

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

In re:)	Chapter 11
)	
ADAMS PRODUCE COMPANY, LLC)	Case No. 12-02036-TOM-11
AND ADAMS CLINTON BUSINESS)	
PARK, LLC)	
)	
Debtors.)	

**DISCLOSURE STATEMENT FOR DEBTORS' JOINT CHAPTER 11 PLAN OF
LIQUIDATION**

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THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL FROM, BUT HAS NOT BEEN APPROVED BY, THE BANKRUPTCY COURT. THIS IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION OF THE PLAN. ACCEPTANCE OR REJECTION MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT.

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ARTICLE I. **INTRODUCTION**

On April 27, 2012, the Debtors, Adams Produce Company, LLC and Adams Clinton Business Park, LLC, filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. The Debtors have continued to manage its businesses as Debtors in possession and no trustee has been appointed.

On January 14, 2013, the Debtors (also referred to as the "Proponents") submitted their Disclosure Statement pursuant to Bankruptcy Code § 1125, to disclose information to enable creditors and other parties in interest entitled to vote (if any) (the "Claimants") to make an informed decision in exercising their rights to accept or reject the Debtors' *Joint Chapter 11 Plan of Liquidation* (the "Plan").

Upon approval of this Disclosure Statement by the Bankruptcy Court, this Disclosure Statement may be considered in connection with (i) the solicitation of votes to accept the Plan, and (ii) the Confirmation Hearing scheduled for ____, prevailing Central Time, to be held by the Bankruptcy Court to consider confirmation of the Plan pursuant to Bankruptcy Code §§ 1128 and 1129 and Bankruptcy Rule 3017, as such hearing may be adjourned or continued from time to time.

The Bankruptcy Court has directed that objections, if any, to confirmation of the Plan be served and Filed so that they are received on or before ____, prevailing Central Time. The Confirmation Hearing may be adjourned or continued from time to time by the Bankruptcy Court without further notice except for the announcement of the adjournment or continuance date made at the Confirmation Hearing or at any subsequent adjourned or continued Confirmation Hearing.

Annexed as Exhibits to this Disclosure Statement are copies of the following documents:

Debtors' Joint Chapter 11 of Liquidation (Exhibit A);

Liquidation Analysis (Exhibit B);

Summary of Liabilities (Exhibit C);

Summary of Unencumbered Assets (Exhibit D);

D&O Settlement (Exhibit E); and

Liquidating Trust Agreement (Exhibit F).

All capitalized terms employed in this Disclosure Statement and not otherwise defined herein shall have the meanings given such terms in the Plan, which is attached hereto as Exhibit "A".

ARTICLE II.
NATURE OF REPRESENTATIONS

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED BY THE DEBTOR SOLELY FOR THE BENEFIT OF CREDITORS AND HOLDERS OF INTERESTS IN THE DEBTOR. THIS THIRD AMENDED DISCLOSURE STATEMENT AND THE RELATED DOCUMENTS ARE THE ONLY DOCUMENTS AUTHORIZED BY THE BANKRUPTCY COURT TO BE USED IN CONNECTION WITH THE SOLICITATION OF VOTES ACCEPTING OR REJECTING THE PLAN.

THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS INCLUDED TO SOLICIT ACCEPTANCES OF THE PLAN. THE INFORMATION IN THIS THIRD AMENDED DISCLOSURE STATEMENT SHOULD NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN TO DETERMINE HOW TO VOTE ON THE PLAN. NO PERSON MAY GIVE ANY INFORMATION OR MAKE ANY REPRESENTATIONS, OTHER THAN THE INFORMATION AND REPRESENTATIONS CONTAINED IN THIS THIRD AMENDED DISCLOSURE STATEMENT REGARDING THE PLAN OR THE SOLICITATION OF ACCEPTANCES OF THE PLAN.

ANY PARTY WHO DOES NOT OBJECT TO THIS THIRD AMENDED DISCLOSURE STATEMENT IS NOT DEEMED TO WAIVE ANY RIGHTS TO OBJECT TO THE CONFIRMATION OF THE PLAN ON ANY BASIS OTHER THAN LACK OF ADEQUATE DISCLOSURE UNDER BANKRUPTCY CODE SECTION 1125.

ALL CREDITORS SHOULD READ THIS DISCLOSURE STATEMENT AND THE PLAN BEFORE VOTING TO ACCEPT OR REJECT THE PLAN. STATEMENTS MADE IN THIS THIRD AMENDED DISCLOSURE STATEMENT ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE PLAN.

THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE BY THE DEBTOR AS OF THE DATE HEREOF UNLESS OTHERWISE SPECIFIED. THE DELIVERY OF THIS DISCLOSURE STATEMENT DOES NOT IMPLY THAT THERE HAS BEEN NO CHANGE IN THE INFORMATION SET FORTH HEREIN SINCE SUCH DATE. THE DEBTOR PREPARED THIS DISCLOSURE STATEMENT, BUT DOES NOT WARRANT OR REPRESENT THAT THIS DISCLOSURE STATEMENT IS WITHOUT ERROR. HOLDERS OF CLAIMS ENTITLED TO VOTE ON THE PLAN SHOULD READ THIS DISCLOSURE STATEMENT AND PLAN AND CONSULT WITH COUNSEL OR OTHER ADVISORS PRIOR TO VOTING ON THE PLAN.

THIS THIRD AMENDED DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE UNITED STATES BANKRUPTCY CODE AND RULE 3016 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AND NOT NECESSARILY IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER NON-BANKRUPTCY LAW.

NOTHING IN THIS THIRD AMENDED DISCLOSURE STATEMENT IS AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY, NOR DOES THIS

DISCLOSURE STATEMENT PROVIDE ADVICE ON THE TAX OR OTHER LEGAL EFFECTS OF THE PLAN AS TO HOLDERS OF CLAIMS. YOU SHOULD CONSULT YOUR TAX ADVISOR ON ANY QUESTIONS OR CONCERNS RESPECTING TAX, SECURITIES OR OTHER LEGAL CONSEQUENCES OF THE PLAN.

IF ANY INCONSISTENCY EXISTS BETWEEN THE TERMS AND PROVISIONS OF THE PLAN AND THIS THIRD AMENDED DISCLOSURE STATEMENT, THE TERMS AND PROVISIONS OF THE PLAN CONTROL. CERTAIN OF THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE FORWARD LOOKING FORECASTS AND ARE BASED UPON CERTAIN ESTIMATES AND ASSUMPTIONS. THERE CAN BE NO ASSURANCE THAT SUCH STATEMENTS WILL BE REFLECTIVE OF ACTUAL OUTCOMES.

IRS CIRCULAR 230 NOTICE

TO ENSURE COMPLIANCE WITH IRS CIRCULAR 230, HOLDERS OF CLAIMS ARE HEREBY NOTIFIED THAT: (A) ANY DISCUSSION OF FEDERAL TAX ISSUES CONTAINED OR REFERRED TO IN THIS THIRD AMENDED DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY HOLDERS OF CLAIMS FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON THEM UNDER THE INTERNAL REVENUE CODE; (B) SUCH DISCUSSION IS WRITTEN IN CONNECTION WITH THE SOLICITATION OF VOTES ON THE PLAN AND OTHER MATTERS ADDRESSED HEREIN; AND (C) CLAIMANTS SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

ARTICLE III. **BACKGROUND**

A. Narrative Description of the Debtor

Prior to its bankruptcy filing, Adams Produce was a privately held company headquartered in Birmingham, Alabama, and was a leading distributor of fresh fruits and vegetables to restaurants, government and hospitality establishments across the Southeastern United States. Adams Produce had multiple distribution centers located throughout the Southeast, servicing the states of Alabama, Arkansas, Florida, Georgia, Mississippi, and Tennessee. Adams Produce employed over 400 employees.

Edwin Calvin Adams founded Adams Produce in 1903 when he incorporated E.C. Adams & Co. Adams Produce's business grew, and once members of the Adams family joined the company, Adams Produce was renamed Adams Brothers Produce Co., Inc. in 1936. At the time of its bankruptcy filing, Adams Produce was one of the preeminent "produce specialist" in the Southeastern United States.

Prior to the Petition Date, PNC Bank ("PNC") was the Debtors' lender. The total amount of the Debtors' pre-petition secured debt approximated \$5.6 million. The total amount of the Debtors' pre-petition unsecured debt approximated \$33.9 million (including PACA Claims).

B. Summary of Events that Occurred During the Course of the Bankruptcy

1. Professionals

At the beginning of the Case, the Debtors application to employ Burr & Forman LLP (“Burr”) as the Debtors’ legal counsel was approved by the Bankruptcy Court. The Debtor also employed Deloitte Financial Advisory Services, LLP to serve as the Debtors Chief Restructuring Officer.

Burr was also later employed by the Debtors to serve as special litigation counsel in order to pursue the Debtors’ claims against Frost Cummings Tidwell Group, LLC.

The Debtors have also sought approval to employ an accounting firm, Dent, Baker & Company, LLP to prepare the Debtors’ 2011 and 2012 tax returns.

2. PACA Issues

Prior to the Filing Date, the Debtors were engaged in the business of distributing fresh fruits and vegetables, in the course of their business, the Debtors regularly purchased goods that qualify as “perishable agricultural commodities” under the Perishable Agricultural Commodities Act of 1930, as amended, 7 U.S.C. §§ 499a et seq. (“PACA”).

Under PACA, the term perishable agricultural commodity is generally defined as “fruits and fresh vegetables of every kind and character.” PACA provides various protections to fresh fruit and vegetable sellers, including the establishment of a statutory constructive trust consisting of a buyer’s entire inventory of food or other derivatives of perishable agricultural commodities, the products derived therefrom and the proceeds related to any sale of the commodities or products. Assets of a PACA trust are preserved as a non-segregated floating trust, and are not property of a Debtors’ estate.

Certain of the Debtors’ produce suppliers were eligible to assert claims against the Debtors under PACA (the “PACA Claims”), including claims that a PACA trust (the “PACA Trust”) had been impressed on certain of the Debtors’ assets (the “PACA Trust Assets”). As the PACA Trust Assets were held in trust by the Debtors and were not property of the Debtors’ estates, the Debtors’ produce suppliers had priority ahead of all other secured and unsecured creditors of the Debtors’ estates as to those PACA Trust Assets.

In order to facilitate the orderly and efficient determination and payment of valid PACA Claims, the Debtors requested that the Bankruptcy Court institute certain procedures related to the PACA Claims made by the Debtors’ produce suppliers. On July 11, 2012, the Court entered its Agreed Order Establishing PACA Claims Procedure (the “PACA Order”), which provided a procedure for determining the amount of assets that were subject to the PACA Trust, determining the amount of valid PACA Claims, and paying valid PACA Claims from the PACA Trust.

As of the deadline to file PACA Claims as set forth in the PACA Order, sixty-one (61) of the Debtors’ creditors (the “PACA Claimants”) filed PACA Claims, asserting claims for more than \$13.5 million. The Debtors and five other interested parties filed objections to sixty (60) of

the PACA Claims. Thereafter, the Debtors reached a settlement with forty-nine of the fifty PACA Claimants holding valid PACA Claims (the “Settling PACA Claimants”), whereby the Debtors agreed to make payment in the total amount of \$8,106,769.07 to the Settling PACA Claimants in full and total satisfaction of the Debtors’ liability to the Settling PACA Claimants, and the Settling PACA Claimants agreed to assign their PACA Claims to the Debtors. On October 8, 2012, the Debtors filed their motion to approve the PACA Settlement, which was approved by the Bankruptcy Court on October 24, 2012.

The PACA Settlement did not resolve the PACA Claim of Alex Kontos Fruit Co., Inc. (“Kontos”). The Debtors and Kontos engaged in mediation pursuant to the PACA Order, and as a result of the mediation, the Debtors and Kontos reached a settlement (the “Kontos Settlement”). On November 30, 2012, the Debtors filed their motion to approve the settlement between the Debtors, PNC Bank, and Kontos, pursuant to which the Debtors paid Kontos the total amount of \$370,000.00 in full and total satisfaction of the Debtors’ liability to Kontos on account of Kontos’ PACA Claim. The settlement did not release certain parties, including the Debtors’ former directors and officers, from liability to Kontos for the deficiency of Kontos’ PACA Claim.

On October 9, 2012 and October 24, 2012, the Debtors filed motions to disallow certain PACA Claimants’ PACA Claims due to such PACA Claimants’ failure to comply with the procedures set forth in the PACA Order (collectively, the “Motions to Disallow”). On October 24, 2012 and November 9, 2012, the Bankruptcy Court entered orders granting the respective Motions to Disallow.

As of the date of this Disclosure Statement, all PACA Claims against the Debtors have been resolved, either through a Final Order approving the settlement of certain PACA Claims or a Final Order disallowing the remaining PACA Claims.

3. Asset Sales

a. Inventory and Lease Rights

The Debtors ceased operations on the Filing Date, but maintained a large inventory of produce and other perishable items, that, if not sold promptly, risked spoilage. Prior to the Filing Date, the Debtors operated around the Southeast out of several distribution centers. Several of the Debtors’ former managers in these locations expressed an interest in purchasing the Debtors’ inventory and operating new produce distribution businesses. Because the Debtors’ inventory would be worthless if it spoiled, the Debtors sought Bankruptcy Court approval to (i) sell their produce inventory to the former managers at no less than 50% of the price paid by the Debtors for the inventory, and (ii) assign the Debtors’ lease rights in certain distribution centers to the former managers so that the former managers could operate their new businesses from the Debtors’ former distribution centers. The Debtors’ major PACA creditors consented to the sale of the inventory, and the Bankruptcy Court approved the sale on April 28, 2012. On May 3, 2012, the Debtors filed another motion to sell inventory, which sought the Bankruptcy Court’s approval to sell the remaining inventory, which had steadily declined in value, at any price that the Debtors deemed reasonable. The Bankruptcy Court approved the Debtors’ second motion on

May 11, 2012. Within weeks of the Filing Date, the Debtors sold a substantial portion of their existing perishable inventory, realizing substantial value for their estates and creditors.

b. Vehicles

The Debtors owned several vehicles, and on July 31, 2012, the Debtors sought the Bankruptcy Court's authorization to sell certain vehicles and to employ Heritage Realty & Auction Co., Inc. ("Heritage") to serve as auctioneer/broker for the Debtors in connection with the sale of the vehicles. The Bankruptcy Court approved the sale of certain vehicles and the Debtors' employment of Heritage, and on September 8, 2012, Heritage conducted an auction, selling five (5) of the Debtors' vehicles to the highest bidder at auction for a total of \$32,650.00. Thereafter, the Bankruptcy Court approved Heritage's compensation and reimbursement of expenses in the total amount of \$7,317.26. The Debtors received net proceeds from the sale of the vehicles in the amount of \$25,332.74.

4. **D&O Settlement**

Claims have been asserted against the Debtors' former directors and officers (the "Directors and Officers") by several parties related to the Directors and Officers' acts and/or omissions in their capacity as directors and/or officers of the Debtors (all such claims collectively, the "D&O Claims").

As set forth above, the Kontos Settlement did not include Kontos' release of the Directors and Officers from any potential liability on account of Kontos' PACA Claim. In certain circumstances, directors and officers of a corporate entity who are in a position to control PACA trust assets, but breach the fiduciary duty to preserve those assets, may be held personally liable under PACA. Kontos has asserted claims against the Directors and Officers based on their alleged failure to preserve the Debtors' assets that were impressed by a PACA trust.

The Debtors' former employees have also asserted claims against the Directors and Officers. On the Filing Date, the Debtors ceased operations and terminated all of their approximately 400 employees (the "Employees"), and did not compensate the Employees for the final three weeks of their employment. The Employees have been represented in the Case by the Ad Hoc Committee, and the Ad Hoc Committee has asserted claims against the Directors and Officers under certain federal and state statutes relating to the Debtors' termination of the Employees on the Filing Date and the Debtors' failure to pay three weeks of wages to the Employees.

Finally, the Debtors' Estates have also asserted claims against the Directors and Officers for the Directors and Officers' breach of their fiduciary duties to the Debtors. Specifically, the Debtors' Estates alleged that the Directors and Officers breached their fiduciary duty of care by intentionally ignoring the Debtors' undercapitalization issues, which caused the Debtors' deepening insolvency and ultimately led to the Debtors' bankruptcy, and breached their fiduciary duty of loyalty by failing to implement any reporting or information controls that would detect malfeasance within the company.

The Debtors have an insurance policy with Federal Insurance Company that provides coverage for claims made against the Directors and Officers. Since the Filing Date, the Debtors

have made several demands upon the Directors and Officers for payment in connection with the D&O Claims and upon Federal Insurance Company for coverage under the policy.

In late 2012, the Debtors, the Directors and Officers, PNC Bank, Kontos, and the Ad Hoc Committee engaged in a mediation over several days before U.S. Magistrate Judge John Ott during which the parties discussed the D&O Claims. The parties reached a settlement of the D&O Claims (the "D&O Settlement"), which is set forth in Exhibit __ to this Disclosure Statement, and provided for in the Plan. Among other things, the D&O Settlement provides for:

- (i) Payment by Federal Insurance of \$950,000.00 to the Estate;
- (ii) Payment by CIC Partners, LP (a former director) of \$350,000.00 to the Estate;
- (iii) Payment by the Estate of \$330,000.00 to Kontos;
- (iv) Payment by the Estate of \$850,000.00 to the Ad Hoc Committee;
- (v) Assignment of Kontos' PACA Claim and the Ad Hoc Committee's PACA Claim and D&O Claims to the Estate; and
- (vi) Mutual releases between the parties to the D&O Settlement

C. Description of Debtors' Liabilities

A summary of the various liabilities of Debtor is set forth on Exhibit C, attached hereto.

D. Description of Debtors' Unencumbered Assets

A summary of the various unencumbered assets of Debtor is set forth on Exhibit D, attached hereto.

ARTICLE IV.
EVENTS LEADING TO BANKRUPTCY

In the several years preceding the Debtors bankruptcy filings, the Debtors suffered market pressures that affected all of their products. The already thin margins on which the Debtors operated in 2010 continued to decline, resulting in lowered EBITDA and operating income. As income decreased, the Debtors began to fall behind on payments to its vendors.

The Debtors worked to restructure their obligations, but the timeframe for the Debtors' restructuring options proved unworkable because the Debtors did not have enough cash to implement any viable restructuring options. The timeframe proved unworkable because many seasonal competitors, like farmer's markets, operate during the summer, and many of the Debtors' customers, such as schools, purchase produce from the Debtors only during the non-summer months. For these reasons, the summer is the slowest season for the Debtors' businesses, and the Debtors' situation became particularly distressed as the summer approached.

ARTICLE V.
SUMMARY OF THE PLAN

The Debtors believes that its creditors, as a group, will obtain a greater recovery from the Estates of the Debtors through the Plan, than the recovery that would be available if the assets of the Debtors were liquidated under Chapter 7 of the Bankruptcy Code. Accordingly, the Plan will

maximize the value of the Debtors' assets. The Debtors believe, therefore, that the Plan is in the best interests of the creditors.

The following summary is offered for convenience only; it is not a complete description of the terms of the Plan. Creditors must review the Plan itself for a complete understanding of the Plan and disclosure of its terms. In the event of a discrepancy between the terms of the Plan and anything contained in this Disclosure Statement, the terms of the Plan shall control.

A. Overview of Plan

The Plan places the creditors and equity holders of the Debtors in separate classes and provides for the treatment of each such class. For purposes of voting and all matters related to confirmation, except as otherwise provided in the Plan, all Claims and Interests shall be classified as set forth in Section II of the Plan. A Claim or Interest is classified in a particular class only to the extent that the Claim or Interest qualifies under the description of that class, and is classified in other classes to the extent that any remainder of the Claim or Interest qualifies under the description of such other classes. A Claim or Interest also is classified within a particular class only to the extent that such Claim or Interest is an Allowed Claim or Interest in that class and has not been paid, released or otherwise satisfied prior to the Effective Date.

The Plan is a liquidating plan. Substantially all of the Debtors unencumbered assets, except for certain Causes of Action, were liquidated during the course of the Debtors' Bankruptcy Cases. The Plan provides for transfer of the Debtors' remaining assets into a Liquidation Trust and the liquidation and conversion to Cash of the Trust Assets and the Distribution of the Net Proceeds realized therefrom by a Liquidating Trustee, to the Debtors' Creditors holding Allowed Claims in accordance with the priorities established by the Bankruptcy Code. The Plan further provides for the termination of all Interests in the Debtors and the dissolution and wind up of the affairs of the Debtors.

The Liquidating Trustee shall liquidate the Assets of the Estates in accordance with the Plan and shall distribute the Net Proceeds thereof as follows: (a) first to pay the reasonable costs and expenses of the Liquidating Trustee and his professionals (including professional fees) incurred in administering, maintaining, and preserving the Available Funds and making the Distributions, and the liquidation of the Assets of the Estate (to the extent not otherwise paid pursuant to the Plan); and (b) second Pro Rata to the holders of Allowed Claims on the terms and conditions, and in the priority, set forth in the Plan.

B. Classification of Claims

All Claims and Interests except Administrative Expense Claims and PACA Claims, PASA Claims, and Priority Tax Claims shall be classified as set forth in Section II of the Plan.

A Claim or Interest shall be deemed classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and shall be deemed classified in a different Class to the extent that any remainder of the Claim or Interest qualifies within the description of such different Class. A Claim or Interest is in a particular Class only to the extent that such Claim or Interest is Allowed in that Class and has not been paid or otherwise settled before the Effective Date.

The Debtors set forth the Classes below:

C. Unclassified Claims

1. Administrative Expense Claims

There are several categories of Claims that make up the Administrative Expense Claims. These categories include Goods Claims, Fee Claims, and other Claims owed pursuant to § 503(b) of the Bankruptcy Code. The Debtor estimates that the total amount of currently unpaid Administrative Expense Claims are \$1.45 million.¹

2. PACA Claims

The Debtor estimates that the total amount of currently unpaid PACA Claims will not exceed \$330,000.00.

3. Priority Tax Claims

The Debtor estimates that the total amount of Priority Tax Claims is approximately \$150,000.00.

D. Classes of Claims

1. Class 1 - Priority Employee Claims

Priority Employee Claims shall collectively consist of any Claims against the Debtors that are entitled to priority under section 507(a)(4) of the Bankruptcy Code. The Debtor estimates that the total amount of Priority Tax Claims is \$1,300,000.00.

2. Class 2 – Secured Claims

Class 2 shall consist of all Allowed Secured Claims. Class 2 Claims include, without limitation, Claims secured by equipment in connection with equipment financings and Claims secured by mechanic's, materialmen's and artisan's liens on miscellaneous personal and/or real property. Each Class 2 Claim is treated for all purposes under the Bankruptcy Code and the Plan as a separate Class. The Debtors' primary Holder of a Secured Claim is PNC Bank, which has a lien on the vast majority of the Debtors' personal and real property.

¹ The amount of Claims for each Class, based upon Debtors' Schedules of Assets and Liabilities, are estimates for informational purposes only and have not been the subject of a final review or reconciliation and all defenses may not have been considered. All Claims that have not previously been allowed remain subject to objection pursuant to the terms of the Plan and the forgoing is not an admission by the Debtors nor shall it be binding on the Liquidating Trustee. The actual amount of Allowed Claims in certain Classes, particularly Allowed General Unsecured Claims, could differ substantially from the estimated amount depending on the resolution of Disputed Claims. Any such differences could have a material impact on the recoveries of the affected Classes.

3. **Class 3 – General Unsecured Claims Against Debtor**

Class 3 shall consist of all Allowed Unsecured Claims against Debtors (other than Class 1 Claims and Class 4 Claims). The Debtor estimates that the total amount of General Unsecured Claims is approximately \$25 million.

4. **Class 4 – Insider Claims**

Class 4 shall consist of All Insider Claims against Debtors.

5. **Class 5 – Interests**

Class 5 shall consist of all Interests in the Debtor. (This Class is conclusively presumed to have rejected the Plan and is not entitled to vote to accept or reject the Plan.)

ARTICLE VI.
Treatment of Claims and Interests

No Claim or Interest shall entitle the Holder thereof to a Distribution of Cash or to other consideration pursuant to the Plan unless, and only to the extent that, such Claim or Interest is an Allowed Claim or an Allowed Interest. Except as otherwise provided in the Plan or an order of the Bankruptcy Court, all Distributions of Cash on account of Allowed Claims and Allowed Interests shall be made on Distribution Date.

A. Treatment of Unclassified Claims

1. **Administrative Expense Claims**

a. Allowance and Payment of Fee Claims. Except as provided by prior order of the Bankruptcy Court, professionals or other entities asserting a Fee Claim must File and serve on the Debtors, the Liquidating Trustee, the Bankruptcy Administrator, and such other entities as are designated by the Bankruptcy Rules, the Confirmation Order or other Final Order of the Bankruptcy Court, an application for final allowance of compensation and reimbursement of expenses no later than thirty (30) days after the Effective Date. Such application may include fees and expenses of the applicant incurred after the Confirmation Date but prior to the Effective Date. Failure to timely and properly File an application for allowance of a Fee Claim as set forth herein shall result in such Fee Claim being forever barred and discharged. Objections to an application for allowance of a Fee Claim must be Filed and served on the Liquidating Trustee, the Bankruptcy Administrator, and the applicant no later than twenty (20) days after the Filing of the application for allowance of such Fee Claim. Unless the holder of an Allowed Fee Claim agrees to other treatment, any Allowed Fee Claim unpaid as of the Effective Date shall be paid on the Effective Date or, if later, not later than the fifteenth (15th) Business Day after such Fee Claim becomes Allowed, in Cash equal to such Allowed Fee Claim from the Available Funds or as soon as funds are available to pay such Allowed Fee Claim.

b. General Allowance Provisions for Administrative Expense Claims Other than Fee Claims. Pursuant to section 502 of the Bankruptcy Code, requests for payment of an Administrative Expense Claim, other than statutory fees and Fee Claims, arising before the

Effective Date, must be Filed and served on the Liquidating Trustee and the Bankruptcy Administrator, no later than thirty (30) days after the Effective Date; provided, however, all requests for payment of Administrative Expense Claims (except for Fee Claims) arising on or before August 31, 2012, that were not filed before the November 2, 2012 Bar Date established by the Bankruptcy Court's Order of October 1, 2012, shall be denied, barred and discharged as untimely. Each such request for payment of an Administrative Expense Claim must include, at a minimum, (i) the name of the Holder of the Claim, (ii) the amount of the Claim, (iii) the basis for the Claim, and (iv) documents evidencing or supporting the Claim. Failure to timely and properly file a request for payment of an Administrative Expense Claim as set forth herein shall result in the Administrative Expense Claim being forever barred and discharged. Objections to any such request may be made by the Debtors or any party in interest and such objections, if any, must be filed and served on the Debtors, the Bankruptcy Administrator, the Liquidating Trustee and the requesting party by the later of twenty (20) days after the Effective Date or twenty (20) days after the filing of the applicable request for payment. To the extent not paid prior to the Effective Date, these claims shall be paid on the Effective Date or, if later, no later than the fifteenth (15th) Business Day after such Claim becomes Allowed, in Cash equal to such Allowed Claim from the Available Funds or as soon as funds are available to pay such Allowed Claim.

2. Allowance and Payment of PACA/PASA Claims

a. The sole remaining unpaid Allowed PACA Claim against the Debtors is held by Kontos. Kontos shall be paid \$330,000.00 as soon as practicable after the Confirmation Date in full satisfaction of Kontos' PACA Claim.

3. Priority Tax Claims

a. Unless such Holder agrees to other treatment (in which event, such other agreement shall govern), each Holder of an Allowed Priority Tax Claim shall be paid in full in Cash from the Available Funds, to the extent funds are available, within the later of (a) thirty (30) days after all Allowed Administrative Expense Claims, and Allowed Priority Employee Claims that exist against the Debtors have received their full treatment under the Plan; or (b) if an objection is pending at such time, no later than the fifteenth (15th) Business Day after such Claim becomes Allowed, in Cash from the Available Funds. In the event funds are not available to pay Allowed Priority Tax Claims at the times set forth above, holders of Allowed Priority Tax Claims shall be paid in regular installments to be paid quarterly each year for five years from the Effective Date. Such quarterly payment shall commence on the first day of the first month that is ninety (90) days after all Allowed Administrative Expense Claims, and Allowed Priority Employee Claims have received their treatment under the Plan.

B. Treatment of Classes of Claims

1. Class 1 - Priority Employee Claims

a. Each non-Insider Employee Holder of an Allowed Priority Employee Claim shall, to the extent not already paid, be paid their Pro Rata share of \$850,000.00 in full in Cash from the Available Funds after paying Counsel to the Ad Hoc Committee of Non-Insider Employees \$200,000.00 and the costs, \$25,000.00, for Processing final Payroll and W-2's and required payroll tax returns(940, 941) and applicable state unemployment, to the extent funds are available, within the later of (i) ten (10) business days following the Effective Date; or (ii) if an objection is pending at such time, no later than the fifteenth (15th) Business Day after such Claim becomes Allowed, in Cash from the Available Funds.

b. Claims in Class 1 are impaired under the Plan. Therefore, pursuant to section 1126(a) of the Bankruptcy Code, the Holders of the Class 1 Claims are entitled to vote to accept or reject the Plan.

2. Class 2 — Allowed Secured Claims

a. Unless such Holder agrees to other treatment (in which event, such other agreement shall govern), each Holder of an Allowed Class 2 Claim shall receive the Collateral securing their Liens on, or as soon as reasonably practicable after, the Effective Date.

b. Claims in Class 2 are unimpaired under the Plan. Therefore, pursuant to section 1126(a) of the Bankruptcy Code, the Holders of the Class 2 Claims are deemed to have accepted the Plan and are not entitled to vote on the Plan.

3. Class 3 – Allowed Unsecured Claims

a. Unless such Holder agrees to other treatment (in which event, such other agreement shall govern), each Holder of an Allowed Class 3 Claim shall be paid pro rata from the Available Funds after all Allowed Administrative Expense Claims, Allowed PACA Claims and Allowed Class 1 and Class 2 Claims received the treatment they are entitled to under the Plan, to the extent funds are available and until such Claims are paid in full, after the later of (i) the Initial Distribution Date; or (ii) if an objection is pending at such time, no later than the fifteenth (15) Business Day after such Claim becomes Allowed. The Initial Distribution Date shall be in the discretion of the Liquidating Trustee, who shall make it as soon as reasonably practicable after taking into the account the status of objections to Claims, the amount of Disputed Claims, the amount of Available Funds, and the cost of making the Distribution.

b. Claims in Class 3 are impaired under the Plan. Therefore, pursuant to section 1126(a) of the Bankruptcy Code, the Holders of the Class 3 Claims are entitled to vote to accept or reject the Plan.

4. Class 4 – Allowed Insider Claims

a. Holders of Allowed Insider Claims shall receive no distribution or recovery under the Plan.

b. Pursuant to section 1126(g) of the Bankruptcy Code, a Holder of Claims in Class 4 is deemed to have rejected the Plan and is not entitled to vote to accept or reject the Plan.

5. Class 5 – Interests in Debtors

a. The Interests in the Debtors, and any instruments and other documents evidencing such Interest, shall be cancelled as of the Effective Date. The Holder of Interests in Class 5 shall not receive or retain any Distribution or other property on account of such Interest.

b. Pursuant to section 1126(g) of the Bankruptcy Code, the Holder of Interests in Class 5 is deemed to have rejected the Plan and is not entitled to vote to accept or reject the Plan.

C. Special Provisions Regarding the Allowance and Treatment of Workers Compensation Claims, Personal Injury Claims and Reservation of Rights Related to Insurance.

1. Treatment and Allowance of Workers Compensation Claims

Subject to applicable deadlines required by the state and/or bankruptcy law, Workers Compensation Claims will continue to be determined by the administrative procedures established in each state. A final, non-appealable administrative determination will result in an Allowed Workers Compensation Claim. Subject to the Reservation of Rights provision below, Holders of Allowed Workers Compensation Claims will be paid by the applicable Insurer or state entity outside of the Plan in accordance with the applicable insurance contracts and/or applicable non-bankruptcy law.

D. Effect of Confirmation

1. Full and Final Satisfaction of Claims

The treatment of Claims and Interests provided in the Plan shall be in full and final satisfaction and settlement of all liabilities of Claims against the Estate, or Interests in the Debtor. Except as provided in the Plan or the Confirmation Order, the rights afforded under the Plan will be in exchange for and in complete satisfaction, discharge and release of all Claims and liabilities against the Estate and termination of all Interests arising on or before the Effective Date, including any interest accrued after the Filing Date.

2. Injunction

EXCEPT AS OTHERWISE PROVIDED IN THIS PLAN, THE CONFIRMATION ORDER SHALL PROVIDE, AMONG OTHER THINGS, THAT FROM AND AFTER THE EFFECTIVE DATE ALL PERSONS WHO HAVE HELD, HOLD OR MAY HOLD CLAIMS AGAINST OR INTERESTS IN THE DEBTORS ARE PERMANENTLY ENJOINED FROM TAKING ANY OF THE FOLLOWING ACTIONS AGAINST THE DEBTORS OR ITS ESTATE, OR ANY OF ITS PROPERTY ON ACCOUNT OF ANY SUCH CLAIMS OR

INTERESTS: (A) COMMENCING OR CONTINUING, IN ANY MANNER OR IN ANY PLACE, ANY ACTION OR OTHER PROCEEDING; (B) ENFORCING, ATTACHING, COLLECTING OR RECOVERING IN ANY MANNER ANY JUDGMENT, AWARD, DECREE OR ORDER; (C) CREATING, PERFECTING OR ENFORCING ANY LIEN OR ENCUMBRANCE; (D) ASSERTING A SETOFF, RIGHT OF SUBROGATION OR RECOUPMENT OF ANY KIND AGAINST ANY DEBT, LIABILITY OR OBLIGATION DUE TO THE DEBTORS; AND (E) COMMENCING OR CONTINUING, IN ANY MANNER OR IN ANY PLACE, ANY ACTION THAT DOES NOT COMPLY WITH OR IS INCONSISTENT WITH THE PROVISIONS OF THIS PLAN, PROVIDED HOWEVER, THAT NOTHING CONTAINED IN THIS PLAN SHALL PRECLUDE SUCH PERSONS FROM EXERCISING THEIR RIGHTS PURSUANT TO AND CONSISTENT WITH THE TERMS OF THIS PLAN OR THE CONFIRMATION ORDER.

THE CONFIRMATION ORDER SHALL FURTHER PROVIDE THAT UPON THE EFFECTIVE DATE, WITH THE EXCEPTION OF THE LIQUIDATING TRUSTEE AND ITS PROFESSIONALS, ALL PERSONS ARE PERMANENTLY ENJOINED FROM OBTAINING ANY DOCUMENTS OR OTHER MATERIALS FROM BURR & FORMAN LLP, CURRENT COUNSEL FOR THE DEBTORS THAT IS IN THE POSSESSION OF SUCH COUNSEL AS A RESULT OF OR ARISING IN ANY WAY OUT OF THEIR REPRESENTATION OF THE DEBTORS.

3. Exculpation Clause

None of the Debtors, the Professionals retained by the Debtors or the Professionals employed by the Debtors; any of the Debtors, or their affiliates nor any of their managers, officers, directors, partners, associates, employees, members or agents (collectively, the “Exculpated Persons”), shall have or incur any liability to any person for any act taken or omission made in connection with or related to the bankruptcy case or actions taken therein, including negotiating, formulating, implementing, confirming or consummating this Plan, the Disclosure Statement, or any contract, instrument, or other agreement or document created in connection with this Plan. The Exculpated Persons shall have no liability to any Creditors or Holders of Interests for actions taken under this Plan, in connection therewith or with respect thereto in good faith, including, without limitation, failure to obtain Confirmation of this Plan or to satisfy any condition or conditions, or refusal to waive any condition or conditions, precedent to Confirmation or to the occurrence of the Effective Date. Further, the Exculpated Persons will not have or incur any liability to any holder of a Claim, holder of an Interest, or party-in-interest herein or any other Person for any act or omission in connection with or arising out of their administration of this Plan or the property to be distributed under this Plan, except for gross negligence or willful misconduct as finally determined by the Bankruptcy Court, and in all respects such person will be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under this Plan.

4. D&O Settlement Releases

For the Consideration, the Settlement Parties (which shall have the meaning as the term “Parties” in Exhibit E) mutually RELEASE, DISCHARGE, ABSOLVE, AND FOREVER ACQUIT each other from All Claims.

The Parties each agree and covenant never to bring any suit or any other action against one another concerning All Claims made the subject of the D&O Settlement, other than to enforce the D&O Settlement. The D&O Settlement may be pled in bar of any suit or action brought or taken in violation of this covenant. If any of the Parties brings suit to enforce the D&O Settlement and prevails on such grounds, it shall be entitled to recover its reasonable attorneys’ fees from the Party or Parties against whom enforcement was sought. If suit is brought against any of the Parties and the Party being sued expressly asserts the D&O Settlement as a defense to the suit and prevails on such grounds, the Party shall be entitled to recover its reasonable attorneys’ fees from the Party or Parties who brought suit.

E. Implementation of Plan

1. Appointment of Liquidating Trustee

The Liquidating Trustee shall be appointed as of the Effective Date and shall serve without a bond. In the event of the death, resignation, incapacity, disqualification, or misconduct of the Liquidating Trustee, the Bankruptcy Court shall appoint a successor. The Liquidating Trustee shall retain and have all of the rights, powers and duties necessary to carry out its responsibilities under the Plan and those rights, powers and duties shall be exercisable solely by the Liquidating Trustee. Commencing on the Confirmation Date, the Debtors shall work with the Liquidating Trustee to facilitate a smooth transition of the responsibility of the wind down of the Estate to the Liquidating Trustee, including being able to make the payments on the Effective Date that are required by the Plan.

2. Duration

The Liquidating Trustee shall continue to exist until entry of a Final Order by the Bankruptcy Court closing the Bankruptcy Case pursuant to section 350(a) of the Bankruptcy Code.

3. Exclusive Powers and Duties

The Liquidating Trustee shall serve under the Plan and shall discharge all of the rights, powers and duties set forth in the Plan. Without limiting the generality of the foregoing, the Liquidating Trustee, his successors and assigns, shall have the following exclusive rights, powers and duties:

a. The Liquidating Trustee shall serve under the Plan and shall discharge all of the rights, powers and duties set forth in the Plan. Without limiting the generality of the foregoing, the Liquidating Trustee, his successors and assigns, shall have the following exclusive rights, powers and duties:

b. all of the rights, powers, and duties of a trustee in bankruptcy, including but not limited to, those under sections 704(a)(1), (2), (4), (5) and (7) and 1106(a)(6) and (7) of the Bankruptcy Code;

c. to administer the Available Funds, pursuant to the terms of the Plan;

d. to use, acquire and dispose of property free of any restrictions imposed under the Bankruptcy Code;

e. to sell, devise or otherwise dispose of any Assets without further notice or order of the Court, except as otherwise provided in the Plan;

f. to employ, retain, and replace such persons, including actuaries, attorneys, accountants, auctioneers, brokers, managers, consultants, other professionals, agents, investigators, expert witnesses, consultants and advisors as necessary to discharge the duties of the Liquidating Trustee under the Plan and to pay the reasonable fees and costs of such employment without the need to seek approval from the Bankruptcy Court or review by any other party in interest.

g. to establish reserves and open, maintain and administer bank accounts as necessary to discharge the duties of the Liquidating Trustee under the Plan;

h. to investigate, analyze, commence, prosecute, litigate, collect and otherwise administer the Causes of Action in the Bankruptcy Court or other court of competent jurisdiction and settle same without further order of the Court or notice to creditors;

i. to voluntarily engage in arbitration or mediation with respect to any Causes of Action;

j. to represent the Estate before the Bankruptcy Court and other courts of competent jurisdiction with respect to all matters;

k. to seek the examination of and production of documents from any entity under and subject to the provisions of Bankruptcy Rule 2004;

l. to pay any fees due and owing under 28 U.S.C. § 1930;

m. to comply with applicable orders of the Bankruptcy Court and any other court of competent jurisdiction over the matters set forth herein;

n. to comply with all applicable laws and regulations concerning the matters set forth herein;

o. to invest the Available Funds in (a) direct obligations of the United States of America or obligations of any agency or instrumentality thereof which are guaranteed by the full faith and credit of the United States of America, (b) in money market deposit accounts, checking accounts, savings accounts or certificates of deposit, or other time deposit

accounts that are issued by a commercial bank or savings institution organized under the laws of the United States of America or any state thereof, or (c) or any other investments that may be permissible under section 345 of the Bankruptcy Code or order of the Bankruptcy Court;

p. to exercise such other powers as may be vested in the Liquidating Trustee pursuant to the Plan, the Confirmation Order or other Final Orders of the Bankruptcy Court;

q. to execute any documents, instruments, contracts and agreements necessary and appropriate to carry out the powers and duties of the Liquidating Trustee.

4. Fees and Expenses

a. The Liquidating Trustee shall be reimbursed for all out of pocket fees, costs, and expenses in acting under the Plan. The compensation of the Liquidating Trustee shall be determined and disclosed to the Bankruptcy Court at least three (3) business days prior to the Disclosure Statement Hearing. Compensation of the Liquidating Trustee and the costs and expenses of the Liquidating Trustee (including, without limitation, professional fees and expenses) shall be paid from the Available Funds. Without limitation of the foregoing, the Liquidating Trustee shall pay, without further order, notice or application to the Bankruptcy Court, the reasonable fees and expenses of the Liquidating Trustee and the Liquidating Trustee's professionals, as necessary to discharge the Liquidating Trustee's duties under the Plan. The payment of fees and expenses of the Liquidating Trustee shall be from Available Funds, be made in the ordinary course of business and shall not be subject to the prior approval of the Bankruptcy Court.

5. Compromising Disputed Claims, Liens, and Causes of Action

The Liquidating Trustee is authorized to: (i) compromise and settle any Causes of Action, Liens, and Disputed Claims; and (ii) execute necessary documents, including, but not limited to, a stipulation of settlement or release, without notice or further order of the Bankruptcy Court or notice to any party in interest.

6. Liquidation of Assets

Notwithstanding any other provision of the Plan, on the Effective Date or as soon as practicable thereafter, the Liquidating Trustee (without further motion, notice or order of the Bankruptcy Court, subject to the terms of the Plan), shall liquidate the Trust Assets on the terms and conditions set forth in the Plan and distribute the Net Proceeds thereof in accordance with the Plan.

7. Distributions

The Liquidating Trustee shall liquidate the Trust Assets of the Debtors in accordance with the Plan and shall distribute the Net Proceeds thereof as follows: (a) first to pay the reasonable costs and expenses of the Liquidating Trustee and his professionals (including professional fees) incurred in administering, maintaining, and preserving the Available Funds and the liquidation of the Assets of the Debtors (to the extent not otherwise paid pursuant to the

Plan); and (b) second Pro Rata to the Holders of Allowed Claims on the terms and conditions, and in the priority, set forth in the Plan.

8. Retention and Enforcement of Claims and Causes of Action of the Estate

Unless expressly and unequivocally released in the Plan, nothing contained in the Plan shall be deemed to be a waiver or relinquishment or release of any Causes of Action that the Liquidating Trustee may choose to assert on behalf of the Estate under any provision of the Bankruptcy Code or any applicable non-bankruptcy law. All Causes of Action, cross-claims, setoffs, defenses and counterclaims of the Debtors or the Estate of any kind or nature whatsoever including, without limitation, those against third parties arising before the Effective Date that have not been disposed of prior to the Effective Date shall be preserved and retained for enforcement by the Liquidating Trustee for the benefit of the Estate as set forth in the Plan, except to the extent expressly and unequivocally released or enjoined by the Plan or pursuant to a Final Order. Without limitation of the foregoing, pursuant to section 1123(b) of the Bankruptcy Code, the Liquidating Trustee, and his successors and assigns, shall retain and is solely empowered and authorized to enforce, for the benefit of the Estate, all Causes of Action and related recoveries of any nature or type whatsoever, at law or in equity, against any Person or entity.

Furthermore, except as specifically released or enjoined by the Plan or pursuant to a Final Order, the Liquidating Trustee is retaining for enforcement for the benefit of the Estate all Avoidance Actions, including, but not limited to, against the following Persons or entities: (a) any Person or entity who received a payment or property from the Debtors to or for their benefit on account of an antecedent debt owed by the Debtors within ninety (90) days of the Filing Date, including, but not limited to, those persons or entities identified in response to Question 3(a) on Debtors' Statement of Financial Affairs Filed with the Bankruptcy Court; (b) any insider of the Debtors, as that term is defined by the Bankruptcy Code, who received a payment or transfer of property from the Debtors to or for their benefit on account of an antecedent debt owed by the Debtors within one year of the Filing Date; (c) any Person or entity who received a transfer of property from the Debtors or from whom the Debtors assumed an obligation within two years of the Filing Date; (d) Frost Cummings Tidwell Group LLC and its agents, employees, officers, directors, attorneys, shareholders, legal representatives, insurers, successors and assigns, parent and all affiliate companies, firms, principals, members, stakeholders, investors and/or entities affiliated with Frost Cummings Tidwell Group LLC, including, without limitation, all indirect and direct parent and/or subsidiary corporations and affiliate entities and all other entities or persons who may be liable for Frost Cummings Tidwell Group LLC's conduct; (e) BP and its agents, employees, officers, directors, attorneys, shareholders, legal representatives, insurers, successors and assigns, parent and all affiliate companies, firms, principals, members, stakeholders, investors and/or entities affiliated with BP, including, without limitation, all indirect and direct parent and/or subsidiary corporations and affiliate entities and all other entities or persons who may be liable for BP's conduct; and (f) Transocean, Ltd. and its agents, employees, officers, directors, attorneys, shareholders, legal representatives, insurers, successors and assigns, parent and all affiliate companies, firms, principals, members, stakeholders, investors and/or entities affiliated with Transocean, Ltd., including, without limitation, all indirect and direct parent and/or subsidiary corporations and affiliate entities and all other

entities or persons who may be liable for Transocean, Ltd.'s conduct. Regardless of whether or not a Person or entity is identified as a recipient of a payment or other transfer of property from the Debtors or the transferor of obligation to the Debtors in the Debtors' Statement of Financial Affairs Filed with the Bankruptcy Court, all Avoidance Actions against any Persons or entities shall be reserved and retained for enforcement by the Liquidating Trustee, for the benefit of the Estate.

Upon the Effective Date, the Liquidating Trustee shall automatically be substituted in as the Plaintiff in any action in which the Debtors was the Plaintiff, and as the party in interest with respect to any proof of claim filed by the Debtors.

Nothing in the Plan prejudices any party's positions with respect to jurisdictional, substantive, and procedural issues pertaining to the Causes of Action and other claims described in this paragraph.

ARTICLE VII.

Claims Resolutions and Distributions

A. Procedure for Determination of Claims

1. **Objections to Claims.** After the Effective Date, the Liquidating Trustee shall have exclusive authority and responsibility to prosecute objections to all Claims.

2. **Disputed Claims.** Payments or Distributions under the Plan on account of Disputed Claims shall be held in reserve pending the Allowance or disallowance of the Claim. To the extent any property is distributed to an entity on account of a Claim that is not an Allowed Claim, such property shall promptly be returned to the Liquidating Trustee. To the extent that a Disputed Claim ultimately becomes an Allowed Claim, Distributions on account of such Allowed Claim shall be made in accordance with the provisions of the Plan. On the Distribution Date next following the date that the order or judgment of the Bankruptcy Court allowing such Claim becomes a Final Order, any Cash held in reserve pursuant to the Plan that would have been distributed prior to the date on which a Disputed Claim becomes an Allowed Claim shall be distributed to the Holder of such Allowed Claim, together with any other Distributions that would have been due on account of such Claim being an Allowed Claim. The Liquidating Trustee shall reserve from any Distribution on account of Allowed Claims any amount otherwise allocable to a Claim that is a Disputed Claim pursuant to Section VII.B.8 of the Plan.

B. Distributions

1. Distributions on Allowed Claims

Except as otherwise provided herein, Distributions to Holders of Allowed Claims shall be made: (a) at the addresses set forth on the respective proofs of claim Filed by such Holders; (b) at the addresses set forth in any written notice of address change delivered to the Debtors, or the Liquidating Trustee, as applicable, after the date of the Filing of any related proof of claim; or (c) at the address reflected in the Schedules or the Debtors' books and records if no proof of claim has been Filed and if the Debtors or the Liquidating Trustee, as applicable, has not received written notice of a change of address, as set forth herein. The Distributions to Holders of

Allowed Claims shall be on the Initial Distribution Date and the subsequent Distribution Dates on the terms and conditions of the Plan. Notwithstanding any other provision of the paragraph, all Distributions to Holders of Claims shall be subject to the provisions of the Plan concerning reserves for Disputed Claims.

2. Undeliverable Distributions

If a Distribution is returned as undeliverable, the Liquidating Trustee shall hold such Distribution and shall not be required to take any further action with respect to the delivery of the Distribution unless and until the earlier of (a) the date on which the Liquidating Trustee, as applicable, is notified in writing of the then current address of the holder entitled to receive the Distribution and (b) three (3) months after said Distribution, except as the Bankruptcy Court may otherwise order. If the Liquidating Trustee is notified in writing of the then current address of the holder before three (3) months after said Distribution, the Liquidating Trustee shall make the Distribution required by the Plan to the Holder at such address. If the Liquidating Trustee is not so notified by three (3) months after said Distribution, and the Holder of the Claim does not assert a right to the undeliverable Distribution within three (3) months after the Distribution, the Holder shall be forever barred from asserting a Claim to such undeliverable Distribution and such future Distributions, and the undeliverable Distribution shall become available for Distribution to Holders of other Allowed Claims as provided in the Plan.

3. Manner of Payment

Distributions under the Plan may be made, at the option of the Liquidating Trustee, in Cash, by wire transfer or by check drawn on such accounts established by the Liquidating Trustee as necessary to effectuate the Plan.

4. Interest

Unless otherwise required by Final Order of the Bankruptcy Court, interest shall not accrue or be paid after the Filing Date on any Claims, and no Holder of a Claim shall be entitled to interest accruing on or after the Filing Date on any Claim.

5. *De Minimis* Distributions

Whenever any payment of a fraction of a cent would otherwise be called for, the actual payment shall reflect a rounding of such fraction to the nearest whole cent.

a. No interim Distribution will be made on account of any Allowed Claim if the amount of such Distribution is less than \$25.00.

b. No interim Distribution will be made on account of any Allowed Claim if the amount of such Distribution is less than \$25.00. On the Final Distribution Date, the Liquidating Trustee shall (i) aggregate the amount of all Distributions that would have been made on account of an Allowed Claim in Class Three but for this de minimis provision and (ii) make a Distribution on account of such Allowed Claim in accordance with the Plan.

6. Distributions on Claims Allowed Pursuant to Section 502(h) of the Bankruptcy Code

Except as otherwise provided in the Plan, no Distributions shall be made on account of a Claim arising as a result of a Final Order entered in an Avoidance Action until such Claim becomes an Allowed Claim. Any Claim that is Allowed pursuant to § 502(h) of the Bankruptcy Code prior to the Initial Distribution Date as a result of the entry of a Final Order in any Avoidance Action will be treated in accordance with the provisions of the Plan. All Holders of such Claims that become Allowed Claims after the Initial Distribution Date will receive an initial Distribution on the Distribution Date next following the date on which their Claim becomes an Allowed Claim and shall receive subsequent Distributions, if any, in accordance with the provisions of the Plan. Distributions under the Plan on account of anticipated Claims that may arise or become allowable as a result of the entry of a Final Order in any Avoidance Action that are not Allowed Claims as of the Initial Distribution Date may be held in reserve, at the discretion of the Liquidating Trustee, pending the allowance or disallowance of such Claims.

7. Compliance with Tax Requirements

In compliance with section 346 of the Bankruptcy Code, to the extent applicable, the Liquidating Trustee shall comply with all withholding and reporting requirements imposed by federal, state or local taxing authorities in connection with making Distributions pursuant to the Plan and shall be authorized to take any and all action necessary and appropriate to comply with such requirements. As a condition to making any Distribution under the Plan, the Liquidating Trustee may require the Holder of an Allowed Claim to provide such Holder's taxpayer identification number, and such other information, certification or forms as necessary to comply with applicable tax reporting and withholding laws. Notwithstanding any other provision of the Plan, each entity receiving a Distribution of Cash pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of tax obligations imposed by any governmental unit, including income, withholding and other tax obligations, on account of such Distribution.

8. Reserve for Disputed Claims

Except as otherwise provided in the Plan, no Distributions shall be made on account of a Disputed Claim until such Claim becomes an Allowed Claim. In making any Distribution on Allowed Class 1 or Class 3 Claims, the Liquidating Trustee shall calculate the amount of such Distribution (for purposes of making a Pro Rata calculation) as if each Disputed Claim were an Allowed Claim, unless the Bankruptcy Court enters an order specifying that the Disputed Claim should be treated as being a different amount for purposes of such calculation. The Liquidating Trustee shall reserve from Distributions a sufficient amount to make a Distribution on a Disputed Claim in the event it becomes an Allowed Claim (unless the Bankruptcy Court orders otherwise); and to the extent a Disputed Claim is disallowed pursuant to a Final Order, any reserves attributable to the disallowed portion of the Disputed Claim shall be distributed on account of Allowed Claims pursuant to the terms of the Plan.

9. Setoffs

Subject to section 553 of the Bankruptcy Code, in the event the Debtors have a Claim or Cause of Action of any nature whatsoever against a Holder of a Claim, the Liquidating Trustee may, but is not required to, set off or recoup the Debtors' Claim or Cause of Action against such Claim (and any Distributions or other rights to receive property arising out of such Claim under this Plan) unless any such Claim or Cause of Action of the Debtors are or will be released under this Plan. Neither the failure to set off nor the allowance of any Claim under this Plan shall constitute a waiver or release of any Claim or Cause of Action of the Debtors.

10. Reliance on Claims Register

In making Distributions under this Plan, the Liquidating Trustee may rely upon the accuracy of the claims register maintained by the Bankruptcy Court or its designee as claims agent in the Case, as modified by any Final Order of the Bankruptcy Court disallowing Claims in whole or in part.

ARTICLE VIII. **Other Provisions of the Plan**

A. Treatment of Executory Contracts and Unexpired Leases

Pursuant to section 1123(b)(2) of the Bankruptcy Code, all executory contracts and unexpired leases to which the Debtors are or were a party and not previously rejected or assumed and assigned pursuant to prior order of the Bankruptcy Court, are deemed rejected pursuant to section 365(a) of the Bankruptcy Code as of the Confirmation Date.

Each party to an executory contract or unexpired lease rejected pursuant to this Plan (and only such entities) asserting a Claim for damages arising from such rejection shall File, not later than thirty (30) days following the Confirmation Date, a proof of such Claim; provided, however, that (1) the Bar Date established for rejection damages claims in this Section IV of this Plan shall not apply to Persons that may assert a Claim on account of an executory contract or unexpired lease that was rejected by the Debtors before the Confirmation Date for which a prior Bar Date was established; and (2) any Person asserting a claim for rejection damages that does not timely File a proof of claim in accordance with this Plan shall be forever enjoined and barred from asserting such Claim against the Debtors, the Estate or any property of the Estate.

B. Effective Date

The Plan will not become effective and operative unless and until the Effective Date occurs. The Effective Date will occur on the first Business Day after, and only after (a) the Confirmation Order has been entered and becomes a Final Order, and provides that the Liquidating Trustee is authorized and directed to take all actions necessary or appropriate to enter into, implement and consummate the contracts, instruments, releases, leases, indentures and other agreements or documents created in connection with the Plan or effectuate, advance or further the purposes thereof; (b) all Plan Exhibits shall be, in form and substance, reasonably acceptable to the Debtor and shall have been executed and delivered by all parties' signatory thereto; (c) the Liquidating Trustee shall be authorized and directed to take all actions necessary

or appropriate to enter into, implement and consummate the contracts, instruments, releases, leases, indentures and the agreements or documents created in connection with the Plan; (d) all other actions, documents, and agreements necessary to implement the Plan shall have been effected or executed; (e) Available Funds shall be sufficient to make all required payments on the Effective Date and fund a reserve for such payments if not Allowed as of the Effective Date; and (f) all of the Consideration under the D&O Settlement shall have been paid, all assignments shall have occurred and PNC Bank shall released its lien on accounts receivable of the Debtors.

Each of the conditions precedent to the Effective Date as set forth in Section V of the Plan may be waived in whole or in part by the Debtor. The failure of a party to exercise any of the foregoing rights shall not be deemed a waiver of any other rights, and each such right shall be deemed an ongoing right that may be asserted at any time.

C. Consequences Of Non-Occurrence Of Effective Date

In the event that the Effective Date does not timely occur, the Debtors reserve all rights to seek an order from the Bankruptcy Court directing that the Confirmation Order be vacated, that this Plan be null and void in all respects, and/or that any settlement of Claims provided for in this Plan be null and void. In the event that the Bankruptcy Court shall enter an order vacating the Confirmation Order, the time within which the Debtors may assume and assign, or reject all executory contracts and unexpired leases not previously assumed, assumed and assigned, or rejected, shall be extended for a period of thirty (30) days after the date the Confirmation Order is vacated, without prejudice to further extensions.

D. Retention of Jurisdiction

Under the Plan, following the Effective Date, the Bankruptcy Court shall retain such jurisdiction as is set forth in the Plan. Without limitation, the Bankruptcy Court shall retain jurisdiction for the following purposes:

1. Allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Interest, including the resolution of any request for payment of any Administrative Expense Claim, the resolution of any objections to the Allowance or priority of Claims or Interests and the determination of requests for the payment of claims entitled to priority under section 507(a)(1) of the Bankruptcy Code, including compensation of any reimbursement of expenses of parties entitled thereto;
2. Hear and determine all applications for compensation and reimbursement of expenses of professionals under this Plan or under sections 330, 331, 503(b), 1103, and 1129(a)(4) of the Bankruptcy Code;
3. Hear and determine all matters with respect to the assumption or rejection of any executory contract or unexpired lease to which the Debtors are a party or with respect to which the Debtors may be liable, and to hear, determine and, if necessary, liquidate any Claims arising therefrom;
4. Effectuate performance of and payments under the provisions of this Plan;

5. Hear and determine any and all adversary proceedings, motions, applications and contested or litigated matters arising out of, under or related to the Case or this Plan;

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

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

8. Consider any modifications of this Plan and any implementing documents, cure any defect or omission or reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;

9. Issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any entity with implementation, consummation, or enforcement of this Plan or the Confirmation Order;

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

11. Hear and determine any matters arising in connection with or relating to this Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document created in connection with this Plan, the Disclosure Statement or the Confirmation Order;

12. Enforce all orders, judgments, injunctions, releases, exculpations, indemnifications and rulings entered in connection with the Case;

13. Except as otherwise limited by this Plan, recover all assets of the Debtors and property of the Estate, wherever located;

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

15. Hear and determine all matters related to the property of the Estate from and after the Confirmation Date;

16. Hear and determine the Causes of Action, unless the Liquidating Trustee determines, in his sole discretion, to commence an action or proceeding in another court of competent jurisdiction;

17. Hear and determine all disputes involving the existence, nature or scope of the injunctions indemnification, exculpation and releases granted pursuant to this Plan.

18. Hear and determine all disputes or other matters arising in connection with the interpretation, implementation or enforcement of the Asset Sales;

19. Hear and determine all matters related to (a) the property of the Estate from and after the Confirmation Date, (b) the winding up of the Estate, and (c) the activities of the Liquidating Trustee, including (i) challenges to or approvals of his activities, where required under this Plan, (ii) the resignation, incapacity or removal of the Liquidating Trustee, (iii) reporting by, termination of and accounting by the Liquidating Trustee, and (iv) release of the Liquidating Trustee from his duties;

20. Hear and determine disputes with respect to compensation of professionals;

21. Hear and determine all disputes involving the existence, nature and/or scope of the injunctions and releases provided by this Plan including any dispute relating to any liability arising out of any termination of employment or the termination of any employee or retiree benefit provision, regardless of whether such termination occurred prior to or after the Effective Date;

22. Hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under, or not inconsistent with, provision of the Bankruptcy Code;

23. Enforce all orders previously entered by the Bankruptcy Court; and

24. Enter a final decree closing the Case.

E. Modifications and Amendments

The Debtors may alter, amend or modify this Plan pursuant to section 1127(a) of the Bankruptcy Code at any time prior to the Confirmation Date. After Confirmation Date and prior to the substantial consummation of this Plan, as defined in section 1101(2) of the Bankruptcy Code, this Plan Proponent may, pursuant to section 1127(b) of the Bankruptcy Code, institute proceedings in Bankruptcy Court to remedy any defect or omission or to reconcile any inconsistencies in this Plan, the Disclosure Statement or the Confirmation Order and any other matters as may be necessary to carry out the purposes and effects of this Plan; so long as such proceedings do not adversely affect the treatment of Holders of Claims or provided, however, that prior notice of such proceedings shall be served in accordance with Bankruptcy Rule 2002 or order of the Bankruptcy Court.

F. Disclosure Statement Supplement

Exhibits to this Plan not attached hereto shall be filed in one or more Supplements by the Exhibit Filing Date. Any Supplement (and amendments thereto) filed by the Debtors shall be deemed an integral part of this Disclosure Statement and shall be incorporated by reference as if fully set forth herein. Substantially contemporaneously with its Filing, any Supplement may be viewed at the office of the clerk of the Court or its designee during normal business hours, by visiting the Court's website at ecf.alnb.uscourts.gov (PACER account required). Holders of Claims and/or Interests may obtain a copy of any Plan Supplement upon written request to the Debtors. The documents contained in any Supplement shall be approved by the Bankruptcy

Court pursuant to the Confirmation Order. To the extent any Exhibit is inconsistent with the terms of this Disclosure Statement, unless otherwise ordered by the Bankruptcy Court, the non-Exhibit portion of this Disclosure Statement shall control.

ARTICLE IX.
PLAN CONFIRMATION PROCESS

Under the Bankruptcy Code, the following steps must be taken to confirm the Plan:

A. Acceptance Of Plan By Voting

1. Approval of Third Amended Disclosure Statement

After notice and a hearing held on _____ by order dated _____ pursuant to Bankruptcy Code § 1125, the Bankruptcy Court approved this Disclosure Statement as containing information of a kind, and in sufficient detail, that would enable a hypothetical reasonable investor typical of holders of Claims to make an informed judgment whether to accept or reject the Plan. The Bankruptcy Court's approval of this Third Amended Disclosure Statement, however, does not constitute a determination by the Bankruptcy Court as to the fairness or merits of the Plan.

Each holder of a Class 1 Claim and Class 3 Claim is entitled to vote on the Plan and should carefully read this Disclosure Statement and the Plan in their entirety before voting on the Plan.

2. Voting on the Plan

Pursuant to Bankruptcy Code § 1126, holders of Allowed Claims may vote to accept or reject the Plan, provided, however, that (i) the holders of Claims in classes that are not impaired under the Plan conclusively are presumed to have accepted the Plan and solicitation of acceptances with respect to such classes is not required, and (ii) a class is deemed not to have accepted the Plan if the Plan provides that the Claims or Interests in such class do not entitle the holders of such Claims or Interests to receive or retain any property under the Plan on account of such Claims or Interests. Accordingly, the Debtor is soliciting acceptance of the Plan only from holders of Claims in Classes 1 and 3 which are "impaired" under the Plan and are entitled to accept or reject the Plan.

Because holders of Interests in Class 4 shall not receive or retain any Distribution or other property on account of such Interests, they are deemed to have rejected the Plan and are not entitled to vote to accept or reject the Plan.

3. Deadline for Voting

After reviewing the Plan and the Exhibits hereto, please indicate your vote on the enclosed Ballot and return it either by overnight courier or regular mail to the Voting Agent at the address specified in the Ballot and below. Holders of Claims in Classes entitled to vote should read the Ballot carefully and follow the instructions contained therein. **BALLOTS**

SUBMITTED TO THE VOTING AGENT BY FAX OR OTHER ELECTRONIC TRANSMISSION WILL NOT BE ACCEPTED AND WILL BE VOID.

Holders of Claims in Classes 1 and 3 should complete and sign the enclosed Ballot and deliver it to the Debtors at the following address:

**Sharidan Hollis
BURR & FORMAN LLP
420 North 20th Street, Suite 3400
Birmingham, Alabama 35283-0719**

FOR YOUR VOTE TO COUNT, YOUR BALLOT MUST BE RECEIVED BY THE VOTING AGENT DESIGNATED ABOVE AT THE SPECIFIED ADDRESS NO LATER THAN 5:00 P.M. PREVAILING CENTRAL TIME ON _____ (THE "VOTING DEADLINE").

IF YOU MUST RETURN YOUR BALLOT TO A TRUSTEE, BANK, BROKER, AGENT OR SIMILAR ENTITY, YOU MUST RETURN YOUR BALLOT TO IT IN SUFFICIENT TIME FOR IT TO PROCESS THE BALLOT AND RETURN IT TO THE VOTING AGENT BY THE VOTING DEADLINE.

To obtain additional Ballots, you may contact the Debtors at the addresses specified above or at Shollis@burr.com .

The Plan Proponent has concluded that confirmation of the Plan is in the best interest of the Debtor, all Holders of Claims and the Debtors' Estate.

B. Confirmation

At the Confirmation Hearing, the Bankruptcy Court shall confirm the Plan if the Plan satisfies all requirements of Bankruptcy Code § 1129(a). The requirements for confirmation of the Plan under Bankruptcy Code § 1129(a) include the following: (1) the Plan must be accepted by all impaired classes, (2) the Plan must be feasible, and (3) with respect to each holder of a Claim or Interest that does not vote to accept the Plan (even if such holder is a member of a Class that as a whole votes to accept the Plan), the Plan must be in the "best interest" of such holder in that the Plan provides for a Distribution to the holder that is not less than the amount such holder would receive in a hypothetical Chapter 7 liquidation of the Debtor.

With respect to the requirement that each impaired class votes to accept the Plan, Bankruptcy Code § 1129(b) provides that if all other requirements of Bankruptcy Code § 1129(a) are satisfied, the Plan still may be confirmed if the Plan, with respect to each impaired class that does not accept the Plan, "does not discriminate unfairly" and is "fair and equitable" with respect to such Class. The acceptance, feasibility, unfair discrimination and fair and equitable concepts are discussed in more detail below.

For the Plan to be accepted by an impaired class of Claims or Interest, it must be accepted by holders of Claims or Interest in such Class that hold at least two-thirds in dollar amount and one-half in number of the Claims or Interest in such Class held by creditors that actually vote. A

Class or Interest is impaired if the legal, equitable, or contractual rights of the members of such Class or Interest are modified or altered by the Plan (with an exception, not applicable to the Plan, for curing defaults, reinstating maturity and compensating certain damages). Holders of Claims in Class 1 and Class 3 are impaired. Unimpaired Classes are conclusively presumed to have accepted the Plan and are not part of the vote solicitation process. Class 2 is unimpaired under the Plan and is not entitled to vote.

If all Classes of Claims are unimpaired but a Class of Interests is impaired and does not accept the Plan, the Debtor may seek confirmation of the Plan under the "cramdown" provisions of Bankruptcy Code § 1129(b). To obtain confirmation despite non-acceptance by one or more impaired classes, the Debtor must show to the Bankruptcy Court that the Plan does not discriminate unfairly and is fair and equitable with respect to each such Class. Each of these requirements is discussed further, as follows:

1. Unfair Discrimination

A Plan does not discriminate unfairly with respect to a non-accepting Class if it protects the rights of such Class in a manner consistent with the treatment of other Classes with similar rights. The unfair discrimination test does not require that similarly situated Classes be treated in exactly the same way. The test requires that such Classes be treated substantially similarly or, if not treated substantially similarly, that differences in treatment be fair.

2. Fair And Equitable Test

In the event any impaired class of Claimants does not accept the Plan, the Debtor must demonstrate to the Bankruptcy Court, as to each nonaccepting Class that the Plan "does not discriminate unfairly" and is "fair and equitable" with respect to that Class. A Plan does not discriminate unfairly if no Class receives more than it is entitled to for its Claims. The Bankruptcy Code establishes "fair and equitable" tests for unsecured creditors as follows:

Unsecured Creditors: Either (i) each impaired unsecured creditor receives or retains under the Plan property of a value equal to the amount of its Allowed Claim, or (ii) the holders of Claims that are junior to the Claims of the dissenting Class will not receive any property under the Plan.

C. Best Interest Test

Before the Bankruptcy Court will confirm the Plan, the Plan must meet the best interest test. The best interest test requires that with respect to each impaired class of creditors under the Plan, each Claimant either (a) has accepted the Plan; or (b) will receive or retain under the Plan on account of its Claim property of a value, as of the Effective Date of the Plan, that is not less than the amount such Claimant would receive or retain if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code. In other words, if one or more Claimants that are members of an impaired class vote to reject the Plan, the Bankruptcy Court will confirm the Plan only if the Distribution to such Claimants under the Plan is not less than the Distribution that the Claimants would receive under a Chapter 7 liquidation of the Debtor.

Based upon several factors present in the Debtors' Bankruptcy Case, the Debtor believes that the Plan meets the best interest test. Considering the liquidation value of the Debtors' assets, the Liens and security interests of secured creditors, the cost of liquidation under Chapter 7, and the adverse impact that a liquidation under Chapter 7 would have on the going concern value of the Debtors' assets, the Debtor believes that the Plan provides for a larger Distribution to individual unsecured creditors than under a Chapter 7 liquidation of the Debtor.

To determine if the Plan is in the best interest of each impaired class, the Bankruptcy Court will compare the present value of the Distributions from the proceeds of the liquidation of the Debtors' assets and properties (after subtracting the amounts attributable to the Secured Claims discussed above) with the present value offered to each of the Classes of Unsecured Claims under the Plan. The Distributions from the liquidation proceeds would be calculated Pro Rata according to the amount of the Claim held by each creditor.

After considering the effects that a Chapter 7 liquidation would have on the ultimate proceeds available for Distribution to creditors in the present case, including the costs and expenses of liquidation under Chapter 7, the uncertainties inherent in a Chapter 7, and the adverse affect that a Chapter 7 would have on the value of certain of the Debtors' assets, the Debtor has determined that a Chapter 7 liquidation would not pay creditors in full. Debtor believes the value of any Distribution from the liquidation proceeds in a Chapter 7 would be less than the value of the Distribution under the Plan due to efficiencies provided by having a Liquidating Trustee.

Based on the foregoing analysis and given the elimination of uncertainties inherent under Chapter 7, the Debtor believes the confirmation of the Chapter 11 Plan will provide each Claimant with greater recovery than such Claimant would receive pursuant to a liquidation of the Debtor under Chapter 7 of the Bankruptcy Code. Accordingly, the Debtor submits that the Plan meets the best interest test.

D. Acceptance

Each impaired class of Claimants must accept the Plan or the "Fair and Equitable Test" described above must be met with respect to each impaired class that does not accept the Plan by the requisite vote.

E. Consummation

The Plan provides that the Plan shall be deemed to be substantially consummated when the Liquidating Trustee makes the Final Distribution.

The Plan is to be implemented pursuant to the provisions of the Bankruptcy Code. Implementation requires an order of the Bankruptcy Court confirming the Plan.

ARTICLE X.
ALTERNATIVES TO CONFIRMATION OF THE PLAN

If the Plan is not confirmed and consummated, the theoretical alternatives include: (a) liquidation of the Debtor under Chapter 7 of the Bankruptcy Code; or (b) an alternative plan of reorganization.

A. Liquidation Under Chapter 7

If the Bankruptcy Court does not confirm a plan of reorganization, the Bankruptcy Court may convert the Debtors' case to a case under Chapter 7 of the Bankruptcy Code. Under Chapter 7, a trustee would be elected or appointed to liquidate the assets of the Debtor for Distribution to creditors in accordance with the priorities established by the Bankruptcy Code. Without limitation, secured and priority Claims would be paid in full before any Distribution to general unsecured creditors. The Debtor believes that liquidation of the Debtors' assets under Chapter 7 would result in fewer Distributions to unsecured creditors than under the Plan. This is especially true since the Plan effectuates and approves the D&O Settlement. Additionally, having one Liquidating Trustee oversee the liquidating of the Debtors' assets through the structure provided by the Plan will provide efficiency to the process.

A liquidation analysis of the Debtors is attached to the Debtors' Plan as Exhibit B.

B. Alternative Plan of Reorganization

If the Plan is not confirmed, creditors may elect to vote for other plans which may be proposed later. However, given the liquidating of the Debtors' stores and the status of the economy, Debtor does not believe that it can effectively reorganize under any plan not involving the complete liquidation of the Debtors' assets.

ARTICLE XI.
RECOMMENDATION

The Debtors believe that the confirmation and implementation of the Plan is preferable to the alternative described above because the Plan will provide greater recoveries to all claimants than those available in a Chapter 7 liquidation. In addition, any other alternative plan would probably not be feasible and would involve significant delay, uncertainty, and substantial additional administration. Accordingly, the Debtors recommend that all parties entitled to vote on the Plan accept the Plan and that the Bankruptcy Court confirm the Plan.

Dated: January 14, 2013

Respectfully submitted,

/s/Marc P. Solomon
D. Christopher Carson
Marc P. Solomon
Brent Dorner

BURR & FORMAN LLP

420 North 20th Street, Suite 3400
Birmingham, Alabama 35283-0719

Phone: (205) 251-3000

Facsimile: (205) 458-5100

Attorneys for Debtors

Exhibit A - DEBTORS' JOINT CHAPTER 11 OF LIQUIDATION

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

In re:)	Chapter 11
)	
ADAMS PRODUCE COMPANY, LLC)	Case No. 12-02036-TOM-11
AND ADAMS CLINTON BUSINESS)	Jointly Administered
PARK, LLC)	
)	
Debtors.)	

DEBTORS' JOINT CHAPTER 11 PLAN OF LIQUIDATION

D. Christopher Carson
Marc P. Solomon
Brent W. Dorner
BURR & FORMAN LLP
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Telephone: (205) 251-3000
Facsimile: (205) 458-5100

Counsel for Debtors and Debtors-in-Possession

January 14, 2013

INTRODUCTION

Adams Produce Company, LLC and Adam Clinton Business Park, LLC (“Adams” or the “Debtors”) hereby propose this Joint Chapter 11 Plan of Liquidation (the “Plan”) to resolve claims against and interests in the Debtors. The Debtors are the proponent of this Plan within the meaning of section 1129 of the United States Bankruptcy Code, as amended (“Bankruptcy Code”).

This is a liquidating plan. Substantially all of the Debtors’ assets have been sold. This Plan provides for the liquidation and conversion to Cash of the Debtors’ remaining Assets and the Distribution of the net proceeds realized therefrom by a Liquidating Trustee to the Debtors’ Creditors holding Allowed Claims in accordance with the provisions established by the Bankruptcy Code. This Plan further provides for the dissolution and wind up of the affairs of the Debtors.

Additionally, this Plan effectuates a settlement between the Debtors, certain of the Debtors’ directors and officers, PNC Bank and other parties.

For a discussion of the Debtors’ history, businesses, operations, assets and financial information, and for a summary and analysis of this Plan, all parties entitled to vote on this Plan should consult the Disclosure Statement accompanying this Plan, including the Exhibits thereto (the “Disclosure Statement”).

No solicitation materials other than the Disclosure Statement and related materials transmitted therewith have been approved for use in soliciting acceptances and rejections of this Plan. Nothing in this Plan should be construed as constituting a solicitation of acceptances of this Plan unless and until the Disclosure Statement has been approved and distributed to all holders of Claims and Interests to the extent required by 11 U.S.C. § 1125.

NO CREDITOR OR OTHER PARTY IN INTEREST SHOULD
CONSIDER THIS PLAN BINDING ON ANY PARTY IN THE
ABOVE-CAPTIONED CASES UNTIL CONFIRMED, AS THIS
PLAN IS SUBJECT TO AMENDMENT AND MAY BE
REVISED. NO ASSURANCE CAN BE GIVEN THAT ANY
DISTRIBUTION WILL BE MADE ON THE TERMS SET
FORTH IN THIS PLAN.

All holders of Claims entitled to vote on this Plan are encouraged to read carefully the Disclosure Statement and this Plan, each in its entirety, before voting to accept or reject this Plan.

Section I.

DEFINITIONS AND RULES OF INTERPRETATION

A. DEFINITIONS.

FOR PURPOSES OF THIS PLAN, EXCEPT AS EXPRESSLY PROVIDED HEREIN OR UNLESS THE CONTEXT OTHERWISE REQUIRES, ALL CAPITALIZED TERMS NOT

OTHERWISE DEFINED SHALL HAVE THE MEANINGS ASCRIBED TO THEM IN SECTION 1 OF THIS PLAN OR ANY EXHIBIT HERETO. ANY TERM USED IN THIS PLAN AND NOT HEREIN DEFINED BUT DEFINED IN THE BANKRUPTCY CODE OR IN THE BANKRUPTCY RULES SHALL HAVE THE MEANING ASSIGNED TO SUCH TERM IN THE BANKRUPTCY CODE OR IN THE BANKRUPTCY RULES, AS APPLICABLE. AS USED IN THIS PLAN, THE FOLLOWING TERMS HAVE THE RESPECTIVE MEANINGS SPECIFIED BELOW:

1. **Administrative Expense Claim** means an Allowed Claim against the Debtors for costs and expenses of administration in connection with the Case under sections 503(b), 507(b) or 1114(e)(2) of the Bankruptcy Code, including: (a) any actual and necessary costs and expenses incurred after the Filing Date of preserving the Estate and operating the businesses of the Debtors (such as wages, salaries or commissions for services and payments for goods and other services and leased premises); (b) all Bankruptcy Administrator fees and charges assessed against the Debtors' Estate, but excluding Claims relating to tax periods; or portions thereof, ending on or before the Filing Date; (c) Allowed Goods Claims; (d) Fee Claims; and (e) all other Claims entitled to administrative claim status pursuant to a Final Order.

2. **Allowed** means, with reference to any Claim or Interest and with respect to the Debtors, (a) any Claim against or Interest in the Debtors that (i) has been listed by the Debtors in the Schedules, as may be amended by the Debtors from time to time in accordance with Bankruptcy Rule 1009, as liquidated in amount and not disputed or contingent and for which no contrary proof of claim or interest has been Filed, or (ii) has been allowed under this Plan, or (iii) has been allowed by Final Order of the Bankruptcy Court, or (iv) as to which a proof of claim has been timely Filed in a liquidated amount with the Bankruptcy Court pursuant to the Bankruptcy Code or any order of the Bankruptcy Court, or Filed late with leave of the Bankruptcy Court after notice and a hearing, and (b) in respect of which no objection to the allowance of such Claim or Interest has been interposed within any applicable period of limitation fixed by the Bankruptcy Code, the Bankruptcy Rules, a Final Order or other applicable law.

3. **Assets** means all property of the Estate that is not Collateral and includes any future right that the Debtors may have to any property, including any deposits.

4. **Asset Sale** means any sale of the Assets of the Debtors which was approved by the Bankruptcy Court pursuant to section 363 of the Bankruptcy Code.

5. **Available Funds** means the amount of Cash held by the Liquidating Trustee available to be distributed to Holders of Allowed Claims, Administrative Claims and the fees and expenses of the Liquidating Trustee and his professionals, including, but not limited to, the proceeds of the liquidation of the Assets, which also includes the recoveries and proceeds of Causes of Action.

6. **Avoidance Action** means any claim, action or cause of action of the Debtors or the Estate, or either of them, that is or may be the subject of an adversary proceeding or contested matter under sections 510, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, and/or 553 of the Bankruptcy Code, or pursuant to any similar or related state or federal statutes

or common law (including fraudulent transfer laws) whether or not litigation has been commenced as of the Confirmation Date to prosecute such claim, action or cause of action.

7. **Ballot** means each of the ballot forms distributed to each Holder of a Claim entitled to vote to accept or reject this Plan.

8. **Bankruptcy Administrator** means the Bankruptcy Administrator for the Northern District of Alabama.

9. **Bankruptcy Code** means Title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. as applicable to this Case.

10. **Bankruptcy Court** means the United States Bankruptcy Court for the Northern District of Alabama, Southern Division or, in the event that such court ceases to exercise jurisdiction over the Case, the court that exercises jurisdiction over the Case in lieu of the United States Bankruptcy Court for the Northern District of Alabama, Southern Division.

11. **Bankruptcy Rules** means the Federal Rules of Bankruptcy Procedure, as promulgated by the United States Supreme Court under 28 U.S.C. § 2075, and the local rules of the Bankruptcy Court as applicable to this Case.

12. **Bar Date** means the date(s) established by this Plan or by a Final Order of the Bankruptcy Court as the final date(s) to file proofs of claim, requests for allowance of an Administrative Expense Claim, or any other notice, objection or other document to evidence, support or seek Allowance of any Claim.

13. **BP** means BP plc and any affiliated or related entity.

14. **Business Day** means any day other than a Saturday, Sunday or Legal Holiday.

15. **Case** means the above styled case of the Debtors under Chapter 11 of the Bankruptcy Code.

16. **Cash** means cash and cash equivalents in United States dollars.

17. **Causes of Action** means all Claims and causes of action held by the Estate immediately prior to the Effective Date, including, but not limited to, any and all Claims, obligations, rights, suits, damages, causes of action, remedies and liabilities, whatsoever, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, whether arising under any contract or under the Bankruptcy Code or other federal, state or other non-bankruptcy law, including, without limitation, any causes of action set forth in this Plan or Disclosure Statement and any Exhibit thereto and Avoidance Actions, but excluding Claims and causes of action and related recoveries expressly released, exculpated or waived pursuant to this Plan.

18. **Claim** has the meaning set forth in section 101(5) of the Bankruptcy Code.

19. **Class** means a category of Holders of Claims or Interests as set forth in Section II of this Plan.

20. **Collateral** means property subject to a Lien, to the extent of the interest of the holder of such Lien in the interest of the Estate in such property.

21. **Confirmation** means entry of the Confirmation Order on the Bankruptcy Court's docket in the Case.

22. **Confirmation Date** means the date of entry of the Confirmation Order on the Bankruptcy Court's docket in the Case.

23. **Confirmation Hearing** means the hearing held by the Bankruptcy Court to consider confirmation of this Plan pursuant to section 1129 of the Bankruptcy Code, as such hearing may be adjourned or continued from time to time.

24. **Confirmation Order** means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

25. **Creditor** means any Person who holds a Claim against the Debtors.

26. **Debtors** mean Adams Produce Company, LLC and Adams Clinton Business Park, LLC.

27. **Disclosure Statement** means the disclosure statement that relates to this Plan, approved by the Court pursuant to section 1125 of the Bankruptcy Code, as such Disclosure Statement may be amended, modified, or supplemented (and all exhibits and schedules annexed thereto or referred to therein).

28. **Disputed Claim** means a Claim against the Debtors that is not Allowed, including:

(a) if no proof of claim has been filed by the applicable Bar Date or has otherwise been deemed timely Filed under applicable law: (i) a Claim that is listed on the Schedules as disputed, contingent or unliquidated; or (ii) a Claim that is listed on the Schedules as other than disputed, contingent or unliquidated, but as to which the Debtors or Liquidating Trustee, as applicable, or any other party in interest with standing to object to Claims under this Plan or applicable law, has Filed an objection by the Claims Objection Deadline, unless such objection has been withdrawn or denied by a Final Order; or

(b) if a proof of claim or request for payment of an Administrative Expense Claim has been Filed by the applicable Bar Date or has otherwise been deemed timely Filed under applicable law: (i) a Claim for which a corresponding Claim is listed on the Schedules as disputed, contingent or unliquidated; or (ii) a Claim for which an objection has been Filed by the Debtors or Liquidating Trustee, as applicable, to which the Claim relates, or any other party in interest with standing to object to Claims under this Plan or applicable law, by the Claims Objections Deadline, unless such objection has been withdrawn or denied by a Final Order. For purposes of this provision, an application, motion, complaint or other pleadings or papers filed

with the Bankruptcy Court seeking to subordinate or dismiss a Claim or Administrative Expense Claim shall be deemed an objection thereto; or

(c) any Claim filed after the Bar Date applicable to such Claim.

29. **Distribution** means any distribution pursuant to this Plan to the Holders of Allowed Claims.

30. **Distribution Date** means any date on which a Distribution is made by the Liquidating Trustee to Holders of Allowed Claims entitled to receive Distributions under this Plan and such term includes the Initial Distribution Date.

31. **D&O Settlement** means the agreement between various entities, including the Debtors, which is set forth on Exhibit E to the Disclosure Statement.

32. **Effective Date** means the first Business Day following the date on which the Confirmation Order becomes a Final Order.

33. **Estate** means the Estate created by the commencement of the Case pursuant to section 541 of the Bankruptcy Code, including, without limitation, any and all rights, Claims and interests of the Debtors and any and all interests in property, whether real, personal or mixed, rights, Causes of Action, Avoidance Actions, avoidance powers or extensions of time that the Debtors or its Estate shall have had effective as of the commencement of the Case, or which such Estate acquired after the commencement of the Case, whether by virtue of sections 544, 545, 546, 547, 548, 549, 550, 551, and 553 of the Bankruptcy Code or otherwise.

34. **Exhibit** means an exhibit annexed to either this Plan or as an appendix to the Disclosure Statement.

35. **Exhibit Filing Date** means the date on which Exhibits to the Plan and Disclosure Statement shall be filed with the Bankruptcy Court, which date shall be at least three (3) Business Days prior to the Voting Deadline or such later date as may be approved by the Bankruptcy Court without further notice to any parties-in-interest.

36. **Fee Claim** means a Claim for compensation or reimbursement of expenses under sections 327, 328, 330, 331 503(b) or 1103 of the Bankruptcy Code.

37. **File, Filed or Filing** means file, filed or filing with the Bankruptcy Court or its designee in the Case.

38. **Filing Date** means April 27, 2012, the date of the Filing of the Debtors' petitions commencing the Case under chapter 11 of the Bankruptcy Code.

39. **Final Distribution Date** means the date of the last Distribution under this Plan.

40. **Final Order** means an order or judgment of a court (a) as to which the time to appeal, petition for certiorari, or move for reargument or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument or rehearing shall then be

pending; or (b) as to rehearing shall have been waived in writing in form and substance satisfactory to the Debtors or, (c) in the event that an appeal, writ of certiorari, or reargument or rehearing thereof has been sought, such order shall have been denied by the highest court to which such order was appealed, no further certiorari, reargument or rehearing shall have been taken, and the time to take any further appeal, petition for certiorari or move for reargument or rehearing shall have expired; provided, however, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure or Bankruptcy Rules 9023 or 9024 may be filed with respect to such order shall not cause such order not to be a final order.

41. **Goods Claim** means a Claim Allowed as an administrative expense under section 503(b)(9) of the Bankruptcy Code.

42. **Governmental Unit** means a “governmental unit” as defined in section 101(27) of the Bankruptcy Code.

43. **Holder** means an entity holding a Claim or Interest.

44. **Initial Distribution Date** means the first date on which the Liquidating Trustee makes a Distribution, which shall be in the discretion of the Liquidating Trustee as soon as reasonably practicable after taking into the account the status of objections to Claims, the amount of Disputed Claims, the amount of Available Funds, and the cost of making the Distribution.

45. **Insider** has the meaning set forth in 11 U.S.C. § 101(31).

46. **Insider Claims** means the Claims of any Insider.

47. **Insider Employee** means Steve Alexander, Scott Grinsted, and Steve Finberg.

48. **Insured Parties** has the meaning set forth in Section IX.A of this Plan.

49. **Interest** means any ownership interest in the Debtors.

50. **Kontos** means Alex Kontos Fruit Co., Inc., an Alabama corporation.

51. **Legal Holiday** has the meaning set forth in Bankruptcy Rule 9006(a)

52. **Lien** has the meaning set forth in section 101(37) of the Bankruptcy Code and shall include, without limitation, all liens, security interests, replacement liens, adequate protection, carve out rights and all charges and interests created or imposed on property by any order of the Bankruptcy Court.

53. **Liquidating Trustee** means Thomas S. O’Donoghue to serve as Liquidating Trustee, or any successor, appointed pursuant to Section VI.A.1 of this Plan.

54. **Member** means any holder of membership interests of Adams Produce Company, Inc.

55. **Net Proceeds** means such amounts collected from the sale or liquidation of Assets after payment of all costs and expenses of such sale or liquidation, including, without limitation, attorneys' fees, and satisfaction of any Liens on or Allowed Claims for set off or recoupment against such Assets.

56. **PACA** means the Perishable Agricultural Commodities Act of 1930, codified at 7 U.S.C. §§ 499(a) *et. seq.*

57. **PACA Claim(s)** means Claims against the Debtors asserted and qualified for treatment under PACA.

58. **PACA Procedures Order** means the Final Order entered by the Bankruptcy Court dated July 11, 2012, setting forth the procedures governing the allowance and payment of PACA Claims against the Debtors, if any.

59. **PACA Settlement Order** means the Final Order entered by the Bankruptcy Court dated October 24, 2012, resolving virtually all of the valid PACA Claims against the Debtors.

60. **Person** has the meaning set forth in section 101(41) of the Bankruptcy Code.

61. **Plan** means this chapter 11 plan of the Debtors, including, without limitation, all documents referenced herein and all exhibits, supplements, appendices and schedules hereto, either in its present form or as the same may be altered, amended or modified from time to time.

62. **Plan Proponent** means the Debtors.

63. **Plan Supplement** means the compilation(s) of documents specified in this Plan that this Plan Proponent will File on or before the Exhibit Filing Date.

64. **PNC Bank** means PNC Bank, National Association, a national banking association.

65. **Priority Employee Claims** means, collectively, any Claim against Debtors that is entitled to priority under section 507(a)(4) of the Bankruptcy Code.

66. **Priority Tax Claim** means any Claim against the Debtors of a Governmental Unit of the kind specified in sections 502(i) or 507(a)(8) of the Bankruptcy Code.

67. **Pro Rata** means proportionally, so that with respect to an Allowed Claim, the ratio of (a)(i) the amount of property distributed on account of a particular Allowed Claim to (ii) the amount of the Allowed Claim is equal to the ratio of (b)(i) the amount of property distributed on account of all Allowed Claims of the Class in which the particular Allowed Claim is included to (ii) the amount of all Claims in that Class (including Disputed Claims until disallowed).

68. **Punitive Damages Claim** means any Claim for damages other than compensatory damages, including without limitation a Claim for damages under Ala. Code § 6-5-410 or Ala. Code § 6-11-20.

69. **Schedules** means the schedules of assets and liabilities, the lists of Holders of Interests and the statements of financial affairs Filed by the Debtors under section 521 of the Bankruptcy Code and Bankruptcy Rule 1007, and all amendments and modifications thereto through the Confirmation Date.

70. **Secured Claim** means the portion of any Claim against the Debtors, (a) determined in accordance with section 506(a) of the Bankruptcy Code, as of the Confirmation Date, secured by a valid, perfected and unavoidable Lien, to the extent of the value of the Holder's interest in the Debtors' interest in the subject Collateral; or (b) subject to offset under section 553 of the Bankruptcy Code, to the extent of the amount subject to offset.

71. **Trust Assets** means all of the assets of the Debtors' estates as of the Effective Date.

72. **Unsecured Claim** means any Claim that is not an Administrative Claim, a Priority Tax Claim, a Priority Employee Claim, a PACA Claim, or a Secured Claim.

73. **Voting Deadline** means the date and time, as fixed by an order of the Bankruptcy Court and as set forth in the Disclosure Statement, by which all Ballots to accept or reject this Plan must be received in order to be counted.

74. **Workers Compensation Claim** means any Claim against the Debtors covered by Ala. Code § 25-5-1 *et seq.* or Fla. Stat. § 440.01 *et. seq.*

B. RULES OF INTERPRETATION.

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

2. **Rules of Construction.** Unless otherwise provided herein, for purposes of this Plan: (a) whenever appropriate from the context, each term, whether stated in the singular or the plural, shall include both the singular and the plural; (b) any reference in this Plan to a contract, instrument, release or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions; (c) any reference in this Plan to an existing document or exhibit Filed or to be Filed means such document or exhibit as it may have been or may be amended, modified or supplemented from time to time and shall include all addenda, exhibits and schedules attached thereto or referenced therein; (d) unless otherwise specified, any reference to an entity as a Holder of a Claim or an Interest includes that entity's successors, assigns and affiliates; (e) unless otherwise specified, all references to sections and articles are references to sections and articles of this Plan; (f) unless otherwise specified, all references in this Plan to exhibits are references to exhibits of or to this Plan or the Disclosure Statement; (g) the words "herein," "hereunder" or "hereto" refer to this Plan in its entirety rather than to a particular portion of this Plan; (h) "including" and "include" shall be understood to mean "including, without limitation" (and, for purposes hereof, the rule of *ejusdem generis* shall not be applicable to limit a general statement, which is followed by or reference to an enumeration of specific matters to matters similar to the matters specifically mentioned); (i) captions and headings to articles, sections and exhibits are inserted for convenience of reference only and are

not intended to be a part of or to affect the interpretations of this Plan; and (j) unless modified herein, the rules of construction set forth in section 102 of the Bankruptcy Code and the Bankruptcy Rules shall apply.

3. **Governing Law.** Except to the extent that the Bankruptcy Code or Bankruptcy Rules are applicable, and subject to the provisions of any contract, instrument, release, indenture or other agreement or document entered into in connection with this Plan, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of the State in which the Bankruptcy Court resides, without giving effect to the principles of conflicts of laws thereof.

Section II.

CLASSIFICATION OF CLAIMS AND INTERESTS

A. INTRODUCTION.

All Claims and Interests except Administrative Expense Claims, Priority Tax Claims and PACA Claims shall be classified as set forth in this Section II of this Plan.

A Claim or Interest shall be deemed classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and shall be deemed classified in a different Class to the extent that any remainder of the Claim or Interest qualifies within the description of such different Class. A Claim or Interest is in a particular Class only to the extent that such Claim or Interest is Allowed in that Class and has not been paid or otherwise settled before the Effective Date.

This Plan Proponent has set forth the Classes below:

B. UNCLASSIFIED CLAIMS.

1. **Administrative Expense Claims.**
2. **PACA Claims.** All valid PACA Claims have previously been settled and paid except for part of the PACA Claim of Kontos.
3. **Priority Tax Claims.** Priority Tax Claims shall collectively consist of any Claims against the Debtors of a Governmental Unit of the kind specified in sections 502(i) or 507(a)(8) of the Bankruptcy Code.

C. CLASSES OF CLAIMS.

1. **Class 1 - Priority Employee Claims.** Priority Employee Claims shall collectively consist of any Claims against the Debtors that are entitled to priority under section 507(a)(4) of the Bankruptcy Code.

2. **Class 2 – Secured Claims.** Class 2 shall consist of all Allowed Secured Claims. Class 3 Claims include, without limitation, Claims secured by equipment in connection with equipment financings and Claims secured by mechanic's, materialmen's and artisan's liens on

miscellaneous personal and/or real property. Each Class 2 Claim is treated for all purposes under the Bankruptcy Code and this Plan as a separate Class.

3. **Class 3 – Unsecured Claims Against The Debtors.** Class 3 shall consist of all Allowed Unsecured Claims against the Debtors.

4. **Class 4 – Insider Claims.** Class 4 shall consist of All Insider Claims against Debtors.

5. **Class 5 – Interests.** Class 5 shall consist of all Interests in the Debtors. (This Class is conclusively presumed to have rejected this Plan and is not entitled to vote to accept or reject this Plan.)

Section III.

TREATMENT OF CLAIMS AND INTERESTS

No Claim or Interest shall entitle the Holder thereof to a Distribution of Cash or to other consideration pursuant to this Plan unless, and only to the extent that, such Claim or Interest is an Allowed Claim or an Allowed Interest. Except as otherwise provided in this Plan or an order of the Bankruptcy Court, all Distributions of Cash on account of Allowed Claims and Allowed Interests shall be made on Distribution Date.

A. TREATMENT OF UNCLASSIFIED CLAIMS.

1. Administrative Expense Claims.

(a) **Allowance and Payment of Fee Claims.** Except as provided by prior order of the Bankruptcy Court, professionals or other entities asserting a Fee Claim must File and serve on the Debtors, the Liquidating Trustee, the Bankruptcy Administrator, and such other entities as are designated by the Bankruptcy Rules, the Confirmation Order or other Final Order of the Bankruptcy Court, an application for final allowance of compensation and reimbursement of expenses no later than thirty (30) days after the Effective Date. Such application may include fees and expenses of the applicant incurred after the Confirmation Date but prior to the Effective Date. Failure to timely and properly File an application for allowance of a Fee Claim as set forth herein shall result in such Fee Claim being forever barred and discharged. Objections to an application for allowance of a Fee Claim must be Filed and served on the Liquidating Trustee, the Bankruptcy Administrator, and the applicant no later than twenty (20) days after the Filing of the application for allowance of such Fee Claim. Unless the holder of an Allowed Fee Claim agrees to other treatment, any Allowed Fee Claim unpaid as of the Effective Date shall be paid on the Effective Date or, if later, not later than the fifteenth (15th) Business Day after such Fee Claim becomes Allowed, in Cash equal to such Allowed Fee Claim from the Available Funds or as soon as funds are available to pay such Allowed Fee Claim.

(b) **General Allowance Procedures for Administrative Expense Claims Other than Fee Claims.** Pursuant to section 502 of the Bankruptcy Code, requests for payment of an Administrative Expense Claim, other than statutory fees and Fee Claims, arising before the Effective Date, must be Filed and served on the Liquidating Trustee and the Bankruptcy Administrator, no later than thirty (30) days after the Effective Date; provided, however, all

requests for payment of Administrative Expense Claims (except for Fee Claims) arising on or before August 31, 2012, that were not filed before the November 2, 2012 Bar Date established by the Bankruptcy Court's Order of October 1, 2012, shall be denied, barred and discharged as untimely.¹ Each such request for payment of an Administrative Expense Claim must include, at a minimum, (i) the name of the Holder of the Claim, (ii) the amount of the Claim, (iii) the basis for the Claim, and (iv) documents evidencing or supporting the Claim. Failure to timely and properly file a request for payment of an Administrative Expense Claim as set forth herein shall result in the Administrative Expense Claim being forever barred and discharged. Objections to any such request may be made by the Debtors or any party in interest and such objections, if any, must be filed and served on the Debtors, the Bankruptcy Administrator, the Liquidating Trustee and the requesting party by the later of twenty (20) days after the Effective Date or twenty (20) days after the filing of the applicable request for payment. To the extent not paid prior to the Effective Date, these claims shall be paid on the Effective Date or, if later, no later than the fifteenth (15th) Business Day after such Claim becomes Allowed, in Cash equal to such Allowed Claim from the Available Funds or as soon as funds are available to pay such Allowed Claim.

2. PACA Claims.

(a) The sole remaining unpaid Allowed PACA Claim against the Debtors is held by Kontos. Kontos shall be paid \$330,000.00 as soon as practicable after the Confirmation Date in full satisfaction of Kontos' PACA Claim.

3. Priority Tax Claims.

(a) Unless such Holder agrees to other treatment (in which event, such other agreement shall govern), each Holder of an Allowed Priority Tax Claim shall be paid in full in Cash from the Available Funds, to the extent funds are available, within the later of (a) thirty (30) days after all Allowed Administrative Expense Claims, and Allowed Priority Employee Claims that exist against the Debtors have received their full treatment under the Plan; or (b) if an objection is pending at such time, no later than the fifteenth (15th) Business Day after such Claim becomes Allowed, in Cash from the Available Funds. In the event funds are not available to pay Allowed Priority Tax Claims at the times set forth above, holders of Allowed Priority Tax Claims shall be paid in regular installments to be paid quarterly each year for five years from the Effective Date. Such quarterly payment shall commence on the first day of the first month that is ninety (90) days after all Allowed Administrative Expense Claims, and Allowed Priority Employee Claims have received their treatment under the Plan.

B. TREATMENT OF CLASSES.

1. Class 1 Priority Employee Claims.

(a) Each non-Insider Employee Holder of an Allowed Priority Employee Claim shall, to the extent not already paid, be paid their Pro Rata share of \$850,000.00 in full in

¹ The Bankruptcy Court entered an Order on October 1, 2012, establishing a bar date of November 2, 2012, for certain limited creditors to file non-Fee Claim Administrative Expense Claims that arose on or before August 31, 2012.

Cash from the Available Funds after paying Counsel to the Ad Hoc Committee of Non-Insider Employees \$200,000.00 and the costs, \$25,000.00, for Processing final Payroll and W-2's and required payroll tax returns(940, 941) and applicable state unemployment, to the extent funds are available, within the later of (i) ten (10) business days following the Effective Date; or (ii) if an objection is pending at such time, no later than the fifteenth (15th) Business Day after such Claim becomes Allowed, in Cash from the Available Funds.

(b) Claims in Class 1 are impaired under this Plan. Therefore, pursuant to section 1126(a) of the Bankruptcy Code, the Holders of the Class 1 Claims are entitled to vote to accept or reject this Plan.

2. Class 2 — Allowed Secured Claims.

(a) Unless such Holder agrees to other treatment (in which event, such other agreement shall govern),² each Holder of an Allowed Class 2 Claim shall receive the Collateral securing their Liens on, or as soon as reasonably practicable after, the Effective Date.

(b) Claims in Class 2 are unimpaired. Pursuant to section 1126 of the Bankruptcy Code, the Holders of the Class 2 Claims are deemed to have accepted this Plan and are not entitled to vote to accept or reject this Plan.

3. Class 3 – Allowed Unsecured Claims.

(a) Unless such Holder agrees to other treatment (in which event, such other agreement shall govern), each Holder of an Allowed Class 3 Claim shall be paid pro rata from the Available Funds after all Allowed Administrative Expense Claims, Allowed PACA Claims and Allowed Class 1 and Class 2 Claims received the treatment they are entitled to under the Plan, to the extent funds are available and until such Claims are paid in full, after the later of (i) the Initial Distribution Date; or (ii) if an objection is pending at such time, no later than the fifteenth (15) Business Day after such Claim becomes Allowed. The Initial Distribution Date shall be in the discretion of the Liquidating Trustee, who shall make it as soon as reasonably practicable after taking into the account the status of objections to Claims, the amount of Disputed Claims, the amount of Available Funds, and the cost of making the Distribution.

(b) Claims in Class 3 are impaired under this Plan. Therefore, pursuant to section 1126(a) of the Bankruptcy Code, the Holders of the Class 3 Claims are entitled to vote to accept or reject this Plan.

4. Class 4 – Allowed Insider Claims.

(a) Holders of Allowed Insider Claims shall receive no distribution or recovery under the Plan.

² PNC Bank has agreed to other treatment with regard to its alleged security interest in the Debtors' interest in their claims relating to the Deepwater Horizon incident, which agreement is set forth in the Bankruptcy Court's Final Order dated August 17, 2012.

(b) Pursuant to section 1126(g) of the Bankruptcy Code, a Holder of Claims in Class 4 is deemed to have rejected the Plan and is not entitled to vote to accept or reject the Plan.

5. Class 5 – Interest in Debtors.

(a) The Interests in the Debtors, and any instruments and other documents evidencing such Interest, shall be cancelled as of the Effective Date. The Holder of Interests in Class 5 shall not receive or retain any Distribution or other property on account of such Interest.

(b) Pursuant to section 1126(g) of the Bankruptcy Code, the Holder of Interest in Class 5 is deemed to have rejected this Plan and is not entitled to vote to accept or reject this Plan.

C. SPECIAL PROVISIONS REGARDING ALLOWANCE AND TREATMENT OF WORKERS COMPENSATION CLAIMS.

Subject to applicable deadlines required by the state and/or bankruptcy law, Workers Compensation Claims will continue to be determined by the administrative procedures established in each state. A final, non-appealable administrative determination will result in an Allowed Workers Compensation Claim. Subject to the Reservation of Rights provision below, Holders of Allowed Workers Compensation Claims will be paid by the applicable Insurer or state entity outside of the Plan in accordance with the applicable insurance contracts and/or applicable non-bankruptcy law.

Section IV.

TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Pursuant to section 1123(b)(2) of the Bankruptcy Code, all executory contracts and unexpired leases to which the Debtors are or were a party and not previously rejected or assumed and assigned pursuant to prior order of the Bankruptcy Court, are deemed rejected pursuant to section 365(a) of the Bankruptcy Code as of the Confirmation Date.

Each party to an executory contract or unexpired lease rejected pursuant to this Plan (and only such entities) asserting a Claim for damages arising from such rejection shall File, not later than thirty (30) days following the Confirmation Date, a proof of such Claim; *provided, however*, that (1) the Bar Date established for rejection damages claims in this Section IV of this Plan shall not apply to Persons that may assert a Claim on account of an executory contract or unexpired lease that was rejected by the Debtors before the Confirmation Date for which a prior Bar Date was established; and (2) any Person asserting a claim for rejection damages that does not timely File a proof of claim in accordance with this Plan shall be forever enjoined and barred from asserting such Claim against the Debtors, the Estate or any property of the Estate.

Section V.

CONFIRMATION AND CONSUMMATION OF THIS PLAN

A. CONDITIONS PRECEDENT – Confirmation Date.

The following are conditions precedent to the occurrence of the Confirmation Date:

1. The entry of a Final Order finding that the Disclosure Statement contains adequate information pursuant to section 1125 of the Bankruptcy Code which order shall be in form and substance reasonably satisfactory to the Debtors;
2. The proposed Confirmation Order shall be, in form and substance, reasonably acceptable to the Debtors; and
3. All provisions, terms and conditions of this Plan are approved in the Confirmation Order.

B. CONDITIONS PRECEDENT – Effective Date.

The following are conditions precedent to the occurrence of the Effective Date, each of which must be satisfied or waived in writing:

1. The Confirmation Order shall have been entered and become a Final Order and shall provide that the Liquidating Trustee is authorized and directed to take all actions necessary or appropriate to enter into, implement and consummate this Plan or effectuate, advance or further the purposes thereof;
2. All Plan Exhibits shall be, in form and substance, reasonably acceptable to the Debtors, and if applicable, shall have been executed and delivered by all parties' signatory thereto;
3. The Liquidating Trustee shall be authorized and directed to take all actions necessary or appropriate to enter into, implement and consummate the contracts, instruments, releases, leases, indentures and the agreements or documents created in connection with the Plan
4. All other actions, documents, and agreements necessary to implement this Plan shall have been effected or executed; and
5. Available Funds shall be sufficient to make all required payments on the Effective Date and fund a reserve for such payments if not Allowed as of the Effective Date.
6. All of the Consideration under the D&O Settlement shall have been paid, all assignments shall have occurred and PNC Bank shall released its lien on accounts receivable of the Debtors.

C. WAIVER OF CONDITIONS.

Each of the conditions set forth in Section V of this Plan may be waived in whole or in part by the Debtors. The failure of a party to exercise any of the foregoing rights shall not be deemed a waiver of any other rights, and each such right shall be deemed an ongoing right that may be asserted at any time.

D. CONSEQUENCES OF NON-OCCURRENCE OF EFFECTIVE DATE.

In the event that the Effective Date does not timely occur, the Debtors reserve all rights to seek an order from the Bankruptcy Court directing that the Confirmation Order be vacated, that this Plan be null and void in all respects, and/or that any settlement of Claims provided for in this Plan be null and void. In the event that the Bankruptcy Court shall enter an order vacating the Confirmation Order, the time within which the Debtors may assume and assign, or reject all executory contracts and unexpired leases not previously assumed, assumed and assigned, or rejected, shall be extended for a period of thirty (30) days after the date the Confirmation Order is vacated, without prejudice to further extensions.

Section VI. **IMPLEMENTATION OF PLAN**

A. THE LIQUIDATION TRUST

1. **The Trust.** The Liquidation Trust shall be established in accordance with and governed by the Liquidating Trust Agreement. For tax purposes, the transfer of the Trust Assets to Liquidating Trust for the benefit of creditors of the Debtors is intended and expected to be treated as a transfer of these assets to such creditors and a deemed transfer by such creditors to the Liquidating Trust. This treatment will result in the Liquidating Trust being considered a “grantor trust” for tax purposes, that is, the beneficiaries of the Liquidating Trust will be deemed the grantors of the Liquidating Trust and the owners of the Trust Assets. As a grantor trust, the Liquidating Trust will not be a taxable entity under applicable tax law but, instead, will be a pass-through entity that will pass any taxable income or losses generated by the Liquidating Trust through to its beneficiaries. By Confirmation, the Bankruptcy Court will specifically approve and designate the Liquidating Trust and the Liquidating Trustee as the representative of the Debtors’ Estates, including the transfer of the Trust Assets to the Liquidating Trust.

2. **Trust Assets.** All of the Trust Assets shall be automatically placed in the Liquidating Trust upon the Effective Date.

B. LIQUIDATING TRUSTEE.

1. **Appointment.** The Liquidating Trustee shall be appointed as of the Effective Date and shall serve without a bond. In the event of the death, resignation, incapacity, disqualification, or misconduct of the Liquidating Trustee, the Bankruptcy Court shall appoint a successor. The Liquidating Trustee shall retain and have all of the rights, powers and duties necessary to carry out its responsibilities under this Plan and those rights, powers and duties shall be exercisable solely by the Liquidating Trustee. Commencing on the Confirmation Date, the Debtors shall work with the Liquidating Trustee to facilitate a smooth transition of the responsibility of the wind down of the Estate to the Liquidating Trustee, including being able to make the payments on the Effective Date that are required by the Plan.

2. **Duration.** The Liquidating Trustee shall continue to exist until entry of a Final Order by the Bankruptcy Court closing the Bankruptcy Case pursuant to section 350(a) of the Bankruptcy Code.

3. **Exclusive Powers and Duties.** The Liquidating Trustee shall serve under this Plan and shall discharge all of the rights, powers and duties set forth in this Plan. Without

limiting the generality of the foregoing, the Liquidating Trustee, his successors and assigns, shall have the following exclusive rights, powers and duties:

(a) all of the rights, powers, and duties of a trustee in bankruptcy, including but not limited to, those under sections 704(a)(1), (2), (4), (5) and (7) and 1106(a)(6) and (7) of the Bankruptcy Code;

(b) to administer the Available Funds, pursuant to the terms of this Plan;

(c) to use, acquire and dispose of property free of any restrictions imposed under the Bankruptcy Code;

(d) to sell, devise or otherwise dispose of any Assets without further notice or order of the Court, except as otherwise provided in the Plan;

(e) to employ, retain, and replace such persons, including actuaries, attorneys, accountants, auctioneers, brokers, managers, consultants, other professionals, agents, investigators, expert witnesses, consultants and advisors as necessary to discharge the duties of the Liquidating Trustee under this Plan and to pay the reasonable fees and costs of such employment without the need to seek approval from the Bankruptcy Court or review by any other party in interest.

(f) to establish reserves and open, maintain and administer bank accounts as necessary to discharge the duties of the Liquidating Trustee under this Plan;

(g) to investigate, analyze, commence, prosecute, litigate, collect and otherwise administer the Causes of Action in the Bankruptcy Court or other court of competent jurisdiction and settle same without further order of the Court or notice to creditors;

(h) to voluntarily engage in arbitration or mediation with respect to any Causes of Action;

(i) to represent the Estate before the Bankruptcy Court and other courts of competent jurisdiction with respect to all matters;

(j) to seek the examination of and production of documents from any entity under and subject to the provisions of Bankruptcy Rule 2004;

(k) to pay any fees due and owing under 28 U.S.C. § 1930;

(l) to comply with applicable orders of the Bankruptcy Court and any other court of competent jurisdiction over the matters set forth herein;

(m) to comply with all applicable laws and regulations concerning the matters set forth herein;

(n) to invest the Available Funds in (a) direct obligations of the United States of America or obligations of any agency or instrumentality thereof which are guaranteed by the

full faith and credit of the United States of America, (b) in money market deposit accounts, checking accounts, savings accounts or certificates of deposit, or other time deposit accounts that are issued by a commercial bank or savings institution organized under the laws of the United States of America or any state thereof, or (c) or any other investments that may be permissible under section 345 of the Bankruptcy Code or order of the Bankruptcy Court;

(o) to exercise such other powers as may be vested in the Liquidating Trustee pursuant to this Plan, the Confirmation Order or other Final Orders of the Bankruptcy Court;

(p) to execute any documents, instruments, contracts and agreements necessary and appropriate to carry out the powers and duties of the Liquidating Trustee.

4. **Fees and Expenses.** The Liquidating Trustee shall be reimbursed for all out of pocket fees, costs, and expenses in acting under this Plan. The compensation of the Liquidating Trustee shall be determined and disclosed to the Bankruptcy Court at least three (3) business days prior to the Disclosure Statement Hearing. Compensation of the Liquidating Trustee and the costs and expenses of the Liquidating Trustee (including, without limitation, professional fees and expenses) shall be paid from the Available Funds. Without limitation of the foregoing, the Liquidating Trustee shall pay, without further order, notice or application to the Bankruptcy Court, the reasonable fees and expenses of the Liquidating Trustee and the Liquidating Trustee's professionals, as necessary to discharge the Liquidating Trustee's duties under this Plan. The payment of fees and expenses of the Liquidating Trustee shall be from Available Funds, be made in the ordinary course of business and shall not be subject to the prior approval of the Bankruptcy Court.

5. **Compromising Disputed Claims, Liens, and Causes of Action.** The Liquidating Trustee is authorized to: (i) compromise and settle any Causes of Action, Liens, and Disputed Claims; and (ii) execute necessary documents, including, but not limited to, a stipulation of settlement or release, without notice or further order of the Bankruptcy Court or notice to any party in interest.

C. DISPOSITION OF PROPERTY BY THE LIQUIDATING TRUSTEE.

1. **Vesting of Assets.** Unless otherwise dealt with under this Plan or by a prior Final Order, on the Effective Date all Trust Assets shall continue to be subject to the jurisdiction of the Bankruptcy Court following Confirmation of this Plan until distributed to Holders of Allowed Claims in accordance with the provisions of this Plan and the Confirmation Order. From and after the Effective Date, all Trust Assets shall be free and clear of all liens, claims and interest of Holders of Claims and Interests, except as otherwise provided in this Plan. All such property of the Estate shall be distributed in accordance with the provisions of this Plan and the Confirmation Order.

2. **Liquidation of Assets.** Notwithstanding any other provision of this Plan, on the Effective Date or as soon as practicable thereafter, the Liquidating Trustee (without further motion, notice or order of the Bankruptcy Court, subject to the terms of this Plan), shall liquidate the Trust Assets on the terms and conditions set forth in this Plan and distribute the Net Proceeds thereof in accordance with this Plan.

3. **Distributions.** The Liquidating Trustee shall liquidate the Trust Assets of the Debtors in accordance with this Plan and shall distribute the Net Proceeds thereof as follows: (a) first to pay the reasonable costs and expenses of the Liquidating Trustee and his professionals (including professional fees) incurred in administering, maintaining, and preserving the Available Funds and the liquidation of the Assets of the Debtors (to the extent not otherwise paid pursuant to this Plan); and (b) second Pro Rata to the Holders of Allowed Claims on the terms and conditions, and in the priority, set forth in this Plan.

4. **Records Retention.** By not later than January 31, 2013, one or more of Grinstead, Alexander, Finberg, Kirkland and O'Brien ("the Interested Individuals") shall be responsible for ensuring that Iron Mountain Inc. will store and maintain certain paper documents and other paper records owned by the Adams Estate (the "Paper Records"). The Interested Individuals may review the Paper Records to determine which records they deem relevant for their purposes ("the Relevant Paper Records"). The Interested Individuals shall only be responsible to ensure that Iron Mountain, Inc. will store and maintain the Relevant Paper Records. The Adams Estate or any other interested party shall have the option to pay to store and maintain those Paper Records which are not deemed by the Interested Individuals to be the Relevant Paper Records ("the Non-Relevant Paper Records"). The Adams Estate shall have the obligation to notify any interested party, including but not limited to the United States Department of Justice and the Internal Revenue Service, that the Non-Relevant Paper Records are available for review and copying at an interested party's expense, and are scheduled to be destroyed sixty (60) days from the date of said notice. The Interested Individuals shall also have certain rights and obligations with respect to any electronic documents and other records owned by the Adams Estate ("the Electronic Records"). The Interested Individuals shall have the right to copy any or all of the Electronic Records they deem relevant ("the Relevant Electronic Records"). The Interested Parties shall be entitled to use the Relevant Electronic Records as they deem appropriate. The Adams Estate or any other interested party shall have the option, at their own expense, to copy any or all of the Electronic Records deemed relevant for said party's purposes. The Adams Estate shall have the obligation to notify any interested party, including but not limited to the United States Department of Justice and the Internal Revenue Service, that the Electronic Records are available for review and copying at an interested party's expense, and that failure to exercise that right within a date certain may result in some or all of the Electronic Records being destroyed.

D. SETTLEMENT, RELEASE, SATISFACTION AND INJUNCTION.

1. **Full and Final Satisfaction.** The treatment of Claims and Interests provided in this Plan shall be in full and final satisfaction and settlement of all liabilities of Claims against the Estate, or Interests in the Debtors. Except as provided in this Plan or the Confirmation Order, the rights afforded under this Plan will be in exchange for and in complete satisfaction, discharge and release of all Claims and liabilities against the Estate and termination of all Interests arising on or before the Effective Date, including any interest accrued after the Filing Date.

2. **INJUNCTION.** EXCEPT AS OTHERWISE PROVIDED IN THIS PLAN, THE CONFIRMATION ORDER SHALL PROVIDE, AMONG OTHER THINGS, THAT FROM AND AFTER THE EFFECTIVE DATE ALL PERSONS WHO HAVE HELD, HOLD OR MAY HOLD CLAIMS AGAINST OR INTERESTS IN THE DEBTORS ARE

PERMANENTLY ENJOINED FROM TAKING ANY OF THE FOLLOWING ACTIONS AGAINST THE DEBTORS OR ITS ESTATE, OR ANY OF ITS PROPERTY ON ACCOUNT OF ANY SUCH CLAIMS OR INTERESTS: (A) COMMENCING OR CONTINUING, IN ANY MANNER OR IN ANY PLACE, ANY ACTION OR OTHER PROCEEDING; (B) ENFORCING, ATTACHING, COLLECTING OR RECOVERING IN ANY MANNER ANY JUDGMENT, AWARD, DECREE OR ORDER; (C) CREATING, PERFECTING OR ENFORCING ANY LIEN OR ENCUMBRANCE; (D) ASSERTING A SETOFF, RIGHT OF SUBROGATION OR RECOUPMENT OF ANY KIND AGAINST ANY DEBT, LIABILITY OR OBLIGATION DUE TO THE DEBTORS; AND (E) COMMENCING OR CONTINUING, IN ANY MANNER OR IN ANY PLACE, ANY ACTION THAT DOES NOT COMPLY WITH OR IS INCONSISTENT WITH THE PROVISIONS OF THIS PLAN, PROVIDED HOWEVER, THAT NOTHING CONTAINED IN THIS PLAN SHALL PRECLUDE SUCH PERSONS FROM EXERCISING THEIR RIGHTS PURSUANT TO AND CONSISTENT WITH THE TERMS OF THIS PLAN OR THE CONFIRMATION ORDER.

THE CONFIRMATION ORDER SHALL FURTHER PROVIDE THAT UPON THE EFFECTIVE DATE, WITH THE EXCEPTION OF THE LIQUIDATING TRUSTEE AND ITS PROFESSIONALS, ALL PERSONS ARE PERMANENTLY ENJOINED FROM OBTAINING ANY DOCUMENTS OR OTHER MATERIALS FROM BURR & FORMAN LLP, CURRENT COUNSEL FOR THE DEBTORS THAT IS IN THE POSSESSION OF SUCH COUNSEL AS A RESULT OF OR ARISING IN ANY WAY OUT OF THEIR REPRESENTATION OF THE DEBTORS.

3. **Term of Bankruptcy Injunction or Stays.** All injunctions or stays provided for in the Chapter 11 Case under sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date. Upon the Effective Date, the injunction provided in this section shall apply.

4. **D&O Settlement/Mutual Releases.**³

(a) Upon the Effective Date, all provisions and terms of the D&O Settlement (attached to the Disclosure Statement as Exhibit E) shall be approved. If any contradiction exists between the terms of this Plan and the D&O Settlement, the terms of the D&O Settlement shall control.

(b) Consideration for D&O Settlement.

- i. Payment by Federal Insurance Company of Nine Hundred Fifty Thousand Dollars (\$950,000.00) to the Adams Estate on or before ten (10) days after the Bankruptcy Court's entry of an order confirming the Plan;

³ All capitalized terms not otherwise defined in this Section VI(C)(4) of the Plan shall have the definition ascribed to those capitalized terms in Exhibit E to the Disclosure Statement.

- ii. Payment by CIC of Three Hundred Fifty Thousand Dollars (\$350,000.00) to the Adams Estate on or before ten (10) days after the Bankruptcy Court's entry of an order confirming the Plan;
- iii. Release by PNC of its security interests in the accounts receivable of the Adams Estate;
- iv. Payment by the Adams Estate of Three Hundred Thirty Thousand Dollars (\$330,000.00) to Kontos on or before five (5) days after the Adams Estate's receipt of the payments described in Sections 4(b)(1) and (2) above;
- v. Payment by the Adams Estate of Eight Hundred Fifty Thousand Dollars (\$850,000.00) to the Ad Hoc Committee of Non-Insider Employees on or before five (5) days after the Adams Estate's receipt of the payments described in Sections 4(b)(1) and (2) above;
- vi. Assignment of the Ad Hoc Committee of Non-Insider Employees PACA Claim and Employee Wage Claims by Ad Hoc Committee of Non-Insider Employees to the Adams Estate, which assignment shall be effected by confirmation of the Plan;
- vii. Assignment of Kontos PACA Claims by Kontos to the Adams Estate, which assignment shall be effected by confirmation of the Plan;
- viii. Insureds' execution of Claims Release Agreement substantially in the form attached to the D&O Settlement as Exhibit A and delivery of same to Federal Insurance Company concerning the Estate Claims settled and released herein.

(c) For the Consideration, the Settlement Parties (which shall have the meaning as the term "Parties" in Exhibit E mutually RELEASE, DISCHARGE, ABSOLVE, AND FOREVER ACQUIT each other from All Claims.

(d) The Settlement Parties acknowledge the sufficiency of the Consideration by signing the D&O Settlement. The D&O Settlement shall not be construed as an admission of liability or concession on the part of any Party, but rather shall be deemed part of a compromise and settlement of doubtful and disputed claims, in order that the Parties may buy their peace, and be free of any litigation with respect to the subject matter of the D&O Settlement. The Parties hereby deny any wrongdoing or liability.

(e) The Parties each agree and covenant never to bring any suit or any other action against one another concerning All Claims made the subject of the D&O Settlement, other than to enforce the D&O Settlement. The D&O Settlement may be pled in bar of any suit or action brought or taken in violation of this covenant. If any of the Parties brings suit to enforce the D&O Settlement and prevails on such grounds, it shall be entitled to recover its reasonable

attorneys' fees from the Party or Parties against whom enforcement was sought. If suit is brought against any of the Parties and the Party being sued expressly asserts the D&O Settlement as a defense to the suit and prevails on such grounds, the Party shall be entitled to recover its reasonable attorneys' fees from the Party or Parties who brought suit.

(f) THE D&O SETTLEMENT SHALL BE ENFORCED AND CONSTRUED IN ACCORDANCE WITH THE U.S. BANKRUPTCY CODE (WHERE APPLICABLE) AND THE LAWS OF THE STATE OF ALABAMA CONCERNING THE EFFICACY AND/OR ENFORCEABILITY OF THIS D&O SETTLEMENT WITHOUT REGARD TO ANY CONFLICTS OF LAWS OR CHOICE OF LAWS RULES THAT MAY REQUIRE APPLICATION OF ANOTHER STATE'S LAWS.

(g) VENUE OF ANY ACTION BROUGHT TO ENFORCE THE D&O SETTLEMENT SHALL BE EXCLUSIVELY IN THE BANKRUPTCY COURT.

(h) The D&O Settlement shall be deemed contractual in nature and shall not be deemed as mere recitals of the Parties' intentions. It is intended that the D&O Settlement shall be comprehensive in nature and shall be liberally construed to effect its purposes as expressed herein.

(i) As a condition to API's and the Adams Estate's entry into and acceptance of the terms and provisions of the D&O Settlement, API and the Adams Estate specifically and expressly exclude and preserve all claims and recoveries concerning the Exclusions specified herein. This D&O Settlement does not in any way extend or inure to the benefit of Frost, any parties liable for the Deepwater Horizon Incident, or any non-signatory. The Parties agree that the D&O Settlement may not be pled as a bar or impediment to the claims expressly excluded and preserved herein.

(j) As a condition to PNC's entry into and acceptance of the terms and provisions of the D&O Settlement, PNC specifically and expressly excludes and preserves its remaining claims against the Adams Estate, consisting solely of its secured claim in discrete pieces of collateral and its unsecured deficiency claim. As a further condition, PNC's unsecured deficiency claim shall be deemed allowed in the amount of \$5,000,000 and PNC shall not be required to file any additional proofs of claim.

(k) The Settlement Parties further agree that the D&O Settlement may not be modified or amended, nor any of its terms waived, except by a writing signed by authorized representatives of the Settlement Parties hereto.

(l) The D&O Settlement is binding on the Settlement Parties and their successors, heirs, devisees, legatees, assigns, legal representatives.

5. **Exculpation Clause.** None of the Debtors, the Professionals retained by the Debtors or the Professionals employed by the Debtors, the Debtors' affiliates nor any of their managers, officers, directors, partners, associates, employees, members or agents (collectively, the "Exculpated Persons"), shall have or incur any liability to any person for any act taken or omission made in connection with or related to the bankruptcy case or actions taken therein, including negotiating, formulating, implementing, confirming or consummating this Plan, the

Disclosure Statement, or any contract, instrument, or other agreement or document created in connection with this Plan. The Exculpated Persons shall have no liability to any Creditors or Holders of Interests for actions taken under this Plan, in connection therewith or with respect thereto in good faith, including, without limitation, failure to obtain Confirmation of this Plan or to satisfy any condition or conditions, or refusal to waive any condition or conditions, precedent to Confirmation or to the occurrence of the Effective Date. Further, the Exculpated Persons will not have or incur any liability to any holder of a Claim, holder of an Interest, or party-in-interest herein or any other Person for any act or omission in connection with or arising out of their administration of this Plan or the property to be distributed under this Plan, except for gross negligence or willful misconduct as finally determined by the Bankruptcy Court, and in all respects such person will be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under this Plan.

6. **Approval of Releases.** To the extent necessary, this Plan constitutes the Debtors' motion pursuant to Bankruptcy Rule 9019 seeking approval of all releases and injunctions granted in this Plan.

7. **Waiver.** The release set forth in this Plan does not limit, abridge, or otherwise affect the rights of the Liquidating Trustee to enforce, sue on, settle, or compromise the rights, claims and other matters retained by the Liquidating Trustee on behalf of the Estate pursuant to this Plan.

8. **Reservation of Police and Regulatory Powers of Governmental Units.** Notwithstanding any other provision in this Plan, any discharge, release, exculpation or injunction provided in this Plan shall not preclude any action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power.

E. PLAN ADMINISTRATION.

1. **General.** From and after the Effective Date, the Liquidating Trustee shall fulfill the specific duties assigned in accordance with this Plan. The Liquidating Trustee shall execute, deliver, file or record such documents, instruments, releases and other agreements, and take such actions as may be necessary or appropriate to implement, effectuate and further evidence the terms and conditions of this Plan.

2. **Cancellation of Equity Interests.** On the Effective Date, all outstanding membership interests in Debtors shall be cancelled and extinguished and all certificates representing an Interest in Debtors shall become void without the need for further action. The Holders of the Interests in Debtors shall have no rights arising from or relating to such agreements and instruments against the Debtors or its Estate except the rights provided pursuant to this Plan.

3. **Debtors' Directors, Officers, Members and Managers.** On the Effective Date, all officers, directors, members and managers of the Debtors shall be deemed to have resigned and shall be discharged from any further duties and responsibilities in such capacity. From and after the Effective Date, the Liquidating Trustee shall serve as the sole officer, sole director, sole member or sole manager of the Debtors, but he shall retain and enforce Causes of Action as the

representative of the Estate in his capacity as the Liquidating Trustee under the Plan pursuant to section 1123(b) of the Bankruptcy Code and not as an officer, director, member or manager of the Debtors. Any and all operating agreements, certificates of organization, and related corporate documents are deemed amended by this Plan to permit and authorize such sole appointment.

4. **Debtors' Existence.** From and after the Effective Date, the Debtors shall continue in existence for the purpose of winding up their affairs as expeditiously as possible. Upon the Effective Date, all transactions and applicable matters provided for under this Plan shall be deemed to be authorized and approved by the Debtors without any requirement of further action by the Debtors. On and after the Effective Date, the Debtors' remaining assets and affairs shall be administered and managed by the Liquidating Trustee in accordance with this Plan.

Upon a certification to be filed with the Court of the Final Distribution and completion of all duties under this Plan and entry of a Final Decree closing the Case, the Debtors shall be deemed to be dissolved without any further action by the Debtors or the Liquidating Trustee, including the filing of any documents in any filing office in any jurisdiction where the Debtors are organized. However, the Liquidating Trustee shall have the authority to take all necessary actions to dissolve the Debtors. Further, upon the aforementioned certification and entry of Final Decree, the Liquidating Trustee shall be authorized, in his sole discretion, to discard or destroy any and all of the Debtors' pre-petition books and records. Upon the Effective Date, the Debtors shall turn over its post-petition books and records to the Liquidating Trustee.

5. **Corporate Authority.** The Confirmation Order shall constitute full and complete corporate authority for the Debtors and the Liquidating Trustee to take all other actions that may be necessary, useful or appropriate to consummate this Plan without any further corporate or judicial authority.

Section VII.

PROVISIONS GOVERNING DISTRIBUTIONS

A. PROCEDURE FOR DETERMINATION OF CLAIMS.

1. **Objections to Claims.** After the Effective Date, the Liquidating Trustee shall have exclusive authority and responsibility to prosecute objections to all Claims.

2. **Disputed Claims.** Payments or Distributions under this Plan on account of Disputed Claims shall be held in reserve pending the Allowance or disallowance of the Claim. To the extent any property is distributed to an entity on account of a Claim that is not an Allowed Claim, such property shall promptly be returned to the Liquidating Trustee. To the extent that a Disputed Claim ultimately becomes an Allowed Claim, Distributions on account of such Allowed Claim shall be made in accordance with the provisions of this Plan. On the Distribution Date next following the date that the order or judgment of the Bankruptcy Court allowing such Claim becomes a Final Order, any Cash held in reserve pursuant to this Plan that would have been distributed prior to the date on which a Disputed Claim becomes an Allowed Claim shall be distributed to the Holder of such Allowed Claim, together with any other Distributions that

would have been due on account of such Claim being an Allowed Claim. The Liquidating Trustee shall reserve from any Distribution on account of Allowed Claims any amount otherwise allocable to a Claim that is a Disputed Claim pursuant to Section VII.B.8 of this Plan.

B. DISTRIBUTIONS.

1. **Distributions on Allowed Claims.** Except as otherwise provided herein, Distributions to Holders of Allowed Claims shall be made: (a) at the addresses set forth on the respective proofs of claim Filed by such Holders; (b) at the addresses set forth in any written notice of address change delivered to the Debtors, or the Liquidating Trustee, as applicable, after the date of the Filing of any related proof of claim; or (c) at the address reflected in the Schedules or the Debtors' books and records if no proof of claim has been Filed and if the Debtors or the Liquidating Trustee, as applicable, has not received written notice of a change of address, as set forth herein. The Distributions to Holders of Allowed Claims shall be on the Initial Distribution Date and the subsequent Distribution Dates on the terms and conditions of this Plan. Notwithstanding any other provision of the paragraph, all Distributions to Holders of Claims shall be subject to the provisions of this Plan concerning reserves for Disputed Claims.

2. **Undeliverable Distributions.** If a Distribution is returned as undeliverable, the Liquidating Trustee shall hold such Distribution and shall not be required to take any further action with respect to the delivery of the Distribution unless and until the earlier of (a) the date on which the Liquidating Trustee, as applicable, is notified in writing of the then current address of the holder entitled to receive the Distribution and (b) three (3) months after said Distribution, except as the Bankruptcy Court may otherwise order. If the Liquidating Trustee is notified in writing of the then current address of the holder before three (3) months after said Distribution, the Liquidating Trustee shall make the Distribution required by this Plan to the Holder at such address. If the Liquidating Trustee is not so notified by three (3) months after said Distribution, and the Holder of the Claim does not assert a right to the undeliverable Distribution within three (3) months after the Distribution, the Holder shall be forever barred from asserting a Claim to such undeliverable Distribution and such future Distributions, and the undeliverable Distribution shall become available for Distribution to Holders of other Allowed Claims as provided in this Plan.

3. **Manner of Payment.** Distributions under this Plan may be made, at the option of the Liquidating Trustee, in Cash, by wire transfer or by check drawn on such accounts established by the Liquidating Trustee as necessary to effectuate this Plan.

4. **Interest.** Unless otherwise required by Final Order of the Bankruptcy Court, interest shall not accrue or be paid after the Filing Date on any Claims, and no Holder of a Claim shall be entitled to interest accruing on or after the Filing Date on any Claim.

5. Fractional Dollars; De Minimis Distributions.

(a) Whenever any payment of a fraction of a cent would otherwise be called for, the actual payment shall reflect a rounding of such fraction to the nearest whole cent.

(b) No interim Distribution will be made on account of any Allowed Claim if the amount of such Distribution is less than \$25.00. On the Final Distribution Date, the

Liquidating Trustee shall (i) aggregate the amount of all Distributions that would have been made on account of an Allowed Claim in Class Three but for this *de minimis* provision and (ii) make a Distribution on account of such Allowed Claim in accordance with this Plan.

6. Distributions on Claims Allowed Pursuant to Section 502(h) of the Bankruptcy Code. Except as otherwise provided in this Plan, no Distributions shall be made on account of a Claim arising as a result of a Final Order entered in an Avoidance Action until such Claim becomes an Allowed Claim. Any Claim that is Allowed pursuant to § 502(h) of the Bankruptcy Code prior to the Initial Distribution Date as a result of the entry of a Final Order in any Avoidance Action will be treated in accordance with the provisions of this Plan. All Holders of such Claims that become Allowed Claims after the Initial Distribution Date will receive an initial Distribution on the Distribution Date next following the date on which their Claim becomes an Allowed Claim and shall receive subsequent Distributions, if any, in accordance with the provisions of this Plan. Distributions under this Plan on account of anticipated Claims that may arise or become allowable as a result of the entry of a Final Order in any Avoidance Action that are not Allowed Claims as of the Initial Distribution Date may be held in reserve, at the discretion of the Liquidating Trustee, pending the allowance or disallowance of such Claims.

7. Compliance with Tax Requirements. In compliance with section 346 of the Bankruptcy Code, to the extent applicable, the Liquidating Trustee shall comply with all withholding and reporting requirements imposed by federal, state or local taxing authorities in connection with making Distributions pursuant to this Plan and shall be authorized to take any and all action necessary and appropriate to comply with such requirements. As a condition to making any Distribution under this Plan, the Liquidating Trustee may require the Holder of an Allowed Claim to provide such Holder's taxpayer identification number, and such other information, certification or forms as necessary to comply with applicable tax reporting and withholding laws. Notwithstanding any other provision of this Plan, each entity receiving a Distribution of Cash pursuant to this Plan shall have sole and exclusive responsibility for the satisfaction and payment of tax obligations imposed by any governmental unit, including income, withholding and other tax obligations, on account of such Distribution.

8. Reserve for Disputed Claims. Except as otherwise provided in this Plan, no Distributions shall be made on account of a Disputed Claim until such Claim becomes an Allowed Claim. In making any Distribution on Allowed Class 1 or Class 3 Claims, the Liquidating Trustee shall calculate the amount of such Distribution (for purposes of making a Pro Rata calculation) as if each Disputed Claim were an Allowed Claim, unless the Bankruptcy Court enters an order specifying that the Disputed Claim should be treated as being a different amount for purposes of such calculation. The Liquidating Trustee shall reserve from Distributions a sufficient amount to make a Distribution on a Disputed Claim in the event it becomes an Allowed Claim (unless the Bankruptcy Court orders otherwise); and to the extent a Disputed Claim is disallowed pursuant to a Final Order, any reserves attributable to the disallowed portion of the Disputed Claim shall be distributed on account of Allowed Claims pursuant to the terms of this Plan.

9. Setoffs. Subject to section 553 of the Bankruptcy Code, in the event the Debtors have a Claim or Cause of Action of any nature whatsoever against a Holder of a Claim, the Liquidating Trustee may, but is not required to, set off or recoup the Debtors' Claim or Cause of

Action against such Claim (and any Distributions or other rights to receive property arising out of such Claim under this Plan) unless any such Claim or Cause of Action of the Debtors are or will be released under this Plan. Neither the failure to set off nor the allowance of any Claim under this Plan shall constitute a waiver or release of any Claim or Cause of Action of the Debtors.

10. **Reliance on Claims Register.** In making Distributions under this Plan, the Liquidating Trustee may rely upon the accuracy of the claims register maintained by the Bankruptcy Court or its designee as claims agent in the Case, as modified by any Final Order of the Bankruptcy Court disallowing Claims in whole or in part.

C. RESERVATION OF RIGHTS OF THE ESTATE; RETENTION AND ENFORCEMENT OF CAUSES OF ACTION.

Unless expressly and unequivocally released in this Plan, nothing contained in this Plan shall be deemed to be a waiver or relinquishment or release of any Causes of Action that the Liquidating Trustee may choose to assert on behalf of the Estate under any provision of the Bankruptcy Code or any applicable non-bankruptcy law. All Causes of Action, cross-claims, setoffs, defenses and counterclaims of the Debtors or the Estate of any kind or nature whatsoever including, without limitation, those against third parties arising before the Effective Date that have not been disposed of prior to the Effective Date shall be preserved and retained for enforcement by the Liquidating Trustee for the benefit of the Estate as set forth in this Plan, except to the extent expressly and unequivocally released or enjoined by this Plan or pursuant to a Final Order. Without limitation of the foregoing, pursuant to section 1123(b) of the Bankruptcy Code, the Liquidating Trustee, and his successors and assigns, shall retain and is solely empowered and authorized to enforce, for the benefit of the Estate, all Causes of Action and related recoveries of any nature or type whatsoever, at law or in equity, against any Person or entity.

Furthermore, except as specifically released or enjoined by the Plan or pursuant to a Final Order, the Liquidating Trustee is retaining for enforcement for the benefit of the Estate all Avoidance Actions, including, but not limited to, against the following Persons or entities: (a) any Person or entity who received a payment or property from the Debtors to or for their benefit on account of an antecedent debt owed by the Debtors within ninety (90) days of the Filing Date, including, but not limited to, those persons or entities identified in response to Question 3(a) on Debtors' Statement of Financial Affairs Filed with the Bankruptcy Court; (b) any insider of the Debtors, as that term is defined by the Bankruptcy Code, who received a payment or transfer of property from the Debtors to or for their benefit on account of an antecedent debt owed by the Debtors within one year of the Filing Date; (c) any Person or entity who received a transfer of property from the Debtors or from whom the Debtors assumed an obligation within two years of the Filing Date; (d) Frost Cummings Tidwell Group LLC and its agents, employees, officers, directors, attorneys, shareholders, legal representatives, insurers, successors and assigns, parent and all affiliate companies, firms, principals, members, stakeholders, investors and/or entities affiliated with Frost Cummings Tidwell Group LLC, including, without limitation, all indirect and direct parent and/or subsidiary corporations and affiliate entities and all other entities or persons who may be liable for Frost Cummings Tidwell Group LLC's conduct; (e) BP and its agents, employees, officers, directors, attorneys, shareholders, legal representatives, insurers,

successors and assigns, parent and all affiliate companies, firms, principals, members, stakeholders, investors and/or entities affiliated with BP, including, without limitation, all indirect and direct parent and/or subsidiary corporations and affiliate entities and all other entities or persons who may be liable for BP's conduct; and (f) Transocean, Ltd. and its agents, employees, officers, directors, attorneys, shareholders, legal representatives, insurers, successors and assigns, parent and all affiliate companies, firms, principals, members, stakeholders, investors and/or entities affiliated with Transocean, Ltd., including, without limitation, all indirect and direct parent and/or subsidiary corporations and affiliate entities and all other entities or persons who may be liable for Transocean, Ltd.'s conduct. Regardless of whether or not a Person or entity is identified as a recipient of a payment or other transfer of property from the Debtors or the transferor of obligation to the Debtors in the Debtors' Statement of Financial Affairs Filed with the Bankruptcy Court, all Avoidance Actions against any Persons or entities shall be reserved and retained for enforcement by the Liquidating Trustee, for the benefit of the Estate.

Upon the Effective Date, the Liquidating Trustee shall automatically be substituted in as the Plaintiff in any action in which the Debtors was the Plaintiff, and as the party in interest with respect to any proof of claim filed by the Debtors.

Nothing in the Plan prejudices any party's positions with respect to jurisdictional, substantive, and procedural issues pertaining to the Causes of Action and other claims described in this paragraph.

Section VIII.

RETENTION OF JURISDICTION

Under sections 105(a) and 1142 of the Bankruptcy Code, and notwithstanding entry of the Confirmation Order, substantial consummation of this Plan and occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, and related to, the Case and this Plan to the fullest extent permitted by law, including, among other things, jurisdiction to:

1. Allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Interest, including the resolution of any request for payment of any Administrative Expense Claim, the resolution of any objections to the Allowance or priority of Claims or Interests and the determination of requests for the payment of claims entitled to priority under section 507(a)(1) of the Bankruptcy Code, including compensation of any reimbursement of expenses of parties entitled thereto;
2. Hear and determine all applications for compensation and reimbursement of expenses of professionals under this Plan or under sections 330, 331, 503(b), 1103, and 1129(a)(4) of the Bankruptcy Code;
3. Hear and determine all matters with respect to the assumption or rejection of any executory contract or unexpired lease to which the Debtors are a party or with respect to which the Debtors may be liable, and to hear, determine and, if necessary, liquidate any Claims arising therefrom;

4. Effectuate performance of and payments under the provisions of this Plan;
5. Hear and determine any and all adversary proceedings, motions, applications and contested or litigated matters arising out of, under or related to the Case or this Plan;
6. Enter such orders as may be necessary or appropriate to execute, implement or consummate the provisions of this Plan and all contracts, instruments, releases and other agreements or documents created in connection with this Plan, the Disclosure Statement or the Confirmation Order;
7. Hear and determine disputes arising in connection with the interpretation, implementation, consummation or enforcement of this Plan, including disputes arising under agreements, documents or instruments executed in connection with this Plan;
8. Consider any modifications of this Plan and any implementing documents, cure any defect or omission or reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;
9. Issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any entity with implementation, consummation, or enforcement of this Plan or the Confirmation Order;
10. Enter and implement such orders as may be necessary or appropriate if the Confirmation Order is for any reason reversed, stayed, revoked, modified or vacated;
11. Hear and determine any matters arising in connection with or relating to this Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document created in connection with this Plan, the Disclosure Statement or the Confirmation Order;
12. Enforce all orders, judgments, injunctions, releases, exculpations, indemnifications and rulings entered in connection with the Case;
13. Except as otherwise limited by this Plan, recover all assets of the Debtors and property of the Estate, wherever located;
14. Hear and determine matters concerning state, local and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code;
15. Hear and determine all matters related to the property of the Estate from and after the Confirmation Date;
16. Hear and determine the Causes of Action, unless the Liquidating Trustee determines, in his sole discretion, to commence an action or proceeding in another court of competent jurisdiction;
17. Hear and determine all disputes involving the existence, nature or scope of the injunctions indemnification, exculpation and releases granted pursuant to this Plan.

18. Hear and determine all disputes or other matters arising in connection with the interpretation, implementation or enforcement of the Asset Sales;

19. Hear and determine all matters related to (a) the property of the Estate from and after the Confirmation Date, (b) the winding up of the Estate, and (c) the activities of the Liquidating Trustee, including (i) challenges to or approvals of his activities, where required under this Plan, (ii) the resignation, incapacity or removal of the Liquidating Trustee, (iii) reporting by, termination of and accounting by the Liquidating Trustee, and (iv) release of the Liquidating Trustee from his duties;

20. Hear and determine disputes with respect to compensation of professionals;

21. Hear and determine all disputes involving the existence, nature and/or scope of the injunctions and releases provided by this Plan including any dispute relating to any liability arising out of any termination of employment or the termination of any employee or retiree benefit provision, regardless of whether such termination occurred prior to or after the Effective Date;

22. Hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under, or not inconsistent with, provision of the Bankruptcy Code;

23. Enforce all orders previously entered by the Bankruptcy Court; and

24. Enter a final decree closing the Case.

Section IX.

MISCELLANEOUS PROVISIONS

A. SUBSTANTIAL CONSUMMATION.

The Plan shall be deemed to be substantially consummated when the Liquidating Trustee makes the Final Distribution.

B. INSURANCE PRESERVATION.

Any policies of insurance or indemnification escrows that may cover or apply to any Claims against any other officer, director, employee, agent or other representative of the Debtors (collectively, the "Insured Parties"), including, without limitation, any directors or officers liability insurance policy, shall be preserved and shall remain in full force and effect following entry of the Confirmation Order and nothing in this Plan, including any releases, shall diminish, impair or prejudice the rights, claims, interests or defenses of any Insured Party.

C. TAX INJUNCTION.

In accordance with § 346 of the Bankruptcy Code for purposes of any state or local law imposing a tax, income will not be realized by the Debtors or by reason of forgiveness or discharge or indebtedness resulting from the Case. As a result, each state or local taxing authority is permanently enjoined and restrained, after the Confirmation Date, from

commencing, continuing or taking any act to impose, collect or recover in any manner any tax against the Debtors arising by reason of the forgiveness or discharge of any such Person under this Plan. Notwithstanding any other provision of this Plan, each Person or entity receiving a Distribution pursuant to this Plan shall have sole and exclusive responsibility for the payment and satisfaction of tax Claims or obligations imposed by any Governmental Unit on account of, arising out of or related to any such Distribution, including, without limitation, income and withholding taxes.

D. EFFECTUATING DOCUMENTS; FURTHER TRANSACTION; EXEMPTION FROM TRANSFERS TAXES.

1. Pursuant to section 1146(a) of the Bankruptcy Code, the creation or transfer of any mortgage, deed of trust or other security interest, the making or assignment of any lease or sublease, or the making or delivery of any deed or other instrument of transfer under, in furtherance of or in connection with this Plan, and executed in connection with the liquidation of assets shall not be subject to any stamp tax, real estate tax or similar tax and the Confirmation Order shall direct the appropriate state, commonwealth and local government officials or agents to forego the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

2. On the Effective Date, all provisions of this Plan, including all releases, injunctions, agreements, instruments and other documents filed in accordance with this Plan, shall be binding and have *res judicata*, collateral estoppel, claim preclusion and issue preclusion effect upon the Debtors, all Holders of Claims and Interests and all other entities that are affected in any manner by this Plan. All agreements, instruments and other documents filed in connection with this Plan shall have full force and effect, and shall bind all parties thereto as of the Effective Date, whether or not such documents actually shall be executed by parties other than the Debtors or shall be issued, delivered or recorded on the Effective Date or thereafter.

E. NONCONSENSUAL CONFIRMATION.

If all impaired classes do not vote in favor of this Plan, this Plan Proponent shall seek confirmation of this Plan in accordance with section 1129(b) of the Bankruptcy Code, either under the terms provided herein or upon such terms as may exist if this Plan is modified in accordance with section 1127(a) of the Bankruptcy Code.

F. MODIFICATION OF PLAN.

The Debtors may alter, amend or modify this Plan pursuant to section 1127(a) of the Bankruptcy Code at any time prior to the Confirmation Date. After Confirmation Date and prior to the substantial consummation of this Plan, as defined in section 1101(2) of the Bankruptcy Code, this Plan Proponent may, pursuant to section 1127(b) of the Bankruptcy Code, institute proceedings in Bankruptcy Court to remedy any defect or omission or to reconcile any inconsistencies in this Plan, the Disclosure Statement or the Confirmation Order and any other matters as may be necessary to carry out the purposes and effects of this Plan; so long as such proceedings do not adversely affect the treatment of Holders of Claims or provided, however,

that prior notice of such proceedings shall be served in accordance with Bankruptcy Rule 2002 or order of the Bankruptcy Court.

G. PLAN SUPPLEMENT(S).

Exhibits to this Plan not attached hereto shall be filed in one or more Plan Supplements by the Exhibit Filing Date. Any Plan Supplement (and amendments thereto) filed this Plan Proponent shall be deemed an integral part of this Plan and shall be incorporated by reference as if fully set forth herein. Substantially contemporaneously with its Filing, any Plan Supplement may be viewed at the office of the clerk of the Court or its designee during normal business hours, by visiting the Court's website at ecf.alnb.uscourts.gov (PACER account required). Holders of Claims and/or Interests may obtain a copy of any Plan Supplement upon written request to the Debtors. The documents contained in any Plan Supplement shall be approved by the Bankruptcy Court pursuant to the Confirmation Order. To the extent any Exhibit is inconsistent with the terms of this Plan, unless otherwise ordered by the Bankruptcy Court, the non-Exhibit portion of this Plan shall control.

H. NOTICE.

Except as specifically provided otherwise in the order approving the Disclosure Statement, any notice, pleading, objection or other document required by this Plan or the Confirmation Order, shall be sent by overnight delivery service, facsimile transmission or hand delivery and deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed and addressed as follows:

1. If to the Debtors:

D. Christopher Carson
Marc P. Solomon
Brent W. Dorner
BURR & FORMAN LLP
420 North 20th Street, Suite 3400
Birmingham, Alabama 35203
Facsimile: (205) 458-5100

2. If to the Liquidating Trustee:

As set forth in the Disclosure Statement Order.

3. If to the Bankruptcy Administrator:

J. Thomas Corbett
Office of the Bankruptcy Administrator
United States Bankruptcy Court
1800 5th Avenue North
Suite 132
Birmingham, AL 35203

I. SEVERABILITY; CONFLICT OF TERMS; SUCCESSORS AND ASSIGNS.

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

J. CONFLICT OF TERMS.

To the extent the Disclosure Statement and this Plan are inconsistent, the terms of this Plan shall control.

K. SUCCESSORS AND ASSIGNS.

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

L. PAYMENT OF BANKRUPTCY ADMINISTRATOR FEES.

All fees payable through the Effective Date due the Bankruptcy Administrator shall be paid on the Effective Date by the Liquidating Trustee on behalf of the Debtors. The Liquidating Trustee shall pay quarterly fees to the Bankruptcy Administrator until the Case is closed or converted and/or the entry of final decrees. The Bankruptcy Administrator shall not be required to file a request or proof of claim for payment of its quarterly fees, which shall be paid by the Liquidating Trustee on behalf of Debtors.

M. TAX REPORTING AND COMPLIANCE.

The Liquidating Trustee is hereby authorized to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtors for all taxable periods ending after the Petition Date through and including the Effective Date.

Respectfully submitted,

/s/Marc P. Solomon

D. Christopher Carson

Marc P. Solomon

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Attorneys for Debtors

By: /s/ Thomas S. O'Donoghue, Jr.
Its: Chief Restructuring Officer

Exhibit B – Liquidation Analysis

Adams Produce Company LLC
Liquidation Analysis
Estimated Recovery

1/14/2013

Sources of Funds

<u>Assets</u>	<u>Note</u>	<u>Unaudited Book Value</u>	<u>%</u>	<u>Projected Liquidation Recovery</u>
Cash	a1			
PNC Collection		\$ 7,262	100%	\$ 7,262
PNC DIP Disbursement		160,185	100%	160,185
BB&T DIP		264,144	100%	264,144
PNC Payroll		170,693	0%	-
PNC Operating		(176,774)	0%	-
Total Cash in Bank		425,509	100%	424,329
Accounts Receivable				
Trade with no offsets	a2	544,882	25%	133,496
Trade - Defense Logistics Accounts	a3	293,322	0%	-
Trade - with offsets	a4	968,323	0%	-
Total Trade Receivables		1,806,527	7%	133,496
Other Receivables				
Rebate Receivables	a5	1,976,528	0%	-
Receivable - Executive	a6	673,260	0%	-
Receivable - Employee	a7	44,093	0%	-
Receivable - Misc.	a8	10,193	0%	-
Total Other Receivables		2,704,073	0%	-
Inventories	a9	\$ -		\$ -
Prepaid, Deposits, Other				
Utility deposits	a10	76,419	0%	-
ProAct membership deposit	a11	25,000	0%	-
Prepaid Key Man insurance	a12	29,957	0%	-
CSV - Key man Life	a13	39,270	0%	-
Prepaid business insurance	a14	30,000	100%	30,000
Prepaid Expenses	a15	111,255	0%	-
Total Prepaid & Other Assets		311,901	10%	30,000
Fixed Assets, at Cost, net of reserves	a16			
Furniture & Fixtures		80,310	0%	-
Warehouse Equipment		2,876,924	0%	-
Computer Equipment		242,910	0%	-
Vehicles		167,969	3%	5,039
Leasehold Improvements		691,305	0%	-
Total Fixed Assets		3,368,113	0%	5,039
Other Assets				
Long Term investments	a17	212,819	19%	41,193
Adams Clinton Park LLC	a18	1,562,037	0%	-
Adams Real estate Holdings	a19	217,478	9%	20,000
Intellectual Property	a20	16,368,520	0%	-
Goodwill	a21	7,262,572	0%	-
Total Other Assets		25,623,426	0%	61,193
Total Assets		\$34,239,550	2%	\$654,058
Contingent assets - Unliquidated				
D&O claims	a22	\$0	0%	1,300,000
Deepwater Horizon claim	a23	\$0	0%	-
Claim - auditor	a24	\$0	0%	-
		0		1,300,000
Available to Pay Debts				\$1,954,058

Notes are integral assumptions about the estimated recovery

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Adams Produce Company LLC
Liquidation Analysis
Estimated Recovery

1/14/2013

<i>Uses of Funds</i>		Unaudited Book Value	Projected Liquidation Recovery
<u>Liabilities</u>		<u>Note</u>	
Secured and PACA claims payable from proceeds			
PNC - Lien Proceeds	L1	49,200	(49,200)
PACA Claim settlement	L2	330,000	(330,000)
Funds Available for Priority			1,574,858
Priority Claims			
503(b)9 claims	L3	103,500	(72,450)
Tax claims	L4	150,000	(150,000)
Stipulation settlements	L5	3,000	(3,000)
Gulf Coast settlement	L6	9,200	(9,200)
Employee wages and health claims	L7	1,313,384	(850,000)
Funds Available for Administrative costs			490,207
Liquidation Administrative Costs			
Professional (Burr & Forman, Deloitte)	L8		(1,200,000)
Tax return prep	L9		(50,000)
Temp Staff	L10		(26,598)
Collection Company - B&J	L11		0
Commissions - sale of Real estate	L12	15%	0
Mailing and notice fees	L13		(4,500)
Bankruptcy Administrator fees	L14		(28,000)
Records Retention fees	L15		(37,000)
Misc. expenses	L16		(105,500)
Total Liquidation Costs			(1,449,598)
Available Funds after Liquidation Costs			(959,391)
Available for Trade and Other Unsecured			(959,391)
Unsecured Claims			
Accounts Payable & Accrueds- pre-petition			(23,500,000)
Landlord claims - (1 yr est.)			(1,000,000)
Estimated Secured Lender Deficiency claim			(5,728,000)
Other - executory claims			(500,000)
Total Unsecured Claims			(30,728,000)
Percent of Claims Paid			0.0%
Available for Equity			0

Notes are integral assumptions about the estimated recovery

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NOTE:

- a1 As of 1/1/12, the cash on hand in two banks - PNC Bank and BB&T.
Trade with no offsets - account receivables due from customers with no known offset such as a rebate program. Over 500 accounts with receivables aging in excess of 180 days. Expect to receive approximately 25% of balance net of third party collection costs.
- a2 *Trade - Defense Logistics Accounts - accounts owed by the Defense Logistics Agency (DLA) not expected to be paid due to offsets asserted by DLA.*
- a3 *Trade - with offsets - account receivables owed by customers who are owed offsetting amounts related to rebate programs or product sold to Adams. Offsets equal amount owed to Adams.*
- a4 *Rebate Receivables represent rebates due to Adams based on volume and type of products purchased from produce suppliers. The Rebates were applied to amounts owed to these suppliers.*
- a5 *Receivable - Executive - various amounts owed by the former CEO of Adams Produce Company. The expectation is that very little of this will be collected. The collection and rights to any proceeds are being assigned to the senior lender who has asserted lien rights to the receivables.*
- a6 *Receivable - Employee - amount is comprised of a receivable due from and a payment on account of a debt owed to a former employee a/k/a Gulf Coast Produce. Adams owed Gulf Coast Produce monies sent in error to Adams by Gulf Coast Produce's customers. Adams settled the monies due to and from Gulf Coast Produce by compromising the debts.*
- a7 *Receivable - Misc. - investigation of amount per books has determined a lack of documents to enforce a collection of the amount.*
- a8 *Inventories - all inventory as of the filing date was sold or scrapped.*
- a9 *Utility Deposits - applied by the utilities to the pre-petition amounts owed.*
- a10 *ProAct membership deposit - was applied against the amount owed to ProAct as part of the PACA claims*
- a11 *Prepaid Key Man Insurance - Adams had paid the life insurance premium on certain policy insuring the CEO. These payments were recorded as a prepayment to be repaid by the CEO. If repaid, the proceeds have been assigned to PNC Bank who has asserted lien rights to the proceeds.*
- a12 *CSV - Key Man Life - a life insurance policy owned by Adams Produce insured the life of the CEO. Adams paid the premiums of this policy. If the CSV is surrendered and paid out, the proceeds have been assigned to PNC Bank who has asserted lien rights to the proceeds.*
- a13 *Prepaid business insurance - represents the refund due to the company from its general business insurance provider based on the early termination of the prepaid policy. The proceeds will be paid out to PNC bank, the secured creditor.*
- a14 *Prepaid Expenses is a combination of prepaid taxes and other expenses that have no value.*
- a15 *Fixed assets - represents primarily the warehouse equipment and computer equipment used by Adams in the business. All of the equipment except for two trailers and five non-running delivery vehicles, was turned over to PNC Bank through a lift of stay motion. These remaining vehicles are assumed to have only scrap value.*
- a16 *Long Term Investments - comprised of LLC memberships in three produce related companies and note receivable from one of the three. The membership in ProAct was terminated and forfeited prior to the bankruptcy due to failure to meet credit requirements; membership in National Distribution Group was sold at zero value and recovery of a \$3,300 note receivable; membership in Integrated Food Services was sold back to the LLC for a discount note receivable of \$37,893 in order to receive the bulk of the membership value in 90 days.*
- a17 *Adams Clinton Park LLC - represents land and building in Clinton, MS on which PNC bank has a first mortgage. PNC Bank was granted a lift from stay and has taken steps to foreclose on the property.*
- a18 *Adams Real estate Holdings - is a dilapidated warehouse located in Panama City, Florida that has been listed for sale. It is assumed it will be sold at auction with no reserve net of the real estate taxes and commissions.*
- a19 *Intellectual Property - values attributed to the business trademark, customer lists and other intangible values. No sale of this property is planned.*
- a20
- a21 *Goodwill refers to the excess in purchase price over the appraised value of the tangible assets.*
- a22 *D&O Claims - refers to a mediation settlement to resolve claims asserted against the D&O insurance policy. Settlement will provide funds to make a settlement with employees and an outstanding PACA claimant.*
- a23 *Deepwater Horizon claim - This is an unliquidated claim at this time that represents unknown claim value related to financial impact to eligible Adams locations by the Deepwater Horizon incident. Claims are being processed by a new settlement fund.*
- a24 *Claim - Auditor - This is an unliquidated claim that represents the financial impact claims asserted by Adams Produce Company related to work product of Adams' former auditor*

1/14/2013

NOTE:

- L1 *PNC - Lien Proceeds - represents payments due to PNC from insurance refund and carve out from Deepwater Horizon claim proceeds and Note Receivable proceeds from NDG.*
- L2 *PACA Claim Settlement - represents a payment to an outstanding PACA claimant satisfied from proceeds of the D&O settlement.*
- L3 *503(b)9 claims - settlement of claimant.*
- L4 *Tax claims - represents tax authorities who filed a claim by bar date.*
- L5 *Stipulation settlements - payments agreed to in stipulation agreements with certain equipment lessees.*
- L6 *Gulf Coast Settlement - payment to settle all claims due to and from Gulf Coast Produce.*
- L7 *Employee wages and Health claims - represents claims by non-C-level employees for unpaid wages, vacation and insurance benefits as of the filing date. Settlement based on payment from D&O settlement proceeds.*
- L8 *Professional - actual and projected professional fees to be approved for payment.*
- L9 *Tax return prep - projected cost of preparing tax returns for FY 2011, 2012 and 2013.*
- L10 *Temp Staff - staffing employees assisting with collection of receivables, reconciling claims and preparation of the Deepwater Horizon claim support.*
- L11 *Collection company - Brown and Joseph - receives 15% of the proceeds collected. The fee has been deducted from the projected receivable collections.*
- L12 *Commissions - sale of real estate - estimated commissions and marketing expenses to auction the Panama City building.*
- L13 *Mailing costs for distribution of notices.*
- L14 *Bankruptcy Administrator fees - estimated fees for quarterly BA fees through Q2 2013.*
- L15 *Records Retention fees - fees for data center of electronic records for five months and one year of paper records.*
- L16 *Misc. Expenses - equal to approximately 3% of all other costs estimated.*

Exhibit C – Summary Of Liabilities

Unclassified Claims

Administrative Expense Claims:

Fee Claims	1,228,190
Other than Fee Claims	153,500
Section 503(b) 9 Claims	<u>72,450</u>
Subtotal Administrative Expense Claims	1,454,140

PACA Claims	330,000
Priority Tax Claims	<u>150,000</u>

Total Unclassified Claims **1,934,140**

Classes of Claims

Class 1 – Priority Employee Claims	1,300,000
Class 2 – Allowed Secured Claims	5,000,000
Class 3 – Allowed Unsecured Claims	25,000,000
Class 4 – Insider claims	-
Class 5 – Interests	<u>-</u>
Total	<u>31,300,000</u>

(1) These amounts are estimates based upon the Debtor's Schedules of Assets and Liabilities. The actual Allowed Claims in certain classes, particularly Allowed General Unsecured Claims, could differ substantially from the estimates depending on the resolution of Disputed Claims. Any such differences could have a material impact on the recoveries of the affected classes.

(2) Class 3 does NOT include Administrative Section 503(b)(9) claims.

(3) These amounts do not reflect proofs of claim filed in the case including, but not limited to, claims for damages based upon the rejection of executor contracts.

(4) Not included in the estimation of administrative expense claims are Professional Fees, Accounts Payable being paid in the ordinary course of the Debtor's business, and administrative expense claims from certain of the Debtor's landlords for amounts owing pursuant to 11 U.S.C. § 365(d)(3).

Exhibit D – Summary of Unencumbered Assets

Projected Bank Cash Balance (as of January 14, 2013)	<u>\$ 521,733</u>
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Other Unencumbered Assets – estimated proceeds

Trade Receivables	\$100,000
Notes Receivable	41,000
Real Property	20,000
Vehicles	<u>5,000</u>
	<u>\$166,000</u>

Estimated Total Unencumbered Assets	<u>\$687,733</u>
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NOTES:

1. This exhibit does not include potential causes of action, including avoidance actions that accrue to the Debtor under the Bankruptcy Code.
2. Also excluded from this Exhibit is any non-Accounts Receivable based Claim that the Debtor may have against any third party, and any deposit currently being held by the Debtor's insurers.
3. The "Projected Bank Cash Balance" is an estimate of the amount of cash that shall be held by the Debtor as of January 14, 2013 assuming receipt of the D&O Settlement.
4. Additionally, administrative expenses will continue to accrue after January 14, 2013

Exhibit E – D&O Settlement

[TO BE FILED PRIOR TO DISLCOSURE STATEMENT HEARING]

Exhibit F – Liquidating Trust Agreement

[TO BE FILED PRIOR TO DISLCOSURE STATEMENT HEARING]