

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

In re:)	Chapter 11
)	
ATHEROGENICS, INC.,)	Case No. 08-78200
)	
Debtor.)	Judge Massey
<hr/>)	

**DISCLOSURE STATEMENT FOR
PLAN FILED BY THE DEBTOR**

February 11, 2009

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DISCLAIMER

IF NO IMPAIRED CLASS OF CREDITORS VOTES TO ACCEPT THE PLAN, THIS CHAPTER 11 CASE MAY BE CONVERTED TO A CASE UNDER CHAPTER 7 OF THE BANKRUPTCY CODE. IF THIS CHAPTER 11 CASE IS CONVERTED TO CHAPTER 7, DISTRIBUTIONS TO CREDITORS WOULD BE DELAYED SIGNIFICANTLY AND CREDITORS WOULD RECEIVE A SMALLER RECOVERY THAN THEY WILL RECEIVE UNDER THE PLAN.

THIS DISCLOSURE STATEMENT HAS BEEN APPROVED BY ORDER OF THE COURT AS CONTAINING INFORMATION OF A KIND, AND IN SUFFICIENT DETAIL, TO ENABLE HOLDERS OF CLAIMS TO MAKE AN INFORMED JUDGMENT IN VOTING TO ACCEPT OR REJECT THE PLAN. APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT, HOWEVER, CONSTITUTE A DETERMINATION OR RECOMMENDATION BY THE BANKRUPTCY COURT AS TO THE FAIRNESS OR THE MERITS OF THE PLAN.

THIS DISCLOSURE STATEMENT CONTAINS A SUMMARY OF CERTAIN PROVISIONS OF THE PLAN, THE EXHIBITS ANNEXED TO THIS DISCLOSURE STATEMENT, AND CERTAIN FINANCIAL INFORMATION. ALTHOUGH THE DEBTOR BELIEVES THAT THESE SUMMARIES ARE FAIR AND ACCURATE AND PROVIDE ADEQUATE INFORMATION WITH RESPECT TO THE DOCUMENTS SUMMARIZED, SUCH SUMMARIES ARE QUALIFIED TO THE EXTENT THAT THEY DO NOT SET FORTH THE ENTIRE TEXT OF, OR ARE INCONSISTENT WITH, SUCH DOCUMENTS. FURTHERMORE, ALTHOUGH THE DEBTOR HAS MADE EVERY EFFORT TO BE ACCURATE, THE FINANCIAL INFORMATION CONTAINED HEREIN HAS NOT BEEN THE SUBJECT OF AN AUDIT OR OTHER REVIEW BY AN ACCOUNTING FIRM. IN THE EVENT OF ANY CONFLICT, INCONSISTENCY, OR DISCREPANCY BETWEEN THE TERMS AND PROVISIONS IN THE PLAN, THIS DISCLOSURE STATEMENT, THE EXHIBITS ANNEXED TO THIS DISCLOSURE STATEMENT, OR THE FINANCIAL INFORMATION INCORPORATED HEREIN OR THEREIN BY REFERENCE, THE PLAN SHALL GOVERN FOR ALL PURPOSES. ALL HOLDERS OF CLAIMS SHOULD READ THIS DISCLOSURE STATEMENT AND THE PLAN IN THEIR ENTIRETY BEFORE VOTING ON THE PLAN.

THE STATEMENTS AND FINANCIAL INFORMATION CONTAINED HEREIN HAVE BEEN MADE AS OF THE DATE HEREOF UNLESS OTHERWISE SPECIFIED. HOLDERS OF CLAIMS AND INTERESTS REVIEWING THIS DISCLOSURE STATEMENT SHOULD NOT INFER AT THE TIME OF SUCH REVIEW THAT THERE HAVE BEEN NO CHANGES IN THE FACTS SET FORTH HEREIN, UNLESS SO SPECIFIED. ALTHOUGH THE DEBTOR HAS MADE AN EFFORT TO DISCLOSE WHERE CHANGES IN PRESENT CIRCUMSTANCES COULD REASONABLY BE EXPECTED TO AFFECT MATERIALLY THE RECOVERY UNDER THE PLAN, THIS DISCLOSURE STATEMENT IS QUALIFIED TO THE EXTENT CERTAIN EVENTS DO OCCUR.

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE AND NOT IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER APPLICABLE NON-BANKRUPTCY LAW. PERSONS OR ENTITIES HOLDING OR TRADING IN OR OTHERWISE PURCHASING, SELLING, OR TRANSFERRING CLAIMS AGAINST THE DEBTOR SHOULD EVALUATE THIS DISCLOSURE STATEMENT IN LIGHT OF THE PURPOSE FOR WHICH IT WAS PREPARED.

IN ACCORDANCE WITH THE BANKRUPTCY CODE, THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION (THE "SEC"), NOR HAS THE SEC PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED HEREIN.

I.

INTRODUCTION

A. OVERVIEW

AtheroGenics, Inc. (“AtheroGenics” or the “Debtor”), the debtor-in-possession herein, hereby submits this Disclosure Statement for the Plan Filed By the Debtor (the “Disclosure Statement”) pursuant to Section 1125(b) of the Bankruptcy Code, and Rule 3017 of the Federal Rules of Bankruptcy Procedure, in connection with the Plan Filed by the Debtor dated February 11, 2009 (the “Plan”). A copy of the Plan is annexed hereto as Exhibit A. All capitalized terms used but not defined in the Disclosure Statement shall have the meanings ascribed to such terms in the Plan, unless otherwise noted. In the event of any inconsistency between the Disclosure Statement and the Plan, the terms of the Plan shall govern and such inconsistency shall be resolved in favor of the Plan.

The purpose of this Disclosure Statement is to enable you, as a creditor under the Plan, to make an informed decision in exercising your right to accept or reject the Plan.

B. SUMMARY OF THE PLAN

The Debtor proposes to make the following distributions from the Debtor’s Estate on the Effective Date or as soon thereafter as is reasonably practicable to holders of secured and unsecured claims as illustrated below. The Plan classifies all Claims against and Interests in the Debtor into nine separate Classes. The following table summarizes the classification and treatment afforded under the Plan as further described in Section V of this Disclosure Statement.

<u>Class</u>	<u>Description</u>	<u>Class Treatment</u>	<u>Class Status</u>	<u>Class Voting Rights</u>
1	Secured Claims	Legal, equitable and contractual rights reinstated and Holder paid in accordance with rights or surrender of collateral	Unimpaired	Deemed to accept Plan
2	Priority Claims	Paid 100% in Cash on Effective Date or to the extent not due and owing on Effective Date, paid in full when Claim becomes due in ordinary course	Unimpaired	Deemed to accept Plan
3	2008 Note Holder Claims	Pro rata distributions of Liquidation Proceeds after satisfaction of Allowed Administrative Expense Claims, Allowed Priority Tax Claims, Allowed Gap Period Claims, and Allowed Claims in Classes 1, 2 and 8	Impaired	Entitled to vote

Class	Description	Class Treatment	Class Status	Class Voting Rights
4	2011 Note Holder Claims	Pro rata distributions of Liquidation Proceeds after satisfaction of Allowed Administrative Expense Claims, Allowed Priority Tax Claims, Allowed Gap Period Claims, and Allowed Claims in Classes 1, 2 and 8	Impaired	Entitled to vote
5	2012 Note Holder Claims	Pro rata distributions of Liquidation Proceeds after satisfaction of Allowed Administrative Expense Claims, Allowed Priority Tax Claims, Allowed Gap Period Claims, and Allowed Claims in Classes 1, 2 and 8	Impaired	Entitled to vote
6	General Unsecured Claims	Pro rata distributions of Liquidation Proceeds after satisfaction of Allowed Administrative Expense Claims, Allowed Priority Tax Claims, Allowed Gap Period Claims, and Allowed Claims in Classes 1, 2 and 8	Impaired	Entitled to vote
7	Rejection Damages Claims	Pro rata distributions of Liquidation Proceeds after satisfaction of Allowed Administrative Expense Claims, Allowed Priority Tax Claims, Allowed Gap Period Claims, and Allowed Claims in Classes 1, 2 and 8	Impaired	Entitled to vote
8	Unsecured Convenience Claims	Paid []% in Cash on the Effective Date	Impaired	Entitled to vote
9	Interests	Holders shall not receive any distribution	Impaired	Deemed to reject Plan

Pursuant to Section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, Gap Period Claims, and Priority Tax Claims against the Debtor are not classified for purposes of voting on, or receiving Distributions under, the Plan. All such Claims are instead treated separately in accordance with Article IV of the Plan and in accordance with the requirements set

forth in Section 1129(a)(9)(A) of the Bankruptcy Code. A more complete description of the treatment of Administrative Expense Claims, Gap Period Claims, and Priority Tax Claims is provided in Article IV of the Plan and Section V.K. of this Disclosure Statement.

C. VOTING AND CONFIRMATION PROCEDURES

Accompanying this Disclosure Statement are copies of the following documents: (1) the Plan, which is annexed to this Disclosure Statement as Exhibit A; (2) a Notice to Voting Classes; and (3) a Ballot to be executed by holders of Claims in Classes 3, 4, 5, 6, 7 and 8 to accept or reject the Plan.

This Disclosure Statement, the form of Ballot, and the related materials delivered together herewith (collectively, the "Solicitation Package"), are being furnished to holders of Claims in Classes 3, 4, 5, 6, 7 and 8 for the purpose of soliciting votes on the Plan.

If you did not receive a Ballot in your Solicitation Package, and believe that you should have received a Ballot, please contact Administar Services Group, LLC (the "Voting Agent"), at AtheroGenics, Inc., c/o Administar Services Group, LLC, 8475 Western Way, Suite 110, Jacksonville, Florida 32256 or by telephone at (904) 807-3000; or by facsimile at (904) 807-3030.

1. Who May Vote

Pursuant to the provisions of the Bankruptcy Code, only classes of Claims or Interests that are "impaired" and that are not deemed as a matter of law to have rejected a plan of reorganization under Section 1126(g) of the Bankruptcy Code are entitled to vote to accept or reject the Plan. Any class that is "unimpaired" is not entitled to vote to accept or reject a plan of reorganization and is conclusively presumed to have accepted the Plan. As set forth in Section 1124 of the Bankruptcy Code, a class is "impaired" if legal, equitable, or contractual rights attaching to the claims or equity interests of that class are modified or altered. For purposes of the Plan only, Holders of Claims in Classes 3, 4, 5, 6, 7 and 8 are Impaired and are entitled to vote on the Plan. Holders of Claims in Classes 1 and 2 are unimpaired and are, therefore, deemed to accept the Plan. Holders of Interests in Class 9 will not receive or retain any property under the Plan on account of such Interests and are, therefore, deemed to reject the Plan and are not entitled to vote.

A creditor's Claim must be "allowed" for purposes of voting in order for such creditor to have the right to vote. Generally, for voting purposes a Claim is deemed "allowed" absent an objection to the Claim if (i) a proof of claim was timely filed, or (ii) if no proof of claim was filed, the Claim is identified in the Debtor's Schedules as other than "disputed," "contingent," or "unliquidated," and an amount of the Claim is specified in the Schedules, in which case the Claim will be deemed allowed for the specified amount. In either case, when an objection to a Claim is filed, the creditor holding the Claim cannot vote unless the Bankruptcy Court, after notice and hearing, either overrules the objection, or allows the Claim for voting purposes. Accordingly, if you did not receive a Ballot and believe that you are entitled to vote on the Plan, you must file a Rule 3018 Motion with the Bankruptcy Court for the temporary allowance of

your Claim for voting purposes by [], 2009, or you will not be entitled to vote to accept or reject the Plan.

THE DEBTOR IN ALL EVENTS RESERVES THE RIGHT THROUGH THE CLAIM RECONCILIATION PROCESS TO OBJECT TO OR SEEK TO DISALLOW ANY CLAIM FOR DISTRIBUTION PURPOSES UNDER THE PLAN.

2. Voting Instructions and Voting Deadline

All votes to accept or reject the Plan must be cast by using the Ballot enclosed with this Disclosure Statement. No votes other than ones using such Ballots will be counted, except to the extent the Court orders otherwise. The Court has fixed [], 2009 as the date (the "Voting Record Date") for the determination of the Holders of Claims who are entitled to (a) receive a copy of this Disclosure Statement and all of the related materials and (b) vote to accept or reject the Plan. After carefully reviewing the Plan and this Disclosure Statement, including the annexed exhibits, please indicate your acceptance or rejection of the Plan on the Ballot and return such Ballot in the enclosed envelope by no later than [], 2009 to:

For mailing:

Administar Services Group, LLC
AtheroGenics, Inc.
8475 Western Way, Suite 110
Jacksonville, FL 32256

By overnight or hand delivery:

Administar Services Group, LLC
AtheroGenics, Inc.
8475 Western Way, Suite 110
Jacksonville, FL 32256

BALLOTS MUST BE COMPLETED AND RECEIVED NO LATER THAN 5:00 P.M. (EASTERN TIME) ON [], 2009 (THE "VOTING DEADLINE"). ANY BALLOT THAT IS NOT EXECUTED BY A DULY AUTHORIZED PERSON SHALL NOT BE COUNTED. ANY BALLOT THAT IS EXECUTED BY THE HOLDER OF AN ALLOWED CLAIM BUT THAT DOES NOT INDICATE AN ACCEPTANCE OR REJECTION OF THE PLAN WILL BE DEEMED TO BE AN ACCEPTANCE. ANY BALLOT THAT IS FAXED SHALL NOT BE COUNTED IN THE VOTING TO ACCEPT OR REJECT THE PLAN, UNLESS THAT BALLOT IS ACCEPTED IN THE DEBTOR'S DISCRETION.

3. Whom to Contact for More Information

If you have any questions about the procedure for voting your Claim or the packet of materials you received, please contact the Voting Agent at the address indicated above. If you wish to obtain additional copies of the Plan, this Disclosure Statement, or the exhibits to those documents, at your own expense, unless otherwise specifically required by Bankruptcy Rule 3017(d), please contact King & Spalding LLP, 1180 Peachtree Street, Atlanta, Georgia, 30309 Attn: Missy Heinz; or by facsimile at (404) 572-5129, Attn: Missy Heinz; or by electronic mail, at mheinz@kslaw.com. Copies of these documents may also be accessed on the website: www.administarllc.com.

4. Acceptance or Rejection of the Plan

The Bankruptcy Code defines “acceptance” of a plan by a class of claims as acceptance by holders of at least two-thirds in dollar amount and more than one-half in number of the Allowed Claims in that class that cast ballots for acceptance or rejection of the plan. Assuming that at least one Impaired Class votes to accept the Plan, the Debtor will seek to confirm the Plan under Section 1129(b) of the Bankruptcy Code, which permits the confirmation of a plan notwithstanding the non-acceptance by one or more impaired classes of Claims or Interests. Under Section 1129(b) of the Bankruptcy Code, a plan may be confirmed if (a) the plan has been accepted by at least one impaired class of claims and (b) the Court determines that the plan does not discriminate unfairly and is “fair and equitable” with respect to the non-accepting classes. A more detailed discussion of these requirements is provided in Section XV of this Disclosure Statement.

5. Time and Place of the Confirmation Hearing

Section 1128(a) of the Bankruptcy Code requires the Court, after notice, to hold a confirmation hearing. Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to confirmation of the Plan.

Pursuant to Section 1128 of the Bankruptcy Code and Bankruptcy Rule 3017(c), the Court has scheduled the Confirmation Hearing to commence on [], 2009 at [] a.m., before the Honorable James E. Massey, of the United States Bankruptcy Court, 75 Spring Street S.W., Atlanta, Georgia 30303. A notice setting forth the time and date of the Confirmation Hearing has been included along with this Disclosure Statement. The Confirmation Hearing may be adjourned from time to time by the Court without further notice, except for an announcement of such adjourned hearing date by the Court in open court at such hearing.

6. Objections to the Plan

Any objection to confirmation of the Plan must be in writing; must comply with the Bankruptcy Code, Bankruptcy Rules, and the Local Rules of the Court; and must be filed with the United States Bankruptcy Court for the Northern District of Georgia, 75 Spring Street S.W., Atlanta, Georgia 30303, and served upon the following parties, so as to be received no later than [], 2009: (a) King & Spalding LLP, 1180 Peachtree Street, Atlanta, Georgia 30309, Attn: James A. Pardo, Jr., Esq. (counsel for Debtor); (b) Office of the United States Trustee, 75 Spring Street, S.W., Atlanta, Georgia 30303; and (c) Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, New York 10036, Attn: David A. Botter, Esq. (counsel for the Committee).

II.

**HISTORY OF THE DEBTOR AND
EVENTS LEADING TO THE CHAPTER 11 FILING**

A. FORMATION, BUSINESS, DEBT STRUCTURE, AND OTHER PRE-PETITION OBLIGATIONS OF THE DEBTOR

1. Formation and History of the Debtor

The Debtor is a research-based pharmaceutical company focused on the discovery, development and commercialization of novel drugs for the treatment of chronic inflammatory diseases, including diabetes and coronary heart disease. The Debtor was incorporated on November 23, 1993 and is headquartered in Alpharetta, Georgia. The Debtor's fiscal year ends on December 31.

As of the date hereof, the key directors and officers of AtheroGenics are as follows:

Russell M. Medford	Director, President, and Chief Executive Officer
Mark P. Colonnese	Executive Vice President, Commercial Operations, and Chief Financial Officer
Joseph M. Gaynor, Jr.	Senior Vice President, General Counsel, and Corporate Secretary
W. Charles Montgomery	Senior Vice President, Business Development and Alliance Management
Charles A. Deignan	Vice President, Finance and Administration and Principal Accounting Officer
Michael A. Henos	Chairman of the Board
R. Wayne Alexander	Board Member
Samuel L. Barker	Board Member
Margaret E. Grayson	Board Member

2. The Debtor's Business Operations

As of the Petition Date, the Debtor employed approximately fifty individuals. Since the Petition Date, the number of individuals employed by the Debtor has been reduced to approximately thirty. The Debtor operates a clinical stage drug development program for its lead antioxidant and anti-inflammatory drug candidate, AGI-1067. A recent Phase 3 clinical trial (the "Diabetes Trial") of AGI-1067 suggests that AGI-1067 may prove to be an important diabetes

treatment. Further development activity, including design of an additional study, will need to be determined after discussions with the U.S. Food and Drug Administration. In addition to AGI-1067, the Debtor has other clinical and preclinical anti-inflammatory compounds. The Debtor is not currently undertaking any development activities on these other compounds.

3. Debtor's Assets, Debt Structure, and Other Pre-Petition Obligations

Information concerning the assets and liabilities of the Debtor as of the Conversion Date are included in the Schedules filed by the Debtor with the Court. As reflected in the Debtor's Schedules, the Debtor had estimated assets totaling approximately \$53,698,356 at book value and estimated liabilities of approximately \$306,553,015.

With the exception of certain leased equipment, the Debtor has no secured financing. Since inception, the Debtor has financed its operations primarily through the sales of equity securities and convertible notes. In August 2003, the Debtor issued \$100.0 million in aggregate principal amount of 4.5% convertible notes due September 1, 2008 with interest payable semiannually on March 1 and September 1.

In January 2005, the Debtor issued \$200.0 million in aggregate principal amount of 1.5% convertible notes due February 1, 2012 with interest payable semi-annually in February and August.

In July 2007 and January 2008, the Debtor issued \$71.898 million in aggregate principal amount of 4.5% convertible notes due March 1, 2011 with interest payable semiannually on March 1 and September 1.

Each of the Notes ranks *pari passu* with each other series, and each series of Notes contains a provision allowing holders of the Notes to require the Debtor to redeem the Notes if the Debtor's common stock ceases to be listed on a national securities exchange.

As of the Petition Date, \$30.5 million in aggregate principal amount was outstanding on the 2008 Notes, \$71.898 million in aggregate principal amount was outstanding on the 2011 Notes, and \$200 million in aggregate principal amount was outstanding on the 2012 Notes.

B. EVENTS LEADING TO, AND CIRCUMSTANCES SURROUNDING, THE INVOLUNTARY CHAPTER 11 FILING

1. The Impact of the Heart Disease Trial

In 2003, the Debtor initiated a Phase 3 clinical study to evaluate the impact of AGI-1067 as a potential treatment for heart disease (the "Heart Disease Trial"). The results of this trial were reported in March 2007. These results did not achieve the main objective of the trial as a treatment for heart disease but indicated that AGI-1067 may be a valuable diabetes medication.

Following the announcement of the Heart Disease Trial results, the Debtor conducted a thorough evaluation of its assets and its business strategy. The Debtor received approval from its Board of Directors to realign the business plan to focus on the comprehensive evaluation of AGI-1067 as a diabetes medication.

Beginning in May 2007 and continuing through 2008, the Debtor implemented a plan to streamline its operations and conserve cash while ensuring it had the necessary resources to pursue the development of AGI-1067 -- including the implementation of the successful Diabetes Trial. As part of this effort, the Debtor significantly reduced its workforce and deferred the maturity of a significant portion of the originally issued 2008 Notes through two successful exchange offers.

The failed Heart Disease Trial and related events had a negative effect on the Debtor's stock price. The Debtor received a notice from Nasdaq that it was in violation of Nasdaq's listing standard, which generally requires that a listed company maintain a closing bid price for its common stock of at least \$1.00. At an August 14, 2008 hearing with the Nasdaq Listing Qualifications Panel (the "Panel"), the Debtor requested that the Panel allow the company additional time to come into compliance with the \$1.00 minimum bid price requirement. On September 15, 2008, the Panel granted the Debtor until December 22, 2008 to come into compliance with the bid price requirement.

2. Default on the Notes

The 2008 Notes became due in full on September 2, 2008, and the Debtor was unsuccessful in its attempts to restructure the 2008 Notes before they reached maturity. Also on September 2, 2008, an interest payment was due on the 2011 Notes. The Debtor did not pay the principal and interest due on the 2008 Notes or the interest on the 2011 Notes. The failure to pay resulted in an event of default under the Notes. The Debtor received notices of acceleration from the holders of the 2011 Notes and the 2012 Notes.

3. Attempt to Restructure

Certain holders of the 2011 Notes and 2012 Notes formed the Ad Hoc Committee and retained counsel.

On September 15, 2008, the Debtor met with the Ad Hoc Committee to discuss further development of AGI-1067 in light of the maturity of the 2008 Notes and the acceleration of the 2011 Notes and the 2012 Notes. The Ad Hoc Committee expressed its strong desire for the Debtor to consider a prompt sale of all of its non-cash assets inside a Chapter 11 bankruptcy proceeding.

4. The Bankruptcy Filing

On September 15, 2008, certain Petitioning Creditors filed the Involuntary Petition for relief under Section 303 of the Bankruptcy Code against the Debtor. On October 6, 2008, the Debtor filed its consent to the Involuntary Petition and moved the Court to convert the case to one under Chapter 11. On October 15, 2008, the Court entered its Order Granting Relief Against the Debtor and Approving the Debtor's Motion to Convert Case to One Under Chapter 11. The Debtor's Bankruptcy Case is pending before the Honorable James E. Massey.

III.

**CORPORATE GOVERNANCE OF THE
DEBTOR DURING THE CHAPTER 11 CASE**

A. BOARD OF DIRECTORS

AtheroGenics's Board of Directors (the "Board") is comprised of five (5) members: Michael A. Henos, R. Wayne Alexander, Samuel L. Barker, Margaret Grayson, and Russell M. Medford.

B. SENIOR MANAGEMENT

Senior management of the Debtor as of the Petition Date is described in Section II.A.1. The members of the Debtor's senior management have continued in their positions.

The Debtor's executive officers are elected by the Board and generally hold office until the next annual meeting of the Board or until their death, resignation, or removal.

IV.

SIGNIFICANT DEVELOPMENTS IN THE CHAPTER 11 CASE

A. FIRST DAY ORDERS AND RETENTION OF PROFESSIONALS

On October 6, 2008, the Debtor filed "first day" motions and applications with the Court seeking certain relief to aid in the efficient administration of the Bankruptcy Case and to facilitate the Debtor's transition to debtor-in-possession status. These motions and applications were granted at the "first day" hearing held on October 15, 2008. Pursuant to the Court's first-day orders and subsequent retention orders, King & Spalding LLP was retained as counsel to the Debtor; Merriman Curhan Ford & Co. was retained as the Debtor's investment banking and financial advisor; Ernst & Young LLP was retained as the Debtor's auditor; and Administar Services Group was retained as the Claims Agent for the Bankruptcy Case. In addition, the Debtor sought and obtained several orders from the Bankruptcy Court that were intended to enable the Debtor to operate to the extent possible in the normal course of business during the Chapter 11 process. Among other things, these orders:

- authorized the continuation of pre-petition banking and investment guidelines;
- authorized the continuation of pre-petition insurance policies;
- authorized payment of certain pre-petition employee salaries, wages, and benefits and reimbursement of pre-petition employee business expenses; and
- authorized payment of pre-petition use taxes owed by the Debtor.

B. APPOINTMENT OF A COMMITTEE

On October 17, 2008, the United States Trustee appointed the Official Committee of Unsecured Creditors pursuant to Section 1102(a) of the Bankruptcy Code. The members of the

Committee are The Bank of New York Mellon Trust Company and Investcorp Silverback Arbitrage Master Fund Ltd. By orders entered on November 3, 2008, the Committee was authorized to retain Akin Gump Strauss Hauer & Feld LLP as counsel to the Committee and Morris, Manning & Martin, LLP as co-counsel to the Committee.

C. MARKETING OF THE DEBTOR'S ASSETS IN CONTEMPLATION OF A CHAPTER 11 PLAN

Since the Petition Date, the Debtor has scrutinized carefully all aspects of its business and has moved aggressively to restructure its business operations. Among other things, the Debtor has taken steps to reduce significantly its headcount and overhead expenses.

Following the substantial completion of these internal restructuring activities and in consultation with the Ad Hoc Committee and the Committee, the Debtor determined to undertake an evaluation of the Debtor's strategic options to find ways to maximize the value of the Estate. Options considered by the Debtor include the sale of the equity in a reorganized debtor or the sale of substantially all of the Debtor's non-cash Assets.

After analyzing available options, the Debtor determined a sale of its non-cash Assets through an auction process would best maximize value for its creditors. Accordingly, the Debtor retained Merriman Curhan Ford & Co. ("Merriman") to conduct an extensive marketing effort to further its goal of identifying potential purchasers or investors.

Merriman contacted potential purchasers including both "strategic" parties (companies already engaged in the healthcare business) and "financial" parties (e.g., private equity funds). Merriman sent a teaser to over one hundred potential purchasers and entered into confidentiality and non-disclosure agreements with approximately nine potential purchasers. At this time, the Debtor and its advisors are evaluating the sale alternatives and working with the Board of Directors and the Committee to bring the sale process to conclusion.

D. ASSET SALE INCENTIVE PROGRAM AND SEVERANCE PLAN

In an effort to provide its management reasonable and appropriate incentives to support the marketing of the Debtor's non-cash Assets, the implementation of the sale of the Debtor's non-cash Assets, and the related efforts to maximize value through the sale, the Debtor and the Committee established the asset sale incentive program (the "Asset Sale Incentive Program") and modified the Debtor's existing severance plan (the "Severance Plan"). The Court entered the Agreed Order Authorizing Debtor to Implement and Make Payments Pursuant to Asset Sale Incentive Program and to Make Payments Pursuant to Severance Plan on November 18, 2008.

Pursuant to the Asset Sale Incentive Program, if the purchase price for the non-cash Assets is less than a certain threshold amount (an amount agreed to by the Debtor the Committee), there is no incentive payment. If the purchase price for the non-cash Assets of the Debtor is more than the threshold amount, then there shall be an incentive pool equal in amount to (a) \$650,000 plus (b) five (5) percent of the purchase price over the threshold amount. In order to receive a distribution pursuant to the Asset Sale Incentive Program, the participant must be employed by the Debtor at the time of the closing of the sale of the Debtor's non-cash Assets (the "Sale") or have been involuntarily separated without cause prior to the closing of the Sale.

Pursuant to the Severance Plan, upon an involuntary separation (other than for cause), all employees of the Debtor other than the four employees that nominally hold the title of vice-president and the four employees that are members of the Debtor's executive committee will receive severance in an amount equal to (x) their pre-separation weekly base salary multiplied by (y) the employee's vested severance period as calculated in accordance with the Debtor's pre-petition policy and practice for employees. The aggregate payments to these employees shall not exceed \$462,010.57, plus such additional severance as may result from incremental vesting of severance benefits subsequent to October 2, 2008.

Upon an involuntary separation (other than for cause), all employees who nominally hold the title of vice president and who, as of the Petition Date, had been employed by the Debtor (x) for five (5) or more years shall receive, as severance, an amount equal to (i) their pre-separation weekly base salary multiplied by (ii) fifty percent (50%) of such employee's vested severance period as if such period were calculated in accordance with the Debtor's pre-petition policy and practice for employees rather than in accordance with the Debtor's pre-petition policy and practice for vice presidents, or (y) for more than two (2) years and less than five (5) years shall receive, as severance, an amount equal to (i) their pre-separation weekly base salary multiplied by (ii) fifty percent (50%) of the average of the vested severance periods for those employees who nominally hold the title of vice president and who have been employed by the Debtor for five (5) or more years as if such periods were calculated in accordance with the Debtor's pre-petition policy for employees rather than the pre-petition policy and practice for vice presidents.

Upon an involuntary separation (other than for cause), all employees who are members of the Debtor's executive committee and who are parties to a written employment agreement shall receive, as severance, an amount equal to \$125,000.00. The aggregate payments to all employees who are members of the Debtor's executive committee and who are parties to a written employment agreement shall not exceed \$500,000.00.

E. POST-PETITION FINANCIAL PERFORMANCE

The Debtor's financial performance since the date of the entry for the Order for Relief is summarized in monthly operating reports the Debtor has filed with the Bankruptcy Court.

F. CLAIMS BAR DATE

On December 22, 2008, the Court entered an order (the "Bar Date Order") fixing February 17, 2009 (the "Bar Date") as the deadline by which all creditors must file proofs of claim in the Bankruptcy Case against the Debtor. The Bar Date Order also approved the form and manner of notice of the Bar Date. Notice of the Bar Date was sent to all known creditors of the Debtor and was published in The Wall Street Journal and The Atlanta Journal Constitution on December 31, 2008.

As of February 10, 2009, forty claims have been filed in the Bankruptcy Case totaling approximately \$306,000,000. This amount includes claims that have been characterized by the purported holders of the claims as claims that are Priority Claims and Unsecured Claims. The Debtor has not yet had an opportunity to review these filed claims to determine whether they are

properly classified, duplicative, or invalid for any other reason. The Debtor will have a more accurate assessment after the deadlines established by the Bar Date Order have passed.

V.

CLASSIFICATION OF CLAIMS AND INTERESTS

A. INTRODUCTION

All Claims and Interests in the Debtor's Bankruptcy Case are classified under the Plan. A Claim in a particular Class is entitled to receive Distributions pursuant to the Plan only to the extent the Claim is an Allowed Claim in that Class, and only to the extent the Claim has not been previously paid, released, or otherwise satisfied.

Claims and Interests are classified as follows:

- Class 1- Secured Claims
- Class 2- Priority Claims
- Class 3- 2008 Note Holder Claims
- Class 4- 2011 Note Holder Claims
- Class 5- 2012 Note Holder Claims
- Class 6- General Unsecured Claims
- Class 7- Rejection Damages Claims
- Class 8- Unsecured Convenience Claims
- Class 9- Interests

The Classes of Claims and Interests, as well as their treatment and an analysis of whether they are impaired or unimpaired, are described as follows:

B. CLASS 1 - SECURED CLAIMS

1. Description and Treatment

Class 1 consists of all Secured Claims. According to the Debtor's Schedules, the amount of the Secured Claims is approximately \$11,744.78. Unless the Holder of such Claim and the Debtor agree to a different treatment, each Holder of an Allowed Class 1 Secured Claim shall receive, in full and final satisfaction of such Allowed Class 1 Secured Claim, one of the following alternative treatments: (a) the legal, equitable and contractual rights to which such Claim entitles the Holder thereof shall be reinstated and the Holder paid in accordance with such legal, equitable and contractual rights; or (b) the Liquidating Agent shall cause the Post-

Confirmation Debtor to surrender all collateral securing such Claim to the Holder thereof, in full satisfaction of such Holder's Allowed Class 1 Secured Claim, without representation or warranty by or recourse against the Post-Confirmation Debtor or the Estate. Any Deficiency Claim of a Class 1 Claim Holder will be treated as a Class 6 General Unsecured Claim.

2. Impairment

Class 1 is an Unimpaired Class, and the Holders of Allowed Class 1 Secured Claims are conclusively deemed to have accepted this Plan pursuant to Section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Claims in Class 1 are not entitled to vote to accept or reject this Plan.

C. CLASS 2 - PRIORITY CLAIMS

1. Description and Treatment

Class 2 consists of all Priority Claims, which are Claims specifically granted priority status under Section 507 of the Bankruptcy Code other than an Administrative Expense Claim, Gap Period Claim, or a Priority Tax Claim. The Debtor believes that all Priority Claims have been paid in full pursuant to the first day orders in the Bankruptcy Case. Unless the Holder of such Claim and the Debtor agree to a different treatment, each Holder of an Allowed Class 2 Priority Claim shall receive, in full and final satisfaction of such Allowed Class 2 Priority Claim, one of the following alternative treatments: (a) to the extent then due and owing on the Effective Date, such Claim will be paid in full in Cash on the Effective Date; or (b) to the extent not due and owing on the Effective Date, the Liquidating Agent shall cause the Post-Confirmation Debtor to pay such Claim in full in Cash when and as such Claim becomes due and owing in the ordinary course of business.

2. Impairment

Class 2 is an Unimpaired Class, and the Holders of Class 2 Priority Claims are conclusively deemed to have accepted this Plan pursuant to Section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Claims in Class 2 are not entitled to vote to accept or reject this Plan.

D. CLASS 3 - HOLDERS OF 2008 CONVERTIBLE NOTES

1. Description and Treatment

Class 3 consists of all Holders of the 2008 Notes. The Holders of Class 3 Claims shall have an aggregate Allowed Claim in the amount of \$31,242,025.00. On the Initial Distribution Date and continuing on each subsequent Distribution Date up to and including the Final Distribution Date, each Holder of an Allowed Class 3 Claim shall receive (together with the Holders of Allowed Claims in Classes 4, 5, 6, and 7) a pro rata Distribution of any available Liquidation Proceeds that remain after the payment and satisfaction of Allowed Administrative Expense Claims, Allowed Priority Tax Claims, Allowed Gap Period Claims, and Allowed Claims in Classes 1, 2, and 8, subject to Retained Proceeds. All Distributions to Holders of

Allowed Class 3 Claims shall be made to the Indenture Trustee, who shall be responsible for making individual distributions to individual Holders.

2. Impairment

Class 3 is an Impaired Class and pursuant to Section 1126 of the Bankruptcy Code each Holder of an Allowed Class 3 Claim is entitled to vote to accept or reject this Plan.

E. CLASS 4 - HOLDERS OF 2011 CONVERTIBLE NOTES

1. Description and Treatment

Class 4 consists of all Holders of the 2011 Notes. The Holders of Class 4 Claims shall have an aggregate Allowed Claim in the amount of \$73,652,191.50. On the Initial Distribution Date and continuing on each subsequent Distribution Date up to and including the Final Distribution Date, each Holder of an Allowed Class 4 Claim shall receive (together with the Holders of Allowed Claims in Classes 3, 5, 6, and 7) a pro rata Distribution of any available Liquidation Proceeds that remain after the payment and satisfaction of Allowed Administrative Expense Claims, Allowed Priority Tax Claims, Allowed Gap Period Claims, and Allowed Claims in Classes 1, 2, and 8, subject to Retained Proceeds. All Distributions to Holders of Allowed Class 4 Claims shall be made to the Indenture Trustee, who shall be responsible for making individual distributions to individual Holders.

2. Impairment

Class 4 is an Impaired Class and pursuant to Section 1126 of the Bankruptcy Code each Holder of an Allowed Class 4 Claim is entitled to vote to accept or reject this Plan.

F. CLASS 5 - HOLDERS OF 2012 CONVERTIBLE NOTES

1. Description and Treatment

Class 5 consists of all Holders of the 2012 Notes. The Holders of Class 5 Claims shall have an aggregate Allowed Claim in the amount of \$200,366,666.66. On the Initial Distribution Date and continuing on each subsequent Distribution Date up to and including the Final Distribution Date, each Holder of an Allowed Class 5 Claim shall receive (together with the Holders of Allowed Claims in Classes 3, 4, 6, and 7) a pro rata Distribution of any available Liquidation Proceeds that remain after the payment and satisfaction of Allowed Administrative Expense Claims, Allowed Priority Tax Claims, Allowed Gap Period Claims, and Allowed Claims in Classes 1, 2, and 8, subject to Retained Proceeds. All Distributions to Holders of Allowed Class 5 Claims shall be made to the Indenture Trustee, who shall be responsible for making individual distributions to individual Holders.

2. Impairment

Class 5 is an Impaired Class and pursuant to Section 1126 of the Bankruptcy Code each Holder of an Allowed Class 5 Claim is entitled to vote to accept or reject this Plan.

G. CLASS 6 - GENERAL UNSECURED CLAIMS

1. Description and Treatment

Class 6 consists of all General Unsecured Claims. According to the Debtor's Schedules, the amount of the General Unsecured Claims, including disputed claims, is approximately \$1,203,139.90. On the Initial Distribution Date and continuing on each subsequent Distribution Date up to and including the Final Distribution Date, each Holder of an Allowed Class 6 Claim shall receive (together with the Holders of Allowed Claims in Classes 3, 4, 5, and 7) a pro rata Distribution of any available Liquidation Proceeds that remain after the payment and satisfaction of Allowed Administrative Expense Claims, Allowed Priority Tax Claims, Allowed Gap Period Claims, and Allowed Claims in Classes 1, 2, and 8, subject to Retained Proceeds.

2. Impairment

Class 6 is an Impaired Class and pursuant to Section 1126 of the Bankruptcy Code each Holder of an Allowed Class 6 Claim is entitled to vote to accept or reject this Plan.

H. CLASS 7 - REJECTION DAMAGES CLAIMS

1. Description and Treatment

Class 7 consists of all Claims arising from the rejection of an Executory Contract or Unexpired Lease. On the Initial Distribution Date and continuing on each subsequent Distribution Date up to and including the Final Distribution Date, each Holder of an Allowed Class 7 Claim shall receive (together with the Holders of Allowed Claims in Classes 3, 4, 5, and 6) a pro rata Distribution of any available Liquidation Proceeds that remain after the payment and satisfaction of Allowed Administrative Expense Claims, Allowed Priority Tax Claims, Allowed Gap Period Claims, and Allowed Claims in Classes 1, 2, and 8, subject to Retained Proceeds.

2. Impairment

Class 7 is an Impaired Class and pursuant to Section 1126 of the Bankruptcy Code each Holder of an Allowed Class 7 Claim is entitled to vote to accept or reject this Plan.

I. CLASS 8 - UNSECURED CONVENIENCE CLAIMS

1. Description and Treatment

Class 8 consists of all Unsecured Convenience Claims. Unsecured Convenience Claims are Unsecured Claims of \$10,000.00 or less. On either (i) the first Distribution Date after the applicable Claims Objection Deadline has occurred, if no objection to such Claim has been timely filed or (ii) the first Distribution Date after the date on which any objection to such Unsecured Convenience Claim is settled, withdrawn or overruled pursuant to a Final Order of the Bankruptcy Court, each Holder of an Allowed Class 8 Unsecured Convenience Claim shall receive, in full and final satisfaction of such Holder's Allowed Class 8 Claim, a one-time Cash payment in an amount equal to [] percent ([]%) of such Holder's Allowed Class 8 Claim.

2. Impairment

Class 8 is an Impaired Class. Pursuant to Section 1126 of the Bankruptcy Code, each Holder of an Allowed Class 8 Claim is entitled to vote to accept or reject this Plan.

J. CLASS 9 - INTERESTS

1. Description and Treatment

Class 9 consists of all Interests in the Debtor. All Interests of the Debtor that are held by a person other than the Debtor, if any, shall be deemed cancelled and extinguished. Holders of Class 9 Interests shall not receive any Distribution on account of such Interests.

2. Impairment

Class 9 will not receive or retain any property under this Plan and, thus, and pursuant to Section 1126(g) of the Bankruptcy Code, the Holders of Interests in Class 9 are deemed to reject this Plan, and, therefore, are not entitled to vote to accept or reject this Plan.

K. TREATMENT OF UNCLASSIFIED CLAIMS

1. Summary

Pursuant to Section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, Gap Period Claims, and Priority Tax Claims against the Debtor are not classified for purposes of voting on, or receiving Distributions under, the Plan. All such Claims are instead treated separately in accordance with Article IV of the Plan and in accordance with the requirements set forth in Section 1129(a)(9)(A) of the Bankruptcy Code.

2. Administrative Expense Claims

Administrative Expense Claims are claims for payment of administrative expenses of a kind specified in Section 503(b) of the Bankruptcy Code and entitled to priority pursuant to Section 507(a)(1) of the Bankruptcy Code. Subject to the provisions of Sections 328, 330(a), and 331 of the Bankruptcy Code, the Plan provides that each Holder of an Allowed Administrative Expense Claim will be paid the full unpaid amount of such Allowed Administrative Expense Claim in Cash on the latest of (i) the Effective Date, (ii) as soon as practicable after the date on which such Claim becomes an Allowed Administrative Expense Claim, (iii) upon such other terms as may be agreed upon by such Holder and the Liquidating Agent, or (iv) as otherwise ordered by the Bankruptcy Court.

Except as otherwise provided in the Plan, each Person holding an Administrative Expense Claim is required to file a proof of such Administrative Expense Claim with the Claims Agent within thirty (30) days after the Liquidating Agent provides notice by mail or by publication, in a form and manner approved by the Court, of the occurrence of the Effective Date. At the same time any Person files an Administrative Expense Claim, such Person shall also cause the Claim to be served on counsel for the Post-Confirmation Debtor and the Liquidating Agent. Any Person who fails to timely file and serve a proof of such Administrative

Expense Claim shall be forever barred from seeking payment of such Administrative Expense Claim by the Post-Confirmation Debtor and the Estate. Any Person seeking an award by the Bankruptcy Court of Professional Compensation shall file a final application with the Bankruptcy Court for allowance of Professional Compensation for services rendered and reimbursement of expenses incurred through the Effective Date within sixty (60) days after the Effective Date or by such other deadline as may be fixed by the Bankruptcy Court. The requirements described in this paragraph do not apply to any professional providing services pursuant to, and subject to the limits contained in, the Order Authorizing Debtor to Retain and Compensate Professionals Used in the Ordinary Course of Business.

3. Gap Period Claims

Gap Period Claims are claims for payment of a kind specified in Section 502(f) of the Bankruptcy Code and entitled to priority pursuant to Section 507(a)(3) of the Bankruptcy Code. The Debtor currently estimates that the amount of Gap Period Claims will be approximately \$6,600. Each Holder of an Allowed Gap Period Claim will be paid the full unpaid amount of such Gap Period Claim in Cash on the latest of (i) the Effective Date, (ii) as soon as practicable after the date on which such Claim becomes an Allowed Gap Period Claim, (iii) such other date or dates as may be agreed upon by such Holder and the Liquidating Agent, or (iv) as otherwise ordered by the Bankruptcy Court. Except as otherwise provided in the Plan, any Person holding a Gap Period Claim shall file a proof of such Gap Period Claim with the Claims Agent within thirty (30) days after the Liquidating Agent provides notice by mail or by publication, in a form and manner approved by the Court, of the occurrence of the Effective Date. At the same time any Person files a Gap Period Claim, such Person shall also serve a copy of the Gap Period Claim upon counsel for the Post-Confirmation Debtor and the Liquidating Agent. Any Person who fails to timely file and serve a proof of such Gap Period Claim shall be forever barred from seeking payment of such Gap Period Claim by the Post-Confirmation Debtor and the Estate.

4. Priority Tax Claims

Priority Tax Claims include Unsecured Claims of governmental units for unpaid taxes entitled to priority under Section 507 of the Bankruptcy Code. Each Holder of an Allowed Priority Tax Claim due and payable on or prior to the Effective Date either (a) will be paid the full unpaid amount of such Allowed Priority Tax Claim in Cash on the Effective Date, or upon such other terms as may be agreed upon by such Holder and the Debtor, or (b) otherwise will be paid as provided for in an order of the Bankruptcy Court. The amount of any Priority Tax Claim that is not an Allowed Claim or that is not otherwise due and payable on or prior to the Effective Date, and the rights of the Holder of such Claim, if any, to payment in respect thereof shall (i) be determined at the Debtor's election by the Bankruptcy Court or, alternatively, in the manner in which the amount of such Claim and the rights of the Holder of such Claim would have been resolved or adjudicated if the Bankruptcy Case had not been commenced, (ii) survive after the Effective Date as if the Bankruptcy Case had not been commenced, and (iii) not be discharged pursuant to Section 1141 of the Bankruptcy Code. In accordance with Section 1124 of the Bankruptcy Code, the Plan leaves unaltered the legal, equitable, and contractual rights of each Holder of a Priority Tax Claim.

VI.

TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. ASSUMPTION AND REJECTION OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

On the Effective Date, all Executory Contracts or Unexpired Leases of the Debtor will be deemed rejected in accordance with the provisions and requirements of Sections 365 and 1123 of the Bankruptcy Code, except those Executory Contracts or Unexpired Leases that (1) have been previously rejected or assumed by the Debtor pursuant to an order of the Bankruptcy Court; (2) are the subject of a motion to assume filed by the Debtor which is pending on the Effective Date; or (3) are identified as Pending Contracts on Schedule 5.1 of the Plan. The Post-Confirmation Debtor will have a period of sixty (60) days following the Effective Date to file a motion to assume or reject a Pending Contract. Any Pending Contract that has not been assumed or rejected by order of the Bankruptcy Court or that is not the subject of a motion to assume or reject that is filed before the end of the sixty (60) day period following the Effective Date shall be deemed rejected pursuant to the Confirmation Order effective as of the last day of such sixty (60) day period. During the period after the Effective Date and prior to the assumption or rejection of a Pending Contract, the Debtor shall continue to perform under the terms of the Pending Contract, and the non-debtor party to the Pending Contract may not take any action to terminate such Pending Contract on account of any default occurring prior to the Effective Date.

B. CLAIMS BASED ON REJECTION OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

All proofs of claim with respect to Claims arising from the rejection pursuant to this Plan of any Executory Contracts or Unexpired Leases, if any, must be filed with the Claims Agent and served upon counsel for the Post-Confirmation Debtor and the Liquidating Agent within thirty (30) days after the later of (1) the Effective Date or (2) the effective date of the rejection of the Executory Contract or Unexpired Lease. Any Claims arising from the rejection of Executory Contracts or Unexpired Leases that become Allowed Claims are classified and shall be treated as Class 7 Claims or Class 8 Claims, as applicable. Any Claims arising from the rejection of an Executory Contract or Unexpired Lease not filed within the time required by Article 5.2 of the Plan will be forever barred from assertion against the Debtor, the Estate and the Post-Confirmation Debtor and their respective Assets unless otherwise ordered by the Bankruptcy Court or provided in the Plan.

VII.

**MEANS FOR IMPLEMENTATION OF THE PLAN
AND EFFECTS OF CONFIRMATION**

A. LIQUIDATING FUND

Pursuant to the Plan, all property of the Debtor and its Estate, including Cash, shall vest automatically in the Post-Confirmation Debtor and the Liquidating Fund on the Effective Date,

free and clear of all Liens, Claims, and Interests and without the need for the execution or delivery of any instruments of assignment, for the express purpose of, among other things, allowing the Liquidating Agent to make Distributions to Holders of Claims pursuant to the terms and conditions of the Plan. Without limiting the foregoing, the Post-Confirmation Debtor shall be vested with all of the Debtor's previously unsold Assets (including its Causes of Action), which shall be administered, liquidated, prosecuted, settled, and enforced under the direction and control of the Liquidating Agent.

B. THE LIQUIDATING AGENT

The Plan provides that a Liquidating Agent will be appointed to administer any Assets in the Liquidating Fund.

The Liquidating Agent shall have the rights, powers and duties as set forth in the Plan and shall be responsible for administering the Plan under the terms and conditions set forth therein. After the Effective Date, the Liquidating Agent shall be authorized to take the necessary and appropriate actions to administer the Liquidating Fund and to proceed with an orderly, expeditious and efficient liquidation and distribution of the Post-Confirmation Debtor's remaining Assets. The Liquidating Agent shall be authorized to retain or engage, or to cause the Post-Confirmation Debtor to retain or engage, such employees, professional persons and agents as are appropriate or desirable to continue the liquidation of the Post-Confirmation Debtor's remaining Assets. Further, the Liquidating Agent shall be authorized to disburse funds from the Liquidation Proceeds to pay the costs and expenses incurred after the Confirmation Date in connection with the administration, liquidation and distribution of the Post-Confirmation Debtor's remaining Assets, without the necessity of providing any notice or seeking or obtaining any approval of the Court with respect to such disbursements. Without limiting the generality of the foregoing, the Liquidating Agent shall be authorized to make disbursements to pay the fees and expenses of any professional persons retained by the Liquidating Agent and/or the Post-Confirmation Debtor. The Liquidating Agent shall be the representative of the Estate and the Post-Confirmation Debtor as contemplated by Section 1123(b)(3)(B) of the Bankruptcy Code. The Liquidating Agent shall have full and exclusive power and authority to act on behalf of the Post-Confirmation Debtor and shall be responsible for performing the duties of the Post-Confirmation Debtor under the Plan. The Liquidating Agent shall have the rights, duties and powers of a trustee appointed pursuant to Sections 701, 702, 1104, and 1106 of the Bankruptcy Code to act on behalf of the Debtor with regard to the administration of the Bankruptcy Case and the Assets of the Estate. No recourse shall ever be had, directly or indirectly, against the Liquidating Agent personally, by legal or equitable proceedings or by virtue of any statute or otherwise, nor upon any promise, contract, instrument, undertaking, obligation, covenant or agreement whatsoever executed by the Liquidating Agent under the Plan, or by reason of the creation of any indebtedness by the Liquidating Agent under the Plan for any purpose authorized by the Plan, save and except in cases of defalcation, misappropriation, fraud or gross negligence by the Liquidating Agent, it being expressly understood and agreed that such liabilities, promises, contracts, instruments, undertakings, obligations, covenants and agreements shall be enforceable only against and be satisfied only out of the Assets of the Debtor or shall be evidence only of a right of payment from the Debtor's Assets. The Liquidating Agent shall be indemnified and held harmless by the Estate from and against any expenses (including the reasonable fees and expenses of counsel), damages or losses incurred or suffered by the

Liquidating Agent in connection with any claim or demand which in any way arises out of or relates to the Plan or the services of the Liquidating Agent under the Plan; provided, however, if the Liquidating Agent is guilty of defalcation, misappropriation, fraud or gross negligence, then the Liquidating Agent shall bear all losses, damages and expenses arising as a result of such defalcation, misappropriation, fraud or gross negligence. The Liquidating Agent may resign at any time in its sole discretion, and such resignation shall be effective upon the date the Bankruptcy Court approves a successor to the resigning Liquidating Agent. In case of the resignation of the Liquidating Agent, a successor shall thereupon be appointed by the Court on application of the Post-Confirmation Debtor made on Designated Notice. The Liquidating Agent shall be reimbursed for any out-of-pocket expenses incurred in connection with the discharge of its duties under the Plan and shall be entitled to receive monthly compensation, in arrears, for its services calculated at its standard hourly rates for similar work on comparable matters. Following the Final Distribution, the Liquidating Agent is directed to take such actions as to cause the Post-Confirmation Debtor to be dissolved. The Liquidating Agent shall be entitled to retain up to \$25,000 from the Final Distribution to complete and pay the costs and expenses associated with the dissolution process. After making the final Distribution under the Plan and upon dissolution of the Post-Confirmation Debtor, the Liquidating Agent shall be discharged from its duties under the Plan.

C. BILLING AND COLLECTION OF ACCOUNTS RECEIVABLE

As of the Effective Date, the Liquidating Agent shall be authorized to: (i) complete the billing of the Debtor's account debtors; (ii) send correspondence to the Debtor's account debtors requesting payment of all amounts outstanding, due and payable to the Debtor; (iii) engage in other collection activity to ensure payment of outstanding accounts receivable; (iv) collect any deferred or outstanding amounts due for the sale of the Debtor's Assets; and (v) employ or cause the Debtor to employ, one or more collection agencies to further pursue collection of the outstanding accounts receivable.

D. MAINTENANCE OF BANK ACCOUNTS AND DISTRIBUTION OF LIQUIDATION PROCEEDS

The Liquidating Agent shall have the authority and responsibility to disburse the Assets of the Estate, including the Liquidation Proceeds, to the Holders of Allowed Claims and otherwise in accordance with the terms of the Plan. All Liquidation Proceeds and Retained Proceeds shall be held in the Liquidating Fund for the benefit of Holders of Allowed Claims in one or more separate bank or other depository accounts throughout the term of the Plan. The Liquidating Agent shall be entitled to use the Debtor's bank accounts that are in existence as of the Effective Date and shall be authorized to open such bank or other depository accounts as may be necessary or appropriate in the discretion of the Liquidating Agent to enable it to carry out the provisions of the Plan (provided that any bank account opened by the Liquidating Agent shall be at a financial institution approved by the Office of the United States Trustee). The Liquidating Agent may, from time to time, invest Liquidation Proceeds and Retained Proceeds in certificates of deposit, treasury bills, money market accounts or other short term investments. All interest earned shall be retained for Distribution to the Holders of Allowed Claims pursuant to the Plan. The Liquidating Agent shall prepare and maintain an adequate set of financial books, records or data bases that will allow the Liquidating Agent to accurately track the amount of Claims

asserted against the Estate and the amounts paid to each Holder of Allowed Claims pursuant to the terms of the Plan; provided that the Liquidating Agent also shall be entitled to use the Debtor's books and records (including the books and records maintained by the Claims Agent that are in existence on the Effective Date). On the Initial Distribution Date and each subsequent Distribution Date (or as soon thereafter as is reasonably practicable), the Liquidating Agent shall make Distributions to the Holders of Allowed Claims in accordance with the terms of the Plan. The Liquidating Agent will continue to make Distributions until the Assets in the Estate, including the Liquidation Proceeds, have been fully distributed to Holders of Allowed Claims and in accordance with the terms of the Plan.

E. SALES OF REMAINING ASSETS

On and after the Effective Date, the Liquidating Agent shall have authority to cause the Post-Confirmation Debtor to liquidate and sell, and the Liquidating Agent shall pursue the liquidation of, all remaining Assets. The Liquidating Agent shall have the authority to consummate such liquidations and sales without the necessity of obtaining any approval from the Bankruptcy Court or providing notice to any party in interest if the aggregate purchase price for the Assets to be sold in connection with a particular transaction is less than or equal to \$200,000, provided, however, the Liquidating Agent shall have the right in its sole discretion to seek and obtain Bankruptcy Court approval of any sale transaction if the Liquidating Agent believes it is in the best interest of the Estate to do so. If the aggregate purchase price in connection with a particular sale transaction exceeds \$200,000, then Bankruptcy Court approval (following Designated Notice) shall be required. The Liquidating Agent shall also have the authority, if appropriate in the judgment of the Liquidating Agent and following Designated Notice, to abandon any Assets that cannot be liquidated or sold in a cost effective manner or that are of inconsequential value.

F. CORPORATE STRUCTURE AND GOVERNANCE OF THE DEBTOR

1. Continued Corporate Existence

The Debtor will continue to exist after the Effective Date as a separate corporate entity, with all the powers of a corporation under applicable law in the jurisdiction in which it is incorporated or otherwise formed, pursuant to the Amended Certificate of Incorporation and the Amended By-Laws, pending the subsequent dissolution of the Post-Confirmation Debtor after the Final Distribution Date.

2. Amended Certificate of Incorporation and By-Laws

The Amended Certificate of Incorporation and Amended By-Laws of the Debtor shall be adopted as may be required in order to be consistent with the provisions of the Plan and the Bankruptcy Code. The Amended Certificate of Incorporation and Amended By-Laws of the Debtor will be contained in the Plan Supplement.

3. Directors and Officers of Debtor

On the Effective Date (a) the authority, power and incumbency of the persons then acting as officers and directors of the Debtor shall be terminated and all such officers and directors shall

be deemed to have resigned as officers and directors, and (b) the Liquidating Agent shall be deemed the sole officer and sole director of the Post-Confirmation Debtor and, as the Holder of the sole share of common stock in the Post-Confirmation Debtor, shall be deemed to have succeeded to such powers as would have been previously exercisable by the shareholders of the Debtor. The Liquidating Agent shall serve in accordance with the Amended Certificate of Incorporation and Amended By-Laws of the Post-Confirmation Debtor, as the same may be amended from time to time. Notwithstanding the foregoing, the deemed resignation of any officer or director shall not affect in any way the individual's employment by the Debtor. Without limiting the generality of the foregoing, such deemed resignation by an officer or director shall not constitute either a resignation by such individual from his or her employment by the Debtor or the rejection by the Estate of any otherwise applicable Executory Contract relating to such individual's employment.

4. Cancellation of Existing Securities of Debtor and Agreements

On the Effective Date, (a) the Existing Securities and any Certificates evidencing or creating any indebtedness or obligation of or ownership interest in the Debtor will be deemed to be fully and finally cancelled, and (b) the obligations of, Claims against, and/or Interests in the Debtor under, relating, or pertaining to any agreements, indentures, certificates of designation, by-laws, or certificate or articles of incorporation or similar documents governing the Existing Securities and any other Certificate evidencing or creating any indebtedness or obligation of the Debtor, will be released and discharged. Notwithstanding the foregoing, on and as of the Effective Date the Liquidating Agent will hold a single, nominal share of common stock in the Post-Confirmation Debtor for the sole and limited purpose of maintaining the corporate existence of the Post-Confirmation Debtor following the Effective Date and pending dissolution of the Post-Confirmation Debtor.

5. Corporate Action

Each of the matters provided for under the Plan involving the corporate structure of the Debtor or any corporate action to be taken by or required of the Debtor, including (without limitation) the adoption of the Amended Certificate of Incorporation and Amended By-Laws as provided for in Article 7.1 of the Plan, shall be deemed to have occurred and be effective as provided herein, and shall be authorized, approved and, to the extent taken prior to the Effective Date, ratified in all respects without any requirement of further action by stockholders, creditors or directors of the Debtor.

G. EFFECTUATING DOCUMENTS, FURTHER TRANSACTIONS

The Debtor, its respective officers and designees, the Post-Confirmation Debtor, and the Liquidating Agent, are authorized to execute, deliver, file, or record such contracts, instruments, releases, indentures, and other agreements or documents, and to take such actions, as may be necessary, desirable or appropriate to effectuate and further evidence the terms and conditions of the Plan or to otherwise comply with applicable law. To facilitate the liquidation and distribution of the Estate and the wind-up of the Debtor's affairs, on the Effective Date the Liquidating Agent shall be deemed, by operation of law and the Confirmation Order and without need for any action by any person affiliated with the Post-Confirmation Debtor, the Debtor or

any officer or director of the Debtor, to hold an irrevocable power of attorney on behalf of the Post-Confirmation Debtor, the Debtor, and the Estate and with respect to all of the Assets.

H. EXEMPTION FROM TRANSFER TAXES

Under Article 6.11 of the Plan, pursuant to Section 1146 of the Bankruptcy Code, any transfers from the Debtor or the Post-Confirmation Debtor to any other Person or entity pursuant to this Plan, or any agreement regarding the transfer of title to or ownership of any of the Assets will not be subject to any document recording tax, stamp tax, conveyance fee, sales tax, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, or other similar tax or governmental assessment, and the Confirmation Order will direct the appropriate state or local governmental officials or agents to forego the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

I. FURTHER AUTHORIZATION

Each of the Debtor, the Post-Confirmation Debtor, and the Liquidating Agent shall be entitled to seek such orders, judgments, injunctions, and rulings as they deem necessary or desirable to carry out the intentions and purposes, and to give full effect to the provisions of the Plan.

J. PRESERVATION OF CAUSES OF ACTION

In accordance with Section 1123(b)(3) of the Bankruptcy Code, the Liquidating Agent will retain and may enforce all Causes of Action. After the Effective Date, the Liquidating Agent, in its sole and absolute discretion, shall have the right to bring, settle, release, compromise, or enforce such Causes of Action (or decline to do any of the foregoing), without further approval of the Bankruptcy Court. The Liquidating Agent, in the exercise of its sole discretion, may pursue such Causes of Action so long as it is the best interests of the Post-Confirmation Debtor. The failure of the Debtor to specifically list any claim, right of action, suit, proceeding or other Cause of Action in this Plan does not, and will not be deemed to, constitute a waiver or release by the Estate, the Liquidating Agent, the Post-Confirmation Debtor, or the Debtor of such claim, right of action, suit, proceeding or other Cause of Action, and the Liquidating Agent (on behalf of the Post-Confirmation Debtor) will retain the right to pursue such claims, rights of action, suits, proceedings and other Causes of Action in its sole discretion and, therefore, no preclusion doctrine, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches will apply to such claim, right of action, suit, proceeding or other Cause of Action upon or after the confirmation or consummation of the Plan.

VIII.

PROVISIONS REGARDING DISTRIBUTIONS

A. DISBURSING AGENT

Unless otherwise provided for in the Plan, all Distributions under the Plan shall be made by the Liquidating Agent.

B. DISTRIBUTIONS OF CASH

Any Distribution of Cash made by the Liquidating Agent pursuant to the Plan shall, at the Liquidating Agent's option, be made by check drawn on a domestic bank or by wire transfer from a domestic bank.

C. NO INTEREST ON CLAIMS OR INTERESTS

Unless otherwise specifically provided for in the Plan, the Confirmation Order, or a post-petition agreement in writing between the Liquidating Agent and a Holder, post-petition interest shall not accrue or be paid on Claims, and no Holder shall be entitled to interest accruing on or after the Petition Date on any Claim. Additionally, and without limiting the foregoing, interest shall not accrue or be paid on any Disputed Claim in respect of the period from the Effective Date to the date a Final Distribution is made when and if such Disputed Claim becomes an Allowed Claim.

D. DELIVERY OF DISTRIBUTIONS

The Distribution to a Holder of an Allowed Claim shall be made by the Liquidating Agent (a) at the address set forth on the proof of claim filed by such Holder, (b) at the address set forth in any written notices of address change delivered to the Debtor or Liquidating Agent after the date of any related proof of claim, (c) at the addresses reflected in the Schedules if no proof of claim has been filed and the Debtor or Liquidating Agent have not received a written notice of a change of address, or (d) if the Holder's address is not listed in the Schedules, at the last known address of such Holder according to the Debtor's books and records. Any Distribution to Holders of Allowed Claims in Classes 3, 4, and 5 shall be made by the Liquidating Agent to and at the address of the Indenture Trustee. If any Holder's Distribution is returned as undeliverable, no further Distributions to such Holder shall be made unless and until the Liquidating Agent is notified of such Holder's then-current address, at which time all missed Distributions shall be made to such Holder without interest. Amounts in respect of undeliverable Distributions made in Cash shall be retained by the Liquidating Agent in an "Unpaid Claims Reserve" until such Distributions are claimed. All Cash Distributions returned to the Liquidating Agent and not claimed within six (6) months of return shall be irrevocably retained by the Liquidating Agent (and the funds held in the Unpaid Claims Reserve shall become Liquidation Proceeds at the end of such six-month period) notwithstanding any federal or state escheat laws to the contrary.

E. DISTRIBUTIONS TO HOLDERS AS OF THE RECORD DATE

All Distributions on Allowed Claims shall be made to the Record Holders of such Claims. As of the close of business on the Record Date, the Claims register maintained by the Claims Agent shall be closed, and there shall be no further changes in the Record Holder of any Claim. The Record Date shall be established in the Confirmation Order or other order entered by the Bankruptcy Court. The Liquidating Agent shall have no obligation to recognize any transfer of any Claim occurring after the Record Date. The Liquidating Agent shall instead be entitled to recognize and deal for all purposes under the Plan with the Record Holders as of the Record Date.

F. DE MINIMIS DISTRIBUTIONS

Prior to the Final Distribution Date, the Liquidating Agent shall have no obligation to make, but in its sole and absolute discretion may elect to make, a Distribution to a specific Holder of an Allowed Claim if the amount to be distributed to such Holder in respect of such Allowed Claim on any particular Distribution Date is less than Fifty Dollars (\$50.00). If the Liquidating Agent elects on any particular Distribution Date to not make Distributions of less than Fifty Dollars (\$50.00) to specific Holders of Allowed Claims, then all such Distributions of less than Fifty Dollars (\$50.00) shall remain in the Liquidating Fund earmarked for ultimate Distribution to each such Holders on the Final Distribution Date or on such earlier Distribution Date, if any, on which the aggregate accumulated Distributions to any such Holder is Fifty Dollars (\$50.00) or more. The Liquidating Agent shall have no obligation to make, but in its sole and absolute discretion may elect to make, a Distribution to a specific Holder of an Allowed Claim if the amount to be distributed to such Holder in respect of such Allowed Claim on the Final Distribution Date is less than Five Dollars (\$5.00).

G. WITHHOLDING TAXES

The Post-Confirmation Debtor and the Liquidating Agent, as the case may be, shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all Distributions under the Plan shall be subject to any such withholding and reporting requirements.

IX.

PROCEDURES FOR RESOLVING DISPUTED CLAIMS

A. OBJECTIONS TO CLAIMS

The Plan provides that the Debtor and the Post-Confirmation Debtor acting through the Liquidating Agent shall be entitled to object to Claims; provided, however, that the Debtor and the Post-Confirmation Debtor acting through the Liquidating Agent shall not be entitled to object to Claims (i) that have been Allowed by a Final Order entered by the Bankruptcy Court prior to the Effective Date or (ii) that are Allowed by the express terms of the Plan. Any objections to Claims must be filed by the Claims Objection Deadline. The Plan defines the Claims Objection Deadline to be either (a) the first Business Day which is ninety (90) days after the later of (i) the Effective Date or (ii) the date on which a specific Proof of Claim was filed, or (b) such other

time as may be ordered by the Bankruptcy Court, as such dates may be from time to time extended by the Bankruptcy Court without further notice to parties in interest.

B. NO DISTRIBUTIONS PENDING ALLOWANCE

Except as otherwise provided in the Plan, no Distributions will be made with respect to any portion of a Claim unless and until (i) the Claims Objection Deadline has passed and no objection to such Claim has been filed, or (ii) any objection to such Claim has been settled, withdrawn or overruled pursuant to a Final Order of the Bankruptcy Court.

C. ESTIMATION OF CLAIMS

The Debtor or the Post-Confirmation Debtor acting through the Liquidating Agent, as the case may be, may, at any time, request that the Bankruptcy Court estimate any contingent or unliquidated Claim pursuant to Section 502 of the Bankruptcy Code regardless of whether the Debtor, the Post-Confirmation Debtor, or the Liquidating Agent has previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court will retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including during the pendency of any appeal relating to any such objection. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount will constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the Debtor (and after the Effective Date, the Post-Confirmation Debtor acting through the Liquidating Agent) may elect to pursue any supplemental proceedings to object to any ultimate payment on such Claim. All of the aforementioned Claims objection, estimation and resolution procedures are cumulative and are not necessarily exclusive of one another.

D. RESOLUTION OF CLAIMS OBJECTIONS

On and after the Effective Date, the Post-Confirmation Debtor acting through the Liquidating Agent shall have the authority to compromise, settle, otherwise resolve, or withdraw any objections to Claims without approval of the Bankruptcy Court.

E. DISTRIBUTIONS AFTER ALLOWANCE

As soon as practicable after (i) the occurrence of the applicable Claims Objection Deadline, if no objection to such Claim has been timely filed, or (ii) the Disputed Claim becomes an Allowed Claim, the Liquidating Agent, with respect to all Distributions other than to Holders of Unsecured Claims, will distribute to the Holder thereof all Distributions to which such Holder is then entitled under the Plan. With respect to Unsecured Claims, on the first Distribution Date after (i) the occurrence of the applicable Claims Objection Deadline, if no objection to such Claim has been timely filed, or (ii) the Disputed Claim becomes an Allowed Claim, the Holder of an Allowed Unsecured Claim shall receive the Distribution to which such Holder is then entitled plus any Distribution such Holder would have received on a prior Distribution Date had such Holder's Claim been Allowed on such prior Distribution Date; provided, however, if the date such Unsecured Claim becomes entitled to a Distribution is less than twenty (20) Business Days prior to the next Distribution Date, the Distribution with respect to such Claim will be

made on the first Distribution Date that occurs more than twenty (20) Business Days after the Claim becomes entitled to a Distribution.

F. DISTRIBUTIONS FOR INSURED CLAIMS

The Plan provides that if any Holder has asserted a Claim that may be covered as to liability, in whole or in part, by an insurance policy that is assumed or otherwise remains in effect pursuant to the terms of the Plan, such Holder will have an Allowed Claim entitled to a Distribution under the Plan only to the extent of any deductible or self-insured retention under the applicable insurance policy that was unpaid or otherwise unexhausted as of the Petition Date. Notwithstanding the foregoing, the Holder shall be entitled to pursue recovery of any amount in excess of such unpaid deductible or self-insured retention from the applicable insurance carrier, and, in connection therewith, notwithstanding the discharge of the balance of such Claim provided pursuant to the Plan, such Holder may continue to pursue the balance of such Claim against the Post-Confirmation Debtor solely for the purposes of liquidating such Claim and obtaining payment of the balance of such liquidated Claim from any otherwise applicable policy of insurance, and except as otherwise provided in the applicable insurance policy, the applicable insurance carrier may, at its expense, employ counsel, direct the defense, and determine whether and on what terms to settle any Claim for the purposes of determining the amount of insurance proceeds that will be paid on account of such Claim. If after liquidation of a Claim pursuant to the procedures described herein, it is determined that there are insufficient insurance proceeds available to satisfy the amount of such Claim that is in excess of any unpaid deductible or self-insured retention, then the Holder of such Claim shall have an Allowed Claim in the amount of such insufficiency. After the Effective Date, the Bankruptcy Court shall be authorized to enter one or more orders in the Bankruptcy Case modifying and amending the provisions of Article 9.6 of the Plan.

Although the Plan provides for Holders of Claims that are covered as to liability, in whole or in part, by an insurance policy, to seek recovery from the proceeds of such insurance policy, and the Debtor intends to take such actions as it believes would be necessary to obligate applicable insurance carriers to provide coverage for such Claims, it is possible that an insurance company may attempt to deny coverage of a Claim in the event the insurance company believes that the Debtor has not complied with the terms of the applicable insurance policy. Accordingly, the Debtor cannot provide any assurance that there will be insurance proceeds available to satisfy all or any portion of an Allowed Claim.

X.

CONDITIONS PRECEDENT

A. CONDITIONS TO CONFIRMATION

The following are conditions precedent to confirmation of the Plan that may be satisfied or waived in accordance with Article 11.3 of the Plan: (a) the Bankruptcy Court shall have approved the Disclosure Statement with respect to the Plan in form and substance that is acceptable to the Debtor, in its sole and absolute discretion; and (b) the Confirmation Order shall have been signed by the Bankruptcy Court and entered on the docket of the Bankruptcy Case.

B. CONDITIONS TO EFFECTIVE DATE

The following are conditions precedent to the occurrence of the Effective Date, each of which may be satisfied or waived in accordance with Article 11.3 of the Plan:

a. The Confirmation Order shall be in all material respects reasonably acceptable to the Debtor, shall not have been vacated, reversed or modified and, as of the Effective Date, shall not be stayed;

b. All documents and agreements to be executed on the Effective Date or otherwise necessary to implement the Plan shall be in form and substance that is acceptable to the Debtor and the Committee, in their reasonable discretion;

c. The Debtor shall have arranged and paid for extended existing insurance coverage or purchased new insurance coverage in accordance with the Plan; and

d. The Debtor shall have received any authorization, consent, regulatory approval, ruling, letter, opinion, or document that may be necessary to implement the Plan and that is required by law, regulation, or order.

Under Article 11.3 of the Plan, each of the conditions set forth above may be waived, in whole or in part, by the Debtor without any notice to any other parties in interest or the Bankruptcy Court and without a hearing. The failure to satisfy or waive any condition to the Confirmation Date or the Effective Date may be asserted by the Debtor in its sole discretion regardless of the circumstances giving rise to the failure of such condition to be satisfied (including any action or inaction by the Debtor). The failure of the Debtor 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, which may be asserted at any time.

XI.

EFFECT OF PLAN ON CLAIMS AND INTERESTS

A. VESTING OF THE DEBTOR'S ASSETS

Except as otherwise explicitly provided in the Plan, on the Effective Date, all property comprising the Estate (including Cause of Actions, but excluding property that has been abandoned pursuant to a prior order of the Bankruptcy Court) shall vest in the Post-Confirmation Debtor, free and clear of all Claims, Liens, charges, encumbrances, rights and Interests of creditors and equity security holders.

B. SATISFACTION OF CLAIMS

Except as otherwise specifically provided in the Plan or in the Confirmation Order, the Distributions and rights that are provided in the Plan shall be in complete satisfaction and release of all Claims, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and Interests in the Debtor or its Estate that arose prior to the Effective Date.

C. RELEASE BY DEBTOR OF CERTAIN PARTIES

Except as otherwise specifically provided in the Plan (including, without limitation, the last sentence of Article 10.3 of the Plan), pursuant to Section 1123(b)(3) of the Bankruptcy Code, as of the Effective Date, the Debtor, as a debtor in possession for and on behalf of its Estate, shall release and discharge and be deemed to have conclusively, absolutely, unconditionally, irrevocably and forever released and discharged all Released Parties for and from any and all claims or Causes of Action existing as of the Effective Date in any manner arising from, based on or relating to, in whole or in part, the Debtor, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between the Debtor and any Released Party, the restructuring of Claims or Interests prior to or in the Bankruptcy Case, or any act, omission, occurrence, or event in any manner related to any such Claims, Interests, restructuring or the Bankruptcy Case. The Post-Confirmation Debtor, the Debtor, the Committee, the Liquidating Agent, and other potential representatives of the Estate shall be bound, to the same extent the Debtor is bound, by all of the releases set forth above.

The Released Parties include (i) all officers, directors, employees, consultants, agents, financial advisors, attorneys and other representatives of the Debtor who served in such capacity on or subsequent to the Petition Date, in each case in their capacity as such, and (ii) the Committee, including its agents, financial advisors, and attorneys, in each case in their capacity as such, and all members of the Committee, including their agents, financial advisors, and attorneys, in each case in their capacity as such.

D. RELEASE BY HOLDERS OF CLAIMS AND INTERESTS

The Plan contains the following language regarding releases of claims by Holders of Claims and Interests:

EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THIS PLAN, ON THE EFFECTIVE DATE, (a) EACH PERSON THAT VOTES TO ACCEPT THIS PLAN OR IS PRESUMED TO HAVE VOTED FOR THIS PLAN PURSUANT TO SECTION 1126(f) OF THE BANKRUPTCY CODE; AND (b) TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, AS SUCH LAW MAY BE EXTENDED OR INTERPRETED SUBSEQUENT TO THE EFFECTIVE DATE, EACH ENTITY (OTHER THAN THE DEBTOR), THAT HAS HELD, HOLDS OR MAY HOLD A CLAIM OR INTEREST (EACH, A “RELEASE OBLIGOR”), IN CONSIDERATION FOR THE OBLIGATIONS OF THE DEBTOR UNDER THIS PLAN AND THE CASH AND OTHER CONTRACTS, INSTRUMENTS, RELEASES, AGREEMENTS OR DOCUMENTS TO BE DELIVERED IN CONNECTION WITH THIS PLAN, SHALL HAVE CONCLUSIVELY, ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY AND FOREVER, RELEASED AND DISCHARGED EACH RELEASED PARTY FROM ANY CLAIM OR CAUSE OF ACTION EXISTING AS OF THE EFFECTIVE DATE ARISING FROM, BASED ON OR RELATING TO, IN WHOLE OR IN PART, THE SUBJECT MATTER OF, OR THE TRANSACTION OR EVENT GIVING RISE TO, THE CLAIM OF SUCH RELEASE OBLIGOR, AND ANY ACT, OMISSION, OCCURRENCE OR EVENT IN ANY MANNER RELATED TO SUCH SUBJECT

MATTER, TRANSACTION OR OBLIGATION; PROVIDED, HOWEVER, THAT THIS ARTICLE 10.4 SHALL NOT RELEASE ANY RELEASED PARTY FROM ANY CAUSE OF ACTION HELD BY A GOVERNMENTAL ENTITY EXISTING AS OF THE EFFECTIVE DATE, BASED ON (i) THE INTERNAL REVENUE CODE OR OTHER DOMESTIC STATE, CITY OR MUNICIPAL TAX CODE, (ii) THE ENVIRONMENTAL LAWS OF THE UNITED STATES OR ANY DOMESTIC STATE, CITY OR MUNICIPALITY, (iii) ANY CRIMINAL LAWS OF THE UNITED STATES OR ANY DOMESTIC STATE, CITY OR MUNICIPALITY, (iv) THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED, THE SECURITIES ACT OF 1933, AS AMENDED, OR OTHER SECURITIES LAWS OF THE UNITED STATES OR ANY DOMESTIC STATE, CITY, OR MUNICIPALITY, OR (v) SECTIONS 1104-1109 AND 1342(d) OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED.

E. SETOFFS

The Post-Confirmation Debtor may, but shall not be required to, set off against any Claim, and the payments or other Distributions to be made pursuant to the Plan in respect of such Claim, claims of any nature whatsoever that the Post-Confirmation Debtor may have against such Holder; but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Post-Confirmation Debtor or the Estate of any such claim that the Post-Confirmation Debtor, the Debtor, or the Estate may have against such Holder.

F. EXCULPATION AND LIMITATION OF LIABILITY

Under the Plan, the Debtor, the Post-Confirmation Debtor, the Estate, the Committee, the members of the Committee in their capacities as such, and any of such parties' respective current and/or post-Petition Date and pre-Effective Date members, officers, directors, employees, advisors, attorneys, representatives, financial advisors, investment bankers, or agents and any of such parties' successors and assigns, shall not have or incur, and are hereby released from, any claim, obligation, cause of action, or liability to one another or to any Holder of any Claim or Interest, or any other party in interest, or any of their respective agents, employees, representatives, financial advisors, attorneys, or affiliates, or any of their successors or assigns, for any act or omission in connection with, relating to, or arising out of the Bankruptcy Case, the negotiation and filing of this Plan, the filing or conversion of the Bankruptcy Case, the pursuit of confirmation of this Plan, the consummation of this Plan, or the administration of this Plan or the property to be distributed under this Plan, except for their willful misconduct or gross negligence, and in all respects shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under this Plan. No Holder of any Claim or Interest, or other party in interest, none of their respective agents, employees, representatives, financial advisors, attorneys, or affiliates, and no successors or assigns of the foregoing, shall have any right of action against the parties listed in this provision for any act or omission in connection with, relating to, or arising out of the Bankruptcy Case, the pursuit of confirmation of this Plan, the consummation of this Plan, the administration of this Plan or the property to be distributed under this Plan.

G. INJUNCTION

The satisfaction and release pursuant to Article X of the Plan shall act as a permanent injunction against any Person commencing or continuing any action, employment of process, or act to collect, offset, or recover any Claim or Cause of Action satisfied, released, or discharged under the Plan to the fullest extent authorized or provided by the Bankruptcy Code.

H. INSURANCE

On or prior to the Effective Date, and as a condition to the Effective Date, the Debtor shall have arranged and paid for extended existing insurance coverage or purchased new insurance coverage covering the Debtor, the Post-Confirmation Debtor, the Estate, the Liquidating Agent, and the Debtor's current and former officers and directors from claims and causes of action of any third party (including without limitation any Holder of a Claim) that remain extant and unreleased under Article X of the Plan on the Effective Date. Such extended or newly purchased insurance shall be in such amounts, for such terms or periods of time, and placed with such insurers as are determined by the Debtor to be reasonable under the circumstances or specified and ordered by the Bankruptcy Court in the Confirmation Order.

I. EFFECT OF CONFIRMATION

1. Binding Effect

Under Section 1141(a) of the Bankruptcy Code, "the provisions of a confirmed plan bind the debtor, any entity issuing securities under the plan, any entity acquiring property under the plan, and any creditor, equity security holder, or general partner in the debtor, whether or not the claim or interest of such creditor, equity security holder, or general partner is impaired under the plan and whether or not such creditor, equity security holder, or general partner has accepted the plan."

As provided in Article 10.9.1 of the Plan, on the Confirmation Date, the provisions of the Plan shall be binding on the Debtor, the Post-Confirmation Debtor, the Estate, the Liquidating Agent, all Holders of Claims against or Interests in the Debtor, and all other parties in interest whether or not such Holders are Impaired and whether or not such Holders have accepted the Plan.

2. Automatic Stay

The automatic stay arising out of Section 362(a) of the Bankruptcy Code shall continue in full force and effect until the Final Distribution Date and the Debtor, the Post-Confirmation Debtor, and the Estate shall be entitled to all of the protections afforded thereby. All Assets of the Post-Confirmation Debtor (including, without limitation, the Liquidation Proceeds and the Retained Proceeds) shall remain property of the Estate until distributed in accordance with the Plan, and no Person shall at any time have any claim to or interest in any Asset of the Debtor (including without limitation any portion of the Liquidation Proceeds) except to the extent that such Person is the Holder of an Allowed Claim entitled to Distributions under the Plan.

3. U.S. Trustee Fees and Reports

Under Article 10.9.3 of the Plan, subsequent to the Effective Date the Liquidating Agent shall file all reports and pay all fees required by the Bankruptcy Code, Bankruptcy Rules, U.S. Trustee Guidelines, and the rules and orders of the Bankruptcy Court.

4. Post-Effective Date Fees and Expenses

Under Article 10.9.4 of the Plan, upon the Effective Date, any requirement that professionals comply with Sections 327 through 331 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date will terminate, and the Post-Confirmation Debtor and the Liquidating Agent will employ and pay professionals in the ordinary course of business. Any professional providing services to the Debtor or the Committee will not be barred from providing services to the Post-Confirmation Debtor or the Liquidating Agent.

XII.

RETENTION OF JURISDICTION

A. RETENTION OF JURISDICTION

The Plan provides that subsequent to the Effective Date, the Bankruptcy Court shall have or retain jurisdiction for the following purposes:

(a) To adjudicate objections concerning the allowance, priority or classification of Claims and any subordination thereof, and to establish a date or dates by which objections to Claims must be filed to the extent not established in the Plan;

(b) To liquidate the amount of any disputed, contingent or unliquidated Claim, to estimate the amount of any disputed, contingent or unliquidated Claim, to establish the amount of any reserve required to be withheld from any Distribution under the Plan on account of any disputed, contingent or unliquidated Claim;

(c) To resolve all matters related to the rejection, or assumption and/or assignment, of any Executory Contract or Unexpired Lease of the Debtor;

(d) To hear and rule upon all Causes of Action and Avoidance Actions commenced and/or pursued by the Post-Confirmation Debtor and/or the Liquidating Agent;

(e) To hear and rule upon all applications for Professional Compensation;

(f) To remedy any defect or omission or reconcile any inconsistency in the Plan, as may be necessary to carry out the intent and purpose of the Plan;

(g) To construe or interpret any provisions in the Plan and to issue such orders as may be necessary for the implementation, execution and consummation of the Plan, to the extent authorized by the Bankruptcy Code;

(h) To hear, rule upon and enter orders approving any sales of Assets (including, without limitation, sales of fee owned real property and the assumption and assignment of real property leases) after the Effective Date;

(i) To adjudicate controversies arising out of the administration of the Estate or the implementation of the Plan;

(j) To make such determinations and enter such orders as may be necessary to effectuate all the terms and conditions of the Plan, including the Distribution of funds from the Estate and the payment of Claims;

(k) To determine any suit or proceeding brought by the Post-Confirmation Debtor and/or the Liquidating Agent to recover property under any provisions of the Bankruptcy Code;

(l) To hear and determine any tax disputes concerning the Debtor and to determine and declare any tax effects under the Plan;

(m) To determine such other matters as may be provided for in the Plan or the Confirmation Order or as may be authorized by or under the provisions of the Bankruptcy Code;

(n) To determine any controversies, actions or disputes that may arise under the provisions of the Plan, or the rights, duties or obligations of any Person under the provisions of the Plan;

(o) To adjudicate any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of, or in connection with, any agreement pursuant to which the Debtor sold any of its assets during the Bankruptcy Case; and

(p) To enter a final decree.

B. ALTERNATIVE JURISDICTION

In the event that the Bankruptcy Court is found to lack jurisdiction to resolve any matter, then the District Court shall hear and determine such matter. If the District Court does not have jurisdiction, then the matter may be brought before any court having jurisdiction with regard thereto.

C. FINAL DECREE

The Bankruptcy Court may, upon application of the Liquidating Agent after Designated Notice, at any time on or after one hundred twenty (120) days after the Initial Distribution Date, enter a final decree in the Bankruptcy Case, notwithstanding the fact that additional funds may eventually be distributed to parties in interest. In such event, the Bankruptcy Court may enter an Order closing the Bankruptcy Case pursuant to Section 350 of the Bankruptcy Code; provided, however, that: (a) the Post-Confirmation Debtor, the Liquidating Agent, and other parties in interest shall continue to have the rights, powers, and duties set forth in the Plan; (b) any provision of the Plan requiring the absence of an objection shall no longer be required, except as otherwise ordered by the Bankruptcy Court; and (c) the Bankruptcy Court may from time to time

reopen the Bankruptcy Case if appropriate for any of the following purposes: (1) administering Assets; (2) entertaining any adversary proceedings, contested matters or applications the Post-Confirmation Debtor or the Liquidating Agent have brought or bring with regard to the liquidation of Assets and the prosecution of Causes of Action; (3) enforcing or interpreting this Plan or supervising its implementation; or (4) for other cause.

XIII.

MISCELLANEOUS

A. PLAN SUPPLEMENT

The Plan Supplement that will contain the Amended By-Laws and Amended Certificate of Incorporation and set forth the elections by the Debtor made pursuant to Articles 3.1.2 and 3.2.2 of the Plan, shall be filed with the Bankruptcy Court no later than five (5) Business Days prior to the deadline set forth in this Disclosure Statement for creditors to vote whether to accept or reject the Plan. Notwithstanding the foregoing, the Debtor may amend the Plan Supplement, and any attachments thereto, through and including the Confirmation Date.

B. MODIFICATION OF PLAN

The Debtor may modify the Plan pursuant to Section 1127 of the Bankruptcy Code and as provided in the Plan, to the extent applicable law permits. The Debtor or the Post-Confirmation Debtor may modify the Plan, before or after confirmation, without notice or hearing, or after such notice and hearing as the Bankruptcy Court deems appropriate, if the Bankruptcy Court finds that the modification does not materially and adversely affect the rights of any parties in interest which have not had notice and an opportunity to be heard with regard thereto. In the event of any modification on or before confirmation, any votes to accept or reject the Plan shall be deemed to be votes to accept or reject the Plan as modified, unless the Bankruptcy Court finds that the modification materially and adversely affects the rights of parties in interest which have cast said votes. The Debtor reserves the right in accordance with Section 1127 of the Bankruptcy Code to modify the Plan at any time before the Confirmation Date.

C. ALLOCATION OF PLAN DISTRIBUTION BETWEEN PRINCIPAL AND INTEREST

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

D. POST-EFFECTIVE DATE NOTICE LIMITED

Under Article 1.1.31 of the Plan, from and after the Effective Date, any person seeking relief from the Court in the Bankruptcy Case shall be required to provide Designated Notice as that term is defined in the Plan.

E. GOVERNING LAW

As provided in Article 13.5 of the Plan, unless a rule of law or procedure is supplied by federal law, including the Bankruptcy Code and the Bankruptcy Rules, the laws of the State of Georgia shall govern the construction and implementation of the Plan and any agreements, documents, and instruments executed in connection with the Plan.

F. PREPARATION OF TAX RETURNS

Except as provided in the Plan, the Post-Confirmation Debtor or the Liquidating Agent shall file all tax returns and other filings with governmental authorities and may file determination requests under Section 505(b) of the Bankruptcy Code to resolve any Disputed Claim relating to taxes with a governmental authority.

G. DISSOLUTION OF CREDITORS' COMMITTEE

On the Effective Date, the Committee shall dissolve automatically, whereupon its members, professionals, and agents shall be released from any further duties and responsibilities in the Bankruptcy Case and under the Bankruptcy Code.

H. NO BAR TO SUITS

Except as otherwise provided in Article X of the Plan, neither the Plan nor confirmation thereof shall operate to bar or estop the Liquidating Agent, the Estate or Post-Confirmation Debtor from commencing any Cause of Action, or any other legal action against any Holder of a Claim or any other Person, whether such Cause of Action, or any other legal action arose prior to or after the Confirmation Date and whether or not the existence of such Cause of Action, or any other legal action was disclosed in any disclosure statement filed by the Debtor in connection with this Plan or whether or not any payment was made or is made on account of any Claim.

I. CONFLICTS

In the event that provisions of the Disclosure Statement and provisions of the Plan conflict, the terms of the Plan shall govern and control.

XIV.

CERTAIN RISK FACTORS TO CONSIDER

The following disclosures are not intended to be inclusive and should be read in connection with the other disclosures contained in this Disclosure Statement and the Exhibits

hereto. You should consult your legal, financial, and tax advisors regarding the risks associated with the Plan and the distributions you may receive thereunder.

Claims Estimation: There can be no assurance that the estimated Claim amounts assumed for the purposes of preparing the Plan are correct. The actual amount of Allowed Claims likely will differ in some respect from the estimates. The estimated amounts are subject to certain risks, uncertainties, and assumptions. Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, the actual Allowed amount of Claims may vary from those estimated for the purpose of preparing the Plan. Depending on the outcome of claims objections, the estimated recovery percentages provided in this Disclosure Statement may be different than the actual recovery percentages that are realized under the Plan.

Certain Risks of Nonconfirmation: There can be no assurance that the requisite acceptances to confirm the Plan will be received. Even if the requisite acceptances are received, there can be no assurance that the Court will confirm the Plan. A rejecting creditor or Interest holder might challenge the balloting procedures and results as not being in compliance with the Bankruptcy Code or Bankruptcy Rules.

Even if the Court were to determine that the balloting procedures and results were appropriate, the Court could still decline to confirm the Plan if it were to find that any of the statutory requirements for confirmation had not been met. Section 1129 of the Bankruptcy Code sets forth requirements for confirmation and requires, among other things, a finding by the Court that the value of distributions to nonaccepting holders of Claims and Interests within a particular Class under the Plan will not be less than the value of distributions such holders would receive if the Debtor was liquidated under Chapter 7 of the Bankruptcy Code. While there can be no assurance that the Court will conclude that these requirements have been met, the Debtor believes that the nonaccepting holders within each Class under the Plan will receive distributions at least as great as would be received following a liquidation pursuant to Chapter 7 of the Bankruptcy Code, as set forth in Section XVI of the Disclosure Statement.

XV.

CONFIRMATION AND CONSUMMATION PROCEDURE

A. GENERAL INFORMATION

All creditors whose Claims are Impaired by the Plan (except those creditors holding Interests in Class 9, which are deemed to have rejected the Plan) may cast their votes for or against the Plan. As a condition to confirmation of the Plan, the Bankruptcy Code requires that one Class of Impaired Claims votes to accept the Plan. Section 1126(c) of the Bankruptcy Code defines acceptance of a plan by a Class of Impaired Claims as acceptance by holders of at least two-thirds of the dollar amount of the class and by more than one-half in number of Claims. Holders of Claims who fail to vote are not counted as either accepting or rejecting a plan. Voting is accomplished by completing, dating, signing and returning the ballot form (the "Ballot") by the Voting Deadline. Ballots will be distributed to all creditors entitled to vote on the Plan. The Ballot will indicate (i) where the Ballot is to be filed and (ii) the deadline by which

creditors must return their Ballots. See Section I.C of this Disclosure Statement for a more detailed explanation of who will receive Ballots and voting procedures.

B. SOLICITATION OF ACCEPTANCES

This Disclosure Statement has been approved by the Court as containing “adequate information” to permit creditors and equity interest holders to make an informed decision whether to accept or reject the Plan. Under the Bankruptcy Code, your acceptance of the Plan may not be solicited unless you receive a copy of this Disclosure Statement prior to, or concurrently with, such solicitation.

C. ACCEPTANCES NECESSARY TO CONFIRM THE PLAN

At the Confirmation Hearing, the Court shall determine, among other things, whether the Plan has been accepted by the Debtor’s creditors. Classes 3, 4, 5, 6, 7, and 8 will be deemed to accept the Plan if at least two-thirds in amount and more than one-half in number of the Claims in each class vote to accept the Plan. Furthermore, unless there is unanimous acceptance of the Plan by Classes 3, 4, 5, 6, 7, and 8 the Court must also determine that any non-accepting Class members will receive property with a value, as of the Effective Date of the Plan, that is not less than the amount that such Class member would receive or retain if the Debtor was liquidated as of the Effective Date of the Plan under Chapter 7 of the Bankruptcy Code.

D. CONFIRMATION OF PLAN PURSUANT TO SECTION 1129(b)

The Bankruptcy Code provides that the Plan may be confirmed even if it is not accepted by all impaired classes. To confirm the Plan without the requisite number of acceptances of each impaired Class, the Court must find that at least one Impaired Class has accepted the Plan without regard to the acceptances of insiders, and the Plan does not discriminate unfairly against, and is otherwise fair and equitable, to any Impaired Class that does not accept the Plan. Class 9 is deemed to reject the Plan. Accordingly, if any Impaired Class votes to accept the Plan, the Debtor will seek to confirm the Plan under the “cramdown” provisions of Section 1129(b) of the Bankruptcy Code.

E. CONSIDERATIONS RELEVANT TO ACCEPTANCE OF THE PLAN

The Debtor’s recommendation that all Creditors should vote to accept the Plan is premised upon the Debtor’s view that the Plan is preferable to other alternatives for liquidation of the Debtor’s Estate. It appears unlikely to the Debtor that an alternate plan of reorganization or liquidation can be proposed that would provide for payments in an amount equal or greater than the amounts proposed under the Plan. If the Plan is not accepted, it is likely that the interests of all creditors will be further diminished.

XVI.

**ALTERNATIVES TO CONFIRMATION AND
CONSUMMATION OF THE PLAN**

The Debtor believes that the Plan affords Holders of Claims the potential for the greatest realization of the Debtor's Assets and, therefore, is in the best interests of such Holders. If the Plan is not confirmed, however, one possible alternative is a liquidation of the Debtor under Chapter 7. The Debtor has analyzed whether a liquidation of its remaining assets by a Chapter 7 trustee, who is unfamiliar with the Debtor, its business, and the industry, would result in a higher return to the creditors of the Estate than an orderly liquidation by the Debtor. The Debtor believes that liquidation in Chapter 7 would result in substantial diminution in the value to be realized by holders of Claims because:

1. any successor Chapter 7 Trustee will not have the relevant knowledge of the Debtor's operations that will be necessary to maximize the proceeds of the Debtor's Assets, including receivables and causes of action; and
2. the substantial additional Administrative Claims that will be required in order for a Chapter 7 Trustee to retain new attorneys, accountants, and other professionals who are unfamiliar with the case and who will also have to learn about the Debtor and its business.

Consequently, the Debtor believes that the Plan, which provides for the collection, marshalling and liquidation of the Debtor's remaining assets by individuals familiar with the Debtor and the industry, provides a substantially greater return to holders of Claims than would a liquidation by a new Chapter 7 Trustee who is unfamiliar with this case, the Debtor, or the relevant industry.

XVII.

CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES

THE DEBTOR HAS NOT SOUGHT OR OBTAINED ANY RULING FROM THE INTERNAL REVENUE SERVICE OR FROM ANY OTHER TAXING AUTHORITY WITH RESPECT TO ANY OF THE TAX CONSEQUENCES OF THE PLAN, NOR HAS THE DEBTOR SOUGHT OR OBTAINED AN OPINION OF COUNSEL WITH RESPECT TO ANY SUCH TAX CONSEQUENCES. NO REPRESENTATIONS OR ASSURANCES ARE MADE WITH RESPECT TO THE FEDERAL INCOME TAX CONSIDERATIONS AS SUMMARIZED HEREIN. CERTAIN TYPES OF CREDITORS MAY BE SUBJECT TO SPECIAL RULES NOT ADDRESSED IN THIS SUMMARY OF FEDERAL INCOME TAX CONSIDERATIONS. FURTHER, CREDITORS MAY BE SUBJECT TO STATE, LOCAL, OR FOREIGN TAX CONSIDERATIONS THAT ARE NOT ADDRESSED HEREIN. BECAUSE THE TAX CONSEQUENCES OF THE PLAN ARE COMPLEX AND MAY VARY BASED ON INDIVIDUAL CIRCUMSTANCES, EACH CREDITOR SHOULD CONSULT WITH HIS OR HER OWN TAX ADVISOR

REGARDING THE SPECIFIC TAX CONSEQUENCES OF ANY ASPECT OF THE PLAN WITH RESPECT TO SUCH CREDITOR.

XVIII.

RECOMMENDATION

Based on the foregoing analysis of the Debtor, its Assets, and the Plan, the Debtor believes that the best interests of all parties would be served through confirmation of the Plan. **ALL CREDITORS ARE URGED TO VOTE TO "ACCEPT" THE PLAN.**

This 11th day of February 2009.

Respectfully submitted,

ATHEROGENICS, INC.

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