



Brian D. Lynch

Brian D. Lynch
U.S. Bankruptcy Judge

(Dated as of Entered on Docket date above)

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IN THE UNITED STATES BANKRUPTCY COURT
IN AND FOR THE WESTERN DISTRICT OF WASHINGTON AT TACOMA

In Re:

FRASER'S BOILER SERVICE, INC.,

Debtor.

NO. 18-41245-BDL

ORDER CONFIRMING DEBTOR'S FIFTH
AMENDED PLAN OF REORGANIZATION

THIS MATTER came for hearing upon the Motion of Fraser's Boiler Service, Inc. (the "**Debtor**") for Confirmation Of Fifth Amended Plan Of Reorganization (the "**Motion**") on November 20, 2020 (the "**Confirmation Hearing**"). The Motion seeks confirmation of the Debtor's Fifth Amended Plan Of Reorganization (the "**Plan**")¹ under Chapter 11 of the United States Bankruptcy Code (the "**Bankruptcy Code**"). The Court has reviewed the records and files herein, and makes the following **FINDINGS AND CONCLUSIONS**:

1. On October 15, 2020, the Court entered an Order Approving Debtor's Motion to Approve the Disclosure Statement and Other Relief [Dkt. 860]. Among other things, that Order approved procedures regarding notice of the Disclosure Statement, the Motion, and the hearing on the Motion. The Debtor provided notice consistent with that Order [Dkt. 871-72, 891-895], which was adequate and proper under the circumstances.

¹ A copy of the Plan is attached as **Exhibit A** to this Order. Capitalized terms not defined herein shall have the meanings set forth in the Plan.

ORDER CONFIRMING DEBTOR'S FIFTH
AMENDED PLAN OF REORGANIZATION - 1



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18785-1/DRK/961530

1 2. On November 17, 2020, the Debtor submitted a Ballot Report [Dkt. 912]. The
2 voting procedures described in the Ballot Report have been approved by the Court and Class 3
3 has voted to accept the Plan.

4 3. The Plan complies with the applicable provisions of the Bankruptcy Code, in
5 particular Sections 1122 and 1123 governing classification and contents of the Plan. Under the
6 Plan, only claims which are substantially similar are classified together.

7 4. The Debtor has complied with the applicable provisions of Title 11 of the
8 Bankruptcy Code.

9 5. The Plan has been proposed in good faith and not by any means forbidden by
10 law.

11 6. The Plan satisfies the “good faith” requirement and satisfies the purposes of
12 Chapter 11 and the Bankruptcy Code by providing a feasible plan for the payment of claims to
13 the extent required by the Bankruptcy Code.

14 7. All payments to the Debtor’s professionals and the source of those payments
15 have been approved by the Court or remain subject to approval of the Court as reasonable.

16 8. The Debtor’s disclosures have satisfied Section 1129(a)(5) of the Bankruptcy
17 Code.

18 9. Mr. Gordon’s appointment as Liquidating Trustee is in the best interests of estate
19 creditors.

20 10. Section 1129(a)(6) of the Bankruptcy Code is satisfied as no governmental
21 regulatory rate setting issues are presented in this case.

22 11. The requirement of 11 U.S.C. §1129(a)(7)(A)(ii) is satisfied as to each creditor,
23 as set forth in the Disclosure Statement.

24 12. Section 1129(a)(8) is not satisfied, as Class 2 and Class 3(a) are impaired and
25 have been deemed to reject the Plan, but confirmation of the Plan is appropriate as Section
26 1129(b) is instead satisfied as to Class 2 and Class 3(a). With respect to Class 2, Section

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1 1129(b) is satisfied as the plan does not discriminate unfairly, and is fair and equitable, and
2 there are no claims junior to Class 2 claims that will retain any property or receive any payment
3 under the Plan. Likewise, with respect to Class 3(a), Section 1129(b) is satisfied as the plan
4 does not discriminate unfairly, and is fair and equitable, and there are no claims junior to Class
5 3(a) claims that will retain any property or receive any payment under the Plan.

6 13. Section 1129(a)(9) of the Bankruptcy Code is satisfied as the holders of priority
7 claims addressed in this section will be paid as required therein. Specifically, administrative
8 claims will be paid in full upon approval of fee applications, or as agreed between the Debtor
9 and the creditor, and tax claims shall be paid no later than over a five (5) year period from the
10 petition date, with interest.

11 14. Section 1129(a)(10) of the Bankruptcy Code is satisfied as Class 3 is impaired
12 and have voted for the Plan [Dkt. 912].

13 15. Section 1129(a)(11) of the Bankruptcy Code is satisfied as liquidation of the
14 Debtor's assets is proposed in the Plan.

15 16. Section 1129(a)(12) of the Bankruptcy Code is satisfied as the fees payable to
16 the Office of the United States Trustees are current and on the Effective Date, and thereafter as
17 may be required, the Debtor shall pay all fees payable pursuant to Section 1930 of Chapter 123
18 of Title 28 of the United States Code.

19 17. Sections 1129(a)(13)–(16) of the Bankruptcy Code do not apply to the Debtor.

20 18. The Plan provisions comply with §1129(c) and (d).

21 19. Section 1129(e) of the Bankruptcy Code does not apply to the Debtor.

22 Based on the foregoing findings and conclusions and the Court's review of the records
23 and files herein, the Court, deeming itself fully advised, finding that adequate and proper notice
24 was provided, and having determined that cause exists to grant the relief requested, and having
25 so found, it is hereby **ORDERED, ADJUDGED AND DECREED** that:

26 1. The Plan, and each of the provisions therein, is hereby confirmed pursuant to

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1 Section 1129 of the Bankruptcy Code. The terms of the Plan and all of its exhibits are
2 incorporated by reference into, and are an integral part of, the Plan and this Order and are
3 authorized and approved.

4 2. For the reasons set forth herein and on the record at the Confirmation Hearing,
5 all objections to the Motion and the relief requested therein and/or granted in this Order that
6 have not been withdrawn, waived, or settled, and all reservations of rights included in such
7 objections, are overruled on the merits.

8 3. In addition to the findings and conclusions described above, the findings of this
9 Court set forth on the record at the Confirmation Hearing and the conclusions of law stated on
10 the record at the Confirmation Hearing shall constitute findings of fact and conclusions of law
11 pursuant to Bankruptcy Rule 7052, made applicable to this proceeding by Rule 9014 of the
12 Federal Rules of Bankruptcy Procedure. To the extent any finding of fact shall be determined
13 to be a conclusion of law, it shall be so deemed, and vice versa.

14 4. In accordance with Section 1141(a) of the Bankruptcy Code, immediately upon
15 the entry of this Order, the terms of the Plan and this Order shall be binding upon all Persons
16 and parties in interest. The Plan is binding upon all entities regardless of whether the claim or
17 interest of any person is impaired under the Plan and whether any person has accepted the Plan.

18 5. The failure specifically to include any particular provision of the Plan in this Order
19 shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that
20 the Plan be confirmed in its entirety.

21 6. David J. Gordon is hereby appointed as the Liquidating Trustee of the
22 Liquidating Trust.

23 7. The Liquidating Trustee shall disclose on the trust website, described in
24 paragraph 2.2(c) of the Liquidating Trust Agreement [Dkt. 863 at 92], all compensation paid to
25 the Liquidating Trustee under paragraph 4.5 of the Liquidating Trust Agreement [Dkt. 863 at
26 96].

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1 8. The Liquidating Trustee shall file an annual report with the Court itemizing and
2 disclosing all compensation paid to the Liquidating Trustee under paragraph 4.5 of the
3 Liquidating Trust Agreement [Dkt. 863 at 96] (“**Compensation Notice**”). The Compensation
4 Notice shall be filed on or before January 31st in the year following any calendar year in which
5 the Liquidating Trustee received such compensation.

6 9. On the Effective Date, each Asbestos-Related Personal Injury or Wrongful Death
7 Claim or Potential Asbestos-Related Trust Claim shall be channeled to the Liquidating Trust
8 and any holder of any Asbestos-Related Personal Injury or Wrongful Death Claim or Potential
9 Asbestos-Related Trust Claim shall be stayed, restrained, and enjoined from taking any action
10 against FBS on, with respect to, or arising out of any such Claim, for the purpose of directly or
11 indirectly, collecting, recovering, or receiving payment and providing that such Claim may
12 thereafter be asserted exclusively against the Liquidating Trust in accordance with the
13 provisions set forth in the Claim Valuation Process. Holders of such Claims are, subject to the
14 Claim Valuation Process, enjoined from filing any future litigation, claims or causes of action
15 arising out of such Claims against the Debtor and may not proceed in any manner against the
16 Debtor in any state or federal court or administrative or arbitral forum, and are required to
17 pursue such Claims against the Liquidating Trust solely as provided in the Claim Valuation
18 Process (subject to the options set forth in the Claim Valuation Process for certain claimants to
19 bring their claims in arbitration in certain circumstances and for certain claimants to initiate suit
20 in court against the Liquidating Trust (as the successor to Fraser’s Insurance Rights) in certain
21 circumstances and then pursue collection of such claim against any unsettled Insurers whose
22 policy rights are triggered by such claim). Additionally, the automatic stay provided pursuant to
23 § 362 of the Bankruptcy Code shall continue in effect after the Effective Date as to any
24 Asbestos-Related Personal Injury or Wrongful Death Claim or Potential Asbestos-Related Trust
25 Claim and the July 3, 2019 order of the Bankruptcy Court partially lifting the automatic stay is
26 hereby modified to provide that an Asbestos-Related Personal Injury or Wrongful Death Claim

1 or Potential Asbestos-Related Trust Claim may be pursued only as provided for in the Plan and
2 the Claim Valuation Process.

3 10. This Court shall, and hereby does, retain such jurisdiction over this case and
4 matters relating to this case to the extent set forth in Article XI of the Plan.

5 11. For the avoidance of doubt, any party in interest is permitted to file, either before
6 or after the Effective Date, any objection to any professional fee application.

7 12. The Debtors are hereby authorized to take all actions necessary to consummate
8 the Plan.

9 **///END OF ORDER///**

10
11 Presented by:

12 EISENHOWER CARLSON PLLC

13 /s/ Darren R. Krattli
14 Darren R. Krattli, WSBA #39128
Attorneys for Debtor

15 Agreed as to Form, Presentation Waived by:

16 SALISH SEA LEGAL PLLC

17
18 By: /s/ Benjamin Ellison
19 Benjamin Ellison, WSBA #48315
20 Attorney for the Larson and Lampert
Estates, represented by SGB

EXHIBIT A

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IN THE UNITED STATES BANKRUPTCY COURT
IN AND FOR THE WESTERN DISTRICT OF WASHINGTON AT TACOMA

In Re:
FRASER’S BOILER SERVICE, INC.,
Debtor.

NO. 18-41245-BDL
FIFTH AMENDED PLAN OF
REORGANIZATION

Fraser’s Boiler Service, Inc. (“FBS” or the “Debtor”) proposes this Chapter 11 Plan of Reorganization (the “Plan”), pursuant to Section 1121(a) of Title 11 of the United States Code. Reference is made to the Disclosure Statement [Dkt. No. 863] for a discussion of the Debtor’s history, results of operations, historical financial information and properties, and for a summary and analysis of the Plan. All holders of Claims and Interests entitled to vote are encouraged to read the Plan and Disclosure Statement in their entirety before voting to accept or reject the Plan.

ARTICLE I

DEFINITIONS AND INTERPRETATION

A. Definitions.

The following terms used herein shall have the respective meanings defined below (such meanings to be equally applicable to both the singular and plural):

1.1. ***Administrative Expense Claim*** means any Claim constituting a cost or expense of administration of the Chapter 11 Case allowed under Sections 503(b) (including 503(b)(9)), 507(a)(2) and 507(b) of the Bankruptcy Code including any actual and necessary costs and

1 expenses of preserving the Debtor’s estates, any actual and necessary costs and expenses of
2 operating the Debtor’s business, any actual and necessary costs and expenses of the
3 administration and implementation of the Plan, any indebtedness or obligations incurred or
4 assumed by the Debtor, as Debtor in Possession, during the Chapter 11 Case, including,
5 without limitation, for the acquisition or lease of property or an interest in property or the
6 rendition of services, any allowances of compensation and reimbursement of expenses to the
7 extent allowed by Final Order under Sections 330 or 503 of the Bankruptcy Code, and any fees
8 or charges assessed against the Debtor’s estates under Section 1930 of Chapter 123 of Title 28
9 of the United States Code.

10 1.2. **Allowed** means that, with respect to a Claim, (i) such Claim has been listed by
11 the Debtor in the Schedules, as such Schedules may be amended by the Debtor from time to
12 time in accordance with Bankruptcy Rule 1009, as liquidated in an amount and not disputed
13 or contingent and no contrary proof of claim has been filed, (ii) a proof of claim with respect
14 to such Claim has been timely filed and no objection thereto has been interposed within the
15 time period set forth in Article 7 of the Plan or such other applicable period of limitation fixed
16 by the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or an objection
17 thereto has been interposed and such Claim has been allowed in whole or in part by a Final
18 Order, (iii) such Claim has been expressly allowed by a Final Order or under the Plan, or (iv)
19 such Claim has been compromised, settled, or otherwise resolved pursuant to the authority
20 granted to the Post-Confirmation Debtor pursuant to a Final Order of the Bankruptcy Court;
21 *provided, however*, that Claims allowed solely for the purpose of voting to accept or reject the
22 Plan pursuant to an order of the Bankruptcy Court shall not be considered “Allowed Claims”
23 under the Plan.

24 1.3. **Asbestos-Related Personal Injury or Wrongful Death Claim** means (a) any
25 liquidated but unpaid or (b) unliquidated Claim (whether or not fixed, contingent, matured,
26 unmatured, disputed, undisputed, legal, equitable, secured or unsecured whenever and

1 wherever arising or asserted against FBS), including, but not limited to, all thereof in the nature
2 of or sounding in tort, contract, warranty, or any other theory of law, or admiralty, relating to,
3 or arising by reason of, directly or indirectly, physical, emotional, bodily or other personal
4 injury, death or damages (including, but not limited to, any claim for compensatory damages,
5 loss of consortium, proximate, consequential, general, special or punitive damages) caused or
6 allegedly caused, in whole or part, directly or indirectly: (i) by asbestos or asbestos-containing
7 products manufactured, supplied, distributed, handled, fabricated, stored, sold, installed, or
8 removed by FBS; (ii) by services, actions, or operations provided, completed or taken by FBS
9 in connection with asbestos or asbestos-containing products or (iii) by asbestos for which FBS
10 is otherwise liable under any applicable law, whether or not arising or allegedly arising,
11 directly or indirectly, from acts or omissions of FBS. Asbestos-Related Personal Injury or
12 Wrongful Death Claim will not include, however, any Claim (i) based on a workers
13 compensation claim or that would qualify as a workers compensation claim under any
14 applicable law or (ii) that is a Short Latency Asbestos-Related Claim.

15 1.4. **Bankruptcy Code** means Title 11 of the United States Code, as amended from
16 time to time, as applicable to the Chapter 11 Case.

17 1.5. **Bankruptcy Court** means the United States Bankruptcy Court for the Western
18 District of Washington or such other court that exercises jurisdiction over the Chapter 11 Case.

19 1.6. **Bankruptcy Rules** means the Federal Rules of Bankruptcy Procedure as
20 promulgated by the United States Supreme Court under Section 2075 of Title 28 of the United
21 States Code, as amended from time to time, and any Local Rules of the Bankruptcy Court, as
22 applicable to the Chapter 11 Case.

23 1.7. **Bar Date** means November 13, 2018.

24 1.8. **Business Day** means any day other than a Saturday, a Sunday, or any other day
25 on which banking institutions in New York, New York are required or authorized to close by
26 law or executive order.

1 1.9. **Cash** means legal tender of the United States of America.

2 1.10. **Causes of Action** means any action, cause of action, suit, account, controversy,
3 agreement, promise, right to legal remedies, right to equitable remedies, right to payment, and
4 Claim, whether known or unknown, reduced to judgment, not reduced to judgment, liquidated,
5 unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured, unsecured,
6 and whether asserted or assertable directly or indirectly or derivatively, in law, equity, or
7 otherwise, and including without limitation any and all avoidance actions under Chapter 5 of
8 the Bankruptcy Code such as 11 U.S.C. §§ 502(d), 544, 545, 547, 548, 549, 550, and 553.

9 1.11. **Chapter 11 Case** means the case under Chapter 11 of the Bankruptcy Code
10 commenced by the Debtor in the United States Bankruptcy Court for the Western District of
11 Washington, Case No. 18-41245-BDL.

12 1.12. **Claim** shall have the meaning ascribed in Section 101 of the Bankruptcy Code.

13 1.13. **Claim Valuation Process or CVP** means the Claim Valuation Process
14 Attached hereto as Exhibit “B”.

15 1.14. **Class** means any group of Claims or Equity Interests classified by the Plan as
16 set forth in Article III of the Plan.

17 1.15. **Commencement Date** means April 9, 2018.

18 1.16. **Company** means, the Debtor, Fraser’s Boiler Service, Inc.

19 1.17. **Confirmation Date** means the date on which the Clerk of the Bankruptcy Court
20 enters the Confirmation Order on the docket of the Bankruptcy Court with respect to the
21 Chapter 11 Case.

22 1.18. **Confirmation Hearing** means the hearing to be held by the Bankruptcy Court
23 regarding confirmation of the Plan in accordance with Section 1129 of the Bankruptcy Code,
24 as such hearing may be adjourned or continued from time to time.

25 1.19. **Confirmation Order** means the order of the Bankruptcy Court confirming the
26 Plan pursuant to Section 1129 of the Bankruptcy Code.

1 1.20. **Contingent Claim** means any Claim, the liability for which attaches or is
2 dependent upon the occurrence of, or is triggered by, an event, which event has not yet occurred
3 as of the date on which such Claim is sought to be estimated or an objection to such Claim is
4 filed, whether or not such event is within the actual or presumed contemplation of the holder
5 of such Claim and whether or not a relationship between the holder of such Claim and the
6 applicable Debtor now or hereafter exists or previously existed.

7 1.21. **Creditors' Committee** means the statutory creditors' committee appointed
8 pursuant to Section 1102 of the Bankruptcy Code in the Chapter 11 Case, as may be
9 reconstituted from time to time.

10 1.22. **Debtor** means the Company, Fraser's Boiler Service, Inc.

11 1.23. **Debtor in Possession** means the Debtor in its capacity as debtor in possession
12 in the Chapter 11 Case pursuant to Sections 1101, 1107(a), and 1108 of the Bankruptcy Code.

13 1.24. **Disallowed Claim** means a Claim or a portion of a Claim that is disallowed by
14 an order of the Bankruptcy Court or any other court of competent jurisdiction.

15 1.25. **Disclosure Statement** means the second amended disclosure statement with
16 respect to the Plan filed with and approved by the Bankruptcy Court in accordance with Section
17 1125 of the Bankruptcy Code, as such disclosure statement may be amended, modified or
18 supplemented.

19 1.26. **Disputed Claim** means any Claim (including any Administrative Expense
20 Claim) against any Debtor, proof of which was timely and properly filed, that is disputed under
21 the Plan or as to which the Debtor has interposed a timely objection and/or request for
22 estimation in accordance with Section 502(c) of the Bankruptcy Code and Bankruptcy Rule
23 3018, which objection and/or request for estimation has not been withdrawn or determined by
24 a Final Order, and any Claim proof of which was required to be filed by order of the
25 Bankruptcy Court but as to which a proof of claim was not timely or properly filed.

26

1 1.27. **Effective Date** means a Business Day specified by the Debtor on or after the
2 Confirmation Date, on which (i) no stay of the Confirmation Order is in effect and (ii) the
3 conditions to the effectiveness of the Plan specified in Article 10 of the Plan have been satisfied
4 or waived and (iii) one or more of the approval orders related to settlement agreements with
5 the Settled Insurers has become a Final Order or one or more of the Settled Insurers has waived
6 the requirement of a Final Order approving such a settlement and no stay of the order approving
7 such settlement is in effect. The Effective Date will be no later than ninety (90) days after the
8 first day on which the conditions of the preceding sentence have been satisfied.

9 1.28. **Entity** means a person, a corporation, a general partnership, a limited
10 partnership, a limited liability company, a limited liability partnership, an association, a joint
11 stock company, a joint venture, an estate, a trust, an unincorporated organization, a
12 governmental unit or any subdivision thereof, including the Office of the United States Trustee.

13 1.29. **Equity Interest** (or **Interest**) means the interest of any holder of an equity
14 security or membership interest of the Debtor represented by any issued and outstanding shares
15 of common stock or any other instrument evidencing an ownership interest in the Debtor,
16 whether or not transferable, or any option, warrant, or right, contractual or otherwise, to acquire
17 any such interest.

18 1.30. **Final Order** means an order or judgment of the Bankruptcy Court or such other
19 court as has applicable jurisdiction over a matter entered by the Clerk of the Bankruptcy Court
20 (or such other court) on the docket in the Chapter 11 Case (or such other case), that has not
21 been reversed, vacated, or stayed, and as to which (i) the time to appeal, petition for *certiorari*,
22 or move for a new trial, reargument, or rehearing has expired, and as to which no appeal,
23 petition for *certiorari*, or other proceedings for a new trial, reargument, or rehearing shall then
24 be pending, or (ii) if an appeal, petition of *certiorari*, new trial, reargument, or rehearing thereof
25 has been sought, such order or judgment of the Bankruptcy Court (or such other court of
26 applicable jurisdiction) shall have been affirmed by the highest court to which such order was

1 appealed, or *certiorari* shall have been denied, or a new trial, reargument, or rehearing shall
2 have been denied or resulted in no modification of such order, and the time to take any further
3 appeal, petition for *certiorari* or move for a new trial, reargument, or rehearing shall have
4 expired; *provided, however*, that the possibility that a motion under Rule 59 or Rule 60 of the
5 Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules or other
6 applicable rules, may be filed relating to such order shall not cause such order to not be a Final
7 Order.

8 1.31. ***General Unsecured Claim*** means any Claim against the Debtor other than an
9 Administrative Expense Claim, a Priority Tax Claim, an Other Priority Claim, an Asbestos-
10 Related Personal Injury or Wrongful Death Claim, or a Short Latency Asbestos-Related Claim.

11 1.32. ***Insurance Carriers*** means any entities that issued or are responsible for any
12 policies of insurance that do or may provide coverage to the Debtor or the Post-Confirmation
13 Debtor.

14 1.33. ***Insurance Policies*** means any and all insurance policies that do or may provide
15 coverage to the Debtor or the Post-Confirmation Debtor.

16 1.34. ***Insurance Rights*** means any right to defense, indemnification, payment of
17 Claims or any other benefits arising under the Insurance Policies, including any benefit
18 resulting from claims or causes of action against Insurance Carriers for breach of contract,
19 wrongful action or bad faith related to the Insurance Policies or any handling of Claims
20 thereunder.

21 1.35. ***Insurance Settlement Agreement*** means the Settlement Agreement and
22 Release approved by the Bankruptcy Court on June 22, 2020 [Dkt.797].

23 1.36. ***Lien*** means any charge against or interest in property to secure payment of a
24 debt or performance of an obligation.

25 1.37. ***Liquidating Trust*** means the liquidating trust to be established for the benefit
26 of holders of Class 3 Claims and Potential Asbestos-Related Trust Claims in accordance with

1 the terms of Section 5.1 of this Plan.

2 1.38. **Liquidating Trust Agreement or Trust Agreement** means that certain
3 agreement by and between the Plan Agent and the Liquidating Trustee establishing and
4 governing the Liquidating Trust. A true and correct copy of the Liquidating Trust Agreement
5 is attached hereto as Exhibit “A.”

6 1.39. **Liquidating Trustee** means the individual appointed to be trustee of the
7 Liquidating Trust in accordance with the terms of Section 5.1 of this Plan.

8 1.40. **Non-Settled Insurance** means all of the Insurance Rights available from or
9 related to Insurance Policies other than policies issued by Settled Insurers or Previously Settled
10 Insurers.

11 1.41. **Non-Settled Insurers** means all of the Insurance Carriers that have not become
12 Settled Insurers or Previously Settled Insurers.

13 1.42. **Other Priority Claim** means any Claim other than an Administrative Expense
14 Claim or a Priority Tax Claim entitled to priority in right of payment under section 507(a) of
15 the Bankruptcy Code.

16 1.43. **Plan** means this Plan of Reorganization Under Chapter 11 of the Bankruptcy
17 Code, including the Plan Documents, and the exhibits and schedules hereto and thereto, as the
18 same may be amended or modified from time to time in accordance with the provisions of the
19 Bankruptcy Code and the terms of the Plan.

20 1.44. **Plan Agent** means DJO Services, LLC, which acquired the stock of FBS in
21 2017, until the Effective Date, and on and after the Effective Date, means the Liquidating
22 Trustee, in his role as administrator of the Plan.

23 1.45. **Plan Documents** means the documents to be executed, delivered, assumed,
24 and/or performed in conjunction with the consummation of the Plan on the Effective Date,
25 including the Liquidating Trust Agreement.
26

1 1.46. **Post-Confirmation Debtor** means the Debtor, following the Effective Date of
2 the Plan.

3 1.47. **Potential Asbestos-Related Trust Claim** means a demand for payment, present
4 or future, that (i) was not an Asbestos-Related Personal Injury or Wrongful Death Claim that
5 was settled by FBS and approved by the Bankruptcy Court during the proceedings leading to
6 confirmation of the Plan, and (ii) constituted an Asbestos-Related Personal Injury or Wrongful
7 Death Claim or would have fit the definition of an Asbestos-Related Personal Injury or
8 Wrongful Death Claim had it progressed to a point that it would have constituted a Claim
9 during the proceedings leading to confirmation of the Plan.

10 1.48. **Previously Settled Insurance** means all of the Insurance Rights available from
11 or related to Insurance Policies issued by Previously Settled Insurers.

12 1.49. **Previously Settled Insurers** means all of the Insurance Carriers who have
13 reached an agreement completely resolving their obligations for, among other things,
14 Asbestos-Related Personal Injury or Wrongful Death Claims asserted against FBS (i) with FBS
15 prior to the Receivership or (ii) with the Receiver, provided that agreement was approved by
16 the Receivership Court by a Final Order prior to the Commencement Date. Previously Settled
17 Insurers would include Continental Casualty Company.

18 1.50. **Priority Tax Claim** means any Claim of a governmental unit of the kind entitled
19 to priority in payment as specified in Sections 502(i) and 507(a)(8) of the Bankruptcy Code.

20 1.51. **PW Amendment** means the Amendment to Settlement Agreement and Release
21 approved by the Bankruptcy Court on June 22, 2020 [Dkt. 797].

22 1.52. **Receiver** means Resource Transition Consultants, LLC, the Receiver for
23 Fraser's Boiler Service, Inc.

24 1.53. **Receivership** means the receivership for FBS established by the Receivership
25 Court in Case No. 15-2-01791-8-SEA.

26 1.54. **Receivership Court** means the Superior Court of Washington for King County.

1 1.55. **Schedules** means the schedules of assets and liabilities and the statements of
2 financial affairs filed by the Debtor pursuant to Section 521 of the Bankruptcy Code,
3 Bankruptcy Rule 1007, and the Official Bankruptcy Forms of the Bankruptcy Rules, as such
4 schedules and statements may be supplemented or amended on or prior to the Effective Date.

5 1.56. **Secured Claim** means any Claim that is secured by a Lien on collateral to the
6 extent of the value of such collateral, as determined in accordance with Section 506(a) of the
7 Bankruptcy Code, or, in the event that such Claim is subject to a permissible setoff under
8 Section 553 of the Bankruptcy Code, to the extent of such permissible setoff.

9 1.57. **Secured Tax Claim** means any Secured Claim that, absent its secured status,
10 would be entitled to priority in right of payment under Section 507(a)(8) of the Bankruptcy
11 Code (determined irrespective of any time limitations therein), and including any related
12 Secured Claim for penalties.

13 1.58. **Settled Insurers** means those insurance carriers who, prior to the Effective
14 Date, have reached an agreement with the Debtor in possession resolving their obligations for,
15 among other things, Asbestos-Related Personal Injury or Wrongful Death Claims or have
16 reached an agreement with the Receiver that has been adopted in amended form by the Debtor.
17 Settled Insurers shall include Allianz Underwriters Insurance Company, Chicago Insurance
18 Company, Century Indemnity Company (as successor to CCI Insurance Company, as
19 successor to Insurance Company of North America), Pacific Employers Insurance Company,
20 Hartford Accident and Indemnity Company, Zurich American Insurance Company (as
21 successor-in-interest to Maine Bonding and Casualty Company), Travelers Indemnity
22 Company, Providence Washington Insurance Company, National Union Fire Insurance
23 Company, Pittsburgh, PA, and London Market Companies (as defined in the Insurance
24 Settlement Agreement), Lloyd's Underwriters (as defined in the Insurance Settlement
25 Agreement), and The Orion Insurance Company Limited (now subject to a scheme of
26 arrangement in the United Kingdom known as OIC Run-Off Limited) to the extent that the

1 proposed settlements with such insurers are approved by the Bankruptcy Court.

2 **1.59. Short Latency Asbestos-Related Claim** means an unliquidated Claim (whether
3 or not fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured
4 or unsecured whenever and wherever arising or asserted against FBS), that would have
5 constituted an Asbestos-Related Personal Injury or Wrongful Death Claim but that arises from
6 a disease that manifests itself within twenty (20) years of the first alleged exposure to
7 (i) asbestos or asbestos-containing products manufactured, supplied, distributed, handled,
8 fabricated, stored, sold, installed, or removed by FBS; (ii) services, actions, or operations
9 provided, completed or taken by FBS in connection with asbestos or asbestos-containing
10 products; or (iii) asbestos for which FBS is otherwise liable under any applicable law.

11 **1.60. Trust Claim** means an Asbestos-Related Personal Injury or Wrongful Death
12 Claim that was settled by FBS and approved by the Bankruptcy Court during the proceedings
13 leading to confirmation of the Plan or a Potential Trust Claim that is allowed by the Liquidating
14 Trust.

15 **1.61. Unliquidated Claim** means any Claim, the amount of liability for which has not
16 been fixed, whether pursuant to agreement, applicable law, or otherwise, as of the date on
17 which such Claim is sought to be estimated.

18 **B. Interpretation; Application of Definitions and Rules of Construction.**

19 Unless otherwise specified, all section or exhibit references in the Plan are to the
20 respective section in, or exhibit to, the Plan, as the same may be amended, waived, or modified
21 from time to time. The words “herein,” “hereof,” “hereto,” “hereunder,” and other words of
22 similar import refer to the Plan as a whole and not to any particular section, subsection, or
23 clause contained therein. The words “including” or “includes” shall be without limitation. A
24 term used herein that is not defined herein shall have the meaning ascribed to that term in the
25 Bankruptcy Code. The rules of construction contained in Section 102 of the Bankruptcy Code
26 shall apply to the Plan. In the event that a particular term of the Plan (including any exhibits

1 or schedules hereto) conflicts with a particular term of the definitive documentation required
2 to be implemented pursuant to the terms of the Plan or any settlement or other agreement
3 contemplated hereunder, the definitive documentation shall control and shall be binding on the
4 parties thereto. The headings in the Plan are for convenience of reference only and shall not
5 limit or otherwise affect the provisions of the Plan. Timing shall be calculated as set forth in
6 Rule 9006 of the Bankruptcy Rules. All exhibits to the Plan are incorporated into the Plan and
7 shall be deemed to be included in the Plan, regardless of when filed with the Bankruptcy Court.

8 ARTICLE II

9 **ADMINISTRATIVE EXPENSE CLAIMS AND PRIORITY TAX CLAIMS**

10 2.1. *Administrative Expense Claims.*

11 Administrative Expense Claims shall include all Administrative Expense Claims
12 arising from the administration of the estate in the Bankruptcy Case, and shall also include, all
13 amounts payable to the Receiver for his compensation for acting as receiver and custodian and
14 all amounts payable to the Receiver's/custodian's professionals (subject to the \$135,000 limit
15 set on the Receiver's 1% compensation set by the Bankruptcy Court's September 28, 2018
16 Order Granting Application). The holders of Administrative Expense Claims that arose in the
17 Receivership may apply for approval of such Claims in the Bankruptcy Case.

18 Except to the extent that a holder of an Allowed Administrative Expense Claim agrees
19 to a less favorable treatment, each Allowed Administrative Expense Claim shall be paid from
20 funds paid by the Settled Insurers and to the extent such funds may be paid to the Post-
21 Confirmation Debtor or the Trust shall be paid by those entities in full, in Cash, in an amount
22 equal to such Allowed Administrative Expense Claim on or as soon as reasonably practicable
23 following the later to occur of (a) the Effective Date, and (b) the date on which such
24 Administrative Expense Claim shall become an Allowed Claim.

25 The holder of an Administrative Expense Claim, other than an Administrative Expense
26 Claim that has been Allowed on or before the Effective Date, must file with the Bankruptcy

1 Court, or for Claims arising in the Receivership with the Receivership Court, and serve on the
2 Debtor or the Post-Confirmation Debtor, as applicable, and the Office of the United States
3 Trustee (the “U.S. Trustee”), notice of such Administrative Expense Claim on or before any
4 deadline that may be set by the Court. Such notice must include at a minimum (i) the name of
5 the holder of the Claim, (ii) the amount of the Claim, and (iii) the basis for the Claim. **Failure**
6 **to file and serve such notice timely and properly will result in the Administrative Expense**
7 **Claim being forever barred and discharged.**

8 2.2. *Professional Compensation and Reimbursement Claims.*

9 The Bankruptcy Court shall fix in the Confirmation Order a date for the filing of, and
10 a date to hear and determine, all applications for final allowance of compensation for services
11 rendered or reimbursement of expenses incurred through and including the Confirmation Date
12 under Sections 328 and 330 of the Bankruptcy Code or applications for allowance of
13 Administrative Expense Claims arising under Sections 503(b)(2), 503(b)(3), 503(b)(4), or
14 503(b)(5) of the Bankruptcy Code. Unless otherwise agreed to by the claimant and the Debtor
15 or the Post-Confirmation Debtor, as applicable, the Allowed Administrative Expense Claims
16 arising under Sections 330, 331, 503(b)(2), 503(b)(3), 503(b)(4), and 503(b)(5) of the
17 Bankruptcy Code shall be paid in full, in Cash, as soon as practicable following the later to
18 occur of (a) the Effective Date and (b) the date upon which any such Administrative Expense
19 Claim becomes an Allowed Administrative Expense Claim. The Debtor and the Post-
20 Confirmation Debtor, as applicable, are authorized to pay compensation for services rendered
21 or reimbursement of expenses incurred after the Confirmation Date and until the Effective Date
22 in the ordinary course of business and without the need for Bankruptcy Court approval. Final
23 fee applications must be filed in accordance with Section 7.2 below.

24 2.3. *Priority Tax Claims.*

25 Except to the extent that a holder of an Allowed Priority Tax Claim has been paid by
26 the Debtor prior to the Effective Date or agrees to a less favorable treatment, each holder of an

1 Allowed Priority Tax Claim shall receive, at the sole option of the Debtor or the Post-
 2 Confirmation Debtor, (a) Cash in an amount equal to such Allowed Priority Tax Claim on or
 3 as soon as reasonably practicable following the later to occur of (i) the Effective Date and
 4 (ii) the date on which such Administrative Priority Tax Claim shall become an Allowed
 5 Priority Tax Claim, (b) equal semi-annual Cash payments in an aggregate amount equal to
 6 such Allowed Priority Tax Claim, together with interest at the applicable non-bankruptcy rate,
 7 commencing upon the later of the Effective Date and the date such Priority Tax Claim becomes
 8 an Allowed Priority Tax Claim, or as soon thereafter as is practicable and continuing over a
 9 period of eighteen (18) months (but in no event exceeding five (5) years from and after the
 10 Commencement Date), or (c) such other treatment as shall be determined by the Bankruptcy
 11 Court to provide the holder of such Allowed Priority Tax Claim deferred Cash payments
 12 having a value, as of the Effective Date, equal to such Allowed Priority Tax Claim.

13 **ARTICLE III**

14 **CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS**

15 The following table designates the Classes of Claims against and Equity Interests in
 16 the Debtor and specifies which of those Classes are (i) impaired or unimpaired by the Plan and
 17 (ii) entitled to vote to accept or reject the Plan in accordance with Section 1126 of the
 18 Bankruptcy Code or deemed to reject the Plan.

CLASS	Designation	STATUS	ENTITLED TO VOTE?
Class 1	Other Priority Claims against the Debtor	Unimpaired	No (deemed to accept)
Class 2	General Unsecured Claims	Impaired	No, deemed to reject
Class 3	Unsecured Asbestos-Related Personal Injury or Wrongful Death Claims	Impaired	Yes
Class 3(a)	Short Latency Asbestos-Related Claims	Impaired	No, deemed to reject

CLASS	Designation	STATUS	ENTITLED TO VOTE?
Class 4	Equity Interests in the Debtor	Impaired	No, deemed to reject

ARTICLE IV

TREATMENT OF CLAIMS AND EQUITY INTERESTS

4.1. ***Class 1: Other Priority Claims against the Debtor.***

(a) Impairment and Voting. Class 1 is unimpaired by the Plan. Each holder of an Allowed Other Priority Claim against the Debtor is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

(b) Distributions. Except to the extent that a holder of an Allowed Other Priority Claim against the Debtor agrees to a less favorable treatment, each such holder shall receive, in full satisfaction of such Allowed Other Priority Claim, Cash in an amount equal to such Allowed Other Priority Claim, on or as soon as reasonably practicable after the later of (i) the Effective Date, and (ii) the date such Claim becomes Allowed.

4.2. ***Class 2: General Unsecured Claims.***

(a) Impairment and Voting. Class 2 is impaired by the Plan. The holder of a General Unsecured Claim is NOT entitled to vote to accept or reject the Plan.

(b) Distributions. There will be no distribution on account of General Unsecured Claims. On the Effective Date, all General Unsecured Claims will retain their claims against the Debtor but will receive no distribution from the estate. General Unsecured Claims will have no rights or claims against the Liquidating Trust.

4.3. ***Class 3: Asbestos-Related Personal Injury or Wrongful Death Claims.***

(a) Impairment and Voting. Class 3 is impaired by the Plan. Holders of Asbestos-Related Personal Injury or Wrongful Death Claims are entitled to vote to accept or reject the Plan as set forth in subparagraph (b) below.

1 (b) Temporary Allowance for Voting. An Asbestos-Related Personal
2 Injury or Wrongful Death Claim will be temporarily allowed for voting with respect to this
3 Plan in the amount of \$1.00 if (1) the holder of the Asbestos-Related Personal Injury or
4 Wrongful Death Claim filed litigation against FBS prior to September 20, 2020 and such suit
5 against the debtor is still pending at the time of approval of the Disclosure Statement, (2) the
6 holder of the Asbestos-Related Personal Injury or Wrongful Death Claim settled litigation
7 against FBS prior to September 20, 2020 and such settlement with the Debtor is still unpaid at
8 the time of approval of the Disclosure Statement, (3) the holder of the Asbestos-Related
9 Personal Injury or Wrongful Death Claim requests and obtains approval from the Bankruptcy
10 Court to be temporarily allowed for voting (with the Debtor entitled to challenge any such
11 request), or (4) the holder of the Asbestos-Related Personal Injury or Wrongful Death Claim
12 obtains the consent of the Debtor to be temporarily allowed for voting by providing the Debtor
13 reasonable evidence of both (i) exposure to asbestos through proximity to the Debtor's
14 operations or products and (ii) disease reasonably linked to asbestos exposure. Additionally,
15 the holder of the Asbestos-Related Personal Injury or Wrongful Death Claim temporarily
16 allowed for voting will be required to certify on the ballot that he or she believes in good faith
17 that he or she holds a valid Claim against the Company arising from exposure to asbestos or
18 asbestos-containing products. Such certification may be made by the claimant or by claimant's
19 counsel on his or her behalf. The Debtor reserves the right to seek to disallow for voting any
20 Asbestos-Related Personal Injury or Wrongful Death Claim that would otherwise be allowed
21 to vote pursuant to this section by motion and after notice and hearing.

22 (c) Liquidation. Asbestos-Related Personal Injury or Wrongful Death
23 Claims that have tentatively been resolved by an agreement with the Debtor reached by
24 negotiation or mediation will be allowed as Trust Claims if such settlements are approved in
25 connection with confirmation of the Plan or by separate Court order. All other Asbestos-
26 Related Personal Injury or Wrongful Death Claims will be liquidated in accordance with the

1 Claim Valuation Process and the channeling injunction described in Section 5.1(j). The Claim
2 Valuation Process will provide that all Potential Asbestos-Related Trust Claims, including all
3 unliquidated Asbestos-Related Personal Injury or Wrongful Death Claims will be liquidated
4 by the Liquidating Trust.

5 (d) Non-Settled Insurance. The Liquidating Trust shall be entitled to
6 exercise and enforce all of the Insurance Rights and obligations of the Debtor and the Post-
7 Confirmation Debtor under or related to the Non-Settled Insurance Policies, including
8 directing the Debtor's or Post-Confirmation Debtor's litigation of any disputes related to the
9 Non-Settled Insurers' coverage obligations. The Liquidating Trust will perform or cause the
10 Debtor or Post-Confirmation Debtor to perform, such obligations, if any, required by Insurance
11 Policies issued by Non-Settled Insurers (for example, by providing any required notice of
12 Claims to the Insurance Carrier) to preserve the Insurance Rights to the fullest extent possible.
13 The Liquidating Trust will have the rights as described in this Plan and in the Trust Agreement
14 related to the pursuit, settlement, and resolution of such insurance coverage rights. All holders
15 of Class 3 Claims are deemed to grant to the Liquidating Trust the right and power to bind
16 them to a settlement or release of Insurance Rights that the Liquidating Trust may execute after
17 the Effective Date and the related limitations on their Class 3 Claims as described in the
18 following subsection of the Plan.

19 (e) Post-Confirmation Settlement of Insurance Coverage. After the
20 Effective Date, the Liquidating Trustee shall have the authority to compromise, settle, and
21 release any and all claims or potential claims by all Class 3 claimants and Potential Asbestos-
22 Related Trust Claims against an Insurance Carrier related to Class 3 Claims and Potential
23 Asbestos-Related Trust Claims and any and all claims or potential claims by the Debtor, Post-
24 Confirmation Debtor, and the Liquidating Trust. No such settlement shall affect, impair or
25 otherwise alter any payment made or obligation assumed pursuant to any settlement agreement
26 by any Insurance Carrier related to any Class 3 Claim or Potential Asbestos-Related Trust

1 Claim prior to the effective date of such settlement without the express written consent of the
2 beneficiary of such payment.

3 (f) Distributions. Each Class 3 claimant or Potential Asbestos-Related
4 Trust Claim claimant will be entitled to distributions on its Claim as liquidated from assets of
5 the Liquidating Trust only in accordance with the Claim Valuation Process, as they may be
6 amended from time to time.

7 4.4. ***Class 3(a): Short Latency Asbestos-Related Claims.***

8 (c) Impairment and Voting. Class 3(a) is impaired by the Plan. The holder
9 of a Short Latency Asbestos-Related Claim is NOT entitled to vote to accept or reject the Plan.

10 (d) Distributions. There will be no distribution on account of Short Latency
11 Asbestos-Related Claims. On the Effective Date, all Short Latency Asbestos-Related Claims
12 will be discharged but will receive no distribution from the Debtor's estate and will have no
13 rights or claims against the Liquidating Trust or against any Insurance Carriers.

14 4.5. ***Class 4: Equity Interests in Fraser's Boiler Service, Inc.***

15 (a) Impairment and Voting. Class 4 is impaired by the Plan. The holder of
16 an Equity Interest is NOT entitled to vote to accept or reject the Plan.

17 (b) Distributions. There will be no distribution on account of Equity
18 Interests in Fraser's Boiler Service, Inc. On the Effective Date, all Equity Interests in Fraser's
19 Boiler Service, Inc. will be transferred by existing owners to the Liquidating Trust which shall
20 thereafter be the sole shareholder of Fraser's Boiler Service, Inc.

21 **ARTICLE V**

22 **MEANS FOR IMPLEMENTATION**

23 5.1. ***The Liquidating Trust.***

24 (a) Establishment. On the Effective Date, the Plan Agent and the
25 Liquidating Trustee will execute the Liquidating Trust Agreement and related documents to
26 form the Liquidating Trust for the benefit of holders of Claims in Class 3 and other holders of

1 Potential Asbestos-Related Trust Claims (the “Liquidating Trust Beneficiaries”). In the event
2 of any conflicts between the terms of this Section 5.1 of the Plan and the Liquidating Trust
3 Agreement, the terms of the Liquidating Trust Agreement shall govern. The Liquidating Trust
4 Agreement shall include terms designed to implement the provisions of this Plan, including
5 the rights and powers appropriate to permit the Liquidating Trust to compromise, settle,
6 release, and receive the proceeds related to the Insurance Policies. Subject to approval by the
7 Bankruptcy Court as part of the Confirmation Order, the initial Liquidating Trustee will be
8 David Gordon. The Trust shall be bound by the terms of the Insurance Settlement Agreement
9 and the PW Amendment.

10 (b) Purpose. The Liquidating Trust shall be established for the sole
11 purposes of: (1) liquidating and distributing its assets, in accordance with applicable
12 provisions of the Internal Revenue Code of 1986 and any applicable Treasury Regulations,
13 with no objective to continue or engage in the conduct of a trade or business; and (2) holding
14 and managing the Post-Confirmation Debtor corporate entity that will dissolve and will not be
15 conducting any trade or business but will instead be wrapping up its affairs by managing
16 Asbestos-Related Personal Injury or Wrongful Death Claims and Potential Asbestos-Related
17 Trust Claims that may be presented to the Liquidating Trust less than three years after the date
18 of Fraser’s dissolution following Plan Confirmation.

19 (c) Funding. The Liquidating Trust shall be funded by amounts received
20 by the Debtor, the Post-Confirmation Debtor, or the Liquidating Trust as a result of settlements
21 with insurers and any subsequent amounts received on account of the Insurance Rights. The
22 primary funding for the Liquidating Trust is expected to be from proposed settlements with
23 certain Settled Insurers.

24 (d) Assets of the Trust. The Trust is expected to hold, directly or indirectly,
25 (i) all the stock of the reorganized Debtor entity or any residual rights of the shareholders of
26 the Debtor entity after dissolution, (ii) the Insurance Rights, and (iii) all amounts received on

1 account of the Insurance Rights after deducting the amounts reserved for administrative
2 expenses or for other Plan funding obligations and deducting any legal fees or other costs
3 incurred in prosecuting the Insurance Rights. These assets, together with any interest or
4 investment proceeds earned by the Liquidating Trust, will constitute the “Trust Assets.”

5 (e) Retention of Counsel. The Liquidating Trustee may employ counsel on
6 such terms as the Liquidating Trustee shall consider prudent under all the existing
7 circumstances. The Liquidating Trustee shall specifically be authorized to employ attorneys
8 that are employed or affiliated with any law firm with which the Liquidating Trustee is
9 associated. As it is anticipated that the Liquidating Trust may at times have limited liquid
10 assets and in any event may wish to retain as much of its liquid assets as possible to fund
11 payments to claimants, it is quite likely that the Liquidating Trustee may deem it advisable to
12 retain counsel pursuant to a contingency fee arrangement when possible. The Liquidating
13 Trust is specifically authorized to employ counsel on contingency fee or other special billing
14 arrangements to be paid in whole or in part from any proceeds obtained as a result of such
15 litigation.

16 (f) Tax Treatment. The transfer of the Trust Assets to the Liquidating
17 Trust, and all subsequent transfers permitted under subparagraph (c) of this section, shall be
18 treated for all purposes of the Internal Revenue Code of 1986, as amended, as a deemed transfer
19 by the Debtor to the Liquidating Trust Beneficiaries, followed by a deemed transfer by the
20 Liquidating Trust Beneficiaries to the Liquidating Trust. The Liquidating Trust Beneficiaries
21 shall be treated as the grantors and deemed owners of the trust assets that they are deemed to
22 transfer to the Liquidating Trust. Whether or not the Liquidating Trustee establishes reserves
23 to pay future trust expenses, all Liquidating Trust income shall be treated as subject to tax on
24 a current basis. The Liquidating Trustee shall allocate the Liquidating Trust income for each
25 taxable year among the Liquidating Trust Beneficiaries in accordance with their respective
26 interest in the Liquidating Trust, as determined from time to time by the Liquidating Trustee,

1 and the Liquidating Trust Beneficiaries shall be responsible for any tax liability that results
2 from said income. The Liquidating Trustee shall execute and file tax returns on behalf of the
3 Liquidating Trust as a grantor trust pursuant to Treasury Regulation Section 1.671.4(a). The
4 Liquidating Trust shall also be responsible for preparing and filing all tax returns for the Debtor
5 due after the Effective Date for any period prior to the Effective Date.

6 (g) Access to Books and Records; Attorney Client Privilege. Upon
7 establishment of the Liquidating Trust, the Liquidating Trustee shall be entitled to obtain
8 access to the Company's books and records to the extent necessary to enable the Liquidating
9 Trust to fulfill its obligations under the Plan, including to obtain financial information for
10 compliance with tax reporting obligations and assist in the retention of any and all Insurance
11 Rights.

12 (h) Proceeds of Insurance Settlements.

13 i. Other than the amounts reserved for other Plan funding
14 obligations as provided below, all amounts received on account of the Insurance Rights after
15 deducting any legal fees or other costs incurred in prosecuting the Insurance Rights shall be
16 paid to the Liquidating Trust in accordance with the terms of the Liquidating Trust Agreement
17 and this Plan. Any amounts received by the Debtor or Post-Confirmation Debtor on account
18 of the Insurance Rights will be held in trust by the Debtor or Post-Confirmation Debtor, as
19 applicable, until such amounts are transferred to the Liquidating Trust, which transfer shall be
20 made as the Liquidating Trustee shall request.

21 ii. This Plan contemplates that settlements with the Settled Insurers
22 will be approved by the Bankruptcy Court prior to confirmation of the Plan. The Plan Agent
23 or the Trust will reserve amounts from the proceeds of such settlements to fund the payments
24 due under the Plan for Administrative Expense Claims, Priority Tax Claims, and Other Priority
25 Claims.

26 (i) Potential Asbestos-Related Trust Claims. Potential Asbestos-Related

1 Trust Claims will be entitled to utilize the liquidation, settlement, and payment provisions
2 authorized by the Liquidating Trust Agreement and the Claim Valuation Process as provided
3 in such agreements.

4 (j) Channeling of All Asbestos-Related Personal Injury or Wrongful
5 Death Claims and Potential Asbestos-Related Trust Claims to the
6 Liquidating Trust.

7 On the Effective Date, each holder of an Asbestos-Related Personal Injury or Wrongful
8 Death Claim or Potential Asbestos-Related Trust Claim shall have such Claim channeled to
9 the Liquidating Trust pursuant to an order of the Bankruptcy Court (which may be the
10 Confirmation Order) staying, restraining, and enjoining any holder of any Asbestos-Related
11 Personal Injury or Wrongful Death Claim or Potential Asbestos-Related Trust Claim from
12 taking any action against FBS on, with respect to, or arising out of any such Claim, for the
13 purpose of directly or indirectly, collecting, recovering, or receiving payment and providing
14 that such Claim may thereafter be asserted exclusively against the Liquidating Trust in
15 accordance with the provisions set forth in the Claim Valuation Process. Holders of such
16 Claims are, subject to the Claim Valuation Process, enjoined from filing any future litigation,
17 claims or causes of action arising out of such Claims against the Debtor and may not proceed
18 in any manner against the Debtor in any state or federal court or administrative or arbitral
19 forum, and are required to pursue such Claims against the Liquidating Trust solely as provided
20 in the Claim Valuation Process (subject to the options set forth in the Claim Valuation Process
21 for certain claimants to bring their claims in arbitration in certain circumstances and for certain
22 claimants to initiate suit in court against the Liquidating Trust (as the successor to Fraser's
23 Insurance Rights) in certain circumstances and then pursue collection of such claim against
24 any unsettled Insurers whose policy rights are triggered by such claim).

25 The automatic stay provided pursuant to § 362 of the Bankruptcy Code shall continue
26 in effect after the Effective Date as to any Asbestos-Related Personal Injury or Wrongful Death
Claim or Potential Asbestos-Related Trust Claim and the July 3, 2019 order of the Bankruptcy

1 Court partially lifting the automatic stay shall be modified to provide that an Asbestos-Related
2 Personal Injury or Wrongful Death Claim or Potential Asbestos-Related Trust Claim may be
3 pursued only as provided for in the Plan and the Claim Valuation Process.

4 On the Effective Date, FBS will withdraw any previous tender of any Asbestos-Related
5 Claims to any of the Settled Insurers. Additionally, from the Effective Date onward, FBS, the
6 Liquidating Trust, or anyone acting on their behalf is prohibited from tendering any Asbestos-
7 Related Claims to any of the Settled Insurers.

8 (k) Duration of Liquidating Trust. The Trust shall continue after Fraser's
9 dissolution until the later of the date that is (a) four (4) years after the Trust's formation, or
10 (b) the date the Trust's corpus is exhausted by payment of Trust Claims and Trust
11 administrative costs.

12 5.2. *Plan Agent.*

13 On and after the Confirmation Date, the Plan Agent shall be the designated
14 representative of the Debtor's estate and is entitled to take any actions necessary to carry out
15 the provisions of this Plan. Upon the Effective Date, the Liquidating Trustee shall become the
16 Plan Agent.

17 5.3. *Dissolution of FBS*

18 No later than three (3) days after the date the Confirmation Order becomes a Final
19 Order, FBS shall dissolve by filing the documentation required by RCW 23B.14.030 (and other
20 relevant provisions of Washington law). FBS is prohibited from revoking, cancelling or in any
21 other way undoing this dissolution.

22 **ARTICLE VI**

23 **VOTING AND DISTRIBUTIONS**

24 6.1. *Voting of Claims.*

25 Each holder of an Allowed Claim in an impaired Class of Claims that is entitled to vote
26 on the Plan pursuant to Article III of the Plan shall, subject to the terms of Section 4.3 above,

1 be entitled to vote separately to accept or reject the Plan, as provided in such order as is entered
2 by the Bankruptcy Court establishing procedures with respect to the solicitation and tabulation
3 of votes to accept or reject the Plan, or any other order or orders of the Bankruptcy Court.

4 6.2. *Nonconsensual Confirmation.*

5 The Debtor seeks to have the Bankruptcy Court confirm the Plan under Section
6 1129(b) of the Bankruptcy Code.

7 6.3. *Date of Distributions.*

8 In the event that any payment or act under the Plan is required to be made or performed on a
9 date that is not a Business Day, then the making of such payment or the performance of such
10 act may be completed on the next succeeding Business Day, but shall be deemed to have been
11 completed as of the required date.

12 6.4. *Delivery of Distributions.*

13 (a) General. Subject to Bankruptcy Rule 9010, all distributions to a holder
14 of an Allowed Claim shall be made at the address of the holder thereof as set forth on the
15 Schedules filed with the Bankruptcy Court or on the books and records of the Debtor or their
16 agents or in a letter of transmittal unless the Debtor has been notified in writing of a change of
17 address, including, without limitation, by the filing of a proof of claim by such holder that
18 contains an address for such holder different from the address reflected on such Schedules for
19 such holder.

20 (b) Withholding and Reporting Requirements. In connection with the Plan
21 and all instruments issued in connection therewith and distributed thereon, any party issuing
22 any instrument or making any distribution under the Plan shall comply with all applicable
23 withholding and reporting requirements imposed by any federal, state or local taxing authority,
24 and all distributions under the Plan shall be subject to any such withholding or reporting
25 requirements. Notwithstanding the above, each holder of an Allowed Claim that is to receive
26 a distribution under the Plan shall have the sole and exclusive responsibility for the satisfaction

1 and payment of any tax obligations imposed by any governmental unit, including income,
2 withholding and other tax obligations, on account of such distribution. Any party issuing any
3 instrument or making any distribution under the Plan has the right, but not the obligation, to
4 not make a distribution until such holder has made arrangements satisfactory to such issuing
5 or disbursing party for payment of any such tax obligations.

6 6.5. ***Unclaimed Distributions.***

7 In the event that any distribution to any holder is returned as undeliverable, the Post-
8 Confirmation Debtor shall use reasonable efforts to determine the current address of such
9 holder, but no distribution to such holder shall be made unless and until the Post-Confirmation
10 Debtor have determined the then-current address of such holder, at which time such
11 distribution shall be made to such holder without interest from the original distribution date
12 through the new distribution date; *provided* that such distributions shall be deemed unclaimed
13 property under Section 347(b) of the Bankruptcy Code at the expiration of one year from the
14 Effective Date. After such date, all unclaimed property or interest in property shall revert to
15 the Liquidating Trust, and the Claim of any other Entity to such property or interest in property
16 shall be discharged and forever barred.

17 6.6. ***Manner of Payment.***

18 At the option of the Plan Agent, any Cash payment to be made hereunder may be made
19 by a check or wire transfer or as otherwise required or provided in applicable agreements.

20 6.7. ***Minimum Cash Distributions.***

21 Notwithstanding anything set forth herein to the contrary, no payment of Cash less than
22 \$50 shall be made to any holder of an Allowed Claim unless a request therefor is made in
23 writing to the Plan Agent.

24 6.8. ***Setoffs.***

25 The Debtor may, but shall not be required to, set off against any Claim (for purposes
26 of determining the Allowed amount of such Claim on which distribution shall be made) any

1 Claims of any nature whatsoever that the Debtor may have against the holder of such Claim,
2 but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a
3 waiver or release by the Debtor of any such Claim the Debtor may have against the holder of
4 such Claim.

5 ARTICLE VII

6 **PROCEDURES FOR ADMINISTRATIVE EXPENSE CLAIMS, 7 **OTHER PROOFS OF CLAIM, AND DISPUTED CLAIMS****

8 7.1. *Administrative Expense Claims and Priority Claims Bar Dates.*

9 (a) With the sole exception of holders of Asbestos-Related Personal Injury
10 or Wrongful Death Claims and Potential Asbestos-Related Trust Claims (the allowance and
11 distributions on account thereof being governed by the Liquidating Trust Agreement), all
12 entities (including, without limitation, Governmental Units as defined in Section 101(27) of
13 the Bankruptcy Code) with Administrative Expense Claims or Priority Claims against the
14 Debtor shall file their proofs of claim prior to any deadline that may be set by the Court,
15 including the Bar Date with respect to Priority Claims. If the holder of the Claim fails to file
16 a Proof of Claim in respect of their Claim before any such deadline in accordance with the
17 procedures set forth in the Confirmation Order or in a previous order that set a such a deadline,
18 that Claim holder shall be forever barred, estopped, and enjoined from asserting such Claim
19 against the Debtor and its estate (or filing a Proof of Claim with respect thereto), and the Debtor
20 and their property shall be forever discharged from any and all indebtedness or liability with
21 respect to such Claim. Furthermore, such holder shall not be permitted to participate in any
22 distribution in these cases on account of such Claim, or be entitled to receive further notices
23 regarding such Claim in these cases.

24 (b) The determination of entitlement to distributions on account of
25 Asbestos-Related Personal Injury or Wrongful Death Claims and Potential Asbestos-Related
26 Trust Claims shall be governed by the process and procedures established pursuant to the

1 Liquidating Trust Agreement.

2 7.2. ***Final Fee Applications.***

3 Final fee applications for payment of administrative expenses for professionals through
4 the Confirmation Date pursuant to Sections 330 and 331 of the Bankruptcy Code shall be filed
5 no later than thirty (30) days after entry of the Confirmation Order. Amounts payable pursuant
6 to any Final Order regarding the final fee applications shall be made (a) first, from any retainer
7 held by any professional and (b) second, by the Plan Agent or Liquidating Trustee from the
8 amounts reserved from the proceeds from insurance settlements as soon as they become
9 available.

10 7.3. ***Objections.***

11 Objections to all Claims against the Debtor other than Asbestos-Related Personal Injury
12 or Wrongful Death Claims and Potential Asbestos-Related Trust Claims may be interposed
13 and prosecuted only by the Debtor and the Post-Confirmation Debtor. The Post-Confirmation
14 Debtor shall be entitled to object to any Claim through and after the Effective Date. Any
15 objections to Claims other than Asbestos-Related Personal Injury or Wrongful Death Claims
16 and Potential Asbestos-Related Trust Claims shall be served and filed with the Bankruptcy
17 Court on or before the later of (i) one hundred eighty (180) days after the Effective Date, as
18 such time may be extended by order of the Bankruptcy Court, and (ii) such later date as may
19 be fixed by the Bankruptcy Court, whether fixed before or after the date specified in clause (i)
20 above.

21 7.4. ***No Payment Pending Allowance.***

22 Notwithstanding any other provision in the Plan, if any portion of a Claim is disputed,
23 then no payment or distribution provided hereunder shall be made on account of any portion
24 of such Claim unless and until such Disputed Claim becomes an Allowed Claim.

25 7.5. ***Distributions After Allowance.***

26 To the extent that a Disputed Claim becomes an Allowed Claim, the Plan Agent shall

1 distribute to the holder of such Claim, the property distributable with respect to such Claim in
2 accordance with Article IV of the Plan. Such distributions shall be made as soon as practicable
3 after the later of (i) the date that the order or judgment of the Bankruptcy Court allowing such
4 Disputed Claim (or portion thereof) becomes a Final Order, (ii) the date on which any objection
5 to such Disputed Claim has been withdrawn, or (iii) the date on which such Disputed Claim
6 has been settled, compromised, or otherwise resolved. To the extent that all or a portion of a
7 Disputed Claim is disallowed, the holder of such Claim shall not receive any distribution on
8 account of the portion of such Claim that is disallowed and any property withheld, if any,
9 pending the resolution of such Claim shall revert in the Liquidating Trust.

10 **7.6. Resolution of Administrative Expense Claims and other Claims.**

11 On and after the Effective Date, the Post-Confirmation Debtor shall have the authority
12 to compromise, settle, otherwise resolve, or withdraw any objections to Administrative
13 Expense Claims and any other Claims and to compromise, settle, or otherwise resolve any
14 Disputed Claims without approval of the Bankruptcy Court, other than with respect to
15 Administrative Expense Claims relating to compensation of professionals.

16 **7.7. Estimation of Claims.**

17 Requests for estimation of all Claims against the Debtor may be interposed and
18 prosecuted only by the Debtor and the Post-Confirmation Debtor. The Debtor and the Post-
19 Confirmation Debtor may at any time request that the Bankruptcy Court estimate any
20 Contingent Claim, Unliquidated Claim, or Disputed Claim pursuant to Section 502(c) of the
21 Bankruptcy Code regardless of whether any of the Debtor or the Post-Confirmation Debtor
22 previously objected to such Claim or whether the Bankruptcy Court has ruled on any such
23 objection, and the Bankruptcy Court will retain jurisdiction to estimate any Claim at any time
24 during litigation concerning any objection to any Claim, including, without limitation, during
25 the pendency of any appeal relating to any such objection. In the event that the Bankruptcy
26 Court estimates any Contingent Claim, Unliquidated Claim, or Disputed Claim, the amount so

1 estimated shall constitute either the Allowed amount of such Claim or a maximum limitation
2 on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a
3 maximum limitation on the amount of such Claim, the Debtor or the Post-Confirmation Debtor
4 may pursue supplementary proceedings to object to the allowance of such Claim. All of the
5 aforementioned objection, estimation, and resolution procedures are intended to be cumulative
6 and not exclusive of one another. Claims may be estimated and subsequently compromised,
7 settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

8 **7.8. *Interest.***

9 To the extent that a Disputed Claim becomes an Allowed Claim after the Effective
10 Date, the holder of such Claim shall not be entitled to any interest thereon from the Effective
11 Date to the date such Claim becomes Allowed.

12 **ARTICLE VIII**

13 **EXECUTORY CONTRACTS, UNEXPIRED LEASES AND INSURANCE RIGHTS**

14 **8.1. *Rejection of Executory Contracts and Unexpired Leases.***

15 Pursuant to Sections 365(a) and 1123(b)(2) of the Bankruptcy Code, all executory
16 contracts and unexpired leases that exist between the Debtor and any person or entity shall be
17 deemed rejected by the Debtor as of the Effective Date, except for any executory contract or
18 unexpired lease (i) that has been assumed, assumed and assigned, or rejected pursuant to the
19 Plan or pursuant to an order of the Bankruptcy Court entered on or before the Effective Date,
20 or (ii) as to which a motion for approval of the assumption, assumption and assignment, or
21 rejection has been filed and served prior to the Confirmation Date, which motion is thereafter
22 approved by the Bankruptcy Court.

23 **8.2. *Bar Date for Filing Proofs of Claim Relating to Executory Contracts and***
24 ***Unexpired Leases Rejected Pursuant to the Plan.***

25 In the event that the rejection of an executory contract or unexpired lease by the Debtor
26 pursuant to the Plan results in damages to the other party or parties to such contract or lease, a

1 Claim for such damages, if not heretofore evidenced by a timely filed proof of claim, shall be
2 forever barred and shall not be enforceable against the Debtor or the Post-Confirmation Debtor,
3 or their properties or interests in property as agents, successors, or assigns, unless a proof of
4 claim is filed with the Plan Agent.

5 8.3. ***Insurance Policies and Rights.***

6 Notwithstanding anything contained in the Plan to the contrary, unless specifically
7 rejected by order of the Bankruptcy Court prior to the Effective Date, all of the Insurance
8 Policies and any agreements, documents or instruments relating to Insurance Policies or
9 Insurance Rights, to the extent such policies, agreements, documents, or instruments are
10 executory contracts, shall be deemed assumed pursuant to the Plan effective as of the Effective
11 Date. Nothing contained in this Section 8.3 shall constitute or be deemed a waiver of any
12 Cause of Action that the Debtor or Post-Confirmation Debtor may hold against any entity,
13 including an Insurance Carrier, under any of the Insurance Policies.

14 Any judgment or award on any Claim against FBS that is tendered to one or more Non-
15 Settled Insurers shall be reduced by the adjudicated amount of any Contribution Claim such
16 Non-Settled Insurer would have been able to assert against the Settled Insurers successfully.
17 “Contribution Claim” means any claim by any insurer of FBS (or guaranty corporation
18 authorized to pay claims on behalf, or in lieu, of an insurer of FBS) seeking contribution,
19 equitable contribution, indemnity, equitable indemnity, subrogation, equitable subrogation, or
20 recovery pursuant to any other theory under law or in equity, arising out of or relating to the
21 payment or defense by such insurer of all or any part of any Claim against FBS, including any
22 Asbestos-Related Personal Injury or Wrongful Death Claim.

23 To the extent the Insurance Policies are determined not to be executory contracts, they
24 will remain in full force and effect in accordance with their terms and will be treated as
25 unimpaired (as defined in Section 1124 of the Bankruptcy Code), including for purposes of
26 payment of Claims for retrospective premiums as the Liquidating Trust may see fit to preserve

1 the value of the Insurance Rights.

2 The Debtor and the Post-Confirmation Debtor (through the Liquidating Trustee) will
3 perform the insureds' obligations under the Insurance Policies, whether they are treated as
4 executory or non-executory. Except as may be explicitly described, the Plan does not modify
5 any of the rights or obligations of any Insurance Carriers or the Debtor under any of the
6 Insurance Policies. Notwithstanding any other provision of the Plan, the Debtor and Post-
7 Confirmation Debtor will be bound by all of the terms, conditions, limitations and/or
8 exclusions contained in the Insurance Policies, which will continue in full force and effect.

9 After the Effective Date, the Liquidating Trustee shall have the right to require that the
10 Debtor or Post-Confirmation Debtor promptly transfer to the Liquidating Trust any payment
11 received by the Debtor or Post-Confirmation Debtor in connection with any Insurance Rights
12 or under any Insurance Policies.

13 **ARTICLE IX**

14 **EFFECT OF CONFIRMATION**

15 9.1. *Vesting of Assets.*

16 Upon the Effective Date, pursuant to Section 1141(b) and (c) of the Bankruptcy Code,
17 all property of the Debtor shall vest in the Post-Confirmation Debtor free and clear of all
18 Claims, Liens, encumbrances, charges, and other interests, except as provided in the Plan, and
19 as set forth herein, the Trust Assets shall be transferred to the Liquidating Trust.

20 9.2. *Release of Assets.*

21 Until the Effective Date, the Bankruptcy Court shall retain jurisdiction of the Debtor
22 and their assets and properties. Thereafter, jurisdiction of the Bankruptcy Court shall be
23 limited to the subject matter as set forth in Article 11 hereof.

24 9.3. *Term of Injunctions or Stays.*

25 Unless otherwise provided, all injunctions or stays arising under or entered during the
26 Chapter 11 Case under Sections 105 or 362 of the Bankruptcy Code, or otherwise, and in

1 existence on the Confirmation Date, shall remain in full force and effect until the later of the
2 closing of the Chapter 11 Cases and the date indicated in the order providing for such injunction
3 or stay. Notwithstanding the foregoing, the automatic stay with respect to any asbestos-related
4 personal injury or wrongful death claims that may be asserted against the Debtor or the Post-
5 Confirmation Debtor shall continue as provided in Section 5.1 (j).

6 9.4. ***Injunction Against Interference With Plan.***

7 Upon the entry of the Confirmation Order, all holders of Claims or Equity Interests and
8 other parties in interest, along with their respective present or former employees, agents,
9 officers, directors, principals, and affiliates shall be enjoined from taking any actions to
10 interfere with the implementation or consummation of the Plan. This provision will not limit
11 or in any way impair Non-Settled Insurers' rights to assert or prosecute claims, defenses, or
12 litigation related to coverage defenses or other rights such Non-Settled Insurers may have with
13 respect to their respective coverage obligations or with respect to any Non-Settled Insurance.

14 9.5. ***Exculpation.***

15 Notwithstanding anything herein to the contrary, as of the Confirmation Date but
16 subject to the occurrence of the Effective Date, none of the Debtor or Creditors' Committee in
17 all their respective capacities, and their respective agents, attorneys, financial advisors,
18 accountants, investment bankers, members, directors, officers, employees, and representatives,
19 successors, and assigns shall have or incur any liability for any claim, cause of action or other
20 assertion of liability for any act taken or omitted to be taken since the Commencement Date in
21 connection with, or arising out of, the Chapter 11 Cases, the formulation, dissemination,
22 confirmation, consummation, or administration of the Plan, the Plan, the Disclosure Statement
23 or any contract, instrument, document, or other agreement related thereto; *provided, however,*
24 that the foregoing shall not affect the liability of any person that would otherwise result from
25 any such act or omission to the extent such act or omission is determined by a Final Order to
26 have constituted willful misconduct, gross negligence, fraud, criminal conduct, intentional

1 unauthorized misuse of confidential information that causes damages, or *ultra vires* act.

2 9.6. ***Retention of Causes of Action/Reservation of Rights.***

3 (a) Except as set forth in Section 9.7 hereof, nothing contained in the Plan
4 or the Confirmation Order shall be deemed to be a waiver or relinquishment of any rights or
5 causes of action that the Debtor or the Post-Confirmation Debtor may have or which the Post-
6 Confirmation Debtor may choose to assert on behalf of its estates under any provision of the
7 Bankruptcy Code or any applicable non-bankruptcy law, including (i) any and all Claims
8 against any person or entity, to the extent such person or entity asserts a crossclaim, a
9 counterclaim, and/or a Claim for setoff that seeks affirmative relief against the Debtor, the
10 Post-Confirmation Debtor, their officers, directors, or representatives, including the
11 Liquidating Trust or the Liquidating Trustee, and (ii) the turnover of any property of the
12 Debtor's estate.

13 (b) Except as set forth in Section 9.7 hereof, nothing contained in the Plan
14 or the Confirmation Order shall be deemed to be a waiver or relinquishment of any claim,
15 cause of action, right of setoff, or other legal or equitable defense that the Debtor had
16 immediately prior to the Commencement Date, against or with respect to any Claim left
17 unimpaired by the Plan. Subject to the foregoing, the Post-Confirmation Debtor shall have,
18 retain, reserve, and be entitled to assert all such claims, causes of action, rights of setoff, and
19 other legal or equitable defenses that the Debtor had immediately prior to the Commencement
20 Date as fully as if the Chapter 11 Cases had not been commenced, and all of the Post-
21 Confirmation Debtor's legal and equitable rights respecting any Claim that are left unimpaired
22 by the Plan may be asserted after the Confirmation Date to the same extent as if the Chapter
23 11 Cases had not been commenced.

24 9.7. ***Limitations on Exculpation.***

25 Nothing in Sections 9.5 or 9.6 of the Plan shall be construed to release or exculpate any
26 entity from fraud, criminal conduct, intentional unauthorized misuse of confidential

1 information that causes damages, or *ultra vires* acts.

2 **ARTICLE X**

3 **CONDITIONS PRECEDENT TO EFFECTIVE DATE**

4 10.1. *Conditions Precedent to Effectiveness.*

5 The Effective Date shall not occur and the Plan shall not become effective unless and
6 until the following conditions are satisfied in full or waived in accordance with Section 10.2
7 of the Plan:

8 (a) The Confirmation Order, in form and substance acceptable to the
9 Debtor, shall have been entered and shall not be subject to any stay or injunction;

10 (b) All actions, documents, and agreements necessary to implement the
11 Plan shall have been effected or executed; and

12 (c) The Debtor shall have received all authorizations, consents, regulatory
13 approvals, rulings, letters, no-action letters, opinions, or documents that are determined by the
14 Debtor to be necessary to implement the Plan or that are required by law, regulation, or order.

15 10.2. *Waiver of Conditions.*

16 Each of the conditions precedent in Section 10.1 hereof may be waived in whole or in
17 part by the Debtor, in its sole discretion. Any such waiver may be effected at any time, without
18 notice or leave or order of the Bankruptcy Court and without any formal action.

19 **ARTICLE XI**

20 **RETENTION OF JURISDICTION**

21 On and after the Effective Date, the Bankruptcy Court shall have exclusive jurisdiction
22 over all matters arising out of, arising under, and related to the Chapter 11 Case and the Plan
23 pursuant to, and for the purpose of, Section 1142 of the Bankruptcy Code, including:

24 (a) To hear and determine pending applications for the assumption or
25 rejection of executory contracts or unexpired leases, the allowance of Claims resulting
26 therefrom, and any disputes with respect to executory contracts or unexpired leases relating to

1 the facts and circumstances arising out of or relating to the Chapter 11 Case;

2 (b) To determine any motion, adversary proceeding, application, contested
3 matter, and other litigated matter pending on or commenced after the Confirmation Date,
4 except that the Bankruptcy Court shall not retain any jurisdiction to determine liability or
5 damages with respect to any Class 3 Claim or Potential Asbestos-Related Trust Claim;

6 (c) To ensure that distributions to holders of Allowed Claims are
7 accomplished as provided herein;

8 (d) To consider Claims or the allowance, classification, priority,
9 compromise, estimation, or payment of any Claim, Administrative Expense Claim, or Equity
10 Interest, including the entitlement of a holder of a beneficial interest in the Liquidating Trust
11 to distribution from the Liquidating Trust, provided however, that the Court shall not retain
12 any jurisdiction to determine liability or damages with respect to any personal injury or
13 wrongful death Claim;

14 (e) To enter, implement, or enforce such orders as may be appropriate in
15 the event the Confirmation Order is stayed, reversed, revoked, modified, or vacated for any
16 reason;

17 (f) To issue injunctions, enter and implement other orders, and take such
18 other actions as may be necessary or appropriate to prevent interference by any person with
19 the consummation, implementation, or enforcement of the Plan, the Confirmation Order, or
20 any other order of the Bankruptcy Court;

21 (g) To hear and determine any application to modify the Plan in accordance
22 with Section 1127 of the Bankruptcy Code, to remedy any defect or omission or reconcile any
23 inconsistency in the Plan, the Disclosure Statement, or any order of the Bankruptcy Court,
24 including the Confirmation Order, in such a manner as may be necessary to carry out the
25 purposes and effects thereof;

26

1 (h) To hear and determine all applications under Sections 330, 331, and
2 503(b) of the Bankruptcy Code for awards of compensation for services rendered and
3 reimbursement of expenses incurred prior to the Confirmation Date;

4 (i) To consider any amendments to or modifications of the Plan or to cure
5 any defect or omission, or reconcile any inconsistency, in any order of the Bankruptcy Court,
6 including, without limitation, the Confirmation Order;

7 (j) To hear and determine disputes arising in connection with the
8 interpretation, implementation, or enforcement of the Plan, the Confirmation Order, any
9 transactions or payments contemplated hereby or thereby, or any agreement, instrument, or
10 other document governing or relating to any of the foregoing;

11 (k) To take any action and issue such orders as may be necessary to
12 construe, enforce, implement, execute, and consummate the Plan or to maintain the integrity
13 of the Plan following the Effective Date;

14 (l) To resolve any issues that may arise relating to the operation of the
15 Liquidating Trust;

16 (m) To determine such other matters and for such other purposes as may be
17 provided in the Confirmation Order;

18 (n) To hear and determine matters concerning state, local, and federal taxes
19 in accordance with Sections 346, 505, and 1146 of the Bankruptcy Code (including the
20 expedited determination of tax under section 505(b) of the Bankruptcy Code);

21 (o) To determine the scope of any discharge of any Debtor under the Plan
22 or the Bankruptcy Code;

23 (p) To recover all assets of the Debtor and all property of the Debtor's
24 estates, wherever located;

25
26

1 (q) To hear and determine any rights, claims or causes of action held by or
2 accruing to the Debtor pursuant to the Bankruptcy Code, any other federal or state statute, or
3 any legal theory;

4 (r) To hear any issues related to settlements concerning Insurance Rights,
5 including any disputes regarding the rights and protections provided to Insurance Carriers
6 pursuant to the “free and clear” sale of Insurance Policies under agreements with the Debtor in
7 possession;

8 (s) To enter a final decree closing the Chapter 11 Cases;

9 (t) To determine any other matters that may arise in connection with or are
10 related to the Plan, the Disclosure Statement, the Confirmation Order, any of the Plan
11 Documents, or any other contract, instrument, release, or other agreement or document related
12 to the Plan or the Disclosure Statement, including without limitation, the Liquidating Trust;
13 and

14 (u) To hear and determine any other matter not inconsistent with the
15 Bankruptcy Code.

16 On and after the Effective Date, the Bankruptcy Court shall retain non-exclusive
17 jurisdiction over any dispute as to Insurance Rights.

18 The retention of jurisdiction set forth herein shall in no way prevent the closing of the
19 Bankruptcy Case once the Plan is substantially consummated.

20 ARTICLE XII

21 MISCELLANEOUS PROVISIONS

22 12.1. *Effectuating Documents and Further Transactions*

23 The Post-Confirmation Debtor is authorized to execute, deliver, file, or record such
24 contracts, instruments, releases, indentures, and other agreements or take such actions as may
25 be necessary or appropriate to effectuate and further evidence the terms and conditions of the
26 Plan and the Liquidating Trust Agreement.

1 12.2. ***Corporate Action.***

2 On the Effective Date, all matters provided for under the Plan that would otherwise
3 require approval of the stockholders or directors of one or more of the Debtor or the Post-
4 Confirmation Debtor shall be deemed to have occurred and shall be in effect from and after
5 the Effective Date pursuant to the applicable general corporation law of the states in which the
6 Debtor or the Post-Confirmation Debtor are incorporated, without any requirement for further
7 action by the stockholders or directors of the Debtor or the Post-Confirmation Debtor.

8 12.3. ***Exemption from Transfer Taxes.***

9 Pursuant to Section 1146(a) of the Bankruptcy Code, the issuance, transfer, or exchange
10 of notes or equity securities under the Plan, the creation of any mortgage, deed of trust, or other
11 security interest, the making or assignment of any lease or sublease, or the making or delivery
12 of any deed or other instrument of transfer under, in furtherance of, or in connection with the
13 Plan, including, without limitation, deeds, bills of sale, or assignments executed in connection
14 with any of the transactions contemplated under the Plan, shall not be subject to any stamp,
15 real estate transfer, mortgage recording, or other similar tax. All sale transactions
16 consummated by the Debtor and approved by the Bankruptcy Court on and after the
17 Commencement Date through and including the Effective Date, including, without limitation,
18 the transfers effectuated under the Plan, the sale by the Debtor of owned property pursuant to
19 section 363(b) of the Bankruptcy Code, and the assumption, assignment, and sale by the Debtor
20 of unexpired leases of non-residential real property pursuant to Section 365(a) of the
21 Bankruptcy Code, shall be deemed to have been made under, in furtherance of, or in connection
22 with the Plan and, thus, shall not be subject to any stamp, real estate transfer, mortgage
23 recording, or other similar tax.

24 12.4. ***Expedited Tax Determination.***

25 The Debtor and the Post-Confirmation Debtor are authorized to request an expedited
26 determination of taxes under Section 505(b) of the Bankruptcy Code for any and all returns

1 filed for, or on behalf of, the Debtor for any and all taxable periods (or portions thereof) ending
2 after the Commencement Date through, and including, the Effective Date.

3 **12.5. *Payment of Statutory Fees.***

4 On the Effective Date, and thereafter as may be required, the Debtor shall pay all fees
5 payable pursuant to Section 1930 of Chapter 123 of Title 28 of the United States Code.

6 **12.6. *Post-Confirmation Date Professional Fees and Expenses.***

7 From and after the Confirmation Date, the Post-Confirmation Debtor shall, in the
8 ordinary course of business and without the necessity for any approval by the Bankruptcy
9 Court, pay the reasonable fees and expenses of professional persons thereafter incurred by
10 Post-Confirmation Debtor.

11 **12.7. *Dissolution of Statutory Committees.***

12 On the Effective Date, any Creditors' Committee shall be dissolved and the members
13 thereof shall be released and discharged of and from all further authority, duties,
14 responsibilities, and obligations relating to, arising from, and in connection with the Chapter
15 11 Case, and the retention or employment of the Creditors' Committee's attorneys, financial
16 advisors, accountants, and other agents, if any, shall terminate other than for purposes of filing
17 and prosecuting applications for final allowances of compensation for professional services
18 rendered and reimbursement of expenses incurred in connection therewith. Nothing shall
19 prevent the professionals of the Creditors' Committee from being hired by the Liquidating
20 Trustee in accordance with the Liquidating Trust Agreement.

21 **12.8. *Amendments or Modifications of the Plan.***

22 Alterations, amendments, or modifications of or to the Plan may be proposed in writing
23 by the Debtor at any time prior to the Confirmation Date, provided that the Plan, as altered,
24 amended, or modified, satisfies the conditions of Sections 1122 and 1123 of the Bankruptcy
25 Code, and the Debtor shall have complied with Section 1125 of the Bankruptcy Code. After
26 the Confirmation Date, so long as such action does not materially and adversely affect the

1 treatment of holders of Claims or Equity Interests under the Plan, the Debtor or the Post-
2 Confirmation Debtor may institute proceedings in the Bankruptcy Court to remedy any defect
3 or omission or reconcile any inconsistencies in the Plan or the Confirmation Order, with respect
4 to such matters as may be necessary to carry out the purposes and effects of the Plan. A holder
5 of a Claim or Equity Interest that has accepted the Plan shall be deemed to have accepted the
6 Plan, as altered, amended, or modified, if the proposed alteration, amendment, or modification
7 does not materially and adversely change the treatment of the Claim or Equity Interest of such
8 holder.

9 12.9. ***Revocation or Withdrawal of the Plan.***

10 The Debtor reserves the right to revoke or withdraw the Plan prior to the Effective Date.
11 If the Debtor takes such action, the Plan shall be deemed null and void. In such event, nothing
12 contained in the Plan shall constitute or be deemed a waiver or release of any Claims against
13 or Equity Interests in the Debtor, any claims or rights of the Debtor against any other person
14 or to prejudice in any manner the rights of the Debtor or any other person in any further
15 proceedings involving the Debtor.

16 12.10. ***Severability.***

17 If, prior to the entry of the Confirmation Order, any term or provision of the Plan is
18 held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court, at
19 the request of the Debtor, shall have the power to alter and interpret such term or provision to
20 make it valid or enforceable to the maximum extent practicable, consistent with the original
21 purpose of the term or provision held to be invalid, void, or unenforceable, and such term or
22 provision as altered or interpreted shall then be applicable. Notwithstanding any such holding,
23 alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain
24 in full force and effect and will in no way be affected, impaired, or invalidated by such holding,
25 alteration, or interpretation. The Confirmation Order shall constitute a judicial determination
26

1 and shall provide that each term and provision of the Plan, as it may have been altered or
2 interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

3 12.11. ***Governing Law.***

4 Except to the extent that the Bankruptcy Code or other federal law is applicable, or to
5 the extent an exhibit hereto or a schedule or document in the Plan Documents provides
6 otherwise, the rights, duties, and obligations arising under the Plan shall be governed by, and
7 construed and enforced in accordance with, the laws of the State of Washington, without giving
8 effect to the principles of conflict of laws thereof.

9 12.12. ***Binding Effect.***

10 The Plan shall be binding upon and inure to the benefit of the Debtor, the holders of
11 Claims and Equity Interests, and their respective successors and assigns, including, without
12 limitation, the Post-Confirmation Debtor and holders of beneficial interests in the Liquidating
13 Trust.

14 12.13. ***Notices.***

15 In order to be effective, all notices, requests, and demands to or upon the Debtor or the
16 Liquidating Trustee, as applicable, must be in writing (including by facsimile transmission)
17 and, unless otherwise expressly provided herein, shall be deemed to have been duly given or
18 made when actually delivered or, in the case of notice by email, when received and confirmed
19 by return email, addressed as follows or at such other addresses as may be listed for the Debtor
20 and the Liquidating Trustee on a webpage to be maintained by the Liquidating Trust post-
21 confirmation:

22 Debtor:

23 David Gordon
24 c/o DJO Services, LLC
25 4460 Redwood Highway, Suite 16-518
26 San Rafael CA 94903
Fax: 949-267-5452
Email: dgordon@djoservicesllc.com

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With a copy to:

Darren R. Krattli
Eisenhower Carlson PLLC
1201 Pacific Avenue
Suite 1200
Tacoma, WA 98402
Fax: 253-272-5732
E-mail: dkrattli@eisenhowerlaw.com

DATED this 14th day of October, 2020.

EISENHOWER CARLSON PLLC

By: /s/ Darren R. Krattli

Darren R. Krattli, WSBA #39128
Samuel J. Dart, WSBA #47871
Attorneys for Debtor

EXHIBIT A TO FOURTH AMENDED PLAN OF REORGANIZATION

LIQUIDATING TRUST AGREEMENT

This Liquidating Trust Agreement (“Trust Agreement”), dated and effective as of _____, 2020, is entered into among Fraser’s Boiler Service, Inc., a Washington corporation (“Debtor”), which is the Debtor and Debtor-in-Possession in the Chapter 11 Case and David J. Gordon (“Liquidating Trustee”), appointed by the Confirmation Order pursuant to the Plan thereby establishing this trust (the “Liquidating Trust”).¹

RECITALS

WHEREAS, on _____ 2020, the Bankruptcy Court entered a confirmation order confirming the terms of the Plan (the “Confirmation Order”); and

WHEREAS, the Liquidating Trust established under this Trust Agreement is created pursuant to, and to effectuate, the Plan and is created on behalf of, and for the sole benefit of, certain holders of Trust Claims (as defined in the Plan); and

WHEREAS, the Liquidating Trust is organized for the sole purposes of (1) liquidating and distributing its assets for the benefit of those parties identified in Article III of the Plan as belonging in Class 3 and similar individuals who may have Potential Asbestos-Related Trust Claims (the “Liquidating Trust Beneficiaries”), in accordance with applicable provisions of the Internal Revenue Code of 1986 and any applicable Treasury Regulations, and (2) holding and managing the Post-Confirmation Debtor corporate entity that will dissolve and will not be conducting any trade or business, but will instead be wrapping up its affairs by managing further asbestos related personal injury or wrongful death claims that may be presented to the Liquidating Trust less than three years after the date of Fraser’s dissolution following Plan Confirmation; and

WHEREAS, the Liquidating Trust is intended to be a liquidating trust within the meaning of Treasury Regulations Section 301.7701-4(d);

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained herein and in the Plan, the Debtor and the Liquidating Trustee agree as follows:

ARTICLE 1

AGREEMENT OF TRUST

1.1 Creation and Name. The Debtor hereby creates a trust known as the “Fraser’s Boiler Liquidating Trust,” which is the Liquidating Trust provided for and referred to in the Plan.

¹ This Trust Agreement is being entered into pursuant to the terms of the Fourth Amended Plan of Reorganization of Fraser’s Boiler Service, Inc. filed in the United States Bankruptcy Court for the Western District of Washington, Case No. 18-18-41245-BDL (the “Plan”). Capitalized terms used in this Trust Agreement that are not otherwise defined in this Trust Agreement are used as defined in the Plan.

The Liquidating Trustee of the Liquidating Trust may transact the business and affairs of the Liquidating Trust in the name “Fraser’s Boiler Liquidating Trust.”

1.2 Purpose. The purpose of the Liquidating Trust is to (1) liquidate and distribute its assets for the benefit of the Liquidating Trust Beneficiaries, in accordance with applicable provisions of the Internal Revenue Code of 1986 and any applicable Treasury Regulations, and (2) hold and manage the Post-Confirmation Debtor corporate entity that will dissolve and will not be conducting any trade or business, but will instead be wrapping up its affairs by managing further asbestos related personal injury or wrongful death claims that may be presented to the Liquidating Trust less than three years after the date of Fraser’s dissolution following Plan Confirmation. The Liquidating Trust shall, at all times, remain qualified as a “qualified settlement fund” under section 468B of the Internal Revenue Code of 1986, as amended.

1.3 Transfer of Assets. Upon the Effective Date, pursuant to the Plan, all property of the Debtor has vested in the Post-Confirmation Debtor free and clear of all Claims, Liens, encumbrances, charges, and other interests, except as provided in the Plan, and ownership of the Post-Confirmation Debtor entity is transferred automatically to the Liquidating Trust upon its formation. As set forth in the Plan and herein, the Plan Agent will transfer the Trust Assets to the Liquidating Trust. The Debtor and/or Post-Confirmation Debtor shall execute and deliver such documents as the Liquidating Trustee reasonably requests to transfer and assign any such Trust Assets.

1.4 Acceptance of Trust Assets and Management of Asbestos-Related Personal Injury or Wrongful Death Claims and Potential Asbestos-Related Trust Claims.

a) In furtherance of the purposes of the Liquidating Trust, the Liquidating Trustee, on behalf of the Liquidating Trust, hereby expressly accepts the transfer and assignment to the Liquidating Trust of the Trust Assets in the time and manner as contemplated in the Plan.

b) The Liquidating Trust shall hold and manage the Post-Confirmation Debtor corporate entity that will be wrapping up its affairs by managing Asbestos-Related Personal Injury or Wrongful Death Claims and Potential Asbestos-Related Trust Claims that may be presented to the Liquidating Trust less than three years after the date of Fraser’s dissolution following Plan Confirmation.

c) In furtherance of the purposes of the Liquidating Trust, commencing on the Effective Date, the Liquidating Trustee, on behalf of the Liquidating Trust, hereby agrees to pay, as an expense of the Liquidating Trust, all remaining administrative expense obligations of the Debtor or the Receiver to the Receiver, to the Debtor or the Receiver’s attorneys, or other parties, whether such obligations shall be then due or thereafter due.

ARTICLE 2

POWERS AND TRUST ADMINISTRATION

2.1 Powers.

a) The Liquidating Trustee is and shall act as a fiduciary to the Liquidating Trust in accordance with the provisions of this Trust Agreement and the Plan. The Liquidating Trustee shall, at all times, administer the Liquidating Trust and the Trust Assets in accordance with Section 1.2 of this Trust Agreement. Subject to the limitations set forth in this Trust Agreement, the Liquidating Trustee shall have the power to take any and all actions that, in the judgment of the Liquidating Trustee, are necessary or proper to fulfill the purposes of the Liquidating Trust, including, without limitation, each power expressly granted in this Section 2.1, any power reasonably incidental thereto, and any trust power now or hereafter permitted under the laws of the State of Washington.

b) Except as otherwise specified herein, the Liquidating Trustee need not obtain the order or approval of any court in the exercise of any power or discretion conferred hereunder; provided that the Liquidating Trustee recognize and acknowledge that the Liquidating Trust is subject to the continuing jurisdiction of the Bankruptcy Court.

c) Without limiting the generality of Subsection 2.1(a) above, and except as limited below, the Liquidating Trustee shall have the power to:

- (i) receive and hold the Trust Assets, and exercise all rights with respect to (including sale of) any or all such assets;
- (ii) invest the monies held from time to time by the Liquidating Trust;
- (iii) sell, transfer, or exchange any or all of the Trust Assets, including but not limited to shares of the Post-Confirmation Debtor, at such prices and upon such terms as he or she may consider proper, consistent with the other terms of this Trust Agreement;
- (iv) carry out the Liquidating Trust's obligations and exercise all rights granted to the Liquidating Trust under the agreements among the Debtor, the Post-Confirmation Debtor, and the Liquidating Trust;
- (v) enter into leasing and financing agreements with third parties to the extent such agreements are reasonably necessary to permit the Liquidating Trust to operate;
- (vi) pay liabilities and expenses of the Liquidating Trust;
- (vii) establish such funds, reserves, and accounts within the Liquidating Trust estate, as deemed by the Liquidating Trustee to be useful in carrying out the purposes of the Liquidating Trust;

- (viii) sue and be sued and participate, as a party or otherwise, in any judicial, administrative, arbitral or other proceeding;
- (ix) establish, supervise, and administer the Liquidating Trust in accordance with the CVP, and administer, amend, supplement, or modify the CVP, in accordance with the terms thereof;
- (x) appoint such officers and hire such employees and engage such legal, financial, accounting, investment, auditing and forecasting, and other consultants or alternative dispute resolution panelists and agents as the business of the Liquidating Trust requires, and delegate to such Persons such powers and authorities as the fiduciary duties of the Liquidating Trustee permits and as the Liquidating Trustee, in his or her discretion, deems advisable or necessary in order to carry out the terms of this Liquidating Trust;
- (xi) pay employees, legal, financial, accounting, investment, auditing and forecasting, and other consultants, advisors and agents reasonable compensation, including without limitation, compensation at rates approved by the Liquidating Trustee for services rendered prior to the execution hereof;
- (xii) compensate the Liquidating Trustee and its agents and reimburse them for all reasonable out-of-pocket costs and expenses incurred by such Persons in connection with the performance of their duties hereunder, including, without limitation, costs and expenses incurred prior to the execution hereof;
- (xiii) execute and deliver such instruments as the Liquidating Trustee considers proper in administering the Liquidating Trust;
- (xiv) enter into such other arrangements with third parties as are deemed by the Liquidating Trustee to be useful in carrying out the purposes of the Liquidating Trust, provided such arrangements do not conflict with any other provision of this Trust Agreement;
- (xv) purchase insurance covering the Liquidating Trustee and its agents in connection with their actions in these capacities;
- (xvi) delegate any or all of the authority herein conferred with respect to the investment of all or any portion of the Trust Assets to any one or more reputable individuals or recognized institutional investment advisors or investment managers without liability for any action taken or omission made because of any such delegation, except as provided in Section 4.4;
- (xvii) make, pursue (by litigation or otherwise), collect, compromise, or settle, in its own name or the name of the Debtor, any claim, right,

action, or cause of action included in the Trust Assets, including, without limitation, any litigation concerning Insurance Rights, before any court of competent jurisdiction; provided that settlement of any action requires the approval of the Bankruptcy Court;

(xviii) merge or contract with other claims resolution facilities that are not specifically created by this Trust Agreement or the CVP, provided that such merger or contract shall not jeopardize the validity or enforceability of the injunctions issued and affirmed in connection with the Plan; and

(xix) manage prosecution of insurance recovery efforts and protect against conflicts arising in its prosecution arising out of involvement of other trust fiduciaries.

d) The Liquidating Trustee shall not have the power to guarantee any debt of other Persons, provided however, that the Liquidating Trustee shall have the power to implement the obligations of the Liquidating Trust, if any, as required under the Plan.

2.2 General Administration.

a) The Liquidating Trustee shall act in accordance with this Trust Agreement.

b) The Liquidating Trustee shall timely file such income tax and other returns and statements and comply with all withholding obligations as required under the applicable provisions of the Internal Revenue Code and of any state law and the regulations promulgated thereunder, including, without limitation, all requirements necessary to qualify and maintain qualification as a qualified settlement fund, and shall timely pay all taxes required to be paid.

c) The Liquidating Trustee shall cause to be prepared and posted on a publicly-available website maintained by the Liquidating Trust, an annual report containing a summary of (1) expenses paid by the Liquidating Trust, (2) any additional assets received by the Liquidating Trust, (3) the total amount of distributions made toward Trust Claims by the Liquidating Trust, (4) the total number of claims forms received by the Liquidating Trust, (5) the pro rata percentage applicable to payments for the past year, and (6) a general description of Liquidating Trust's activities and operations during the prior year.

2.3 Claims Administration. The Liquidating Trustee shall promptly proceed to implement the CVP.

ARTICLE 3

ACCOUNTS, INVESTMENTS, AND PAYMENTS

3.1 Accounts. The Liquidating Trustee may, from time to time, create such accounts and reserves within the Liquidating Trust estate as he or she may deem necessary, prudent, or useful in order to provide for the payment of expenses and valid Asbestos-Related Personal Injury or Wrongful Death Claims and Potential Asbestos-Related Trust Claims and may, with respect to any such account or reserve, restrict the use of monies therein.

3.2 Investments. The Liquidating Trustee shall invest and manage Liquidating Trust assets consistent with those standards and provisions of the Uniform Prudent Investor Act expressly set forth herein in this preamble for Section 3.2 and in Sections 3.2(a)–(c), subject to the limitations and provisions set forth below in Section 3.2(d), as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the Liquidating Trust. In satisfying this standard, the Liquidating Trustee shall exercise reasonable care, skill, and caution.

a) The Liquidating Trustee’s investment and management decisions respecting individual assets and courses of action must be evaluated not in isolation, but in the context of the Liquidating Trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the Liquidating Trust.

b) Among circumstances that are appropriate to consider in investing and managing Liquidating Trust assets are the following, to the extent relevant to the Liquidating Trust or its beneficiaries:

- (i) General economic conditions.
- (ii) The possible effect of inflation or deflation.
- (iii) The expected tax consequences of investment decisions or strategies.
- (iv) The role that each investment or course of action plays within the overall Liquidating Trust portfolio.
- (v) The expected total return from income and the appreciation of capital.
- (vi) Needs for liquidity, regularity of income, and preservation or appreciation of capital.

c) The Liquidating Trustee shall make a reasonable effort to ascertain facts relevant to the investment and management of Liquidating Trust assets.

d) Notwithstanding the foregoing and/or any other provision of this Trust Agreement, the Liquidating Trustee shall comply with the following limitations and provisions:

- (i) The Liquidating Trust shall not acquire, directly or indirectly, equity in any Entity (other than the Post-Confirmation Debtor or any successor to the Post-Confirmation Debtor on the terms and conditions in the Plan and all exhibits thereto) or business enterprise if, immediately following such acquisition, the Liquidating Trust would hold more than one percent of the equity in such Entity or business enterprise.
- (ii) The Liquidating Trust shall not acquire or hold any long-term debt securities (other than those of the Post-Confirmation Debtor or any successor to the Post-Confirmation Debtor on the terms and conditions in the Plan and all exhibits thereto) unless (i) such securities are rated “Baa” or higher by Moody’s, “BBB” or higher by S&P’s, or have been given an equivalent investment grade rating by another nationally recognized statistical rating agency, or (ii) have been issued or fully guaranteed as to principal and interest by the United States of America or any agency or instrumentality thereof.
- (iii) The Liquidating Trust shall not acquire or hold for longer than ninety (90) days any commercial paper unless such commercial paper is rated “Prime-1” or higher by Moody’s, “A-1” or higher by S&P’s, or has been given an equivalent rating by another nationally recognized statistical rating agency.
- (iv) Excluding any securities issued by the Post-Confirmation Debtor, the Liquidating Trust shall not acquire or hold, directly or indirectly, any common or preferred stock or convertible securities, REITS, MLPs, and Royalty Trusts (“Stocks”) unless such Stock is included in a diversified and managed portfolio or portfolios. The Liquidating Trust shall not acquire, directly or indirectly, more than forty percent of the Liquidating Trust’s total assets in such Stock portfolios, excluding any securities issued by the Post-Confirmation Debtor, or hold, directly or indirectly, more than forty-five percent of the Liquidating Trust’s total assets in such Stock, excluding any securities issued by the Post-Confirmation Debtor.
- (v) The Liquidating Trust shall not acquire any securities or other instruments issued by any Entity (other than debt securities or other instruments issued or fully guaranteed as to principal and interest by the United States of America or any agency or instrumentality thereof, or other than securities or other instruments of the Post-Confirmation Debtor or any successor to the Post-Confirmation Debtor for investments authorized in the Plan) if, following such acquisition, the aggregate market value of all securities and instruments issued by such Entity held by the

Liquidating Trust would exceed ten percent, excluding any securities issued by the Post-Confirmation Debtor, of the aggregate value of the Liquidating Trust estate.

- (vi) The Liquidating Trust shall not acquire or hold any repurchase obligations.
- (vii) The Liquidating Trust shall not acquire or hold any options.

3.3 Source of Payments. All expenses of the Liquidating Trust and all liabilities with respect to Asbestos-Related Personal Injury or Wrongful Death Claims and Potential Asbestos-Related Trust Claims shall be payable solely by the Liquidating Trust out of the Trust Assets and amounts received on account of the Insurance Rights. None of the Debtor, the Post-Confirmation Debtor, the Liquidating Trustee, or any of their affiliates, subsidiaries, successors in interest, present or former stockholders, directors, officers, employees or agents shall be liable for the payment of any expenses of the Liquidating Trust or any other liability of the Liquidating Trust.

ARTICLE 4

LIQUIDATING TRUSTEE

4.1 Number. There shall be one Liquidating Trustee. The Liquidating Trustee shall be the Entity named on the signature page hereof. Subject to approval by the Bankruptcy Court as part of the Confirmation Order, the initial Liquidating Trustee will be David J. Gordon.

4.2 Term of Service.

a) Each Liquidating Trustee named pursuant to Section 4.1 shall serve until the earlier of (i) his or her death, (ii) his or her resignation pursuant to Subsection 4.2(c), (iii) his or her removal pursuant to Subsection 4.2(d), or (iv) the termination of the Liquidating Trust pursuant to Section 5.2.

b) Each successor Liquidating Trustee shall serve until the earlier of (i) his or her death, (ii) his or her resignation pursuant to Subsection 4.2(c), (iii) his or her removal pursuant to Subsection 4.2(d), or (iv) the termination of the Liquidating Trust pursuant to Section 5.2.

c) Any Liquidating Trustee may resign at any time by written notice to the Bankruptcy Court. Such notice shall specify a date when such resignation shall take effect, which shall not be fewer than ninety (90) days after the date such notice is given, where practicable.

d) Any Liquidating Trustee may be removed in the event that such Liquidating Trustee becomes unable to discharge his or her duties hereunder due to accident or physical or mental deterioration, or for other good cause. "Good cause" shall be deemed to include, without limitation, any substantial failure to comply with Section 2.2, a consistent pattern of neglect and failure to perform or participate in performing the duties of the Liquidating

Trustee hereunder, or repeated non-attendance at scheduled meetings. Such removal shall require an order from the Bankruptcy Court or another court of competent jurisdiction. Such removal shall take effect at such time as set by such court order.

4.3 Appointment of Successor Liquidating Trustee.

a) In the event of a vacancy in the position of a Liquidating Trustee, the vacancy shall be filled by an order of the Bankruptcy Court or another court of competent jurisdiction.

b) Immediately upon the appointment of any successor Liquidating Trustee, all rights, titles, duties, powers and authority of the predecessor Liquidating Trustee hereunder shall be vested in, and undertaken by, the successor Liquidating Trustee without any further act. No successor Liquidating Trustee shall be liable personally for any act or omission of his or her predecessor Liquidating Trustees.

4.4 Liability of Liquidating Trustee. Neither the Liquidating Trustee nor any of its agents, shall be liable to the Liquidating Trust, to any Entity holding an Asbestos-Related Personal Injury or Wrongful Death Claim or Potential Asbestos-Related Trust Claim, or to any other Entity, except for such individual's or entity's own breach of trust committed in bad faith or willful misappropriation. Neither the Liquidating Trustee nor any of its agents shall be liable for any act or omission of any agent of the Liquidating Trust unless the Liquidating Trustee acted with bad faith in the selection or retention of such agent.

4.5 Compensation and Expenses of Liquidating Trustee.

a) Each Liquidating Trustee shall receive compensation from the Liquidating Trust for his or her services as Liquidating Trustee in the amount of \$500.00 per hour for work on Liquidating Trust administration and management, for an official Liquidating Trustee meeting, or on an official Liquidating Trustee trip, or in the performance of any other task that the Liquidating Trustee believes benefits or has benefited the Liquidating Trust. The compensation will be paid out of Liquidating Trust assets. The Liquidating Trustee will not be compensated for non-working travel time. The Liquidating Trustee shall record all hourly time to be charged to the Liquidating Trust on a daily basis. The hourly amount of compensation payable to the Liquidating Trustee hereunder shall be adjusted each year in accordance with the Federal Bureau of Labor Statistics' Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) published in January of each year, beginning as of January, 2021.

b) The Liquidating Trust will promptly reimburse the Liquidating Trustee for all reasonable out-of-pocket costs and expenses incurred by the Liquidating Trustee in connection with the performance of his or her duties hereunder.

4.6 Purchase of Insurance For the Liquidating Trustee and Other Parties.

a) The Liquidating Trustee may purchase and maintain reasonable amounts and types of insurance on behalf of an individual who is or was a Liquidating Trustee and an agent of the Liquidating Trust, against liability asserted against or incurred by such individual in that capacity or arising from his or her status as such.

4.7 Liquidating Trustee's Lien. The Liquidating Trustee and its agents shall have a first priority lien upon the Trust Assets to secure the payment of any amounts payable to them pursuant to Section 4.5.

4.8 Liquidating Trustee's Employment of Experts. The Liquidating Trustee may, but shall not be required to, retain or consult with counsel, accountants, appraisers, auditors and forecasters, and other parties deemed by the Liquidating Trustee to be qualified as experts on the matters submitted to them and the opinion of any such parties on any matters submitted to them by the Liquidating Trustee shall be full and complete authorization and protection in respect of any action taken or not taken by the Liquidating Trustee hereunder in good faith and in accordance with the written opinion of any such party.

4.9 Liquidating Trustee's Independence. No Liquidating Trustee shall act as an attorney for any Entity who holds an Asbestos-Related Personal Injury or Wrongful Death Claim or Potential Asbestos-Related Trust Claim.

4.10 Bond. The Liquidating Trustee shall not be required to post any bond or other form of surety or security unless otherwise ordered by the Bankruptcy Court.

ARTICLE 5

GENERAL PROVISIONS

5.1 Irrevocability. THE LIQUIDATING TRUST IS IRREVOCABLE.

5.2 Termination. The Liquidating Trust shall automatically terminate on the date ninety (90) days after the Liquidating Trust has liquidated and distributed all Liquidating Trust assets (but in no event shall such termination occur within four (4) years of the Trust's formation).

5.3 Severability. Should any provision in this Trust Agreement be determined to be unenforceable, such determination shall in no way limit or affect the enforceability and operative effect of any and all other provisions of this Trust Agreement.

5.4 Notices. Notices to Entities asserting claims shall be given at the address of such Entity, in each case as provided on such Entity's claim form submitted to the Liquidating Trust with respect to his or her or its Asbestos-Related Personal Injury or Wrongful Death Claim or Potential Asbestos-Related Trust Claims. For any Entity asserting claims that is represented by counsel, notices to that Entity may instead be provided through their counsel.

Any notices or other communications required or permitted hereunder shall be in writing and delivered at the addresses designated below, or sent by e-mail pursuant to the instructions listed below, or mailed by registered or certified mail, return receipt requested, postage prepaid, addressed as follows, or to such other address or addresses as may hereafter be furnished by any party to whom such notice is directed to the other parties listed herein in compliance with terms hereof.

To the Liquidating Trust through the Liquidating Trustee: David J. Gordon
with a copy to: _____

All such notices and communications if mailed shall be effective when physically delivered at the designated addresses or, if electronically transmitted, when the communication is received at the designated addresses and confirmed by the recipient by return electronic transmission.

5.5 Successors and Assigns. The provisions of this Trust Agreement shall be binding upon and inure to the benefit of the Post-Confirmation Debtor, the Liquidating Trust, and the Liquidating Trustee and their respective successors and assigns, except that none of the Post-Confirmation Debtor, or the Liquidating Trust, nor the Liquidating Trustee may assign or otherwise transfer any of its, his or her rights or obligations under this Trust Agreement except, in the case of the Liquidating Trust and the Liquidating Trustee, as contemplated by Section 2.1.

5.6 Entire Agreement; No Waiver. The entire agreement of the parties relating to the subject matter of this Trust Agreement is contained herein and in the documents referred to herein, and this Trust Agreement and such documents supersede any prior oral or written agreements concerning the subject matter hereof. No failure to exercise or delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any further exercise thereof or of any other right, power or privilege. The rights and remedies herein provided are cumulative and are not exclusive of rights under law or in equity.

5.7 Headings. The headings used in this Trust Agreement are inserted for convenience only and neither constitute a portion of this Trust Agreement, nor in any manner affect the construction of the provisions of this Trust Agreement.

5.8 Governing Laws; Submission to Jurisdiction. This Trust Agreement shall be governed by, and construed in accordance with, the laws of the State of Washington without regard to Washington's conflict of laws principles. The Liquidating Trust is subject to the continuing jurisdiction of the Bankruptcy Court.

5.9 Dispute Resolution. Any disputes that arise under this Trust Agreement or under the annexes hereto shall be resolved by the Bankruptcy Court pursuant to the Plan, except as otherwise provided herein or in the annexes hereto. Notwithstanding anything else herein contained, to the extent any provision of this Trust Agreement is inconsistent with any provision of the Plan, the Plan shall control.

5.10 Enforcement and Administration. The provisions of this Trust Agreement and the annexes hereto shall be enforced by the Bankruptcy Court pursuant to the Plan. The parties hereby further acknowledge and agree that the Bankruptcy Court shall have exclusive jurisdiction over the settlement of the accounts of the Liquidating Trustee.

5.11 Effectiveness. This Trust Agreement shall not become effective until it has been executed and delivered by all the parties hereto.

5.12 Counterpart Signatures. This Trust Agreement may be executed in counterparts, each of which shall constitute an original, but such counterparts shall together constitute but one and the same instrument.

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IN WITNESS WHEREOF, the parties have executed this Trust Agreement this ____ day of _____, 2020.

FRASER'S BOILER SERVICE, INC.:

By: _____

LIQUIDATING TRUSTEE:

David J. Gordon

EXHIBIT B TO [FIFTH] AMENDED PLAN OF REORGANIZATION

FRASER'S BOILER SERVICE, INC. LIQUIDATING TRUST CLAIM VALUATION PROCESS

This Fraser's Boiler Service, Inc. Liquidating Trust Claim Valuation Process (the "CVP") provides a process for resolving all Potential Asbestos-Related Trust Claims against Fraser's Boiler Service, Inc. ("FBS").

The Plan and Trust Agreement establish the Liquidating Trust. The Liquidating Trustee of the Liquidating Trust shall implement and administer this CVP in accordance with the Trust Agreement. Capitalized terms used herein and not otherwise defined shall have the meanings assigned to them in the Plan and the Trust Agreement.

SECTION I

Definitions

The following definitions will apply to the listed terms wherever those terms appear in this CVP. Unless otherwise specified, each defined term stated in singular form shall include the plural form, and each defined term stated in plural form shall include the singular form. The terms "includes" and "including" wherever used in this CVP shall mean both includes or including, both without limitation.

1.1 "Claim Submission Fee" means a fee of \$1,000 payable in connection with any Trust Claim submitted after the Effective Date to the Liquidating Trust.

1.2 "Debtor" means Fraser's Boiler Service, Inc.

1.3 "Liquidating Trust" means the FBS Liquidating Trust.

1.4 "Notice Address" means a mailing address that will be listed on a website maintained by the Liquidating Trust on and after the Liquidating Trust's formation for the purpose of receiving formal claims notifications and other legal notices provided for

in this CVP. The Liquidating Trust may also list an email or electronic address for receiving formal claim notices or other legal notices and may condition use of such alternate electronic address upon such provisions as the Liquidating Trust deems appropriate.

1.5 “Plan” means the [Fifth] Amended Plan of Reorganization under Chapter 11 of the Bankruptcy Code of the Debtor dated as of October __, 2020.

1.6 “Trust Agreement” means that FBS Liquidating Trust Agreement executed as of _____ __, 2020 by and among the Debtor and the Liquidating Trustee.

1.7 “Trust Claim” means a Potential Asbestos-Related Trust Claim that is allowed by the Liquidating Trust or a Class 3 Claim that was settled in mediation and approved by the Court prior to the Effective Date.

SECTION II

Introduction

2.1 Purpose. This CVP has been adopted in connection with the Liquidating Trust. It is designed to utilize the funds received from insurance settlements to resolve and pay Potential Asbestos-Related Trust Claims for as long as the Liquidating Trust has assets available to pay such claims. The purpose of the Liquidating Trust is to provide meaningful compensation to asbestos victims for whom FBS would have been the principal source of tort system recovery. A Potential Asbestos-Related Trust Claim is therefore based upon an asbestos exposure history in which FBS represents the majority of the claimant’s asbestos exposure in that more than 40% of the claimant’s exposure occurred in direct proximity to FBS contractors removing and/or installing asbestos on

boilers at a jobsite or ship for which FBS has previously paid settlements in the tort system or pursuant to an administrative settlement agreement; or 2) while working directly on specific boilers in which FBS previously installed asbestos containing materials on a jobsite or ship for which FBS has previously paid settlements in the tort system or pursuant to an administrative settlement agreement. The Liquidating Trust is intended to pay claims consistent with historic tort system values until its assets are exhausted and this CVP is not designed to preserve distributable assets for asbestos-related claims that might arise or that might be established as Trust Claims after the Liquidating Trust has exhausted its assets. The Liquidating Trust is instead designed to promptly and efficiently distribute fair compensation to Trust Claims consistent with historical tort system values until it has exhausted its assets.

2.2 Interpretation. Nothing in this CVP shall be deemed to create a substantive right for any claimant or injured person.

SECTION III

Overview

3.1 Treatment of Trust Claims. This CVP contemplates that many Class 3 Claims will have been resolved by mediation and approved by the Court before the Effective Date and such claims will be Trust Claims. Other Potential Asbestos-Related Trust Claims, including all unliquidated Class 3 Claims, will be submitted, liquidated, and paid by the Trust as set forth in Sections IV and V. As detailed in Sections IV and V, the value of each Potential Asbestos-Related Trust Claim will be determined by negotiation, mediation, and in certain instances arbitration. The process for valuing each Potential Asbestos-Related Trust Claim also provides guidelines for the Liquidating

Trustee in negotiations. These guidelines are designed to allow Potential Asbestos-Related Trust Claims to be valued based on FBS's historical tort system values of similarly situated cases and resolved through negotiation, mediation and, if necessary, binding arbitration.

3.2 Annual Payment Caps. To ensure that the Liquidating Trust has assets available to pay Trust Claims for at least four years, payments during the first six months of the Trust's existence toward Trust Claims allowed on the Effective Date shall not exceed 75% of the Liquidating Trust's available cash after payment of Allowed Administrative Expense Claims and Class 1 Claims and costs related to the Liquidating Trust's administration. Thereafter, in any calendar year, payments by the Liquidating Trust toward Trust Claims shall not exceed 75% of the Liquidating Trust's available cash as of the first day of the 14th month after the Effective Date or the subsequent anniversary of that date (the "Payment Cap"). In each year, the Liquidating Trustee shall evaluate the newly valued claims and determine if it is feasible without substantially risking the Liquidating Trust's ability to provide all Trust Claims a similar pro rata payment. If the Liquidating Trustee concludes that a distribution is possible without such a substantial risk, then the Liquidating Trustee will make further pro rata payments to all Trust Claims. However, in the absence of a strong likelihood that all Trust Claims will be able to receive pro rata distributions at the end of the Liquidating Trust's life, the Trustee will defer further distributions until after the fourth year after the Effective Date. In the fourth year after the Effective Date, there will be no Payment Cap and the Liquidating Trustee may utilize the remaining Trust Assets to equalize the pro rata payments made on all Trust Claims and make further pro rata payments on Trust Claims.

SECTION IV

Claims Submission

4.1 Submission of Claims. All claimants holding a Potential Asbestos-Related Trust Claim—whether the claimant is the injured person or bringing a claim on behalf of an injured person—may initiate action by the Liquidating Trust by sending to the Liquidating Trust at the Notice Address the completed claim form that the Liquidating Trustee will promulgate (“Claim Form”), together with supporting documentation as the Claim Form may request and with the Claim Submission Fee.

4.2 Claimant’s Burden to Submit Credible Claim Information.

Information submitted in support of a Trust Claim must comply with recognized medical standards (including but not limited to standards regarding equipment, testing methods, and procedures) and/or legal evidentiary and authenticity standards. While the Liquidating Trust will not strictly apply rules of evidence, information provided in support of claims must be reliable and credible so that the Liquidating Trust is fully informed regarding the foundations for facts asserted in support of claims.

Evidence of an injured person’s asbestos-related disease must include a diagnosis by either (1) a Board-Certified physician in appropriate specialties, or (2) a medical expert who is not Board-Certified, but who the Liquidating Trust determines meets equivalent medical experience (in which case the Liquidating Trust may consider the lack of evidence from a Board-Certified physician as a factor in valuing a Trust Claim). The diagnosis must be made to a level of reasonable medical probability, and a finding that an injured person’s health is “consistent with” asbestos-related disease will not, standing alone, be sufficient evidence of an injured person’s asbestos-related disease.

The Liquidating Trust normally will accept copies instead of authenticated copies of x-ray reports, laboratory tests, medical examinations, other medical records and reviews that otherwise comply with recognized medical and/or legal standards unless circumstances indicate that the information submitted is unreliable. The Liquidating Trust normally will accept copies instead of authenticated copies of deposition testimony, invoices, affidavits, business records, deck logs, military service records (including leave records) or other credible indirect or secondary evidence in a form otherwise acceptable to the Liquidating Trust that establishes an injured person's occupation, occupational history, business or other losses or the injured person's presence at a particular ship, facility, job site, building, or other location as required by Section 4.3, unless circumstances indicate that the information submitted is unreliable.

Examples of unreliable information include where the circumstances raise questions of authenticity of copies or where persons authoring or verifying facts offered in support of a claim lack direct knowledge of such facts but fail to reveal and describe what facts, and how and from what sources they learned those facts, they relied upon as the basis for their assertion of such facts. Under these circumstances, the Liquidating Trust shall apply the rules of evidence to exclude evidence where the witness or verifying party declines to provide such foundational information, e.g., on grounds that the information relied upon is privileged or confidential.

4.3 Information Requirements Regarding Certain Jobsite Exposures.

The Trust will only allow claims arising from exposure aboard ships or at jobsites that FBS previously acknowledged as potential exposure sites by settling tort system

litigation at greater than nominal value or acknowledged potential exposure sites pursuant to an administrative settlement agreement.

If a claimant asserts that the injured person's FBS exposure was on a ship, claimant must demonstrate through meaningful and credible evidence that the injured person worked in the engineering areas of the ship during or after the period that FBS performed work on the particular vessel. If a claimant asserts that an injured person's exposure occurred at a non-ship jobsite, claimant must demonstrate the injured person's presence in the general area where FBS performed work within the date range for which FBS has acknowledged responsibility and/or paid prepetition.

If a claimant asserts that an injured person's exposure occurred solely from exposure to an occupationally exposed person, such as a family member, the claimant must demonstrate that (a) the occupationally exposed person was exposed to FBS's asbestos-containing products or operations at a ship or jobsite during the date range that FBS has recognized and/or payed on in the tort system; and (b) the injured person's own exposure to the occupationally exposed person occurred within the same time frame as the occupationally exposed person experienced FBS exposure.

4.4 Incomplete Claims Submissions. If a claimant submits a Claim Form without properly completing the form or without all necessary supporting documentation, the Liquidating Trust will notify the claimant within 90 days of such deficiencies and the claimant may correct the noted deficiencies. The Claim Form will be deemed submitted for the purposes of processing when all necessary supporting documentation has been furnished.

SECTION V

Resolution of Trust Claims

5.1 Valuation of Trust Claims. The Liquidating Trustee will perform an individual review of each Trust Claim and assign each Trust Claim to one of two categories—Presumptively Disallowed Claims or Generally Allowable Claims—based on an injured person’s exposure and other basic qualification criteria, as set forth in Sections 5.1(i)–5.1(ii). Once a Trust Claim is assigned to a category, a liquidation value will be determined through negotiation and mediation based on the qualification criteria and related factors, as set forth in Sections 5.1(i) –5.1(ii). These factors are intended to parallel the considerations that would typically add or subtract value to cases in the tort system or in related settlement negotiations outside the context of a post-bankruptcy trust with the ultimate goal of this evaluation process being to value claims based upon the settlement the particular claim would have received had it been filed in the tort system.

5.1(i) Presumptively Disallowed Claims. A Trust Claim will be categorized as a Presumptively Disallowed Claim if, based on the Liquidating Trustee’s review of the documentation provided, a claimant cannot credibly demonstrate all of the following:

5.1(i)(a): The Potential Asbestos-Related Trust Claim was presented to the Liquidating Trust less than three years after the date of Fraser’s dissolution following Plan Confirmation;

5.1(i)(b): The Potential Asbestos-Related Trust Claim was presented to the Liquidating Trust less than three years after the injured person’s diagnosis of asbestos disease or death, whatever is earlier;

5.1(i)(c): The Potential Asbestos-Related Trust Claim is based on exposure at ship or jobsite within the limitations described in Section 4.3;

5.1(i)(d): A latency period of at least 20 years between first exposure and the manifestation of a disease;

5.1(i)(e): The Potential Asbestos-Related Trust Claim is based upon a diagnosis of (a) mesothelioma, (b) lung cancer, (c) other cancer that has been recognized by FBS prior to the Effective Date as a basis for valid settlements at greater than nominal value, or (d) pulmonary asbestosis by a board-certified pathologist or pulmonologist.

5.1(i)(f): The Potential Asbestos-Related Trust Claim is, for deceased claimants, presented by an individual that has obtained letters testimony appointing such individual as the personal representative to file claim on behalf of estate.

5.1(i)(g): The Potential Asbestos-Related Trust Claim is based upon an asbestos exposure history in which FBS represents the majority of the claimant's asbestos exposure in that more than 40% of the claimant's exposure occurred in direct proximity to FBS contractors removing and/or installing asbestos on boilers at a jobsite or ship for which FBS has previously paid settlements in the tort system or pursuant to an administrative settlement agreement ; or 2) while working directly on specific boilers in which FBS previously installed asbestos containing materials on a jobsite or ship for which FBS has previously paid settlements in the tort system or pursuant to an administrative settlement agreement.

A Presumptively Disallowed Claim will generally be valued at \$0. However, the Liquidating Trustee has the authority to allow a Presumptively Disallowed Claim with unusual circumstances within the settlement range of \$100.00 to \$6,000.00.

5.1(ii) Generally Allowable Claims. A Trust Claim will be categorized as a Generally Allowable Claim if, based on the Liquidating Trustee's review of the documentation provided, a claimant can credibly demonstrate each of the requirements set forth in Section 5.1(i)(a)–(g). In negotiating a settlement of a Generally Allowable Claim, the Liquidating Trustee shall seek to replicate the settlement value that FBS paid for similarly situated in the tort system. In valuing Generally Allowable Claims, the Liquidating Trustee shall consider, among other factors: (a) the site where the injured person was exposed to FBS operations or products; (b) the strength of the injured person's exposure evidence; (c) the asbestos disease that the injured person has experienced and whether the injured person was living with this disease at the time his or her Trust Claim was initiated; (d) the injured person's age, number of dependents, loss of earnings or pension, and medical and funeral expenses; (e) the injured person's smoking history (if applicable based on the injured person's disease); (f) the injured person's occupation (or other circumstances that relate to the duration of the injured person's exposure and the amount of exposure to which the injured person was subject); (g) the percentage of the injured person's asbestos exposure that occurred due to FBS's products and operations; (h) the length of time the injured person was exposed to asbestos due to FBS's products or operations; and (i) the length of time that has passed between the time that FBS last performed operations at the jobsite and the time the injured person was exposed at the jobsite. In valuing Generally Allowable Claims the Trustee may also

consider the likely time that would have existed in the tort system between the Liquidating Trust valuation and a likely available trial date in the tort system and the impact such a delay would have on a tort system settlement valuation.¹

5.2 Processing of Potential Asbestos-Related Trust Claims. Potential Asbestos-Related Trust Claims shall be placed by the Liquidating Trustee into the two categories set forth in Section 5.1 on a rolling basis as they are received by the Liquidating Trust. Once a Potential Asbestos-Related Trust Claim has been assigned to a category, the Liquidating Trustee shall issue a settlement offer based on the valuation guidelines as described in Section 5.1 if it is a Generally Allowable Claim. Claimants may accept the Trustee's settlement offer or request mediation of the Potential Asbestos-Related Trust Claim in the next round of mediations as described below. Claimants with a Presumptively Disallowed Claim may accept disallowance of their claims, negotiate directly with the Trustee regarding resolution of their claims or may pursue binding arbitration with Judicial Dispute Resolution in Seattle or an alternative arbitrator proposed by the claimant and approved by the Trustee

The Liquidating Trust will organize a mediation process annually at about the anniversary of the Effective Date for any unresolved Generally Allowable Claims. All Potential Asbestos-Related Trust Claims categorized as Generally Allowable Claims that are ready for mediation by the time of such mediations will be mediated in these annual sessions. The mediation sessions will be collective, in that, for efficiency, multiple Potential Asbestos-Related Trust Claims will be scheduled for resolution at individual

¹ For many Generally Allowable Claims, this consideration may reflect somewhat lower settlement values than similar claims settled in the pre-confirmation settlement program that had in many cases already been pending in the tort system for several years and were close to trial dates and had obtained relief from the stay and were then entitled to proceed with tort system litigation.

mediation sessions, at the discretion of the Liquidating Trustee. The Liquidating Trust and the claimant will share equally the allocated costs of mediation. A claimant that has mediated its claim without resolution may elect to pursue binding arbitration.

Arbitration, if elected, will be with Judicial Dispute Resolution in Seattle or an alternative arbitrator proposed by the claimant and approved by the Liquidating Trustee. Any such arbitration proceeding shall be a “baseball arbitration” in which the arbitrator’s decision is solely based on the valuation factors set forth in Section 5.1. The cost of this arbitration shall be divided equally between the Liquidating Trust and the claimant.

5.3 Alternative Resolution / Payment Mechanism. With the consent of any Potential Asbestos-Related Trust Claim holder, and subject to any limitations as the claimant and the Liquidating Trustee may agree will apply, the Liquidating Trustee may tender an unresolved claim to any Insurer that is not a Settled Insurer and authorize the claimant to initiate a suit against the Liquidating Trust as the successor to Fraser’s Insurance Rights. Such a claimant will be permitted to assert their claim against the Liquidating Trust in the place of Fraser’s in a court of competent jurisdiction. If such a claim is allowed by judgment, such claimant may pursue collection of such claim against any unsettled Insurers whose policy rights are triggered by such claim, subject to the reduction of judgment provisions of the Plan.

5.4 Payment of Trust Claims. All Trust Claims resolved prior to the Effective Date will be paid their pro rata share of a total distribution amount that is equal to 75% of the Liquidating Trust’s available cash after payment of Allowed Administrative Claims and Class 1 Claims and costs related to the Liquidating Trust’s administration with the balance to be paid in subsequent years as funds permit.

All Trust Claims resolved by negotiation, mediation or arbitration on or before the first day of the 14th calendar month after the Effective Date, and on each successive anniversary of that date, will be paid from the then available Trust Assets subject to the Payment Caps. In each year, the Liquidating Trustee will use the available funds permitted by the Payment Cap make pro rata distributions to newly valued claims until all Trust Claims have received a similar pro rata payment and then may, within the Liquidating Trustee's discretion, make further pro rata payments to all Trust Claims. In the fourth year after the Effective Date, there will be no Payment Cap and the Liquidating Trustee may utilize the remaining Trust Assets to equalize the pro rata payments made on all Trust Claims and make further pro rata payments on Trust Claims.

SECTION VI

CVP Administration

6.1 Trustee Administrators. Pursuant to the Plan and the Trust Agreement, the Liquidating Trust and this CVP shall be administered by the Liquidating Trustee.

SECTION VII

General Provisions Related to Liquidating and Paying Trust Claims

7.1 Showing Required. To establish a valid Trust Claim, a claimant must meet the requirements set forth in this CVP, including by supplying all the information requested on the Claim Form and any additional information that the Liquidating Trust may reasonably request to verify and evaluate such claim.

7.2 Claimant Change of Address. Following the submission of a Potential Asbestos-Related Trust Claim, if the claimant address associated with the claim changes, such claimant shall submit a change of address form to the Liquidating Trustee (via the

Liquidating Trustee’s website or by mail). Until the Liquidating Trustee receives such change of address notice, the Liquidating Trustee is entitled to use the last known address on file for the claimant for all purposes.

7.3 Third-Party Services. Nothing in this CVP shall preclude the Liquidating Trust from retaining counsel and/or contracting with a claims processing organization to respectively provide advice and services to the Liquidating Trust so long as decisions about the categorization and liquidated value of Trust Claims are made by the Liquidating Trust and based on the relevant provisions of this CVP.

7.4 Medicare Act Obligations.

a. Without taking any position as to whether any of the funders of the Liquidating Trust have reporting obligations for claims paid by the Liquidating Trust pursuant to 42 U.S.C. §1395y et seq. or any other similar statute or regulation, and its related rules or guidance (“MPSA”), including Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007 (P.L. 110-173), or any other similar statute or regulation, and any related rules, regulations or guidance (“MMSEA”), the Liquidating Trust will act as a reporting agent for all funders of the Liquidating Trust and will register as a Responsible Reporting Entity (“RRE”).

b. The Liquidating Trust shall timely submit all reports that would be required to be made by any funder of the Liquidating Trust under MMSEA with respect to any claims settled, resolved, paid, or otherwise liquidated by the Liquidating Trust or with respect to contributions to the Liquidating Trust.

c. The Liquidating Trust, in its role as RRE shall follow all applicable guidance published by the Centers for Medicare & Medicaid Services of the United

States Departments of Health and Human Services and/or any other successor entity charged with responsibility for monitoring, assessing or receiving reports made under the MMSEA (collectively, “CMS”) to determine whether and how to report pursuant to MMSEA.

d. All documentation relied upon by the Liquidating Trust in deciding that any payment by the Liquidating Trust did not have to be reported to CMS shall be maintained for five (5) years.

e. The Liquidating Trust shall withhold from any settlement to a Medicare-eligible claimant funds sufficient to reimburse Medicare’s conditional payments and place those funds in a client trust, escrow account, or similar account until the Liquidating Trustee or his agent obtains written documentations from CMS that any such claim for reimbursement pursuant to MMSEA has been waived, satisfied or otherwise released. To the extent such obligations exist, the Liquidating Trustee shall be responsible for any reimbursement and repayment obligations arising from Pre-Suit Eligible Claim liquidation amounts and Litigation Claim Payment amounts under the Medicare Act for claim-related conditional payments made under Medicare Part A, B, C, and D or any state’s Medicaid statute. Any amounts the Liquidating Trust may be required to pay as a result of any reimbursement and repayment obligations will reduce the amounts payable by the Liquidating Trust to the related claimant. To the extent such obligations exist, the Liquidating Trustee also shall be responsible for any reporting or financial obligations imposed by the Medicare Act or any state’s Medicaid statute in connection with any payment to a claimant on a Trust Claim.

SECTION IX

Miscellaneous

8.1 **Amendments.** The Liquidating Trustee may amend, modify, delete, or add to any provisions of this CVP to conform this CVP to advances in scientific, medical, or other knowledge as may be essential to the successful operation of the Liquidating Trust, with notice to any known claimants who are asserting Potential Asbestos-Related Trust Claims and any then unpaid Trust Claims.

8.2 **Severability.** Should any provision contained in this CVP be determined to be unenforceable, such determination shall in no way limit or affect the enforceability and operative effect of any and all other provisions of this CVP.

8.3 **Governing Law.** Administration of this CVP shall be governed by, and construed in accordance with, the laws of the State of Washington.