3.11, if the underwriter advises the Initiating Holders in writing that marketing factors require a limitation of the number of shares to be underwritten, then the Company shall so advise all Holders of Registrable Securities which would otherwise be underwritten pursuant hereto, and the number of shares of Registrable Securities that may be included in the underwriting shall be allocated in the following order of priority: (A) first, the Registrable Securities requested to be included in such registration by the Holders, allocated pro

rata among the holders thereof on the basis of the total number of shares of Registrable Securities such Holder requested to be included in such registration or apportioned among them in any other manner in which HCMLP determines to be appropriate in its sole discretion; (B) second, the securities requested to be included therein by the Company; and (C) third, among persons not contractually entitled to registration rights under this Agreement.

Section 3.12 Expenses of Form 5-3 Registration. All expenses, other than underwriting discounts and commissions, incurred in connection with registrations, filings or qualifications pursuant to Section 3.11, including (without limitation) all registration, filing and qualification fees, printers' and accounting fees, fees and disbursements of counsel for the Company and the reasonable fees and disbursements of counsel for the selling Holders shall be borne by the Company; including, without limitation, all such expenses incurred with respect to a registration request subsequently withdrawn by the Holders, regardless of whether such withdrawal was a result of a material adverse change in the condition (financial or otherwise), business or prospects of the Company from that known to the Holders at the time of the request or otherwise.

Section 3.13 Assignment of Registration Rights. Subject to the prior consent of HCMLP, the rights to cause the Company to register Registrable Securities pursuant to this Article III may be assigned (but only with all related obligations) by a Holder to a transferee or assignee of such securities that (i) is a subsidiary, parent, member, partner, limited partner, retired partner, grantor or shareholder of a Holder, and (ii) an affiliate of HCMLP, including any investment funds controlled by or under common control with, or managed directly or indirectly by, HCMLP, which will continue to qualify as Highland Capital after such transfer; *provided* that: (a) the Company is, within a reasonable time after such transfer, furnished with written notice of the name and address of such transferee or assignee and the securities with respect to which such registration rights are being assigned; (b) such transferee or assignee agrees in writing to be bound by and subject to the terms and conditions of this Agreement, including (without limitation) the provisions of Section 1.4 below, including the execution of an Adoption Agreement in the form attached hereto as Exhibit A; and (c) such assignment shall be effective only if immediately following such transfer the further disposition of such securities by the transferee or assignee is restricted under the Securities Act. For the purposes of determining the number of shares of Registrable Securities held by a transferee or assignee, the holdings of transferees and assignees of a partnership who are partners or retired partners of such partnership (including spouses and ancestors, lineal descendants and siblings of such partners or spouses who acquire Registrable Securities by gift, will or intestate succession) shall be aggregated together and with the partnership; *provided* that all assignees and transferees who would not qualify individually for assignment of registration rights shall have a single attorney-in-fact for the purpose of exercising any rights, receiving notices or taking any action under this Article III.

Section 3.14 Limitations on Subsequent Registration Rights. From and after the date of this Agreement, the Company shall not, without the prior written consent of HCMLP (which approval may be granted or withheld in its sole discretion), enter into any agreement with any holder or prospective holder of any securities of the Company (i) to include such securities in any registration filed under Section 3.2, unless under the terms of such agreement, such holder or prospective holder may include such securities in any such registration only to the extent that the inclusion of such holder's or prospective holder's securities will not reduce the amount of the

Registrable Securities of the Holders which is included or (ii) to make a demand registration that could result in such registration statement being declared effective prior to the dates set forth in Section 3.2 or within one-hundred-eighty (180) days of the effective date of any registration effected pursuant to Section 3.2.

ARTICLE IV

VOTING AGREEMENT; BOARD OF DIRECTORS; REQUIRED VOTE

Section 4.1 Board of Directors.

(a) Composition of Board of Directors. For so long as Highland Capital owns any shares of the Company's capital stock, each Stockholder agrees that in any election of directors of the Company, each Stockholder shall vote all shares of the Company capital stock entitled to vote in the election of directors that are owned or controlled by such Stockholder (or shall consent pursuant to an action by written consent of the holders of capital stock of the Company), including all shares that each Stockholder is entitled to vote under any voting trust, voting agreement, proxy or other arrangement (collectively, "***Stock***"), to elect a Board of Directors consisting of the directors designated by HCMLP in its sole discretion. In the absence of any designation HCMLP, the director previously designated by HCMLP and then serving shall be re-elected if still eligible to serve as provided herein. This Section 4.1(a) shall not apply to Crusader.

(b) Subsidiary Governing Bodies; Committees. Unless otherwise agreed to by HCMLP or the Board of Directors, the members of the Board of Directors, as the same shall be constituted from time to time, shall also constitute the board of directors or equivalent governing body of each subsidiary of the Company. HCMLP shall have the right but not the obligation to designate at least two members of the Board of Directors elected pursuant to this Section 4.1 to serve on any duly constituted committee of the boards of directors of the Company and any subsidiaries.

(c) Obligations of the Company. The Company shall use its best efforts and shall exercise all authority under applicable law to cause to be nominated for election and cause to be elected or appointed, as the case may be, as directors of the Company, a slate of directors consisting of individuals meeting the requirements of Section 4.1(a). The Company will not, by any voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all of the provisions of this Agreement and in the taking of all such actions as may be necessary or appropriate in order to protect the rights of HCMLP hereunder against impairment. Each Stockholder hereby agrees to vote, cause to be voted or sign a written consent with respect to all of its shares in favor of a slate of directors consisting of individuals meeting the requirements of Section 4.1(a).

(d) Vacancies; Removal. In the event of any vacancy in the Board of Directors, each Stockholder agrees to vote all outstanding shares of Stock owned or controlled by such Stockholder and to use such Stockholder's best efforts to fill such vacancy so that the Board of Directors will be comprised of directors designated as provided in Section 4.1(a). Each

Stockholder agrees to vote all outstanding shares of Stock owned or controlled by such Stockholder for the removal of a director whenever (but only whenever) there shall be presented to the Board of Directors the written direction that such director be removed, signed by HCMLP. In such event, the Board of Directors shall solicit the vote of the Stockholders entitled to remove such director in order to effect such removal. This Section 4.1(d) shall not apply to Crusader.

Section 4.2 Required Vote.

(a) Notice of Disposition Transaction. In the event HCMLP has approved or rejected any (A) the acquisition of the Company by another entity by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation) unless the Company's stockholders of record as constituted immediately prior to such acquisition or sale will, immediately after such acquisition or sale (by virtue of securities issued as consideration for the Company's acquisition or sale or otherwise) hold at least 50% of the voting power of the surviving or acquiring entity; or (B) a sale of all or substantially all of the assets of the Company, including a sale of all or substantially all of the assets of the Company's subsidiaries, if such assets constitute substantially all of the assets of the Company and such subsidiaries taken as a whole (each, an "***Approved Sale***"), the Company shall give notice (the "***Sale Notice***") to the Stockholders stating that HCMLP has approved or rejected, as applicable, an Approved Sale. The Sale Notice also shall set forth the identity of the person or entity proposing to buy the Company, its assets or its capital stock (the "***Acquisition Offeror***") and shall summarize the basic terms of the proposed Approved Sale. Any Sale Notice may be rescinded by HCMLP by delivering written notice thereof to the Stockholders.

(b) Obligations of Stockholders. As soon as practicable after receipt of the Sale Notice, the Stockholders shall take all lawful action reasonably necessary and requested by the Company (i) in the event the Approved Sale was approved by HCMLP, to complete the Approved Sale, including without limitation (A) the voting of all capital stock of the Company held by the Stockholders in favor of the Approved Sale, (B) if so requested, the surrender to the Acquisition Offeror of certificates representing all capital stock and all instruments representing convertible securities of the Company held by the Stockholders, properly endorsed for transfer to the Acquisition Offeror against payment of the sale price for such capital stock or such convertible securities in the Approved Sale, and (C) the execution of all sale, liquidation and other agreements in the form reasonably requested (containing, among other things, reasonable and customary representations and warranties relating to the valid title to such capital stock free and clear of any liens, claims, encumbrances and restrictions of any kind (other than those arising hereunder) and such Stockholder's power, authority, and right to enter into and consummate such purchase or merger agreement without violating any other agreement); or (ii) in the event the Approved Sale was rejected by HCMLP, to reject the Approved Sale, including, without limitation, the voting of all capital stock of the Company held by the Stockholders against the Approved Sale. The Stockholders hereby agree, after having received a Sale Notice, not to exercise any dissenter's rights or other rights granted to minority stockholders under state law in connection with an Approved Sale, or otherwise take actions designed to or that reasonably would be expected to complicate, delay, reject or terminate the Approved Sale.

Section 4.3 Grant of Proxy. To ensure the performance of each Stockholder with respect to the agreements set forth in this Article IV, each Stockholder hereby appoints the

Chairman of the Board of Directors and the principal executive officer of the Company, or either of them from time to time, or their designees, as his, her or its true and lawful proxy and attorney-in-fact, with full power of substitution and resubstitution, to vote all. Stock owned or held by such Stockholder and to execute all appropriate instruments consistent with this Agreement, subject to the provisions of this Agreement, upon any matter presented to the stockholders of the Company, if and only if such Stockholder fails to vote all of such Stockholder's Stock or execute such other instruments in accordance with the provisions of this Agreement within five (5) days of the Company's or any other party's written request for such Stockholder's written consent or signature. The proxies and powers granted by each Stockholder pursuant to this Section 4.3 are coupled with an interest, are given to secure the performance of such Stockholder's commitments under this Agreement, and shall he irrevocable unless and until this Agreement terminates or expires pursuant to its terms. Such proxies shall survive the death, incompetence, disability, merger, reorganization, dissolution or winding up of such Stockholder. Each party hereto hereby revokes any and all previous proxies with respect to the Stock and shall not hereafter, unless and until this Agreement terminates or expires, purport to grant any other proxy or power of attorney with respect to any of the Stock, deposit any of the Stock into a voting trust or enter into any agreement (other than this Agreement), arrangement or understanding with any person, directly or indirectly, to vote, grant any proxy or give instructions with respect to the voting of any of the Stock, in each case, with respect to any of the matters set forth herein.

ARTICLE V

COVENANTS OF THE COMPANY

Section 5.1 Delivery of Financial Statements. The Company shall deliver the following information to HCMLP, to each Highland Capital Stockholder and to Crusader:

(a) as soon as reasonably practicable, but in any event within 90 days after the end of each fiscal year of the Company (which due date may be lengthened with respect to any fiscal year by approval of HCMLP), an audited consolidated income statement of the Company for such year, an audited consolidated balance sheet and statement of stockholders' equity of the Company as of the end of such fiscal year, and an audited consolidated statement of cash flows of the Company for such fiscal year, such audited year-end financial reports to be in reasonable detail, prepared in accordance with generally accepted accounting principles ("***GAAP***") consistently applied and setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail. Such audited financial statements shall be accompanied by a report and opinion thereon by independent public accountants of national standing selected by HCMLP.

(b) as soon as reasonably practicable, but in any event within thirty (30) days after the end of each fiscal quarter of the Company, an unaudited consolidated income statement and consolidated statement of cash flows of the Company for such fiscal quarter and an unaudited consolidated balance sheet of the Company as of the end of such fiscal quarter, prepared in accordance with GAAP, which shall each show a comparison to plan figures for such period and to the comparable period in the prior year prepared in accordance with GAAP with the exception that no notes need be attached to such statements and year end audit adjustments

need not have been made, together with a report from the Company's chief executive officer, and/or chief financial officer, summarizing the Company's consolidated financial condition and consolidated results of operation during such quarter.

(c) as soon as reasonably practicable, but in any event within twenty (20) days after the end of each calendar month, an unaudited consolidated income statement and consolidated statement of cash flows of the Company for such month and an unaudited consolidated balance sheet of the Company as of the end of such month and for the current fiscal year to date, including a comparison to plan figures for such period and to the comparable period in the prior year, prepared in accordance with GAAP consistently applied, with the exception that no notes need be attached to such statements and year end audit adjustments may not have been made, together with a report from the Company's chief executive officer, and/or chief financial officer, summarizing the Company's consolidated financial condition and consolidated results of operation during such month.

(d) an annual budget and operating plans for the Company at least thirty (30) days prior to the beginning of each fiscal year and (promptly after they are available) any subsequent substantive revisions thereto; and

(e) such relevant business and other information reasonably requested, including, without limitation, copies of relevant management reports, as HCMLP may request from time to time.

If, for any period, the Company has any subsidiary whose accounts are consolidated with those of the Company, then in respect of such period the financial statements delivered pursuant to the foregoing sections shall be the consolidated and consolidating financial statements of the Company and all such consolidated subsidiaries.

Section 5.2 Inspection. The Company will maintain true books and records of account in which full and correct entries will be made of all its business transactions pursuant to a system of accounting established and administered in accordance with GAAP consistently applied, and will set aside on its books all such proper accruals and reserves as shall be required under GAAP consistently applied. The Company shall permit HCMLP or its designee(s) to visit and inspect the Company's properties, to examine and audit its books of account and records and to discuss the Company's affairs, finances and accounts with its officers, all at such reasonable times and during normal business hours as may be requested by HCMLP.

Section 5.3 Directors and Officers Insurance.

(a) The Company shall maintain, from financially sound and reputable insurers approved by HCMLP, directors' and officers' insurance with coverage decided in accordance with policies adopted by HCMLP.

(b) The Company will indemnify the Board of Directors to the broadest extent permitted by applicable law. The Company shall enter into written indemnification agreements (in a form reasonably acceptable to HCMLP) with the directors and executive officers of the Company.

(c) in the event of a Change in Control, proper provision shall be made so that the successors and assigns of the Company assume the obligations of the Company with respect to indemnification of members of the Board of Directors as in effect immediately prior to such transaction, whether in the Company's Bylaws, Certificate of Incorporation, or elsewhere, as the case may be, and, unless otherwise affirmatively determined by the Board of Directors, for the purchase of "***tail***" D&O insurance coverage.

Section 5.4 **Additional Stockholders**. As a condition to the Company's issuance of any shares of Common Stock, or options, warrants or rights to purchase or acquire Common Stock, to any person or entity, including the issuance of certificates representing shares of Common Stock upon a transfer following compliance with the terms of this Agreement, the Company shall, as a condition to such issuance, cause such person or entity to execute an Adoption Agreement in the form attached as Exhibit A hereto in the capacity of a Remaining Stockholder or a Highland Capital Stockholder, as appropriate, confirming that such person or entity is bound by, and subject to, all the terms and provisions of this Agreement applicable to a Remaining Stockholder or a Highland Capital Stockholder, whichever is applicable to such person or entity. The addition of Stockholders as parties to the Agreement in compliance with this provision shall not be deemed an amendment.

ARTICLE VI

MISCELLANEOUS

Section 6.1 **Term; Termination**. This Agreement shall terminate upon the earliest to occur of (a) such time as the Stockholders shall no longer be the owner of any shares of capital stock of the Company; or (b) the date specified by agreement of the Company and HCMLP. Notwithstanding the foregoing, the following rights under this Agreement shall terminate as set forth herein:

(a) The rights of first refusal and co-sale set forth in Article I hereof shall terminate upon the earlier of (i) the closing of a bona fide firm commitment underwritten public offering of the Company's Common Stock registered under the Securities Act resulting in proceeds to the Company of at least $50 million (a "***Qualified IPO***"), and (ii) a Change in Control (including in the case of an asset sale or similar transaction in which Stockholders continue to hold the Company's shares, the final distribution of proceeds to the Stockholders);

(b) The rights of first offer set forth in Article II hereof shall terminate upon the earlier of (i) a Qualified IPO, and (ii) a Change in Control (including in the case of an asset sale or similar transaction in which Stockholders continue to hold the Company's shares, the final distribution of proceeds to the Stockholders);

(c) The registration rights set forth in Article III hereof shall terminate with respect to any Holder upon the earlier of (i) a Change in Control, and (ii) the date upon which all Registrable Securities held by such Holder can be sold without restriction under Rule 144(k) under the Securities Act;

(d) The voting rights and obligations set forth in Article IV hereto shall terminate upon the earlier of (i) (A) in the case of Section 4.1 the Initial Public Offering, and (B) in the case of Section 4.2, a Qualified IPO, and (ii) a Change in Control; and, *provided* that the provisions of Section 4.2 will continue after the closing of any Approved Sale to the extent necessary to enforce the provisions of Section 4.2 with respect to such Approved Sale;

(e) The information and inspection rights set forth in Section 5.1 and Section 5.2 hereto shall terminate upon the earliest of (i) the Initial Public Offering, (ii) the date upon which the Company becomes subject to the periodic reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, and (iii) a Change in Control (including in the case of an asset sale or similar transaction in which Stockholders continue to hold the Company's shares, the final distribution of proceeds to the Stockholders).

Section 6.2 Legend. Each certificate representing the Common Stock of the Company shall be endorsed with substantially the following legend, in addition to any other legend required by law, the Company's organizational documents or agreement to which the Stockholder is subject:

> "THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE TERMS AND CONDITIONS OF A CERTAIN STOCKHOLDERS' AGREEMENT, BY AND AMONG THE COMPANY AND CERTAIN HOLDERS OF THE COMMON STOCK OF THE COMPANY, INCLUDING SUBSTANTIAL RESTRICTIONS ON TRANSFER AND VOTING. A COPY OF SUCH AGREEMENT IS ON FILE AT THE PRINCIPAL OFFICE OF THE COMPANY. THE STOCKHOLDERS' AGREEMENT IS BINDING ON THE TRANSFEREES OF SUCH SHARES."

Section 6.3 Successors and Assigns. In addition to any restriction on transfer that may be imposed by any other agreement by which the parties hereto may be bound, this Agreement shall be binding upon the parties hereto and their respective permitted transferees, heirs, executors, administrators, successors and assigns; *provided*, *however*, that the Company shall not effect any transfer of Common Stock subject to this Agreement on its books or issue a new certificate for such Common Stock unless the transferee of such Common Stock has executed and delivered an Adoption Agreement in the form attached hereto as Exhibit A. Upon compliance with all transfer and other restrictions set forth herein and the execution and delivery of an Adoption Agreement by the transferee, such transferee shall be deemed to be a party hereto as if such transferee's signature appeared on the signature pages hereto, in the capacity of Highland Capital or a Remaining Stockholder, as the case may be, whereupon the schedules of Stockholders shall be updated accordingly. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

Section 6.4 Governing Law. This Agreement shall be governed by and construed under the laws of the State of Texas, without giving effect to conflicts of laws principles.

Section 6.5 **Counterparts**. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 6.6 **Titles and Subtitles**. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

Section 6.7 **Notices**.

(a) All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or by commercial delivery service, or mailed by registered or certified mail (return receipt requested) or sent via facsimile (with confirmation of receipt) to the parties at the address for each party set forth herein (or at such other address for a party as shall be specified by like notice):

(i) If to the Company:

Cornerstone Healthcare Group Holding, Inc.
13455 Noel Rd., Suite 1320
Dallas, TX 75240
Fax: [●]
Attn: [●]
Email: [●]

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

[●]
[●]
[●]
Fax: ([●]
Attn: [●]

(ii) If to HCMLP:

Highland Capital Management, L.P.
[●]
[●]
[●]
Fax: [●]
Attention: [●]
Email: [●]

(iii) If to a Highland Capital Stockholder, to the address set forth below such Highland Capital Stockholder's name on Schedule A hereto, with a copy (which shall not constitute notice) to HCMLP and the Company.

(iv) If to a Remaining Stockholder, at the address set forth below such Stockholder's name on Schedule B hereto, with a copy (which shall not constitute notice) to HCMLP and the Company.

(b) Notice given by personal delivery, courier service or mail shall be effective upon actual receipt. Notice given by facsimile shall be confirmed by appropriate answer back and shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next business day after receipt if not received during the recipient's normal business hours. All notices by facsimile shall be confirmed promptly after transmission in writing by certified mail or personal delivery. Any party may change any address to which notice is to be given to it by giving notice as provided above of such change of address.

(c) An electronic communication ("***Electronic Notice***") shall be deemed written notice for purposes of this Section 6.7 if sent with return receipt requested to the electronic mail address specified by the receiving party in a signed writing in a nonelectronic form. Electronic Notice shall be deemed received at the time the party sending Electronic Notice receives verification of receipt by the receiving party. Any party receiving Electronic Notice may request and shall be entitled to receive the notice on paper, in a nonelectronic form ("***Nonelectronic Notice***") which shall be sent to the requesting party within five (5) days of receipt of the written request for Nonelectronic Notice.

Section 6.8 DGCL Electronic Notice. Each party hereto generally consents to the delivery of any stockholder notice pursuant to the Delaware General Corporation Law (the "***DGCL***"), as amended or superseded from time to time, by electronic transmission (a "***DGCL Electronic Notice***") pursuant to Section 232 of the DGCL at the electronic mail address or the facsimile number set forth below such party's name on the Schedules hereto, as updated from time to time by notice to the Company, or as the books of the Company. To the extent that any DGCL Electronic Notice is returned or undeliverable for any reason, the foregoing consent shall be deemed to have been revoked until a new or corrected electronic mail address has been provided, and such attempted DGCL Electronic Notice shall be ineffective and deemed to not have been given. Each party hereto hereby agrees to promptly notify the Company of any change in such holder's electronic mail address, but failure to do so shall not affect the foregoing.

Section 6.9 Dispute Resolution.

(a) Arbitration. Notwithstanding anything contained in this Agreement to the contrary, and except for the equitable remedies provided in Section 6.9(b), in the event there is an unresolved legal dispute between the parties and/or any of their respective officers, directors, partners, employees, agents, affiliates or other representatives that involves legal rights or remedies arising from this Agreement, the parties agree to submit their dispute to binding arbitration under the authority of the Federal Arbitration Act; *provided*, *however*, that the Company or such applicable affiliate thereof may pursue a temporary restraining order and/or preliminary injunctive relief in connection with any confidentiality covenants or agreements binding on any of the parties, with related expedited discovery for the parties, in a court of law, and, thereafter, require arbitration of all issues of final relief. The Arbitration will be conducted by the American Arbitration Association, or another, mutually agreeable arbitration service. The arbitrator(s) shall be duly licensed to practice law in the State of Texas. The discovery process

shall be limited to the following: Each side shall be permitted no more than (i) two party depositions of six hours each. Each deposition is to be taken pursuant to the Texas Rules of Civil Procedure; (ii) one non-party deposition of six hours; (iii) twenty-five interrogatories; (iv) twenty-five requests for admission; (v) ten requests for production. In response, the producing party shall not be obligated to produce in excess of 5,000 total pages of documents. The total pages of documents shall include electronic documents; (vi) one request for disclosure pursuant to the Texas Rules of Civil Procedure. Any discovery not specifically provided for in this paragraph, whether to parties or non-parties, shall not be permitted. The arbitrator(s) shall be required to state in a written opinion all facts and conclusions of law relied upon to support any decision rendered. No arbitrator will have authority to render a decision that contains an outcome determinative error of state or federal law, or to fashion a cause of action or remedy not otherwise provided for under applicable state or federal law. Any dispute over whether the arbitrator(s) has failed to comply with the foregoing will be resolved by summary judgment in a court of law. In all other respects, the arbitration process will be conducted in accordance with the American Arbitration Association's dispute resolution rules or other mutually agreeable, arbitration service rules. The party initiating arbitration shall pay all arbitration costs and arbitrator's fees, subject to a final arbitration award on who should bear costs and fees. All proceedings shall be conducted in Dallas, Texas, or another mutually agreeable site. Each party shall bear its own attorneys fees, costs and expenses, including any costs of experts, witnesses and/or travel, subject to a final arbitration award on who should bear costs and fees. The duty to arbitrate described above shall survive the termination of this Agreement. Except as otherwise provided above, the parties hereby waive trial in a court of law or by jury. All other rights, remedies, statutes of limitation and defenses applicable to claims asserted in a court of law will apply in the arbitration.

(b) Equitable Relief. Each party hereto acknowledges and agrees that any breach of this Agreement would result in substantial harm to the other parties hereto for which monetary damages alone could not adequately compensate. Therefore, the parties hereto unconditionally and irrevocable agree that nay non-breaching party hereto shall be entitled to seek protective orders, injunctive relief and other remedies available at law or in equity (including, without limitation, seeking specific performance or the rescission of purchases, sales and other transfers of Securities not made in strict compliance with this Agreement).

Section 6.10 Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

Section 6.11 Amendments and Waivers. Subject to the last sentence of this Section 6.11, any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of (i) the Company, (ii) HCMLP, (iii) the Highland Capital Stockholders holding a majority of the Shares of the Company's Capital Stock held by Highland Capital, and (iv) at any such time as Highland Capital does not hold a majority of the Shares of the Company's capital stock that are subject to this Agreement, the Stockholders holding a majority of the shares of the Company's capital stock (on an as-converted to Common Stock basis) then held by all Stockholders that are subject to this Agreement, *provided* that the

consent of the Remaining Stockholders shall not be required for any amendment or waiver if such amendment or waiver either (A) is not directly applicable to the rights of the Remaining Stockholders hereunder or (B) does not materially and adversely affect the rights of the Remaining Stockholders in a manner that is disproportionate to the effect on the rights of the other parties hereto. Notwithstanding the foregoing, any provision hereof may be waived by the waiving party on such party's own behalf, without the consent of any other party. Any amendment or waiver effected in accordance with this Section 6.11 shall be binding upon each party to this Agreement and each future party to this Agreement. Notwithstanding the foregoing, neither (i) the addition of parties hereto as a condition to such person participating in a transaction described herein, nor (ii) the addition of a party hereto as a result of such party being or becoming a Highland Capital Stockholder, shall be deemed an amendment hereto, nor shall any update to the Schedules hereto from time to time to reflect the correct holdings of or other information with respect to the parties. No provision of this Agreement that is applicable expressly to Crusader, including Section 1.1(b)(vi), Section 1.1(b)(vii), Section 1.2(d), Section 4.1(a), Section 4.1(d), Section 5.1 and this Section 6.11, shall be amended in any respect that is applicable to Crusader without the prior written consent of Crusader.

Section 6.12 Aggregation of Stock. All shares of Common Stock or other Securities of the Company held or acquired by affiliated entities or persons (including, without limitation, the Common Stock or other Securities held by Highland Capital) may be aggregated together for the purpose of determining the availability of any rights under this Agreement. For the purposes of determining the availability of any rights under this Agreement, the holdings of transferees and assignees of an individual or a partnership who are spouses, ancestors, lineal descendants or siblings of such individual or partners or retired partners of such partnership or partnerships affiliated with such transferring or assigning partnership (including spouses and ancestors, lineal descendants and siblings of such partners or spouses who acquire Common Stock by gift, will or intestate succession) shall be aggregated together with the individual or partnership, as the case may be, for the purpose of exercising any rights or taking any action under this Agreement.

Section 6.13 Entire Agreement. This Agreement (including the Schedules hereto, if any) constitutes the full and entire understanding and agreement between the parties with regard to the subject matter hereof and thereof and supersedes any and all prior agreements relating to the subject matter hereof, including without limitation the First Stockholders' Agreement. The Company and each Stockholder acknowledges and agrees that neither the Company's Certificate of Incorporation or Bylaws shall be amended to include any transfer restrictions on the Company's Securities (it being understood that any and all applicable transfer restrictions, other than those arising under the securities laws generally, shall be as set forth herein).

Section 6.14 Stock Splits, Stock Dividends, etc. In the event of any stock split, stock dividend, capitalization, reorganization, or the like, any securities issued with respect to the shares of the Company's capital stock held by the Stockholders shall become subject to the terms of this Agreement.

Section 6.15 Cumulative Remedies. In addition to the rights and remedies stated in this Agreement, each party hereto shall have all those rights and remedies allowed by applicable laws. The rights and remedies of each party are cumulative and recourse to one or more right or remedy shall not constitute a waiver of the others.

Section 6.16 Rights of Stockholders. Each of HCMLP and each Stockholder, in its sole and absolute discretion, may exercise or refrain from exercising any rights or privileges that such Stockholder may have pursuant to this Agreement, the Company's Certificate of Incorporation or Bylaws, or at law or in equity; and neither HCMLP nor such Stockholder shall incur or be subject to any liability or obligation to the Company, any other party hereto, or any other person, by reason of exercising or refraining from exercising any such rights or privileges.

Section 6.17 Further Assurance. At any time or from time to time after the date hereof, the parties agree to cooperate with each other, and at the request of any other party, to execute and deliver any further instrument or documents and take all such further action as the other party may reasonably request in order to evidence or effectuate the consummation of the transactions contemplated hereby and to otherwise carry out the intent of the parties hereunder.

Section 6.18 Joint Product. This Agreement is the joint product of the Company and the other parties hereto and each provision hereof and thereof has been subject to the mutual consultation, negotiation and agreement of the Company and the other parties hereto and shall not be construed against any party hereto.

[Signature Pages Follow]

IN WITNESS WHEREOF, the undersigned party has executed this counterpart signature page to the Amended & Restated Stockholders' Agreement as of the date first above written.

COMPANY:

CORNERSTONE HEALTHCARE GROUP HOLDING, INC.

By: _____
Name: _____
Title: _____

HCMLP:

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its general partner

By: _____
Name: _____
Title: _____

HIGHLAND CAPITAL STOCKHOLDERS:

Highland Credit Opportunities Holding Corporation

By:_____
Name: _____
Title: _____

Highland Credit Strategies Holding Corporation

By:_____
Name: _____
Title: _____

Highland Capital Management, L.P.

By: Strand Advisors, Inc., its general partner

By:_____
Name: _____
Title: _____

REMAINING STOCKHOLDERS:

Highland Crusader Holding Corp.

By: _____
Name: Mark S. DiSalvo
Title: Authorized Signatory

SCHEDULE A

Highland Capital Stockholders
(as of [●], 2020)

Name/Address	**Number of Shares**
Highland Credit Opportunities Holding Corporation 13455 Noel Road, Suite 800 Dallas, Texas 75240	4,029
Highland Credit Strategies Holding Corporation 13455 Noel Road, Suite 800 Dallas, Texas 75240	8,119
Highland Capital Management, L.P. 13455 Noel Road, Suite 800 Dallas, Texas 75240	1,022
Highland Restoration Capital Partners Master, L.P. 13455 Noel Road, Suite 1300 Dallas, Texas 75240	6,655
Highland Restoration Capital Partners, L.P. 13455 Noel Road, Suite 1300 Dallas, Texas 75240	5,445
Total	**25,270**

SCHEDULE B

Remaining Stockholders
(as of [●], 2020)

Name/Address	**Number of Shares**
Highland Crusader Holding Corp. 800 Turnpike Street, Suite 300 North Andover, MA 01845	14,830

EXHIBIT A

Adoption Agreement

This Adoption Agreement ("***Adoption Agreement***") is executed by the undersigned (the "***Transferee***") pursuant to the terms of that certain Amended & Restated Stockholders' Agreement dated as of _____ (the ***Stockholders' Agreement***") by and among Cornerstone Healthcare Group Holding, Inc. (the "***Company***"), Highland Capital Management, L.P. and certain holders of its Common Stock. Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Stockholders' Agreement.

1. Acknowledgement. Transferee acknowledges that Transferee is acquiring certain shares of the capital stock of the Company (the "***Stock***"), which shares are subject to the terms and conditions of the Stockholders' Agreement.

2. Agreement. As partial consideration for such transfer, Transferee (i) agrees that the Stock acquired by Transferee shall be bound by and subject to the terms of the Stockholders' Agreement, to the same extent and with the same rights and obligations as the person(s) from which such Stock is received and (ii) hereby agrees to become a party to the Stockholders' Agreement with the same force and effect as if Transferee were originally a party thereto in the capacity of a [Highland Capital / Remaining] Stockholder.

3. Notice. Any notice required or permitted by the Stockholders' Agreement shall be given to Transferee at the address listed beside Transferee's signature below.

4. Joinder. The spouse of the undersigned Transferee, if applicable, executes this Adoption to acknowledge its fairness and that it is in such spouse's best interests, and to bind to the terms of the Stockholders' Agreement such spouse's community interest, if any, in the Stock.

EXECUTED AND DATED this ____ day of _____, ____.

TRANSFEREE:

_____

Title: _____
Address: _____
Fax: _____

Spouse: (if applicable):

_____
Name:

Acknowledged and accepted on _____, _____.

CORNERSTONE HEALTHCARE GROUP HOLDING, INC.

By:_____
Name: _____
Title: _____

EXHIBIT B

(To Be Filed under Seal)

EXHIBIT 2

***Partial Final Award* dated March 6, 2019**

(To Be Filed under Seal)

EXHIBIT 3

Disposition of Application of Modification of Award **dated March 14, 2019**

(To Be Filed under Seal)

EXHIBIT 4

***Final Award* dated April 29, 2019**

(To Be Filed under Seal)

EXHIBIT 5

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   Redeemer Committee Highland Crusader Fund
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
See summary page	
Contact phone	Contact phone
Contact email TMascherin@jenner.com	Contact email

   Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing?

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Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ See attached rider . **Does this amount include interest or other charges?**
   - ☐ No
   - ☑ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.

   See attached rider

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature or property:
   - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

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12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

		Amount entitled to priority
☑	No	
☐	Yes. *Check all that apply:*	
☐	Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐	Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐	Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐	Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐	Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐	Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/03/2020
MM / DD / YYYY

/s/Terri L. Mascherin
Signature

Print the name of the person who is completing and signing this claim:

Name: Terri L. Mascherin
First name Middle name Last name

Title: Partner

Company: Jenner and Block LLP
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____ Email _____

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KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor: Redeemer Committee Highland Crusader Fund c/o Terri Mascherin, Esq. Jenner and Block 353 N. Clark Street Chicago, IL, 60654-3456 **Phone:** **Phone 2:** **Fax:** **Email:** TMascherin@jenner.com	**Has Supporting Documentation:** Yes, supporting documentation successfully uploaded **Related Document Statement:** **Has Related Claim:** No **Related Claim Filed By:** **Filing Party:** Authorized agent
Other Names Used with Debtor:	**Amends Claim:** No **Acquired Claim:** No
Basis of Claim: See attached rider	**Last 4 Digits:** No **Uniform Claim Identifier:**
Total Amount of Claim: See attached rider	**Includes Interest or Charges:** Yes
Has Priority Claim: No	**Priority Under:**
Has Secured Claim: No **Amount of 503(b)(9):** No **Based on Lease:** No **Subject to Right of Setoff:** No	**Nature of Secured Amount:** **Value of Property:** **Annual Interest Rate:** **Arrearage Amount:** **Basis for Perfection:** **Amount Unsecured:**

Submitted By:
Terri L. Mascherin on 03-Apr-2020 1:51:56 p.m. Eastern Time
Title:
Partner
Company:
Jenner and Block LLP

Your claim can be filed electronically on KCC's website at https://epoc.kccllc.net/HCMLP

ID: 24788159 PIN: wZvUm7fb

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the Northern District of Texas, Dallas Division

Case number 19-34054-sgj11

Official Form 410
Proof of Claim

04/19

Read the instructions before filiing out this form. This form is for making a claim for payment in a bankruptcy case. Other than a claim under 11 U.S.C. § 503(b)(9), this form should not be used to make a claim for an administrative expense arising after the commencement of the case.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed.

Part 1: Identify the Claim

NameID: 13930498

1. **Who is the current creditor?**
   Redeemer Cmmttee Highland Crusader Fund
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor _____

2. **Has this claim been acquired from someone else?**
   ☒ No
   ☐ Yes. From whom? _____

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

   Where should notices to the creditor be sent?
   Redeemer Cmmttee Highland Crusader Fund
   c/o Terri Mascherin, Esq.
   Jenner & Block
   353 N. Clark Street
   Chicago, IL 60654-3456

   Address _____
   Contact phone _____
   Contact email _____

   Where should payments to the creditor be sent? (if different)
   Name _____
   Number Street _____
   City State ZIP Code _____
   Country _____
   Contact phone _____
   Contact email _____

   Uniform claim identifier for electronic payments in chapter 13 (if you use one):
   _

4. **Does this claim amend one already filed?**
   ☒ No
   ☐ Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☒ No
   ☐ Yes. Who made the earlier filing? _____

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Part 2: **Give Information About the Claim as of the Date the Case Was Filed**

6. **Do you have any number you use to identify the debtor?**
   - ☒ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ See attached rider. **Does this amount include interest or other charges?**
   - ☐ No
   - ☒ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
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9. **Is all or part of the claim secured?**
   - ☒ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature of property:
   - ☐ Real estate: If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☒ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☒ No
    - ☐ Yes. Identify the property: _____

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12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☒ No

☐ Yes. *Check all that apply:*

	Amount entitled to priority
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☒ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

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Check the appropriate box:

☐ I am the creditor.

☒ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04 / 02 / 2020
MM / DD / YYYY

Terri L. Mascherin
Signature

Print the name of the person who is completing and signing this claim:

Name: Terri (First name) L. (Middle name) Mascherin (Last name)

Title: Partner

Company: Jenner & Block LLP
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: 353 N. Clark Street
Number Street

Chicago (City) IL (State) 60654-3456 (ZIP Code) USA (Country)

Contact phone: (312) 222-9350 Email: tmascherin@jenner.com

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RIDER TO THE PROOFS OF CLAIM OF THE REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND

This Rider is part of the proof of claim (the "**Proof of Claim**") filed by the Redeemer Committee of the Highland Crusader Fund (the "**Redeemer Committee**") against Highland Capital Management, L.P. ("**HCM**" or the "**Debtor**").

On March 6, 2019, a panel of arbitrators issued a Partial Final Award (the "**March Award**") in favor of the Redeemer Committee against HCM. On April 29, 2019, the panel issued a Final Award (the "**Final Award**," and together with the March Award, the "**Arbitration Award**") in favor of the Redeemer Committee against HCM.[1] The Arbitration Award is subject to the Federal Arbitration Act and The Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The Redeemer Committee timely moved to confirm the Award in the Delaware Chancery Court. HCM moved for partial vacatur of the Arbitration Award in June 2019. The time period to move to vacate the Arbitration Award expired prior to the Petition Date (as defined below). All capitalized terms that are not defined herein have the meanings given to such terms in the Arbitration Award.

The Redeemer Committee files this Proof of Claim out of an abundance of caution. The Arbitration Award is an executory contract under section 365 of the Bankruptcy Code. HCM has not yet moved to assume or reject the contract. Accordingly, the deadline to file a proof of claim remains undetermined. By filing the Proof of Claim, the Redeemer Committee does not concede that the amounts awarded under the Arbitration Award are prepetition claims or that it is required to file a proof of claim to be entitled to the amounts described herein. The Redeemer Committee reserves all rights to amend or modify this Proof of Claim in any respect, including to assert other or additional claims, or for the purpose of fixing or liquidating any contingent or unliquidated claims. This Proof of Claim is without prejudice to any other rights the Redeemer Committee may have against the Debtor, its officers, employees, successors, or assigns.

This Proof of Claim includes the following components, and each is based on the Arbitration Award (together, the "**Claim**"):

1. **Damage Claim.** The Redeemer Committee asserts a liquidated claim for at least $190,824,557 plus interest that is accruing beginning as of October 16, 2019, the date that HCM filed its bankruptcy case (the "**Petition Date**"). As set forth in the Final Award, the separate components of the Damage Claim are as follows, and the amounts set forth below are as of the Petition Date, including prepetition interest awarded under the Arbitration Award accrued to the Petition Date:

   a. Deferred Fee Claim: $43,105,395 (Final Award ¶ F.a.ii.1)

   b. Distribution Fee Claim: $22,922,608 (Final Award ¶ F.a.ii.2)

[1] Copies of the Arbitral Award have previously been provided the Debtor, the Official Committee of Unsecured Creditors, and the Office of the United States Trustee. The Redeemer Committee reserves the right to file a copy of the Arbitral Award with the Bankruptcy Court.

c. Taking of Plan Claims: $3,277,991 (Final Award ¶ F.a.v)

d. CLO Trades Claim: $685,195 (Final Award ¶ F.a.vi)

e. Credit Suisse Claim: $3,660,130 (Final Award ¶ F.a.vii)

f. UBS Claim: $2,600,968 (Final Award ¶ F.a.viii)

g. Barclays Claim: $30,811,366 (Final Award ¶ F.a.ix)

h. Legal Fees, Costs, and Expenses: $11,351,850 (Final Award ¶ F.a.xi)

i. Administrative Fees: $514,164 (Final Award ¶ F.a.xii)

j. Cornerstone Award: $71,894,891 (Final Award ¶ F.a.ix)

The Redeemer Committee also asserts an unliquidated claim for post-petition interest, attorneys' fees, costs, and other expenses that continue to accrue in connection with the Damage Claim.

2. **Cancellation of Limited Partnership Interests.** The Final Award provides, in relevant part, for the cancellation of the limited partnership interests in the Crusader Fund that are (i) held by HCM and Charitable DAF Fund, L.P. that are identified in RC411, and (ii) held by Eames, Ltd. (Final Award ¶¶ F.a.v and F.a.x). The Final Award provides for HCM to transfer, or take all necessary steps to cause the transfer of, such interests to the Redeemer Committee for the benefit of the Crusader Fund. The Final Award also provides that the Redeemer Committee has the independent right to cause the Crusader Fund to cancel such limited partnership interests. The Redeemer Committee reserves the right, to the extent required under applicable law, to seek relief from the Bankruptcy Court in order to cancel such limited partnership interests in accordance with the Final Award. The Redeemer Committee asserts a claim in an unliquidated amount in the event all such limited partnership interests are not cancelled in accordance with the Final Award.

3. **Deferred Fee Account.** The Arbitration Award granted the Redeemer Committee's request for a declaratory judgment with respect to the immediate distribution of the Deferred Fee Account, which the Crusader Fund continues to hold, and ordered the payment of the funds in such account to the Redeemer Committee for disbursal to the Consenting Compulsory Redeemers (March Award ¶ VII.D; Final Award ¶ F.a). The Redeemer Committee reserves the right, to the extent required under applicable law, to seek relief from the Bankruptcy Court in order to cause the distribution of the funds held in the Deferred Fee Account in accordance with the Arbitration Award. The Redeemer Committee asserts a claim in an unliquidated amount in the event all such funds are not distributed in accordance with the Arbitration Award.

The Redeemer Committee expressly reserves all of its procedural and substantive defenses and rights with respect to any claim that may be asserted against the Redeemer Committee by the Debtor, including any rights of setoff or recoupment.

The filing of this Claim shall not constitute: (i) an admission of liability by the Redeemer Committee to any party; (ii) a waiver or release of the Redeemer Committee's rights against any person, entity, or property; (iii) a consent by the Redeemer Committee to the jurisdiction of the Bankruptcy Court with respect to the subject matter of this Claim, any objection or other proceeding commenced with respect thereto, or any other proceeding commenced in these cases or otherwise involving the Redeemer Committee; (iv) a waiver of the right to move to withdraw the reference to the subject matter of this Claim, any objection or other proceeding commenced with respect thereto, or any other proceeding commenced in these cases against or otherwise involving any claimant; (v) a waiver of the right to have final orders entered only after *de novo* review by a United States Judge; (vi) its right to trial by jury in any proceeding so triable in these cases or any case, controversy, or proceeding related to these cases; (vii) its right to arbitration under the Plan and Scheme; (viii) an election of remedies; or (ix) any other rights, claims, actions, defenses, setoffs, or recoupments to which it is or may be entitled under agreements, in law, in equity, or otherwise, all of which rights, claims, actions, defenses, setoffs, and recoupments are expressly reserved.

EXHIBIT 6

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410
Proof of Claim

04/19

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Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   See summary page
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
See summary page	Alvarez and Marsal CRF Management, LLC 2029 Century Park East, Suite 2060 Los Angeles, CA 90067, United States
Contact phone 212-351-3969	Contact phone 310-975-2600
Contact email mrosenthal@gibsondunn.com	Contact email svarner@alvarezandmarsal.com

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) _____ Filed on ____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing?

0128822
19340542004060000000005

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ see attached rider . **Does this amount include interest or other charges?**
   - ☐ No
   - ☑ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   See attached rider

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature or property:
   - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☐ No
    - ☑ Yes. Identify the property: See attached rider

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

		Amount entitled to priority
☑	No	
☐	Yes. *Check all that apply:*	
☐	Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$
☐	Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$
☐	Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$
☐	Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$
☐	Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$
☐	Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/06/2020
MM / DD / YYYY

/s/Michael A. Rosenthal
Signature

Print the name of the person who is completing and signing this claim:

Name: Michael A. Rosenthal
First name Middle name Last name

Title: Counsel to Alvarez and Marsal CRF Management, LLC, as Investment Manage

Company: Gibson, Dunn and Crutcher LLP
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____ Email _____

1934054200406000000000005

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
Highland Crusader Offshore Partners, L.P., et al., see rider for all names of creditors
Michael A. Rosenthal, Gibson, Dunn and Crutcher LLP
200 Park Avenue
New York, NY, 10166
United States
Phone:
212-351-3969
Phone 2:
Fax:
Email:
mrosenthal@gibsondunn.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Authorized agent

Disbursement/Notice Parties:
Alvarez and Marsal CRF Management, LLC
2029 Century Park East, Suite 2060
Los Angeles, CA, 90067
United States
Phone:
310-975-2600
Phone 2:
Fax:
E-mail:
svarner@alvarezandmarsal.com
DISBURSEMENT ADDRESS

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
See attached rider

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
see attached rider

Includes Interest or Charges:
Yes

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No

Amount of 503(b)(9):
No

Based on Lease:
No

Subject to Right of Setoff:
Yes, See attached rider

Nature of Secured Amount:
Value of Property:
Annual Interest Rate:
Arrearage Amount:
Basis for Perfection:
Amount Unsecured:

Submitted By:
Michael A. Rosenthal on 06-Apr-2020 4:27:48 p.m. Eastern Time
Title:
Counsel to Alvarez and Marsal CRF Management, LLC, as Investment Manager
Company:
Gibson, Dunn and Crutcher LLP

Fill in this information to identify the case:

Debtor 1 Highland Capital Management, L.P.

Debtor 2 (Spouse, if filing) _____

United States Bankruptcy Court for the: Northern District of Texas

Case number 19-34054-sgj11

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**

Highland Crusader Offshore Partners, L.P., et al. (see rider for all names of creditors)
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor _____

2. **Has this claim been acquired from someone else?**

☑ No
☐ Yes. From whom? _____

3. **Where should notices and payments to the creditor be sent?**
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
Michael A. Rosenthal, Gibson, Dunn & Crutcher Name	Alvarez & Marsal CRF Management, LLC Name
200 Park Avenue Number Street	2029 Century Park East, Suite 2060 Number Street
New York NY 10166 City State ZIP Code	Los Angeles CA 90067 City State ZIP Code
Contact phone (212) 351-3969	Contact phone 310-975-2600
Contact email mrosenthal@gibsondunn.com	Contact email SVarner@alvarezandmarsal.com

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

_ _

4. **Does this claim amend one already filed?**

☑ No
☐ Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**

☑ No
☐ Yes. Who made the earlier filing? _____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
☑ No
☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ ____ ____ ____

7. **How much is the claim?** $See attached rider. **Does this amount include interest or other charges?**
☐ No
☑ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.
See attached rider

9. **Is all or part of the claim secured?**
☑ No
☐ Yes. The claim is secured by a lien on property.

Nature of property:
☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim.*
☐ Motor vehicle
☐ Other. Describe: _____

Basis for perfection: _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: $_____
Amount of the claim that is secured: $_____
Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amounts should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: $_____

Annual Interest Rate (when case was filed)_____%
☐ Fixed
☐ Variable

10. **Is this claim based on a lease?**
☑ No
☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
☐ No
☑ Yes. Identify the property: See attached rider

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☑ No

☐ Yes. *Check one:*

	Amount entitled to priority
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.
☑ I am the creditor's attorney or authorized agent.
☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/06/2020
MM / DD / YYYY

Signature

Print the name of the person who is completing and signing this claim:

Name: Michael A. Rosenthal
First name Middle name Last name

Title: Counsel to Alvarez & Marsal CRF Management, LLC, as Investment Manager

Company: Gibson, Dunn & Crutcher LLP
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: 200 Park Avenue
Number Street

New York NY 10166
City State ZIP Code

Contact phone (212) 351-3969 Email mrosenthal@gibsondunn.com

RIDER TO THE PROOF OF CLAIM OF THE CRUSADER FUNDS
Dated: April 6, 2020

This Rider is part of the proof of claim (the "**Proof of Claim**") filed by Highland Crusader Offshore Partners, L.P. ("**Master Fund**"), Highland Crusader Fund, L.P. ("**Onshore Fund**"), Highland Crusader Fund, Ltd. ("**Offshore Fund I**"), and Highland Crusader Fund II, Ltd. ("**Offshore Fund II**" and together with the Master Fund, Onshore Fund, and Offshore Fund I, the "**Crusader Funds**"), by and through their authorized investment manager, Alvarez & Marsal CRF Management, LLC, against Highland Capital Management, L.P. ("**HCM**" or the "**Debtor**").

The Crusader Funds' claim against HCM contains two components (which partially overlap) and a number of sub-components, described below.

I. FORFEITURE OF COMPENSATION

At all relevant times prior to August 4, 2016, HCM served as the investment manager for each of the Crusader Funds, pursuant to the terms of (a) the Joint Plan of Distribution of the Crusader Funds (the "**Plan**"); (b) the Scheme of Arrangement (the "**Scheme**"); (c) the Amended and Restated Investment Management Agreement between the Master Fund and HCM, dated as of June 1, 2006 (the "**Master Fund IMA**"); (d) the Amended and Restated Investment Management Agreement between Onshore Fund and HCM, dated as of June 1, 2006 (the "**Onshore IMA**"); (e) the Amended and Restated Investment Management Agreement between Offshore Fund I and HCM, dated as of September 1, 2006 (the "**Offshore I IMA**"); and (f) the Third Amended and Restated Investment Management Agreement between Offshore Fund II and HCM, dated as of September 1, 2006 (the "**Offshore II IMA**" and together with the Master Fund IMA, the Onshore IMA, and the Offshore I IMA, the "**IMAs**"). The Plan, the Scheme, and the IMAs are collectively referred to as the "**Fund Documents**."

Pursuant to the Fund Documents, HCM received compensation from the Crusader Funds in the form of Management Fees, Distribution Fees, and rights to Deferred Fees (each as defined in the Plan, the Scheme, or the IMAs). However, by no later than January 2012, HCM willfully and deliberately breached its obligations under the Fund Documents and breached its duty of loyalty to the Crusader Funds. At that time, HCM caused the Crusader Funds to borrow on margin from a trading account at Jefferies, and used the borrowings to inflate the amount of distributions being made, so as to inflate the amount of HCM's Distribution Fee. Following that date, HCM committed other acts of disloyalty and further breached its obligations to the Crusader Funds, as described in the Arbitration Award (as defined below) and as shown by the evidence presented at the arbitration hearing that led to the Arbitration Award.

As a result, pursuant to the "faithless servant" doctrine, HCM forfeited any right it had to compensation for its services from the Crusader Funds, from the date of HCM's first disloyal act onward. *See, e.g.*, *Phansalkar v. Andersen Weinroth & Co., L.P.*, 344 F.3d 184, 188 (2d Cir. 2003) ("We hold that New York's faithless servant doctrine requires Phansalkar to forfeit all compensation received after his first disloyal act."). As a "faithless servant," HCM is obligated to disgorge all compensation received from the Crusader Funds from the date of HCM's first disloyal act, and has no right to any further compensation from the Crusader Funds. The Crusader Funds thus assert a claim in the following amounts:

1. Management Fees: $8,233,337

2. Distribution Fees: $15,250,109

3. Deferred Fees: $32,313,000[1]

4. Other Fees: In the amount of any other compensation, fees or distributions which may now or in the future otherwise be owing to HCM

The Crusader Funds also assert an unliquidated claim for pre- and post-petition interest, attorneys' fees, costs, and other expenses in connection with recovering such amounts. The Crusader Funds also assert a claim in an unliquidated amount for any Deferred Fees to which HCM might otherwise become entitled in the future under the Fund Documents.

The Crusader Funds currently hold, and may in the future hold, amounts that HCM may claim are, either now or in the future, due to it as a result of services provided by HCM to the Crusader Funds (the "Withheld Amounts"). As a result of the claims detailed in the Arbitration Award and this Proof of Claim (including without limitation, the faithless servant claim), the Crusader Funds dispute that any such amounts are due. However, to the extent that HCM prevails on an entitlement to a claim against the Crusader Funds, the Crusader Funds have a right of setoff against any such claim to the extent of its claims against HCM and such right of setoff is further secured by the Withheld Amounts.

II. ARBITRATION AWARD

This component of the claim is asserted in the alternative to the claim asserted by the Redeemer Committee of the Crusader Funds (the "**Redeemer Committee**"). The Crusader Funds would withdraw this portion of their claim if and to the extent that the Redeemer Committee's claim is allowed.

On March 6, 2019, a panel of arbitrators issued a Partial Final Award (the "**March Award**") in favor of the Redeemer Committee against HCM. On April 29, 2019, the panel issued a Final Award (the "**Final Award**," and together with the March Award, the "**Arbitration Award**") in favor of the Redeemer Committee against HCM.[2] Substantially all of the relief awarded by the panel was expressly noted to be "for the benefit of the Fund." Final Award ¶¶ F.a.iii-x. The Arbitration Award is subject to the Federal Arbitration Act and The Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The Redeemer Committee timely moved to confirm the Award in the Delaware Chancery Court. HCM moved for partial vacatur of the Arbitration Award in June 2019. The time period to move to vacate the Arbitration Award expired prior to the Petition Date (as defined below). All capitalized terms that are not defined below have the meanings given to such terms in the Arbitration Award.

[1] This element of the claim for forfeiture of compensation overlaps in part with a component of the Arbitration Award claim, described in Section II below.

[2] Copies of the Arbitral Award have previously been provided the Debtor, the Official Committee of Unsecured Creditors, and the Office of the United States Trustee. The Crusader Funds reserve the right to file a copy of the Arbitral Award with the Bankruptcy Court.

The Arbitration Award component of the Crusader Funds' claim includes the following sub-components, and each is based on the Arbitration Award:

1. **Damage Claim.** The Crusader Funds assert a liquidated claim for at least $190,824,557 plus interest that is accruing beginning as of October 16, 2019, the date that HCM filed its bankruptcy case the (the "**Petition Date**"). As set forth in the Final Award, the separate components of the Damage Claim are as follows, and the amounts set forth below are as of the Petition Date, including prepetition interest awarded under the Arbitration Award accrued to the Petition Date:

   a. Deferred Fee Claim: $43,105,395 (Final Award ¶ F.a.ii.1)

   b. Distribution Fee Claim: $22,922,608 (Final Award ¶ F.a.ii.2)

   c. Taking of Plan Claims: $3,277,991 (Final Award ¶ F.a.v)

   d. CLO Trades Claim: $685,195 (Final Award ¶ F.a.vi)

   e. Credit Suisse Claim: $3,660,130 (Final Award ¶ F.a.vii)

   f. UBS Claim: $2,600,968 (Final Award ¶ F.a.viii)

   g. Barclays Claim: $30,811,366 (Final Award ¶ F.a.ix)

   h. Legal Fees, Costs, and Expenses: $11,351,850 (Final Award ¶ F.a.xi)

   i. Administrative Fees: $514,164 (Final Award ¶ F.a.xii)

   j. Cornerstone Award: $71,894,891 (Final Award ¶ F.a.ix)

The Crusader Funds also assert an unliquidated claim for post-petition interest, attorneys' fees, costs, and other expenses that continue to accrue in connection with the Damage Claim.

2. **Cancellation of Limited Partnership Interests.** The Final Award provides, in relevant part, for the cancellation of the limited partnership interests in the Crusader Funds that are (i) held by HCM and Charitable DAF Fund, L.P. that are identified in RC411, and (ii) held by Eames, Ltd. (Final Award ¶¶ F.a.v and F.a.x). The Final Award provides for HCM to transfer, or take all necessary steps to cause the transfer of, such interests to the Redeemer Committee for the benefit of the Crusader Funds. The Final Award also provides that the Redeemer Committee has the independent right to cause the Crusader Funds to cancel such limited partnership interests. The Crusader Funds reserve the right, to the extent required under applicable law, to seek relief from the Bankruptcy Court in order to cancel such limited partnership interests in accordance with the Final Award. The Crusader Funds assert a claim in an unliquidated amount in the event all such limited partnership interests are not cancelled in accordance with the Final Award.

3. **Deferred Fee Account.** The Arbitration Award granted the Redeemer Committee's request for a declaratory judgment with respect to the immediate distribution of the

Deferred Fee Account, which the Crusader Funds continue to hold, and ordered the payment of the funds in such account to the Redeemer Committee for disbursal to the Consenting Compulsory Redeemers (March Award ¶ VII.D; Final Award ¶ F.a). The Crusader Funds reserve the right, to the extent required under applicable law, to seek relief from the Bankruptcy Court in order to cause the distribution of the funds held in the Deferred Fee Account in accordance with the Arbitration Award. The Crusader Funds assert a claim in an unliquidated amount in the event all such funds are not distributed in accordance with the Arbitration Award.

The Crusader Funds file this portion of the Proof of Claim out of an abundance of caution and in the event that the Arbitration Award is determined not to be an executory contract. However, the Arbitration Award may be an executory contract under section 365 of the Bankruptcy Code. HCM has not yet moved to assume or reject such contract. The Crusader Funds reserve the right to dispute whether the Arbitration Award is an executory contract and, if so, HCM's decision to reject such contract. If the Arbitration Award is determined to be an executory contract and is allowed to be rejected by the Bankruptcy Court, the Crusader Funds reserve the right to file an amended proof of claim by the bar date for the filing of rejection damages claims; if no such amended proof of claim is filed, then, this claim shall serve as the Crusader Funds' rejection damages claim. By filing this Proof of Claim, the Crusader Funds do not concede that the Arbitration Award is an executory contract, that amounts awarded under the Arbitration Award are prepetition claims or that they are now required to file a proof of claim to be entitled to the amounts described in the Arbitration Award.

* * *

The Crusader Funds reserve all rights to amend or modify this Proof of Claim in any respect, including, without limitation, to assert other or additional claims, or for the purpose of fixing or liquidating any contingent or unliquidated claims. This Proof of Claim is without prejudice to any other rights the Crusader Funds may have against the Debtor, its officers, employees, successors, or assigns.

The Crusader Funds expressly reserve all of their procedural and substantive defenses and rights with respect to any claim that may be asserted against the Crusader Funds by the Debtor, including, without limitation, any rights of setoff or recoupment.

The filing of this Proof of Claim shall not constitute: (i) an admission of liability by the Crusader Funds to any party; (ii) a waiver or release of the Crusader Funds' rights against any person, entity, or property; (iii) a consent by the Crusader Funds to the jurisdiction of the Bankruptcy Court with respect to the subject matter of this Proof of Claim, any objection or other proceeding commenced with respect thereto, or any other proceeding commenced in these cases or otherwise involving the Crusader Funds; (iv) a waiver or release of the right to move to withdraw the reference to the subject matter of this Proof of Claim Claim, any objection or other proceeding commenced with respect thereto, or any other proceeding commenced in these cases against or otherwise involving any claimant; (v) a waiver or release of the right to seek to have the Bankruptcy Court abstain with respect to the subject matter of this Proof of Claim, any objection or other proceeding commenced with respect thereto, or any other proceeding commenced in these cases against or otherwise involving any claimant, (vi) a waiver or release of the right to have final

orders entered only after *de novo* review by a United States District Judge; (vii) a waiver or release of their right to trial by jury in any proceeding so triable in these cases or any case, controversy, or proceeding related to these cases; (viii) a consent to a jury trial in any proceeding so triable in these cases or any case, controversy or proceeding related to these cases, (ix) a waiver or release of their right to arbitration under the Plan and Scheme; (x) an election of remedies or limitation of rights or remedies; or (xi) a waiver or release of any other rights, claims, actions, defenses, setoffs, or recoupments to which they are or may be entitled under agreements, in law, in equity, or otherwise, all of which rights, claims, actions, defenses, setoffs, and recoupments are expressly reserved.

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054 (SGJ)
Debtor.	)	

CERTIFICATE OF SERVICE

I, Vincent Trang, depose and say that I am employed by Kurtzman Carson Consultants LLC ("KCC"), the claims and noticing agent for the Debtor in the above-captioned case.

On September 23, 2020, at my direction and under my supervision, employees of KCC caused the following documents to be served via Electronic Mail upon the service lists attached hereto as **Exhibit A** and **Exhibit B**; and on September 24, 2020, via First Class Mail upon the service lists attached hereto as **Exhibit C** and **Exhibit D**:

- **Debtor's Motion for Entry of an Order Approving Settlements with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith** [Docket No. 1089]

- **Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlements with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith** [Docket No. 1090]

- **Debtor's Motion for Entry of an Order Authorizing Filing Under Seal Certain of the Exhibits to the Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlements with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith** [Docket No. 1091]

Furthermore, on September 24, 2020, at my direction and under my supervision, employees of KCC caused the following document to be served via Electronic Mail upon the service lists attached hereto as **Exhibit A**, **Exhibit B**, and **Exhibit E**; and via First Class Mail upon the service lists attached hereto as **Exhibit C**, **Exhibit D**, and **Exhibit F**:

(Continued on Next Page)

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

- **Notice of Hearing** [Docket No. 1095]

Dated: September 29, 2020

/s/ Vincent Trang
Vincent Trang
KCC
222 N Pacific Coast Highway, Suite 300
El Segundo, CA 90245

EXHIBIT A

Exhibit A

Core/2002 Service List
Served via Electronic Mail

Description	CreditorName	CreditorNoticeName	Email
Counsel for Collin County Tax Assessor/Collector	Abernathy, Roeder, Boyd & Hullett, P.C.	Chad Timmons, Larry R. Boyd, Emily M. Hahn	ctimmons@abernathy-law.com; bankruptcy@abernathy-law.com; ehahn@abernathy-law.com
Counsel for NexBank	Alston & Bird LLP	Jared Slade	jared.slade@alston.com
Counsel for NexBank	Alston & Bird LLP	Jonathan T. Edwards	jonathan.edwards@alston.com
Counsel to Jefferies LLC	Ashby & Geddes, P.A.	William P. Bowden, Esq., Michael D. DeBaecke, Esq.	mdebaecke@ashbygeddes.com
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P. (collectively, “Acis”)	Blank Rome LLP	John E. Lucian, Josef W. Mintz	mintz@blankrome.com; jbibiloni@blankrome.com
Counsel to James Dondero	Bonds Ellis Eppich Schafer Jones LLP	D. Michael Lynn, John Y. Bonds, III, Bryan C. Assink	michael.lynn@bondsellis.com; john@bondsellis.com; bryan.assink@bondsellis.com
Counsel to Oracle America, Inc.	Buchalter, A Professional Corporation	Shawn M. Christianson, Esq.	schristianson@buchalter.com
Counsel for UBS Securities	Butler Snow LLP	Attn: Martin A. Sosland and Candice M. Carson	martin.sosland@butlersnow.com; candice.carson@butlersnow.com
Counsel to Integrated Financial Associates Inc.	Carlyon Cica Chtd.	Candace C. Carlyon, Esq., Tracy M. Osteen, Esq.	ccarlyon@carlyoncica.com; tosteen@carlyoncica.com
Counsel to the Intertrust Entities and the CLO Entities	Chipman, Brown, Cicero & Cole, LLP	Mark L. Desgrosseilliers	desgross@chipmanbrown.com
Creditor	Cole, Schotz, Meisel, Forman & Leonard, P.A.	Michael D. Warner, Esq.	mwarner@coleschotz.com
Counsel to Siepe LLC	Condon Tobin Sladek Thornton PLLC	J. Seth Moore	smoore@ctstlaw.com
Counsel to Patrick Daugherty (“Mr. Daugherty”)	Cross & Simon LLC	Michael L. Vild, Esquire	mvild@crosslaw.com
Counsel to Jefferies LLC	Dentons US LLP	Lauren Macksoud, Esq.	lauren.macksoud@dentons.com
Counsel to Jefferies LLC	Dentons US LLP	Patrick C. Maxcy, Esq.	patrick.maxcy@dentons.com
Secured Creditor	Frontier State Bank	Attn: Steve Elliot	selliott@frontier-ok.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Frost Brown Todd LLC	Mark A. Platt	mplatt@fbtlaw.com
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Marshall R. King, Esq., Michael A. Rosenthal, Esq. & Alan Moskowitz, Esq.	mking@gibsondunn.com; mrosenthal@gibsondunn.com; amoskowitz@gibsondunn.com
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Matthew G. Bouslog, Esq.	mbouslog@gibsondunn.com
Counsel for the Debtor	Hayward & Associates PLLC	Melissa S. Hayward, Zachery Z. Annable	MHayward@HaywardFirm.com; ZAnnable@HaywardFirm.com
Equity Holders	Hunter Mountain Investment Trust	c/o Rand Advisors LLC	Jhonis@RandAdvisors.com
IRS	Internal Revenue Service	Attn Susanne Larson	SBSE.Insolvency.Balt@irs.gov
Counsel to Crescent TC Investors, L.P.	Jackson Walker L.L.P.	Michael S. Held	mheld@jw.com
Secured Creditor	Jefferies LLC	Director of Compliance	cbianchi@jefferies.com
Secured Creditor	Jefferies LLC	Office of the General Counsel	cbianchi@jefferies.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Jenner & Block LLP	Marc B. Hankin, Richard Levin	mhankin@jenner.com; rlevin@jenner.com
Counsel for CCS Medical, Inc.	Jones Day	Amanda Rush	asrush@jonesday.com
Counsel to the Issuers (group of 25 separate Cayman issuers of loan)	Jones Walker LLP	Joseph E. Bain, Amy K. Anderson	jbain@joneswalker.com; aanderson@joneswalker.com
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	K&L Gates LLP	Artoush Varshosaz	artoush.varshosaz@klgates.com
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	K&L Gates LLP	James A. Wright III	james.wright@klgates.com

Exhibit A

Core/2002 Service List
Served via Electronic Mail

Description	CreditorName	CreditorNoticeName	Email
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Counsel for Highland CLO Funding Ltd.	King & Spalding LLP	Paul R. Bessette	pbessette@kslaw.com
Counsel to BET Investments II, L.P.	Kurtzman Steady, LLC	Jeffrey Kurtzman, Esq.	Kurtzman@kurtzmansteady.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Asif Attarwala	asif.attarwala@lw.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Jeffrey E. Bjork	jeff.bjork@lw.com
Counsel to Coleman County TAD, Kaufman County, Upshur County, Fannin CAD, Tarrant County, Grayson County, Allen ISD, Dallas County, Irving ISD, and Rockwall CAD	Linebarger Goggan Blair & Sampson LLP	Elizabeth Weller, Laurie A. Spindler	dallas.bankruptcy@publicans.com
Creditor	Lynn Pinker Cox & Hurst, L.L.P.	Michael K. Hurst, Esq.	mhurst@lynnllp.com
Equity Holders	Mark K. Okada		mokadadallas@gmail.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Morris, Nichols, Arsht & Tunnell LLP	Curtis S. Miller, Kevin M. Coen	rdehney@mnat.com; cmiller@mnat.com
Counsel to Meta-e Discovery, LLC	Morrison Cohen LLP	Joseph T. Moldovan, Esq. & Sally Siconolfi, Esq.	bankruptcy@morrisoncohen.com
Bank	NexBank	John Danilowicz	john.holt@nexbankcapital.com
Counsel to California Public Employees' Retirement System ("CalPERS")	Nixon Peabody LLP	Louis J. Cisz, III, Esq.	lcisz@nixonpeabody.com
SEC Headquarters	Office of General Counsel	Securities & Exchange Commission	SECBankruptcy-OGC-ADO@SEC.GOV
US Trustee for Northern District of TX	Office of the United States Trustee	Lisa L. Lambert, Esq	lisa.l.lambert@usdoj.gov
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	John A. Morris and Gregory V. Demo	jmorris@pszjlaw.com; gdemo@pszjlaw.com
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Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Richard M. Pachulski, Jeffrey N. Pomerantz, Ira D. Kharasch, Maxim B. Litvak, James E. O'Neill	rpachulski@pszjlaw.com; jpomerantz@pszjlaw.com; ikharasch@pszjlaw.com; mlitvak@pszjlaw.com; joneill@pszjlaw.com
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Richard M. Pachulski, Jeffrey N. Pomerantz, Ira D. Kharasch, Maxim B. Litvak, James E. O'Neill	rpachulski@pszjlaw.com; jpomerantz@pszjlaw.com; ikharasch@pszjlaw.com; mlitvak@pszjlaw.com; joneill@pszjlaw.com
Pension Benefit Guaranty Corporation ("PBGC")	Pension Benefit Guaranty Corporation	Michael I. Baird	baird.michael@pbgc.gov; efile@pbgc.gov
Counsel to City of Garland, Garland ISD, Wylie ISD	Perdue, Brandon, Fielder, Collins & Mott, L.L.P.	Linda D. Reece	lreece@pbfcm.com
Delaware counsel to Alvarez & Marsal CRF Management LLC	Potter Anderson & Corroon LLP	Jeremy W. Ryan, Esq., R. Stephen McNeill, Esq. & D. Ryan Slaugh, Esq.	jryan@potteranderson.com; rmcneill@potteranderson.com; rslaugh@potteranderson.com
Secured Creditor	Prime Brokerage Services	Jefferies LLC	cbianchi@jefferies.com
Counsel to Patrick Daugherty	Pronske & Kathman, P.C.	Jason P. Kathman	jkathman@pronskepc.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Richards, Layton & Finger PA	Michael J. Merchant, Sarah E. Silveira	merchant@rlf.com; silveira@rlf.com
Counsel to Hunter Mountain Trust	Rochelle McCullough, LLP	E. P. Keiffer	pkeiffer@romclaw.com
Counsel to the Intertrust Entities and the Issuers (group of 25 separate Cayman issuers of loan)	Schulte Roth & Zabel LLP	David J. Karp, James V. Williams III	david.karp@srz.com; jay.williams@srz.com
SEC Regional Office	Securities & Exchange Commission	Andrew Calamari, Regional Director	bankruptcynoticeschr@sec.gov; nyrobankruptcy@sec.gov
SEC Regional Office	Securities & Exchange Commission	Sharon Binger, Regional Director	philadelphia@sec.gov

Exhibit A

Core/2002 Service List
Served via Electronic Mail

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Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Bojan Guzina, Matthew Clemente, Alyssa Russell, Elliot A. Bromagen	bguzina@sidley.com; mclemente@sidley.com; alyssa.russell@sidley.com; ebromagen@sidley.com
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Jessica Boelter	jboelter@sidley.com
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Penny P. Reid, Paige Holden Montgomery, Charles M. Person, Juliana Hoffman	preid@sidley.com; pmontgomery@sidley.com; cpersons@sidley.com; jhoffman@sidley.com
DE Secretary of State	State of Delaware	Division of Corporations - Franchise Tax	dosdoc_bankruptcy@state.de.us
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Equity Holders	The Dugaboy Investment Trust		gscott@myersbigel.com
Equity Holders	The Mark and Pamela Okada Family Trust - Exempt Trust #1		mokadadallas@gmail.com
Equity Holders	The Mark and Pamela Okada Family Trust - Exempt Trust #2		mokadadallas@gmail.com
Counsel to the United States Internal Revenue Service	U.S. Department of Justice, Tax Division	David G. Adams	david.g.adams@usdoj.gov
United States Attorney General	United States Attorney General	U.S. Department of Justice	askdoj@usdoj.gov
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P. (collectively, "Acis")	Winstead PC	Rakhee V. Patel, Phillip Lamberson	rpatel@winstead.com; plamberson@winstead.com; achiarello@winstead.com
Counsel for Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz, and Thomas Surgent (the "Employees")	Winston & Strawn LLP	Attn: David Neier	dneier@winston.com
Counsel for Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz, and Thomas Surgent (the "Employees")	Winston & Strawn LLP	Attn: Katherine A. Preston	kpreston@winston.com
Counsel for Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz, and Thomas Surgent (the "Employees")	Winston & Strawn LLP	Attn: Thomas M. Melsheimer; Natalie L. Arbaugh	tmelsheimer@winston.com; narbaugh@winston.com
Counsel to Official Committee of Unsecured Creditors	Young Conaway Stargatt & Taylor, LLP	Michael R. Nestor, Edmon L. Morton, Sean M. Beach, Esq., Jaclyn C. Weissgerber, Esq.	bankfilings@ycst.com; mnestor@ycst.com; emorton@ycst.com; sbeach@ycst.com; jweissgerber@ycst.com

EXHIBIT B

Exhibit B

Affected Parties

Served via Electronic Mail

CreditorName	CreditorNoticeName	Email
Highland Crusader Offshore Partners, L.P., et al.	Alvarez and Marsal CRF Management, LLC	svarner@alvarezandmarsal.com
Highland Crusader Offshore Partners, L.P., et al.	Michael A. Rosenthal, Gibson, Dunn and Crutcher LLP	mrosenthal@gibsondunn.com
Redeemer Commttee Highland Crusader Fund	c/o Terri Mascherin, Esq.	ejg10128@yahoo.com

EXHIBIT C

Exhibit C
Core/2002 Service List
Served via First Class Mail

Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
Bank	BBVA	Michael Doran	8080 North Central Expressway	Suite 1500		Dallas	TX	75206
IRS	Internal Revenue Service	Centralized Insolvency Operation	PO Box 7346			Philadelphia	PA	19101-7346
Secured Creditor	KeyBank National Association	as Administrative Agent	225 Franklin Street, 18th Floor			Boston	MA	02110
Secured Creditor	KeyBank National Association	as Agent	127 Public Square			Cleveland	OH	44114
Texas Attorney General	Office of the Attorney General	Ken Paxton	300 W. 15th Street			Austin	TX	78701
Attorney General of the United States	Office of the Attorney General		Main Justice Building, Room 5111	10th & Constitution Avenue, N.W.		Washington	DC	20530
US Attorneys Office for Northern District of TX	Office of the United States Attorney	Erin Nealy Cox, Esq	1100 Commerce Street, 3rd Floor			Dallas	TX	75202
TX Comptroller of Public Accounts	State Comptroller of Public Accounts	Revenue Accounting Division-Bankruptcy Section	PO Box 13258			Austin	TX	78711
Equity Holders	Strand Advisors, Inc.		300 Crescent Court	Suite 700		Dallas	TX	75201
TX AG Office	Texas Attorney Generals Office	Bankruptcy-Collections Division	PO Box 12548			Austin	TX	78711-2548
U.S. Department of the Treasury	US Department of the Treasury	Office of General Counsel	1500 Pennsylvania Avenue, NW			Washington	DC	20220
Delaware Division of Revenue	Zillah A. Frampton	Bankruptcy Administrator	Delaware Division of Revenue	Carvel State Office Building, 8th Floor	820 N. French Street	Wilmington	DE	19801

EXHIBIT D

Exhibit D

Affected Parties

Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	City	State	Zip
Highland Crusader Offshore Partners, L.P., et al.	Alvarez and Marsal CRF Management, LLC	2029 Century Park East, Suite 2060		Los Angeles	CA	90067
Redeemer Commttee Highland Crusader Fund	c/o Terri Mascherin, Esq.	Jenner & Block	353 N. Clark Street	Chicago	IL	60654-3456
Highland Crusader Offshore Partners, L.P., et al.	Michael A. Rosenthal, Gibson, Dunn and Crutcher LLP	200 Park Avenue		New York	NY	10166

EXHIBIT E

Exhibit E

Affected Parties

Served via Electronic Mail

CreditorName	CreditorNoticeName	Email
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Acis Capital Management L.P. and Acis Capital Management GP, LLC	Attn Annmarie Chiarello	achiarello@winstead.com
Acis Capital Management, LP	Brian P. Shaw	shaw@roggedunngroup.com
Acis Capital Management, LP		josh@aciscm.com
Joshua N. Terry on behalf of his IRAs and Jennifer G. Terry on behalf of her IRAs and The Terry Family 401-K Plan	Brian P. Shaw	shaw@roggedunngroup.com
Joshua N. Terry on behalf of his IRAs and Jennifer G. Terry on behalf of her IRAs and The Terry Family 401-K Plan		joshuanterry@gmail.com

EXHIBIT F

Exhibit F

Affected Parties
Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
Acis Capital Management L.P. and Acis Capital Management GP, LLC	Acis Capital Management L.P. and Acis Capital Management GP, LLC	3110 Webb Ave., Suite 203			Dallas	TX	75205
Acis Capital Management L.P. and Acis Capital Management GP, LLC	Attn Annmarie Chiarello	c/o Winstead PC	500 Winstead Building	2728 N. Harwood Street	Dallas	TX	75201
Acis Capital Management, LP	Brian P. Shaw	500 N. Akard St. Suite 1900			Dallas	TX	75201
Acis Capital Management, LP		3110 Webb Ave Suite 203			Dallas	TX	75205
Joshua N. Terry on behalf of his IRAs and Jennifer G. Terry on behalf of her IRAs and The Terry Family 401-K Plan	Brian P. Shaw	500 N. Akard St. Suite 1900			Dallas	TX	75201
Joshua N. Terry on behalf of his IRAs and Jennifer G. Terry on behalf of her IRAs and The Terry Family 401-K Plan		25 Highland Park Village Suite 100-848			Dallas	TX	75205

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candice.carson@butlersnow.com

Counsel for UBS Securities LLC and UBS AG, London Branch

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

In re	:	
	:	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	:	
	:	Case No. 19-34054-sgj11
Debtor.	:	

Notice of Appeal

To the Honorable Court:

[1] The Debtor's last four digits of its taxpayer identification number are 6725. The headquarters and service address for the Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

NOTICE IS HEREBY GIVEN that, pursuant to rules 8002 and 8003 of the Federal Rules of Bankruptcy Procedure Movants, UBS Securities LLC and UBS AG, London Branch hereby appeal to the United States District Court for the Northern District of Texas from the *Order Approving Debtor's Settlement with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith*, dated October 22, 2020 [Docket No. 1273] (the "Order"), and entered by the United States Bankruptcy Court for the Northern District of Texas on October 23, 2020. A copy of the Order is attached hereto.

The parties to this matter and the names and addresses of their respective attorneys are as follows:

Party	**Counsel of Record**
Creditors UBS Securities LLC and UBS AG, London Branch -- Movants	Andrew Clubok (*pro hac vice*) Sarah Tomkowiak (*pro hac vice*) **LATHAM & WATKINS LLP** 555 Eleventh Street, NW, Suite 1000 Washington, District of Columbia Telephone: (202) 637-2200 Email: andrew.clubok@lw.com sarah.tomkowiak@lw.com and Jeffrey E. Bjork (*pro hac vice*) Kimberly A. Posin (*pro hac vice*) **LATHAM & WATKINS LLP** 355 South Grand Avenue, Suite 100 Los Angeles, CA 90071 Telephone: (213) 485-1234 Email: jeff.bjork@lw.com kim.posin@lw.com and Martin Sosland (TX Bar No. 18855645)

	Candice M. Carson (TX Bar No. 24074006) **BUTLER SNOW LLP** 2911 Turtle Creek Boulevard, Suite 1400 Dallas, Texas 75219 Telephone: (469) 680-5502 Email: martin.sosland@butlersnow.com candice.carson@butlersnow.com
Debtor Highland Capital Management, L.P. – Respondent	Jeffrey N. Pomerantz (CA Bar No.143717) (*pro hac vice*) Ira D. Kharasch (CA Bar No. 109084) (*pro hac vice*) John A. Morris (NY Bar No. 266326) (*pro hac vice*) Gregory V. Demo (NY Bar No. 5371992) (*pro hac vice*) **PACHULSKI STANG ZIEHL & JONES LLP** 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067 Telephone: (310) 277-6910 Email: jpomerantz@pszjlaw.com ikharasch@pszjlaw.com gdemo@pszjlaw.com and Melissa S. Hayward (TX Bar No. 24044908) Zachery Z. Annable (TX Bar No. 24053075) **HAYWARD & ASSOCIATES PLLC** 10501 N. Central Expy, Ste. 106 Dallas, Texas 75231 Telephone: (972) 755-7100 Email: MHayward@HaywardFirm.com ZAnnable@HaywardFirm.com
Creditors Redeemer Committee of the Highland Crusader Fund and Highland Crusader Offshore Partners, L.P., Highland Crusader Fund, L.P., Highland Crusader Fund, Ltd. and Highland Crusader Fund II, Ltd. – Parties-In-Interest	Mark A. Platt, Esq. (TX Bar No. 00791453) **FROST BROWN TODD LLC** 2101 Cedar Springs Road, Suite 900 Dallas, Texas 75201 Telephone: 214-545-3474 Email: mplatt@fbtlaw.com and

	Terri L. Mascherin **JENNER AND BLOCK, LLP** 353 North Clark Street Chicago, IL 60654-3456 Telephone: (312) 222-9350 Email: TMascherin@jenner.com and Marc B. Hankin **JENNER AND BLOCK, LLP** 919 3rd Avenue, New York, NY 10022 (212) 891-1647 Email: MHankin@jenner.com

[Remainder of page intentionally left blank]

DATED this 6th day of November, 2020.

BUTLER SNOW LLP

By /s/ *Martin Sosland*

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Counsel for UBS Securities LLC and UBS AG, London Branch

CERTIFICATE OF SERVICE

I, Martin Sosland, certify that this *Notice of Appeal* was filed electronically through the Court's ECF system, which provides notice to all parties of interest.

Dated: November 6, 2020.

/s/ *Martin Sosland*

Martin A. Sosland

Exhibit A

Order

The following constitutes the ruling of the court and has the force and effect therein described.

Signed October 22, 2020

United States Bankruptcy Judge

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

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Debtor.	§	Related to Docket No. 1089

ORDER APPROVING DEBTOR'S SETTLEMENT WITH (A) THE REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND (CLAIM NO. 72), AND (B) THE HIGHLAND CRUSADER FUNDS (CLAIM NO. 81), AND AUTHORIZING ACTIONS CONSISTENT THEREWITH

Upon the *Motion for Entry of an Order Approving Settlement with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith* [Docket No. 1089] (the "Motion")[2] filed by the above-captioned debtor and debtor-in-possession (the "Debtor"); and this

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties-in-interest; and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion, any and all other documents filed in support of the Motion, and the UBS Objection; and this Court having held an evidentiary hearing October 20, 2020, where it assessed the credibility of the witnesses, considered the evidence admitted into the record, and determined that the legal and factual bases set forth in the Motion and at the hearing on the Motion establish good cause for the relief granted herein; and upon overruling any objections to the Motion; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT**:

1. The Motion is **GRANTED** as set forth herein.

2. The Settlement, attached as **Exhibit 1** to the Morris Declaration, is approved in all respects pursuant to Bankruptcy Rule 9019.

3. The UBS Objection is overruled in its entirety.

4. The Debtor and its agents are authorized to take any and all actions necessary or desirable to implement the Settlement without need of further Court approval or notice.

5. The Court shall retain jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order

END OF ORDER

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	

FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND CAPITAL MANAGEMENT, L.P.

PACHULSKI STANG ZIEHL & JONES LLP
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Ira D. Kharasch (CA Bar No. 109084)
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Counsel for the Debtor and Debtor-in-Possession

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

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Page

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Page

DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION

HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned case (the "Debtor"), proposes the following chapter 11 plan of reorganization (the "Plan") for, among other things, the resolution of the outstanding Claims against, and Equity Interests in, the Debtor. Unless otherwise noted, capitalized terms used in this Plan have the meanings set forth in Article I of this Plan. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor's history, business, results of operations, historical financial information, projections and assets, and for a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents that may be Filed with the Bankruptcy Court that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Documents. All such Exhibits and Plan Documents are incorporated into and are a part of this Plan as if set forth in full herein. Subject to the other provisions of this Plan, and in accordance with the requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to the Effective Date.

If this Plan cannot be confirmed, for any reason, then subject to the terms set forth herein, this Plan may be revoked.

ARTICLE I.
RULES OF INTERPRETATION, COMPUTATION OF TIME, GOVERNING LAW AND DEFINED TERMS

A. Rules of Interpretation, Computation of Time and Governing Law

For purposes hereof: (a) in the appropriate context, 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 herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented in accordance with its terms; (d) unless otherwise specified, all references herein to "Articles," "Sections," "Exhibits" and "Plan Documents" are references to Articles, Sections, Exhibits and Plan Documents hereof or hereto; (e) unless otherwise stated, the words "herein," "hereof," "hereunder" and "hereto" refer to this Plan in its entirety rather than to a particular portion of this Plan; (f) 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 hereof; (g) any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity's successors and assigns;

(h) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (i) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (j) "$" or "dollars" means Dollars in lawful currency of the United States of America. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

B. Defined Terms

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. "*Acis*" means collectively Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

2. "*Administrative Expense Claim*" means any Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, and that have not already been paid by the Debtor during the Chapter 11 Case and a Professional Fee Claim.

3. "*Administrative Expense Claims Bar Date*" means, with respect to any Administrative Expense Claim (other than a Professional Fee Claim) becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is forty-five days after the Effective Date.

4. "*Administrative Expense Claims Objection Deadline*" means, with respect to any Administrative Expense Claim, the later of (a) ninety (90) days after the Effective Date and (b) sixty (60) days after the timely Filing of the applicable request for payment of such Administrative Expense Claim; *provided, however,* that the Administrative Expense Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

5. "*Affiliate*" means an "affiliate" as defined in section 101(2) of the Bankruptcy Code and also includes any other Entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such affiliate. For the purposes of this definition, the term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

6. "*Allowed*" means, with respect to any Claim, except as otherwise provided in the Plan: (a) any Claim that is evidenced by a Proof of Claim that has been timely Filed by the Bar Date, or that is not required to be evidenced by a Filed Proof of Claim under the Bankruptcy Code or a Final Order; (b) a Claim that is listed in the Schedules as not contingent, not

unliquidated, and not disputed and for which no Proof of Claim has been timely filed; (c) a Claim Allowed pursuant to the Plan or an order of the Bankruptcy Court that is not stayed pending appeal; or (d) a Claim that is not Disputed (including for which a Proof of Claim has been timely filed in a liquidated and noncontingent amount that has not been objected to by the Claims Objection Deadline or as to which any such objection has been overruled by Final Order); *provided, however,* that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed as set forth above.

7. "*Allowed Claim or Equity Interest*" means a Claim or an Equity Interest of the type that has been Allowed.

8. "*Assets*" means all of the rights, titles, and interest of the Debtor, Reorganized Debtor, or Claimant Trust, in and to property of whatever type or nature, including, without limitation, real, personal, mixed, intellectual, tangible, and intangible property, the Debtor's books and records, and the Causes of Action.

9. "*Available Cash*" means any Cash in excess of the amount needed for the Claimant Trust and Reorganized Debtor to maintain business operations as determined in the sole discretion of the Claimant Trustee.

10. "*Avoidance Actions*" means any and all avoidance, recovery, subordination or other actions or remedies that may be brought by and on behalf of the Debtor or its Estate under the Bankruptcy Code or applicable nonbankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510, 544, 545, and 547-553 of the Bankruptcy Code or under similar state or federal statutes and common law, including fraudulent transfer laws

11. "*Ballot*" means the form(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

12. "*Bankruptcy Code*" means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

13. "*Bankruptcy Court*" means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or any other court having jurisdiction over the Chapter 11 Case.

14. "*Bankruptcy Rules*" means the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in each case as amended from time to time and as applicable to the Chapter 11 Case.

15. "*Bar Date*" means the applicable deadlines set by the Bankruptcy Court for the filing of Proofs of Claim against the Debtor as set forth in the Bar Date Order, which deadlines may be or have been extended for certain Claimants by order of the Bankruptcy Court.

16. "*Bar Date Order*" means the *Order (I) Establishing Bar Dates for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof* [D.I. 488].

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

18. "*Cash*" means the legal tender of the United States of America or the equivalent thereof.

19. "*Causes of Action*" means any action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license and franchise of any kind or character whatsoever, in each case whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including, without limitation, under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law. For the avoidance of doubt, Cause of Action includes, without limitation,: (a) any right of setoff, counterclaim or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Equity Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any claims under any state or foreign law, including, without limitation, any fraudulent transfer or similar claims; (f) the Avoidance Actions, and (g) the Estate Claims. The Causes of Action include, without limitation, the Causes of Action belonging to the Debtor's Estate listed on the schedule of Causes of Action to be filed with the Plan Supplement.

20. "*CEO/CRO*" means James P. Seery, Jr., the Debtor's chief executive officer and chief restructuring officer.

21. "*Chapter 11 Case*" means the Debtor's case under chapter 11 of the Bankruptcy Code commenced on the Petition Date in the Delaware Bankruptcy Court and transferred to the Bankruptcy Court on December 4, 2019, and styled *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj-11.

22. "*Claim*" means any "claim" against the Debtor as defined in section 101(5) of the Bankruptcy Code.

23. "*Claims Objection Deadline*" means the date that is 180 days after the Confirmation Date; *provided, however,* the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

24. "*Claimant Trust*" means the trust established for the benefit of the Claimant Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the Claimant Trust Agreement.

25. "*Claimant Trust Agreement*" means the agreement Filed in the Plan Supplement establishing and delineating the terms and conditions of the Claimant Trust.

26. "*Claimant Trust Assets*" means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

27. "*Claimant Trust Beneficiaries*" means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

28. "*Claimant Trustee*" means James P. Seery, Jr., the Debtor's chief executive officer and chief restructuring officer, or such other Person identified in the Plan Supplement who will act as the trustee of the Claimant Trust in accordance with the Plan, the Confirmation Order, and Claimant Trust Agreement or any replacement trustee pursuant to (and in accordance with) the Claimant Trust Agreement. The Claimant Trustee shall be responsible for, among other things, monetizing the Estate's investment assets, resolving Claims (other than those Claims assigned to the Litigation Sub-Trust for resolution), and, as the sole officer of New GP LLC, winding down the Reorganized Debtor's business operations.

29. "*Claimant Trust Expenses*" means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Trustees on account of administration of the Claimant Trust, including any reasonable administrative fees and expenses, reasonable attorneys' fees and expenses, reasonable insurance costs, taxes, reasonable escrow expenses, and other expenses.

30. "*Claimant Trust Interests*" means the non-transferable interests in the Claimant Trust that are issued to the Claimant Trust Beneficiaries pursuant to this Plan; *provided*, *however*, Holders of Class A Limited Partnership Interests, Class B Limited Partnership Interests, and Class C Limited Partnership Interests will not be deemed to hold Claimant Trust Interests unless and until the Contingent Claimant Trust Interests distributed to such Holders vest in accordance with the terms of this Plan and the Claimant Trust Agreement.

31. "*Claimant Trust Oversight Committee*" means the committee of five Persons established pursuant to ARTICLE IV of this Plan to oversee the Claimant Trustee's performance of its duties and otherwise serve the functions described in this Plan and the Claimant Trust Agreement.

32. "*Class*" means a category of Holders of Claims or Equity Interests as set forth in ARTICLE III hereof pursuant to section 1122(a) of the Bankruptcy Code.

33. "*Class A Limited Partnership Interest*" means the Class A Limited Partnership Interests as defined in the Limited Partnership Agreement held by The Dugaboy Investment Trust, Mark and Pamela Okada Family Trust – Exempt Trust 2, Mark and Pamela Okada – Exempt Descendants' Trust, and Mark Kiyoshi Okada, and the General Partner Interest.

34. "*Class B Limited Partnership Interest*" means the Class B Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

35. "*Class B/C Limited Partnership Interests*" means, collectively, the Class B Limited Partnership and Class C Limited Partnership Interests.

36. "*Class C Limited Partnership Interest*" means the Class C Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

37. "*Committee*" means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee pursuant to 11 U.S.C. § 1102(a)(1) on October 29, 2019 [D.I. 65], consisting of (i) the Redeemer Committee of Highland Crusader Fund, (ii) Meta-e Discovery, (iii) UBS, and (iv) Acis.

38. "*Confirmation Date*" means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

39. "*Confirmation Hearing*" means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

40. "*Confirmation Order*" means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

41. *"Convenience Claim"* means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to $1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.

42. "*Convenience Claim Pool*" means the $13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all

distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

43. "*Convenience Class Election*" means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to $1,000,000 and receive the treatment provided to Convenience Claims.

44. "*Contingent Claimant Trust Interests"* means the contingent Claimant Trust Interests to be distributed to Holders of Class A Limited Partnership Interests, Holders of Class B Limited Partnership Interests, and Holders of Class C Limited Partnership Interests in accordance with this Plan, the rights of which shall not vest, and consequently convert to Claimant Trust Interests, unless and until the Claimant Trustee Files a certification that all holders of Allowed General Unsecured Claims have been paid indefeasibly in full, plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, all accrued and unpaid post-petition interest from the Petition Date at the Federal Judgment Rate and all Disputed Claims in Class 8 and Class 9 have been resolved. As set forth in the Claimant Trust Agreement, the Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests will be subordinated to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests.

45. "*Debtor*" means Highland Capital Management, L.P. in its capacity as debtor and debtor in possession in the Chapter 11 Case.

46. *"Delaware Bankruptcy Court"* means the United States Bankruptcy Court for the District of Delaware.

47. "*Disclosure Statement*" means that certain *Disclosure Statement for Debtor's Fifth Amended Chapter 11 Plan of Reorganization*, as amended, supplemented, or modified from time to time, which describes this Plan, including all exhibits and schedules thereto and references therein that relate to this Plan.

48. "*Disputed*" means with respect to any Claim or Equity Interest, any Claim or Equity Interest that is not yet Allowed.

49. "*Disputed Claims Reserve*" means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

50. "*Disputed Claims Reserve Amount*" means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or Reorganized Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

51. "*Distribution Agent*" means the Claimant Trustee, or any party designated by the Claimant Trustee to serve as distribution agent under this Plan.

52. "*Distribution Date*" means the date or dates determined by the Reorganized Debtor or the Claimant Trustee, as applicable, on or after the Initial Distribution Date upon which the Distribution Agent shall make distributions to holders of Allowed Claims and Interests entitled to receive distributions under the Plan.

53. "*Distribution Record Date*" means the date for determining which Holders of Claims and Equity Interests are eligible to receive distributions hereunder, which date shall be the Effective Date or such later date determined by the Bankruptcy Court.

54. "*Effective Date*" means the Business Day that this Plan becomes effective as provided in ARTICLE VIII hereof.

55. "*Employees*" means the employees of the Debtor set forth in the Plan Supplement.

56. "*Entity*" means any "entity" as defined in section 101(15) of the Bankruptcy Code and also includes any Person or any other entity.

57. "*Equity Interest*" means any Equity Security in the Debtor, including, without limitation, all issued, unissued, authorized or outstanding partnership interests, shares, of stock or limited company interests, the Class A Limited Partnership Interests, the Class B Limited Partnership Interests, and the Class C Limited Partnership Interests.

58. "*Equity Security*" means an "equity security" as defined in section 101(16) of the Bankruptcy Code.

59. "*Estate*" means the bankruptcy estate of the Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

60. "*Estate Claims*" has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [D.I. 354].

61. "*Exculpated Parties*" means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however,* that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the

Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term "Exculpated Party."

62. "*Executory Contract*" means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

63. "*Exhibit*" means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

64. "*Federal Judgment Rate*" means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

65. "*File*" or "*Filed*" or "*Filing*" means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

66. "*Final Order*" means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.

67. "*Frontier Secured Claim*" means the loan from Frontier State Bank to the Debtor in the principal amount of $7,879,688.00 made pursuant to that certain First Amended and Restated Loan Agreement, dated March 29, 2018.

68. "*General Partner Interest*" means the Class A Limited Partnership Interest held by Strand, as the Debtor's general partner.

69. "*General Unsecured Claim*" means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

70. "*Governmental Unit*" means a "governmental unit" as defined in section 101(27) of the Bankruptcy Code.

71. "*GUC Election*" means the option provided to each Holder of a Convenience Claim on their Ballot to elect to receive the treatment provided to General Unsecured Claims.

72. "*Holder*" means an Entity holding a Claim against, or Equity Interest in, the Debtor.

73. "*Impaired*" means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

74. "*Independent Directors*" means John S. Dubel, James P. Seery, Jr., and Russell Nelms, the independent directors of Strand appointed on January 9, 2020, and any additional or replacement directors of Strand appointed after January 9, 2020, but prior to the Effective Date.

75. "*Initial Distribution Date*" means, subject to the "Treatment" sections in ARTICLE III hereof, the date that is on or as soon as reasonably practicable after the Effective Date, when distributions under this Plan shall commence to Holders of Allowed Claims and Equity Interests.

76. "*Insurance Policies*" means all insurance policies maintained by the Debtor as of the Petition Date.

77. "*Jefferies Secured Claim*" means any Claim in favor of Jefferies, LLC, arising under that certain Prime Brokerage Customer Agreement, dated May 24, 2013, between the Debtor and Jefferies, LLC, that is secured by the assets, if any, maintained in the prime brokerage account created by such Prime Brokerage Customer Agreement.

78. "*Lien*" means a "lien" as defined in section 101(37) of the Bankruptcy Code and, with respect to any asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset.

79. "*Limited Partnership Agreement*" means that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, as amended.

80. "*Litigation Sub-Trust*" means the sub-trust established within the Claimant Trust or as a wholly –owned subsidiary of the Claimant Trust on the Effective Date in each case in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement and Claimant Trust Agreement. As set forth in the Litigation Sub-Trust Agreement, the Litigation Sub-Trust shall hold the Claimant Trust Assets that are Estate Claims.

81. "*Litigation Sub-Trust Agreement*" means the agreement filed in the Plan Supplement establishing and delineating the terms and conditions of the Litigation Sub-Trust.

82. "*Litigation Trustee*" means the trustee appointed by the Committee and reasonably acceptable to the Debtor who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

83. "*Managed Funds*" means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to this Plan.

84. "*New Frontier Note*" means that promissory note to be provided to the Allowed Holders of Class 2 Claims under this Plan and any other documents or security agreements securing the obligations thereunder.

85. "*New GP LLC*" means a limited liability company incorporated in the State of Delaware pursuant to the New GP LLC Documents to serve as the general partner of the Reorganized Debtor on the Effective Date.

86. "*New GP LLC Documents*" means the charter, operating agreement, and other formational documents of New GP LLC.

87. "*Ordinary Course Professionals Order*" means that certain *Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course* [D.I. 176].

88. "*Other Unsecured Claim*" means any Secured Claim other than the Jefferies Secured Claim and the Frontier Secured Claim.

89. *"Person*" means a "person" as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, individual, corporation, company, general or limited partnership, limited liability company, unincorporated organization firm, trust, estate, business trust, association, joint stock company, joint venture, government, governmental agency, Governmental Unit or any subdivision thereof, the United States Trustee, or any other entity, whether acting in an individual, fiduciary or other capacity.

90. "*Petition Date*" means October 16, 2019.

91. "*Plan*" means this *Debtor's Fifth Amended Chapter 11 Plan of Reorganization*, including the Exhibits and the Plan Documents and all supplements, appendices, and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

92. "*Plan Distribution*" means the payment or distribution of consideration to Holders of Allowed Claims and Allowed Equity Interests under this Plan.

93. "*Plan Documents*" means any of the documents, other than this Plan, but including, without limitation, the documents to be filed with the Plan Supplement, to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date, and as may be modified consistent with the terms hereof with the consent of the Committee.

94. "*Plan Supplement*" means the ancillary documents necessary for the implementation and effectuation of the Plan, including, without limitation, (i) the form of

Claimant Trust Agreement, (ii) the forms of New GP LLC Documents, (iii) the form of Reorganized Limited Partnership Agreement, (iv) the Sub-Servicer Agreement (if applicable), (v) the identity of the initial members of the Claimant Trust Oversight Committee, (vi) the form of Litigation Sub-Trust Agreement; (vii) the schedule of retained Causes of Action; (viii) the New Frontier Note, (ix) the schedule of Employees; (x) the form of Senior Employee Stipulation,; and (xi) the schedule of Executory Contracts and Unexpired Leases to be assumed pursuant to this Plan, which, in each case, will be in form and substance reasonably acceptable to the Debtor and the Committee.

95. "*Priority Non-Tax Claim*" means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, including any Claims for paid time-off entitled to priority under section 507(a)(4) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

96. "*Pro Rata*" means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class.

97. "*Professional*" means (a) any Entity employed in the Chapter 11 Case pursuant to section 327, 328 363 or 1103 of the Bankruptcy Code or otherwise and (b) any Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 327, 328, 330, 331, 363, 503(b), 503(b)(4) and 1103 of the Bankruptcy Code.

98. "*Professional Fee Claim*" means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of the Bankruptcy Code, with respect to a particular Professional, for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date.

99. "*Professional Fee Claims Bar Date*" means with respect to Professional Fee Claims, the Business Day which is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.

100. "*Professional Fee Claims Objection Deadline*" means, with respect to any Professional Fee Claim, thirty (30) days after the timely Filing of the applicable request for payment of such Professional Fee Claim.

101. "*Professional Fee Reserve*" means the reserve established and funded by the Claimant Trustee pursuant this Plan to provide sufficient funds to satisfy in full unpaid Allowed Professional Fee Claims.

102. "*Proof of Claim*" means a written proof of Claim or Equity Interest Filed against the Debtor in the Chapter 11 Case.

103. "*Priority Tax Claim*" means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

104. "*Protected Parties*" means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however,* that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term "Protected Party."

105. "*PTO Claims*" means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

106. "*Reduced Employee Claims*" has the meaning set forth in ARTICLE IX.D.

107. "*Reinstated*" means, with respect to any Claim or Equity Interest, (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim or Equity Interest in accordance with section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim or Equity Interest to demand or receive accelerated payment of such Claim or Equity Interest after the occurrence of a default: (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) of the Bankruptcy Code expressly does not require to be cured; (ii) reinstating the maturity of such Claim or Equity Interest as such maturity existed before such default; (iii) compensating the Holder of such Claim or Equity Interest for any damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim or Equity Interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder of such Claim or Equity Interest (other than any Debtor or an insider of any Debtor) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim.

108. "*Rejection Claim*" means any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Confirmation Order.

109. "*Related Entity*" means, without duplication, (a) James Dondero, (b) Mark Okada, (c) Grant Scott, (d) Hunter Covitz, (e) any entity or person that was an insider of the

Debtor on the Petition Date under Section 101(31) of the Bankruptcy Code, including any non-statutory insider, (f) any entity that, after the Effective Date, is controlled directly or indirectly by James Dondero, including, without limitation, The Dugaboy Investment Trust, (g) the Hunter Mountain Investment Trust and any of its direct or indirect parents, and (h) the Charitable Donor Advised Fund, L.P., and any of its direct or indirect subsidiaries.

110. "*Related Persons*" means, with respect to any Person, such Person's predecessors, successors, assigns (whether by operation of law or otherwise), and each of their respective present and former officers, directors, employees, managers, managing members, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, employees, subsidiaries, divisions, management companies, and other representatives, in each case solely in their capacity as such.

111. "*Released Parties*" means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.

112. "*Reorganized Debtor*" means the Debtor, as reorganized pursuant to this Plan on and after the Effective Date.

113. "*Reorganized Debtor Assets*" means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, "Reorganized Debtor Assets" includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

114. "*Reorganized Limited Partnership Agreement*" means that certain Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., by and among the Claimant Trust, as limited partner, and New GP LLC, as general partner, Filed with the Plan Supplement.

115. "*Restructuring*" means the restructuring of the Debtor, the principal terms of which are set forth in this Plan and the Disclosure Statement.

116. "*Retained Employee Claim*" means any Claim filed by a current employee of the Debtor who will be employed by the Reorganized Debtor upon the Effective Date.

117. "*Schedules*" means the schedules of Assets and liabilities, statements of financial affairs, lists of Holders of Claims and Equity Interests and all amendments or supplements thereto Filed by the Debtor with the Bankruptcy Court [D.I. 247].

118. "*Secured*" means, when referring to a Claim: (a) secured by a Lien on property in which the Debtor's Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the

creditor's interest in the interest of the Debtor's Estate 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) Allowed pursuant to the Plan as a Secured Claim.

119. "*Security*" or "*security*" means any security as such term is defined in section 101(49) of the Bankruptcy Code.

120. "*Senior Employees*" means the senior employees of the Debtor Filed in the Plan Supplement.

121. "*Senior Employee Stipulation*" means the agreements filed in the Plan Supplement between each Senior Employee and the Debtor.

122. "*Stamp or Similar Tax*" means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

123. "*Statutory Fees*" means fees payable pursuant to 28 U.S.C. § 1930.

124. "*Strand*" means Strand Advisors, Inc., the Debtor's general partner.

125. "*Sub-Servicer*" means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.

126. "*Sub-Servicer Agreement*" means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

127. "*Subordinated Claim*" means any Claim that (i) is or may be subordinated to the Convenience Claims and General Unsecured Claims pursuant to 11 U.S.C. § 510 or Final Order of the Bankruptcy Court or (ii) arises from a Class A Limited Partnership Interest or a Class B/C Limited Partnership Interest.

128. "*Subordinated Claimant Trust Interests*" means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

129. "*Trust Distribution*" means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

130. "*Trustees*" means, collectively, the Claimant Trustee and Litigation Trustee.

131. "*UBS*" means, collectively, UBS Securities LLC and UBS AG London Branch.

132. "*Unexpired Lease*" means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

133. "*Unimpaired*" means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

134. "*Voting Deadline*" means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

135. "*Voting Record Date*" means November 23, 2020.

ARTICLE II.
ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS

A. Administrative Expense Claims

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized Debtor, as applicable, and such Holder; *provided, however,* that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

B. Professional Fee Claims

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329,330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

C. Priority Tax Claims

On or as soon as reasonably practicable after the later of (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 will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount equal to the amount of such Allowed Priority Tax Claim, or (b) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

ARTICLE III.
CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS AND EQUITY INTERESTS

A. Summary

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

B. Summary of Classification and Treatment of Classified Claims and Equity Interests

Class	Claim	Status	Voting Rights
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

C. Elimination of Vacant Classes

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of

voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

D. Impaired/Voting Classes

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

E. Unimpaired/Non-Voting Classes

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

F. Impaired/Non-Voting Classes

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

G. Cramdown

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

H. Classification and Treatment of Claims and Equity Interests

1. Class 1 – Jefferies Secured Claim

- *Classification*: Class 1 consists of the Jefferies Secured Claim.
- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until full and final payment of such Allowed Class 1 Claim is made as provided herein.
- *Impairment and Voting*: Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted this Plan

pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

2. *Class 2 – Frontier Secured Claim*

- *Classification*: Class 2 consists of the Frontier Secured Claim.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.

- *Impairment and Voting*: Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject this Plan.

3. *Class 3 – Other Secured Claims*

- *Classification*: Class 3 consists of the Other Secured Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.

- *Impairment and Voting*: Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

4. *Class 4 – Priority Non-Tax Claims*

- *Classification*: Class 4 consists of the Priority Non-Tax Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.

- *Impairment and Voting*: Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

5. *Class 5 – Retained Employee Claims*

- *Classification*: Class 5 consists of the Retained Employee Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.

- *Impairment and Voting*: Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

6. *Class 6 – PTO Claims*

- *Classification*: Class 6 consists of the PTO Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.

- *Impairment and Voting*: Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

7. *Class 7 – Convenience Claims*

- *Classification*: Class 7 consists of the Convenience Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.

- *Impairment and Voting*: Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject this Plan.

8. *Class 8 – General Unsecured Claims*

- *Classification*: Class 8 consists of the General Unsecured Claims.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes a valid Convenience Class Election.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject this Plan.

9. *Class 9 – Subordinated Claims*

- *Classification*: Class 9 consists of the Subordinated Claims.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 9 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive either (i) the treatment provided to Allowed Class 8 Claims or (ii) if such Allowed Class 9 Claim is subordinated to the Convenience Claims and General Unsecured Claims pursuant to 11 U.S.C. § 510 or Final Order of the Bankruptcy Court, its Pro Rata share of the Subordinated Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject this Plan.

10. *Class 10 – Class B/C Limited Partnership Interests*

- *Classification*: Class 10 consists of the Class B/C Limited Partnership Interests.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject this Plan.

11. Class 11 – Class A Limited Partnership Interests

- *Classification*: Class 11 consists of the Class A Limited Partnership Interests.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject this Plan.

I. Special Provision Governing Unimpaired Claims

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

J. Subordinated Claims

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Under section 510 of the Bankruptcy Code, upon written notice, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to re-classify, or to seek to subordinate, any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

ARTICLE IV.
MEANS FOR IMPLEMENTATION OF THIS PLAN

A. Summary

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to this Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in this Plan and the Claimant Trust Agreement.

B. The Claimant Trust[2]

1. Creation and Governance of the Claimant Trust and Litigation Sub-Trust.

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its

[2] In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.

rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

2. *Claimant Trust Oversight Committee*

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be

overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.

The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

3. *Purpose of the Claimant Trust.*

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in this Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in ARTICLE IV.C.

4. *Purpose of the Litigation Sub-Trust.*

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.

5. *Claimant Trust Agreement and Litigation Sub-Trust Agreement.*

The Claimant Trust Agreement generally will provide for, among other things:

(i) the payment of the Claimant Trust Expenses;

(ii) the payment of other reasonable expenses of the Claimant Trust;

(iii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;

(iv) the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;

(v) the orderly monetization of the Claimant Trust Assets;

(vi) litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;

(vii) the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;

(viii) the administration of the Disputed Claims Reserve and distributions to be made therefrom; and

(ix) the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expenses and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however,* that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. In all circumstances, the Claimant Trustee shall act in the best interests of the Claimant Trust Beneficiaries and with the same fiduciary duties as a chapter 7 trustee.

The Litigation Sub-Trust Agreement generally will provide for, among other things:

(i) the payment of other reasonable expenses of the Litigation Sub-Trust;

(ii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and

(iii) the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

6. *Compensation and Duties of Trustees.*

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

7. *Cooperation of Debtor and Reorganized Debtor.*

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

8. *United States Federal Income Tax Treatment of the Claimant Trust.*

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9. *Tax Reporting.*

(a) The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

(b) The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.

(c) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

(d) The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

10. *Claimant Trust Assets.*

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court, and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in this Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the

Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

11. *Claimant Trust Expenses.*

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

12. *Trust Distributions to Claimant Trust Beneficiaries.*

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

13. *Cash Investments.*

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however,* that such investments are investments permitted to be made by a "liquidating trust" within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

14. *Dissolution of the Claimant Trust and Litigation Sub-Trust.*

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Clamant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the

Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however,* that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

C. The Reorganized Debtor

1. Corporate Existence

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.

2. Cancellation of Equity Interests and Release

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

3. Issuance of New Partnership Interests

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

4. Management of the Reorganized Debtor

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant

Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

5. *Vesting of Assets in the Reorganized Debtor*

Except as otherwise provided in this Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

6. *Purpose of the Reorganized Debtor*

Except as may be otherwise provided in this Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court.

7. *Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets*

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement, the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust

will be (i) deemed transferred in all respects as forth in ARTICLE IV.B.1, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

D. Company Action

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in this Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with this Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.

E. Release of Liens, Claims and Equity Interests

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the

Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, 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 Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

F. Cancellation of Notes, Certificates and Instruments

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

G. Cancellation of Existing Instruments Governing Security Interests

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

H. Control Provisions

To the extent that there is any inconsistency between this Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, this Plan shall control.

I. Treatment of Vacant Classes

Any Claim or Equity Interest in a Class considered vacant under ARTICLE III.C of this Plan shall receive no Plan Distributions.

J. Plan Documents

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in ARTICLE I hereof) and fully enforceable as if stated in full herein.

The Debtor and the Committee are currently working to finalize the forms of certain of the Plan Documents to be filed with the Plan Supplement. To the extent that the Debtor and the Committee cannot agree as to the form and content of such Plan Documents, they intend to submit the issue to non-binding mediation pursuant to the *Order Directing Mediation* entered on August 3, 2020 [D.I. 912].

K. Highland Capital Management, L.P. Retirement Plan and Trust

The Highland Capital Management, L.P. Retirement Plan And Trust ("Pension Plan") is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor's controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the "IRC"), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

ARTICLE V.
TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to a Final Order of the Bankruptcy Court entered prior to the Effective Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a contract or lease to be assumed in the Plan Supplement, on the Effective Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Effective Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. ("Landlord") for the Debtor's headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the "Lease") in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4), as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [Docket No. 1122].

B. Claims Based on Rejection of Executory Contracts or Unexpired Leases

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Effective Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Effective Date. Any Rejection Claims that are not timely Filed pursuant to this Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with ARTICLE III of this Plan.

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

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor's or Reorganized Debtor's intention to assume or assign the Executory Contract or Unexpired Lease in connection with this Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to this ARTICLE V.C shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts

or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to this ARTICLE V.C, shall be deemed disallowed and expunged as of the Effective Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

ARTICLE VI.
PROVISIONS GOVERNING DISTRIBUTIONS

A. Dates of Distributions

Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that this Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under this Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in this Plan. Except as otherwise provided in this Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to this Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in this Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under this Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under this Plan to such Persons or the date of such distributions.

B. Distribution Agent

Except as provided herein, all distributions under this Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.

The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

C. Cash Distributions

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

D. Disputed Claims Reserve

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

E. Distributions from the Disputed Claims Reserve

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

F. Rounding of Payments

Whenever this Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under this Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as "Unclaimed Property" under this Plan.

G. *De Minimis* Distribution

Except as to any Allowed Claim that is Unimpaired under this Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than $100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in ARTICLE VI.J hereof within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

H. Distributions on Account of Allowed Claims

Except as otherwise agreed by the Holder of a particular Claim or as provided in this Plan, all distributions shall be made pursuant to the terms of this Plan and the Confirmation Order. Except as otherwise provided in this Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

I. General Distribution Procedures

The Distribution Agent shall make all distributions of Cash or other property required under this Plan, unless this Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under this Plan shall not be subject to any claim by any Person.

J. Address for Delivery of Distributions

Distributions to Holders of Allowed Claims, to the extent provided for under this Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor's books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

K. Undeliverable Distributions and Unclaimed Property

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.

Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under this Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

L. Withholding Taxes

In connection with this Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under this Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to this Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

M. Setoffs

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to this Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with this Plan; *provided, however*, that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to

such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

N. Surrender of Cancelled Instruments or Securities

As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to ARTICLE IV of this Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

O. Lost, Stolen, Mutilated or Destroyed Securities

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with ARTICLE VI.O of this Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under this Plan, be deemed to have surrendered such security or note to the Distribution Agent.

ARTICLE VII.
PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED AND DISPUTED CLAIMS

A. Filing of Proofs of Claim

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

B. Disputed Claims

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest or any other appropriate motion or adversary proceeding with respect thereto, which shall be litigated to Final Order or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such

Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of this Plan.

C. Procedures Regarding Disputed Claims or Disputed Equity Interests

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.

D. Allowance of Claims and Equity Interests

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

1. Allowance of Claims

After the Effective Date and subject to the other provisions of this Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

2. Estimation

Subject to the other provisions of this Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trustee, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with this Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

3. Disallowance of Claims

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE, ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.

ARTICLE VIII.
EFFECTIVENESS OF THIS PLAN

A. Conditions Precedent to the Effective Date

The Effective Date of this Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of ARTICLE VIII.B of this Plan of the following:

- This Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to this Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.

- The Confirmation Order shall have been entered, not subject to stay pending appeal, and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate this Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in this Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under this Plan; and (d) entering

into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

- All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.

- The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

B. Waiver of Conditions

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee), without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate this Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized

Debtor, or the Claimant Trust, as applicable.

C. Effect of Non-Occurrence of Conditions to Effectiveness

Unless waived as set forth in ARTICLE VIII.B, if the Effective Date of this Plan does not occur within twenty calendar days of entry of the Confirmation Order, the Debtor may withdraw this Plan and, if withdrawn, the Plan shall be of no further force or effect.

D. Dissolution of the Committee

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

ARTICLE IX.
EXCULPATION, INJUNCTION AND RELATED PROVISIONS

A. General

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

B. Discharge of Claims

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to this Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose

before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

C. Exculpation

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(v); *provided*, *however,* the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

D. Releases by the Debtor

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal

misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to this ARTICLE IX.D (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or

- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

Provided, however, that the release provided pursuant to this ARTICLE IX.D will vest and the Employee will be indefeasibly released pursuant to this ARTICLE IX.D if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims

brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

E. Preservation of Rights of Action

1. Maintenance of Causes of Action

Except as otherwise provided in this Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

2. Preservation of All Causes of Action Not Expressly Settled or Released

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan or any Final Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except where such Causes of Action have been expressly released in this Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

F. Injunction

Upon entry of the Confirmation Order, all holders of Claims and Equity Interests and other parties in interest, along with their respective Related Persons, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan.

Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether proof of such Claims or Equity Interests has been filed or not and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan) and other parties in interest,

along with their respective Related Persons, are permanently enjoined, on and after the Effective Date, with respect to such Claims and Equity Interests, from (i) commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or the property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree, or order against the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or the property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust, (iii) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or the property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust, (iv) asserting any right of setoff, directly or indirectly, against any obligation due from the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or against property or interests in property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust; and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

The injunctions set forth herein shall extend to any successors of the Debtor, the Reorganized Debtor, and the Claimant Trust and their respective property and interests in property.

Subject in all respects to ARTICLE XII.D, no Entity may commence or pursue a claim or cause of action of any kind against any Protected Party that arose from or is related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice, that such claim or cause of action represents a colorable claim of bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Entity to bring such claim against any such Protected Party; *provided, however,* the foregoing will not apply to Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. As set forth in ARTICLE XI, the Bankruptcy Court will have sole jurisdiction to adjudicate any such claim for which approval of the Bankruptcy Court to commence or pursue has been granted.

G. Term of Injunctions or Stays

Unless otherwise provided in this Plan, the Confirmation Order, or in a Final Order of the Bankruptcy Court, all injunctions or stays arising under or entered during the Chapter 11 Case under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay.

H. Continuance of January 9 Order

Unless otherwise provided in this Plan, the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date until the dissolution of each of the Claimant Trust and the Litigation Trust.

ARTICLE X.
BINDING NATURE OF PLAN

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in ARTICLE IX, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to this Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state, Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to nay taxes of the kind specified in Bankruptcy Code section 1146(a).

ARTICLE XI.
RETENTION OF JURISDICTION

Pursuant to sections 105 and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Reorganized Debtor, the Claimant Trust, and this Plan as legally permissible, including, without limitation, jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured, unsecured, or subordinated status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the allowance or priority of any Claim or Equity Interest;

- grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided*, *however*, that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date subject to the terms of this Plan and the Confirmation Order, and such payment shall not be subject to the approval of the Bankruptcy Court;

- resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor, Reorganized Debtor, or Claimant Trust may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, any dispute regarding whether a contract or lease is or was executory or expired;

- make any determination with respect to a claim or cause of action against a Protected Party as set forth in ARTICLE IX;

- resolve any claim or cause of action against an Exculpated Party or Protected Party arising from or related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, or the transactions in furtherance of the foregoing;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any sale, disposition, assignment or other transfer of the Reorganized Debtor Assets or Claimant Trust Assets, including any break-up compensation or expense reimbursement that may be requested by a purchaser thereof*; provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any borrowing or the incurrence of indebtedness, whether secured or unsecured by the Reorganized Debtor or Claimant Trust; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- resolve any issues related to any matters adjudicated in the Chapter 11 Case;

- ensure that distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions of this Plan;

- decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action (including Estate Claims) that are pending as of the Effective Date or that may be commenced in the future, including approval of any settlements, compromises, or other resolutions as may be requested by the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee whether under Bankruptcy Rule 9019 or otherwise, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor, the Claimant Trustee, or Litigation Trustee after the Effective Date, provided that the Reorganized Debtor, the Claimant Trustee, and the Litigation Trustee shall reserve the right to commence actions in all appropriate forums and jurisdictions;

- enter such orders as may be necessary or appropriate to implement, effectuate, or consummate the provisions of this Plan, the Plan Documents, and all other contracts, instruments, releases, and other agreements or documents adopted in connection with this Plan, the Plan Documents, or the Disclosure Statement;

- resolve any cases, controversies, suits or disputes that may arise in connection with the implementation, effectiveness, consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;

- issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with implementation, effectiveness, consummation, or enforcement of this Plan, except as otherwise provided in this Plan;

- enforce the terms and conditions of this Plan and the Confirmation Order;

- resolve any cases, controversies, suits or disputes with respect to the release, exculpation, indemnification, and other provisions contained herein and enter such orders or take such others actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;

- enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;

- resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Plan Documents, or any contract, instrument, release, indenture or other agreement or document adopted in connection with this Plan or the Disclosure Statement; and

- enter an order concluding or closing the Chapter 11 Case after the Effective Date.

ARTICLE XII.
MISCELLANEOUS PROVISIONS

A. Payment of Statutory Fees and Filing of Reports

All outstanding Statutory Fees shall be paid on the Effective Date. All such fees payable, and all such fees that become due and payable, after the Effective Date shall be paid by the Reorganized Debtor when due or as soon thereafter as practicable until the Chapter 11 Case is closed, converted, or dismissed. The Claimant Trustee shall File all quarterly reports due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. After the Effective Date, the Claimant Trustee shall File with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee. The Reorganized Debtor shall remain obligated to pay Statutory Fees to the Office of the U.S. Trustee until the earliest of the Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

B. Modification of Plan

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order with the consent of the Committee, such consent not to be unreasonably withheld; and (b) after the entry of the Confirmation Order, the Debtor may, after notice and hearing and entry of an order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

C. Revocation of Plan

The Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File a subsequent chapter 11 plan with the consent of the Committee. If the Debtor revokes or withdraws this Plan prior to the Confirmation Date, then: (i) this Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in this Plan, assumption of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (iii) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.

D. Obligations Not Changed

Notwithstanding anything in this Plan to the contrary, nothing herein will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

E. Entire Agreement

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

F. Closing of Chapter 11 Case

The Claimant Trustee shall, after the Effective Date and promptly after the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

G. Successors and Assigns

This Plan shall be binding upon and inure to the benefit of the Debtor and its successors and assigns, including, without limitation, the Reorganized Debtor and the Claimant Trustee. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

H. Reservation of Rights

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and the Effective Date occurs. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtor, the Reorganized Debtor, the Claimant Trustee, or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor, the Reorganized Debtor, or the Claimant Trustee with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

Neither the exclusion or inclusion by the Debtor of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Documents, nor anything contained in this Plan, will constitute an admission by the Debtor that any such contract or lease is or is not an executory contract or lease or that the Debtor, the Reorganized Debtor, the Claimant Trustee, or their respective Affiliates has any liability thereunder.

Except as explicitly provided in this Plan, nothing herein shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the Debtor, the Reorganized Debtor, or the Claimant Trustee under any executory or non-executory contract.

Nothing in this Plan will increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, under any executory or non-executory contract or lease.

If there is a dispute regarding whether a contract or lease is or was executory at the time of its assumption under this Plan, the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract.

I. Further Assurances

The Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, all Holders of Claims and Equity Interests receiving distributions hereunder, and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order. On or before the Effective Date, the Debtor shall File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

J. Severability

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court 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 will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this 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 this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

K. Service of Documents

All notices, requests, and demands to or upon the Debtor, the Reorganized Debtor, or the Claimant Trustee to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered addressed as follows:

If to the Claimant Trust:

Highland Claimant Trust
c/o Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.

If to the Debtor:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.

with copies to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Attn: Jeffrey N. Pomerantz, Esq.
Ira D. Kharasch, Esq.
Gregory V. Demo, Esq.

If to the Reorganized Debtor:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.
with copies to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Attn: Jeffrey N. Pomerantz, Esq.
Ira D. Kharasch, Esq.
Gregory V. Demo, Esq.

L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code

To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate federal, state or local governmental officials or agents or taxing authority to forego the collection of any such Stamp or Similar 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 Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to evidence and implement the provisions of and the distributions to be made under this Plan; (ii) the maintenance or creation of security or any Lien as contemplated by this Plan; and (iii) assignments, sales, or transfers executed in connection with any transaction occurring under this Plan.

M. Governing Law

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Texas, without giving effect to the principles of conflicts of law of such jurisdiction; *provided, however,* that corporate governance matters relating to the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trust, as applicable, shall be governed by the laws of the state of organization of the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trustee, as applicable.

N. Tax Reporting and Compliance

The Debtor is hereby authorized to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor is for all taxable periods ending after the Petition Date through, and including, the Effective Date.

O. Exhibits and Schedules

All exhibits and schedules to this Plan, if any, including the Exhibits and the Plan Documents, are incorporated and are a part of this Plan as if set forth in full herein.

P. Controlling Document

In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and of the Confirmation Order, on the other hand, shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any provision of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and any provision of the Confirmation Order, on the other hand, that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan, the Disclosure Statement, and the Plan Documents, as applicable.

[Remainder of Page Intentionally Blank]

Dated: November 24, 2020

Respectfully submitted,

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: _____
James P. Seery, Jr.
Chief Executive Officer and Chief Restructuring Officer

Prepared by:

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Counsel for the Debtor and Debtor-in-Possession

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

In Re: Highland Capital Management, L.P.	§	Case No.	**19-34054-sgj11**
CLO HoldCo, Ltd.	§		
Appellant	§		
vs.	§		
Marc Kirschner	§		
Appellee	§		**3:22-CV-02051-B**

[3457] Order denying motion motion to ratify second amended proof of claim and expunging claim (related document # 3178) Entered on 8/17/2022

APPELLEE RECORD
VOLUME 13

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Telephone: (214) 981-3300

Counsel for Marc S. Kirschner, as Litigation Trustee of the Highland Litigation Sub-Trust

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., [1] Debtor.	Case No. 19-34054-sgj11
CLO HOLDCO, LTD., Appellant, v. MARC S. KIRSCHNER, AS LITIGATION TRUSTEE OF THE LITIGATION SUB-TRUST, Appellee.	Case No. 3:22-cv-02051-B

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APPELLEE'S SUPPLEMENTAL DESIGNATION OF RECORD ON APPEAL PURSUANT TO FED. R. BANKR. P. 8009(a)(2)

[1] The last four digits of the Reorganized Debtor's taxpayer identification number are (8357). The Reorganized Debtor is a Delaware limited partnership. The Reorganized Debtor's headquarters and service address are 100 Crescent Court, Suite 1850, Dallas, TX 75201.

Pursuant to Rule 8009(a)(2) of the Federal Rules of Bankruptcy Procedure, Marc Kirschner, as Litigation Trustee for the Litigation Sub-Trust ("Appellee"), created by Highland Capital Management, L.P.'s *Fifth Amended Plan of Reorganization*, by and through his undersigned counsel, hereby submits his supplemental designation of items to be included in the record on appeal filed by CLO Holdco, Ltd. ("Appellant") from the *Order Denying Motion to Ratify Second Amended Proof of Claim and Expunging Claim* [Dkt. No. 3457] (the "Order"), entered by the above named Bankruptcy Court in the above captioned Bankruptcy Case on August 17, 2022. Appellee respectfully reserves the right to supplement and/or amend the record on appeal designated herein.

I. Supplemental Items from the Docket in the Bankruptcy Case

Appellee designates the following additional items from the docket in the Bankruptcy Case, in addition to the items previously designated by the Appellant:

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Date	Docket No.	Description
12/04/2019	11	Affidavit/ Declaration by Frank Waterhouse in Support of First Day Motion filed by Highland Capital Management, L.P.
03/02/2020	488	Order Granting Motion Establishing Bar Dates for Filing Claims
09/23/2020	1090	Declaration of John Morris (and all exhibits and attachments thereto) in support of Dkt. No. 1089, Motion to Compromise with the Redeemer Committee
09/29/2020	1113	Certificate of Service of Dkt. No. 1089, Motion to Compromise with the Redeemer Committee
11/06/2020	1339	Notice of appeal by UBS AG London Branch from Dkt. No. 1273, the Motion to Compromise Controversy with the Redeemer Committee
11/24/2020	1472	Debtor's Amended Chapter 11 Plan
11/24/2020	1473	Debtor's Amended Disclosure Statement to Amended Chapter 11 Plan
12/23/2020	1625	Debtor's Motion to Compromise Controversy with HarbourVest

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01/08/2021	1707	Objection by CLO Holdco to Dkt. No. 1625, the Motion to Compromise Controversy with HarbourVest
02/22/2021	1943	Order confirming Debtor's Fifth Amended Chapter 11 Plan, Dkt. No. 1472, as modified
05/14/2021	2309	Order to Show Cause
11/09/2021	3000	Objection to Claim of Creditor Jean-Paul Sevilla
12/09/2021	3091	Stipulation between Litigation Trustee and Creditors Scott Ellington, Jean-Paul Sevilla, Isaac Leventon, and Frank Waterhouse, re: Dkt. Nos. 3000 and 3001
12/15/2021	3121	Notice of hearing re: Dkt. No. 3001
01/07/2022	3164	Order Approving Dkt. No. 3091, Stipulation between Litigation Trustee and Sevilla, Ellington, Leventon, and Waterhouse
01/11/2022	3178	CLO Holdco's Motion to Ratify Second Amended Proof of Claim No. 198
02/01/2022	3220-1	Exhibit 1, Declaration by Deborah Newman (and all attachments or exhibits thereto), in support of Dkt. No. 3220, the Trustee's Opposition to Dkt. No. 3178, CLO Holdco's Motion to Ratify
1/17/2021	1765	Transcript regarding hearing held on 1/14/2021 re: Dkt. No. 1707
08/28/2021	2794	Transcript regarding Hearing Held 08/19/2021 RE: Motion to Extend the Stay in Trustee's Adversary Proceeding

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II. Supplemental Items Not on Bankruptcy Case Docket

Appellee designates the following items not found on the docket but pertinent to this appeal:

Date	Description
10/16/2019	Hearing Transcript, *Redeemer Comm. Of the Highland Crusader Fund v. Highland Capital Mgmt., L.P.*, C.A. No. 12533-VCZ (Del. Ch. Oct. 16, 2019) (attached hereto as **Exhibit 1**)
06/14/2021	Electronic Order, *UBS Securities LLC et al. v. Highland Capital Management LP*, Case No. 3:20-cv-03408-G (N.D. Tex. 2020) (attached hereto as **Exhibit 2**)
08/02/2022	Email dated Aug. 2, 2022 to Traci Ellison (attached hereto as **Exhibit 3**)

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003627

Appellee reserves the right to designate additional items depending on the arguments made by Appellant on appeal.

Dated: September 28, 2022

Respectfully submitted,

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/s/ *Paige Holden Montgomery*
Paige Holden Montgomery
Juliana L. Hoffman
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Telephone: (214) 981-3300
Facsimile: (214) 981-3400

-and-

QUINN EMANUEL URQUHART & SULLIVAN, LLP
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Counsel for Marc S. Kirschner, as Litigation Trustee of the Highland Litigation Sub-Trust

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a true and correct copy of the above and foregoing document and all attachments thereto were sent via electronic mail via the Court's ECF system to all parties authorized to receive electronic notice in this case on this 28th day of September, 2022.

/s/ Paige Holden Montgomery
Paige Holden Montgomery

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	

DISCLOSURE STATEMENT FOR THE FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND CAPITAL MANAGEMENT, L.P.

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Counsel for the Debtor and Debtor-in-Possession

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned cases (the "Debtor"), is sending you this document and the accompanying materials (the "Disclosure Statement") because you are a creditor or interest holder in connection with the *Fifth Amended Chapter 11 Plan of Reorganization of Highland Capital Management, L.P.*, dated November 24, 2020, as the same may be amended from time to time (the "Plan").[2] The Debtor has filed a voluntary petition under chapter 11 of title 11 of the United States Code, as amended (the "Bankruptcy Code").

This Disclosure Statement has not yet been approved by the Bankruptcy Court as containing adequate information within the meaning of section 1125(a) of the Bankruptcy Code. The Debtor intends to seek an order or orders of the Bankruptcy Court (a) approving this Disclosure Statement as containing adequate information and (b) confirming the Plan.

A copy of the Plan is attached hereto as **Exhibit A**.

The Debtor believes that the Plan is fair and equitable, will maximize the value of the Debtor's Estate, and is in the best interests of the Debtor and its constituents. Notably, the Plan provides for the transfer of the majority of the Debtor's Assets to a Claimant Trust. The balance of the Debtor's Assets, including the management of the Managed Funds, will remain with the Reorganized Debtor. The Reorganized Debtor will be managed by New GP LLC – a wholly-owned subsidiary of the Claimant Trust. This structure will allow for continuity in the Managed Funds and an orderly and efficient monetization of the Debtor's Assets.

The Claimant Trust, the Litigation Trust, or the Reorganized Debtor, as applicable, will institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action without any further order of the Bankruptcy Court, and the Claimant Trust and Reorganized Debtor, as applicable, will sell, liquidate, or otherwise monetize all Claimant Trust Assets and Reorganized Debtor Assets and resolve all Claims, except as otherwise provided in the Plan, the Claimant Trust Agreement, or the Reorganized Limited Partnership Agreement.

IMPORTANT INFORMATION ABOUT THIS DISCLOSURE STATEMENT FOR YOU TO READ

The Debtor is providing the information in this Disclosure Statement to Holders of Claims and Equity Interests in connection with the Debtor's Plan. Nothing in this Disclosure Statement may be relied upon or used by any Entity for any purpose other than with respect to confirmation of the Plan. The information contained in this Disclosure Statement is included for purposes of soliciting acceptances to, and confirmation of, the Plan and may not be relied on for any other purpose.

This Disclosure Statement has not been filed for approval with the Securities and Exchange Commission ("SEC") or any state authority and neither the SEC nor any state authority has passed upon the accuracy or adequacy of this Disclosure Statement or upon

[2] All capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Plan. To the extent that a definition of a term in the text of this Disclosure Statement and the definition of such term in the Plan are inconsistent, the definition included in the Plan shall control and govern.

the merits of the Plan. Any representation to the contrary is a criminal offense. This Disclosure Statement does not constitute an offer to sell or the solicitation of an offer to buy securities in any state or jurisdiction.

This Disclosure Statement contains "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Such statements consist of any statement other than a recitation of historical fact and can be identified by the use of forward-looking terminology such as "may," "expect," "anticipate," "estimate" or "continue" or the negative thereof or other variations thereon or comparable terminology. The Debtor considers all statements regarding anticipated or future matters to be forward-looking statements. Forward-looking statements may include statements about:

- **the effects of insolvency proceedings on the Debtor's business and relationships with its creditors;**
- **business strategy;**
- **financial condition, revenues, cash flows, and expenses;**
- **financial strategy, budget, projections, and operating results;**
- **variation from projected operating and financial data;**
- **substantial capital requirements;**
- **availability and terms of capital;**
- **plans, objectives, and expectations;**
- **the adequacy of the Debtor's capital resources and liquidity; and**
- **the Claimant Trust's or the Reorganized Debtor's ability to satisfy future cash obligations.**

Statements concerning these and other matters are not guarantees of the Claimant Trust's or Reorganized Debtor's future performance. There are risks, uncertainties, and other important factors that could cause the Claimant Trust's or Reorganized Debtor's actual performance or achievements to be different from those that may be projected. The reader is cautioned that all forward-looking statements are necessarily speculative and there are certain risks and uncertainties that could cause actual events or results to differ materially from those referred to in such forward-looking statements. Therefore, any analyses, estimates, or recovery projections may or may not turn out to be accurate.

This Disclosure Statement has been prepared pursuant to section 1125 of the Bankruptcy Code and Bankruptcy Rule 3016 and is not necessarily in accordance with federal or state securities laws or other similar laws.

No legal or tax advice is provided to you by this Disclosure Statement. The Debtor urges each Holder of a Claim or an Equity Interest to consult with its own advisers with respect to any legal, financial, securities, tax or business advice in reviewing this Disclosure Statement, the Plan and each of the proposed transactions contemplated thereby. Further, the Bankruptcy Court's approval of the adequacy of disclosures contained in this Disclosure Statement does not constitute the Bankruptcy Court's approval of the merits of the Plan or a guarantee by the Bankruptcy Court of the accuracy or completeness of the information contained herein.

Pachulski Stang Ziehl & Jones LLP ("PSZ&J") is general insolvency counsel to the Debtor. Development Specialists, Inc. ("DSI") is the Debtor's financial advisor. PSZ&J, DSI, and the Independent Board (as defined below) have relied upon information provided by the Debtor in connection with preparation of this Disclosure Statement. PSZ&J has not independently verified the information contained herein.

This Disclosure Statement contains, among other things, summaries of the Plan, the management of the Reorganized Debtor, the Claimant Trust, certain statutory provisions, certain events in the Debtor's Chapter 11 Case, and certain documents related to the Plan that are attached hereto and incorporated herein by reference or that may be filed later with the Plan Supplement. Although the Debtor believes that these summaries are fair and accurate, these summaries are qualified in their entirety to the extent that the summaries do not set forth the entire text of such documents or statutory provisions or every detail of such events. In the event of any conflict, inconsistency or discrepancy between a description in this Disclosure Statement and the terms and provisions of the Plan or any other documents incorporated herein by reference, the Plan or such other documents will govern and control for all purposes. Except where otherwise specifically noted, factual information contained in this Disclosure Statement has been provided by the Debtor's management. The Debtor does not represent or warrant that the information contained herein or attached hereto is without any material inaccuracy or omission.

In preparing this Disclosure Statement, the Debtor relied on financial data derived from the Debtor's books and records and on various assumptions regarding the Debtor's business. The Debtor's management has reviewed the financial information provided in this Disclosure Statement. Although the Debtor has used its reasonable business judgment to ensure the accuracy of this financial information, the financial information contained in, or incorporated by reference into, this Disclosure Statement has not been audited (unless otherwise expressly provided herein) and no representations or warranties are made as to the accuracy of the financial information contained herein or assumptions regarding the Debtor's business and its, the Reorganized Debtor's, and the Claimant Trust's future results. The Debtor expressly cautions readers not to place undue reliance on any forward-looking statements contained herein.

This Disclosure Statement does not constitute, and may not be construed as, an admission of fact, liability, stipulation or waiver. Rather, this Disclosure Statement shall constitute a statement made in settlement negotiations related to potential contested matters, potential adversary proceedings and other pending or threatened litigation or actions.

No reliance should be placed on the fact that a particular litigation claim or projected objection to a particular Claim or Equity Interest is, or is not, identified in the Disclosure Statement. Except as provided under the Plan, the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, may seek to investigate, file and prosecute Claims and Causes of Action and may object to Claims or Equity Interests after the Confirmation Date or Effective Date of the Plan irrespective of whether the Disclosure Statement identifies any such Claims or Equity Interests or objections to Claims or Equity Interests on the terms specified in the Plan.

The Debtor is generally making the statements and providing the financial information contained in this Disclosure Statement as of the date hereof where feasible, unless otherwise specifically noted. Although the Debtor may subsequently update the information in this Disclosure Statement, the Debtor has no affirmative duty to do so. Holders of Claims and Equity Interests reviewing this Disclosure Statement should not infer that, at the time of their review, the facts set forth herein have not changed since the Disclosure Statement was sent. Information contained herein is subject to completion, modification, or amendment. The Debtor reserves the right to file an amended or modified Plan and related Disclosure Statement from time to time.

The Debtor has not authorized any Entity to give any information about or concerning the Plan other than that which is contained in this Disclosure Statement. The Debtor has not authorized any representations concerning the Debtor or the value of its property other than as set forth in this Disclosure Statement.

Holders of Claims or Equity Interests must rely on their own evaluation of the Debtor and their own analyses of the terms of the Plan in considering the Plan. Importantly, each Holder of a Claim should review the Plan in its entirety and consider carefully all of the information in this Disclosure Statement and any exhibits hereto, including the risk factors described in greater detail in ARTICLE IV herein, "Risk Factors."

If the Plan is confirmed by the Bankruptcy Court and the Effective Date occurs, all Holders of Claims against, and Holders of Equity Interests in, the Debtor will be bound by the terms of the Plan and the transactions contemplated thereby.

The effectiveness of the Plan is subject to certain material conditions precedent described herein and set forth in Article IX of the Plan. There is no assurance that the Plan will be confirmed, or if confirmed, that the conditions required to be satisfied for the Plan to become effective will be satisfied (or waived).

EXHIBITS

EXHIBIT A – Plan of Reorganization

EXHIBIT B – Organizational Chart of the Debtor

EXHIBIT C – Liquidation Analysis/Financial Projections

THE DEBTOR HEREBY ADOPTS AND INCORPORATES EACH EXHIBIT ATTACHED TO THIS DISCLOSURE STATEMENT BY REFERENCE AS THOUGH FULLY SET FORTH HEREIN.

ARTICLE I.
EXECUTIVE SUMMARY

This Disclosure Statement is provided for informational purposes only.

In the opinion of the Debtor, the Plan is preferable to the alternatives described in this Disclosure Statement because it provides for the highest distributions to the Debtor's creditors and interest holders. The Debtor believes that any delay in confirmation of the Plan would result in significant administrative expenses resulting in less value available to the Debtor's constituents. In addition, any alternative other than confirmation of the Plan could result in extensive delays and increased administrative expenses resulting in smaller distributions to Holders of Allowed Claims and Equity Interests than that which is proposed under the Plan. Accordingly, the Debtor recommends that all Holders of Claims and Equity Interests support confirmation of the Plan.

This Executive Summary is being provided to Holders of Allowed Claims and Equity Interests as an overview of the material items addressed in the Disclosure Statement and the Plan, which is qualified by reference to the entire Disclosure Statement and by the actual terms of the Plan (including all exhibits attached hereto and to the Plan and the Plan Supplement), and should not be relied upon for a comprehensive discussion of the Disclosure Statement and/or the Plan. Section 1125 of the Bankruptcy Code requires a debtor to prepare a disclosure statement containing information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment regarding acceptance or rejection of the plan of reorganization or liquidation. As such, this Disclosure Statement is being submitted in accordance with the requirements of section 1125 of the Bankruptcy Code. This Disclosure Statement includes, without limitation, information about:

- the Debtor's operating and financial history;
- the significant events that have occurred to date;
- the Confirmation process; and
- the terms and provisions of the Plan, including key aspects of the Claimant Trust and the Reorganized Debtor, certain effects of Confirmation of the Plan, certain risk factors relating to the Plan, and the manner in which distributions will be made under the Plan.

The Debtor believes that any alternative to Confirmation of the Plan would result in significant delays, litigation, and additional costs, and ultimately would diminish the Debtor's value. **Accordingly, the Debtor strongly supports confirmation of the Plan.**

A. Summary of the Plan

The Plan represents a significant achievement for the Debtor. As discussed herein, the Plan provides that the Claimant Trust will receive the majority of the Debtor's assets, including Causes of Action. The assets being transferred to the Claimant Trust are referred to, collectively, as the Claimant Trust Assets. The Claimant Trust will – for the benefit of the Claimant Trust

Beneficiaries – monetize the Claimant Trust Assets, pursue the Causes of Action, and work to conclude the various lawsuits and litigation claims pending against the Estate.

The Plan also provides for the reorganization of the Debtor. This will be accomplished by the cancellation of the Debtor's current Equity Interests, which consist of partnership interests held by: The Dugaboy Investment Trust;[3] the Hunter Mountain Investment Trust ("Hunter Mountain"); Mark Okada, personally and through family trusts; and Strand, the Debtor's general partner. On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. The Reorganized Debtor will be managed by the Claimant Trust, as the managing member of New GP LLC.

The Reorganized Debtor will oversee the monetization of the Reorganized Debtor Assets, which consist of, among other Assets, the management of the Managed Funds. The net proceeds from the Reorganized Debtor Assets will ultimately be distributed to the Claimant Trust and available for distribution to the Claimant Trust Beneficiaries.

The following is an overview of certain other material terms of the Plan:

- Allowed Priority Non-Tax Claims will be paid in full;
- Allowed Retained Employee Claims will be Reinstated;
- Allowed Convenience Claims will receive the lesser of (i) 85% of their Allowed Claim or (ii) such Holder's Pro Rata share of the Convenience Claims Cash Pool (*i.e.*, $13,150,000). Holders of Convenience Claims can elect the treatment provided to General Unsecured Claims by making the GUC Election on their Ballots;
- Allowed General Unsecured Claims and Allowed Subordinated Claims will receive their Pro Rata share of Claimant Trust Interests. The Claimant Trust Interests distributed to Allowed General Unsecured Claims will be senior to those distributed to Allowed Subordinated Claims as set forth in the Claimant Trust Agreement. Holders of General Unsecured Claims that are liquidated as of the Confirmation Date can elect the treatment provided to Convenience Class Election by reducing their Claims to $1,000,000 and making the Convenience Class Election on their Ballots; and
- Allowed Class B/C Limited Partnership Interests and Allowed Class A Limited Partnership Interests will receive their Pro Rata share of the Contingent Claimant Trust Interests.

[3] The Dugaboy Investment Trust is a Delaware trust created to manage the assets of James Dondero and his family.

B. An Overview of the Chapter 11 Process

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. Pursuant to chapter 11 of the Bankruptcy Code, a debtor may remain in possession of its assets and business and attempt to reorganize its business for the benefit of such debtor, its creditors, and other parties in interest. A plan of reorganization sets forth the means for satisfying claims against and interests in a debtor. Confirmation of a plan of reorganization by a bankruptcy court makes the plan binding upon the debtor and any creditor of or interest holder in the debtor, whether or not such creditor or interest holder (i) is impaired under or has accepted the plan or (ii) receives or retains any property under the plan.

The commencement of a Chapter 11 case creates an estate comprised of all of the legal and equitable interests of a debtor in property as of the date that the bankruptcy petition is filed. Sections 1107 and 1108 of the Bankruptcy Code provide that a debtor may continue to operate its business and remain in possession of its property as a "debtor-in-possession," unless the bankruptcy court orders the appointment of a trustee. The filing of a bankruptcy petition also triggers the automatic stay provisions of section 362 of the Bankruptcy Code which provide, among other things, for an automatic stay of all attempts to collect prepetition claims from a debtor or otherwise interfere with its property or business. Except as otherwise ordered by the bankruptcy court, the automatic stay generally remains in full force and effect until the consummation of a plan of reorganization or liquidation, following confirmation of such plan of reorganization.

The Bankruptcy Code provides that upon commencement of a chapter 11 bankruptcy case, the Office of the United States Trustee may appoint a committee of unsecured creditors and may, in its discretion, appoint additional committees of creditors or of equity interest holders if necessary to assure adequate representation. Please see ARTICLE II for a discussion of the U.S. Trustee and the statutory committees.

Upon the commencement of a chapter 11 bankruptcy case, all creditors and equity interest holders generally have standing to be heard on any issue in the chapter 11 proceedings pursuant to section 1109(b) of the Bankruptcy Code.

The formulation and confirmation of a plan is the principal objective of a chapter 11 case. The plan sets forth the means of satisfying the claims against and equity interests in the debtor.

C. Purpose and Effect of the Plan

1. <u>The Plan of Reorganization</u>

The Debtor is reorganizing pursuant to chapter 11 of the Bankruptcy Code. As a result, the Confirmation of the Plan means that the Debtor's business will continue to operate following confirmation of the Plan through the Claimant Trust and the Reorganized Debtor to monetize assets for distribution to Holders of Allowed Claims. The Claimant Trust will hold the Claimant Trust Assets and manage the efficient monetization of, the Claimant Trust Assets. The Claimant Trust will also manage the Reorganized Debtor through the Claimant Trust's ownership of the Reorganized Debtor's general partner, New GP LLC. The Claimant Trust will also be the sole limited partner in the Reorganized Debtor. The Reorganized Debtor will manage the wind down

of the Managed Funds as well as the monetization of the balance of the Reorganized Debtor Assets. The Claimant Trust will also establish a Litigation Sub-Trust in accordance with the Plan, which will also be for the benefit of the Claimant Trust Beneficiaries. The Litigation Sub-Trust will receive the Estate Claims. The Litigation Trustee shall be the exclusive trustee of the Estate Claims included in the Claimant Trust Assets subject to oversight by the Claimant Trust Oversight Committee

A bankruptcy court's confirmation of a plan binds the debtor, any entity acquiring property under the plan, any holder of a claim or an equity interest in a debtor and all other entities as may be ordered by the bankruptcy court in accordance with the applicable provisions of the Bankruptcy Code to the terms and conditions of the confirmed plan, whether or not such Entity voted on the plan or affirmatively voted to reject the plan.

2. Plan Overview

The Plan provides for the classification and treatment of Claims against and Equity Interests in the Debtor. For classification and treatment of Claims and Equity Interests, the Plan designates Classes of Claims and Classes of Equity Interests. These Classes and Plan treatments take into account the differing nature and priority under the Bankruptcy Code of the various Claims and Equity Interests.

The following chart briefly summarizes the classification and treatment of Claims and Equity Interests under the Plan.[4] Amounts listed below are estimated.

In accordance with section 1122 of the Bankruptcy Code, the Plan provides for eight Classes of Claims against and/or Equity Interests in the Debtor.

The projected recoveries set forth in the table below are estimates only and therefore are subject to change. For a complete description of the Debtor's classification and treatment of Claims or Equity Interests, reference should be made to the entire Plan and the risk factors described in ARTICLE IV below. For certain classes of Claims, the actual amount of Allowed Claims could be materially different than the estimated amounts shown in the table below.

[4] This chart is only a summary of the classification and treatment of Claims and Equity Interests under the Plan. References should be made to the entire Disclosure Statement and the Plan for a complete description.

Class	Type of Claim or Interest	Estimated Prepetition Claim Amount [1]	Impaired	Entitled to Vote	Estimated Recovery
1	Jefferies Secured Claim	$0.00	No	No	100%
2	Frontier Secured Claim[2]	$5,209,964	Yes	Yes	100%
3	Other Secured Claims	$551,116	No	No	100%
4	Priority Non-Tax Claim	$16,489	No	No	100%
5	Retained Employee Claim	$0	No	No	100%
6	PTO Claims [3]	$1,181,886	No	No	100%
7	Convenience Claims[4]	$12,064,333	Yes	Yes	85.00%
8	General Unsecured Claims[5]	$180,442,199	Yes	Yes	85.31%
9	Subordinated Claims	Undetermined	Yes	Yes	Undetermined
10	Class B/C Limited Partnership Interests	N/A	Yes	Yes	Undetermined
11	Class A Limited Partnership Interests	N/A	Yes	Yes	Undetermined

[1] Excludes Priority Tax Claims and certain other unclassified amounts totaling approximately $1.1 million owed to Joshua and Jennifer Terry and Acis under a settlement agreement.

[2] Excludes interest accrued postpetition estimated at $318,000, which will be paid on the Effective Date. The Liquidation Analysis/Financial Projections provide for the payment of postpetition interest.

[3] Represents outstanding PTO Claims as of September 30, 2020. PTO Claims are subject to adjustment depending on the amount of actual prepetition PTO Claims outstanding as of the Effective Date. PTO claims are accounted for in the Liquidation Analysis/Financial Projections as an administrative claim and will be paid out in ordinary courses pursuant to applicable state law.

[4] Represents the estimated gross prepetition amount of Convenience Claims with a total payout amount estimated at 85% of $12.06 million, or $10.25 million. This number includes approximately $1.113 million of potential Rejection Claims and assumes that Holders of Allowed General Unsecured Claims that are each less than $2.50 million opt into the Convenience Class.

[5] Assumes no recovery for UBS, the HarbourVest Entities, IFA, Hunter Mountain, and an Allowed Claim of only $3,722,019 for Mr. Daugherty (each as discussed further below). Assumes $1.440 million of potential rejection damage claims. The Liquidation Analysis/Financial Projections assume Highland RCP, LP and Highland RCP Offshore, LP offset their Claim of $4.4 million against amounts owed to the Debtor.

3. Voting on the Plan

Under the Bankruptcy Code, acceptance of a plan by a Class of Claims or Equity Interests is determined by calculating the number and the amount of Claims voting to accept, based on the actual total Allowed Claims or Equity Interests voting on the Plan. Acceptance by a Class of Claims requires more than one-half of the number of total Allowed Claims in the Class to vote in favor of the Plan and at least two-thirds in dollar amount of the total Allowed Claims in the Class to vote in favor of the Plan. Acceptance by a Class of Equity Interests requires at least two-thirds in amount of the total Allowed Equity Interests in the Class to vote in favor of the Plan.

Under the Bankruptcy Code, only Classes of Claims or Equity Interests that are "Impaired" and that are not deemed as a matter of law to have rejected a plan under Section 1126 of the Bankruptcy Code are entitled to vote to accept or reject the Plan. Any Class that is "Unimpaired" is not entitled to vote to accept or reject a plan and is conclusively presumed to have accepted the Plan. As set forth in Section 1124 of the Bankruptcy Code, a Class is "Impaired" if the legal, equitable, or contractual rights attaching to the claims or equity interests of that Class are modified or altered.

Pursuant to the Plan, Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims and Equity Interests in those Classes are entitled to vote to accept or reject the Plan. Whether a Holder of a Claim or Equity Interest in Class 2 and Class 7 through Class 11 may vote to accept or reject the Plan will also depend on whether the Holder held such Claim or Equity Interest as of November 23, 2020 (the "Voting Record Date"). The Voting Record Date and all of the Debtor's solicitation and voting procedures shall apply to all of the Debtor's Creditors and other parties in interest.

Pursuant to the Plan, Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

Pursuant to the Plan, there are no Classes that will not receive or retain any property and no Classes are deemed to reject the Plan.

4. Confirmation of the Plan

(a) Confirmation Generally

"Confirmation" is the technical term for the Bankruptcy Court's approval of a plan of reorganization or liquidation. The timing, standards and factors considered by the Bankruptcy Court in deciding whether to confirm a plan of reorganization are discussed below.

The confirmation of a plan by the Bankruptcy Court binds the debtor, any issuer of securities under a plan, any person acquiring property under a plan, any creditor or equity interest holder of a debtor, and any other person or entity as may be ordered by the Bankruptcy Court in accordance with the applicable provisions of the Bankruptcy Code. Subject to certain limited exceptions, the order issued by the Bankruptcy Court confirming a plan discharges a debtor from any debt that arose before the confirmation of such plan and provides for the treatment of such debt in accordance with the terms of the confirmed plan.

(b) The Confirmation Hearing

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a hearing on Confirmation of the Plan. Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to Confirmation of the Plan.

The Debtor will provide notice of the Confirmation Hearing to all necessary parties. The Confirmation Hearing may be adjourned from time to time without further notice except for an

announcement of the adjourned date made at the Confirmation Hearing of any adjournment thereof.

5. Confirming and Effectuating the Plan

It is a condition to the Effective Date of the Plan that the Bankruptcy Court shall have entered the Confirmation Order in form and substance reasonably acceptable to the Debtor and the Official Committee of Unsecured Creditors (the "Committee"). Certain other conditions contained in the Plan must be satisfied or waived pursuant to the provisions of the Plan.

6. Rules of Interpretation

The following rules for interpretation and construction shall apply to this Disclosure Statement: (1) capitalized terms used in the Disclosure Statement and not otherwise defined shall have the meaning ascribed to such terms in the Plan; (2) unless otherwise specified, any reference in this Disclosure Statement to a contract, instrument, release, indenture, or other agreement or document shall be a reference to such document in the particular form or substantially on such terms and conditions described; (3) unless otherwise specified, any reference in this Disclosure Statement to an existing document, schedule, or exhibit, whether or not filed, shall mean such document, schedule, or exhibit, as it may have been or may be amended, modified, or supplemented; (4) any reference to an entity as a Holder of a Claim or Equity Interest includes that Entity's successors and assigns; (5) unless otherwise specified, all references in this Disclosure Statement to Sections are references to Sections of this Disclosure Statement; (6) unless otherwise specified, all references in this Disclosure Statement to exhibits are references to exhibits in this Disclosure Statement; (7) unless otherwise set forth in this Disclosure Statement, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; and (8) any term used in capitalized form in this Disclosure Statement that is not otherwise defined in this Disclosure Statement or the Plan but that is used 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 applicable.

7. Distribution of Confirmation Hearing Notice and Solicitation Package to Holders of Claims and Equity Interests

As set forth above, Holders of Claims in Class 1 and Class 3 through Class 6 are not entitled to vote on the Plan. As a result, such parties will not receive solicitation packages or ballots but, instead, will receive this a notice of non-voting status, a notice of the Confirmation Hearing, and instructions on how to receive a copy of the Plan and Disclosure Statement.

The Debtor, with the approval of the Bankruptcy Court, has engaged Kurtzman Carson Consultants LLC (the "Voting Agent") to serve as the voting agent to process and tabulate Ballots for each Class entitled to vote on the Plan and to generally oversee the voting process. The following materials shall constitute the solicitation package (the "Solicitation Package"):

- This Disclosure Statement, including the Plan and all other Exhibits annexed thereto;

- The Bankruptcy Court order approving this Disclosure Statement (the "Disclosure Statement Order") (excluding exhibits);

- The notice of, among other things, (i) the date, time, and place of the hearing to consider Confirmation of the Plan and related matters and (ii) the deadline for filing objections to Confirmation of the Plan (the "Confirmation Hearing Notice");

- A single Ballot, to be used in voting to accept or to reject the Plan and applicable instructions with respect thereto (the "Voting Instructions");

- A pre-addressed, postage pre-paid return envelope; and

- Such other materials as the Bankruptcy Court may direct or approve.

The Debtor, through the Voting Agent, will distribute the Solicitation Package in accordance with the Disclosure Statement Order. The Solicitation Package is also available at the Debtor's restructuring website at www.kccllc.net/hcmlp.

On November 13, 2020, the Debtor filed the Plan Supplement [D.I. 1389] that included, among other things, the form of Claimant Trust Agreement, the Litigation Sub-Trust Agreement, the Reorganized Limited Partnership Agreement, New GP LLC Documents, the New Frontier Note, the Senior Employee Stipulation, and the identity of the initial members of the Claimant Trust Oversight Committee. The Plan Supplement also includes a schedule of the Causes of Action that will be retained after the Effective Date. The Plan Supplement may be supplemented or amended through and including December 18, 2020. If the Plan Supplement is supplemented, such supplemented documents will be made available on the Debtor's restructuring website at www.kccllc.net/hcmlp.

If you are the Holder of a Claim or Equity Interest and believe that you are entitled to vote on the Plan, but you did not receive a Ballot or your Ballot is damaged or illegible, or if you have any questions concerning voting procedures, you should contact the Voting Agent by writing to Kurtzman Carson Consultants LLC, via email at HighlandInfo@kccllc.com and reference "Highland Capital Management, L.P." in the subject line or by telephone at toll free: (877) 573-3984, or international: (310) 751-1829. If your Claim or Equity Interest is subject to a pending claim objection and you wish to vote on the Plan, you must file a motion pursuant to Bankruptcy Rule 3018 with the Bankruptcy Court for the temporary allowance of your Claim or Equity Interest for voting purposes or you will not be entitled to vote to accept or reject the Plan. Any such motion must be filed so that it is heard in sufficient time prior to the Voting Deadline to allow for your vote to be tabulated.

THE DEBTOR, THE REORGANIZED DEBTOR, AND THE CLAIMANT TRUSTEE, AS APPLICABLE, RESERVE THE RIGHT THROUGH THE CLAIM OBJECTION PROCESS TO OBJECT TO OR SEEK TO DISALLOW ANY CLAIM OR EQUITY INTEREST FOR DISTRIBUTION PURPOSES.

8. Instructions and Procedures for Voting

All votes to accept or reject the Plan must be cast by using the Ballots enclosed with the Solicitation Packages or otherwise provided by the Debtor or the Voting Agent. No votes other than ones using such Ballots will be counted, except to the extent the Bankruptcy Court orders otherwise. The Bankruptcy Court has fixed November 23, 2020, as the Voting Record Date for the determination of the Holders of Claims and Equity Interests who are entitled to (a) receive a copy of this Disclosure Statement and all of the related materials and (b) vote to accept or reject the Plan. The Voting Record Date and all of the Debtor's solicitation and voting procedures shall apply to all of the Debtor's Creditors and other parties in interest.

After carefully reviewing the Plan, this Disclosure Statement, and the detailed instructions accompanying your Ballot, you are asked to indicate your acceptance or rejection of the Plan by voting in favor of or against the Plan on the accompanying Ballot.

The deadline to vote on the Plan is January 5, 2021 at 5:00 p.m. (prevailing Central Time) (the "Voting Deadline"). In order for your vote to be counted, your Ballot must be properly completed in accordance with the Voting Instructions on the Ballot, and received no later than the Voting Deadline at the following address, as applicable:

If by first class mail, personal delivery, or overnight mail to:

HCMLP Ballot Processing Center
c/o KCC
222 N. Pacific Coast Highway, Suite 300
El Segundo, CA 90245

If by electronic voting:

You may submit your Ballot via the Balloting Agent's online portal. Please visit http://www.kccllc.net/hcmlp and click on the "Submit Electronic Ballot" section of the website and follow the instructions to submit your Ballot. IMPORTANT NOTE: You will need the Unique Electronic Ballot ID Number and the Unique Electronic Ballot PIN Number set forth on your customized ballot in order to vote via the Balloting Agent's online portal. Each Electronic Ballot ID Number is to be used solely for voting on those Claims or Interests on your electronic ballot. You must complete and submit an electronic ballot for each Electronic Ballot ID Number you receive, as applicable. Parties who cast a Ballot using the Balloting Agent's online portal should NOT also submit a paper Ballot.

Only the Holders of Claims and Equity Interests in Class 2 and Class 7 through Class 11 as of the Voting Record Date are entitled to vote to accept or reject the Plan, and they may do so by completing the appropriate Ballots and returning them in the envelope provided to the Voting Agent so as to be actually received by the Voting Agent by the Voting Deadline. Each Holder of a Claim and Equity Interest must vote its entire Claim or Equity Interest, as applicable, within a particular Class either to accept or reject the Plan and may not split such votes. If multiple Ballots are received from the same Holder with respect to the same Claim or Equity Interest prior to the Voting Deadline, the last timely received, properly executed Ballot will be deemed to

reflect that voter's intent and will supersede and revoke any prior Ballot. The Ballots will clearly indicate the appropriate return address. It is important to follow the specific instructions provided on each Ballot.

ALL BALLOTS ARE ACCOMPANIED BY VOTING INSTRUCTIONS. IT IS IMPORTANT THAT THE HOLDER OF A CLAIM OR EQUITY INTEREST IN THE CLASSES ENTITLED TO VOTE FOLLOW THE SPECIFIC INSTRUCTIONS PROVIDED WITH EACH BALLOT.

If you have any questions about (a) the procedure for voting your Claim or Equity Interest, (b) the Solicitation Package that you have received, or (c) the amount of your Claim or Equity Interest, or if you wish to obtain an additional copy of the Plan, this Disclosure Statement, or any appendices or Exhibits to such documents, please contact the Voting Agent at the address specified above. Copies of the Plan, Disclosure Statement and other documents filed in these Chapter 11 Case may be obtained free of charge on the Voting Agent's website at www.kccllc.net/hcmlp or by calling toll free at: (877) 573-3984, or international at: (310) 751-1829. You may also obtain copies of pleadings filed in the Debtor's case for a fee via PACER at pacer.uscourts.gov. Subject to any rules or procedures that have or may be implemented by the Court as a result of the COVID 19 Pandemic, documents filed in this case may be examined between the hours of 8:00 a.m. and 4:00 p.m., prevailing Central Time, Monday through Friday, at the Office of the Clerk of the Bankruptcy Court, Earle Cabell Federal Building, 1100 Commerce Street, Room 1254, Dallas, Texas 75242-1496.

The Voting Agent will process and tabulate Ballots for the Classes entitled to vote to accept or reject the Plan and will file a voting report (the "Voting Report") by January 11, 2021. The Voting Report will, among other things, describe every Ballot that does not conform to the Voting Instructions or that contains any form of irregularity, including, but not limited to, those Ballots that are late, illegible (in whole or in material part), unidentifiable, lacking signatures, lacking necessary information, or damaged.

THE DEBTOR URGES HOLDERS OF CLAIMS AND EQUITY INTERESTS WHO ARE ENTITLED TO VOTE TO TIMELY RETURN THEIR BALLOTS AND TO VOTE TO ACCEPT THE PLAN BY THE VOTING DEADLINE.

9. The Confirmation Hearing

The Bankruptcy Court has scheduled Confirmation Hearing Dates on January 13, 2021, and January 14, 2021, at 9:30 a.m. prevailing Central time. The Confirmation Hearing may be continued from time to time by the Bankruptcy Court or the Debtor without further notice other than by such adjournment being announced in open court or by a notice of adjournment filed with the Bankruptcy Court and served on such parties as the Bankruptcy Court may order. Moreover, the Plan may be modified or amended, if necessary, pursuant to section 1127 of the Bankruptcy Code, prior to, during or as a result of the Confirmation Hearing, without further notice to parties-in-interest.

10. The Deadline for Objecting to Confirmation of the Plan

The Bankruptcy Court has set a deadline of January 5, 2021, at 5:00 p.m. prevailing Central time, for the filing of objections to confirmation of the Plan (the "Confirmation Objection Deadline"). Any objection to confirmation of the Plan must: (i) be in writing; (ii) conform to the Bankruptcy Rules and the Local Rules; (iii) state the name of the objecting party and the amount and nature of the Claim of such Entity or the amount of Equity Interests held by such Entity; (iv) state with particularity the legal and factual bases and nature of any objection to the Plan and, if practicable, a proposed modification to the Plan that would resolve such objection; and (v) be filed, contemporaneously with a proof of service, with the Bankruptcy Court and served so that it is **actually received** no later than the Confirmation Objection Deadline by the parties set forth below (the "Notice Parties").

CONFIRMATION OBJECTIONS NOT TIMELY FILED AND SERVED IN THE MANNER SET FORTH HEREIN MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT AND MAY BE OVERRULED WITHOUT FURTHER NOTICE. INSTRUCTIONS WITH RESPECT TO THE CONFIRMATION HEARING AND DEADLINES WITH RESPECT TO CONFIRMATION WILL BE INCLUDED IN THE NOTICE OF CONFIRMATION HEARING APPROVED BY THE BANKRUPTCY COURT.

11. Notice Parties

- Debtor: Highland Capital Management, L.P., 300 Crescent Court, Suite 700, Dallas, Texas 75201 (Attn: James P. Seery, Jr.);
- Counsel to the Debtor: Pachulski Stang Ziehl & Jones LLP, 10100 Santa Monica Boulevard, 13th Floor, Los Angeles, California 90067-4003 (Attn: Jeffrey Pomerantz, Esq.; Ira Kharasch, Esq., and Gregory Demo, Esq.);
- Counsel to the Committee: Sidley Austin, LLP, One South Dearborn, Chicago, Illinois 60603 (Attn: Matthew Clemente, Esq., and Alyssa Russell, Esq.); and
- Office of the United States Trustee, 1100 Commerce Street, Room 976, Dallas, Texas 75242 (Attn: Lisa Lambert, Esq.).

12. Effect of Confirmation of the Plan

The Plan contains certain provisions relating to (a) the compromise and settlement of Claims and Equity Interests; (b) exculpation of certain parties; and (c) the release of claims against certain parties by the Debtor.

The Plan shall bind all Holders of Claims against and Equity Interests in the Debtor to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder (i) will receive or retain any property or interest in property under the Plan, (ii) has filed a proof of claim in the Chapter 11 Case, or (iii) did not vote to accept or reject the Plan.

D. Effectiveness of the Plan

It will be a condition to the Effective Date of the Plan that all provisions, terms and conditions of the Plan are approved in the Confirmation Order unless otherwise satisfied or waived pursuant to the provisions of Article IX of the Plan. Following confirmation, the Plan will go into effect on the Effective Date.

E. RISK FACTORS

Each Holder of a Claim or an Equity Interest is urged to consider carefully all of the information in this Disclosure Statement, including the risk factors described in ARTICLE IV herein titled, "Risk Factors."

ARTICLE II.
BACKGROUND TO THE CHAPTER 11 CASE AND SUMMARY OF BANKRUPTCY PROCEEDINGS TO DATE

A. Description and History of the Debtor's Business

Prior to the Petition Date, the Debtor was a multibillion-dollar global alternative investment manager founded in 1993 by James Dondero and Mark Okada. A pioneer in the leveraged loan market, the firm evolved over twenty-five years, building on its credit expertise and value-based approach to expand into other asset classes.

As of the Petition Date, the Debtor operated a diverse investment platform, serving both institutional and retail investors worldwide. In addition to high-yield credit, the Debtor's investment capabilities include public equities, real estate, private equity and special situations, structured credit, and sector- and region-specific verticals built around specialized teams. Additionally, the Debtor provided shared services to its affiliated registered investment advisers.

B. The Debtor's Corporate Structure

The Debtor is headquartered in Dallas, Texas. The Debtor itself is a Delaware limited partnership and one of the principal operating arms of the Debtor's business. As of the Petition Date, the Debtor employed approximately 76 people, including executive-level management employees, finance and legal staff, investment professionals, and back-office accounting and administrative personnel.

Pursuant to various contractual arrangements, the Debtor, as of the Petition Date, provided money management and advisory services for approximately $2.5 billion of assets under management shared services for approximately $7.5 billion of assets managed by a variety of affiliated and unaffiliated entities, including other affiliated registered investment advisors. None of these affiliates filed for Chapter 11 protection. As of September 30, 2020, the Debtor provided money management and advisory services for approximately $1.641 billion of assets under management and shared services for approximately $7.136 billion of assets managed by a variety of affiliated and unaffiliated entities, including other affiliated registered investment advisors. Further, on the Petition Date, the value of the Debtor's Assets was approximately

$566.5 million. As of September 30, 2020, the total value of Debtor's Assets totaled approximately $328.3 million.

The drop in the value of the Debtor's Assets and assets under management was caused, in part, by the COVID-19 global pandemic. Specifically, the decline was the result of, among other things, the drop in value of the Debtor's assets generally, the loss of value in the Prime Accounts discussed below, the professional and other costs associated with the Chapter 11 Case, and the reserve of approximately $59 million against a loan receivable listed as an asset.

Asset	10/16/2019	9/30/2020
Investments (FV)[1]	$232,620,000	$109,479,000
Investments (Equity)	$161,819,000	$101,213,000
Cash/Cash Equivalents	$2,529,000	$5,888,000
Management/Incentive Fees Receivable	$2,579,000	$3,350,000
Fixed Assets, net	$3,754,000	$2,823,000
Loan Receivables	$151,901,000	$93,445,000[2]
Other Assets	$11,311,000	$12,105,000
Totals	$566,513,000	$328,302,000

[1] Includes decrease in value of assets, costs of Chapter 11 Cases, and assets sold to satisfy liabilities.

[2] Net of reserve of $59 million.

The Debtor's organizational chart is attached hereto as Exhibit B. The organizational chart is not all inclusive and certain entities have been excluded for the sake of brevity.

C. Business Overview

The Debtor's primary means of generating revenue has historically been from fees collected for the management and advisory services provided to funds that it manages, plus fees generated for services provided to its affiliates. For additional liquidity, the Debtor, prior to the Petition Date, would sell liquid securities in the ordinary course held through its prime brokerage account at Jefferies, LLC ("Jefferies"), as described in additional detail below. The Debtor would also, from time to time, sell assets at non-Debtor subsidiaries and distribute those proceeds to the Debtor in the ordinary course of business. During calendar year 2018, the Debtor's stand-alone annual revenue totaled approximately $50 million. During calendar year 2019, the Debtor's stand-alone revenue totaled approximately $36.1 million.

D. Prepetition Capital Structure

1. Jefferies Margin Borrowings (Secured)

The Debtor is party to that certain *Prime Brokerage Customer Agreement* with Jefferies dated May 24, 2013 (the "Brokerage Agreement"). Pursuant to the terms of the Brokerage Agreement and related documents, the Debtor maintains a prime brokerage account with

Jefferies (the "Prime Account"). A prime brokerage account is a unique type of brokerage account that allows sophisticated investors to, among other things, borrow both money on margin to purchase securities and common stock to facilitate short positions. A prime brokerage account also serves as a custodial account and holds client securities in the prime broker's street name.

As of the Petition Date, the Debtor held approximately $57 million of equity in liquid and illiquid securities (the "Securities") in the Prime Account. Pursuant to the Brokerage Agreement, the Debtor granted a lien in favor of Jefferies in the Securities and all of the proceeds thereof.

However, because of the economic distress caused by the COVID-19 global pandemic, the value of the Securities held in the Prime Account dropped since the Petition Date, and Jefferies has exerted significant pressure on the Debtor to liquidate the Securities to satisfy margin calls. As of September 30, 2020, the equity value of the Securities in the Prime Account was approximately $23.3 million, and the Debtor owed no amounts to Jefferies. The Debtor has been actively selling Securities to cover operating expenses and professional fees.

2. The Frontier Bank Loan (Secured)

The Debtor and Frontier State Bank ("Frontier Bank") are parties to that certain *Loan Agreement* dated as of August 17, 2015 (the "Original Frontier Loan Agreement"), pursuant to which Frontier Bank loaned to the Debtor the aggregate principal amount of $9.5 million. On March 29, 2018, the Debtor and Frontier Bank entered into that certain First Amended and Restated Loan Agreement (the "Amended Frontier Loan Agreement"), amending and superseding the Original Frontier Loan Agreement. Pursuant to the Amended Frontier Loan Agreement, Frontier Bank made an additional $1 million loan to the Debtor (together with the borrowings under the Original Frontier Loan Agreement, the "Frontier Loan"). The Frontier Loan matures on August 17, 2021.

Pursuant to that certain Security and Pledge Agreement dated August 17, 2015, between Frontier Bank and the Debtor, as amended by the Amended Frontier Loan Agreement, the Debtor's obligations under the Frontier Loan are secured by 171,724 shares of voting common stock of MGM Holdings, Inc. (collectively, the "Frontier Collateral").

The aggregate principal balance of the Frontier Loan was approximately $5.2 million. As of September 30, 2020, the value of the Frontier Collateral was approximately $13.1 million, and approximately $318,000 in postpetition interest had accrued.

3. Other Unsecured Obligations

As discussed below, the Plan provides for four Classes of unsecured claims: (i) PTO Claims, (ii) the Convenience Claims, (iii) the General Unsecured Claims, and (iv) the Subordinated Claims.

The Debtor has various substantial litigation claims asserted against it, which have been classified as General Unsecured Claims. In addition, as of the Petition Date, the Debtor had ordinary course trade debt, unaccrued employee bonus obligations and loan repayment, and

contractual commitments to various affiliated and unaffiliated non-Debtor entities for capital calls, contributions, and other potential reimbursement or funding obligations that were potentially in the tens of millions of dollars. The Debtor is still assessing these claims and its liability for such amounts. These Claims have been classified as Convenience Claims and Subordinated Claims.

4. Equity Interests

The Debtor is a Delaware limited partnership. As of the Petition Date, the Debtor had three classes of limited partnership interest (Class A, Class B, and Class C). The Class A interests were held by The Dugaboy Investment Trust, Mark Okada, personally and through family trusts, and Strand, the Debtor's general partner. The Class B and C interests were held by Hunter Mountain.

In the aggregate, the Debtor's limited partnership interests were held: (a) 99.5% by Hunter Mountain; (b) 0.1866% by The Dugaboy Investment Trust, (c) 0.0627% by Mark Okada, personally and through family trusts, and (d) 0.25% by Strand.

E. SEC Filings

The Debtor is an investment adviser registered with the SEC as required by the Investment Advisers Act of 1940. As a registered investment adviser, the Debtor is required to file (at least annually) a Form ADV. The Debtor's current Form ADV is available at https://adviserinfo.sec.gov/.

Following the Effective Date, it is anticipated that the Reorganized Debtor will maintain its registration with the SEC as a registered investment adviser.

F. Events Leading Up to the Debtor's Bankruptcy Filings

The Chapter 11 Case was precipitated by the rendering of an Arbitration Award (as that term is defined below) against the Debtor on May 9, 2019, by a panel of the American Arbitration Association (the "Panel"), in favor of the Redeemer Committee of the Highland Crusader Fund (the "Redeemer Committee").

The Debtor was formerly the investment manager for the Highland Crusader Funds (the "Crusader Funds") that were formed between 2000 and 2002. In September and October 2008, as the financial markets in the United States began to fail, the Debtor was flooded with redemption requests from Crusader Funds' investors, as the Crusader Funds' assets lost significant value.

On October 15, 2008, the Debtor placed the Crusader Funds in wind-down, thereby compulsorily redeeming the Crusader Funds' limited partnership interests. The Debtor also declared that it would liquidate the Crusader Funds' remaining assets and distribute the proceeds to investors.

However, disputes concerning the distribution of the assets arose among certain investors. After several years of negotiations, a Joint Plan of Distribution of the Crusader Funds

(the "Crusader Plan"), and the Scheme of Arrangement between Highland Crusader Fund and its Scheme Creditors (the "Crusader Scheme"), were adopted in Bermuda and became effective in August 2011. As part of the Crusader Plan and the Crusader Scheme, the Redeemer Committee was elected from among the Crusader Funds' investors to oversee the Debtor's management of the Crusader Funds.

Between October 2011 and January 2013, in accordance with the Crusader Plan and the Crusader Scheme, the Debtor distributed in excess of $1.2 billion to the Crusader Funds' investors. The Debtor distributed a further $315.3 million through June 2016.

However, disputes subsequently arose between the Redeemer Committee and the Debtor. On July 5, 2016, the Redeemer Committee (a) terminated and replaced the Debtor as investment manager of the Crusader Fund, (b) commenced an arbitration against the Debtor (the "Arbitration"), and (c) commenced litigation in Delaware Chancery Court, to, among other things, obtain a status quo order in aid of the arbitration, which order was subsequently entered.

Following an evidentiary hearing, the Panel issued (a) a *Partial Final Award,* dated March 6, 2019 (the "March Award"), (b) a *Disposition of Application for Modification of Award,* dated March 14, 2019 (the "Modification Award"), and (c) a *Final Award,* dated May 9, 2019 (the "Final Award" and together with the March Award and the Modification Award, the "Arbitration Award"). Pursuant to the Arbitration Award, the Redeemer Committee was awarded gross damages against the Debtor in the aggregate amount of $136,808,302; as of the Petition Date, the total value of the Arbitration Award was $190,824,557, inclusive of interest

Prior to the Petition Date, the Redeemer Committee moved in the Chancery Court to confirm the Arbitration Award. For its part, the Debtor moved to vacate parts of the Final Award contending that certain aspects were procedurally improper. The Redeemer Committee's motion to confirm the Arbitration Award and the Debtor's motion to vacate were fully briefed and were scheduled to be heard by the Chancery Court on the day the Debtor filed for bankruptcy

On the Petition Date, the Debtor believed that the aggregate value of its assets exceeded the amount of its liabilities; however, the Debtor filed the Chapter 11 Case because it did not have sufficient liquidity to immediately satisfy the Award or post a supersedeas bond necessary to pursue an appeal.

G. Additional Prepetition Litigation

In addition to the litigation with the Redeemer Committee described above, the Debtor, both directly and through certain subsidiaries, affiliates, and related entities, was party to substantial prepetition litigation. Although the Debtor disputes the allegations raised in this litigation and believes it has substantial defenses, this litigation has resulted in substantial Claims against the Debtor's Estate, each of which has been classified as a General Unsecured Claim. To the extent that these litigation Claims cannot be resolved consensually, they will be litigated by the Claimant Trustee or Reorganized Debtor, as applicable. The Debtor's major prepetition litigation is as follows:

- Redeemer Committee: The dispute with the Redeemer Committee is described in ARTICLE II.F above. As discussed in ARTICLE II.R, the Bankruptcy Court entered an order approving a settlement that resolves the Redeemer Committee's claims against the Estate; however, that order is currently subject to appeal.

- Acis Capital Management, L.P., & Acis Capital Management GP, LLC: On January 30, 2018, Joshua Terry filed involuntary bankruptcy petitions against both Acis Capital Management, L.P. ("Acis LP") and its general partner, Acis Capital Management GP, LLC ("Acis GP," and collectively with Acis LP, "Acis") in the Bankruptcy Court for the Northern District of Texas, Dallas Division, the Honorable Judge Jernigan presiding (the same judge presiding over the Chapter 11 Case), Case No. 18-30264-SGJ (the "Acis Case"). Mr. Terry had been an employee of the Debtor and a limited partner of Acis LP. Mr. Terry was terminated in June 2016, and obtained a multi-million dollar arbitration award against Acis. Overruling various objections, the Bankruptcy Court entered the orders for relief for the Acis debtors in April 2018, and a chapter 11 trustee was appointed. The Debtor filed a proof of claim against Acis and an administrative claim. Acis disputes the Debtor's claim, and the Debtor has not received any distributions on its claim to date. On January 31, 2019, Acis's chapter 11 plan was confirmed, and Mr. Terry become the sole owner of reorganized Acis. Several appeals remain pending, including an appeal of the entry of the Acis orders for relief and the Acis confirmation order.

  The Acis trustee commenced a lawsuit against the Debtor, among others, alleging fraudulent conveyance and other causes of action in relation to the Debtor's alleged prepetition effort to control and transfer away Acis's assets to avoid paying Mr. Terry's claim. After the confirmation of the Acis plan, reorganized Acis allegedly supplanted the Acis Trustee as plaintiff and filed an amended complaint against the Debtor and other defendants, which claims comprise Acis's pending proof of claim against the Debtor.

  As discussed in ARTICLE II.R, the Bankruptcy Court entered an order approving a settlement that resolves Acis's claims against the Estate; however, that order is currently subject to appeal.

- UBS Securities LLC and UBS AG London Branch: UBS Securities LLC ("UBS Securities") filed a proof of claim in the amount of $1,039,957,799.40 [Claim No. 190] (the "UBS Securities Claim"), and UBS AG, London Branch ("UBS London," and together with UBS Securities, "UBS") filed a substantively identical proof of claim in the amount of $1,039,957,799.40 [Claim No. 191] (the "UBS London Claim" and together with the UBS Securities Claim, the "UBS Claim"). The UBS Claim was based on the amount of a judgment UBS received on a breach of contract claim against funds related to the Debtor that were unable to honor margin calls in 2008. Although the Debtor had no obligation under UBS's contracts with the funds, UBS alleges the Debtor is liable for the judgment because it (i) breached an alleged duty to ensure that the funds could pay UBS, (ii) caused or permitted $233 million in alleged fraudulent transfers to be made by

Highland Financial Partners, L.P. ("HFP") in March 2009, and (iii) is an alter ego of the funds. The Debtor believes there are meritorious defenses to most, if not all, of the UBS Claim for numerous reasons, including: (i) decisions by the New York Appellate Division that limited UBS's claims to the March 2009 transfers that it alleges were fraudulent; (ii) those decisions should also apply to any alter ego claim (which at this time has not been formally asserted against the Debtor); (iii) UBS settled claims relating to $172 million of the $233 million in alleged fraudulent transfers and the Debtor is covered by the release; and (iv) the March 2009 transfers were in any event part of a wholly legitimate transaction that did not target UBS and for which HFP received fair consideration. Those and several additional defenses are described in the *Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch* [D.I. 928].

On October 19, 2020, both the Debtor and the Redeemer Committee filed motions seeking partial summary judgment of the UBS Claim, which, if granted, will significantly decrease the UBS Claim.[5] UBS responded to these motions on November 6, 2020 [D.I. 1341]. On November 20, 2020, the Bankruptcy Court granted partial summary judgment in favor of the Debtor and the Redeemer Committee. It is anticipated that the Bankruptcy Court will enter a formal order within the next couple of weeks.

- Patrick Daugherty: Patrick Daugherty has Filed a Proof of Claim for "at least $37,483,876.62" [Claim Nos. 67; 77] (the "Daugherty Claim").[6] Mr. Daugherty is a former limited partner and employee of the Debtor. The Daugherty Claim has three components, and Mr. Daugherty asserts claims: (1) for indemnification for any taxes Mr. Daugherty is required to pay as a result of the IRS audit of the Debtor's 2008-2009 tax return; (2) for defamation arising from a 2017 press release posted by the Debtor; and (3) arising from a pending Delaware lawsuit against the Debtor, which seeks to recover a judgment of $2.6 million in respect of Highland Employee Retention Assets ("HERA"), plus interest, from assets Mr. Daugherty claims were fraudulently transferred to the Debtor. The Daugherty Claim also seeks (a) the value of Mr. Daugherty's asserted interest in HERA, which he values at approximately $26 million; and (b) indemnification for fees incurred in the Delaware action and in previous litigation in Texas State Court. The Debtor believes that the Daugherty Claim should be allowed in the amount of

[5] See *Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch* [D.I. 1180]; *Debtor's Opening Brief in Support of Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch* [D.I. 1181]; *Redeemer Committee of the Highland Crusader Fund and the Crusaders Funds' Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS AG, London Branch and UBS Securities LLC* [D.I. 1183]; and *Redeemer Committee of the Highland Crusader Fund and the Crusaders Funds' Brief in Support of Motion for Partial Summary Judgment and Joinder in the Debtor's Motion for Partial Summary Judgment on Proof of Claim No. 190 and 191 of UBS AG, London Branch and UBS Securities LLC* [D.I. 1186].

[6] On October 23, 2020, Mr. Daugherty filed *Patrick Hagaman Daugherty's Motion for Leave to Amend Proof of Claim No. 77* [D.I. 1280] pursuant to which Mr. Daugherty has asked leave to amend the Daugherty Claim to assert damages of $40,710,819.42. On November 17, 2020, the Bankruptcy Court approved Mr. Daugherty's request to amend the Daugherty Claim from the bench.

$3,722,019; however, the Debtor believes, for various reasons, that the balance of the Daugherty Claim lacks merit. The Debtor's defenses to the Daugherty Claim are described in the *Debtor's (i) Objection to Claim No. 77 of Patrick Hagaman Daugherty and (ii) Complaint to Subordinate Claim of Patrick Hagaman Daugherty* [D.I. 1008].

H. The Debtor's Bankruptcy Proceeding

On October 16, 2019, the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Delaware Bankruptcy Court"). On December 4, 2019, the Delaware Bankruptcy Court entered an order transferring venue of the Chapter 11 Case to the Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court").[7] The Debtor continues to operate its business and manage its properties as debtor-in-possession under the jurisdiction of the Bankruptcy Court and in accordance with the applicable provisions of the Bankruptcy Code and orders of the Bankruptcy Court.

An immediate effect of commencement of the Chapter 11 Case was the imposition of the automatic stay under the Bankruptcy Code which, with limited exceptions, enjoins the commencement or continuation of all collection efforts, the enforcement of liens against property of the Debtor, and the continuation of litigation against the Debtor during the pendency of the Chapter 11 Case. The automatic stay will remain in effect, unless modified by the Bankruptcy Court, until the later of the Effective Date and the date indicated in any order providing for the implementation of such stay or injunction.

I. First Day Relief

On or about the Petition Date, the Debtor filed certain "first day" motions and applications (the "First Day Motions") with the Delaware Bankruptcy Court seeking certain immediate relief to aid in the efficient administration of this Chapter 11 Case and to facilitate the Debtor's transition to debtor-in-possession status. A brief description of each of the First Day Motions and the evidence in support thereof is set forth in the *Declaration of Frank Waterhouse in Support of First Day Motions* [D.I. 11] (the "First Day Declaration"). At a hearing on October 19, 2019, the Delaware Bankruptcy Court granted virtually all of the relief initially requested in the First Day Motions [D.I. 39, 40, 42-44].

The Delaware Bankruptcy Court subsequently entered an order authorizing the Debtor to pay critical vendor claims on a final basis [D.I. 168]. Following the transfer of the Chapter 11 Case to the Bankruptcy Court, the Bankruptcy Court entered an order authorizing the Debtor to continue its cash management system on a final basis [D.I. 379]

The First Day Motions, the First Day Declaration, and all orders for relief granted in this case can be viewed free of charge at https://www.kccllc.net/hcmlp.

[7] All docket reference numbers refer to the docket maintained by the Bankruptcy Court.

J. Other Procedural and Administrative Motions

On and after the Petition Date, the Debtor also filed a number of motions and applications to retain professionals and to streamline the administration of the Chapter 11 Case, including:

- Interim Compensation Motion. On October 29, 2019, the Debtor filed the *Debtor's Motion Pursuant o Sections 105(a), 330 and 331 of the Bankruptcy Code for Administrative Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals* [D.I. 72] (the "Interim Compensation Motion"). The Interim Compensation Motion sought to establish procedures for the allowance and payment of compensation and reimbursement of expenses for attorneys and other professionals whose retentions are approved by the Bankruptcy Court pursuant to section 327 or 1103 of the Bankruptcy Code and who will be required to file applications for allowance of compensation and reimbursement of expenses pursuant to section 330 and 331 of the Bankruptcy Code. On November 14, 2019, the Delaware Bankruptcy Court entered an order granting the Interim Compensation Motion [D.I. 141].

- Ordinary Course Professionals. On October 29, 2019, the Debtor filed the Motion of the Debtor for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business [D.I. 75] (the "OCP Motion"). The OCP Motion sought authority for the Debtor to retain and compensate certain professionals in the ordinary course of its business. On November 26, 2019, the Delaware Bankruptcy Court entered an order granting the OCP Motion [D.I. 176].

- Retention Applications. During the course of the chapter 11 case, the Delaware Bankruptcy Court or Bankruptcy Court, as applicable, have approved a number of applications by the Debtor seeking to retain certain professionals pursuant to sections 327, 328 and/or 363 of the Bankruptcy Code, including Pachulski Stang Ziehl & Jones LLP as legal counsel [D.I. 183], Development Specialists, Inc. as chief restructuring officer and financial advisor [D.I. 342], Kurtzman Carson Consultants LLC as administrative advisor [D.I. 74], Mercer (US) Inc. as compensation consultant [D.I. 381], Hayward & Associates PLLC as local counsel [D.I. 435], Foley Gardere, Foley & Lardner LLP as special Texas counsel [D.I. 513], Deloitte Tax LLP as tax services provider [D.I. 551], Wilmer Cutler Pickering Hale and Dorr LLP as regulatory and compliance counsel [D.I. 669], and Hunton Andrews Kurth LLP as special tax counsel [D.I. 763].

K. United States Trustee

While the Chapter 11 Case was pending in the Delaware Bankruptcy Court, the U.S. Trustee for Region 3 appointed Jane Leamy as the attorney for the U.S. Trustee in connection with this Chapter 11 Case (the "Delaware U.S. Trustee"). Following the transfer of the Chapter 11 Case to the Bankruptcy Court, the Delaware U.S. Trustee no longer represented the U.S. Trustee, and the U.S. Trustee for Region 6 appointed Lisa Lambert as the attorney for the U.S. Trustee in connection with this Chapter 11 Case (the "Texas U.S. Trustee," and together with the

Delaware U.S. Trustee, the "U.S. Trustee"). The Debtor has worked cooperatively to address concerns and comments from the U.S. Trustee's office during this Chapter 11 Case.

L. Appointment of Committee

On October 29, 2019, the Delaware U.S. Trustee appointed the Committee in this Chapter 11 Case [D.I. 65]. The members of the Committee are (a) Redeemer Committee of Highland Crusader Fund, (b) Meta-e Discovery, (c) UBS Securities LLC and UBS AG London Branch, and (d) Acis Capital Management, L.P. and Acis Capital Management GP, LLP. Meta-E Discovery is a vendor to the Debtor. The other members of the Committee are litigants in prepetition litigation with the Debtor as described in ARTICLE II.G. The Bankruptcy Court approved the retention of Sidley Austin LLP as counsel to the Committee [D.I. 334], Young Conaway Stargatt & Taylor, LLP as Delaware co-counsel to the Committee [D.I. 337], and FTI Consulting, Inc. as financial advisor to the Committee [D.I. 336].

M. Meeting of Creditors

The meeting of creditors under section 341(a) of the Bankruptcy Code was initially scheduled for November 20, 2019, at 9:30 a.m. (prevailing Eastern Time) at the J. Caleb Boggs Federal Building, 844 N. King Street, Room 3209, Wilmington, Delaware 19801, and was rescheduled to December 3, 2019, at 10:30 a.m. (prevailing Eastern Time). At the meeting of creditors, the Delaware U.S. Trustee and creditors asked questions of a representative of the Debtor.

Following the transfer of the Chapter 11 Case to the Bankruptcy Court, the Texas U.S. Trustee scheduled an additional meeting of creditors under section 341(a) for January 9, 2020, at 11:00 a.m. (prevailing Central Time) at the Office of the U.S. Trustee, 1100 Commerce Street, Room 976, Dallas, Texas 75242, at the conclusion of that meeting, the Texas U.S. Trustee continued the meeting to January 22, 2020. The Texas U.S. Trustee and creditors asked questions of a representative of the Debtor at the January 9 and January 22, 2020 meetings.

N. Schedules, Statements of Financial Affairs, and Claims Bar Date

The Debtor filed its Schedules of Assets and Liabilities and Statements of Financial Affairs (the "Schedules") on December 19, 2019 [D.I. 247-248]. A creditor whose Claim is set forth in the Schedules and not identified as contingent, unliquidated or disputed may have elected to file a proof of claim against the Debtor.

The Bankruptcy Court established (i) April 8, 2020 as the deadline for Creditors (other than governmental units) to file proofs of claim against the Debtor; (ii) April 13, 2020, as the deadline for any governmental unit (as such term is defined in section 101(27) of the Bankruptcy Code), (iii) April 23, 2020, and as the deadline for any investors in any fund managed by the Debtor to file proofs of claim against the Debtor; and (iv) May 26, 2020 as the deadline for the Debtor's employees to file proofs of claim against the Debtor pursuant to and accordance with Court's order entered on April 3, 2020 [D.I. 560].[8] Consequently, the bar date for filing proofs

[8] During the course of its Chapter 11 Case, the Debtor entered into stipulations to extend the Bar Date for certain other claimants or potential claimants.

of claims has passed and any claims filed after the applicable bar date will be considered late filed.

O. Governance Settlement with the Committee

On January 9, 2020, the Bankruptcy Court entered the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [D.I. 339] (the "Settlement Order").

Among other things, the Settlement Order approved a term sheet (the "Term Sheet") agreed to by the Debtor and the Committee pursuant to which the Debtor agreed to abide by certain protocols governing the production of documents and certain protocols governing the operation of the Debtor's business (the "Operating Protocols"). Under the Operating Protocols, the Debtor agreed to seek consent from the Committee prior to entering into certain "Transactions" (as defined in the Operating Protocols. The Operating Protocols were amended on February 21, 2020, with the consent of the Committee [D.I. 466].

Pursuant to the Term Sheet, the Debtor also granted the Committee standing to pursue certain estate claims and causes of action against Mr. Dondero, Mr. Okada, other insiders of the Debtor, and the Related Entities (as defined in the Operating Protocols) (collectively, the "Estate Claims"). To the extent permitted, the Estate Claims and the ability to pursue the Estate Claims are being transferred to either the Claimant Trust or Litigation Sub-Trust pursuant to the Plan.

In connection with the Settlement Order, an independent board of directors was also appointed at Strand, the Debtor's general partner (the "Independent Board"). The members of the Independent Board are John S. Dubel, James P. Seery, Jr., and Russell Nelms. The Independent Board was tasked with managing the Debtor's operations during the Chapter 11 Case and facilitating a reorganization or orderly liquidation of the Debtor's Estate.

P. Appointment of James P. Seery, Jr., as Chief Executive Officer and Chief Restructuring Officer

Following their appointment in January 2020, the Independent Board determined that it would be more efficient for the Debtor to have a traditional corporate management structure, i.e. a fully engaged chief executive officer supervised by the Independent Board. The Independent Board ultimately determined that Mr. Seery – a member of the Independent Board – had the requisite experience and expertise to lead the Debtor. On June 23, 2020, the Debtor filed *Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020* [D.I. 774] (the "Seery Retention Motion") to retain Mr. Seery as chief executive officer, chief restructuring officer, and foreign representative.

The Bankruptcy Court entered an order approving the Seery Retention Motion on July 16, 2020 [D.I. 854]. Mr. Seery was retained as the Debtor's chief executive officer and the duties of Bradley Sharp of DSI as the Debtor's chief restructuring officer and foreign representative were transferred to Mr. Seery.

Q. Mediation

On August 3, 2020, the Bankruptcy Court entered the *Order Directing Mediation* [D.I. 912] pursuant to which the Bankruptcy Court ordered the Debtor, the Committee, UBS, Acis, the Redeemer Committee, and Mr. Dondero into mediation and appointed Sylvia Mayer and Allan Gropper as the mediators (the "Mediators"). The mediation began on August 27, 2020, and is still open as of the date of this Disclosure Statement

R. Postpetition Settlements

1. Settlement with Acis and the Terry Parties

With the assistance of the Mediators, on September 9, 2020, (i) the Debtor, (ii) Acis LP, (iii) Acis GP, and (iv) Joshua N. Terry, individually and for the benefit of his individual retirement accounts, and Jennifer G. Terry, individually and for the benefit of her individual retirement accounts and as trustee of the Terry Family 401-K Plan (together, the "Terry Parties") executed that certain Settlement Agreement and General Release. On September 23, 2020, the Debtor filed the *Debtor's Motion for Entry of an Order Approving Settlement with (a) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (b) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (c) Acis Capital Management, L.P. (Claim No. 159) and Authorizing Actions Consistent Therewith* [D.I. 1087] (the "Acis Settlement Motion").

The Settlement Agreement and General Release contain the following material terms, among others:

- The proof of claim filed by Acis [Claim No. 23] will be Allowed in the amount of $23,000,000 as a General Unsecured Claim.
- On the Effective Date of the Plan (or any other plan of reorganization confirmed by the Bankruptcy Court), the Debtor will pay in cash to:
    - Mr. and Mrs. Terry in the amount of $425,000 plus 10% simple interest (calculated on the basis of a 360-day year from and including June 30, 2016), in full and complete satisfaction of the proof of claim filed by the Terry Parties [Claim No. 156];
    - Acis LP in the amount of $97,000, which amount represents the legal fees incurred by Acis LP with respect to the N*WCC, LLC v. Highland CLO Management, LLC, et al.*, Index No. 654195/2018 (N.Y. Sup. Ct. 2018), in full and complete satisfaction of the proof of claim filed by Acis LP [Claim No. 159]; and
    - Mr. Terry in the amount of $355,000 in full and complete satisfaction of the legal fees assessed against Highland CLO Funding, Ltd., in *Highland CLO Funding v. Joshua Terry*, [No Case Number], pending in the Royal Court of the Island of Guernsey;

The Settlement Agreement also provides that within five days of the Bankruptcy Court's approval of the Settlement Agreement and the General Release, the Debtor will move to withdraw, with prejudice, the proofs of claim that the Debtor filed in the Acis bankruptcy cases and the motion filed by the Debtor in the Acis bankruptcy cases seeking an administrative claim for postpetition services provided to Acis.

On October 5, 2020, James Dondero filed an objection to the Acis Settlement Motion [D.I. 1121] (the "Dondero Objection"). On October 28, 2020, the Bankruptcy Court entered an order approving the Acis Settlement Motion and overruling the Dondero Objection in its entirety [DI.I. 1347]. On November 9, 2020, Mr. Dondero filed a notice of his intent to appeal the order approving the Acis Settlement Motion.

The foregoing is a summary only, and all parties are encouraged to review the Acis Settlement Motion and related documents for additional information on the Settlement Agreement and General Release.

2. Settlement with the Redeemer Committee

The Debtor, Eames, Ltd., the Redeemer Committee, and the Crusader Funds (collectively, the "Settling Parties") executed a settlement (the "Redeemer Stipulation"). The Redeemer Stipulation was also executed, solely with respect to paragraphs 10 through 15 thereof, by Hockney, Ltd., Strand, Highland CDO Opportunity Master Fund, L.P., Highland Credit Strategies Master Fund, L.P., Highland Credit Opportunities CDO, L.P., House Hanover, LLC, and Alvarez & Marsal CRF Management, LLC (collectively, the "Additional Release Parties"). On September 23, 2020, the Debtor filed *Debtor's Motion for Entry of an Order Approving Settlements with (A) the Redeemer Committee of the Highland Crusader Funds (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith* [D.I. 1089] seeking approval of the Redeemer Stipulation (the "Redeemer Settlement Motion").

The Redeemer Stipulation contains the following material terms, among others:

- The proof of claim filed by the Redeemer Committee [Claim No. 72] will be Allowed in the amount of $137,696,610 as a General Unsecured Claim;
- The proof of claim filed by the Crusader Funds [Claim No. 81] will be Allowed in the amount of $50,000 as a General Unsecured Claim;
- The Debtor and Eames, Ltd., each (a) consented to the cancellation of certain interests in the Crusader Funds held by them, and (b) agreed that they will not object to the cancellation of certain interests in the Crusader Funds held by the Charitable Donor Advised Fund;4
- The Debtor and Eames each acknowledged that they will not receive any portion of certain reserved distributions, and the Debtor further acknowledged that it will not receive any payments from the Crusader Funds in respect of any deferred fees, distribution fees, or management fees;

- The Debtor and the Redeemer Committee agreed to a form of amendment to the shareholders' agreement for Cornerstone Healthcare Group and to a process to monetize Cornerstone Healthcare Group;

- Upon the effective date of the Redeemer Stipulation, the Settling Parties and the Additional Release Parties shall exchange releases as set forth in the Redeemer Stipulation; and

- All litigation between the Debtor, Eames, Ltd., and the Additional Highland Release Parties (as defined in the Redeemer Stipulation) on the one hand, and the Redeemer Committee and the Crusader Funds, on the other hand, will cease.

On October 16, 2020, UBS filed an objection to the Redeemer Settlement Motion [D.I. 1190] (the "UBS Objection"). On October 22, 2020, the Bankruptcy Court entered an order approving the Redeemer Settlement Motion and overruling the UBS Objection in its entirety [DI.I. 1273]. On November 6, 2020, UBS filed a notice of its intent to appeal the order approving the Redeemer Settlement Motion.

The foregoing is a summary only, and all parties are encouraged to review the Redeemer Settlement Motion and related documents for additional information on the Redeemer Stipulation.

S. Certain Outstanding Material Claims

As discussed above, April 8, 2020, was the general bar date for filing proofs of claim. The Debtor has begun the process of resolving those Claims. Although each Claim represents a potential liability of the Estate, the Debtor believes that, in addition to UBS's Claim, the Claims filed by Integrated Financial Associates, Inc. ("IFA"), the HarbourVest Entities,[9] and Hunter Mountain represent the largest unresolved Claims against the Estate.

- IFA Proof of Claim. IFA filed a proof of claim [Claim No. 93] (the "IFA Claim") seeking damages in the amount of $241,002,696.73 arising from the purported joint control of the Debtor and NexBank, SSB, and the Debtor's management of various lenders to IFA. The Debtor believes that IFA's claim should be disallowed in its entirety. IFA's claim and the Debtor's defenses thereto are described in greater detail in the *Objection to Proof of Claim No. 93 of Integrated Financial Associates, Inc.* [D.I. 868]. On October 4, 2020, the Bankruptcy Court entered the *Order Approving Stipulation Regarding Proof of Claim No. 93 of Integrated Financial Associates, Inc.* [D.I. 1126], which capped the IFA Claim, for all purposes, at $8,000,000.

- HarbourVest Entities Proofs of Claim. The HarbourVest Entities are investors in Highland CLO Funding, Ltd. ("HCLOF") and filed proofs of claim against the

[9] "HarbourVest Entities" means HarbourVest 2017 Global Fund, L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment, L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners, L.P.

Debtor's Estate [Claim No. 143, 147, 149, 150, 153, 154] (the "HarbourVest Claims"). The Debtor included an assertion of "no liability" in respect of the HarbourVest Claims in its Debtor's *First Omnibus Objection to Certain (a) Duplicate Claims; (b) Overstated Claims; (c) Late-Filed Claims; (d) Satisfied Claims; (e) No-Liability Claims; and (f) Insufficient Documentation Claims* [D.I. 906]. HarbourVest provided a response in its *HarbourVest Response to Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims* [D.I. 1057]. The HarbourVest Entities' response argued that the Debtor's objection should be overruled, and set forth allegations in support of claims under federal and state law and Guernsey law, including claims for fraud, violations of securities laws, breaches of fiduciary duties, and RICO violations. The Debtor intends to vigorously defend the HarbourVest Claims on various grounds, including, among others, the failure to state a claim upon which relief can be granted, the lack of reasonable reliance, the lack of misrepresentations, the lack of reasonable reliance, the failure to mitigate damages, the parties' agreements bar or otherwise limit the Debtor's liability, and waiver and estoppel. The HarbourVest Entities invested approximately $80 million in HCLOF but seek an allowed claim in excess of $300 million dollars (after giving effect to treble damages for the alleged RICO violations).

- Hunter Mountain Proof of Claim. Hunter Mountain is one of the Debtor's limited partners. Hunter Mountain filed a proof of claim [Claim No. 152] seeking a $60,298,739 indemnification claim against the Debtor because of the Debtor's alleged failures to make priority distributions to Hunter Mountain under the Debtor's Partnership Agreement. The Debtor believes that it has meritorious defenses to Hunter Mountain's claim. Hunter Mountain's claim and the Debtor's defenses to such claim are described in greater detail in the *Debtor's (i) Objection to Claim No. 152 of Hunter Mountain Investment Trust and (ii) Complaint to Subordinate Claim of Hunter Mountain Investment Trust and for Declaratory Relief* [D.I. 995]. The Debtor believes that Hunter Mountain's proof of claim should either be disallowed in its entirety or subordinated in its entirety.

In addition to the foregoing, the UBS Claim (in the amount of $1,039,957,799.40) and the Daugherty Claim (in the amount of $40,710,819.42) remain outstanding. As set forth above, partial summary judgment on the UBS Claim was granted in favor of the Debtor and the Redeemer Committee on November 20, 2020, and a formal order is expected to be entered within the next couple of weeks.

The Daugherty Claim has been allowed for voting purposes only in the amount of $9,134,019 [D.I. 1422]. In a bench ruling on November 20, 2020, the Bankruptcy Court allowed UBS Claims for voting purposes only in the amount of $94,761,076 [D.I. 1646].

T. Treatment of Shared Service and Sub-Advisory Agreements

As discussed in the Plan, the Reorganized Debtor will manage the wind down of the Managed Funds. However, it is not anticipated that either the Reorganized Debtor or the

Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities[10] pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities.

Currently, the Debtor receives approximately $2.2 million per month in revenue from such contracts. However, in order to service those contracts, the Debtor must maintain a full staff and the cost of providing services under such contracts, among other factors, has historically resulted in a net loss to the Debtor. As such, the Debtor does not believe that assuming these contracts would benefit the Estate.

Further, the contracts generally contain anti-assignment provisions which the Debtor believes may be enforceable under 11 U.S.C. § 365(c). These provisions, therefore, would arguably prevent the assignment of such contracts without the consent of the Debtor's contract counterparty. However, even if 11 U.S.C. § 365(c) would not prevent assignment, the contracts are generally terminable at will by either party. As such, assuming and assigning such contracts without the consent of the contract counterparty would be of nominal or no benefit to the Estate. It is doubtful that any assignee would provide consideration to the Debtor for the assignment of such contract as the contract counterparty could simply terminate the contract immediately following assignment. As such, the Debtor does not believe that there is any benefit to the Estate in attempting to assign these contracts.

Notwithstanding the foregoing disclosure, the Debtor is currently assessing whether it is both possible and in the best interests of the Estate to assume and assign such shared services and sub-advisory agreements to a Related Entity.

During the course of this Chapter 11 Case, Mr. Daugherty stated that he would be willing to assume the Debtor's obligations under the shared service and sub-advisory contracts. The Independent Directors reviewed Mr. Daugherty's proposal and for the foregoing reasons, among others, determined that it was not workable and would provide no benefit to the Estate.

U. Portfolio Managements with Issuer Entities

The Debtor is party to certain portfolio management agreements (including any ancillary agreements relating thereto collectively being the "Portfolio Management Agreements" and each a "Portfolio Management Agreement") with ACIS CLO 2017-7 Ltd., Brentwood CLO, Ltd., Gleneagles CLO, Ltd., Greenbriar CLO, Ltd., Highland CLO 2018-1, Ltd., Highland Legacy Limited, Highland Loan Funding V Ltd., Highland Park CDO I, Ltd., Pam Capital Funding LP, PamCo Cayman Ltd., Rockwall CDO II Ltd., Rockwall CDO Ltd., Southfork CLO Ltd., Stratford CLO Ltd., Westchester CLO, Ltd., Aberdeen Loan Funding, Ltd., Bristol Bay Funding Ltd. Eastland CLO, Ltd., Grayson CLO, Ltd., Highland Credit Opportunities CDO Ltd., Jasper CLO, Ltd., Liberty Cayman Holdings, Ltd., Liberty CLO, Ltd., Red River CLO, Ltd., Valhalla CLO, Ltd. (each an "Issuer" and collectively the "Issuers") wherein the Debtor agreed to generally provide certain services to each Issuer in the Debtor's capacity as a portfolio manager in exchange for certain fees as described in the applicable Portfolio Management Agreement.

[10] For the avoidance of doubt, the Debtor does not consider any of the Issuers (as defined herein) to be a Related Entity.

The Issuers filed proofs of claim [Claim No. 165, 168, and 169] asserting claims against the Debtor for damages arising from, relating to or otherwise concerning (i) such Issuer's Portfolio Management Agreement(s) with the Debtor, including, without limitation, failure to perform or other breach of the Portfolio Management Agreement(s), rejection of the Portfolio Management Agreement(s), any cure amount as a result of assumption of the Portfolio Management Agreement(s), any adequate assurance of future performance as a result of assumption of the Portfolio Management Agreement(s), and any failure to provide and pay for indemnification or other obligations under the Portfolio Management Agreement(s); and (ii) the action or inaction of the Debtor to the detriment of such Issuer (collectively, the "Issuer Claims"). The Debtor believes that it has satisfied its obligations to the Issuers; that the Issuer Claims lack merit; and that the Debtor will have no liability with respect to the Issuer Claims. However, such proofs of claim remain outstanding.

The Issuers have taken the position that the rejection of the Portfolio Management Agreements (including any ancillary documents) would result in material rejection damages and have encouraged the Debtor to assume such agreements. Nonetheless, the Issuers and the Debtor are working in good faith to address any outstanding issues regarding such assumption. The Portfolio Management Agreements may be assumed either pursuant to the Plan or by separate motion filed with the Bankruptcy Court.

The Debtor is still assessing its options with respect to the Portfolio Management Agreements, including whether to assume the Portfolio Management Agreements.

V. Resignation of James Dondero

On October 9, 2020, Mr. Dondero resigned as an employee and portfolio manager of the Debtor.

W. Exclusive Periods for Filing a Plan and Soliciting Votes

Under the Bankruptcy Code, a debtor has the exclusive right to file and solicit acceptance of a plan or plans of reorganization for an initial period of 120 days from the date on which the debtor filed for voluntary relief. If a debtor files a plan within this exclusive period, then the debtor has the exclusive right for 180 days from the petition date to solicit acceptances to the plan. During these exclusive periods, no other party in interest may file a competing plan of reorganization; however, a court may extend these periods upon request of a party in interest and "for cause."

The Debtor filed motions to extend the exclusive period, and the Bankruptcy Court entered the following orders granting such applications:

- Order Granting Debtor's Motion for Entry of an Order Pursuant to 11 U.S.C. § 1121(d) and Local Rule 3016-1 Extending the Exclusivity Periods for the Filing and Solicitation of Acceptances of a Chapter 11 Plan [D.I. 460];

- Agreed Order Extending Exclusive Periods by Thirty Days [D.I. 668];

- Order Granting Debtor's Third Motion for Entry of an Order Pursuant to 11 U.S.C. § 1121(d) and Local Rule 3016-1 Further Extending the Exclusivity Periods for the Filing and Solicitation of Acceptances of a Chapter 11 Plan [D.I. 820]; and

- Order Further Extending the Debtor's Exclusive Period for Solicitation of Acceptance of a Chapter 11 Plan [D.I. 1092].

Pursuant to the foregoing orders, the Bankruptcy Court extended the exclusivity period through June 12, 2020, for the filing of a plan, which was subsequently extended through July 13, 2020, and again through August 12, 2020. The Bankruptcy Court also extended the exclusivity period for the solicitation of votes to accept such plan through August 11, 2020, which was subsequently extended through September 10, 2020, and again through October 13, 2020, and December 4, 2020.

X. Negotiations with Constituents

The Debtor, Mr. Dondero, and certain of the creditors have been negotiating a consensual reorganization plan for the Debtor that contemplates the Debtor continuing its business largely in its current form. Those negotiations have yet to reach conclusion but are continuing, and the negotiations were part of the previously discussed mediation. There is no certainty that those negotiations will reach a consensual resolution of the Debtor's bankruptcy case.

Y. Highland Capital Management, L.P. Retirement Plan and Trust

The Highland Capital Management, L.P. Retirement Plan And Trust ("Pension Plan") is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). 29 U.S.C. §§ 1301-1461.

The Debtor is the contributing sponsor of the Pension Plan. As such, the PBGC asserts that Debtor is liable to contribute to the Pension Plan the amounts necessary to satisfy the minimum funding standards in ERISA and the Internal Revenue Code of 1986, as amended ("IRC"). *See* 29 U.S.C. §§ 1082, 1083; 26 U.S.C. §§ 412, 430. As the sponsor of the Pension Plan, the PBGC asserts Debtor is also liable for insurance premiums owed to PBGC. *See* 29 U.S.C. §§ 1306, 1307. The PBGC asserts that any members of the contributing sponsor's controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) are also jointly and severally liable with the Debtor for such obligations relating to the Pension Plan.

The Pension Benefit Guaranty Corporation ("PBGC"), the federal agency that administers the pension insurance program under Title IV of ERISA, filed contingent proofs of claims against the Debtors for (1) the Pension Plan's potential underfunded benefit liabilities; (2) the potential unliquidated unpaid minimum funding contributions owed to the Pension Plan; and (3) the potential unliquidated insurance premiums owed to PBGC. The PBGC acknowledges that, as of the date of this Disclosure Statement, there is nothing currently owed by the Debtor to the PBGC.

The Debtor reserves the right to contest any claims filed by the PBGC for any reason.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the "IRC"), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

No provision contained in the Disclosure Statement, the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof), shall be construed as discharging, releasing, exculpating, or relieving any person or entity, including the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, government policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions for satisfaction, release, injunction, exculpation, and discharge of claims in the Plan, Confirmation Order, or the Bankruptcy Code.

ARTICLE III.
SUMMARY OF THE PLAN

THIS ARTICLE III IS INTENDED ONLY TO PROVIDE A SUMMARY OF THE MATERIAL TERMS OF THE PLAN AND IS QUALIFIED BY REFERENCE TO THE ENTIRE DISCLOSURE STATEMENT AND THE PLAN AND SHOULD NOT BE RELIED ON FOR A COMPREHENSIVE DISCUSSION OF THE PLAN. TO THE EXTENT THERE ARE ANY INCONSISTENCIES OR CONFLICTS BETWEEN THIS ARTICLE III AND THE PLAN, THE TERMS AND CONDITIONS SET FORTH IN THE PLAN SHALL CONTROL AND GOVERN.

A. Administrative and Priority Tax Claims

1. Administrative Expense Claims

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized Debtor, as applicable, and such Holder; *provided, however,* that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions

relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

2. Professional Fee Claims

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329,330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

3. Priority Tax Claims

On or as soon as reasonably practicable after the later of (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 will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount equal to the amount of such Allowed Priority Tax Claim, or (b) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

B. Classification and Treatment of Classified Claims and Equity Interests

1. Summary

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

Summary of Classification and Treatment of Classified Claims and Equity Interests

Class	Claim	Status	Voting Rights
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

2. Elimination of Vacant Classes

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

3. Impaired/Voting Classes

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

Please refer to "Distribution of Confirmation Hearing Notice and Solicitation Package to Holders of Claims and Equity Interests" and "Instructions and Procedures for Voting" in ARTICLE I.C.7 and ARTICLE I.C.8 for a discussion of how the how votes on the Plan will be solicited and tabulated.

4. Unimpaired/Non-Voting Classes

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

5. Impaired/Non-Voting Classes

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

6. Cramdown

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

C. Classification and Treatment of Claims and Equity Interests

1. *Class 1 – Jefferies Secured Claim*

- *Classification*: Class 1 consists of the Jefferies Secured Claim.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until full and final payment of such Allowed Class 1 Claim is made as provided herein.

- *Impairment and Voting*: Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject the Plan and will not be solicited.

2. *Class 2 – Frontier Secured Claim*

- *Classification*: Class 2 consists of the Frontier Secured Claim.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.

- *Impairment and Voting*: Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject the Plan.

  The New Frontier Note will include the following terms: (i) an extension of the maturity date to December 31, 2022; (ii) quarterly interest only payments; (iii) a payment on the New Frontier Note equal to fifty percent of the outstanding principal on December 31, 2021, if the New Frontier Note is not paid in full on or prior to such date; (iv) mandatory prepayments from the proceeds of the sale of any collateral securing the New Frontier Note; and (v) the payment of fees and expenses incurred in negotiating the terms of the New Frontier Note.

3. *Class 3 – Other Secured Claims*

- *Classification*: Class 3 consists of the Other Secured Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.

- *Impairment and Voting*: Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject the Plan and will not be solicited.

4. *Class 4 – Priority Non-Tax Claims*

- *Classification*: Class 4 consists of the Priority Non-Tax Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.

- *Impairment and Voting*: Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject the Plan and will not be solicited.

5. *Class 5 – Retained Employee Claims*

- *Classification*: Class 5 consists of the Retained Employee Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.

- *Impairment and Voting*: Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject the Plan and will not be solicited.

6. *Class 6 – PTO Claims*

- *Classification*: Class 6 consists of the PTO Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.

- *Impairment and Voting*: Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6 Claims are not entitled to vote to accept or reject the Plan and will not be solicited.

"*PTO Claims*" means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

7. *Class 7 – Convenience Claims*

- *Classification*: Class 7 consists of the Convenience Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is

Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.

- *Impairment and Voting*: Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject the Plan.

"Convenience Claim" means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to $1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.

"*Convenience Claim Pool*" means the $13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

By making the GUC Election on their Ballots, each Holder of a Convenience Claim can elect the treatment provided to General Unsecured Claims.

8. *Class 8 – General Unsecured Claims*

- *Classification*: Class 8 consists of the General Unsecured Claims.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes the Convenience Class Election.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of the Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and

will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject the Plan.

"*General Unsecured Claim*" means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

"*Convenience Class Election*" means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to $1,000,000 and receive the treatment provided to Convenience Claims.

9. *Class 9 – Subordinated Claims*

- *Classification*: Class 9 consists of the Subordinated Claims.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 9 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive either (i) the treatment provided to Allowed Class 8 Claims or (ii) if such Allowed Class 9 Claim is subordinated to the Convenience Claims and General Unsecured Claims pursuant to 11 U.S.C. § 510 or Final Order of the Bankruptcy Court, its Pro Rata share of the Subordinated Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of the Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject the Plan.

"*Subordinated Claim*" means any Claim that (i) is or may be subordinated to the Convenience Claims and General Unsecured Claims pursuant to 11 U.S.C. § 510 or Final Order of the Bankruptcy Court or (ii) arises from a

Class A Limited Partnership Interest or a Class B/C Limited Partnership Interest.

10. *Class 10 – Class B/C Limited Partnership Interests*

- *Classification*: Class 10 consists of the Class B/C Limited Partnership Interests.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of the Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject the Plan.

11. *Class 11 – Class A Limited Partnership Interests*

- *Classification*: Class 11 consists of the Class A Limited Partnership Interests.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of the Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject the Plan.

D. Special Provision Governing Unimpaired Claims

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

E. Subordinated Claims

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Under section 510 of the Bankruptcy Code, upon written notice, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to re-classify, or to seek to subordinate, any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

F. Means for Implementation of the Plan

1. Summary

The Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to the Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in the Plan and the Claimant Trust Agreement.

2. The Claimant Trust[11]

(a) *Creation and Governance of the Claimant Trust and Litigation Sub-Trust.*

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant

[11] In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.

Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in Article IV of the Plan, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in Article IV of the Plan, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

(a) *Claimant Trust Oversight Committee*

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.

The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

(b) *Purpose of the Claimant Trust.*

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in the Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in Article IV.C of the Plan.

(c) *Purpose of the Litigation Sub-Trust.*

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.

(d) *Claimant Trust Agreement and Litigation Sub-Trust Agreement.*

The Claimant Trust Agreement generally will provide for, among other things:

- the payment of the Claimant Trust Expenses;
- the payment of other reasonable expenses of the Claimant Trust;
- the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;
- the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;
- the orderly monetization of the Claimant Trust Assets;
- litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;

- the administration of the Disputed Claims Reserve and distributions to be made therefrom; and

- the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expenses and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however,* that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. In all circumstances, the Claimant Trustee shall act in the best interests of the Claimant Trust Beneficiaries and with the same fiduciary duties as a chapter 7 trustee.

The Litigation Sub-Trust Agreement generally will provide for, among other things:

- the payment of other reasonable expenses of the Litigation Sub-Trust;

- the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and

- the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

(e) *Compensation and Duties of Trustees.*

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

(f) *Cooperation of Debtor and Reorganized Debtor.*

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

(g) *United States Federal Income Tax Treatment of the Claimant Trust.*

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

(h) *Tax Reporting.*

The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.

The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

(i) *Claimant Trust Assets.*

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in the Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

(j) *Claimant Trust Expenses.*

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

(k) *Trust Distributions to Claimant Trust Beneficiaries.*

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

(l) *Cash Investments.*

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however,* that such investments are

investments permitted to be made by a "liquidating trust" within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

(m) *Dissolution of the Claimant Trust and Litigation Sub-Trust.*

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Clamant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however,* that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

3. The Reorganized Debtor

(a) *Corporate Existence*

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.

(b) *Cancellation of Equity Interests and Release*

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

(c) *Issuance of New Partnership Interests*

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

(d) *Management of the Reorganized Debtor*

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

(e) *Vesting of Assets in the Reorganized Debtor*

Except as otherwise provided in the Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under the Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

(f) *Purpose of the Reorganized Debtor*

Except as may be otherwise provided in the Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court

(g) *Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets*

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement, the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust will be (i) deemed transferred in all respects as forth in Article IV.B.1 of the Plan, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

4. Company Action

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of the Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to the Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement

of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in the Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with the Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in the Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.

5. Release of Liens, Claims and Equity Interests

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, 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 Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, Article IV.C.2 of the Plan.

6. Cancellation of Notes, Certificates and Instruments

Except for the purpose of evidencing a right to a distribution under the Plan and except as otherwise set forth in the Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the

cancellation thereof, except the rights provided for pursuant to the Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, Article IV.C.2 of the Plan.

7. Cancellation of Existing Instruments Governing Security Interests

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

8. Control Provisions

To the extent that there is any inconsistency between the Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, the Plan shall control.

9. Treatment of Vacant Classes

Any Claim or Equity Interest in a Class considered vacant under Article III.C of the Plan shall receive no Plan Distributions.

10. Plan Documents

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in Article I of the Plan) and fully enforceable as if stated in full herein.

11. Highland Capital Management, L.P. Retirement Plan and Trust

The Highland Capital Management, L.P. Retirement Plan And Trust ("Pension Plan") is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor's controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal

Revenue Code (the "IRC"), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

A. Treatment of Executory Contracts and Unexpired Leases

1. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to a Final Order of the Bankruptcy Court entered prior to the Effective Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a contract or lease to be assumed in the Plan Supplement, on the Effective Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Effective Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts

and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. ("Landlord") for the Debtor's headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the "Lease") in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4), as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [D.I. 1122].

2. Claims Based on Rejection of Executory Contracts or Unexpired Leases

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Effective Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Effective Date. Any Rejection Claims that are not timely Filed pursuant to the Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with Article III of the Plan.

3. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor's or Reorganized Debtor's intention to assume or assign the Executory Contract or Unexpired Lease in connection with the Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to Article V.C of the Plan shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to Article V.C of the Plan, shall be deemed disallowed and expunged as of the Effective Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

B. Provisions Governing Distributions

1. Dates of Distributions

Except as otherwise provided in the Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that the Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under the Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in the Plan. Except as otherwise provided in the Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to the Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in the Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under the Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under the Plan to such Persons or the date of such distributions.

2. Distribution Agent

Except as provided herein, all distributions under the Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.

The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under the Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions of the Plan.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

3. Cash Distributions

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

4. Disputed Claims Reserve

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

As used above, "*Disputed Claims Reserve*" means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant

Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

"*Disputed Claims Reserve Amount*" means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or Reorganized Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

HarbourVest and Mr. Daugherty have objected to the mechanisms for calculating the amount of the Disputed Claims Reserve with respect to the HarbourVest Claim and the Daugherty Claim, respectively, and intend to press their objections at the hearing for confirmation of the Plan.

5. Distributions from the Disputed Claims Reserve

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of the Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of the Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

6. Rounding of Payments

Whenever the Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under the Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as "Unclaimed Property" under the Plan.

7. *De Minimis* Distribution

Except as to any Allowed Claim that is Unimpaired under the Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than $100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in Article VI.I of the Plan within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall

revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

8. Distributions on Account of Allowed Claims

Except as otherwise agreed by the Holder of a particular Claim or as provided in the Plan, all distributions shall be made pursuant to the terms of the Plan and the Confirmation Order. Except as otherwise provided in the Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

9. General Distribution Procedures

The Distribution Agent shall make all distributions of Cash or other property required under the Plan, unless the Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under the Plan shall not be subject to any claim by any Person.

10. Address for Delivery of Distributions

Distributions to Holders of Allowed Claims, to the extent provided for under the Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor's books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

11. Undeliverable Distributions and Unclaimed Property

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.

Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under the Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

12. Withholding Taxes

In connection with the Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to the Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under the Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to the Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of the Plan.

13. Setoffs

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to the Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with the Plan; *provided, however*, that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

14. Surrender of Cancelled Instruments or Securities

As a condition precedent to receiving any distribution pursuant to the Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to Article IV of the Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

15. Lost, Stolen, Mutilated or Destroyed Securities

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by the Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any

damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with Article VI.O of the Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under the Plan, be deemed to have surrendered such security or note to the Distribution Agent.

C. Procedures for Resolving Contingent, Unliquidated and Disputed Claims

1. Filing of Proofs of Claim

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

2. Disputed Claims

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest or any other appropriate motion or adversary proceeding with respect thereto, which shall be litigated to Final Order or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of the Plan.

3. Procedures Regarding Disputed Claims or Disputed Equity Interests

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.

4. Allowance of Claims and Equity Interests

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

Allowance of Claims

After the Effective Date and subject to the other provisions of the Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and

defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in the Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under the Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

Estimation

Subject to the other provisions of the Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trustee, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with the Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

Disallowance of Claims

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE, ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.

D. Effectiveness of the Plan

1. Conditions Precedent to the Effective Date

The Effective Date of the Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of Article VIII.B of the Plan of the following:

- the Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to the Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.

- The Confirmation Order shall have been entered, not subject to stay pending appeal, and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate the Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in the Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under the Plan; and (d) entering into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and the Plan are nonseverable and mutually dependent; (iii) the implementation of the Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with the Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under the Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under the Plan upon the Effective Date.

- All documents and agreements necessary to implement the Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement the Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.

- The Professional Fee Reserve shall be funded pursuant to the Plan in an amount determined by the Debtor in good faith.

2. Waiver of Conditions

The conditions to effectiveness of the Plan set forth in Article VIII of the Plan (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee), without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate the Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable.

3. Effect of Non-Occurrence of Conditions to Effectiveness

Unless waived as set forth in Article VIII.B of the Plan, if the Effective Date of the Plan does not occur within twenty calendar days of entry of the Confirmation Order, the Debtor may withdraw the Plan and, if withdrawn, the Plan shall be of no further force or effect.

4. Dissolution of the Committee

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

E. Exculpation, Injunction, and Related Provisions

1. General

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

For purposes of the following provisions:

- "*Exculpated Parties*" means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however,* that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term "Exculpated Party."

- "*Released Parties*" means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.

- "*Protected Parties*" means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however,* that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO

Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term "Protected Party."

2. Discharge of Claims

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by the Plan or the Confirmation Order, all consideration distributed under the Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to the Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by the Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

3. Exculpation

Subject in all respects to Article XII.D of the Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(v); *provided*, *however,* the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of the Plan, including Article IV.C.2 of the Plan, protecting such Exculpated Parties from liability.

4. Releases by the Debtor

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to Article IX.D of the Plan (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or

- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with

respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

Provided, however, that the release provided pursuant to Article IX.D of the Plan will vest and the Employee will be indefeasibly released pursuant to Article IX.D of the Plan if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

In addition to the obligations set forth in Article IX.D of the Plan, as additional consideration for the foregoing releases, the Senior Employees will waive their rights to certain deferred compensation owed to them by the Debtor. As of the date hereof, the total deferred compensation owed to the Senior Employees was approximately $3.9 million, which will be reduced by approximately $2.2 million to approximately $1.7 million. That reduction is composed of a reduction of (i) approximately $560,000 in the aggregate in order to qualify as Convenience Claims, (ii) approximately $510,000 in the aggregate to reflect the Convenience Claims treatment of 85% (and may be lower depending on the number of Convenience Claims), and (iii) of approximately $1.15 million in the aggregate to reflect an additional reduction of 40%.

As of the date of this Disclosure Statement, the Debtor has not identified any Causes of Action against any Released Parties. However, as set forth above, during the Chapter 11 Case, the Committee was granted sole standing to investigate and pursue the Estate Claims, which may include Causes of Action against certain of the Released Parties. As of the date of this Disclosure Statement, the Committee has not identified any Estate Claims against any Released Parties. The Debtor currently believes that there are no material Estate Claims or other Causes of Action against any Released Party.

5. Preservation of Rights of Action

Maintenance of Causes of Action

Except as otherwise provided in the Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as

appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

Preservation of All Causes of Action Not Expressly Settled or Released

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of the Plan based on the Disclosure Statement, the Plan or the Confirmation Order, except where such Causes of Action have been expressly released in the Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

6. Injunction

Upon entry of the Confirmation Order, all holders of Claims and Equity Interests and other parties in interest, along with their respective Related Persons, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan.

Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether proof of such Claims or Equity Interests has been filed or not and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan) and other parties in interest, along with their respective Related Persons, are permanently enjoined, on and after the Effective Date, with respect to such Claims and Equity Interests, from (i) commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or the property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering by any manner or means, whether directly or indirectly, any

judgment, award, decree, or order against the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or the property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust, (iii) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or the property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust, (iv) asserting any right of setoff, directly or indirectly, against any obligation due from the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or against property or interests in property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust; and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

The injunctions set forth herein shall extend to any successors of the Debtor, the Reorganized Debtor, and the Claimant Trust and their respective property and interests in property.

Subject in all respects to Article XII. D of the Plan, no Entity may commence or pursue a claim or cause of action of any kind against any Protected Party that arose from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice, that such claim or cause of action represents a colorable claim of bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Entity to bring such claim against any such Protected Party; *provided, however,* the foregoing will not apply to Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. As set forth in Article XI of the Plan, the Bankruptcy Court will have sole jurisdiction to adjudicate any such claim for which approval of the Bankruptcy Court to commence or pursue has been granted.

7. Term of Injunctions or Stays

Unless otherwise provided in the Plan, the Confirmation Order, or in a Final Order of the Bankruptcy Court, all injunctions or stays arising under or entered during the Chapter 11 Case under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay.

8. Continuance of January 9 Order

Unless otherwise provided in the Plan, the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on

January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date until the dissolution of each of the Claimant Trust and the Litigation Trust.

F. Article XII.D of the Plan

Article XII.D of the Plan provides that, notwithstanding anything in the Plan to the contrary, nothing in the Plan will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

G. Binding Nature of Plan

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in Article IX of the Plan, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to the Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state, Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to nay taxes of the kind specified in Bankruptcy Code section 1146(a)

H. Statutory Requirements for Confirmation of the Plan

At the Confirmation Hearing, the Bankruptcy Court will determine whether the Plan satisfies the requirements of section 1129 of the Bankruptcy Code. The Debtor believes that: (i) the Plan satisfies or will satisfy all of the statutory requirements of chapter 11 of the Bankruptcy Code; (ii) the Debtor has complied or will have complied with all of the requirements of chapter 11 of the Bankruptcy Code; and (iii) the Plan has been proposed in good faith. Specifically, the Debtor believes that the Plan satisfies or will satisfy the applicable confirmation requirements of section 1129 of the Bankruptcy Code set forth below.

- The Plan complies with the applicable provisions of the Bankruptcy Code;
- The Debtor has complied and will comply with the applicable provisions of the Bankruptcy Code;
- The Plan has been proposed in good faith and not by any means forbidden by law;
- Any payment made or promised under the Plan for services or for costs and expenses in, or in connection with, the Debtor's bankruptcy case, or in connection with the Plan and incident to the case, has been or will be disclosed to the Bankruptcy Court, and any such payment: (i) made before the confirmation of the Plan is reasonable; or (ii) is subject to the

approval of the Bankruptcy Court as reasonable if it is to be fixed after confirmation of the Plan;

- Each Class of Claims or Equity Interests that is entitled to vote on the Plan will have accepted the Plan, or the Plan can be confirmed without the approval of such voting Class pursuant to section 1129(b) of the Bankruptcy Code;

- Except to the extent that the Holder of a particular Claim will agree to a different treatment of its Claim, the Plan provides that Administrative Expense Claims and Priority Claims will be paid in full in Cash on the Effective Date, or as soon thereafter as is reasonably practicable;

- Confirmation of the Plan will not likely be followed by the liquidation or the need for further financial reorganization of the Debtor or any successor thereto under the Plan;

- The Debtor has paid or will pay all fees payable under section 1930 of title 28, and the Plan provides for the payment of all such fees on the Effective Date; and

- The Plan provides for the continuation after the Effective Date of payment of all retiree benefits, if applicable.

1. Best Interests of Creditors Test

Often called the "best interests" test, section 1129(a)(7) of the Bankruptcy Code requires that the bankruptcy court find, as a condition to confirmation of a chapter 11 plan, that each holder of a claim or equity interest in each impaired class: (i) has accepted the plan; or (ii) among other things, will receive or retain under the plan property of a value, as of the effective date of the plan, that is not less than the amount that such Person would receive if the debtor were liquidated under chapter 7 of the Bankruptcy Code. To make these findings, the Bankruptcy Court must: (a) estimate the net Cash proceeds (the "Liquidation Proceeds") that a chapter 7 trustee would generate if the Debtor's Chapter 11 Case were converted to a chapter 7 case on the Effective Date and the assets of such Debtor's Estate were liquidated; (b) determine the distribution (the "Liquidation Distribution") that each non-accepting Holder of a Claim or Equity Interest would receive from the Liquidation Proceeds under the priority scheme dictated in chapter 7; and (c) compare each Holder's Liquidation Distribution to the distribution under the Plan that such Holder would receive if the Plan were confirmed and consummated.

2. Liquidation Analysis

Any liquidation analysis, including the estimation of Liquidation Proceeds and Liquidation Distributions, with respect to the Debtor (the "Liquidation Analysis") is subject to numerous assumptions and there can be no guarantee that the Liquidation Analysis will be accurate. No order or finding has been entered by the Bankruptcy Court estimating or otherwise fixing the amount of Claims and Equity Interests at the projected amounts of Allowed Claims

and Equity Interests set forth in the Liquidation Analysis. In preparing the Liquidation Analysis, the Debtor has projected an amount of Allowed Claims and Equity Interests that represents its best estimate of the chapter 7 liquidation dividend to Holders of Allowed Claims and Equity Interests. The estimate of the amount of Allowed Claims and Equity Interests set forth in the Liquidation Analysis should not be relied on for any other purpose, including, without limitation, any determination of the value of any Plan Distribution to be made on account of Allowed Claims and Equity Interests under the Plan and Disclosure Statement.

The full Liquidation Analysis is attached hereto as **Exhibit C**.

Furthermore, any chapter 7 trustee appointed in a chapter 7 liquidation would have to confront all of the issues described in this Disclosure Statement, including the prepetition litigation claims. This process would be significantly time-consuming and costly, and reduce any recoveries available to the Debtor's Estate. The Debtor believes that liquidation under chapter 7 would result in (i) smaller distributions being made to creditors than those provided for in the Plan because of the additional administrative expenses involved in the appointment of a trustee and attorneys and other professionals to assist such trustee, (ii) additional expenses and claims, some of which would be entitled to priority, which would be generated during the liquidation and from the rejection of executory contracts in connection with the cessation of the Debtor's operations, and (iii) the failure to realize greater value from all of the Debtor's assets.

Therefore, the Debtor believes that confirmation of the Plan will provide each Holder of a Claim with a greater recovery than such Holder would receive pursuant to the liquidation of the Debtor under chapter 7 of the Bankruptcy Code.

3. Feasibility

Section 1129(a)(11) of the Bankruptcy Code requires that the bankruptcy court find that confirmation is not likely to be followed by the liquidation, or the need for further financial reorganization of the Debtor, or any successor to the Debtor, unless the plan contemplates such liquidation or reorganization. For purposes of demonstrating that the Plan meets this "feasibility" standard, the Debtor has analyzed the ability of the Claimant Trust and the Reorganized Debtor to meet their obligations under the Plan and to retain sufficient liquidity and capital resources to conduct their business. A copy of the financial projections prepared by the Debtor is attached hereto as **Exhibit C**.

The Debtor believes that the Plan meets the feasibility requirement set forth in section 1129(a)(11) of the Bankruptcy Code. In connection with the development of the Plan and for the purposes of determining whether the Plan satisfies this feasibility standard, the Debtor analyzed their ability to satisfy their financial obligations while maintaining sufficient liquidity and capital resources. The Debtor believes that its available Cash and any additional proceeds from the Debtor's Assets will be sufficient to allow the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, to make all payments required to be made under the Plan. Accordingly, the Debtor believes that the Plan is feasible.

4. Valuation

In order to provide information and full disclosure to parties in interest regarding the Debtor's assets, the Debtor estimates that its value and the total value of its Assets, as of September 30, 2020, was approximately $328.3 million.

5. Acceptance by Impaired Classes

The Bankruptcy Code requires, as a condition to confirmation, that, except as described in the following section, each class of claims or equity interests that is impaired under a plan, accepts the plan. A class that is not "impaired" under a plan is deemed to have accepted the plan and, therefore, solicitation of acceptances with respect to such class is not required. A class is "impaired" unless the plan: (i) leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest; or (ii) notwithstanding any contractual provision or applicable law that entitles the holder of such claim or interest to demand or receive accelerated payment of such claim or interest after the occurrence of a default— (a) cures any such default that occurred before or after the commencement of the Chapter 11 Case, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) expressly does not require to be cured; (b) reinstates the maturity of such claim or interest as such maturity existed before such default; (c) compensates the holder of such claim or interest for any damages incurred as a result of any reasonable reliance by such holder on such contractual provision or such applicable law; (d) if such claim or such interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a nonresidential real property lease subject to section 365(b)(1)(A), compensates the holder of such claim or such interest (other than the debtor or an insider) for any actual pecuniary loss incurred by such holder as a result of such failure; and (e) does not otherwise alter the legal, equitable, or contractual rights to which such claim or interest entitles the holder of such claim or interest.

Section 1126(c) of the Bankruptcy Code defines acceptance of a plan by a class of impaired claims as acceptance by holders of at least two-thirds in dollar amount and more than one-half in number of claims in that class, but for that purpose counts only those who actually vote to accept or to reject the plan and are not insiders. Section 1126(d) of the Bankruptcy Code defines acceptance of a plan by a class of equity interests as acceptance by holders of at least two-thirds in amount of the allowed interests of such class. Thus, a class of claims will have voted to accept the plan only if two-thirds in amount and a majority in number actually voting cast their ballots in favor of acceptance. Section 1126(d) of the Bankruptcy Code, except as otherwise provided in section 1126(e) of the Bankruptcy Code, defines acceptance of a plan by a class of impaired equity interests as acceptance by holders of at least two-thirds in amount of equity interests in that class actually voting to accept or to reject the plan.

Pursuant to section 1129 of the Bankruptcy Code, the Holders of Claims or Equity Interests in any voting class must accept the Plan for the Plan to be confirmed without application of the "fair and equitable test" to such Class, and without considering whether the Plan "discriminates unfairly" with respect to such Class, as both standards are described herein.

6. Confirmation Without Acceptance by Impaired Classes

Section 1129(b) of the Bankruptcy Code allows a bankruptcy court to confirm a plan even if less than all impaired classes entitled to vote on the plan have accepted it, *provided* that the plan has been accepted by at least one impaired class of claims. Pursuant to section 1129(b) of the Bankruptcy Code, notwithstanding an impaired Class's rejection or deemed rejection of the Plan, the Plan will be confirmed, at the Debtor's request, in a procedure commonly known as "cram down," so long as the Plan does not "discriminate unfairly" and is "fair and equitable" with respect to each Class of Claims or Equity Interests that is impaired under, and has not accepted, the Plan.

7. No Unfair Discrimination

This test applies to classes of claims or equity interests that are of equal priority and are receiving different treatment under the Plan. The test does not require that the treatment be the same or equivalent, but that such treatment be "fair." In general, bankruptcy courts consider whether a plan discriminates unfairly in its treatment of classes of claims of equal rank (e.g., classes of the same legal character). Bankruptcy courts will take into account a number of factors in determining whether a plan discriminates unfairly and, accordingly, a plan could treat two classes of unsecured creditors differently without unfairly discriminating against either class.

8. Fair and Equitable Test

This test applies to classes of different priority and status (e.g., secured versus unsecured) and includes the general requirement that no class of claims receive more than 100% of the amount of the allowed claims in such class. As to the dissenting class, the test sets different standards depending on the type of claims or equity interests in such class:

The condition that a plan be "fair and equitable" to a non-accepting Class of Secured Claims includes the requirements that: (a) the Holders of such Secured Claims retain the liens securing such Claims to the extent of the Allowed amount of the Claims, whether the property subject to the liens is retained by the debtor or transferred to another entity under the Plan; and (b) each Holder of a Secured Claim in the Class receives deferred Cash payments totaling at least the Allowed amount of such Claim with a present value, as of the Effective Date of the Plan, at least equivalent to the value of the secured claimant's interest in the debtor's property subject to the liens.

The condition that a plan be "fair and equitable" with respect to a non-accepting Class of unsecured Claims includes the requirement that either: (a) the plan provides that each Holder of a Claim of such Class receive or retain on account of such Claim property of a value, as of the Effective Date of the plan, equal to the allowed amount of such Claim; or (b) the Holder of any Claim or Equity Interest that is junior to the Claims of such Class will not receive or retain under the plan on account of such junior Claim or Equity Interest any property.

The condition that a plan be "fair and equitable" to a non accepting Class of Equity Interests includes the requirements that either: (a) the plan provides that each Holder of an Equity Interest in that Class receives or retains under the plan, on account of that Equity Interest, property of a value, as of the Effective Date of the plan, equal to the greater of (i) the allowed

amount of any fixed liquidation preference to which such Holder is entitled, (ii) any fixed redemption price to which such Holder is entitled, or (iii) the value of such interest; or (b) if the Class does not receive such an amount as required under (a), no Class of Equity Interests junior to the non-accepting Class may receive a distribution under the plan.

To the extent that any class of Claims or Class of Equity Interests rejects the Plan, the Debtor reserves the right to seek (a) confirmation of the Plan under section 1129(b) of the Bankruptcy Code and/or (b) modify the Plan in accordance with Article XIII.C of the Plan.

The Debtor believes that the Plan and the treatment of all Classes of Claims and Equity Interests under the Plan satisfy the foregoing requirements for non-consensual confirmation of the Plan.

ARTICLE IV.
RISK FACTORS

ALL HOLDERS OF CLAIMS AND EQUITY INTERESTS SHOULD READ AND CONSIDER CAREFULLY THE RISK FACTORS SET FORTH HEREIN, AS WELL AS ALL OTHER INFORMATION SET FORTH OR OTHERWISE REFERENCED IN THIS DISCLOSURE STATEMENT. THESE FACTORS SHOULD NOT BE REGARDED AS CONSTITUTING THE ONLY RISKS PRESENT IN CONNECTION WITH THE DEBTOR'S BUSINESS OR THE PLAN AND ITS IMPLEMENTATION.

A. Certain Bankruptcy Law and Other Considerations

1. Parties in Interest May Object to the Debtor's Classification of Claims and Equity Interests, or Designation as Unimpaired.

Section 1122 of the Bankruptcy Code provides that a plan may place a claim or an equity interest in a particular class only if such claim or equity interest is substantially similar to the other claims or equity interests in such class. The Debtor believes that the classification of Claims and Equity Interests under the Plan complies with the requirements set forth in the Bankruptcy Code because the Debtor created Classes of Claims and Equity Interests, each encompassing Claims or Equity Interests, as applicable, that are substantially similar to the other Claims and Equity Interests in each such Class. Nevertheless, there can be no assurance that the Holders of Claims or Equity Interests or the Bankruptcy Court will reach the same conclusion.

There is also a risk that the Holders of Claims or Equity Interests could object to the Debtor's designation of Claims or Equity Interests as Unimpaired, and the Bankruptcy Court could reach the same conclusion.

2. The Debtor May Not Be Able to Secure Confirmation of the Plan.

Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation of a chapter 11 plan and requires, among other things, findings by the bankruptcy court that: (i) such plan "does not unfairly discriminate" and is "fair and equitable" with respect to any non-accepting classes; (ii) confirmation of such plan is not likely to be followed by a liquidation or a

need for further financial reorganization unless such liquidation or reorganization is contemplated by the plan; and (c) the value of distributions to Holders of Claims within a particular class under such plan will not be less than the value of distributions such holders would receive if the debtor was liquidated under chapter 7 of the Bankruptcy Code.

There can be no assurance that the Bankruptcy Court will confirm the Plan. The Bankruptcy Court could decline to confirm the Plan if it found that any of the statutory requirements for confirmation had not been met.

If the Plan is not confirmed by the Bankruptcy Court, there can be no assurance that any alternative plan of reorganization or liquidation would be on terms as favorable to Holders of Claims as the terms of the Plan. In addition, there can be no assurance that the Debtor will be able to successfully develop, prosecute, confirm and consummate an alternative plan that is acceptable to the Bankruptcy Court and the Debtor's creditors.

3. The Conditions Precedent to the Effective Date of the Plan May Not Occur.

As more fully set forth in Article IX of the Plan, the Effective Date of the Plan is subject to a number of conditions precedent. If such conditions precedent are not waived or not met, the Effective Date will not take place.

4. Continued Risk Following Effectiveness.

Even if the Effective Date of the Plan occurs, the Debtor, the Reorganized Debtor, and Claimant Trust will continue to face a number of risks, including certain risks that are beyond its control, such as changes in assets, asset values, and increasing expenses. Some of these concerns and effects typically become more acute when a case under the Bankruptcy Code continues for a protracted period without indication of how or when the case may be completed. As a result of these risks and others, there is no guarantee that a chapter 11 plan of liquidation reflecting the Plan will achieve the Debtor's stated goals.

In addition, at the outset of the Chapter 11 Case, the Bankruptcy Code provides the Debtor with the exclusive right to propose the Plan and prohibits creditors and others from proposing a plan. The Debtor will have retained the exclusive right to propose the Plan upon filing its petition. If the Bankruptcy Court terminates that right, however, or the exclusivity period expires, there could be a material adverse effect on the Debtor's ability to achieve confirmation of the Plan in order to achieve the Debtor's stated goals.

5. The Effective Date May Not Occur.

Although the Debtor believes that the Effective Date may occur quickly after the Confirmation Date, there can be no assurance as to such timing or as to whether the Effective Date will, in fact, occur.

6. The Chapter 11 Case May Be Converted to Cases Under Chapter 7 of the Bankruptcy Code

If the Bankruptcy Court finds that it would be in the best interest of creditors and/or the debtor in a chapter 11 case, the Bankruptcy Court may convert a chapter 11 bankruptcy case to a case under chapter 7 of the Bankruptcy Code. In such event, a chapter 7 trustee would be appointed or elected to liquidate the debtor's assets for distribution in accordance with the priorities established by the Bankruptcy Code. The Debtor believes that liquidation under chapter 7 would result in significantly smaller distributions being made to creditors than those provided for in the Plan because of (a) the likelihood that the assets would have to be sold or otherwise disposed of in a disorderly fashion over a short period of time, rather than selling the assets in an orderly and controlled manner, (b) additional administrative expenses involved in the appointment of a chapter 7 trustee, and (c) additional expenses and Claims, some of which would be entitled to priority, that would be generated during the liquidation.

7. Claims Estimation

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

8. The Financial Information Contained Herein is Based on the Debtor's Books and Records and, Unless Otherwise Stated, No Audit was Performed.

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

B. Risks Related to Recoveries under the Plan

1. The Reorganized Debtor and/or Claimant Trust May Not Be Able to Achieve the Debtor's Projected Financial Results

The Reorganized Debtor or Claimant Trust, as applicable, may not be able to achieve their projected financial results. The Financial Projections represent the best estimate of the Debtor's future financial performance, which is necessarily based on certain assumptions regarding the anticipated future performance of the Reorganized Debtor or Claimant Trust, as well as the United States and world economies in general, and the investment industry in which the Debtor operates. The Debtor's Financial Projections include key assumptions on (i) target asset monetization values, (ii) timing of asset monetization, and (iii) costs to effectuate the Plan. In terms of achieving target asset monetization values, the Debtor faces issues including investment assets with cross-ownership across related entities and challenges associated with

collecting notes due from affiliates. The Debtor's Financial Projections anticipate that all investment assets will be sold by 2022, which may be at risk due to the semi-liquid or illiquid nature of the Debtor's assets, as well as general market conditions, including the sustained impact of COVID-19. Costs are based on estimates and may increase with delays or any other unforeseen factor. If the Reorganized Debtor or Claimant Trust do not achieve their projected financial results, the recovery for Claimant Trust Beneficiaries may be negatively affected and the Claimant Trust may lack sufficient liquidity after the Effective Date.

2. Claim Contingencies Could Affect Creditor Recoveries

The estimated Claims and projected creditor recoveries set forth in this Disclosure Statement are based on various assumptions the actual amount of Allowed Claims may differ from the estimates. Should one or more of the underlying assumptions ultimately prove incorrect, the actual Allowed amounts of Claims may vary materially from the estimated Claims contained in this Disclosure Statement. Moreover, the Debtor cannot determine with any certainty at this time, the number or amount of Claims that will ultimately be Allowed. Such differences may materially and adversely affect, among other things, the percentage recoveries to Holders of Allowed Claims under the Plan.

3. If Approved, the Debtor Release Could Release Claims Against Potential Defendants of Estate Causes of Action With Respect to Which the Claimant Trust Would Otherwise Have Recourse

The Claimant Trust Assets will include, among other things, Causes of Action, including Estate Claims that will be assigned to the Litigation Sub-Trust. The Committee's investigation of potential Estate Claims is still ongoing. Because the Committee has not concluded its investigation as of the date hereof, and such investigation will be transferred to the Litigation Trustee, there is no certainty of whether there are viable Estate Claims against any of the Released Parties. In the event there are viable Estate Claims against any of the Released Parties, such claims cannot be pursued for the ultimate benefit of Claimant Trust Beneficiaries if the Debtor Release is approved.

C. Investment Risk Disclaimer

1. Investment Risks in General.

The Reorganized Debtor is and will remain a registered investment adviser under the Investment Advisers Act of 1940, and the Reorganized Debtor will continue advising the Managed Funds. No guarantee or representation is made that the Reorganized Debtor's or the Managed Funds' investment strategy will be successful, and investment results may vary substantially over time.

2. General Economic and Market Conditions and Issuer Risk.

Any investment in securities carries certain market risks. Investments by the Reorganized Debtor, the Managed Funds, or the Claimant Trust may decline in value for any number of reasons over which none of the Managed Funds, the Reorganized Debtor, the Claimant Trust, or the Claimant Trustee may have control, including changes in the overall

market and other general economic and market conditions, such as interest rates, availability of credit, inflation rates, economic uncertainty, changes in laws, currency exchange rates and controls and national, international political circumstances (including wars and security operations), and acts of God (including pandemics like COVID-19). The value of the Managed Funds or the assets held by the Reorganized Debtor or Claimant Trust may also decline as a result of factors pertaining to particular securities held by the Managed Funds, Reorganized Debtor, or Claimant Trust, as applicable, such as perception or changes in the issuer's management, the market for the issuer's products or services, sources of supply, technological changes within the issuer's industry, the availability of additional capital and labor, general economic conditions, political conditions, acts of God, and other similar conditions. All of these factors may affect the level and volatility of security prices and the liquidity and the value of the securities held by the Managed Fund, Reorganized Debtor, or Claimant Trust. Unexpected volatility or illiquidity could impair the Managed Funds', Reorganized Debtor's, or Claimant Trust's profitability or result in it suffering losses.

D. Disclosure Statement Disclaimer

1. The Information Contained Herein is for Disclosure Purposes Only.

The information contained in this Disclosure Statement is for purposes of disclosure in connection with the Plan and may not be relied upon for any other purposes.

2. This Disclosure Statement was Not Approved by the SEC.

Neither the SEC nor any state regulatory authority has passed upon the accuracy or adequacy of this Disclosure Statement, or the exhibits or the statements contained herein, and any representation to the contrary is unlawful.

3. This Disclosure Statement Contains Forward-Looking Statements.

This Disclosure Statement contains "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Such statements consist of any statement other than a recitation of historical fact and can be identified by the use of forward looking terminology such as "may," "expect," "anticipate," "estimate" or "continue" or the negative thereof or other variations thereon or comparable terminology. The reader is cautioned that all forward-looking statements are necessarily speculative and there are certain risks and uncertainties that could cause actual events or results to differ materially from those referred to in such forward-looking statements.

4. No Legal or Tax Advice is Provided to You by This Disclosure Statement.

This Disclosure Statement is not legal or tax advice to you. The contents of this Disclosure Statement should not be construed as legal, business or tax advice, and are not personal to any person or entity. Each Holder of a Claim or an Equity Interest should consult his or her own legal counsel and accountant with regard to any legal, tax and other matters concerning his or her Claim or Equity Interest. This Disclosure Statement may not be relied upon for any purpose other than as a disclosure of certain information to determine how to vote on the Plan or object to confirmation of the Plan.

5. No Admissions Are Made by This Disclosure Statement.

The information and statements contained in this Disclosure Statement will neither (i) constitute an admission of any fact or liability by any Entity (including, without limitation, the Debtor) nor (ii) be deemed evidence of the tax or other legal effects of the Plan on the Debtor, the Reorganized Debtor, the Claimant Trust, Holders of Allowed Claims or Equity Interests, or any other parties in interest.

6. No Reliance Should Be Placed on Any Failure to Identify Litigation Claims or Projected Objections.

No reliance should be placed on the fact that a particular litigation claim or projected objection to a particular Claim or Equity Interest is, or is not, identified in this Disclosure Statement. The Debtor or the Reorganized Debtor or Claimant Trustee, as applicable, may seek to investigate, file and prosecute litigation rights and claims against any third parties and may object to Claims after the Confirmation Date or Effective Date of the Plan irrespective of whether the Disclosure Statement identifies such litigation claims or objections to Claims or Equity Interests.

7. Nothing Herein Constitutes a Waiver of Any Right to Object to Claims or Equity Interests or Recover Transfers and Assets.

The Debtor, the Reorganized Debtor, the Claimant Trustee, or any party in interest, as the case may be, reserve any and all rights to object to that Holder's Allowed Claim regardless of whether any Claims or Causes of Action of the Debtor or its Estate are specifically or generally identified herein.

8. The Information Used Herein was Provided by the Debtor and was Relied Upon by the Debtor's Advisors.

Counsel to and other advisors retained by the Debtor have relied upon information provided by the Debtor in connection with the preparation of this Disclosure Statement. Although counsel to and other advisors retained by the Debtor have performed certain limited due diligence in connection with the preparation of this Disclosure Statement, they have not verified independently the information contained herein.

9. The Disclosure Statement May Contain Inaccuracies.

The statements contained in this Disclosure Statement are made by the Debtor as of the date hereof, unless otherwise specified herein, and the delivery of this Disclosure Statement after that date does not imply that there has not been a change in the information set forth herein since that date. While the Debtor has used its reasonable business judgment to ensure the accuracy of all of the information provided in this Disclosure Statement and in the Plan, the Debtor nonetheless cannot, and does not, confirm the current accuracy of all statements appearing in this Disclosure Statement. Further, the information contained in this Disclosure Statement is as of the date of the Disclosure Statement and does not address events that may occur after such date. The Debtor may update this Disclosure Statement but is not required to do so.

10. No Representations Made Outside the Disclosure Statement Are Authorized.

No representations concerning or relating to the Debtor, the Chapter 11 Case, or the Plan are authorized by the Bankruptcy Court or the Bankruptcy Code, other than as set forth in this Disclosure Statement. You should promptly report unauthorized representations or inducements to the counsel to the Debtor and the U.S. Trustee.

ARTICLE V.
ALTERNATIVES TO CONFIRMATION AND EFFECTIVENESS OF THE PLAN

If no chapter 11 plan can be confirmed, the Chapter 11 Case may be converted to a case under chapter 7 of the Bankruptcy Code in which case, a trustee would be elected or appointed to liquidate the Debtor's assets. If the Plan is not confirmed by the Bankruptcy Court, there can be no assurance that any alternative plan of reorganization or liquidation would be on terms as favorable to Holders of Claims as the terms of the Plan. In addition, there can be no assurance that the Debtor will be able to successfully develop, prosecute, confirm and consummate an alternative plan that is acceptable to the Bankruptcy Court and the Debtor's creditors.

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

Implementation of the Plan will have federal, state, local or foreign tax consequences to the Debtor and Holders of Equity Interests as well as Holders of Claims. No tax opinion or ruling has been sought or will be obtained with respect to any tax consequences of the Plan, and the following discussion does not constitute and is not intended to constitute either a tax opinion or tax advice to any person.

The following discussion summarizes certain U.S. federal income tax consequences of the Plan to the Debtor and to Holders of Claims. This discussion assumes that each Holder of Claims is for United States federal income tax purposes:

- An individual who is a citizen or resident of the United States for federal income tax purposes;
- a corporation (or other entity treated as a corporation for United States federal income tax purposes) created or organized in or under the laws of the United States, any state thereof or the District of Columbia;
- any other person that is subject to U.S. federal income taxation on a net income basis.
- an estate the income of which is subject to United States federal income tax without regard to its source; or
- a trust (1) that is subject to the primary supervision of a United States court and the control of one or more United States persons or (2) that has a valid election in effect under applicable treasury regulations to be treated as a United States person.

This discussion also assumes that each Holder holds the Claims as capital assets under Section 1221 of the Internal Revenue Code.

The summary provides general information only and does not purport to address all of the federal income tax consequences that may be applicable to the Debtor or to any particular Holder of Claims in light of such Holder's own individual circumstances. In particular, the summary does not address the federal income tax consequences of the Plan to Holders of Claims that may be subject to special rules, such as non-U.S. persons, insurance companies, financial institutions, regulated investment companies, broker-dealers, persons who acquired Claims as part of a straddle, hedge, conversion transaction or other integrated transaction, or persons who acquired Claims in connection with the performance of services; persons who hold Claims through a partnership or other pass-through entity and tax-exempt organizations. The summary does not address foreign, state, local, estate or gift tax consequences of the Plan, nor does it address the federal income tax consequences to Holders of Equity Interests.

This summary is based on the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code"), the final, temporary and proposed Treasury regulations promulgated thereunder, judicial decisions and administrative rulings and pronouncements of the Internal Revenue Service ("IRS"), all as in effect on the date hereof and all of which are subject to change (possibly with retroactive effect) by legislation, judicial decision or administrative action. Moreover, due to a lack of definitive authority, substantial uncertainties exist with respect to various tax consequences of the Plan.

THE TAX CONSEQUENCES TO THE HOLDERS OF CLAIMS OR EQUITY INTERESTS MAY VARY BASED UPON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER. MOREOVER, THE TAX CONSEQUENCES OF CERTAIN ASPECTS OF THE PLAN ARE UNCERTAIN DUE TO THE LACK OF APPLICABLE LEGAL PRECEDENT AND THE POSSIBILITY OF CHANGES IN THE APPLICABLE TAX LAW. THERE CAN BE NO ASSURANCE THAT THE IRS WILL NOT CHALLENGE ANY OF THE TAX CONSEQUENCES DESCRIBED HEREIN, OR THAT SUCH A CHALLENGE, IF ASSERTED, WOULD NOT BE SUSTAINED. ACCORDINGLY, EACH HOLDER OF A CLAIM OR EQUITY INTEREST SHOULD CONSULT WITH ITS OWN TAX ADVISOR REGARDING THE FOREIGN, FEDERAL, STATE AND LOCAL TAX CONSEQUENCES OF THE PLAN.

A. Consequences to the Debtor

It is anticipated that the consummation of the Plan will not result in any federal income tax liability to the Debtor. The Debtor is a partnership for federal income tax purposes. Therefore, the income and loss of the Debtor is passed-through to the Holders of its Equity Interests, and the Debtor does not pay federal income tax.

1. Cancellation of Debt

Generally, the discharge of a debt obligation of a debtor for an amount less than the adjusted issue price (in most cases, the amount the debtor received on incurring the obligation, with certain adjustments) creates cancellation of indebtedness ("COD") income that must be included in the debtor's income. Due to the nature of the Impaired Claims, it is anticipated that

the Debtor will not recognize any material amount of COD income. If any such COD income is recognized, it will be passed-through to the Holders of its Equity Interests, and the Holders of such Equity Interest generally will be required to include such amounts in income, unless a Holder is entitled to exclude such amounts from income under Section 108 of the Internal Revenue Code, based on the Holder's individual circumstances.

2. Transfer of Assets

Pursuant to the Plan, the Debtor's assets (including the Claimant Trust Assets and Reorganized Debtor Assets) will be transferred directly or indirectly to the Claimant Trust. For federal income tax purposes, any such assets transferred to the Claimant Trust will be deemed to have been transferred to the Claimant Trust Beneficiaries followed by the transfer by such Holders to the Claimant Trust of such assets in exchange for the respective Holders' beneficial interests in the Claimant Trust. The Claimant Trust thereafter will be treated as a grantor trust for federal income tax purposes. See U.S. Federal Income Tax Treatment of the Claimant Trust, below.

The Debtor's transfer of its assets pursuant to the Plan will constitute a taxable disposition of such assets. As discussed above, the Debtor is a partnership for federal income tax purposes. Any gain or loss recognized as a result of the taxable disposition of such assets will be passed through to the Holders of Equity Interests in the Debtor. The Debtor will not be required to pay any tax as a result of such disposition.

B. U.S. Federal Income Tax Treatment of the Claimant Trust

It is intended that the Claimant Trust will be treated as a "grantor trust" for U.S. federal income tax purposes. In general, a grantor trust is not a separate taxable entity. The IRS, in Revenue Procedure 94-45, 1994-2 C.B. 684, set forth the general criteria for obtaining an advanced ruling as to the grantor trust status of a liquidating trust under a chapter 11 plan. Consistent with the requirements of Revenue Procedure 94-45, the Claimant Trust Agreement requires all relevant parties to treat, for U.S. federal income tax purposes, the transfer of the Debtor's assets to the Claimant Trust as (i) a transfer of such assets to the Claimant Trust Beneficiaries (to the extent of the value of their respective interests in the applicable Claimant Trust Assets) followed by (ii) a transfer of such assets by such beneficiaries to the Claimant Trust (to the extent of the value of their respective interests in the applicable Claimant Trust Assets), with the beneficiaries being treated as the grantors and owners of the Claimant Trust.

The Plan and the Claimant Trust Agreement generally provide that the Claimant Trust Beneficiaries must value the assets of the Claimant Trust consistently with the values determined by the Claimant Trustee for all U.S. federal income tax purposes. As soon as possible after the Effective Date, the Claimant Trustee, based upon his good faith determination after consultation with his counsel and other advisors, shall inform the beneficiaries in writing as to his estimate of the value of the assets transferred to the Claimant Trust and the value of such assets allocable to each Class of beneficiaries.

Consistent with the treatment of the Claimant Trust as a grantor trust, the Claimant Trust Agreement will require each beneficiary to report on its U.S. federal income tax return its allocable share of the Claimant Trust's income, gain, loss or deduction that reflects the

beneficiary's interest in the interim and final distributions to be made by the Claimant Trust. Furthermore, certain of the assets of the Claimant Trust will be interests in the Reorganized Debtor, which will be a partnership for U.S. federal income tax purposes. The income, gain, loss or deduction of the Reorganized Debtor will also flow through the Claimant Trust to the beneficiaries of the Claimant Trust. Therefore, a beneficiary may incur a federal income tax liability with respect to its allocable share of the income of the Claimant Trust (including the income of the Reorganized Debtor) whether or not the Claimant Trust has made any distributions to such beneficiary. The character of items of income, gain, deduction, and credit to any beneficiary and the ability of such beneficiary to benefit from any deduction or losses will depend on the particular situation of such beneficiary. The interests of the beneficiaries may shift from time to time as the result of the allowance or disallowance of claims that have not been allowed at the Effective Date, which could give rise to tax consequences both to the Holders of claims that have, and have not been, allowed at the Effective Date. The Claimant Trustee will file with the IRS tax returns for the Claimant Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a) and will also send to each beneficiary a separate statement setting forth such beneficiary's share of items of Trust income, gain, loss, deduction, or credit. Each beneficiary will be required to report such items on its U.S. federal income tax return. Holders are urged to consult their tax advisors regarding the appropriate federal income tax treatment of distributions from the Claimant Trust.

The discussion above assumes that the Claimant Trust will be respected as a grantor trust for U.S. federal income tax purposes. If the IRS were to challenge successfully such classification, the U.S. federal income tax consequences to the Claimant Trust and the beneficiaries could differ materially from those discussed herein (including the potential for an entity level tax to be imposed on all income of the Claimant Trust).

C. Consequences to Holders of Allowed Claims

1. Recognized Gain or Loss

In general, each Holder of an Allowed Claim will recognize gain or loss in an amount equal to the difference between (i) the "amount realized" by such Holder in satisfaction of its Claim (other than any Claim for accrued but unpaid interest) and (ii) such holder's adjusted tax basis in such Claim (other than any Claim for accrued but unpaid interest). In general, the "amount realized" by a Holder will equal the sum of any cash and the aggregate fair market value of any property received by such Holder pursuant to the Plan (for example, such Holder's undivided beneficial interest in the assets of the Claimant Trust). A Holder that receives or is deemed to receive for U.S. federal income tax purposes a non-cash asset under the Plan in respect of its Claim should generally have a tax basis in such asset in an amount equal to the fair market value of such asset on the date of its receipt or deemed receipt. See U.S. Federal Income Tax Treatment of the Claimant Trust, above for more information regarding the tax treatment of the Claimant Trust Interests.

Where gain or loss is recognized by a Holder, the character of such gain or loss as long-term or short-term capital gain or loss or as ordinary income or loss will be determined by a number of factors, including the tax status of the Holder, whether the claim constitutes a capital asset in the hands of the Holder and how long it has been held, whether the claim was acquired at

a market discount, and whether and to what extent the Holder had previously claimed a bad debt deduction.

A Holder who, under the Plan, receives in respect of an Allowed Claim an amount less than the Holder's tax basis in the Allowed Claim may be entitled to a deduction for U.S. federal income tax purposes. The rules governing the character, timing and amount of such a deduction place considerable emphasis on the facts and circumstances of the Holder, the obligor and the instrument with respect to which a deduction is claimed. Holders of Allowed Claims, therefore, are urged to consult their tax advisors with respect to their ability to take such a deduction.

2. Distribution in Discharge of Accrued Unpaid Interest

Pursuant to the Plan, a distribution received in respect of Allowed Claims will be allocated first to the principal amount of such Claims, with any excess allocated to unpaid accrued interest. However, there is no assurance that the IRS would respect such allocation for federal income tax purposes. In general, to the extent that an amount received (whether cash or other property) by a Holder of a claim is received in satisfaction of interest that accrued during its holding period, such amount will be taxable to the Holder as interest income if not previously included in the Holder's gross income. Conversely, a Holder generally recognizes a deductible loss to the extent that it does not receive payment of interest that has previously been included in its income. Holders of Claims are urged to consult their tax advisors regarding the allocation of consideration and the deductibility of unpaid interest for tax purposes.

3. Information Reporting and Withholding

All distributions to Holders of Allowed Claims under the Plan are subject to any applicable withholding tax requirements. Under federal income tax law, interest, dividends, and other reportable payments, may, under certain circumstances, be subject to "backup withholding" (currently at a rate of up to 24%). Backup withholding generally applies if the Holder (a) fails to furnish its social security number or other taxpayer identification number ("TIN"), (b) furnishes an incorrect TIN, (c) fails properly to report interest or dividends, or (d) under certain circumstances, fails to provide a certified statement, signed under penalty of perjury, that the TIN provided is its correct number and that it is not subject to backup withholding. Backup withholding is not an additional tax but merely an advance payment, which may be refunded to the extent it results in an overpayment of tax. Certain persons are exempt from backup withholding, including, in certain circumstances, corporations and financial institutions.

D. Treatment of the Disputed Claims Reserve

Pursuant to the Plan, the Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity. Such taxes will be paid out of the Disputed Claims Reserve and therefore may reduce amounts paid to Holders of Allowed Claims from the Claimant Trust. If the Claimant Trustee does not make such an election to treat the Disputed Claims Reserve as a separate taxable entity, the net income, if any, earned in the Disputed Claims Reserve will be taxable to the Holders of Allowed Claims in accordance with

the principles discussed above under the heading "U.S. Federal Income Tax Treatment of the Claimant Trust", possibly in advance of any distributions to the Holders.

AS INDICATED ABOVE, THE FOREGOING IS INTENDED TO BE A SUMMARY ONLY AND NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE TAX CONSEQUENCES OF THE PLAN ARE COMPLEX AND, IN SOME CASES, UNCERTAIN. ACCORDINGLY, EACH HOLDER OF A CLAIM OR EQUITY INTEREST IS STRONGLY URGED TO CONSULT WITH HIS OWN TAX ADVISOR REGARDING THE TAX CONSEQUENCES OF THE PLAN.

ARTICLE VII.
RECOMMENDATION

In the opinion of the Debtor, the Plan is preferable to the alternatives described in this Disclosure Statement because it provides for the highest distribution to the Debtor's creditors and interest holders. In addition, any alternative other than confirmation of the Plan could result in extensive delays and increased administrative expenses resulting in smaller distributions to Holders of Allowed Claims and Equity Interests than that which is proposed under the Plan. Accordingly, the Debtor recommends that all Holders of Claims and Equity Interests support confirmation of the Plan.

Dated: November 24, 2020

Respectfully submitted,

HIGHLAND CAPITAL MANAGEMENT, L.P.

James P. Seery, Jr.
Chief Executive Officer and Chief Restructuring Officer

Prepared by:

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EXHIBIT A

PLAN OF REORGANIZATION

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	

FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND CAPITAL MANAGEMENT, L.P.

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[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

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DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION

HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned case (the "Debtor"), proposes the following chapter 11 plan of reorganization (the "Plan") for, among other things, the resolution of the outstanding Claims against, and Equity Interests in, the Debtor. Unless otherwise noted, capitalized terms used in this Plan have the meanings set forth in Article I of this Plan. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor's history, business, results of operations, historical financial information, projections and assets, and for a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents that may be Filed with the Bankruptcy Court that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Documents. All such Exhibits and Plan Documents are incorporated into and are a part of this Plan as if set forth in full herein. Subject to the other provisions of this Plan, and in accordance with the requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to the Effective Date.

If this Plan cannot be confirmed, for any reason, then subject to the terms set forth herein, this Plan may be revoked.

ARTICLE I.
RULES OF INTERPRETATION, COMPUTATION OF TIME, GOVERNING LAW AND DEFINED TERMS

A. Rules of Interpretation, Computation of Time and Governing Law

For purposes hereof: (a) in the appropriate context, 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 herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented in accordance with its terms; (d) unless otherwise specified, all references herein to "Articles," "Sections," "Exhibits" and "Plan Documents" are references to Articles, Sections, Exhibits and Plan Documents hereof or hereto; (e) unless otherwise stated, the words "herein," "hereof," "hereunder" and "hereto" refer to this Plan in its entirety rather than to a particular portion of this Plan; (f) 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 hereof; (g) any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity's successors and assigns;

(h) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (i) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (j) "$" or "dollars" means Dollars in lawful currency of the United States of America. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

B. Defined Terms

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. "*Acis*" means collectively Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

2. "*Administrative Expense Claim*" means any Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, and that have not already been paid by the Debtor during the Chapter 11 Case and a Professional Fee Claim.

3. "*Administrative Expense Claims Bar Date*" means, with respect to any Administrative Expense Claim (other than a Professional Fee Claim) becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is forty-five days after the Effective Date.

4. "*Administrative Expense Claims Objection Deadline*" means, with respect to any Administrative Expense Claim, the later of (a) ninety (90) days after the Effective Date and (b) sixty (60) days after the timely Filing of the applicable request for payment of such Administrative Expense Claim; *provided, however,* that the Administrative Expense Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

5. "*Affiliate*" means an "affiliate" as defined in section 101(2) of the Bankruptcy Code and also includes any other Entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such affiliate. For the purposes of this definition, the term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

6. "*Allowed*" means, with respect to any Claim, except as otherwise provided in the Plan: (a) any Claim that is evidenced by a Proof of Claim that has been timely Filed by the Bar Date, or that is not required to be evidenced by a Filed Proof of Claim under the Bankruptcy Code or a Final Order; (b) a Claim that is listed in the Schedules as not contingent, not

unliquidated, and not disputed and for which no Proof of Claim has been timely filed; (c) a Claim Allowed pursuant to the Plan or an order of the Bankruptcy Court that is not stayed pending appeal; or (d) a Claim that is not Disputed (including for which a Proof of Claim has been timely filed in a liquidated and noncontingent amount that has not been objected to by the Claims Objection Deadline or as to which any such objection has been overruled by Final Order); *provided, however,* that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed as set forth above.

7. "*Allowed Claim or Equity Interest*" means a Claim or an Equity Interest of the type that has been Allowed.

8. "*Assets*" means all of the rights, titles, and interest of the Debtor, Reorganized Debtor, or Claimant Trust, in and to property of whatever type or nature, including, without limitation, real, personal, mixed, intellectual, tangible, and intangible property, the Debtor's books and records, and the Causes of Action.

9. "*Available Cash*" means any Cash in excess of the amount needed for the Claimant Trust and Reorganized Debtor to maintain business operations as determined in the sole discretion of the Claimant Trustee.

10. "*Avoidance Actions*" means any and all avoidance, recovery, subordination or other actions or remedies that may be brought by and on behalf of the Debtor or its Estate under the Bankruptcy Code or applicable nonbankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510, 544, 545, and 547-553 of the Bankruptcy Code or under similar state or federal statutes and common law, including fraudulent transfer laws

11. "*Ballot*" means the form(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

12. "*Bankruptcy Code*" means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

13. "*Bankruptcy Court*" means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or any other court having jurisdiction over the Chapter 11 Case.

14. "*Bankruptcy Rules*" means the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in each case as amended from time to time and as applicable to the Chapter 11 Case.

15. "*Bar Date*" means the applicable deadlines set by the Bankruptcy Court for the filing of Proofs of Claim against the Debtor as set forth in the Bar Date Order, which deadlines may be or have been extended for certain Claimants by order of the Bankruptcy Court.

16. "*Bar Date Order*" means the *Order (I) Establishing Bar Dates for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof* [D.I. 488].

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

18. "*Cash*" means the legal tender of the United States of America or the equivalent thereof.

19. "*Causes of Action*" means any action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license and franchise of any kind or character whatsoever, in each case whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including, without limitation, under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law. For the avoidance of doubt, Cause of Action includes, without limitation,: (a) any right of setoff, counterclaim or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Equity Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any claims under any state or foreign law, including, without limitation, any fraudulent transfer or similar claims; (f) the Avoidance Actions, and (g) the Estate Claims. The Causes of Action include, without limitation, the Causes of Action belonging to the Debtor's Estate listed on the schedule of Causes of Action to be filed with the Plan Supplement.

20. "*CEO/CRO*" means James P. Seery, Jr., the Debtor's chief executive officer and chief restructuring officer.

21. "*Chapter 11 Case*" means the Debtor's case under chapter 11 of the Bankruptcy Code commenced on the Petition Date in the Delaware Bankruptcy Court and transferred to the Bankruptcy Court on December 4, 2019, and styled *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj-11.

22. "*Claim*" means any "claim" against the Debtor as defined in section 101(5) of the Bankruptcy Code.

23. "*Claims Objection Deadline*" means the date that is 180 days after the Confirmation Date; *provided, however,* the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

24. "*Claimant Trust*" means the trust established for the benefit of the Claimant Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the Claimant Trust Agreement.

25. "*Claimant Trust Agreement*" means the agreement Filed in the Plan Supplement establishing and delineating the terms and conditions of the Claimant Trust.

26. "*Claimant Trust Assets*" means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

27. "*Claimant Trust Beneficiaries*" means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

28. "*Claimant Trustee*" means James P. Seery, Jr., the Debtor's chief executive officer and chief restructuring officer, or such other Person identified in the Plan Supplement who will act as the trustee of the Claimant Trust in accordance with the Plan, the Confirmation Order, and Claimant Trust Agreement or any replacement trustee pursuant to (and in accordance with) the Claimant Trust Agreement. The Claimant Trustee shall be responsible for, among other things, monetizing the Estate's investment assets, resolving Claims (other than those Claims assigned to the Litigation Sub-Trust for resolution), and, as the sole officer of New GP LLC, winding down the Reorganized Debtor's business operations.

29. "*Claimant Trust Expenses*" means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Trustees on account of administration of the Claimant Trust, including any reasonable administrative fees and expenses, reasonable attorneys' fees and expenses, reasonable insurance costs, taxes, reasonable escrow expenses, and other expenses.

30. "*Claimant Trust Interests*" means the non-transferable interests in the Claimant Trust that are issued to the Claimant Trust Beneficiaries pursuant to this Plan; *provided*, *however*, Holders of Class A Limited Partnership Interests, Class B Limited Partnership Interests, and Class C Limited Partnership Interests will not be deemed to hold Claimant Trust Interests unless and until the Contingent Claimant Trust Interests distributed to such Holders vest in accordance with the terms of this Plan and the Claimant Trust Agreement.

31. "*Claimant Trust Oversight Committee*" means the committee of five Persons established pursuant to ARTICLE IV of this Plan to oversee the Claimant Trustee's performance of its duties and otherwise serve the functions described in this Plan and the Claimant Trust Agreement.

32. "*Class*" means a category of Holders of Claims or Equity Interests as set forth in ARTICLE III hereof pursuant to section 1122(a) of the Bankruptcy Code.

33. "*Class A Limited Partnership Interest*" means the Class A Limited Partnership Interests as defined in the Limited Partnership Agreement held by The Dugaboy Investment Trust, Mark and Pamela Okada Family Trust – Exempt Trust 2, Mark and Pamela Okada – Exempt Descendants' Trust, and Mark Kiyoshi Okada, and the General Partner Interest.

34. "*Class B Limited Partnership Interest*" means the Class B Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

35. "*Class B/C Limited Partnership Interests*" means, collectively, the Class B Limited Partnership and Class C Limited Partnership Interests.

36. "*Class C Limited Partnership Interest*" means the Class C Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

37. "*Committee*" means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee pursuant to 11 U.S.C. § 1102(a)(1) on October 29, 2019 [D.I. 65], consisting of (i) the Redeemer Committee of Highland Crusader Fund, (ii) Meta-e Discovery, (iii) UBS, and (iv) Acis.

38. "*Confirmation Date*" means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

39. "*Confirmation Hearing*" means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

40. "*Confirmation Order*" means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

41. *"Convenience Claim"* means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to $1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.

42. "*Convenience Claim Pool*" means the $13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all

distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

43. "*Convenience Class Election*" means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to $1,000,000 and receive the treatment provided to Convenience Claims.

44. "*Contingent Claimant Trust Interests"* means the contingent Claimant Trust Interests to be distributed to Holders of Class A Limited Partnership Interests, Holders of Class B Limited Partnership Interests, and Holders of Class C Limited Partnership Interests in accordance with this Plan, the rights of which shall not vest, and consequently convert to Claimant Trust Interests, unless and until the Claimant Trustee Files a certification that all holders of Allowed General Unsecured Claims have been paid indefeasibly in full, plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, all accrued and unpaid post-petition interest from the Petition Date at the Federal Judgment Rate and all Disputed Claims in Class 8 and Class 9 have been resolved. As set forth in the Claimant Trust Agreement, the Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests will be subordinated to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests.

45. "*Debtor*" means Highland Capital Management, L.P. in its capacity as debtor and debtor in possession in the Chapter 11 Case.

46. *"Delaware Bankruptcy Court"* means the United States Bankruptcy Court for the District of Delaware.

47. "*Disclosure Statement*" means that certain *Disclosure Statement for Debtor's Fifth Amended Chapter 11 Plan of Reorganization*, as amended, supplemented, or modified from time to time, which describes this Plan, including all exhibits and schedules thereto and references therein that relate to this Plan.

48. "*Disputed*" means with respect to any Claim or Equity Interest, any Claim or Equity Interest that is not yet Allowed.

49. "*Disputed Claims Reserve*" means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

50. "*Disputed Claims Reserve Amount*" means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or Reorganized Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

51. "*Distribution Agent*" means the Claimant Trustee, or any party designated by the Claimant Trustee to serve as distribution agent under this Plan.

52. "*Distribution Date*" means the date or dates determined by the Reorganized Debtor or the Claimant Trustee, as applicable, on or after the Initial Distribution Date upon which the Distribution Agent shall make distributions to holders of Allowed Claims and Interests entitled to receive distributions under the Plan.

53. "*Distribution Record Date*" means the date for determining which Holders of Claims and Equity Interests are eligible to receive distributions hereunder, which date shall be the Effective Date or such later date determined by the Bankruptcy Court.

54. "*Effective Date*" means the Business Day that this Plan becomes effective as provided in ARTICLE VIII hereof.

55. "*Employees*" means the employees of the Debtor set forth in the Plan Supplement.

56. "*Entity*" means any "entity" as defined in section 101(15) of the Bankruptcy Code and also includes any Person or any other entity.

57. "*Equity Interest*" means any Equity Security in the Debtor, including, without limitation, all issued, unissued, authorized or outstanding partnership interests, shares, of stock or limited company interests, the Class A Limited Partnership Interests, the Class B Limited Partnership Interests, and the Class C Limited Partnership Interests.

58. "*Equity Security*" means an "equity security" as defined in section 101(16) of the Bankruptcy Code.

59. "*Estate*" means the bankruptcy estate of the Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

60. "*Estate Claims*" has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [D.I. 354].

61. "*Exculpated Parties*" means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however,* that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the

Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term "Exculpated Party."

62. "*Executory Contract*" means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

63. "*Exhibit*" means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

64. "*Federal Judgment Rate*" means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

65. "*File*" or "*Filed*" or "*Filing*" means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

66. "*Final Order*" means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.

67. "*Frontier Secured Claim*" means the loan from Frontier State Bank to the Debtor in the principal amount of $7,879,688.00 made pursuant to that certain First Amended and Restated Loan Agreement, dated March 29, 2018.

68. "*General Partner Interest*" means the Class A Limited Partnership Interest held by Strand, as the Debtor's general partner.

69. "*General Unsecured Claim*" means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

70. "*Governmental Unit*" means a "governmental unit" as defined in section 101(27) of the Bankruptcy Code.

71. "*GUC Election*" means the option provided to each Holder of a Convenience Claim on their Ballot to elect to receive the treatment provided to General Unsecured Claims.

72. "*Holder*" means an Entity holding a Claim against, or Equity Interest in, the Debtor.

73. "*Impaired*" means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

74. "*Independent Directors*" means John S. Dubel, James P. Seery, Jr., and Russell Nelms, the independent directors of Strand appointed on January 9, 2020, and any additional or replacement directors of Strand appointed after January 9, 2020, but prior to the Effective Date.

75. "*Initial Distribution Date*" means, subject to the "Treatment" sections in ARTICLE III hereof, the date that is on or as soon as reasonably practicable after the Effective Date, when distributions under this Plan shall commence to Holders of Allowed Claims and Equity Interests.

76. "*Insurance Policies*" means all insurance policies maintained by the Debtor as of the Petition Date.

77. "*Jefferies Secured Claim*" means any Claim in favor of Jefferies, LLC, arising under that certain Prime Brokerage Customer Agreement, dated May 24, 2013, between the Debtor and Jefferies, LLC, that is secured by the assets, if any, maintained in the prime brokerage account created by such Prime Brokerage Customer Agreement.

78. "*Lien*" means a "lien" as defined in section 101(37) of the Bankruptcy Code and, with respect to any asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset.

79. "*Limited Partnership Agreement*" means that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, as amended.

80. "*Litigation Sub-Trust*" means the sub-trust established within the Claimant Trust or as a wholly –owned subsidiary of the Claimant Trust on the Effective Date in each case in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement and Claimant Trust Agreement. As set forth in the Litigation Sub-Trust Agreement, the Litigation Sub-Trust shall hold the Claimant Trust Assets that are Estate Claims.

81. "*Litigation Sub-Trust Agreement*" means the agreement filed in the Plan Supplement establishing and delineating the terms and conditions of the Litigation Sub-Trust.

82. "*Litigation Trustee*" means the trustee appointed by the Committee and reasonably acceptable to the Debtor who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

83. "*Managed Funds*" means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to this Plan.

84. "*New Frontier Note*" means that promissory note to be provided to the Allowed Holders of Class 2 Claims under this Plan and any other documents or security agreements securing the obligations thereunder.

85. "*New GP LLC*" means a limited liability company incorporated in the State of Delaware pursuant to the New GP LLC Documents to serve as the general partner of the Reorganized Debtor on the Effective Date.

86. "*New GP LLC Documents*" means the charter, operating agreement, and other formational documents of New GP LLC.

87. "*Ordinary Course Professionals Order*" means that certain *Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course* [D.I. 176].

88. "*Other Unsecured Claim*" means any Secured Claim other than the Jefferies Secured Claim and the Frontier Secured Claim.

89. *"Person*" means a "person" as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, individual, corporation, company, general or limited partnership, limited liability company, unincorporated organization firm, trust, estate, business trust, association, joint stock company, joint venture, government, governmental agency, Governmental Unit or any subdivision thereof, the United States Trustee, or any other entity, whether acting in an individual, fiduciary or other capacity.

90. "*Petition Date*" means October 16, 2019.

91. "*Plan*" means this *Debtor's Fifth Amended Chapter 11 Plan of Reorganization*, including the Exhibits and the Plan Documents and all supplements, appendices, and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

92. "*Plan Distribution*" means the payment or distribution of consideration to Holders of Allowed Claims and Allowed Equity Interests under this Plan.

93. "*Plan Documents*" means any of the documents, other than this Plan, but including, without limitation, the documents to be filed with the Plan Supplement, to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date, and as may be modified consistent with the terms hereof with the consent of the Committee.

94. "*Plan Supplement*" means the ancillary documents necessary for the implementation and effectuation of the Plan, including, without limitation, (i) the form of

Claimant Trust Agreement, (ii) the forms of New GP LLC Documents, (iii) the form of Reorganized Limited Partnership Agreement, (iv) the Sub-Servicer Agreement (if applicable), (v) the identity of the initial members of the Claimant Trust Oversight Committee, (vi) the form of Litigation Sub-Trust Agreement; (vii) the schedule of retained Causes of Action; (viii) the New Frontier Note, (ix) the schedule of Employees; (x) the form of Senior Employee Stipulation,; and (xi) the schedule of Executory Contracts and Unexpired Leases to be assumed pursuant to this Plan, which, in each case, will be in form and substance reasonably acceptable to the Debtor and the Committee.

95. "*Priority Non-Tax Claim*" means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, including any Claims for paid time-off entitled to priority under section 507(a)(4) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

96. "*Pro Rata*" means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class.

97. "*Professional*" means (a) any Entity employed in the Chapter 11 Case pursuant to section 327, 328 363 or 1103 of the Bankruptcy Code or otherwise and (b) any Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 327, 328, 330, 331, 363, 503(b), 503(b)(4) and 1103 of the Bankruptcy Code.

98. "*Professional Fee Claim*" means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of the Bankruptcy Code, with respect to a particular Professional, for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date.

99. "*Professional Fee Claims Bar Date*" means with respect to Professional Fee Claims, the Business Day which is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.

100. "*Professional Fee Claims Objection Deadline*" means, with respect to any Professional Fee Claim, thirty (30) days after the timely Filing of the applicable request for payment of such Professional Fee Claim.

101. "*Professional Fee Reserve*" means the reserve established and funded by the Claimant Trustee pursuant this Plan to provide sufficient funds to satisfy in full unpaid Allowed Professional Fee Claims.

102. "*Proof of Claim*" means a written proof of Claim or Equity Interest Filed against the Debtor in the Chapter 11 Case.

103. "*Priority Tax Claim*" means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

104. "*Protected Parties*" means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however,* that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term "Protected Party."

105. "*PTO Claims*" means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

106. "*Reduced Employee Claims*" has the meaning set forth in ARTICLE IX.D.

107. "*Reinstated*" means, with respect to any Claim or Equity Interest, (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim or Equity Interest in accordance with section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim or Equity Interest to demand or receive accelerated payment of such Claim or Equity Interest after the occurrence of a default: (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) of the Bankruptcy Code expressly does not require to be cured; (ii) reinstating the maturity of such Claim or Equity Interest as such maturity existed before such default; (iii) compensating the Holder of such Claim or Equity Interest for any damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim or Equity Interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder of such Claim or Equity Interest (other than any Debtor or an insider of any Debtor) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim.

108. "*Rejection Claim*" means any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Confirmation Order.

109. "*Related Entity*" means, without duplication, (a) James Dondero, (b) Mark Okada, (c) Grant Scott, (d) Hunter Covitz, (e) any entity or person that was an insider of the

Debtor on the Petition Date under Section 101(31) of the Bankruptcy Code, including any non-statutory insider, (f) any entity that, after the Effective Date, is controlled directly or indirectly by James Dondero, including, without limitation, The Dugaboy Investment Trust, (g) the Hunter Mountain Investment Trust and any of its direct or indirect parents, and (h) the Charitable Donor Advised Fund, L.P., and any of its direct or indirect subsidiaries.

110. "*Related Persons*" means, with respect to any Person, such Person's predecessors, successors, assigns (whether by operation of law or otherwise), and each of their respective present and former officers, directors, employees, managers, managing members, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, employees, subsidiaries, divisions, management companies, and other representatives, in each case solely in their capacity as such.

111. "*Released Parties*" means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.

112. "*Reorganized Debtor*" means the Debtor, as reorganized pursuant to this Plan on and after the Effective Date.

113. "*Reorganized Debtor Assets*" means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, "Reorganized Debtor Assets" includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

114. "*Reorganized Limited Partnership Agreement*" means that certain Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., by and among the Claimant Trust, as limited partner, and New GP LLC, as general partner, Filed with the Plan Supplement.

115. "*Restructuring*" means the restructuring of the Debtor, the principal terms of which are set forth in this Plan and the Disclosure Statement.

116. "*Retained Employee Claim*" means any Claim filed by a current employee of the Debtor who will be employed by the Reorganized Debtor upon the Effective Date.

117. "*Schedules*" means the schedules of Assets and liabilities, statements of financial affairs, lists of Holders of Claims and Equity Interests and all amendments or supplements thereto Filed by the Debtor with the Bankruptcy Court [D.I. 247].

118. "*Secured*" means, when referring to a Claim: (a) secured by a Lien on property in which the Debtor's Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the

creditor's interest in the interest of the Debtor's Estate 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) Allowed pursuant to the Plan as a Secured Claim.

119. "*Security*" or "*security*" means any security as such term is defined in section 101(49) of the Bankruptcy Code.

120. "*Senior Employees*" means the senior employees of the Debtor Filed in the Plan Supplement.

121. "*Senior Employee Stipulation*" means the agreements filed in the Plan Supplement between each Senior Employee and the Debtor.

122. "*Stamp or Similar Tax*" means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

123. "*Statutory Fees*" means fees payable pursuant to 28 U.S.C. § 1930.

124. "*Strand*" means Strand Advisors, Inc., the Debtor's general partner.

125. "*Sub-Servicer*" means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.

126. "*Sub-Servicer Agreement*" means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

127. "*Subordinated Claim*" means any Claim that (i) is or may be subordinated to the Convenience Claims and General Unsecured Claims pursuant to 11 U.S.C. § 510 or Final Order of the Bankruptcy Court or (ii) arises from a Class A Limited Partnership Interest or a Class B/C Limited Partnership Interest.

128. "*Subordinated Claimant Trust Interests*" means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

129. "*Trust Distribution*" means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

130. "*Trustees*" means, collectively, the Claimant Trustee and Litigation Trustee.

131. "*UBS*" means, collectively, UBS Securities LLC and UBS AG London Branch.

132. "*Unexpired Lease*" means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

133. "*Unimpaired*" means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

134. "*Voting Deadline*" means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

135. "*Voting Record Date*" means November 23, 2020.

ARTICLE II.
ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS

A. Administrative Expense Claims

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized Debtor, as applicable, and such Holder; *provided, however,* that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

B. Professional Fee Claims

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329,330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

C. Priority Tax Claims

On or as soon as reasonably practicable after the later of (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 will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount equal to the amount of such Allowed Priority Tax Claim, or (b) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

ARTICLE III.
CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS AND EQUITY INTERESTS

A. Summary

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

B. Summary of Classification and Treatment of Classified Claims and Equity Interests

Class	Claim	Status	Voting Rights
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

C. Elimination of Vacant Classes

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of

voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

D. Impaired/Voting Classes

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

E. Unimpaired/Non-Voting Classes

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

F. Impaired/Non-Voting Classes

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

G. Cramdown

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

H. Classification and Treatment of Claims and Equity Interests

1. Class 1 – Jefferies Secured Claim

- *Classification*: Class 1 consists of the Jefferies Secured Claim.
- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until full and final payment of such Allowed Class 1 Claim is made as provided herein.
- *Impairment and Voting*: Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted this Plan

pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

2. *Class 2 – Frontier Secured Claim*

- *Classification*: Class 2 consists of the Frontier Secured Claim.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.

- *Impairment and Voting*: Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject this Plan.

3. *Class 3 – Other Secured Claims*

- *Classification*: Class 3 consists of the Other Secured Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.

- *Impairment and Voting*: Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

4. *Class 4 – Priority Non-Tax Claims*

- *Classification*: Class 4 consists of the Priority Non-Tax Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.

- *Impairment and Voting*: Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

5. *Class 5 – Retained Employee Claims*

- *Classification*: Class 5 consists of the Retained Employee Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.

- *Impairment and Voting*: Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

6. *Class 6 – PTO Claims*

- *Classification*: Class 6 consists of the PTO Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.

- *Impairment and Voting*: Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

7. *Class 7 – Convenience Claims*

- *Classification*: Class 7 consists of the Convenience Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.

- *Impairment and Voting*: Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject this Plan.

8. *Class 8 – General Unsecured Claims*

- *Classification*: Class 8 consists of the General Unsecured Claims.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes a valid Convenience Class Election.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject this Plan.

9. *Class 9 – Subordinated Claims*

- *Classification*: Class 9 consists of the Subordinated Claims.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 9 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive either (i) the treatment provided to Allowed Class 8 Claims or (ii) if such Allowed Class 9 Claim is subordinated to the Convenience Claims and General Unsecured Claims pursuant to 11 U.S.C. § 510 or Final Order of the Bankruptcy Court, its Pro Rata share of the Subordinated Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject this Plan.

10. *Class 10 – Class B/C Limited Partnership Interests*

- *Classification*: Class 10 consists of the Class B/C Limited Partnership Interests.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject this Plan.

11. Class 11 – Class A Limited Partnership Interests

- *Classification*: Class 11 consists of the Class A Limited Partnership Interests.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject this Plan.

I. Special Provision Governing Unimpaired Claims

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

J. Subordinated Claims

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Under section 510 of the Bankruptcy Code, upon written notice, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to re-classify, or to seek to subordinate, any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

ARTICLE IV.
MEANS FOR IMPLEMENTATION OF THIS PLAN

A. Summary

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to this Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in this Plan and the Claimant Trust Agreement.

B. The Claimant Trust[2]

1. Creation and Governance of the Claimant Trust and Litigation Sub-Trust.

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its

[2] In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.

rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

2. *Claimant Trust Oversight Committee*

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be

overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.

The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

3. *Purpose of the Claimant Trust.*

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in this Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in ARTICLE IV.C.

4. *Purpose of the Litigation Sub-Trust.*

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.

5. *Claimant Trust Agreement and Litigation Sub-Trust Agreement.*

The Claimant Trust Agreement generally will provide for, among other things:

(i) the payment of the Claimant Trust Expenses;

(ii) the payment of other reasonable expenses of the Claimant Trust;

(iii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;

(iv) the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;

(v) the orderly monetization of the Claimant Trust Assets;

(vi) litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;

(vii) the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;

(viii) the administration of the Disputed Claims Reserve and distributions to be made therefrom; and

(ix) the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expenses and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however,* that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. In all circumstances, the Claimant Trustee shall act in the best interests of the Claimant Trust Beneficiaries and with the same fiduciary duties as a chapter 7 trustee.

The Litigation Sub-Trust Agreement generally will provide for, among other things:

(i) the payment of other reasonable expenses of the Litigation Sub-Trust;

(ii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and

(iii) the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

6. *Compensation and Duties of Trustees.*

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

7. *Cooperation of Debtor and Reorganized Debtor.*

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

8. *United States Federal Income Tax Treatment of the Claimant Trust.*

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9. *Tax Reporting.*

(a) The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

(b) The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.

(c) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

(d) The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

10. *Claimant Trust Assets.*

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court, and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in this Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the

Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

11. *Claimant Trust Expenses.*

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

12. *Trust Distributions to Claimant Trust Beneficiaries.*

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

13. *Cash Investments.*

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however,* that such investments are investments permitted to be made by a "liquidating trust" within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

14. *Dissolution of the Claimant Trust and Litigation Sub-Trust.*

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Clamant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the

Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however,* that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

C. The Reorganized Debtor

1. Corporate Existence

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.

2. Cancellation of Equity Interests and Release

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

3. Issuance of New Partnership Interests

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

4. Management of the Reorganized Debtor

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant

Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

5. *Vesting of Assets in the Reorganized Debtor*

Except as otherwise provided in this Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

6. *Purpose of the Reorganized Debtor*

Except as may be otherwise provided in this Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court.

7. *Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets*

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement, the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust

will be (i) deemed transferred in all respects as forth in ARTICLE IV.B.1, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

D. Company Action

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in this Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with this Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.

E. Release of Liens, Claims and Equity Interests

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the

Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, 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 Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

F. Cancellation of Notes, Certificates and Instruments

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

G. Cancellation of Existing Instruments Governing Security Interests

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

H. Control Provisions

To the extent that there is any inconsistency between this Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, this Plan shall control.

I. Treatment of Vacant Classes

Any Claim or Equity Interest in a Class considered vacant under ARTICLE III.C of this Plan shall receive no Plan Distributions.

J. Plan Documents

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in ARTICLE I hereof) and fully enforceable as if stated in full herein.

The Debtor and the Committee are currently working to finalize the forms of certain of the Plan Documents to be filed with the Plan Supplement. To the extent that the Debtor and the Committee cannot agree as to the form and content of such Plan Documents, they intend to submit the issue to non-binding mediation pursuant to the *Order Directing Mediation* entered on August 3, 2020 [D.I. 912].

K. Highland Capital Management, L.P. Retirement Plan and Trust

The Highland Capital Management, L.P. Retirement Plan And Trust ("Pension Plan") is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor's controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the "IRC"), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

ARTICLE V.
TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to a Final Order of the Bankruptcy Court entered prior to the Effective Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a contract or lease to be assumed in the Plan Supplement, on the Effective Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Effective Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. ("Landlord") for the Debtor's headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the "Lease") in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4), as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [Docket No. 1122].

B. Claims Based on Rejection of Executory Contracts or Unexpired Leases

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Effective Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Effective Date. Any Rejection Claims that are not timely Filed pursuant to this Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with ARTICLE III of this Plan.

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

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor's or Reorganized Debtor's intention to assume or assign the Executory Contract or Unexpired Lease in connection with this Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to this ARTICLE V.C shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts

or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to this ARTICLE V.C, shall be deemed disallowed and expunged as of the Effective Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

ARTICLE VI.
PROVISIONS GOVERNING DISTRIBUTIONS

A. Dates of Distributions

Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that this Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under this Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in this Plan. Except as otherwise provided in this Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to this Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in this Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under this Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under this Plan to such Persons or the date of such distributions.

B. Distribution Agent

Except as provided herein, all distributions under this Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.

The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

C. Cash Distributions

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

D. Disputed Claims Reserve

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

E. Distributions from the Disputed Claims Reserve

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

F. Rounding of Payments

Whenever this Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under this Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as "Unclaimed Property" under this Plan.

G. *De Minimis* Distribution

Except as to any Allowed Claim that is Unimpaired under this Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than $100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in ARTICLE VI.J hereof within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

H. Distributions on Account of Allowed Claims

Except as otherwise agreed by the Holder of a particular Claim or as provided in this Plan, all distributions shall be made pursuant to the terms of this Plan and the Confirmation Order. Except as otherwise provided in this Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

I. General Distribution Procedures

The Distribution Agent shall make all distributions of Cash or other property required under this Plan, unless this Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under this Plan shall not be subject to any claim by any Person.

J. Address for Delivery of Distributions

Distributions to Holders of Allowed Claims, to the extent provided for under this Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor's books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

K. Undeliverable Distributions and Unclaimed Property

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.

Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under this Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

L. Withholding Taxes

In connection with this Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under this Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to this Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

M. Setoffs

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to this Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with this Plan; *provided, however*, that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to

such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

N. Surrender of Cancelled Instruments or Securities

As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to ARTICLE IV of this Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

O. Lost, Stolen, Mutilated or Destroyed Securities

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with ARTICLE VI.O of this Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under this Plan, be deemed to have surrendered such security or note to the Distribution Agent.

ARTICLE VII.
PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED AND DISPUTED CLAIMS

A. Filing of Proofs of Claim

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

B. Disputed Claims

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest or any other appropriate motion or adversary proceeding with respect thereto, which shall be litigated to Final Order or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such

Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of this Plan.

C. Procedures Regarding Disputed Claims or Disputed Equity Interests

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.

D. Allowance of Claims and Equity Interests

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

1. Allowance of Claims

After the Effective Date and subject to the other provisions of this Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

2. Estimation

Subject to the other provisions of this Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trustee, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with this Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

3. Disallowance of Claims

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE, ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.

ARTICLE VIII.
EFFECTIVENESS OF THIS PLAN

A. Conditions Precedent to the Effective Date

The Effective Date of this Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of ARTICLE VIII.B of this Plan of the following:

- This Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to this Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.

- The Confirmation Order shall have been entered, not subject to stay pending appeal, and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate this Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in this Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under this Plan; and (d) entering

into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

- All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.

- The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

B. Waiver of Conditions

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee), without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate this Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized

Debtor, or the Claimant Trust, as applicable.

C. Effect of Non-Occurrence of Conditions to Effectiveness

Unless waived as set forth in ARTICLE VIII.B, if the Effective Date of this Plan does not occur within twenty calendar days of entry of the Confirmation Order, the Debtor may withdraw this Plan and, if withdrawn, the Plan shall be of no further force or effect.

D. Dissolution of the Committee

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

ARTICLE IX.
EXCULPATION, INJUNCTION AND RELATED PROVISIONS

A. General

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

B. Discharge of Claims

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to this Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose

before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

C. Exculpation

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(v); *provided*, *however,* the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

D. Releases by the Debtor

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal

misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to this ARTICLE IX.D (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or

- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

Provided, however, that the release provided pursuant to this ARTICLE IX.D will vest and the Employee will be indefeasibly released pursuant to this ARTICLE IX.D if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims

brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

E. Preservation of Rights of Action

1. Maintenance of Causes of Action

Except as otherwise provided in this Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

2. Preservation of All Causes of Action Not Expressly Settled or Released

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan or any Final Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except where such Causes of Action have been expressly released in this Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

F. Injunction

Upon entry of the Confirmation Order, all holders of Claims and Equity Interests and other parties in interest, along with their respective Related Persons, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan.

Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether proof of such Claims or Equity Interests has been filed or not and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan) and other parties in interest,

along with their respective Related Persons, are permanently enjoined, on and after the Effective Date, with respect to such Claims and Equity Interests, from (i) commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or the property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree, or order against the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or the property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust, (iii) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or the property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust, (iv) asserting any right of setoff, directly or indirectly, against any obligation due from the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or against property or interests in property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust; and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

The injunctions set forth herein shall extend to any successors of the Debtor, the Reorganized Debtor, and the Claimant Trust and their respective property and interests in property.

Subject in all respects to ARTICLE XII.D, no Entity may commence or pursue a claim or cause of action of any kind against any Protected Party that arose from or is related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice, that such claim or cause of action represents a colorable claim of bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Entity to bring such claim against any such Protected Party; *provided, however,* the foregoing will not apply to Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. As set forth in ARTICLE XI, the Bankruptcy Court will have sole jurisdiction to adjudicate any such claim for which approval of the Bankruptcy Court to commence or pursue has been granted.

G. Term of Injunctions or Stays

Unless otherwise provided in this Plan, the Confirmation Order, or in a Final Order of the Bankruptcy Court, all injunctions or stays arising under or entered during the Chapter 11 Case under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay.

H. Continuance of January 9 Order

Unless otherwise provided in this Plan, the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date until the dissolution of each of the Claimant Trust and the Litigation Trust.

ARTICLE X.
BINDING NATURE OF PLAN

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in ARTICLE IX, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to this Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state, Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to nay taxes of the kind specified in Bankruptcy Code section 1146(a).

ARTICLE XI.
RETENTION OF JURISDICTION

Pursuant to sections 105 and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Reorganized Debtor, the Claimant Trust, and this Plan as legally permissible, including, without limitation, jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured, unsecured, or subordinated status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the allowance or priority of any Claim or Equity Interest;

- grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided*, *however*, that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date subject to the terms of this Plan and the Confirmation Order, and such payment shall not be subject to the approval of the Bankruptcy Court;

- resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor, Reorganized Debtor, or Claimant Trust may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, any dispute regarding whether a contract or lease is or was executory or expired;

- make any determination with respect to a claim or cause of action against a Protected Party as set forth in ARTICLE IX;

- resolve any claim or cause of action against an Exculpated Party or Protected Party arising from or related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, or the transactions in furtherance of the foregoing;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any sale, disposition, assignment or other transfer of the Reorganized Debtor Assets or Claimant Trust Assets, including any break-up compensation or expense reimbursement that may be requested by a purchaser thereof*; provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any borrowing or the incurrence of indebtedness, whether secured or unsecured by the Reorganized Debtor or Claimant Trust; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- resolve any issues related to any matters adjudicated in the Chapter 11 Case;

- ensure that distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions of this Plan;

- decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action (including Estate Claims) that are pending as of the Effective Date or that may be commenced in the future, including approval of any settlements, compromises, or other resolutions as may be requested by the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee whether under Bankruptcy Rule 9019 or otherwise, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor, the Claimant Trustee, or Litigation Trustee after the Effective Date, provided that the Reorganized Debtor, the Claimant Trustee, and the Litigation Trustee shall reserve the right to commence actions in all appropriate forums and jurisdictions;

- enter such orders as may be necessary or appropriate to implement, effectuate, or consummate the provisions of this Plan, the Plan Documents, and all other contracts, instruments, releases, and other agreements or documents adopted in connection with this Plan, the Plan Documents, or the Disclosure Statement;

- resolve any cases, controversies, suits or disputes that may arise in connection with the implementation, effectiveness, consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;

- issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with implementation, effectiveness, consummation, or enforcement of this Plan, except as otherwise provided in this Plan;

- enforce the terms and conditions of this Plan and the Confirmation Order;

- resolve any cases, controversies, suits or disputes with respect to the release, exculpation, indemnification, and other provisions contained herein and enter such orders or take such others actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;

- enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;

- resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Plan Documents, or any contract, instrument, release, indenture or other agreement or document adopted in connection with this Plan or the Disclosure Statement; and

- enter an order concluding or closing the Chapter 11 Case after the Effective Date.

ARTICLE XII.
MISCELLANEOUS PROVISIONS

A. Payment of Statutory Fees and Filing of Reports

All outstanding Statutory Fees shall be paid on the Effective Date. All such fees payable, and all such fees that become due and payable, after the Effective Date shall be paid by the Reorganized Debtor when due or as soon thereafter as practicable until the Chapter 11 Case is closed, converted, or dismissed. The Claimant Trustee shall File all quarterly reports due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. After the Effective Date, the Claimant Trustee shall File with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee. The Reorganized Debtor shall remain obligated to pay Statutory Fees to the Office of the U.S. Trustee until the earliest of the Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

B. Modification of Plan

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order with the consent of the Committee, such consent not to be unreasonably withheld; and (b) after the entry of the Confirmation Order, the Debtor may, after notice and hearing and entry of an order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

C. Revocation of Plan

The Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File a subsequent chapter 11 plan with the consent of the Committee. If the Debtor revokes or withdraws this Plan prior to the Confirmation Date, then: (i) this Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in this Plan, assumption of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (iii) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.

D. Obligations Not Changed

Notwithstanding anything in this Plan to the contrary, nothing herein will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

E. Entire Agreement

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

F. Closing of Chapter 11 Case

The Claimant Trustee shall, after the Effective Date and promptly after the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

G. Successors and Assigns

This Plan shall be binding upon and inure to the benefit of the Debtor and its successors and assigns, including, without limitation, the Reorganized Debtor and the Claimant Trustee. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

H. Reservation of Rights

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and the Effective Date occurs. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtor, the Reorganized Debtor, the Claimant Trustee, or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor, the Reorganized Debtor, or the Claimant Trustee with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

Neither the exclusion or inclusion by the Debtor of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Documents, nor anything contained in this Plan, will constitute an admission by the Debtor that any such contract or lease is or is not an executory contract or lease or that the Debtor, the Reorganized Debtor, the Claimant Trustee, or their respective Affiliates has any liability thereunder.

Except as explicitly provided in this Plan, nothing herein shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the Debtor, the Reorganized Debtor, or the Claimant Trustee under any executory or non-executory contract.

Nothing in this Plan will increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, under any executory or non-executory contract or lease.

If there is a dispute regarding whether a contract or lease is or was executory at the time of its assumption under this Plan, the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract.

I. Further Assurances

The Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, all Holders of Claims and Equity Interests receiving distributions hereunder, and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order. On or before the Effective Date, the Debtor shall File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

J. Severability

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court 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 will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this 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 this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

K. Service of Documents

All notices, requests, and demands to or upon the Debtor, the Reorganized Debtor, or the Claimant Trustee to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered addressed as follows:

If to the Claimant Trust:

Highland Claimant Trust
c/o Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.

If to the Debtor:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.

with copies to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Attn: Jeffrey N. Pomerantz, Esq.
Ira D. Kharasch, Esq.
Gregory V. Demo, Esq.

If to the Reorganized Debtor:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.
with copies to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Attn: Jeffrey N. Pomerantz, Esq.
Ira D. Kharasch, Esq.
Gregory V. Demo, Esq.

L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code

To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate federal, state or local governmental officials or agents or taxing authority to forego the collection of any such Stamp or Similar 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 Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to evidence and implement the provisions of and the distributions to be made under this Plan; (ii) the maintenance or creation of security or any Lien as contemplated by this Plan; and (iii) assignments, sales, or transfers executed in connection with any transaction occurring under this Plan.

M. Governing Law

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Texas, without giving effect to the principles of conflicts of law of such jurisdiction; *provided, however,* that corporate governance matters relating to the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trust, as applicable, shall be governed by the laws of the state of organization of the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trustee, as applicable.

N. Tax Reporting and Compliance

The Debtor is hereby authorized to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor is for all taxable periods ending after the Petition Date through, and including, the Effective Date.

O. Exhibits and Schedules

All exhibits and schedules to this Plan, if any, including the Exhibits and the Plan Documents, are incorporated and are a part of this Plan as if set forth in full herein.

P. Controlling Document

In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and of the Confirmation Order, on the other hand, shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any provision of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and any provision of the Confirmation Order, on the other hand, that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan, the Disclosure Statement, and the Plan Documents, as applicable.

[Remainder of Page Intentionally Blank]

Dated: November 24, 2020

Respectfully submitted,

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: _____
James P. Seery, Jr.
Chief Executive Officer and Chief Restructuring Officer

Prepared by:

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EXHIBIT B

ORGANIZATIONAL CHART OF THE DEBTOR

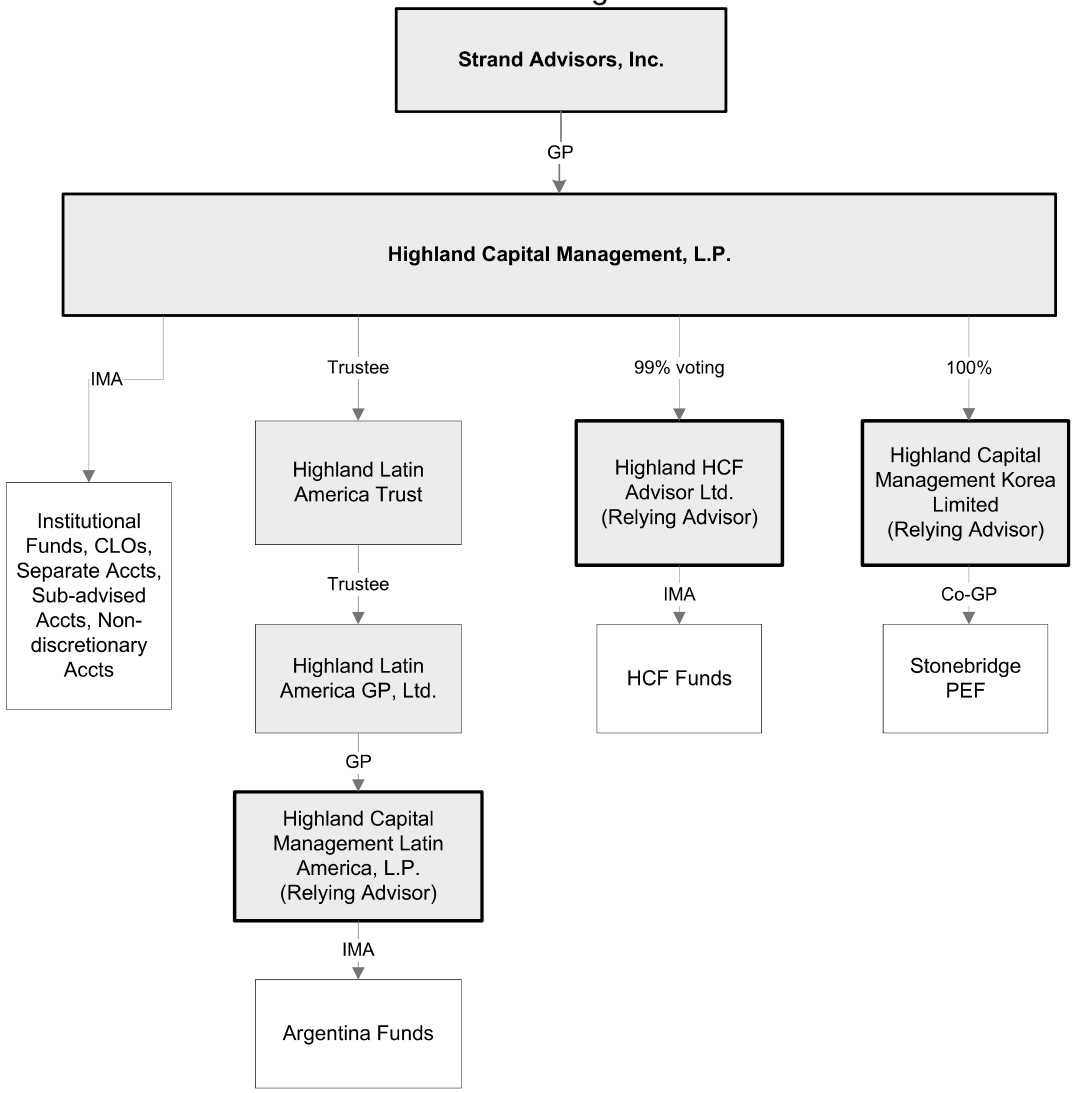

EXHIBIT C

LIQUIDATION ANALYSIS/FINANCIAL PROJECTIONS

Highland Capital Management, L.P.
Disclaimer For Financial Projections

This document includes financial projections for July 2020 through December 2022 (the "Projections") for Highland Capital Management, L.P. "Company"). These Projections have been prepared by DSI with input from management at the Company. The historical information utilized in these Projections has not been audited or reviewed for accuracy by DSI.

This Memorandum includes certain statements, estimates and forecasts provided by the Company with respect to the Company's anticipated future performance. These estimates and forecasts contain significant elements of subjective judgment and analysis that may or may not prove to be accurate or correct. There can be no assurance that these statements, estimates and forecasts will be attained and actual outcomes and results may differ materially from what is estimated or forecast herein.

These Projections should not be regarded as a representation of DSI that the projected results will be achieved.

Management may update or supplement these Projections in the future, however, DSI expressly disclaims any obligation to update its report.

These Projections were not prepared with a view toward compliance with published guidelines of the Securities and Exchange Commission or the American Institute of Certified Public Accountants regarding historical financial statements, projections or forecasts.

Highland Capital Management, L.P.
Statement of Assumptions

A. Plan effective date is January 31 ,2021.
B. All investment assets are sold by December 31, 2022.
C. All demand notes are collected in the year 2021.
D. All notes receivable with maturity dates beyond 12/31/2022 are sold in Q4 2022; in the interim interest income and principal payments are collected as they become due.
E. Fixed assets used in daily business operations are sold in February 2021.
F. Accrual for employee bonuses as of January 2021 are reversed and not paid.
G. All Management advisory or shared service contracts are terminated on their terms by the effective date or shortly thereafter
H. Post-effective date, the reorganized Debtor would retain three HCMLP employees as contractors to help monetize the remaining assets.
I. Litigation Trustee budget is $6,500,000.
J. Unrealized gains or losses are not recorded on a monthly basis; all gains or losses are recorded as realized gains or losses upon sale of asset.
K. Plan does not provide for payment of interest to Class 8 holders of general unsecured claims, as set forth in the Plan. If holders of general unsecured claims receive 100% of their allowed claims, they would then be entitled to receive interest at the federal judgement rate, prior to any funds being available for claims or interest of junior priority.
L. Plan assumes zero allowed claims for UBS, IFA, the HarbourVest entities (collectively "HV") and Hunter Mountain Investment Trust ("HM").
M. Claim amounts listed in Plan vs. Liquidation schedule are subject to change; claim amounts in Class 8 assume $0 for UBS, IFA, HM and HV. Assumes RCP claims will offset against HCMLP's interest in fund and will not be paid from Debtor assets
N. With the exception of Class 2 - Frontier, Classes 1-7 will be paid in full within 30 days of effective date.
O. Class 7 payout limited to 85% of each individual creditor claim or in the aggregate $13.15 million. Plan currently projects Class 7 payout of $9.96 million.
P. See below for Class 8 estimated payout schedule; payout is subject to certain assets being monetized by payout date:
    - By September 30, 2021 - $50,000,000
    - By March 31, 2022 – additional $50,000,000
    - By June 30, 2022 – additional $25,000,000
    - All remaining proceeds are assumed to be paid out on or soon after all remaining assets are monetized.

Highland Capital Management, L.P.
Plan Analysis Vs. Liquidation Analysis
(US $000's)

	Plan Analysis	Liquidation Analysis
Estimated cash on hand at 1/31/2020	$ 25,076	$ 25,076
Estimated proceeds from monetization of assets [1][2]	190,445	149,197
Estimated expenses through final distribution[1][3]	(33,642)	(36,232)
Total estimated $ available for distribution	181,879	138,042
Less: Claims paid in full		
Unclassified [4]	(1,078)	(1,078)
Administrative claims [5]	(10,574)	(10,574)
Class 1 - Jefferies Secured Claim	-	-
Class 2 - Frontier Secured Claim [6]	(5,463)	(5,463)
Class 3 - Other Secured Claims	(551)	(551)
Class 4 – Priority Non-Tax Claims	(16)	(16)
Class 5 - Retained Employee Claims	-	-
Class 6 - PTO Claims	-	-
Class 7 – Convenience Claims [7][8][9]	(10,255)	-
Subtotal	(27,937)	(17,682)
Estimated amount remaining for distribution to general unsecured claims	153,942	120,359
Class 8 – General Unsecured Claims [8][10]	176,049	192,258
Subtotal	176,049	192,258
% Distribution to general unsecured claims	87.44%	62.60%
Estimated amount remaining for distribution	-	-
Class 9 – Subordinated Claims	*no distribution*	*no distribution*
Class 10 – Class B/C Limited Partnership Interests	*no distribution*	*no distribution*
Class 11 – Class A Limited Partnership Interest	*no distribution*	*no distribution*

Footnotes:
[1] Assumes chapter 7 Trustee will not be able to achieve same sales proceeds as Claimant Trustee
Assumes Chapter 7 Trustee engages new professionals to help liquidate assets
[2] Sale of investment assets, sale of fixed assets, collection of accounts receivable and interest receivable
[3] Estimated expenses through final distribution exclude non-cash expenses:
Depreciation of $462 thousand in 2021
[4] Unclassified claims include payments for priority tax claims and settlements with previously approved by the Bankruptcy Court
[5] Represents $4.7 million in unpaid professional fees and $4.5 million in timing of payments to vendors
[6] Debtor will pay all unpaid interest estimated at $253 thousand of Frontier on effective date and continue to pay interest quarterly at 5.25% until Frontier's collateral is sold
[7] Claims payout limited to 85% of each individual creditor claim or limited to a total class payout of $13.15 million
[8] Class 7 includes $1.1 million estimate for aggregate contract rejections damage and Class 8 includes $1.4 million for contract rejection damages
[9] Assumes 3 claimants with allowed claims less than $2.5 million opt into Class 7 along with claims of Senior Employees
[10] Class estimates $0 allowed claim for the following creditors: IFA, HV, HM and UBS; assumes RCP claims offset against HCMLP interest in RCP fund

Notes:
All claim amounts are estimated as of November 20, 2020 and subject to change

Highland Capital Management, L.P.
Balance Sheet
(US $000's)

	Actual Jun-20	Actual Sep-20	Forecast ---> Dec-20	Mar-21	Jun-21	Sep-21	Dec-21	Mar-22	Jun-22	Sep-22	Dec-22
Assets											
Cash and Cash Equivalents	$ 14,994	$ 5,888	$ 28,342	$ 4,934	$ 96,913	$ 90,428	$ 106,803	$ 52,322	$ 23,641	$ 21,344	$ -
Other Current Assets	13,182	13,651	10,559	9,629	7,746	7,329	5,396	6,054	6,723	7,406	-
Investment Assets	320,912	305,961	261,333	258,042	133,026	81,793	54,159	54,159	54,159	54,159	-
Net Fixed Assets	3,055	2,823	2,592	1,348	-	-	-	-	-	-	-
TOTAL ASSETS	**$ 352,142**	**$ 328,323**	**$ 302,826**	**$ 273,952**	**$ 237,684**	**$ 179,550**	**$ 166,358**	**$ 112,535**	**$ 84,523**	**$ 82,910**	**$ -**
Liabilities											
Post-petition Liabilities	$ 26,226	$ 19,138	$ 19,280	$ 2,891	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Pre-petition Liabilities	126,365	126,343	121,950	-	-	-	-	-	-	-	-
Claims											
Unclassified	-	-	-	-	-	-	-	-	-	-	-
Class 1 – Jefferies Secured Claim	-	-	-	-	-	-	-	-	-	-	-
Class 2 - Frontier Secured Claim	-	-	-	5,210	-	-	-	-	-	-	-
Class 3 - Other Secured Claims	-	-	-	-	-	-	-	-	-	-	-
Class 4 – Priority Non-Tax Claims	-	-	-	-	-	-	-	-	-	-	-
Class 5 – Retained Employee Claims	-	-	-	-	-	-	-	-	-	-	-
Class 6 - PTO Claims	-	-	-	-	-	-	-	-	-	-	-
Class 7 – Convenience Claims	-	-	-	-	-	-	-	-	-	-	-
Class 8 – General Unsecured Claims	-	-	-	176,049	176,049	126,049	126,049	76,049	51,049	51,049	22,107
Class 9 – Subordinated Claims	-	-	-	-	-	-	-	-	-	-	-
Class 10 – Class B/C Limited Partnership Interests	-	-	-	-	-	-	-	-	-	-	-
Class 11 – Class A Limited Partnership Interests	-	-	-	-	-	-	-	-	-	-	-
Claim Payable	126,365	126,343	121,950	181,259	176,049	126,049	126,049	76,049	51,049	51,049	22,107
TOTAL LIABILITIES	**$ 152,591**	**145,481**	**141,230**	**184,150**	**176,049**	**126,049**	**126,049**	**76,049**	**51,049**	**51,049**	**22,107**
Partners' Capital	199,551	182,842	161,596	89,802	61,635	53,501	40,309	36,486	33,473	31,860	(22,107)
TOTAL LIABILITIES AND PARTNERS' CAPITAL	**$ 352,142**	**$ 328,323**	**$ 302,826**	**$ 273,952**	**$ 237,684**	**$ 179,550**	**$ 166,358**	**$ 112,535**	**$ 84,523**	**$ 82,910**	**$ -**

Highland Capital Management, L.P.
Profit/Loss
(US $000's)

	Actual Jan 2020 to June 2020 Total	Actual 3 month ended Sept 2020	Forecast ---> 3 month ended Dec 2020	Total 2020	3 month ended Mar 2021	3 month ended Jun 2021	3 month ended Sept 2021	3 month ended Dec 2021	Total 2021
Revenue									
Management Fees	$ 6,572	$ 1,949	$ 2,651	$ 11,173	$ 779	$ -	$ -	$ -	$ 779
Shared Service Fees	7,672	3,765	3,788	15,225	1,263	-	-	-	1,263
Other Income	3,126	538	340	4,004	113	-	-	-	113
Total revenue	$ 17,370	$ 6,252	$ 6,779	$ 30,401	$ 2,154	$ -	$ -	$ -	$ 2,154
Operating Expenses [1]	13,328	9,171	9,079	31,579	8,428	1,646	1,807	2,655	14,536
Income/(loss) From Operations	$ 4,042	$ (2,918)	$ (2,301)	$ (1,177)	$ (6,274)	$ (1,646)	$ (1,807)	$ (2,655)	$ (12,383)
Professional Fees	17,522	7,707	7,741	32,971	5,450	5,058	2,048	1,605	14,160
Other Income/(Expenses) [2]	2,302	1,518	1,057	4,878	(59,016)	573	423	423	(57,598)
Operating Gain/(Loss)	$ (11,178)	$ (9,107)	$ (8,985)	$ (29,270)	$ (70,741)	$ (6,130)	$ (3,432)	$ (3,837)	$ (84,139)
Realized and Unrealized Gain/(Loss)									
Other Realized Gains/(Loss)	-	-	-	-	(763)	522	-	-	(241)
Net Realized Gain/(Loss) on Sale of Investment	(28,418)	1,549	(12,167)	(39,036)	(290)	19	(4,702)	(8,006)	(12,979)
Net Change in Unrealized Gain/(Loss) of Investments	(29,929)	(7,450)	-	(37,380)	-	-	-	-	-
Net Realized Gain /(Loss) from Equity Method Investees	-	-	(94)	(94)	-	(22,578)	-	(1,349)	(23,927)
Net Change in Unrealized Gain /(Loss) from Equity Method Investees	(80,782)	(1,700)	-	(82,482)	-	-	-	-	-
Total Realized and Unrealized Gain/(Loss)	$ (139,129)	$ (7,601)	$ (12,262)	$ (158,992)	$ (1,053)	$ (22,037)	$ (4,702)	$ (9,355)	$ (37,147)
Net Income	$ (150,307)	$ (16,708)	$ (21,247)	$ (188,262)	$ (71,794)	$ (28,167)	$ (8,134)	$ (13,192)	$ (121,287)

Footnotes:
[1] Operating expenses include an adjustment in January 2021 to account for expenses that have not been accrued or paid prior to effective date.
[2] Other income and expenses of $61.2 million in January 2021 includes:
[a] $77.7 million was expensed to record for the increase of allowed claims.
[b] Income of $15.8 million for the accrued, but unpaid payroll liability related to the Debtor's deferred bonus programs amount written-off.

Highland Capital Management, L.P.
Profit/Loss
(US $000's)

	Forecast ---> 3 month ended Mar 2022	3 month ended Jun 2022	3 month ended Sept 2022	3 month ended Dec 2022	Total 2022	Plan
Revenue						
Management Fees	$ -	$ -	$ -	$ -	$ -	$ 779
Shared Service Fees	-	-	-	-	-	1,263
Other Income	-	-	-	-	-	113
Total revenue	$ -	$ -	$ -	$ -	$ -	$ 2,154
Operating Expenses	1,443	643	758	1,088	3,932	18,468
Income/(loss) From Operations	$ (1,443)	$ (643)	$ (758)	$ (1,088)	$ (3,932)	$ (16,314)
Professional Fees	2,788	2,788	1,288	1,288	8,153	22,313
Other Income/(Expenses)	408	419	434	184	1,444	(56,154)
Operating Gain/(Loss)	$ (3,823)	$ (3,013)	$ (1,613)	$ (2,193)	$ (10,641)	$ (94,780)
Realized and Unrealized Gain/(Loss)						
Other Realized Gains/(Loss)	-	-	-	(51,775)	(51,775)	(52,016)
Net Realized Gain/(Loss) on Sale of Investment	-	-	-	-	-	(12,979)
Net Change in Unrealized Gain/(Loss) of Investments	-	-	-	-	-	-
Net Realized Gain /(Loss) from Equity Method Investees	-	-	-	-	-	(23,927)
Net Change in Unrealized Gain /(Loss) from Equity Method Investees	-	-	-	-	-	-
Total Realized and Unrealized Gain/(Loss)	$ -	$ -	$ -	$ (51,775)	$ (51,775)	$ (88,922)
Net Income	$ (3,823)	$ (3,013)	$ (1,613)	$ (53,967)	$ (62,415)	$ (183,702)

Highland Capital Management, L.P.
Cash Flow Indirect
(US $000's)

	Forecast ---->									
	Sep-20	**Dec-20**	**Mar-21**	**Jun-21**	**Sep-21**	**Dec-21**	**Mar-22**	**Jun-22**	**Sep-22**	**Dec-22**
Net (Loss) Income	$ (16,708)	$ (21,247)	$ (71,794)	$ (28,167)	$ (8,134)	$ (13,192)	$ (3,823)	$ (3,013)	$ (1,613)	$ (53,967)
Cash Flow from Operating Activity										
(Increase) / Decrease in Cash										
Depreciation and amortization	231	231	231	231	-	-	-	-	-	
Other realized (gain)/ loss	-	-	763	(522)	-	-	-	-	-	51,756
Investment realized (gain)/ loss	(1,549)	12,262	290	22,559	4,702	9,355	-	-	-	-
Unrealized (gain) / loss	(9,150)	-	-	-	-	-	-	-	-	
(Increase) Decrease in Current Assets	(470)	3,092	930	1,884	417	1,933	(658)	(669)	(684)	2,010
Increase (Decrease) in Current Liabilities	(7,110)	(4,251)	(54,172)	(2,891)	-	-	-	-	-	
Net Cash Increase / (Decrease) - Operating Activities	(34,757)	(9,913)	(123,752)	(6,907)	(3,015)	(1,904)	(4,481)	(3,681)	(2,297)	(1,202)
Cash Flow From Investing Activities										
Proceeds from Sale of Fixed Assets	-	-	250	1,639	-	-	-	-	-	
Proceeds from Investment Assets	25,650	32,366	3,002	102,457	46,531	18,278	-	-	-	7,780
Net Cash Increase / (Decrease) - Investing Activities	25,650	32,366	3,252	104,096	46,531	18,278	-	-	-	7,780
Cash Flow from Financing Activities										
Claims payable	-	-	(73,997)	-	-	-	-	-	-	
Claim reclasses/(paid)	-	-	181,259	(5,210)	(50,000)	-	(50,000)	(25,000)	-	(28,942)
Maple Avenue Holdings	-	-	(4,975)	-	-	-	-	-	-	
Frontier Note	-	-	(5,195)	-	-	-	-	-	-	-
Net Cash Increase / (Decrease) - Financing Activities	-	-	97,092	(5,210)	(50,000)	-	(50,000)	(25,000)	-	(28,942)
Net Change in Cash	$ (9,107)	$ 22,454	$ (23,408)	$ 91,979	$ (6,484)	$ 16,374	$ (54,481)	$ (28,681)	$ (2,297)	$ (21,344)
Beginning Cash	14,994	5,888	28,342	4,934	96,913	90,428	106,803	52,322	23,641	21,344
Ending Cash	$ 5,887	$ 28,342	$ 4,934	$ 96,913	$ 90,428	$ 106,803	$ 52,322	$ 23,641	$ 21,344	$

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Counsel for the Debtor and Debtor-in-Possession

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

In re:	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
	§	
Debtor.	§	

DEBTOR'S MOTION FOR ENTRY OF AN ORDER APPROVING SETTLEMENT WITH HARBOURVEST (CLAIM NOS. 143, 147, 149, 150, 153, 154) AND AUTHORIZING ACTIONS CONSISTENT THEREWITH

TO THE HONORABLE STACEY G. C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE:

[1] The last four digits of the Debtor's taxpayer identification number are 6725. The headquarters and service address for the Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

Highland Capital Management, L.P., the above-captioned debtor and debtor-in-possession ("Highland" or the "Debtor"), files this motion (the "Motion") for entry of an order, substantially in the form attached hereto as **Exhibit A**, pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), approving a settlement agreement (the "Settlement Agreement"),[2] a copy of which is attached as Exhibit 1 to the *Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith* being filed simultaneously with this Motion ("Morris Dec."), that, among other things, fully and finally resolves the proofs of claim filed by HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P. (collectively, "HarbourVest"). In support of this Motion, the Debtor represents as follows:

JURISDICTION

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought herein are sections 105(a) and 363 of title 11 of the United States Code (the "Bankruptcy Code"), and Rule 9019 of the Bankruptcy Rules.

[2] All capitalized terms used but not defined herein shall have the meanings given to them in the Settlement Agreement.

RELEVANT BACKGROUND

A. Procedural Background

3. On October 16, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the "Delaware Court").

4. On October 29, 2019, the official committee of unsecured creditors (the "Committee") was appointed by the U.S. Trustee in the Delaware Court.

5. On December 4, 2019, the Delaware Court entered an order transferring venue of the Debtor's case to this Court [Docket No. 186].[3]

6. On December 27, 2019, the Debtor filed that certain *Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [Docket No. 281] (the "Settlement Motion"). This Court approved the Settlement Motion on January 9, 2020 [Docket No. 339] (the "Settlement Order").

7. In connection with the Settlement Order, an independent board of directors was constituted at the Debtor's general partner, Strand Advisors, Inc., and certain operating protocols were instituted.

8. On July 16, 2020, this Court entered an order appointing James P. Seery, Jr., as the Debtor's chief executive officer and chief restructuring officer [Docket No. 854].

9. The Debtor has continued in the possession of its property and has continued to operate and manage its business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this chapter 11 case.

[3] All docket numbers refer to the docket maintained by this Court.

B. Overview of HarbourVest's Claims

10. HarbourVest's claims against the Debtor's estate arise from its $80 million investment in Highland CLO Funding, f/k/a Acis Loan Funding, Ltd. ("HCLOF"), pursuant to which HarbourVest obtained a 49 percent interest in HCLOF (the "Investment").

11. In brief, HarbourVest contends that it was fraudulently induced into entering into the Investment based on the Debtor's misrepresentations and omissions concerning certain material facts, including that the Debtor: (1) failed to disclose that it never intended to pay an arbitration award obtained by a former portfolio manager, (2) failed to disclose that it engaged in a series of fraudulent transfers for the purpose of preventing the former portfolio manager from collecting on his arbitration award and misrepresented the reasons changing the portfolio manager for HCLOF immediately prior to the Investment, (3) indicated that the dispute with the former portfolio manager would not impact investment activities, and (4) expressed confidence in the ability of HCLOF to reset or redeem the collateralized loan obligations ("CLOs") under its control.

12. HarbourVest seeks to rescind its Investment and claims damages in excess of $300 million based on theories of fraud, fraudulent inducement, fraudulent concealment, fraudulent misrepresentation, negligent misrepresentation, and breach of fiduciary duty (under Guernsey law), and on alleged violations of state securities laws and the Racketeer Influenced Corrupt Organization Act ("RICO").

13. HarbourVest's allegations are summarized below.[4]

[4] Solely for purposes of this Motion, and not for any other reason, the facts set forth herein are adopted largely from the *HarbourVest Response to Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims* [Docket No. 1057] (the "Response").

C. Summary of HarbourVest's Factual Allegations

14. At the time HarbourVest made its Investment, the Debtor was embroiled in an arbitration against Joshua Terry ("Mr. Terry"), a former employee of the Debtor and limited partner of Acis Capital Management, L.P. ("Acis LP"). Through Acis LP, Mr. Terry managed Highland's CLO business, including CLO-related investments held by Acis Loan Funding, Ltd. ("Acis Funding").

15. The litigation between Mr. Terry and the Debtor began in 2016, after the Debtor terminated Mr. Terry and commenced an action against him in Texas state court. Mr. Terry asserted counterclaims for wrongful termination and for the wrongful taking of his ownership interest in Acis LP and subsequently had certain claims referred to arbitration where he obtained an award of approximately $8 million (the "Arbitration Award") on October 20, 2017.

16. HarbourVest alleges that the Debtor responded to the Arbitration Award by engaging in a series of fraudulent transfers and corporate restructurings, the true purposes of which were fraudulently concealed from HarbourVest.

17. For example, according to HarbourVest, the Debtor changed the name of the target fund from Acis Funding to "Highland CLO Funding, Ltd." ("HCLOF") and "swapped out" Acis LP for Highland HCF Advisor, Ltd. as portfolio manager (the "Structural Changes"). The Debtor allegedly told HarbourVest that it made these changes because of the "reputational harm" to Acis LP resulting from the Arbitration Award. The Debtor further told HarbourVest that in lieu of redemptions, resetting the CLOs was necessary, and that it would be easier to reset them under the "Highland" CLO brand instead of the Acis CLO brand.

18. In addition, HarbourVest also alleges that the Debtor had no intention of allowing Mr. Terry to collect on his Arbitration Award, and orchestrated a scheme to "denude"

Acis of assets by fraudulently transferring virtually all of its assets and attempting to transfer its profitable portfolio management contracts to non-Acis, Debtor-related entities.

19. Unaware of the fraudulent transfers or the true purposes of the Structural Changes, and in reliance on representations made by the Debtor, HarbourVest closed on its Investment in HCLOF on November 15, 2017.

20. After discovering the transfers that occurred between Highland and Acis between October and December 2017 following the Arbitration Award (the "Transfers"), on January 24, 2018, Terry moved for a temporary restraining order (the "TRO") from the Texas state court on the grounds that the Transfers were pursued for the purpose of rendering Acis LP judgment-proof. The state court granted the TRO, enjoining the Debtor from transferring any CLO management contracts or other assets away from Acis LP.

21. On January 30, 2018, Mr. Terry filed involuntary bankruptcy petitions against Acis LP and its general partner, Acis Capital Management GP, LLC. *See In re Acis Capital Management, L.P.*, Case No. 18-30264-sgj11 (Bankr. N.D. Tex. 2018) and *In re Acis Capital Management GP, LLC*, Case No. 18-30265-sgj11 (Bankr. N.D. Tex. 2018) (collectively, the "Acis Bankruptcy Case"). The Bankruptcy Court overruled the Debtor's objection, granted the involuntary petitions, and appointed a chapter 11 trustee (the "Acis Trustee"). A long sequence of events subsequently transpired, all of which relate to HarbourVest's claims, including:

- On May 31, 2018, the Court issued a *sua sponte* TRO preventing any actions in furtherance of the optional redemptions or other liquidation of the Acis CLOs.
- On June 14, 2018, HCLOF withdrew optional redemption notices.
- The TRO expired on June 15, 2018, and HCLOF noticed the Acis Trustee that it was requesting an optional redemption.

- HCLOF's request was withdrawn on July 6, 2018, and on June 21, 2018, the Acis Trustee sought an injunction preventing Highland/HCLOF from seeking further redemptions (the "Preliminary Injunction").

- The Court granted the Preliminary Injunction on July 10, 2018, pending the Acis Trustee's attempts to confirm a plan or resolve the Acis Bankruptcy.

- On August 30, 2018, the Court denied confirmation of the First Amended Joint Plan for Acis, and held that the Preliminary Injunction must stay in place on the ground that the "evidence thus far has been compelling that numerous transfers after the Josh Terry judgment denuded Acis of value."

- After the Debtor made various statements implicating HarbourVest in the Transfers, the Acis Trustee investigated HarbourVest's involvement in such Transfers, including extensive discovery and taking a 30(b)(6) deposition of HarbourVest's managing director, Michael Pugatch, on November 17, 2018.

- On March 20, 2019, HCLOF sent a letter to Acis LP stating that it was not interested in pursuing, or able to pursue, a CLO reset transaction.

D. The Parties' Pleadings and Positions Concerning HarbourVest's Proofs of Claim

22. On April 8, 2020, HarbourVest filed proofs of claim against Highland that were subsequently denoted by the Debtor's claims agents as claim numbers 143, 147, 149, 150, 153, and 154, respectively (collectively, the "Proofs of Claim"). Morris Dec. Exhibits 2-7.

23. The Proofs of Claim assert, among other things, that HarbourVest suffered significant harm due to conduct undertaken by the Debtor and the Debtor's employees, including "financial harm resulting from (i) court orders in the Acis Bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise relegated the activity of HCLOF [*i.e.*, the Preliminary Injunction]; and (ii) significant fees and expenses related to the Acis Bankruptcy that were charged to HCLOF." *See, e.g.*, Morris Dec. Exhibit 2 ¶3.

24. HarbourVest also asserted "any and all of its right to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the forgoing harm, including for any amounts due or owed under the various

agreements with the Debtor in connection with relating to" the Operative Documents "and any and all legal and equitable claims or causes of action relating to the forgoing harm." *See, e.g.*, Morris Dec. Exhibit 2 ¶4.

25. Highland subsequently objected to HarbourVest's Proofs of Claim on the grounds that they were no-liability claims. [Docket No. 906] (the "Claim Objection").

26. On September 11, 2020, HarbourVest filed its Response. The Response articulated specified claims under U.S. federal and state and Guernsey law, including claims for fraud, fraudulent concealment, fraudulent inducement, fraudulent misrepresentation, negligent misrepresentation (collectively, the "Fraud Claims"), U.S. State and Federal Securities Law Claims (the "Securities Claims"), violations of the Federal Racketeer Influenced and Corrupt Organizations Act ("RICO"), breach of fiduciary duty and misuse of fund assets, and an unfair prejudice claim under Guernsey law (collectively, with the Proofs of Claim, the "HarbourVest Claims").

27. On October 18, 2020, HarbourVest filed its *Motion of HarbourVest Pursuant to Rule 3018 of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan* [Docket No. 1207] (the "3018 Motion"). In its 3018 Motion, HarbourVest sought for its Claims to be temporarily allowed for voting purposes in the amount of more than $300 million (based largely on a theory of treble damages).

E. Settlement Discussions

28. In October, the parties discussed the possibility of resolving the Rule 3018 Motion.

29. In November, the parties broadened the discussions in an attempt to reach a global resolution of the HarbourVest Claims. In the pursuit thereof, the parties and their

counsel participated in several conference calls where they engaged in a spirited exchange of perspectives concerning the facts and the law.

30. During follow up meetings, the parties' interests became more defined. Specifically, HarbourVest sought to maximize its recovery while fully extracting itself from the Investment, while the Debtor sought to minimize the HarbourVest Claims consistent with its perceptions of the facts and law.

31. After the parties' interests became more defined, the principals engaged in a series of direct, arm's-length, telephonic negotiations that ultimately lead to the settlement, whose terms are summarized below.

F. Summary of Settlement Terms

32. The Settlement Agreement contains the following material terms, among others:

- HarbourVest shall transfer its entire interest in HCLOF to an entity to be designated by the Debtor;[5]
- HarbourVest shall receive an allowed, general unsecured, non-priority claim in the amount of $45 million and shall vote its Class 8 claim in that amount to support the Plan;
- HarbourVest shall receive a subordinated, allowed, general unsecured, non-priority claim in the amount of $35 million and shall vote its Class 9 claim in that amount to support the Plan;
- HarbourVest will support confirmation of the Debtor's Plan, including, but not limited to, voting its claims in support of the Plan;
- The HarbourVest Claims shall be allowed in the aggregate amount of $45 million for voting purposes;
- HarbourVest will support the Debtor's pursuit of its pending Plan of Reorganization; and
- The parties shall exchange mutual releases.

[5] The NAV for HarbourVest's 49.98% interest in HCLOF was estimated to be approximately $22 million as of December 1, 2020.

See generally Morris Dec. Exhibit 1.

BASIS FOR RELIEF REQUESTED

33. Bankruptcy Rule 9019 governs the procedural prerequisites to approval of a settlement, providing that:

> On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

FED. R. BANKR. P. 9019(a).

34. Settlements in bankruptcy are favored as a means of minimizing litigation, expediting the administration of the bankruptcy estate, and providing for the efficient resolution of bankruptcy cases. *See Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996); *Rivercity v. Herpel (In re Jackson Brewing Co.)*, 624 F.2d 599, 602 (5th Cir. 1980). Pursuant to Bankruptcy Rule 9019(a), a bankruptcy court may approve a compromise or settlement as long as the proposed settlement is fair, reasonable, and in the best interest of the estate. *See In re Age Ref. Inc.*, 801 F.3d 530, 540 (5th Cir. 2015). Ultimately, "approval of a compromise is within the sound discretion of the bankruptcy court." *See United States v. AWECO, Inc. (In re AWECO, Inc.)*, 725 F.2d 293, 297 (5th Cir. 1984); *Jackson Brewing*, 624 F.2d at 602–03.

35. In making this determination, the United States Court of Appeals for the Fifth Circuit applies a three-part test, "with a focus on comparing 'the terms of the compromise with the rewards of litigation.'" *Official Comm. of Unsecured Creditors v. Cajun Elec. Power Coop. (In re Cajun Elec. Power Coop.)*, 119 F.3d 349, 356 (5th Cir. 1997) (citing *Jackson Brewing*, 624 F.2d at 602). The Fifth Circuit has instructed courts to consider the following factors: "(1) The probability of success in the litigation, with due consideration for the uncertainty of law and fact, (2) The complexity and likely duration of the litigation and any

attendant expense, inconvenience and delay, and (3) All other factors bearing on the wisdom of the compromise." *Id.* Under the rubric of the third factor referenced above, the Fifth Circuit has specified two additional factors that bear on the decision to approve a proposed settlement. First, the court should consider "the paramount interest of creditors with proper deference to their reasonable views." *Id.*; *Conn. Gen. Life Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mortgage Corp.)*, 68 F.3d 914, 917 (5th Cir. 1995). Second, the court should consider the "extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion." *Age Ref. Inc.*, 801 F.3d at 540; *Foster Mortgage Corp.*, 68 F.3d at 918 (citations omitted).

36. There is ample basis to approve the proposed Settlement Agreement based on the Rule 9019 factors set forth by the Fifth Circuit.

37. First, although the Debtor believes that it has valid defenses to the HarbourVest Claims, there is no guarantee that the Debtor would succeed in its litigation with HarbourVest. Indeed, to establish its defenses, the Debtor would be required to rely, at least in part, on the credibility of witnesses whose veracity has already been called into question by this Court. Moreover, it will be difficult to dispute that the Transfers precipitated the Acis Bankruptcy, and, ultimately, the imposition of the Bankruptcy Court's TRO that restricted HCLOF's ability to reset or redeem the CLOs and that is at the core of the HarbourVest Claims.

38. The second factor—the complexity, duration, and costs of litigation—also weighs heavily in favor of approving the Settlement Agreement. As this Court is aware, the events forming the basis of the HarbourVest Claims—including the Terry Litigation and Acis Bankruptcy—proceeded *for years* in this Court and in multiple other forums, and has already cost the Debtor's estate millions of dollars in legal fees. If the Settlement Agreement is not approved, then the parties will expend significant resources litigating a host of fact-intensive

issues including, among other things, the substance and materiality of the Debtor's alleged fraudulent statements and omissions and whether HarbourVest reasonably relied on those statements and omissions.

39. Third, approval of the Settlement Agreement is justified by the paramount interest of creditors. Specifically, the settlement will enable the Debtor to: (a) avoid incurring substantial litigation costs; (b) avoid the litigation risk associated with HarbourVest's $300 million claim; and (c) through the plan support provisions, increase the likelihood that the Debtor's pending plan of reorganization will be confirmed.

40. Finally, the Settlement Agreement was unquestionably negotiated at arm's-length. The terms of the settlement are the result of numerous, ongoing discussions and negotiations between the parties and their counsel and represent neither party's "best case scenario." Indeed, the Settlement Agreement should be approved as a rational exercise of the Debtor's business judgment made after due deliberation of the facts and circumstances concerning HarbourVest's Claims.

NO PRIOR REQUEST

41. No previous request for the relief sought herein has been made to this, or any other, Court.

NOTICE

42. Notice of this Motion shall be given to the following parties or, in lieu thereof, to their counsel, if known: (a) counsel for HarbourVest; (b) the Office of the United States Trustee; (c) the Office of the United States Attorney for the Northern District of Texas; (d) the Debtor's principal secured parties; (e) counsel to the Committee; and (f) parties requesting notice pursuant to Bankruptcy Rule 2002. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Debtor respectfully requests entry of an order, substantially in the form attached hereto as Exhibit A, (a) granting the relief requested herein, and (b) granting such other relief as is just and proper.

Dated: December 23, 2020.

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ATTORNEYS FOR CLO HOLDCO, LTD.

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

In re:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054-SGJ
	§	
Debtor.	§	Chapter 11
	§	

CLO HOLDCO, LTD.'S OBJECTION TO HARBOURVEST SETTLEMENT

TO THE HONORABLE STACEY G. JERNIGAN, U.S. BANKRUPTCY JUDGE:

CLO Holdco, Ltd. ("**CLO Holdco**") respectfully files this *Objection to Harbourvest Settlement* (the "**Harbourvest Settlement Objection**") which seeks entry of an order from this Court denying the Debtor's *Motion for Entry of an Order Approving Settlement with Harbourvest (Claims Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith* (the "**Harbourvest Settlement Motion**") for the reasons stated below. In support of the Harbourvest Settlement Objection, CLO Holdco respectfully states as follows:

I.
BACKGROUND

A. TRANSFERRING SHARES IN HCLOF

1. CLO Holdco owns 75,061,630.55 shares, or about 49.02% of Highland CLO Funding, Ltd. ("**HCLOF**"). Other shareholders include Harbourvest 2017 Global AIF L.P., Harbourvest Global Fund L.P., Harbourvest Dover Street IX Investment L.P., and Harbourvest Skew Base AIF L.P., and HV International VIII Secondary L.P. (collectively, "**Harbourvest**"). Harbourvest owns approximately 49.98% of HCLOF. The remaining 1% is owned by the Debtor and a five other investors.

2. HCLOF is governed by a *Members Agreement Relating to the Company* dated November 15, 2017 by and between each of the members of HCLOF, including Harbourvest, the Debtor, and CLO Holdco (the "**Member Agreement**"). A copy of that agreement is attached hereto as **Exhibit A**.

3. Section 6 of the Member Agreement addresses the "Transfer or Disposals of Shares." MEMBER AGREEMENT, § 6. The Member Agreement places strict restrictions on the sale or transfer of shares to entities other than the initial Member's own affiliates. *See id.* at §§ 6.1, 6.2. Before a Member can transfer its interests to a party other than its own affiliates it must: (i) obtain the prior written consent of the Portfolio Manager; and (ii) "offer to the other Members a right to purchase the Shares, on a pro rata basis with respect to their current Shares, at the same price (which must be cash) as such Shares are proposed to be purchased by the prospective third party purchaser pursuant to an irrevocable offer letter" (the "**Right of First Refusal**"). *Id.* As further stated in section 6.2 of the Member Agreement, "The other Members will have 30 days following receipt of the letter to determine whether to purchase their entire pro rata portion of the Shares proposed to be Transferred." *Id.* at § 6.2.

B. THE HARBOURVEST SETTLEMENT

4. On December 23, 2020, the Debtor filed the Harbourvest Settlement Motion. On the following day, the Debtor filed a copy of the Settlement Agreement referenced in the

Harbourvest Settlement Motion (the "**Settlement Agreement**") [Dkt. No. 3]. In the Settlement Agreement, Harbourvest represents and warrants that it is authorized to transfer its interest in HCLOF to the Transferee, HCMLP Investments, LLC (the "**Transferee**"). SETTLEMENT AGREEMENT, Ex. A. § 3. Further, the Transferee and Debtor agree to be bound by the terms and conditions of the Member Agreement. *Id.* at § 1.c.

5. In exchange for conveniently classified allowed claims under the Debtor's *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (the "**Plan**") [Dkt. No. 1472], Harbourvest agrees to vote in favor of the Plan and to transfer all of its interests in HCLOF to the Transferee. SETTLEMENT AGREEMENT, § 1.

6. As detailed below, CLO Holdco objects to the Harbourvest Settlement Motion because Harbourvest has no authority to transfer its interests in HCLOF without first complying with the Right of First Refusal. The only way to effectuate such a transfer without first providing other members the Right of First Refusal is an intentionally inaccurate interpretation of the Member Agreement's contractual provisions that would render specific passages redundant and meaningless. More simply put, the only way Harbourvest and the Debtor could effectuate the Settlement Agreement is by violating fundamental tenets of contract interpretation.

II.
ARGUMENTS AND AUTHORITIES

A. CONTRACT INTERPRETATION – AVOIDING REDUNDANCIES AND SURPLUS LANGUAGE

7. The Fifth Circuit recognizes fundamental tenets of contract interpretation, and notes that "contracts should be read as a whole, viewing particular language in the context in which it appears. *Woolley v. Clifford Chance Rogers & Wells, L.L.P.*, 51 F. App'x 930 (5th Cir. 2002) (citing Restatement (Second) of Contracts § 202 (1981)). The Fifth Circuit has applied substantially the same tenets of contract interpretation across the laws of various jurisdictions, and consistently reasons that "[a]ll parts of the agreement are to be reconciled, if possible, in order to avoid an

inconsistency. A specific provision will not be set aside in favor of a catch-all clause." *Broad v. Rockwell Int'l Corp.*, 642 F.2d 929, 947 (5th Cir. 1981) (internal citations omitted); and *see Hawthorne Land Co. v. Equilon Pipeline Co., LLC*, 309 F.3d 888, 892–93 (5th Cir. 2002); *Luv N' Care, Ltd. v. Groupo Rimar*, 844 F.3d 442, 447 (5th Cir. 2016); *Wooley*, 51 F.Appx. at 930.

8. Reconciliation of terms that would otherwise render other parts of a contract redundant is fundamental to proper contract interpretation. *Hawthorne Land*, 309 F.3d at 892-93. As the Firth Circuit explained in *Hawthorne Land*, "each provision of a contract must be read in light of the other provisions so that each is given the meaning suggested by the contract as a whole. A contract should be interpreted so as to avoid neutralizing or ignoring a provision or treating it as surplusage." *Id.* (internal citations and quotations omitted). In other words, provisions of a contract should be read to create harmony, not internal inconsistencies, redundancies, and unnecessary surplus language. *See, e.g., Luv N' Care*, 844 F.3d at 447 (overturning district court on appeal by interpreting contract in manner that eliminated perceived redundancy).

B. ANALYZING THE MEMBER AGREEMENT

9. Section 6.1 of the Member Agreement will almost certainly be cited by the Debtor and Harbourvest as authority for their entry into the Settlement Agreement, regardless of whether other Members or the Portfolio Manager consent. It states, in pertinent part, that:

> No Member shall sell, pledge, charge, mortgage, assign, assign by way of security, transfer, convey, exchange or otherwise dispose of its Shares or its commitment to settle purchases of Shares under the Subscription and Transfer Agreement (each a "Transfer"), other than to an Affiliate of an initial Member party hereto, without the prior written consent of the Portfolio Manager…

MEMBER AGREEMENT, § 6.1. Harbourvest will likely stress that under the terms of the Member Agreement, it can transfer its interests so long as the transfer is to "an Affiliate of an initial Member." Indeed, the Debtor will no doubt point out to this Court that Harbourvest is

conveniently transferring its interests in HCLOF to an Affiliate of the Debtor, and that the Debtor is an initial Member listed in the Member Agreement.

10. Section 6.1, however, must be read in the context of the Member Agreement, and in conjunction with the transfer restrictions found in section 6.2. Read together it is clear that the consent exception allowing a transfer in 6.1 was intended to allow a Member to transfer its shares to *its* own Affiliate, without required consents and effectuating a Right of First Refusal. Doing so would allow inter-company transfers within a corporate structure without the need for complicated procedures. Applying Fifth Circuit precedent, this interpretation fits squarely within the agreement and gives weight to the terms of section 6.2 of the Member Agreement, as explained below.

(i) Surplusage – Specific Allowance of Transfers by CLO Holdco to Debtor Affiliates

11. Recall that both CLO Holdco and the Debtor are initial Members to the Member Agreement. MEMBER AGREEMENT, p. 3. Section 6.2 of the Member Agreement states, in pertinent part, that "Prior to making any Transfer of Shares (other than Transfers to Affiliates of an initial Member or, *in the case of CLO Holdco or a Highland Principal, to Highland, its Affiliates or another Highland Principal*) a Member must first…" comply with the Right of First Refusal. *Id.* at § 6.2 (emphasis added). The italicized language above is important for two reasons: (i) it specifically enumerates that CLO Holdco can transfer its interests to Debtor Affiliates without having to pursue the Right of First Refusal; and (ii) it allows only limited transfers between Members, as opposed to between a Member and an Affiliate of an initial Member.

12. If, as the Debtor and Harbourvest will likely argue, Members are allowed to transfer their interests to any Affiliates of any other initial Members, there is absolutely no need for the Member Agreement to specifically authorize CLO Holdco to transfer its interests to the Debtor's Affiliates. Per Fifth Circuit fundamentals of contract interpretation, that purported redundancy

should not be discarded as mere surplusage, and the Member Agreement should be interpreted in a manner that gives weight to that provision. *Hawthorne Land*, 309 F.3d at 892-93.

13. If the Member Agreement is read to literally allow all "Transfers to Affiliates of an initial Member" there would be no reason to expressly set forth allowed transfers between specific Members and other Member's Affiliates. If the Member Agreement sought to list all allowed transfers between Members and their Affiliates, it should have similarly noted that any Member could transfer its interest to any Harbourvest Member entity, as each Harbourvest Member entity is an Affiliate of the other Harbourvest Member entities. Alternatively, if the specific enumeration of CLO Holdco and the Highland Principals' transfer rights was surplusage, it would presumably have listed other parties' rights, or had inclusive language such as "including but not limited to" or "for example." The Member Agreement lacks such language and, as a result, should be interpreted in a manner that both gives weight to the specific provision while reconciling other provisions of the contract.

(ii) Absurd Results – Disparate Transfer Rights Between Members

14. Note that the Member Agreement does not generally allow a transfer of interests from Member to Member unless specifically enumerated. Section 6.2 specifically allows only CLO Holdco and the Highland Principals to make transfers to other Members, but those other Members include only the Debtor or another Highland Principal. MEMBER AGREEMENT, § 6.2. It does not allow the Debtor to transfer interests to any Member, and does not expressly allow any Member, other than limited transfers by CLO Holdco and the Highland Principals, to transfer interests to any other Member. *Id.* For instance, if the Debtor wished to transfer its interests to CLO Holdco, it would first have to offer *all* of the other Members their Right of First Refusal. *Id.*

15. Similarly, if Harbourvest wished to transfer its interest to CLO Holdco, it could not do so without first providing the Right of First Refusal to all other Members. *Id.* As noted above,

however, allowing a Member to transfer its interest to an Affiliate of any initial Member would allow *all* of the Members to transfer their interests to any Harbourvest Member entity, as the Harbourvest Members are Affiliates of each other. Given the specific enumeration of CLO Holdco and the Highland Principals' rights to inter-Member transfers, it would be inconsistent to expand that specific provision to allow all transfers by all Members to any Harbourvest entity without first providing a Right of First Refusal.

16. Such a reading would lead to absurd results. It would grant similarly situated Members profoundly disparate rights under the agreement, and could easily lead to manipulation. For instance, because the Harbourvest Members are technically Affiliates of an initial Member (each other), they could obtain control of all of the interests in HCLOF without any Member receiving a Right of First Refusal for any transfer. No other Member could do that. For instance, if CLO Holdco wished to acquire other Members' interests, the transferring member (including Harbourvest) would have to offer a Right of First Refusal in *every instance*. To resolve that potential disparate treatment—though CLO Holdco and Harbourvest own nearly identical ownership interests in HCLOF—CLO Holdco would have to form an Affiliate and acquire interests through the Affiliate. That simply *cannot* be the intended result of the Member Agreement.

17. Instead, the Member Agreement must be read to require Harbourvest to provide a Right of First Refusal to the other Members of HCLOF before transferring its interests to either the Debtor or the Transferee.

C. THE RIGHT OF FIRST REFUSAL IN BANKRUPTCY

18. Most cases addressing third party rights of first refusal in bankruptcy involve the assignment of leases and landlords' rights of first refusal. In those cases, courts analyze whether such a provision in the *debtor's* contract is a defacto restriction on assignment that may be excised

from the agreement. This case is very different. Here, it is a creditor that owes a right of first refusal to another non-debtor entity.

19. Even so, at least one court has issued telling commentary on a bankruptcy court's ability to excise provisions of a bargained-for contract, stating "A bankruptcy court's authority to excise a bargained for element of a contract is questionable and modification of a nondebtor contracting party's rights is not to be taken lightly." *In re E-Z Serve Convenience Stores, Inc.*, 289 B.R. 45, 51-52 (Bankr. M.D.N.C. 2003) (citing *In re Joshua Slocum Ltd.*, 922 F.2d 1081, 1091 (3d Cir. 1991)). CLO Holdco was unable to find any case that would allow a bankruptcy court to invalidate or otherwise excise a third party's right of first refusal in what largely amounts to a non-debtor contract.

20. As the Member Agreement requires Harbourvest to provide a Right of First Refusal to the non-Debtor Members under section 6.2 of the Agreement, and such Members have 30 days to review and determine whether to purchase their pro-rata shares offered by Harbourvest, Harbourvest lacks contractual authority to enter into the Settlement Agreement.

D. HARBOURVEST'S LACK OF AUTHORITY PRECLUDES ENFORCEMENT OF SETTLEMENT

21. Harbourvest has not completed its conditions precedent to the transfer of its interest to Transferee under the Member Agreement. As detailed above, and in section 6.2 of the Agreement, Harbourvest must effectuate the Right of First Refusal before it can transfer its interests in HCLOF. MEMBER AGREEMENT, § 6.2. Harbourvest is, in essence, bound by the condition precedent of effectuating the Right of First Refusal before it is authorized under the Member Agreement to enter into the Settlement Agreement.

22. Courts should not enforce a settlement agreement where a party has a condition precedent to entry into the agreement and fails to satisfy that condition. *In re De La Fuente*, 409 B.R. 842, 846 (Bankr. S.D. Tex. 2009). As noted in part in *De La Fuente*, the court would not recognize

or enforce a settlement where the parties were subject to conditions precedent before the settlement could be effective, and the conditions precedent were not satisfied. This Court should similarly deny Harbourvest's proposed settlement, as it would deny the Members' Right of First Refusal, which is the benefit of their bargain under the Member Agreement.

III.
PRAYER FOR RELIEF

WHEREFORE, CLO Holdco requests that this Court grant the Objection and enter an order denying the Harbourvest Settlement Motion.

DATED: January 8, 2020

Respectfully submitted,

KANE RUSSELL COLEMAN LOGAN PC

By: */s/ John J. Kane*
Joseph M. Coleman
State Bar No. 04566100
John J. Kane
State Bar No. 24066794

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ATTORNEYS FOR CLO HOLDCO, LTD.

CERTIFICATE OF SERVICE

I hereby certify that on January 8, 2020, a true and correct copy of the foregoing CLO Holdco Objection was served via the Court's electronic case filing (ECF) system upon all parties receiving such service in this bankruptcy case; and via e-mail upon the United States Trustee at Lisa.L.Lambert@usdoj.gov and upon the following parties:

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/s/ John J. Kane
John J. Kane

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

In Re: Highland Capital Management, L.P.	§	Case No.	**19-34054-sgj11**
CLO HoldCo, Ltd.	§		
Appellant	§		
vs.	§		
Marc Kirschner	§		
Appellee	§		**3:22-CV-02051-B**

[3457] Order denying motion motion to ratify second amended proof of claim and expunging claim (related document # 3178) Entered on 8/17/2022

APPELLEE RECORD
VOLUME 14

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Counsel for Marc S. Kirschner, as Litigation Trustee of the Highland Litigation Sub-Trust

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., [1]	Case No. 19-34054-sgj11
Debtor.	
CLO HOLDCO, LTD.,	Case No. 3:22-cv-02051-B
Appellant,	
v.	
MARC S. KIRSCHNER, AS LITIGATION TRUSTEE OF THE LITIGATION SUB-TRUST,	
Appellee.	

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APPELLEE'S SUPPLEMENTAL DESIGNATION OF RECORD ON APPEAL PURSUANT TO FED. R. BANKR. P. 8009(a)(2)

[1] The last four digits of the Reorganized Debtor's taxpayer identification number are (8357). The Reorganized Debtor is a Delaware limited partnership. The Reorganized Debtor's headquarters and service address are 100 Crescent Court, Suite 1850, Dallas, TX 75201.

Pursuant to Rule 8009(a)(2) of the Federal Rules of Bankruptcy Procedure, Marc Kirschner, as Litigation Trustee for the Litigation Sub-Trust ("Appellee"), created by Highland Capital Management, L.P.'s *Fifth Amended Plan of Reorganization*, by and through his undersigned counsel, hereby submits his supplemental designation of items to be included in the record on appeal filed by CLO Holdco, Ltd. ("Appellant") from the *Order Denying Motion to Ratify Second Amended Proof of Claim and Expunging Claim* [Dkt. No. 3457] (the "Order"), entered by the above named Bankruptcy Court in the above captioned Bankruptcy Case on August 17, 2022. Appellee respectfully reserves the right to supplement and/or amend the record on appeal designated herein.

I. Supplemental Items from the Docket in the Bankruptcy Case

Appellee designates the following additional items from the docket in the Bankruptcy Case, in addition to the items previously designated by the Appellant:

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Date	Docket No.	Description
12/04/2019	11	Affidavit/ Declaration by Frank Waterhouse in Support of First Day Motion filed by Highland Capital Management, L.P.
03/02/2020	488	Order Granting Motion Establishing Bar Dates for Filing Claims
09/23/2020	1090	Declaration of John Morris (and all exhibits and attachments thereto) in support of Dkt. No. 1089, Motion to Compromise with the Redeemer Committee
09/29/2020	1113	Certificate of Service of Dkt. No. 1089, Motion to Compromise with the Redeemer Committee
11/06/2020	1339	Notice of appeal by UBS AG London Branch from Dkt. No. 1273, the Motion to Compromise Controversy with the Redeemer Committee
11/24/2020	1472	Debtor's Amended Chapter 11 Plan
11/24/2020	1473	Debtor's Amended Disclosure Statement to Amended Chapter 11 Plan
12/23/2020	1625	Debtor's Motion to Compromise Controversy with HarbourVest

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01/08/2021	1707	Objection by CLO Holdco to Dkt. No. 1625, the Motion to Compromise Controversy with HarbourVest
02/22/2021	1943	Order confirming Debtor's Fifth Amended Chapter 11 Plan, Dkt. No. 1472, as modified
05/14/2021	2309	Order to Show Cause
11/09/2021	3000	Objection to Claim of Creditor Jean-Paul Sevilla
12/09/2021	3091	Stipulation between Litigation Trustee and Creditors Scott Ellington, Jean-Paul Sevilla, Isaac Leventon, and Frank Waterhouse, re: Dkt. Nos. 3000 and 3001
12/15/2021	3121	Notice of hearing re: Dkt. No. 3001
01/07/2022	3164	Order Approving Dkt. No. 3091, Stipulation between Litigation Trustee and Sevilla, Ellington, Leventon, and Waterhouse
01/11/2022	3178	CLO Holdco's Motion to Ratify Second Amended Proof of Claim No. 198
02/01/2022	3220-1	Exhibit 1, Declaration by Deborah Newman (and all attachments or exhibits thereto), in support of Dkt. No. 3220, the Trustee's Opposition to Dkt. No. 3178, CLO Holdco's Motion to Ratify
1/17/2021	1765	Transcript regarding hearing held on 1/14/2021 re: Dkt. No. 1707
08/28/2021	2794	Transcript regarding Hearing Held 08/19/2021 RE: Motion to Extend the Stay in Trustee's Adversary Proceeding

II. Supplemental Items Not on Bankruptcy Case Docket

Appellee designates the following items not found on the docket but pertinent to this appeal:

003618
003625
003627

Date	**Description**
10/16/2019	Hearing Transcript, *Redeemer Comm. Of the Highland Crusader Fund v. Highland Capital Mgmt., L.P.*, C.A. No. 12533-VCZ (Del. Ch. Oct. 16, 2019) (attached hereto as **Exhibit 1**)
06/14/2021	Electronic Order, *UBS Securities LLC et al. v. Highland Capital Management LP*, Case No. 3:20-cv-03408-G (N.D. Tex. 2020) (attached hereto as **Exhibit 2**)
08/02/2022	Email dated Aug. 2, 2022 to Traci Ellison (attached hereto as **Exhibit 3**)

Appellee reserves the right to designate additional items depending on the arguments made by Appellant on appeal.

Dated: September 28, 2022

Respectfully submitted,

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-and-

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Counsel for Marc S. Kirschner, as Litigation Trustee of the Highland Litigation Sub-Trust

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a true and correct copy of the above and foregoing document and all attachments thereto were sent via electronic mail via the Court's ECF system to all parties authorized to receive electronic notice in this case on this 28th day of September, 2022.

/s/ Paige Holden Montgomery
Paige Holden Montgomery

The following constitutes the ruling of the court and has the force and effect therein described.

Signed February 22, 2021

United States Bankruptcy Judge

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	

ORDER (I) CONFIRMING THE FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND CAPITAL MANAGEMENT, L.P. (AS MODIFIED) AND (II) GRANTING RELATED RELIEF

The Bankruptcy Court[2] having:

a. entered, on November 24, 2020, the *Order (A) Approving the Adequacy of the Disclosure Statement, (B) Scheduling A Hearing to Confirm the Fifth Amended Plan of Reorganization (C) Establishing Deadline for Filing Objections to Confirmation of Plan, (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures, and (E) Approving Form and Manner of Notice* [Docket No. 1476] (the "Disclosure Statement Order"), pursuant to which the Bankruptcy Court approved the adequacy of the *Disclosure Statement Relating to the Fifth*

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

[2] Capitalized terms used but not otherwise defined herein have the meanings given to them in the Plan (as defined below). The rules of interpretation set forth in Article I of the Plan apply to this Confirmation Order.

Amended Plan of Reorganization of Highland Capital Management, L.P. [Docket No. 1473] (the "Disclosure Statement") under section 1125 of the Bankruptcy Code and authorized solicitation of the Disclosure Statement;

b. set January 5, 2021, at 5:00 p.m. prevailing Central Time (the "Objection Deadline"), as the deadline for filing objections to confirmation of the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (*As Modified*) [Docket No. 1808] (as amended, supplemented or modified, the "Plan");

c. set January 5, 2021, at 5:00 p.m. prevailing Central Time, as the deadline for voting on the Plan (the "Voting Deadline") in accordance with the Disclosure Statement Order;

d. initially set January 13, 2021, at 9:30 a.m. prevailing Central Time, as the date and time to commence the hearing to consider confirmation of the Plan pursuant to Bankruptcy Rules 3017 and 3018, sections 1126, 1128, and 1129 of the Bankruptcy Code, and the Disclosure Statement Order, which hearing was continued to January 26, 2021, at 9:30 a.m. prevailing Central Time and further continued to February 2, 2021;

e. reviewed: (i) the Plan; (ii) the Disclosure Statement; and (iii) *Notice of (I) Entry of Order Approving Disclosure Statement; (II) Hearing to Confirm; and (III) Related Important Dates* (the "Confirmation Hearing Notice"), the form of which is attached as Exhibit 1-B to the Disclosure Statement Order;

f. reviewed: (i) the *Debtor's Notice of Filing of Plan Supplement for the Third Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1389] filed November 13, 2020; (ii) *Debtor's Notice of Filing of Plan Supplement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1606] filed on December 18, 2020; (iii) the *Debtor's Notice of Filing of Plan Supplement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1656] filed on January 4, 2021; (iv) *Notice of Filing Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (with Technical Modifications)t* dated January 22, 2021 [Docket No. 1811]; and (v) *Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland of Highland Capital Management, L.P. (As Modified)* on February 1, 2021 [Docket No. 1875]; (collectively, the documents listed in (i) through (v) of this paragraph, the "Plan Supplements");

g. reviewed: (i) the *Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on December 30, 2020 [Docket No. 1648]; (ii) the *Second Notice of (I) Executory Contracts and*

Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith filed on January 11, 2021 [Docket No.1719]; (iii) the *Third Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on January 15, 2021 [Docket No. 1749]; (iv) the *Notice of Withdrawal of Certain Executory Contracts and Unexpired Leases from List of Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan* [Docket No. 1791]; (v) the *Fourth Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan (II) Cure Amounts, if Any, and (III) Released Procedures in Connection Therewith* filed on January 27, 2021 [Docket No. 1847]; (vi) the *Notice of Hearing on Agreed Motion to (I) Assume Nonresidential Real Property Lease with Crescent TC Investors, L.P. Upon Confirmation of Plan and (II) Extend Assumption Deadline* filed on January 28, 2021 [Docket No. 1857]; and (vii) the *Fifth Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan (II) Cure Amounts, if Any, and (III) Released Procedures in Connection Therewith* filed on February 1, 2021 [Docket No. 1873] (collectively, the documents referred to in (i) to (vii) are referred to as "List of Assumed Contracts");

h. reviewed: (i) the *Debtor's Memorandum of Law in Support of Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1814] (the "Confirmation Brief"); (ii) the *Debtor's Omnibus Reply to Objections to Confirmation of the Fifth Amended Chapter 11 Plan of Reorganization of Highland Capital Management*; [Docket No. 1807]; and (iii) the *Certification of Patrick M. Leathem With Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1772] and *Supplemental Certification of Patrick M. Leathem With Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1887] filed on February 3, 2021 (together, the "Voting Certifications").

i. reviewed: (i) the *Notice of Affidavit of Publication* dated December 3, 2020 [Docket No. 1505]; (ii) the *Certificate of Service* dated December 23, 2020 [Docket No. 1630]; (iii) the *Supplemental Certificate of Service* dated December 24, 2020 [Docket No. 1637]; (iv) the *Second Supplemental Certificate of Service* dated December 31, 2020 [Docket No. 1653]; (v) the *Certificate of Service* dated December 23, 2020 [Docket No. 1627]; (vi) the *Certificate of Service* dated January 6, 2021 [Docket No. 1696]; (vii) the *Certificate of Service* dated January 7, 2021 [Docket No. 1699]; (viii) the *Certificate of Service* dated January 7, 2021 [Docket No 1700]; (ix) the *Certificate of Service* dated January 15, 2021 [Docket No. 1761]; (x) the *Certificate of Service* dated January 19, 2021 [Docket No. 1775]; (xi) the

Certificate of Service dated January 20, 2021 [Docket No. 1787]; (xii) the *Certificate of Service* dated January 26, 2021[Docket No. 1844]; (xiii) the *Certificate of Service* dated January 27, 2021 [Docket No. 1854]; (xiv) the *Certificate of Service* dated February 1, 2021 [Docket No. 1879]; (xv) the *Certificates of Service* dated February 3, 2021 [Docket No. 1891 and 1893]; and (xvi) the *Certificates of Service* dated February 5, 2021 [Docket Nos. 1906, 1907, 1908 and 1909] (collectively, the "Affidavits of Service and Publication");

j. reviewed all filed[3] pleadings, exhibits, statements, and comments regarding approval of the Disclosure Statement and confirmation of the Plan, including all objections, statements, and reservations of rights;

k. conducted a hearing to consider confirmation of the Plan, which commenced on February 2, 2021, at 9:30 a.m. prevailing Central Time and concluded on February 3, 2021, and issued its oral ruling on February 8, 2021 (collectively, the "Confirmation Hearing");

l. heard the statements and arguments made by counsel in respect of confirmation of the Plan and having considered the record of this Chapter 11 Case and taken judicial notice of all papers and pleadings filed in this Chapter 11 Case; and

m. considered all oral representations, testimony, documents, filings, and other evidence regarding confirmation of the Plan, including (a) all of the exhibits admitted into evidence;[4] (b) the sworn testimony of (i) James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer and a member of the Board of Directors of Strand Advisors, Inc. ("Strand"), the Debtor's general partner; (ii) John S. Dubel, a member of the Board of Strand; (iii) Marc Tauber, a Vice President at Aon Financial Services; and (iv) Robert Jason Post, the Chief Compliance Officer of NexPoint Advisors, LP (collectively, the "Witnesses"); (c) the credibility of the Witnesses; and (d) the Voting Certifications.

NOW, THEREFORE, after due deliberation thereon and good cause appearing therefor, the Bankruptcy Court hereby makes and issues the following findings of fact and conclusions of law:

[3] Unless otherwise indicated, use of the term "filed" herein refers also to the service of the applicable document filed on the docket in this Chapter 11 Case, as applicable.

[4] The Court admitted the following exhibits into evidence: (a) all of the Debtor's exhibits lodged at Docket No. 1822 (except TTTTT, which was withdrawn by the Debtor); (b) all of the Debtor's exhibits lodged at Docket No. 1866; (c) all of the Debtor's exhibits lodged at Docket No. 1877; (d) all of the Debtor's exhibits lodged at Docket No. 1895; and (e) Exhibits 6-12 and 15-17 offered by Mr. James Dondero and lodged at Docket No. 1874.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. **Findings of Fact and Conclusions of Law.** The findings and conclusions set forth herein, together with the findings of fact and conclusions of law set forth in the record during the Confirmation Hearing, constitute the Bankruptcy Court's findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, made applicable to this proceeding pursuant to Bankruptcy Rules 7052 and 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

2. **Introduction and Summary of the Plan.** Prior to addressing the specific requirements under the Bankruptcy Code and Bankruptcy Rules with respect to the confirmation of the Plan, the Bankruptcy Court believes it would be useful to first provide the following background of the Debtor's Chapter 11 Case, the parties involved therewith, and some of the major events that have transpired culminating in the filing and solicitation of the Plan of this very unusual case. Before the Bankruptcy Court is the *Debtor's Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*, filed on November 24, 2020, as modified on January 22, 2021 and again on February 1, 2021. The parties have repeatedly referred to the Plan as an "asset monetization plan" because it involves the orderly wind-down of the Debtor's estate, including the sale of assets and certain of its funds over time, with the Reorganized Debtor continuing to manage certain other funds, subject to the oversight of the Claimant Trust Oversight Board. The Plan provides for a Claimant Trust to, among other things, manage and monetize the Claimant Trust Assets for the benefit of the Debtor's economic stakeholders. The Claimant Trustee is responsible

for this process, among other duties specified in the Plan's Claimant Trust Agreement. There is also anticipated to be a Litigation Sub-trust established for the purpose of pursuing certain avoidance or other causes of action for the benefit of the Debtor's economic constituents.

3. **Confirmation Requirements Satisfied.** The Plan is supported by the Committee and all claimants with Convenience Claims (*i.e.*, general unsecured claims under $1 million) who voted in Class 7. Claimants with Class 8 General Unsecured Claims, however, voted to reject the Plan because, although the Plan was accepted by 99.8% of the amount of Claims in that class, only 17 claimants voted to accept the Plan while 27 claimants voted to reject the Plan. As a result of such votes, and because Mr. Dondero and the Dondero Related Entities (as defined below) objected to the Plan on a variety of grounds primarily relating to the Plan's release, exculpation and injunction provisions, the Bankruptcy Court heard two full days of evidence on February 2 and 3, 2021, and considered testimony from five witnesses and thousands of pages of documentary evidence in determining whether the Plan satisfies the confirmation standards required under the Bankruptcy Code. The Bankruptcy Court finds and concludes that the Plan meets all of the relevant requirements of sections 1123, 1124, and 1129, and other applicable provisions of the Bankruptcy Code, as more fully set forth below with respect to each of the applicable confirmation requirements.

4. **Not Your Garden Variety Debtor**. The Debtor's case is not a garden variety chapter 11 case. The Debtor is a multibillion-dollar global investment adviser registered with the SEC, pursuant to the Investment Advisers Act of 1940. It was founded in 1993 by James Dondero and Mark Okada. Mark Okada resigned from his role with Highland prior to the

bankruptcy case being filed on October 16, 2019 (the "Petition Date"). Mr. Dondero controlled the Debtor as of the Petition Date but agreed to relinquish control of it on or about January 9, 2020, pursuant to an agreement reached with the Committee, as described below. Although Mr. Dondero remained with the Debtor as an unpaid employee/portfolio manager after January 9, 2020, his employment with the Debtor terminated on October 9, 2020. Mr. Dondero continues to work for and/or control numerous non-debtor entities in the complex Highland enterprise.

5. **The Debtor**. The Debtor is headquartered in Dallas, Texas. As of the Petition Date, the Debtor employed approximately 76 employees. The Debtor is privately-owned: (a) 99.5% by the Hunter Mountain Investment Trust; (b) 0.1866% by The Dugaboy Investment Trust, a trust created to manage the assets of Mr. Dondero and his family; (c) 0.0627% by Mark Okada, personally and through family trusts; and (d) 0.25% by Strand, the Debtor's general partner.

6. **The Highland Enterprise.** Pursuant to various contractual arrangements, the Debtor provides money management and advisory services for billions of dollars of assets, including collateralized loan obligation vehicles ("CLOs"), and other investments. Some of these assets are managed by the Debtor pursuant to shared services agreements with certain affiliated entities, including other affiliated registered investment advisors. In fact, there are approximately 2,000 entities in the byzantine complex of entities under the Highland umbrella. None of these affiliated entities filed for chapter 11 protection. Most, but not all, of these entities are not subsidiaries (direct or indirect) of the Debtor. Many of the Debtor's affiliated companies are

offshore entities, organized in jurisdictions such as the Cayman Islands and Guernsey. *See* Disclosure Statement, at 17-18.

7. **Debtor's Operational History.** The Debtor's primary means of generating revenue has historically been from fees collected for the management and advisory services provided to funds that it manages, plus fees generated for services provided to its affiliates. For additional liquidity, the Debtor, prior to the Petition Date, would sell liquid securities in the ordinary course, primarily through a brokerage account at Jefferies, LLC. The Debtor would also, from time to time, sell assets at non-Debtor subsidiaries and cause those proceeds to be distributed to the Debtor in the ordinary course of business. The Debtor's current Chief Executive Officer, James P. Seery, Jr., credibly testified at the Confirmation Hearing that the Debtor was "run at a deficit for a long time and then would sell assets or defer employee compensation to cover its deficits." The Bankruptcy Court cannot help but wonder if that was necessitated because of enormous litigation fees and expenses incurred by the Debtor due to its culture of litigation—as further addressed below.

8. **Not Your Garden Variety Creditor's Committee**. The Debtor and this chapter 11 case are not garden variety for so many reasons. One of the most obvious standouts in this case is the creditor constituency. The Debtor did not file for bankruptcy because of any of the typical reasons that large companies file chapter 11. For example, the Debtor did not have a large, asset-based secured lender with whom it was in default; it only had relatively insignificant secured indebtedness owing to Jeffries, with whom it had a brokerage account, and one other entity, Frontier State Bank. The Debtor also did not have problems with its trade vendors or landlords.

The Debtor also did not suffer any type of catastrophic business calamity. In fact, the Debtor filed for Chapter 11 protection six months before the onset of the COVID-19 pandemic. Rather, the Debtor filed for Chapter 11 protection due to a myriad of massive, unrelated, business litigation claims that it faced—many of which had finally become liquidated (or were about to become liquidated) after a decade or more of contentious litigation in multiple forums all over the world. The Committee in this case has referred to the Debtor—under its former chief executive, Mr. Dondero—as a "serial litigator." The Bankruptcy Court agrees with that description. By way of example, the members of the Committee (and their history of litigation with the Debtor and others in the Highland complex) are as follows:

a. **The Redeemer Committee of the Highland Crusader Fund (the "Redeemer Committee").** This Committee member obtained an arbitration award against the Debtor in the amount of $190,824,557, inclusive of interest, approximately five months before the Petition Date, from a panel of the American Arbitration Association. It was on the verge of having that award confirmed by the Delaware Chancery Court immediately prior to the Petition Date, after years of disputes that started in late 2008 (and included legal proceedings in Bermuda). This creditor's claim was settled during this Chapter 11 Case in the amount of approximately $137,696,610 (subject to other adjustments and details not relevant for this purpose).

b. **Acis Capital Management, L.P., and Acis Capital Management GP, LLC ("Acis").** Acis was formerly in the Highland complex of companies, but was not affiliated with Highland as of the Petition Date. This Committee member and its now-owner, Joshua Terry, were involved in litigation with the Debtor dating back to 2016. Acis was forced by Mr. Terry (who was a former Highland portfolio manager) into an involuntary chapter 11 bankruptcy in the Bankruptcy Court for the Northern District of Texas, Dallas Division before the Bankruptcy Court in 2018, after Mr. Terry obtained an approximately $8 million arbitration award and judgment against Acis. Mr. Terry ultimately was awarded the equity ownership of Acis by the Bankruptcy Court in the Acis bankruptcy case. Acis subsequently asserted a multi-million dollar claim against Highland in the Bankruptcy Court for Highland's alleged denuding of Acis to defraud its creditors—primarily Mr. Terry. The litigation involving Acis and Mr. Terry dates back to mid-2016 and has

continued on with numerous appeals of Bankruptcy Court orders, including one appeal still pending at the Fifth Circuit Court of Appeals. There was also litigation involving Mr. Terry and Acis in the Royal Court of the Island of Guernsey and in a state court in New York. The Acis claim was settled during this Chapter 11 Case, in Bankruptcy Court-ordered mediation, for approximately $23 million (subject to other details not relevant for this purpose), and is the subject of an appeal being pursued by Mr. Dondero.

c. **UBS Securities LLC and UBS AG London Branch ("UBS").** UBS is a Committee member that filed a proof of claim in the amount of $1,039,957,799.40 in this Chapter 11 Case. The UBS Claim was based on a judgment that UBS received from a New York state court in 2020. The underlying decision was issued in November 2019, after a multi-week bench trial (which had occurred many months earlier) on a breach of contract claim against non-Debtor entities in the Highland complex. The UBS litigation related to activities that occurred in 2008 and 2009. The litigation involving UBS and Highland and affiliates was pending for more than a decade (there having been numerous interlocutory appeals during its history). The Debtor and UBS recently announced an agreement in principle for a settlement of the UBS claim (which came a few months after Bankruptcy Court-ordered mediation) which will be subject to a 9019 motion to be filed with the Bankruptcy Court on a future date.

d. **Meta-E Discovery ("Meta-E").** Meta-E is a Committee member that is a vendor who happened to supply litigation and discovery-related services to the Debtor over the years. It had unpaid invoices on the Petition Date of more than $779,000.

It is fair to say that the members of the Committee in this case all have wills of steel. They fought hard before and during this Chapter 11 Case. The members of the Committee, all of whom have volunteered to serve on the Claimant Trust Oversight Board post-confirmation, are highly sophisticated and have had highly sophisticated professionals representing them. They have represented their constituency in this case as fiduciaries extremely well.

9. **Other Key Creditor Constituents.** In addition to the Committee members who were all embroiled in years of litigation with Debtor and its affiliates in various ways, the Debtor has been in litigation with Patrick Daugherty, a former limited partner and employee of the Debtor, for many years in both Delaware and Texas state courts. Mr. Daugherty filed an amended

proof of claim in this Chapter 11 Case for $40,710,819.42 relating to alleged breaches of employment-related agreements and for defamation arising from a 2017 press release posted by the Debtor. The Debtor and Mr. Daugherty recently announced a settlement of Mr. Daugherty's claim pursuant to which he will receive $750,000 in cash on the Effective Date of the Plan, an $8.25 million general unsecured claim, and a $2.75 million subordinated claim (subject to other details not relevant for this purpose). Additionally, entities collectively known as "HarbourVest" invested more than $70 million with an entity in the Highland complex and asserted a $300 million proof of claim against the Debtor in this case, alleging, among other things, fraud and RICO violations. HarbourVest's claim was settled during the bankruptcy case for a $45 million general unsecured claim and a $35 million subordinated claim, and that settlement is also being appealed by a Dondero Entity.

10. **Other Claims Asserted.** Other than the Claims just described, most of the other Claims in this Chapter 11 Case are Claims asserted against the Debtor by: (a) entities in the Highland complex—most of which entities the Bankruptcy Court finds to be controlled by Mr. Dondero; (b) employees who contend that are entitled to large bonuses or other types of deferred compensation; and (c) numerous law firms that worked for the Debtor prior to the Petition Date and had outstanding amounts due for their prepetition services.

11. **Not Your Garden Variety Post-Petition Corporate Governance Structure**. Yet another reason this is not your garden variety chapter 11 case is its post-petition corporate governance structure. Immediately from its appointment, the Committee's relationship with the Debtor was contentious at best. First, the Committee moved for a change of venue from

Delaware to Dallas. Second, the Committee (and later, the United States Trustee) expressed its then-desire for the appointment of a chapter 11 trustee due to its concerns over and distrust of Mr. Dondero, his numerous conflicts of interest, and his history of alleged mismanagement (and perhaps worse).

12. **Post-Petition Corporate Governance Settlement with Committee.** After spending many weeks under the threat of the potential appointment of a trustee, the Debtor and Committee engaged in substantial and lengthy negotiations resulting in a corporate governance settlement approved by the Bankruptcy Court on January 9, 2020.[5] As a result of this settlement, among other things, Mr. Dondero relinquished control of the Debtor and resigned his positions as an officer or director of the Debtor and its general partner, Strand. As noted above, Mr. Dondero agreed to this settlement pursuant a stipulation he executed,[6] and he also agreed not to cause any Related Entity (as defined in the Settlement Motion) to terminate any agreements with the Debtor. The January 9 Order also (a) required that the Bankruptcy Court serve as "gatekeeper" prior to the commencement of any litigation against the three independent board members appointed to oversee and lead the Debtor's restructuring in lieu of Mr. Dondero and (b) provided for the exculpation of those board members by limiting claims subject to the "gatekeeper" provision to those alleging willful misconduct and gross negligence.

[5] This order is hereinafter referred to as the "January 9 Order" and was entered by the Court on January 9, 2020 [Docket No. 339] pursuant to the *Motion of the Debtor to Approve Settlement with Official Committee of Unsecured Creditors Regarding the Governance of the Debtor and Procedures for Operation in the Ordinary Course* [Docket No. 281] (the "Settlement Motion").

[6] *See Stipulation in Support of Motion of the Debtor for Approval of Settlement With the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in Ordinary Course* [Docket No. 338] (the "Stipulation").

13. **Appointment of Independent Directors.** As part of the Bankruptcy Court-approved settlement, three eminently qualified independent directors were chosen to lead Highland through its Chapter 11 Case. They are: James P. Seery, Jr., John S. Dubel (each chosen by the Committee), and Retired Bankruptcy Judge Russell Nelms. These three individuals are each technically independent directors of Strand (Mr. Dondero had previously been the sole director of Strand and, thus, the sole person in ultimate control of the Debtor). The three independent board members' resumes are in evidence. The Bankruptcy Court later approved Mr. Seery's appointment as the Debtor's Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative. Suffice it to say that this settlement and the appointment of the independent directors changed the entire trajectory of the case and saved the Debtor from the appointment of a trustee. The Bankruptcy Court and the Committee each trusted the independent directors. They were the right solution at the right time. Because of the unique character of the Debtor's business, the Bankruptcy Court believed the appointment of three qualified independent directors was a far better outcome for creditors than the appointment of a conventional chapter 11 trustee. Each of the independent directors brought unique qualities to the table. Mr. Seery, in particular, knew and had vast experience at prominent firms with high-yield and distressed investing similar to the Debtor's business. Mr. Dubel had 40 years of experience restructuring large complex businesses and serving on boards in this context. And Retired Judge Nelms had not only vast bankruptcy experience but seemed particularly well-suited to help the Debtor maneuver through conflicts and ethical quandaries. By way of comparison, in the chapter 11 case of Acis, the former affiliate of Highland that the Bankruptcy Court presided over and which company was

much smaller in size and scope than Highland (managing only 5-6 CLOs), the creditors elected a chapter 11 trustee who was not on the normal trustee rotation panel in this district but, rather, was a nationally known bankruptcy attorney with more than 45 years of large chapter 11 experience. While the Acis chapter 11 trustee performed valiantly, he was sued by entities in the Highland complex shortly after he was appointed (which the Bankruptcy Court had to address). The Acis trustee was also unable to persuade the Debtor and its affiliates to agree to any actions taken in the case, and he finally obtained confirmation of Acis' chapter 11 plan over the objections of the Debtor and its affiliates on his fourth attempt (which confirmation was promptly appealed).

14. **Conditions Required by Independent Directors.** Given the experiences in Acis and the Debtor's culture of constant litigation, it was not as easy to get such highly qualified persons to serve as independent board members and, later, as the Debtor's Chief Executive Officer, as it would be in an ordinary chapter 11 case. The independent board members were stepping into a morass of problems. Naturally, they were worried about getting sued no matter how defensible their efforts—given the litigation culture that enveloped Highland historically. Based on the record of this Case and the proceedings in the Acis chapter 11 case, it seemed as though everything always ended in litigation at Highland. The Bankruptcy Court heard credible testimony that none of the independent directors would have taken on the role of independent director without (1) an adequate directors and officers' ("D&O") insurance policy protecting them; (2) indemnification from Strand that would be guaranteed by the Debtor; (3) exculpation for mere negligence claims; and (4) a gatekeeper provision prohibiting the commencement of litigation against the independent directors without the Bankruptcy Court's prior authority. This gatekeeper provision was also

included in the Bankruptcy Court's order authorizing the appointment of Mr. Seery as the Debtor's Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative entered on July 16, 2020.[7] The gatekeeper provisions in both the January 9 Order and July 16 Order are precisely analogous to what bankruptcy trustees have pursuant to the so-called "Barton Doctrine" (first articulated in an old Supreme Court case captioned *Barton v. Barbour,* 104 U.S. 126 (1881)). The Bankruptcy Court approved all of these protections in the January 9 Order and the July 16 Order, and no one appealed either of those orders. As noted above, Mr. Dondero signed the Stipulation that led to the settlement that was approved by the January 9 Order. The Bankruptcy Court finds that, like the Committee, the independent board members have been resilient and unwavering in their efforts to get the enormous problems in this case solved. They seem to have at all times negotiated hard and in good faith, which culminated in the proposal of the Plan currently before the Bankruptcy Court. As noted previously, they completely changed the trajectory of this case.

15. **Not Your Garden Variety Mediators.** And still another reason why this was not your garden variety case was the mediation effort. In the summer of 2020, roughly nine months into the chapter 11 case, the Bankruptcy Court ordered mediation among the Debtor, Acis, UBS, the Redeemer Committee, and Mr. Dondero. The Bankruptcy Court selected co-mediators because mediation among these parties seemed like such a Herculean task—especially during COVID-19 where people could not all be in the same room. Those co-mediators were: Retired

[7] *See Order Approving the Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020* [Docket No. 854] entered on July 16, 2020 (the "July 16 Order")

Bankruptcy Judge Alan Gropper from the Southern District of New York, who had a distinguished career presiding over complex chapter 11 cases, and Ms. Sylvia Mayer, who likewise has had a distinguished career, first as a partner at a preeminent law firm working on complex chapter 11 cases, and subsequently as a mediator and arbitrator in Houston, Texas. As noted earlier, the Redeemer Committee and Acis claims were settled during the mediation—which seemed nothing short of a miracle to the Bankruptcy Court—and the UBS claim was settled several months later and the Bankruptcy Court believes the ground work for that ultimate settlement was laid, or at least helped, through the mediation. And, as earlier noted, other significant claims have been settled during this case, including those of HarbourVest (who asserted a $300 million claim) and Patrick Daugherty (who asserted a $40 million claim). The Bankruptcy Court cannot stress strongly enough that the resolution of these enormous claims—and the acceptance by all of these creditors of the Plan that is now before the Bankruptcy Court—seems nothing short of a miracle. It was more than a year in the making.

16. **Not Your Garden Variety Plan Objectors (That Is, Those That Remain)**. Finally, a word about the current, remaining objectors to the Plan before the Bankruptcy Court. Once again, the Bankruptcy Court will use the phrase "not your garden variety", which phrase applies to this case for many reasons. Originally, there were over a dozen objections filed to the Plan. The Debtor then made certain amendments or modifications to the Plan to address some of these objections, none of which require further solicitation of the Plan for reasons set forth in more detail below. The only objectors to the Plan left at the time of the Confirmation Hearing

were Mr. Dondero [Docket No. 1661] and entities that the Bankruptcy Court finds are owned and/or controlled by him and that filed the following objections:

a. *Objection to Confirmation of the Debtor's Fifth Amended Plan of Reorganization* (filed by Get Good Trust and The Dugaboy Investment Trust) [Docket No. 1667];

b. *Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (filed by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrate Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund)* [Docket No. 1670];

c. A *Joinder to the Objection filed at 1670 by: NexPoint Real Estate Finance Inc., NexPoint Real Estate Capital, LLC, NexPoint Residential Trust, Inc., NexPoint Hospitality Trust, NexPoint Real Estate Partners, LLC, NexPoint Multifamily Capital Trust, Inc., VineBrook Homes Trust, Inc., NexPoint Real Estate Advisors, L.P., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VIII, L.P., and any funds advised by the foregoing* [Docket No. 1677];

d. *NexPoint Real Estate Partners LLC's Objection to Debtor's Fifth Amended Plan of Reorganization (filed by NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC)* [Docket No. 1673]; and

e. *NexBank's Objection to Debtor's Fifth Amended Plan of Reorganization (filed by NexBank Title, Inc., NexBank Securities, Inc., NexBank Capital, Inc., and NexBank)* [Docket No. 1676]. The entities referred to in (i) through (v) of this paragraph are hereinafter referred to as the "Dondero Related Entities").

17. **Questionability of Good Faith as to Outstanding Confirmation Objections.** Mr. Dondero and the Dondero Related Entities technically have standing to object to the Plan, but the remoteness of their economic interests is noteworthy, and the Bankruptcy Court

questions the good faith of Mr. Dondero's and the Dondero Related Entities' objections. In fact, the Bankruptcy Court has good reason to believe that these parties are not objecting to protect economic interests they have in the Debtor but to be disruptors. Mr. Dondero wants his company back. This is understandable, but it is not a good faith basis to lob objections to the Plan. As detailed below, the Bankruptcy Court has slowed down plan confirmation multiple times and urged the parties to talk to Mr. Dondero in an attempt to arrive at what the parties have repeatedly referred to as a "grand bargain," the ultimate goal to resolve the Debtor's restructuring. The Debtor and the Committee represent that they have communicated with Mr. Dondero regarding a grand bargain settlement, and the Bankruptcy Court believes that they have.

18. **Remote Interest of Outstanding Confirmation Objectors.** To be specific about the remoteness of Mr. Dondero's and the Dondero Related Entities' interests, the Bankruptcy Court will address them each separately. First, Mr. Dondero has a pending objection to the Plan. Mr. Dondero's only economic interest with regard to the Debtor is an unliquidated indemnification claim (and, based on everything the Bankruptcy Court has heard, his indemnification claims would be highly questionable at this juncture). Mr. Dondero owns no equity in the Debtor directly. Mr. Dondero owns the Debtor's general partner, Strand, which in turn owns a quarter percent of the total equity in the Debtor. Second, a joint objection has been filed by The Dugaboy Trust ("Dugaboy") and the Get Good Trust ("Get Good"). The Dugaboy Trust was created to manage the assets of Mr. Dondero and his family and owns a 0.1866% limited partnership interest in the Debtor. *See* Disclosure Statement at 7, n.3. The Bankruptcy Court is not clear what economic interest the Get Good Trust has, but it likewise seems to be related to Mr. Dondero. Get Good

filed three proofs of claim relating to a pending federal tax audit of the Debtor's 2008 return, which the Debtor believes arise from Get Good's equity security interests and are subject to subordination as set forth in its Confirmation Brief. Dugaboy filed three claims against the Debtor: (a) an administrative claim relating to the Debtor's alleged postpetition management of Multi-Strat Credit Fund, L.P., (b) a prepetition claim against a subsidiary of the Debtor for which it seeks to pierce the corporate veil, each of which the Debtor maintains are frivolous in the Confirmation Brief, and (c) a claim arising from its equity security interest in the Debtor, which the Debtor asserts should be subordinated. Another group of objectors that has joined together in one objection is what the Bankruptcy Court will refer to as the "Highland Advisors and Funds." *See* Docket No. 1863. The Bankruptcy Court understands they assert disputed administrative expense claims against the estate that were filed shortly before the Confirmation Hearing on January 23, 2021 [Docket No. 1826], and during the Confirmation Hearing on February 3, 2021 [Docket No. 1888]. At the Confirmation Hearing, Mr. Post testified on behalf of the Highland Advisors and Funds that the Funds have independent board members that run the Funds, but the Bankruptcy Court was not convinced of their independence from Mr. Dondero because none of the so-called independent board members have ever testified before the Bankruptcy Court and all have been engaged with the Highland complex for many years. Notably, the Court questions Mr. Post's credibility because, after more than 12 years of service, he abruptly resigned from the Debtor in October 2020 at the exact same time that Mr. Dondero resigned at the Board of Directors' request, and he is currently employed by Mr. Dondero. Moreover, Dustin Norris, a witness in a prior proceeding (whose testimony was made part of the record at the Confirmation Hearing), recently

testified on behalf of the Highland Advisors and Funds in another proceeding that Mr. Dondero owned and/or controlled these entities. Finally, various NexBank entities objected to the Plan. The Bankruptcy Court does not believe they have liquidated claims against the Debtor. Mr. Dondero appears to be in control of these entities as well.

19. **Background Regarding Dondero Objecting Parties.** To be clear, the Bankruptcy Court has allowed all these objectors to fully present arguments and evidence in opposition to confirmation, even though their economic interests in the Debtor appear to be extremely remote and the Bankruptcy Court questions their good faith. Specifically, the Bankruptcy Court considers them all to be marching pursuant to the orders of Mr. Dondero. In the recent past, Mr. Dondero has been subject to a temporary restraining order and preliminary injunction by the Bankruptcy Court for interfering with Mr. Seery's management of the Debtor in specific ways that were supported by evidence. Around the time that this all came to light and the Bankruptcy Court began setting hearings on the alleged interference, Mr. Dondero's company phone, which he had been asked to turn in to Highland, mysteriously went missing. The Bankruptcy Court merely mentions this in this context as one of many reasons that the Bankruptcy Court has to question the good faith of Mr. Dondero and his affiliates in raising objections to confirmation of the Plan.

20. **Other Confirmation Objections.** Other than the objections filed by Mr. Dondero and the Dondero Related Entities, the only other pending objection to the Plan is the *United States Trustee's Limited Objection to Confirmation of Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1671], which objected to the Plan's exculpation, injunction, and

Debtor release provisions. In juxtaposition, to these pending objections, the Bankruptcy Court notes that the Debtor resolved the following objections to the Plan:

a. *CLO Holdco, Ltd.'s Joinder to Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. and Supplemental Objections to Plan Confirmation* [Docket No. 1675]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph VV of the Confirmation Order;

b. *Objection of Dallas County, City of Allen, Allen ISD, City of Richardson, and Kaufman County to Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1662]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph QQ of the Confirmation Order;

c. *Senior Employees' Limited Objection to Debtor's Fifth Amended Plan of Reorganization (filed by Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon)* [Docket No. 1669]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph 82 and paragraphs RR and SS of the Confirmation Order;

d. *Limited Objection of Jack Yang and Brad Borud to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1666] and the amended joinder filed by Davis Deadman, Paul Kauffman and Todd Travers [Docket No. 1679]. This Objection and the amended joinder were resolved by agreement of the parties pursuant to modifications to the Plan filed by the Debtor;

e. *United States' (IRS) Limited Objection to Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1668]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraphs TT and UU of the Confirmation Order; and

f. *Patrick Hagaman Daugherty's Objection to Confirmation of Fifth Amended Plan of Reorganization* [Docket No. 1678]. This objection was resolved by the parties pursuant to the settlement of Mr. Daugherty's claim announced on the record of the Confirmation Hearing.

21. **Capitalized Terms.** Capitalized terms used herein, but not defined herein, shall have the respective meanings attributed to such terms in the Plan and the Disclosure Statement, as applicable.

22. **Jurisdiction and Venue.** The Bankruptcy Court has jurisdiction over the Debtor's Chapter 11 Case pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Chapter 11 Case is proper in this district and in the Bankruptcy Court pursuant to 28 U.S.C. §§ 1408 and 1409.

23. **Chapter 11 Petition.** On the Petition Date, the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware, which case was transferred to the Bankruptcy Court on December 19, 2019. The Debtor continues to operate its business and manage its property as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this Chapter 11 Case. The Office of the United States Trustee appointed the Committee on October 29, 2019.

24. **Judicial Notice.** The Bankruptcy Court takes judicial notice of the docket in this Chapter 11 Case maintained by the clerk of the Bankruptcy Court and the court-appointed claims agent, Kurtzman Carson Consultants LLC ("KCC"), including, without limitation, all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered or adduced at the hearings held before the Bankruptcy Court during this Chapter 11 Case, including, without limitation, the hearing to consider the adequacy of the Disclosure Statement and the Confirmation Hearing, as well as all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered, or adduced at hearings held before the Bankruptcy Court or the District Court for the Northern District of Texas in

connection with an adversary proceeding or appellate proceeding, respectively, related to this Chapter 11 Case.

25. **Plan Supplement Documents.** Prior to the Confirmation Hearing, the Debtor filed each of the Plan Supplements. The Plan Supplements contain, among other documents, the Retained Causes of Action, the Claimant Trust Agreement, the Litigation Sub-Trust Agreement, the Senior Employee Stipulation, the Related Entity List, the Schedule of Employees, the Reorganized Limited Partnership Agreement, supplements to the Liquidation Analysis/Financial Projections, the Schedule of Contracts and Leases to be Assumed, and the other Plan Documents set forth therein (collectively, the "Plan Supplement Documents").

26. **Retained Causes of Action Adequately Preserved.** The Bankruptcy Court finds that the list of Retained Causes of Action included in the Plan Supplements sufficiently describes all potential Retained Causes of Action, provides all persons with adequate notice of any Causes of Action regardless of whether any specific claim to be brought in the future is listed therein or whether any specific potential defendant or other party is listed therein, and satisfies applicable law in all respects to preserve all of the Retained Causes of Action. The definition of the Causes of Action and Schedule of Retained Causes of Action, and their inclusion in the Plan, specifically and unequivocally preserve the Causes of Action for the benefit of the Reorganized Debtor, the Claimant Trust, or the Litigation Sub-Trust, as applicable.

27. **Plan Modifications Are Non-Material.** In addition to the Plan Supplements, the Debtor made certain non-material modifications to the Plan, which are reflected in (i) the *Redline of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*

(as Modified) filed on January 22, 2021 [Docket No. 1809], and (ii) Exhibit B to the *Debtor's Notice of Filing of Plan Supplement to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* filed on February 1, 2021 [Docket No. 1875] (collectively, the "Plan Modifications"). Section 1127(a) of the Bankruptcy Code provides that a plan proponent may modify its plan at any time before confirmation so long as such modified plan meets the requirements of sections 1122 and 1123 of the Bankruptcy Code. None of the modifications set forth in the Plan Supplements or the Plan Modifications require any further solicitation pursuant to sections 1125, 1126, or 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, because, among other things, they do not materially adversely change the treatment of the claims of any creditors or interest holders who have not accepted, in writing, such supplements and modifications. Among other things, there were changes to the projections that the Debtor filed shortly before the Confirmation Hearing (which included projected distributions to creditors and a comparison of projected distributions under the Plan to potential distributions under a hypothetical chapter 7 liquidation). The Plan Supplements and Plan Modifications did not mislead or prejudice any creditors or interest holders nor do they require that Holders of Claims or Equity Interests be afforded an opportunity to change previously cast votes to accept or reject the Plan. Specifically, the Amended Liquidation Analysis/Financial Projections filed on February 1, 2021 [Docket No. 1875] do not constitute any material adverse change to the treatment of any creditors or interest holders but, rather, simply update the estimated distributions based on Claims that were settled in the interim and provide updated financial data. The filing and notice of the Plan Supplements and Plan Modifications were appropriate and complied with the requirements of

section 1127(a) of the Bankruptcy Code and the Bankruptcy Rules, and no other solicitation or disclosure or further notice is or shall be required. The Plan Supplements and Plan Modifications each became part of the Plan pursuant section 1127(a) of the Bankruptcy Code. The Debtor or Reorganized Debtor, as applicable, is authorized to modify the Plan or Plan Supplement Documents following entry of this Confirmation Order in a manner consistent with section 1127(b) of the Bankruptcy Code, the Plan, and, if applicable, the terms of the applicable Plan Supplement Document.

28. **Notice of Transmittal, Mailing and Publication of Materials.** As is evidenced by the Voting Certifications and the Affidavits of Service and Publication, the transmittal and service of the Plan, the Disclosure Statement, Ballots, and Confirmation Hearing Notice were adequate and sufficient under the circumstances, and all parties required to be given notice of the Confirmation Hearing (including the deadline for filing and serving objections to the confirmation of the Plan) have been given due, proper, timely, and adequate notice in accordance with the Disclosure Statement Order and in compliance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and applicable non-bankruptcy law, and such parties have had an opportunity to appear and be heard with respect thereto. No other or further notice is required. The publication of the Confirmation Hearing Notice, as set forth in the *Notice of Affidavit of Publication* dated December 3, 2020 [Docket No. 1505], complied with the Disclosure Statement Order.

29. **Voting.** The Bankruptcy Court has reviewed and considered the Voting Certifications. The procedures by which the Ballots for acceptance or rejection of the Plan were

distributed and tabulated, including the tabulation as subsequently amended to reflect the settlement of certain Claims to be Allowed in Class 7, were fairly and properly conducted and complied with the Disclosure Statement Order, the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

30. **Bankruptcy Rule 3016(a).** In accordance with Bankruptcy Rule 3016(a), the Plan is dated and identifies the Debtor as the proponent of the Plan.

31. **Plan Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1)).** As set forth below, the Plan complies with all of the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(1) of the Bankruptcy Code.

32. **Proper Classification (11 U.S.C. §§ 1122, 1123(a)(1)).** Section 1122 of the Bankruptcy Code provides that a plan may place a claim or interest in a particular class only if such claim or interest is substantially similar to the other claims or interest of such class. The Claims and Equity Interests placed in each Class are substantially similar to other Claims and Equity Interests, as the case may be, in each such Class. Valid business, factual, and legal reasons exist for separately classifying the various Classes of Claims and Equity Interests created under the Plan, and such Classes do not unfairly discriminate between Holders of Claims and Equity Interests.

33. **Classification of Secured Claims.** Class 1 (Jefferies Secured Claim) and Class 2 (Frontier Secured Claim) each constitute separate secured claims held by Jefferies LLC and Frontier State Bank, respectively, and it is proper and consistent with section 1122 of the Bankruptcy Code to separately classify the claims of these secured creditors. Class 3 (Other

Secured Claims) consists of other secured claims (to the extent any exist) against the Debtor, are not substantially similar to the Secured Claims in Class 1 or Class 2, and are also properly separately classified.

34. **Classification of Priority Claims.** Class 4 (Priority Non-Tax Claims) consists of Claims entitled to priority under section 507(a), other than Priority Tax Claims, and are properly separately classified from non-priority unsecured claims. Class 5 (Retained Employee Claims) consists of the potential claims of employees who may be retained by the Debtor on the Effective Date, which claims will be Reinstated under the Plan, are not substantially similar to other Claims against the Debtor, and are properly classified.

35. **Classification of Unsecured Claims.** Class 6 (PTO Claims) consists solely of the claims of the Debtor's employees for unpaid paid time off in excess of the $13,650 statutory cap amount under sections 507(a)(4) and (a)(5) of the Bankruptcy Code and are dissimilar from other unsecured claims in Class 7 and Class 8. Class 7 (Convenience Claims) allows holders of eligible and liquidated Claims (below a certain threshold dollar amount) to receive a cash payout of the lesser of 85% of the Allowed amount of the creditor's Claim or such holder's *pro rata* share of the Convenience Claims Cash Pool. Class 7 (Convenience Claims) are provided for administrative convenience purposes in order to allow creditors, most of whom are either trade creditors or holders of professional claims, to receive treatment provided under Class 7 in lieu of the treatment of Class 8 (General Unsecured Claims). The Plan also provides for reciprocal "opt out" mechanisms to allow holders of Class 7 Claims to elect to receive the treatment for Class 8 Claims. Class 8 creditors primarily constitute the litigation claims of the Debtor. Class 8 Creditors

will receive Claimant Trust Interests which will be satisfied pursuant to the terms of the Plan. Class 8 also contains an "opt out" mechanism to allow holders of liquidated Class 8 Claims at or below a $1 million threshold to elect to receive the treatment of Class 7 Convenience Claims. The Claims in Class 7 (primarily trade and professional Claims against the Debtor) are not substantially similar to the Claims in Class 8 (primarily the litigation Claims against the Debtor), and are appropriately separately classified. Valid business reasons also exist to classify creditors in Class 7 separately from creditors in Class 8. Class 7 creditors largely consist of liquidated trade or service providers to the Debtor. In addition, the Claims of Class 7 creditors are small relative to the large litigation claims in Class 8. Furthermore, the Class 8 Claims were overwhelmingly unliquidated when the Plan was filed. The nature of the Class 7 Claims as being largely liquidated created an expectation of expedited payment relative to the largely unliquidated Claims in Class 8, which consists in large part of parties who have been engaged in years, and in some cases over a decade of litigation with the Debtor. Separate classification of Class 7 and Class 8 creditors was the subject of substantial arm's-length negotiations between the Debtor and the Committee to appropriately reflect these relative differences.

36. **Classification of Equity Interests.** The Plan properly separately classifies the Equity Interests in Class 10 (Class B/C Limited Partnership Interests) from the Equity Interests in Class 11 (Class A Limited Partnership Interests) because they represent different types of equity security interests in the Debtor and different payment priorities.

37. **Elimination of Vacant Classes.** Section III.C of the Plan provides for the elimination of Classes that do not have at least one holder of a Claim or Equity Interest that is

Allowed in an amount greater than zero for purposes of voting to accept or reject the Plan, and are disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class. The purpose of this provision is to provide that a Class that does not have voting members shall not be included in the tabulation of whether that Class has accepted or rejected the Plan. Pursuant to the Voting Certifications, the only voting Class of Claims or Equity Interests that did not have any members is Class 5 (Retained Employees). As noted above, Class 5 does not have any voting members because any potential Claims in Class 5 would not arise, except on account of any current employees of the Debtor who may be employed as of the Effective Date, which is currently unknown. Thus, the elimination of vacant Classes provided in Article III.C of the Plan does not violate section 1122 of the Bankruptcy Code. Class 5 is properly disregarded for purposes of determining whether or not the Plan has been accepted under Bankruptcy Code section 1129(a)(8) because there are no members in that Class. However, the Plan properly provides for the treatment of any Claims that may potentially become members of Class 5 as of the Effective Date in accordance with the terms of the Plan. The Plan therefore satisfies section 1122 of the Bankruptcy Code.

38. **Classification of Claims and Designation of Non-Classified Claims (11 U.S.C. §§ 1122, 1123(a)(1)).** Section 1123(a)(1) of the Bankruptcy Code requires that the Plan specify the classification of claims and equity security interests pursuant to section 1122 of the Bankruptcy Code, other than claims specified in sections 507(a)(2), 507(a)(3), or 507(a)(8) of the Bankruptcy Code. In addition to Administrative Claims, Professional Fee Claims, and Priority Tax Claims, each of which need not be classified pursuant to section 1123(a)(1) of the Bankruptcy

Code, the Plan designates eleven (11) Classes of Claims and Equity Interests. The Plan satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

39. **Specification of Unimpaired Classes (11 U.S.C. § 1123(a)(2)).** Article III of the Plan specifies that each of Class 1 (Jefferies Secured Claim), Class 3 (Other Secured Claims), Class 4 (Priority Non-Tax Claims), Class 5 (Retained Employee Claims), and Class 6 (PTO Claims) are Unimpaired under the Plan. Thus, the requirement of section 1123(a)(2) of the Bankruptcy Code is satisfied.

40. **Specification of Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)).** Article III of the Plan designates each of Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), Class 8 (General Unsecured Claims), Class 9 (Subordinated Claims), Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests) as Impaired and specifies the treatment of Claims and Equity Interests in such Classes. Thus, the requirement of section 1123(a)(3) of the Bankruptcy Code is satisfied.

41. **No Discrimination (11 U.S.C. § 1123(a)(4)).** The Plan provides for the same treatment by the Plan proponent for each Claim or Equity Interest in each respective Class unless the Holder of a particular Claim or Equity Interest has agreed to a less favorable treatment of such Claim or Equity Interest. The Plan satisfies this requirement because Holders of Allowed Claims or Equity Interests in each Class will receive the same rights and treatment as other Holders of Allowed Claims or Equity Interests within such holder's respective class, subject only to the voluntary "opt out" options afforded to members of Class 7 and Class 8 in accordance with the terms of the Plan. Thus, the requirement of section 1123(a)(4) of the Bankruptcy Code is satisfied.

42. **Implementation of the Plan (11 U.S.C. § 1123(a)(5)).** Article IV of the Plan sets forth the means for implementation of the Plan which includes, but is not limited to, the establishment of: (i) the Claimant Trust; (ii) the Litigation Sub-Trust; (iii) the Reorganized Debtor; and (iv) New GP LLC, in the manner set forth in the Plan Documents, the forms of which are included in the Plan Supplements.

a. **The Claimant Trust.** The Claimant Trust Agreement provides for the management of the Claimant Trust, as well as the Reorganized Debtor with the Claimant Trust serving as the managing member of New GP LLC (a wholly-owned subsidiary of the Claimant Trust that will manage the Reorganized Debtor as its general partner). The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will all be managed and overseen by the Claimant Trust Oversight Committee. Additionally, the Plan provides for the transfer to the Claimant Trust of all of the Debtor's rights, title, and interest in and to all of the Claimant Trust Assets in accordance with section 1141 of the Bankruptcy Code and for the Claimant Trust Assets to automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement. The Claimant Trust will administer the Claimant Trust Assets as provided under the Plan and the Claimant Trust Agreement contained in the Plan Supplements.

b. **The Litigation Sub-Trust.** The Plan and the Litigation Sub-Trust Agreement provide for the transfer to the Litigation Sub-Trust all of the Claimant Trust's rights, title, and interest in and to all of the Estate Claims (as transferred to the Claimant Trust by the Debtor) in accordance with section 1141 of the Bankruptcy Code and for the Estate Claims to automatically vest in the Litigation Sub-Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Litigation Sub-Trust Interests and the Litigation Sub-Trust Expenses, as provided for in the Litigation Sub-Trust Agreement. The Litigation Trustee is charged with investigating, pursuing, and otherwise resolving any Estate Claims (including those with respect to which the Committee has standing to pursue prior to the Effective Date pursuant to the January 9 Order) pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan, regardless of whether any litigation with respect to any Estate Claim was commenced by the Debtor or the Committee prior to the Effective Date.

c. **The Reorganized Debtor**. The Reorganized Debtor will administer the Reorganized Debtor Assets, which includes managing the wind down of the Managed Funds.

The precise terms governing the execution of these restructuring transactions are set forth in greater detail in the applicable definitive documents included in the Plan Supplements, including the Claimant Trust Agreement, the Litigation Sub-Trust Agreement, and the Schedule of Retained Causes of Action. The Plan, together with the documents and forms of agreement included in the Plan Supplements, provides a detailed blueprint for the transactions contemplated by the Plan. The Plan's various mechanisms provide for the Debtor's continued management of its business as it seeks to liquidate the Debtor's assets, wind down its affairs, and pay the Claims of the Debtor's creditors. Upon full payment of Allowed Claims, plus interest as provided in the Plan, any residual value would then flow to the holders of Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests). Finally, Mr. Seery testified that the Debtor engaged in substantial and arm's length negotiations with the Committee regarding the Debtor's post-Effective Date corporate governance, as reflected in the Plan. Mr. Seery testified that he believes the selection of the Claimant Trustee, Litigation Trustee, and members of the Claimant Trust Oversight Board are in the best interests of the Debtor's economic constituents. Thus, the requirements of section 1123(a)(5) of the Bankruptcy Code are satisfied.

43. **Non-Voting Equity Securities (11 U.S.C. § 1123(a)(6)).** The Debtor is not a corporation and the charter documents filed in the Plan Supplements otherwise comply with section 1123(a)(6) of the Bankruptcy Code. Therefore, the requirement of section 1123(a)(6) of the Bankruptcy Code is satisfied.

44. **Selection of Officers and Directors (11 U.S.C. § 1123(a)(7)).** Article IV of the Plan provides for the Claimant Trust to be governed and administered by the Claimant Trustee. The Claimant Trust, the management of the Reorganized Debtor, and the management and monetization of the Claimant Trust Assets and the Litigation Sub-Trust will be managed by the Claimant Trust Oversight Board. The Claimant Trust Oversight Board will consist of: (1) Eric Felton, as representative of the Redeemer Committee; (2) Joshua Terry, as representative of Acis; (3) Elizabeth Kozlowski, as representative of UBS; (4) Paul McVoy, as representative of Meta-E Discovery; and (5) David Pauker. Four of the members of the Claimant Trust Oversight Committee are the holders of several of the largest Claims against the Debtor and/or are current members of the Committee. Each of these creditors has actively participated in the Debtor's case, both through their fiduciary roles as Committee members and in their individual capacities as creditors. They are therefore intimately familiar with the Debtor, its business, and assets. The fifth member of the Claimant Trustee Oversight Board, David Pauker, is a disinterested restructuring advisor and turnaround manager with more than 25 years of experience advising public and private companies and their investors, and he has substantial experience overseeing, advising or investigating troubled companies in the financial services industry and has advised or managed such companies on behalf of boards or directors, court-appointed trustees, examiners and special masters, government agencies, and private investor parties. The members of the Claimant Trust Oversight Board will serve without compensation, except for Mr. Pauker, who will receive payment of $250,000 for his first year of service, and $150,000 for subsequent years.

45. **Selection of Trustees.** The Plan Supplements disclose that Mr. Seery will serve as the Claimant Trustee and Marc Kirschner will serve as the Litigation Trustee. As noted above, Mr. Seery has served as an Independent Board member since January 2020, and as the Chief Executive Officer and Chief Restructuring Officer since July 2020, and he has extensive management and restructuring experience, as evidenced from his curriculum vitae which is part of the record. The evidence shows that Mr. Seery is intimately familiar with the Debtor's organizational structure, business, and assets, as well as how Claims will be treated under the Plan. Accordingly, it is reasonable and in the Estate's best interests to continue Mr. Seery's employment post-emergence as the Claimant Trustee. Mr. Seery, upon consultation with the Committee, testified that he intends to employ approximately 10 of the Debtor's employees to enable him to manage the Debtor's business until the Claimant Trust effectively monetizes its remaining assets, instead of hiring a sub-servicer to accomplish those tasks. Mr. Seery testified that he believes that the Debtor's post-confirmation business can most efficiently and cost-effectively be supported by a sub-set of the Debtor's current employees, who will be managed internally. Mr. Seery shall initially be paid $150,000 per month for services rendered after the Effective Date as Claimant Trustee; however, Mr. Seery's long-term salary as Claimant Trustee and the terms of any bonuses and severance are subject to further negotiation by Mr. Seery and the Claimant Trust Oversight Board within forty-five (45) days after the Effective Date. The Bankruptcy Court has also reviewed Mr. Kirschner's curriculum vitae. Mr. Kirschner has been practicing law since 1967 and has substantial experience in bankruptcy litigation matters, particularly with respect to his prior experience as a litigation trustee for several litigation trusts, as set forth on the record of the

Confirmation Hearing and in the Confirmation Brief. Mr. Kirschner shall be paid $40,000 per month for the first three months and $20,000 per month thereafter, plus a success fee related to litigation recoveries. The Committee and the Debtor had arm's lengths negotiations regarding the post-Effective Date corporate governance structure of the Reorganized Debtor and believe that the selection of the Claimant Trustee, the Litigation Trustee, and the Claimant Trust Oversight Committee are in the best interests of the Debtor's economic stakeholders. Section 1123(a)(7) of the Bankruptcy Code is satisfied.

46. **Debtor's Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)).** Pursuant to section 1129(a)(2) of the Bankruptcy Code, the Debtor has complied with the applicable provisions of the Bankruptcy Code, including sections 1122, 1123, 1124, 1125, and 1126 of the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Order governing notice, disclosure, and solicitation in connection with the Plan, the Disclosure Statement, the Plan Supplements, and all other matters considered by the Bankruptcy Court in connection with this Chapter 11 Case.

47. **Debtor's Solicitation Complied with Bankruptcy Code and Disclosure Statement Order.** Before the Debtor solicited votes on the Plan, the Bankruptcy Court entered the Disclosure Statement Order. In accordance with the Disclosure Statement Order and evidenced by the Affidavits of Service and Publication, the Debtor appropriately served (i) the Solicitation Packages (as defined in the Disclosure Statement Order) on the Holders of Claims in Classes 2, 7, 8 and 9 and Holders of Equity Interests in Classes 10 and 11 who were entitled to vote on the Plan; and (ii) the Notice of Nonvoting Status (as defined in the Disclosure Statement Order) and the

Confirmation Hearing Notice to the Holders of Claims in Classes 1, 3, 4, 5 and 6, who were not entitled to vote on the Plan pursuant to the Disclosure Statement Order. The Disclosure Statement Order approved the contents of the Solicitation Packages provided to Holders of Claims and Equity Interests entitled to vote on the Plan, the notices provided to parties not entitled to vote on the Plan, and the deadlines for voting on and objecting to the Plan. The Debtor and KCC each complied with the content and delivery requirements of the Disclosure Statement Order, thereby satisfying sections 1125(a) and (b) of the Bankruptcy Code, as evidenced by the Affidavits of Service and Publication. The Debtor also satisfied section 1125(c) of the Bankruptcy Code, which provides that the same disclosure statement must be transmitted to each holder of a claim or interest in a particular class. The Debtor caused the same Disclosure Statement to be transmitted to all holders of Claims and Equity Interests entitled to vote on the Plan. The Debtor has complied in all respects with the solicitation requirements of section 1125 of the Bankruptcy Code and the Disclosure Statement Order. The Bankruptcy Court rejects the arguments of the Mr. Dondero and certain Dondero Related Entities that the changes made to certain assumptions and projections from the Liquidation Analysis annexed as Exhibit C to the Disclosure Statement (the "Liquidation Analysis") to the Amended Liquidation Analysis/Financial Projections require resolicitation of the Plan. The Bankruptcy Court heard credible testimony from Mr. Seery regarding the changes to the Liquidation Analysis as reflected in the Amended Liquidation Analysis/Financial Projections. Based on the record, including the testimony of Mr. Seery, the Bankruptcy Court finds that the changes between the Liquidation Analysis and the Amended Liquidation Analysis/Financial Projections do not constitute materially adverse change to the treatment of Claims or Equity

Interests. Instead, the changes served to update the projected distributions based on Claims that were settled after the approval of the Disclosure Statement and to otherwise incorporate more recent financial data. Such changes were entirely foreseeable given the large amount of unliquidated Claims at the time the Disclosure Statement was approved and the nature of the Debtor's assets. The Bankruptcy Court therefore finds that holders of Claims and Equity Interests were not misled or prejudiced by the Amended Liquidation Analysis/Financial Projections and the Plan does not need to be resolicited.

48. **Plan Proposed in Good Faith and Not by Means Forbidden by Law (11 U.S.C. § 1129(a)(3)).** The Debtor has proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code. In determining that the Plan has been proposed in good faith, the Bankruptcy Court has examined the totality of the circumstances surrounding the filing of this Chapter 11 Case, the Plan itself, and the extensive, unrebutted testimony of Mr. Seery in which he described the process leading to Plan's formulation. Based on the totality of the circumstances and Mr. Seery's testimony, the Bankruptcy Court finds that the Plan is the result of extensive arm's-length negotiations among the Debtor, the Committee, and key stakeholders, and promotes the objectives and purposes of the Bankruptcy Code. Specifically, the Debtor's good faith in proposing the Plan is supported by the following facts adduced by Mr. Seery:

a. The Independent Board determined that it should consider all potential restructuring alternatives, including pursuit of a traditional restructuring and the continuation of the Debtor's business, a potential sale of the Debtor's assets in one or more transactions, an asset monetization plan similar to that described in the Plan, and a so-called "grand bargain" plan that would involve Mr. Dondero's sponsorship of a plan with a substantial equity infusion.

b. The Debtor subsequently engaged in arm's-length, good faith negotiations with the Committee over an asset monetization Plan commencing in June 2020, which negotiations occurred over the next several months.

c. Negotiations between the Debtor and the Committee were often contentious over disputes, including, but not limited to, the post-confirmation corporate governance structure and the scope of releases contemplated by the Plan.

d. While negotiations with the Committee progressed, the Independent Board engaged in discussions with Mr. Dondero regarding a potential "grand bargain" plan which contemplated a significant equity infusion by Mr. Dondero, and which Mr. Seery personally spent hundreds of hours pursuing over many months.

e. On August 3, 2020, the Bankruptcy Court entered the *Order Directing Mediation* [Docket No. 912] pursuant to which the Bankruptcy Court ordered the Debtor, the Committee, UBS, Acis, the Redeemer Committee, and Mr. Dondero into mediation. As a result of this mediation, the Debtor negotiated the settlement of the claims of Acis and Mr. Terry, which the Bankruptcy Court approved on October 28, 2020 [Docket No. 1302].

f. On August 12, 2020, the Debtor filed its *Chapter 11 Plan of* Reorganization *of Highland Capital Management, L.P.* [Docket No. 944] (the "Initial Plan") and related disclosure statement (the "Initial Disclosure Statement") which were not supported by either the Committee or Mr. Dondero. The Independent Board filed the Initial Plan and Initial Disclosure Statement in order to act as a catalyst for continued discussions with the Committee while it simultaneously worked with Mr. Dondero on the "grand bargain" plan.

g. The Bankruptcy Court conducted a contested hearing on the Initial Disclosure Statement on October 27, 2020. The Committee and other parties objected to approval of the Disclosure Statement at the Initial Disclosure Statement hearing, which was eventually continued to November 23, 2020.

h. Following the Initial Disclosure Statement hearing, the Debtor continued to negotiate with the Committee and ultimately resolved the remaining material disputes and led to the Bankruptcy Court's approval of the Disclosure Statement on November 23, 2020.

i. Even after obtaining the Bankruptcy Court's approval of the Disclosure Statement, the Debtor and the Committee continued to negotiate with Mr. Dondero and the Committee over a potential "pot plan" as an alternative to the Plan on file with the Bankruptcy Court, but such efforts were unsuccessful. This history conclusively demonstrates that the Plan is being proposed in good faith within the meaning of section 1129(a)(3).

49. **Payments for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)).** Article II.B of the Plan provides that Professionals will file all final requests for payment of Professional Fee Claims no later than 60 days after the Effective Date, thereby providing an adequate period of time for interested parties to review such claims. The procedures set forth in the Plan for the Bankruptcy Court's approval of the fees, costs, and expenses to be paid in connection with this chapter 11 Case, or in connection with the Plan and incident to this Chapter 11 Case, satisfy the objectives of and are in compliance with section 1129(a)(4) of the Bankruptcy Code.

50. **Directors, Officers, and Insiders (11 U.S.C. § 1129(a)(5)).** Article IV.B of the Plan provides for the appointment of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee and the members thereto. For the reasons more fully explained in paragraphs 44-45 of this Confirmation Order with respect to the requirement of section 1123(a)(7) of the Bankruptcy Code, the Debtor has disclosed the nature of compensation of any insider to be employed or retained by the Reorganized Debtor, if applicable, and compensation for any such insider. The appointment of such individuals is consistent with the interests of Claims and Equity Interests and with public policy. Thus, the Plan satisfies section 1129(a)(5) of the Bankruptcy Code.

51. **No Rate Changes (11 U.S.C. § 1129(a)(6)).** The Plan does not provide for any rate change that requires regulatory approval. Section 1129(a)(6) of the Bankruptcy Code is thus not applicable.

52. **Best Interests of Creditors (11 U.S.C. § 1129(a)(7)).** The "best interests" test is satisfied as to all Impaired Classes under the Plan, as each Holder of a Claim or Equity Interest in such Impaired Classes will receive or retain property of a value, as of the Effective Date of the Plan, that is not less than the amount that such Holder would so receive or retain if the Debtor were liquidated under chapter 7 of the Bankruptcy Code. On October 15, 2020, the Debtor filed the Liquidation Analysis [Docket 1173], as prepared by the Debtor with the assistance of its advisors and which was attached as Exhibit C to the Disclosure Statement. On January 29, 2021, in advance of Mr. Seery's deposition in connection with confirmation of the Plan, the Debtor provided an updated version of the Liquidation Analysis to the then-objectors of the Plan, including Mr. Dondero and the Dondero Related Entities. On February 1, 2021, the Debtor filed the Amended Liquidation Analysis/Financial Projections. The Amended Liquidation Analysis/Financial Projections included updates to the Debtor's projected asset values, revenues, and expenses to reflect: (1) the acquisition of an interest in an entity known as "HCLOF" that the Debtor will acquire as part of its court-approved settlement with HarbourVest and that was valued at $22.5 million; (2) an increase in the value of certain of the Debtor's assets due to changes in market conditions and other factors; (3) expected revenues and expenses arising in connection with the Debtor's continued management of the CLOs pursuant to management agreements that the Debtor decided to retain; (4) increases in projected expenses for headcount (in addition to adding two or three employees to assist in the management of the CLOs, the Debtor also increased modestly the projected headcount as a result of its decision not to engage a Sub-Servicer) and professional fees; and (5) an increase in projected recoveries on notes resulting from the

acceleration of term notes owed to the Debtor by the following Dondero Related Entities: NexPoint Advisors, L.P.; Highland Capital Management Services, Inc.; and HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC). Under the Plan, as of the Confirmation Date, (a) Class 7 General Unsecured Creditors are projected to receive 85% on account of their claims; and (b) Class 8 General Unsecured Creditors are projected to receive at least approximately 71% on account of their Claims. Under a hypothetical chapter 7 liquidation, all general unsecured creditors are projected to receive approximately 55% on account of their Claims. The Bankruptcy Court finds that the distributions that Class 7 and 8 General Unsecured Creditors are projected to receive under the Plan substantially exceeds that which they would receive under a chapter 7 liquidation based on Mr. Seery's testimony, including the following credible reasons he posited, among others:

a. The nature of the Debtor's assets is complex. Certain assets relate to complicated real estate structures and private equity investments in operating businesses. Mr. Seery's extensive experience with the Debtor during the thirteen months since his appointment as an Independent Director and later Chief Executive Officer and Chief Restructuring Officer, provides him with a substantial learning curve in connection with the disposition of the Debtor's assets and are reasonably expected to result in him being able to realize tens of millions of dollars more value than would a chapter 7 trustee.

b. Assuming that a hypothetical chapter 7 trustee could even operate the Debtor's business under chapter 7 of the Bankruptcy Code and hire the necessary personnel with the relevant knowledge and experience to assist him or her in selling the Debtor's assets, a chapter 7 trustee would likely seek to dispose of the Debtor's assets in a forced sale liquidation which would generate substantially less value for the Debtor's creditors than the asset monetization plan contemplated by the Plan.

c. A chapter 7 trustee would be unlikely to retain the Debtor's existing professionals to assist in its efforts to monetize assets, resulting in delays, increased expenses, and reduced asset yields for the chapter 7 estate.

d. The chapter 7 estate would be unlikely to maximize value as compared to the asset monetization process contemplated by the Plan because potential buyers are likely to perceive a chapter 7 trustee as engaging in a quick, forced "fire sale" of assets; and

e. The Debtor's employees, who are vital to its efforts to maximum value and recoveries for stakeholders, may be unwilling to provide services to a chapter 7 trustee.

Finally, there is no evidence to support the objectors' argument that the Claimant Trust Agreement's disclaimed liability for ordinary negligence by the Claimant Trustee compared to a chapter 7 trustee's liability has any relevance to creditor recoveries in a hypothetical chapter 7 liquidation. Thus, section 1129(a)(7) of the Bankruptcy Code is satisfied.

53. **Acceptance by Certain Classes (11 U.S.C. § 1129(a)(8)).** Classes 1, 3, 4, 5 and 6 are Unimpaired under the Plan. Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), and Class 9 (Subordinated Claims) have each voted to accept the Plan in accordance with the Bankruptcy Code, thereby satisfying section 1129(a)(8) as to those Classes. However, Class 8 (General Unsecured Claims), Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests) have not accepted the Plan. Accordingly, section 1129(a)(8) of the Bankruptcy Code has not been satisfied. The Plan, however, is still confirmable because it satisfies the nonconsensual confirmation provisions of section 1129(b), as set forth below.

54. **Treatment of Administrative, Priority, Priority Tax Claims, and Professional Fee Claims (11 U.S.C. § 1129(a)(9)).** The treatment of Administrative Claims, Priority Claims, and Professional Fee Claims pursuant to Article III of the Plan, and as set forth below with respect to the resolution of the objections filed by the Internal Revenue Service and

certain Texas taxing authorities satisfies the requirements of sections 1129(a)(9) of the Bankruptcy Code.

55. **Acceptance by Impaired Class (11 U.S.C. § 1129(a)(10)).** Class 2 (Frontier Secured Claims) and Class 7 (Convenience Claims) are each Impaired Classes of Claims that voted to accept the Plan, determined without including any acceptance of the Plan by any insider. Therefore, the requirement of section 1129(a)(10) of the Bankruptcy Code is satisfied.

56. **Feasibility (11 U.S.C. § 1129(a)(11)).** Article IV of the Plan provides for the implementation of the Plan through the Claimant Trust, the Litigation Sub-Trust, and the Reorganized Debtor. The Plan provides that the Claimant Trust, among other things, will monetize and distribute the Debtor's remaining assets. The Disclosure Statement, the Amended Liquidation Analysis/Financial Projections, and the other evidence presented at the Confirmation Hearing provide a reasonable probability of success that the Debtor will be able to effectuate the provisions of the Plan. The Plan contemplates the establishment of the Claimant Trust upon the Effective Date, which will monetize the Estate's assets for the benefit of creditors. Mr. Seery testified that the Class 2 Frontier Secured Claim will be paid over time pursuant to the terms of the New Frontier Note and the Reorganized Debtor will have sufficient assets to satisfy its obligations under this note. The Claims of the Holders of Class 7 Claims (as well as those Class 8 creditors who validly opted to receive the treatment of Class 7 Claims) are expected to be satisfied shortly after the Effective Date. Holders of Class 8 Claims (including any holders of Class 7 Claims who opted to receive the treatment provided to Class 8 Claims) are not guaranteed any recovery and will

periodically receive pro rata distributions as assets are monetized pursuant to the Plan and the Claimant Trust Agreement. Thus, section 1129(a)(11) of the Bankruptcy Code is satisfied.

57. **Payment of Fees (11 U.S.C. § 1129(a)(12)).** All fees payable under 28 U.S.C. § 1930 have been paid or will be paid on or before the Effective Date pursuant to Article XII.A of the Plan, thus satisfying the requirement of section 1129(a)(12) of the Bankruptcy Code. The Debtor has agreed that the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust shall be jointly and severally liable for payment of quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 through the entry of the Final Decree for the Debtor or the dismissal or conversion of the Chapter 11 Case.

58. **Retiree Benefits.** The Plan provides for the assumption of the Pension Plan (to the extent such Pension Plan provides "retiree benefits" and is governed by section 1114 of the Bankruptcy Code). Thus, the Plan complies with section 1129(a)(13) of the Bankruptcy Code, to the extent applicable.

59. **Miscellaneous Provisions (11 U.S.C. §§ 1129(a)(14)-(16)).** Sections 1129(a)(14)-(16) of the Bankruptcy Code are inapplicable as the Debtor (i) has no domestic support obligations (section 1129(a)(14)), (ii) is not an individual (section 1129(a)(15)), and (iii) is not a nonprofit corporation (section 1129(a)(16)).

60. **No Unfair Discrimination; Fair and Equitable Treatment (11 U.S.C. § 1129(b)).** The classification and treatment of Claims and Equity Interests in Classes 8, 10 and 11, which have not accepted the Plan, is proper pursuant to section 1122 of the Bankruptcy Code, does

not discriminate unfairly, and is fair and equitable pursuant to section 1129(b)(1) of the Bankruptcy Code.

a. Class 8. The Plan is fair and equitable with respect to Class 8 General Unsecured Claims. While Equity Interests in Class 10 and Class 11 will receive a contingent interest in the Claimant Trust under the Plan (the "Contingent Interests"), the Contingent Interests will not vest unless and until holders of Class 8 General Unsecured Claims and Class 9 Subordinated Claims receive distributions equal to 100% of the amount of their Allowed Claims plus interest as provided under the Plan and Claimant Trust Agreement. Accordingly, as the holders of Equity Interests that are junior to the Claims in Class 8 and Class 9 will not receive or retain under the Plan on account of such junior claim interest any property unless and until the Claims in Class 8 and Class 9 are paid in full plus applicable interest, the Plan is fair and equitable with respect to holders of Class 8 General Unsecured Claims pursuant to section 1129(b)(2)(B) of the Bankruptcy Code and the reasoning of *In re Introgen Therapuetics* 429 B.R 570 (Bankr. W.D. Tex. 2010).

b. Class 10 and Class 11. There are no Claims or Equity Interests junior to the Equity Interests in Class 10 and Class 11. Equity Interests in Class 10 and 11 will neither receive nor retain any property under the Plan unless Allowed Claims in Class 8 and Class 9 are paid in full plus applicable interest pursuant to the terms of the Plan and Claimant Trust Agreement. Thus, the Plan does not violate the absolute priority rule with respect to Classes 10 and 11 pursuant to Bankruptcy Code section 1129(b)(2)(C). The Plan does not discriminate unfairly as to Equity Interests. As noted above, separate classification of the Class B/C Partnership Interests from the Class A Partnerships Interests is appropriate because they constitute different classes of equity security interests in the Debtor, and each are appropriately separately classified and treated.

Accordingly, the Plan does not violate the absolute priority rule, does not discriminate unfairly, and is fair and equitable with respect to each Class that has rejected the Plan. Thus, the Plan satisfies the requirements of section 1129(b) of the Bankruptcy Code with respect to Classes 8, 10, and 11.

61. **Only One Plan (11 U.S.C. § 1129(c)).** The Plan is the only chapter 11 plan confirmed in this Chapter 11 Case, and the requirements of section 1129(c) of the Bankruptcy Code are therefore satisfied.

62. **Principal Purpose (11 U.S.C. § 1129(d)).** Mr. Seery testified that the principal purpose of the Plan is neither the avoidance of taxes nor the avoidance of the application of section 5 of the Securities Act of 1933, and no governmental unit has objected to the confirmation of the Plan on any such grounds. Accordingly, section 1129(d) of the Bankruptcy Code is inapplicable.

63. **Satisfaction of Confirmation Requirements.** Based upon the foregoing, the Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code and should be confirmed.

64. **Good Faith Solicitation (11 U.S.C. § 1125(e)).** The Debtor, the Independent Directors, and the Debtor's employees, advisors, Professionals, and agents have acted in good faith within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules in connection with all of their respective activities relating to the solicitation of acceptances of the Plan and their participation in the activities described in section 1125 of the Bankruptcy Code, and they are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code.

65. **Discharge (11 U.S.C. § 1141(d)(3))**. The Debtor is entitled to a discharge of debts pursuant to section 1141(d)(3)(B) of the Bankruptcy Code. Under the Plan, the Claimant Trust or Reorganized Debtor, as applicable, will continue to manage funds and conduct business

in the same manner as the Debtor did prior to Plan confirmation, which includes the management of the CLOs, Multi-Strat, Restoration Capital, the Select Fund and the Korea Fund. Although the Plan projects that it will take approximately two years to monetize the Debtor's assets for fair value, Mr. Seery testified that while the Reorganized Debtor and Claimant Trust will be monetizing their assets, there is no specified time frame by which this process must conclude. Mr. Seery's credible testimony demonstrates that the Debtor will continue to engage in business after consummation of the Plan, within the meaning of Section 1141(d)(3)(b) and that the Debtor is entitled to a discharge pursuant to section 1141(d)(1) of the Bankruptcy Code.

66. **Retention of Jurisdiction.** The Bankruptcy Court may properly retain jurisdiction over the matters set forth in Article XI of the Plan and/or section 1142 of the Bankruptcy Code to the maximum extent under applicable law.

67. **Additional Plan Provisions (11 U.S.C. § 1123(b)).** The Plan's provisions are appropriate, in the best interests of the Debtor and its Estate, and consistent with the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules.

68. **Executory Contracts and Unexpired Leases (11 U.S.C. § 1123(b)(2)).** The Debtor has exercised reasonable business judgment with respect to the rejection of the Executory Contracts and Unexpired Leases pursuant the terms of the Plan and this Confirmation Order, and such rejections are justified and appropriate in this Chapter 11 Case. The Debtor also filed the List of Assumed Contracts, which contain notices to the applicable counterparties to the contracts set forth on Exhibit "FF" to Plan Supplement filed on February 1, 2021 [Docket No. 1875] and which exhibit sets forth the list of executory contracts and unexpired leases to be

assumed by the Debtor pursuant to the Plan (collectively, the "Assumed Contracts"). With respect to the Assumed Contracts, only one party objected to the assumption of any of the Assumed Contracts, but that objection was withdrawn.[8] Any modifications, amendments, supplements, and restatements to the Assumed Contracts that may have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Assumed Contracts or the validity, priority, or amount of any Claims that may arise in connection therewith. Assumption of any Assumed Contract pursuant to the Plan and full payment of any applicable Cure pursuant to the Plan shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption.

69. **Compromises and Settlements Under and in Connection with the Plan (11 U.S.C. § 1123(b)(3)).** All of the settlements and compromises pursuant to and in connection with the Plan, comply with the requirements of section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019.

70. **Debtor Release, Exculpation and Injunctions (11 U.S.C. § 1123(b)).** The Debtor Release, Exculpation, and Injunction provisions provided in the Plan (i) are within the jurisdiction of the Bankruptcy Court under 28 U.S.C. § 1334; (ii) are integral elements of the transactions incorporated into the Plan, and inextricably bound with the other provisions of the Plan; (iii) confer material benefit on, and are in the best interests of, the Debtor, its Estate, and its

[8] *See Notice of Withdrawal of James Dondero's Objection Debtor's Proposed Assumption of Contracts and Cure Amounts Proposed in Connection Therewith* [Docket No. 1876]

creditors; (iv) are fair, equitable, and reasonable; (v) are given and made after due notice and opportunity for hearing; (vi) satisfy the requirements of Bankruptcy Rule 9019; and (vii) are consistent with the Bankruptcy Code and other applicable law, and as set forth below.

71. **Debtor Release.** Section IX.D of the Plan provides for the Debtor's release of the Debtor's and Estate's claims against the Released Parties. Releases by a debtor are discretionary and can be provided by a debtor to persons who have provided consideration to the Debtor and its estate pursuant to section 1123(b)(3)(A) of the Bankruptcy Code. Contrary to the objections raised by Mr. Dondero and certain of the Dondero Related Entities, the Debtor Release is appropriately limited to release claims held by the Debtor and does not purport to release the claims held by the Claimant Trust, Litigation Sub-Trust, or other third parties. The Plan does not purport to release any claims held by third parties and the Bankruptcy Court finds that the Debtor Release is not a "disguised" release of any third party claims as asserted by certain objecting parties. The limited scope of the Debtor Release in the Plan was extensively negotiated with the Committee, particularly with the respect to the Debtor's conditional release of claims against employees, as identified in the Plan, and the Plan's conditions and terms of such releases. The Plan does not release (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual

fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction. The Debtor Release also contains conditions to such releases as set forth in Article X.D of the Plan with respect to employees (the "Release Conditions"). Until the an employee satisfies the Release Conditions or the Release Conditions otherwise terminate, any claims against such employee will be tolled so that if the Release Conditions are not met the Litigation Trustee may pursue claims against an employee at a later date. The evidence before the Bankruptcy Court, including, but not limited to Mr. Seery's testimony, demonstrates that the Debtor is not aware of any claims against any of the Released Parties, that the Released Parties have been instrumental in assisting the Debtor's efforts toward confirmation of the Plan and that, therefore, the releases are a *quid pro quo* for the Released Parties' significant contributions to a highly complex and contentious restructuring. The Committee, whose members hold approximately $200 million in claims against the Estate, is highly sophisticated and is represented by highly sophisticated professionals, and has actively and vigorously negotiated the terms of the Debtor Release, which was the subject of significant controversy at the Initial Disclosure Statement hearing held by the Bankruptcy Court on October 27, 2020.

72. **Exculpation.** Section IX.C of the Plan provides for the exculpation of certain Exculpated Parties to the extent provided therein (the "Exculpation Provision"). As explained below, the Exculpation Provision is appropriate under the unique circumstances of this litigious Chapter 11 Case and consistent with applicable Fifth Circuit precedent. First, with respect to the Independent Directors, their agents, and their advisors, including any employees acting at

their direction, the Bankruptcy Court finds and concludes that it has already exculpated these parties for acts other than willful misconduct and gross negligence pursuant to the January 9 Order. The January 9 Order was specifically agreed to by Mr. Dondero, who was in control of the Debtor up until entry of the January 9 Order. The January 9 Order was not appealed. In addition to the appointment of the Independent Directors in an already contentious and litigious case, the January 9 Order set the standard of care for the Independent Directors and specifically exculpated them for negligence. Mr. Seery and Mr. Dubel each testified that they had input into the contents of the January 9 Order and would not have agreed to their appointment as Independent Directors if the January 9 Order did not include the protections set forth in paragraph 10 of the January 9 Order. Paragraph 10 of the January 9 Order (1) requires that parties wishing to sue the Independent Directors or their agents and advisors must first seek approval from the Bankruptcy Court before doing so; (2) sets the standard of care for the Independent Directors during the Chapter 11 Case and exculpated the Independent Directors for acts other than willful misconduct or gross negligence; (3) only permits suits against the Independent Directors to proceed for colorable claims of willful misconduct and gross negligence upon order of the Bankruptcy Court; and (4) does not expire by its terms.

73. **Existing Exculpation of Independent Directors.** The Bankruptcy Court also finds and concludes that it has already exculpated Mr. Seery acting in the capacity as Chief Executive Officer and Chief Restructuring Officer pursuant to the July 16 Order. The Bankruptcy Court concludes its previous approval of the exculpation of the Independent Directors, their agents, advisors and employees working at their direction pursuant to the January 9 Order, and the Chief

Executive Officer and Chief Restructuring Officer pursuant to the July 16 Order constitutes the law of this case and are *res judicata* pursuant to *In re Republic Supply Co. v. Shoaf*, 815 F.2d 1046 (5th Cir.1987). The January 9 Order and July 16 Order cannot be collaterally attacked based on the objectors' objection to the exculpation of the Independent Directors, their agents, and advisors, including any employees acting at their direction, as well as the Chief Executive Officer and Chief Restructuring Officer, that the Bankruptcy Court already approved pursuant to the January 9 Order and the July 16 Order.

74. **The Exculpation Provision Complies with Applicable Law.** Separate and apart from the *res judicata* effect of the January 9 Order and the July 16 Order, the Bankruptcy Court also finds and concludes that the Exculpation Provision is consistent with applicable law, including *In re Pacific Lumber Co*., 584 F.3d 229 (5th Cir. 2009), for several reasons:

a. First, the statutory basis for *Pacific Lumber*'s denial of exculpation for certain parties other than a creditors' committee and its members is that section 524(e) of the Bankruptcy Code "only releases the debtor, not co-liable third parties." *Pacific Lumber*, 253 F.3d. at 253. However, *Pacific Lumber* does not prohibit all exculpations under the Bankruptcy Code and the court in such case specifically approved the exculpations of a creditors' committee and its members on the grounds that "11 U.S.C. § 1103(c), which lists the creditors' committee's powers, implies committee members have qualified immunity for actions within the scope of their duties…. [I]f members of the committee can be sued by persons unhappy with the committee's performance during the case or unhappy with the outcome of the case, it will be extremely difficult to find members to serve on an official committee." *Pacific Lumber*, 253 F.3d at 253 (quoting Lawrence P. King, et al, Collier on Bankruptcy, ¶ 1103.05[4][b] (15th Ed. 2008]). *Pacific Lumber's* rationale for permitted exculpation of creditors' committees and their members (which was clearly policy-based and based on a creditors' committee qualified immunity flowing from their duties under section 1103(c) of the Bankruptcy Code and their disinterestedness and importance in chapter 11 cases) does not preclude exculpation to other parties in a particular chapter 11 case that perform similar roles to a creditors' committee and its members. The Independent Directors, and by extension the Chief Executive Officer and Chief Restructuring Officer, were not

part of the Debtor's enterprise prior to their appointment by the Bankruptcy Court under the January 9 Order. The Bankruptcy Court appointed the Independent Directors in lieu of a chapter 11 trustee to address what the Bankruptcy Court perceived as serious conflicts of interest and fiduciary duty concerns with the then-existing management prior to January 9, 2020, as identified by the Committee. In addition, the Bankruptcy Court finds that the Independent Directors expected to be exculpated from claims of negligence, and would likely have been unwilling to serve in contentious cases absent exculpation. The uncontroverted testimony of Mr. Seery and Mr. Dubel demonstrates that the Independent Directors would not have agreed to accept their roles without the exculpation and gatekeeper provision in the January 9 Order. Mr. Dubel also testified as to the increasing important role that independent directors are playing in complex chapter 11 restructurings and that unless independent directors could be assured of exculpation for simple negligence in contentious bankruptcy cases they would be reluctant to accept appointment in chapter 11 cases which would adversely affect the chapter 11 restructuring process. The Bankruptcy Court concludes that the Independent Directors were appointed under the January 9 Order in order to avoid the appointment of a chapter 11 trustee and are analogous to a creditors' committee rather than an incumbent board of directors. The Bankruptcy Court also concludes that if independent directors cannot be assured of exculpation for simple negligence in contentious bankruptcy cases, they may not be willing to serve in that capacity. Based upon the foregoing, the Bankruptcy Court concludes that *Pacific Lumber's* policy of exculpating creditors' committees and their members from "being sued by persons unhappy with the committee's performance during the case or unhappy with the outcome of the case" is applicable to the Independent Directors in this Chapter 11 Case.[9]

b. Second, the Bankruptcy Court also concludes that *Pacific Lumber* does not preclude the exculpation of parties if there is a showing that "costs [that] the released parties might incur defending against such suits alleging such negligence are likely to swamp either the Exculpated Parties or the reorganization." *Pacific Lumbe*r, 584 F.3d at 252. If ever there was a risk of that happening in a chapter 11 reorganization, it is this one. Mr. Seery credibly testified that Mr. Dondero stated outside the courtroom that if Mr. Dondero's pot plan does not get approved, that Mr. Dondero will "burn the place down." The Bankruptcy Court can easily expect that the proposed Exculpated Parties might expect to incur costs that could swamp them and the reorganization based on the prior litigious conduct of Mr. Dondero and his controlled entities that justify their inclusion in the Exculpation Provision.

[9] The same reasoning applies to the inclusion of Strand in the Exculpation Provision because Strand is the general partner of the Debtor through which each of the Independent Board members act.

75. **Injunction.** Section IX.D of the Plan provides for a Plan inunction to implement and enforce the Plan's release, discharge and release provisions (the "Injunction Provision"). The Injunction Provision is necessary to implement the provisions in the Plan. Mr. Seery testified that the Claimant Trustee will monetize the Debtor's assets in order to maximize their value. In order to accomplish this goal, the Claimant Trustee needs to be able to pursue this objective without the interference and harassment of Mr. Dondero and his related entities, including the Dondero Related Entities. Mr. Seery also testified that if the Claimant Trust was subject to interference by Mr. Dondero, it would take additional time to monetize the Debtor's assets and those assets could be monetized for less money to the detriment of the Debtor's creditors. The Bankruptcy Court finds and concludes that the Injunction Provision is consistent with and permissible under Bankruptcy Code sections 1123(a), 1123(a)(6), 1141(a) and (c), and 1142. The Bankruptcy Court rejects assertions by certain objecting parties that the Injunction Provision constitutes a "third-party release." The Injunction Provision is appropriate under the circumstances of this Chapter 11 Case and complies with applicable bankruptcy law. The Bankruptcy Court also concludes that the terms "implementation" and "consummation" are neither vague nor ambiguous

76. **Gatekeeper Provision**. Section IX.F of the Plan contains a provision contained in paragraph AA of this Confirmation Order and which the Debtor has referred to as a gatekeeper provision (the "Gatekeeper Provision"). The Gatekeeper Provision requires that Enjoined Parties first seek approval of the Bankruptcy Court before they may commence an action against Protected Parties. Thereafter, if the Bankruptcy Court determines that the action is

colorable, the Bankruptcy Court may, if it has jurisdiction, adjudicate the action. The Bankruptcy Court finds that the inclusion of the Gatekeeper Provision is critical to the effective and efficient administration, implementation, and consummation of the Plan. The Bankruptcy Court also concludes that the Bankruptcy Court has the statutory authority as set forth below to approve the Gatekeeper Provision.

77. **Factual Support for Gatekeeper Provision.** The facts supporting the need for the Gatekeeper Provision are as follows. As discussed earlier in this Confirmation Order, prior to the commencement of the Debtor's bankruptcy case, and while under the direction of Mr. Dondero, the Debtor had been involved in a myriad of litigation, some of which had gone on for years and, in some cases, over a decade. Substantially all of the creditors in this case are either parties who were engaged in litigation with the Debtor, parties who represented the Debtor in connection with such litigation and had not been paid, or trade creditors who provided litigation-related services to the Debtor. During the last several months, Mr. Dondero and the Dondero Related Entities have harassed the Debtor, which has resulted in further substantial, costly, and time-consuming litigation for the Debtor. Such litigation includes: (i) entry of a temporary restraining order and preliminary injunction against Mr. Dondero [Adv. Proc. No. 20-03190 Docket No. 10 and 59] because of, among other things, his harassment of Mr. Seery and employees and interference with the Debtor's business operations; (ii) a contempt motion against Mr. Dondero for violation of the temporary restraining order, which motion is still pending before the Bankruptcy Court [Adv. Proc. No. 20-03190 Docket No. 48]; (iii) a motion by Mr. Dondero's controlled investors in certain CLOs managed by the Debtor that the Bankruptcy Court referred to

as frivolous and a waste of the Bankruptcy Court's time [Docket No. 1528] which was denied by the Court [Docket No. 1605]; (iv) multiple plan confirmation objections focused on ensuring the Dondero Related Entities be able to continue their litigation against the Debtor and its successors post-confirmation [Docket Nos. 1661, 1667, 1670, 1673, 1676, 1677 and 1868]; (v) objections to the approval of the Debtor's settlements with Acis and HarbourVest and subsequent appeals of the Bankruptcy Court's order approving each of those settlements [Docket Nos. 1347 and 1870]; and (vi) a complaint and injunction sought against Mr. Dondero's affiliated entities to prevent them from violating the January 9 Order and entry of a restraining order against those entities [Adv Proc. No. 21-03000 Docket No 1] (collectively, the "Dondero Post-Petition Litigation").

78. **Findings Regarding Dondero Post-Petition Litigation.** The Bankruptcy Court finds that the Dondero Post-Petition Litigation was a result of Mr. Dondero failing to obtain creditor support for his plan proposal and consistent with his comments, as set forth in Mr. Seery's credible testimony, that if Mr. Dondero's plan proposal was not accepted, he would "burn down the place." The Bankruptcy Court concludes that without appropriate protections in place, in the form of the Gatekeeper Provision, Mr. Dondero and his related entities will likely commence litigation against the Protected Parties after the Effective Date and do so in jurisdictions other than the Bankruptcy Court in an effort to obtain a forum which Mr. Dondero perceives will be more hospitable to his claims. The Bankruptcy Court also finds, based upon Mr. Seery's testimony, that the threat of continued litigation by Mr, Dondero and his related entities after the Effective Date will impede efforts by the Claimant Trust to monetize assets for the benefit of creditors and result

in lower distributions to creditors because of costs and distraction such litigation or the threats of such litigation would cause.

79. **Necessity of Gatekeeper Provision.** The Bankruptcy Court further finds that unless the Bankruptcy Court approves the Gatekeeper Provision, the Claimant Trustee and the Claimant Trust Oversight Board will not be able to obtain D&O insurance, the absence of which will present unacceptable risks to parties currently willing to serve in such roles. The Bankruptcy Court heard testimony from Mark Tauber, a Vice President with AON Financial Services, the Debtor's insurance broker ("AON"), regarding his efforts to obtain D&O insurance. Mr. Tauber credibly testified that of all the insurance carriers that AON approached to provide D&O insurance coverage after the Effective Date, the only one willing to do so without an exclusion for claims asserted by Mr. Dondero and his affiliates otherwise requires that this Order approve the Gatekeeper Provision. Based on the foregoing, the Bankruptcy Court finds that the Gatekeeper Provision is necessary and appropriate in light of the history of the continued litigiousness of Mr. Dondero and his related entities in this Chapter 11 Case and necessary to the effective and efficient administration, implementation and consummation of the Plan and is appropriate pursuant to *Carroll v. Abide (In re Carroll)* 850 F.3d 811 (5th Cir. 2017). Approval of the Gatekeeper Provision will prevent baseless litigation designed merely to harass the post-confirmation entities charged with monetizing the Debtor's assets for the benefit of its economic constituents, will avoid abuse of the court system and preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants. Any suit against a Protected Party would effectively be a suit against the Debtor, and the Debtor may be required to indemnify the Protected

Parties under the Limited Partnership Agreement, which will remain in effect through the Effective Date, or those certain *Indemnification and Guaranty Agreements*, dated January 9, 2020, between Strand, the Debtor, and each Independent Director, following the Confirmation Date as each such agreement will be assumed pursuant to 11 U.S.C. § 365 pursuant to the Plan.

80. **Statutory Authority to Approve Gatekeeper Provision.** The Bankruptcy Court finds it has the statutory authority to approve the Gatekeeper Provision under sections 1123(a)(5), 1123(b)(6), 1141, 1142(b), and 105(a). The Gatekeeper Provision is also within the spirit of the Supreme Court's "Barton Doctrine." *Barton v. Barbour,* 104 U.S. 126 (1881). The Gatekeeper Provision is also consistent with the notion of a prefiling injunction to deter vexatious litigants, that has been approved by the Fifth Circuit in such cases as *Baum v. Blue Moon Ventures, LLC*, 513 F.3d 181, 189 (5th Cir. 2008), and *In re Carroll,* 850 F.3d 811 (5th Cir. 2017).

81. **Jurisdiction to Implement Gatekeeper Provision.** The Bankruptcy Court finds that it will have jurisdiction after the Effective Date to implement the Gatekeeper Provision as post-confirmation bankruptcy court jurisdiction has been interpreted by the Fifth Circuit under *United States Brass Corp. v. Travelers Ins. Group, Inc. (In re United States Brass Corp.)*, 301 F.3d 296 (5th Cir. 2002) and *EOP-Colonnade of Dallas Ltd. P'Ship v. Faulkner (In re Stonebridge Techs., Inc.)*, 430 F.3d 260 (5th Cir. 2005). Based upon the rationale of the Fifth Circuit in *Villegas v. Schmidt*, 788 F.3d 156, 158-59 (5th Cir. 2015), the Bankruptcy Court's jurisdiction to act as a gatekeeper does not violate *Stern v. Marshall.* The Bankruptcy Court's determination of whether

a claim is colorable, which the Bankruptcy Court has jurisdiction to determine, is distinct from whether the Bankruptcy Court would have jurisdiction to adjudicate any claim it finds colorable.

82. **Resolution of Objections of Scott Ellington and Isaac Leventon**. Each of Scott Ellington ("Mr. Ellington") and Isaac Leventon ("Mr. Leventon") (each, a "Senior Employee Claimant") has asserted certain claims for liquidated but unpaid bonus amounts for the following periods: 2016, 2017, and 2018, as set forth in Exhibit A to that certain *Senior Employees' Limited Objection to Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1669] (the "Senior Employees' Objection") (for each of Mr. Ellington and Mr. Leventon, the "Liquidated Bonus Claims").

a. Mr. Ellington has asserted Liquidated Bonus Claims in the aggregate amount of $1,367,197.00, and Mr. Leventon has asserted Liquidated Bonus Claims in the aggregate amount of $598,198.00. Mr. Ellington received two Ballots[10] – a Ballot for Class 7 of the Plan and a Ballot for Class 8 of the Plan. Mr. Ellington completed and timely returned both of such Ballots, voted to reject the Plan, and elected to have his Class 8 Liquidated Bonus Claims treated under Class 7 of the Plan, subject to the objections and reservations of rights set forth in the Senior Employees' Objection. If Mr. Ellington is permitted to elect Class 7 treatment for his Liquidated Bonus Claims, then the maximum amount of his Liquidated Bonus Claims will be $1,000,000.

b. Mr. Leventon received two Ballots—a Ballot for Class 7 of the Plan and a Ballot for Class 8 of the Plan. Mr. Leventon completed and timely returned both of such Ballots and voted each such Ballots to rejected the Plan.

c. The Senior Employees' Objection, among other things, objects to the Plan on the grounds that the Debtor improperly disputes the right of Mr. Ellington to elect Class 7 treatment for his Liquidated Bonus Claims and Mr. Leventon's entitlement to receive Class 7 Convenience Class treatment for his Liquidated Bonus Claims. The Debtor contended that neither Mr. Ellington or Mr. Leventon were entitled to elect to receive Class 7 Convenience Class treatment on account of their Liquidated

[10] As defined in the Plan, "Ballot" means the forms(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

Bonus Claims under the terms of the Plan, the Disclosure Statement Order or applicable law.

d. The Debtor and Mr. Ellington and Mr. Leventon negotiated at arms' length in an effort to resolve all issues raised in the Senior Employee's Objection, including whether or not Mr. Ellington and Mr. Leventon were entitled to Class 7 Convenience Class treatment of their Liquidated Bonus Claims. As a result of such negotiation, the Debtor, Mr. Ellington, and Mr. Leventon have agreed to the settlement described in paragraphs 82(e) through 82(k) below and approved and effectuated pursuant to decretal paragraphs RR through SS (the "Senior Employees' Settlement").

e. Under the terms of the Senior Employees' Settlement, the Debtor has the right to elect one of two treatments of the Liquidated Bonus Claims for a Senior Employee Claimant. Under the first treatment option ("Option A"), the Liquidated Bonus Claims will be entitled to be treated in Class 7 of the Plan, and the Liquidated Bonus Claims will be entitled to receive payment in an amount equal to 70.125% of the Class 7 amount of the Liquidated Bonus Claims, subject to the Liquidated Bonus Claims becoming Allowed Claims under the terms of the Plan. Under this calculation, Mr. Ellington would be entitled to receive $701,250.00 on account of his Class 7 Convenience Class Claim when and as Allowed under the Plan, and Mr. Leventon would be entitled to receive $413,175.10 on account of his Class 7 Convenience Class Claim when and as Allowed under the Plan. If, however, any party in interest objects to the allowance of the Senior Employee Claimant's Liquidated Bonus Claims and does not prevail in such objection, then such Senior Employee Claimant will be entitled to a payment in an amount equal to 85% of his Allowed Liquidated Bonus Claims (subject, in the case of Mr. Ellington, to the cap imposed on Class 7 Claims). In addition, under Option A, each of Mr. Ellington and Mr. Leventon would retain their respective rights to assert that the Liquidated Bonus Claims are entitled to be treated as Administrative Expense Claims, as defined in Article I.B.2. of the Plan, in which case the holder of such Liquidated Bonus Claims would be entitled to payment in full of the Allowed Liquidated Bonus Claims. Under Option A, parties in interest would retain the right to object to any motion seeking payment of the Liquidated Bonus Amounts as Administrative Expenses.

f. Under the second treatment option ("Option B"), the Debtor would agree that the Senior Employee Claimant has Allowed Liquidated Bonus Claims, no longer subject to objection by any party in interest, in the amounts of the Liquidated Bonus Claims (subject, in the case of Mr. Ellington, to the cap imposed by Class 7). If the Debtor elects Option B as to a Senior Employee Claimant, then such Senior Employee Claimant would be entitled to a payment on account of his Allowed Liquidated Bonus Claims in an amount equal to 60% of the amount of the

Liquidated Bonus Claims (which, in Mr. Ellington's case, would be $600,000 and in Mr. Leventon's case, would be $358,918.80), and such payment would be the sole recovery on account of such Allowed Liquidated Bonus Claims.

g. The Debtor may, with the consent of the Committee, elect Option B with respect to a Senior Employee Claimant at any time prior to the occurrence of the Effective Date. If the Debtor does not make an election, then Option A will apply.

h. Under either Option A or Option B, Mr. Ellington and Mr. Leventon will retain all their rights with respect to all Claims other than the Liquidated Bonus Amounts, including, but not limited to, their Class 6 PTO Claims, other claims asserted as Class 8 General Unsecured Claims, the Senior Employees' claims for indemnification against the Debtor, and any other claims that they may assert constitute Administrative Expense Claims, and any other such Claims are subject to the rights of any party in interest to object to such Claims, and the Debtor reserves any all of its rights and defenses in connection therewith.

i. Subject to entry of this Confirmation Order and as set forth and announced on the record at the hearing on confirmation of the Plan and no party objecting thereto, Mr. Ellington and Mr. Leventon agreed to change the votes in their respective Ballots from rejection to acceptance of the Plan and to withdraw the Senior Employees' Objection.

j. The Senior Employees' Settlement represents a valid exercise of the Debtor's business judgment and satisfies the requirements for a compromise under Bankruptcy Rule 9019(a).

k. For the avoidance of doubt, neither Mr. Leventon nor Mr. Ellington shall be a Released Party under the Plan regardless of how the Senior Employee Claimants' Claims are to be treated hereunder.

Based upon the foregoing findings, and upon the record made before the Bankruptcy Court at the Confirmation Hearing, and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

A. Confirmation of the Plan. The Plan is approved in its entirety and **CONFIRMED** under section 1129 of the Bankruptcy Code. The terms of the Plan, including the

Plan Supplements and Plan Modifications, are incorporated by reference into and are an integral part of this Confirmation Order.[11]

B. Findings of Fact and Conclusions of Law. The findings of fact and the conclusions of law set forth in this Confirmation Order and on the record of the Confirmation Hearing constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052, made applicable to this proceeding by Bankruptcy Rule 9014. All findings of fact and conclusion of law announced by the Bankruptcy Court at the Confirmation Hearing in relation to confirmation of the Plan are hereby incorporated into this Confirmation Order. To the extent that any of the following constitutes findings of fact or conclusions of law, they are adopted as such. To the extent any findings of fact or conclusions of law set forth in this Confirmation Order (including any findings of fact or conclusions of law announced by the Bankruptcy Court at the Confirmation Hearing and incorporated herein) constitutes an order of the Bankruptcy Court, and is adopted as such.

C. Objections. Any resolution or disposition of objections to confirmation of the Plan or otherwise ruled upon by the Bankruptcy Court on the record of the Confirmation Hearing is hereby incorporated by reference. All objections and all reservations of rights pertaining to confirmation of the Plan that have not been withdrawn, waived or settled are overruled on the merits, except as otherwise specifically provided in this Confirmation Order.

D. Plan Supplements and Plan Modifications. The filing with the Bankruptcy Court of the Plan Supplements and the Plan Modifications constitutes due and

[11] The Plan is attached hereto as **Exhibit A**.

sufficient notice thereof. Accordingly, pursuant to section 1127(a) of the Bankruptcy Code and Bankruptcy Rule 3019, the Plan Modifications and the Plan Supplements do not require additional disclosure under section 1125 of the Bankruptcy Code or resolicitation of votes under section 1126 of the Bankruptcy Code, nor do they require that Holders of Claims or Equity Interests be afforded an opportunity to change previously cast acceptances or rejections of the Plan. The Plan Modifications and the Plan Supplements constitute the Plan pursuant to section 1127(a) of the Bankruptcy Code. Accordingly, the Plan, as modified, is properly before the Bankruptcy Court and all votes cast with respect to the Plan prior to such modification shall be binding and shall apply with respect to the Plan.

E. Deemed Acceptance of Plan. In accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, all Holders of Claims and Equity Interests who voted to accept the Plan (or whom are conclusively presumed to accept the Plan) are deemed to have accepted the Plan as modified by the Plan Modifications. No holder of a Claim shall be permitted to change its vote as a consequence of the Plan Modifications.

F. Vesting of Assets in the Reorganized Debtor. Except as otherwise provided in the Plan or this Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code, except with respect to such Liens, Claims, charges, and other encumbrances that are specifically preserved under the Plan upon the Effective Date. The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the

representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

G. Effectiveness of All Actions. All actions contemplated by the Plan, including all actions in connection with the Claimant Trust Agreement, the Senior Employee Stipulation, the New GP LLC Documents, the New Frontier Note, the Reorganized Limited Partnership Agreement, the Litigation Sub-Trust Agreement, and the other Plan Documents, are authorized to be taken on, prior to, or after the Effective Date, as applicable, under this Confirmation Order, without further application to or order of the Bankruptcy Court, or further action by the directors, managers, officers or partners of the Debtor or the Reorganized Debtor and with the effect that such actions had been taken by unanimous action of such parties.

H. Restructuring Transactions. The Debtor or Reorganized Debtor, as applicable, are authorized to enter into and effectuate the Restructuring provided under the Plan, including, without limitation, the entry into and consummation of the transactions contemplated by the Claimant Trust Agreement, the Senior Employee Stipulation, the New GP LLC Documents, the New Frontier Note, the Reorganized Limited Partnership Agreement, the Litigation Sub-Trust Agreement, and the other Plan Documents, and may take any actions as may be necessary or appropriate to effect a corporate restructuring of its business or a corporate restructuring of the overall corporate structure of the Reorganized Debtor, as and to the extent provided in the Plan. Any transfers of assets or equity interests effected or any obligations incurred through the Restructuring pursuant to the Plan are hereby approved and shall not constitute fraudulent conveyances or fraudulent transfers or otherwise be subject to avoidance.

I. Preservation of Causes of Action. Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order (including, without limitation, this Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor, the Litigation Sub-Trust, or the Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of the Plan based on the Disclosure Statement, the Plan, or this Confirmation Order, except where such Causes of Action have been expressly released in the Plan or any other Final Order (including, without limitation, this Confirmation Order). In addition, the right of the Reorganized Debtor, the Claimant Trust, or the Litigation Sub-Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

J. Independent Board of Directors of Strand. The terms of the current Independent Directors shall expire on the Effective Date without the need for any further or other action by any of the Independent Directors. For avoidance of doubt, the Assumed Contracts

include the *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and James Seery*; the *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and John Dubel* and *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and Russell Nelms* and shall each remain in full force and effect notwithstanding the expiration of the terms of any Independent Directors.

K. Cancellation of Equity Interests and Issuance of New Partnership Interests. On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be deemed cancelled, and all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, such Class A Limited Partnership Interests and Class B/C Limited Partnership Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement. As of the Effective Date and pursuant to the Plan, new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited

Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

L. Transfer of Assets to Claimant Trust. On or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax. Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to the Plan and the Claimant Trust Agreement.

M. Transfer of Estate Claims to Litigation Sub-Trust. On or prior to the Effective Date, the Claimant Trust shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Litigation Sub-Trust all of the Claimant Trust's rights, title, and interest in and to all of the Estate Claims as successor in interest to the Debtor, and in accordance with section 1141 of the Bankruptcy Code, the Estate Claims shall automatically vest in the Litigation Sub-Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Litigation Sub-Trust Interests and Litigation Sub-Trust Expenses. The Litigation Trustee will

be authorized to investigate, pursue, and otherwise resolve the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan, including as successor in interest to the Debtor or Committee, as applicable, in any litigation commenced prior to the Effective Date in which Estate Claims are asserted.

N. Compromise of Controversies. In consideration for the distributions and other benefits, including releases, provided under the Plan, the provisions of the Plan constitute a good faith compromise and settlement of all Claims, Equity Interests, and controversies resolved under the Plan and the entry of this Confirmation Order constitutes approval of such compromise and settlement under Bankruptcy Rule 9019.

O. Objections to Claims. The Claims Objection Deadline shall be the date that is 180 days after the Effective Date, *provided, however*, that the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee and as otherwise provided under the Plan.

P. Assumption of Contracts and Leases. Effective as of the date of this Confirmation Order, each of the Assumed Contacts shall be assumed by the Debtor without the need for any further notice to or action, order, or approval of the Bankruptcy Court, under section 365 of the Bankruptcy Code and the payment of Cures, if any, shall be paid in accordance with the Plan. Each Assumed Contract shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests. Modifications, amendments, supplements, and restatements to any of the

Assumed Contracts that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of such Assumed Contracts or the validity, priority, or amount of any Claims that may arise in connection therewith. Assumption of the Assumed Contracts pursuant to Article V.A of the Plan and full payment of any applicable Cure pursuant to the Plan shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition, or other bankruptcy-related defaults, arising under any Assumed Contracts.

Q. Rejection of Contracts and Leases. Unless previously assumed during the pendency of the Chapter 11 Case or pursuant to the Plan, all other Executory Contracts and Unexpired Leases are rejected as of the date of the entry of this Confirmation Order and pursuant to the terms of the Plan. To the extent that any party asserts any damages resulting from the rejection of any Executory Contract or Unexpired Lease, such claim must be filed within **thirty (30) days** following entry of this Confirmation Order, or such claim will be forever barred and disallowed against the Reorganized Debtor.

R. Assumption of Issuer Executory Contracts. On the Confirmation Date, the Debtor will assume the agreements set forth on **Exhibit B** hereto (collectively, the "Issuer Executory Contracts") pursuant to section 365 of the Bankruptcy Code and Article V of the Plan. In full and complete satisfaction of its obligation to cure outstanding defaults under section 365(b)(1) of the Bankruptcy Code, the Debtor or, as applicable, any successor manager under the

Issuer Executory Contracts (collectively, the "Portfolio Manager") will pay to the Issuers[12] a cumulative amount of $525,000 (the "Cure Amount") as follows:

a. $200,000 in cash on the date that is five business days from the Effective Date, with such payment paid directly to Schulte Roth & Zabel LLP ("SRZ") in the amount of $85,714.29, Jones Walker LLP ("JW") in the amount of $72,380.95, and Maples Group ("Maples" and collectively with SRZ and JW, the "Issuers' Counsel") in the amount of $41,904.76 as reimbursement for the attorney's fees and other legal expenses incurred by the Issuers in connection with the Debtor's bankruptcy case; and

b. $325,000 in four equal quarterly payments of $81,250.00 (each, a "Payment"), which amounts shall be paid to SRZ in the amount of $34,821.43, JW in the amount of $29,404.76, and Maples in the amount of $17,023.81 as additional reimbursement for the attorney's fees and other legal expenses incurred by the Issuers in connection with the Debtor's bankruptcy case (i) from any management fees actually paid to the Portfolio Manager under the Issuer Executory Contracts (the "Management Fees"), and (ii) on the date(s) Management Fees are required to be paid under the Issuer Executory Contracts (the "Payment Dates"), and such obligation shall be considered an irrevocable direction from the Debtor and the Bankruptcy Court to the relevant CLO Trustee to pay, on each Payment Date, the Payment to Issuers' Counsel, allocated in the proportion set forth in such agreement; *provided, however,* that (x) if the Management Fees are insufficient to make any Payment in full on a Payment Date, such shortfall, in addition to any other amounts due hereunder, shall be paid out of the Management Fees owed on the following Payment Date, and (y) nothing herein shall limit either Debtor's liability to pay the amounts set forth herein, nor the recourse of the Issuers or Issuers' Counsel to the Debtor, in the event of any failure to make any Payment.

S. Release of Issuer Claims. Effective as of the Confirmation Date, and to the maximum extent permitted by law, each Issuer on behalf of itself and each of its current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, successors, designees, and

[12] The "Issuers" are: Brentwood CLO, Ltd., Gleneagles CLO, Ltd., Greenbriar CLO, Ltd., Highland CLO 2018-1, Ltd., Highland Legacy Limited, Highland Loan Funding V Ltd., Highland Park CDO I, Ltd., Pam Capital Funding LP, Rockwall CDO II Ltd., Rockwall CDO Ltd., Southfork CLO Ltd., Stratford CLO Ltd., Westchester CLO, Ltd., Aberdeen Loan Funding, Ltd., Eastland CLO, Ltd., Grayson CLO, Ltd., Highland Credit Opportunities CDO Ltd., Jasper CLO, Ltd., Liberty Cayman Holdings, Ltd., Liberty CLO, Ltd., Red River CLO, Ltd., Valhalla CLO, Ltd.

assigns hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue, (i) the Debtor and (ii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, the Independent Directors, the CEO/CRO, and with respect to the Persons listed in this subsection (ii), such Person's Related Persons (collectively, the "Debtor Released Parties"), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "Issuer Released Claims").

T. Release of Debtor Claims against Issuer Released Parties. Upon entry of this Order, and to the maximum extent permitted by law, the Debtor hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue [(i) each Issuer and (ii) Wendy Ebanks, (iii) Yun Zheng, (iv) Laura Chisholm, (v) Mora Goddard, (vi) Stacy Bodden, (vii) Suzan Merren (viii) Scott Dakers, (ix) Samit Ghosh, (x) Inderjit Singh, (xi) Ellen Christian, (xii) Andrew Dean, (xiii) Betsy Mortel, (xiv) David Hogan, (xv) Cleveland Stewart, (xvi) Rachael Rankin, (xvii) Otelia Scott, (xviii) Martin Couch, (xx) Ferona Bartley-Davis, (xxi) Charlotte Cloete, (xxii) Christina McLean, (xxiii) Karen Ellerbe,

(xxiv) Gennie Kay Bigord, (xxv) Evert Brunekreef, (xxvii) Evan Charles Burtton (collectively, the "Issuer Released Parties"),] for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "Debtor Released Claims"); *provided, however,* that notwithstanding anything herein to the contrary, the release contained herein will apply to the Issuer Released Parties set forth in subsection (ii) above only with respect to Debtor Released Claims arising from or relating to the Issuer Executory Contracts. Notwithstanding anything in this Order to the contrary, the releases set forth in paragraphs S and T hereof will not apply with respect to the duties, rights, or obligations of the Debtor or any Issuer hereunder.

U. Authorization to Consummate. The Debtor is authorized to consummate the Plan after the entry of this Confirmation Order subject to satisfaction or waiver of the conditions precedent to the Effective Date of the Plan set forth in Article VIII.A of the Plan. The Plan shall not become effective unless and until the conditions set forth in Article VIII.A of the Plan have been satisfied, or otherwise waived pursuant to Article VIII.B of the Plan.

V. Professional Compensation. All requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses incurred prior to the Effective Date

must be filed no **later than sixty (60) days after the Effective Date**. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims after notice and an opportunity for hearing in accordance with the procedures established by the Bankruptcy Code and the Bankruptcy Court. The Debtor shall fund the Professional Fee Reserve as provided under the Plan. The Reorganized Debtor shall pay Professional Fee Claims in Cash in the amounts the Bankruptcy Court allows. The Debtor is authorized to pay the pre-Effective Date fees and expenses of all ordinary course professionals in the ordinary course of business without the need for further Bankruptcy Court order or approval. From and after the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 (if applicable) of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtor or Claimant Trustee, as applicable, may employ and pay any Professional or Entity employed in the ordinary course of the Debtor's business without any further notice to or action, order, or approval of the Bankruptcy Court.

W. Release, Exculpation, Discharge, and Injunction Provisions. The following release, exculpation, discharge, and injunction provisions set forth in the Plan are approved and authorized in their entirety, and such provisions are effective and binding on all parties and Entities to the extent provided therein.

X. Discharge of Claims and Termination of Interests. To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by the Plan or this Confirmation Order, all consideration distributed under the Plan will be in exchange for, and in complete satisfaction, settlement,

discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to the Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by the Plan or this Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

Y. Exculpation. Subject in all respects to Article XII.D of the Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(v);

provided, however, the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. The Plan's exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of the Plan, including Article IV.C.2 of the Plan, protecting such Exculpated Parties from liability.

Z. Releases by the Debtor. On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person. Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under

any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

AA. Injunction. Upon entry of this Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan. Except as expressly provided in the Plan, this Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner, any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner,

in any place whatsoever, that does not conform to or comply with the provisions of the Plan. The injunctions set forth in the Plan and this Confirmation Order shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property. Subject in all respects to Article XII.D of the Plan, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however*, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in

Article XI of the Plan, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

BB. Duration of Injunction and Stays. Unless otherwise provided in the Plan, in this Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date, shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Bankruptcy Court will enter an equivalent order under Section 105.

CC. Continuance of January 9 Order and July 16 Order. Unless otherwise provided in the Plan, in this Confirmation Order, or in a Final Order of the Bankruptcy Court, each of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course, entered by the Bankruptcy Court on January 9, 2020* [Docket No. 339] and *Order Approving the Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020* [Docket No. 854] entered on July 16, 2020 shall remain in full force and effect from the Confirmation Date and following the Effective Date.

DD. No Governmental Releases. Nothing in this Confirmation Order or the Plan shall effect a release of any claim by the United States Government or any of its agencies or

any state and local authority whatsoever, including without limitation any claim arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against any party or person, nor shall anything in this Confirmation Order or the Plan enjoin the United States or any state or local authority from bringing any claim, suit, action, or other proceedings against any party or person for any liability of such persons whatever, including without limitation any claim, suit, or action arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against such persons, nor shall anything in this Confirmation Order or the Plan exculpate any party or person from any liability to the United States Government or any of its agencies or any state and local authority whatsoever, including any liabilities arising under the Internal Revenue Code, the environmental laws, or any criminal laws of the United States or any state and local authority against any party or person.

EE. Exemption from Transfer Taxes. Pursuant to section 1146(a) of the Bankruptcy Code, any transfers (whether from the Debtor to the Reorganized Debtor or to any other Person) of property under the Plan or pursuant to: (a) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtor or the Reorganized Debtor; (b) the Restructuring transactions pursuant to the Plan; (c) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (d) the making, assignment, or recording of any lease or sublease; or (e) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan,

including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment to the fullest extent contemplated by section 1146(a) of the Bankruptcy Code, and upon entry of this Confirmation Order, the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation of any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment.

FF. Cancellation of Notes, Certificates and Instruments. Except for the purpose of evidencing a right to a distribution under the Plan and except as otherwise set forth in the Plan or as otherwise provided in this Confirmation Order, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to the Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the

Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person.

GG. Documents, Mortgages, and Instruments. Each federal, state, commonwealth, local, foreign, or other governmental agency is authorized to accept any and all documents, mortgages, and instruments necessary or appropriate to effectuate, implement, or consummate the Plan, including the Restructuring transactions contemplated under the Plan, and this Confirmation Order.

HH. Post-Confirmation Modifications. Subject section 1127(b) of the Bankruptcy Code and the Plan, the Debtor and the Reorganized Debtor expressly reserve their rights to revoke or withdraw, or 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 or this Confirmation Order, in such manner 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 Article XII.B of the Plan.

II. Applicable Nonbankruptcy Law. The provisions of this Confirmation Order, the Plan and related documents, or any amendments or modifications thereto, shall apply and be enforceable notwithstanding any otherwise applicable nonbankruptcy law.

JJ. Governmental Approvals Not Required. This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules, or regulations of any state,

federal, or other governmental authority with respect to the dissemination, implementation, or consummation of the Plan and the Disclosure Statement, any certifications, documents, instruments or agreements, and any amendments or modifications thereto, and any other acts referred to in, or contemplated by, the Plan and the Disclosure Statement.

KK. Notice of Effective Date. As soon as reasonably practicable after the Effective Date, the Reorganized Debtor shall file notice of the Effective Date and shall serve a copy of the same on all Holders of Claims and Equity Interests, and all parties who have filed with the Bankruptcy Court requests to receive notices in accordance with Bankruptcy Rules 2002 and 3020(c). Notwithstanding the above, no notice of Confirmation or Consummation or service of any kind shall be required to be mailed or made upon any Entity to whom the Debtor mailed notice of the Confirmation Hearing, but received such notice returned marked "undeliverable as addressed," "moved, left no forwarding address" or "forwarding order expired," or similar reason, unless the Debtor has been informed in writing by such Entity, or is otherwise aware, of that Entity's new address. The above-referenced notices are adequate under the particular circumstances of this Chapter 11 Case and no other or further notice is necessary.

LL. Substantial Consummation. On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127 of the Bankruptcy Code.

MM. Waiver of Stay. For good cause shown, the stay of this Confirmation Order provided by any Bankruptcy Rule is waived, and this Confirmation Order shall be effective and enforceable immediately upon its entry by the Bankruptcy Court.

NN. References to and Omissions of Plan Provisions. References to articles, sections, and provisions of the Plan are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan. The failure to specifically include or to refer to any particular article, section, or provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such article, section, or provision, it being the intent of the Bankruptcy Court that the Plan be confirmed in its entirety, except as expressly modified herein, and incorporated herein by this reference.

OO. Headings. Headings utilized herein are for convenience and reference only, and do not constitute a part of the Plan or this Confirmation Order for any other purpose.

PP. Effect of Conflict. This Confirmation Order supersedes any Bankruptcy Court order issued prior to the Confirmation Date that may be inconsistent with this Confirmation Order. If there is any inconsistency between the terms of the Plan and the terms of this Confirmation Order, the terms of this Confirmation Order govern and control. If there is any inconsistency between the terms of this Confirmation Order and the terms of a final, executed Plan Supplement Document, the terms of the final, executed Plan Supplement Document will govern and control.

QQ. Resolution of Objection of Texas Taxing Authorities. Dallas County, Kaufman County, City of Allen, Allen ISD and City of Richardson (collectively, the "Tax Authorities") assert that they are the holders of prepetition and administrative expense claims for 2019, 2020 and 2021 ad valorem real and business personal property taxes. The ad valorem property taxes for tax year 2020 shall be paid in accordance with and to the extent required under

applicable nonbankruptcy law. In the event the 2020 taxes are paid after February 1, 2021, the Tax Authorities may assert any rights and amounts they claim are owed with respect to penalties and interest that have accrued through the date of payment and the Debtor and Reorganized Debtor reserve any all rights and defenses in connection therewith.

a. The Debtor/Reorganized Debtor shall pay all amounts owed to the Tax Authorities for tax year 2021 in accordance with and to the extent required under applicable nonbankruptcy law. The Tax Authorities shall not be required to file and serve an administrative expense claim and request for payment as a condition of allowance of their administrative expense claims pursuant to 11 U.S.C. Section 503(b)(1)(D). With regard to year 2019 ad valorem property taxes, the Tax Authorities will receive payment of their prepetition claims within 30 days of the Effective Date of the Plan. The payment will include interest from the Petition Date through the Effective Date and from the Effective Date through payment in full at the state statutory rate pursuant to 11 U.S.C. Sections 506(b), 511, and 1129, if applicable, subject to all of the Debtor's and Reorganized Debtor's rights and defenses in connection therewith. Notwithstanding any other provision in the Plan, the Tax Authorities shall (i) retain the liens that secure all prepetition and postpetition amounts ultimately owed to them, if any, as well as (ii) the state law priority of those liens until the claims are paid in full.

b. The Tax Authorities' prepetition claims and their administrative expense claims shall not be discharged until such time as the amounts owed are paid in full. In the event of a default asserted by the Taxing Authorities, the Tax Authorities shall provide notice Debtor or Reorganized Debtor, as applicable, and may demand cure of any such asserted default. Subject to all of its rights and defenses, the Debtor or Reorganized Debtor shall have fifteen (15) days from the date of the notice to cure the default. If the alleged default is not cured, the Tax Authorities may exercise any of their respective rights under applicable law and pursue collection of all amounts owed pursuant to state law outside of the Bankruptcy Court, subject in all respects to the Debtor's and Reorganized Debtor's applicable rights and defenses. The Debtor/Reorganized Debtor shall be entitled to any notices of default required under applicable nonbankruptcy law and each of the Taxing Authorities, the Debtor and the Reorganized Debtor reserve any and all of their respective rights and defenses in connection therewith. The Debtor's and Reorganized Debtor's rights and defenses under Texas Law and the Bankruptcy Code with respect to this provision of the Confirmation Order, including their right to dispute or object to the Tax Authorities' Claims and liens, are fully preserved.

RR. Resolution of Objections of Scott Ellington and Isaac Leventon. Pursuant to Bankruptcy Rule 9019(a), the Senior Employees' Settlement is approved in all respects. The Debtor may, only with the consent of the Committee, elect Option B for a Senior Employee Claimant by written notice to such Senior Employee Claimant on or before the occurrence of the Effective Date. If the Debtor does not elect Option B, then Option A will govern the treatment of the Liquidated Bonus Claims.

a. Notwithstanding any language in the Plan, the Disclosure Statement, or this Confirmation Order to the contrary, if Option A applies to the Liquidated Bonus Claims of a Senior Employee Claimant, then the Liquidated Bonus Claims of such Senior Employee Claimant will receive the treatment described in paragraph 82(e) hereof, and if the Debtor timely elects Option B with respect to the Liquidated Bonus Claims of a Senior Employee Claimant, then the Liquidated Bonus Claims of such Senior Employee will receive the treatment described in paragraph 82(f) hereof.

b. The Senior Employees' Settlement is hereby approved, without prejudice to the respective rights of Mr. Ellington and Mr. Leventon to assert all their remaining Claims against the Debtor's estate, including, but not limited to, their Class 6 PTO Claims, their remaining Class 8 General Unsecured Claims, any indemnification claims, and any Administrative Expense Claims that they may assert and is without prejudice to the rights of any party in interest to object to any such Claims.

c. Pursuant to Bankruptcy Rule 3018(a), Mr. Ellington and Mr. Leventon were permitted to change their votes on the Plan. Accordingly, Mr. Ellington's votes on his Ballots in Class 7 and Class 8 of the Plan were changed from a rejection of the Plan to acceptance of the Plan, and Mr. Leventon's votes on his Ballots in Class 7 and Class 8 of the Plan were, changed from rejections of the Plan to acceptances of the Plan.

d. The Senior Employees' Objection is deemed withdrawn.

SS. No Release of Claims Against Senior Employee Claimants. For the avoidance of doubt, the Senior Employees' Settlement, as approved herein, shall not, and shall not be deemed to, release any Claims or Causes of Action held by the Debtor against either Senior

Employee Claimant nor shall either Senior Employee Claimant be, or be deemed to be, a "Released Party" under the Plan.

TT. Resolution of Objection of Internal Revenue Service. Notwithstanding any other provision or term of the Plan or Confirmation Order, the following Default Provision shall control as to the United States of America, Internal Revenue Service ("IRS") and all of its claims, including any administrative claim (the "IRS Claim"):

(a) Notwithstanding any other provision in the Plan, if the Debtor, the Reorganized Debtor, or any successor in interest fails to pay when due any payment required to be made on federal taxes, the IRS Claim, or other payment required to be made to the IRS under the terms and provisions of this Plan, the Confirmation Order, or the Internal Revenue Code (26 U.S.C.), or fails to timely file any required federal tax return, or if any other event of default as set forth in the Plan occurs, the IRS shall be entitled to give the Debtor, the Reorganized Debtor and/or any successor in interest and their counsel of record, by United States Certified Mail, written notice of the failure and/or default with demand that it be cured, and if the failure and/or default is not cured within 14 days of the date of said notice and demand, then the following shall apply to the IRS:

(1) The administrative collection powers and the rights of the IRS shall be reinstated as they existed prior to the filing of the bankruptcy petition, including, but not limited to, the assessment of taxes, the filing of a notice of Federal tax lien and the powers of levy, seizure, and collection as provided under the Internal Revenue Code;

(2) The automatic stay of 11 U.S.C. § 362 and any injunction of the Plan or in the Confirmation Order shall, with regard to the IRS only, lift or terminate without further notice or hearing by the Bankruptcy Court, and the entire prepetition liability owed to the IRS, together with any unpaid postpetition tax liabilities, may become due and payable immediately; and

(3) The IRS shall have the right to proceed to collect from the Debtor, the Reorganized Debtor or any successor in interest any of the prepetition tax liabilities and related penalties and interest through administrative or judicial collection procedures available under the United States Code as if no bankruptcy petition had been filed and as if no plan had been confirmed.

(b) If the IRS declares the Debtor, the Reorganized Debtor, or any successor-in-interest to be in default of the Debtor's, the Reorganized Debtor's and/ or any successor- in-interest's obligations under the Plan, then entire prepetition liability of an IRS' Allowed Claim, together with any unpaid postpetition tax liabilities shall become due and payable

immediately upon written demand to the Debtor, Reorganized Debtor and/or any successor-in-interest. Failure of the IRS to declare a failure and/or default does not constitute a waiver by the United States or its agency the IRS of the right to declare that the Debtor, Reorganized Debtor, and/or any successor in interest is in default.

(c) The IRS shall only be required to send two notices of failure and/or default, and upon the third event of a failure and/or default, the IRS shall be entitled to proceed as set out in paragraphs (1), (2), and/or (3) herein above without further notice to the Debtor, the Reorganized Debtor, or any successor in interest, or its counsel. The collection statute expiration date for all unpaid federal tax liabilities shall be extended pursuant to non-bankruptcy law.

(d) The Internal Revenue Service shall not be bound by any release provisions in the Plan that would release any liability of the responsible persons of the Debtor, the Reorganized Debtor, and/or any successor in interest to the IRS. The Internal Revenue Service may take such actions as it deems necessary to assess any liability that may be due and owing by the responsible persons of the Debtor, the Reorganized Debtor and/or any successor in interest to the Internal Revenue Service.

(e) Nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any rights, claims, causes of action, rights of setoff or recoupment, rights to appeal tax assessments, or other legal or equitable defenses that the Debtor or Reorganized Debtor have under non-bankruptcy law in connection with any claim, liability or cause of action of the United States and its agency the Internal Revenue Service.

(f) The term "any payment required to be made on federal taxes," as used herein above, is defined as: any payment or deposit required by the Internal Revenue Code to be made by the Debtor from and after the Confirmation Date, or the Reorganized Debtor and/or any successor in interest from and after the Effective Date, to the date the IRS Claim is together with interest paid in full. The term "any required tax return," as used herein above, is defined as: any tax return or report required by the Internal Revenue Code to be made by the Debtor from and after the Confirmation Date, or the Reorganized Debtor and/or any successor in interest from and after the Effective Date, to the date the IRS Claim is together with interest paid in full.

UU. IRS Proof of Claim. Notwithstanding anything in the Plan or in this Confirmation Order, until all required tax returns are filed with and processed by the IRS, the IRS's proof of claim will not be deemed fixed for purposes of Section 502 of the Bankruptcy Code and may be amended in order to reflect the IRS' assessment of the Debtor's unpaid priority and general unsecured taxes, penalties and interest.

VV. CLO Holdco, Ltd. Settlement Notwithstanding anything contained herein to the contrary, nothing in this Order is or is intended to supersede the rights and obligations of either the Debtor or CLO Holdco contained in that certain *Settlement Agreement between CLO Holdco, Ltd., and Highland Capital Management, L.P., dated January 25,2021* [Docket No. 1838-1] (the "CLOH Settlement Agreement"). In the event of any conflict between the terms of this Order and the terms of the CLOH Settlement Agreement, the terms of the CLOH Settlement Agreement will govern.

WW. Retention of Jurisdiction. The Bankruptcy Court may properly, and upon the Effective Date shall, to the maximum extent permitted under applicable law, retain jurisdiction over all matters arising out of, and related to, this Chapter 11 Case, including the matters set forth in Article XI of the Plan and section 1142 of the Bankruptcy Code.

XX. Payment of Statutory Fees; Filing of Quarterly Reports. All fees payable pursuant to 28 U.S.C. § 1930 shall be paid on or before the Effective Date. The Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust shall be jointly and severally liable for payment of quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 through the entry of the Final Decree for the Debtor or the dismissal or conversion of the Chapter 11 Case. Notwithstanding anything to the contrary in the Plan, the U.S. Trustee shall not be required to file any proofs of claim with respect to quarterly fees payable pursuant to 28 U.S.C. § 1930.

YY. Dissolution of the Committee. On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have

any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). Notwithstanding the foregoing, any Committee member or Professional may serve following the Effective Date with respect to the Claimant Trust Oversight Board or Litigation Sub-Trust. The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan, the Claimant Trust Agreement, and/or Litigation Sub-Trust in connection with such representation.

ZZ. Miscellaneous. After the Effective Date, the Debtor or Reorganized Debtor, as applicable, shall have no obligation to file with the Bankruptcy Court or serve on any parties reports that the Debtor or Reorganized Debtor, as applicable, were obligated to file under the Bankruptcy Code or a court order, including monthly operating reports (even for those periods for which a monthly operating report was not filed before the Effective Date), ordinary course professional reports, reports to any parties otherwise required under the "first" and "second" day orders entered in this Chapter 11 Case (including any cash collateral financing orders entered in this Chapter 11 Case) and monthly or quarterly reports for Professionals; *provided*, *however*, that

the Debtor or Reorganized Debtor, as applicable, will comply with the U.S. Trustee's post confirmation reporting requirements.

###END OF ORDER###

Exhibit A

Fifth Amended Plan (as Modified)

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	

FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND CAPITAL MANAGEMENT, L.P. (AS MODIFIED)

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ZAnnable@HaywardFirm.com:

Counsel for the Debtor and Debtor-in-Possession

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

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DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION

HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned case (the "Debtor"), proposes the following chapter 11 plan of reorganization (the "Plan") for, among other things, the resolution of the outstanding Claims against, and Equity Interests in, the Debtor. Unless otherwise noted, capitalized terms used in this Plan have the meanings set forth in Article I of this Plan. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor's history, business, results of operations, historical financial information, projections and assets, and for a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents that may be Filed with the Bankruptcy Court that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Documents. All such Exhibits and Plan Documents are incorporated into and are a part of this Plan as if set forth in full herein. Subject to the other provisions of this Plan, and in accordance with the requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to the Effective Date.

If this Plan cannot be confirmed, for any reason, then subject to the terms set forth herein, this Plan may be revoked.

ARTICLE I.
RULES OF INTERPRETATION, COMPUTATION OF TIME, GOVERNING LAW AND DEFINED TERMS

A. Rules of Interpretation, Computation of Time and Governing Law

For purposes hereof: (a) in the appropriate context, 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 herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented in accordance with its terms; (d) unless otherwise specified, all references herein to "Articles," "Sections," "Exhibits" and "Plan Documents" are references to Articles, Sections, Exhibits and Plan Documents hereof or hereto; (e) unless otherwise stated, the words "herein," "hereof," "hereunder" and "hereto" refer to this Plan in its entirety rather than to a particular portion of this Plan; (f) 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 hereof; (g) any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity's successors and assigns; (h) the rules of construction set

forth in section 102 of the Bankruptcy Code shall apply; (i) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (j) "$" or "dollars" means Dollars in lawful currency of the United States of America. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

B. Defined Terms

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. "*Acis*" means collectively Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

2. "*Administrative Expense Claim*" means any Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, and that have not already been paid by the Debtor during the Chapter 11 Case and a Professional Fee Claim.

3. "*Administrative Expense Claims Bar Date*" means, with respect to any Administrative Expense Claim (other than a Professional Fee Claim) becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is forty-five days after the Effective Date.

4. "*Administrative Expense Claims Objection Deadline*" means, with respect to any Administrative Expense Claim, the later of (a) ninety (90) days after the Effective Date and (b) sixty (60) days after the timely Filing of the applicable request for payment of such Administrative Expense Claim; *provided, however,* that the Administrative Expense Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

5. "*Affiliate*" of any Person means any Entity that, with respect to such Person, either (i) is an "affiliate" as defined in section 101(2) of the Bankruptcy Code, or (ii) is an "affiliate" as defined in Rule 405 of the Securities Act of 1933, or (iii) directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For the purposes of this definition, the term "control" (including, without limitation, the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction in any respect of the management or policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

6. "*Allowed*" means, with respect to any Claim, except as otherwise provided in the Plan: (a) any Claim that is evidenced by a Proof of Claim that has been timely Filed by the Bar Date, or that is not required to be evidenced by a Filed Proof of Claim under the Bankruptcy

Code or a Final Order; (b) a Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed and for which no Proof of Claim has been timely filed; (c) a Claim Allowed pursuant to the Plan or an order of the Bankruptcy Court that is not stayed pending appeal; or (d) a Claim that is not Disputed (including for which a Proof of Claim has been timely filed in a liquidated and noncontingent amount that has not been objected to by the Claims Objection Deadline or as to which any such objection has been overruled by Final Order); *provided, however,* that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed as set forth above.

7. "*Allowed Claim or Equity Interest*" means a Claim or an Equity Interest of the type that has been Allowed.

8. "*Assets*" means all of the rights, titles, and interest of the Debtor, Reorganized Debtor, or Claimant Trust, in and to property of whatever type or nature, including, without limitation, real, personal, mixed, intellectual, tangible, and intangible property, the Debtor's books and records, and the Causes of Action.

9. "*Available Cash*" means any Cash in excess of the amount needed for the Claimant Trust and Reorganized Debtor to maintain business operations as determined in the sole discretion of the Claimant Trustee.

10. "*Avoidance Actions*" means any and all avoidance, recovery, subordination or other actions or remedies that may be brought by and on behalf of the Debtor or its Estate under the Bankruptcy Code or applicable nonbankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510, 544, 545, and 547-553 of the Bankruptcy Code or under similar state or federal statutes and common law, including fraudulent transfer laws

11. "*Ballot*" means the form(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

12. "*Bankruptcy Code*" means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

13. "*Bankruptcy Court*" means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or any other court having jurisdiction over the Chapter 11 Case.

14. "*Bankruptcy Rules*" means the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in each case as amended from time to time and as applicable to the Chapter 11 Case.

15. "*Bar Date*" means the applicable deadlines set by the Bankruptcy Court for the filing of Proofs of Claim against the Debtor as set forth in the Bar Date Order, which deadlines may be or have been extended for certain Claimants by order of the Bankruptcy Court.

16. "*Bar Date Order*" means the *Order (I) Establishing Bar Dates for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof* [D.I. 488].

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

18. "*Cash*" means the legal tender of the United States of America or the equivalent thereof.

19. "*Causes of Action*" means any action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license and franchise of any kind or character whatsoever, in each case whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including, without limitation, under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law. For the avoidance of doubt, Cause of Action includes, without limitation,: (a) any right of setoff, counterclaim or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Equity Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any claims under any state or foreign law, including, without limitation, any fraudulent transfer or similar claims; (f) the Avoidance Actions, and (g) the Estate Claims. The Causes of Action include, without limitation, the Causes of Action belonging to the Debtor's Estate listed on the schedule of Causes of Action to be filed with the Plan Supplement.

20. "*CEO/CRO*" means James P. Seery, Jr., the Debtor's chief executive officer and chief restructuring officer.

21. "*Chapter 11 Case*" means the Debtor's case under chapter 11 of the Bankruptcy Code commenced on the Petition Date in the Delaware Bankruptcy Court and transferred to the Bankruptcy Court on December 4, 2019, and styled *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj-11.

22. "*Claim*" means any "claim" against the Debtor as defined in section 101(5) of the Bankruptcy Code.

23. "*Claims Objection Deadline*" means the date that is 180 days after the Confirmation Date; *provided, however,* the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

24. "*Claimant Trust*" means the trust established for the benefit of the Claimant Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the Claimant Trust Agreement.

25. "*Claimant Trust Agreement*" means the agreement Filed in the Plan Supplement establishing and delineating the terms and conditions of the Claimant Trust.

26. "*Claimant Trust Assets*" means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

27. "*Claimant Trust Beneficiaries*" means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

28. "*Claimant Trustee*" means James P. Seery, Jr., the Debtor's chief executive officer and chief restructuring officer, or such other Person identified in the Plan Supplement who will act as the trustee of the Claimant Trust in accordance with the Plan, the Confirmation Order, and Claimant Trust Agreement or any replacement trustee pursuant to (and in accordance with) the Claimant Trust Agreement. The Claimant Trustee shall be responsible for, among other things, monetizing the Estate's investment assets, resolving Claims (other than those Claims assigned to the Litigation Sub-Trust for resolution), and, as the sole officer of New GP LLC, winding down the Reorganized Debtor's business operations.

29. "*Claimant Trust Expenses*" means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Trustees on account of administration of the Claimant Trust, including any reasonable administrative fees and expenses, reasonable attorneys' fees and expenses, reasonable insurance costs, taxes, reasonable escrow expenses, and other expenses.

30. "*Claimant Trust Interests*" means the non-transferable interests in the Claimant Trust that are issued to the Claimant Trust Beneficiaries pursuant to this Plan; *provided*, *however*, Holders of Class A Limited Partnership Interests, Class B Limited Partnership Interests, and Class C Limited Partnership Interests will not be deemed to hold Claimant Trust Interests

unless and until the Contingent Claimant Trust Interests distributed to such Holders vest in accordance with the terms of this Plan and the Claimant Trust Agreement.

31. "*Claimant Trust Oversight Committee*" means the committee of five Persons established pursuant to ARTICLE IV of this Plan to oversee the Claimant Trustee's performance of its duties and otherwise serve the functions described in this Plan and the Claimant Trust Agreement.

32. "*Class*" means a category of Holders of Claims or Equity Interests as set forth in ARTICLE III hereof pursuant to section 1122(a) of the Bankruptcy Code.

33. "*Class A Limited Partnership Interest*" means the Class A Limited Partnership Interests as defined in the Limited Partnership Agreement held by The Dugaboy Investment Trust, Mark and Pamela Okada Family Trust – Exempt Trust 2, Mark and Pamela Okada – Exempt Descendants' Trust, and Mark Kiyoshi Okada, and the General Partner Interest.

34. "*Class B Limited Partnership Interest*" means the Class B Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

35. "*Class B/C Limited Partnership Interests*" means, collectively, the Class B Limited Partnership and Class C Limited Partnership Interests.

36. "*Class C Limited Partnership Interest*" means the Class C Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

37. "*Committee*" means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee pursuant to 11 U.S.C. § 1102(a)(1) on October 29, 2019 [D.I. 65], consisting of (i) the Redeemer Committee of Highland Crusader Fund, (ii) Meta-e Discovery, (iii) UBS, and (iv) Acis.

38. "*Confirmation Date*" means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

39. "*Confirmation Hearing*" means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

40. "*Confirmation Order*" means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

41. *"Convenience Claim"* means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to $1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.

42. "*Convenience Claim Pool*" means the $13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

43. "*Convenience Class Election*" means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to $1,000,000 and receive the treatment provided to Convenience Claims.

44. "*Contingent Claimant Trust Interests"* means the contingent Claimant Trust Interests to be distributed to Holders of Class A Limited Partnership Interests, Holders of Class B Limited Partnership Interests, and Holders of Class C Limited Partnership Interests in accordance with this Plan, the rights of which shall not vest, and consequently convert to Claimant Trust Interests, unless and until the Claimant Trustee Files a certification that all holders of Allowed General Unsecured Claims have been paid indefeasibly in full, plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, all accrued and unpaid post-petition interest from the Petition Date at the Federal Judgment Rate and all Disputed Claims in Class 8 and Class 9 have been resolved. As set forth in the Claimant Trust Agreement, the Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests will be subordinated to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests.

45. "*Debtor*" means Highland Capital Management, L.P. in its capacity as debtor and debtor in possession in the Chapter 11 Case.

46. *"Delaware Bankruptcy Court"* means the United States Bankruptcy Court for the District of Delaware.

47. "*Disclosure Statement*" means that certain *Disclosure Statement for Debtor's Fifth Amended Chapter 11 Plan of Reorganization*, as amended, supplemented, or modified from time to time, which describes this Plan, including all exhibits and schedules thereto and references therein that relate to this Plan.

48. "*Disputed*" means with respect to any Claim or Equity Interest, any Claim or Equity Interest that is not yet Allowed.

49. "*Disputed Claims Reserve*" means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

50. "*Disputed Claims Reserve Amount*" means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or Reorganized

Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

51. "*Distribution Agent*" means the Claimant Trustee, or any party designated by the Claimant Trustee to serve as distribution agent under this Plan.

52. "*Distribution Date*" means the date or dates determined by the Reorganized Debtor or the Claimant Trustee, as applicable, on or after the Initial Distribution Date upon which the Distribution Agent shall make distributions to holders of Allowed Claims and Interests entitled to receive distributions under the Plan.

53. "*Distribution Record Date*" means the date for determining which Holders of Claims and Equity Interests are eligible to receive distributions hereunder, which date shall be the Effective Date or such later date determined by the Bankruptcy Court.

54. "*Effective Date*" means the Business Day that this Plan becomes effective as provided in ARTICLE VIII hereof.

55. "*Employees*" means the employees of the Debtor set forth in the Plan Supplement.

56. "*Enjoined Parties*" means (i) all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether or not proof of such Claims or Equity Interests has been filed and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan), (ii) James Dondero ("Dondero"), (iii) any Entity that has appeared and/or filed any motion, objection, or other pleading in this Chapter 11 Case regardless of the capacity in which such Entity appeared and any other party in interest, (iv) any Related Entity, and (v) the Related Persons of each of the foregoing.

57. "*Entity*" means any "entity" as defined in section 101(15) of the Bankruptcy Code and also includes any Person or any other entity.

58. "*Equity Interest*" means any Equity Security in the Debtor, including, without limitation, all issued, unissued, authorized or outstanding partnership interests, shares, of stock or limited company interests, the Class A Limited Partnership Interests, the Class B Limited Partnership Interests, and the Class C Limited Partnership Interests.

59. "*Equity Security*" means an "equity security" as defined in section 101(16) of the Bankruptcy Code.

60. "*Estate*" means the bankruptcy estate of the Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

61. "*Estate Claims*" has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [D.I. 354].

62. "*Exculpated Parties*" means, collectively, (i) the Debtor and its successors and assigns, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however,* that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term "Exculpated Party."

63. "*Executory Contract*" means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

64. "*Exhibit*" means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

65. "*Federal Judgment Rate*" means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

66. "*File*" or "*Filed*" or "*Filing*" means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

67. "*Final Order*" means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.

68. "*Frontier Secured Claim*" means the loan from Frontier State Bank to the Debtor in the principal amount of $7,879,688.00 made pursuant to that certain First Amended and Restated Loan Agreement, dated March 29, 2018.

69. "*General Partner Interest*" means the Class A Limited Partnership Interest held by Strand, as the Debtor's general partner.

70. "*General Unsecured Claim*" means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

71. "*Governmental Unit*" means a "governmental unit" as defined in section 101(27) of the Bankruptcy Code.

72. "*GUC Election*" means the option provided to each Holder of a Convenience Claim on their Ballot to elect to receive the treatment provided to General Unsecured Claims.

73. "*Holder*" means an Entity holding a Claim against, or Equity Interest in, the Debtor.

74. "*Impaired*" means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

75. "*Independent Directors*" means John S. Dubel, James P. Seery, Jr., and Russell Nelms, the independent directors of Strand appointed on January 9, 2020, and any additional or replacement directors of Strand appointed after January 9, 2020, but prior to the Effective Date.

76. "*Initial Distribution Date*" means, subject to the "Treatment" sections in ARTICLE III hereof, the date that is on or as soon as reasonably practicable after the Effective Date, when distributions under this Plan shall commence to Holders of Allowed Claims and Equity Interests.

77. "*Insurance Policies*" means all insurance policies maintained by the Debtor as of the Petition Date.

78. "*Jefferies Secured Claim*" means any Claim in favor of Jefferies, LLC, arising under that certain Prime Brokerage Customer Agreement, dated May 24, 2013, between the Debtor and Jefferies, LLC, that is secured by the assets, if any, maintained in the prime brokerage account created by such Prime Brokerage Customer Agreement.

79. "*Lien*" means a "lien" as defined in section 101(37) of the Bankruptcy Code and, with respect to any asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset.

80. "*Limited Partnership Agreement*" means that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, as amended.

81. "*Litigation Sub-Trust*" means the sub-trust established within the Claimant Trust or as a wholly –owned subsidiary of the Claimant Trust on the Effective Date in each case in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement and Claimant Trust Agreement. As set forth in the Litigation Sub-Trust Agreement, the Litigation Sub-Trust shall hold the Claimant Trust Assets that are Estate Claims.

82. "*Litigation Sub-Trust Agreement*" means the agreement filed in the Plan Supplement establishing and delineating the terms and conditions of the Litigation Sub-Trust.

83. "*Litigation Trustee*" means the trustee appointed by the Committee and reasonably acceptable to the Debtor who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

84. "*Managed Funds*" means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to this Plan.

85. "*New Frontier Note*" means that promissory note to be provided to the Allowed Holders of Class 2 Claims under this Plan and any other documents or security agreements securing the obligations thereunder.

86. "*New GP LLC*" means a limited liability company incorporated in the State of Delaware pursuant to the New GP LLC Documents to serve as the general partner of the Reorganized Debtor on the Effective Date.

87. "*New GP LLC Documents*" means the charter, operating agreement, and other formational documents of New GP LLC.

88. "*Ordinary Course Professionals Order*" means that certain *Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course* [D.I. 176].

89. "*Other Unsecured Claim*" means any Secured Claim other than the Jefferies Secured Claim and the Frontier Secured Claim.

90. "*Person*" means a "person" as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, individual, corporation, company, general or limited partnership, limited liability company, unincorporated organization firm, trust, estate, business trust, association, joint stock company, joint venture, government, governmental agency, Governmental Unit or any subdivision thereof, the United States Trustee, or any other entity, whether acting in an individual, fiduciary or other capacity.

91. "Petition *Date*" means October 16, 2019.

92. "*Plan*" means this *Debtor's Fifth Amended Chapter 11 Plan of Reorganization*, including the Exhibits and the Plan Documents and all supplements, appendices,

and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

93. "*Plan Distribution*" means the payment or distribution of consideration to Holders of Allowed Claims and Allowed Equity Interests under this Plan.

94. "*Plan Documents*" means any of the documents, other than this Plan, but including, without limitation, the documents to be filed with the Plan Supplement, to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date, and as may be modified consistent with the terms hereof with the consent of the Committee.

95. "*Plan Supplement*" means the ancillary documents necessary for the implementation and effectuation of the Plan, including, without limitation, (i) the form of Claimant Trust Agreement, (ii) the forms of New GP LLC Documents, (iii) the form of Reorganized Limited Partnership Agreement, (iv) the Sub-Servicer Agreement (if applicable), (v) the identity of the initial members of the Claimant Trust Oversight Committee, (vi) the form of Litigation Sub-Trust Agreement; (vii) the schedule of retained Causes of Action; (viii) the New Frontier Note, (ix) the schedule of Employees; (x) the form of Senior Employee Stipulation,; and (xi) the schedule of Executory Contracts and Unexpired Leases to be assumed pursuant to this Plan, which, in each case, will be in form and substance reasonably acceptable to the Debtor and the Committee.

96. "*Priority Non-Tax Claim*" means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, including any Claims for paid time-off entitled to priority under section 507(a)(4) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

97. "*Pro Rata*" means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class.

98. "*Professional*" means (a) any Entity employed in the Chapter 11 Case pursuant to section 327, 328 363 or 1103 of the Bankruptcy Code or otherwise and (b) any Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 327, 328, 330, 331, 363, 503(b), 503(b)(4) and 1103 of the Bankruptcy Code.

99. "*Professional Fee Claim*" means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of the Bankruptcy Code, with respect to a particular Professional, for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date.

100. "*Professional Fee Claims Bar Date*" means with respect to Professional Fee Claims, the Business Day which is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.

101. "*Professional Fee Claims Objection Deadline*" means, with respect to any Professional Fee Claim, thirty (30) days after the timely Filing of the applicable request for payment of such Professional Fee Claim.

102. "*Professional Fee Reserve*" means the reserve established and funded by the Claimant Trustee pursuant this Plan to provide sufficient funds to satisfy in full unpaid Allowed Professional Fee Claims.

103. "*Proof of Claim*" means a written proof of Claim or Equity Interest Filed against the Debtor in the Chapter 11 Case.

104. "*Priority Tax Claim*" means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

105. "*Protected Parties*" means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however,* that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term "Protected Party."

106. "*PTO Claims*" means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

107. "*Reduced Employee Claims*" has the meaning set forth in ARTICLE IX.D.

108. "*Reinstated*" means, with respect to any Claim or Equity Interest, (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim or Equity Interest in accordance with section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim or Equity Interest to demand or receive accelerated payment of such Claim or Equity Interest after the occurrence of a default: (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) of the Bankruptcy Code expressly does not require to be cured; (ii) reinstating the maturity of such Claim or Equity Interest as such maturity existed before such default; (iii) compensating the Holder of such Claim or Equity Interest for any damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim or Equity Interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder

of such Claim or Equity Interest (other than any Debtor or an insider of any Debtor) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim.

109. "*Rejection Claim*" means any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Confirmation Order.

110. "*Related Entity*" means, without duplication, (a) Dondero, (b) Mark Okada ("Okada"), (c) Grant Scott ("Scott"), (d) Hunter Covitz ("Covitz"), (e) any entity or person that was an insider of the Debtor on or before the Petition Date under Section 101(31) of the Bankruptcy Code, including, without limitation, any entity or person that was a non-statutory insider, (f) any entity that, after the Effective Date, is an insider or Affiliate of one or more of Dondero, Okada, Scott, Covitz, or any of their respective insiders or Affiliates, including, without limitation, The Dugaboy Investment Trust, (g) the Hunter Mountain Investment Trust and any of its direct or indirect parents, (h) the Charitable Donor Advised Fund, L.P., and any of its direct or indirect subsidiaries, and (i) Affiliates of the Debtor and any other Entities listed on the Related Entity List.

111. "*Related Entity List*" means that list of Entities filed with the Plan Supplement.

112. "*Related Persons*" means, with respect to any Person, such Person's predecessors, successors, assigns (whether by operation of law or otherwise), and each of their respective present, future, or former officers, directors, employees, managers, managing members, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, subsidiaries, divisions, management companies, heirs, agents, and other representatives, in each case solely in their capacity as such.

113. "*Released Parties*" means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.

114. "*Reorganized Debtor*" means the Debtor, as reorganized pursuant to this Plan on and after the Effective Date.

115. "*Reorganized Debtor Assets*" means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, "Reorganized Debtor Assets" includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

116. "*Reorganized Limited Partnership Agreement*" means that certain Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., by and among the Claimant Trust, as limited partner, and New GP LLC, as general partner, Filed with the Plan Supplement.

117. "*Restructuring*" means the restructuring of the Debtor, the principal terms of which are set forth in this Plan and the Disclosure Statement.

118. "*Retained Employee Claim*" means any Claim filed by a current employee of the Debtor who will be employed by the Reorganized Debtor upon the Effective Date.

119. "*Schedules*" means the schedules of Assets and liabilities, statements of financial affairs, lists of Holders of Claims and Equity Interests and all amendments or supplements thereto Filed by the Debtor with the Bankruptcy Court [D.I. 247].

120. "*Secured*" means, when referring to a Claim: (a) secured by a Lien on property in which the Debtor's Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor's interest in the interest of the Debtor's Estate 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) Allowed pursuant to the Plan as a Secured Claim.

121. "*Security*" or "*security*" means any security as such term is defined in section 101(49) of the Bankruptcy Code.

122. "*Senior Employees*" means the senior employees of the Debtor Filed in the Plan Supplement.

123. "*Senior Employee Stipulation*" means the agreements filed in the Plan Supplement between each Senior Employee and the Debtor.

124. "*Stamp or Similar Tax*" means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

125. "*Statutory Fees*" means fees payable pursuant to 28 U.S.C. § 1930.

126. "*Strand*" means Strand Advisors, Inc., the Debtor's general partner.

127. "*Sub-Servicer*" means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.

128. "*Sub-Servicer Agreement*" means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

129. "*Subordinated Claim*" means any Claim that is subordinated to the Convenience Claims and General Unsecured Claims pursuant to an order entered by the Bankruptcy Court (including any other court having jurisdiction over the Chapter 11 Case) after notice and a hearing.

130. "*Subordinated Claimant Trust Interests*" means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

131. "*Trust Distribution*" means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

132. "*Trustees*" means, collectively, the Claimant Trustee and Litigation Trustee.

133. "*UBS*" means, collectively, UBS Securities LLC and UBS AG London Branch.

134. "*Unexpired Lease*" means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

135. "*Unimpaired*" means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

136. "*Voting Deadline*" means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

137. "*Voting Record Date*" means November 23, 2020.

ARTICLE II.
ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS

A. Administrative Expense Claims

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized Debtor, as applicable, and such Holder; *provided, however,* that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on

or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

B. Professional Fee Claims

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329,330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

C. Priority Tax Claims

On or as soon as reasonably practicable after the later of (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 will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount of a total value as of the Effective Date of the Plan equal to the amount of such Allowed

Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code, or (b) if paid over time, payment of such Allowed Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code; or (c) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

ARTICLE III.
CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS AND EQUITY INTERESTS

A. Summary

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

B. Summary of Classification and Treatment of Classified Claims and Equity Interests

Class	Claim	Status	Voting Rights
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

C. Elimination of Vacant Classes

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

D. Impaired/Voting Classes

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

E. Unimpaired/Non-Voting Classes

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

F. Impaired/Non-Voting Classes

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

G. Cramdown

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

H. Classification and Treatment of Claims and Equity Interests

1. *Class 1 – Jefferies Secured Claim*

- *Classification*: Class 1 consists of the Jefferies Secured Claim.
- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until

full and final payment of such Allowed Class 1 Claim is made as provided herein.

- *Impairment and Voting*: Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

2. *Class 2 – Frontier Secured Claim*

- *Classification*: Class 2 consists of the Frontier Secured Claim.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.

- *Impairment and Voting*: Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject this Plan.

3. *Class 3 – Other Secured Claims*

- *Classification*: Class 3 consists of the Other Secured Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.

- *Impairment and Voting*: Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

4. *Class 4 – Priority Non-Tax Claims*

- *Classification*: Class 4 consists of the Priority Non-Tax Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.

- *Impairment and Voting*: Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

5. *Class 5 – Retained Employee Claims*

- *Classification*: Class 5 consists of the Retained Employee Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.

- *Impairment and Voting*: Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

6. *Class 6 – PTO Claims*

- *Classification*: Class 6 consists of the PTO Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.

- *Impairment and Voting*: Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6

Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

7. *Class 7 – Convenience Claims*

- *Classification*: Class 7 consists of the Convenience Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.

- *Impairment and Voting*: Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject this Plan.

8. *Class 8 – General Unsecured Claims*

- *Classification*: Class 8 consists of the General Unsecured Claims.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes a valid Convenience Class Election.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject this Plan.

9. *Class 9 – Subordinated Claims*

- *Classification*: Class 9 consists of the Subordinated Claims.

  Treatment: On the Effective Date, Holders of Subordinated Claims shall receive either (i) their Pro Rata share of the Subordinated Claimant Trust Interests or, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee may agree upon in writing.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject this Plan.

10. *Class 10 – Class B/C Limited Partnership Interests*

- *Classification*: Class 10 consists of the Class B/C Limited Partnership Interests.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject this Plan.

11. *Class 11 – Class A Limited Partnership Interests*

- *Classification*: Class 11 consists of the Class A Limited Partnership Interests.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject this Plan.

I. Special Provision Governing Unimpaired Claims

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

J. Subordinated Claims

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Upon written notice and hearing, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to seek entry of an order by the Bankruptcy Court to re-classify or to subordinate any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

ARTICLE IV.
MEANS FOR IMPLEMENTATION OF THIS PLAN

A. Summary

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited

partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to this Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in this Plan and the Claimant Trust Agreement.

B. The Claimant Trust[2]

1. *Creation and Governance of the Claimant Trust and Litigation Sub-Trust.*

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and

[2] In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.

such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

2. *Claimant Trust Oversight Committee*

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.

The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

3. *Purpose of the Claimant Trust.*

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in this Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in ARTICLE IV.C.

4. *Purpose of the Litigation Sub-Trust.*

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.

5. *Claimant Trust Agreement and Litigation Sub-Trust Agreement.*

The Claimant Trust Agreement generally will provide for, among other things:

(i) the payment of the Claimant Trust Expenses;

(ii) the payment of other reasonable expenses of the Claimant Trust;

(iii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;

(iv) the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;

(v) the orderly monetization of the Claimant Trust Assets;

(vi) litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;

(vii) the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;

(viii) the administration of the Disputed Claims Reserve and distributions to be made therefrom; and

(ix) the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expense (including, without limitation, any reserve for potential indemnification claims as authorized and provided under the Claimant Trust Agreement), and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however,* that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. The Litigation Sub-Trust Agreement generally will provide for, among other things:

(i) the payment of other reasonable expenses of the Litigation Sub-Trust;

(ii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and

(iii) the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

6. *Compensation and Duties of Trustees.*

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

7. *Cooperation of Debtor and Reorganized Debtor.*

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

8. *United States Federal Income Tax Treatment of the Claimant Trust.*

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer

of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9. *Tax Reporting.*

(a) The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

(b) The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.

(c) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

(d) The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

10. *Claimant Trust Assets.*

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court, and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in this Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

11. *Claimant Trust Expenses.*

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

12. *Trust Distributions to Claimant Trust Beneficiaries.*

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

13. *Cash Investments.*

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however,* that such investments are investments permitted to be made by a "liquidating trust" within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

14. *Dissolution of the Claimant Trust and Litigation Sub-Trust.*

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Clamant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however,* that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and

no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

C. The Reorganized Debtor

1. *Corporate Existence*

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.

2. *Cancellation of Equity Interests and Release*

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

3. *Issuance of New Partnership Interests*

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

The Reorganized Limited Partnership Agreement does not provide for, and specifically disclaims, the indemnification obligations under the Limited Partnership Agreement, including any such indemnification obligations that accrued or arose or could have been brought prior to the Effective Date. Any indemnification Claims under the Limited Partnership Agreement that accrued, arose, or could have been filed prior to the Effective Date will be resolved through the Claims resolution process provided that a Claim is properly filed in accordance with the Bankruptcy Code, the Plan, or the Bar Date Order. Each of the Debtor, the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust reserve all rights with respect to any such indemnification Claims.

4. *Management of the Reorganized Debtor*

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

5. *Vesting of Assets in the Reorganized Debtor*

Except as otherwise provided in this Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

6. *Purpose of the Reorganized Debtor*

Except as may be otherwise provided in this Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court.

7. *Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets*

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement,

the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust will be (i) deemed transferred in all respects as forth in ARTICLE IV.B.1, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

D. Company Action

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in this Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with this Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.

E. Release of Liens, Claims and Equity Interests

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, 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 Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

F. Cancellation of Notes, Certificates and Instruments

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

G. Cancellation of Existing Instruments Governing Security Interests

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

H. Control Provisions

To the extent that there is any inconsistency between this Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, this Plan shall control.

I. Treatment of Vacant Classes

Any Claim or Equity Interest in a Class considered vacant under ARTICLE III.C of this Plan shall receive no Plan Distributions.

J. Plan Documents

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in ARTICLE I hereof) and fully enforceable as if stated in full herein.

The Debtor and the Committee are currently working to finalize the forms of certain of the Plan Documents to be filed with the Plan Supplement. To the extent that the Debtor and the Committee cannot agree as to the form and content of such Plan Documents, they intend to submit the issue to non-binding mediation pursuant to the *Order Directing Mediation* entered on August 3, 2020 [D.I. 912].

K. Highland Capital Management, L.P. Retirement Plan and Trust

The Highland Capital Management, L.P. Retirement Plan And Trust ("Pension Plan") is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor's controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the "IRC"), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

ARTICLE V.
TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to this Plan on or prior to the Confirmation Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a contract or lease to be assumed in the Plan or the Plan Supplement, on the Confirmation Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Confirmation Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. ("Landlord") for the Debtor's headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the "Lease") in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4),

as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [Docket No. 1122].

B. Claims Based on Rejection of Executory Contracts or Unexpired Leases

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Confirmation Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Confirmation Date. Any Rejection Claims that are not timely Filed pursuant to this Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with ARTICLE III of this Plan.

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

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor's or Reorganized Debtor's intention to assume or assign the Executory Contract or Unexpired Lease in connection with this Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to this ARTICLE V.C shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to this ARTICLE V.C, shall be deemed disallowed and expunged as of the Confirmation Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

ARTICLE VI.
PROVISIONS GOVERNING DISTRIBUTIONS

A. Dates of Distributions

Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that this Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under this Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in this Plan. Except as otherwise provided in this Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to this Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in this Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under this Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under this Plan to such Persons or the date of such distributions.

B. Distribution Agent

Except as provided herein, all distributions under this Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.

The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

C. Cash Distributions

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

D. Disputed Claims Reserve

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

E. Distributions from the Disputed Claims Reserve

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

F. Rounding of Payments

Whenever this Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under this Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as "Unclaimed Property" under this Plan.

G. *De Minimis* Distribution

Except as to any Allowed Claim that is Unimpaired under this Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than $100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in ARTICLE VI.J hereof within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

H. Distributions on Account of Allowed Claims

Except as otherwise agreed by the Holder of a particular Claim or as provided in this Plan, all distributions shall be made pursuant to the terms of this Plan and the Confirmation Order. Except as otherwise provided in this Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

I. General Distribution Procedures

The Distribution Agent shall make all distributions of Cash or other property required under this Plan, unless this Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under this Plan shall not be subject to any claim by any Person.

J. Address for Delivery of Distributions

Distributions to Holders of Allowed Claims, to the extent provided for under this Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor's books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

K. Undeliverable Distributions and Unclaimed Property

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.

Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under this Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

L. Withholding Taxes

In connection with this Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under this Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to this Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

M. Setoffs

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to this Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with this Plan; *provided, however*, that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

N. Surrender of Cancelled Instruments or Securities

As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to ARTICLE IV of this Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

O. Lost, Stolen, Mutilated or Destroyed Securities

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with ARTICLE VI.O of this Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under this Plan, be deemed to have surrendered such security or note to the Distribution Agent.

ARTICLE VII.
PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED AND DISPUTED CLAIMS

A. Filing of Proofs of Claim

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

B. Disputed Claims

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest, request the Bankruptcy Court subordinate any Claims to Subordinated Claims, or any other appropriate motion or adversary proceeding with respect to the foregoing by the Claims Objection Deadline or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of this Plan.

C. Procedures Regarding Disputed Claims or Disputed Equity Interests

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.

D. Allowance of Claims and Equity Interests

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

1. *Allowance of Claims*

After the Effective Date and subject to the other provisions of this Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

2. *Estimation*

Subject to the other provisions of this Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trustee, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with this Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

3. *Disallowance of Claims*

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE,

ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.

ARTICLE VIII.
EFFECTIVENESS OF THIS PLAN

A. Conditions Precedent to the Effective Date

The Effective Date of this Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of ARTICLE VIII.B of this Plan of the following:

- This Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to this Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.

- The Confirmation Order shall have become a Final Order and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate this Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in this Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under this Plan; and (d) entering into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

- All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust

Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.

- The Debtor shall have obtained applicable directors' and officers' insurance coverage that is acceptable to each of the Debtor, the Committee, the Claimant Trust Oversight Committee, the Claimant Trustee and the Litigation Trustee.

- The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

B. Waiver of Conditions

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee), without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate this Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable.

C. Dissolution of the Committee

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on

the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

ARTICLE IX.
EXCULPATION, INJUNCTION AND RELATED PROVISIONS

A. General

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

B. Discharge of Claims

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to this Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

C. Exculpation

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(iv); *provided*, *however,* the foregoing

will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

D. Releases by the Debtor

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to this ARTICLE IX.D (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation

Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or

- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

Provided, however, that the release provided pursuant to this ARTICLE IX.D will vest and the Employee will be indefeasibly released pursuant to this ARTICLE IX.D if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

E. Preservation of Rights of Action

1. *Maintenance of Causes of Action*

Except as otherwise provided in this Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

2. *Preservation of All Causes of Action Not Expressly Settled or Released*

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan or any Final Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including,

without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except where such Causes of Action have been expressly released in this Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

F. Injunction

Upon entry of the Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan.

Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

The injunctions set forth herein shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property.

Subject in all respects to ARTICLE XII.D, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court

(i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however,* the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in ARTICLE XI, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

G. Duration of Injunctions and Stays

ARTICLE II. Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Court will enter an equivalent order under Section 105.

H. Continuance of January 9 Order

Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date.

ARTICLE X.
BINDING NATURE OF PLAN

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in ARTICLE IX, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to this Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state, Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to nay taxes of the kind specified in Bankruptcy Code section 1146(a).

ARTICLE XI.
RETENTION OF JURISDICTION

Pursuant to sections 105 and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Reorganized Debtor, the Claimant Trust, and this Plan to the maximum extent legally permissible, including, without limitation, jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured, unsecured, or subordinated status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the allowance or priority of any Claim or Equity Interest;

- grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided*, *however*, that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date subject to the terms of this Plan and the Confirmation Order, and such payment shall not be subject to the approval of the Bankruptcy Court;

- resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor, Reorganized Debtor, or Claimant Trust may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, any dispute regarding whether a contract or lease is or was executory or expired;

- make any determination with respect to a claim or cause of action against a Protected Party as set forth in ARTICLE IX;

- resolve any claim or cause of action against an Exculpated Party or Protected Party arising from or related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, or the transactions in furtherance of the foregoing;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any sale, disposition, assignment or other transfer of the Reorganized Debtor Assets or Claimant Trust Assets, including any break-up compensation or expense reimbursement that may be requested by a purchaser thereof*; provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any borrowing or the incurrence of indebtedness, whether secured or unsecured by the Reorganized Debtor or Claimant Trust; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- resolve any issues related to any matters adjudicated in the Chapter 11 Case;

- ensure that distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions of this Plan;

- decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action (including Estate Claims) that are pending as of the Effective Date or that may be commenced in the future, including approval of any settlements, compromises, or other resolutions as may be requested by the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee whether under Bankruptcy Rule 9019 or otherwise, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor, the Claimant Trustee, or Litigation Trustee after the Effective Date, provided that the Reorganized Debtor, the Claimant Trustee, and the Litigation Trustee shall reserve the right to commence actions in all appropriate forums and jurisdictions;

- enter such orders as may be necessary or appropriate to implement, effectuate, or consummate the provisions of this Plan, the Plan Documents, and all other contracts, instruments, releases, and other agreements or documents adopted in connection with this Plan, the Plan Documents, or the Disclosure Statement;

- resolve any cases, controversies, suits or disputes that may arise in connection with the implementation, effectiveness, consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;

- issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with implementation, effectiveness, consummation, or enforcement of this Plan, except as otherwise provided in this Plan;

- enforce the terms and conditions of this Plan and the Confirmation Order;

- resolve any cases, controversies, suits or disputes with respect to the release, exculpation, indemnification, and other provisions contained herein and enter such orders or take such others actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;

- enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;

- resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Plan Documents, or any contract, instrument, release, indenture or other agreement or document adopted in connection with this Plan or the Disclosure Statement; and

- enter an order concluding or closing the Chapter 11 Case after the Effective Date.

ARTICLE XII.
MISCELLANEOUS PROVISIONS

A. Payment of Statutory Fees and Filing of Reports

All outstanding Statutory Fees shall be paid on the Effective Date. All such fees payable, and all such fees that become due and payable, after the Effective Date shall be paid by the Reorganized Debtor when due or as soon thereafter as practicable until the Chapter 11 Case is closed, converted, or dismissed. The Claimant Trustee shall File all quarterly reports due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. After the Effective Date, the Claimant Trustee shall File with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee. The Reorganized Debtor shall remain obligated to pay Statutory Fees to the Office of the U.S. Trustee until the earliest of the Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

B. Modification of Plan

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order with the consent of the Committee, such consent not to be unreasonably withheld; and (b) after the entry of the Confirmation Order, the Debtor may, after notice and hearing and entry of an order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

C. Revocation of Plan

The Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File a subsequent chapter 11 plan with the consent of the Committee. If the Debtor revokes or withdraws this Plan prior to the Confirmation Date, then: (i) this Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in this Plan, assumption of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (iii) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.

D. Obligations Not Changed

Notwithstanding anything in this Plan to the contrary, nothing herein will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

E. Entire Agreement

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

F. Closing of Chapter 11 Case

The Claimant Trustee shall, after the Effective Date and promptly after the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

G. Successors and Assigns

This Plan shall be binding upon and inure to the benefit of the Debtor and its successors and assigns, including, without limitation, the Reorganized Debtor and the Claimant Trustee. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

H. Reservation of Rights

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and the Effective Date occurs. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtor, the Reorganized Debtor, the Claimant Trustee, or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor, the Reorganized Debtor, or the Claimant Trustee with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

Neither the exclusion or inclusion by the Debtor of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Documents, nor anything contained in this Plan, will constitute an admission by the Debtor that any such contract or lease is or is not an executory contract or lease or that the Debtor, the Reorganized Debtor, the Claimant Trustee, or their respective Affiliates has any liability thereunder.

Except as explicitly provided in this Plan, nothing herein shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the

Debtor, the Reorganized Debtor, or the Claimant Trustee under any executory or non-executory contract.

Nothing in this Plan will increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, under any executory or non-executory contract or lease.

If there is a dispute regarding whether a contract or lease is or was executory at the time of its assumption under this Plan, the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract.

I. Further Assurances

The Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, all Holders of Claims and Equity Interests receiving distributions hereunder, and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order. On or before the Effective Date, the Debtor shall File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

J. Severability

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court 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 will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this 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 this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

K. Service of Documents

All notices, requests, and demands to or upon the Debtor, the Reorganized Debtor, or the Claimant Trustee to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered addressed as follows:

If to the Claimant Trust:

Highland Claimant Trust
c/o Highland Capital Management, L.P.
300 Crescent Court, Suite 700

Dallas, Texas 75201
Attention: James P. Seery, Jr.

If to the Debtor:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.

with copies to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Attn: Jeffrey N. Pomerantz, Esq.
Ira D. Kharasch, Esq.
Gregory V. Demo, Esq.

If to the Reorganized Debtor:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.
with copies to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Attn: Jeffrey N. Pomerantz, Esq.
Ira D. Kharasch, Esq.
Gregory V. Demo, Esq.

L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code

To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate federal, state or local governmental officials or agents or taxing authority to forego the collection of any such Stamp or Similar 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 Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to

evidence and implement the provisions of and the distributions to be made under this Plan; (ii) the maintenance or creation of security or any Lien as contemplated by this Plan; and (iii) assignments, sales, or transfers executed in connection with any transaction occurring under this Plan.

M. Governing Law

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Texas, without giving effect to the principles of conflicts of law of such jurisdiction; *provided, however,* that corporate governance matters relating to the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trust, as applicable, shall be governed by the laws of the state of organization of the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trustee, as applicable.

N. Tax Reporting and Compliance

The Debtor is hereby authorized to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor is for all taxable periods ending after the Petition Date through, and including, the Effective Date.

O. Exhibits and Schedules

All exhibits and schedules to this Plan, if any, including the Exhibits and the Plan Documents, are incorporated and are a part of this Plan as if set forth in full herein.

P. Controlling Document

In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and of the Confirmation Order, on the other hand, shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any provision of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and any provision of the Confirmation Order, on the other hand, that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan, the Disclosure Statement, and the Plan Documents, as applicable.

[Remainder of Page Intentionally Blank]

Dated: January 22, 2021

Respectfully submitted,

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: _____
James P. Seery, Jr.
Chief Executive Officer and Chief Restructuring Officer

Prepared by:

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Email: MHayward@HaywardFirm.com
ZAnnable@HaywardFirm.com

Counsel for the Debtor and Debtor-in-Possession

Exhibit B

Schedule of CLO Management Agreements and Related Contracts to Be Assumed

Schedule of CLO Management Agreements and Related Contracts to Be Assumed

1. Servicing Agreement, dated December 20, 2007, by and among Greenbriar CLO, Ltd., and Highland Capital Management, L.P.
2. Investment Management Agreement, dated November 1, 2007, by and between Longhorn Credit Funding, LLC, and Highland Capital Management, L.P. (as amended)
3. Reference Portfolio Management Agreement, dated August 1, 2016, by and between Highland Capital Management, L.P., and Valhalla CLO, Ltd.
4. Collateral Servicing Agreement, dated December 20, 2006, by and among Highland Park CDO I, Ltd., and Highland Capital Management, L.P.
5. Portfolio Management Agreement, dated March 15, 2005, by and among Southfork CLO Ltd., and Highland Capital Management, L.P.
6. Amended and Restated Portfolio Management Agreement, dated November 30, 2005, by and among Jaspar CLO Ltd., and Highland Capital Management, L.P.
7. Servicing Agreement, dated May 31, 2007, by and among Westchester CLO, Ltd., and Highland Capital Management, L.P.
8. Servicing Agreement, dated May 10, 2006, by and among Rockwall CDO Ltd. and Highland Capital Management, L.P. (as amended)
9. Portfolio Management Agreement, dated December 8, 2005, by and between Liberty CLO, Ltd., and Highland Capital Management, L.P.
10. Servicing Agreement, dated March 27, 2008, by and among Aberdeen Loan Funding, Ltd., and Highland Capital Management, L.P.
11. Servicing Agreement, dated May 9, 2007, by and among Rockwall CDO II Ltd. and Highland Capital Management, L.P.
12. Collateral Management Agreement, by and between, Highland Loan Funding V Ltd. and Highland Capital Management, L.P., dated August 1, 2001.
13. Collateral Management Agreement, dated August 18, 1999, by and between Highland Legacy Limited and Highland Capital Management, L.P.
14. Servicing Agreement, dated November 30, 2006, by and among Grayson CLO Ltd., and Highland Capital Management, L.P. (as amended)
15. Servicing Agreement, dated October 25, 2007, by and among Stratford CLO Ltd., and Highland Capital Management, L.P.
16. Servicing Agreement, dated August 3, 2006, by and among Red River CLO Ltd., and Highland Capital Management, L.P. (as amended)
17. Servicing Agreement, dated December 21, 2006, by and among Brentwood CLO, Ltd., and Highland Capital Management, L.P.
18. Servicing Agreement, dated March 13, 2007, by and among Eastland CLO Ltd., and Highland Capital Management, L.P.

19. Portfolio Management, Agreement, dated October 13, 2005, by and among Gleneagles CLO, Ltd., and Highland Capital Management, L.P.

20. Members' Agreement and Amendment, dated November 15, 2017, by and between Highland CLO Funding, Ltd. and Highland Capital Management, L.P.

21. Collateral Management Agreement, dated May 19, 1998, by and between Pam Capital Funding LP, Ranger Asset Mgt LP and Highland Capital Management, L.P.

22. Collateral Management Agreement, dated August 6, 1997, by and between Pamco Cayman Ltd., Ranger Asset Mgt LP and Highland Capital Management, L.P.

23. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Red River CLO Ltd. et al

24. Interim Collateral Management Agreement, June 15, 2005, between Highland Capital Management, L.P. and Rockwall CDO Ltd

25. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Rockwall CDO Ltd

26. Collateral Servicing Agreement dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.; The Bank of New York Trust Company, National Association

27. Representations and Warranties Agreement, dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.

28. Collateral Administration Agreement, dated March 27, 2008, between Highland Capital Management, L.P. and Aberdeen Loan Funding, Ltd.; State Street Bank and Trust Company

29. Collateral Administration Agreement, dated December 20, 2007, between Highland Capital Management, L.P. and Greenbriar CLO, Ltd.; State Street Bank and Trust Company

30. Collateral Acquisition Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd

31. Collateral Administration Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd. and Investors Bank and Trust Company

32. Collateral Administration Agreement, dated October 13, 2005, between Highland Capital Management, L.P. and Gleneagles CLO, Ltd.; JPMorgan Chase Bank, National Association

33. Collateral Acquisition Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.

34. Collateral Administration Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.; Investors Bank & Trust Company

35. Collateral Acquisition Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.

36. Collateral Administration Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.; U.S. Bank National Association

37. Master Warehousing and Participation Agreement, dated April 19, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company

38. Master Warehousing and Participation Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

39. Master Warehousing and Participation Agreement (Amendment No. 2), dated May 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

40. Master Warehousing and Participation Agreement (Amendment No. 1), dated April 12, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

41. Master Warehousing and Participation Agreement (Amendment No. 3), dated June 22, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

42. Master Warehousing and Participation Agreement (Amendment No. 4), dated July 17, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

43. Collateral Administration Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; U.S. Bank National Association; IXIS Financial Products Inc.

44. Collateral Administration Agreement, dated April 18, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company; U.S. Bank National Association

45. Master Participation Agreement, dated June 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Grand Central Asset Trust

46. A&R Asset Acquisition Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Smith Barney Inc.; Highland Loan Funding V Ltd.

47. A&R Master Participation Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Brothers Holding Company; Highland Loan Funding V Ltd.

48. Collateral Acquisition Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.

49. Collateral Administration Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.; JPMorgan Chase Bank, National Association

50. Master Warehousing and Participation Agreement, dated March 24, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.

51. Master Warehousing and Participation Agreement (Amendment No. 1), dated May 16, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.

52. Collateral Administration Agreement, dated December 8, 2005, between Highland Capital Management, L.P. and Liberty CLO Ltd.

53. Collateral Administration Agreement, dated May 10, 2006, between Highland Capital Management, L.P. and Rockwall CDO Ltd; JPMorgan Chase Bank, National Association

54. Collateral Administration Agreement, dated May 9, 2007, between Highland Capital Management, L.P. and Rockwall CDO II, Ltd.; Investors Bank & Trust Company

55. Collateral Administration Agreement, dated March 15, 2005, between Highland Capital Management, L.P. and Southfork CLO Ltd.; JPMorgan Chase Bank, National Association

56. Collateral Administration Agreement, dated October 25, 2007, between Highland Capital Management, L.P. and Stratford CLO Ltd.; State Street

57. Collateral Administration Agreement, dated August 18, 2004, between Highland Capital Management, L.P. and Valhalla CLO, Ltd.; JPMorgan Chase Bank

58. Collateral Acquisition Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.

59. Collateral Administration Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.; Investors Bank & Trust Company

60. Collateral Administration Agreement, dated December 21, 2006, between Highland Capital Management, L.P. and Brentwood CLO, Ltd.; Investors Bank & Trust Company

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

In re:	§	**Case No. 19-34054-sgj11**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	**Chapter 11**
	§	
Debtor	§	

RESPONSE TO ORDER TO SHOW CAUSE

Mark Patrick ("Patrick"), though undersigned counsel, files this *Response to Order to Show Cause* ("Response") to the Court's *Order Requiring the Violators to Show Cause Why They Should Not Be Held In Civil Contempt for Violating Two Court Orders* (Dkt. No. 2255) (the "Show Cause Order") which was entered on the *Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders* (Dkt. No. 2236) (the "Show Cause Motion") filed by the above-captioned debtor (the "Debtor"). In the Show Cause Order, the Court ordered those persons who authorized plaintiffs in that certain civil action styled *Charitable DAF Fund, L.P. et al. v. Highland Capital Management, L.P.* et al., case no. 21-cv-00842, pending in the United States District Court for the Northern District of Texas (the "District Court Suit") to file the *Motion for Leave to File First Amended Complaint in the District Court* (the "Motion for Leave") to appear at a hearing on June 8, 2021 (the "Show Cause Hearing"), and any such authorizing person, whom the Court has already included in the term "Violators," to file a response by May 14, 2021. As set forth herein, Patrick authorized the filing of the Motion for Leave on behalf of Plaintiffs CLO Holdco, Ltd. and Charitable DAF Fund, L.P., ("Plaintiffs"), and files this Response to the Show Cause Order showing why this Court should not

find and hold Patrick, or the other respondents, in contempt of court, nor impose any of the myriad of sanctions requested by the Debtor and seemingly already endorsed by the Court.

THIS COURT'S ORDERS

In the above-captioned bankruptcy case (the "Bankruptcy Case"), in the *Order Approving Settlement With Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* (the "January 2020 Order"), this Court included restrictions against commencing or pursuance of claims against Independent Directors (as defined in the January 2020 Order). And in the *Order Approving Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc To March 15, 2020* (the "July 2020 Order," along with the January 2020 Order, the "Orders"), the Court ordered that:

> No entity may commence or pursue a claim or cause of action of any kind against Mr. Seery relating in any way to his role as the chief executive officer and chief restructuring officer of the Debtor without the Bankruptcy Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Mr. Seery, and (ii) specifically authorizing such entity to bring such claim. The Bankruptcy Court shall have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

THE DISTRICT COURT SUIT AND THE MOTION FOR LEAVE

On April 23, 2021 Plaintiffs commenced the District Court Suit, and did not name James Seery ("Seery") as a defendant in their complaint (the "Complaint"). Instead, Plaintiffs filed the Motion for Leave to assert claims against Seery, specifically noting this Court's Orders. In fact, the Plaintiffs (1) specifically noted to the District Court that that this Court had entered the Orders limiting suits against Seery, (2) attached the Orders to the Motion for Leave, and (3) briefed why Plaintiffs believed the Orders did not apply. The Debtor responded with the Show Cause Motion,

and as more fully briefed by Plaintiffs in their response to the Show Cause Order, therein has made several material misrepresentations.

PATRICK IS THE CONTROL PERSON OF THE PLAINTIFFS AND AUTHORIZED THE FILING OF THE DISTRICT COURT SUIT AND MOTION FOR LEAVE

Prior to March 245, 2021, Grant James Scott ("Scott") was the holder of Management Shares in the Charitable DAF Holdco, Ltd. On March 24, 2021, Scott executed the *Share Transfer Form*, in which he transferred the Management Shares to Patrick, and on March 24, 2021, Scott and Patrick executed that certain *Assignment and Assumption of Membership Interest* whereby Scott assigned and Patrick assumed one hundred percent of the limited liability company interest in the Charitable DAF GP, LLC, the general partner of Charitable DAF Fund, LP. Scott was removed as Director of the Charitable DAF Holdco, Ltd., and Patrick was appointed Director of the Charitable DAF Holdco, Ltd., the 100% limited partner of Charitable DAF Fund, LP, which is the 100% shareholder of Plaintiff CLO HoldCo, Ltd. Patrick, therefore became the director of Plaintiff CLO HoldCo, Ltd. and the control person of Charitable DAF Fund, LP.

Patrick was the person with authority to retain counsel for and on behalf of the Plaintiffs in the District Court Suit. Patrick worked with counsel to obtain lawfully the information upon which Plaintiffs, with assistance of counsel, could analyze whether there was legal and factual basis for bringing the District Court Suit. Patrick and counsel were aware of the Court's Orders and understood that this Court had prohibited the commencement or pursuit of a claim or cause of action against "Mr. Seery relating in any way to his role as the chief executive officer and chief restructuring officer of the Debtor" without first complying with the Orders.

Patrick reviewed and authorized the filing of the District Court Suit, with, of course, the advice of counsel that the facts asserted supported the legal claims made in the complaint, and that the complaint and Motion for Leave did not violate the Court's Orders.[1]

RESPONSE ARGUMENT

First, Patrick adopts the response of Plaintiffs to the Show Cause Order filed or to be filed by counsel of record for Plaintiffs in the District Court Suit, including without limitation the factual assertions and legal arguments made therein. Patrick further avers that he reviewed and approved Plaintiffs' response for filing.

Second, Patrick offers this particularized response to the Show Cause Order as he is, separately, a respondent thereto.

Bankruptcy courts frequently issue orders to show cause *sua sponte* and typically, these are intended to prompt compliance with court orders or court procedures. *In re Symka, Inc*., 518 B.R. 888, 889 (Bankr. D. Colo. 2014). But issuing an order to show cause at the request of a party, as occurred here, "creates an appearance of impropriety." *Id*. As the bankruptcy court in *Symka* explained:

> In effect, such a litigant seeks the Court's endorsement of relief against another private party, on an ex parte basis, before the merits of that relief have been subjected to due process. Such orders create an appearance of impropriety. They create the appearance that the Court has evaluated allegations made by the applicant—without an opportunity for input from the other party—and adopts the applicant's position that a basis exists to require the target of the order to appear and explain himself to the Court.

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[1] Patrick intends no waiver of attorney client privilege. As set forth herein, Patrick is not asserting advice of counsel as a defense and as such, there can be no such waiver. *See In re Schlumberger Tech. Corp*., 818 F. App'x 304, 307 (5th Cir. 2020) (explaining that a client waives the privilege by affirmatively relying on attorney-client communications as a claim or defense—put differently, when a client "uses confidential information against his adversary, it cannot simultaneously use the privilege as a shield"). Nonetheless, in *Schulmberger*, the Fifth Circuit determined that there is no waiver of attorney-client privilege by raising good faith as a defense. *Id*.

Id. at 888-89. The *Symka* court also noted the pressing issue of where such a motion relates to a dispute between private litigants, "a court's entry of an order to show cause has the effect of shifting the burden of going forward from the applicant to the target of the show cause order." *Id*. at 889. The Fifth Circuit had held that in a civil contempt proceeding, it is the petitioner bears the burden of proving that respondent violated some court order by clear and convincing evidence. *Louisiana Ed. Ass'n v. Richland Parish School Bd.,* 421 F. Supp. 973, *aff'd,* 585 F.2d 518 (5th Cir.1978). While the Show Cause Order has appeared to turn the burden around and has already deemed the respondents "Violators," Patrick urges that under Fifth Circuit law, the Debtor has the burden to show by clear and convincing evidence that Patrick violated this Court's Orders. *See In re Cannon*, No. BR 17-11549-JGR, 2017 WL 10774809, at *1 (Bankr. D. Colo. June 13, 2017) (citing to *Symka,* 518 B.R. at 889 and declining "to issue orders that would create such an impression or shift the burden in this manner.").

A. The Debtor cannot meet its burden to show a violation of the Court's Orders.

The Court's Orders do not immunize Seery from all litigations whatsoever. The Debtor does not argue that the Complaint filed in the District Court Suit was prohibited. The Complaint mentions Seery and his acts and omissions but does not name him as a defendant. Therefore, the Complaint which Patrick authorized to file cannot be construed as a the commencement or pursuit of "a claim or cause of against" Seery, nor does the Debtor contend the Complaint itself violated the Orders.

Instead, the Debtor argues that the Motion for Leave is grounds for the extensive requested sanctions. But the Motion for Leave is itself proof that Seery has not yet been sued. Therefore, the issue before the Court is whether Respondents should be held in contempt and sanctioned for asking the District Court for permission to sue Seery. In support, the Debtor recites its belief that

this Court has stripped the District Court of its original jurisdiction through the Orders. But of course, this Court's jurisdiction is ***derivative*** of the District Court's, and as such, the Court does not have authority to remove jurisdiction from the District Court. *In re 7303 Holdings, Inc.*, No. 08-36698, 2010 WL 3420477, at *3 (Bankr. S.D. Tex. Aug. 26, 2010) (citing to 28 U.S.C. § 157(a)).

Nonetheless, Respondents expected that the Motion to Leave would likely be referred to this Court. At that time, the Respondents would move to withdraw the reference under 28 U.SC. § 157(d). And even if the Respondents were wrong, the District Court, who has original jurisdiction, would decide the Motion for Leave. In recognition of this peculiar procedural posture, the Respondents did not move to have the proposed amended Complaint deemed filed, going so far as to submitting an amended proposed order avoiding the use of any such language.

The Debtor fails to identify the provision in this Court's Orders which Respondents violated. The Orders prohibit an entity from "commenc[ing] or pursue[ing] a claim or cause of action of any kind against Mr. Seery relating in any way to his role as the chief executive officer and chief restructuring officer of the Debtor without the Bankruptcy Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Mr. Seery, and (ii) specifically authorizing such entity to bring such claim. The Bankruptcy Court shall have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted." But the Motion for Leave cannot be deemed to "commencing" or "pursuing" a cause of action against Seery. ***If*** the Motion for Leave had been granted, and then, ***if*** the Respondents filed an amended complaint without consultation of this Court, then this Court would be faced with a District Court authorizing the filing of the complaint against Seery (with full disclosure of this Court's Orders), and the Debtor

and this Court could decide whether Plaintiffs could be subject to sanctions for filing a pleading pursuant to the order of the District Court. This has not happened.

In sum, the sole offending conduct complained of was asking the District Court for permissions to amend the Complaint before it. The Debtor contends that this violated this Court's Orders because this Court stripped the District Court of jurisdiction. The Respondents' belief that this was not legally possible, nor practically the case, cannot be construed as "bad faith" warranting extensive sanctions.

B. While Patrick may be in distinct posture, he asserts no mitigation or defense based upon advice of counsel.

Patrick consulted with and relied upon analysis of counsel. As set forth herein, Patrick remains convinced that Patrick, counsel, and Plaintiffs acted in full compliance with the Orders. Therefore, and upon established Fifth Circuit law, Patrick does not assert advice of counsel as a defense. *Sec. & Exch. Comm'n v. First Fin. Grp. of Texas, Inc*., 659 F.2d 660, 670 (5th Cir. 1981). Second, while *Sec. & Exch. Comm'n v. First Fin. Grp. of Texas, Inc*. would allow Patrick the argument that any sanction directed to him should be mitigated because he acted upon advice of counsel, he seeks no mitigation. Patrick, in good faith, authorized the filing of the Motion For Leave, and asserts that neither he nor Plaintiffs can be held in contempt for violation of this Court's Orders.

CONCLUSION

Respectfully, Patrick submits that this Court should withdraw its Show Cause Order, without the imposition of any sanction or cost upon Plaintiffs, Patrick or any other person, firm or entity.

Dated: May 14, 2021

Respectfully submitted,

KELLY HART PITRE

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ATTORNEYS FOR MARK PATRICK

CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that a true and correct copy of the above and foregoing document and all attachments thereto were sent via electronic mail via the Court's ECF system to all parties authorized to receive electronic notice in this case on this May 14, 2021.

/s/ Louis M. Phillips
Louis M. Phillips

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Deborah J. Newman (admitted *pro hac vice*)
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Co-counsel for Marc S. Kirschner, as Litigation Trustee of the Highland Litigation Sub-Trust

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., [1]	)	Case No. 19-34054-sgj11
Debtor.	)	

LITIGATION TRUSTEE'S OBJECTION TO PROOF OF CLAIM FILED BY JEAN-PAUL SEVILLA (CLAIM NO. 242)

Pursuant to sections 502(b), 502(d), and 502(e) of Title 11 of the United States Code (the "Bankruptcy Code"), Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rules 3007-1 and 3007-2 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Northern District of Texas (the "Local Rules"), Marc S. Kirschner (the "Litigation Trustee"), as Litigation Trustee of the Litigation Sub-Trust (the "Trust") established pursuant to the Fifth Amended Plan of Reorganization (the "Plan") of Highland Capital

[1] The last four digits of the Reorganized Debtor's taxpayer identification number are (8357). The Reorganized Debtor is a Delaware limited partnership. The Reorganized Debtor's headquarters and service address are 100 Crescent Court, Suite 1850, Dallas, TX 75201.

Management L.P. ("HCMLP" or the "Reorganized Debtor") [Docket No. 1808], through his undersigned counsel, hereby files this objection (the "Objection') to Proof of Claim No. 242 filed by Jean-Paul Sevilla on March 12, 2021 (the "Claim").[2] The Litigation Trustee requests that the Claim be summarily disallowed and respectfully represents as follows.

I. JURISDICTION

1. The Court has jurisdiction over this matter under the Bankruptcy Code and pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. §§ 157(b). Venue is proper in this District under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are 11 U.S.C. § 502(b)-(e), Bankruptcy Rule 3007, and Local Rules 3007-1 and 3007-2.

II. RELEVANT FACTUAL BACKGROUND

A. General Background

3. On October 16, 2019 (the "Petition Date"), HCMLP filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court of the District of Delaware, Case No. 19-12239 (CSS).

4. On December 4, 2019, the Delaware Court entered an order transferring venue of HCMLP's bankruptcy case to this Court [Docket No. 186].

5. On March 2, 2020, the Court entered its *Order (I) Establishing Bar Dates for Filing Claims and (II) Approving the Form and Manner of Notice Thereof* [Docket No. 488] (the "Bar Date Order"). The Bar Date Order fixed April 8, 2020 at 5:00 p.m. (prevailing Central Time) as

[2] Also on March 12, 2021, Sevilla filed Proof of Claim No. 241, which was subsequently transferred to CPCM, LLC. HCMLP has objected to Proof of Claim No. 241 in the *Debtor's Third Omnibus Objection to Certain No Liability Claims* [Docket No. 2059], filed on March 18, 2021, and in the *Reorganized Debtor's Amended and Supplemental Omnibus Objection to Certain Employee Claims* [Docket No. 2976], filed on November 2, 2021.

the deadline for any person or entity, other than Governmental Units (as such term is defined in section 101(27) of the Bankruptcy Code), to file proofs of claim against the Debtor (the "General Bar Date"). HCMLP also sought and obtained the extended employee bar date of May 26, 2020 per the *Order Granting Debtor's Emergency Motion and Extending Bar Date Deadline for Employees to File Claims* [Docket No. 560].

6. On March 3, 2020, HCMLP filed the *Notice of Bar Dates for Filing Claims* [Docket No. 498] (the "Bar Date Notice"). The Bar Date Notice was mailed to all known creditors and equity holders on March 5, 2020. See Certificate of Service [Docket No. 530].

7. On May 8, 2020, this Court entered the *Order Approving Joint Stipulation of the Debtor and the Official Committee of Unsecured Creditors Modifying Bar Date Order* [Docket No. 628] (the "Employee Bar Date Order"). Pursuant to the Employee Bar Date Order, HCMLP was authorized to provide certain employees with a letter (the "Employee Letter") setting forth the prepetition deferred, contingent bonuses awarded to such employees under the Bonus Programs (as defined below). For confidentiality reasons, HCMLP provided the Employee Letters in lieu of requiring such employees to file a proof of claim publicly that disclosed his or her compensation, and the amounts included in the Employee Letters were deemed to constitute prima facie evidence of the validity and amount of such covered employees' claims under Bankruptcy Rule 3003(c). If a covered employee disagreed with the amounts included in his or her Employee Letter, such employee was required to file a proof of claim no later than 5:00 p.m. Central Time on May 26, 2020.

8. On February 22, 2021, this Court entered the *Order Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (ii) Granting Related Relief* [Docket No. 1943] (the "Confirmation Order"), which confirmed the Plan.

B. The Claim

9. Sevilla is a former employee of HCMLP who was terminated in February 2021. On March 12, 2021, Sevilla filed the Claim, which alleges that Sevilla is owed (1) $26,517.64 for unpaid vacation and paid time off and (2) indemnification "for all acts performed or omitted to be performed" on behalf of or in connection with HCMLP.

III. RELIEF REQUESTED

10. The Litigation Trustee files this Objection pursuant to section 502 of the Bankruptcy Code, Bankruptcy Rule 3007, and Local Rule 3007, seeking entry of an order, substantially in the form annexed hereto as **Exhibit A** (the "Proposed Order"), disallowing and expunging the Claim in its entirety.

IV. OBJECTIONS

11. Pursuant to the Plan, the Claimant Trust Agreement, the Litigation Sub-Trust Agreement, and the Assignment Agreement—executed between the Highland Claimant Trust[2] and the Litigation Sub-Trust and effective as of August 11, 2021—the Litigation Trustee has standing to object to the Claim.

12. A filed proof of claim is "deemed allowed, unless a party in interest … objects." 11 U.S.C. § 502(a).

13. As set forth in Bankruptcy Rule 3001(f), a properly executed and filed proof of claim constitutes prima facie evidence of the validity and amount of the claim under section 502(a) of the Bankruptcy Code. *See In re Fidelity Holding Co.,* 837 F.2d 696, 698 (5th Cir. 1988). To receive the benefit of prima facie validity, however, "[i]t is elemental that a proof of claim must

[2] The terms "Claimant Trust Agreement," "Litigation Sub-Trust Agreement," and "Highland Claimant Trust" shall have the meaning ascribed to them as set forth in the Plan.

assert facts or allegations . . . which would entitle the claimant to a recovery." *In re Heritage Org., L.L.C.*, 04-35574 (BJH), 2006 WL 6508477, at *8 (Bankr. N.D. Tex. Jan. 27, 2006), *aff'd sub nom., Wilferth v. Faulkner*, 3:06 CV 510 K, 2006 WL 2913456 (N.D. Tex. Oct 11, 2006). And if evidence rebutting the claim is presented in an objection, then the claimant must produce additional evidence to support the claim. *In re Fidelity,* 837 F.2d at 698. Indeed, "[t]he ultimate burden of proof always lies with the claimant." *In re Armstrong*, 347 B.R. 581, 583 (Bankr. N.D. Tex. 2006).

14. Section 502(b)(1) of the Bankruptcy Code requires disallowance of a claim if "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law[.]" 11 U.S.C. § 502(b)(1). For the reasons contained herein, the Claim is unenforceable against HCMLP and should be disallowed, expunged, or reduced.

15. The compensation-related claims set forth in the Claim should be disallowed because Sevilla has already been paid the full amount that he claims that he was owed. Indeed, on March 15, 2021, Sevilla received $26,517.64 on account of paid time off and vacation.

16. Sevilla's indemnification-related claims should also be disallowed. As an initial matter, Sevilla has not incurred any allegedly indemnifiable costs, and his claim should be disallowed on that basis.

17. Moreover, even if Sevilla did incur costs, he is not entitled to indemnification under the plain text of the operative agreements. Sevilla is not entitled to indemnification under either the Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P. (the "Previous LPA") or the Resolution of the Board of Directors of Strand Advisor, Inc., dated May 12, 2020 (the "Resolution"). As of the effective date of the Plan, the rights of current and former employees are governed by the Fifth Amended and Restated

Partnership Agreement, which: (1) does not afford Sevilla any right to indemnification; and (2) expressly disclaims any prior indemnification claims.[3]

18. Section 502(e)(1)(B) of the Bankruptcy Code provides that "the court shall disallow any claim for reimbursement or contribution of an entity that is liable with the debtor … to the extent that … such claim for reimbursement or contribution is contingent as of the time of allowance or disallowance[.]" Once again, although Sevilla fails to plead his indemnification claim with specificity, it should be disallowed to the extent that it arises out of conduct undertaken with or on behalf of HCMLP. *See In re Falcon V, L.L.C.*, 620 B.R. 256, 270 (Bankr. M.D. La 2020) (disallowing contingent claim for indemnification under section 502(e)(1)(B) and observing that "[c]ourts have consistently held that 'the concept of reimbursement includes indemnity'").

19. For all of these reasons, the Litigation Trustee respectfully requests that the Court disallow and expunge the Claim.

V. RESPONSES TO OBJECTIONS

20. To contest an objection, a claimant must file and serve a written response to this Objection (each, a "Response") so that it is received no later than December 9, 2021 (the "Response Deadline"). Every Response must be filed with the Office of the Clerk of the United States Bankruptcy Court for the Northern District of Texas (Dallas Division), Earle Cabell Federal Building, 1100 Commerce Street, Room 1254, Dallas, TX 75242-1496 and served upon the following entities, so that the Response is received no later than the Response Deadline, at the following addresses:

[3] The Fifth Amended and Restated Partnership Agreement is attached hereto as **Exhibit B**. Moreover, even if the Previous LPA and May Resolution governed, HCMLP would not owe Sevilla indemnification obligations for conduct constituting gross negligence or willful or wanton misconduct. Although Sevilla does not provide any detail about the conduct or circumstances that may give rise to his purported indemnification claim, it should be disallowed to the extent that it is premised on Sevilla's negligent, willful, or wanton misconduct.

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-and-

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21. Every Response to this Objection must contain, at a minimum, the following information:

a. A caption setting forth the name of the Court, the name of the Debtor, the case number, and the title of the objection to which the Response is directed;

b. The name of the claimant, his/her/its claim number, and a description of the basis for the amount of the claim;

c. The specific factual basis and supporting legal argument upon which the party will rely in opposing this Objection;

d. Any supporting documentation (to the extent it was not included with the proof of claim previously filed with the clerk of the Court or KCC) upon which the party will rely to support the basis for and amounts asserted in the proof of claim; and

e. The name, address, telephone number, email address, and fax number of the person(s) (which may be the claimant or the claimant's legal representative) with whom counsel for the Debtor should communicate with respect to the

claim or the Objection and who possesses authority to reconcile, settle, or otherwise resolve the objection to the disputed claim on behalf of the claimant.

22. If a claimant fails to file and serve a timely Response by the Response Deadline, the Litigation Trustee will present to the Court an appropriate order disallowing such claimant's claim, as set forth in **Exhibit A**, without further notice to the claimant.

VI. RESERVATION OF RIGHTS

23. The Litigation Trustee hereby reserves his right to supplement or modify this Objection and to assert such further objections, defenses, or arguments as may later become available or apparent.

VII. NOTICE

24. Notice of this Objection shall be provided to (i) the Office of the United States Trustee for the Northern District of Texas; (ii) each of the claimants whose claim is subject to this Objection; (iii) the Reorganized Debtor; and (iv) all entities requesting notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Litigation Trustee submits that no further notice is required.

WHEREFORE, the Litigation Trustee respectfully requests the entry of the proposed Order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested and granting such other and further relief as the Court deems just and proper.

Dated: November 9, 2021
Dallas, Texas

Respectfully submitted,

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Counsel for the Litigation Trustee

CERTIFICATE OF SERVICE

The undersigned hereby certifies, that on this 9th day of November 2021, the undersigned caused to be served a true and correct copy of the *Litigation Trustee's Objection to Proof of Claim Filed by Jean-Paul Sevilla (Claim No. 242)*, by electronically filing it with the Court using the CM/ECF system, which sent notification to all parties of interest participating in the CM/ECF system.

/s/ *Paige Holden Montgomery*
Paige Holden Montgomery

EXHIBIT A

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	

ORDER SUSTAINING THE LITIGATION TRUSTEE'S OBJECTION TO PROOF OF CLAIM FILED BY JEAN-PAUL SEVILLA (CLAIM NO. 242)

Having considered *The Litigation Trustee's Objection to Proof of Claim Filed by Jean-Paul Sevilla (Claim No. 242)* (the "Objection"), Proof of Claim No. 242 filed by Jean-Paul Sevilla on March 12, 2021 (the "Claim"), any responses to the Objection, and the arguments of counsel,

[1] The last four digits of the Reorganized Debtor's taxpayer identification number are (8357). The Reorganized Debtor is a Delaware limited partnership. The Reorganized Debtor's headquarters and service address are 100 Crescent Court, Suite 1850, Dallas, TX 75201.

the Court finds that (i) notice of the Objection was good and sufficient upon the particular circumstances and that no other or further notice need be given; (ii) the Objection is a core proceeding under 28 U.S.C. §§ 157(b)(2); (iii) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and (iv) Sevilla was properly and timely served with the Objection and the notice of hearing on the Objection. Accordingly, the Court finds and concludes that there is good and sufficient cause to grant the relief set forth in this Order. It is therefore **ORDERED:**

1. The Objection is **SUSTAINED** as set forth in further detail herein.

2. The Claim is **DISALLOWED** with prejudice and expunged in its entirety.

3. To the extent applicable, the official claims register in the Debtor's chapter 11 case shall be modified in accordance with this Order.

4. The Litigation Trustee's[2] rights to amend, modify, or supplement the Objection, to file additional objections to the Claim and any other claims (filed or not, including any other claims filed by holder of the Claim) which may be asserted against the Reorganized Debtor, and to seek further reduction of any claim to the extent such claim has been paid, are preserved. Additionally, should one or more of the grounds in the Objection be overruled, the Litigation Trustee's right to object on other stated grounds or any other ground that the Litigation Trustee may discover are further preserved.

5. The Litigation Trustee is authorized and empowered to take any actions necessary to implement and effectuate the terms of this Order.

6. The Court shall retain jurisdiction over all matters arising from or related to the interpretation and implementation of this Order.

###END OF ORDER###

[2] Capitalized terms not otherwise defined in this Order shall have the meanings ascribed to them in the Objection.

EXHIBIT B

FIFTH AMENDED AND RESTATED

AGREEMENT OF LIMITED PARTNERSHIP

OF

HIGHLAND CAPITAL MANAGEMENT, L.P.

(A Delaware Limited Partnership)

August 11, 2021

This FIFTH AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP (this "***Agreement***") of Highland Capital Management, L.P., (the "***Partnership***"), dated as of August 11, 2021 and entered into by and among the HCMLP GP LLC as general partner of the Partnership (the "***General Partner***") and the limited partner of the Partnership as set forth on Schedule A hereto (the "***Limited Partner***"), amends and restates in its entirety the Fourth Amended and Restated Agreement of Limited Partnership of the Partnership dated as of December 24, 2015 (as amended to date, the "***Prior Agreement***"), by and among Strand Advisors, Inc. (the "***Prior General Partner***") and the former limited partners of the Partnership who were limited partners of the Partnership (the "***Prior Limited Partners***"). The General Partner and Limited Partners are collectively referred to as the "***Partners***."

WHEREAS, the Prior Agreement, as amended pursuant to that certain amendment dated January 27, 2021, provides for the reconstitution and continuation of the Partnership if new limited partners are admitted to the partnership within 90 days after dissolution thereof and such new limited partners consent to the continuation of the Partnership.

WHEREAS, the Partnership was reorganized pursuant to the Plan of Reorganization of Highland Capital Management, L.P., that was approved by the United States Bankruptcy Court for Northern District of Texas, Dallas Division, on February 22, 2021 (the "***Plan***").

WHEREAS, pursuant to the Plan the limited partnership interests of the Prior Limited Partners and the Prior General Partner were canceled on August 11, 2021 and new limited partnership interests were issued to the Limited Partner and the General Partner under the Prior Agreement.

WHEREAS, the General Partner and the Limited Partner wish to ratify the admission to the Partnership of the General Partner and the Limited Partner and to amend and restate the terms of the Partnership as set forth in this Agreement.

NOW, THEREFORE, in consideration of the agreements and obligations set forth herein, the undersigned hereby agree as follows:

1. Continuation.

(a) Subject to the provisions of this Agreement, the Partners hereby continue the Partnership as a limited partnership pursuant to the provisions of the Delaware Revised Uniform Limited Partnership Act (6 *Del.C.* §17-101, *et seq.)*, as amended from time to time (the "***Act***"). This Agreement amends, restates, and supersedes the Prior Agreement and all other prior agreements or understandings with respect to the matters covered herein.

(b) The Limited Partner, being the sole limited partner of the Partnership, hereby (i) consents to the continuation of the Partnership and (ii) ratifies and approves the appointment of the General Partner as general partner of the Partnership.

2. Organizational Matters.

(a) *Name; Certificate*. The name of the Partnership is Highland Capital Management, L.P. The Partnership was organized as a limited partnership pursuant to the Act and

filed a Certificate of Limited Partnership (the "***Certificate***") with the Secretary of State of the State of Delaware. Any person authorized to act on behalf of the General Partner or the Partnership may, subject to Section 19 below, cause the Partnership to file such other certificates and documents as may be necessary or appropriate to comply with the Act and any other applicable requirements for the operation of a limited partnership in accordance with the laws of the State of Delaware and any other jurisdictions in which the Partnership shall conduct business, and to maintain such filings for so long as the Partnership conducts business therein.

(b) *Offices*. The name of the resident agent for service of process for the Partnership and the address of the registered office of the Partnership in the State of Delaware is Corporation Services Company, 2023 Centre Road, Wilmington Delaware 19805-1297. The General Partner may establish places of business of the Partnership within and without the State of Delaware, as and when required by the Partnership's business and in furtherance of its purposes set forth herein, and may appoint (or cause the appointment of) agents for service of process in all jurisdictions in which the Partnership shall conduct business. The General Partner may from time to time in its sole discretion change the Partnership's places of business, resident agent for service of process, and/or the location of its registered office in Delaware.

3. Purpose; Powers. The Partnership is formed for the purpose of engaging in any lawful act or activity for which limited partnerships may be formed under the Act. Without limiting the foregoing, the general character and purposes of the business of the Partnership are to (a) engage in the business, directly and/or through one or more subsidiaries, of liquidating assets of, and performing investment management and advisory services for, pooled investment vehicles, funds, investment holdings, accounts, and interests therein; and (b) engage in any lawful activities (including, subject to the other provisions of this Agreement, the borrowing of money and the issuance of guarantees of indebtedness of others) directly or indirectly related or incidental thereto and in which a Delaware limited partnership may lawfully engage. The Partnership shall have and exercise all of the powers and rights conferred upon limited partnerships formed pursuant to the Act.

4. Management.

(a) *Authority of the General Partner*. The business and affairs of the Partnership shall be managed exclusively by and under the direction of the General Partner, which shall have the right, power and authority to exercise all of the powers of the Partnership except as otherwise provided by law or this Agreement. Decisions or actions made or approved by the General Partner in accordance with this Agreement shall constitute decisions or actions by the Partnership and shall be binding upon the Partnership and each Limited Partner of the Partnership. The General Partner may not be removed or replaced by the Limited Partners. In the event of the withdrawal, resignation or dissolution of the General Partner, a new General Partner shall be designated in writing by a majority in interest of the Limited Partners, who shall provide written notice to the remaining Limited Partners of such designation.

(b) *Delegation of Powers; Officers*. Notwithstanding anything to the contrary herein, the General Partner may delegate any or all or any portion of its rights, powers, authority, duties and responsibilities with respect to the management of the Partnership to such officers of the Partnership with such titles as the General Partner may determine ("***Officers***"). The General Partner

may authorize any such Officers to sign agreements, contracts, instruments, or other documents in the name of and on behalf of the Partnership, and such authority may be general or limited to specific instances. The power and authority of any Officer appointed by the General Partner under this Section 4(b) shall not exceed the power and authority possessed by the General Partner under this Agreement. The Officers shall hold office until their successors are duly appointed or their earlier death, resignation, or removal. Any Officer so appointed may be removed at any time, with or without cause, by the written consent of the General Partner. Any Officer may resign from his or her office upon prior written notice to the Partnership. If any office shall become vacant, a replacement Officer may be appointed by the written consent of the General Partner. Two or more offices may be held by the same person. The initial Officers of the Partnership are set forth on Schedule B.

(c) *Limited Partners*. No Limited Partner shall have any right to participate in the management of the Partnership as a Limited Partner. Moreover, no Limited Partner shall have any voting rights except with respect to consent to amendments as set forth in Section 19 below, or as otherwise required by the Act.

(d) *Transactions with Affiliates*. The General Partner or any person controlling, controlled by, or under common control with the General Partner (an "***Affiliate***") may engage in transactions with the Partnership from time to time, including without limitation for lending to or borrowing from the Partnership, engaging in the provision of services to the Partnership, or otherwise engaging in business transactions with the Partnership, provided that such transactions are entered into in good faith. Unless otherwise expressly provided in this Agreement or any other agreement contemplated herein, whenever a conflict of interest exists or arises between the General Partner or any of its Affiliates, on the one hand, and the Partnership or any Limited Partner, on the other hand, any action taken by the General Partner, in the absence of bad faith by the General Partner, shall not constitute a breach of this Agreement or any other agreement contemplated herein or a breach of any standard of care or duty imposed herein or therein or under the Act or any other applicable law, rule, or regulation.

5. Partners.

(a) *General*. The name, address, and percentage interest ownership interest of the General Partner and each Limited Partner in the Partnership (the "***Percentage Interest***") are set forth on Schedule A hereto. Additional Limited Partners may be admitted to the Partnership, and Schedule A may be amended, only with the written consent of the General Partner (provided, that failure to update Schedule A shall not itself be conclusive of whether consent of the General Partner has been obtained). No Limited Partner shall have the right or power to resign, withdraw or retire from the Partnership, except upon (i) the occurrence of any event described in Section 17-801 of the Act (in which case the Limited Partner(s) with respect to which such event has occurred shall, automatically and with no further action necessary by any person, cease to be a Limited Partner, and shall be deemed to have solely the interest of an assignee (within the meaning of Section 17 of the Act) with respect to such Limited Partner's Limited Partnership Interest), or (ii) with the consent of the General Partner. For the avoidance of doubt, no action may be taken to reduce, directly or indirectly, the Percentage Interest of any Partner without the written consent of such Partner.

(b) *Capital Contributions*. The Partners may, in their sole discretion, make additional capital contribution to the Partnership if requested by the General Partner. All capital, whenever contributed, shall be subject in all respects to the risks of the business and subordinate in right of payment to the claims of present or future creditors of the Partnership in accordance with this Agreement.

(c) *Capital Accounts*. The Partnership shall maintain a capital account for each Partner in accordance with Section 704(b) and 704(c) of the Internal Revenue Code of 1986, as amended (the "***Code***"), and the principles of the Treasury Regulations promulgated thereunder.

(d) *Tax Representative*. The General Partner shall serve as the "tax representative" to be the Partnership's designated representative within the meaning of Section 6223 of the Code with sole authority to act on behalf of the Partnership for purposes of subchapter C of Chapter 63 of the Code and any comparable provisions of state or local income tax laws (the "***Tax Representative***"). The Tax Representative is specifically directed and authorized to take whatever steps it deems necessary or desirable to perfect such designation, including, without limitation, filing any forms or documents with the Internal Revenue Service, properly designating a particular individual to act on its behalf of the Tax Representative and taking such other action as may from time to time be required under Treasury Regulations. The Tax Representative is hereby authorized to and shall perform all duties of a "tax representative" and shall serve as Tax Representative until its resignation or until the designation of its successor, whichever occurs sooner.

6. Allocation of Income and Losses.

(a) *Definitions*. For purposes of this Agreement, "***Income***" and "***Loss***" of the Partnership shall mean the taxable income and loss, respectively, of the Partnership computed with the adjustments set forth in Treasury Regulation under Code Section 704(b) including (A) adjustments pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(g), (B) the inclusion of the amount of any tax-exempt income as an item of income, (C) the inclusion of the amount of any nondeductible, noncapitalizable expense as an item of deduction and (D) the inclusion of the amount of unrealized gain or unrealized loss with respect to an asset of the Partnership as an item of income or gain (as applicable) upon distribution of such asset in kind or as required by Treasury Regulation Section 1.704-1(b)(2)(iv)(f).

(b) *Allocations Generally*. The Income and Loss of the Partnership for each fiscal year or other applicable period shall be allocated to and among the Partners in proportion to their respective Percentage Interests.

(c) *Adjustments*. Notwithstanding Section 6(b) (but subject to Section 6(c)),

(i) Items of income or gain for any taxable period shall be allocated to the Partner in the manner and to the extent required by the "qualified income offset" provisions of Treasury Regulation Section 1.704-1(b)(2)(ii)(d); and

(ii) In no event shall any Loss or item of deduction be allocated to a Partner if such allocation would cause or increase a negative balance

in such Partner's capital account determined by increasing the Partner's capital account balance by any amount the Partner may be obligated to restore to the Partnership pursuant to Treasury Regulation Section 1.704-1(b)(2)(ii)(c) and by decreasing such capital account balance by the amounts specified in Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6)).

(d) *Nonrecourse Debt*. If at any time the Partnership incurs any "nonrecourse debt" (*i.e.,* debt that is treated as nonrecourse for purposes of Treasury Regulation Section 1.1001-2), the following provisions will apply notwithstanding anything to the contrary expressed elsewhere in this Agreement:

(i) "Nonrecourse deductions" (as defined in Treasury Regulation Sections 1.704-2(b) and (c)) shall be allocated to the Partners in proportion to their respective Percentage Interests.

(ii) All other allocations relating to such nonrecourse debt shall be allocated in accordance with Treasury Regulation Section 1.704-2; and

(iii) For purposes of Sections 6(b) and 6(c), each Partner's capital account balance shall be increased by the Partner's share of minimum gain and of partner nonrecourse debt minimum gain (as determined pursuant to Treasury Regulation Sections 1.704-2(g) and 1.704-2(i)(5), respectively).

(e) *Deductions, Credits*. Except as otherwise provided herein or as required by Code Section 704, for federal income tax purposes, all items of income, gain, loss, deduction or credit shall be allocated to the Partners in the same manner as are Income and Loss.

(f) *Regulatory Allocations*. Notwithstanding the provisions of Sections 6(a)-(e) above, allocations of Income and Loss shall be made in the order of priority set forth in Exhibit I to this Agreement.

(g) *Withholding*. To the extent that the Partnership is required to withhold and pay over any amounts to any Governmental Authority with respect to Distributions or allocations to any Limited Partner, the amount withheld shall be treated as a Distribution to that Limited Partner pursuant to Sections 4.02, 4.03 or 4.05, as applicable. In the event of any claimed over-withholding, Limited Partners shall be limited to an action against the applicable jurisdiction and not against the Partnership (unless the Partnership has not yet paid such amounts over to such jurisdiction). If any amount required to be withheld was not, in fact, actually withheld from one or more Distributions and the Partnership shall have been required to pay such amount to such Governmental Entity, the Partnership may, at its option, (i) require the affected Limited Partner to reimburse the Partnership for such withholding or (ii) reduce any subsequent Distributions to such Limited Partner by the amount of such withholding, in each case plus interest. Each Limited Partner agrees to furnish the Partnership with such documentation as shall reasonably be requested by the Partnership to assist it in determining the extent of, and in fulfilling, its withholding

obligations. Each Limited Partner will indemnify the General Partner and the Partnership against any losses and liabilities (including interest and penalties) related to any withholding obligations with respect to allocations or Distributions made to such Limited Partner by the Partnership.

(h) *Consistent Tax Reporting*. Except as otherwise unanimously agreed to in writing by the Limited Partners, for U.S. federal, state and local income tax purposes, the Limited Partners agree, as a condition to their admission to the Partnership, to report all taxable income, loss and items thereof (including the character and timing of such items) in a manner consistent with the manner in which such taxable income, loss or item thereof is reported by the Partnership on its tax returns and the Schedules K-1 (or any successor form) furnished by the Partnership to the Limited Partners.

7. Distributions. Distributions shall be made from the undistributed profit and loss account to the Partners at the times and in the aggregate amounts determined by the General Partner in its sole discretion; provided, that distributions shall be made to the Partners in accordance with their Percentage Interests. Distributions may be in cash or in kind as determined by the General Partner in its sole discretion. Notwithstanding any provision to the contrary contained in this Agreement, the Partnership shall not make a distribution to the Limited Partners on account of its interest in the Partnership if such distribution would violate Section 17-607 of the Act or other applicable law.

8. Other Business. The Partners and their affiliates may engage in or possess an interest in other business ventures (unconnected with the Partnership) of every kind and description, independently or with others. The Partnership shall not have any rights in or to such independent ventures or the income or profits therefrom by virtue of this Agreement.

9. Limited Liability. The debts, obligations, and liabilities of the Partnership, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Partnership and the General Partner. No Limited Partner shall have any liability (personal or otherwise) for any such debt, obligation, or liability of the Partnership solely by reason of acting in such capacity. For the avoidance of doubt, to the extent a Limited Partner is an Officer of the Partnership (regardless of title) and/or has authority to act on behalf of the General Partner of the Partnership, such Limited Partner shall remain a Limited Partner of the Partnership and shall not be subject to any liability (personal or otherwise) for any debt, obligation or liability of the Partnership.

10. Indemnification.

(a) *General*. To the fullest extent permitted by law, subject to Section 10(c) below, the Partnership shall indemnify each Covered Person (as defined below) for any and all losses, claims, demands, costs, damages, liabilities (joint and several), expenses of any nature (including attorneys' fees and disbursements), judgments, fines, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, civil, criminal, administrative or investigative, in which such Covered Person may be involved or threatened to be involved, as a party or otherwise, by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Partnership and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement. For the avoidance of doubt, the indemnification under this Section 10(a) shall apply even though at the time of such claim, demand, action, suit or proceeding such person is no longer a Covered Person. Any

indemnity under this Section 10(a) shall be provided out of and only to the extent of the Partnership's assets, and no Limited Partner shall have personal liability on account thereof.

(b) *Covered Persons*. "***Covered Person***" means each of the following:

(i) the General Partner, and each member, partner, director, officer, and agent thereof,

(ii) each person who is or becomes an Officer of the Partnership on or after the date hereof, and

(iii) any other current or former officer, director, employee or agent for the Partnership or the General Partner, in each case to the extent determined by the General Partner in its sole discretion.

(c) *Limitations on Indemnification*. Notwithstanding anything to the contrary herein, no indemnification shall be provided for any Covered Person (i) with respect to any action brought by such Covered Person as a plaintiff against the Partnership or another Covered Person, or (ii) for any loss, damage or claim arising from such Covered Person's fraud, gross negligence or willful misconduct (in each case as determined by a final and binding judgment of a court or arbitrator).

(d) *Advancement of Expenses*. Expenses reasonably incurred in defending any claim, action, suit or proceeding of the character described in Section 10(a), to the extent available, shall be advanced by the Partnership prior to the final disposition of such claim, action, suit or proceeding upon receipt of a written undertaking by or on behalf of the recipient to repay all such advances if it is ultimately determined by the General Partner that such Covered Person is not entitled to indemnification pursuant to Section 10(c).

(e) *Third Party Beneficiaries*. Covered Persons shall be deemed to be third-party beneficiaries solely for purposes of this Section 10. All rights of any Covered Person under this Section shall inure to the benefit of such Covered Person's heirs and assigns.

11. Fiscal Year. The fiscal year of the Partnership shall end on December 31st of each year.

12. Transfers of Limited Partner Interests. No Limited Partner may transfer, in whole or in part, whether by sale, exchange, lease, license, assignment, distribution, gift, transfer or other disposition or alienation in any way, its interest in the Partnership, without the prior consent of the General Partner, which consent may be given or withheld in the sole discretion of the General Partner and may include such terms and conditions as the General Partner shall deem appropriate in its sole discretion. In addition, it shall be a condition precedent to every transfer of all or any portion of a Limited Partner's interest permitted hereunder, the transferring Limited Partner shall demonstrate to the satisfaction of the General Partner that (i) the proposed transfer will not cause or result in a breach of any violation of law, including U.S. federal or state securities laws, and (ii) that the transfer would not adversely affect the classification of the Partnership as a partnership for U.S. federal tax purposes (including by causing the Partnership to be treated as a "publicly traded partnership" under Section 7704 of the Code), terminate it as a partnership under Code Section 708,

or have a substantial adverse effect with respect to U.S. federal income taxes payable by the Partnership.

13. Dissolution. The Partnership shall dissolve, and its affairs shall be wound up upon the first to occur of the following: (i) the consent of the General Partner; (ii) at any time there are no Limited Partners of the Partnership, unless the business of the Partnership is continued in a manner permitted by the Act; or (iii) the entry of a decree of judicial dissolution under Section 17-802 of the Act. Following the foregoing event, the General Partner shall proceed diligently to liquidate the assets of the Partnership in a manner consistent with commercially reasonable business practices. In the event of dissolution, the Partnership shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of the Partnership in an orderly manner), and the assets of the Partnership shall be applied in the manner, and in the order of priority, set forth in Section 17-804 of the Act. Liquidating distributions to the Partners shall be made in in accordance with their Percentage Interests.

14. Severability of Provisions. Each provision of this Agreement shall be considered separable and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Agreement which are valid, enforceable and legal.

15. Counterparts. This Agreement may be executed in several counterparts and as so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all of the parties have not signed the same counterpart.

16. Facsimile Signature Page. This Agreement may be executed and delivered by the parties hereto by an executed signature page transmitted by facsimile, and any failure to deliver the originally executed signature page shall not affect the validity, legality or enforceability of this Agreement.

17. Entire Agreement. This Agreement embodies the entire agreement and understanding among the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings relating to such subject matter.

18. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware (without regard to the conflicts of law principles), all rights and remedies being governed by said laws.

19. Amendments. No amendment of this Agreement shall be valid or binding unless such amendment is made with the written consent of the General Partner. Further, any amendment of this Agreement that reduces the Percentage Interest or economic rights of any Limited Partner in a manner that is disproportionate to other Limited Partners shall require the written consent of the affected Limited Partner. For the avoidance of doubt, amendment includes any merger, combination or other reorganization or any amendment of the Certificate that has the effect of changing or superseding the terms of this Agreement.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has duly executed this Agreement as of the date first set forth above.

GENERAL PARTNER:

HCMLP GP LLC

By: Highland Claimant Trust, its sole member

By: James P. Seery, Jr.
Its: Trustee

LIMITED PARTNER:

HIGHLAND CLAIMANT TRUST

By: James P. Seery, Jr.
Its: Trustee

[Signature Page to Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P.]

Schedule A

SCHEDULE OF PARTNERS

August 11, 2021

General Partner

Name	Address	Percentage Interest
HCMLP GP LLC	100 Crescent Court, Suite 1850 Dallas, Texas 75201	1.00%

Limited Partners

Name	Address	Percentage Interest
Highland Claimant Trust	100 Crescent Court, Suite 1850 Dallas, Texas 75201	99.00%

Execution Version

Schedule B

SCHEDULE OF OFFICERS

August 11, 2021

Name	Officer Title
James P. Seery, Jr.	Chief Executive Officer

Execution Version

Exhibit I

REGULATORY ALLOCATIONS

(i) Items of income or gain (computed in accordance with Section 6(a), including the adjustments therein) for any taxable period shall be allocated to the Partners in the manner and to the minimum extent required by the "minimum gain chargeback" provisions of Treasury Regulation Section 1.704-2(f) and Treasury Regulation Section 1.704-2(i)(4).

(ii) All "nonrecourse deductions" (as defined in Treasury Regulation Section 1.704-2(b)(1)) of the Partnership for any year shall be allocated to the Partners in accordance with their respective Percentage Interests; provided, however, that nonrecourse deductions attributable to "partner nonrecourse debt" (as defined in Treasury Regulation Section 1.704-2(b)(4)) shall be allocated to the Partners in accordance with the provisions of Treasury Regulation Section 1.704-2(i)(1).

(iii) Items of income or gain (computed in accordance with Section 6(a), including the adjustments therein) for any taxable period shall be allocated to the Partners in the manner and to the extent required by the "qualified income offset" provisions of Treasury Regulation Section 1.704-1(b)(2)(ii)(*d*).

(iv) In no event shall Loss of the Partnership be allocated to a Partner if such allocation would cause or increase a negative balance in such Partner's Adjusted Capital Account (determined for purposes of this Exhibit I only, by increasing the Partner's Adjusted Capital Account balance by the amount the Partner is obligated to restore to the Partnership pursuant to Treasury Regulation Section 1.704-1(b)(2)(ii)(*c*) and decreasing it by the amounts specified in Treasury Regulation Sections 1.704-1(b)(2)(ii)(*d*)(*4*), (*5*) and (*6*)).

(v) For tax purposes, except as otherwise provided herein or as required by Code Section 704, all items of income, gain, loss, deduction or credit shall be allocated to the Partners in the same manner as are Income and Loss; provided, however, that if the Book Value of any property of the Partnership differs from its adjusted basis for tax purposes, then items of income, gain, loss, deduction or credit related to such property for tax purposes shall be allocated among the Partners so as to take account of the variation between the adjusted basis of the property for tax purposes and its Book Value in the manner provided for under Code Section 704(c).

(vi) For purposes hereof, the following terms have the meanings set forth below:

"***Adjusted Capital Account***" means, for each Partner, such Partner's capital account balance increased by such Partner's share of "minimum gain" and of "partner nonrecourse debt minimum gain" (as determined pursuant to Treasury Regulation Sections 1.704-2(g) and 1.704-2(i)(5), respectively).

"***Book Value***" means, with respect to any asset, the asset's adjusted basis for U.S. federal income tax purposes; provided, however, that (i) the initial Book Value of any asset contributed to the Partnership shall be adjusted to equal its fair market value as determined by the General Partner at the time of its contribution, and (ii) the Book Values of all assets held by the Partnership shall be adjusted to equal their respective fair market values as determined by the General Partner (taking Code Section 7701(g) into account) upon an election by the Partnership to revalue its property in accordance with Regulation Section 1.704-1(b)(2)(iv)(*f*) and upon liquidation of the Partnership. The Book Value of any asset whose Book Value was adjusted pursuant to the preceding sentence shall thereafter be adjusted in accordance with the provisions of Regulation Section 1.704-1(b)(2)(iv)(*g*).

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Counsel for Frank Waterhouse, Scott Ellington, Isaac Leventon, and Jean-Paul Sevilla

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., [1]	)	Case No. 19-34054-sgj11
Debtor.	)	

STIPULATION AND AGREED ORDER AUTHORIZING WITHDRAWAL OF PROOFS OF CLAIM NOS. 182, 184, 185, 187, 192, 214, 215, 242, 245, and 253

[1] The last four digits of the Reorganized Debtor's taxpayer identification number are (8357). The Reorganized Debtor is a Delaware limited partnership. The Reorganized Debtor's headquarters and service address are 100 Crescent Court, Suite 1850, Dallas, TX 75201.

This *Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim Nos. 182, 184, 185, 187, 192, 214, 215, 242, 245, and 253* (the "Stipulation") is entered into between Marc S. Kirschner (the "Litigation Trustee"), as Litigation Trustee of the Litigation Sub-Trust established pursuant to the Fifth Amended Plan of Reorganization (the "Plan") of Highland Capital Management L.P. ("HCMLP" or the "Reorganized Debtor") [Docket No. 1808], on the one hand, and Frank Waterhouse, Scott Ellington, Isaac Leventon, and Jean-Paul Sevilla (together, the "Claimants"), on the other hand.

RECITALS

WHEREAS, on May 26, 2020, Claimant Frank Waterhouse filed Proof of Claim No. 182.

WHEREAS, on May 26, 2020, Claimant Isaac Leventon filed Proof of Claim No. 184.

WHEREAS, on May 26, 2020, Claimant Jean-Paul Sevilla filed Proof of Claim No. 185.

WHEREAS, on May 26, 2020, Claimant Scott Ellington filed Proof of Claim No. 187.

WHEREAS, on July 16, 2020, Claimant Scott Ellington filed Proof of Claim No. 192.

WHEREAS, on February 26, 2021, Claimant Isaac Leventon filed Proof of Claim No. 214.

WHEREAS, on February 26, 2021, Claimant Isaac Leventon filed Proof of Claim No. 215.

WHEREAS, on March 12, 2021, Claimant Jean-Paul Sevilla filed Proof of Claim No. 242.

WHEREAS, on March 23, 2021, Claimant Scott Ellington filed Proof of Claim No. 245.

WHEREAS, on October 28, 2021, Isaac Leventon filed Proof of Claim No. 253.

WHEREAS, on November 9, 2021, the Litigation Trustee filed (i) *Litigation Trustee's Objection to Proof of Claim Filed By Jean-Paul Sevilla (Claim No. 242)* (Dkt. No. 3000); and (ii)

Litigation Trustee's Omnibus Objection to Certain Amended and Superseded Claims and Zero Dollar Claims (Docket No. 3001).

WHEREAS, the Claimants desire to withdraw their respective proofs of claim with prejudice.

STIPULATION

Now, therefore, the Litigation Trustee and Claimant agree and stipulate as follows:

1. Proofs of Claim Nos. 182, 184, 185, 187, 192, 214, 215, 242, 245, and 253 are hereby withdrawn with prejudice.

2. This Stipulation is and will be binding on each Claimant and each Claimant's predecessors, successors, transferees, and assigns.

3. The Bankruptcy Court for the Northern District of Texas, Dallas Division, shall have and retain jurisdiction over all disputes arising out of or otherwise concerning the interpretation and enforcement of this Stipulation.

4. To the extent applicable, the official claims register in the HCMLP bankruptcy case will be modified in accordance with this Stipulation.

Dated: December 9, 2021
Dallas, Texas

Respectfully submitted,

SIDLEY AUSTIN LLP
/s/ *Paige Holden Montgomery*
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-and-

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Counsel for Scott Ellington, Isaac Leventon, Frank Waterhouse, and Jean-Paul Sevilla

Exhibit A
(Proposed Order)

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., [1]	)	Case No. 19-34054-sgj11
Debtor.	)	

ORDER APPROVING STIPULATION AND AGREED ORDER AUTHORIZING WITHDRAWAL OF PROOFS OF CLAIM NOS. 182, 184, 185, 187, 192, 214, 215, 242, 245, and 253

[1] The last four digits of the Reorganized Debtor's taxpayer identification number are (8357). The Reorganized Debtor is a Delaware limited partnership. The Reorganized Debtor's headquarters and service address are 100 Crescent Court, Suite 1850, Dallas, TX 75201.

Having considered *The Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim Nos. 182, 184, 185, 187, 192, 214, 215, 242, 245, and 253* (the "Stipulation") filed in the above-captioned case, it is **HEREBY ORDERED THAT:**

1. The Stipulation, a copy of which is attached hereto as **Exhibit A**, is approved.

2. The withdrawal with prejudice of Proofs of Claim Nos. 182, 184, 185, 187, 192, 214, 215, 242, 245, and 253 is approved.

3. This Order and the Stipulation are and will be binding on each Claimant,[1] and each Claimant's predecessors, successors, transferees, and assigns.

4. To the extent applicable, the official claims register in the HCMLP bankruptcy case will be modified in accordance with this Order.

5. This Court shall have and retain jurisdiction over all disputes arising out of or otherwise concerning the interpretation and enforcement of this Order and the Stipulation.

###END OF ORDER###

[1] All capitalized terms used but not defined herein have the meanings given to them in the Stipulation.

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., [1]	)	Case No. 19-34054-sgj11
Debtor.	)	

ORDER APPROVING STIPULATION AND AGREED ORDER AUTHORIZING WITHDRAWAL OF PROOFS OF CLAIM NOS. 182, 184, 185, 187, 192, 214, 215, 242, 245, and 253

[1] The last four digits of the Reorganized Debtor's taxpayer identification number are (8357). The Reorganized Debtor is a Delaware limited partnership. The Reorganized Debtor's headquarters and service address are 100 Crescent Court, Suite 1850, Dallas, TX 75201.

Having considered *The Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim Nos. 182, 184, 185, 187, 192, 214, 215, 242, 245, and 253* (the "Stipulation") filed in the above-captioned case, it is **HEREBY ORDERED THAT:**

1. The Stipulation, a copy of which is attached hereto as **Exhibit A**, is approved.

2. The withdrawal with prejudice of Proofs of Claim Nos. 182, 184, 185, 187, 192, 214, 215, 242, 245, and 253 is approved.

3. This Order and the Stipulation are and will be binding on each Claimant,[1] and each Claimant's predecessors, successors, transferees, and assigns.

4. To the extent applicable, the official claims register in the HCMLP bankruptcy case will be modified in accordance with this Order.

5. This Court shall have and retain jurisdiction over all disputes arising out of or otherwise concerning the interpretation and enforcement of this Order and the Stipulation.

###END OF ORDER###

[1] All capitalized terms used but not defined herein have the meanings given to them in the Stipulation.

QUINN EMANUEL URQUHART & SULLIVAN LLP
Susheel Kirpalani (admitted *pro hac vice*)
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Co-counsel for Marc S. Kirschner, as Litigation Trustee of the Highland Litigation Sub-Trust

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

In re:	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., [1]	Case No. 19-34054-sgj11
Debtor.	

NOTICE OF HEARING FOR THE LITIGATION TRUSTEE'S OMNIBUS OBJECTION TO CERTAIN AMENDED AND SUPERSEDED CLAIMS AND ZERO DOLLAR CLAIMS

PLEASE TAKE NOTICE that a hearing on the *Litigation Trustee's Omnibus Objection to Certain Amended and Superseded Claims and Zero Dollar Claims* [Docket No. 3001] (the "Objection") is scheduled for hearing on **Monday, February 28, 2022 at 9:30 a.m. (Central Time)** (the "Hearing").[2]

[1] The last four digits of the Reorganized Debtor's taxpayer identification number are (8357). The Reorganized Debtor is a Delaware limited partnership. The Reorganized Debtor's headquarters and service address are 100 Crescent Court, Suite 1850, Dallas, TX 75201.

[2] Pursuant to the *Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim Nos. 182, 184, 185, 187, 192, 214, 215, 242, 245, and 253* [Docket No. 3091], entered into between Marc S. Kirschner, as Litigation Trustee of the Litigation Sub-Trust established pursuant to the Fifth Amended Plan of Reorganization of Highland Capital

The Hearing on the Objection will be held before The Honorable Stacey G. C. Jernigan, United States Bankruptcy Court Judge, and will be conducted via WebEx videoconference. The WebEx video participation/attendance link for the Status Conference is: https://us-courts.webex.com/meet/jerniga.

A copy of the WebEx Hearing Instructions for the Hearing is attached hereto as Exhibit A; alternatively, the WebEx Hearing Instructions for the Hearing may be obtained from Judge Jernigan's hearing/calendar site at: https://www.txnb.uscourts.gov/judges-info/hearing-dates/judgejernigans-hearing-dates.

[*Remainder of Page Intentionally Left Blank*]

Management L.P. [Docket No. 1808], on the one hand, and Frank Waterhouse, Scott Ellington, Isaac Leventon, and Jean-Paul Sevilla, on the other hand, the only remaining proof of claim in the Objection that is set for Hearing is Claim No. 133, held by CLO Holdco, Ltd.

Dated: December 15, 2021
Dallas, Texas

Respectfully submitted,

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Counsel for the Litigation Trustee

EXHIBIT A

WebEx Hearing Instructions
Judge Stacey G. Jernigan

Pursuant to General Order 2020-14 issued by the Court on May 20, 2020, all hearings before Judge Stacey G. Jernigan are currently being conducted by WebEx videoconference unless ordered otherwise.

For WebEx Video Participation/Attendance:

Link: https://us-courts.webex.com/meet/jerniga

For WebEx Telephonic Only Participation/Attendance:

Dial-In: 1.650.479.3207
Meeting ID: 479 393 582

Participation/Attendance Requirements:

- Counsel and other parties in interest who plan to actively participate in the hearing are encouraged to attend the hearing in the WebEx video mode using the WebEx video link above. Counsel and other parties in interest who will not be seeking to introduce any evidence at the hearing and who wish to attend the hearing in a telephonic only mode may attend the hearing in the WebEx telephonic only mode using the WebEx dial-in and meeting ID above.
- Attendees should join the WebEx hearing at least 10 minutes prior to the hearing start time. Please be advised that a hearing may already be in progress. During hearings, participants are required to keep their lines on mute at all times that they are not addressing the Court or otherwise actively participating in the hearing. **The Court reserves the right to disconnect or place on permanent mute any attendee that causes any disruption to the proceedings**. For general information and tips with respect to WebEx participation and attendance, please see Clerk's Notice 20-04: https://www.txnb.uscourts.gov/sites/txnb/files/hearings/Webex%20Information%20and%20Tips_0.pdf
- **Witnesses are required to attend the hearing in the WebEx video mode and live testimony will only be accepted from witnesses who have the WebEx video function activated**. Telephonic testimony without accompanying video will not be accepted by the Court.
- All WebEx hearing attendees are required to comply with Judge Jernigan's Telephonic and Videoconference Hearing Policy (included within Judge Jernigan's Judge-Specific Guidelines): https://www.txnb.uscourts.gov/content/judge-stacey-g-c-jernigan

Exhibit Requirements:

- Any party intending to introduce documentary evidence at the hearing must file an exhibit list in the case with a true and correct copy of each designated exhibit filed as a separate, individual attachment thereto so that the Court and all participants have ready access to all designated exhibits.
- If the number of pages of such exhibits exceeds 100, then such party must also deliver two (2) sets of such exhibits in exhibit binders to the Court by no later than twenty-four (24) hours in advance of the hearing.

Notice of Hearing Content and Filing Requirements:

IMPORTANT: For all hearings that will be conducted by WebEx only:

- The Notice of Hearing filed in the case and served on parties in interest must: (1) provide notice that the hearing will be conducted by WebEx videoconference only, (2) provide notice of the above WebEx video participation/attendance link, and (3) attach a copy of these WebEx Hearing Instructions or provide notice that they may be obtained from Judge Jernigan's hearing/calendar site: https://www.txnb.uscourts.gov/judges-info/hearing-dates/judge-jernigans-hearing-dates.
- When electronically filing the Notice of Hearing via CM/ECF select "at https://us-courts.webex.com/meet/jerniga" as the location of the hearing (note: this option appears immediately after the first set of Wichita Falls locations). Do not select Judge Jernigan's Dallas courtroom as the location for the hearing.

The following constitutes the ruling of the court and has the force and effect therein described.

Signed January 6, 2022

United States Bankruptcy Judge

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

In re:	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., [1]	Case No. 19-34054-sgj11
Debtor.	

ORDER APPROVING STIPULATION AND AGREED ORDER AUTHORIZING WITHDRAWAL OF PROOFS OF CLAIM NOS. 182, 184, 185, 187, 192, 214, 215, 242, 245, and 253

[1] The last four digits of the Reorganized Debtor's taxpayer identification number are (8357). The Reorganized Debtor is a Delaware limited partnership. The Reorganized Debtor's headquarters and service address are 100 Crescent Court, Suite 1850, Dallas, TX 75201.

Having considered *The Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim Nos. 182, 184, 185, 187, 192, 214, 215, 242, 245, and 253* (the "Stipulation") filed in the above-captioned case, it is **HEREBY ORDERED THAT:**

1. The Stipulation, a copy of which is attached hereto as **Exhibit A**, is approved.

2. The withdrawal with prejudice of Proofs of Claim Nos. 182, 184, 185, 187, 192, 214, 215, 242, 245, and 253 is approved.

3. This Order and the Stipulation are and will be binding on each Claimant,[1] and each Claimant's predecessors, successors, transferees, and assigns.

4. To the extent applicable, the official claims register in the HCMLP bankruptcy case will be modified in accordance with this Order.

5. This Court shall have and retain jurisdiction over all disputes arising out of or otherwise concerning the interpretation and enforcement of this Order and the Stipulation.

###END OF ORDER###

[1] All capitalized terms used but not defined herein have the meanings given to them in the Stipulation.

EXHIBIT A

QUINN EMANUEL URQUHART & SULLIVAN LLP
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., [1]	)	Case No. 19-34054-sgj11
Debtor.	)	

STIPULATION AND AGREED ORDER AUTHORIZING WITHDRAWAL OF PROOFS OF CLAIM NOS. 182, 184, 185, 187, 192, 214, 215, 242, 245, and 253

[1] The last four digits of the Reorganized Debtor's taxpayer identification number are (8357). The Reorganized Debtor is a Delaware limited partnership. The Reorganized Debtor's headquarters and service address are 100 Crescent Court, Suite 1850, Dallas, TX 75201.

This *Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim Nos. 182, 184, 185, 187, 192, 214, 215, 242, 245, and 253* (the "Stipulation") is entered into between Marc S. Kirschner (the "Litigation Trustee"), as Litigation Trustee of the Litigation Sub-Trust established pursuant to the Fifth Amended Plan of Reorganization (the "Plan") of Highland Capital Management L.P. ("HCMLP" or the "Reorganized Debtor") [Docket No. 1808], on the one hand, and Frank Waterhouse, Scott Ellington, Isaac Leventon, and Jean-Paul Sevilla (together, the "Claimants"), on the other hand.

RECITALS

WHEREAS, on May 26, 2020, Claimant Frank Waterhouse filed Proof of Claim No. 182.

WHEREAS, on May 26, 2020, Claimant Isaac Leventon filed Proof of Claim No. 184.

WHEREAS, on May 26, 2020, Claimant Jean-Paul Sevilla filed Proof of Claim No. 185.

WHEREAS, on May 26, 2020, Claimant Scott Ellington filed Proof of Claim No. 187.

WHEREAS, on July 16, 2020, Claimant Scott Ellington filed Proof of Claim No. 192.

WHEREAS, on February 26, 2021, Claimant Isaac Leventon filed Proof of Claim No. 214.

WHEREAS, on February 26, 2021, Claimant Isaac Leventon filed Proof of Claim No. 215.

WHEREAS, on March 12, 2021, Claimant Jean-Paul Sevilla filed Proof of Claim No. 242.

WHEREAS, on March 23, 2021, Claimant Scott Ellington filed Proof of Claim No. 245.

WHEREAS, on October 28, 2021, Isaac Leventon filed Proof of Claim No. 253.

WHEREAS, on November 9, 2021, the Litigation Trustee filed (i) *Litigation Trustee's Objection to Proof of Claim Filed By Jean-Paul Sevilla (Claim No. 242)* (Dkt. No. 3000); and (ii)

Litigation Trustee's Omnibus Objection to Certain Amended and Superseded Claims and Zero Dollar Claims (Docket No. 3001).

WHEREAS, the Claimants desire to withdraw their respective proofs of claim with prejudice.

STIPULATION

Now, therefore, the Litigation Trustee and Claimant agree and stipulate as follows:

1. Proofs of Claim Nos. 182, 184, 185, 187, 192, 214, 215, 242, 245, and 253 are hereby withdrawn with prejudice.

2. This Stipulation is and will be binding on each Claimant and each Claimant's predecessors, successors, transferees, and assigns.

3. The Bankruptcy Court for the Northern District of Texas, Dallas Division, shall have and retain jurisdiction over all disputes arising out of or otherwise concerning the interpretation and enforcement of this Stipulation.

4. To the extent applicable, the official claims register in the HCMLP bankruptcy case will be modified in accordance with this Stipulation.

Dated: December 9, 2021
Dallas, Texas

Respectfully submitted,

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-and-

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COUNSEL FOR CLO HOLDCO, LTD.

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

In re:	§	**Case No. 19-34054-sgj11**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	**Chapter 11**
	§	
	§	**Relates to Claim No. 198 and Dkt. No. 3001**
Debtor	§	

MOTION TO RATIFY SECOND AMENDMENT TO PROOF OF CLAIM [CLAIM NO. 198] AND RESPONSE TO OBJECTION TO CLAIM

CLO HoldCo, Ltd. ("CLO HoldCo") files this *Motion to Ratify Second Amendment to Proof of Claim [Claim No. 198] and Response to Objection to Claim* (the "Motion to Ratify and Response") to that certain *Omnibus Objection to Certain Amended and Superseded Claims and Zero Dollar Claims* [Dkt. No. 3001] (the "Litigation Trustee Objection") filed by Marc S. Kirschner (the "Litigation Trustee") which, in part, objects to Proof of Claim No. 198 (the "First Amended CLO HoldCo Crusader Claim"). On January 4, 2021, CLO HoldCo further amended the First Amended CLO HoldCo Crusader Claim, Proof of Claim No. 198 (the "Second Amended CLO HoldCo Crusader Claim"). Because the Second Amended CLO HoldCo Crusader Claim moots the Litigation Trustee Objection, as the objection is based solely on the First Amended CLO HoldCo Crusader Claim having been amended to reflect $0 amount (with no expressed limitation precluding subsequent amendments),[1] CLO HoldCo submits this Motion to Ratify and Response.

PRELIMINARY STATEMENT

1. By filing the Litigation Trustee Objection, the Litigation Trustee commenced a contested matter in relation to the CLO HoldCo Crusader Claim pursuant to FED. R. BANKR. P. 9014. FED. R. BANKR. P. 9014(c) applies certain Part VII Bankruptcy Rules (the "Adversary Rules") to contested matters, but importantly, does not apply FED. R. BANKR. P. 7015 (applying FED. R. CIV. P. 15).

2. Notwithstanding that the plain text of FED. R. BANKR. P. 9014, in *Gilbreath*, Judge Bohm determined that because FED. R. BANKR. P. 9014 permits a bankruptcy court to direct that

[1] The first Proof of claim filed by CLO HoldCo was filed as claim # 133 ("Original Claim"). Subsequently, and as a result of the settlement by the Debtor of the claims of the Crusader Redeemer Committee, the Original Claim was amended and filed as Claim No.198 (the "First Amended CLO HoldCo Crusader Claim"). The Second Amended CLO HoldCo Crusader Claim Amended Claim No. 198, as opposed to filing a separate claim with a new claim number.

other rules of the Adversary Rules shall apply, the bankruptcy court could retroactively apply FED. R. BANKR. P. 7015 to refuse to consider materials submitted by a creditor after an objection to a proof of claim was filed, without the bankruptcy court's leave. *In re Gilbreath*, 395 B.R. 356, 365 (Bankr. S.D. Tex. 2008), *In re DePugh*, 409 B.R. 84, 118-20 (Bankr. S.D. Tex. 2009) (J. Bohm, same).

3. Judge Clark, in *In re Colvin*, agreed with Judge Bohm in applying Fed. R. Bankr. P. 7015; however, Judge Clark determined that under section 105(a) of the Bankruptcy Code, the bankruptcy court could *sua sponte* apply a FED. R. BANKR. P. 7015 (i.e. FED. R. CIV. P. 15) standard to determine if leave should be granted, even absent a motion from a creditor. *In re Colvin*, No. BR 11-51241-C, 2012 WL 1123055, at *2 (Bankr. W.D. Tex. Apr. 3, 2012)

4. But this analytical framework is precluded by the plain text of FED. R. BANKR. P. 9014. Absent prior court order, pursuant to FED. R. BANKR. P. 9014(c), FED. R. BANKR. P. 7015 does not apply at the time amended claim is filed. While FED. R. BANKR. P. 9014(c) certainly permits a bankruptcy court to apply Adversary Rules at any stage of a contested matter, it requires that if a bankruptcy court does so: "[t]he court **shall** give the parties notice of any order issued under this paragraph to afford them a reasonable opportunity to comply with the procedures prescribed by the order." FED. R. BANKR. P. 9014 (c) (emphasis added). But by applying FED. BANKR. P. 7015 retroactively to preclude amendment of a claim, the bankruptcy court would violate this provision of FED. R. BANKR. P. 9014(c).

5. Therefore, FED. R. BANKR. P. 7015 does not apply to the Litigation Trustee Objection or to the First Amended CLO HoldCo Crusader Claim, and cannot be invoked after the filing of the Second Amended CLO HoldCo Crusader Claim without violating FED. R. BANKR. P. 9014(c).

6. Therefore, the applicable standard to this Motion to Ratify and Response is not that of Fed. R. Civ. P. 7015, but rather, the Fifth Circuit standard is the standard for amendments to proofs of claim first articulated in *Kolstad*, 928 F.2d 171, 175 (5th Cir. 1991).

7. Since April 2020, CLO HoldCo has maintained that it has a claim against Highland Capital Management, LP ("HCMLP") with regard to certain participation and tracking interests CLO HoldCo holds that were cancelled in arbitration against HCMLP, at least with respect to the prospect of amendment. But on information received from HCMLP, who was CLO HoldCo's investment advisor, CLO HoldCo amended its Original Claim to $0, while still attaching all relevant documents and expressly reserving its right to amend.[2]

8. After HCMLP terminated its investment advisory agreement and CLO HoldCo retained new counsel, CLO HoldCo became able to articulate a theory of recovery based upon these **exact** same documents. The Second Amended Crusader Claim attaches no new documents (only a extracted pages from the previously submitted documents for ease of reference).

9. As set forth herein, this is the type of amendment that the Fifth Circuit expressly permits, and as such, CLO HoldCo respectfully requests that this Court ratify the Second Amended CLO HoldCo Crusader Claim as properly filed, and deny the Litigation Trustee Objection as a

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[2] CLO HoldCo recognizes that it has taken the position previously that there was no claim requiring litigation as to allowance that would be necessary to determine the outcome of a fraudulent transfer claim. CLO HoldCo recognizes that s of the Second Amended CLO HoldCo Crusader Claim, it can no longer make this particular (*Stern*) argument, given the Second Amended CLO HoldCo Crusader Claim (as defined below) and Section 502(d) of the Bankruptcy Code (this, with respect to CLO HoldCo, only, and any and all rights are reserved). As the time of this argument before the Court within, for example, the motion to withdraw reference of a previously pending adversary, undersigned counsel had not been enrolled for a sufficient amount of time to review the Original Claim and First Amended CLO HoldCo Crusader Claim (as defined below). It was not until counsel for HCMLP understandably sought a stipulation extinguishing the First Amended CLO HoldCo Crusader Claim that focus was given to whether there could be amendment under the set of facts and occurrences that generated the Original Claim and the subsequent first amendment.

moot (subject to the right of the Litigation Trustee to amend his objection and further proceedings thereupon).

BACKGROUND

A. HCMLP Crusader Fund Management

10. HCMLP served as investment manager for the Highland Crusader Funds (the "Crusader Funds") which were formed between 2000 and 2002 consisting of the Highland Crusader Fund, L.P. (the "Onshore Crusader Fund") and Highland Crusader Fund II, Ltd. (the "Offshore Crusader Fund"), and the capital through the Onshore Crusader Fund and Offshore Crusader Fund was pooled into a Master Fund. *See* Partial Final Award, AAA Case No. 01-16-0002-6927 ("Partial Final Award") §IA,2.[3]

11. During the 2008 market decline, HCMLP was flooded with redemption request from Crusader Fund investors, and on October 15, 2008, HCMLP placed the Crusader Funds in wind-down, "compulsorily redeeming" Crusader Fund's limited partnership interests. *Id*. at §II. Pursuant to a 2011 adoption of the negotiated "Plan and Scheme," HCMLP was to manage, sell, and distribute assets with the Committee of Redeemers in the Highland Crusader Fund (the "Redeemer Committee") to oversee the process with an increased level of influence. *Id*.

12. According to that certain *Participation Interest and the Tracking Interest Schedule I*, HCMLP granted certain participation interest (the "Participation Interest") in certain participating shares of the Onshore Crusader Fund and the Offshore Crusader Fund that had been

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[3] The pleadings in the Arbitration are available to HCMLP and the Litigation Trustee. Pursuant to the Court's *Agreed Protective Order* [Dkt. No. 382], parties have previously identified pleadings in the Arbitration as designated Highly Confidential and only subject to disclosure under the procedures set forth in Local Rule 9077-1. CLO HoldCo quotes relevant provisions of such pleadings herein and will provide such pleadings as necessary pursuant to applicable procedures.

purchased by HCMLP ("HCLMP Crusader Interests") and a tracking interest (the "Tracking Interest") in certain participating shares of the HCLMP Crusader Shares to Highland Dallas Foundation, who then transferred such interests to Charitable DAF HoldCo, Ltd. ("DAF HoldCo"), who then transferred the Participation Interest and Tracking Interest to the DAF who transferred those interests to CLO HoldCo by Written Resolution effective December 28, 2016. *See* Original CLO HoldCo Crusader Claim, First Amended CLO HoldCo Crusader Claim, and Second Amended CLO HoldCo Crusader Claim, Attachment D [Exhibit A, Schedule 1 thereto] (the "Participation and Tracking Interest Schedule").

13. Pursuant to the Participation and Tracking Interest Schedule, HCMLP agreed that:

> Subject to any applicable tax withholding, **HCMLP shall promptly pay to the holder of the Participation Interest an amount equal to such holder's share of each amount received and applied by HCMLP** (or Eames, Ltd., a wholly-owned subsidiary of HCMLP, if applicable) in payment of distributions, Plan Claims (as defined in the Joint Plan of Distribution of the Crusader Funds adopted by Highland Crusader Offshore Partners, L.P., the Onshore Crusader Fund, Highland Crusader Fund, Ltd. and the Offshore Crusader Fund, and the Scheme of Arrangement between the Offshore Crusader Fund and its Scheme Creditors, as applicable) and **proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Participating Shares (such holder's share of such amounts, collectively, the "Participation Proceeds")**. Pending such payment of Participation Proceeds by HCMLP to the holder of the Participation Interest, HCMLP will hold the Participation Proceeds in trust for the benefit of such holder and will not commingle such amounts with other property of HCMLP. Subject to any applicable tax withholding, **HCMLP shall promptly pay to the holder of the Tracking Interest** an amount equal to each amount received and applied by HCMLP in payment of distributions, Plan Claims and **proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Underlying Shares.** Notwithstanding anything herein to the contrary, except for the right to receive amounts specified in this paragraph, no holder shall have, by reason of the Participation Interest or the Tracking Interest, any rights with respect to the Participating Shares or the Tracking Shares.

See Participation and Tracking Interest Schedule (emphasis added).

14. As such, HCMLP is obligated to pay to CLO HoldCo (as holder of the Participation Interest and Tracking Interest) the proceeds of any sale, assignment, or other disposition of any interest with respect to or in the HCMLP Crusader Interest.

B. The Arbitration

15. The Redeemer Committee terminated HCMLP on July 5, 2016 (effective August 4, 2016), and on July 6, 2016, the Redeemer Committee filed a Notice of Claim before the AAA commencing arbitration case No. 01-16-0002-6927 (the "Arbitration") against HCMLP. Partial Final Award. On October 14, 2016, the Redeemer Committee amended its Notice of Claim and asserted willful misconduct and violation of fiduciary and contractual duties by HCMLP as investment manager of the Crusader Funds. *Id.*

16. An evidentiary hearing in the Arbitration took place over several days in September 2018, and certain post hearing briefing occurred until the Arbitration record was declared closed on December 12, 2018. *Id*. at §II. On March 6, 2019, the Arbitration panel issued a Partial Final Award. In part, the panel explained that from December 2013 through January 2016, HCMLP purchased twenty-seven Plan Claims (as defined in the Plan and Scheme) from Crusader Funds investors without approval of the Redeemer Committee. *Id*., §III(H).

17. The panel found that the Redeemer Committee would have exercised its right of first refusal ("ROFR") as to those Plan Claims if it had been given full information by HCMLP and had HCMLP not been preventing the exercise of the ROFR by invoking a certain TRO and misrepresenting to buyers that it had ROFR. *Id*. The panel thus determined that HCMLP breached the Plan and Scheme and its fiduciary duty to the Redeemer Committee and ordered HCMLP to transfer the purchased Plan Claims to the Redeemer Committee. *Id*.

18. As to the calculation of damages owed by HCMLP, the panel rejected the Redeemer Committee's methodology (that the fair market value of each of the Plan Claims was the NAV). *Id*. at ¶H,24.

19. Instead, the panel adopted the alternative approach of rescission, and ordered HCMLP "to transfer the [Plan Claims] to the Redeemer Committee, to pay to the [Redeemer Committee] whatever financial benefits [HCMLP] received from the transactions, less what [HCMLP] paid for the Plan Claims, plus interest at the rate of 9%, from the date of each purchase." *Id*. at ¶H,25.

20. The panel left the hearing open so that the parties could supplement by subsequent damages analyses. *Id*., s*ee* Final Award, ¶E,b,7.

21. On May 9, 2019, the panel issued the *Final Award* (the "Final Award"). The Final Award adopts the previous awards and made certain clerical corrections, and made final awards, including: ordering that the HCMLP purchased Plan Claims be transferred to the Redeemer Committee for benefit of the Crusader Funds or the Redeemer Committee cause the Crusader Funds to extinguish those claims, and for damages in the amount of $3,106,414. *See Id*., ¶F.

22. Because CLO HoldCo was not a party to the Arbitration, it does not have access to the models provided by the parties. But the panel was clear that the damages amount was to be net of the price paid by HCMLP for the Plan Claims, meaning that HCMLP received a credit against the damages award by virtue of the transfer or extinguishment of the HCMLP Crusader Interest.

23. The exact amount of this credit is unknown to CLO HoldCo, but known to HCMLP and will be elicited through the discovery process now that this is a contested matter. However, upon information and belief, the credit is estimated to be at least $3,788,932 (which amount was

calculated using some Crusader Fund documents to which CLO HoldCo has access, as HCMLP documents and Arbitration documents are not available to CLO HoldCo), and up to an amount that is the difference between the amount of the award ($3,106,414), and the initial Crusader valuation of its claim ($8,897,899), or up to the difference of $5,791,485 (this difference very likely reflects the credit for the purchase price paid by HCMLP). CLO HoldCo reserves the right to further amend upon receipt of the records of HCMLP, which should establish the precise purchase price paid for the interests.

24. After the Final Award was entered, the Redeemer Committee then moved to confirm the Final Award in Chancery Court and HCMLP brought certain procedural challenges in a Motion to Vacate, essentially arguing that the Partial Final Award should have been the final award. *See* Dkt. No. 1089, ¶¶17-19. The pleadings in the Chancery Court have been filed under seal pursuant to a protective order, but according to the HCMLP, it did not challenge any of the factual findings, credibility assessments, or substantive legal conclusion rendered by the panel. *Id.* at ¶19.

C. The HCMLP Bankruptcy Case

25. On October 6, 2019, the motion to confirm the Final Award and Motion to Vacate were scheduled to be heard by the Chancery Court, and HCMLP filed a petition for relief under chapter 11 of the Bankruptcy Code commencing the Bankruptcy Case. *See id.* and Dkt. No. 1.

26. On April 3, 2020, the Redeemer Committee filed a general unsecured claim in the amount of $190,824,557.00, plus "post-petition interest, attorneys' fees, costs and other expenses that [allegedly] continue[d] to accrue." Proof of Claim No. 72. On April 6, 2020, the Crusader Funds filed a general unsecured claim in the amount of $23,483,446.00, plus "post-petition interest, attorneys' fees, costs and other expenses. Proof of Claim No. 81

27. On April 8, 2020, CLO HoldCo filed Proof of Claim No. 133 (the "Original Proof of Claim") which asserted a claim for the Participation Interests and Tracking Interests. *See Summary of Proof of Claim,* Original Proof of Claim.

28. CLO HoldCo attached the Participation and Tracking Interest Schedule as well as documents detailing the transfer of ownership to CLO HoldCo. *Id*.

29. CLO HoldCo expressly reserved the right to amend the Original Proof of Claim. *Id*. at ¶B.

30. On July 16, 2020, the Bankruptcy Court entered the *Order Approving Debtor's Motion under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020 entered July 16, 2020* (Dkt. No. 854) (the "July 16 Order"), authorizing HCMLP to retain James Seery ("Mr. Seery") as CEO and CRO. Under Mr. Seery's direction, on September 23, 2020, HCMLP filed the *Debtor's Motion For Entry Of An Order Approving Settlements With (A) The Redeemer Committee Of The Highland Crusader Fund (Claim No. 72), and (B) The Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith* [Dkt. No. 1089] (the "Redeemer Settlement Motion").

31. In the Redeemer Settlement Motion, HCMLP stated that: pursuant to the Final Award, the Redeemer Committee was awarded damages of $190,824,557.00, inclusive of interest (the "Damage Award"). Redeemer Settlement Motion, ¶16. In the Redeemer Settlement Motion, HCMLP explained the terms of the proposed settlement relevant hereto as:

> The Debtor and Eames will each (a) consent to the cancellation of certain interests in the Crusader Funds held by them that the Panel found were wrongfully acquired, and (b) agree that they will not object to the cancellation of certain interests in the Crusader Funds held by the Charitable DAF that the Panel also found were wrongfully acquired.

Id. at ¶23.

32. On September 24, 2020, HCMLP filed the *Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlements with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith* [Dkt. No. 1090] (the "Morris Declaration"). The Morris Declaration attached the actual Settlement Agreement (the "Redeemer Settlement") which provides, in pertinent part:

> The Debtor and Eames each consent to the Crusader Funds, on or after the date an order of the Bankruptcy Court approving this Stipulation pursuant to Federal Rule of Bankruptcy Procedure 9019 and section 363 of the Bankruptcy Code becomes a final and non-appealable order (the "Stipulation Effective Date"), cancelling or extinguishing all of the limited partnership interests and shares in the Crusader Funds held by each of them respectively (collectively, the "Cancelled Highland and Eames Interests"), as provided for in the Arbitration Award. Each of the Debtor and Eames represents solely for itself that (a) it has the authority to consent to the cancellation or extinguishment of the Cancelled Highland and Eames Interests that it holds, and (b) upon the occurrence of the Stipulation Effective Date, no other actions by or on behalf of it are necessary for such cancellation or extinguishment. Each of the Debtor and Eames agrees that it will not object to the Crusader Funds, on or after the Stipulation Effective Date, cancelling or extinguishing the limited partnership interests or shares in the Crusader Funds held by Charitable DAF (the "Cancelled DAF Interests," and together with the Cancelled Highland and Eames Interests, the "Cancelled LP Interests"). Each of the Debtor and Eames acknowledges that the cancellation or extinguishment of the Cancelled LP Interests is intended to implement Sections F.a.v and F.a.x.2 of the Final Award.

Attachment G, Settlement Agreement.

33. On October 20, 2020, the Bankruptcy Court held a hearing on Redeemer Settlement Motion. Dkt. No. 1271. At the hearing, the Bankruptcy Court approved the Redeemer Settlement. *Id*.

34. On October 21, 2020, CLO HoldCo amended its Original Proof of Claim and filed the CLO HoldCo Crusader Claim, stating that; "**[a]ccording to Debtor**, the termination of Debtor's interests in Crusader funds served to cancel CLO HoldCo's participation interests in

Debtor's interests accordingly the claim amount is reduce to $0.00." *See* Proof of Claim No. 198 (emphasis added).

35. It is important to note that at the time CLO HoldCo filed the First Amended CLO HoldCo Crusader Claim upon information conveyed from HCMLP, **HCMLP served as investment advisor to Charitable DAF Fund, L.P. ("DAF Fund"), and Charitable DAF GP, LLC ("DAF GP")** pursuant to that certain *Second Amended and Restated Investment Advisory Agreement effective January 1, 2017* (the "Investment Advisory Agreement"). As has previously been detailed to the Court, DAF Fund is the sole shareholder of CLO HoldCo. *See* Dkt. No. 2547, ¶21. So upon information from its sole shareholder's investment advisor concerning the HCMLP Crusader Interest, CLO HoldCo amended its claim to $0, with reservation.

36. Although the CLO HoldCo Crusader Claim was amended to $0.00, CLO HoldCo attached the Participation and Tracking Interest Schedule and identified its claim against CLO HoldCo as one arising from Participation and Tracking Interests in investment funds. *Id*. CLO HoldCo further expressly reserved the right to amend its claim and to produce additional documents as necessary to support its claim. *Id*. at ¶B.

37. On October 22, 2020, the Bankruptcy Court entered the *Order Approving Debtor's Settlement With (A) The Redeemer Committee Of The Highland Crusader Fund (Claim No. 72), and (B) The Highland Crusader Funds (Claim No. 81), And Authorizing Actions Consistent Therewith* [Dkt. No. 1273] (the "Redeemer Settlement Order").

38. The Redeemer Settlement Order approved the Redeemer Settlement in all respects, including the cancellation of the HCMLP Crusader Interest and damage award which is net of the credit HCMLP was awarded for the purchase price.

39. As shown by the addendum to the Second Amended CLO HoldCo Crusader Claim, this Claim was properly amended (upon analysis performed after termination of the Investment Advisory Agreement).

AUTHORITY

40. The Fifth Circuit has explained that, "[a]mendments to timely creditor proofs of claim have been **liberally permitted** to cure a defect in the claim as originally filed, to describe the claim with greater particularity, or to plead a new theory of recovery on the facts set forth in the original claim." *In re Kolstad*, 928 F.2d 171, 175 (5th Cir. 1991) (citing *In re International Horizons, Inc.*, 751 F.2d 1213 (11th Cir.1985)) (emphasis added); *In re Pilgrim's Pride Corp.*, 442 B.R. 522, 536 (Bankr. N.D. Tex. 2010).

41. According to the Fifth Circuit, when determining whether to permit amendments to proof of claims, there are two general questions: (1) whether [the creditor] is attempting to stray beyond the perimeters of the original proof of claim and effectively file a 'new' claim that could not have been foreseen from the earlier claim or events such as an ongoing or recently commenced audit; and (2) the degree and incidence of prejudice, if any, caused by [the creditor]'s delay." *In re Walker*, 526 B.R. 187, 191 (E.D. La. 2015) (citing to *Kolstad*, 928, F.2d at n.7).

42. Here, the Original, First Amended, and Second Amended CLO HoldCo Crusader Claim specifically asserts a claim against HCMLP based upon the disposition of the HCMLP Crusader Interest and thus the Participation and Tracking Interest in the Arbitration and later Redeemer Settlement.

43. The Second Amended CLO HoldCo Crusader Claim does the same. Specifically, as set forth in the Second Amended CLO HoldCo Claim: (i) pursuant to the applicable Participation and Tracking Interest Schedule, HCMLP is required to pay to CLO HoldCo the

proceeds of any disposition of any interest with respect to or in the HCMLP Crusader Interest; (ii) in the Arbitration, the HCMLP Crusader Interest was disposed of and in return, HCMLP received a credit against the damage award for the purchase price of the cancelled the HCMLP Crusader Interest; and (iii) HCMLP therefore received proceeds of a disposition of the HCMLP Crusader Interest through this credit and owes payment of those amounts to CLO HoldCo.

44. This is not a new claim but rather the plainly permissible theory of recovery on the facts set forth in the original claim which the Fifth Circuit directs are **liberally** permitted.

45. As to the degree of prejudice, it might range from utterly minimal to non-existent, but in fact that is probably too lenient. There is no prejudice. The Second Amended CLO HoldCo Claim is a miniscule fraction of the claims on file (maybe some 1% to 1.6%). It is an unsecured claim. Allowance renders no bad consequences.

46. First, the facts must be viewed in light of CLO HoldCo's position at the time it filed the First Amended CLO HoldCo Crusader Claim. CLO HoldCo did not, and still does not, have the applicable documents related to the calculation of the credit received by HCMLP [the purchase price, the damages models, etc.] but HCMLP does.

47. Second, HCMLP was serving as the investment advisor to CLO HoldCo's sole shareholder at the time it relayed information to CLO HoldCo related to the cancelation of the HCMLP Crusader Interest and the effect upon its claim. Expressly based upon this information (as stated therein), CLO HoldCo amended its Original Claim.

48. Third, HCMLP terminated the Investment Advisory Agreement in January 2021 and CLO HoldCo retained undersigned as new counsel thereafter. Undersigned counsel has been discussing this matter with HCMLP counsel since October 2021. The discussion began in response to an understandable suggestion from HCMLP counsel that CLO HoldCo agree to a stipulation

expunging the First Amended CLO HoldCo Crusader Claim, as it had been amended to reflect a $00.00 claim amount. As we say, understandable suggestion. But current counsel reviewed available documents, and determined that because of the Arbitration, HCMLP had in fact received payment upon transfer or dissolution, and that HCMLP was obligated to pay over to CLO HoldCo such payment/consideration received. Thus, the cancellation and extinguishment of the HCMLP Crusader Interests, ordered through the arbitration and confirmed by this Court's issuance of the Redeemer Settlement Order confirmed the receipt of the purchase price credit by HCMLP, an amount that it was contractually obligated to turn/pay over to CLO HoldCo.

49. Fourth, HCMLP and the Litigation Trustee have been on notice since April 2020 that CLO HoldCo held a claim of some kind arising out of the HCMLP Crusader Interests and the Participation and Tracking Interests. And, while HCMLP, the counterparty under the Investment Advisor Agreement gave the advice that the consequence of the extinguishment of the HCMLP Crusader Interests was that the Original Claim had no value, HCMLP has always been aware of the basis for the Second Amended CLO HoldCo Crusader Claim, as it understood the result of the Arbitration and itself received the purchase price credit. Also, CLO HoldCo refused to withdraw or expunge its First Amended CLO HoldCo Crusader Claim, but rather **maintained** the First CLO HoldCo Crusader Claim on the claims register. This was an open and obvious signal to all that CLO HoldCo reserved the right to vet the information supplied by HCMLP, or conduct additional analysis and inquiry with respect to its claim arising from the cancellation of HCMLP Crusader Interest, and to pursue the same. The existence of the First CLO HoldCo Crusader Claim, though at the amount of $00.00, required HCMLP to seek expungement. Why? Because HCMLP understood the prospect and possibility of amendment, given the express and specific reservation thereof.

50. Finally, while the amount of the claim is uncertain, CLO HoldCo estimates it to be in the range of approximately $3,788,932 and $5,791,485. There are several hundred millions of dollars of claims asserted in this case, and the Second Amended CLO HoldCo Crusader Claim therefore will not prejudice (unduly or otherwise) other claim holders, given the prior express reservation and the small percentage of overall claims that it represents.

CONCLUSION

51. All parties were on notice that CLO HoldCo believed it had a valid claim based upon the cancellation of the HCMLP Crusader Interest in the Arbitration arising from its Participation and Tracking Interest, and even though the First Amended CLO HoldCo Crusader Claim amended the Original Claim to $00.00, the amendment was done with express reservation for further amendments. While the Second Amended CLO HoldCo Crusader Claim may plead a more particularized theory of recovery (receipt of the purchase price under the transaction documents as opposed to a claim to the whole value of the Participation and Tracking Interests), it is based upon the exact same facts and documents set forth in the Original Claim and the First Amended CLO HoldCo Crusader Claim, in which CLO HoldCo carefully reserved its rights to amend and kept its claim on file.

52. As such, the Fifth Circuit *Kolstad* standard is met and CLO respectfully requests that the Court ratify the Second Amended CLO HoldCo Crusader Claim and deny the Litigation Trustee Objection as moot, or, if the Litigation Trustee should amend his objection, CLO HoldCo should have its Second Amended CLO HoldCo Crusader Claim, in full, after due proceedings.

[*signature block on following page*]

Respectfully submitted:

KELLY HART PITRE

/s/ Louis M. Phillips
Louis M. Phillips (#10505)
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Baton Rouge, LA 70801-1916
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Fort Worth, Texas 76102
Telephone: (817) 332-2500

CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that a true and correct copy of the above and foregoing document and all attachments thereto were sent via electronic mail via the Court's ECF system to all parties authorized to receive electronic notice in this case on this January 11, 2022.

/s/ Louis M. Phillips
Louis M. Phillips

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

In Re: Highland Capital Management, L.P.	§	Case No.	**19-34054-sgj11**
CLO HoldCo, Ltd.	§		
Appellant	§		
vs.	§		
Marc Kirschner	§		
Appellee	§		**3:22-CV-02051-B**

[3457] Order denying motion motion to ratify second amended proof of claim and expunging claim (related document # 3178) Entered on 8/17/2022

APPELLEE RECORD
VOLUME 15

QUINN EMANUEL URQUHART & SULLIVAN LLP
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Counsel for Marc S. Kirschner, as Litigation Trustee of the Highland Litigation Sub-Trust

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., [1] Debtor.	Case No. 19-34054-sgj11
CLO HOLDCO, LTD., Appellant, v. MARC S. KIRSCHNER, AS LITIGATION TRUSTEE OF THE LITIGATION SUB-TRUST, Appellee.	Case No. 3:22-cv-02051-B

INDEX

APPELLEE'S SUPPLEMENTAL DESIGNATION OF RECORD ON APPEAL PURSUANT TO FED. R. BANKR. P. 8009(a)(2)

[1] The last four digits of the Reorganized Debtor's taxpayer identification number are (8357). The Reorganized Debtor is a Delaware limited partnership. The Reorganized Debtor's headquarters and service address are 100 Crescent Court, Suite 1850, Dallas, TX 75201.

Pursuant to Rule 8009(a)(2) of the Federal Rules of Bankruptcy Procedure, Marc Kirschner, as Litigation Trustee for the Litigation Sub-Trust ("Appellee"), created by Highland Capital Management, L.P.'s *Fifth Amended Plan of Reorganization*, by and through his undersigned counsel, hereby submits his supplemental designation of items to be included in the record on appeal filed by CLO Holdco, Ltd. ("Appellant") from the *Order Denying Motion to Ratify Second Amended Proof of Claim and Expunging Claim* [Dkt. No. 3457] (the "Order"), entered by the above named Bankruptcy Court in the above captioned Bankruptcy Case on August 17, 2022. Appellee respectfully reserves the right to supplement and/or amend the record on appeal designated herein.

I. Supplemental Items from the Docket in the Bankruptcy Case

Appellee designates the following additional items from the docket in the Bankruptcy Case, in addition to the items previously designated by the Appellant:

Vol. 12

Date	Docket No.	Description
12/04/2019	11	Affidavit/ Declaration by Frank Waterhouse in Support of First Day Motion filed by Highland Capital Management, L.P.
03/02/2020	488	Order Granting Motion Establishing Bar Dates for Filing Claims
09/23/2020	1090	Declaration of John Morris (and all exhibits and attachments thereto) in support of Dkt. No. 1089, Motion to Compromise with the Redeemer Committee
09/29/2020	1113	Certificate of Service of Dkt. No. 1089, Motion to Compromise with the Redeemer Committee
11/06/2020	1339	Notice of appeal by UBS AG London Branch from Dkt. No. 1273, the Motion to Compromise Controversy with the Redeemer Committee
11/24/2020	1472	Debtor's Amended Chapter 11 Plan
11/24/2020	1473	Debtor's Amended Disclosure Statement to Amended Chapter 11 Plan
12/23/2020	1625	Debtor's Motion to Compromise Controversy with HarbourVest

Vol. 13

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003116

01/08/2021	1707	Objection by CLO Holdco to Dkt. No. 1625, the Motion to Compromise Controversy with HarbourVest
Vol. 14 003126		
02/22/2021	1943	Order confirming Debtor's Fifth Amended Chapter 11 Plan, Dkt. No. 1472, as modified
003287		
05/14/2021	2309	Order to Show Cause
003296		
11/09/2021	3000	Objection to Claim of Creditor Jean-Paul Sevilla
003323		
12/09/2021	3091	Stipulation between Litigation Trustee and Creditors Scott Ellington, Jean-Paul Sevilla, Isaac Leventon, and Frank Waterhouse, re: Dkt. Nos. 3000 and 3001
003333		
12/15/2021	3121	Notice of hearing re: Dkt. No. 3001
003338		
01/07/2022	3164	Order Approving Dkt. No. 3091, Stipulation between Litigation Trustee and Sevilla, Ellington, Leventon, and Waterhouse
003346		
01/11/2022	3178	CLO Holdco's Motion to Ratify Second Amended Proof of Claim No. 198
Vol. 15		
02/01/2022	3220-1	Exhibit 1, Declaration by Deborah Newman (and all attachments or exhibits thereto), in support of Dkt. No. 3220, the Trustee's Opposition to Dkt. No. 3178, CLO Holdco's Motion to Ratify
003363		
1/17/2021	1765	Transcript regarding hearing held on 1/14/2021 re: Dkt. No. 1707
003393		
08/28/2021	2794	Transcript regarding Hearing Held 08/19/2021 RE: Motion to Extend the Stay in Trustee's Adversary Proceeding
003566		

II. Supplemental Items Not on Bankruptcy Case Docket

Appellee designates the following items not found on the docket but pertinent to this appeal:

Date	**Description**
003618	
10/16/2019	Hearing Transcript, *Redeemer Comm. Of the Highland Crusader Fund v. Highland Capital Mgmt., L.P.*, C.A. No. 12533-VCZ (Del. Ch. Oct. 16, 2019) (attached hereto as **Exhibit 1**)
003625	
06/14/2021	Electronic Order, *UBS Securities LLC et al. v. Highland Capital Management LP*, Case No. 3:20-cv-03408-G (N.D. Tex. 2020) (attached hereto as **Exhibit 2**)
003627	
08/02/2022	Email dated Aug. 2, 2022 to Traci Ellison (attached hereto as **Exhibit 3**)

Appellee reserves the right to designate additional items depending on the arguments made by Appellant on appeal.

Dated: September 28, 2022

Respectfully submitted,

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/s/ *Paige Holden Montgomery*
Paige Holden Montgomery
Juliana L. Hoffman
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Facsimile: (214) 981-3400

-and-

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Counsel for Marc S. Kirschner, as Litigation Trustee of the Highland Litigation Sub-Trust

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a true and correct copy of the above and foregoing document and all attachments thereto were sent via electronic mail via the Court's ECF system to all parties authorized to receive electronic notice in this case on this 28th day of September, 2022.

/s/ Paige Holden Montgomery
Paige Holden Montgomery

EXHIBIT 1

QUINN EMANUEL URQUHART & SULLIVAN LLP
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Co-Counsel for Marc S. Kirschner, as Litigation Trustee of the Highland Litigation Sub-Trust

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Reorganized Debtor.	Chapter 11 Case No. 19-34054-sgj11
MARC S. KIRSCHNER, AS LITIGATION TRUSTEE OF THE LITIGATION SUB-TRUST, Plaintiff, v. JAMES D. DONDERO; MARK A. OKADA; SCOTT ELLINGTON; ISAAC LEVENTON; GRANT JAMES SCOTT III; FRANK WATERHOUSE; STRAND ADVISORS, INC.; NEXPOINT ADVISORS, L.P.; HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.; DUGABOY INVESTMENT TRUST AND NANCY DONDERO, AS TRUSTEE OF DUGABOY INVESTMENT TRUST; GET GOOD TRUST AND GRANT JAMES SCOTT III, AS TRUSTEE OF GET GOOD TRUST; HUNTER MOUNTAIN INVESTMENT TRUST; MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1 AND LAWRENCE TONOMURA AS TRUSTEE OF MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1; MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2	Adv. Pro. No. 21-03076-sgj

[1] The last four digits of the Reorganized Debtor's taxpayer identification number are (8357). The Reorganized Debtor is a Delaware limited partnership. The Reorganized Debtor's headquarters and service address are 100 Crescent Court, Suite 1850, Dallas, TX 75201.

AND LAWRENCE TONOMURA IN HIS CAPACITY AS TRUSTEE OF MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2; CLO HOLDCO, LTD.; CHARITABLE DAF HOLDCO, LTD.; CHARITABLE DAF FUND, LP.; HIGHLAND DALLAS FOUNDATION; RAND PE FUND I, LP, SERIES 1; MASSAND CAPITAL, LLC; MASSAND CAPITAL, INC.; SAS ASSET RECOVERY, LTD.; AND CPCM, LLC,

Defendants.

DECLARATION OF DEBORAH NEWMAN IN SUPPORT OF THE LITIGATION TRUSTEE'S OPPOSITION TO MOTION TO FURTHER AMEND ZERO DOLLAR PROOF OF CLAIM FILED BY CLO HOLDCO, LTD.

I, Deborah Newman, pursuant to 28 U.S.C. Section 1746(a), under penalty of perjury, declare follows:

1. I am an attorney at the law firm of Quinn Emanuel Urquhart & Sullivan LLP, counsel to Marc S. Kirschner (the "Litigation Trustee"), as Litigation Trustee of the Litigation Sub-Trust established pursuant to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. [Docket No. 1808]. I submit this declaration (the "Declaration") in support of *The Litigation Trustee's Opposition to Motion to Further Amend Zero Dollar Proof of Claim Filed by CLO Holdco, Ltd.* (the "Motion"). Unless stated otherwise, this Declaration is based on my personal knowledge and review of the documents identified below.

2. Attached hereto as Exhibit A is a true and correct copy of the October 16, 2019 Delaware Chancery Court hearing transcript in *Redeemer Committee of the Highland Crusader Fund v. Highland Capital Management, L.P.*, C.A. No. 12533-VCZ.

3. Attached hereto as Exhibit B is a true and correct copy of financial statements demonstrating that the net asset value of the Redeemed Interests equals zero.

4. Attached hereto as Exhibit C is a true and correct copy of an email from counsel to CLO Holdco to counsel for HCMLP dated September 1, 2020.

5. Attached hereto as Exhibit D is a true and correct copy of an email from counsel to CLO Holdco to counsel to HCMLP dated October 21, 2020.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 1st day of February, 2022.

/s/ Deborah J. Newman
Deborah J. Newman

Exhibit A

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND,	:	
Plaintiff, Counterclaim Defendant,	:	
v	:	C.A. No. 12533-VCZ
HIGHLAND CAPITAL MANAGEMENT, L.P.,	:	
Defendant, Counterclaim and Third-Party Plaintiff,	:	
and	:	
HOUSE HANOVER, LLC and ALVAREZ & MARSAL CRF MANAGEMENT, LLC,	:	
Third-Party Defendants.	:	

- - -

Chancery Courtroom No. 12A
Leonard L. Williams Justice Center
500 North King Street
Wilmington, Delaware
Wednesday, October 16, 2019
9:18 a.m.

- - -

BEFORE: HON. MORGAN T. ZURN, Vice Chancellor.

- - -

STATUS CONFERENCE REGARDING CROSS-MOTIONS FOR SUMMARY JUDGMENT

APPEARANCES:

KEVIN M. COEN, ESQ.
Morris, Nichols, Arsht & Tunnell LLP
-and-
TERRI L. MASCHERIN, ESQ.
GARRETT FITZSIMMONS, ESQ.
of the Illinois Bar
Jenner & Block LLP
for Plaintiff and Counterclaim Defendant Redeemer Committee of the Highland Crusader Fund

MICHAEL F. BONKOWSKI, ESQ.
KODY M. SPARKS, ESQ.
Cole Schotz, P.C.
for Defendant, Counterclaim and Third-Party Plaintiff Highland Capital Management, L.P.

TIMOTHY R. DUDDERAR, ESQ.
Potter Anderson & Corroon LLP
for Third-Party Defendant House Hanover, LLC

ELENA C. NORMAN, ESQ.
Young Conaway Stargatt & Taylor, LLP
-and-
MARSHALL R. KING, ESQ.
of the New York Bar
Gibson, Dunn & Crutcher LLP
for Third-Party Defendant Alvarez & Marsal CRF Management, LLC

- - -

THE COURT: Good morning, everyone.

MR. BONKOWSKI: Good morning, Your Honor. Michael Bonkowski for Highland Capital Management, L.P.

I rise to let the Court know of a bankruptcy filing made approximately 8:55 a.m. this morning in the Delaware Bankruptcy Court. I have copies of the petition if you'd like to see them. I'm down to two, but I do have two.

THE COURT: Thank you.

MR. BONKOWSKI: I don't have anything else to offer.

THE COURT: You've been busy. Do you have any thoughts on the scope of the stay that would flow from this, or any stay?

MR. BONKOWSKI: I didn't follow.

THE COURT: The scope of any bankruptcy stay on litigation.

MR. BONKOWSKI: I assume the automatic stay is kicked in with the filing. I understand there will be a -- the talk that I just got was there should be a hearing on Friday. A judge should be appointed later this morning.

THE COURT: So what are your

recommendations for the Redeemer matter this morning?

MR. BONKOWSKI: I think it has to be stayed, Your Honor.

THE COURT: All right. Thank you.

MS. MASCHERIN: Your Honor, Terri Mascherin on behalf of Reedemer Committee.

This comes as some surprise to us. We're prepared to go forward today, but obviously we're required to respect the stay of the Bankruptcy Court until we can get that stay lifted, which we will endeavor to do.

THE COURT: Do you agree that under the automatic stay statutes that we cannot go forward today?

MS. MASCHERIN: That's my understanding of the law, Your Honor.

THE COURT: All right.

MS. MASCHERIN: We'll move as expeditiously as we can to have the stay lifted.

THE COURT: All right. Well, that is my understanding of the law as well, that my hands are now tied in this matter and we are under an automatic stay. So I will just be on the lookout for what you-all would like me to do next.

Is there anything else I can do with the Redeemer matter this morning?

MS. MASCHERIN: No, Your Honor. Thank you.

MR. BONKOWSKI: No, Your Honor. Thank you.

THE COURT: All right. Thank you. Then we will take a brief recess for that matter, and we'll let the Patrick Daugherty folks set up, and then we'll have probably a very similar discussion.

Thank you. We're adjourned.

(Court adjourned at 9:20 a.m.)

- - -

CERTIFICATE

I, KAREN L. SIEDLECKI, Official Court Reporter for the Court of Chancery of the State of Delaware, Registered Merit Reporter, and Certified Realtime Reporter, do hereby certify the foregoing pages numbered 3 through 5, contain a true and correct transcription of the proceedings as stenographically reported by me at the hearing before the Vice Chancellor of the State of Delaware, on the date therein indicated.

IN WITNESS WHEREOF, I have hereunto set my hand at Wilmington this 16th day of October, 2019.

/s/Karen L. Siedlecki

Karen L. Siedlecki
Official Court Reporter
Registered Merit Reporter
Certified Realtime Reporter

Exhibit B

Highland Crusader Fund, Ltd.

Statement of Value and Activity

June 1, 2021 through June 30, 2021

Highland Capital Management, Ltd. Bermuda Corp. 2001 Series
300 Crescent Court
Suite 700
Dallas, TX 75201

Account ID:	Bermuda2001	Attention:	
Account Name:	Highland Capital Management, Ltd. Bermuda Corp. 2001 Series	Fax Number:	
		Email:	
Currency:	US Dollar		

For Your Information

Your Statement of Value and Activity has been designed to keep you up-to-date on the activity in your account. It provides you with an easy to read summary of your account balance and history of your transactions during the periods.

Your Portfolio Value Month - to - Date

Partner Capital	Beginning Market Value	Subscriptions/ Redemptions	Profit/ Loss	Net Ending Balance	PTD ROR
Comp_LTD	$33,491.28	(33,491.28)	0.00	$0.00	0.00%
Total:	$33,491.28	(33,491.28)	0.00	$0.00	

Your Portfolio Value Year - to - Date

Partner Capital	Beginning Market Value	Subscriptions/ Redemptions	Profit/ Loss	Net Ending Balance	YTD ROR
Comp_LTD	$33,478.14	(33,491.28)	13.14	$0.00	0.04%
Total:	$33,478.14	(33,491.28)	13.14	$0.00	

Your Transaction Activity

Transaction Date	Partner Capital	Acct ID	Activity Description	Cash Amount
06/01/2021	Comp_LTD	Bermuda2001	Redemption	($33,491.28)

SEI Investments
Alternative Investments Fund Services
One Freedom Valley Drive
Oaks, PA 19456
(610) 676-8725
AIFS-IS_Crusader@seic.com

Highland Crusader Fund, Ltd.

Statement of Value and Activity

June 1, 2021 through June 30, 2021

Highland Capital Management, Ltd. Bermuda Corp. 2003 Series
300 Crescent Court
Suite 700
Dallas, TX 75201

Account ID:	Bermuda2003	Attention:	
Account Name:	Highland Capital Management, Ltd. Bermuda Corp. 2003 Series	Fax Number:	
		Email:	
Currency:	US Dollar		

For Your Information

Your Statement of Value and Activity has been designed to keep you up-to-date on the activity in your account. It provides you with an easy to read summary of your account balance and history of your transactions during the periods.

Your Portfolio Value Month - to - Date

Partner Capital	Beginning Market Value	Subscriptions/ Redemptions	Profit/ Loss	Net Ending Balance	PTD ROR
Comp_LTD	$54,707.81	(54,707.81)	0.00	$0.00	0.00%
Total:	$54,707.81	(54,707.81)	0.00	$0.00	

Your Portfolio Value Year - to - Date

Partner Capital	Beginning Market Value	Subscriptions/ Redemptions	Profit/ Loss	Net Ending Balance	YTD ROR
Comp_LTD	$54,686.34	(54,707.81)	21.47	$0.00	0.04%
Total:	$54,686.34	(54,707.81)	21.47	$0.00	

Your Transaction Activity

Transaction Date	Partner Capital	Acct ID	Activity Description	Cash Amount
06/01/2021	Comp_LTD	Bermuda2003	Redemption	($54,707.81)

SEI Investments
Alternative Investments Fund Services
One Freedom Valley Drive
Oaks, PA 19456
(610) 676-8725
AIFS-IS_Crusader@seic.com

Highland Crusader Fund, Ltd.

Statement of Value and Activity

June 1, 2021 through June 30, 2021

Highland Capital Management, Ltd. Bermuda Corp. 2005 Series
300 Crescent Court
Suite 700
Dallas, TX 75201

Account ID:	Bermuda2005	Attention:	
Account Name:	Highland Capital Management, Ltd. Bermuda Corp. 2005 Series	Fax Number:	
		Email:	
Currency:	US Dollar		

For Your Information

Your Statement of Value and Activity has been designed to keep you up-to-date on the activity in your account. It provides you with an easy to read summary of your account balance and history of your transactions during the periods.

Your Portfolio Value Month - to - Date

Partner Capital	Beginning Market Value	Subscriptions/ Redemptions	Profit/ Loss	Net Ending Balance	PTD ROR
Comp_LTD	$45,439.16	(45,439.16)	0.00	$0.00	0.00%
Total:	$45,439.16	(45,439.16)	0.00	$0.00	

Your Portfolio Value Year - to - Date

Partner Capital	Beginning Market Value	Subscriptions/ Redemptions	Profit/ Loss	Net Ending Balance	YTD ROR
Comp_LTD	$45,421.33	(45,439.16)	17.83	$0.00	0.04%
Total:	$45,421.33	(45,439.16)	17.83	$0.00	

Your Transaction Activity

Transaction Date	Partner Capital	Acct ID	Activity Description	Cash Amount
06/01/2021	Comp_LTD	Bermuda2005	Redemption	($45,439.16)

SEI Investments
Alternative Investments Fund Services
One Freedom Valley Drive
Oaks, PA 19456
(610) 676-8725
AIFS-IS_Crusader@seic.com

Highland Crusader Fund, Ltd.

Statement of Value and Activity

June 1, 2021 through June 30, 2021

Highland Capital Management, Ltd. Bermuda Corp. 2006 Series
300 Crescent Court
Suite 700
Dallas, TX 75201

Account ID:	Bermuda2006	Attention:	
Account Name:	Highland Capital Management, Ltd. Bermuda Corp. 2006 Series	Fax Number:	
		Email:	
Currency:	US Dollar		

For Your Information

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Your Portfolio Value Month - to - Date

Partner Capital	Beginning Market Value	Subscriptions/ Redemptions	Profit/ Loss	Net Ending Balance	PTD ROR
Comp_LTD	$138,819.88	(138,819.88)	0.00	$0.00	0.00%
Total:	$138,819.88	(138,819.88)	0.00	$0.00	

Your Portfolio Value Year - to - Date

Partner Capital	Beginning Market Value	Subscriptions/ Redemptions	Profit/ Loss	Net Ending Balance	YTD ROR
Comp_LTD	$138,765.40	(138,819.88)	54.48	$0.00	0.04%
Total:	$138,765.40	(138,819.88)	54.48	$0.00	

Your Transaction Activity

Transaction Date	Partner Capital	Acct ID	Activity Description	Cash Amount
06/01/2021	Comp_LTD	Bermuda2006	Redemption	($138,819.88)

SEI Investments
Alternative Investments Fund Services
One Freedom Valley Drive
Oaks, PA 19456
(610) 676-8725
AIFS-IS_Crusader@seic.com

Highland Crusader Fund II, Ltd.

Statement of Value and Activity

June 1, 2021 through June 30, 2021

Account ID:	Highland	Attention:	
Account Name:	Highland Capital Management, LP	Fax Number:	
Currency:	US Dollar	Email:	

For Your Information

Your Statement of Value and Activity has been designed to keep you up-to-date on the activity in your account. It provides you with an easy to read summary of your account balance and history of your transactions during the periods.

Your Portfolio Value Month - to - Date

Partner Capital	Beginning Market Value	Subscriptions/ Redemptions	Profit/ Loss	Net Ending Balance	PTD ROR
Comp_LTD_II	$1,404,328.64	(1,404,328.64)	0.00	$0.00	0.00%
Prior_LTD_II	$509,991.57	(509,991.57)	0.00	$0.00	0.00%
Total:	$1,914,320.21	(1,914,320.21)	0.00	$0.00	

Your Portfolio Value Year - to - Date

Partner Capital	Beginning Market Value	Subscriptions/ Redemptions	Profit/ Loss	Net Ending Balance	YTD ROR
Comp_LTD_II	$1,396,449.40	(1,404,328.64)	7,879.24	$0.00	0.56%
Prior_LTD_II	$507,132.58	(509,991.57)	2,858.99	$0.00	0.56%
Total:	$1,903,581.98	(1,914,320.21)	10,738.23	$0.00	

Your Transaction Activity

Transaction Date	Partner Capital	Acct ID	Activity Description	Cash Amount
06/01/2021	Comp_LTD_II	Highland	Redemption	($1,404,328.64)
06/01/2021	Prior_LTD_II	Highland	Redemption	($509,991.57)

SEI Investments
Alternative Investments Fund Services
One Freedom Valley Drive
Oaks, PA 19456
(610) 676-8725
AIFS-IS_Crusader@seic.com

Highland Crusader Fund II, Ltd.

Statement of Value and Activity

June 1, 2021 through June 30, 2021

Highland Capital Management 2002 Deferred Fees
300 Crescent Court
Suite 700
Dallas, TX 75201

Account ID:	Highland2002	Attention:	
Account Name:	Highland Capital Management 2002 Deferred Fees	Fax Number:	
Currency:	US Dollar	Email:	

For Your Information

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Your Portfolio Value Month - to - Date

Partner Capital	Beginning Market Value	Subscriptions/ Redemptions	Profit/ Loss	Net Ending Balance	PTD ROR
Comp_LTD_II	$5,450.34	(5,450.34)	0.00	$0.00	0.00%
Total:	$5,450.34	(5,450.34)	0.00	$0.00	

Your Portfolio Value Year - to - Date

Partner Capital	Beginning Market Value	Subscriptions/ Redemptions	Profit/ Loss	Net Ending Balance	YTD ROR
Comp_LTD_II	$5,419.76	(5,450.34)	30.58	$0.00	0.56%
Total:	$5,419.76	(5,450.34)	30.58	$0.00	

Your Transaction Activity

Transaction Date	Partner Capital	Acct ID	Activity Description	Cash Amount
06/01/2021	Comp_LTD_II	Highland2002	Redemption	($5,450.34)

SEI Investments
Alternative Investments Fund Services
One Freedom Valley Drive
Oaks, PA 19456
(610) 676-8725
AIFS-IS_Crusader@seic.com

Highland Crusader Fund II, Ltd.

Statement of Value and Activity

June 1, 2021 through June 30, 2021

Highland Capital Management 2003 Deferred Fees
300 Crescent Court
Suite 700
Dallas, TX 75201

Account ID:	Highland2003	Attention:	
Account Name:	Highland Capital Management 2003 Deferred Fees	Fax Number:	
Currency:	US Dollar	Email:	

For Your Information

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Your Portfolio Value Month - to - Date

Partner Capital	Beginning Market Value	Subscriptions/ Redemptions	Profit/ Loss	Net Ending Balance	PTD ROR
Comp_LTD_II	$8,678.62	(8,678.62)	0.00	$0.00	0.00%
Total:	$8,678.62	(8,678.62)	0.00	$0.00	

Your Portfolio Value Year - to - Date

Partner Capital	Beginning Market Value	Subscriptions/ Redemptions	Profit/ Loss	Net Ending Balance	YTD ROR
Comp_LTD_II	$8,629.93	(8,678.62)	48.69	$0.00	0.56%
Total:	$8,629.93	(8,678.62)	48.69	$0.00	

Your Transaction Activity

Transaction Date	Partner Capital	Acct ID	Activity Description	Cash Amount
06/01/2021	Comp_LTD_II	Highland2003	Redemption	($8,678.62)

SEI Investments
Alternative Investments Fund Services
One Freedom Valley Drive
Oaks, PA 19456
(610) 676-8725
AIFS-IS_Crusader@seic.com

Highland Crusader Fund II, Ltd.

Statement of Value and Activity

June 1, 2021 through June 30, 2021

Highland Capital Management 2004 Deferred Fees
300 Crescent Court
Suite 700
Dallas, TX 75201

Account ID:	Highland2004	Attention:	
Account Name:	Highland Capital Management 2004 Deferred Fees	Fax Number:	
Currency:	US Dollar	Email:	

For Your Information

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Your Portfolio Value Month - to - Date

Partner Capital	Beginning Market Value	Subscriptions/ Redemptions	Profit/ Loss	Net Ending Balance	PTD ROR
Comp_LTD_II	$358,716.46	(358,716.46)	0.00	$0.00	0.00%
Total:	$358,716.46	(358,716.46)	0.00	$0.00	

Your Portfolio Value Year - to - Date

Partner Capital	Beginning Market Value	Subscriptions/ Redemptions	Profit/ Loss	Net Ending Balance	YTD ROR
Comp_LTD_II	$356,703.82	(358,716.46)	2,012.64	$0.00	0.56%
Total:	$356,703.82	(358,716.46)	2,012.64	$0.00	

Your Transaction Activity

Transaction Date	Partner Capital	Acct ID	Activity Description	Cash Amount
06/01/2021	Comp_LTD_II	Highland2004	Redemption	($358,716.46)

SEI Investments
Alternative Investments Fund Services
One Freedom Valley Drive
Oaks, PA 19456
(610) 676-8725
AIFS-IS_Crusader@seic.com

Highland Crusader Fund II, Ltd.

Statement of Value and Activity

June 1, 2021 through June 30, 2021

Highland Capital Management 2005 Deferred Fees
300 Crescent Court
Suite 700
Dallas, TX 75201

Account ID:	Highland2005	Attention:	
Account Name:	Highland Capital Management 2005 Deferred Fees	Fax Number:	
Currency:	US Dollar	Email:	

For Your Information

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Your Portfolio Value Month - to - Date

Partner Capital	Beginning Market Value	Subscriptions/ Redemptions	Profit/ Loss	Net Ending Balance	PTD ROR
Comp_LTD_II	$316,859.79	(316,859.79)	0.00	$0.00	0.00%
Total:	$316,859.79	(316,859.79)	0.00	$0.00	

Your Portfolio Value Year - to - Date

Partner Capital	Beginning Market Value	Subscriptions/ Redemptions	Profit/ Loss	Net Ending Balance	YTD ROR
Comp_LTD_II	$315,081.99	(316,859.79)	1,777.80	$0.00	0.56%
Total:	$315,081.99	(316,859.79)	1,777.80	$0.00	

Your Transaction Activity

Transaction Date	Partner Capital	Acct ID	Activity Description	Cash Amount
06/01/2021	Comp_LTD_II	Highland2005	Redemption	($316,859.79)

SEI Investments
Alternative Investments Fund Services
One Freedom Valley Drive
Oaks, PA 19456
(610) 676-8725
AIFS-IS_Crusader@seic.com

Highland Crusader Fund II, Ltd.

Statement of Value and Activity

June 1, 2021 through June 30, 2021

Highland Capital Management 2006 Deferred Fees
300 Crescent Court
Suite 700
Dallas, TX 75201

Account ID:	Highland2006	Attention:	
Account Name:	Highland Capital Management 2006 Deferred Fees	Fax Number:	
Currency:	US Dollar	Email:	

For Your Information

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Your Portfolio Value Month - to - Date

Partner Capital	Beginning Market Value	Subscriptions/ Redemptions	Profit/ Loss	Net Ending Balance	PTD ROR
Comp_LTD_II	$1,639,926.88	(1,639,926.88)	0.00	$0.00	0.00%
Total:	$1,639,926.88	(1,639,926.88)	0.00	$0.00	

Your Portfolio Value Year - to - Date

Partner Capital	Beginning Market Value	Subscriptions/ Redemptions	Profit/ Loss	Net Ending Balance	YTD ROR
Comp_LTD_II	$1,630,725.78	(1,639,926.88)	9,201.10	$0.00	0.56%
Total:	$1,630,725.78	(1,639,926.88)	9,201.10	$0.00	

Your Transaction Activity

Transaction Date	Partner Capital	Acct ID	Activity Description	Cash Amount
06/01/2021	Comp_LTD_II	Highland2006	Redemption	($1,639,926.88)

SEI Investments
Alternative Investments Fund Services
One Freedom Valley Drive
Oaks, PA 19456
(610) 676-8725
AIFS-IS_Crusader@seic.com

Highland Crusader Fund II, Ltd.

Statement of Value and Activity

June 1, 2021 through June 30, 2021

Highland Capital Management 2007 Deferred Fees
300 Crescent Court
Suite 700
Dallas, TX 75201

Account ID:	Highland2007	Attention:	
Account Name:	Highland Capital Management 2007 Deferred Fees	Fax Number:	
Currency:	US Dollar	Email:	

For Your Information

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Your Portfolio Value Month - to - Date

Partner Capital	Beginning Market Value	Subscriptions/ Redemptions	Profit/ Loss	Net Ending Balance	PTD ROR
Comp_LTD_II	$58,975.90	(58,975.90)	0.00	$0.00	0.00%
Total:	$58,975.90	(58,975.90)	0.00	$0.00	

Your Portfolio Value Year - to - Date

Partner Capital	Beginning Market Value	Subscriptions/ Redemptions	Profit/ Loss	Net Ending Balance	YTD ROR
Comp_LTD_II	$58,645.01	(58,975.90)	330.89	$0.00	0.56%
Total:	$58,645.01	(58,975.90)	330.89	$0.00	

Your Transaction Activity

Transaction Date	Partner Capital	Acct ID	Activity Description	Cash Amount
06/01/2021	Comp_LTD_II	Highland2007	Redemption	($58,975.90)

SEI Investments
Alternative Investments Fund Services
One Freedom Valley Drive
Oaks, PA 19456
(610) 676-8725
AIFS-IS_Crusader@seic.com

Highland Crusader Fund, L.P.

Statement of Value and Activity

June 1, 2021 through June 30, 2021

jennifer.lim@maplesfs.com
PO Box 1043
69 Dr. Roy's Drive, Georgetown
Grand Cayman KY1-1102
Cayman Islands

Account ID:	Eames	Attention:	
Account Name:	Eames, Ltd.	Fax Number:	
Currency:	US Dollar	Email:	jennifer.lim@maplesfs.com

For Your Information

Your Statement of Value and Activity has been designed to keep you up-to-date on the activity in your account. It provides you with an easy to read summary of your account balance and history of your transactions during the periods.

Your Portfolio Value Month - to - Date

Partner Capital	Beginning Market Value	Subscriptions/ Redemptions	Profit/ Loss	Net Ending Balance	PTD ROR
Comp_LP	$3,074,636.21	(3,074,636.21)	0.00	$0.00	0.00%
Total:	$3,074,636.21	(3,074,636.21)	0.00	$0.00	

Your Portfolio Value Year - to - Date

Partner Capital	Beginning Market Value	Subscriptions/ Redemptions	Profit/ Loss	Net Ending Balance	YTD ROR
Comp_LP	$3,056,796.46	(3,074,636.21)	17,839.75	$0.00	0.58%
Total:	$3,056,796.46	(3,074,636.21)	17,839.75	$0.00	

Your Transaction Activity

Transaction Date	Acct ID	Activity Description	Cash Amount
06/01/2021	Eames	Redemption	($3,074,636.21)

SEI Investments
Alternative Investments Fund Services
One Freedom Valley Drive
Oaks, PA 19456
(610) 676-8725
AIFS-IS_Crusader@seic.com

Highland Crusader Fund, L.P.

Statement of Value and Activity

June 1, 2021 through June 30, 2021

Account ID:	Highland	Attention:	
Account Name:	Highland Capital Management, LP	Fax Number:	
Currency:	US Dollar	Email:	

For Your Information

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Your Portfolio Value Month - to - Date

Partner Capital	Beginning Market Value	Subscriptions/ Redemptions	Profit/ Loss	Net Ending Balance	PTD ROR
Prior_LP	$184,930.96	(184,930.96)	0.00	$0.00	0.00%
Comp_LP	$608,646.16	(608,646.16)	0.00	$0.00	0.00%
Total:	$793,577.12	(793,577.12)	0.00	$0.00	

Your Portfolio Value Year - to - Date

Partner Capital	Beginning Market Value	Subscriptions/ Redemptions	Profit/ Loss	Net Ending Balance	YTD ROR
Prior_LP	$183,858.82	(184,930.96)	1,072.14	$0.00	0.58%
Comp_LP	$605,114.65	(608,646.16)	3,531.51	$0.00	0.58%
Total:	$788,973.47	(793,577.12)	4,603.65	$0.00	

Your Transaction Activity

Transaction Date	Acct ID	Activity Description	Cash Amount
06/01/2021	Highland	Redemption	($608,646.16)
06/01/2021	Highland	Redemption	($184,930.96)

SEI Investments
Alternative Investments Fund Services
One Freedom Valley Drive
Oaks, PA 19456
(610) 676-8725
AIFS-IS_Crusader@seic.com

Exhibit C

From: John J. Kane [mailto:jkane@krcl.com]
Sent: Saturday, October 17, 2020 9:53 AM
To: John A. Morris <jmorris@pszjlaw.com>
Subject: Re: CLO Holdco - Highland [IWOV-iManage.FID1955366]

Look for an amendment from us to $0 on Monday.

Sent from my iPhone

On Oct 17, 2020, at 4:38 AM, John A. Morris wrote:

Following up, John.
Please let us know if there are any issues with the Debtor's request.
Thank you,
John

John A. Morris
Pachulski Stang Ziehl & Jones LLP
Direct Dial: 212.561.7760
Tel: 212.561.7700 | Fax: 212.561.7777
jmorris@pszjlaw.com
vCard | Bio | LinkedIn

Los Angeles | San Francisco | Wilmington, DE | New York | Costa Mesa

From: John A. Morris
Sent: Thursday, October 15, 2020 5:03 PM
To: 'John J. Kane'
Cc: Brian Clark
Subject: RE: CLO Holdco - Highland [IWOV-iManage.FID1955366]
John,
I'm following up on the e-mail below and our discussions on the topic.
The Debtor would really appreciate it if the claims against it were withdrawn by next Wednesday so we can avoid solicitation, voting, etc.
Please let me know if that's an issue.
Thanks,
John

John A. Morris
Pachulski Stang Ziehl & Jones LLP
Direct Dial: 212.561.7760
Tel: 212.561.7700 | Fax: 212.561.7777
jmorris@pszjlaw.com
vCard | Bio | LinkedIn

Los Angeles | San Francisco | Wilmington, DE | New York | Costa Mesa

From: John J. Kane [mailto:jkane@krcl.com]
Sent: Tuesday, September 01, 2020 4:47 PM
To: John A. Morris
Cc: Brian Clark
Subject: CLO Holdco - Highland [IWOV-iManage.FID1955366]

John,

We'll agree to waive our claims against Highland pursuant to the Crusader participation interests in our proof of claim. We just filed a small E&P case but have been underwater with prep. I'll need a little time to get the claim addressed but here is my written confirmation.

John

JOHN J. KANE
Director

Kane Russell Coleman Logan PC
901 Main Street | Suite 5200 | Dallas, Texas 75202
Tel 214.777.4261 **Cell** 972.672.6915
krcl.com | **krclblogs.com**

Exhibit D

From: John J. Kane [mailto:jkane@krcl.com]
Sent: Wednesday, October 21, 2020 4:45 PM
To: John A. Morris <jmorris@pszjlaw.com>
Subject: CLO Holdco - Highland Claim [IWOV-iManage.FID1955366]

John,
I have an executed claim amendment from my client that reduces CLO's claim to $0. I did not feel it was appropriate to get it on file prior to the Court's ruling on the redeemer settlement, but will get it on file now that she's issued her ruling.
John

JOHN J. KANE
Director

KRCL

Kane Russell Coleman Logan PC
901 Main Street | Suite 5200 | Dallas, Texas 75202
Tel 214.777.4261 **Cell** 972.672.6915
krcl.com | krclblogs.com

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

In Re:	**Case No. 19-34054-sgj-11**
	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	Dallas, Texas
	Thursday, January 14, 2021
	9:30 a.m. Docket
Debtor.	
	- MOTION TO PREPAY LOAN [1590]
	- MOTION TO COMPROMISE CONTROVERSY [1625]
	- MOTION TO ALLOW CLAIMS OF HARBOURVEST [1207]

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

WEBEX APPEARANCES:

For the Debtor:	Jeffrey Nathan Pomerantz PACHULSKI STANG ZIEHL & JONES, LLP 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067-4003 (310) 277-6910
For the Debtor:	John A. Morris Gregory V. Demo PACHULSKI STANG ZIEHL & JONES, LLP 780 Third Avenue, 34th Floor New York, NY 10017-2024 (212) 561-7700
For the Official Committee of Unsecured Creditors:	Matthew A. Clemente SIDLEY AUSTIN, LLP One South Dearborn Street Chicago, IL 60603 (312) 853-7539
For CLO Holdco, Ltd.:	John J. Kane KANE RUSSELL COLEMAN LOGAN, P.C. 901 Main Street, Suite 5200 Dallas, TX 75202 (214) 777-4261

APPEARANCES, cont'd.:

For James Dondero:	John T. Wilson D. Michael Lynn John Y. Bonds, III Bryan C. Assink BONDS ELLIS EPPICH SCHAFER JONES, LLP 420 Throckmorton Street, Suite 1000 Fort Worth, TX 76102 (817) 405-6900
For Get Good Trust and Dugaboy Investment Trust:	Douglas S. Draper HELLER, DRAPER & HORN, LLC 650 Poydras Street, Suite 2500 New Orleans, LA 70130 (504) 299-3300
For HarbourVest, et al.:	Erica S. Weisgerber M. Natasha Labovitz Daniel E. Stroik DEBEVOISE & PLIMPTON, LLP 919 Third Avenue New York, NY 10022 (212) 909-6621
For Highland CLO Funding, Ltd.:	Rebecca Matsumura KING & SPALDING, LLP 500 West 2nd Street, Suite 1800 Austin, TX 78701 (512) 457-2024
Recorded by:	Michael F. Edmond, Sr. UNITED STATES BANKRUPTCY COURT 1100 Commerce Street, 12th Floor Dallas, TX 75242 (214) 753-2062
Transcribed by:	Kathy Rehling 311 Paradise Cove Shady Shores, TX 76208 (972) 786-3063

Proceedings recorded by electronic sound recording; transcript produced by transcription service.

DALLAS, TEXAS - JANUARY 14, 2021 - 9:41 A.M.

THE CLERK: All rise. The United States Bankruptcy Court for the Northern District of Texas, Dallas Division, is now in session, the Honorable Stacey Jernigan presiding.

THE COURT: Good morning. Please be seated. All right. We're a little late getting started because we had lots of reading material for the Court today. All right. This is Judge Jernigan, and we have a couple of Highland settings. The HarbourVest matters are the primary thing we have set today, and then we also have a Debtor's motion pursuant to protocols for authority for Highland Multi-Strat to prepay a loan.

All right. Well, let's get a few appearances. First, for the Debtor team, who do we have appearing this morning?

MR. POMERANTZ: Good morning, Your Honor. It's Jeff Pomerantz, John Morris, and Greg Demo here on behalf of the Debtor.

THE COURT: Okay. Thank you.

All right. We have objections on HarbourVest. Who do we have appearing for Mr. Dondero this morning?

MR. WILSON: Your Honor, it's John Wilson, and I'm also joined by Michael Lynn, John Bonds, and Bryan Assink.

THE COURT: Okay. I'm sorry. Could -- the court reporter does yeoman's work in this case. Let me just make sure we got all three of those names. Say again, Mr. Wilson.

MR. WILSON: John Bonds and Michael Lynn and Bryan Assink.

THE COURT: Oh, okay. So, see, I thought I heard somebody Wilson in all of that, which was why I was pressing the issue.

All right. Is Mr. Dondero present on the video for today's hearing?

MR. WILSON: I believe he is, Your Honor.

THE COURT: Mr. Dondero, could you confirm that you are out there? (No response.) Okay. My court reporter says he sees the name out there. Is he in your office?

MR. WILSON: Your Honor, he is appearing remotely from my office. I'm not sure exactly where he's appearing from.

THE COURT: Okay. Well, Mr. Dondero, if you're out there and you're speaking up to confirm you're present, we're not hearing you. Maybe your device is on mute. So please unmute yourself.

(No response.)

THE COURT: All right. I'm going to take some other appearances and you -- you need to try to communicate with your client and let him know I need to confirm he's present. Okay?

All right. Meanwhile, let's go to our other Objectors. CLO Holdco. Who do we have appearing today?

MR. KANE: John Kane; Kane Russell Coleman & Logan; on behalf of CLO Holdco.

THE COURT: All right. Thank you, Mr. Kane.

We had an objection from Dugaboy Investment Trust and Get Good Trust. Who do we have appearing?

MR. DRAPER: Douglas Draper, Your Honor, for -- for Draper.

THE COURT: All right. Thank you, Mr. Draper.

All right. I think those were the only written objections we had. Mr. Pomerantz, do you confirm, we don't have any other objectors for the motions set, correct?

MR. POMERANTZ: Your Honor, there was those three.

THE COURT: I'm sorry. I didn't catch your full sentence.

MR. POMERANTZ: That is correct, Your Honor. There were three objections to the motion.

THE COURT: Okay. Mr. Clemente, you're there for the Creditors' Committee?

MR. CLEMENTE: Yes. Good morning, Your Honor. Matt Clemente on behalf of the Official Committee of Unsecured Creditors.

THE COURT: All right. Good morning. Thank you. All right. We have a lot of other folks on the video. I'm not going to go ahead and take a roll call of other lawyers.

MS. WEISGERBER: Your Honor?

THE COURT: Yes?

MS. WEISGERBER: Excuse me, Your Honor. It's Erica Weisgerber from Debevoise on behalf of HarbourVest.

THE COURT: Okay.

MS. WEISGERBER: And I'm joined by Natasha Labovitz and Dan Stroik --

THE COURT: Okay.

MS. WEISGERBER: -- from Debevoise as well.

THE COURT: Thank you. I was neglectful in not getting your appearance, because, of course, you're at the front and center of this motion to compromise, and I did see that you filed a reply brief yesterday afternoon. Okay. Thank you.

All right. Do we have -- do we have Mr. Dondero on the line? I'm going to check again.

(No response.)

THE COURT: Mr. Dondero's counsel, I cannot hear you, so please unmute your device.

MR. WILSON: Your Honor, it appears to me that Mr. Dondero's device was unmuted as soon as you asked if he was available. I sent him a communication a second ago asking if he's having technical difficulties. I have not received a response, so I --

MR. DONDERO: Hello. Can anybody hear me?

THE COURT: Oh.

MR. WILSON: Okay. I hear him.

THE COURT: Mr. Dondero?

MR. DONDERO: Hello?

THE COURT: Is that you?

MR. DONDERO: Yeah, it is. I've been on. I've heard everything since the beginning. It's just we've had technical difficulties. I couldn't use the Highland offices. We've been trying to set up something else.

THE COURT: All right.

MR. DONDERO: But I'm on now, if -- yes.

THE COURT: All right. Very good. Well, I'm glad we've got you.

All right. Well, Mr. Pomerantz, how did you want to proceed this morning?

MR. POMERANTZ: Your Honor, we could take up the HarbourVest motion first, and I will turn it over to John Morris. He and Greg Demo will be handling that. And then after that we can handle the other motion, which is unopposed.

THE COURT: All right. Mr. Morris?

MR. KANE: Your Honor, this is -- sorry. This is John Kane for CLO Holdco. Just very briefly, if I may. And this will affect, I think, the Debtor's case in chief, so I'll expedite things a little bit, I believe.

CLO Holdco has had an opportunity to review the reply briefing, and after doing so has gone back and scrubbed the

HCLOF corporate documents. Based on our analysis of Guernsey law and some of the arguments of counsel in those pleadings and our review of the appropriate documents, I obtained authority from my client, Grant Scott, as Trustee for CLO Holdco, to withdraw the CLO Holdco objection based on the interpretation of the member agreement.

THE COURT: All right. Well, thank you for that, Mr. Kane. I think that -- that eliminates one of the major arguments that we had anticipated this morning. So, thank you for that.

Any other housekeeping matters that maybe someone had that I didn't ask about?

MS. MATSUMURA: Yes, Your Honor. This is Rebecca Matsumura from King & Spalding representing Highland CLO Funding, Ltd. I just wanted to put on the record, we -- our client had requested that some of its organizational documents be filed under seal. But we have given permission for the parties to present the relevant excerpts, to the extent it's still relevant after Mr. Kane's announcement, in court. And we'd just ask that the underlying documents remain sealed, but we're not going to object if they show them on a PowerPoint or anything like that.

So, to the extent that you had that on your radar, I just wanted to clear that up for the proceedings.

THE COURT: All right. Well, I did sign an order

late last night. I don't know if it's popped up on the docket.

MS. MATSUMURA: Yes, Your Honor. That's what this referred to. That was what -- these are the documents that were being sealed. And so I just wanted to note, if you -- you know, if the Debtor puts up an excerpt of those documents and you're like, wait a minute, didn't I seal those, that we were the party that requested them be under seal and we're fine with them being shown in court, as long as the underlying documents aren't publicly accessible.

THE COURT: Okay. Got you. Thank you.

All right. Any other housekeeping matters?

MR. MORRIS: Yes, Your Honor. This is John Morris from Pachulski Stang for the Debtor. Good morning.

THE COURT: Good morning.

MR. MORRIS: The only other matter that I wanted to raise, and I can do it now or I can do it later, or Your Honor may tell me that it's not appropriate to do at this time, is to schedule the Debtor's motion to hold Mr. Dondero in contempt for violation of the TRO.

THE COURT: All right. Well, let's do that at the conclusion today. And please make sure I do it. I think I was going to address this last Friday, and we went very late and it slipped off my radar screen. But I did see from my courtroom deputy that you all were reaching out to her

yesterday to get this set, and then Mr. Dondero's counsel reached out to her and said, We're going to file an objection to a setting next Wednesday, or I think you had asked for a setting next Tuesday or Wednesday.

MR. MORRIS: I did.

THE COURT: And I don't -- I don't know if that response/objection was ever filed last night. I haven't seen it if it was. So, we'll -- please, make sure I don't forget. We'll take that up at the end of today's matters. All right. Well, --

MR. MORRIS: All right. So, --

MS. WEISGERBER: Your Honor, one last housekeeping item from -- I'm joined this morning by Michael Pugatch of HarbourVest, who will present some testimony this morning. I just want to confirm he's on the line and confirm no objections to him sitting in for the rest of the hearing.

THE COURT: All right. Mr. Pugatch, this is Judge Jernigan. Could you respond? Are you there with us?

MR. PUGATCH: Yes. Good morning, Your Honor. Mike Pugatch from HarbourVest here.

THE COURT: All right. Very good. I think we had you testify once before in the Acis matter, if I'm not mistaken. Maybe. Maybe not. Maybe I saw a video deposition. I can't remember.

All right. So, we're going to let Mr. Pugatch sit in on

this. Anyone want to say anything about that? I consider him a party representative, so I don't -- I don't think anyone could invoke the Rule.

All right. Very good. Well, let's go forward if there are no more housekeeping matters.

MR. MORRIS: Okay.

THE COURT: Mr. Morris?

MR. MORRIS: Thank you. Thank you very much, Your Honor. John Morris; Pachulski Stang Ziehl & Jones; for the Debtor.

It's a rather straightforward motion today. It's a motion under Rule 9019, pursuant to which the Debtor requests the Court's authority and approval to enter into a settlement agreement with HarbourVest that will resolve a number of claims that HarbourVest has filed against the Debtor.

What I -- the way I propose to proceed this morning, Your Honor, is to give what I hope is an informative but relatively brief opening statement. I'll defer to HarbourVest and its counsel as to whether they want to make a presentation in advance of the offer of evidence. Any objecting party, I suppose, should then be given the opportunity to present their case to the Court. Then the Debtor will call Jim Seery, the Debtor's CEO and CRO. We will offer documents into evidence. I would propose then that the objecting parties take the opportunity to ask Mr. Seery any questions they'd like on the

matter.

After the Debtor rests, I think HarbourVest would like to put Mr. Pugatch on the stand to offer some testimony on their behalf. And I think that that will conclude the case. We can finish up with some closing arguments as to what we believe the evidence showed, but that's the way that I'd like to proceed, if that's okay with the Court.

THE COURT: All right. That sounds fine.

OPENING STATEMENT ON BEHALF OF THE DEBTOR

MR. MORRIS: Okay. So, as I said, Your Honor, this is a -- this should be a very straightforward motion under Rule 9019. The standard is well-known to the Court. There are four elements to a 9019 motion. The Debtor clearly has the burden of proof on each one. And we easily meet that burden, Your Honor.

The standard, just to be clear, the first part is that we have to establish a probability of success, with due consideration for uncertainty of law and fact. The second one is the complexity, likely duration, expense and inconvenience of the litigation. The third part of the test is the paramount interest of creditors. And the fourth part of the test is whether or not the proposed settlement was reached after arm's-length negotiations.

The Debtor believes that it easily meets this standard, and frankly, is a little bit frustrated that it's being forced

to incur the expense by Mr. Dondero in going through this process.

A plain reading, a fair reading of the economics here relative to the claim shows that this is a very reasonable settlement. I don't need to go beyond that, Your Honor. I don't even need to use the word reasonable. It surely meets the lowest standard.

We've prepared a couple of demonstrative exhibits, Your Honor. I'm going to use them with Mr. Seery. But I'd like to just put one up on the screen now, if I may.

Ms. Canty, can you please put up Demonstrative Exhibit #3?

Demonstrative Exhibit #3 is an outline of the economics of the settlement. It includes the various pieces, the components that the parties have agreed to. And it shows, at least from the Debtor's perspective, just what HarbourVest is being given here.

Up on the screen is a demonstrative exhibit. It has citations to the evidence that will be admitted by the Court. The first line shows that HarbourVest will receive a $45 million allowed general unsecured nonpriority claim. And that -- that can be found at Debtor's Exhibit EE, Exhibit 1, at Page 2.

That claim is discounted by the expected recovery that general unsecured creditors are supposed to get. As of November, in the liquidation analysis that was part of the

disclosure statement -- that's the citation in the footnote -- the Debtor believed that unsecured creditors were estimated to recover approximately eighty-seven and a half cents on the dollar. And so we just did the arithmetic there to get to the net economic value of the proposed general unsecured claim.

And from that, we reduced $22-1/2 million because that is the net asset value of HarbourVest's interest in HCLOF, which, pursuant to the settlement agreement, it will transfer back to the Debtor, so that the net economic value is approximately $16.8 million.

You will hear testimony from Mr. Seery that this number is, in fact, overstated, and it's overstated because, since the time the disclosure statement was filed in November, a number of events have occurred that will -- that have caused the estimated recovery percentage to be reduced from approximately 87-1/2 percent to something lower than that. We don't have the exact number, Your Honor, but Mr. Seery will -- and the evidence will show that there's been more expenses, that there's been some resolution of certain claims. There's been some positive issues, too. But that number is probably in the 70s somewhere.

And in any event, I think the point here is, Your Honor, HarbourVest invested $80 million in HCLOF, which was going to participate in the investment in CLOs. They filed a claim for $300 million, through treble damages and other claims. But

the net economic impact of this is going to be somewhere probably in between $12 and $14 million. I'll let Mr. Seery give more precision to that. And it represents less than -- a less than five percent recovery on the total claim.

And we think it's important for the Court to keep that in mind. What are the economics here? Are we overpaying? Is this an unreasonable settlement? And I think the evidence will show that the Debtor is not, but that this settlement that you see before you was the product of arm's length, and I'm going to go in reverse order of the four-part test under 9019.

So, the last part is whether or not the settlement, the proposed settlement was the product of arm's-length negotiation. You'll hear lots of evidence that this settlement that's up on the screen right now very much was the product of arm's-length negotiation.

The third part of the test, Your Honor, is whether it meets the paramount interest of creditors. You know, regrettably, Mr. Dondero is the only purported creditor who is objecting here. He may have done so through different vehicles, but every objecting party here is a debtor [sic] owned and controlled by Mr. Dondero. No other creditor -- not the Creditors' Committee, UBS, Acis, Mr. Terry, Mr. Daugherty -- nobody is objecting to this settlement except for Mr. Dondero. And we believe that that highlights the Debtor's

ability to meet the third prong of the test, and that is these are -- this settlement is in the paramount interest of creditors.

Again, going in reverse, the second part of the test is the complexity, duration, and expense of litigation. There will be no disputed evidence that we meet -- the Debtor easily meets this prong of the test. The evidence is going to show that HarbourVest's claim is based on fraud, fraud in the inducement, fraudulent statements and omissions, the kind of case, Your Honor, that I'm sure you're familiar with that is incredibly fact-intensive, that will be incredibly difficult to navigate through. It will be prolonged, it will be expensive, because you're necessarily relying on he said/she said, basically. And so we're going to have to get testimony from every person that spoke in connection with the events leading up to the transaction. So we think the second prong will be easily met, Your Honor.

And then the last prong -- the first prong, if you will -- is the likelihood of success on the merits. We think that the settlement, the economic recovery that's up on the screen here, which ultimately will be less than five percent of the claimed amount, in and of itself shows that the settlement is consistent with the Debtor's perception of its likely success on the merits. I'm certain that HarbourVest disagrees, but that's okay, we're here today and that's the Debtor's view,

and the Court is here to assess the Debtor's business judgment and whether the Debtor has properly analyzed the issues and gone through the process. And the evidence will show conclusively that it will. That it has.

Mr. Seery will testify at some length as to the risks that he saw. I think that you'll hear counsel for Mr. Dondero ask both Mr. Seery and Mr. Pugatch a number of questions designed to elicit testimony about this defense or that defense. And it's a little -- it's a little ironic, Your Honor, because, really, every defense that they're going to try to suggest to the Court was a valid defense is a defense that the Debtor considered. In fact, it's, you know, it's a little spooky, how they've -- how they've been able to identify kind of the arguments that the Debtor had already considered in the prosecution of their objections here.

But be that as it may, the evidence will conclusively show that the Debtor acted consistent with its fiduciary duties, acted in the best interests of the Debtor's estate, acted completely appropriately here in getting yet another very solid achievement for the Debtor, leaving very few claims that are disputed at this point, all but one of which I believe are in the hands of Mr. Dondero.

So, that's what we think that the evidence will show.

I do want to express my appreciation to Mr. Kane for reflecting on the arguments that we made with respect to the

ability of the Debtor to engage in the transfer or the acquisition of the asset from HarbourVest. I would -- I would respectfully request that we just enter into a short stipulation on the record reflecting that the Debtor's acquisition of HarbourVest's interests in HCLOF is compliant with all of the applicable agreements between the parties.

And with that, Your Honor, I look forward to putting Mr. Seery on the stand and presenting the Debtor's case.

THE COURT: All right. Other opening statements?

OPENING STATEMENT ON BEHALF OF CLO HOLDCO, LTD.

MR. KANE: Yes, Your Honor. Sorry. John Kane on behalf of CLO Holdco.

In response to Mr. Morris, I'm not going to enter into a stipulation on behalf of my client, but the Debtor is compliant with all aspects of the contract. We withdrew our objection, and we believe that's sufficient.

THE COURT: All right. Well, I'm content with that.

Other opening statements?

OPENING STATEMENT ON BEHALF OF HARBOURVEST

MS. WEISGERBER: Your Honor, Erica Weisgerber on behalf of HarbourVest.

HarbourVest joins in Mr. Morris's comments in support of the settlement, and we believe that the question of whether the settlement between HarbourVest and the Debtor satisfies the Rule 9019 standard is not even a close one.

Some Objectors have made arguments about the merits of HarbourVest's claims, which is why we're here. As Your Honor will hear this morning, HarbourVest has meaningful and meritorious claims against Highland, but made the business decision to avoid the time, expense, and inherent risk of litigation in the interest of preserving value, both for itself and for the estate.

Today, Michael Pugatch, a managing director of HarbourVest, will testify before the Court. He'll explain that HarbourVest claims against Highland arise out of certain misrepresentations and omissions by Highland to HarbourVest in connection with HarbourVest's purchase of an interest in HCLOF, one of Highland's managed funds. Those misrepresentations and omissions, as Your Honor will hear, relate to Highland's litigation with its former employee, Joshua Terry, and transfers that were conducted in 2017 to strip Acis of value and prevent Mr. Terry from collecting on an $8 million judgment.

Mr. Pugatch will further explain that HarbourVest would not have invested in HCLOF had it known the underlying facts about those Acis transfers.

Mr. Pugatch will also testify that not only did HarbourVest not know about those transfers, it learned about those transfers when it was accused of orchestrating the transfers itself in the Acis bankruptcy. Your Honor will hear

that the Acis trustee sought extensive discovery from HarbourVest after numerous accusations that HarbourVest was behind the transfers.

Mr. Pugatch will also testify that Highland charged legal fees for itself and its affiliates to HCLOF, essentially forcing HCLOF to fund the litigation involving the Acis bankruptcy and Mr. Terry.

In total, HarbourVest's claims for damages are over a hundred million dollars in investment-related losses, lost profits, legal fees inappropriately charged to HCLOF, its own legal fees. And that's before interest or trebling damages.

But HarbourVest stands ready to litigate its claims, but following hard-fought and extensive negotiations with the Debtors, the parties reached the settlement that's now before the Court. Mr. Pugatch's testimony regarding the strong factual bases for HarbourVest's claims against Highland and its recoverable damages will further underscore the risks that the Debtors faced if they chose to litigate these claims, and why this settlement is fair, equitable, and in the best interest of the estate.

THE COURT: All right. Thank you, Counsel.

Other opening statements?

OPENING STATEMENT ON BEHALF OF GET GOOD AND DUGABOY TRUSTS

MR. DRAPER: Your Honor, this is Douglas Draper on behalf of one of the Objectors. I'd like to just make a few

comments with respect to what I've heard and what the Court is going to hear.

The first issue I'd like to address is the comment by counsel for the Debtor that no other party has objected. The 9019 motion is one of the issues that this Court has to rule on, whether or not there was an objection or not. So the fact that this may be -- bankruptcy is not a popularity contest and not an issue of who votes for what and doesn't vote. This, along with the 1129(a) tests, are clearly within your province, and you need to listen carefully because you'll have to make your own independent analysis whether my objection is correct or incorrect.

Two other points I'd like to make that I think are very salient. Number one is, if you look at the Debtor's disclosure statement, it basically took the position that the HarbourVest claim is of little or no value. And lo and behold, thirty days later, there's a settlement that brings about a significant recovery to HarbourVest. The timing is interesting, and I think the Court needs to pay careful attention to what transpired between the two dates.

And then the last point I'd like to make is, as you listen to the evidence, and what I learned abundantly clear from hearing the depositions, is that the claim of HarbourVest, if there is a claim at all, is probably one hundred percent -- should be subordinated in that it appears to arise out of the

purchase or sale of a security. And, again, I would ask the Court to listen carefully to this because that's what it appears to be and that's what the evidence is going to show to the Court.

THE COURT: All right. Mr. Draper, let me clarify something I'm not sure if I heard you say or not. Were you saying that the Court still needs to drill down on the issue of whether the Debtor can acquire HarbourVest's interest in HCLOF?

MR. DRAPER: No.

THE COURT: Okay. I was confused whether you were saying I needed to take an independent look at that, now that the objection has been withdrawn of Holdco. You are not pressing that issue?

MR. DRAPER: No, I am not. Basically, I think it's the fairness of the settlement. I think the transferability of the interest is separate and apart from the fairness of the settlement itself. I think the fairness -- the transferability was a contractual issue between two parties that the Court does not have to drill down on.

THE COURT: All right. I have another question for you. I want to clarify your client's standing. Tell me -- I'm looking through a chart I printed out a while back. I guess Dugaboy Investment Trust filed a couple of proofs of claim; is that right?

MR. DRAPER: Yes.

THE COURT: Okay. What --

MR. DRAPER: And objections are pending.

THE COURT: Pardon?

MR. DRAPER: Objections to those claims are pending before the Court, Your Honor, --

THE COURT: Okay.

MR. DRAPER: -- and have not been litigated.

THE COURT: And what about Get Good Trust?

MR. DRAPER: Get Good Trust has a proof of claim also that objections are pending to. Pending.

THE COURT: Okay. I don't want to get too sidetracked here, but I know standing was -- was mentioned as a legal argument today. What is the basis for those proofs of claim?

MR. DRAPER: The first one is, with respect to the proof of claim for Dugaboy, there is an investment that Dugaboy made that was then funneled, we believe, up to the Debtor. And the -- the loan that exists, we believe is a Debtor loan, as opposed to a loan to the entity that we made the loans to.

And, again, it's a matter that the Court is going to hear. The claim may or may not be allowed. It has not been disallowed yet.

The second part to the Dugaboy ownership is we own an

interest in the Debtor. And so we are, in fact, a party in interest.

THE COURT: Okay.

MR. DRAPER: It may be a small interest, but it is an interest.

THE COURT: It has a limited partnership interest in the Debtor?

MR. DRAPER: Yes.

THE COURT: Is that correct?

MR. DRAPER: Yes.

THE COURT: Okay. Well, I'll move forward. Thank you.

Does that cover -- any other opening statements? I think that covered everyone who was -- who filed some sort of pleading today. No.

MR. WILSON: Your Honor, John Wilson on behalf of --

THE COURT: I'm sorry. I'm sorry.

MR. WILSON: -- Mr. Dondero.

THE COURT: I missed Mr. Dondero's counsel. I knew we had visited at some point this morning. I just got confused there. Go ahead, Mr. Wilson.

MR. WILSON: No problem, Your Honor. I was just going to say that we will reserve our comments until after the conclusion of the testimony.

THE COURT: All right. Very well.

Mr. Morris, you may call your first witness.

MR. MORRIS: Thank you, Your Honor. Before I do, just two very, very quick points.

THE COURT: Okay.

MR. MORRIS: To be clear, Dugaboy's interest in the Debtor is 0.1866 percent. Less than two-tenths of one percent.

Secondly, the argument that Mr. Draper just made with respect to subordination is one that appears in nobody's papers. And, in fact, not only doesn't it appear in anybody's papers, but Mr. Dondero, I believe, specifically took issue with the fact that a portion of the consideration that HarbourVest would receive would be on a subordinated basis, and he would -- and I think he took the position there is no basis to give them a subordinated claim.

So, I just wanted to point those items out to the Court, not that I think either one makes a large difference today, but I do want to deal with the facts.

THE COURT: Thank you.

MR. MORRIS: The Debtor would call -- you're welcome, Your Honor. The Debtor calls Mr. James Seery.

THE COURT: All right. Mr. Seery, welcome back to virtual court. If you could say, "Testing, one, two" so I can see you and swear you in.

MR. SEERY: Testing, one, two.

THE COURT: All right. I heard you but I'm not yet seeing your video. Is your video turned on?

MR. SEERY: Video is on. Yes, Your Honor.

THE COURT: Okay. I see you now. Please raise your right hand.

JAMES SEERY, DEBTOR'S WITNESS, SWORN

THE COURT: Thank you. Mr. Morris?

MR. MORRIS: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. MORRIS:

Q Good morning, Mr. Seery. Can you hear me?

A I can. Thank you, Mr. Morris.

Q Okay. Let's just cut to the chase here. Are you familiar with HarbourVest's claims filed against the Debtor?

A I am, yes.

Q And did you personally review them?

A I did, yes.

Q Do you recall that over the summer the Debtor objected to HarbourVest's claim?

A Yes, we did.

Q Why -- can you explain to the judge why Harbour -- why the Debtor objected to HarbourVest's claim last summer?

A Sure. The HarbourVest claims, I believe there are about six of them, initially were filed, and they were -- they were relatively vague in terms of what the specifics of the claims

were.

So, we saw the claims but didn't, frankly, pay a lot of attention to the underlying transaction that was referred to in the proofs of claim and the losses that HarbourVest had claimed to suffer -- to suffer with respect to their purchase of securities related to HCLOF and the damages caused by the Acis case. So we filed a pretty pro forma objection. I believe it was a simply stated objection that we didn't have any record that there was anything in the Debtor's books and records that they had a valid claim for any amount against the Debtor.

Q Are you aware that HarbourVest subsequently filed a response to the Debtor's objection to their claims?

A Yes. Yes, I am aware.

Q And did you familiarize yourself with that particular response?

A I did indeed. It was a pretty extensive response, really developing the full panoply of their claims, which included claims for expenses relating to the Acis case, which HarbourVest viewed as being improperly charged to HCLOF by its manager, which is effectively Highland. Those expenses, HarbourVest took the view, were excessive, had nothing to do with the investment, and were simply a pursuit of a personal vendetta against Mr. Terry and his interests by Mr. Dondero, and using HCLOF's money to actually pursue those interests.

In addition, and this was the first time we saw that, HarbourVest brought forth its claims that it was entitled to effectively rescind the transaction. And I say rescind the transaction: In security parlance, they claim that they were induced by fraud, I think as most are -- to enter into the transaction.

As most are aware, the liability limitations in the OMs and the exculpation in the documents are pretty broad, and HarbourVest's position was that they weren't going to be subject to those limitations because the actual transaction that they entered into was a fraud on them, designed by Mr. Dondero, Mr. Ellington, and the Highland team.

Q All right. Let's talk about your understanding, the Debtor's understanding of the factual background to HarbourVest's claim. What is your understanding of the investment that HarbourVest made?

A Well, HarbourVest made an investment in the Highland CLO business. The Highland CLO business was -- was Acis. And effectively, the business had been separated, but in name only. Acis was just a shell, with a few partners -- obviously, Mr. Terry as well -- but it was all Highland personnel doing all the work.

And what they were trying to do with Acis was, in essence, resuscitate a business that had been in a bit of a decline from its pre-crisis heyday.

They were looking to take additional outside capital. They would -- they would pay down or take money out of the transaction, Highland would, or ultimately Mr. Dondero, and they would -- they would seek to invest in Acis CLOs, Highland's 1.0 CLOs. And then with respect to the Acis CLOs, and potentially new CLOs, but with the Acis CLOs, they'd seek to reset those and capture what they thought would be an opportunity in the market to -- to really use the assets that were there, not have to gather assets in the warehouse but be able to use those assets to reset them to market prices for the liabilities and then make money on the equity.

Q Do you have an understanding --

A Then --

Q I'm sorry. Go ahead.

A Why don't I continue? So, the transaction, they found HarbourVest as a potential investor, and the basis of the transaction was that they would make an investment into Acis.

Shortly before the transaction, and while they were doing diligence, Mr. Terry received his arbitration award. I believe that was in October of 2017. The transaction with HarbourVest closed in mid- to late November of 2017. But Mr. Terry was not an integral part. Indeed, he wasn't going to be a key man. He had been long gone from Highland by that time.

What the -- I think you asked me originally what the basis of their claim was. The transaction went forward, and the

basis of their claim is that they really were never -- nothing was disclosed to them about the nature of the dispute with Mr. Terry other than in the highest-level terms; the animosity with respect to which that dispute was held by Highland and potentially Mr. Terry; and really, how those costs would be borne and risks be borne by the investment that they were making.

That was, in essence, the transaction and the high-level view of their claim.

Q Okay. Just a few very specific facts. Do you have an understanding as to how much HarbourVest invested and what they got in exchange for that investment?

A Yeah. HarbourVest invested in a couple tranches, and I forget the exact dates, but approximately $75 million originally, and then they added another five. Some distributions were made in the first half of 2018, putting their net investment in the mid-seventies on the investment, which now is worth about 22-1/2 million bucks.

Q And what percentage interest in HCLOF did HarbourVest acquire, to the best of your knowledge?

A They have 49.98 percent of HCLOF. HCLOF, just to refresh -- the Court is, I think, well aware of this, but to refresh, is a Guernsey entity. Not -- not atypical for structures of this type to use offshore jurisdictions and sell the securities under -- at least to U.S. -- can't sell them to

U.S. investors unless they qualify, and these are sold under Reg S to -- to investors that otherwise qualify. And HarbourVest was investing in that transaction through the Guernsey structure.

Q And do you have an understanding as to who owned the 50-plus percent of HCLOF that HarbourVest was not going to acquire?

A Yeah. There's -- you can tell by the name. HCLOF is Highland CLO Funding. This is a Highland vehicle. So Highland owned and controlled the vehicle. The DAF, which is -- which is Dondero-controlled trusts, have the -- 49 percent. Highland has, I believe, around .63-65 percent directly. And then Highland employees at the time who were involved in the business owned another small percentage.

So the majority was going to be controlled by Highland through its control of DAF and its control of the employees that worked for it. HarbourVest would be a minority investor.

Q Okay. And I believe you testified that the investment was made in mid-November; is that right?

A That's correct. I think it was the 15th, may have been the 17th of November.

Q And do you recall when in October the Terry arbitration award was rendered?

A It was about a month before. I think it was right around the 20th, the 17th to the 20th. I may be slightly wrong on

each of those dates.

Q Okay. What is your understanding as to what happened after the issuance of the award that is the basis or at least one of the bases for HarbourVest's claim?

A I don't think there's -- I don't think there's any dispute. And there certainly are judicial findings. Dondero and Highland went about stripping Acis of all of its assets. So, remember that Acis is not a separate standalone company, in any event. It's controlled and dominated completely by Highland at the time. But it did have contracts. And those contracts had value.

So the first idea was to strip out the management contract and put it into a separate vehicle, which we called HCF Advisor, which Highland still owns. The second piece was to strip out some valuable assets, the risk retention piece, which was a loan that in essence was equity that Highland had put into Acis but structured as a loan, as many of the transactions we'll see down the road are, in order to deal with some -- avoid taxes in any way possible. And that structure, that value moved value out of Acis for the express purpose of trying to run, in essence, the Highland business back in Highland.

Remember, as I said, Acis is just a Highland business moved to a separate shell. When Mr. Terry got his arbitration award against Acis and was seeking to enforce it, it was

pretty straightforward, let's take all the assets -- Dondero scheme -- let's take all the assets and move them back into Highland so Terry can't get anything.

Q And how does that scheme relate to the HarbourVest claim, to the best of your knowledge?

A Well, HarbourVest -- HarbourVest's position is that they invested in Acis and -- and whether Acis was called Acis or called Highland, it doesn't really matter; there were valuable assets in the -- in the entity that they were going to be investing in through the equity in these CLOs and some of the debt securities in those CLOs.

And then the stripping out and the fraudulent conveyances out of Acis caused them damages because that's what left the damage to Mr. Terry.

The quick math on Acis, by the way, is Acis has probably lost, total damages, 175 million bucks. And that's pretty easy. DAF lost 50. HarbourVest lost 50. Fifteen million of fees charged to HCLOF. Another five million of fees, at least, incurred by Mr. Terry. Ten million that went to Mr. Terry, 15 to Highland fees, another five, plus Mr. Terry's settlement in this case, over eight million bucks.

So HarbourVest's position, which, on a factual basis, you know, is problematic for the estate, is, wait a second, we invested in this vehicle with Highland. That was supposed to invest in Highland CLOs. They were called Acis, but they were

Highland CLOs. And then you went about causing tremendous damage to that vehicle that we ultimately were investing in, and then charge us for the pleasure.

Q You used the phrase earlier "OM," I believe.

A Offering memorandum.

Q Offering memorandum? Can you just explain to the Court your understanding of what an offering memorandum is?

A Typically, under U.S. law, and foreign jurisdictions have similar laws, you have to have a document that explains the securities that you're selling. And it goes into extreme detail about the securities and the risks related to those securities.

And the idea is not to have a document that tells you whether it's a good investment or a bad investment, but it's a document that discloses to the potential investor all of the risks with respect to that security or related to the investment over the duration of the security. It doesn't predict the future, but it's supposed to make sure that it gives you a very clean view of the past and a very clean view of what the facts from the past are and how they would implicate the future of the investment.

Q And in the course of its diligence, did the Debtor have an opportunity to review the offering memorandum in the context of the claims that were being asserted by HarbourVest?

A Oh, absolutely. It was originally effectively -- it's an

HCLOF offering memorandum. But as I said, HCLOF was managed and controlled by Highland, and Highland originally prepared it. And then, of course, in connection with -- with this dispute and these claims, we reviewed it, both myself and my legal team.

Q All right.

MR. MORRIS: Your Honor, the offering memorandum is on the Debtor's exhibit list, and I think this is an appropriate time to move into evidence Debtor's Exhibits A through EE, all of which appear at Docket No. 1732.

THE COURT: 1732?

MR. MORRIS: It's the Debtor's Second Amended Witness and Exhibit List.

THE COURT: All right. Any objection to admission of A through EE?

MR. DRAPER: Douglas Draper. No objection, Your Honor.

THE COURT: All right. Mr. --

MR. MORRIS: May I proceed?

THE COURT: Yeah. Mr. Wilson, did you want to confirm no objection?

(Echoing.)

THE COURT: All right. Hearing no objection, Debtor's A through EE are admitted.

(Debtor's Exhibits A through EE are received into

evidence.)

THE COURT: Go ahead, Mr. Morris.

MR. MORRIS: Thank you, Your Honor. The offering memorandum itself is one of the documents that we filed under seal, and we did so at the request of counsel to HCLOF. But HCLOF has consented to our sharing up on the screen certain very limited provisions of the document, without waiving the request that the agreement otherwise be maintained under seal.

THE COURT: All right.

MR. MORRIS: So may I proceed on that basis, Your Honor?

THE COURT: You may. Uh-huh.

MR. MORRIS: Okay. Ms. Canty, can you please put up on the screen Demonstrative Exhibit #1? Okay. Can we just -- is there a way to just expand that just a bit, Ms. Canty? Thank you very much. And if we could just scroll it up? Thank you very much. Perfect.

Okay. So, Your Honor, this, as the footnote says, is an excerpt from the offering memorandum that can be found at Debtor's Exhibit AA. Double A. And this particular portion of the offering memorandum is at Page 35.

THE COURT: Okay.

BY MR. MORRIS:

Q Mr. Seery, have you seen this portion of the offering memorandum before?

A Yes, I have. But before I continue, I just -- I should have checked. Are you able to hear me clearly? Am I speaking too quickly or am I cutting out? I just want to make sure. I'm using a different set of audio today.

THE COURT: All right.

MR. MORRIS: That's fine.

THE COURT: I hear you very well.

MR. MORRIS: Yeah.

THE COURT: So I think we're good right now. Thank you.

THE WITNESS: Yeah. Thank you, Your Honor. I was just checking.

THE COURT: Okay.

THE WITNESS: In response to your question, Mr. Morris, yes, I have seen this before.

BY MR. MORRIS:

Q Okay. And can you -- did you form a view in doing the due diligence as to the adequacy of this disclosure?

A Yes, I did.

Q Can you share your -- or share with Judge Jernigan the Debtor's view as to the adequacy of this disclosure concerning the litigation between Highland and Acis?

A With respect to the litigation between Highland and Acis, or, really, between Acis, Highland, and Highland's principals and Acis's principal, totally inadequate. The disclosure here

is very high-level. And if there were no other litigation going on, it might serve to suffice. It basically says, In our business, because we invest in distressed loans, there's a lot of litigation around distressed investments, and that's what we have. And then it says, We've talked with the investor about other things and we're -- we think that's enough.

Q Is there anything in this portion or anywhere in the offering memorandum that you're aware of that disclosed to HarbourVest that in the weeks leading up to the investment Highland was engaged in the fraudulent transfer of assets away from Acis?

A No. And I apologize, because I think it's -- I've conflated two provisions. This one only deals with the very high-level nature of the business. It doesn't give any indication that there's any material litigation going on elsewhere with respect to Acis.

I believe there's another provision that says, We -- we have talked to -- oh, here -- I'm sorry. It is here. Shareholders have had an opportunity to discuss with Highland to their satisfaction all litigation matters against Highland and its affiliates unrelated to its distressed business.

That, in my opinion, is wholly inadequate.

Q Okay.

MR. MORRIS: And let's put up -- actually, let's just

move on.

BY MR. MORRIS:

Q Let's go to the settlement itself.

MR. MORRIS: Can we put back up Demonstrative Exhibit #3?

BY MR. MORRIS:

Q Mr. Seery, can you see that?

A Yes, I can.

Q Does this generally describe the net economic recovery of the HarbourVest settlement based on estimated recoveries for general unsecured creditors as of November 2020?

A As of November 2020, it does. And you alluded to this in your opening, but to be clear, the numbers have shifted. Costs have increased. The -- so the -- effectively, the numerator, in terms of distributable value that we estimate, is lower. And settlements, the denominator, have also increased. So the claims against the estate that have been recognized have increased. And that, that probably takes it down closer, in our view, to about seventy cents distribution, a number closer to nine to ten million, maybe a little bit less.

However, there's also some additional value that we -- we believe we will recover directly. There are north of $150 million of intercompany notes owed by Dondero entities to Highland. A number of those notes are demand notes, and we've

already made demand. We'll be initiating actions next week. So those are -- those value, we believe, we'll recover directly from Mr. Dondero and from related entities.

To the extent those related entities don't have value, we feel very strongly about our ability to pierce the veil and reach in to Mr. Dondero. And then his assets, either his personal assets or the assets that he claims are in trusts.

In addition, there are a significant amount of notes that were extended in two -- I believe around 2017, for no consideration. Those notes were demand notes, I believe, and then extended it 30 years. So they have 2047 maturities. Those were probably going to have to be subject to fraudulent conveyance type actions or -- or some sort of sale at a very discounted value because third parties wouldn't want long-dated notes with Mr. Dondero as the counterparty for very much money.

Those -- they defaulted on some of those parties, so we effectively turned them into demand notes. We've accelerated, and we'll be bringing actions against those entities next week as well.

So I think (garbled) have come up, so I apologize. One way of saying I think the sixteen and a half is a bit high right now, based upon what we know, but the value is going to be higher than our estimate a couple of weeks ago because we do believe we'll be able to recover on the notes.

One additional caveat, just to be fully transparent here. This summary with the 16.8 doesn't include the subordinated piece of this -- of this claim and our resolution. That -- recovery of that piece will be dependent upon the success of litigations.

In order for the subordinated piece to get paid, all general unsecured claims in Class -- Classes 7 and 8 will have to be paid in full. And then -- and then the subordinated class in Class 9, which we believe UBS will have a piece of, and HarbourVest will have a piece of by this settlement, those will be able to recover, and those will be based upon other claims of action against -- primarily against related parties.

Q And then that last point, is that what's reflected in Footnote 3 on this page?

A That's correct, yes.

Q Okay. And just for the record, there's a reduction in value of $22-1/2 million. Do you see that?

A Yes.

Q And can you just explain to the Court what that is and how that value was arrived at?

A Yes. I may be getting slightly ahead of you, Mr. Morris. But to give the Court a reflection of the transaction -- and we can go into the details in a moment -- ultimately, the transaction we structured we think is very fair both economically to the Debtor, but there -- there is some

complexity to it to satisfy some of HarbourVest's concerns that they be able to effectively rescind the transaction, at least from an optical perspective. Value was important, but optics were as well. The twenty-two and a half is the current -- actually, the November value of HCL -- the HarbourVest interests in HCLOF. And that's based upon Highland's evaluation of those interests.

So we do believe that that is a fair value as of that date. It has not gone done. It hasn't gone up explosively, either, but it hasn't gone down. We think that's good, real value. That value is in the Acis CLOs, the equity in those CLOs, which is 2 through 6, that we -- we will be working with the HCLOF folks to get Mr. Terry to monetize those assets and those longer-dated CLOs.

In addition, I think it's 85 percent of the equity in Acis 7 -- Acis 7 is managed by Highland -- that is also beyond its reinvestment period. And in talking to the directors -- and they're new directors, and I'll get to that in a minute, for HCLOF -- they'll seek to push Highland, which is the reorganized Highland, to monetize that asset, with due regard to fair value.

In addition, Harbour -- HCLOF owned a significant amount of the preferred or equity pieces, if you will, in the Highland CLO, 1.0 CLOs. As we've talked about, those are not really CLOs. Those are effectively closed-end funds with

illiquid assets, primarily illiquid assets in them. We've had some dispute in front of the Court about selling the liquid assets in them, which we can go into it another time. Those are being liquidated in the market at fair value.

But HCLOF also is a significant holder of those preferred shares, and those directors would -- have indicated to me that they would like to see those interests also monetized.

Q All right. Let's shift gears for a moment to talk about the diligence that the Debtor did before entering into this agreement. Can you just describe for the Court generally the diligence that was undertaken at your direction?

A Well, when we first received the reply to our objection, we dug into that reply and the specifics in it very aggressively. So we reviewed all of the underlying documents related to the original transaction. We discussed with counsel the legal basis for the HarbourVest claims. We interviewed our own HCMLP employees who were involved in the transaction and tested their recollection, specifically around who dealt with HarbourVest, who had the discussions with HarbourVest, what was disclosed to HarbourVest with respect to the Terry dispute and the Acis litigation.

We also had done, as I think the Court is well aware from prior 9019 testimony, extensive work around the transfers and the issues related to Acis. So we were familiar with their impact on HCLOF.

We also did extensive work valuing the remaining HCLOF interests to get a good feel of not only how much HarbourVest originally invested, but how much they actually lost in this transaction. And as I said, their original investment was around, in total, in two tranches, about $80 million, of which they got about $5 million back, and they've lost $22 million. So it -- I mean, remaining with $22 million. So they've lost, you know, in excess of $50 million.

Q Do you recall whether the Debtor reviewed and analyzed all of the documents that were cited in HarbourVest's response to the Debtor's objection to the HarbourVest proofs of claim?

A Yeah. I think -- I forget, to be honest, which -- exactly what documents were in there. But we went through their objection with a fine-toothed comb, not only with respect to the issues related to the Acis case, but also their references to Guernsey law, other U.S. law, any of the documents between the parties. And obviously, as I mentioned before, the offering memorandum.

MR. MORRIS: Your Honor, I would just note for the record that Debtor's Exhibits I through X are all of the documents that are cited in HarbourVest's response to the Debtor's objection to the HarbourVest proofs of claim, and those are the documents that Mr. Seery just referred to.

THE COURT: All right.

MR. MORRIS: Just, they're in evidence now, and I

just wanted the Court to understand why they're in evidence.

THE COURT: Okay. Thank you.

MR. MORRIS: You're welcome.

BY MR. MORRIS:

Q Let's talk about the Debtor and whether or not it had or has any viable defenses. Did the Debtor form any views as to whether or not it had any defenses to the HarbourVest claims?

A Yes, we did.

Q Can you describe for the Court the defenses that were reviewed and analyzed by the Debtor?

A Yeah. I think we -- we had very significant defenses. So, first and foremost, with respect to the original proof of claim, as I mentioned earlier, it alluded to the expenses and the overcharge. And I think with respect to the 15 million of fees that were charged to HCLOF by Highland, we didn't have a lot of defenses to that claim.

It's pretty clear, by any fair view of the Acis case, that HCLOF, as the investor in the Acis CLOs and the Highland CLOs, had no real responsibility for fighting with Acis and Josh Terry and shouldn't have been charged those fees. I don't -- I don't think there's a legitimate investor that would actually think that that was an appropriate amount to be charged to a fund.

However, the claim was not as broad -- the proof of claim was not as fulsome in terms of discussing and only vaguely

referred to other damages. So we did -- we did, as a threshold matter, think about whether we could argue that it was time-barred because they had not met their obligations to fully disclose under the proof of claim.

Secondly, we considered the defenses to the overall claim of fraudulent inducement. Our perspective was that if we could stop the claim of fraudulent inducement, the damages would likely be limited to the 15 and maybe some -- some other damages. With respect to the 15, again, the problem that we had when we got past -- past motions for summary judgment is the factual predicate for our defense was going to be that we divulged these things to HarbourVest and that they did not reasonably -- it was -- reasonably rely on some failure to divulge because they're a sophisticated investor.

The problem with that defense is that our witnesses, which really would have primarily been Mr. Dondero and Mr. Ellington, and one other employee who runs the CLO business, Mr. Covitz, would not be pretty good. They've been -- two of them have been in front of this Court and they're not viewed favorably and their testimony would be challenged and potentially suspect.

So that gave us a real focus on trying to make sure that we could, if we had to litigate, that we would litigate around the fraudulent inducement.

As I said, reasonable reliance, what was disclosed, lack

of digging into the public record, because you don't have to go far on Google to find "fraud" within two words of "Highland," and the tremendous, you know, litigious nature of Highland. You know, even at that point, when this investment was made, aside from Mr. Terry's arbitration, which by that point, at least by the time (inaudible) was public, there was, you know, significant public disclosure around the Credit Strat and the litigation, the Crusader litigation, the UBS litigation, the, gosh knows, the Daugherty litigation.

So our defense was going to be that you should have figured this out, you're a sophisticated investor, and you should have been able to figure out that there was significant risk that, with respect to Mr. Terry, that Mr. Dondero would not stop litigating and that those costs would put significant risk on the investment.

The problem with that, as I mentioned earlier, is that the OM is wholly deficient. If you have a typical risk factor in the offering memorandum, you would have disclosed that there was a litigation with Mr. Terry, a former partner in the business, and that the Debtor had no intention of settling it. There was no intention of settling. That litigation would go on. It could go on for years and it could result in bankruptcy or attachments and other risks to the business, and that the investor should be fully aware that the Offeror does not intend to be involved in any -- or the manager, in any

settlement with Mr. Terry, and the fact it undermined the investment. That wasn't there.

But that was our preliminary focus, to try to stop fraud in the inducement. And then we -- we had specific facts related to that. You know, once they knew about the bankruptcy in HarbourVest of -- I'm sorry, of Acis, HarbourVest made a second funding, which was there was a -- it was an initial $75 million draw, and then a second, I believe, about a $5 million draw, which was in -- I believe in February. And they made it without -- without objection, and that was after the commencement of the bankruptcy.

In addition, they were -- they were active in the bankruptcy, so the -- some of the things that happened in the bankruptcy, there were many opportunities to settle that case, from our examination, all of which were turned down to -- by Mr. Dondero. But you don't see HarbourVest pounding the table to settle, either, either with respect to the Oaktree transaction or any other transaction.

Now, HarbourVest's defense to that is, well, we were taking advice and all of our information from Highland, and we were getting that information directly from senior folks at Highland why -- what the value was and why we shouldn't do those things. We thought that that would mitigate some of the arguments that -- some of the damages that we might have, I'm sorry, if we -- if we lost.

But the focus at that point, you know, our legal strategy, was can we stop HarbourVest at the very forefront to say, You've got to come into the factual realm and get out of the fraud in the inducement realm. And then the defenses and the exculpations and the liability limitations in the documents would also come into play.

So that -- those are some of the defenses that we focused on and our analytical thinking around them.

Q So, if the Debtor had viable defenses, why is it settling?

A Well, this is a significant claim. And we -- we looked at it with respect to both the impact on the case, but, really, the merits of the claim.

As I said, there's really little dispute that the legal fees should not have been charged to HarbourVest. We think based upon the testimony in Acis, the suspect credibility of those who would have been our witnesses, and the experience in Acis that the Court has had in terms of the completely hell-bent on litigation, it would be hard for anyone to justifiably defend those fees being charged. So, as an initial matter, we had exposure there.

In addition, if HarbourVest got by our defense of -- was able, for example, to claim fraud in the inducement, then we were open to significant damages.

We really didn't put much value, frankly, on the RICO part of it. We think that that's waved around often to show treble

damages. Although in this case certainly somebody could lay out the predicate acts and put forth a RICO-type argument, we just didn't think that that had real merit in this commercial dispute, even with a fraud claim.

But even without the trebling of the damages, there's no dispute that HarbourVest lost more than $50 million in this investment. You know, we -- we thought about that risk as well.

In addition, because the case would really be fact-based, even if we had a high degree of confidence based upon our discussions with our employees and the factual testimony, it was going to be expensive to litigate this case, and time-consuming.

And so we looked at the economic value, the potential risks, and the actual value that we were giving up, and found this to be an extremely, extremely reasonable settlement.

Importantly, and I think what drove it, you -- one of -- one of the things that drove it is another one of our defenses on why, notwithstanding their -- what they held out as meritorious claims, I don't think HarbourVest really wanted to publicly litigate this claim. And we were aggressive in our discussions with HarbourVest of how we would litigate it, which would be quite publicly.

Now, that may or may not be fair, but that does put risk on the counterparty. And so I think that helped drive the

settlement.

In addition, the structure of the settlement we think is extremely favorable to the Debtor and to the estate because, rather than taking the full claim and putting it into a senior unsecured position, we have bifurcated it. We did think about whether this was a claim that could be subordinated under 510. There won't be any arguments, I would be surprised if there's arguments today that we didn't actually give to the Highland employees who have given them to Mr. Dondero's respective counsel.

We did structure it in a way that we thought gave HarbourVest the opportunity to effectively claim a rescission, even though that's not really what it is, and then be able to claim that their recovery is based on the bankruptcy, which it is, but not really dilute all the other stakeholders in the case.

(Pause.)

THE COURT: Mr. Morris? Anything else?

MR. MORRIS: I can hear you, Your Honor.

THE COURT: Okay.

MR. MORRIS: I can hear you.

THE COURT: Okay. Now can you --

MR. MORRIS: I got cut off from Mr. Seery for a moment.

THE COURT: Okay.

BY MR. MORRIS:

Q Okay. I appreciate that. Are you done giving the Debtor's basis for entering into this settlement, Mr. Seery, if you can hear me?

A I think so, but I think as the Court has probably seen, I can go on.

Q Yes.

A So I will try to be -- I'll try to be more concise. But this was a -- this was a difficult settlement. We felt good about our defenses. Felt that we could -- we could try them. But it would be extremely expensive, time-consuming, and there would be a lot of risk. And settling at a level which we believe is actually below the damages that were clearly caused only by the fees was a -- was a -- is a -- is a very reasonable settlement.

Q Okay. Let's just talk about the process by which we got to the settlement. Do you recall generally when the settlement negotiations have -- were commenced?

A I believe it was -- was late summer, early -- early fall.

Q Okay. Before I move on, I just want to go back to the Acis matter that you were talking about, one last issue. Do you know how, if at all, the injunction that was entered in the Acis bankruptcy impacted or related to the HarbourVest claims?

A Yeah. I -- yes, I do. And I believe it -- it did. I

think there's an argument, and we analyzed it thoroughly, that the injunction effectively caused a lot of the damages. Because if you look at the values of the equity that HarbourVest had, the -- and HCLOF had in the CLOs, it went down dramatically after the Trustee in the Acis case took over and then subsequently, when the case was reorganized and Mr. Terry took over, you know, with Brigade as the sub-advisor.

Now, that would -- you know, we would -- we could certainly attempt to throw, in our defense, the causation at Mr. Terry's feet or at Mr. Phelan's feet. HarbourVest's retort is that none of this would have occurred but for the burn-it-down litigation that Mr. Dondero engaged in with Highland.

In addition, in Mr. Terry's defense, you know, he did try multiple times with HCLOF, tried to petition, if you will, the HCLOF entity to -- and directors, former directors, to reset the CLOs to make them more economically viable, based upon the current level of asset returns versus the debt costs in the CLOs. And that was rejected by the HCLOF and the Debtor as the controlling party of HCLOF. So, we thought about those risks.

You know, similarly, the economic values in Acis 7 went down pretty significantly from that date as well. So I think there's -- there are some defenses, but that's really Mr. Terry's issue, not our issue. So we thought about those

issues, we analyzed them, and we certainly did all the work around month-to-month reductions in NAVs and how different events in the Acis case might have -- might have caused those and was that some sort of break from the original transgression that HarbourVest claims, which was the fraudulent inducement.

Q Do you recall that in November HarbourVest's motion under 3018 was scheduled to be heard?

A Yes.

Q And can you just tell the Court your understanding of what the 3018 motion was about?

A Well, the 3018 motion was going to be on voting. And we took the view that it really was not -- it shouldn't have been that big an issue and HarbourVest should have been content with just taking their actual losses of roughly a $50-$60 million claim for voting purposes and then we would move on.

HarbourVest was very insistent that they have a $300 million claim, because they took the position -- and with extensive documentation; not only the pleadings they filed, but also detailed decks that were prepared by their counsel, which they had presented to us on the merits of their claim -- that they were going to litigate for -- the 3018 and for the full $300 million value.

And that became the genesis, if you will, of the negotiations to settle.

So, we started talking about the 3018. It was very contentious. My apologies to Ms. Weisgerber and her counsel, her partners, because it was a significant and contentious negotiating call. But the reasons for that I think were that -- their insistence on litigating the 3018 and our view that this was just, you know, another -- another of a series of delays and costs in this case that we really were hoping to avoid.

That led to Mr. Pugatch and I stepping away from counsel, no offense to counsel, you know, ours and his, to begin negotiations around the potential for a settlement. First, it started with a 3018, and then, you know, argued that we would, if we got past the 3018, we were going to litigate this, because we effectively had -- thought we could get everyone else done at -- in and around that time. And I think we were also probably a little bit optimistic about UBS at that time and the mediation, which subsequently we have settled. But that was the genesis of those settlements.

Q And how did the structure, how did the Debtor and HarbourVest derive at the structure whereby there is a general unsecured claim, there is a subordinated piece, and there's the takeback of the HCLOF interest?

A Well, as I outlined, we -- we aggressively set forth our various defenses. Their position was that they -- they should never have been in this transaction before. And they --

HarbourVest is, in essence, a fund of funds, and they have investors, and it certainly wouldn't be their, I'm sure, the best-performing asset in their portfolio, to have made this investment and lost $50 million over this period of time. So they felt strongly that they should never have been in this investment, and but for the failure to disclose and the improper disclosures, they would not have been in this investment.

So, optically, getting out of it was important to them, and that led to our idea and construction of a subordinated claim and the transfer of the HCLOF interests to the estate.

Importantly, the HCLOF interests, as I mentioned, are -- the investments are in the Acis CLOs controlled by Acis and Mr. Terry. The reorganized Acis. As well as the 1.0 CLOs and the Acis 7.

So we were keenly focused on, if we were going to get that interest, would we then have the majority control in HCLOF, which we will, and would we be able to drive the recoveries, as opposed to what Highland typically does in these investments is use other people's money, drive down the value, and then try to buy back the interest on the cheap.

Q Just in terms of timing, because I think there was a suggestion in one of the openings that there was something untoward about the timing here: At the time the liquidation analysis was prepared on November 24th, had the Debtor reached

any agreement in principle with HarbourVest?

A If we had, it would have been reflected, so I don't -- I don't think we were agreed by then. I don't recall the specific dates, but if we had, it would have -- it would have been reflected.

Q If I can refresh your recollection that the motion was filed on December 24th, does that help form your understanding or refresh your recollection that there was no agreement in principle on November 24th?

A Yeah. Well, I'm quite sure there was no agreement in principle or we would have reflected it minimally by a footnote. There's -- there's no chance. It's a material reduction in the claims pool that we were previously telling people that, at least for purposes of distribution, like UBS and a couple others we said we thought we would get to zero on. So we didn't calculate in that amount. So I'm quite sure we didn't have a deal when we filed the disclosure statement.

In terms of the timing, anyone who's done this business for any degree of time knows that the crucible of bankruptcy brings people to the settlement when they see something happening in the case, and not before. I think HarbourVest looked at our -- this is my supposition -- HarbourVest looked at our plan, our ability to get this done, our settlement with Redeemer, our settlement with Mr. Terry and Acis, and saw that this plan was coming together, and if they didn't think about

the settlement, they were going to think about not only the risks that we laid forth for them with respect our defenses, but also the opportunity to litigate with the Claimant Trustee over a long period of time, which couldn't have been particularly appetizing.

Q Can you describe for the Court the role played by the independent board of Strand, the general partner of the Debtor, in analyzing and participating in the approval process?

A Yes. I think, as the Court is aware and I've testified before, Mr. Russell Nelms and Mr. John Dubel are fellow independent directors with me, appointed pursuant to the Court order. They are kept abreast of every detail, and -- along the way, not just in a summary form at the end. We have reviewed and analyzed collectively each of the issues. Mr. Dubel has extensive experience in these types of litigation matters. Obviously, Mr. Nelms, from his -- both his practice and his time on the bench, has a keen insight into how to resolve and what the risks and benefits are from settling litigation. So I consult them every step of the way.

Q And as part of this process, did the Debtor reach out to the directors of HCLOF?

A Yes, we did. So, we reached out and we've had several conversations on video chats with the directors. The directors of HCLOF are two new gentlemen, Mr. Richard Boleat

and Mr. Dicky Burwood. They are extremely professional. They are exceptionally well-informed. They are truly careful, and I would say very experienced professional not only directors, but experienced in -- in these matters, both in respect of structured finance as well as these types of vehicles and litigation.

They were appointed by the old directors, Scott and Bestwick, and they have been in control. They have outside counsel, which is King & Spalding in the U.S. They have Guernsey counsel. They have accountants and professional advisors, and are being, in my opinion, exceptionally careful. I've got -- very quickly developed a lot of respect for them, and we consulted with them on this settlement and how it would work.

They've been very clear that they represent HCLOF and they work for the benefit of the equity, whomever owns it, and taking a view that they would like to see these assets monetized swiftly, with due regard to value, for the benefit of the equity.

Q And is it your understanding that the directors of HCLOF approved of this transaction?

A They -- I don't know that their approval was required. It's really -- there are a number of hoops to jump through under the documentation, including opinion of outside counsel that we received from WilmerHale in terms of the effectiveness

of the transfer under the documents. We had a negotiation with -- with those directors, and making sure that we did everything correct -- correctly, excuse me -- with respect to the requirements for the transfer under the documents. And they've indicated their support and acknowledgement that we're doing it correctly.

I don't know if it's fair to say they approved it. I'd just have to go check the documents. But they certainly support it. And I think they generally support our position with respect to how to move forward with the assets.

Q I appreciate that. I guess I meant approval with a small a and not a capital A.

You mentioned WilmerHale. Who do they represent in all of this?

A WilmerHale is the Debtor's outside corporate counsel, in particular with respect to the fund issues that we don't handle in-house. We have significant support for fund issues from the expertise of Mr. Surgent, who's been the CCO, and he is also a lawyer, with respect to, you know, some of the difficult fund issues that Highland has. But when we use outside counsel, we use WilmerHale for that, and they've been -- they've been exceptional.

Q Okay. Just the last two points that were made in Mr. Dondero's objection, I believe. Did the Debtor overpay in this settlement in order to gain the support of HarbourVest in

connection with its -- with the Debtor's attempt to get its plan confirmed?

A Not in any way. My -- I believe the settlement is extremely reasonable. As I testified, it's -- it's less than the -- the actual value going out, depending on unless there's successful litigation, and there well could be, is less than on a pro forma basis the fees that were taken and charged to HCLOF. We didn't do this for votes. We will have Class 2, Class 7, Class 8, and Class 9. So I don't think that's a -- there's no vote purchasing, I think you called it. No, not at all.

Q Yeah. Well, on that topic, I think the phrase that was used was gerrymandering. Are you aware of the argument that's been made that the subordinated claim was dropped in there in order to gerrymander a positive vote for the impaired class of Class 9, I believe?

A In a word, I would say that's preposterous. The -- as I said, we have a number of classes that will vote for the plan. The plan is -- the plan is a monetization plan. And if -- if the creditors determine that they don't want to pursue this plan, we'll go forward with another -- we'll try to get another plan. We tried to have a grand bargain plan. We tried to have a pot plan, as I've testified previously. I'm quite certain that I've done more work on that than anyone else, including Mr. Dondero and anybody who works for him.

And he hasn't been willing to do that.

This is a -- this is a plan that's come together. We think it's going to be in the best interests of the estate. That'll be confirmation next week. Or two weeks, I guess. But I don't see how this is any way related -- this settlement is not any way related to the voting on that -- on that -- on that plan.

Q Just to put the finest point on it, is the Debtor relying on Class 9 to be the impaired consenting class?

A No. I think -- I think what I've -- as I said, I believe we already have the votes in Class -- I think it's 2 or 3, 7, 8, and -- and 9 will vote in favor as well. So that won't be an issue.

MR. MORRIS: Your Honor, I have no further questions of Mr. Seery.

THE COURT: All right. Pass the witness. I'll ask HarbourVest counsel first: Do you have any questions of Mr. Seery?

MS. WEISGERBER: No, Your Honor.

THE COURT: All right. Thank you.

What about cross-examination? Mr. Dondero's counsel?

CROSS-EXAMINATION

BY MR. WILSON:

Q Mr. Seery, how are you doing today?

A I'm well, thank you.

Q I'm John Wilson, and I represent Jim Dondero. I have a few questions for you today.

Now, the HarbourVest proof of claims were filed on April 8th, 2020; is that your recollection?

A I believe that's correct. I don't recall the specific date.

Q Okay. And do you know when you first became aware of the HarbourVest claims?

A I believe it was early in the summer when we filed the omnibus objection. It may have been in late spring, shortly after that. I don't recall the specific date of the filing.

Q And before the time of the filing of the omnibus objection, did Highland educate itself regarding the HarbourVest proof of claims?

A I'm sorry, could you say that again? I didn't quite understand it.

Q Before the omnibus objection was filed, did HarbourVest -- I'm sorry, did Highland educate itself on the HarbourVest proof of claims?

A Not especially, no.

Q Okay. And -- but at some point, Highland did investigate those proofs of claim, correct?

A That's correct.

Q And when would you -- when do you recall that that investigation began?

A I don't recall the date, but the triggering event was HarbourVest's response to our omnibus objection.

Q Okay. And that would have been filed September 11th of 2020?

A I'll take your representation. I don't -- I don't recall the specific date.

Q Okay. And so when you began to investigate the HarbourVest claims, what was your initial reaction?

A My initial reaction was that the -- the larger claims that they were asserting -- the fraud in the inducement, the RICO -- that those claims were, in my view, attorney-made and that when we dug in and did the work, we saw that HarbourVest clearly lost north of $50 million on the investment. We had just started to uncover the fee issue and saw the risk we had there.

But I thought the bulk of those claims were attorney-made. Clever, but attorney-made, as opposed to what I would think are more legitimate. And so we started to develop our defenses around that.

Q And was your initial reaction that the HarbourVest claims were largely worthless?

A I think with respect to the claim around the fees, I believed there was significant risk. With respect to the other claims, I thought our defenses would make them worthless, yes.

Q And did you ever represent to any party that the HarbourVest claim was worth, at most, $5 million?
A I think I represented often, including to HarbourVest, that it was worth nothing. I don't recall if I specifically said $5 million. $5 million would have been a nominal amount to -- which is litigation costs. So it may -- it may have been in my models that I put in that as a settlement amount, but I -- I thought that there were valid and good defenses to those larger claims.
Q And you recognize that HarbourVest was a large, sophisticated investor, correct?
A Yes. I think they manage north of -- right around a hundred billion dollars.
Q And you recognize that HarbourVest routinely structured complex customized investments, correct?
A I believe that -- I don't know the intricate part of their businesses, but as a fund of funds who does creative investments, I think that they do do quite a bit of that. This, I believe, was their first investment in the CLO space.
Q And it was not -- or I should say, you did not believe that HarbourVest was simply a passive investor in HCLOF, correct?
A I don't think that that's true, no.
Q You don't -- you don't believe that you denied their claim to be a passive investor?

A Oh, I think -- I'm sure that in defense of their claims I would argue that they were -- they were more than a passive investor. But it was pretty clear when you look at the structure of what they invested that there was an intent that they be passive on their part. They didn't take a majority interest.

In fact, Highland made it clear in the structure of the deal that they couldn't -- it would be hard for them to get a majority interest because Highland entities would control that and Dondero-controlled entities or individuals would control the majority.

I think that they -- they had hoped to be a passive investor.

Q But was it not your position that HarbourVest was actually an active, involved investor?

A I think our defense was going to be that they knew exactly what was going on, that they participated, that they were active, and that, indeed, that they were in and around some of the subsequent issues in the Acis case.

Q And you understood that HarbourVest played a material role in the various outcomes in the Acis bankruptcy case, correct?

A I don't believe that to be correct, no.

Q Have you ever made that representation to anyone before?

A Not -- not that I recall.

Q Well, do you recall giving statements to a reporter named

Syed Khaderi?

A I've never spoken to a reporter named Syed Khaderi in my life.

Q Well, did you participate in the preparation of statements to be given to Syed Khaderi?

A I've never heard of Syed Khaderi, nor have I participated in any preparation of statements. I don't know who that is.

MR. WILSON: All right. I'm going to have Bryan Assink put on the screen a document.

And Bryan, can you go to Page 7? Bottom of -- the top of Page 7. Well, actually, before you do that, go to the very top of the document.

BY MR. WILSON:

Q Now, Mr. Seery, are you familiar with Lucy Bannon?

A Yes.

Q And who is Lucy Bannon?

A She is the Highland public relations person.

MR. WILSON: Okay. Now go back to Page 7.

BY MR. WILSON:

Q Now, do you -- do you see on your screen an email of September 14th from Syed Khaderi that says, Hi, Lucy, how are you?

A Yes.

Q Have you seen this email before?

A Not that I recall, no.

Q All right. It continues on that, I saw the filing on Friday about HarbourVest claims against Highland for a CLO investment, and I'm looking to put out a report tomorrow morning London time. Ahead of that, I wanted to check if Highland would like to comment on the matter.

MR. MORRIS: Your Honor, this is -- the Debtor respectfully objects. A, this document is not in evidence. B, it's rank hearsay.

THE COURT: Response, Mr. Wilson?

MR. WILSON: Your Honor, I am attempting to authenticate this document, but I'm using it in rebuttal to the testimony that Mr. Seery just offered.

THE COURT: All right. I'll allow it. Overrule the objection.

MR. WILSON: All right. Thank you, Your Honor.

BY MR. WILSON:

Q All right. Now, if we -- and oh, that September 14th date, that was three days after the September 11th date that we discussed was the date that HarbourVest filed its response to the omnibus objection, correct?

A Yes. If that's the date that they filed it, then I -- if you're representing that, I concede that the 14th is three days after the 11th.

Q All right. And if you go back to the first page of this, it looks like, on the following day, Lucy Bannon sends an

email to you, and is that your email address, jpseeryjr@gmail.com?

A That's correct, yes.

Q And do you recall receiving this email from Lucy Bannon?

MR. MORRIS: Your Honor, I renew my objection that this is hearsay. He's not rebutting anything that Mr. Seery testified to. He testified that he'd never heard of the gentleman at the bottom of the document. There's nothing in this document that rebuts Mr. Seery's testimony at all.

THE COURT: Response, Mr. Wilson?

MR. WILSON: Well, I'm not -- I'm not trying to rebut his statement that he hadn't -- that he hadn't heard of Syed Khaderi. My rebuttal is attempted to -- attempting to show that he has made various statements that he denied.

THE COURT: I'll overrule the objection.

BY MR. WILSON:

Q All right. So, back to this exhibit, Mr. Seery. You recall receiving this email from Lucy Bannon on Tuesday, September 15, 2020?

A Not specifically. But to be clear, I recall talking to Lucy Bannon about the HCMLP dispute with HarbourVest.

Q Okay. And --

MR. WILSON: Bryan, can you go down to the next page? Scroll down to where -- the James Seery email.

BY MR. WILSON:

Q Do you see this email on your screen that's dated September 15, 2020 at 10:33 p.m.?
A Yes, I do.
Q And do you recall sending this email to Lucy?
A Not specifically, no.
Q Well, do you deny that you sent this email to Lucy?
A It appears to be my email.

MR. WILSON: Your Honor, we would move to admit this document into evidence as Dondero Exhibit Letter N.

THE COURT: Any objections?

MR. MORRIS: I would consent to the admission of Mr. Seery's email, but the balance of it ought to be excluded as hearsay.

THE COURT: What about that?

MR. WILSON: Well, Your Honor, I think that this document -- and I'll get into this in a little more detail in a second -- but I think this document is a combination of the work product of Lucy Bannon and Mr. Seery in preparing a response for the reporter who requested comment from Highland.

THE COURT: Okay. I --

MR. MORRIS: Your Honor, um, --

THE COURT: Go ahead.

MR. MORRIS: I just -- I do question how they got this document, but that's for another day. That's number one. Number two, in addition to the hearsay argument, I just --

relevance grounds.

THE COURT: Okay. I'll allow the portion that is the communication of Seery, that portion of Exhibit N. All right?

MR. WILSON: Okay. With due -- thank you, Your Honor. With due respect, I -- to use that portion, I need to refer to the portion below it, because he says, Good to submit with your final edit/revisions. And so we need to know what those final edit/revisions are, which are contained in the email directly below that on the document that was four minutes earlier in time.

THE COURT: All right. Fair enough. That'll be allowed.

MR. WILSON: All right. Thank you, Your Honor.

(James Dondero's Exhibit N is received into evidence as specified.)

MR. WILSON: So, Bryan, now can you scroll to the next page? Oh, actually, let's just -- let's just stop at the top -- at the bottom of the page. What's this statement?

BY MR. WILSON:

Q So, to be clear, Mr. Seery, when -- in response to Mr. Khaderi's request for information and comment, you prepared actually two responses, and one of those was a statement on the record attributed to a spokesperson for HCMLP or something along those lines. And then --

MR. WILSON: Can you scroll down to that next page?

BY MR. WILSON:

Q And this says -- I think part of this got cut off for some reason, but it looks like the official statement is in quotation marks. It says, "We dispute the allegations made in the filing and believe the underlying claims are invalid and will be found to be without merit. Our focus continues to be treating all valid claims in a transparent, orderly, and equitable manner, and vigorously disputing meritless in the court. That focus will assure that HCMLP's reorganization process -- progress is towards an efficient and equitable resolution."

And then below that there's another section of this email that says, Background/Clarification, Not for Attribution. And do you know the purpose of this second section of the response?

A Do I know the purpose of that? Yes.

Q And what would that purpose be?

A Ms. Bannon was speaking on background to reporters. As I said earlier, I've -- I never heard of the gentleman from London. If he's at the bottom of the email, I didn't pay any mind, never heard of him. Nor have I heard it since. Ms. Bannon didn't ever reference the specific person.

But she is the public relations person. So, as I testified earlier, she does communicate with the press. And as I previously testified when Mr. Morris questioned me, one

of our tactics and our defenses for HarbourVest was going to be that we were going to be very public and aggressive about the investment and it would have a negative impact or negative perspective for viewers, in our opinion, about HarbourVest's investment.

Q All right. Well, look with me in the middle of that paragraph right after the closed parenthetical, where it says, "But it's important to note the background of HarbourVest's active and deep involvement in the investment of which it now complains."

And so it was your position that HarbourVest had an active and deep involvement in the investment, correct?

A No. I don't think that's correct. Ms. Bannon prepared the statement, it was a litigation defense on background, and that's our -- that was our position for this purpose. It was not my view that they were active and deeply involved. They were certainly involved. There's no doubt about it. But they got all their information, in our estimation and our research, from Highland.

Q But in any event, you would agree with me that four minutes after receiving this email, you approved this statement to go out to the reporter, correct?

A No, that's not correct. That's -- this portion is on background. That statement doesn't go out. The previous statement was the official statement. This is the background

discussion that she would have. So, no, she was not authorized in any way whatsoever to send that out. She was authorized to have conversations with those general facts.

MR. WILSON: Okay. Bryan, go to the top, or the bottom of the page immediately preceding that. That's it. Yes, that's it right there.

BY MR. WILSON:

Q Now, you'll see that this email from Lucy Bannon on September 15, 2020 at 10:29 p.m. starts off, "Jim, let me know what you think of the below. And, again, the first would be on the record and the second will be sent for information purposes to ensure accuracy, not for attribution."

So the intent was that this -- that this entire statement be sent to the reporter, correct?

A I don't believe that's correct. I think when she goes on background she doesn't send them a written doc. It's got to be clear to the reporter, at least my understanding is that what on background means -- I've been involved with this before -- is that typically that's done orally. I don't know if she's done it in a written statement before. I have never seen that done in a written statement before. You give the official statement and then you walk the reporter through your other views on background. And you're not quoted. And it's usually attributed to a source with knowledge.

Q Okay. We'll come back to that in a minute. The next

sentence after the one I just read to you --

MR. WILSON: Go back to where we were on the background.

BY MR. WILSON:

Q Now, we just read you the sentence that starts with, "Then it's important." The following sentence says, "HarbourVest was not simply invested in HCLOF as an ignorant, unsophisticated, passive investor, but was an active and informed participant in the inception of its investment through all of the Acis bankruptcy proceedings, and HarbourVest played a material role in various outcomes related to that case and its impact on HCLOF."

And is it -- did you not just tell me before we investigated this document that HarbourVest did not play a material role in the various outcomes of the Acis bankruptcy?

A I don't know exactly what I said, but I think that's correct, after we'd done the research on it, yeah.

Q But you took the position in this email that you approved to go out to a reporter that says that -- that HarbourVest was an active and informed participant in the inception of -- of its investment through all of the Acis bankruptcy proceedings and played a material role in various outcomes related to that case and its impact on HCLOF. Can we agree with that?

A Yes.

Q And then the final sentence of this paragraph says that,

We believe that neither the facts nor the law support HarbourVest's, quote, We-were-too-lazy-to-know allegations.

Whose words were those, "We-were-too-lazy-to-know allegations"?

A I don't recall. They may be mine. It's aggressive the way I am, so that -- that may well be the case.

MR. WILSON: All right. Go -- go down to the next page.

BY MR. WILSON:

Q And with respect your comment that that second paragraph would not have gone to the reporter, look at this email in the middle of the page from Lucy Bannon to Syed Khaderi, September 16, 2020, at 1:51 a.m. And --

MR. MORRIS: Your Honor, this I will object to as hearsay. There is no witness here to testify to anything on this document.

THE COURT: All right. How about that?

MR. WILSON: Well, it's -- well, scroll up just a little bit. This email at the top of the page is three minutes after the one in the middle of the page, where Lucy Bannon is forwarding this to James Seery, saying, See below for responses sent to *Creditflux*. Will follow up with the story when it runs or with any other updates.

MR. MORRIS: Your Honor, these --

MR. WILSON: So I think this --

MR. MORRIS: These documents don't appear on the witness list. They're not being offered to impeach anything. They're just -- he's taking discovery as we sit here.

MR. WILSON: Your Honor, in response, I'm simply trying to rebut the statements that Mr. Seery made. In fact, he told me just a minute ago that that second paragraph would not have gone out to the reporter. However, this email from Lucy Bannon to Syed Khaderi directly rebuts that statement.

THE COURT: But your whole purpose in this line of questioning, with an undisclosed document, is to rebut the earlier testimony he gave before you even put this exhibit in front of him.

MR. WILSON: I'm trying to rebut multiple statements that Mr. Seery has made today, and I think it -- you know, if he's going to testify that this information did not go out to a reporter, I think I'm allowed to rebut that to demonstrate that it did.

THE COURT: All right. Why didn't you disclose this in advance? It's feeling less and less like an impeachment document the more we go through it.

MR. WILSON: Your Honor, I did not -- I did not actually have this document at the time we filed our witness and exhibit list, but I would also say that I didn't have any purpose to use it if I didn't need it for rebuttal.

THE COURT: Okay. First off, you're supposed to

disclose all exhibits you anticipate using except those for purposes of impeachment. Okay? Not rebuttal, to be technical.

So, if you didn't disclose this exhibit, the only way you can use it, subject to other possible objections, is if you're impeaching a statement. And I'm just saying I think we're going beyond trying to impeach the original statement and now we're trying to impeach statements he's made after seeing portions of the document.

What did you mean, you didn't have this document in time to disclose it?

MR. WILSON: Well, I actually just received this document this morning, Your Honor.

THE COURT: Where did you receive it from?

MR. MORRIS: From who?

MR. WILSON: I -- I honestly do not know the source of this document, although it was provided to me by my client.

MR. MORRIS: Your client being Mr. Dondero?

THE COURT: Could you answer that, Mr. Wilson?

MR. WILSON: Yes, that's -- yes, that's correct.

THE COURT: All right. I will -- that's --

MR. MORRIS: Your Honor, I'd like to --

THE COURT: That's a different can of worms. But for now, I sustain the objection. You're done questioning on this document.

MR. WILSON: That's fine, Your Honor. I can move on.

BY MR. WILSON:

Q Now, Mr. Seery, you would agree with me that whether or not HarbourVest played an active role in the Acis bankruptcy, it was kept apprised of the -- of the ongoings in the bankruptcy? (Pause.) I'm sorry. Could you hear that?

A Yes. My understanding is that -- that they were.

Q And in fact, did Highland have weekly conference calls with HarbourVest during the Acis bankruptcy to discuss what was going on in the bankruptcy?

A I don't know if they were weekly. I've been told that they had regular calls updating HarbourVest, yes.

Q Okay. And did Highland produce over 40,000 pages of documents to HarbourVest related to the Acis bankruptcy?

A I'm not aware of that, no.

Q Have those documents been provided to you?

A I hope not.

Q So, in your role --

A I'm sorry. I don't -- I didn't receive 40,000 documents from anybody.

Q Well, did you receive any number of documents that were provided by Highland to HarbourVest during the Acis bankruptcy?

A I wasn't involved in this during the Acis bankruptcy. I'm sorry.

Q Well, I'm referring to, after you became involved in this Highland bankruptcy, whether you were provided with these documents that were sent from Highland to HarbourVest.

A I don't -- I don't know what the documents are. I've reviewed tons of documents with respect to the HarbourVest claims, but I don't know of the documents to which you're referring.

Q Okay. And after you performed your investigation into the HarbourVest claim, what was your opinion as to the cause in the reduction in value of HarbourVest's investment in HCLOF?

A I think the main cause of the reduction in the investment was the imposition of the Trustee and the failure of Highland HCLOF and then subsequently with the injunction to reset the CLOs.

You know, these are -- these are some of the worst-performing CLOs in the market because they weren't reset. And when the liabilities of the CLOs are set at a level to match assets, and then liability -- the assets run off, and the asset financings or the new deals come in at much lower levels, and the obligations of the CLO are not reset, the arbitrage that is the CLO shrinks. And that's what happened to these CLOs.

Q And during the course of the Acis bankruptcy, Acis and Brigade were given management responsibilities over the CLOs and HCLOF, correct?

A I believe that the Trustee had the overall, and then subsequently, with the confirmation of the plan, they took it over. So I think that ultimately Mr. Terry had the management authority, full management authority, and some advice through Brigade. But I think technically it wasn't actually during the Chapter 7. The Chapter 7 proceeding, I believe that Mr. Phelan had the actual authority.

(Echoing.)

Q I'm sorry. And so your testimony is that Mr. Phelan had the actual authority but he delegated that authority to Josh Terry and Brigade?

A I think that's fair, yes.

Q And do you know when that occurred?

A I believe that the control of the CLOs was in July of 2018, and then the ultimate confirmation of the case was at the very beginning of '19.

Q So, after being instituted as portfolio manager, and during the time when Acis and Brigade were working under the direction of the Trustee, who would have receive the fees for managing those portfolios?

A I believe -- I don't know. I believe the -- that the Acis estate would have received those fees.

Q And who -- and so is that your testimony, that prior to confirmation the Acis estate would have received the management fees?

A I believe that -- I believe they would have if they were the manager, yeah.

Q Okay. And who would have received the fees after confirmation?

A Acis.

Q Okay. And who would have had the discretion to set the amount of those management fees?

A They would be agreed to in the -- in the investment management agreement.

Q They would be agreed to?

A Yes. As far as I've seen, I've -- I haven't seen unilateral ability of a manager to set fees at its -- at its whim.

Q So is it your understanding that Acis and Brigade ended up charging substantially more fees than Highland had charged when it was under Highland's management?

A I think the fees were -- the fees were -- the fees were set by the agreement.

MR. MORRIS: Your Honor, I just object to the line of questioning on relevance grounds. This is a 9019 hearing, Your Honor. How -- I just don't think this has any relevance at all.

THE COURT: All right. Mr. Wilson, what is the relevance?

MR. WILSON: The relevance is that Mr. Seery has

testified that these Acis CLOs were among the worst-performing in the market, and frankly, we would agree with that, and I'm trying to get his understanding as to why, because I think there's direct relevance in the reason that the value of the HarbourVest investment diminished.

MR. MORRIS: I don't think that was his testimony, Your Honor. But at the end of the day, Your Honor has heard the litany of reasons why the Debtor is entering into this agreement. I just, I just think it's irrelevant, Your Honor.

THE COURT: All right. Mr. Wilson, I barely think this is relevant. I mean, I'm going to give you some benefit of the doubt on that because of, you know, the testimony that HarbourVest lost $50 million of value and --

(Echoing.)

THE COURT: -- maybe that shouldn't, you know, lie at the feet of Highland. I think the compromise reflects that they don't -- it doesn't lie entirely at the feet of Highland. But, you know, maybe two or three more questions.

MR. WILSON: Yes. Thank you, Your Honor. And I didn't have very much more on this point. But to be a hundred percent honest, I can't remember my question right before the objection.

THE WITNESS: I think you were asking me about the fees and somehow alluding or implying that the manager could unilaterally set fees.

The fees are set in the investment management contract. The manager doesn't get to wake up on Wednesday and say, you know, I'd like another half a basis point. It doesn't work that way.

BY MR. WILSON:

Q But you would agree with me that the fees and expenses charged to an investment would impact the performance of that investment in the market?

A Absolutely.

Q Would you also agree with me that there was one CLO -- and I think you referred to it in your direct testimony -- but CLO 7, which continued to be managed by Highland?

A That's correct.

Q And is it fair to say that CLO 7 exceeded the performance of the CLOs that were managed by Acis and Brigade?

A I think that's fair. I don't -- I don't recall the magnitude, but I think it's outperformed those -- those CLOs, yes.

Q All right. Well, thank you. I want to turn your attention to the portion of the settlement agreement that deals with voting of the HarbourVest claim. How did HarbourVest's commitment to vote for the plan become a part of the settlement?

A Pretty straightforward negotiation. We -- in negotiating the settlement, one of the key factors was the cost and

expense of the litigation, in addition to the risk on the -- on the fees, and whether we could wrap this up in a global settlement now. So in my experience, it's fairly typical, we would try to do this in every settlement, have the settling party, be that the claimant, agree to support the case and the plan.

You know, we did not do that with the Committee members, although we wanted to. (Echoing) I frankly still wish I had. Those little -- little bits that have been difficult (echoing). The Committee members have a different interest in (echoing) than their more global interest for creditors at large, which is more difficult than traditionally in bankruptcy cases, less likely to have a Committee member, a sitting Committee member, actually support the (echoing) of the plan.

THE COURT: Mr. Wilson, could you be careful to put your device on mute every time you're not talking? Because we're getting some feedback loop from you when Mr. Seery answers your questions. Okay?

(Echoing continues.)

THE COURT: Like right now. I'm hearing feedback of my own voice through your speakers.

Right, Mike? Isn't that what --

A VOICE: I am, too.

THE COURT: Yes. Okay. So please be sure you put

your device on mute whenever you are not speaking. All right. Go ahead.

BY MR. WILSON:

Q I mean, I think you just answered this question, but there was -- there was no similar voting provision in the Acis or the Redeemer settlements, correct?

A There is not, no. And just as a -- by way of explanation, if it's okay, the reason was my counsel advised against it. I did ask for it.

Q Your counsel advised against putting that voting requirement in the Acis and Redeemer settlements?

A For the reasons I stated. And in my experience, that's consistent, where sitting members of Committees don't generally sign up to resolve their own claims and support the plan because of their larger fiduciary duties to the creditor body as a whole.

Q And during the settlement negotiations of the HarbourVest claim, was this commitment to vote a topic of discussion?

A Not -- not particularly, no. It was pretty clear that HarbourVest, if they were going to agree to the settlement and the numbers, could see structure. Obviously, it wanted to understand what the potential distributions would be under the plan, but this was not a hotly-negotiated point.

Q And would you consider HarbourVest's commitment to vote for the plan an important part of the settlement?

A I think it's an important part of the settlement, that the part of the settlement is the subordinated claim. We could put that into presumably any plan. But our plan does -- does have a Class 9 for that. So I think it's a -- it's a part of the settlement that is important or we wouldn't have included it. It clearly wraps everything up and moves us towards confirmation.

Q And would you have made the deal with HarbourVest if they had pushed back on the commitment to vote for the plan?

A Yeah, I would have.

Q All right. Thank you.

MR. WILSON: No further questions.

THE COURT: All right. Mr. Draper, anything from you?

MR. DRAPER: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. DRAPER:

Q Mr. Seery, I may not understand the settlement, and I apologize, but the way I think the settlement reads, the interest that you're acquiring, you have the right to place in any entity. Is that my -- is that correct?

A I don't recall the -- the specifics, but just from a structural standpoint, we wanted to be able to put it into a subsidiary as opposed to putting it directly in HCMLP. If we couldn't do that, we would -- we would put it into HCMLP. So

there wasn't a -- I don't recall the actual specifics, but we certainly thought about holding that interest in a -- in a subsidiary, just to have a cleaner hold.

Q Why aren't you putting it into the Debtor so the Court and the estate have jurisdiction over that?

A I think the Court certainly has jurisdiction over an entity that the estate owns a hundred percent of. I don't think that's -- that's even a close call. So the important --

Q Now, --

A Can I finish?

Q Sure.

A You asked me why. To the extent that somebody thinks that problematic, I will consent to the Court having complete jurisdiction over it, since I control it a hundred percent.

Q No. The real reason is, if I remember correctly, Mr. Dondero and Judge Lynn filed a motion to have some say or some information as to sales by subsidiaries, and I think you took the position that they weren't entitled to it. And so my concern was that putting this in a subsidiary in a sense gave you unfettered control without any review of the item.

A I don't -- I don't think that's the case where we -- there's a directly-held subsidiary where we own a hundred percent of it. I don't think that that's the case.

Q Okay. But you're willing to (a) put this into the Debtor, number one; and number two, have the estate and have the Court

have complete control over the disposition of it and its actions, correct?

A That's not correct, no.

Q What -- what is incorrect about my statement?

A The debtor-in-possession has control of its assets. The Court doesn't have complete control over its assets. There's --

Q Well, --

A -- issues -- hold on a second. This is not -- this is not a game and a trap. We put it in a subsidiary for specific reasons. You asked why. I'm giving you the why. It's not to hide it from anybody. We're not going to sell the asset unless somebody comes up with a great price for it. We're going to monetize the assets. We're going to control HCLOF by a majority.

Q But, again, the issue is, if it's in the estate, the Court has supervision over it. If it's not in the estate, the Court has no supervision of it.

A I don't think that's correct, because the Court has supervision over the estate, which owns a hundred percent of the special-purpose entity that will own the shares.

Q Okay. All right. Now, let's talk about the $15 million that you discussed and the legal fees that were incurred. Is that the total amount that was spent, or is -- or is that -- was the total amount $30 million and HarbourVest was only

responsible for one half of it or functionally took the brunt of one half of it?

A I think the total amount is between $15 and $20 million. I don't have the exact numbers.

Q So, in fact, the HarbourVest loss due to its ownership would have been one half of that, not $15 million?

A Well, the vehicle lost the money. HarbourVest owned 49.98 percent of it, and Highland controlled the rest. So if you allocate it that way, I suppose that would be a -- that's how you would divide it, in -- roughly in half, yes.

Q And so HarbourVest's actual dollar loss due to the legal fees is really the 49-point-whatever percent of $15 million, not $15 million?

A I don't know if -- I certainly would argue that. I don't think that HarbourVest has that position.

Q Okay. Now, in connection -- you were asked a question about the documentation that was provided by Highland to HarbourVest both during the bankruptcy of Acis and before. You have control over the Harbour -- over the Highland server, correct?

A I'm sorry. Can -- can we do two things? One is, Mr. Draper, I can't see you, so it would be better if I could see you during the questioning.

Q Okay.

A And could you repeat the question?

Q All right. I'll be happy to. You were asked a question about the documentation that was provided by Highland to HarbourVest during the Acis bankruptcy and meetings that took place between the parties. Correct?

A Yes.

Q And you stated you were unaware of the material that was sent over?

A I think I testified that I didn't receive the 40,000 documents that were mentioned.

Q Did you do any search or order a search of the Highland server to see what material was sent over by any party to HarbourVest to analyze what -- what information they had available to them and what was provided to them?

A Yes, we did a search.

Q And did you review the documentation that was sent over?

A The -- the documentation that we looked at was very specific to the investment and to the OM. So we didn't look for the -- the supposed 40,000 documents, no.

Q Did you look for the material that was provided to them during the Acis bankruptcy and the periodic meetings that you discussed? Or that you testified to earlier?

A The answer is no.

Q One last question. I think, and just so I understand your testimony, you've broken out the HarbourVest claim into two pieces. One is the legal fee amount that we've just

discussed, and I gather the other piece of that is the fraud in the inducement to enter into the CLO purchase?

A It's -- it's more -- it's much more than that.

Q Okay. Well, let me say it in a different way. The other part of it is the losses as a result of the fraud in the inducement to purchase the interest?

A I don't think that's -- that's fair. If I could explain?

Q Sure.

A Yeah. The legal fee piece is pretty clear. The other piece starts with fraud in the inducement, but it's extensive fraud claims. Fraud in the inducement, as I testified earlier, would get them around the exculpation and liability limitations in the OM. You don't get around all of those with just the fraud. And so that's -- that's the split of that claim. So the fraud in the inducement contains fraud allegations. Even if you didn't have inducement, you'd have other potential fraud claims.

Q But let me state it in a different fashion. But for the investment, the fraud that you allege wouldn't have occurred?

A I -- HarbourVest alleges it.

Q No, I'm just -- in your analysis of the claim, but for the inducement, the rest of the damages wouldn't have flowed?

A That's HarbourVest's position, yes. But for the fraud, they wouldn't have made the investment.

Q All right.

MR. DRAPER: I have nothing further for this witness.

THE COURT: All right. Any redirect, Mr. Morris?

MR. MORRIS: Just a few very questions, Your Honor. Just a very few questions.

REDIRECT EXAMINATION

BY MR. MORRIS:

Q Mr. Seery, you were asked about that document that Lucy prepared. Do you remember that?

A Yes, I do.

Q In your experience, don't defendants often deny liability before entering into settlements, or even worse, getting adverse judgments entered against them?

A Of course. Yes.

Q Okay. And in response to Mr. Draper's questions, isn't the Guernsey claim another claim that the Debtor took into account in assessing the potential risks of this settlement?

A There's a number of claims contained in it. As I mentioned earlier, I mentioned the RICO claim. But there is a Guernsey shadow director claim, which is not dissimilar to U.S. claims that somebody effectively controls an enterprise, notwithstanding them not having the official role.

Q Okay.

MR. MORRIS: I have nothing further, Your Honor.

THE COURT: All right. Any recross on that redirect? All right.

MR. WILSON: No, Your Honor.

MR. DRAPER: No, Your Honor.

THE COURT: Thank you. Mr. Seery, that concludes your testimony. Thank you.

THE WITNESS: Thank you, Your Honor.

THE COURT: We need to take a bathroom break. Before we do, I just want to be clear with what we have left. As I understood it, we were having Mr. Pugatch from HarbourVest. Mr. Morris, will that conclude the Debtor's evidence? (Pause.) Okay. You were on mute, but I think you were saying yes.

MR. MORRIS: Sorry. But to be clear, Debevoise is going to be putting their witness on the stand.

THE COURT: Okay.

MR. MORRIS: But it's part of the evidence in support of the motion.

THE COURT: All right. Do the Objectors have any witnesses today?

MR. WILSON: Your Honor, Mr. Dondero intends to examine Mr. Pugatch, but if he's going to be called by his counsel, then we will do that as a cross-examination.

THE COURT: All right.

MR. DRAPER: This is Douglas Draper. I have no witnesses.

THE COURT: Okay. All right. Well, I'm asking --

well, I do want to ask: Can we get a time estimate potentially for Mr. Pugatch?

MS. WEISGERBER: For my examination, Your Honor, twenty minutes, perhaps.

THE COURT: Okay.

MS. WEISGERBER: Or less.

THE COURT: All right. Well, let me tell you what we're going to do. We're going to take a ten-minute bathroom break. But I have a 1:30 hearing and I have a 2:00 o'clock. Well, I have a 1:30 docket, multiple matters, and a 2:00 o'clock docket. So, you know, I'm really intending that we get finished in time to give me and my staff a little bit of a lunch break before launching into the 1:30 docket, so I'm hopeful we can get done around 1:00-ish. If we can't, then we're going to have to reconvene, I'm going to say probably 3:00-ish Central time. So let's hope we can get through everything. All right? Ten-minute break.

THE CLERK: All rise.

(A recess ensued from 11:58 a.m. until 12:08 p.m.)

THE CLERK: All rise.

THE COURT: All right. Please be seated. We're going back on the record in the Highland matters. Do we have everyone? It looks like we do. Ms. Weisgerber is going to call the next witness; is that correct?

MS. WEISGERBER: Yes, Your Honor. We call Michael

Pugatch of HarbourVest to the stand.

THE COURT: All right. Mr. Pugatch, if you could turn on your video and say, "Testing one, two."

MR. PUGATCH: Two.

THE COURT: All right. There you are. Please raise your right hand.

MICHAEL PUGATCH, HARBOURVEST'S WITNESS, SWORN

THE COURT: Thank you. You may proceed.

MS. WEISGERBER: Thank you, Your Honor.

DIRECT EXAMINATION

BY MS. WEISGERBER:

Q Good morning. Can you please state your name for the record?

A Sure. It's Michael Pugatch.

Q And where do you work, Mr. Pugatch?

A HarbourVest Partners.

Q And what is your title?

A I'm a managing director in our secondary investment group.

Q Did HarbourVest file claims in the Highland bankruptcy, Mr. Pugatch?

A We did, yes. Several claims, in fact.

Q What was the basis for those claims?

A Yeah. Among other things, fraudulent inducement based on misrepresentations and omissions on the part of Highland in

connection with our original investment, mismanagement at the HCLOF level, including inappropriate fees that were charged to investors, among a number of other items as well.

Q Can you explain what you mean by misrepresentations made to HarbourVest by Highland?

A Yeah, sure. So, you know, based on a number of statements that were made to us around the litigation involving Mr. Terry, some of the intentions found, the structural changes that came to light with respect to HCLOF and our investment, as well as the fact that the arbitration award specifically against Mr. Terry would have no impact or implication on Highland's sale or business.

Q And can you explain what you mean by omissions made by Highland to HarbourVest?

A Sure. So I would say, really, the implications behind the structural changes that were made at the time of our investment into HCLOF. Also, the intention, clear intentions that Highland had to never, in fact, pay the arbitration award that came to light during our due diligence period to Mr. -- to Mr. Terry as part of the investment. And ultimately the -- what Highland went about doing in terms of stripping assets of Acis that led to the material value declines and destruction of value that we've experienced since our investment.

Q You mentioned a diligence period. Did HarbourVest

conduct diligence on the investment?
A We did. We conducted very detailed due diligence, as we do for all of our investments. That diligence period lasted several months ahead of our investment decision.
Q And did HarbourVest conduct that diligence by itself?
A No. So, in addition to internal investment professionals at HarbourVest, we engage with outside advisors, both consultants as well as legal advisors, in connection with that due diligence.
Q And did Highland answer all of HarbourVest's questions during that diligence period?
A They did. And they were numerous. But yes, they answered all the questions that we had for them.
Q Was the Terry dispute part of HarbourVest's diligence?
A It was. That came up as one of the outstanding items of litigation as part of our due diligence.
Q I'm going to ask my colleague to pull up on the screen an exhibit that was on our exhibit list as Items -- Exhibits 34 and 35. It's an August 15, 2017 email from Brad Eden to Dustin Willard. Mr. Pugatch, do you recognize this document?
A I do, yes.
Q And what is it?
A This was an email sent to us during our due diligence period in response to a request for more information on the outstanding litigation that Highland was involved with.

MS. WEISGERBER: And if my colleague can just scroll to the attachment to that email.

BY MS. WEISGERBER:

Q And do you recall the attachment as well, Mr. Pugatch?

A Yes, I do.

MS. WEISGERBER: And if you can scroll back up to the first email.

BY MS. WEISGERBER:

Q Who is Dustin Willard?

A Yes. Dustin is a colleague of mine at HarbourVest who worked closely with me on this investment.

Q And you said that this document was shared with HarbourVest during the diligence period before the HCLOF investment?

A It was, correct.

Q Is it typical during diligence to receive a description of litigation such as this?

A It is. It's a question that we always ask. Certainly a component of our diligence to understand any outstanding litigation on the part of our counterparty or manager that we're investing in.

MS. WEISGERBER: Your Honor, I'd move to offer this exhibit into evidence.

THE COURT: Any objection?

MR. DRAPER: No objection, Your Honor.

MR. MORRIS: No objection from the Debtor, Your Honor.

THE COURT: All right. What is the letter or number for this exhibit?

MS. WEISGERBER: It's HarbourVest Exhibit 34.

THE COURT: All right. So HarbourVest Exhibit 34 is admitted.

(HarbourVest's Exhibit 34 is received into evidence.)

THE COURT: And I need to be clear where it appears on the docket. Can someone tell me?

MS. WEISGERBER: So, it's identified on our exhibit list, not -- it's not attached to the exhibits. It is on the docket. We were -- when we initially filed the exhibit list, we were working out confidentiality issues. But it was subsequently filed with our reply last night. It's at Docket No. 1735 --

THE COURT: All right.

MS. WEISGERBER: -- at Pages A -- Pages A345 to A350.

THE COURT: All right. Very well. Thank you.

BY MS. WEISGERBER:

Q Mr. Pugatch, we'll just scroll down to the second page of the attachment. Can you describe generally what the litigation says regarding the Terry dispute?

A Yes. Generally speaking, this dispute was described as an employee dispute, employment agreement dispute, with Mr.

Terry, who was a former employee of Highland involved in their CLO business, and is described by Highland to us really having to do with a series of false claims, in their opinion, but having to do with a disgruntled former employee.

Q And did it strike you as an unusual or significant dispute?

A No. I would say we often -- we'll see, you know, former employees with, you know, claims against a former employer in connection with wrongful termination. I wouldn't say it's extremely common, but certainly not entirely out of the ordinary. And based on the explanations that we'd received from Highland, seemed to be more of an ordinary-course type former employee litigation suit.

Q Based on what you now know about the Terry dispute, do you believe that this was an adequate disclosure regarding the dispute?

A I would say very clearly not, you know, based on the facts that came to light subsequently, the various rulings in connection with the Acis bankruptcy case. What was very clearly not stated are the actual facts and implications of the ongoing litigation with Mr. Terry.

MS. WEISGERBER: I'd ask my colleague to put up the next exhibit. Okay. So, this is on a HarbourVest exhibit list, which is Document No. 1723. It's Exhibit 36 on that. Same issue with respect to initially not filed, but it is on

the docket at our response last evening at ECF No. 1735 at Page A351.

THE COURT: Page what?

MS. WEISGERBER: A351.

THE COURT: A351. Thank you.

MS. WEISGERBER: You're welcome.

BY MS. WEISGERBER:

Q Mr. Pugatch, I just put up a November 29, 2017 email from Hunter Covitz to Dustin Willard, Michael Pugatch, and Nick Bellisario. Do you recall this document?

A I do, yes.

Q And what is this document?

A This was an email sent to us by Highland a couple weeks after we closed on our investment on the (inaudible) in response to a *Wall Street Journal* article that had come out regarding Highland, a number of actions that they had taken, and what Highland was articulating to us, a number of false claims that had been made about Highland's prior actions, and specifically trying to explain some of that and also share with HarbourVest a letter that was being sent to the editor of the *Wall Street Journal* highlighting, in their view, some of the inaccuracies around the reporting.

Q And did you receive this document?

A We did, yes.

MS. WEISGERBER: I'd move to offer this, so

HarbourVest Exhibit 36, into evidence.

THE COURT: Any objections?

MR. WILSON: Your Honor, John Wilson. I would object as to the relevance of this document.

THE COURT: All right. What's your response?

MS. WEISGERBER: Your Honor, it shows misrepresentations that the witness will testify how it relates back to prior representations prior to HarbourVest's investment, as well as misrepresentations at that time.

THE COURT: Okay. I overrule the objection. I'm going to admit it.

(HarbourVest's Exhibit 36 is received into evidence.)

BY MS. WEISGERBER:

Q Mr. Pugatch, can you describe generally -- we spoke about this a little bit -- just what this communication from Highland was conveying to HarbourVest at the time?

A Yes. Specifically, again, responding to this *Wall Street Journal* article that had been published, trying to defend, again, Highland's own views why there were inaccuracies in the reporting. But importantly, from our perspective, trying to reassure us as to the fact that, you know, these accusations would have no bearing and any results from it would have no bearing on their ongoing business or partnership or the investment that we had made in HCLOF.

MS. WEISGERBER: And if you can scroll to the second

page.

BY MS. WEISGERBER:

Q We'll just look at the last paragraph of another email from Mr. Covitz. Can you just read that first sentence of the last paragraph?

A Sure. (reading) While the dispute has no impact on our investment activities, as always, we welcome any questions you may have.

Q Mr. Pugatch, was this email and the discussion regarding the Terry dispute consistent with the representations made to you prior to HarbourVest's investment into HCLOF?

A It was, yes. Both the message, the lack of any impact that ultimately the dispute with Mr. Terry, the arbitration award would have around Highland's ongoing CLO business, or HCLOF specifically, was all, you know, very clear in this document, but all consistent with the representations that had been made to us leading up to our investment in the middle of November 2017 as well.

Q Thank you.

MS. WEISGERBER: And you can take down the exhibit, Emily. Thank you.

BY MS. WEISGERBER:

Q You mentioned, Mr. Pugatch, an arbitration award to Mr. Terry. How did you learn about that arbitration award?

A That was initially disclosed to us by Highland as we were

in the late stages of our diligence and closing process on the investment into HCLOF.

Q And generally, what did Highland tell you about the arbitration award?

A We were aware of its existence. We were aware of the quantum of the award, I think it was around an $8 million arbitration award in the favor of Mr. Terry, and that was following the litigation around the wrongful termination and employee dispute that Highland had described to us previously.

Q Did you ask to see a copy of the arbitration award?

A No, we did not.

Q Why not?

A Ultimately, we -- you know, the explanations that Highland had provided to us all seemed very reasonable. We relied on their representations that this was, again, nothing more than a dispute with a former disgruntled employee, in their words, that had no bearing or, you know, would not have any bearing on our investment in HCLOF or their ongoing CLO business, which all very clearly was not the case, as we've -- as we've learned over the last several years.

Q Following learning about the arbitration award, did HarbourVest do other diligence?

A We did. So, in addition to asking questions related to the arbitration award and any impact that it would have, we

also spent some time diligencing a couple of structural changes that were proposed by Highland, and, in fact, ended up delaying the closing of our investment by about two weeks as we vetted some of those structural changes that Highland had proposed. Vetted those both, you know, internally with Highland directly and with external counsel in order to make sure that those structural changes were in fact legally sound in ultimately making our investment.

Q And were those changes proposed following the arbitration award?

A They were, yes.

Q Did Highland tell you the reason for the structural changes?

A Yeah. So, so some of this -- and specifically, this involved a change of the portfolio manager at the HCLOF level that was really in connection with a rebranding as Highland was going through a rebuild of its CLO business and wanting to align, from a brand perspective, their business on an ongoing basis with the Highland brand as opposed to the Acis brand. But more specifically, in the case of a late change from a structured standpoint, the -- part of the intention and the investment thesis of HCLOF was to pursue a reset, a refinancing of all the underlying CLOs as they approached the end of their investment period or came out of their investment period.

And in connection with that, in light of the arbitration award, Highland's view was that there may be difficulties in the market in resetting certain of those Acis CLOs with the Acis brand associated with them, given, again, the existence of the arbitration award and concerns in the market around the Acis brand reputation.

Q And what did they tell you was the market view of Acis, or the Acis brand?

A Yeah. Their view or their concern was that the, you know, because of the existence of that arbitration award, the brand would be viewed as toxic.

Q Didn't this put you on notice that perhaps there was something wrong with the structural changes?

A I mean, we -- I mean, short answer, no. We ultimately asked questions, we diligenced the legal structure, but relied on the representations that were made to us by Highland around the rationale for the structural changes, that these are all changes that were within a Highland-managed vehicle or sat below the vehicle that we were investing in, and so ultimately were in Highland's purview, was the representations that we relied on.

Q And did HarbourVest alone do that diligence of the structural changes?

A So, no. I mean, in connection with the diligence that we did internally and with Highland directly, we engaged with

outside counsel who was working with us at the time to vet those structural changes as well.

Q Did HarbourVest rely on Highland's representations regarding the arbitration award and the structural changes in making its investment in HCLOF?

A We did, absolutely.

Q If Highland had disclosed the nature of the structural changes, of removing Acis as the portfolio manager and related transfers, would HarbourVest have proceeded with its investment?

A Definitively, no, we would not have.

Q Why not?

A I think the reality is if we had understood the intent, you know, that Highland was ultimately undertaking here, we would not have wanted to be any part of this, and certainly getting dragged into all of this, the hassle, the value destruction that we've seen on behalf of the investors and the funds that we manage. And I would say, lastly, we just full stop would not have done business with a firm who engages with this type of behavior, had we actually known the truth.

Q Mr. Pugatch, are you familiar with the bankruptcy that followed of Acis?

A Yes.

Q And what was your -- or, did HarbourVest participate in

that bankruptcy?
A So, initially, no. Subsequently, we ended up getting dragged into that on account of a number of misstatements by Highland about the role that HarbourVest had played as part of our investment into HCLOF and some of that structure and the structural changes that I alluded to.
Q How did HarbourVest learn about those misstatements in the bankruptcy about HarbourVest's role?
A So, ultimately, those came to light on -- you know, on account of the ongoing proceedings within the Acis bankruptcy process, and specifically brought to light to us by the Acis trustee at the time, who decided to pursue, you know, further diligence or discovery around the claims that Highland had made around HarbourVest's involvement in those changes.
Q And what is your understanding of what the allegations were that caused the Acis trustee to investigate HarbourVest?
A Sure. So, you know, our understanding was that Highland had made statements, again, false statements that HarbourVest had actually instructed some of those structural changes, that we were the ones that had said that we would not do business with Acis and had ordered some of the underlying transfer of assets or, again, structural changes, that, you know, very clearly I would say were not the case. Also, that HarbourVest was -- was calling the shots as it relates to any of the ongoing management or future resets of the CLOs.

Q Did HarbourVest instruct any of those structural changes or transfers to occur?
A We did not. Absolutely not.
Q Why didn't HarbourVest itself appear in the Acis bankruptcy and file a claim?
A Yeah. HarbourVest's role, again, in HCLOF, we were a passive investor in a Highland-managed company. We had no direct interaction with or relationship with Acis. There was really no reason for us to be directly involved until we were subsequently dragged into involvement on account of those misstatements. And then at that point our focus really pivoted to, you know, whether we needed to defend ourselves against those accusations that had been made by Highland and after a request for further information in discovery by the Acis trustee.
Q Did HCLOF participate in the Acis bankruptcy?
A They did, yes.
Q Did HCLOF incur fees for participating in the Acis bankruptcy?
A Yes. In fact, very meaningful fees, to the tune of well in excess of $15 million of legal fees, as we understand it, that have been incurred, largely in connection with the ongoing Acis bankruptcy and Highland's continued pursuit of and in connection with the litigation with Mr. Terry, which we firmly believe was entirely inappropriate that HCLOF and

ultimately investors in HCLOF bear those expenses, which were not just expenses of HCLOF but of Highland and a number of other Highland affiliates.

Q Do those expenses form a basis of separate claims filed by HarbourVest against Highland?

A They do, yes. One of the multiple claims that we had filed against Highland.

Q And a few more questions, just for the record, Mr. Pugatch. How much did HarbourVest initially invest in HCLOF?

A Sure. So, our initial investment in November of 2017 was right about $73-1/2 million, I believe.

Q Did HarbourVest invest any additional money in HCLOF?

A We did. There was a subsequent capital call investment of about $5 million, bringing our total investment to just under $80 million in aggregate.

Q When HarbourVest initially made the investment, did it anticipate making a profit on it?

A We did, yes.

Q How much did HarbourVest anticipate earning from the investment?

A Yeah. So, our -- based on the original $73-1/2 million investment, we had expected a total return of about $137 million on that -- on that investment.

Q What was that projection based on?

A So, that projection was based on materials that we had

received from Highland, their internal projection models on the future performance of the underlying CLOs that we were acquiring exposure to through our investment in HCLOF, and was one of the inputs or formed the basis in connection with our diligence that we ultimately ran different sensitivities -- projections around and helped employ -- helped inform our investment thesis.

Q Do you know the current value of HarbourVest's investment in HCLOF?

A Yes. The current value is right around $22-1/2 million.

Q So roughly how much has the investment itself decreased from HarbourVest's initial investment?

A So, net of what was about $4-1/2 million of distributions that we received early on in the investment, we've lost, to date, in excess of $50 million on our original investment.

Q And just for -- to close out, Mr. Pugatch, knowing all that you know, if HarbourVest had known that -- about the nature of the transfers by Acis or Highland's intent with respect to the arbitration award, would HarbourVest have made this investment?

A No. The reality is, had we known the truth, or even had a sense of the truth, the true intentions behind some of those transfers and ultimately what would have happened, we never would have made this investment, full stop.

Q Thank you, Mr. Pugatch.

THE COURT: All right. I didn't hear you, Ms. Weisgerber. Do you pass the witness?

MS. WEISGERBER: Yes, I pass the witness.

THE COURT: All right. Thank you.

Mr. Morris, any examination from you?

MR. MORRIS: No, thank you, Your Honor.

THE COURT: All right.

(Interruption.)

THE COURT: All right. I'm not sure whose voice that was, but please, again, mute your devices when you're not talking.

Any cross-examination of Mr. Pugatch? I'll start with you, Mr. Wilson.

MR. WILSON: Yes, Your Honor.

THE COURT: Okay.

CROSS-EXAMINATION

BY MR. WILSON:

Q How are you -- I guess we're afternoon now. How are you this afternoon, Mr. Pugatch?

A I'm doing well. Yourself?

Q I'm doing well as well. Do you recall that on Monday of this week I took your deposition?

A Yes, I do.

Q And so you understand that my name is John Wilson and I represent Jim Dondero, who has filed an objection to the 9019

motion filed by the Debtor?

I've got a few questions for you today. Has HarbourVest been around for over 35 years?

A We have, yes.

Q And does HarbourVest have ten offices around the world?

A Correct, yes.

Q And does HarbourVest employ over 150 investment professionals?

A Yes.

Q Does HarbourVest have over $74 billion in assets under management?

A Correct, yes.

Q And is HarbourVest's client base largely comprised of institutional investors?

A Also correct.

Q And you would agree with me that HarbourVest is a sophisticated investor, right?

A I would, yes.

Q How long have you worked for HarbourVest?

A I've been employed by HarbourVest for 17 years now.

Q And how long have you been a managing director?

A I've been a managing director for approximately six years.

Q And you were, in fact, the managing director for the investment that HarbourVest made in Highland CLO Funding,

Ltd., which has been referred to today as HCLOF, correct?
A I was, correct.
Q And HarbourVest, I think you just testified, invested approximately $73 million as its initial investment in HCLOF?
A Yes, correct.
Q And before HarbourVest made that investment, it had made many investments of this type, correct?
A Yeah. We've made hundreds of investments into partnerships over our history, correct.
Q So HarbourVest was well-experienced in evaluating and deciding whether to invest in large investments, correct?
A It was, yes.
Q Now, in your -- and by your, I mean HarbourVest -- in the response to the Debtor's omnibus objection, it says that by summer 2017 HarbourVest was engaged in preliminary discussions with Highland regarding the investment. Is that a correct statement?
A Correct, yes.
Q And, in fact, those talks began in the second quarter of 2017, correct?
A Yes.
Q And so the investment closed ultimately on November 15th, 2017?
A Yes, that's correct.
Q So it's fair to say that HarbourVest considered and

evaluated this transaction for over six months before investing its $73 million, right?

A From the time of the initial conversations that we had with Highland, yes.

Q And one of the reasons that it took over six months to complete the investment is that HarbourVest performs due diligence before it makes an investment, correct?

A Correct.

Q And when you're performing due diligence -- well, first off, you would agree with me that that's a common practice amongst sophisticated investors such as HarbourVest, correct?

A To perform due diligence?

Q Yes.

A Yes.

Q And describe -- describe what HarbourVest does in a general sense when it performs its due diligence.

A Sure. So, we spend time with the manager -- in this case, Highland -- certainly around the investment thesis, the opportunity, receive materials around the underlying assets. We take that and perform our own independent due diligence around the value of those assets, perform due diligence on the manager itself, the go-forward opportunity. In many cases, and certainly in this case, engage with outside advisors to assist with that due diligence. It's a very robust and thorough process.

Q And by outside advisors, are you referring to the outside counsel that you testified about earlier?
A Yes. Both outside counsel and outside consultants.
Q Okay. And so did you say that it's typical to engage outside counsel when performing due diligence?
A Yes.
Q And which outside counsel did you retain with respect to this due diligence?
A Debevoise and Plimpton as well as Milbank.
Q And during the course of HarbourVest's due diligence, did it identify some items of concern?
A As with any investment, there are always items that are identified that require further diligence, risks that are identified that we look to mitigate through our due diligence, et cetera.
Q And if Harbour -- I'm sorry, did you say something else?
A No.
Q You were finished? Okay. Now, if HarbourVest identifies an item of concern, is it typical to request additional information regarding those items of concern?
A It is, yes.
Q And so that actually happened with respect to the HCLOF investment, correct?
A In certain cases, yes.
Q HarbourVest identified several litigation matters that it

had questions about, correct?
A Correct. As we would with any investment.
Q And it went back to Highland and asked them to explain their position on those litigation matters?
A Correct.
Q And one of those litigation matters was the Joshua Terry litigation, correct?
A Yes.
Q And at the time that HarbourVest was considering this investment, beginning in the second quarter and continuing through the summer, that Josh Terry litigation had not resulted in an award or a final judgment, correct?
A Correct.
Q And I think we looked earlier at a document that your counsel admitted as HarbourVest Exhibits 34 and 35. There was an email from a HarbourVest -- or, I'm sorry, from a Highland representative to a HarbourVest representative that was discussing Highland's position on the litigation, including the Terry litigation, correct?
A Are you referring to the document that we looked at earlier?
Q I am. And I can put it on the screen if we need to.
A No. Right, I recall that, and yes, that's correct.
Q Okay. And just to be clear, that document, which stated Highland's positions on the -- and summaries of the

litigation, was issued months before the arbitration award to Josh Terry, correct?

A I don't remember the exact timing, but it was certainly during our due diligence period and prior to the arbitration award, yes.

Q Well, it seems to me that that email that you -- your counsel admitted as an exhibit was issued in August of 2017. Does that sound right to you?

A If that's what the email said, yes.

Q And if the Terry arbitration award came out in October, then you would agree with me that that is several months prior to the -- or at least two months prior to the arbitration award?

A Yes.

Q And so when HarbourVest made requests of Highland to provide information regarding its items of concern, Highland complied with those requests, correct?

A It did, correct.

Q And was there ever a time when HarbourVest requested Highland to provide information and that information was not provided?

A Our requests for information, or at least, you know, responses or color to a question, were always met either with, you know, written or verbal communication back to us, yeah.

Q And you would agree with me that, in fact, HarbourVest delayed the closing of the investment by two weeks to continue its due diligence, correct?
A Correct, related to the structural changes that were made close to closing. That's right.
Q And after conducting that due diligence, HarbourVest satisfied itself that the investment was sound?
A That the legal structure that had been put in place in connection with those proposed changes by Highland was -- was legally sound, yes, and on the back of, again, statements and misrepresentations on the part of Highland around the nature and potential impact to their ongoing CLO business and HCLOF.
MR. WILSON: Well, I'm going to object to the latter part of your response as nonresponsive.
THE COURT: Sustained.
BY MR. WILSON:
Q Now, after you conducted the due diligence, HarbourVest made the investment of $73 million on November 15th, 2017, correct?
A Correct.
Q And so I think you testified earlier that prior to that investment HarbourVest had become aware that that Josh Terry litigation had resulted in an arbitration award, correct?
A Yes.
Q But I think you've also testified that HarbourVest did

not request that Highland provide a copy of the arbitration award, correct?

A That's correct.

Q And you further testified that you were represented by outside counsel at the time, correct?

A Correct.

Q And as of Monday of this week, you had not reviewed that arbitration award; is that correct?

A That's correct.

Q Have you reviewed that arbitration award since Monday of this week?

A I have not.

Q But in any event, you testified that Highland told you about the award?

A Yes.

Q And they told you the amount of the award?

A Yes.

Q And then they told you that the award had been converted to a judgment?

A When you say the award had been converted to a judgment, can you be more specific?

Q Well, I don't know how familiar you are with the litigation process, but in this instance, that award was taken to a court and the court entered a judgment on the arbitration award. Did you -- were you aware of that?

A I don't recall the specific legal terms of judgment against it. I was award of the existence of the arbitration award and the -- and the obligation for Highland to comply with that arbitration award.

Q And HarbourVest did not make an appearance in the Acis bankruptcy, right?

A We did not.

Q But you were aware of the Acis bankruptcy, correct?

A Yes.

Q And you were kept apprised of the Acis bankruptcy by Highland individuals, correct?

A We had conversations with a couple of Highland individuals throughout the Acis bankruptcy process, yes.

Q Right. And in fact, you testified that you participated in regular conference calls with Highland regarding that bankruptcy?

A That's correct, yes.

Q And do you recall having been provided with over 40,000 documents by Highland related to the Acis bankruptcy?

A I do not recall that, no.

Q Would those documents have been provided to your outside counsel, had you received them?

A I don't know the answer to that.

Q Did the outside counsel that represented you in the due diligence continue to represent you throughout the Acis

bankruptcy?
A They did. One of the counsels did, correct.
Q And which counsel was that?
A Debevoise.
Q So was your counsel actively involved with monitoring the Acis bankruptcy?
A They were, yes, particularly after we were ultimately accused of having something to do with the original structure and -- as a result of misstatements by Highland.
Q Did your counsel attend hearings in the Acis bankruptcy?
A I don't recall.
Q Are you familiar with the PACER system?
A I am not.
Q Now, I think that HarbourVest has been described as a passive investor. You recall that description of HarbourVest in this instance?
A Yes.
Q But, in fact, HarbourVest invested substantial assets such that it owned a 49.98 percent share of HCLOF. Would you agree with that?
A That's correct.
Q And in fact, the next largest investor was CLO Holdco, which owned 49.02 percent of the shares, correct?
A That sounds right.
Q And there was an advisory board that was created pursuant

to the formation documents of this investment, correct?
A That's correct.
Q And in fact, that advisory board only had two members, and one was a representative of HarbourVest and one was a representative of CLO Holdco, correct?
A Correct.
Q And the advisor -- I'm sorry, the portfolio manager was not allowed to disregard the recommendations of the advisory board, correct?
A With respect to the limited set of items that the advisory board could opine on, that is correct.
Q All right. I want to go over a couple of the misrepresentations that HarbourVest has identified in its filings related to its claim. The first one is -- and just for the record, I'm reading from Docket No. 1057 filed on September 11, 2020, HarbourVest Response to Debtor's First Omnibus Objection.

But the first misrepresentation identified in that document says that Highland never informed HarbourVest that Highland had no intention of paying the arbitration award. And was -- was Highland obligated to pay the Josh Terry arbitration award against Acis?

MR. MORRIS: Objection to the question to the extent it calls for a legal conclusion.

THE COURT: Sustained.

MS. WEISGERBER: Join in that objection.

THE COURT: Sustained. I think --

BY MR. WILSON:

Q Your understanding was --

MR. WILSON: I'm sorry, Judge?

THE COURT: I sustained the objection as calling for a legal conclusion. So, next question.

MR. WILSON: Yes, I -- I heard that. Thank you, Your Honor.

BY MR. WILSON:

Q In your understanding, was Highland responsible for paying the arbitration award to Josh Terry?

A My understanding is on the account of the fact that Acis --

MS. WEISGERBER: Objection, Your Honor. Objection, Your Honor, same basis.

THE COURT: Sustained. It was essentially the same question.

MR. WILSON: Well, Your Honor, I didn't ask --

THE COURT: It was essentially the same question, Mr. Wilson. Move on.

MR. WILSON: Okay.

BY MR. WILSON:

Q The next misrepresentation identified by HarbourVest said that Highland did not inform HarbourVest that it undertook

the transfers to siphon assets away from Acis, LP and that such transfers would prevent Mr. Terry from collecting on the arbitration award. So the basis for that allegation would be that Highland was siphoning assets from Acis to avoid having Acis pay the arbitration award, correct?

A That -- that would be the implication, yes.

Q Okay. And then that misrepresentation continues on and says that Highland represented to HarbourVest that it was changing the portfolio manager because Acis was toxic. And do you recall that representation being made to you?

A Yes, I do.

Q And would you agree with me that whether or not Acis is toxic in the industry would be an opinion?

A I suppose it would be an opinion, but by the manager of the vehicle responsible for managing the HCLOF investment and the underlying CLOs. Yeah, we viewed the Acis name and the Highland name as synonymous, if you will. I mean, Acis was a subsidiary of Highland. For all intents and purposes, it was the same from our perspective as we made the investment into HCLOF.

Q So did HarbourVest have an independent understanding of whether or not the Acis name was toxic in the industry?

A We did not, no. We relied on Highland's views of that as manager of HCLOF.

MR. WILSON: Your Honor, just a brief housekeeping

item. Did you say that we need to be done at 1:00 o'clock?

THE COURT: Well, I said I really wanted you to be done by 1:00 o'clock because I have a 1:30 docket and a 2:00 o'clock docket and I'd rather not have to hang up 70-something people and reconnect them again at 3:00 o'clock. How close are you to being finished?

MR. WILSON: Well, --

THE COURT: This is going at a very slow pace.

MR. WILSON: Well, I apologize for that, Your Honor. I think I've got at least ten more minutes, but -- but I know we also have closing remarks. And I was just going to ask if Your Honor had a preference of --

THE COURT: Keep going.

MR. WILSON: -- of breaking now --

THE COURT: Keep -- let's --

MR. WILSON: -- or keep going? Okay.

THE COURT: Let's talk fast and try to get through. You know, even if I'm sacrificing lunch today, I don't want to inconvenience 75 people this way. So we'll just probably start our 1:30 hearing a little late and inconvenience those people.

All right. Go ahead.

MR. WILSON: All right. Thank you, Your Honor.

BY MR. WILSON:

Q Did Acis form its -- I can't recall if you answered this

question, but did Acis form its own opinion on whether or not -- I'm sorry, strike that. Did HarbourVest form its own opinion on whether or not the Acis name was toxic in the industry?

MS. WEISGERBER: Objection, --

THE WITNESS: We did not. We didn't have a basis.

THE COURT: I'm sorry, did I have an objection?

BY MR. WILSON:

Q You did not --

THE COURT: Did I have an objection?

MS. WEISGERBER: Yeah. Objection. Yes. Objection, asked and answered, Your Honor.

THE COURT: Overruled. He can answer.

BY MR. WILSON:

Q Okay. But --

A We did not.

Q Did Highland have the ability to investigate the Acis name and make its own determination of whether that name was toxic? I'm sorry, I think I'm misspeaking. HarbourVest.

A HarbourVest had the ability to do that, yes.

Q I apologize I misspoke. I meant HarbourVest. Did HarbourVest have the ability to investigate that name and determine if it was toxic?

A It was irrelevant to our investment thesis. And as I said before, Acis was a subsidiary of Highland. We viewed

them as interchangeable in the context of our investment.

Q Okay. The next misrepresentation that you refer to says that Highland indicated to HarbourVest that the dispute with Mr. Terry would have no impact on its investment activities. Would you agree with me that that is also an opinion?

A It was a statement that --

MS. WEISGERBER: Your Honor, I'm going to object to the extent these questions are seeking a legal conclusion regarding, you know, if something's an opinion or not.

THE COURT: Okay. Overruled. He can answer.

THE WITNESS: It was -- it was a statement that was made to us by Highland and represented in multiple different formats as fact. And a representation that we relied on in connection with our investment.

BY MR. WILSON:

Q And finally, the misrepresentation, the last misrepresentation identified, is that Highland expressed confidence in the ability of HCLOF to reset or redeem the CLOs. Would you agree with me that that statement is an opinion?

A On the basis that it was the core investment thesis of the -- of the investment of HCLOF. Again, whether that's legally viewed as an opinion or a fact, it was -- it was certainly the investment thesis that we made the investment predicated upon.

Q And you just testified that you thought that Acis and Highland were interchangeable from the perspective of the investment opportunity, correct?
A Correct.
Q But you also accepted Highland's recommendation because HarbourVest agreed that the change in the -- to a Highland manager made commercial sense, correct?
A We took at face value what Highland recommended because this all had to do with the structuring of an entity that they fully managed with respect to multiple underlying subsidiaries that weren't managed by Highland.
Q But would you agree that, at the time, you -- HarbourVest thought that made commercial sense?
A It did not seem unreasonable to us based on the explanation we were given.
Q Okay.
MR. WILSON: I want to refer to HarbourVest Exhibit 39.
(Pause.)
THE COURT: What are we waiting on? What are we waiting on?
MR. WILSON: I'm trying to get the document on the screen, Your Honor.
(Pause.)
THE COURT: We can't hear you. We can't hear you.

MR. WILSON: I'm sorry. I'm sorry, Your Honor. I'm speaking with my --

THE COURT: Okay.

MR. WILSON: -- co-counsel here.

THE COURT: All right.

(Pause.)

MS. WEISGERBER: Mr. Wilson, is it 39 or 38 that you're referring to?

MR. WILSON: 39. HarbourVest 9019 motion on the main -- on the Dondero file. And then there's the -- it's -- it's John -- and then there's the HarbourVest, and then the exhibits are all in one file.

MS. WEISGERBER: Mr. Wilson, I'll just note that 39 was subject to confidentiality based on HCLOF's request. HCLOF's counsel is present. I think they know it's an excerpt. But I'd just -- that for HCLOF's counsel.

MR. WILSON: Well, is there an objection to showing this document on the screen? Yes. All right. We're not going to put Document 39 on the screen.

A VOICE: Yes.

MR. WILSON: All right. Scroll down to the next page.

BY MR. WILSON:

Q This is a -- this is a document that was produced to us this week, the Highland production. It appears to be a

Highland CLO Funding, Ltd. Statement of Operations for the Year Ended 31 December 2017. Do you see at the top of that -- at the top of that document where it says total investment income of $26 million?

A I do, yes.

Q And total expenses were roughly $1.8 million?

A Yes.

Q And then net change and unrealized depreciation on investments and net realized loss on investments was $4.26 million cumulative, resulting in a net increase in net assets resulting from operations of $20.224 million. Do you agree with that?

A Yes.

Q Okay.

MR. WILSON: Go to the next one.

BY MR. WILSON:

Q And you understand that, in the course of the Acis bankruptcy, the portfolio managers for certain of the CLOs were changed by the Trustee, correct?

A Yes, around the underlying CLOs. That's -- that's my understanding, yes.

Q And, in fact, Mr. Seery testified earlier today that that occurred in the summer of 2018, correct?

MR. WILSON: Scroll.

THE WITNESS: I don't recall the timing, but that's

what he testified to.

BY MR. WILSON:

Q Well, this document is HarbourVest Exhibit 40, and this is the statement of operations for the financial year ended 31 December 2018. Here, the total investment income is only $11.1 million. Do you see that?

A I do.

Q And do you see where the expenses have increased to $13.6 million?

A I do, yes.

MR. WILSON: Okay. Scroll down some more.

BY MR. WILSON:

Q And do you see where it says net change and unrealized loss on investments of $48.47 million?

A Yes.

Q And so after Acis and Brigade took over the managements of these CLOs, we had a net decrease in net assets resulting from operations of $52.483 million in the year 2018, correct?

MS. WEISGERBER: Objection, Your Honor. Assumes a fact not in evidence.

THE COURT: Overruled. He --

MR. WILSON: Your Honor, --

THE COURT: We're just looking at this statement and testifying about it says, so I overrule the objection.

MR. WILSON: Thank you, Your Honor. Thank you, Your

Honor. I'm now going to turn to HarbourVest Exhibit 41. All right. I'll --

BY MR. WILSON:

Q Did you answer the question, Mr. Pugatch?

A No, I -- I would agree with the second part of your statement that for the year 2018 the -- the loss was $52 million. I don't -- I don't believe that jives with the first part of your statement that that was after Acis and Brigade took over. As I understand, that was in the middle of the year.

Q But in any event, Acis and Brigade had been managing this for at least six months of 2018 when that loss occurred, correct?

A They had been managing a portion of the underlying CLO portfolio held by Highland CLO Funding.

Q All right. We're now looking at Exhibit #41, which is the Draft Unaudited Statement of Comprehensive Income, 31 December 2019. Total income has now dropped to $4.664 million.

MR. WILSON: And scroll down.

BY MR. WILSON:

Q Expenditures are at $3.645 million. And then it says investment gains and losses net out to $11.493 million, a negative $11.493 million. And --

MR. WILSON: Scroll down to the --

BY MR. WILSON:

Q And so would you agree with me that in the year 2019, HCLOF showed a net loss of $10.476 million?
A Yes, that's what the financial statements say.
Q And in this year, the Acis CLOs were solely managed by Acis and Brigade, correct?
A The Acis CLOs were. Yes, correct.
Q All right.
MR. WILSON: Now, go to 42.
BY MR. WILSON:
Q Now, this is HarbourVest #42.
MR. WILSON: Go down to the next page.
BY MR. WILSON:
Q And this is the Highland CLO Funding, Ltd. Unaudited Condensed Statement of Operations for the Financial Period Ended 30 June 2020. And so this is just half a year of operations. And would you -- and this actually has a comparison between 2019 and 2020. But do you see where it says investment income has dropped from a million dollars in the first half of 2019 to $381,000 in the first half of 2020?
A Yes.
MR. WILSON: Okay. Scroll down.
BY MR. WILSON:
Q And do you see where, in the first half of 2019, total expenses were $1.85 million, and then in the first half of 2020 total expenses were $2.16 million? Do you see that?

A I do.

Q And if you go down below that, where it says Net Realized and Unrealized Gain/Loss on Investments, the first half of 2019 HCLOF lost $12 million, and in the first half of 2020 it lost $39.472 million?

MR. MORRIS: Your Honor, I'm going to object. It's John Morris for the Debtor. I'm happy to stipulate. In fact, he can offer this document into evidence. There's no foundation that Mr. Pugatch has any particularized knowledge about any of the numbers behind this. All he's asking him to do is to confirm what the document says. It says what it says. But this -- I'll object on that basis, Your Honor.

THE COURT: All right. Mr. Wilson, what about it? You're just getting him to read numbers off of these exhibits.

MR. WILSON: Well, --

THE COURT: Shall we just --

MR. WILSON: -- I understood --

THE COURT: -- by stipulation get them into evidence?

MR. WILSON: Well, --

MR. MORRIS: No objection, Your Honor.

MS. WEISGERBER: No objection.

THE COURT: All right. So these are exhibits what? We've gone through 39, 41, and I don't know what else. 40, maybe?

MR. WILSON: It was Exhibits 39, 40, 41, and 42 that

were on the HarbourVest exhibit list.

THE COURT: All right. Those will be admitted, and we've already discussed what docket entry number they appear at.

(HarbourVest's Exhibits 39 through 42 are received into evidence.)

THE COURT: All right. Anything else? You told me you had 10 more minutes about 15 minutes ago.

MR. WILSON: Well, I'm sorry if I -- I think I had said I had at least ten more minutes, and I was looking at the -- it was 10:50 [sic] and you wanted to quit at 1:00. So I do have longer than that. I'm sorry, Your Honor.

THE COURT: Well, --

MR. WILSON: But --

THE COURT: -- I feel like I'm being --

MR. WILSON: -- I'll try to proffer --

THE COURT: Okay, Mr. Wilson, let me just tell you something. I feel like I'm being disrespected now, and the parties are. We really need to pick up the pace. I've told you I've got a 1:30 docket -- with four or five matters on it, by the way. I've got a 2:00 o'clock docket. I'm starting them late. No one advised my courtroom deputy that we were going to need all day today for this, okay? So you've got five more minutes to wrap it up, and then, of course, I have to go to Mr. Draper and see if he has cross. All right? So

please don't test my patience any more. Five minutes to finish.

MR. DRAPER: Judge, I have no questions.

THE COURT: I didn't hear you, Mr. Draper. What did you say?

MR. DRAPER: I have no questions.

THE COURT: All right. Very good.

MR. WILSON: I apologize, Your Honor. I was actually trying to be respectful of your time when I informed you that I had at least ten more minutes left at 12:50, but I will try to be as expedient as I can as I finish up.

BY MR. WILSON:

Q And I don't see you on my screen.

MR. WILSON: You can take that document down.

THE WITNESS: Here.

BY MR. WILSON:

Q Mr. Pugatch, do you have an opinion as to what caused these incredible losses of value at HCLOF?

MS. WEISGERBER: Objection to the extent it calls for a legal conclusion.

THE COURT: Overruled. He can answer.

THE WITNESS: I would say that there's no one cause for the decline in value. I can point to a number of different things, including the exorbitant fees that were charged to HCLOF, including the inability to be able to re --

refinance the CLOs on the part of HCLOF, all of which stems from the actions that Highland took prior to our investment in HCLOF.

BY MR. WILSON:

Q And you've -- I think it's been referenced several times in HarbourVest's arguments that -- that the reset was a fundamental -- the inability to get a reset was a fundamental cause of the loss in value. Is that -- is that HarbourVest's position?

A That -- that is a part of the -- the cause in the declining value of the CLOs, yes.

Q And you would agree with me that a reset is fundamentally a reset of interest rates, correct?

A Of the interest rates of the liabilities of the -- the timing for repayment of those liabilities, yes.

Q Now, just say with -- for the sake of a hypothetical example. If you had a home that was valued at $5 million, or let's just say $500,000, let's make it more realistic. If you had a $500,000 home and you had a mortgage on that home at five percent interest, your inability to refinance that home at a lower interest rate would not affect the underlying value of that home, correct?

MS. WEISGERBER: Objection, Your Honor. Hypothetical. And objection to relevance as well.

THE COURT: Sustained.

MS. WEISGERBER: Calls for speculation.

THE COURT: Sustained.

BY MR. WILSON:

Q Is there any reason to believe that the change in the interest rate would have prevented the massive losses of investment value that occurred in HCLOF?

MS. WEISGERBER: Object on the same grounds.

THE COURT: Sustained.

THE WITNESS: The short -- the short answer is yes, with a -- with the amount of leverage --

MS. WEISGERBER: I --

THE WITNESS: -- that exists. Oh, sorry.

MS. WEISGERBER: The objection was sustained.

THE COURT: Yeah, I sustained the objection. That means you don't answer.

THE WITNESS: I'm sorry, Your Honor.

BY MR. WILSON:

Q So, would you agree with me that if the expenses and the fees charged by the portfolio manager increased dramatically, that would -- that would impact the value of the investment, correct?

MS. WEISGERBER: Objection on the same grounds, and relevance. This is a 9019 hearing, Your Honor. We are not here to try every minutia. And in fact, we're trying to avoid a trial on the merits. And it feels like we're getting a bit

far afield now.

THE COURT: I sustain.

MR. WILSON: All right. I'll pass the witness.

THE COURT: All right. Mr. Draper said he had no cross. So, any redirect, Ms. Weisgerber?

MS. WEISGERBER: No, Your Honor.

THE COURT: All right. Mr. Morris, did you have any redirect?

MR. MORRIS: I do not, Your Honor. I have a very brief closing and then some additional remarks if -- if we finish.

THE COURT: All right. So, Mr. Pugatch, that concludes your testimony. Thank you. You're excused if you want to be.

All right. So, as I understood it, there would be no more evidence after this.

MR. WILSON: Well, Your Honor, along those lines, as a housekeeping measure, I think everything on my exhibit list is included on someone else's exhibit list, but just for belt and suspenders I would move to admit all of the exhibits on the -- on Mr. Dondero's exhibit list.

THE COURT: Well, is that agreed or not? Because we didn't have a witness to get them in.

MR. MORRIS: No objection, Your Honor.

THE COURT: Any objection? All right. If there's no

objection, I'll --

MR. MORRIS: Your Honor, --

THE COURT: I'm sorry. Was there an objection? I will admit Dondero Exhibits A through M, and those appear at Docket Entry 1721, correct, Mr. Wilson?

MR. WILSON: That is correct, Your Honor.

THE COURT: All right.

MR. WILSON: That is correct, Your Honor.

(James Dondero's Exhibits A through M are received into evidence.)

MR. WILSON: And one final matter is, during the examination of Mr. Seery, you at least partially admitted Dondero's Exhibit N, and I was wondering if we need to -- how we'd need to submit that for the record.

THE COURT: Okay. First, I'm confused. I think you said Mr. Terry's testimony. You --

MR. WILSON: I said Seery. I'm sorry.

THE COURT: Oh, Seery?

MR. WILSON: Or I may have said Terry, but I meant to say Seery.

THE COURT: Okay. Maybe you said it. Okay. During Mr. Seery's testimony -- oh, the email that I admitted a portion of?

MR. WILSON: That is -- that's correct, Your Honor.

THE COURT: What -- what are you asking? It's not in

your notebook. Are you asking do you need to separately submit it or what?

MR. WILSON: Yeah, I was just asking what the Court's preference on how we submit that for the -- put it in the record.

THE COURT: Okay. That was so garbled I didn't hear you. You need to file that on the docket as a supplemental exhibit that was admitted, okay?

MR. WILSON: Okay. Thank you, Your Honor.

THE COURT: All right. Closing arguments? Mr. Morris?

CLOSING ARGUMENT ON BEHALF OF THE DEBTOR

MR. MORRIS: Yes, very briefly, Your Honor. The Debtor easily meets the standard here. The settlement consideration relative to the claim establishes and reflects the likelihood of success on the merits.

You know, I've never -- I did hear Mr. Pugatch in the deposition the other day, but I otherwise haven't heard from him. I found him to be incredibly credible, Your Honor, and I regret the fact that he and HarbourVest are being blamed twice here. The fact that they got 40,000 documents or didn't read the arbitration award, it's just -- it's a shame that they're being dragged through this yet again.

The fact is, Your Honor, there is no evidence that they made the disclosures that HarbourVest claims -- complains

about. They just don't. The fraudulent transfers led to the bankruptcy, led to the appointment of a trustee, led to -- right? So, so it's -- that's why -- but they're getting something for their claim.

It was a hard negotiation, Your Honor. There is no dispute that if we litigated this it would be complex. It would fact-intensive. The Debtor would be forced to rely upon witnesses who are no longer employed by it. That it would be expensive, for sure. There's no dispute about any of that. There's no dispute that the creditor body has spoken loudly here by unanimously refraining from objecting except for Mr. Dondero and the entities controlled by him.

And you heard Mr. Seery's testimony. I think he exhaustively informed the Court as to the process by which the transaction was analyzed and negotiated, and there's no evidence to the contrary that this was an arm's-length negotiation.

Unless Your Honor has any questions, we would request that the motion be granted.

THE COURT: Thank you. Ms. Weisgerber, your closing argument?

CLOSING ARGUMENT ON BEHALF OF HARBOURVEST

MS. WEISGERBER: Sure. Thank you, Your Honor. I'll also be brief. We again join in Mr. Morris's arguments and comments.

The Court has now heard testimony from Mr. Pugatch regarding the factual detail underlying HarbourVest's claims. The Court has also heard about the significant damages that HarbourVest stands to recover for those claims. And HarbourVest came to this Court ready to litigate. It would -- it's ready to do so if needed. It believes it would prevail on its claims if it had to do so.

But the Court also heard from Mr. Seery about his understanding of HarbourVest's claims, his calculus, and his decision to settle them. And we submit that nothing further is needed by this Court in order to approve the settlement. This is a question of the Debtor's business judgment. We're not here to have a trial on the merits of HarbourVest's claims. The Objectors have made various arguments, including about the cause of HarbourVest's damages. But even the nature of the legal claims that HarbourVest is asserting, some do not require a loss causation. So we submit that's not even relevant to the merits of the claims.

The settlement is clearly in the best interest of the estate, and we respectfully request that the Court approve it.

THE COURT: Thank you. All right. Mr. Wilson, your closing argument?

MR. LYNN: Michael Lynn. I will give the closing argument, if that's satisfactory to the Court.

THE COURT: All right. Go ahead.

CLOSING ARGUMENT ON BEHALF OF JAMES DONDERO

MR. LYNN: Good afternoon, Your Honor. I just want to make a few points, and I'll try to do it as quickly as possible.

First, I feel compelled to address the argument of the Debtor that Mr. Dondero is repeating his litigious behavior from the Acis case. I don't know about the Acis case. I wasn't involved except very, very peripherally. But with respect to this case, we have only taken positions in court that we believed -- that is, his lawyers -- believed were warranted by law, facts as we knew them, and that are consistent with professionalism. I'd be glad to explain any position we took.

Often, through the Debtor's very persuasive powers, we never had the chance to explain our position previously to the Court. In fact, for the most part, as today, we have been reactive rather than commencing proceedings. In fact, during the first seven months of this case, we only appeared in court a few times, when we felt we had to -- for example, when discovery was being sought by the Creditors' Committee that we feared might invade privilege. Then, much to the Debtor's fury, we opposed the Acis 9019. We did so because we thought it was too much.

Since, as the Court can see, the principal instigators of litigation have been the Debtor, and to a lesser extent, the

Committee.

Indeed, in an apparent effort to drown Mr. Dondero and his counsel in litigation, the Debtor has repeatedly sought court action on a very short fuse, claiming need for expedited hearing.

Perhaps the most startling example of this is the recent contempt motion, for which there is no good reason for a quick hearing. Resolution of that motion is not necessary to reach the confirmation hearing. The motion could be heard after the confirmation hearing. There is no need to put Mr. Dondero and his professionals in a position where they have to respond in a couple of days, two business days, and then will have two days to prepare for trial.

Second, Your Honor, Mr. Seery has repeatedly asserted, contrary to today's motion, that the HarbourVest claim was of no merit. That is why, when he came in to settle for tens of millions of dollars, we opposed this motion. It appears that the motion is occurring without any cross-party discovery. There is no consideration, apparently, of trying dispositive -- dispositive motions first. There is no consideration for junior classes of equity, which Mr. Seery has previously opined were in the money. This, even though there's no reason that this settlement is necessary pre-confirmation, unless Mr. Seery wants HarbourVest's vote.

Third, for whatever reason, that seems to be the driving

factor for settling. On its face, the vote seems to be a key factor of the settlement. About the longest provision of the settlement agreement relates to voting. The motion itself -- in the motion itself, five of seven bullet points cited by the Debtor for approval of the settlement deal with and emphasize support of the plan or the vote that is to be cast for the plan.

If the settlement is a good deal, it didn't need to have as one of its parts the requirement that HarbourVest vote for the plan.

Your Honor, I'll stop there. I know Your Honor would like to get just a few minutes before your 1:30 docket. I've been there and I understand that, and I do apologize for taking the time we have, but I think that responsibility is shared with the Debtor and HarbourVest.

Thank you, Your Honor.

THE COURT: All right. Thank you for that.

Mr. Draper, any closing argument from you?

CLOSING ARGUMENT ON BEHALF OF GET GOOD AND DUGABOY TRUSTS

MR. DRAPER: Yes, I have three comments. The first is the claim -- the loss claim, absent the fraud claim, is, at best, $7 million. I think Mr. Seery's argument that a hundred -- one hundred percent is attributable to there is just wrong. If he and I both invested in a company 50-50 and it goes broke, we only lost 50 cents each.

Number two, I think the Court heard the evidence. I think this is, at best, a subordinated claim under 5 -- under the Bankruptcy Code. It's really a "But for the misrepresentations, we wouldn't have invested."

And the last one is the -- Judge Lynn represented the voting, so I won't deal with that. But the one that troubles me the most is the fact that this asset that is ultimately being paid for in claim dollars that's being transferred over to the Debtor and being put it outside the estate, outside the purview of this Court, and placed in some subsidiary, this -- this transaction, if it is approved, must -- should contain a provision that the asset that's being acquired come into the Debtor and be owned by the Debtor.

THE COURT: All right.

MR. DRAPER: I have nothing further, Your Honor.

THE COURT: Thank you, Mr. Draper.

Mr. Morris, you get the last word since it's your motion.

MR. MORRIS: Very quickly, Your Honor. The subordination argument doesn't hold water. This is not a claim against the Debtor for the security; it's a claim for fraud. Okay? So, so 510(b), if it was a claim against HCLOF, that might make sense, but this is a claim against the Debtor. And it's a Debtor -- it's a claim for fraud. That's number one.

Number two, we need to keep this exactly as it's been

structured in order to avoid litigation. Mr. Seery told the Court. I'm sure the Court can make its own assessment as to Mr. Seery's credibility as to whether or not the Debtor is intending to somehow get this asset beyond the Court.

But there are reasons why we've done this, Your Honor. They could have made an objection on that basis. In fact, if they did, it would be overruled, because there's no -- there's no basis for this Court to find that somehow the Debtor and Mr. Seery are doing something untoward to get assets away from this Court's jurisdiction.

You know, I don't know what to say about Mr. Lynn's commentary. Much of it had nothing to do with any evidence in the record.

The fact remains, Your Honor, that this settlement is fair. It's reasonable. It's in the best interest of the estate. And we would respectfully request that the Court grant the motion.

THE COURT: All right. Thank you. Well, I appreciate all the arguments and evidence I have heard today. I'm going to be brief in my ruling here, but I reserve the right to supplement in a more fulsome written order, which I'm going to instruct Mr. Morris to submit. I am approving the motion to compromise the HarbourVest claim today, and I guess subsumed in that is granting the motion to allow their claim for 3018 voting purposes.

I in all ways find this compromise to meet the required legal standard set forth in such cases as *TMT Trailer Ferry*, *AWECO*, and *Foster Mortgage*, numerous other Fifth Circuit cases.

First, I'm going to specifically say for the record that I found both witnesses today, Mr. Seery and Mr. Pugatch, to be very credible. Very credible testimony and meaningful testimony was provided to the Court today. And based on that testimony, I find, first, that this compromise was the product of arm's-length negotiations. It was a hard-fought negotiation, as far as I'm concerned. The Debtor objected to these numerous HarbourVest proofs of claim. The Debtor did not want to allow HarbourVest a significant claim for voting purposes. I duly note the statements made in the disclosure statement before this compromise was reached suggesting, you know, the Debtor didn't think HarbourVest should have a large claim.

That is consistent with everything I typically see in a bankruptcy case when there's a claim objection. The objector vehemently denies the claimant should have a proof of claim, and then people sit down and think about the risks and rewards of litigating things. And I believe very fervently that's what happened here. There were good-faith, arm's-length negotiations that resulted in this proposed compromise.

I find the compromise -- and I'll add to that point, on

the good-faith point, I find nothing sinister or improper about the fact that the compromise includes a commitment of HarbourVest to vote in favor of the plan. Again, we see this a lot. You know, there's even a buzz word that doesn't even exist in the Bankruptcy Code: "plan support agreement." You know, we see those a lot -- you know, oftentimes negotiated before the case, but sometimes after. You know, it may be improper in certain situations, but there was nothing here that troubles me about that component of the compromise.

I find the compromise to meet the paramount interest of creditors here. Notably, we have very large creditors in this case who have not objected. The *Foster Mortgage* case from the Fifth Circuit tells me I am supposed to consider support or opposition of creditors. No opposition of UBS. No opposition of the Redeemer Committee Crusader Fund. No opposition from Josh Terry or Acis. No opposition from Daugherty.

But moreover, when considering the paramount interest of creditors, I find this compromise to be in all ways fair and equitable and in the best interest of the estate, and certainly within the range of reasonableness. The evidence showed that HarbourVest asserted over $300 million. Over $300 million. Granted, that was based on all kinds of legal theories that would be contested and expensive to litigate, but the evidence also showed that they invested over $70 million. You know, close to $75 million. I forget the exact

number. $75 or $80 million, somewhere in that range. And now the credible evidence is that investment is worth about $22 million.

So, certainly, while the claim may not have, at the ultimate end of the day in litigation, resulted in a $300 million proof of claim, certainly, certainly there were strong arguments for a very sizeable claim, more than this compromise amount. So it's certainly fair and equitable and reasonable when considering the complexity and duration of further litigation, the risks and rewards, the expense, delay, and likely success.

A couple of last things I'm going to say are these. I understand, you know, there is vehement disagreement on the part of our Objectors to the notion that Highland might have caused a $50 million loss to HarbourVest. But I will tell you, for what it's worth -- I want the record clear that this is part of my evaluation of the reasonableness of the settlement -- my reaction is that, indeed, Highland's litigation strategy in the Acis case caused HCLOF to lose a huge portion of its value, to the detriment of HarbourVest. You know, whether all evidence at the end of the day would convince me of that, I don't know, but that's -- that is definitely this judge's impression.

I'm very sympathetic to HarbourVest. It appears in all ways from the record, not just the record before me today, but

the record in the Acis case that I presided over, that Highland back then would have rather spent HarbourVest's investment for HCLOF legal fees than let Josh Terry get paid on his judgment. They were perfectly happy to direct the spending of other people's money, is what the record suggested to me.

And then, you know, I have alluded to this very recently, as recently as last Friday: I can still remember Mr. Ellington sitting on the witness stand over here to my left and telling the Court, telling the parties under oath, that HarbourVest -- he didn't use its name back then, okay? For the first phase of the Acis case, or most of the Acis case, we were told it was an investor from Boston. And at some point someone even said their name begins with H. I mean, it seemed almost humorous. But Mr. Ellington said it was they, HarbourVest, the undisclosed investor, who was insistent that the Acis name was toxic, and so that's what all of this had been about: the rebranding, the wanting to extract or move things away from Acis.

So, you know, I have heard for the -- well, at least the second time today, from Mr. Pugatch, what I perceive to be very credible testimony that that's just not the way it happened.

And I guess the last thing I want to say here today, and you know, I guess I have multiple reasons for saying this, not

just in connection with approving the settlement, you know, I've heard about how the Acis CLOs, the HCLOF CLOs have lost, you know, a crazy amount of value, that they underperform in the market, that, you know, during the Acis/Brigade tenure and, you know, they should have been reset. You know, I hope those who have not been around as long as some of us in this whole saga know that the -- Mr. Terry, Mr. Phelan, I think Brigade, they all desperately wanted to reset these things, but it was HCLOF, I believe directed by Highland, that wanted to redeem, wanted to liquidate, take the pot of money, warehouse it, and then do their own thing.

And there was, I think, from my vantage point, a monumental effort to try to get everyone to the table to do reasonable resets that would be good for the stakeholders at HCLOF and be good for the creditors of Acis, including Josh Terry. That was always the balancing act that most of us were focused on during the Acis bankruptcy. But Highland, I believe, directing HCLOF's strategy, just did not want the resets to happen.

So, again, part of me, I suppose, just wants to make the record clear on something that I fear not everyone is clear about. And I say that because the comment was made that the injunctions, the preliminary injunctions sought by the Acis trustee caused the plummet in value, and I think that's just not an accurate statement. I think litigation strategies are

what caused the plummet in value, and that's why I think ultimately HarbourVest would potentially have a meritorious claim here in a significant amount if this litigation were to go forward.

So, I approve this under 9019. And again, Mr. Morris, you'll upload an order.

It is now 1:41, so let's as quickly as possible hear the other motion that I don't think had any objections. Mr. Morris?

MR. MORRIS: Your Honor, just -- yes, just very quickly, just four things.

With respect to the order, I just want to make it clear that we are going to include a provision that specifically authorizes the Debtor to engage in -- to receive from HarbourVest the asset, you know, the HCLOF interest, and that that's consistent with its obligations under the agreement.

The objection has been withdrawn, I think the evidence is what it is, and we want to make sure that nobody thinks that they're going to go to a different court somehow to challenge the transfer. So I just want to put the Court on notice and everybody on notice that we are going to put in a specific finding as to that.

THE COURT: All right. Fair --

MR. MORRIS: Number two is --

THE COURT: Fair enough. I do specifically approve

that mechanism and find it is appropriate and supported by the underlying agreements.

And just so you know, I spent some time noodling this yesterday before I knew it was going to be settled, so I'm not just casually doing that. I think it's fine.

Okay. Next?

MR. MORRIS: Thank you very much, Your Honor. Number two, with respect to the motion to pay, there is no objection. If we can just submit an order. Or if Your Honor has other guidance for us, we're happy to take it.

THE COURT: Okay. Does anyone have anything they want to say about that motion?

Again, I looked at it. I didn't see any objections. I didn't see any problem with it. It's -- you know, you're going through this exercise because of the earlier protocol order.

MR. MORRIS: Correct.

THE COURT: All right. Well, if there's nothing, then, I will approve that, finding there is good cause to grant that motion.

MR. MORRIS: Okay.

THE COURT: All right. Is the only other housekeeping matter --

MR. MORRIS: I --

THE COURT: -- we have the contempt motion?

MR. MORRIS: It is, and I do -- I do have to point out how troubled the Debtor is to learn that Mr. Dondero was still receiving documents from Highland as late as this morning. It's got to be a violation of both the TRO -- I guess it's now the preliminary injunction.

I would respectfully request -- I know that time is what it is -- but maybe Mr. Dondero can answer now where he got the document, who he got the document from, what other documents he's gotten from the Debtor since Your Honor ordered him not to communicate with the Debtor's employees.

This is not saying hello in the hallway. I mean, this is just -- it is really troubling, Your Honor, and it's why we need the contempt motion heard as soon as possible.

THE COURT: Well, Mr. Wilson, do you want to address that? I think the words I heard were that you just got the document this morning, and you got it from Mr. Dondero, but we don't know where and when Mr. Dondero got it. Mr. Wilson, are you there?

MR. LYNN: I'm afraid I'm back, Your Honor.

THE COURT: Okay.

MR. LYNN: I am not sure whether Mr. Dondero had it in his files from some -- from back before he was asked not to communicate with members or with employees of the Debtor. I believe -- I believe he's with us, though I don't think he's available by video.

Are you there, Mr. Dondero?

THE COURT: We can't hear you, Mr. Dondero.

MR. DONDERO: Judge?

THE COURT: Oh, go ahead.

MR. DONDERO: Can you hear me now?

THE COURT: Yes.

MR. DONDERO: Yes, I -- I -- when I moved offices, I found it in a stack of paper, and --

MR. LYNN: I understand it shows that his microphone is working.

THE COURT: Okay. Go ahead.

MR. DONDERO: Can you hear me?

THE COURT: Yes, go ahead.

MR. DONDERO: Yeah, I -- I'm sitting in new offices. I've got everything in boxes. I was going through everything yesterday, and I found those emails in a stack of papers and I sent them over because I thought they would be relevant relative to Seery's initial impression.

THE COURT: Okay. Well, let's talk about the timing of this hearing. Mr. Morris, I'm going to -- I'm going to ask you why --

MR. LYNN: Michael Lynn, Your Honor. I don't want to waste the Court's time. We have not made available anything to the Court objecting to the expedited hearing on the contempt motion. We've been here.

I would say to Your Honor that if Mr. Dondero is indeed in contempt, or was in contempt toward the motion, which has nothing to do with the document that was presented as Dondero Exhibit N, there is no need to hear this on an expedited basis.

Every time we turn around, Your Honor, the Debtor is asking that something be heard on an expedited basis. And we have not opposed that. We have not fought that, to speak of, to date. But this is getting a little ridiculous. We're within days of confirmation of the Debtor's plan, and it is simply a means of causing pain and suffering to Mr. Dondero and those who are working with him and for him. And he does have employees at NexPoint who are assisting him.

So we most strongly object to being put on a schedule where we are expected to get a response to the contempt motion on file by Monday, today being Thursday, and a weekend intervening. And we strongly object to any setting of this contempt motion on Tuesday or Wednesday. It is absurd, and it is done solely, solely, Your Honor, to cause pain.

THE COURT: All right.

MR. MORRIS: Your Honor, if I may?

THE COURT: Please.

MR. MORRIS: Just very briefly, we had a hearing the other day. The evidence is the exact same. The evidence is crystal clear that the violations are meaningful, they're

substantial, and they are repeated.

After the TRO was entered into, Mr. Dondero and only Mr. Dondero chose to interfere with the Debtor's business. Mr. Dondero and only Mr. Dondero chose to communicate with the Debtor's employees, not about saying hello in the hallway but about coordinating a legal defense strategy against the Debtor.

The need is immediate, Your Honor, and I would respectfully request that the hearing be set for Tuesday or Wednesday. They've had this motion now since the 7th of January. They had a full evidentiary hearing, so they know most of the evidence that's going to be presented. They have a whole team of -- they have an army of lawyers, Your Honor, and half a dozen firms working on behalf of Mr. Dondero and his interests. For him to cry here, for him to cry that this is too much is really -- it's obscene. It just is.

THE COURT: All right. I'm going to say a couple --

MR. LYNN: That is absurd.

THE COURT: I'm going to say a couple of things. One is that I -- well, the one time I remember getting reversed for holding someone in contempt of court, the District Court felt like I had not given enough notice of that. The District Courts, what they think is reasonable notice, is sometimes very different from what the bankruptcy judges think. We're used to going very lickety-split fast in the bankruptcy

courts. And the Courts of Appeals, District Court, Courts of Appeals obviously, for good reason, are very concerned about due process in this kind of context. So I'm sensitive to that.

I'm also sensitive to the fact that it is monetary damages that are being sought here to purge the contempt. Okay? The shifting of attorneys' fees is basically what I understand is being sought at this point. You know, we have a preliminary injunction halting behavior at this point, and so I think that's another reason I'm hesitant to give an emergency hearing. I feel like monetary damages can wait and we can give 21-plus days' notice of the hearing.

But I'm going to throw this out there as well. If I do feel like there is a showing of contempt, if I do feel like the phone -- as I told you the other day, I'm very, very fixated on the phone that may have been destroyed or thrown away, maybe at Mr. Dondero's suggestion. I mean, the potential monetary sanction here may be very, very large if the evidence plays out in the way I fear it might play out. So I need to make sure everybody has adequate time to prepare for that hearing and make sure I get all the evidence I need to see. All right? Contempt of court is very, very, very, very serious, and I don't think anyone would deny that.

So, with that, it was filed what day? January 4th? Is that what I heard? Or --

MR. MORRIS: January 7th, I believe, Your Honor.

THE COURT: January 7th? All right. Well, Traci, are you there? Hopefully, you're not in a hunger coma at this point.

THE CLERK: I am here.

THE COURT: Okay. We have -- we're going to have to go to that first week of February, right? Because we've got the confirmation hearing that, you know, late in January, and then --

THE CLERK: Yes. Uh-huh.

THE COURT: Okay. Do you have an available date to give right now?

THE CLERK: How about -- if you're willing to hear them on Friday, February 5th.

THE COURT: Okay. I can do that. February 5th at 9:30. Any -- anybody want to argue about that?

MR. MORRIS: Thank you, Your Honor. That's acceptable to the Debtor.

THE COURT: Okay. Mr. Lynn, is that good with you?

MR. LYNN: We'll do that, Your Honor. I would say, by the way, that I'll be happy to buy Mr. Seery, out of my own pocket, five cell phones, which ought to make up for the one that was lost, though I recognize that those cell phones will not have on them the privileged information, the conversations between his lawyers and Mr. Dondero that I imagine he was

looking forward to seeing.

THE COURT: Well, I wouldn't want him to see that information, but I do think he's entitled to any nonprivileged information, texting, or calls that are on that phone. So, again, I'm either going to hear good explanations for that or not, but it's something very concerning to me.

All right. So we have a game plan.

I'm going to ask, Did we have good-faith negotiations between Dondero and the Committee and anything positive to report? I'll ask Mr. Lynn and Mr. Clemente to weigh in.

MR. CLEMENTE: Yes, Your Honor. I'll go first, Your Honor. Mr. Lynn and I have exchanged several emails over the weekend, and the message that I sent to Mr. Lynn was very clear. There had been a term sheet that Mr. Seery had sent back to Mr. Dondero. I had asked Mr. Lynn to take a pencil out and be very specific as to what it was Mr. Dondero was prepared to do in connection with the pot plan. I instructed him that some of the issues that the Committee still has is obviously the overall value, along with the concept that's signing up to a promise from Mr. Dondero to comply with (indiscernible) as part of that value. As Your Honor may understand, the Committee is obviously very skeptical of Mr. Dondero's future performance under an agreement that he enters into.

Those are but a couple of issues, Your Honor, that I

advised Mr. Lynn were very concerning to the Committee. And I suggested to him that if he wanted to move things forward, the best way to do it would be to come to us with a fulsome term sheet that explained exactly what it was in clear and precise detail that Mr. Dondero was proposing, and that would be the best way to move the process forward, Your Honor.

THE COURT: All right. Mr. Lynn, anything to add to that?

MR. LYNN: Well, Your Honor, my experience in negotiations is that it is useful to agree on substantive terms, or at least be in the ballpark, before term sheets are exchanged. Long ago, a term sheet was prepared and presented to the Committee. Ultimately, I think it was rejected, though I don't know if we ever received a formal rejection.

I explained in my emails, which I'm happy to share with the Court if Your Honor wants to see them, why I was reluctant to try to put into a term sheet form the proposal that I suggested to Mr. Clemente. As I said, I'm more than happy to provide you with that email chain and let you form your own judgment, Your Honor, as to whether we're proceeding in good faith.

THE COURT: All right. Well I'm not going to ask --

MR. POMERANTZ: Your Honor? Your Honor, this is Jeff Pomerantz.

THE COURT: -- to see any of that. Mr. Pomerantz?

MR. POMERANTZ: May I just be heard real quickly?

THE COURT: Sure.

MR. POMERANTZ: Your Honor, we also took Your Honor's comments to heart. We, Mr. Seery and I, had an over-an-hour conversation with Mr. Lynn and with Mr. Bonds. We provided them with our thoughts as to what they needed to do in order to move forward. Of course, it's not really the Debtor to agree. It's the creditors to agree. But as Mr. Seery has testified many times before and as I have told the Court, we would support a plan that the Committee and Mr. Dondero could get behind.

So we again -- I'm not going to divulge the nature of those communications, but we suggested several things that Mr. Dondero could do in order to move the ball forward, and unfortunately, we have not seen any of those things done thus far. So we are, at this point, not optimistic that there will be a grand bargain plan.

THE COURT: All right.

MR. DONDERO: Your Honor, could I comment for a second? This is Mr. Dondero.

THE COURT: If you and your counsel want you to comment, you can comment.

MR. DONDERO: I'd love to do a pot plan. I would love to reach some kind of settlement and everybody move on with their lives. The estate started with $360 million of

third-party assets and $90 million of notes. The $360 million of third-party assets are down to $130 million.

MR. POMERANTZ: Again, Your Honor, I must interrupt. I did this at the last hearing, and it's not my practice to interrupt, but issues regarding what the value is or not, it's going to require a response, and that's not really before Your Honor. I think before Your Honor is --

MR. DONDERO: Okay.

MR. POMERANTZ: -- have there been negotiations? Have they been in good faith? If Mr. Dondero wanted to address that, that's fine, but I object to having any discussion at this point, especially with Mr. Dondero not even under oath, on what the nature of the value of the assets and why they have changed and what not.

THE COURT: Well, --

MR. POMERANTZ: It's just not appropriate.

THE COURT: I understand --

MR. DONDERO: Okay. Can I --

THE COURT: Stop.

MR. DONDERO: Can I -- can I finish?

THE COURT: Let me please respond to that. I understand your concern, but I've heard from Mr. Seery testimony many months ago about the value plummeting during the case. And I asked why, and I got some explanations. This is not evidence. This is just, you know, this is not going to

be binding in any way. Mr. Dondero can speak as to what he thinks, you know, the situation is.

Go ahead, Mr. Dondero.

MR. DONDERO: Okay. I'm not trying to fixate on the numbers. And as far as the third-party assets are, we would be willing to pay -- I would be willing to pay for those. I'd be willing to pay more, and even some value for the affiliate notes that were really part of compensation agreements throughout the history of Highland and avoid the POC arguments. I'd be willing to pay for the assets and I'd be willing to pay even more than that.

I have no transparency in terms of what the assets are, and there's no fulsome discussion in terms of, well, here are the assets, here are the notes, here's what we think the values are, can you get to this number? It's just a -- you -- the -- it -- I don't view there is good-faith negotiations going on because it's always just a: You need to put a big number on a piece of paper; otherwise, you're going to get run over.

And there's no back and forth going on, but it's not due to a lack of willingness on my part. And maybe there needs to be a committee set up. Maybe there needs to be, I don't know, a mediator or an examiner or somebody to try and push through the pot plan, but there's nothing happening. People are not returning the judge's calls, I mean, Mr. Lynn's calls, or my

calls. They're -- there's -- despite efforts of our -- of my own and a willingness of my own, there's no negotiations of any sort going on at the moment.

THE COURT: All right. I don't want anyone to respond to that. I know people have different views of what's going on. But let me just say a couple of things, and then we're done.

We do have a Committee in this case. We have a Committee with very sophisticated members and very sophisticated professionals. Okay? That's who I wanted you to be talking to before the end of the day Tuesday.

We have had co-mediators in this case. Okay? And, you know, I identified very sophisticated human beings for that role. Okay? And in fact, there ended up being settlements that flowed out of the co-mediator process.

We're now 15 months into the case. There are major, significant compromises now: HarbourVest, UBS, Acis, Terry, and Redeemer Committee. I hate to use a worn-out metaphor, but the train is leaving the station. We've got confirmation. I've pushed out two weeks. I mean, you all are either going to get there in the next few days or we're just going to go forward with I think what everyone, you know, would rather be a pot plan, but if we can't get there, we're just going to have to consider the plan that's on the table now. Okay?

You know, the Committee, again, they're sophisticated.

They can compare apples to oranges and decide whether the plan on the table, with its risks of future litigation and recoveries, whether it's better or worse than whatever consideration you're offering, Mr. Dondero.

And you know, as we all know, there is distrust here, there, and everywhere among these parties. So I can totally understand them, you know, taking a hard line: We either get all cash or we're just not going to mess with it. We don't want to risk broken promises. We'd rather just do litigation.

So, anyway, that's as much as I'm going to say except I am going to further direct good-faith negotiations. It sounds like to me a written term sheet might be the appropriate next step, given where I've heard things are at the moment. But, you know, I guess we don't have any hearings between now and the 26th, right? No Highland hearings that I can think of between now and the 26th.

MR. POMERANTZ: I don't think so.

MR. MORRIS: I think that's correct, Your Honor.

THE COURT: So you have all this time --

MR. MORRIS: At the moment.

THE COURT: You have all this time to negotiate and simultaneously get ready for the confirmation hearing without any other battles. So I know you will use the time well.

All right. We're adjourned.

THE CLERK: All rise.

MR. BONDS: Thank you, Your Honor.

(Proceedings concluded at 2:04 p.m.)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **01/16/2021**

_____ _____

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

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

In Re:	**Case No. 19-34054-sgj-11**
	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	Dallas, Texas
	Thursday, August 19, 2021
	9:30 a.m. Docket
Debtor.	
	COMMITTEE'S MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE EXAMINATION PURSUANT TO RULE 2004 (#2620)
OFFICIAL COMMITTEE OF UNSECURED CREDITORS,	**Adversary Proceeding 20-3195-sgj**
Plaintiff,	MOTION TO FURTHER EXTEND THE STAY OF THE ADVERSARY PROCEEDING THROUGH OCTOBER 15, 2021 (#70)
v.	
CLO HOLDCO, LTD., et al.,	
Defendants.	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

WEBEX APPEARANCES:

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Proceedings recorded by electronic sound recording; transcript produced by transcription service.

DALLAS, TEXAS - AUGUST 19, 2021 - 9:38 A.M.

THE COURT: All right. We have Highland matters set this morning. We have what I'll call the 2004 Motion, which I've heard from my staff we may have an agreed order, despite the many, many objections. And then we have a motion to further extend the stay in the Adversary 20-3195.

All right. So, rather than take dozens of appearances right now, I'm going to start with Creditors' Committee counsel on the 2004 Motion. Who do we have appearing for the Creditors' Committee?

MR. POMERANTZ: Your Honor, actually, this is Jeff Pomerantz. I thought it would be helpful to give Your Honor a 60-second update on the case, since we've had some developments. We don't have anything on in the Debtor, but I think Your Honor might appreciate a little update.

THE COURT: All right. Sure. Sure. So, Mr. Pomerantz, good morning. How are you?

MR. POMERANTZ: Good morning. How are you, Your Honor?

We are pleased to report that, after months of working towards an effective date of the plan, the plan did go effective on August 11th. Refinancing that Your Honor had approved has actually closed. And we have new corporate governance in place, as was contemplated under the plan. That includes the Claimant Trust having been established, with Jim

Seery, who is well known to Your Honor, as the Claimant Trustee. The Litigation Sub-Trust has been established. Marc Kirschner is the Litigation Sub-Trustee. He is appearing I believe today with his counsel, Quinn Emanuel, headed by Deborah Newman. And we have a new Claimant Trust Oversight Board.

The parties have been working well before the effective date, and continue to work together towards the twin goals that were set forth in the plan: one, to monetize assets as reasonably and quickly as possible to maximize their value; and second, to pursue any claims that the estate has, which, of course, is the subject of today's hearings.

So, that's the update, Your Honor. We're very pleased, after all these months, that it's occurred. We still, as Your Honor is aware, have a whole bunch of litigation at various places -- in the Fifth Circuit, the District Court, and Your Honor -- and we will proceed with that and hopefully narrow the issues as time goes by.

Thank you, Your Honor.

THE COURT: All right. Well, thank you, Mr. Pomerantz. We appreciate hearing that news.

Well, now I'll turn -- I said, maybe incorrectly, to the Creditors' Committee. Perhaps I should say I'm turning to counsel for the former Committee and I presume now counsel for the Litigation Trustee. Who is appearing for this client?

MS. MONTGOMERY: Yes, Your Honor. It's Paige Montgomery from Sidley Austin. And you're accurate that we are former counsel for the Committee and now represent the Litigation Sub-Trust and the Trustee.

And appearing with me today is Deborah Newman of Quinn Emanuel. And Ms. Newman also represents the Litigation Sub-Trust and has recently filed her appearance *pro hac vice*.

THE COURT: All right. Well, I said I would wait before asking for the dozens of appearances of Objectors on this 2004 motion because my staff tells me there's an agreed order, so let me hear about that and then I'll let the Objectors chime in on their consents or any disagreements they have. All right.

MS. MONTGOMERY: Yes, Your Honor. I believe that as of midnight-ish last night we reached resolution with all of the filed Objectors with regard to a form of order that we submitted on -- by filing and also emailed to chambers last night with -- I believe we had agreed signatures from everyone except for counsel for Grant Scott. Mr. Scott's counsel has now also informed us that he agrees to that form of order officially, so I believe that that will completely resolve the 2004 motion today.

THE COURT: All right. Well, and I'm pulling up that order now, just to see if I have any last-minute questions. All right. Well, and just as I understood it, let me see how

I can paraphrase it, I mean, basically, it doesn't mean we're not going to have any future disputes, shall we say, with regard to production. Everybody sort of has reserved their rights, when they ultimately get a subpoena, to make whatever arguments they want to make about holding back documents and -- so we may have motions to compel, you know, motions to quash, motions for protective order down the line, but this is just sort of setting the stage for this discovery that's going to be sought, correct?

MS. MONTGOMERY: That's right, Your Honor. We believe that it, you know, allows for the authorization of the subpoenas, so that we can issue them. And then disputes with regard to scope, timing, logistics, all of those sorts of things, have been reserved by all the parties, and we hope to be able to work those out individually and meet and confer.

THE COURT: All right. Well, I will ask. People, speak now or forever hold your peace. If you are one of the Objectors, it's been represented that all of you have signed off on this order, except for maybe Grant Scott's counsel, but Grant Scott, they have orally approved this form or order. Speak now or forever hold your peace. If you are an Objector and you want to say anything to the Court about this, please do so now.

(No response.)

THE COURT: All right. I'm not hearing anyone, so if

you're trying to speak and you're on mute, I'm just letting you know I'm not hearing anyone.

(No response.)

THE COURT: All right. Well, very well. I'm happy to accept this agreed form of order. And so I assume that it will be uploaded, if it hasn't been already, and I'll get it signed today, Ms. Montgomery.

All right. Well, thank you. So we'll move on to the other matter. And so, again, it's a motion to further extend the stay in what I'll call the CLO Holdco adversary, Adversary 20-3195. Ms. Montgomery, will you be presenting that motion as well?

MS. MONTGOMERY: No, Your Honor. Ms. Newman will be presenting that motion on behalf of the Litigation Trust.

THE COURT: All right. Ms. Newman, would you like to appear at this time?

MS. NEWMAN: Yes. Thank you, Your Honor. For the record, Deborah Newman from Quinn Emanuel on behalf of Marc Kirschner, the Litigation Trustee for the Litigation Sub-Trust created under the plan, who, as noted, was -- well, I guess who -- the Sub-Trust was created on the effective date, on August 11th, and has now substituted in as the Plaintiff in the adversary proceeding under the terms of the plan.

THE COURT: All right. Thank you, Ms. Newman.

I'll now take other appearances of the Defendants in that

matter. Who do we have appearing for Defendants in that matter? CLO Holdco first.

(No response.)

THE COURT: All right. Is Mr. Phillips perhaps the one?

THE CLERK: He's still on mute.

THE COURT: Mr. Phillips, if you're trying to speak up, you're on mute.

MR. PHILLIPS: Sorry, Your Honor. Can you hear me now?

THE COURT: I can, yes.

MR. PHILLIPS: Okay. Thank you. I apologize. I had it on two sets of mute.

Louis M. Phillips on behalf of CLO Holdco, Ltd. and Highland Dallas Foundation, who were the -- are the two parties who have been served in the CLO enterprise group and who were the prior Objectors to the first motion to stay, and we are the Objectors to this second motion to stay.

THE COURT: All right. Thank you.

So, I assume we have no other appearances for Defendants. If we do, by chance, please speak up.

(No response.)

THE COURT: All right. Well, Ms. Newman, you may present the motion.

MR. PHILLIPS: You're on mute, Ms. Newman.

THE COURT: You're on mute.

MS. NEWMAN: Thank you. That seems to be a common issue here.

OPENING STATEMENT ON BEHALF OF THE LITIGATION TRUSTEE

MS. NEWMAN: Again, for the record, Deborah Newman from Quinn Emanuel on behalf of Marc Kirschner, the Trustee of the Litigation Sub-Trust.

Your Honor, we're here today seeking a brief further extension of the stay of Adversary Proceeding 20-3195 through October 15, 2021.

Under the plan, Your Honor, the Litigation Trustee has been tasked with investigating and monetizing estate causes of action. As I understand it, the original expectation was that the plan would be confirmed and go effective much sooner than has actually occurred. In reality, as Your Honor knows, the plan did not go effective and the Litigation Trust was not formed until eight days ago.

Because of this delay and in recognition of the fact that the statute of limitations for many estate causes of action is set to expire in mid-October, in May the Committee moved to retain the Litigation Trustee and his firm, Teneo Capital, as Litigation Advisor to the Committee. The Committee also filed the first motion to stay the adversary proceeding, seeking a 90-day stay in order to provide the Litigation Trustee and Teneo with the necessary time to familiarize themselves with

the adversary proceeding and to effectively manage the litigation of the adversary proceeding in its entirety.

Since that time, Your Honor, the Litigation Trustee and Teneo have spent a tremendous amount of time investigating potential estate causes of action and trying to understand the structure of the Debtor and its many related entities and the myriad of transactions between and among those entities. And I and my colleagues at Quinn Emanuel have recently joined that effort on the Litigation Trustee's behalf.

But to say that this is a Herculean task is to put it mildly, Your Honor. As I believe Your Honor knows better than I do, the Debtor's corporate structure is extremely complex, involving more than 2,000 related entities, and there are dozens and perhaps even hundreds of transactions in which assets were transferred out of the Debtor seemingly for no reason and in exchange for consideration that is of dubious value or value that is very difficult to quantify.

And the complexity here is exacerbated by the fact that virtually all of those transactions involved more than one counterparty. Assets left the Debtor and then moved from one entity to another, and sometimes from country to country, before being transferred to the ultimate transferee.

For those types of transactions, the Debtor's records include some information about the transfers, but piecing together the entire chain of events is exceedingly difficult.

While it's true, as Mr. Phillips has pointed out in his objection, that the Committee began taking discovery from the Debtor in the fall of 2019, as I know the Court is aware, that was a long and laborious process and required motions to compel and a complex protocol that placed restrictions on the information that the Committee was able to access.

Additionally, the bulk of the Committee's work in this case focused on matters having nothing to do with the investigation of estate causes of action. And the work of that nature that the Committee did do focused primarily an identifying large transfers, assessing what legal claims might arise from them, and work relating to the claims asserted in this action, given the deadline set by the Court to file claims against CLO Holdco in order to prevent funds from being released from the Court registry.

The Committee took no third party discovery of any entity other than CLO Holdco, and no substantive witness interviews with Debtor employees were conducted. And it was only recently, upon the effective date, that the Litigation Trustee received broader access to the Debtor's information, including some of its detailed financial records.

In short, Your Honor, this is not a situation where the Committee provided the Litigation Trustee with a detailed list of claims, relevant facts, and potential legal theories that would act as a roadmap for his work. The Litigation Trustee

is thus literally running up against a clock that is ticking towards October 15th and is spending all of his time investigating and preparing to litigate additional estate causes of action and determining whether to amend the complaint filed in the adversary proceeding.

As was just discussed, the Litigation Trustee also intends to begin serving Rule 2004 discovery in order to aid in the investigation of causes of action outside of those asserted in this adversary proceeding. As we have made exceedingly clear, however, the Litigation Trustee does not intend to take Rule 2004 discovery relating to the claims asserted in this action. But we are continuing to analyze information in the Litigation Trustee's possession, including the information that just recently became available to him, and likely will be seeking to amend the complaint as well as commencing additional estate causes of action.

Accordingly, Your Honor, we are here today asking for a brief additional stay of the adversary proceeding for 57 days, through and including October 15th, 2021, so that the Litigation Trustee may have the time necessary to determine whether to seek leave to amend the complaint filed in this action, to file additional estate causes of action, and to ensure that the complaint or any amended complaint and any additional causes of action that are filed may be litigated on a consolidated basis.

As the Supreme Court held in the *Landis* case cited in our motion, the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the cases on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can be done calls for the exercise of judgment which must weigh competing interests and maintain an even balance.

Here, Your Honor, the balance weighs heavily and clearly in favor of granting the Litigation Trustee's request. An additional stay of the limited 57-day duration requested poses no threat of harm to anyone and affords significant benefit to all.

Of course, this stay will benefit the Litigation Trustee and the beneficiaries on whose behalf he is acting by enabling the Litigation Trustee to gain a better understanding of the extremely opaque structure and transactions involving the Debtor and its related entities. But it will also benefit the Court and the Defendants by ensuring that the parties to the adversary proceeding are not wasting time and money litigating over a complaint that is shortly going to be superseded by an amended complaint, and that the litigation commenced by the Litigation Trustee may proceed in a uniform and consolidated manner, thereby preserving both litigant and judicial resources.

We thus respectfully request, Your Honor, that the Court

grant the requested additional stay.

THE COURT: All right. Ms. Newman, thank you. Remind me of one thing. I didn't go back and study the docket in this adversary. I meant to. There is obviously a motion to withdraw the reference. I issued the previous stay before the response deadline of the Plaintiff to that motion to withdraw the reference; is that correct? So there's no response --

MS. NEWMAN: Yes. Yes, Your Honor.

THE COURT: There's no response on file yet?

MS. NEWMAN: That's correct.

THE COURT: All right.

MS. NEWMAN: That's correct, Your Honor.

THE COURT: So are you of the position that a morphing complaint, the potential for an amended complaint, might affect what is the right thing for the District Court to do on the motion to withdraw the reference?

MS. NEWMAN: Yes, Your Honor. I think that it's important that the complaint be the actual complaint that we intend to litigate before we litigate over the question of whether the Bankruptcy Court or the District Court is the appropriate court to hear that case.

THE COURT: All right. And this may seem like minutiae, but it always matters on a motion to withdraw the reference: Pending proofs of claim? Do we have pending

proofs of claim for any of these Defendants?

MS. NEWMAN: Yes, for one, Your Honor. For CLO Holdco, I believe.

THE COURT: Okay.

MR. PHILLIPS: That is not correct, Your Honor. There is no pending proofs of claim. The only proof of claim on file is for zero amount on behalf of CLO Holdco because the very interests that the complaint complains about having been transferred to ultimately CLO Holdco were canceled; therefore, of no value. And CLO Holdco had previously had a proof of claim on file, but amended that proof of claim to reflect a zero amount.

Highland Dallas Foundation had never made any appearance in this bankruptcy case.

And so it's not correct to say that there -- I mean, a pending zero proof of claim is, I guess, a pending proof of claim, but it's for zero, and there's no --

THE COURT: I don't know that means. I don't know what a proof of claim for zero --

MR. PHILLIPS: I don't, either, but I didn't do it.

THE COURT: I don't know why you wouldn't withdraw --

MR. PHILLIPS: I didn't do it, but it's for zero.

THE COURT: I don't know why you wouldn't withdraw the proof of claim.

MR. PHILLIPS: Well, I can withdraw it. It was done before I got -- I became counsel here. And it was done to -- on the basis of a resolution of issues regarding the Crusader Redeemer litigation and -- and because the ultimate result was that the basis for the proof of claim was extinguished, the proof of claim was either amended -- it was amended to reflect a zero amount. And I can certainly withdraw it because it is a zero amount.

These Defendants -- these two Defendants have no claims pending that would require action by the Court or be inextricably interrelated to any complaint against them. So, and the --

THE COURT: All right. Well, we kind of -- do you want to go ahead --

MR. PHILLIPS: I'll stop right now.

THE COURT: -- and make your argument at this time? You can go ahead.

MR. PHILLIPS: Well, I wanted -- I'm a little unclear if -- is -- is the Litigation Trust, is that the Litigation Trustee's case, or was that an opening statement? I'm not clear about that.

THE COURT: Well, I presumed it was an opening statement, but I don't know if there's going to be evidence on a motion to extend time. Ms. Newman, are you going to have any evidence today?

MS. NEWMAN: Your Honor, we did file a declaration of the Litigation Trustee and we would propose to proffer that as the Litigation Trustee's direct testimony. The Litigation Trustee is here to answer any questions that Your Honor may have or for cross.

I understand that the Litigation Trustee was having some technical difficulties with his video, but he has been -- I'm not sure if that's been resolved, but he is at least here by phone, and hopefully by video as well.

So we would propose to, as I said, proffer his direct -- excuse me, proffer his declaration as his direct testimony, and ask simply to reserve for a brief redirect if necessary.

THE COURT: All right. Well, there's your answer, Mr. Phillips. We have a --

MR. PHILLIPS: Thank you, Your Honor.

THE COURT: -- declaration that's going to be proffered, and you would obviously have a chance to cross Mr. Kirschner --

MR. PHILLIPS: I have reviewed --

THE COURT: -- if you so choose.

MR. PHILLIPS: I have reviewed the declaration and I have some documentary evidence that we would like to submit, and then I don't have any questions for Mr. Kirschner.

THE COURT: All right.

MR. PHILLIPS: So we -- I have no objection to the

introduction of the declaration, and I would not -- not because of technical difficulties, but because I read it, he's the greatest litigation trustee who ever existed, and that's fine. We don't have any questions of him.

And so I just wanted to know, we have a brief opening, certainly, but we also have some documentary evidence that we would like to put in, Your Honor, and then we could argue from that both opening and closing, I guess.

THE COURT: All right. Well, I've heard the opening statement of Mr. Kirschner's counsel. I am accepting as evidence his declaration, which appears at Docket Entry No. 70 in this adversary proceeding, starting at Page 18. And Mr. Phillips, I'll hear your opening, and then -- and you can offer your documents. All right?

MR. PHILLIPS: Okay. Well, Your Honor, I will do that.

OPENING STATEMENT ON BEHALF OF THE DEFENDANTS

MR. PHILLIPS: We -- this motion is premised upon, we think, the following assumption, which is, first of all, we heard some -- almost 90 days ago that there was going to be -- we had to have more time to respond to legal questions, motion to withdraw reference, and 12(b)(6) motion to dismiss, which the Court had stayed pending its recommendation to the District Court about withdrawal of the reference. We at that point mentioned that, unlike the other Defendants in this

litigation, CLO Holdco has in excess of $2 million hung up in the registry of the Court. The Plaintiffs filed a -- we'll call it utterly conclusory preliminary injunction request which doesn't state a claim for preliminary injunction but has really been given a preliminary injunction since March of 2020 when the Court's registry order said, file a complaint within 90 days. We know that didn't happen, it was filed in December, and then amended, and we -- we got, I think, an extension of approximately nine days to file our responses to the complaint upon service. We did so on April 14th, 127 days ago.

And what we have before the Court, by admission of the Committee -- and we're concerned because this sounds to us like a start-over -- the Committee in its reply at Page 5 says that everybody's wrong when they say the Committee, from January of 2020, had authority to investigate and prosecute estate claims, because what the Committee did was look into the CLO Holdco transaction -- the CLO Holdco action that is now the subject of the pending complaint.

So, since January of '20, there has been discovery, there has been document review, there's been investigation by the Committee, who is at least co-counsel for the Litigation Trustee, and now we hear that, notwithstanding FTI spending $1.7 or $1.8 million in investigating and reviewing documents, investigating avoidable transfers, the Committee spending some

number of millions of dollars in litigation, $5 to $6 million in litigation over and including avoidance claims, the CLO claim, we now hear that, really, everything that was done by FTI and the Committee about causes of action was about this lawsuit. And now we're hearing that the Litigation Trustee needs to start over.

Well, that's what litigants are supposed to do through discovery, and we're talking -- we hear that we need to have enough time to make sure we amend the complaint. Well, there's no provision in the Rules of Civil Procedure 7001 et seq. that says that once you file a complaint you need to go off and do a lot of different stuff to figure out whether or not you need to amend your complaint. We have a motion to dismiss. We have a motion to withdraw the reference. And the Court made the decision not to proceed on the motion to dismiss. We understand that. We thought we would have a decision on the motion to withdraw reference so that we could take action to get the preliminary injunction dissolved, because they don't state a claim for preliminary injunction and the Court is holding two million of our dollars or more, two or more million of our dollars.

So what we have now is 127 days. The Court said at the last hearing that it would probably be a 90-day process to get the motion to withdraw reference resolved. So they're asking for another, say, 60, plus 90, is 277 days before we'll know

what court is handling our litigation.

The -- we know if the District Court -- we think the District Court is going to rule. We know that there is an absolute right to an Article III adjudication of the claims in the complaint. And the claims in the complaint are very broad-based. They're not just a single transaction. They're claims for alter ego, they're claims of corporate fiction, they're claims of collapse, they're claims of civil conspiracy, and they're claims about an avoidable transfer. We responded to that with a motion to dismiss under 12(b) for failure to state a claim, notwithstanding that for the last 20 months this apparently is what everybody was looking into, this litigation.

And so, Your Honor, we have -- the 50-day -- the 57 days is a circular problem. In the declaration, it's made very clear that there'll be no discovery about this litigation. All discovery will be exclusive of that related to this litigation.

(Interruption.)

THE COURT: All right. Someone needs to put their device on mute, please. Or was that the attendant?

(Clerk advises.)

THE COURT: Okay. Go ahead, Mr. Phillips.

MR. PHILLIPS: Okay. Thank you, Your Honor.

The declaration of Mr. Kirschner and the reply of the

Committee says that this 200... and this is why we came to an agreement, because the pending proceeding rule assertions and grounds are all preserved in connection with the 2004 to make sure that the representations made are abided. There is going to be no discovery under the 2004 process about this litigation. And yet they say they need to finish all of this so that they can make a decision about whether to amend this complaint. But at the -- we -- we have, in our documents, Exhibit 16 would be the FTI fee applications. In December of 2020, FTI was reviewing the 79th docket -- document production from the Debtor. The 79th document production from the Debtor, in December of '20. That is eight months ago.

In January of '21, the Committee began its knowledge transfer to the future Litigation Trustee, Mr. Kirschner. That's Exhibit 16 at Page 56.

In February of 2021, there were communications by FTI, by Sidley & Austin, with Mr. Kirschner about the litigation, about CLO Holdco, about analysis. There was knowledge transfers. He reviewed -- his office or his firm reviewed the complaint on April 21st. There was a -- and the 2004 motions and process were under discussion on May 12th. That's Exhibit 17 at Page 110.

So the point that I'm trying to make is we have representations from the Committee that all -- 79 document requests by the Debtor or document productions by the Debtor,

we pointed out there were four separate document requests, there was a document -- a broad-based document request to CLO Holdco, and production, and the Debtor provided the Committee, who is co-counsel to the Lit... and has been acting as counsel to the Litigation Trustee person since February or even January, when they started the information transfer. That was eight months ago.

So, Your Honor, what we're being told is that you can't move forward in a piece of litigation until you can move forward in all litigation, and that's simply just not the way litigation works. Once you file your lawsuit, you do discovery. And if you lose on a 12(b)(6) motion, we all know the Fifth Circuit's standard for authorizing amendments. Unless an amendment would be entirely fruitful, the Fifth Circuit grants the authority to amend. When will that happen? This is a legal question. And the idea that you don't have the right to a ruling on your reference withdrawal motion and 12(b)(6) motion until the Plaintiff has had plenty of time, not to review, not to do extra discovery, but to review the documents that the Committee has been dealing with since January of 2020, just because you have a new person.

And we cited Your Honor to the case, *ADPT*, whatever, where you were faced with the question, does a litigation trustee get to start over or is the information imputed that the committee holds and committee counsel holds, certainly when

committee counsel is going to be counsel to the litigation trustee, is that imputed somewhat to the litigation trustee or does the litigation trustee just get to start over?

We're told in the Committee's reply that it was always thought that the investigation would be done by the Litigation Trustee. But Your Honor, in January of 2020, presumably because they wanted to do investigation, the Committee was granted the authority to investigate and prosecute estate claims, which included, for one, this one. This one was filed twelve months after it got authority to investigate and prosecute, after 79 document productions by the Debtor. And now we need another -- we've already had another eight months since it was filed. We can't -- we were given a nine-day extension on our ability to respond, while at the same time, without telling us, they had already retained the Litigation Trustee and -- as a litigation consultant, and in about three and a half or four months had commenced an information transfer. And when we had our argument about the stay, they were already contemplating the 2004, because they have communications about the 2004 on May 12th, when our hearing, I think, was on May 25th, or maybe June 3rd.

So, Your Honor, what we have -- excuse me -- is the Committee saying, we investigated this and only this, and we brought a complaint, and we had to respond to it -- I got an extension, Your Honor. One client got served. Another client

got served some few days later. I got an extension to respond that was the day the second client served was supposed to respond, so I could file both responses at one time. Nine, twelve days, something like that. That was my extension. Then we granted a 30- to 45-day extension to the Committee, and then, before that extension ran, they filed their first stay motion.

So, Your Honor, we -- we have -- we have an injunction that, in fact, has been in place for eighteen months without the first showing or first assertion of fact showing that there's any entitlement to an injunction. So what we -- we understand the Court has discretion over its docket. We understand that the Court can -- the Court can fashion a stay if it wants to. We're just asking the Court, enough is enough. Let us proceed. And if you want to stay it, let us file a motion, because we think while the -- we have a right to Article III decision over the ultimate claims made in the complaint, Your Honor has jurisdiction and authority because you have money in the registry of the Court, and the question is whether a party would be able to get pre-judgment attachment because of some estate interest. We have a right, we think, to get that money back. We would like, if the Court is going to stay this litigation, we would like the ability to go in and get our money out. And if not, we understand that the Court can hold up issuing its ruling and effectively grant

the stay -- grant -- grant the stay. We just want this to proceed.

If they get their stay, it will be 277 days until -- if the 90-day process is correct, before we get a ruling on our motion to dismiss. And what we have heard, first stay hearing, second stay hearing, is only: Once we come to understand everything that the Committee got paid $5 million to investigate and FTI got paid a million eight to investigate, once we understand it, we are liable to have an amended complaint. There's no particulars. Why? Because they say they don't understand it all. The information transfer started in January of 2021. Retention, April 2021. Twelve hundred hours spent, sixteen hours a day by the group if you -- if you work on Saturday and Sunday, which I do. I don't know if other people do. And Mr. Kirschner spent 2.4 hours a day doing his work from June through July. So, 2.4 hours, he's working hard on that. That's fine with us. He can work all he wants to.

But, Judge, we -- we want to move forward. We want to know where we are. And if they have a right to amend and there's going to be a reference withdrawal recommendation by this Court, a ruling by the District Court, a hearing on our motion to dismiss under 12(b), won't they have time to do that? Won't they have time to figure out whether they have a right to amend?

We need to move forward. We need to try to get our money back. There's been no showing that the Court ought to be holding our money. That's why the Court said, file a lawsuit and assert a claim if you think you have one. Here is their injunction. We have an injunction right because we have filed this complaint. They're holding two point something million dollars of our money for -- since March of 2020, now nineteen, eighteen months, and now they want another 60 days. I don't even know when they want to get a response due if the stay extends another 57 days. We haven't heard when they want their response to be due to our motion. So I would assume that what they want to do is have a new scheduling so they get a new response date so we further out the 90 days, more than 90 days. So hopefully, from their standpoint, they can stretch it out a year before we even get a ruling on our motion to withdraw reference.

So, Your Honor, they can do whatever they want to do. They have had plenty of time to do it. I don't -- I'm not buying that the greatest litigation trustee in the history of the world, given his declaration, can't go through a chart that they have had since Document 2398 on my client. There may be 2,200 entities, but there are not 2,200 defendants like mine. There are five. There are four, in fact. And that's not Byzantine, although it's everybody's favorite word. There are four entities here. We have some charities that are now

going to be subject to 2004 exams, if they are going to actually do them, but those charities aren't involved in this transaction.

And so if they want to bring other lawsuits, let them bring other lawsuits. They don't have to finish all their investigation of all their lawsuits before they're obligated to move forward on the lawsuit they filed back in December of 2020, eight months ago.

So, Your Honor, with that, I'll close, but I would like to introduce -- I filed in an exhibit list and an amended exhibit list yesterday evening. And this -- I have one declaration from me just identifying documents that we received. I do have a declaration of Mark Patrick that I'll withdraw and not -- we'll just leave No. 2 blank. And then I have No. 3 -- 3 through 21, and all of -- all of these are pleadings on file, and we would like Your Honor to allow us to introduce 1 through 21, with the exception of 2, on our amended list that is filed in at Document 79 filed in yesterday afternoon.

THE COURT: All right. Ms. Newman, any objection to Exhibits 1 and Exhibits 3 through 21?

MS. NEWMAN: No objection, Your Honor.

THE COURT: All right. They will be admitted.

(Defendants' Exhibit 1 and Exhibits 3 through 21 are received into evidence.)

THE COURT: All right. Mr. Phillips, a couple of

follow-up questions.

MR. PHILLIPS: Yes, ma'am.

THE COURT: Is it more about the two-plus million dollars in the registry of the Court that is your timing concern here, or --

MR. PHILLIPS: I would -- I would say that that's --

THE COURT: -- moving forward with litigation sooner rather than later, --

MR. PHILLIPS: Well, I would say --

THE COURT: -- generally?

MR. PHILLIPS: -- that they're -- they're connected, Your Honor, because until we can move forward in the litigation, we can't take an action -- if we can take an action on the -- on the money that's in the registry of the Court, I'm fine with staying the rest of it, although I don't think the stay would really help them at all. It's not going to -- look, if Quinn Emanuel and Sidley & Austin can't respond to a Louis Phillips motion for withdrawal of the reference, then they need to get another job. Because I am not --

THE COURT: Well, --

MR. PHILLIPS: They're -- they're the king of the -- they're the queens of the prom. I'm not. But we have a -- just a motion to withdraw reference, simple motion to withdraw reference, and they have said all their discovery is going to be outside this complaint and outside this litigation. So

they can't -- I can't figure how discovery outside the litigation is going to help them figure out about amending the complaint that's already on file. So they can't be saying that.

And any litigant who files a complaint needs to stand behind that complaint and can't say, I filed this complaint, now I don't want to move forward until I'm sure I have all my amendments and all of my facts straight. They've had millions of pages of information.

So, in answer -- a longwinded answer, I'm sorry -- in answer to your question, our prejudice is we can't do anything to get our money until we get somewhere on the litigation. And so if we can get that, I'm willing to make a deal. But I need to be able to do that. And that's a simple -- they haven't stated a claim for injunctive relief, and the Fifth Circuit says you've got a claim, you can't get injunctive relief. *Grupo* says you can't have pre-judgment attachments. So we think we have a right to get it.

And you tried, you tried back in March to give them the option and the opportunity to file something that gave them the right. What they filed, I promise, didn't. And we just want our day in court on that. And if they have -- they want to -- we also want our day in court on our motion to dismiss, because we don't think they've stated a claim. And we also want our day in court on the motion to withdraw reference, but

we understand that the Court is busy and the Court has to do a recommendation, and we don't have any control, even if you denied the stay, we don't have any control over the recommendation timeline or the District Court referral.

That said, that means that however long the stay goes, we still don't have any authority -- any control over that time period.

But to answer your question, my harm, my harm is twofold. One, monetary. I can't get my money. Two, parties have the right to get litigation tossed. We've withdrawn Mr. Patrick's declaration, but this has consequences. We have a supporting organization, the Highland Dallas Foundation, that was set up by the Dallas Foundation, which I would assume Your Honor is familiar with. It's the largest charity -- charitable entity in Dallas. There's a pall over that. There's a pall over all of these people who are being investigated, or have been investigated for the last twenty months. But now we have one supporting organization that is one of the many supporting organizations for the Dallas Foundation, and we have -- we need to get this resolved. They don't state a claim. We've said that. We've briefed that.

So, Your Honor, I want our money. I want to be able to go after my money. I'm a party. I am not a party who wants to lay back and just hope for the best. We're ready to go. We got a nine-day extension and filed two motions. And we're

being told by two international law firms that they need another 60 days after 90 days to respond to our two motions. And that's not fair. That's not fair.

THE COURT: All right. I'm thinking through this and remembering the history. And I do remember that I ordered, you know, you've got to file an adversary proceeding by *x* date here because of concerns about money being held in the registry of the Court without there being, you know, a lawsuit or, you know, to support that type of injunctive relief. As we all know, ordinarily, without the Court putting those restrictions in place, the Plaintiff would have had until October 15th of this year to bring this lawsuit. And absent the Court's order speeding up the time frame, you know, we wouldn't be here, possibly, the lawsuit wouldn't even be filed yet.

But thinking back through that, a couple of things are on my mind. One is it wasn't just CLO Holdco's money, as I recall, originally put in the registry of the Court. I think there was Mark Okada and maybe other parties. And that money has since been freed up. Can you confirm my memory of that?

MR. PHILLIPS: Your Honor, all I know is that our money has not been freed up. And it may very well be that you freed up other people's money and I -- but I don't know. I was not there at that point. I know ours is still there.

THE COURT: All right. I wonder, is there anyone on

the line -- maybe Ms. Montgomery -- who can confirm that? Because, again, I'm just trying to put my brain back in the mindset it was in when I imposed these, you know, tight deadlines: You've got to file an adversary by *x* date. I feel like it was multiple parties' money tied up, and since then some of that was freed up. Can anyone confirm my memory? I would have to scroll back through the bankruptcy docket, not just this adversary docket. The adversary wasn't around.

MR. POMERANTZ: Your Honor, this is Jeff Pomerantz. We're checking. But I believe Mark Okada's money was subject to the initial order. We're not sure, and we're checking now, whether that money actually went into the registry or what we believe it may have been was offset against other obligations that Mr. Okada owed. So, we're just confirming that, --

THE COURT: All right.

MR. POMERANTZ: -- but that was a second (audio glitch), Your Honor.

THE COURT: Okay. So it may --

MR. KANE: Yeah.

THE COURT: Is someone speaking?

MR. KANE: Yeah, Your Honor. Hi. This is John Kane.

THE COURT: Uh-huh.

MR. KANE: I was previously representing CLO Holdco at the time and participated in the approval of a number of orders that included funds related to Mark Okada also or Okada

also.

It was my understanding over some period of time that Mr. Okada's funds in the registry of the Court were resolved but the money from CLO Holdco was never removed from the registry. And there were a couple of deposits after our hearing of some smaller amounts of CLO Holdco funds as well.

THE COURT: Okay. Thank you, Mr. Kane.

MR. POMERANTZ: Your Honor, also, I understand that Highland Capital Management Services has a small amount of money in the registry as well.

THE COURT: Okay. All right. Thank you.

Another thing on my mind, Mr. Phillips, is this: I mean, you used the words, it's not fair, it's not fair, so I'm going to go down this fairness/equitable trail with you. I mean, I've heard in other contexts that there might be $200 million of assets in this charitable structure. And I don't mean to, you know, dismiss $2 million. That's a lot of money. But as far as, is there some undue hardship here, are lives going to be affected, --

MR. PHILLIPS: Well, --

THE COURT: -- what would you say if it kind of rings hollow with me, knowing the size of the organization, which, again, I'm not sure I appreciated way back when when I had such huge concern about money in the registry of the Court for a long term.

MR. PHILLIPS: Number one, Your Honor, I am not -- we have -- CLO Holdco and the DAF which owns CLO Holdco have investments, and those investments have value. But there's a difference between value and cash. And so when you make charitable contributions, when we make charitable contributions, what we try to do is we try to get cash -- turn investments into cash at the right time, and then the cash goes to the -- through the supporting organizations to the charities themselves.

And the problem I have, Your Honor, is that question you just asked me flips the burden. I have to prove that I am not unduly harmed by you holding money without a proceeding to determine whether the other side is entitled to injunctive relief.

Now, I'll say it says something else. I think your number could be correct as far as mark-to-market, ultimate valuation, that sort of thing, which, again, cuts against you having to hold that money in the registry of the Court, because, first of all, they've asserted a claim against my client, and the claim is for far less than the amount that you've been talking about. I'm not talking -- what I'm saying, to me, and maybe I'm wrong, it doesn't ring hollow at all. Injunctive relief, no matter what, has to be proven. You have to prove irreparable harm. And this money has been held in the registry of the Court for eighteen months without a showing of

any harm by -- that would be -- result from you releasing the money.

So our point is I don't know how to get it in front of you or -- and get it in front of a court if there's a stay in place. I would like to be able to get it in front of a court. We don't think there's any harm at all in releasing the money. The estate had claims against other people; that money got released. We don't have any liquidated claims against us. We have a lawsuit against us, but we've filed a motion to dismiss under 12(b) that they don't want to answer.

So, what is my -- what is it? Is it $200 million? I don't know if it's $200 million, but it's -- it's substantial, but it's in investments that you can't just turn to money by the flip of a switch. And I don't -- I don't know that that's an appropriate investigative question here, but I -- in answering your question, CLO Holdco holds substantial investments for the charitable enterprises, and they can say whatever they want to, but at the end of the day we know how this is going to turn out. And -- but if -- if they -- they have a claim against us for $24 million, and have admitted in the lawsuit that they've already gotten paid $8 million on the note that they got for the alleged $24 million in property, most of which was extinguished by the settlement of the Crusader interests.

So they've already been paid at least -- over 35 percent

of the $24 million, and they still have a note that's paying -- that is going to pay the full $24 million.

But that's a -- that's a merits issue. We're -- we're on an -- we're here trying to break through an injunction issue, which hasn't ever been raised. Hasn't ever been raised. They don't want to proceed on their preliminary injunction. Why? It doesn't say anything. They know the Fifth Circuit won't let a preliminary injunction go.

And what Your Honor is pointing out is there can be no harm if you release the money to us. If you'll release the money to us, you know, we can make -- we'll -- we'll quit yammering and let you control your docket as you want to, and -- we want to get the litigation resolved, but we recognize that we have no control over how fast we get a recommendation from this Court, and it won't be until after there's a response to our motion to withdraw the reference. We understand that we are subject to control of the Court, authority of the Court. We just want to move forward. But we can have our money, and they still have their claim, and that resolves any injunction request.

And the injunction request, think about this, Your Honor, you're holding -- not you, but the Court is holding the money. What is the injunction request? Are they enjoining you from distributing it to me if I ask for it? Or are they enjoining me from asking you for it? There's no injunction right for

money that's being held in the registry of the Court. We -- anyway, I've beat it to death. I apologize if I've gone over. But --

THE COURT: All right. Again, and I want to say that the burden of proof flipping that you suggested might be going on here, I'm not ignoring the burden of proof in a preliminary injunction context. I'm not overlooking that. It's just what I'm getting at is you don't like the stay, among other reasons, because it delays your day in court, some court, this one or the District Court, in arguing about getting that money back. As long as there's a stay, we don't have a hearing, I guess, is what you're saying, on that money.

MR. PHILLIPS: Yes, ma'am.

THE COURT: And so I'm just -- I was trying to evaluate the fairness, the equities of delaying by another 57 days, perhaps, your chance to have your day in court on that. So it wasn't about burden-flipping.

MR. PHILLIPS: I appreciate it.

THE COURT: Okay.

MR. PHILLIPS: I appreciate, Your Honor.

THE COURT: All right. So, I'll go back to Ms. Newman. Do you have any rebuttal evidence or any rebuttal or I guess closing argument at this point?

MS. NEWMAN: Thank you, Your Honor. No rebuttal evidence. I'd like to just make a few remarks in response to

what Mr. Phillips has said, and I'll try to be brief.

First of all, Your Honor, Mr. Phillips' citations to the time records I think in many ways supports what we've been trying to -- telling you and Mr. Phillips, which is that, yes, there is a lot of information here. And there's a lot of information to synthesize. And while the Litigation Trustee has begun that process, there is yet still very much work to do.

And Mr. Phillips talked a lot about what happens with ordinary litigation and how an ordinary litigation stay of this nature isn't warranted. And that may be right, Your Honor, but I would submit that this is not ordinary litigation. This is litigation where we have a new plaintiff substituting in. Yes, he has been around for some months, but he has not been fully up and operational. Mr. Kirschner was -- his -- the Litigation Sub-Trust that he represents didn't even exist until August 11th. And so, in many ways, we think that differentiates what we have here from ordinary litigation and really -- really warrants the stay.

And, look, I sense -- I sense Mr. Phillips' frustration. I think a lot of people were frustrated that the effective date didn't happen earlier, that confirmation didn't happen earlier, that things have taken so long. But -- and I'm sure that the beneficiaries of this litigation are frustrated by that. But denying the stay and forcing the parties to move

forward in litigation of a complaint that is very likely to be amended and superseded is not going to save time or benefit the parties. It's going to cause the parties to engage in needless litigation over the next 57 days, and then at the end of the day we will have -- we will -- we will likely move to amend the complaint.

And, you know, also, as I've said, going -- there is -- undoubtedly, there will be additional estate causes of action. This is going to be a long haul here, and we are going to do our best to make it efficient for the parties and the Court, and we think that the best -- and to save costs for the Trust and its beneficiaries. And we submit that the best way to do that is to grant a short reprieve for 57 days so that all of this can proceed in a coordinated fashion and with the complaint that's going to be operative.

THE COURT: All right. Ms. Newman, let me ask you to respond to Mr. Phillips' argument that all of this 2004 discovery, you all have made clear that it wouldn't be aimed at claims or causes of action that might be in this adversary proceeding. So he says, what do you need 57 more days for if it's not related at all to this discovery you're going to be engaging in? What is your response to that?

MS. NEWMAN: So, two points on that, Your Honor. First of all, the discovery that we're going to be taking could potentially lead to additional causes of action against

the -- against the Defendants to this litigation. We think that's -- that's well within the realm of possibility, and we may amend the complaint to include those claims.

The Litigation Trustee, while we will continue -- is -- Mr. Kirschner is continuing to work with Sidley, look, he's brought in new counsel, and we are looking at the causes of action, we're doing all his legal analysis, and Sidley is working with us to do that. And we're likely going to seek to expand the causes of action that are in the complaint, having nothing to do with the 2004 discovery, just based on the information the Litigation Trustee has now. And so, as I said, there is likely to be an amended complaint. There is likely to be additional causes of action that are the result of the 2004 discovery. And we believe all of that should go forward together, as a piece.

THE COURT: Okay. So it's not *per se* aimed at developing claims, causes of action, and theories in this adversary, but it could lead to information that gives you information to add claims or causes of action? That's what you're saying?

MS. NEWMAN: I would say different claims or causes of action, potentially, that are unrelated to the claims and causes of action --

THE COURT: Okay.

MS. NEWMAN: -- that are currently asserted. But in

addition to that, Your Honor, to be clear, Mr. Kirschner just obtained access to certain of the Debtor's financial information, and is continuing to try to unravel the very opaque transactions that are at the heart of this litigation. And so there is still, within the information that we just received, there is potential that we will be examining the factual basis of the claims that are asserted, not based on the 2004 discovery but based on the information that the Litigation Trustee has only recently gained access to. And, again, we are also continuing to analyze the legal -- the legal claims.

THE COURT: All right.

MS. NEWMAN: Your Honor, what was the last twenty months about, then?

And by the way, the frustrations of the hedge funds that just bought into the claims, knowing what they were getting into, do you -- are we really -- are we really going to attribute new people who bought in at a discount frustration? I don't think they're frustrated. I think they knew exactly what they were getting into.

THE COURT: All right.

MR. PHILLIPS: Let's be real here.

THE COURT: Okay. Well, here are what I consider the relevant facts here. We have a request for a 57-day further stay in an adversary that is inside, obviously, the two-year

statute of limitations for the Plaintiff to bring claims and causes of action. In fact, the 57-further-day stay would coincide exactly with that two-year deadline to file claims and causes of action. So that's number one.

Number two, the adversary -- this adversary was commenced on December 17, 2020. And the timing was because of an order that this Court imposed. As I said earlier, I was concerned when I issued that December 20 deadline about tying up people's money in the registry of the Court for a long time before there was even any litigation to resolve claims against them.

So that's the procedural backdrop for why we're here. There might not even be an adversary proceeding filed yet against these Defendants if not for the fact that there was the request to put money in the registry of the Court, and I thought, well, if you're going to do that, I understand your concern, because the argument was there are claims against these entities and, you know, obviously, some of them are Cayman Island entities, --

(Interruption.)

THE COURT: Whoever is on -- not on mute, please put it on mute.

So, anyway, that's the backdrop. I set a much earlier deadline for bringing claims and causes of action against CLO Holdco because of the registry, money in the registry of the

Court.

So, that's part of the backdrop that matters today. But I can't ignore other big-picture facts, and that is that we don't have a Plaintiff that's exactly sitting his hands here. You know, among other things, I will point to the 40-page motion to take the 2004 exam as some evidence that the Plaintiff isn't exactly sitting on his hands. We have a 40-page motion, dense with 62 footnotes, I would add, that shows tons and tons of investigation, as Mr. Phillips alluded to.

So what are the other things that matter here? We have a 22-month-old case now. The case was filed in October 2019. Since then, venue was transferred from Delaware to Texas. That was a several-week contested matter. We had -- okay. So, venue was transferred in December 2019. Then in January 2020, we had an entirely new board of directors installed and the CEO, Mr. Dondero, ousted. And we had this corporate governance arrangement put in place where the UCC got standing to pursue estate causes of action.

Then in March 2020, two months later, we have a worldwide pandemic declared, so the Court process went virtual. Safe to say things kind of slowed down a little because of the obstacles of that.

Then, in July 2020, we had a new CEO installed, Mr. Seery. But, significantly, we also had what the Court perceived to be the UCC beginning in earnest at trying to get document

discovery, and that came to light with an ESI motion where the UCC was seeking to get protocols in place for the production of ESI from different document custodians at Highland. And so what I learned in that very lengthy hearing, with many, many participants and objectors, was that the Committee had been trying informally almost since day one, December 2019, to get documents, to get documents, to get documents informally, and then they brought this ESI motion.

Then, August 2020, I ordered global mediation, where I pretty -- I didn't order people to stand down, but I almost used those strong of terms. I want everyone focused on this global mediation. And so we had two very prominent mediators work several weeks, and major settlements were reached after that effort.

Then, in the fall, we had the Debtor pursuing a plan incorporating these settlements. All of a sudden, at that point, in mid-fall, I would say, despite the mediation where major global settlements were reached, we had Mr. Dondero terminated in October 2020, and then we had lots of litigation, a contested confirmation, adversaries seeking TROs and injunctions against Mr. Dondero and certain of his related entities.

Plan confirmed in February 2021. Appeals, appeals still pending. And on the topic of appeals, we've had dozens, dozens of -- I don't know if we've had dozens. We've had at

least a dozen appeals in this case of various orders. We've had what this Court considered violation of its gatekeeping orders and litigation over that. Then, of course, we've had -- we had the Litigation Advisor and the Litigation Trustee more recently get involved. And then the plan has now gone effective August 11th.

You know, that's the history. And then, oh, I guess we should mention that there are supposedly 2,000 or so companies out there that the Committee and its professionals have had to analyze and figure out inter -- I guess I should say intercompany transfers and transactions. It doesn't get much more complicated than this.

So all this to say that, against that backdrop, I don't think 57 extra days seems that unreasonable.

And let's just further think through this. If I deny the stay, what does it mean? It means, okay, the Plaintiff has to respond, you know, let's say in 21 days to the motion to withdraw the reference, and then I would give ten days to reply, and then I would do my report and recommendation, but I don't know when the Rule 15 motion to amend that's predicted would be filed, and that would affect what I put in my report and recommendation.

And as far as would they be given leave to amend, we all know, as Mr. Phillips alluded to, very liberal standard, of course they would be allowed to amend under the Fifth

Circuit's interpretation of Rule 15.

So, you know, I said 57 days doesn't seem that unreasonable, number one, but I have to think about efficiency. You know, the District Court doesn't want a report and recommendation from me that is stale because now there are five more causes of action, so I've got to supplement that thing. But then maybe I don't. Maybe I have to defer to the District Court to rule on the Rule 15 motion, and then I've got to do an either/or: Right now, these are the claims, but if you allow the leave to amend, then there are going to be these others. So there's an efficiency thing that's very troublesome here.

But it's frustrating also because I think the reference is going to be withdrawn. I mean, it just sounds like we're going to have non-core claims, and I don't know about this zero proof of claim, but, you know, it just seems like we might be delaying the inevitable. Okay.

So, all of that having said, I'm going to grant the motion for a further 57-day stay in substantial part, but not entirely. I am going to say there is no stay with regard to motions, applications, pertaining to the money in the registry of the Court. Okay? So I don't know who tees that up, but I -- if Mr. Phillips wants to tee it up with an application, if, you know, the Plaintiff thinks it's more correct for us to tee it up. I can't remember the wording of the order, but it was

in the underlying bankruptcy case before there was the adversary. So, obviously, we need to have, if we're going to tee it up, applications in the adversary. So the stay will not apply with regard to that being teed up.

Now, you know, then I'm going to have the dilemma, assuming one of you tees it up: Well, is it proper for me to consider it, or do I defer to the District Court, you know, just like I'm deferring to it on the motion to dismiss, you know, until there's an ruling on the motion to withdraw the reference?

So I think, you know, I may be moving the ball here a tiny bit, but I'm not sure I'm moving it that much, because even though I am saying no stay as to litigation on the money in the registry of the Court, I mean, you all have to take a position: Do you consent to me ruling on it or not? And then, if not, then --

MR. PHILLIPS: Your Honor, we will deal with that --

THE COURT: -- I guess I'll do a report and recommendation on whatever I decide on that. It's messy. Okay. Mr. Phillips?

MR. PHILLIPS: Your Honor, we appreciate that, and we will -- will get with counsel and figure out who moves first. We have no problem moving first, I promise.

THE COURT: Uh-huh.

MR. PHILLIPS: And we will deal with and brief how we

see the jurisdictional question. We're not going to -- we'll do our best, with my feeble brain, to lead -- provide you with a roadmap about what we think you should do. So we don't think you need to spend any time trying to figure it out now, because I think you need to put us to the test, and if we file something, then you sure have the right to expect that we will show you our best effort on how we think you ought to proceed and what we think you ought to rule and what authority we think you have with respect to this discrete issue. And we propose -- we propose that we will do that to the best of our ability.

THE COURT: All right. Well, thank you. And a couple of follow-up thoughts on that. Do not seek an emergency setting on this. Number one, COVID and --

MR. PHILLIPS: We won't.

THE COURT: COVID and other things allowing, I'm planning on being out of the country August 25th through September 5th. But I guess, more importantly, is it's waited this long, it can wait, you know, 30 more days --

MR. PHILLIPS: Well, we --

THE COURT: -- or whatever.

MR. PHILLIPS: That's a sword -- that's a sword that cuts both of our heads off, Judge: It's waited this long so they can't have irreparable harm, and it's waited this long so we will not -- we promise we will not notice it for hearing

before September 6th, the day you get back. How's that? That was a joke.

THE COURT: Okay.

MR. PHILLIPS: That was a joke.

THE COURT: The last thing I want to say is reasonable minds, I think, can work something out here.

MR. PHILLIPS: We think so, too.

THE COURT: I mean, the registry of the Court is not a great place to have $2 million sitting around earning no interest, or interest that federal, whatever, you know, federal employees generate for it. But we have a Cayman Islands entity here, so I and any court is going to have that going through my/its mind as far as --

MR. PHILLIPS: Your Honor? We understand the Court's concern, and what -- what we are -- if the Court is right, and I'm not going to say that it's not, that the value of -- they are suing who they're suing, right? And we are who we are. And if they win, this $2 million has nothing to do with whether or not they'll be able to collect their judgment. So we understand the Court's concern, but we will deal with that in our briefing and we will deal with that in whatever proposition we make. And as well, what we will try to do is we will try to resolve this in a way that does not involve the Court, or at least in a way that involves the Court on an approval basis. If we can't, then we'll take adversarial

action. But we will never -- we will not start with that.

THE COURT: All right. Thank you. All right. Ms. Newman and Mr. Phillips, can you work together on an appropriate form of order that reflects the Court's ruling? And I'll look for it to be submitted shortly.

MR. PHILLIPS: I will certainly -- I will certainly try, Your Honor. I've never met Ms. Newman, but she seems very competent, way more than me, so I'll follow her lead.

THE COURT: All right.

MS. NEWMAN: Thank you, Mr. Phillips. Looking forward to working together.

Thank you, Your Honor.

MR. PHILLIPS: Thank you. Thank you, Your Honor.

THE COURT: Thank you. We stand adjourned.

THE CLERK: All rise.

(Proceedings concluded at 10:59 a.m.)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **08/27/2021**

_____ _____

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

INDEX

Exhibit 1

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND,	:	
Plaintiff, Counterclaim Defendant,	:	
v	:	C.A. No. 12533-VCZ
HIGHLAND CAPITAL MANAGEMENT, L.P.,	:	
Defendant, Counterclaim and Third-Party Plaintiff,	:	
and	:	
HOUSE HANOVER, LLC and ALVAREZ & MARSAL CRF MANAGEMENT, LLC,	:	
Third-Party Defendants.	:	

- - -

Chancery Courtroom No. 12A
Leonard L. Williams Justice Center
500 North King Street
Wilmington, Delaware
Wednesday, October 16, 2019
9:18 a.m.

- - -

BEFORE: HON. MORGAN T. ZURN, Vice Chancellor.

- - -

STATUS CONFERENCE REGARDING CROSS-MOTIONS FOR SUMMARY JUDGMENT

CHANCERY COURT REPORTERS
Leonard L. Williams Justice Center
500 North King Street - Suite 11400
Wilmington, Delaware 19801
(302) 255-0532

APPEARANCES:

KEVIN M. COEN, ESQ.
Morris, Nichols, Arsht & Tunnell LLP
-and-
TERRI L. MASCHERIN, ESQ.
GARRETT FITZSIMMONS, ESQ.
of the Illinois Bar
Jenner & Block LLP
for Plaintiff and Counterclaim Defendant Redeemer Committee of the Highland Crusader Fund

MICHAEL F. BONKOWSKI, ESQ.
KODY M. SPARKS, ESQ.
Cole Schotz, P.C.
for Defendant, Counterclaim and Third-Party Plaintiff Highland Capital Management, L.P.

TIMOTHY R. DUDDERAR, ESQ.
Potter Anderson & Corroon LLP
for Third-Party Defendant House Hanover, LLC

ELENA C. NORMAN, ESQ.
Young Conaway Stargatt & Taylor, LLP
-and-
MARSHALL R. KING, ESQ.
of the New York Bar
Gibson, Dunn & Crutcher LLP
for Third-Party Defendant Alvarez & Marsal CRF Management, LLC

- - -

THE COURT: Good morning, everyone.

MR. BONKOWSKI: Good morning, Your Honor. Michael Bonkowski for Highland Capital Management, L.P.

I rise to let the Court know of a bankruptcy filing made approximately 8:55 a.m. this morning in the Delaware Bankruptcy Court. I have copies of the petition if you'd like to see them. I'm down to two, but I do have two.

THE COURT: Thank you.

MR. BONKOWSKI: I don't have anything else to offer.

THE COURT: You've been busy. Do you have any thoughts on the scope of the stay that would flow from this, or any stay?

MR. BONKOWSKI: I didn't follow.

THE COURT: The scope of any bankruptcy stay on litigation.

MR. BONKOWSKI: I assume the automatic stay is kicked in with the filing. I understand there will be a -- the talk that I just got was there should be a hearing on Friday. A judge should be appointed later this morning.

THE COURT: So what are your

recommendations for the Redeemer matter this morning?

MR. BONKOWSKI: I think it has to be stayed, Your Honor.

THE COURT: All right. Thank you.

MS. MASCHERIN: Your Honor, Terri Mascherin on behalf of Reedemer Committee.

This comes as some surprise to us. We're prepared to go forward today, but obviously we're required to respect the stay of the Bankruptcy Court until we can get that stay lifted, which we will endeavor to do.

THE COURT: Do you agree that under the automatic stay statutes that we cannot go forward today?

MS. MASCHERIN: That's my understanding of the law, Your Honor.

THE COURT: All right.

MS. MASCHERIN: We'll move as expeditiously as we can to have the stay lifted.

THE COURT: All right. Well, that is my understanding of the law as well, that my hands are now tied in this matter and we are under an automatic stay. So I will just be on the lookout for what you-all would like me to do next.

Is there anything else I can do with the Redeemer matter this morning?

MS. MASCHERIN: No, Your Honor. Thank you.

MR. BONKOWSKI: No, Your Honor. Thank you.

THE COURT: All right. Thank you. Then we will take a brief recess for that matter, and we'll let the Patrick Daugherty folks set up, and then we'll have probably a very similar discussion.

Thank you. We're adjourned.

(Court adjourned at 9:20 a.m.)

- - -

CERTIFICATE

I, KAREN L. SIEDLECKI, Official Court Reporter for the Court of Chancery of the State of Delaware, Registered Merit Reporter, and Certified Realtime Reporter, do hereby certify the foregoing pages numbered 3 through 5, contain a true and correct transcription of the proceedings as stenographically reported by me at the hearing before the Vice Chancellor of the State of Delaware, on the date therein indicated.

IN WITNESS WHEREOF, I have hereunto set my hand at Wilmington this 16th day of October, 2019.

/s/Karen L. Siedlecki

Karen L. Siedlecki
Official Court Reporter
Registered Merit Reporter
Certified Realtime Reporter

Exhibit 2

UBS Securities LLC et al v. Highland Capital Management LP (closed 06/14/2021)

Texas Northern District Court

Case no. 3:20-cv-03408-G (N.D. Tex.)
Filed date: June 14, 2021
Docket entry no.: 40

Docket text:

ELECTRONIC ORDER: Upon consideration of the parties' stipulation of voluntary dismissal (docket entry 39), it is ORDERED that this case is DISMISSED WITH PREJUDICE. Each party shall bear its own costs and fees in connection with this case. SO ORDERED. (Ordered by Senior Judge A. Joe Fish on 6/14/2021) (chmb) (Entered: 06/14/2021)

Exhibit 3

Caitlin Garvey

From: TXNB SGJ _Settings <sgj_settings@txnb.uscourts.gov>
Sent: Tuesday, August 2, 2022 10:37 AM
To: Robert Loigman; Louis M. Phillips
Cc: Deborah Newman; Aaron Lawrence; Montgomery, Paige; Rognes, Chandler; Gregory V. Demo
Subject: Re: In re Highland Capital Management, L.P., No. 19-34054-sgj11

Importance: High

[EXTERNAL EMAIL from sgj_settings@txnb.uscourts.gov]

Thank you for clarifying, Mr. Loigman. I will share this information with Judge Jernigan and reduce the time estimate to one hour.

Traci

Traci A. Ellison, Courtroom Deputy
to the Honorable Stacey G. C. Jernigan
U.S. Bankruptcy Court
Northern District of Texas
(214)753-2046
sgj_settings@txnb.uscourts.gov

From: Robert Loigman <robertloigman@quinnemanuel.com>
Sent: Tuesday, August 2, 2022 9:20 AM
To: TXNB SGJ _Settings <sgj_settings@txnb.uscourts.gov>; Louis M. Phillips <Louis.Phillips@kellyhart.com>
Cc: Deborah Newman <deborahnewman@quinnemanuel.com>; Aaron Lawrence <aaronlawrence@quinnemanuel.com>; Montgomery, Paige <pmontgomery@sidley.com>; Rognes, Chandler <crognes@sidley.com>; Gregory V. Demo <GDemo@pszjlaw.com>
Subject: In re Highland Capital Management, L.P., No. 19-34054-sgj11

CAUTION - EXTERNAL:

Dear Ms. Ellison:

We represent the Litigation Trustee in the Highland matter. We write with the consent of counsel to CLO Holdco, Ltd. On Thursday, August 4, at 2:30 p.m. CT, the parties will be appearing before the Court (via Webex) to address CLO Holdco's motion with respect to its Second Amendment to Proof of Claim.

We have noted that the Court's schedule for August 4 provides one hour for argument on the CLO Holdco motion [Docket No. 3178] and two hours to address the Litigation Trustee's Omnibus Objection to Certain Amended and Superseded Claims and Zero Dollar Claims [Docket No. 3001]. Please be advised that, with the exception of CLO Holdco's claim, all of the claims addressed by the Omnibus Objection have been withdrawn or otherwise resolved. As a result, argument on CLO Holdco's motion will address the only remaining claim raised in the Omnibus Objection, and the additional time allocated to address the Omnibus Objection will not be required by the parties.

Please let us know if you have any questions.

Sincerely,
Bob Loigman

Robert S. Loigman ▫ **Partner**
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