

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

**IN RE:** )  
**BILL HEARD ENTERPRISES, INC., et al.,<sup>1</sup>** ) **Chapter 11**  
 )  
**Debtors.** ) **Case No. 08-83029-JAC11**  
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**NOTICE OF FILING OF BLACKLINE OF FIRST AMENDED DISCLOSURE  
STATEMENT DESCRIBING DEBTORS' JOINT CONSOLIDATED CHAPTER 11  
PLAN OF LIQUIDATION PROPOSED BY DEBTORS AND THE OFFICIAL  
COMMITTEE OF UNSECURED CREDITORS, THE EXHIBITS THERETO AND  
FIRST AMENDED JOINT CONSOLIDATED CHAPTER 11 PLAN OF LIQUIDATION**

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**COMES NOW**, Bill Heard Enterprises, Inc. ("Heard"), and certain of its direct and indirect subsidiaries (the "Subsidiaries"), as debtors and debtors in possession (collectively, the "Debtors"), by and through their undersigned counsel, and submits the attached blacklines<sup>2</sup> of the *First Amended Disclosure Statement Describing Debtors' Joint Consolidated Chapter 11 Plan of Liquidation Proposed by Debtors and the Official Committee of Unsecured Creditors* (the "Disclosure Statement"), the Exhibits thereto and the *First Amended Joint Consolidated Chapter*

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<sup>1</sup> In addition to Bill Heard Enterprises, Inc., the Debtors include the following entities: (i) Bill Heard Chevrolet Company, (ii) Tom Jumper Chevrolet, Inc., (iii) Bill Heard Chevrolet, Inc. - Huntsville, (iv) Landmark Chevrolet, Ltd., (v) Bill Heard Chevrolet, Ltd., (vi) Bill Heard Chevrolet Corporation Nashville, (vii) Bill Heard Chevrolet Corporation - Orlando, (viii) Bill Heard Chevrolet, Inc. - Union City, (ix) Bill Heard Chevrolet at Town Center, LLC, (x) Bill Heard Chevrolet, Inc. - Collierville, (xi) Bill Heard Chevrolet, Inc. - Scottsdale, (xii) Bill Heard Chevrolet, Inc. - Plant City, (xiii) Bill Heard Chevrolet, Inc. - Buford, (xiv) Bill Heard Chevrolet Corporation - Las Vegas, (xv) Bill Heard Chevrolet Corporation - N.W. Las Vegas, (xvi) Twentieth Century Land Corp., (xvii) Enterprise Aviation, Inc., (xviii) Century Land Corporation, (xix) Century Land Company - Tennessee, (xx) Bill Heard Management, LLC, (xxi) Landmark Vehicle Mgt., LLC, (xxii) Georgia Services Group, LLC, (xxiii) Columbus Transportation, LLC, and (xxiv) Airport Chevrolet, Inc.

<sup>2</sup> Contemporaneously herewith the Debtor is filing non-blacklined versions of the Plan and Disclosure Statement as well.

*11 Plan of Liquidation* (the “Plan”)<sup>3</sup>, which represent the modifications that have been made to the Plan and the Disclosure Statement since their filing with the Court on June 19, 2009. These modifications have been made following discussions with parties-in-interest in advance of the hearing set on the Disclosure Statement for August 4, 2009.

For ease of reference, the blacklines are being filed in color. A key to the modifications is included as the last page of the blackline. Modifications in blue represent new text added, modifications in green represent text that has been moved, and modifications in red represent deletions.

/s/ Marc P. Solomon

Robert B. Rubin

Derek F. Meek

Marc P. Solomon

Attorneys for Debtors

**OF COUNSEL:**

BURR & FORMAN LLP

420 North 20th Street, Suite 3400

Birmingham, Alabama 35203

Telephone: (205) 251-3000

Facsimile: (205) 458-5100

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<sup>3</sup> The Plan is attached as Exhibit A to the Disclosure Statement.

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing has been served on the attached Master Service List and the following parties listed below who had previously requested a copy of the Disclosure Statement and Plan on this the 29th day of July, 2009.

/s/ Marc P. Solomon  
OF COUNSEL

**MASTER SERVICE LIST**

**Electronic Service:**

Robert B. Rubin  
Derek F. Meek  
Heather A. Lee  
Marc P. Solomon  
Amanda M. Beckett  
c/o Burr & Forman LLP

**Counsel for Debtors**

420 North 20th Street, Suite 3400  
Birmingham, AL 35203  
[brubin@burr.com](mailto:brubin@burr.com)  
[dmeek@burr.com](mailto:dmeek@burr.com)  
[hlee@burr.com](mailto:hlee@burr.com)  
[msolomon@burr.com](mailto:msolomon@burr.com)  
[abeckett@burr.com](mailto:abeckett@burr.com)

Edward J. Peterson  
Amy Denton Harris

**Counsel for Debtor**

Stichter Riedel Blain & Prosser P.A.  
110 East Madison Street, Suite 200  
Tampa, FL 33602  
[epeterson@srbp.com](mailto:epeterson@srbp.com)  
[aharris@srbp.com](mailto:aharris@srbp.com)

Richard Blythe

**Bankruptcy Administrator for the  
Northern District of Alabama**

400 Wells Street  
PO Box 3045  
Decatur, AL 35602  
[richard\\_blythe@alnba.uscourts.gov](mailto:richard_blythe@alnba.uscourts.gov)

**First Commercial Bank**

c/o Stuart M. Maples  
Maples & Ray, PC  
401 Holmes Ave., Suite H  
Huntsville, AL 35801  
[smaples@maplesandray.com](mailto:smaples@maplesandray.com)

**MassMutual Asset Finance LLC**

c/o Robert H. Adams  
Kimberly B. Glass  
Haskell Slaughter Young & Rediker, LLC  
1400 Park Place Tower  
2001 Park Place North  
Birmingham, AL 35203  
[rha@hsy.com](mailto:rha@hsy.com)  
[kgb@hsy.com](mailto:kgb@hsy.com)

**ADP Commercial Leasing, LLC**

**ADP, Inc. Dealer Services Group**  
c/o Henry A. Callaway, III  
Hand Arendall LLC  
Post Office Box 123  
Mobile, AL 36601  
[hcallaway@handarendall.com](mailto:hcallaway@handarendall.com)

**Alphera Financial Services, A Division of  
BMC Financial Services NA, LLC**

c/o Holland & Knight LLP  
James H. Rollins  
Paul E. Vranicar  
Suite 2000, One Atlantic Center  
1201 West Peachtree Street  
Atlanta, GA 30309-3400  
[jim.rollins@hklaw.com](mailto:jim.rollins@hklaw.com)  
[paul.vranicar@hklaw.com](mailto:paul.vranicar@hklaw.com)

**MassMutual Asset Finance LLC**

c/o Jodie E. Buchman  
Shaan S. Chima  
DLA Piper LLP (US)  
The Marbury Building  
6225 Smith Avenue  
Baltimore, MD 21209-3600  
[jodie.buchman@dlapiper.com](mailto:jodie.buchman@dlapiper.com)  
[shaan.chima@dlapiper.com](mailto:shaan.chima@dlapiper.com)

**Astar Finance LLC**  
**Astar Financing Falcon II, LLC**  
**Falcon Finacial II, LLC**

c/o Mike Rupe  
Cara S. Mittleman  
Merritt A. Pardini  
Katten Muchin Rosenman LLP  
575 Madison Avenue  
New York, NY 10022-2585  
[mike.rupe@kattenlaw.com](mailto:mike.rupe@kattenlaw.com)  
[cara.mittleman@kattenlaw.com](mailto:cara.mittleman@kattenlaw.com)  
[merritt.pardini@kattenlaw.com](mailto:merritt.pardini@kattenlaw.com)

**Astar Finance LLC**  
**Astar Financing Falcon II, LLC**  
**Falcon Finacial II, LLC**

c/o Patrick Darby  
Jennifer A. Harris  
Bradley Arant Rose & White LLP  
1819 Fifth Avenue North  
Birmingham, AL 35203  
[pdarby@bradleyarant.com](mailto:pdarby@bradleyarant.com)  
[jharris@bradleyarant.com](mailto:jharris@bradleyarant.com)

**CB & T**

c/o Jeff Kelley  
Troutman Sanders  
600 Peachtree Street, NE  
Suite 5200  
Atlanta, GA 30308-2216  
[jeffrey.kelley@troutmansanders.com](mailto:jeffrey.kelley@troutmansanders.com)

**GE**

John M. Monahan  
[John.M.Monahan@GE.com](mailto:John.M.Monahan@GE.com)

**GMAC**

**GMAC LLC**  
c/o Charles Tatelbaum  
Joshua B. Alper  
Adorno & Yoss  
350 East Las Olas Boulevard  
Suite 1700  
Fort Lauderdale, FL 33301

[ctatelbaum@adorno.com](mailto:ctatelbaum@adorno.com)  
[jalper@adorno.com](mailto:jalper@adorno.com)

**GMAC LLC**

c/o Sara Anne Ford  
Lightfoot, Franklin & White LLC  
The Clark Building  
400 20th Street North  
Birmingham, AL 35203  
[sford@lflaw.com](mailto:sford@lflaw.com)

**General Motors Corporation**

c/o Robert B. Weiss  
Joseph R. Sgroi  
Adam L. Kochenderfer  
Honigman Miller Schwartz and Cohn, LLP  
2290 First National Building  
660 Woodward Avenue  
Detroit, MI 48226  
[JSgroi@honigman.com](mailto:JSgroi@honigman.com)  
[rweiss@honigman.com](mailto:rweiss@honigman.com)  
[akochenderfer@honigman.com](mailto:akochenderfer@honigman.com)

**BMW Financial Services**

c/o Jim Rollins  
Holland & Knight  
1201 West Peachtree Street, N.E.  
One Atlantic Center, Suite 2000  
Atlanta, GA 30309  
[jim.rollins@hklaw.com](mailto:jim.rollins@hklaw.com)

Carrie Ann Rohrscheib  
Hale, Dewey & Knight, PLLC  
88 Union Avenue, Suite 700  
Memphis, TN 38103  
[crohrscheib@haledewey.com](mailto:crohrscheib@haledewey.com)

**GE Commercial Finance Business  
Property Corporation**

c/o John B. Hutton  
Greenberg Traurig, P.A.  
1221 Brickell Avenue  
Miami, FL 33131  
[huttonj@gtlaw.com](mailto:huttonj@gtlaw.com)

**GE Commercial Finance Business  
Property Corporation**

c/o Stephen Katz  
John Elrod  
The Forum-Suite 400  
3290 Northside Parkway, NW  
Atlanta, GA 30327  
[KatzS@gtlaw.com](mailto:KatzS@gtlaw.com)  
[ElrodJ@gtlaw.com](mailto:ElrodJ@gtlaw.com)

**Wells Fargo Equipment Finance, Inc.**

C. Ellis Brazeal III  
Edward J. Ashton  
Walston, Wells & Birchall LLP  
1819 5th Avenue North, Suite 1100  
Birmingham, AL 35203  
[ebrazeal@walstonwells.com](mailto:ebrazeal@walstonwells.com)  
[eamason@walstonwells.com](mailto:eamason@walstonwells.com)

**DeFalco Advertising**

c/o Ted Stuckenschneider  
205 North 20th Street, Suite 427  
Birmingham, AL 35203  
[tstucken@bellsouth.net](mailto:tstucken@bellsouth.net)

**Wells Fargo Bank NA and affiliates**

c/o Lee R. Benton  
Brenton K. Morris  
Benton & Centeno, LLP  
2019 Third Avenue North  
Birmingham, AL 35203  
[lbenton@bcattys.com](mailto:lbenton@bcattys.com)  
[bmorris@bcattys.com](mailto:bmorris@bcattys.com)

**Comptroller of Public Accounts of the  
State of Texas**

c/o Jay W. Hurst  
Assistant Attorney General  
Bankruptcy & Collections Division  
P.O. Box 12548  
Austin, TX 78711-2548  
[jay.hurst@oag.state.tx.us](mailto:jay.hurst@oag.state.tx.us)

**Georgia Department of Revenue**

c/o Oscar B. Fears, III  
Senior Assistant Attorney General  
40 Capitol Square, S.W.  
Atlanta, GA 30334  
[bfears@law.ga.gov](mailto:bfears@law.ga.gov)

**Coventry Healthcare, Inc.**

c/o Cozen O'Connor  
Neal D. Colton  
Eric L. Scherling  
1900 Market Street  
Philadelphia, PA 19103  
[ncolton@cozen.com](mailto:ncolton@cozen.com)  
[eschering@cozen.com](mailto:eschering@cozen.com)

**JP Morgan Chase Bank, N.A.**

Clark R. Hammond  
Lindan Hill  
Johnston Barton Proctor & Rose, LLP  
569 Brookwood Village  
Suite 901  
Birmingham, AL 35209  
[crh@johnstonbarton.com](mailto:crh@johnstonbarton.com)

**De Lage Landen Financial Services, Inc.**

c/o William M. Hancock  
Wolfe, Jones, Boswell, Wolfes, Hancock &  
Daniel, LLC  
905 Bob Wallace Avenue  
Huntsville, AL 35801  
[bankruptcy@wjb-law.com](mailto:bankruptcy@wjb-law.com)

**Lynda Hall, Tax Collector of Madison  
County, Alabama**

c/o Travis S. Jackson  
Sirote & Permutt, PC  
305 Church Street, Suite 800  
Post Office Box 18248  
Huntsville, AL 35804  
[tjackson@sirote.com](mailto:tjackson@sirote.com)

**The Reynolds and Reynolds Company  
Reyna Capital Corporation**

c/o Jennifer L. Maffett  
Jonathan S. Hawkins  
Thompson Hine LLP  
2000 Courthouse Plaza, NE  
10 W. Second Street  
Dayton, OH 45402  
[thdaytonecf@thompsonhine.com](mailto:thdaytonecf@thompsonhine.com)

**BG Products, Inc.**

c/o Louise Thompson  
BG Products, Inc.  
6601 W. Wilshire  
Oklahoma City, OK 73132  
[lthompson@bglsi.com](mailto:lthompson@bglsi.com)

**The Columbus Ledger-Enquirer**

Paul J. Pascuzzi  
Felderstein Fitzgerald Willoughby &  
Pascuzzi LLP  
400 Capitol Mall, Suite 1450  
Sacramento, CA 95814  
[ppascuzzi@ffwplaw.com](mailto:ppascuzzi@ffwplaw.com)

**Hochsztein & Harrison-Jolly, P.A.**

c/o Fred Hochsztein  
1930 Harrison Street, Suite 503  
Hollywood, FL 33020  
[ajaye@aol.com](mailto:ajaye@aol.com)

**Navistar International, Inc.**

c/o Kevin D. Heard  
Heard & Associates, LLC  
307 Clinton Avenue, West  
Civic Plaza, Suite 310  
Huntsville, AL 35801  
[kheard@heardlaw.com](mailto:kheard@heardlaw.com)

**The Official Committee of Unsecured  
Creditors of Bill Heard Enterprises, Inc.,  
et al.**

c/o Dennis S. Meir  
John W. Mills  
Kilpatrick Stockton LLP  
1100 Peachtree Street, NE, Suite 2800  
Atlanta, GA 30309-4530  
[dmeir@kilpatrickstockton.com](mailto:dmeir@kilpatrickstockton.com)  
[jmills@kilpatrickstockton.com](mailto:jmills@kilpatrickstockton.com)

Mark D. Taylor  
Kilpatrick Stockton, LLP  
607 14th Street NW  
Suite 900  
Washington, D.C. 20005-2018  
[MaTaylor@KilpatrickStockton.com](mailto:MaTaylor@KilpatrickStockton.com)

**Navistar Financial Corp.**

William J. Gibbons, Jr.  
Gibbons & Furman  
117 Jefferson Street, N.  
Huntsville, AL 35801  
[bill.gibbons@gibbonsandfurman.com](mailto:bill.gibbons@gibbonsandfurman.com)

Karen Fagin White  
Bruce Z. Walker  
Cohen Pollock Merlin & Small  
3350 Riverwood Parkway  
Suite 1600  
Atlanta, GA 30339  
[kfwhite@cpmas.com](mailto:kfwhite@cpmas.com)  
[bwalker@cpmas.com](mailto:bwalker@cpmas.com)

**HSH Properties, LLLP**

c/o Donald M. Wright  
Sirote & Permutt, PC  
2311 Highland Avenue South  
Birmingham, AL 35205  
[dwright@sirote.com](mailto:dwright@sirote.com)

**HSH Properties, LLLP**

c/o Stephen H. Block  
Levine, Block & Strickland  
945 E. Paces Ferry Road #2270  
Atlanta, GA 30326  
[shblock@lbslaw.net](mailto:shblock@lbslaw.net)

**Fletcher Jones, Sr. Trust**

c/o Robert P. Reynolds  
Reynolds, Reynolds, & Duncan, LLC  
Post Office Box 2863  
Tuscaloosa, AL  
[rreynolds@rrdlaw.com](mailto:rreynolds@rrdlaw.com)

**Fletcher Jones, Sr. Trust**

c/o Jackson E. Duncan, III  
Reynolds, Reynolds & Duncan, LLC  
303 Williams Avenue, Suite 811  
Post Office Box 18605  
Huntsville, AL 35804  
[jduncan@rrdlaw.com](mailto:jduncan@rrdlaw.com)

**Fletcher Jones, Sr. Trust**

c/o Jeanette E. McPherson  
Lenard E. Schwartzer  
Schwarter & McPherson Law Firm  
2850 South Jones Blvd., Suite 1  
Las Vegas, NV 89146  
[bkfilings@s-mlaw.com](mailto:bkfilings@s-mlaw.com)

**Bruce Qvale**

c/o Donald M. Wright  
Sirote & Permutt, PC  
2311 Highland Avenue South  
Birmingham, AL 35205  
[dwright@sirote.com](mailto:dwright@sirote.com)

**United Service Protection Corporation  
and United Service Protection, Inc.**

c/o Roy H. Liddell  
Wells, Marble & Hurst, PLLC  
P.O. Box 131  
Jackson, MS 39205-0131  
[royliddell@wellsmar.com](mailto:royliddell@wellsmar.com)

**Harris County and Fort Bend County**  
c/o Linebarger Goggan Blair & Sampson,  
LLP

P.O. Box 3064  
Houston, TX 77253-3064  
[houston\\_bankruptcy@publicans.com](mailto:houston_bankruptcy@publicans.com)

Charles I. Pollack

Segal, Fryer, Shuster & Lester, PC  
Suite 410  
1050 Crown Pointe Parkway  
Atlanta, GA 30338  
[cpollack@sfsllaw.com](mailto:cpollack@sfsllaw.com)

**General Motors Corporation**

c/o Joseph R. Sgroi  
Honigman Miller Schwartz and Cohn LLP  
2290 First National Building  
660 Woodward Avenue, Suite 2290  
Detroit, MI 48226  
[jsgroi@honigman.com](mailto:jsgroi@honigman.com)

**tw telecom inc.**

c/o Linda Boyle  
10475 Park Meadows Drive, #400  
Littleton, CO 80124  
[linda.boyle@twtelecom.com](mailto:linda.boyle@twtelecom.com)

**William Heard, Jr.**

c/o Charles L. Denaburg  
Najjar Denaburg, PC  
2125 Morris Avenue  
Birmingham, AL 35203  
[cdenaburg@najjar.com](mailto:cdenaburg@najjar.com)

**US Bank**

c/o Paul J. Spina, III  
Yearout, Spina & Lavelle, PC  
1500 Urban Center Drive, Suite 450  
Birmingham, AL 35242  
[pauls@ysllaw.com](mailto:pauls@ysllaw.com)



**Navistar Financial Corporation**

c/o Karen Fagin White  
Bruce Z. Walker  
Cohen Pollock Merlin & Small PC  
3350 Riverwood Parkway  
Suite 1600  
Atlanta, GA 30339  
[kfwhite@cpmas.com](mailto:kfwhite@cpmas.com)  
[bwalker@cpmas.com](mailto:bwalker@cpmas.com)

**Fort Bend Independent School District**

c/o Yolanda M. Humphrey  
Perdue, Brandon, Fielder, Collins & Mott,  
LLP  
1235 North Loop West, Suite 600  
Houston, TX 77008  
[yhumphrey@pbfc.com](mailto:yhumphrey@pbfc.com)

**Ken Smith Auto Parts**

c/o Harry R. Cash  
Grant, Konvalinka & Harrison, P.C.  
633 Chestnut Street  
9th Floor  
Chattanooga, TN 37450  
[hcash@gkhpc.com](mailto:hcash@gkhpc.com)

**Commercial Truck and Van Equipment**

**Adrian Steel Company**

c/o Steven J. Shaw  
Joshua B. White  
Stephens, Millirons, Harrison, Gammons  
2430 L&N Drive  
P.O. Box 307  
Huntsville, AL 35804  
[sshaw@smhg.com](mailto:sshaw@smhg.com)  
[jwhite@smhg.com](mailto:jwhite@smhg.com)

**D.L. Claborn**

c/o Donald M. Wright  
Sirote & Permutt, P.C.  
2311 Highland Avenue South  
Birmingham, AL 35205  
[dwright@sirote.com](mailto:dwright@sirote.com)

**United Service Protection Corporation**

**United Service Protection, Inc.**  
c/o William E. Manhein, III  
Wells, Marble & Hurst, P.C.  
300 Concourse Blvd., Suite 200  
Ridgeland, MS 39157  
[tmanhein@wellsmar.com](mailto:tmanhein@wellsmar.com)

**Greater Texas Federal Credit Union**

c/o Edward S. Reisinger  
Post Office Box 1885  
Birmingham, AL 35201  
[ereisinger@trimmier.com](mailto:ereisinger@trimmier.com)

**Mac Haik**

c/o James R. Langdon  
Moore & Vann Allen, PLLC  
100 North Tryon Street, Suite 4700  
Charlotte, NC 28202  
[jimlangdon@mvalaw.com](mailto:jimlangdon@mvalaw.com)

**Canon Financial Services, Inc.**

c/o Andrew L. Unterlack  
Scott H. Marcus & Associates  
121 Johnson Road  
Turnersville, NJ 08012  
[aunterlack@marcuslaw.net](mailto:aunterlack@marcuslaw.net)

**Serra Automotive, Inc.**

c/o C. Steven Ball  
Carr Allison  
100 Vestavia Parkway  
Birmingham, AL 35216  
[sball@carrallison.com](mailto:sball@carrallison.com)

**Jean W. Durdin**

c/o Preston T. Towber  
Towber Law Firm, PLLC  
675 West Loop South, Suite 920  
Bellaire, TX 77401  
[preston@towberlaw.com](mailto:preston@towberlaw.com)

**Steve Wier, Inc. d/b/a Wier Enterprises**

c/o David M. Smith  
2777 Allen Parkway, Suite 1000  
Houston, TX 77019-2165  
[dmsmith@dmslegal.com](mailto:dmsmith@dmslegal.com)

**Maricopa County Treasurer**

c/o Madeleine C. Wanslee  
201 E. Washington Street, Suite 800  
Phoenix, AZ 85004-2327  
[mwanslee@gustlaw.com](mailto:mwanslee@gustlaw.com)

**AutoNation, Inc.**

c/o Walter F. McArdle  
Spain & Gillon, LLC  
2117 Second Avenue North  
Birmingham, AL 35203  
[wfm@Spain-Gillon.com](mailto:wfm@Spain-Gillon.com)

**Emanuel D. Jones,  
Legacy Chevrolet, Inc., and  
Legacy Automotive of Columbus, LLC**

c/o Charles I. Pollack, Esq.  
1050 Crown Pointe Parkway  
Atlanta, GA 30338  
[cpollack@sfsllaw.com](mailto:cpollack@sfsllaw.com)

**Communicorp, Inc.**

c/o Brooks C. Morel, Esq.  
Nelson Mullins Riley & Scarborough, LLP  
Atlantic Station  
201 17<sup>th</sup> Street NW, Suite 1700  
Atlanta, GA 30363  
[Brooks.morel@nelsonmullins.com](mailto:Brooks.morel@nelsonmullins.com)

**The McDougal Company and  
H&S Brokerage Company**

c/o Brenton K. Morris  
Benton & Centeno, LLP  
2019 Third Avenue North  
Birmingham, AL 35203  
[bmorris@bcattys.com](mailto:bmorris@bcattys.com)

**Carl Gregory and  
Carl Gregory Enterprises, Inc.**

c/o Frank B. Wilensky  
Macey, Wilensky, Kessler, Hennings, LLC  
230 Peachtree Street, N.W., Suite 2700  
Atlanta, GA 30303-1561  
[fwilensky@maceywilensky.com](mailto:fwilensky@maceywilensky.com)

**Iron Mountain Information Management, Inc.**

c/o Frank F. McGinn  
Bartlett Hackett Feinberg P.C.  
155 Federal Street, 9<sup>th</sup> Floor  
Boston, MA 02110  
[ffm@bostonbusinesslaw.com](mailto:ffm@bostonbusinesslaw.com)

**Ceridian Tax Service  
Ceridian Corporation**

c/o Vincent M. Coscino, Esq.  
James A. Timko, Esq.  
Allen Matkins Leck Gamble  
Mallory & Natsis LLP  
1900 Main Street, Fifth Floor  
Irvine, California 92614-7321  
[jtimko@allenmatkins.com](mailto:jtimko@allenmatkins.com)  
[vcoscino@allenmatkins.com](mailto:vcoscino@allenmatkins.com)

**Capital One Auto Finance**

c/o Joe M. Lozano, Jr.  
National Bankruptcy Services.com LLC  
9441 LBJ Freeway, Suite 350  
Dallas, TX 75243  
[notice@bkcyllaw.com](mailto:notice@bkcyllaw.com)

**Fidelity and Deposit Company of  
Maryland**

c/o Alberta L. Adams  
Mills Paskert Divers  
100 North Tampa Street, Suite 2010  
Tampa, FL 33602  
[aadams@mpdlegal.com](mailto:aadams@mpdlegal.com)

**Verizon Business Global LLC**  
c/o Stinson Morrison Hecker LLP  
1150 18th Street, NW  
Suite 800  
Washington, DC 20036  
Attention: Darrell W. Clark  
[dclark@stinson.com](mailto:dclark@stinson.com)

**Verizon Business Global LLC**  
c/o The Shields Law Firm  
2025 Third Avenue North, Suite 209  
Birmingham, AL 35203  
[rls@bhamlawfirm.com](mailto:rls@bhamlawfirm.com)

**Parkway Chevrolet**  
c/o Marcy E. Kurtz  
Bracewell & Giuliani LLP  
711 Louisiana Street, Suite 2300  
Houston, TX 77002  
[Marcy.Kurtz@bgllp.com](mailto:Marcy.Kurtz@bgllp.com)

**First Commercial Bank of Huntsville**  
c/o Jeffrey W. Kelly  
Carolyn P. Richter  
Troutman Sanders LLP  
5200 Bank of America Plaza  
600 Peachtree Street, N.E.  
Atlanta, GA 30308-2216  
[jeffrey.kelley@troutmansanders.com](mailto:jeffrey.kelley@troutmansanders.com)

**Systems & Services Technologies, Inc.**  
c/o Joe M. Lozano, Jr.  
Brice, Vander Linden & Wernick, P.C.  
9441 LBJ Freeway, Suite 350  
Dallas, TX 75243  
[notice@bkcyllaw.com](mailto:notice@bkcyllaw.com)

**Judy Huff**  
c/o Christopher M. Farmer, Esq.  
Christopher Farmer, LLC  
918 Ponce de Leon Ave NE  
Atlanta, GA 30306-4212  
[cfarmer@dzkl.com](mailto:cfarmer@dzkl.com)

**Western Surety Company**  
c/o Thomas L. Selden & Brian A. Dodd  
Starnes & Atchison LLP  
Seventh Floor, Brookwood Place  
Post Office Box 598512  
Birmingham, AL 35259-8512  
[TLS@starneslaw.com](mailto:TLS@starneslaw.com)  
[BAD@starneslaw.com](mailto:BAD@starneslaw.com)

**Motors Insurance Corporation**  
c/o Peter A. Ivanick & Heather L. Aaronson  
Dewey & Leboeuf LLP  
1301 Avenue of the Americas  
New York, NY 10019  
[pivanick@dl.com](mailto:pivanick@dl.com)  
[haaronson@dl.com](mailto:haaronson@dl.com)

**Mitel Leasing**  
c/o Russell W. Mills & Jason M. Katz  
Hiersche, Hayward, Drakeley & Urbach,  
P.C.  
15303 Dallas Parkway, Suite 700  
Addison, TX 75001  
[rmills@hhdulaw.com](mailto:rmills@hhdulaw.com)  
[jkatz@hhdulaw.com](mailto:jkatz@hhdulaw.com)

**MassMutual Asset Finance LLC**  
c/o C. Kevin Kobbe  
DLA Piper LLP  
The Marbury Building  
6225 Smith Avenue  
Baltimore, MD 21209-3600  
[kevin.kobbe@dlapiper.com](mailto:kevin.kobbe@dlapiper.com)

**Wells Fargo Equipment Finance, Inc.**  
c/o Edward J. Ashton  
Walston, Wells, & Birchall, LLP  
1819 5th Avenue North, Suite 1100  
Birmingham, AL 35203  
[eamshon@walstonwells.com](mailto:eamshon@walstonwells.com)

**Houston Police Federal Credit Union**

c/o Lewis W. Smith, IV

Holoway Jones Law Firm, P.L.L.C.

407 Julie Rivers Drive

Sugar Land, TX 77478

[csmith@jonesattorneys.com](mailto:csmith@jonesattorneys.com)

**Credit Union of Texas**

c/o Edward S. Reisinger

Post Office Box 46832

Birmingham, AL 35201

[ereisinger@trimmier.com](mailto:ereisinger@trimmier.com)

**ATCO PARTS, INC. AND  
ADVANTAGE DELIVERY &  
LOGISTICS**

c/o Mercedes Hale

Steele & Hale, P.A.

201 East Kennedy Blvd., Suite 425

Tampa, FL 33602

[mhale@steelehale.com](mailto:mhale@steelehale.com)

**Crescent Bank and Trust**

c/o David K. Bowsher

Adams and Reese LLP

2100 3<sup>rd</sup> Avenue North

Suite 1100

Birmingham, Alabama 35203

[david.bowsher@arlaw.com](mailto:david.bowsher@arlaw.com)

**Reliant Energy Retail Services, LLC**

c/o Bruce J. Ruzinsky

Jackson Walker L.L.P.

1401 McKinney Street

Suite 1900

Houston, Texas 77010

[bruzinsky@jw.com](mailto:bruzinsky@jw.com)

**Reliant Energy Retail Services, LLC**

c/o Heather M. Forrest

Jackson Walker L.L.P.

901 Main Street

Suite 6000

Dallas, Texas 75202

[hforrest@jw.com](mailto:hforrest@jw.com)

**Via U.S. Mail**

**Navistar Financial Corporation**

c/o Kathleen N. Reed  
425 N. Martingale Road, 18th Floor  
Schaumburg, IL 60173

**A-Line Auto Parts and Arnold Oil of Austin**

Attn: Leah Bush  
1617 E. 6th Street  
Austin, TX 78702

**Bellaire Air Conditioning**

Phillip Miller  
7315 Ashcroft #116  
Houston, TX 77081

**Factory Motor Parts Co.**

Todd E. Heldt  
1380 Corporate Center Curve #200  
Eagan, MN 55311

**Genesis Marketing Group, Inc.**

Gerald Doyle  
256 N. Sam Houston Pkwy #120  
Houston, TX 77060

**Noble Logistics Inc.**

Vince Hannigan  
11335 Clay Road, Suite 100  
Houston, TX 77041

**Reflexion Automotive Products LLC**

Michael O'Neal  
2949 Norbrook  
Memphis, TN 38116

**Weaver Distributors Inc.**

John C. Weaver  
4015 Danielsville Rd  
Athens, GA 30601

**AmeriCredit Financial Services, Inc.**

Attn: Alice Whitten - Legal Dept  
801 Cherry Street, Ste. 3900  
Fort Worth, TX 76102

**River Oaks L-M  
Hot Rides ADI, LP**

c/o Michael S. Holmes  
8100 Washington Avenue  
Suite 120  
Houston, TX 77007

**Four Leaf Towers Council of Co-Owners**

c/o Brady E. Ortego  
Roberts Markel P.C.  
2800 Post Oak Boulevard, 57<sup>th</sup> Floor  
Houston, Texas 77056

**Thomas James Schwartz**

c/o Brady E. Ortego  
Roberts Markel P.C.  
2800 Post Oak Boulevard, 57<sup>th</sup> Floor  
Houston, Texas 77056

**Capital One Auto Finance**

P.O. Box 829009  
Dallas, Texas 75382-9009

**Consumer Auto Finance, Inc.**

c/o John Malone  
1838 N. Valley Mills Drive  
Waco, Texas 76710

**Systems & Services Technologies, Inc.**

P.O. Box 829009  
Dallas, Texas 75382-9009

**IKON Office Solutions**

Katrina Rumph  
Recovery & Bankruptcy Group  
3920 Arkwright Road, Suite 400  
Macon, GA 31210

*In re: Bill Heard Enterprises, Inc., et al.*, Chapter 11 Case No. 08-83029-JAC11

United States Bankruptcy Court for the No. Dist. of Alabama, No. Div.

updated: 6/12/2009

**Tennessee Department of Revenue**

c/o TN Attorney General's Office,

Bankruptcy Division

PO Box 20207

Nashville, TN 37202-0207

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ALABAMA  
NORTHERN DIVISION

In re: ) Chapter 11  
)  
BILL HEARD ENTERPRISES, INC., et al., ) Case No. 08-83029-JAC-11  
)  
Debtors. ) (Jointly Administered)  
)

**FIRST AMENDED DISCLOSURE STATEMENT DESCRIBING DEBTORS' JOINT  
CONSOLIDATED CHAPTER 11 PLAN OF LIQUIDATION PROPOSED BY DEBTORS  
AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

DATED: ~~JUNE 19~~, JULY 31, 2009

|  |  |
|--|--|
| Robert B. Rubin<br>Derek F. Meek<br>Marc P. Solomon<br>Amanda Beckett<br>BURR & FORMAN LLP<br>420 North 20th Street, Suite 3400<br>Birmingham, Alabama 35203<br>Telephone: (205) 251-3000<br>Facsimile: (205) 458-5100<br><br><i>Counsel for Debtors and Debtors in Possession</i> | John W. Mills, III<br>Kilpatrick Stockton LLP<br>Suite 2800<br>1100 Peachtree Street<br>Atlanta, GA 30309-4530<br>Telephone: (404) 815-6183<br>Facsimile: (404) 541-3236<br><br><i>Counsel for the Official Committee of<br/>Unsecured Creditors</i> |
|--|--|

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

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## DISCLAIMER

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

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

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

THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE BY THE DEBTORS AND THE COMMITTEE AS OF THE DATE HEREOF UNLESS OTHERWISE SPECIFIED. THE DELIVERY OF THIS DISCLOSURE STATEMENT DOES NOT IMPLY THAT THERE HAS BEEN NO CHANGE IN THE INFORMATION SET FORTH HEREIN SINCE SUCH DATE. THE DEBTORS AND THE COMMITTEE HAVE PREPARED THIS DISCLOSURE STATEMENT, BUT DO NOT WARRANT OR REPRESENT THAT THIS DISCLOSURE STATEMENT IS WITHOUT ERROR. NEITHER THE DEBTORS NOR THE COMMITTEE CAN GIVE LEGAL ADVICE AS IT RELATES TO THE PLAN OR THE DISCLOSURE STATEMENT AND HOLDERS OF CLAIMS ENTITLED TO VOTE ON THE PLAN SHOULD READ THIS DISCLOSURE STATEMENT AND PLAN AND CONSULT WITH THEIR OWN COUNSEL OR OTHER ADVISORS PRIOR TO VOTING ON THE PLAN.

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

NOTHING IN THIS DISCLOSURE STATEMENT IS AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY, NOR DOES THIS DISCLOSURE STATEMENT PROVIDE ADVICE ON THE TAX OR OTHER LEGAL EFFECTS OF THE PLAN AS TO HOLDERS OF CLAIMS. YOU SHOULD CONSULT YOUR TAX ADVISOR ON ANY QUESTIONS OR CONCERNS RESPECTING TAX, SECURITIES OR OTHER LEGAL CONSEQUENCES OF THE PLAN.

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

**IRS CIRCULAR 230 NOTICE**

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

## INTRODUCTION

This Disclosure Statement is furnished by BILL HEARD ENTERPRISES, INC. together with certain of its affiliates,<sup>1</sup> as debtors and debtors in possession in the above captioned jointly administered chapter 11 cases (collectively, the "*Debtors*"), and the OFFICIAL COMMITTEE OF UNSECURED CREDITORS appointed in the Debtors' chapter 11 cases (the "*Committee*") (the Debtors and the Committee are collectively referred to herein as the "*Plan Proponents*") in connection with the Plan Proponents' solicitation of votes to confirm the Joint Consolidated Chapter 11 Plan of Liquidation (as amended from time to time, the "*Plan*") for resolution of the Debtors' outstanding Claims and Interests. A copy of the Plan is attached hereto as *Exhibit A*.<sup>2</sup>

On September 28, 2008, the Debtors ~~filed~~(with the exception of ACI) Filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.<sup>3</sup> The Debtors have managed their businesses as debtors in possession and no trustee has been appointed.

This Disclosure Statement sets forth the information regarding the Debtors' prepetition operating and financial history, the reasons for their chapter 11 bankruptcy filings and significant events that have occurred during the chapter 11 cases. This Disclosure Statement also describes certain terms and provisions of the Plan, certain effects of Confirmation of the Plan and the manner in which distributions will be made ~~under~~pursuant to the effective Plan. This Disclosure Statement also discusses the Confirmation process and the voting procedures that a Holder of a Claim entitled to vote on the Plan must follow for their votes to be counted.

By an order entered on ~~\_\_\_\_\_~~[August 4], 2009, the Bankruptcy Court has: (a) approved this Disclosure Statement as containing "adequate information" in accordance with section 1125 of the Bankruptcy Code to enable a hypothetical, reasonable investor typical of Holders of Claims to make an informed judgment as to whether to accept or reject the Plan; and (b) authorized use of this Disclosure Statement in connection with the solicitation of votes with respect to the Plan. **APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE A DETERMINATION BY THE BANKRUPTCY COURT AS TO THE**

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<sup>1</sup> In addition to Bill Heard Enterprises, Inc., the Debtors include the following entities: (i) Bill Heard Chevrolet Company, (ii) Tom Jumper Chevrolet, Inc., (iii) Bill Heard Chevrolet, Inc. - Huntsville, (iv) Landmark Chevrolet, Ltd., (v) Bill Heard Chevrolet, Ltd., (vi) Bill Heard Chevrolet Corporation Nashville, (vii) Bill Heard Chevrolet Corporation - Orlando, (viii) Bill Heard Chevrolet, Inc. - Union City, (ix) Bill Heard Chevrolet at Town Center, LLC, (x) Bill Heard Chevrolet, Inc. - Collierville, (xi) Bill Heard Chevrolet, Inc. - Scottsdale, (xii) Bill Heard Chevrolet, Inc. - Plant City, (xiii) Bill Heard Chevrolet, Inc. - Buford, (xiv) Bill Heard Chevrolet Corporation - Las Vegas, (xv) Bill Heard Chevrolet Corporation - N.W. Las Vegas, (xvi) Twentieth Century Land Corp., (xvii) Enterprise Aviation, Inc., (xviii) Century Land Corporation, (xix) Century Land Company - Tennessee, (xx) Bill Heard Management, LLC, (xxi) Landmark Vehicle Mgt., LLC, (xxii) Georgia Services Group, LLC, (xxiii) Columbus Transportation, LLC, and (xxiv) Airport Chevrolet, Inc.

<sup>2</sup> All capitalized terms used in the Disclosure Statement have the meanings ascribed to such terms in the Plan. To the extent any inconsistency exists between the definitions in the Plan and ~~herein~~the Disclosure Statement, the definitions in the Plan govern.

<sup>3</sup> ~~On October 3, 2008,~~ ACI Filed its own petition ~~for relief under Chapter 11 of the Bankruptcy Code on~~October 3, 2008.



**FAIRNESS OR MERITS OF THE PLAN.** No solicitation of votes may be made except pursuant to this Disclosure Statement and section 1125 of the Bankruptcy Code. In voting on the Plan, Holders of Claims entitled to vote on the Plan should not rely on any information other than that contained in this Disclosure Statement, the Plan and all exhibits hereto and thereto.

Pursuant to the provisions of the Bankruptcy Code, only certain classes of Claims are entitled to vote on the Plan. If you are entitled to vote to accept or reject the Plan, a "Ballot" and pre-addressed envelope for the return of the Ballot are enclosed. If you are a Creditor in Class 2, Class 3, Class 4, Class 5 or Class 7 and did not receive a Ballot, received a damaged or illegible Ballot, or lost your Ballot, please contact the Voting Agent for a Ballot.<sup>4</sup>

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<sup>4</sup> Interest Holders in Class 8, which receive no Distribution under the Plan, are deemed to have rejected the Plan, and are therefore not entitled to Vote on the Plan. Creditors in Class 1 and Class 6 are unimpaired and deemed to have accepted the Plan, and are therefore not entitled to vote on the Plan.

## VOTING PROCEDURES

After reviewing this Plan and the Exhibits hereto, please indicate your vote on the enclosed Ballot and return it either by overnight courier or regular mail to the Voting Agent at the address specified in the Ballot and below. Holders of Claims in Classes entitled to vote should read the Ballot carefully and follow the instructions contained therein. **BALLOTS SUBMITTED TO THE VOTING AGENT BY FAX OR OTHER ELECTRONIC TRANSMISSION WILL NOT BE ACCEPTED AND WILL BE VOID.**

Please vote and return your Ballot to the Voting Agent at the following address:

**If by U.S. Mail:**

Bill Heard Enterprises, Inc., et. al  
Ballot Processing Center  
c/o Epiq Bankruptcy Solutions, LLC  
P.O. Box 5014, FDR Station  
New York, NY 10150-5014

**If by Overnight Carrier or Hand-Delivery:**

Bill Heard Enterprises, Inc., et. al  
Ballot Processing Center  
c/o Epiq Bankruptcy Solutions, LLC  
757 Third Avenue, Third Floor  
New York, NY 10017

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

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

To obtain additional Ballots, you may contact the Voting Agent at the addresses specified above, or by calling Epiq Bankruptcy Solutions at (646) 282-2400. You may also obtain copies of the Plan, Disclosure Statement and other related documents at <http://chapter11.epiqsystems.com/billheard>.

**ARTICLE I.**  
**DESCRIPTION AND HISTORY OF THE DEBTORS**

**A. Description of the Debtors.**

William T. Heard, Sr. began a single dealership in Columbus, Georgia in ~~1919, eleven years after Henry Ford first produced the Model T. In 1961, Bill Heard, Jr. took the reins of the company, and the company grew to become the equity holder of, either directly or indirectly,~~ 1919. Ultimately, Bill Heard Enterprises, Inc., of which Bill Heard, Jr. was the Chief Executive Officer, became the direct or indirect equity holder of subsidiaries which owned and operated fourteen Chevrolet dealerships in seven states. ~~Specifically, these~~ These dealerships were located in Sanford, Florida; Plant City, Florida; Huntsville, Alabama; Columbus, Georgia; Union City Georgia; Buford, Georgia; Atlanta, Georgia; Kennesaw, Georgia; Collierville, Tennessee; Houston, Texas; Sugar Land, Texas; Scottsdale, Arizona; and Las Vegas, Nevada. ~~Additionally, the Debtors operated a Saab/Cadillac dealership at one of their locations. The model of the business was to operate large stores that focused~~

The Debtors developed a business model of operating large dealerships with a focus on maximizing the volume of vehicles sold. This model led Bill Heard, Jr. to adopt the slogan of "Mr. Big Volume." At its peak, the Debtors' revenue approximated \$2.5 billion per year. Over the past several years As a result, the Debtors transitioned from older, smaller dealerships in many locations to newer, larger dealerships ~~in order to effectuate this business model.~~ These larger locations enabled the Debtors to maximize the volume of vehicles sold at the locations, but also resulted in increased operating expenses. The Debtors had historically been one of, if not the, largest Chevrolet dealers in the country based upon the volume of cars sold.

Beginning in mid-2007, the Debtors' dealerships began to suffer significant monthly operating losses. These losses ~~are~~ were attributable to a variety of factors, including credit availability and decreased demand. In 2008, the Debtors' dealerships suffered monthly losses ranging from approximately \$2.0 million to \$5.0 million. Due to these losses and the resulting financial liquidity crises at the dealerships, the Debtors ceased operations at the dealerships on September 24, 2008.

The Debtors had ~~multiple Floor Plan Lenders~~ four floor plan lenders that financed the dealerships' purchase of automobiles at their fourteen dealerships. ~~The Debtors' Floor Plan Lenders included:~~ GMAC, Alpera, JPMorgan and Navistar. Alpera provided the floor plan lending at the ~~Debtors'~~ dealerships in Plant City, Florida; Union City, Georgia; and Sugar Land, Texas. JPMorgan provided the floor plan lending at the ~~Debtors'~~ dealership in Scottsdale, Arizona. GMAC provided the floor plan lending at the remaining ten Debtor dealerships with the exception of International brand trucks sold at the Columbus, Georgia dealership which floor plan financing was provided by Navistar.<sup>5</sup> ~~The~~ As of the Petition Date, the total amount of the Debtors' floor plan debt approximated \$229 million.

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<sup>5</sup> ~~Navistar Financial Corporation provided the floor plan financing for International trucks sold at the Columbus, Georgia dealership. GMAC provided the floor plan financing for the remaining trucks sold at the dealership.~~

The majority of the dealerships were, as of the Petition Date, located on real property owned by one or more of the Debtors' subsidiaries, some of which have not~~-yet~~ Filed for bankruptcy protection. This real property is mortgaged to various entities including GE Commercial Finance Business Property Corporation, Astar Finance Falcon II LLC, Columbus Bank & Trust Company, GMAC or JPMorgan. However, several of the dealerships were located on property leased from third parties.

The Debtors and the primary business of each are set forth in the following chart:

| <u>Debtor Entity</u>                            | <u>Primary Purpose</u>   |
|---|--|
| BHE   | Parent Entity <del>of other Debtors</del> and provider of management services to <del>The Debtor dealership entities</del> <a href="#">the dealerships</a> |
| ACI   | Non-Operating Entity   |
| BHC - Buford                                    | Chevrolet Dealership   |
| BHC - Collierville                              | Chevrolet Dealership   |
| BHC - Plant City                                | Chevrolet Dealership   |
| BHC - Scottsdale                                | Chevrolet Dealership   |
| BHC - Town Center                               | Chevrolet Dealership   |
| BHC - Union City                                | Chevrolet Dealership   |
| BHCC  | Chevrolet Dealership   |
| BHCC - Las Vegas                                | Chevrolet Dealership   |
| BHCC - N.W. Las Vegas                           | Chevrolet Dealership   |
| BHCC - Nashville                                | Non-Operating Entity   |
| BHCC - Orlando                                  | Chevrolet Dealership   |
| <del>BHCH</del> <a href="#">BHC - Sugarland</a> | Chevrolet Dealership   |
| BHCL  | Chevrolet Dealership   |
| BHML  | Non-Operating Entity   |
| <del>CTL</del> <a href="#">Century Land</a>     | Non-Operating Entity   |
| <del>EAI</del> <a href="#">CLC-TN</a>           | Non-Operating Entity   |
| <del>GSGL</del> <a href="#">CTL</a>             | Non-Operating Entity   |
| <a href="#">EAI</a>                             | <a href="#">Non-Operating Entity</a>   |
| <a href="#">GSGL</a>                            | <a href="#">Non-Operating Entity</a>   |

|                   |                        |
|-------------------|------------------------|
| LCL               | Chevrolet Dealership   |
| LVML              | Non-Operating Entity   |
| TCLC              | Owner of Real Property |
| <del>THCTJC</del> | Chevrolet Dealership   |

An organizational chart of the business structure of the Debtors is attached hereto as *Exhibit B*.

**B. Description of the Debtors' Liabilities.**

A summary of the various liabilities of each of the individual Debtors is attached hereto as *Exhibit C*.

**C. Description of the Debtors' Unencumbered Assets.**

~~As~~Certain of the ~~Petition Date, the Debtors owned a variety of assets. However, the majority of these assets were encumbered by Liens securing loans made by the Lenders to the Debtors. However, certain of the Debtors do~~Debtors have unencumbered assets. ~~These assets include including:~~ (a) a receivable in the approximate amount of \$4.291 million owed by an insurance trust to BHE; (b) the unencumbered portion of the proceeds of the sale of TCLC's real property, approximately \$1.5 million ~~in unencumbered cash~~; (c) a pending lawsuit brought by LCL against GM relating to, among other things, GM's placement of another Chevrolet dealership near LCL's dealership<sup>62</sup>; (d) receivables owed by certain ~~insiders~~Insiders to BHE in the approximate amount of \$~~33.0~~ million; (e) a certain amount of unencumbered cash held by BHE, including proceeds from the sale of two unencumbered condominiums; and (f) funds in the amount of approximately \$2.477 million related to deferred compensation for several former employees of BHE. The Debtors' entitlement to some of ~~the~~these assets, ~~however~~, is disputed.

~~Furthermore, following~~Still, the majority of the Debtors' assets were encumbered by Liens securing loans made by the Lenders to the Debtors. Following the payment in full of the secured claims of Alphaera and GMAC, there may be proceeds from the Asset Sales of the dealerships that are unencumbered. A summary of the potential unencumbered proceeds from the Asset Sales of the dealerships is included within the Debtors' Liquidation Analysis attached hereto as Exhibit D. Additionally, certain of these assets may have been used to pay administrative expenses during the course of these Cases.

The Debtors have various ~~causes~~Causes of ~~action~~Action against third parties, which they intend to pursue after confirmation ~~of this plan. Additionally, certain~~. Certain of the Debtors made ~~a significant amount of~~ transfers to ~~Creditors~~Persons in the ninety days preceding the Petition Date. Some portion of these transfers may be avoidable as preferential transfers pursuant to ~~Section~~section 547 of the Bankruptcy Code. Additionally, the Debtors may have

<sup>62</sup> GM and certain of its affiliates filed chapter 11 bankruptcy on June 1, 2009.

made transfers to ~~insiders~~Insiders within ~~1~~one year of the Petition Date. Some of these transfers may ~~likewise~~ be subject to avoidance pursuant to ~~Section~~section 547 of the Bankruptcy Code. Transfers from the Debtors could also be avoidable as fraudulent conveyances pursuant to ~~Section~~section 548 of the Bankruptcy Code. The Debtors, ~~however,~~ have ~~as of~~not yet undertaken ~~no~~an analysis to determine which of these transfers may ~~potentially~~ be avoidable.

## **ARTICLE II.**

### **EVENTS LEADING TO BANKRUPTCY**

The Debtors' bankruptcy filing was precipitated by a variety of factors which served to create a "perfect storm."

In the year leading up to the bankruptcy filing, the nation saw a significant rise in gasoline prices. This unprecedented rise in fuel costs, ~~combined with Chevrolet's product mix focused on sport utility vehicles and trucks,~~ led to a significant decline in the volume of purchases of Chevrolet ~~manufactured vehicles,~~ specifically sport utility vehicles and trucks, which constituted a significant portion of the Debtors' sales.

Chevrolet was not the only manufacturer adversely affected. The overall volume of new car sales in the United States fell from an estimated 16.1 million ~~two years ago in 2007~~ to an estimated ~~14~~11 million ~~this past year in 2008.~~ A ~~recent~~2008 study by Grant Thornton, LLP ~~in 2008 found~~concluded that several thousand U.S. dealerships would need to close in ~~the United States in order to maintain for~~ sales per dealer ~~at the prior year's volume to remain at 2007's totals.~~ This decrease in overall volume left the Debtors' dealerships, which were ~~focused on selling large volumes of vehicles~~volume-driven, with a reduced ~~volume of vehicles sold,~~revenue but ~~remaining~~continued high operating ~~expenses~~expense.

~~Additionally, the current~~The general economic climate ~~triggered~~caused public reluctance ~~by the public~~ to make large purchases. ~~The current state of affairs~~It also caused a tightening in the banking and financial sectors ~~also resulted~~resulting in some retail lenders ~~that formerly financed the consumers' purchase of new and used automobiles to~~ significantly ~~restrict~~restricting their lending to certain buyers, while other lenders ceased such lending altogether.

~~In the months leading up to the bankruptcy filing, The Debtors suffered from a financial liquidity crisis at their dealerships. Due to the lack of liquidity at the dealerships, the Debtors ceased operations at the~~Ultimately, this "perfect storm" led to the Debtors' ceasing operations at their dealerships on September 24, 2008.<sup>76</sup>

## **ARTICLE III.**

### **SIGNIFICANT EVENTS DURING THE CHAPTER 11 CASES**

#### **A. DIP Financing.**

After filing for bankruptcy, the Debtors entered into DIP Financing agreements with Alphaera and GMAC. ~~GMAC and Alphaera who~~ were ~~both Floor Plan Lenders to the Debtors~~

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<sup>76</sup> The Debtors' dealership located in Scottsdale, Arizona ceased operations on September 12, 2008.

~~prior to the filing of the bankruptcy~~each pre-petition Lenders. The DIP Financing ~~provided by GMAC and Alphera was utilized~~was used by the Debtors to fund ~~the Debtors' bankruptcy~~their Cases and ~~the liquidation of the collateral of GMAC to liquidate GMAC's~~and Alphera's Collateral. The DIP Financing was extended multiple times during the course of the Debtors' ~~bankruptcy~~ Cases.

**B. Retention of Professionals.**

At the beginning of the ~~case~~Cases, the Debtors' applications to employ Burr & Forman LLP as the Debtors' primary legal counsel and Stichter, Reidel, Blain & Prosser, P.A. as the Debtors' conflicts counsel were approved by the Bankruptcy Court. The Debtors ~~also~~ employed Development Specialists, Inc. as their financial advisor.

The Official Committee of Unsecured Creditors was appointed on October 9, 2008 and is made up of Reflexxion Automotive Products LLC, Genesis Marketing Group Inc., Bellaire Air Conditioning, Weaver Distributors Inc., Noble Logistics Inc., Factory Motor Parts Co. and A-Line Auto Parts and Arnold Oil. The Bankruptcy Court authorized the Committee to retain Kilpatrick Stockton LLP as ~~their~~its legal counsel and W.G. Hays & Associates, LLC as ~~their~~its financial advisor.

**C. Sale of the Debtors' Assets.**

During the course of the bankruptcy, the Debtors have sold eight of their dealerships pursuant to section 363 of the Bankruptcy Code, ~~eight of the Debtors' dealerships~~. A chart ~~that summarizes~~summarizing the dealership Asset Sales ~~of the Debtors' dealerships~~ is attached hereto as *Exhibit E*.

The Debtors were unable to sell their remaining five dealerships.<sup>87</sup> Accordingly, the Debtors Filed motions to terminate the dealership agreements between GM and BHCC - Orlando, LCL, ~~THE TJC~~, BHC - Union City and BHCC - Las Vegas. Following the Bankruptcy Court's approval of those terminations, the Debtors returned vehicles and parts to GM in exchange for a refund ~~from GM~~.

~~In addition to the dealership sales,~~ BHE also sold, ~~pursuant to section 363 of the Bankruptcy Code,~~ two condominiums it owned ~~by BHE~~ that were located in Houston, TX and Destin, FL ~~respectively~~.

**D. Liquidation of the Debtors' Secured Assets.**

~~Additionally, stay~~Stay relief was granted to several Lenders in order for the Lenders to move forward with liquidating their own collateral. For example, GE was granted stay relief in order to foreclose their mortgages on certain real property including the real property on which the BHCC - Orlando and ~~THE TJC~~ dealerships were located.

**E. Adversary Proceedings.**

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<sup>87</sup> The dealership agreement between BHCC - Scottsdale and GM was terminated pre-petition.



There are a variety of disputes ~~between~~among the Debtors' secured creditors regarding those creditors' relative priority in certain of the ~~assets of the~~ Debtors' assets. Most of these disputes have been consolidated within a single adversary proceeding which is pending in the Bankruptcy Court: as case number 09-80009. This adversary proceeding was initiated by GMAC on January 15, 2009 against those creditors asserting a lien against the proceeds derived from assets sold. The parties seek to determine the extent, validity and priority of each party's liens to determine the order and amount of payment to such parties. Litigation of this adversary proceeding is continuing.

#### Synovus Adversary

On April 1, 2009, Synovus Trust Company, N.A. ("Synovus") commenced an action in interpleader (the "Interpleader Action"). Through the Interpleader Action, Synovus is seeking direction from the Bankruptcy Court on the proper owner of funds (totaling approximately \$2,000,000) that Synovus holds pursuant to various trust accounts. Each of the Debtors and the Committee have filed papers in the Interpleader Action seeking to have the funds returned to the BHE Estate. The other named defendants who are each current or former BHE employees, have separately made demands for the funds to be delivered to them personally rather than to BHE. A status conference in the matter has been scheduled for September 29, 2009.

#### ~~F.~~ **F.**—WARN Act Litigation and Settlement.

Except for BHC- Scottsdale, which ceased operations on or about September 12, 2008, the Debtors advised substantially all of their employees on September 24, 2008 that their services were no longer required and also ceased operations on such date. On or about September 25, 2008, Erica Lodge and Michelle Whitby (collectively, "**Lodge**") filed suit on behalf of themselves and purportedly on behalf of all others similarly situated, in the United States District Court for the Northern District of Alabama, Northeastern Division (the "**District Court**") against two of the Debtors, Bill Heard Enterprises, Inc. and Bill Heard Chevrolet, Inc. of Huntsville (~~the "Lodge Lawsuit"~~). ~~Lodge alleged these Debtors violated the WARN Act. Lodge asserted these claims on behalf of a putative class of all employees for alleged violations of the WARN Act (the "Lodge Lawsuit").~~ Specifically, Lodge alleged that the named Debtors violated the WARN Act by, among other things, failing to give certain 60 day notices to those Debtors' employees prior to the Debtors' cessation of operations.

On or about October 1, 2008, the Debtors filed a *Suggestion of Bankruptcy* in the Lodge Lawsuit. ~~On and on~~ or about October 2, 2008, the District Court entered an order dismissing the Lodge Lawsuit without prejudice.<sup>98</sup>

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<sup>98</sup>Lodge filed a motion to alter, amend, or vacate the dismissal of the Lodge Lawsuit in order to have that lawsuit reinstated (the "**Motion to Reinstate**"); which the District Court denied on November 7, 2008. In response to the order denying the Motion to Reinstate, on or about November 18, 2008, Lodge ~~filed an adversary proceeding~~Filed a complaint in this Court (the "Lodge Adversary Proceeding") seeking to certify the same class for alleged violation of the WARN Act, but this time naming all Debtors (except ~~Airport Chevrolet, Inc.~~ACI) as defendants. Lodge ~~also~~ added an additional plaintiff (Robert Dunn), and claims for "conversion" and

On October 3, 2008, Adam Kettell ("*Kettell*"), on behalf of himself and purportedly on behalf of all others similarly situated, filed an adversary proceeding ~~complaint~~ in this Court (the "*Kettell Adversary Proceeding*") against certain of the Debtors for alleged violation of the WARN Act. ~~Specifically, Kettell alleged that the twelve Debtors~~ claimed the named debtor-defendants violated the WARN Act by failing to give certain ~~60~~ sixty-day notices to those Debtors' employees prior to the Debtors' cessation of operations. The Kettell Adversary Proceeding seeks ~~damages against~~ recovery from the named Debtors for compensatory and statutory damages, including interest, costs, and ~~attorney's~~ attorneys' fees. ~~At the same time,~~ Kettell also filed a motion seeking class certification.

On October 6, 2008, ~~at 8:58 a.m.,~~ Edward Kratzel ("*Kratzel*"), individually and purportedly on behalf of all others similarly situated, filed an adversary proceeding in this Court (the "*Kratzel Adversary Proceeding*") against all of the Debtors except ~~Airport Chevrolet, Inc.~~ ACI. In ~~his~~ the complaint commencing the litigation, Kratzel, like Kettell, makes the same claims for alleged violations of the WARN Act, and seeks to certify the same class. Kratzel also claimed that any damages on the WARN Act Claim should be afforded administrative expense status.

On January 12, 2009, the Bankruptcy Court entered an interim order certifying a class in the WARN Act Litigation, naming Kettell as class representative and appointing class counsel.

~~The Debtors, Committee and counsel for holders of WARN Act Claims have entered into~~ Holders of WARN Act Claims have vigorously asserted that the Debtors are liable for a violation of the WARN Act. Conversely, the Debtors dispute liability for any violation of the WARN Act. The parties exchanged letters outlining their legal authority and factual positions in support of their respective positions.

The Plan Proponents and counsel representing all members of the WARN Act Settlement Class discussed their relative positions over a series of meetings and in multiple exchanges of documents. Holders of WARN Act Claims have vigorously asserted that the Debtors are liable for a violation of the WARN Act. Conversely, the Debtors dispute liability for any violation of the WARN Act. The basis of each party's position was fully vetted, including the assertions by Holders of WARN Act Claims regarding the application of the "single employer doctrine" and the Debtors' applicable defenses thereto. The single employer doctrine allows claimants to effectively pierce the corporate veil to recover on account of their claims from the assets of entities other than their direct employer. The Debtors asserted their defenses including the unforeseeable business circumstances defense.

The Debtors, the Committee and counsel representing all members of the WARN Act Settlement Class ultimately reached a settlement in regards to Kettell v. Bill Heard Enterprises, Inc. et al. (Adv. Pro. No. 08-80153). ~~The settlement provides for~~ which was fully supported by the Debtors' Boards of Directors as well as unanimously by each member of the Creditors'

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~~"wantonness." As discussed herein, by this time two more putative class action adversary proceedings making the same claims and seeking to certify the same class had already been filed six weeks earlier in this Court" in the Lodge Adversary Proceeding.~~

Committee. A copy of the settlement agreement is attached hereto and incorporated herein as Exhibit G.

The Debtors maintained and ultimately the Committee concluded that a settlement of the WARN Act Litigation was in the best interests of the Debtors' Estates because it would avoid costly and time-consuming litigation that could significantly deplete the Debtors' remaining assets.

The settlement agreement outlines the treatment of WARN Act Claims under the Plan. ~~More specifically, the~~ and is the cornerstone upon which the Plan itself is built.<sup>9</sup> Among other things, the settlement provides that the Debtors' estates will be substantively consolidated for purposes of making distributions. Substantive consolidation of all of the Debtors' Estates was a fundamental aspect of the settlement agreement and the subject of intense negotiations between all of the parties to the agreement.

The settlement provides each Holder of a Priority WARN Act Claim will be treated under Class 2 of the Plan, and Holders of Allowed Class 2 Claims, as a Class, shall receive sixty-seven point five percent (67.5 %) of any such Distribution that the Holders of Allowed Class 2 Claims would be entitled to receive under section 507(a)(4) of the Bankruptcy Code, with the remaining thirty-two point five percent (32.5 %) of such Distribution to be paid to Holders of Claims in Class 3, Class 4, Class 5, and Class 7, including members of the WARN Act Settlement Class holding Claims in such Classes in the order set forth in the Plan; provided, however, once the Holders of Allowed Class 2 Claims, as a Class, have received \$8.25 million in Distributions toward their Class 2 Claims, the Holders of Allowed Class 2 Claims, as a Class, shall then receive fifty percent (50%) of any Distribution under the Plan, and the remaining fifty percent (50%) shall be paid to Holders of Claims in Class 3, Class 4, Class 5, and Class 7, including members of the WARN Act Settlement Class holding Allowed Claims in such Classes in the order set forth in the Plan. Moreover, the first \$20,000, with no withholdings for attorney fees, of any Distribution to Holders of Class 2 Claims will be paid to and split evenly between Adam Kettell and Edward Kratzel, in addition to their WARN Act Claims, for their services in the WARN Act Litigation. Furthermore, counsel to the WARN Act Settlement Class shall receive 33.3% of any Distribution received by a Holder of a WARN Act Claim on account of their WARN Act Claim. The order confirming the Plan shall constitute ~~any~~ an order approving the settlement as satisfying the requirements of Bankruptcy Rule 9019 as well as constituting necessary court approval of fees of counsel to the WARN Act Settlement Class under applicable law.

The United States Supreme Court set out the basic approach for a bankruptcy court in considering a substantial compromise involved as part of a plan in Protective Committee v. Anderson, 390 U.S. 414, 88 S.Ct. 1157, 20 L. Ed. 2d 1 (1968). The Supreme Court concluded that the "best interests" test contained in Bankruptcy Rule 9019 requires a debtor to show that the settlement or compromise is "fair and equitable."

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<sup>9</sup> To the extent of any disagreement between the summary and the terms of the Kettell Settlement Agreement attached as Exhibit G, the Kettell Settlement Agreement shall control.

The Bankruptcy Court is authorized to approve compromises and settlements and in doing so to apply the following criteria:

- (i) The probability of success in the litigation;
- (ii) The difficulty, if any, to be encountered in the matter of collection;
- (iii) The complexity of the litigation involved, and the expense, inconvenience and delay necessary attending it; and
- (iv) The paramount interest of the creditors and a proper deference to their reasonable views and the premises.

In re Justice Oaks II, Ltd., 898 F.2d 1544, 1549 (11th Cir.1990), cert. denied Wallis v. Justice Oaks II, Ltd., 498 U.S. 959, 111 S. Ct. 387, 112 L. Ed. 2d 398 (1990).

In making its determination to approve a proposed settlement, the Bankruptcy Court need not hold a full evidentiary hearing or a “minitrial” as it would not be an efficient use of judicial resources and would delay the administration of the bankruptcy case. See In re Grant, 291 B.R. 204, 208 (Bankr. M.D. Ga. 2003). Instead the Bankruptcy Court need merely “canvas the issues and see whether the settlement falls below the lowest point in the range of reasonableness.” Id. (citation omitted). In making this determination, the Bankruptcy Court should not substitute its own judgment for that of the debtors in evaluating the costs and benefits associated with a settlement. In re C.R. Stone Concrete Contractors, Inc., 346 B.R. 32, 48 – 49 (Bankr. D. Mass. 2006) (citing Hicks, Must & Co. v. Brandt (In re Healthco Int’l.), 136 F.3d 45, 50 (1<sup>st</sup> Cir. 1998).

A review of the Justice Oaks factors in the context of these cases demonstrates that the settlement agreement resolving the WARN Act Litigation confers significant benefits on the Debtors’ Estates and falls far above “the lowest level of reasonableness.”

Without the agreements, the Debtors, the Committee and the plaintiffs in the WARN Act Litigation would be forced to litigate the claims and disputes between them. Such litigation would likely be protracted with extensive discovery conducted in multiple jurisdictions given not only the Debtors’ extensive geographic footprint but also the locus of the various parties asserting claims. There would also be significant briefing and other filings made with the Bankruptcy Court, multiple days of hearings and likely appeals. The settlement will result in savings by avoiding costly litigation and appeals that could deplete the Assets of the Estates to the detriment of all creditors, including the Holders of WARN Act Claims.

There is no guarantee of the Debtors’ success in a litigation and at worst such litigation could leave the Estates saddled with a costly battle and ultimately have a Final Order that would result in the parties asserting WARN Claims being the only parties to recover any funds from the Debtors’ Estates. The settlement agreement not only resolves the WARN Act Litigation but also provides a mechanism for creditors with Allowed Claims to share in the Estates Assets while at the same time sparing the Estates significant administrative costs.

The Debtors, in their business judgment, believe the settlement represents the proximate conclusion that would be reached following an extended court battle and, therefore, is in the best

interests of the Estates and their beneficiaries, provide for a result that falls far above the lowest level of reasonableness, and that good cause exists for the Court to approve the Agreements.

The Committee, whose duty is to represent the interests of unsecured creditors, actively participated in the negotiation and documentation of the proposed settlement and approved of the terms therein.

Pursuant to section 105 of the Bankruptcy Code, this Court “may issue any order ... that is necessary to carry out the provisions of” the Bankruptcy Code. 11 U.S.C. § 105(a). For the reasons set forth herein, it is the Plan Trustee’s belief that the relief sought herein is proper and should be granted.

## **G. Substantive Consolidation**

The Plan proposes, and its terms embody, a compromise and settlement of various issues arising in the WARN Act Litigation. As part of the resolution of that dispute, the Debtors’ Estates will be substantively consolidated.

### 1. Standards for Substantively Consolidating Debtors’ Estates

The Plan proposes, and its terms embody, a compromise and settlement of various issues arising in the WARN Act Litigation. As part of the resolution of that dispute, the Debtors’ Estates will be substantively consolidated.

Substantive consolidation is an equitable remedy that the Bankruptcy Court may order. In general, substantive consolidation can greatly affect creditor recovery because it pools the assets and liabilities of entities with different debt-to-asset ratios. Therefore, affected parties often enter into protracted and expensive litigation related to substantive consolidation. As discussed in greater detail below, based on the facts of these cases, case law on the subject, and discussions with certain creditor constituencies most affected by substantive consolidation, namely, holders of WARN Act Claims and counsel for the general unsecured creditors, the Plan Proponents concluded that absent substantive consolidation of the Debtors’ Estates, there would be a number of Classes of Creditors who would receive nothing from these Cases and that substantive consolidation was in the best interests of the Debtors, their Estates, and creditors.

The United States Court of Appeals for the Eleventh Circuit – the circuit in which the Debtors’ cases are pending – recognizes that a court may authorize substantive consolidation. Eastgroup Properties v. Southern Motel Assoc., Ltd., 935 F.2d 245 (11<sup>th</sup> Cir. 1991). In Eastgroup, the Circuit Court concluded that substantive consolidation was appropriate when (i) there is a substantial identity between the entities to be consolidated; and (ii) consolidation is necessary to avoid some harm or to realize some benefit. Id. at 249. Upon such a showing by the proponent of substantive consolidation (in these Cases, the Debtors and the Committee), the burden shifts to an objecting party to show that (1) it has reasonably relied on the separate credit of one of the entities to be consolidated and (2) it will be prejudiced by substantive consolidation. Id. Finally, even if an objecting party makes a showing, substantive consolidation is appropriate if the benefits of consolidation heavily outweigh the harm.

The Eleventh Circuit suggested that consolidation proponents use the following factors when making their prima facie case for consolidation:

- (a) The presence or absence of consolidated financial statements.
- (b) The unity of interests and ownership between the various corporate entities.
- (c) The existence of parent and intercorporate guarantees on loans.
- (d) The degree of difficulty in segregating and ascertaining individual assets and liabilities.
- (e) The existence of transfers of assets without formal observance of corporate formalities.
- (f) The commingling of assets and business functions.
- (g) The profitability of consolidation at a single physical location.
- (h) The parent owning the majority of the subsidiary's stock.
- (i) The entities having common officers or directors.
- (j) The subsidiary being grossly undercapitalized.
- (k) The subsidiary transacting business solely with the parent.
- (l) Both entities [or all entities to be consolidated] disregarding the legal requirements of the subsidiary as a separate organization.

Eastgroup, 935 F.2d at 249-50. Factors (a) through (g) were adopted from In re Vecco Construction Industries, Inc., 4 B.R. 407, 410 (Bankr. E.D. Va. 1980). Factors (h) through (l) were adopted from Pension Benefit Guar. Corp. v. Ouimet Corp., 711 F.2d 1085, 1093 (1st Cir. 1983). The Eleventh Circuit noted that these factors are only "examples of information that may be useful to courts" and that "[n]o single factor is likely to be determinative in the court's inquiry." Eastgroup, 935 F.2d at 250.

## 2. Applying Substantive Consolidation Factors in These Cases

In applying the preceding factors to the Debtors, it is evident that substantive consolidation of the Debtors' estates is appropriate.

Despite the separate corporate identities of the Debtors, the Debtors' operations were all effectively managed by BHE, the ultimate corporate parent of all of the Debtors. BHE hired the general managers and controllers for all of the Debtors. The directors of all of the Debtors were also appointed by BHE's board and the affairs of all of the Debtors were discussed at BHE's board meetings. The senior officers and the directors of all of the Debtors were nearly identical across the various Debtor entities. Outside of BHE and the dealership entities (which include BHC-Buford, BHC-Collierville, BHC-Plant City, BHC-Scottsdale, BHC-Town Center, BHC-



Union City, BHCC, BHCC-Las Vegas, BHCC-N.W. Las Vegas, BHCC-Nashville, BHCC-Orlando, BHCH, LCL, TJC and BHC - Sugarland), almost none of the Debtors had any employees and the corporate decisions for these entities were made by BHE. At the dealership level, ordinary course of business purchasing decisions were made by the individual entities but decisions outside the ordinary course of business were approved by BHE. BHE's board of directors also made the ultimate decision that it was necessary for all of the Debtors to file for bankruptcy.

The Debtors collectively operated retail store operations under the "Bill Heard" brand name and were all in the same business, or conducted operations, or held real estate or other assets that supported the retail sale and service of automobiles. In effect, there was really only one business. Despite the fact that this business may have been operated through several different legal entities for various business planning purposes, these entities were part of one, integrated enterprise. The Debtors were effectively dependant on each other in furtherance of their business.

Further indicating the single enterprise status of the Debtors is that in exchange for a flat management fee, benefits administration of all of the benefits programs for employees at the dealership level was handled by BHE. Additionally, humans resources functions were handled out of BHE except for local payroll and local hiring. The majority of the advertising creation and placement was organized by Georgia Services Group, LLC on behalf of the dealership entities.

From a financial perspective, there were also substantial identity between the Debtors. BHE filed consolidated audit and federal tax returns on behalf of all of the Debtors. There are also a variety of cross-corporate guarantees among the various Debtors such that creditors were not relying on the separate credit of the individual entities, but rather the enterprise as a whole. Various credit agreements were also entered into by multiple Debtors collectively rather than on an individual basis.

It is the view of the Plan Proponents that substantive consolidation of the Debtors' Estates will actually benefit unsecured creditors in all classes. Without substantive consolidation there is no settlement agreement with the WARN Settlement Class and administrative expense claims would accrue from defending against the Claims brought by the WARN Settlement Class. The accrual of these administrative expense claims could substantially diminish the recoveries that unsecured creditors would otherwise receive. Moreover, in the event that the Debtors were ultimately found liable to the Holders of WARN Act Claims and the plaintiffs asserting WARN Act Claims were able to prove the single employer doctrine, which essentially achieves the same result of substantive consolidation with respect to their Claims, Holders of WARN Act Claims would be entitled to be paid in full prior to any creditor below the priority level under section 507(a)(4) of the Bankruptcy Code (where Holders of Claims in Class 3, Class 4, Class 5 and Class 7 would fall) received any distribution. A review of the Debtors' Liquidation Analysis, attached hereto as Exhibit D, indicates that under that scenario, there would likely be no recovery for any unsecured creditor below the section 507(a)(4) priority level.

#### **ARTICLE IV. THE PLAN OF LIQUIDATION**

The Plan Proponents believe that Creditors, as a group, will obtain a greater recovery from the Debtors' Estates ~~of the Debtors~~ through the ~~Debtors' chapter 11 Plan, than the recovery that Plan~~ would be available if the assets of the Debtors were liquidated under chapter 7 of the Bankruptcy Code. This position is supported by the liquidation analysis attached as Exhibit D and discussed more fully herein. Accordingly, the Plan will maximize the value of the Debtors' assets. The Plan Proponents believe, therefore, that the Plan is in the best interests of the creditors.

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

##### **A. Overview.**

The Plan ~~places the Claim and Interest Holders of the Debtors in separate~~divides Claims and Interests into Classes and ~~provides for the treatment of each such Class. For purposes of voting and all matters related to Confirmation, except as otherwise provided in the Plan, all Claims and Interests will be classified as set forth in Section III of the Plan. A Claim or Interest~~ sets forth the treatment for each Class (other than Administrative Expense Claims, including Fee Claims and Goods Claims, which are not classified). The Plan further classifies Claims against and Interests in the Debtors into Classes that contain Claims and Interests that are substantially similar to the other Claims and Interests in that Class. A Claim or Interest will be classified in a particular Class only ~~to the extent that the~~if that Claim or Interest qualifies under within the description of that Class ~~and is classified in other Classes to the extent that, and will be classified in a different Class if~~ any remainder of ~~the~~such Claim or Interest qualifies under within the description of such ~~other Classes. A Claim or Interest also is classified within a particular Class only to the extent that such Claim or Interest~~different Class. A Claim will only receive Distributions pursuant to this Plan if the Claim is an Allowed Claim or Allowed Interest in ~~that Class and~~which such Claim or Interest is classified and such Claim or Interest has not been paid, released, settled or otherwise satisfied prior to the Effective Date. Nothing in the Plan is intended to or will waive or otherwise compromise the Liquidating Trustee or the Plan Committee's right to object to the Allowance or Distribution on account of any Claim or Interest based upon applicable law, including Bankruptcy Code section 502, except as expressly set forth in this Plan.

##### **B. Plan Structure.**

The Plan is a plan of liquidation. Substantially all of the Debtors' assets have either been sold, abandoned or otherwise repossessed by secured creditors. The Plan provides liquidation and conversion to Cash of the Debtors' remaining Assets and the Distribution of the Net Proceeds realized therefrom by a Liquidating Trustee, as chosen by the Committee, to the Debtors' Creditors holding Allowed Claims in accordance with the provisions established by the



Bankruptcy Code. The Plan further provides for the termination of all Interests in the Debtors and the dissolution and wind up of the affairs of the Debtors.

~~The Debtors' Assets will be substantially consolidated as of the Effective Date of the Plan. Thus, a Holder of an Allowed Claim against a particular Debtor shall receive a distribution from the consolidated Assets of the Debtors, and not just the Assets of that individual Debtor. Moreover, the Holder of a Claim against a Debtor shall be entitled to vote on the acceptance or rejection of the Plan as it pertains to the Debtors as a whole.~~

As noted above, the Plan provides for the appointment of a Liquidating Trustee to liquidate the Assets of the Debtors in accordance with the Plan and will distribute the Net Proceeds thereof as follows: (a) first to pay the reasonable costs and expenses of the Liquidating Trustee and his professionals (including professional fees) incurred in administering, maintaining and preserving the Unsecured Creditor Distribution and the liquidation of the Assets of the Debtors (to the extent not otherwise paid pursuant to the Plan); and (b) second Pro Rata to the ~~holders~~ Holders of Allowed Claims on the terms and conditions, and in the priority, set forth in the Plan.

### **C. The Plan's Designation and Treatment of Administrative Claims.**

#### **1. General Treatment of Administrative Claims under the Plan.**

~~The Plan does not place certain~~Certain Claims are not placed into voting Classes pursuant to section 1123(a)(1) of the Bankruptcy Code. ~~Instead, these Claims; instead, they~~ are unclassified. Administrative Expense Claims, including Fee Claims and Goods Claims, are designated as unclassified Claims under this Plan. These unclassified, non-voting Claims and their treatment are described herein and in Section II of the Plan.

#### **2. Allowance and Payment of Administrative Expense Claims Other than Fee Claims and Goods Claims under the Plan.**

The Plan provides that pursuant to section 502 of the Bankruptcy Code, requests for payment of an Administrative Expense Claim, other than Fee Claims and Goods Claims, arising before the Effective Date must be Filed and served on the Debtors, the Lenders, the Plan Committee, the Liquidating Trustee and the Bankruptcy Administrator, pursuant to procedures set forth in the Confirmation Order, no later than thirty (30) days after the Effective Date; provided, however, all requests for payment of Administrative Expense Claims that are subject to the April 1, 2009 Bar Date and not filed before such Bar Date shall be denied, barred and discharged as untimely. Each such request for payment of an Administrative Expense Claim must include, at a minimum, (i) the name of the Holder of the Claim, (ii) the amount of the Claim, (iii) the basis for the Claim and (iv) documents evidencing or supporting the Claim. Failure to timely and properly file a request for payment of an Administrative Expense Claim as set forth herein shall result in the Administrative Expense Claim being forever barred and discharged. Objections to any such request may be made by the Debtors, the ~~Liquidation~~Liquidating Trustee, or any party in interest, and such objections, if any, must be filed and served on the Debtors, the Bankruptcy Administrator, the Lenders, the Plan Committee, the Liquidating Trustee and the requesting party by the later of twenty (20) days after the

Effective Date or twenty (20) days after the filing of the applicable request for payment. Any ~~allowed~~Allowed Administrative Expense Claim, other than Fee Claims and Goods Claims, unpaid as of the Effective Date, shall be paid ~~on~~within five (5) Business Days of the Effective Date, or, if later, not later than the fifteenth (15) Business Day after such Administrative Expense Claim becomes ~~allowed~~Allowed, in Cash from the Available Funds, in an amount equal to such Allowed Administrative Expense Claim ~~from the Available Funds~~.

### 3. Allowance and Payment of Fee Claims under the Plan.

The Plan provides that, except as provided by prior order of the Bankruptcy Court, Professionals or other entities asserting a Fee Claim must File and serve on the Debtors, the Bankruptcy Administrator, the Lenders, the Plan Committee, the Liquidating Trustee and such other entities as are designated by the Bankruptcy Rules, the Confirmation Order or other Final Order of the Bankruptcy Court, an application for final allowance of compensation and reimbursement of expenses no later than thirty (30) days after the Effective Date. Such application may include fees and expenses of the applicant incurred after the Confirmation Date but prior to the Effective Date. Failure to timely and properly File an application for Allowance of a Fee Claim as set forth herein shall result in such Fee Claim being forever barred and discharged. Objections to an application for allowance of a Fee Claim must be Filed and served on the Debtors, the Bankruptcy Administrator, the Lenders, the Committee, the Liquidating Trustee and the applicant no later than twenty (20) days after the Filing of the application for allowance of such Fee Claim. Any Allowed Fee Claim unpaid as of the Effective Date shall be paid ~~on~~within five (5) Business Days of the Effective Date or, if later, not later than the fifteenth (15th) Business Day after such Fee Claim becomes Allowed, in Cash from the Available Funds, in an amount equal to such Allowed Fee Claim ~~from the Available Funds~~.

### 4. Allowance and Payment of Goods Claims.

~~The Plan provides that, subject~~Subject to the allowance procedures set forth in the Plan, unless such Holder agrees to other treatment (in which event, such other agreement shall govern), each Holder of an Allowed Goods Claim shall, to the extent not already paid, be paid ~~on~~within five (5) Business Days of the Effective Date, in Cash, in an amount equal to such Allowed Goods Claim from the Available Funds of the Debtors, to the extent funds are available, provided, however, that such Goods Claim was filed by the April 1, 2009 Bar Date, as all such Goods Claims not filed by the April 1, 2009 Bar Date shall be denied, barred and discharged as untimely.

## ARTICLE V.

### CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS AND INTEREST.

#### ~~A.~~ ~~D.~~ The Plan's Classification and Treatment of Impaired Classes of Claims.

~~The Plan provides for seven Classes of Claims: (i) Employee Wage Claims ("Class 1"); (ii) WARN Act Settlement Claims ("Class 2"); (iii) Priority Benefit Claims ("Class 3"); (iv) Priority Deposit Claims ("Class 4"); (v) Priority Tax Claims ("Class 5"); (vi) Secured Claims ("Class 6"); (vii)~~

The Plan divides Claims and Interests into Classes and sets forth the treatment for each Class (other than Administrative Expense Claims, including Fee Claims and Goods Claims, which are not classified). The Plan further classifies Claims against and Interest in the Debtors into Classes that contain Claims and Interests that are substantially similar to the other Claims and Interests in that Class. A Claim or Interest will be classified in a particular Class only if that Claim or Interest qualifies within the description of that Class, and will be classified in a different Class if any remainder of such Claim or Interest qualifies within the description of such different Class. A Claim will only receive Distributions pursuant to the Plan if the Claim is an Allowed Claim in which such Claim is classified and such Claim has not been paid, released, settled or otherwise satisfied prior to the Effective Date. Nothing in the Plan is intended to or will waive or otherwise compromise the Liquidating Trustee or the Plan Committee's right to object to the Allowance or Distribution on account of any Claim or Interest based upon applicable law, including Bankruptcy Code section 502, except as expressly set forth in the Plan.

**B. Classification of Claims.**

Pursuant to section 1122 of the Bankruptcy Code, set forth below is a designation of Classes of Claims. Administrative Expense Claims, including Fee Claims and Goods Claims, have not been classified and are excluded from the following Classes in accordance with section 1123(a)(1) of the Bankruptcy Code. For purposes of organization, voting and all confirmation matters with respect to other Claims, the Plan classifies the Claims against each individual Debtor as follows:

**Class 1 - Employee Wage Claims (§ 507(a)(4)).** Class 1 shall consist of Allowed Employee Wage Claims.

**Class 2 – Priority WARN Act Claims (§ 507(a)(4)).** Class 2 shall consist of Allowed WARN Act Claims.

**Class 3 - Priority Benefit Claims (§ 507(a)(5)).** Class 3 shall consist of Allowed Priority Benefit Claims.

**Class 4 - Priority Deposit Claims (§ 507(a)(7)).** Class 4 shall consist of Allowed Priority Deposit Claims.

**Class 5 - Priority Tax Claims (§ 507(a)(8)).** Class 5 shall consist of Allowed Priority Tax Claims.

**Class 6 - Secured Claims.** Class 6 shall consist of Allowed Secured Claims.

**Class 7 - General Unsecured Claims** (~~“Class 7”~~) **and** (~~viii~~) **Interest Claims** (~~“Class 8”~~).  ~~Holders of Claims in Class 2, Class 3, Class 4, Class 5 and Class 7 are impaired and will be entitled to vote to accept or reject the Plan. Holders of Claims in Class 8 will not receive or retain any Distribution or other property under the Plan and are deemed to have rejected the Plan and not entitled to vote to accept or reject the Plan. Holders of claims in Class 1 and Class 6 are unimpaired and are deemed to have accepted the Plan and therefore, are not entitled to vote on the Plan.~~

~~The Plan sets forth the following treatment of Impaired Classes of Claims:~~ Class 7 shall consist of all Allowed Unsecured Claims, other than Class 1 Claims, Class 2 Claims, Class 3 Claims, Class 4 Claims and Class 5 Claims.

Class 8 - Interests. Class 8 shall consist of all Interests in the Debtors.

**C. Treatment of Classes of Claims and Identification of Classes of Claims that are Impaired Under the Plan.**

**1. Class 1 - Employee Wage Claims.**

(a) Classification: This Class consists of all Employee Wage Claims.

(b) Treatment: Each Holder of a Class 1 Allowed Employee Wage Claim will receive, in full and final satisfaction of and in exchange for such Class 1 Allowed Employee Wage Claim, Cash in an amount equal to the Allowed Amount of such Claim in accordance with the distribution provisions of Section IX.B of the Plan.

(c) Estimated Amount of Claims: The Plan Proponents estimate approximately \$1,688,000 of Claims in Class 1. To estimate percentage distributions to Creditors, the Plan Proponents have used this estimated figure. To establish the ~~Reserves~~Disputed Claim Reserve, and for purposes of making distributions to Creditors, the Plan Proponents will use the Face Amount of all Class 1 Claims that have not been disallowed.

(d) Projected Distributions: A Distribution will be made to Holders of Claims in Class 1, from the Available Funds of the Debtors, to the extent funds are available, after all Allowed Administrative Expense Claims have been paid in full.

(e) Voting: Claims in this Class are unimpaired, and Holders of Claims in this Class are deemed to have accepted the Plan.

**2. Class 2 - Priority WARN Act Claims.**

(a) Classification: This Class consists of all WARN Act Claims entitled to priority treatment under section 507(a)(4) of the Bankruptcy Code.

(b) Treatment: Each Holder of a Class 2 Priority WARN Act Claim will receive, in full and final satisfaction of and in exchange for such Class 2 Priority WARN Act ~~Claim~~ Claims, Cash in an amount equal to the Allowed Amount of such Claim in accordance with the distribution provisions of Section IX.B of the Plan.

(c) Estimated Amount of Claims: The Plan Proponents estimate approximately \$16,000,000 of Claims in Class 2. To estimate percentage distributions to Creditors, the Plan Proponents have used this estimated figure. To establish the ~~Reserves~~Disputed Claim Reserve, and for purposes of making distributions to Creditors, the Plan Proponents will use the Face Amount of all Class 3 Claims that have not been disallowed.

(d) Projected Distributions: Each Holder of an Allowed Class 2 Claim shall be paid in full and final satisfaction of such Claim, on the Initial Distribution Date, from the Available Funds of the Debtors, in Cash, in an amount equal to such Allowed Class 2 Claim, to the extent funds are available after all Allowed Administrative Expense Claims and Allowed Class 1 Claims have been paid in full. The Holders of Allowed Class 2 Claims, as a Class, shall receive sixty-seven point five percent (67.5 %) of any such Distribution that the Holders of Allowed Class 2 Claims would be entitled to receive under section 507(a)(4) of the Bankruptcy Code, with the remaining thirty-two point five percent (32.5 %) of such Distribution to be paid to Holders of Allowed Claims in Class 3, Class 4, Class 5, and Class 7, including ~~members~~ Holders of ~~the~~ WARN Act ~~Settlement Class~~Claims holding Claims in such Classes; provided, however, once the Holders of Allowed Class 2 Claims, as a Class, have received \$8.25 million in Distributions toward their Class 2 Claims, the Holders of Allowed Class 2 Claims, as a Class, shall then receive fifty percent (50%) of any Distribution under the Plan, and the remaining fifty percent (50%) shall be paid to Holders of Allowed Claims in Class 3, Class 4, Class 5, and Class 7, including members of the WARN Act ~~Settlement~~Claims Class holding Allowed Claims in such Classes. The first \$20,000, with no withholdings for attorney fees, of any Distribution to Holders of Class 2 Claims shall be paid to and split evenly between Adam Kettell and Edward Kratzel, in addition to their WARN Act Claims, for their services in the WARN Act Litigation. All Distributions made to Holders of Allowed Class 2 Claims shall be in proportion to the Holder's WARN Act Claim as set forth in section 507(a)(4) of the Bankruptcy Code, minus any Distribution received by such Holder under Section III.C.1 of the Plan. The amount of each Allowed Class 2 Claim will be calculated in accordance with the WARN Act and based upon the Debtors' books and records. The portion of a Class 2 Claim entitled to priority will be based upon Debtors' books and records and subject to challenge by any member of the WARN Act Settlement Class as provided for in Section IX.A.4 of the Plan. A WARN Act Claim that is in excess of such Holders' statutory cap under section 507(a)(4) of the Bankruptcy Code will be treated as a Class 7 General Unsecured Claim.

(e) Voting: Claims in this Class are impaired, and Holders of Claims in this Class are entitled to vote to accept or reject the Plan.

### 3. **Class 3 - Priority Benefit Claims.**

(a) Classification: This Class consists of all Priority Benefit Claims.

(b) Treatment: Each Holder of a Class 3 Allowed Priority Benefit Claim will receive, in full and final satisfaction of and in exchange for such Class 3 Allowed Priority Benefit Claim, Cash in an amount equal to the Allowed Amount of such Claim in accordance with the distribution provisions of Section IX.B of the Plan.

(c) Estimated Amount of Claims: The Plan Proponents estimate approximately \$1,500,000 of Claims in Class 3. To estimate percentage distributions to Creditors, the Plan Proponents have used this estimated figure. To establish the ~~Reserves~~Disputed Claim Reserve, and for purposes of making distributions to Creditors, the Plan Proponents will use the Face Amount of all Class 3 Claims that have not been disallowed.

(d) Projected Distributions: Unless such Holder agrees to other treatment (in which event, such other agreement shall govern), each Holder of an Allowed Class 3 Claim shall be paid in full and final satisfaction, on the Initial Distribution Date, from the Available Funds of the Debtors, in Cash in an amount equal to such Allowed Priority Benefit Claim, to the extent funds are available after all Allowed Administrative Expense Claims and Allowed Class 1 Claims are paid in full and the Allowed Class 2 Claims, as a Class, have received sixty-seven point five percent (67.5%) of any such Distribution. Thereafter, each Holder of an Allowed Class 3 Claim shall be paid in full from the thirty-two point five percent (32.5%) of the Distribution made to ~~creditors~~Creditors following payment in full of Class 1, until all Allowed Class 3 Claims are paid in full. However, if the Class 2 Claims, as a Class, have received \$8.25 million in Distributions toward their Allowed Class 2 Claims and Allowed Class 1 Claims have been paid in full, at which time, Allowed Class 3 Claims, as a Class, shall then receive fifty percent (50%) of any subsequent Distribution until all Allowed Class 3 Claims have been paid in full.

(e) Voting: Claims in this Class are impaired, and Holders of Claims in this Class are entitled to vote to accept or reject the Plan.

#### 4. **Class 4 - Priority Deposit Claims.**

(a) Classification: This Class consists of all Priority Deposit Claims.

(b) Treatment: Each Holder of a Class 4 Allowed Priority Deposit Claim will receive, in full and final satisfaction of and in exchange for such Claim, Cash in an amount equal to the Allowed Amount of such Class 4 Allowed Priority Deposit Claim in accordance with the distribution provisions of Section IX.B of the Plan.

(c) Estimated Amount of Claims: The Plan Proponents estimate approximately \$678,000 of Claims in Class 4. To estimate percentage distributions to Creditors, the Plan Proponents have used this estimated figure. To establish the ~~Reserves~~Disputed Claim Reserve, and for purposes of making distributions to Creditors, the Plan Proponents will use the Face Amount of all Class 4 Claims that have not been disallowed.



(d) Projected Distributions: Unless such Holder agrees to other treatment (in which event, such other agreement shall govern), each Holder of an Allowed Class 4 Claim shall be paid in full and final satisfaction, on the Initial Distribution Date, from the Available Funds of the Debtors, in Cash in the amount equal to such Allowed Priority Deposit Claim, to the extent funds are available after all Allowed Administrative Expense Claims, Allowed Class 1 Claims, and Allowed Class 3 Claims have been paid in full and after Allowed Class 2 Claims, as a Class, have received sixty-seven point five percent (67.5%) of any such Distribution. Thereafter, each Holder of an Allowed Class 4 Claim shall be paid in full from the thirty-two point five percent (32.5%) of the Distribution made to ~~ereditors~~Creditors. However, if Class 2 Claims, as a Class, have received \$8.25 million in Distributions toward their Allowed Class 2 Claims and Allowed Class 1 Claims, ~~and~~ Allowed Class 3 Claims have been paid in full, Allowed Class 4 Claims, as a Class, shall then receive fifty percent (50%) of any subsequent Distributions until all Allowed 4 Class Claims have been paid in full.

(e) Voting: Claims in this Class are impaired, and Holders of Claims in this Class are entitled to vote to accept or reject the Plan.

#### 5. **Class 5 - Priority Tax Claims.**

(a) Classification: This Class consists of all Priority Tax Claims.

(b) Treatment: Each Holder of a Class 5 Allowed Priority Tax Claim will receive, in full and final satisfaction of and in exchange for such Class 5 Allowed Priority Tax Claim, Cash in an amount equal to the Allowed Amount of such Claim in accordance with the distribution provisions of Section IX.B of the Plan.

(c) Estimated Amount of Claims: The Plan Proponents estimate approximately \$1,460,000 of Claims in Class 5. To estimate percentage distributions to Creditors, the Plan Proponents have used this estimated figure. To establish the ~~Reserves~~Disputed Claim Reserve, and for purposes of making distributions to Creditors, the Plan Proponents will use the Face Amount of all Class 5 Claims that have not been disallowed.

(d) Projected Distributions: Unless such Holder agrees to other treatment (in which event, such other agreement shall govern), each Holder of an Allowed Class 5 Claim shall be paid in full and final satisfaction, on the Initial Distribution Date, from the Available Funds of the Debtors, in Cash in an amount equal to such Allowed Priority Tax Claims, to the extent funds are available, after all Allowed Administrative Expense Claims, Allowed Class 1 Claims, Allowed Class 3 Claims and Allowed Class 4 Claims have been paid in full and after Allowed Class 2 Claims, as a Class, have received sixty-seven point five percent (67.5%) of any such Distribution. Thereafter, each Holder of an Allowed Class 5 Claim shall be paid in full from the thirty-two point five percent (32.5%) of the Distribution made to ~~ereditors~~Creditors. However, if the Class 2 Claims, as a Class, have received \$8.25 million in Distributions toward their Allowed Class 2 Claims, and Allowed Class 1 Claims, Allowed Class 3 Claims and Allowed Class 4 Claims have been paid in full, Allowed Class 5 Claims, as a Class, shall then receive fifty percent (50%) of any subsequent Distributions until all Allowed 5 Class Claims have been paid in full.

(e) Voting: Claims in this Class are impaired, and Holders of Claims in this Class are entitled to vote to accept or reject the Plan.

**6. Class 6 - Secured Claims.**

(a) Classification: This Class consists of all Secured Claims.

(b) Treatment: Each Holder of a Class 6 Secured Claim will receive, in full and final satisfaction of and in exchange for such Class 6 Secured Claim, the return of the Collateral securing their Liens, or proceeds of that Collateral, in accordance with the distribution provisions of Section IX.B of the Plan.

(c) Projected Distributions: A Holder of a Class 6 Secured Claim will receive the return of the Collateral securing their Liens. To the extent the Holder of Allowed Class 6 Claims is undersecured, the undersecured portion of the Claim will be treated as a Class 7 General Unsecured Claim against the Debtors.

(d) Voting: Claims in this Class are unimpaired, and Holders of Claims in this Class are not entitled to vote to accept or reject the Plan.

**7. Class 7 - General Unsecured Claims.**

(a) Classification: This Class consists of all General Unsecured Claims.

(b) Treatment: Each Holder of a Class 7 General Unsecured Claim will receive, in full and final satisfaction of and in exchange for such Class 7 General Unsecured Claim, Cash in an amount equal to the Allowed Amount of such Claim in accordance with the distribution provisions of Section IX.B of the Plan.

(c) Estimated Amount of Claims: The Plan Proponents estimate approximately \$61,000,000 of Claims in Class 7. To estimate percentage distributions to Creditors, the Plan Proponents have used this estimated figure. To establish the ~~Reserves~~Disputed Claim Reserve, and for purposes of making distributions to Creditors, the Plan Proponents will use the Face Amount of all Class 7 Claims that have not been disallowed.

(d) Projected Distributions: Unless such Holder agrees to other treatment (in which event, such other agreement shall govern), each Holder of an Allowed Class 7 Claim shall be paid in full and final satisfaction, on the Initial Distribution Date, in Cash, a Pro Rata share of any Distribution to Holders of General Unsecured Claims, from the Available Funds of the Debtors, after all Allowed Administrative Expense Claims, Allowed Class 1 Claims, Allowed Class 3 Claims, Allowed Class 4 Claims and Allowed Class 5 Claims have been paid in full and after Allowed Class 2 Claims, as a Class, have received sixty-seven point five percent (67.5%) of any such Distribution. Thereafter, each Holder of an Allowed Class 7 Claim shall be paid in full from the thirty-two point five percent (32.5%) of the Distribution made to ~~ereditors~~Creditors until all Allowed Class 7 Claims are paid in full. However, if the Class 2 Claims, as a Class, have received \$8.25 million in Distributions toward their Allowed Class 2 Claims, and Allowed Class 1 Claims, Allowed Class 3 Claims ~~and~~, Allowed Class 4 Claims, and Allowed Class 5



Claims have been paid in full, Allowed Class 7 Claims shall then receive fifty percent (50%) of any subsequent Distributions until all Allowed 7 Class Claims have been paid in full.

(e) Voting: Claims in this Class are impaired, and Holders of Claims in this Class are entitled to vote to accept or reject the Plan.

8. **Class 8 - ~~Interest~~Interests.**

(a) Classification: This Class consists of all ~~Interest~~Interests.

(b) Treatment: Each Holder of a Class 8 Interests Claim will not receive or retain any Distribution or other property on account of such Interest under the Plan.

(c) Projected Distributions: The Plan Proponents anticipate that there will be no Distribution made to Holders of Class 8 ~~Claims~~. Interests.

(d) Voting: ~~Claims~~Interests in this Class are deemed to have rejected the Plan and are not entitled to vote to accept or reject the Plan.

~~E. Other Provisions of the Plan.~~

**ARTICLE VI.**  
**ACCEPTANCE OR REJECTION OF THE PLAN; CRAMDOWN**

**A. Voting Classes.**

Except as otherwise provided by the Bankruptcy Code, the Bankruptcy Rules or order of the Bankruptcy Court, each Holder of a Claim in Classes 2, 3, 4, 5, and 7 is impaired and may vote to accept or reject the Plan. Only those votes cast timely by Holders of Allowed Claims in these Classes will be counted in determining whether acceptances have been received in sufficient number and amount to obtain Class acceptance and to confirm the Plan. Holders of Interests in Class 8 of the Plan are deemed to have rejected the Plan and are therefore not entitled to vote on the Plan. Holders of a Claim in Classes 1 and 6 are unimpaired and are deemed to have voted in favor of the Plan.

**B. Ballot Instructions.**

To have a vote count towards confirmation of the Plan, each Holder of a Claim entitled to vote on the Plan must complete and timely return a Ballot to the Voting Agent, which will compile the votes received.

**C. ~~1.~~ Cramdown.**

~~The Plan provides that if~~ If all applicable requirements for ~~Confirmation~~ confirmation of the Plan are met as set forth in Bankruptcy Code sections 1129(a)(1) through (13), except subsection (8), the Plan Proponents will request that the Bankruptcy Court confirm the Plan in accordance with Bankruptcy Code section 1129(b), notwithstanding the failure to satisfy the requirements of section 1129(a)(8), on the basis that ~~this~~ the Plan is fair and equitable and does not discriminate unfairly with respect to each Class of Claims that is impaired under, and has not accepted, the Plan.

~~2. Amending Claims.~~

**ARTICLE VII.**  
**PROVISIONS FOR AMENDING CLAIMS**

The Plan provides that unless otherwise provided in the Plan, a Claim may not be ~~filed~~ Filed or amended after the Confirmation Date without prior authorization of the Bankruptcy Court. Except as otherwise provided for in the Plan, any new or amended Claim ~~filed~~ Filed after the Confirmation Date will be deemed disallowed in full and expunged without any action by the Debtors or the Committee.

**ARTICLE VIII.**  
**TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

The Plan provides that pursuant to section 1123(b)(2) of the Bankruptcy Code, all executory contracts and unexpired leases to which any Debtor is or was a party and not previously rejected or assumed and assigned pursuant to prior order of the Bankruptcy Court, are deemed rejected pursuant to section 365(a) of the Bankruptcy Code as of the Confirmation Date.

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

**ARTICLE IX.**  
**CONFIRMATION AND CONSUMMATION OF THE PLAN**

**A.** **3. ~~Condition~~ Conditions Precedent to Confirmation.**

The Plan provides that it will not be confirmed until and unless all of the conditions precedent to confirmation have been met:

1. ~~The Plan provides that it will not be confirmed until and unless: (i) The entry of a Final Order finding that the Disclosure Statement contains adequate information pursuant to section 1125 of the Bankruptcy Code is entered by the Bankruptcy Court; (ii) the proposed Confirmation Order is reasonably acceptable to the Debtors and the Committee; and (iii) all the provisions, terms and conditions of the Plan are approved in the Confirmation Order. which order shall be in form and substance reasonably satisfactory to the Plan Proponents;~~

~~4. **Condition Precedent to**~~

2. ~~The proposed Confirmation Order shall be, in form and substance, reasonably acceptable to the Plan Proponents; and~~

3. ~~All provisions, terms and conditions of the Plan are approved in the Confirmation Order.~~

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

The Plan provides that it will not become effective and operative unless and until the Effective Date occurs. The Effective Date shall occur after, and only after, all of the conditions precedent set forth below have been met:

1. ~~The Plan provides that it will not become effective and operative unless and until the Effective Date occurs. Moreover, the Plan provides that the Effective Date will occur after,~~

~~and only after: (i) the Confirmation Order is entered and has become a Final Order providing~~The Confirmation Order shall have been entered and become a Final Order and shall provide that the Liquidating Trustee is authorized and directed to take all actions necessary ~~and~~or appropriate to enter into, implement and consummate ~~those documents and~~the contracts, instruments, releases, leases, indentures and other agreements or documents created in connection with the Plan; ~~(ii) all Plan Exhibits are, in form and substance, reasonably acceptable to the Debtors and the Committee and have been executed and delivered;~~ (ii) all Plan Exhibits are, in form and substance, reasonably acceptable to the Debtors and the Committee and have been executed and delivered; ~~(iii) the Liquidating Trustee is authorized and directed to take all actions necessary and appropriate to enter into, implement and consummate those documents and agreements created in connection with the Plan;~~ (iii) the Liquidating Trustee is authorized and directed to take all actions necessary and appropriate to enter into, implement and consummate those documents and agreements created in connection with the Plan; ~~(iv) all other actions, documents and agreements necessary to implement the Plan have been effected or executed; and~~ (iv) all other actions, documents and agreements necessary to implement the Plan have been effected or executed; and ~~(v) the Debtors have sufficient Cash to make all required payments to be made on the Initial Distribution Date and to fund the Disputed Claim Reserve.~~ (v) the Debtors have sufficient Cash to make all required payments to be made on the Initial Distribution Date and to fund the Disputed Claim Reserve. or effectuate, advance or further the purposes thereof;

2. All Plan Exhibits shall be, in form and substance, reasonably acceptable to the Plan Proponents and shall have been executed and delivered by all parties' signatory thereto;

3. The Liquidating Trustee shall be authorized and directed to take all actions necessary or appropriate to enter into, implement and consummate the contracts, instruments, releases, leases, indentures and the agreements or documents created in connection with the Plan;

4. All other actions, documents and agreements necessary to implement the Plan shall have been effected or executed; and

5. The Debtors shall have sufficient Cash to make all required payments to be made on the Initial Distribution Date and to fund the Disputed Claims Reserve.

### C. Waiver of Conditions.

The Plan provides that the conditions set forth in Section VII.A and VII.B of the Plan may be waived in whole or in part by the Debtors with the approval of the Committee which approval shall be in the Committee's sole and absolute discretion. The Plan provides that the failure of a party to exercise any of the foregoing rights shall not be deemed a waiver of any other rights, and each such right shall be deemed an ongoing right that may be asserted at any time.

### D. ~~5.~~ Consequences of Non-Occurrence of the Effective Date.

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

~~F.~~ **Implementation and Means of Execution of the Plan.**

**ARTICLE X.**  
**IMPLEMENTATION OF PLAN**

**A.** ~~1.~~ **Substantive Consolidation.**

The Plan is premised upon the substantive consolidation of the Estates. As of the Effective Date, the Estates shall be substantively consolidated, such that (i) all Intercompany Claims are canceled and disallowed and no distributions shall be made on account thereof; (ii) all guarantees of any of the Debtors of the payment, performance or collection of obligations of any of the other Debtors are eliminated and canceled, and Claims on account of such guaranties are disallowed; (iii) any obligations of the Debtors and all guarantees thereof executed by the other Debtors are treated as a single obligation and are deemed a single Claim against the consolidated Estates; (iv) all joint obligations of the Debtors, and all multiple Claims against such entities on account of such joint obligations, are deemed a single Claim against the consolidated Estates, and any such multiple Claims are disallowed and (v) each Claim filed in the Bankruptcy Case is deemed filed against the consolidated Estates.

1. **The WARN Act Settlement**

The linchpin of the Plan is the proposed compromise and settlement of the claims and issues arising in the WARN Act Litigation. As part of the settlement, the Debtors' Estates will be substantively consolidated for purposes of distributions under the Plan.

2. **Effect of Compromise and Settlement**

As a result of the compromise and settlement of the WARN Act Litigation contained in the Plan, (i) the separate chapter 11 cases of the Debtors shall be consolidated into the case of BHE as a single consolidated case; and (ii) all property of the Estate of each Debtor shall be deemed to be property of the consolidated Estate. As a result, (a) all Intercompany Claims are canceled and disallowed and no Distributions shall be made on account thereof; (b) all guarantees of any of the Debtors of the payment, performance or collection of obligations of any of the other Debtors are eliminated and canceled, and Claims on account of such guarantees are disallowed; (c) any obligations of the Debtors and all guarantees thereof executed by the other Debtors are treated as a single obligation and are deemed a single Claim against the consolidated Estates; (d) all joint obligations of the Debtors, and all multiple Claims against such entities on account of such joint obligations, are deemed a single Claim against the consolidated Estates, and any such multiple Claims are disallowed and (e) each Claim filed in the Bankruptcy Case is deemed filed against the consolidated Estates.

The Plan shall not result in the merger or otherwise affect the separate legal existence of each Debtor, other than with respect to distribution rights under the Plan. The substantively consolidated plan structure will not (i) have the effect of creating a Claim in a Class different from the Class in which a Claim would have been placed in the absence of such structure; or (ii) affect the obligation of the Debtors to pay quarterly fees to the Office of the Bankruptcy Administrator until such time as each particular Debtor's case is closed.

**B. Liquidation Trustee.**

1. Appointment. The Liquidating Trustee shall be selected by the Committee by majority vote pursuant to its bylaws, announced at the Confirmation Hearing, and appointed as of the Effective Date. In the event of the death, resignation, incapacity, disqualification or misconduct of the Liquidating Trustee or in the event that the Committee is unable to select a Liquidating Trustee by the Confirmation Date, the Bankruptcy Court shall appoint the Liquidating Trustee. The Debtors shall retain and have all of the rights, powers and duties necessary to carry out their responsibilities under this Plan, provided that the rights, powers and duties shall be exercisable solely by the Liquidating Trustee.

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

~~The Plan provides that a Liquidating Trustee will be appointed by the Committee as of the Effective Date and, pursuant to the Plan, will hold and administer the Unsecured Creditor Distribution, and the Net Proceeds thereof, which will be deemed assigned by the Debtors to the Liquidating Trustee for the benefit of Holders of Allowed Claims. Pursuant to the Plan, the Liquidating Trustee will maintain separate segregated accounts for each of the Debtors from which the Liquidating Trustee will distribute the Net Proceeds of the Unsecured Creditor Distribution to holders of Allowed Claims against that particular Debtor in the order of priority set forth in the Plan.~~

~~3. Vesting and Liquidation of the Debtors' Assets.~~ Powers and Duties. The Liquidating Trustee shall serve under this Plan and shall discharge all of the rights, powers and duties set forth in this Plan, including the rights, powers, and duties of a trustee under sections 704(a)(1), (2), (4), (5) and (7) and 1106(a)(6) and (7) of the Bankruptcy Code. Without limiting the generality of the foregoing, the Liquidating Trustee, acting on behalf of the Debtors, shall have the following rights, powers and duties:

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

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

(c) to employ, retain, and replace such persons, including actuaries, attorneys, accountants, auctioneers, brokers, managers, consultants, other professionals, agents, investigators, expert witnesses, consultants and advisors as necessary to discharge the duties of the Liquidating Trustee under the Plan and to pay the reasonable fees and costs of such employment without the need to seek approval from the Bankruptcy Court. The Liquidating Trustee is authorized, but not required, to employ Coventry Healthcare, Inc. with respect to processing and administering payment, if possible, of employee claims for health insurance coverage.

(d) to object to the Allowance of Claims or seek equitable subordination of Claims, pursuant to the terms of the Plan;

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

(f) to investigate, analyze, commence, prosecute, litigate, collect and otherwise administer the Disputed Claims, Liens and Causes of Action;

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

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

(i) to seek the examination of any entity under and subject to the provisions of Bankruptcy Rule 2004;

(j) to pay any Bankruptcy Administrator fees;

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

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

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

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

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

4. **Fees and Expenses.** Compensation of the Liquidating Trustee and the costs and expenses of the Debtors (including, without limitation, professional fees and expenses) shall be paid from the Available Funds. Without limitation of the foregoing, the Liquidating Trustee shall pay, without further order, notice or application to the Bankruptcy Court, the reasonable fees and expenses of the Liquidating Trustee and the Liquidating Trustee's professionals, as necessary to discharge the Liquidating Trustee's duties under the Plan. The payment of fees and expenses of the Liquidating Trustee and the Liquidating Trustee's professionals shall be from Available Funds and be made in the ordinary course of business and shall not be subject to the prior approval of the Bankruptcy Court, provided, however, the fees and expenses of such professionals, including, without limitation, the Liquidating Trustee's fees and expenses shall be paid within ten (10) Business Days after submission of a detailed invoice thereof to the Debtors'



and the Plan Committee by directing it to the Liquidating Trustee and a representative for the Plan Committee. If the Liquidating Trustee or the Plan Committee dispute the reasonableness of any such invoice, then the objecting party or the affected professional may submit such dispute to the Bankruptcy Court for determination of reasonableness of such invoice and the disputed portion of such invoice shall not be paid until the dispute is resolved.

5. **Compromising Disputed Claims, Liens and Causes of Action.** The Plan provides that the Liquidating Trustee is authorized to: (i) compromise and settle any Causes of Action, Liens and Disputed Claims; and (ii) execute necessary documents, including stipulations of settlement or release, without notice to any party other than the Plan Committee and without further order of the Bankruptcy Court.

### C. **Disposition of Property by the Liquidating Trustee.**

1. ~~The Plan provides that~~ **Vesting of Assets.** Unless otherwise dealt with under the Plan by a prior Final Order, on the Effective Date all property of the Estates (including all Causes of Action) will remain vested in the Estates and ~~will~~shall continue to be subject to the jurisdiction of the Bankruptcy Court following confirmation of ~~the~~this Plan until distributed to Holders of Allowed Claims in accordance with the provisions of ~~the~~this Plan and the Confirmation Order. ~~Moreover, on the Effective Date or as soon as practicable thereafter, the Liquidating Trustee, (without further motion, notice or order of the Bankruptcy Court, subject to the terms of the Plan), will liquidate the Available Funds on the terms and conditions set forth in the Plan and distribute the Net Proceeds thereof in accordance with the Plan.~~ From and after the Effective Date, all property of the Estates shall be free and clear of all liens, claims and interests of Holders of Claims and Interests, except as otherwise provided in the Plan. All such property of the Estates shall be distributed in accordance with the provisions of this Plan and the Confirmation Order.

### ~~G. **Effect of Confirmation and the Effective Date.**~~

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

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

### D. **Preservation of Causes of Action; Resulting Claim Treatment**

Under the Plan, Causes of Action consist of claims, rights of action, suits or proceedings, whether in law or in equity, whether known or unknown, that the Debtors or their estates may



hold against any Person (except to the extent such claims are expressly released under the Plan.). The Plan provides that except as otherwise provided in the Plan or the Confirmation Order, or in any contract, instrument, release, indenture, or other agreement entered into in connection with the Plan, in accordance with Bankruptcy Code section 1123(b), on the Effective Date, each Debtor will retain all of the respective Causes of Action that such Debtor may hold against any Person. Each Debtor will retain and may enforce, sue on, settle, or compromise (or decline to do any of the foregoing) all such Causes of Action. Each Debtor or their respective successor(s) may pursue such retained Causes of Action, as appropriate, in accordance with the best interests of the Debtors or their successor(s) who hold such rights in accordance with applicable law and consistent with the terms of the Plan.

Causes of Action include (but are not limited to) potential avoidance or other bankruptcy causes of action. Such causes of action may exist, among other things, as a result of “preferential” payments or other transfers made by the Debtors on account of antecedent debt within 90 days of the Petition Date, or one year in the case of Insiders. The deadline for commencing any avoidance actions including, but not limited to, preference and fraudulent transfer actions, is two years after the Petition Date. A decision with respect to whether to pursue such transfers will be made by the Liquidating Trustee prior to the expiration of that deadline. All creditors and other parties who received potentially preferential payments are advised that such payments are subject to possible avoidance in proceedings to be commenced by the Debtors of the Liquidating Trustee on behalf of the Debtors.

In addition, Causes of Action include non-bankruptcy claims, rights of action, suits, or proceedings that arise in the ordinary course of the Debtors’ businesses. The Debtors currently hold certain claims or rights of action against a number of parties. The Debtors reserve their rights to continue to prosecute all of these unless settled on terms acceptable to them. The Debtors also have claims against certain parties that may ripen into litigation. The Debtors have disclosed potential Causes of Action as well as potential defendants on Exhibit F.

Unless a claim or Cause of Action is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order (including, without limitation, the Confirmation Order), the Debtors expressly reserve such Cause of Action for later adjudication by the Debtors or the Liquidating Trustee on behalf of the Debtors (including, without limitation, Causes of Action not specifically identified or of which the Debtors may presently be unaware or which may arise or exist by reason of additional facts or circumstances unknown to the Debtors at this time or facts or circumstances that may change or be different from those the Debtors now believe to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches shall apply to such Causes of Action upon or after the confirmation or consummation of the Plan based on the Disclosure Statement, the Plan or the Confirmation Order, except where such Causes of Action have been expressly released in the Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the Debtors expressly reserve the right to pursue or adopt any claims alleged in any lawsuit in which the Debtors are a plaintiff, defendant or an interested party, against any entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits.

The Debtors reserve the right to pursue, settle, or otherwise not pursue any pending or potential claims, rights of action, suits, or proceedings against any of the parties described herein. Neither the listing nor the failure to list any party herein will prejudice the Debtors' rights to pursue any claims, rights of action, suits, or proceedings that have arisen or may arise in the future in the ordinary course of the Debtors' businesses.

If, as a result of the pursuit of any Causes of Action, a Claim would arise from a recovery pursuant to Bankruptcy Code section 550 after distributions under the Plan have commenced, making it impracticable to treat the claim in accordance with the applicable provision of Section III of the Plan, the Debtors shall be permitted to reduce the recovery by an amount that reflects the value of the treatment that would have been accorded to the Claim under the Plan, thereby effectively treating the Claim through the reduction.

**E. ~~1. Full and Final Satisfaction of Claims, Including WARN Act Claims.~~**

1. Settlement of WARN Act Litigation. The Plan is intended to, among other things, compromise and settle the WARN Act Litigation. Upon Confirmation of Plan, all WARN Act Settlement Class members shall be paid, in full and final satisfaction, settlement and discharge of all liabilities of and Claims against the Debtors arising out of the WARN Act Litigation. Nothing in the Plan or in this Disclosure Statement shall be construed as an admission by the Debtors of liability under the WARN Act or any enterprise theory recognized in WARN Act jurisprudence.

2. Full and Final Satisfaction. ~~The Plan provides that the~~ treatment of Claims and Interests ~~in the Plan will provided in the Plan shall~~ be in full and final satisfaction, settlement and discharge of all liabilities of, Claims against, or Interests in the Debtors, ~~and except.~~ Except as provided in the Plan or the Confirmation Order, the rights afforded under the Plan will be in exchange for and in complete satisfaction, discharge and release of all Claims and liabilities and termination of all Interests arising on or before the Effective Date, including any interest accrued after the Petition Date. ~~Nothing in this Disclosure Statement or in the Plan shall be construed as an admission by the Debtors of liability under the WARN Act or any enterprise theory recognized in WARN Act jurisprudence.~~

~~Moreover, the Plan sets forth a compromise and settlement of the WARN Act Litigation. Upon Confirmation of Plan, all WARN Act Settlement Class members shall be paid, in full and final satisfaction, settlement and discharge of all liabilities of and Claims against the Debtors arising out of the WARN Act Litigation as provided for in Section III.C.2 of the Plan.~~

**2. Exculpation.**

~~The Plan provides that from and after the Effective Date, (a) the Debtors; (b) all current officers and directors, and all other agents, employees, professionals, and representatives of the Debtors; (c) the Liquidating Trustee; (d) all agents, employees, professionals and representatives of the Liquidating Trust; (e) the Committee, its members and its professionals (collectively, with each of their predecessors and successors in interest and their respective general and limited partners, officers, directors, employees, agents, professionals and other representatives, the "**Exculpated Parties**") will neither have nor incur any liability to any Person or entity for any act~~

~~taken or omitted to be taken from and after the Petition Date in connection with or related to the formulation, preparation, dissemination, implementation, administration, confirmation or consummation of the Plan, the Asset Sales, the Disclosure Statement or any contract, instrument, release or other agreement or document created or entered into in connection with the Plan. Moreover, as provided for in the Plan, from and after the Confirmation Date, all Persons are permanently enjoined from commencing or continuing in any manner, any suit, action or other proceeding, on account of or respecting any claim, obligation, debt, right, cause of action, remedy or liability released or to be released against an Exculpated Party pursuant to the Plan~~

~~3. **Injunction.** EXCULPATION. FROM AND AFTER THE EFFECTIVE DATE, (A) THE DEBTORS; (B) ALL CURRENT OFFICERS AND DIRECTORS, AND ALL OTHER AGENTS, EMPLOYEES, PROFESSIONALS AND REPRESENTATIVES OF THE DEBTORS; (C) THE LIQUIDATING TRUSTEE; (D) ALL AGENTS, EMPLOYEES, PROFESSIONALS AND REPRESENTATIVES OF THE LIQUIDATING TRUSTEE; (E) THE COMMITTEE, ITS MEMBERS AND ITS PROFESSIONALS (COLLECTIVELY, WITH EACH OF THEIR PREDECESSORS AND SUCCESSORS IN INTEREST AND THEIR RESPECTIVE GENERAL AND LIMITED PARTNERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, PROFESSIONALS AND OTHER REPRESENTATIVES, THE "EXCULPATED PARTIES") SHALL NEITHER HAVE NOR INCUR ANY LIABILITY TO ANY PERSON OR ENTITY FOR ANY ACT TAKEN OR OMITTED TO BE TAKEN FROM AND AFTER THE PETITION DATE IN CONNECTION WITH OR RELATED TO THE FORMULATION, PREPARATION, DISSEMINATION, IMPLEMENTATION, ADMINISTRATION, CONFIRMATION OR CONSUMMATION OF THE PLAN, THE ASSET SALES, THE DISCLOSURE STATEMENT OR ANY CONTRACT, INSTRUMENT, RELEASE OR OTHER AGREEMENT OR DOCUMENT CREATED OR ENTERED INTO IN CONNECTION WITH THE PLAN. HOWEVER, THAT THE FOREGOING PROVISIONS OF THIS SECTION VIII SHALL HAVE NO EFFECT ON THE LIABILITY OF ANY PERSON OR ENTITY THAT RESULTS FROM ANY SUCH ACT OR OMISSION THAT IS DETERMINED IN A FINAL ORDER TO HAVE CONSTITUTED GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. FROM AND AFTER THE CONFIRMATION DATE, ALL PERSONS ARE PERMANENTLY ENJOINED FROM COMMENCING OR CONTINUING IN ANY MANNER, ANY SUIT, ACTION OR OTHER PROCEEDING, ON ACCOUNT OF OR RESPECTING ANY CLAIM, OBLIGATION, DEBT, RIGHT, CAUSE OF ACTION, REMEDY OR LIABILITY RELEASED OR TO BE RELEASED AGAINST AN EXCULPATED PARTY PURSUANT TO THE PLAN.~~

~~The Plan provides that from and after the Effective Date, all persons who have held, hold or may hold claims against or interest in any Debtor are permanently enjoined from taking the following actions against a Debtor or its Estates, or any of its Property on account of such Claims or Interests: (a) commencing or continuing any action or other proceeding against the Debtors; (b) enforcing, attaching, collecting or recovering in any manner any judgment against the Debtors; (c) creating, perfecting or enforcing any Lien or encumbrance; (d) asserting a setoff, right of subrogation or recoupment of any kind against any debt, liability or obligation due to the Debtors; and (e) commencing or continuing in any action that does not comply with or is inconsistent with the Plan.~~

4. ~~Indemnification Obligations.~~ INJUNCTION. EXCEPT AS OTHERWISE PROVIDED IN THE PLAN, THE CONFIRMATION ORDER SHALL PROVIDE, AMONG OTHER THINGS, THAT FROM AND AFTER THE EFFECTIVE DATE ALL PERSONS WHO HAVE HELD, HOLD OR MAY HOLD CLAIMS AGAINST OR INTERESTS IN ANY DEBTOR ARE PERMANENTLY ENJOINED FROM TAKING ANY OF THE FOLLOWING ACTIONS AGAINST THAT DEBTOR OR ITS ESTATE, OR ANY OF ITS PROPERTY ON ACCOUNT OF ANY SUCH CLAIMS OR INTERESTS: (A) COMMENCING OR CONTINUING, IN ANY MANNER OR IN ANY PLACE, ANY ACTION OR OTHER PROCEEDING; (B) ENFORCING, ATTACHING, COLLECTING OR RECOVERING IN ANY MANNER ANY JUDGMENT, AWARD, DECREE OR ORDER; (C) CREATING, PERFECTING OR ENFORCING ANY LIEN OR ENCUMBRANCE; (D) ASSERTING A SETOFF, RIGHT OF SUBROGATION OR RECOUPMENT OF ANY KIND AGAINST ANY DEBT, LIABILITY OR OBLIGATION DUE TO ANY DEBTOR; AND (E) COMMENCING OR CONTINUING, IN ANY MANNER OR IN ANY PLACE, ANY ACTION THAT DOES NOT COMPLY WITH OR IS INCONSISTENT WITH THE PROVISIONS OF THE PLAN, PROVIDED HOWEVER, THAT NOTHING CONTAINED IN THE PLAN SHALL PRECLUDE SUCH PERSONS FROM EXERCISING THEIR RIGHTS PURSUANT TO AND CONSISTENT WITH THE TERMS OF THE PLAN OR THE CONFIRMATION ORDER.

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

6. ~~The Plan provides that~~ Indemnification Obligations. Except as otherwise provided in the Plan or any contract, instrument, release or other agreement or document entered into in connection with the Plan, any and all indemnification obligations that the Debtors have pursuant to a contract, instrument, agreement, certificate of incorporation, bylaw, comparable organizational document or any other document or applicable law ~~will~~ shall be deemed rejected (if and to the extent executory) as of the Effective Date.

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

8. Insurance Claims for Personal Injury or Wrongful Death Claims. Notwithstanding any other provision of the Plan, any discharge or injunction contained in the Plan shall not prejudice, impair or increase any right of the Holder of any personal injury or wrongful death Claim to collect from any insurer of the Debtors or the insurer of any agent of the Debtors under any applicable property, liability or casualty insurance policy. On the Effective Date the stay shall be modified pursuant to section 362(d) of the Bankruptcy Code to the extent necessary to allow any such Holder of a personal injury or wrongful death claim to collect from any insurer of the Debtors or the insurer of any agent of the Debtors under any applicable property, liability or casualty insurance policy; provided, however, that any such Claim may be

liquidated and enforced only in accordance with the Plan. In such instance, the Holders of those Claims may proceed against the Debtors in name only and are entitled to no recovery from the Debtors or their Estates.

## ARTICLE XI.

### A. Plan Administration.

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

2. Cancellation of Equity Interests. Upon the Effective Date, the Interests and any other promissory notes, share certificates, whether for preferred or common stock (including treasury stock), other instruments evidencing any Interests, and all options, warrants, calls, rights, puts, awards, commitments or any other agreements of any character to acquire such Interests shall be deemed of no further force and effect against the Debtors, without any further act or action under any applicable agreement, law, regulation, order or rule, and the obligations of the Debtors under the notes, share certificates and other agreements an instruments governing such Interests shall be discharged; provided, however, that certain instruments, documents and credit agreements related to Claims shall continue in effect solely for the purposes of allowing the agents to make distributions to the beneficial holders and lenders thereunder. The Holders of or parties to such notes, share certificates and other agreement and instruments shall have no rights arising from or relating to such notes, share certificates and other agreements and instruments against the Debtors or their Estates except the rights provided pursuant to the Plan.

3. Debtors' Directors, Officers, Members and Managers. On the Effective Date, all officers, directors, members and managers of the Debtors shall be deemed to have resigned and shall be discharged from any further duties and responsibilities in such capacity. From and after the Effective Date, the Liquidating Trustee shall serve as the sole officer, sole director, sole member or sole manager of each of the Debtors. All bylaws, articles, certificates of incorporation, and related corporate documents are deemed amended by the Plan to permit and authorize such sole appointment.

4. Debtors' Existence. From and after the Effective Date, each Debtor shall continue in existence for the purpose of (i) winding up its affairs as expeditiously as possible; (ii) liquidating, by conversion to Cash or other methods, any remaining Assets as expeditiously as reasonably possible, (iii) enforcing and prosecuting claims, interests, rights and privileges of the Debtors, including, without limitation, the prosecution of the Causes of Action, (iv) having Disputed Claims resolved, (v) administering the Plan, (vi) filing appropriate tax returns and (vii) dissolution. Upon the Effective Date, all transactions and applicable matters provided for under the Plan shall be deemed to be authorized and approved by each Debtor without any requirement of further action by such Debtor. On and after the Effective Date, each of the Debtors' remaining assets and affairs shall be administered and managed by the Liquidating Trustee in accordance with the Plan.

5. ~~Treatment of Executory Contracts and Unexpired Leases.~~ Dissolution of the Debtors. Upon a certification to be Filed with the Court of the Final Distribution and completion of all duties under the Plan and entry of a Final Decree closing the Cases, the Debtors shall be deemed to be dissolved without any further action by the Debtors, including the filing of any documents in any filing office in any jurisdiction where any Debtor is organized. However, the Liquidating Trustee shall have the authority to take all necessary actions to dissolve the Debtors in any applicable state or commonwealth. Further, upon the aforementioned certification and entry of Final Decree, the Liquidating Trustee shall be authorized, in his sole discretion, to discard or destroy any and all of the Debtors' pre-petition books and records. The Debtors shall continue to preserve their post-petition books and records, subject to further Court order.

~~The Plan provides that all executory contracts and unexpired leases to which any Debtor is or was a party and not previously rejected or assumed and assigned pursuant to prior order of the Bankruptcy Court, will be deemed rejected pursuant to section 365(a) of the Bankruptcy Code as of the Confirmation Date.~~

~~The Plan further provides that each party to an executory contract or unexpired lease rejected pursuant to the Plan (and only such entities) asserting a Claim for damages arising from the rejection must File, on the Rejection Damages Bar Date, as that term is defined in the Plan, proof of such Claim; provided, however, that the Rejection Damages Bar Date, as defined in the Plan, will not apply to Persons that may assert a Claim on account of an executory contract or unexpired lease that was rejected by a Debtor before the Confirmation Date for which a prior Bar Date was established. Any Person asserting a claim for rejection damages that does not timely File a proof of claim in accordance with the Plan will be forever enjoined and barred from asserting the Claim against the Debtors, the Estates or any property of the Estates.~~

6. Dissolution of Committee. On the Effective Date, (a) the Committee shall dissolve and its members shall be released of their respective duties, responsibilities and obligations in connection with the Cases or the Plan; and (b) the retention or employment of the Committee's respective professionals and agents shall be terminated, other than with respect to Filing of and objecting to fee applications.

7. Plan Committee. On the Effective Date, the Plan Committee shall be formed and constituted from members of the Committee. The bylaws of the Committee shall be adopted as the bylaws of the Plan Committee. The Plan Committee members' identities shall be disclosed to the Bankruptcy Court on or prior to the Confirmation Date. If no one is willing to serve on the Plan Committee or there shall have been no Plan Committee members for a period of thirty (30) consecutive days, then the Liquidating Trustee may, during the vacancy and thereafter, ignore any reference in this Plan or the Confirmation Order to the Plan Committee, and all references to the Plan Committee's ongoing duties and rights in the Plan shall be null and void. The Plan Committee shall have all of the rights, powers and duties provided for in the Plan, including the right and authority to employ and compensate professionals, whether currently employed by the Committee or such other professionals as the Plan Committee may select and consistent with section 1103(b) of the Bankruptcy Code. The Plan Committee shall be authorized to:



(a) Consult with the Liquidating Trustee concerning the administration of the Estates and all property of the Estates;

(b) Object to Claims to the extent the Liquidating Trustee has not filed an objection;

(c) Review objections to and propose settlements of Disputed Claims;

(d) Review proposed settlements to Causes of Action and consent or object thereto; and

(e) Perform such other services as are specifically authorized by this Plan.

8. **No Compensation to Members of the Plan Committee.** Members of the Plan Committee serve without compensation but may be reimbursed for their reasonable out-of-pocket expenses. Professionals may be retained by the Plan Committee in the ordinary course of business and without prior approval of the Bankruptcy Court; provided, however, that, upon retaining any professional, the Plan Committee shall File a notice of such retention with the Bankruptcy Court, and such retention shall be subject to review and objection by any party in interest, with any such objection which cannot be resolved by agreement of the parties to be determined by the Bankruptcy Court, but the Filing of any such objection shall not operate to preclude such retention; provided further, however, that professionals retained by the Plan Committee shall not be entitled to be compensated from the Available Funds except for services rendered in order to facilitate the Plan Committee's discharge of its authority described in clauses (a) through (f) above in this Section VIII.D and such other matters as shall be authorized by the Bankruptcy Court after notice and a hearing. Such professionals shall provide the Liquidating Trustee monthly statements for services rendered and expenses incurred which fees and expenses shall be paid with fifteen (15) days of submission of an invoice. Any objection to such fees and expenses shall be resolved by the Bankruptcy Court, but the Filing of any such objection shall not operate to defer the payment of any such fees and expenses. Neither the Plan Committee, nor any of its members or designees, nor their respective employees or professionals shall be liable for any act or omission of any other member, designee, agent or representative of the Plan Committee, nor shall any member be liable for any act or omission taken or omitted to be taken in its capacity as a member of the Plan Committee, other than acts or omissions resulting from such member's willful misconduct or negligence.

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

**ARTICLE XII, ARTICLE V.**  
**CLAIMS**

**PROVISIONS GOVERNING CLAIM RESOLUTION AND DISTRIBUTIONS**

**A. ~~Objections to~~ Procedure for Determination of Claims.**

1. ~~The Plan provides that after~~ **Objections to Claims.** After the Effective Date, the

Liquidating Trustee and the Plan Committee willshall have ~~the~~ exclusive authority and responsibility to prosecute objections to all Claims.

**B. Stay of Claims Objection Process and Liquidation of Claims.**

2. Stay of Claims Objection Process and Liquidation of Claims. The Plan ~~provides that the~~ process of objecting to Claims in a particular Class or liquidating Claims in a particular Class willshall be stayed until it is evident that there are funds available from the Available Funds to make a ~~distribution~~Distribution to Holders of a Claim in that Class. The process of objecting to Claims or liquidating a particular Class of Claims willshall only begin after it is evident that there will be funds available to make a Distribution to that particular Class. Notwithstanding the foregoing, the Debtors shall have the right to object to the Claims of any Person who is the subject of an adversary proceeding asserting any Cause of Action, including, but not limited to, assertion of objections pursuant to section 502(d) of the Bankruptcy Code.

**C. Disputed Claims.**

3. The Plan provides that Disputed Claims. Payments or Distributions under the Plan on Account of Disputed Claims willshall be held in ~~reserve~~the Disputed Claims Reserve pending the Allowance or disallowance of the Claim. To the extent any property is distributed to an entity on account of a Claim that is not an Allowed Claim, ~~the Plan provides that~~ such property willshall promptly be returned to the Liquidating Trustee. To the extent that a Disputed Claim ultimately becomes an Allowed Claim, payments and Distributions on account of ~~the~~such Allowed Claim willshall be made in accordance with the provisions of the Plan. On the Distribution Date next following the date that the order or judgment ~~of the Bankruptcy Court~~ allowing such Claim becomes a Final Order, any property held in reserve pursuant to the Plan that would have been distributed prior to the date on which a Disputed Claim becomes an Allowed Claim willshall be distributed to the Holder of ~~the~~such Allowed Claim, together with any dividends, payments or other distributions made on account of such property from the date such Distributions would have been due had such Claim then been an Allowed Claim to the date such Distributions are made. Notwithstanding the foregoing or any other term or provision of the Plan, until Allowed, no Claim willshall delay or otherwise affect Distributions on account of Allowed Claims. ~~The~~Without limitation, the Liquidating Trustee willshall not reserve from any Distribution on account of Allowed Claims any amount otherwise allocable to a Claim that is a Disputed Claim, ~~notwithstanding the possibility that the Claim may be Allowed as a Claim to the extent unpaid as a result of an insufficiency in the Fund.~~ The holder of any Claim Allowed as a Claim willshall share Pro Rata in any Distribution to which it is entitled occurring after such Claim is Allowed but willshall be entitled to no share of any prior Distribution.

**D. Procedure to Challenge WARN Act Claims.**

4. The Plan provides that Procedure to Challenge WARN Act Claims. As set forth in Section III.C.2.(c), all Distributions made to members of the WARN Act Settlement Class shall be in proportion to ~~each~~ such member's WARN Act Claim as set forth in section 507(a)(4) of the Bankruptcy Code, minus any other Distributions received by such member under Section III.C.1 of the Plan. The amount of each member's WARN Act Claim willshall be calculated in accordance with the WARN Act and based upon ~~debtors~~Debtors' books and records and subject



to challenge by any member of the WARN Act Settlement Class. If ~~the~~ Holder of a WARN Act Claim disputes any of the amounts ~~indicated~~shown on ~~the~~ Debtors' books and records, he or she may dispute such amounts by mailing a "Claim Challenge" containing the following: 1) the caption of this action shown above on the first page; 2) the WARN Settlement Class ~~Member~~member's name, address, and telephone number; 3) the basis for the dispute and 4) documentation supporting the WARN Settlement Class ~~Member~~member's position. This detailed written statement must be mailed to 1) WARN Act Settlement Class counsel: The Gardner Firm, P.C., P.O. Drawer 3103, Mobile, AL 36652, Attn: Mary Olsen; 2) Debtors' counsel: Dent Morton, Burr & Forman LLP, 420 North 20th Street, Suite 3400, Birmingham, AL 35203; and 3) Committee Counsel: John Mills, Kilpatrick Stockton, LLP, Suite 2800, 1100 Peachtree Street, Atlanta, GA 30309-4530. **Claim Challenges must be received by the above no later than \_\_\_\_\_, 2009. September 17, 2009.** Counsel will attempt in good faith to resolve the dispute among themselves, but if they are unable to do so counsel for any party may submit the matter to the Court for resolution.

**B.** ~~E.~~ **Distributions.**

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

~~F.~~ **Distributions on Allowed Claims.**

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

~~G.~~ **Undeliverable Distributions.**

~~2. Disbursing Agent. The Debtors or their duly authorized agent shall make all Distributions required under the Plan, subject to the terms and provisions of the Plan. The party making the Distributions shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court. The party making the distributions shall be authorized and directed to rely upon the Debtors' books and records and~~

its representatives and professionals in determining Allowed Claims entitled to Distribution under the Plan.

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

~~H. Manner of Payment, Interest, Fractional Dollars and~~De Minimis Distributions.

~~4. The Plan provides that~~Manner of Payment. Distributions under the Plan may be made, at the option of the Liquidating Trustee, in Cash, by wire transfer or by check drawn on such accounts established by the Liquidating Trustee as necessary to effectuate the Plan. ~~Further, the Plan provides that unless otherwise required by Final Order of the Bankruptcy Court, interest will not accrue or be paid after the Petition Date on any Claims, and no Holder of a Claim will be entitled to interest accruing on or after the Petition Date on any Claim. Moreover, pursuant to the Plan, whenever any payment of a fraction of a cent would otherwise be called for, the actual payment will reflect a rounding of such fraction to the nearest whole cent, and no interim Distribution will be made on account of any Allowed Class 7 Claim if the amount of such Distribution is less than \$25.00.~~

~~I. Compliance with Tax Requirements.~~

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

**J. ~~Setoffs.~~**

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

6. Fractional Dollars; *De Minimis* Distributions.

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

(b) No interim Distribution will be made on account of any Allowed Class 7 Claim if the amount of such Distribution is less than \$25.00. On the Final Distribution Date, the Liquidating Trustee shall (i) aggregate the amount of all Distributions that would have been made on account of an Allowed Claim in Class 7 but for this *de minimis* provision and (ii) make a Distribution on account of such Allowed Claim in accordance with the Plan.

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

8. Disputed Claims Reserves. Except as otherwise provided in the Plan, no Distributions shall be made on account of a Disputed Claim until such Claim becomes an Allowed Claim. In making any Distribution on Allowed Class 7 Claims, the Liquidating Trustee shall calculate the amount of such Distribution (for purposes of making a Pro Rata calculation) as if each Disputed Class 7 Claim were an Allowed Claim, unless the Bankruptcy Court enters an order specifying that the Disputed Claim should be treated as being a different amount for purposes of such calculation. Subject to Section IX.A.3 of the Plan (a) the Liquidating Trustee shall reserve from Distributions a sufficient amount to make a Distribution on a Disputed Claim in the event it becomes an Allowed Claim (unless the Bankruptcy Court orders otherwise); and (b) to the extent a Disputed Claim is disallowed pursuant to a Final Order, any reserves attributable to the disallowed portion of the Disputed Claim shall be distributed on account of Allowed Claims pursuant to the terms of the Plan.

9. ~~The Plan provides that~~Setoffs. Subject to section 553 of the Bankruptcy Code, in the event any Debtor has a Claim of any nature whatsoever against a Holder of a Claim, the Liquidating Trustee may, but is not required to, set off or recoup such Debtor's Claim against

such Claim (and any Distributions or other rights to receive property arising out of such Claim under the Plan) unless any such claim of the Debtor is or will be released under the Plan; ~~however, neither.~~ Neither the failure to set off nor the allowance of any Claim under the Plan ~~will~~shall constitute a waiver or release of any Claim of the Debtors.

~~K.~~ Reliance on Claims Register.

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

~~L.~~ Reservation of Rights of the Estate.

~~The Plan provides that all claims, rights to payment, causes of action, cross claims and counterclaims of the Debtors of any kind or nature whatsoever including, without limitation, Causes of Action and Avoidance Actions, against third parties arising before the Confirmation Date, that have not been disposed of prior to the Effective Date, shall be preserved and treated in accordance with the Plan, except to the extent released or enjoined by the Plan or pursuant to a Final Order. The Liquidating Trustee is empowered and authorized to enforce: (a) the Causes of Action, including, Avoidance Actions; and (b) all other Claims, causes of action, rights to payment and related recoveries of any nature or type whatsoever, at law or in equity, against any Person or entity, other than the Exculpated Parties, only to the extent exculpated or released pursuant to the Plan, or any other Person released pursuant the Plan or to a Final Order, whether or not filed prior to the Effective Date.~~

~~ARTICLE VI.~~

~~OTHER PLAN EFFECTUATION MATTERS~~

ARTICLE XIII.

RETENTION OF JURISDICTION

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

1. Allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Interest, including the resolution of any request for payment of any Administrative Expense Claim, the resolution of any objections to the Allowance or priority of Claims or Interests and the determination of requests for the payment of claims entitled to priority under section 507(a)(1) of the Bankruptcy Code, including compensation of any reimbursement of expenses of parties entitled thereto;

2. Hear and determine all applications for compensation and reimbursement of expenses of Professionals under the Plan or under sections 330, 331, 503(b), 1103 and 1129(a)(4) of the Bankruptcy Code;

3. Hear and determine all matters with respect to the assumption or rejection of any executory contract or unexpired lease to which a Debtor is a party or with respect to which a Debtor may be liable, and to hear, determine and, if necessary, liquidate any Claims arising therefrom;

4. Effectuate performance of and payments under the provisions of the Plan;

5. Hear and determine any and all adversary proceedings, motions, applications and contested or litigated matters arising out of, under or related to the chapter 11 Cases or the Plan;

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

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

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

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

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

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

12. Enforce all orders, judgments, injunctions, releases, exculpations, indemnifications and rulings entered in connection with the chapter 11 Cases;

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

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

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

16. Hear and determine the Causes of Action;

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

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

19. Hear and determine all matters related to (i) the property of the Estates from and after the Confirmation Date, (ii) the winding up of the Debtors' affairs and (iii) the activities of Debtors, including (A) challenges to or approvals of Debtors' activities, (B) resignation, incapacity or removal of the Liquidating Trustee, (C) reporting by, termination of and accounting by Debtors' and (D) release of the Liquidating Trustee from his duties;

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

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

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

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

24. Enter a final decree closing the Cases.

#### ARTICLE XIV. MISCELLANEOUS PROVISIONS

**A. General. Insurance Preservation.**

~~The Plan provides that from and after the Effective Date the Liquidating Trustee will fulfill the specific duties assigned in accordance with the Plan, including, but not limited to executing, delivering, filing or recording such documents, instruments, releases and other agreements as provided for in the Plan, and take such actions as may be necessary or appropriate to implement, effectuate and further evidence the terms and conditions of the Plan.~~

Pursuant to the Plan, any policies of insurance or indemnification escrows that may cover or apply to any Claims against any other officer, director, employee, agent or other representative of the Debtors (collectively, the "*Insured Parties*"), including, without limitation, any directors or officers liability insurance policy, shall be preserved and shall remain in full



force and effect following entry of the Confirmation Order and nothing in the Plan, including any releases, shall diminish, impair or prejudice the rights, claims, interests or defenses of any Insured Party.

**B. Cancellation of Equity Interests. Tax Injunction.**

~~The Plan provides that on the Effective Date, the Interests and any other promissory notes, share certificates, whether for preferred or common stock (including treasury stock), other instruments evidencing any Interests, and all options, warrants, calls, rights, puts, awards, commitments or any other agreements of any character to acquire such Interests will be deemed of no further force and effect against the Debtors, without any further act or action under any applicable agreement, law, regulation, order or rule, and the obligations of the Debtors under the notes, share certificates and other agreements an instruments governing such Interests will be discharged; provided, however, that certain instruments, documents and credit agreements related to Claims will continue in effect solely for the purposes of allowing the agents to make distributions to the beneficial holders and lenders thereunder.~~

In accordance with section 346 of the Bankruptcy Code for purposes of any state or local law imposing a tax, income will not be realized by a Debtor or by reason of forgiveness or discharge or indebtedness resulting from the Cases. As a result, each state or local taxing authority is permanently enjoined and restrained, after the Confirmation Date, from commencing, continuing or taking any act to impose, collect or recover in any manner any tax against the Debtors arising by reason of the forgiveness or discharge of any such Person under the Plan. Notwithstanding any other provision of the Plan, each Person or entity receiving a Distribution pursuant to the Plan shall have sole and exclusive responsibility for the payment and satisfaction of tax claims or obligations imposed by any Governmental Unit on account of, arising out of or related to any such Distribution, including, without limitation, income and withholding taxes.

**C. Debtors' Directors, Officers, Members and Managers. Effectuating Documents; Further Transaction; Exemption From Transfer Taxes.**

~~The Plan provides that on the Effective Date, all officers, directors, members and managers of the Debtors will be deemed to have resigned and will be discharged from any further duties and responsibilities in such capacity, and that the Liquidating Trustee will serve as the sole officer, sole director, sole member or sole manager of each of the Debtors.~~

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

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

**D. ~~Debtors' Existence~~ Modification of Plan.**

~~The Plan provides that from and after the Effective Date, each Debtor will continue in existence for the purpose of (i) winding up their affairs as expeditiously as possible; (ii) liquidating, by conversion to Case or other methods, any remaining assets as expeditiously as reasonably possible; (iii) enforcing and prosecuting claims, interest, rights and privileges of the Debtors; (iv) having Disputed Claims resolved; (v) administering the Plan; (vi) filing appropriate tax returns; and (viii) dissolution. On and after the Effective Date, each of the Debtors' remaining assets and affairs will be administered and managed by the Liquidating Trustee in accordance with the Plan.~~

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

**E. ~~Dissolution of the Debtors.~~ Plan Supplement(s).**

~~The Plan provides that upon a certification to be filed with the Court of the Final Distribution and completion of all duties under the Plan and entry of a Final Decree closing the Cases, the Debtors will be deemed dissolved without any further action by the Debtors. The Plan further provides that upon the aforementioned certification and entry of Final Decree, the Liquidating Trustee will be authorized, in his sole discretion, to discard or destroy any and all of the Debtors' pre-petition books and records, however, the Debtors will continue to preserve their post-petition books and records subject to further Court order.~~

Exhibits to the Plan not attached hereto shall be Filed in one or more Plan Supplements by the Exhibit Filing Date. Any Plan Supplement (and amendments thereto) Filed by the Plan Proponents shall be deemed an integral part of the Plan and shall be incorporated by reference as if fully set forth herein. Substantially contemporaneously with their Filing, the Plan Supplements may be viewed at the office of the clerk of the Court or its designee during normal business hours, by visiting the Court's website at [ecf.alnb.uscourts.gov](http://ecf.alnb.uscourts.gov) (PACER account



required) or by visiting [www.epiqbankruptcysolutions.com](http://www.epiqbankruptcysolutions.com). Holders of Claims and/or Interests may obtain a copy of any Plan Supplement upon written request to the Debtors. The documents contained in any Plan Supplement shall be approved by the Bankruptcy Court pursuant to the Confirmation Order. To the extent any Exhibit is inconsistent with the terms of the Plan, unless otherwise ordered by the Bankruptcy Court, the non-Exhibit portion of the Plan shall control.

**F. Dissolution of Committee. Notice.**

~~The Plan provides that on the Effective Date, (a) the Committee will dissolve and its members will be released of their respective duties, responsibilities and obligations in connection with the Cases or the Plan; and (b) the retention or employment of the Committee's respective professionals and agents will be terminated, other than with respect to Filing and objecting to fee applications.~~

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

1. **If to the Debtors:**

Robert B. Rubin  
Derek F. Meek  
Marc P. Solomon  
BURR & FORMAN LLP  
420 North 20<sup>th</sup> Street, Suite 3400  
Birmingham, Alabama 35203  
Facsimile: (205) 458-5100

2. **If to the Committee:**

John W. Mills, III  
KILPATRICK STOCKTON LLP  
Suite 2800  
1100 Peachtree Street  
Atlanta, GA 30309-4530  
Facsimile: (404) 541-3236

3. **If to the Liquidating Trustee:**

As set forth in the Confirmation Order.

4. **If to the Bankruptcy Administrator:**

Richard Blythe  
Office of the Bankruptcy Administrator  
United States Bankruptcy Court  
400 Wells Street  
P.O. Box 3045  
Decatur, AL 35602

**G. Plan Committee, Severability.**

~~The Plan provides that on the Effective Date, the Plan Committee will be formed and constituted from members of the Committee, whose identities will be disclosed to the Bankruptcy Court prior to the Confirmation Date. The Plan Committee will have all of the rights, powers and duties provided for in the Plan, including the right and authority to employ and compensation professionals, whether currently employed by the Committee or such other professionals as the Plan Committee may select consistent with Section 1103(b) of the Bankruptcy Code.~~

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

**H. Conflict of Terms.**

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

**I. Successors and Assigns.**

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

**J. Payment of Bankruptcy Administrator Fees.**

All fees payable through the Effective Date due the Bankruptcy Administrator shall be paid on the Effective Date by the Debtors. The Debtors shall pay quarterly fees to the Bankruptcy Administrator until the Cases are closed or converted and/or the entry of final

decrees. The Bankruptcy Administrator shall not be required to file a request or proof of claim for payment of its quarterly fees, which shall be paid by the Debtors.

**K. Tax Reporting and Compliance.**

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

**L. Tax Consequences.**

ALL CREDITORS AND PARTIES IN INTEREST ARE URGED TO CONSULT WITH THEIR OWN TAX ADVISORS TO ASCERTAIN THE PLAN'S CONSEQUENCES UNDER APPLICABLE FEDERAL, STATE, LOCAL AND FOREIGN TAX LAWS.

**ARTICLE XV. ~~ARTICLE VII.~~**  
**PLAN CONFIRMATION PROCESS**

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

**A. ~~Confirmation.~~ Feasibility of the Plan**

~~At the Confirmation Hearing, the Bankruptcy Court will confirm the Plan if the Plan satisfies all requirements of section 1129(a) of the Bankruptcy Code. The requirements for confirmation of the Plan under section 1129(a) of the Bankruptcy Code include the following: (1) the Plan must be accepted by all impaired classes, (2) the Plan must be feasible, and (3) with respect to each holder of a Claim or Interest that does not vote to accept the Plan (even if such holder is a member of a Class that as a whole votes to accept the Plan), the Plan must be in the "best interest" of such holder in that the Plan provides for a Distribution to the holder that is not less than the amount such holder would receive in a hypothetical chapter 7 liquidation of the Debtors. With respect to the requirement that each impaired class votes to accept the Plan, section 1129(b) of the Bankruptcy Code provides that if all other requirements of section 1129(a) of the Bankruptcy Code are satisfied, the Plan still may be confirmed if the Plan, with respect to each impaired class that does not accept the Plan, "does not discriminate unfairly" and is "fair and equitable" with respect to such Class. The acceptance, feasibility, unfair discrimination and fair and equitable concepts are discussed in more detail below.~~

The Plan provides a structured mechanism for the distribution of the Estates' Assets in a manner that will benefit the largest number of the Debtors' creditors while at the same time resolving significant disputes that could significantly deplete those Assets. The Plan Proponents believe that there will be substantial amounts distributed to Holders of Allowed Claims. Accordingly, the Plan Proponents believe that the Plan is feasible.

**B. Acceptance of Plan By Voting.**

For the Plan to be accepted by an impaired ~~class~~Class of Claims or ~~Interest~~Interests, it must be accepted by ~~holders~~ Holders of Claims or ~~Interest~~Interests in such Class that hold at least two-thirds in dollar amount and one-half in number of the Claims or ~~Interest~~Interests in such Class held by ~~ereditors~~ Creditors that actually vote. A Class or Interest is impaired if the legal, equitable, or contractual rights of the members of such Class or Interest are modified or altered by the Plan (with an exception, not applicable to the Plan, for curing defaults, reinstating maturity and compensating certain damages). Class 2, Class 3, Class 4, Class 5 and Class 7 are impaired. Unimpaired Classes are conclusively presumed to have accepted the Plan and are not part of the vote solicitation process. Classes 1 and 6 are unimpaired under the Plan and ~~is~~are not entitled to vote. Holders of Interests in Class 8 are receiving no Distribution under the Plan and are conclusively presumed to have rejected the Plan.

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

**1. Unfair Discrimination.**

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

**2. Fair And Equitable Test.**

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

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

**C. Best Interest Test.**

Before the Bankruptcy Court will confirm the Plan, the Plan must meet the best interest test as set forth in section 1129(a)(7) of the Bankruptcy Code. The best interest test requires that with respect to each impaired ~~elass~~Class of ~~ereditors~~ Creditors under the Plan, each ~~Claimant~~Holder either (a) has accepted the Plan; or (b) will receive or retain under the Plan on account of its Claim property of a value, as of the Effective Date of the Plan, that is not less than

the amount such ClaimantHolder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. In other words, if one or more claimantsHolders that are members of an impaired Class vote to reject the Plan, the Court will confirm the Plan only if the Distribution to such claimantsHolders under the Plan is not less than the Distribution that the ClaimantsHolders would receive under a chapter 7 liquidation of the Debtors.

Based upon several factors present in the Debtors' ~~Bankruptcy—Case~~Cases, the ~~DebtorsPlan Proponents~~ believe that the Plan meets the best interest test. Considering the liquidation value of the Debtors' assetsAssets, the Plan's resolution and settlement of the litigationWARN Act Litigation against the Debtors thereby resolving all WARN Act Claims against the Debtors, the cost of liquidation under chapter 7, and the adverse impact that a liquidation under chapter 7 would have on the going concern value of the Debtors' assetsAssets, the ~~DebtorsPlan Proponents~~ believe that the Plan provides for a larger Distribution to individual unsecured creditors than under a ~~Chapter~~chapter 7 liquidation of the Debtors.

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

After considering the effects that a chapter 7 liquidation would have on the ultimate proceeds available for Distribution to creditors in the ~~present case~~Debtors' cases, including the costs and expenses of liquidation under chapter 7, the uncertainties inherent in a chapter 7, and the adverse ~~affect~~effect that a chapter 7 liquidation would have on the value of certain of the Debtors' assets, the ~~DebtorsPlan Proponents~~ have determined that a chapter 7 liquidation would not pay creditors in full. ~~Debtors believe the value of any Distribution from the liquidation proceeds in a chapter 7 would be less than the value of the Distribution any more than they would receive under the current proposed Plan due to efficiencies provided by having a liquidating trustee.~~

Based on the foregoing analysis and given the elimination of uncertainties inherent under chapter 7, the ~~DebtorsPlan Proponents~~ believe the confirmation of the chapter 11 Plan will provide ~~each Claimant with~~Holders of Allowed Claims a greater chance of recovery than such claimantHolder would receive pursuant to a liquidation of the Debtors under chapter 7 of the Bankruptcy Code. Accordingly, the ~~DebtorsPlan Proponents~~ submit that the Plan meets the best interest test.

In order to determine the amount of hypothetical chapter 7 liquidation value available to Holders of Claims and Interests, the Debtors prepared a liquidation analysis, a copy of which is annexed hereto as Exhibit D (the "Liquidation Analysis"). The Plan Proponents believe that the Liquidation Analysis demonstrates that, in a chapter 7 liquidation, Holders in the various Classes of Claims would receive less of a recovery (or no recovery at all) compared to recovery under the Plan.

Notwithstanding the foregoing, the Plan Proponents believe that any liquidation analysis with respect to the Debtors will be inherently speculative. The Liquidation Analysis for the Debtors necessarily contains estimates of the Net Proceeds that will be available after completion of a chapter 7 wind-down. Claims estimates would be based solely upon the Plan Proponents' review of any Claims Filed (a review that is ongoing) and the Debtors' books and records. No order or finding has been entered by the Bankruptcy Court estimating or otherwise fixing the amount of Claims at the projected amounts of Allowed Claims set forth in the Liquidation Analysis.

**D. Application of the "Best Interests" of Creditors Test to the Liquidation Analysis and Plan**

It is impossible for the Plan Proponents to determine with any specificity the value each Creditor will receive as a percentage of its Allowed Claim. This difficulty in estimating the value of recoveries is due to, among other things, the inherent uncertainty in estimating the amount of Administrative Expense Claims that will ultimately become Allowed, as well as to a lesser degree, the ultimate amount of Allowed Claims in any Impaired Class.

Notwithstanding the difficulty in quantifying recoveries to Holders of Allowed Claims with precision, the Plan Proponents believe that the financial disclosures and proposed recoveries to each Class of Impaired Claims and Impaired Interests under the Plan implies a greater or equal recovery to Holders of Claims and Interests in Impaired Classes than the recovery available in a chapter 7 liquidation. Accordingly, the Plan Proponents believe that the "best interests" test of section 1129 of the Bankruptcy Code is satisfied.

**E. Confirmation without Acceptance of All Impaired Classes – "Cramdown"**

At the Confirmation Hearing, the Bankruptcy Court will confirm the Plan if the Plan satisfies all requirements of section 1129(a) of the Bankruptcy Code. The requirements for confirmation of the Plan under section 1129(a) of the Bankruptcy Code include the following: (1) the Plan must be accepted by all impaired Classes, (2) the Plan must be feasible, and (3) with respect to each Holder of a Claim or Interest that does not vote to accept the Plan (even if such Holder is a member of a Class that as a whole votes to accept the Plan), the Plan must be in the "best interest" of such Holder in that the Plan provides for a Distribution to the Holder that is not less than the amount such Holder would receive in a hypothetical chapter 7 liquidation of the Debtors. With respect to the requirement that each impaired class votes to accept the Plan, section 1129(b) of the Bankruptcy Code provides that if all other requirements of section 1129(a) of the Bankruptcy Code are satisfied, the Plan still may be confirmed if the Plan, with respect to each impaired class that does not accept the Plan, "does not discriminate unfairly" and is "fair and equitable" with respect to such Class. It is the position of the Plan Proponents that the Plan does not discriminate unfairly and is fair and equitable and should be confirmed.

**E. ~~D.~~ Acceptance of the Plan.**

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

**G.** ~~**E.**~~ **Consummation of the Plan.**

The Plan will be consummated and the Distributions made if the Plan is confirmed. The Plan is to be implemented pursuant to the provisions of the Bankruptcy Code. Implementation requires an order of the Bankruptcy Court confirming the Plan.

**ARTICLE VIII**  
**ALTERNATIVES TO CONFIRMATION OF THE PLAN**

The Plan, via chapter 11, proposes liquidation of the Debtors' Estates by a Liquidating Trustee. If the Plan is not confirmed and consummated, the theoretical alternatives include: (a) liquidation of the Debtors under chapter 7 of the Bankruptcy Code; or (b) an alternative plan of reorganization.

**A.** **Liquidation Under Chapter 7.**

If the Bankruptcy Court does not confirm ~~a plan of reorganization~~this Plan, the Court may convert the Debtors' ~~ease~~Cases to ~~a ease~~cases under chapter 7 of the Bankruptcy Code. Under chapter 7, a trustee would be elected or appointed to liquidate the assets of the Debtors for distribution to creditors in accordance with the priorities established by the Bankruptcy Code. Without limitation, secured and priority Claims would be paid in full before any Distribution to general unsecured creditors. As ~~virtually~~nearly all of the Debtors' ~~assets~~Assets are encumbered, the ~~Debtors~~Plan Proponents believe that liquidation of the Debtors' ~~assets~~Assets under chapter 7 would result in ~~less~~lesser Distributions to unsecured ~~creditors~~Creditors than under the Plan and potentially no Distribution to unsecured Creditors who do not hold Priority Claims. Having one Liquidating Trustee oversee the liquidation of the Debtors' assets through the structure provided by the Plan will provide efficiency to the process.



**B. Alternative Plan of Reorganization.**

If the Plan is not confirmed, creditors may elect to vote for other plans which may be proposed later, including a Plan whereby the Debtors estates are not substantively consolidated. ~~However, given the liquidation of the Debtors' dealerships and the status of the economy, Debtors do not believe that they can effectively reorganize under any plan not involving the complete liquidation of the Debtors' assets.~~

With respect to alternative liquidation plans, the Plan Proponents have explored various other alternatives in connection with the extensive negotiations in formulating and developing the Plan. The Plan Proponents believe the Plan enables creditors to realize the greatest possible value under the circumstances, and, that as compared to any alternative plan of liquidation, to the extent that any such alternative plan could be prepared in light of the liquidation of the Debtors' dealerships and the status of the economy, this Plan has the greatest chance to be confirmed and consummated.

**ARTICLE XVI.**  
**VOTING PROCEDURE**

**A. Waivers of Defects, Irregularities, Etc.**

Unless otherwise directed by the Bankruptcy Court, all questions as to the validity, form, eligibility (including time of receipt), acceptance, and revocation or withdrawal of Ballots will be determined by the Voting Agent and the Plan Proponents, in their sole discretion, which determination will be final and binding. As indicated below under "Withdrawal of Ballots; Revocation," effective withdrawals of Ballots must be delivered to the Voting Agent prior to the Voting Deadline. The Plan Proponents reserve the absolute right to contest the validity of any such withdrawal. The Plan Proponents also reserve the right to seek to reject any and all Ballots not in proper form, the acceptance of which would, in the opinion of the Plan Proponents or their counsel, be unlawful. The Plan Proponents further reserve the right to waive any defects or irregularities or conditions of delivery as to any particular Ballot. The interpretation (including the Ballot and the respective instructions thereto) by the Plan Proponents unless otherwise directed by the Bankruptcy Court, will be final and binding on all parties. Unless waived, any defects or irregularities in connection with deliveries of Ballots must be cured within such time as the Plan Proponents (or the Bankruptcy Court) determine. Neither the Plan Proponents nor any other person will be under any duty to provide notification of defects or irregularities with respect to deliveries of Ballots nor will any of them incur any liabilities for failure to provide such notification. Unless otherwise directed by the Bankruptcy Court, delivery of such Ballots will not be deemed to have been made until such irregularities have been cured or waived. Ballots previously furnished and as to which any irregularities have not theretofore been cured or waived will be invalidated.

**B. Withdrawal of Ballots; Revocation**

Any party who has delivered a valid Ballot for the acceptance or rejection of the Plan may withdraw such acceptance or rejection by delivering a written notice of withdrawal to the Voting Agent at any time prior to the Voting Deadline. A notice of withdrawal, to be valid, must: (i) contain the description of the Claim(s) or Interests to which it relates and the aggregate principal amount represented by such Claim(s) (or number and classification of shares of

Interests), (ii) be signed by the withdrawing party in the same manner as the Ballot being withdrawn, (iii) contain a certification that the withdrawing party owns the Claim(s) or Interests and possesses the right to withdraw the vote sought to be withdrawn and (iv) be received by the Voting Agent in a timely manner at the address set forth below. The Plan Proponents intend to consult with the Voting Agent to determine whether any withdrawals of Ballots were received and whether the requisite acceptances of the Plan have been received. As stated above, the Plan Proponents expressly reserve the absolute right to contest the validity of any such withdrawals of Ballots.

Unless otherwise directed by the Bankruptcy Court, a purported notice of withdrawal of Ballots which is not received in a timely manner by the Voting Agent will not be effective to withdraw a previously cast Ballot.

Any party who has previously submitted to the Voting Agent prior to the Voting Deadline a properly completed Ballot may revoke such Ballot and change his or its vote by submitting to the Voting Agent prior to the Voting Deadline a subsequent properly completed Ballot for acceptance or rejection of the Plan. In the case where more than one timely, properly completed Ballot is received, only the Ballot which bears the latest date will be counted for purposes of determining whether the requisite acceptances have been received.

**C. Further Information; Additional Copies**

If you have any questions or require further information about the voting procedure for voting your Claim or about the packet of material you received, or if you wish to obtain an additional copy of the Plan, the Disclosure Statement, or any exhibits or appendices to such documents (at your own expense, unless otherwise specifically required by Bankruptcy Rule 3017(d)), please contact the Voting Agent:

|   |   |
|---|---|
| <u>If by U.S. Mail:</u><br><u>Bill Heard Enterprises, Inc.</u><br><u>c/o:Epiq Bankruptcy Solutions, LLC</u><br><u>FDR Station</u><br><u>P.O. Box 5014</u><br><u>New York, NY 10150-5014</u> | <u>If by overnight delivery or hand delivery:</u><br><u>Bill Heard Enterprises, Inc.</u><br><u>c/o:Epiq Bankruptcy Solutions, LLC</u><br><u>757 Third Avenue</u><br><u>Third Floor</u><br><u>New York, NY 10017</u> |
|---|---|

**D. Internet Access to Bankruptcy Court Documents**

Bankruptcy Court documents filed in this chapter 11 Case as well as the Bankruptcy Court's calendar and other administrative matters may be found, downloaded and printed from the Bankruptcy Court's website found at [www.alnb.uscourts.gov](http://www.alnb.uscourts.gov) (PACER login required), or at the website maintained by the Debtors' Voting Agent at [www.epiqbankruptcysolutions.com](http://www.epiqbankruptcysolutions.com).

**ARTICLE XVII. ~~ARTICLE VIII.~~**  
**RECOMMENDATION**

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

recommend that all parties entitled to vote on the Plan accept the Plan and that the Court confirm the Plan.

Dated: ~~June 19~~, July 31, 2009.

Respectfully submitted,

/s/ Derek F. Meek \_\_\_\_\_

Robert B. Rubin  
Derek F. Meek  
Marc P. Solomon  
BURR & FORMAN LLP  
420 North 20<sup>th</sup> Street, Suite 3400  
Birmingham, Alabama 35203  
Facsimile: (205) 458-5100

*Counsel to the Debtors and Debtors in Possession*

/s/ John W. Mills, III \_\_\_\_\_

John W. Mills, III  
KILPATRICK STOCKTON LLP  
Suite 2800  
1100 Peachtree Street  
Atlanta, GA 30309-4530  
Facsimile: (404) 541-3236

*Counsel to the Official Committee of Unsecured Creditors*

~~Exhibit~~ EXHIBIT A

~~DEBTORS' FIRST AMENDED JOINT PLAN UNDER CONSOLIDATED CHAPTER 11  
OF THE BANKRUPTCY CODE~~ PLAN OF LIQUIDATION

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

**In re:** ) **Chapter 11**  
)  
**BILL HEARD ENTERPRISES, INC., et al.,** ) **Case No. 08-83029-JAC-11**  
)  
**Debtors.** ) **(Jointly Administered)**  
)

**FIRST AMENDED JOINT CONSOLIDATED  
CHAPTER 11 PLAN OF LIQUIDATION**

|  |  |
|--|--|
| Robert B. Rubin<br>Derek F. Meek<br>Marc P. Solomon<br>BURR & FORMAN LLP<br>420 North 20th Street, Suite 3400<br>Birmingham, Alabama 35203<br>Telephone: (205) 251-3000<br>Facsimile: (205) 458-5100<br><br><i>Counsel for Debtors and Debtors in Possession</i> | John W. Mills, III<br>Kilpatrick Stockton LLP<br>Suite 2800<br>1100 Peachtree Street<br>Atlanta, GA 30309-4530<br>Telephone: (404) 815-6183<br>Facsimile: (404) 541-3236<br><br><i>Counsel for the Official Committee of<br/>Unsecured Creditors</i> |
|--|--|

~~June 19,~~ July 31, 2009

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## INTRODUCTION

Bill Heard Enterprises, Inc., together with certain of its affiliates,<sup>1</sup> debtors and debtors in possession (collectively, the "**Debtors**") and the Official Committee of Unsecured Creditors in the Debtors' cases (the "**Committee**") (the Debtors and Committee are collectively referred to herein as the "**Plan Proponents**"), together, propose the following Joint Chapter 11 Plan of Liquidation (as amended from time to time, the "**Plan**") for resolution of the Debtors' outstanding Claims and Interests.

This is a liquidating plan. Substantially all of the Debtors' assets have either been sold, abandoned or otherwise repossessed by secured creditors. The Plan provides for liquidation and conversion to Cash of the Debtors' remaining Assets and the Distribution of the Net Proceeds realized therefrom by a Liquidating Trustee, as chosen by the Committee, to the Debtors' Creditors holding Allowed Claims in accordance with the provisions established by the Bankruptcy Code. The Plan further provides for the termination of all Interests in the Debtors and the dissolution and wind up of the affairs of the Debtors.

The Debtors' AssetsEstates will be substantively consolidated as of the Effective Date of the Plan. Thus, a Holder of an Allowed Claim against a particular Debtor shall receive a Distribution from the consolidated Assets of the Debtors, and not just the Assets of that individual Debtor. Moreover, the Holder of a Claim against a Debtor shall be entitled to vote on the acceptance or rejection of the Plan as it pertains to the Debtors as a whole.

For a discussion of the Debtors' history, businesses, operations, assets and financial information, and for a summary and analysis of the Plan, all parties entitled to vote on the Plan should consult the Disclosure Statement accompanying the Plan.

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

NO SOLICITATION MATERIALS OTHER THAN THE DISCLOSURE STATEMENT AND RELATED MATERIALS TRANSMITTED THEREWITH HAVE BEEN APPROVED FOR USE IN SOLICITING ACCEPTANCES AND REJECTIONS OF THE PLAN. NOTHING IN THE PLAN SHOULD BE CONSTRUED AS CONSTITUTING A SOLICITATION OF

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<sup>1</sup> In addition to Bill Heard Enterprises, Inc., the Debtors include the following entities: (i) Bill Heard Chevrolet Company, (ii) Tom Jumper Chevrolet, Inc., (iii) Bill Heard Chevrolet, Inc. - Huntsville, (iv) Landmark Chevrolet, Ltd., (v) Bill Heard Chevrolet, Ltd., (vi) Bill Heard Chevrolet Corporation - Nashville, (vii) Bill Heard Chevrolet Corporation - Orlando, (viii) Bill Heard Chevrolet, Inc. - Union City, (ix) Bill Heard Chevrolet at Town Center, LLC, (x) Bill Heard Chevrolet, Inc. - Collierville, (xi) Bill Heard Chevrolet, Inc. - Scottsdale, (xii) Bill Heard Chevrolet, Inc. - Plant City, (xiii) Bill Heard Chevrolet, Inc. - Buford, (xiv) Bill Heard Chevrolet Corporation - Las Vegas, (xv) Bill Heard Chevrolet Corporation - N.W. Las Vegas, (xvi) Twentieth Century Land Corp., (xvii) Enterprise Aviation, Inc., (xviii) Century Land Corporation, (xix) Century Land Company - Tennessee, (xx) Bill Heard Management, LLC, (xxi) Landmark Vehicle Mgt., LLC, (xxii) Georgia Services Group, LLC, (xxiii) Columbus Transportation, LLC, and (xxiv) Airport Chevrolet, Inc.

ACCEPTANCES OF THE PLAN UNLESS AND UNTIL THE DISCLOSURE STATEMENT HAS BEEN APPROVED AND DISTRIBUTED TO ALL HOLDERS OF CLAIMS AND INTERESTS TO THE EXTENT REQUIRED BY SECTION 1125 OF THE BANKRUPTCY CODE.

ALL HOLDERS OF CLAIMS ENTITLED TO VOTE ON THE PLAN ARE ENCOURAGED TO READ CAREFULLY THE DISCLOSURE STATEMENT AND PLAN, EACH IN ITS ENTIRETY, BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.

## **SECTION I** **DEFINITIONS AND RULES OF INTERPRETATION**

### **A. DEFINITIONS.**

For the purposes of this Plan, except as expressly provided herein or unless the context otherwise requires, all capitalized terms not otherwise defined herein shall have the meanings ascribed to them in this Section I of the Plan or any Exhibit hereto. Any term used in this Plan and not herein defined, but is defined in the Bankruptcy Code or in the Bankruptcy Rules, shall have the meaning assigned to such term in the Bankruptcy Code or Bankruptcy Rules, as applicable. As used in the Plan, the following terms have the respective meanings specified below:

1. **"ACI"** means Airport Chevrolet, Inc., debtor and debtor in possession.
2. **"Administrative Expense Claim"** means a Claim against the Debtors for costs and expenses of administration in connection with the Cases under sections 503(b), 507(b) or 1114(e)(2) of the Bankruptcy Code, including: (a) any actual and necessary costs and expenses incurred after the Petition Date of preserving the Estate and operating the businesses of the Debtors (such as wages, salaries or commissions for services and payments for goods and other services and leased premises); (b) all Bankruptcy Administrator fees and charges assessed against the Debtors' Estates, but excluding Claims relating to tax periods, or portions thereof, ending on or before the Petition Date; (c) Allowed Goods Claims; (d) Allowed Fee Claims and (e) all other Claims entitled to administrative claim status pursuant to a Final Order.
3. **"Allowed"** means, with reference to any Claim ~~or Interest~~ and with respect to a Debtor, (a) any Claim against ~~or Interest in the~~ Debtor that (i) has been listed by the Debtor in the Schedules, as may be amended by the Debtor from time to time in accordance with Bankruptcy Rule 1009, as liquidated in amount and not disputed or contingent and for which no contrary proof of claim ~~or interest~~ has been Filed, or (ii) has been allowed under the Plan, or (iii) has been allowed by Final Order ~~of the Bankruptcy Court~~, or (iv) as to which a proof of claim has been timely Filed in a liquidated amount with the Bankruptcy Court pursuant to the Bankruptcy Code or any order of the Bankruptcy Court or Filed late with leave of the Bankruptcy Court after notice and a hearing, and (b) in respect of which no objection to the allowance of such Claim ~~or Interest~~ has been interposed within any applicable period of limitation fixed by the Bankruptcy Code, the Bankruptcy Rules, a Final Order or other applicable law.
4. **"Alphera"** means BMW Financial Services N.A., LLC.
5. **"Assets"** means all property of the Debtors' Estates that is not Collateral.

6. **"Asset Sale"** means any sale of the assets of the Debtors which was approved by ~~the Bankruptcy Court~~ Final Order pursuant to section 363 of the Bankruptcy Code.

7. **"Available Funds"** means ~~the amount of Cash~~ Net Proceeds held by the Debtors and available to be distributed to Holders of Allowed Claims, including proceeds of the liquidation of the Debtors or the Debtor's Assets including, but not limited to, the recoveries and proceeds of the Causes of Action and excluding any amounts held in reserve pursuant to the terms of the Plan.

8. **"Avoidance Action"** means any claim, action or cause of action of a Debtor or a Debtor's Estate, or any of them, that is or may be the subject of an adversary proceeding under sections 510, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, and/or 553 of the Bankruptcy Code, or pursuant to any similar or related state or federal statutes or common law (including fraudulent transfer laws) whether or not litigation has been commenced as of the Confirmation Date to prosecute such claim, action or cause of action.

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

10. **"Bankruptcy Administrator"** means the Bankruptcy Administrator for the Northern District of Alabama appointed pursuant to the U.S. Bankruptcy Administrator Program.

11. **"Bankruptcy Code"** means title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* as applicable to these Cases.

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

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

14. **"Bar Date"** means (a) the April 1, 2009 date set by the Bankruptcy Court in the March 4, 2009 Order (Docket No. 1448) as the last day for the filing of proofs of claim for all Non-WARN Act Claims, including Administrative Expense Claims; or (b) the date(s) established by the Plan or by a Final Order of the Bankruptcy Court as the final date(s) to (i) File proofs of claim not subject to the April 1, 2009 bar date, (ii) File requests for allowance of an Administrative Expense Claims not subject to the April 1, 2009 bar date or (iii) File any other notice, objection or other document as evidence or support of such Claims.

15. **"BHC - Buford"** means Bill Heard Chevrolet, Inc. - Buford, debtor and debtor in possession.

16. **"BHC - Collierville"** means Bill Heard Chevrolet, Inc. - Collierville, debtor and debtor in possession.

17. **"BHC - Plant City"** means Bill Heard Chevrolet, Inc. - Plant City, debtor and debtor in possession.

18. **"BHC - Scottsdale"** means Bill Heard Chevrolet, Inc. - Scottsdale, debtor and debtor in possession.

19. **"BHC - Sugarland"** means Bill Heard Chevrolet, Ltd., debtor and debtor in possession.

20. **"BHC - Town Center"** means Bill Heard Chevrolet at Town Center, LLC, debtor and debtor in possession.

21. **"BHC - Union City"** means Bill Heard Chevrolet, Inc. - Union City, debtor and debtor in possession.

22. **"BHCC"** means Bill Heard Chevrolet Company, debtor and debtor in possession.

23. **"BHCC - Las Vegas"** means Bill Heard Chevrolet Corporation - Las Vegas, debtor and debtor in possession.

24. **"BHCC - N.W. Las Vegas"** means Bill Heard Chevrolet Corporation - N.W. Las Vegas, debtor and debtor in possession.

25. **"BHCC - Nashville"** means Bill Heard Chevrolet Corporation Nashville, debtor and debtor in possession.

26. **"BHCC - Orlando"** means Bill Heard Chevrolet Corporation - Orlando, debtor and debtor in possession.

27. **"BHCH"** means Bill Heard Chevrolet, Inc. - Huntsville, debtor and debtor in possession.

28. **"BHE"** means Bill Heard Enterprises, Inc., debtor and debtor in possession.

29. **"BHML"** means Bill Heard Management, LLC, debtor and debtor in possession.

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

31. **"Cases"** means the jointly administered cases of the Debtors under ~~chapter 11 of~~ the Bankruptcy Code.

32. **"Cash"** means cash and cash equivalents in United States dollars.

33. **"Causes of Action"** means all Claims and causes of action now owned or hereafter acquired by the Debtors or the Estates, or any of them, or which may be maintained by the Debtors or the Estates, or any of them, for the benefit of Creditors, whether arising under any contract or under the Bankruptcy Code or other federal or state law, including, without limitation, any causes of action set forth in the Plan and any Exhibit thereto and Avoidance Actions, but excluding (a) Claims related to accounts receivable and other Claims and causes of action and related recoveries

sold to a buyer pursuant to any Asset Sale; and (b) Claims and causes of action and related recoveries expressly released, exculpated or waived pursuant to the Plan.

34. "***Certificate of Incorporation***" means the certificate of incorporation, articles of incorporation or corporate charter of any Debtor that is a corporation as it exists on the Effective Date.

35. "***Century Land***" means Century Land Corporation.

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

~~37. "***Claimholder***" means the holder of a Claim.~~

37. ~~38.~~ "***Class***" means a category of Holders of Claims or Interests as set forth in Section III of the Plan.

38. ~~39.~~ "***CLC - TN***" means Century Land Company - Tennessee.

39. ~~40.~~ "***Collateral***" means property subject to a Lien, to the extent of the interest of the holder of such Lien in the interest of the Estate in such property.

40. ~~41.~~ "***Committee***" means the Official Committee of Unsecured Creditors appointed by the Bankruptcy Administrator in the Cases pursuant to section 1102(a) of the Bankruptcy Code.

41. ~~42.~~ "***Confirmation***" means entry of the Confirmation Order on the Bankruptcy Court's docket in the Cases.

42. ~~43.~~ "***Confirmation Date***" means the date of entry of the Confirmation Order on the Bankruptcy Court's docket in the Cases.

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

44. ~~45.~~ "***Confirmation Order***" means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

45. ~~46.~~ "***Creditor***" means any Person who holds a Claim against one or more of the Debtors.

46. ~~47.~~ "***CTL***" means Columbus Transportation, LLC, debtor and debtor in possession.

47. ~~48.~~ "***Debtors***" means; Bill Heard Enterprises, Inc., together with ~~ertain~~those of its affiliates ~~as~~ set forth in detail in footnote 1 above.

48. ~~49.~~ "***DIP Financing***" means the debtor in possession financing agreements that the Debtors entered into with Alphera and GMAC pursuant to section 364 of the Bankruptcy Code, as approved by orders of the Bankruptcy Court.

49. ~~50.~~ "**DIP Financing Claims**" means the claims of Alpera and GMAC under the DIP Financing.

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

51. ~~52.~~ "**Disclosure Statement Order**" means the order of the Court approving the Disclosure Statement as containing adequate information pursuant to section 1125 of the Bankruptcy Code.

52. ~~53.~~ "**Disputed Claim**" means a Claim against a Debtor that is not Allowed, including:

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

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

(c) any late Filed Claims.

53. ~~54.~~ "**Disputed Claim Reserve**" means the reserve held for payments and Distributions under the Plan on ~~Account~~account of Disputed Claims as set forth in Section IX.B of the Plan.

54. ~~55.~~ "**Distribution**" means any distribution pursuant to the Plan to the Holders of Allowed Claims.

55. ~~56.~~ "**Distribution Date**" means, including the Initial Distribution Date, the date upon which distributions are made by the Liquidating Trustee to Holders of Allowed Claims entitled to receive Distributions under the Plan.

56. ~~57.~~ "**Distribution Record Date**" means the record date for purposes of making Distributions under the Plan on account of Allowed Claims, which date shall be the Confirmation Date or such other date designated in the Confirmation Order.



57. ~~58.~~ "**Effective Date**" means the first Business Day following the date on which the Confirmation Order becomes a Final Order.

58. ~~59.~~ "**EAI**" means Enterprise Aviation, Inc., debtor and debtor in possession.

59. ~~60.~~ "**Employee Wage Claim**" means any Claim against any Debtor of the kind specified in section 507(a)(4) of the Bankruptcy Code, but excluding WARN Act Claims.

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

61. ~~62.~~ "**Exculpated Parties**" has the meaning set forth in Section VIII.B.3 of the Plan.

62. ~~63.~~ "**Exhibit**" means an exhibit annexed to either this Plan or as an appendix to the Disclosure Statement.

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

64. ~~65.~~ "**Face Amount**" means (a) when used in reference to a Disputed Claim, the Disputed Claim Amount, and (b) when used in reference to an Allowed Claim, the Allowed Amount of such Claim.

65. ~~66.~~ "**Fee Claim**" means a Claim for compensation or reimbursement of expenses under sections 327, 328, 330, 331 503(b) or 1103 of the Bankruptcy Code including compensation requested pursuant to section 503(b)(3) and (4) of the Bankruptcy Code for substantial contribution in the Cases.

66. ~~67.~~ "**File**", "**Filed**" or "**Filing**" means file, filed or filing with the Bankruptcy Court or its designee in the Cases.

67. ~~68.~~ "**Final Distribution Date**" means the date of the last Distribution under the Plan.

68. ~~69.~~ "**Final Order**" means an order or judgment of a court (a) as to which the time to appeal, petition for certiorari, or move for reargument or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument or rehearing shall then be pending; or (b) as to rehear shall have been waived in writing in form and substance satisfactory to the Debtors or, (c) in the event that an appeal, writ of certiorari, or reargument or rehearing thereof has been sought, such order shall have been denied by the highest court to which such order was appealed, no further certiorari, reargument or rehearing shall have been taken, and the time to take

any further appeal, petition for certiorari or move for reargument or rehearing shall have expired; provided, however, that the possibility that a motion under Federal Rules of Civil Procedure 59 or 60 or Bankruptcy Rules 9023 or 9024 may be filed with respect to such order shall not cause such order not to be a final order.

~~70. "Floor Plan Lender" means a lender that finances vehicle inventory and each loan advance is made against a specific piece of inventory. The Debtors had four Floor Plan Lenders that financed the Debtors' purchase of automobiles at Debtors' fourteen dealerships. The Debtors' Floor Plan Lenders include (i) GMAC, (ii) Alphaera, (iii) JPMorgan and (iv) Navistar.~~

~~69. 71. "General Unsecured Claim" means any Claim against any of the Debtors that is not an Administrative Expense Claim, Priority Claim, Secured Claim or an Interest Claim.~~

~~70. 72. "GM" means General Motors Corporation.~~

~~71. 73. "GMAC" means GMAC, LLC.~~

~~72. 74. "Goods Claim" means a Claim Allowed as an administrative expense under made pursuant to section 503(b)(9) of the Bankruptcy Code.~~

~~73. 75. "Governmental Unit" means a "governmental unit" as defined in section 101(27) of the Bankruptcy Code.~~

~~74. 76. "GSGL" means Georgia Services Group, LLC, debtor and debtor in possession.~~

~~75. 77. "Holder" means an entity holding a Claim or Interest.~~

~~76. "Insider" has the meaning ascribed to it in section 101(31) of the Bankruptcy Code.~~

~~77. 78. "Initial Distribution Date" means a Business Day, as determined by the Liquidating Trustee after the funding of the Plan which date will be within five (5) Business Days of the Effective Date.~~

~~78. 79. "Insured Parties" has the meaning set forth in Section XI.A of the Plan.~~

~~79. 80. "Intercompany Claim" means any Claim held by the respective Debtors any Debtor against any or all of the other Debtors.~~

~~80. 81. "Interest" means the legal, equitable, contractual or other rights of any Person with respect to any capital stock or ownership interest in any Debtor, whether or not transferable and any option, warrant or right sell or subscribe for an ownership interest or the equity security in any Debtor.~~

~~81. 82. "JPMorgan" means JPMorgan Chase Bank, N.A.~~

~~82. 83. "LCL" means Landmark Chevrolet, Ltd., debtor and debtor in possession.~~

~~83. 84. "Legal Holiday" has the meaning set forth in Bankruptcy Rule 9006(a).~~

~~84.~~ ~~85.~~ "**Lenders**" means, collectively, GMAC, Alpera and JPMorgan ~~Chase Bank,~~  
~~N.A.~~

~~85.~~ ~~86.~~ "**Lien**" has the meaning set forth in section 101(37) of the Bankruptcy Code and shall include, without limitation, all liens, security interests, replacement liens, adequate protection, carve out rights and all charges and interests created or imposed on property by ~~any order of the Bankruptcy Court~~ a Final Order.

~~86.~~ ~~87.~~ "**Liquidating Trustee**" means the representative appointed pursuant to Section VIII.B.1 of the Plan to administer the Unsecured Creditor Distribution, make Distributions from the Unsecured Creditors Distribution and to discharge the other rights and duties set forth in Section VIII.B.3 of the Plan.

~~87.~~ ~~88.~~ "**LVML**" means Landmark Vehicle Mgt., LLC, debtor and debtor in possession.

~~88.~~ "Navistar" means Navistar Financial Corporation.

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

~~90.~~ ~~"Navistar" means Navistar Financial Corporation.~~

~~90.~~ ~~91.~~ "**Person**" has the meaning set forth in section 101(41) of the Bankruptcy Code.

~~91.~~ ~~92.~~ "**Petition Date**" means September 28, 2008, the date of the Filing of each of the Debtors' petitions commencing the Cases under Chapter 11 of the Bankruptcy Code ~~with the exception of ACI which Filed its case on October 3, 2008.~~

~~92.~~ ~~93.~~ "**Plan**" means this chapter 11 plan of the Debtors, including, without limitation, all documents referenced herein and all exhibits, supplements, appendices and schedules hereto, either in its present form or as the same may be altered, amended or modified from time to time.

~~93.~~ ~~94.~~ "**Plan Committee**" means a committee which shall consist of those members of the Committee as of the Confirmation Date who are willing to serve on the ~~Plan Committee~~ committee and such other members as may be appointed by the Court at the request of an interested party (other than the Debtors or an ~~insider~~ Insider of the Debtors) on or before the Confirmation Date.

~~94.~~ ~~95.~~ "**Plan Proponents**" means the Debtors and the Committee.

~~95.~~ ~~96.~~ "**Plan Supplement**" means the compilation(s) of documents specified in the Plan that the Plan Proponents will File on or before the Exhibit Filing Date.

~~96.~~ ~~97.~~ "**Priority Benefit Claim**" means any Claim against any Debtor of the kind specified in section 507(a)(5) of the Bankruptcy Code.

97. ~~98.~~ "**Priority Claim**" means any Claim against any Debtor that is entitled to priority under section 507(a) of the Bankruptcy Code.

98. ~~99.~~ "**Priority Deposit Claim**" means any Claim against any Debtor of the kind specified in section 507(a)(7) of the Bankruptcy Code.

99. "Priority WARN Act Claim" means any WARN Act Claim against any Debtor entitled to priority status under section 507(a)(4) of the Bankruptcy Code.

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

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

102. "**Professional**" means (a) any professional employed in these Cases pursuant to sections 327, 328, 1103 or otherwise of the Bankruptcy Code and (b) any professional or other entity seeking compensation or reimbursement of expenses in connection with these Cases pursuant to section 503(b)(4) of the Bankruptcy Code.

103. "**Professional Fee Claim**" means a Claim of a Professional for compensation for services rendered or reimbursement of costs, expenses, or other charges incurred.

104. "**Rejection Damages Bar Date**" means the date by which a party asserting a Claim for damages arising under Section VI of the Plan must file a proof of Claim which date is 30 days after the Confirmation Date.

~~105. "Remaining Assets" means all Assets of the Debtors or the Estates other than the Unsecured Creditor Distribution.~~

105. ~~106.~~ "**Reserve Distribution Account**" means an account to be established and maintained by the Liquidating Trustee (a) for the purpose of (i) depositing the ~~Reserves~~Disputed Claim Reserve, and (ii) making distributions ~~from the Reserves~~ pursuant to the Plan, and (b) which shall not constitute a part of the ~~res of the Unsecured Creditor Distribution~~Available Funds, except as otherwise provided in the Plan.

~~107. "Reserves" mean, in the aggregate, the Disputed Claim Reserve and the Reserve Distribution Account.~~

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

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

108. ~~110.~~ "**TCLC**" means Twentieth Century Land Corp., debtor and debtor in possession.

109. ~~111.~~ "**TJC**" means Tom Jumper Chevrolet, Inc., debtor and debtor in possession.

~~112.~~ "**Unsecured Creditor Distribution**" means the proceeds of the liquidation of the Debtors' Assets including, but not limited to, the recoveries and proceeds of the Causes of Action.

110. ~~113.~~ "**Voting Agent**" means Epiq Bankruptcy Solutions, LLC.

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

112. ~~115.~~ "**Voting Record Date**" means \_\_\_\_\_, August 4, 2009.

113. ~~116.~~ "**WARN Act**" means title 29 of the United States Code, 29 U.S.C. §§ 2101 *et seq.*

114. ~~117.~~ "**WARN Act Litigation**" means the case styled *Kettell v. Bill Heard Enterprises, Inc. et al.*, pending in the United States Bankruptcy Court for the Northern District of Alabama, Adversary Proceeding No. 08-80153.

115. ~~118.~~ "**WARN Act Claims**" means any Claim by a member of the WARN Act Settlement Class against the Debtors arising out of the WARN Act Litigation.

116. ~~119.~~ "**WARN Act Settlement Class**" means (i) the individuals appearing on the employee lists provided to counsel for the plaintiffs of the WARN Act Litigation on April 15, 2009, April 29, 2009, and May 22, 2009 by the Debtors, regardless of whether such individuals have filed individual proofs of claim and (ii) other individuals subsequently agreed by counsel for the parties in the WARN Act Litigation; but does not include any persons who worked for a Debtor for 60 calendar days after September 24, 2008, or in the case of BHC – Scottsdale, September 12, 2008.

## **B. RULES OF INTERPRETATION.**

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

2. **Rules of Construction.** Unless otherwise provided herein, for purposes of the Plan: (a) whenever appropriate from the context, each term, whether stated in the singular or the plural, shall include both the singular and the plural; (b) any reference in the Plan to a contract, instrument,

release or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions; (c) any reference in the Plan to an existing document or exhibit Filed or to be Filed means such document or exhibit as it may have been or may be amended, modified or supplemented from time to time and shall include all addenda, exhibits and schedules attached thereto or referenced therein; (d) unless otherwise specified, any reference to an entity as a Holder of a Claim or of an Interest includes that entity's successors, assigns and affiliates; (e) unless otherwise specified, all references to sections and articles are references to sections of or to the Plan; (f) unless otherwise specified, all references in the Plan to exhibits are references to exhibits of or to the Plan or the Disclosure Statement; (g) the words "herein," "hereunder" or "hereto" refer to the Plan in its entirety rather than to a particular portion of the Plan; (h) "including" and "include" shall be understood to mean "including, without limitation" (and, for purposes hereof, the rule of *ejusdem generis* shall not be applicable to limit a general statement, which is followed by or reference to an enumeration of specific matters to matters similar to the matters specifically mentioned); (i) captions and headings to articles, sections and exhibits are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretations of the Plan; and (j) unless modified herein, the rules of construction set forth in section 102 of the Bankruptcy Code and the Bankruptcy Rules shall apply.

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

## **SECTION II**

### **DESIGNATION AND TREATMENT OF ADMINISTRATIVE EXPENSE CLAIMS**

#### **A. INTRODUCTION.**

Certain Claims are not placed into voting Classes pursuant to section 1123(a)(1) of the Bankruptcy Code; instead, they are unclassified. Administrative Expense Claims, including Fee Claims and Goods Claims, are designated as unclassified Claims under this Plan. These unclassified, non-voting Claims and their treatment are described in this Section II.

#### **B. ADMINISTRATIVE EXPENSE CLAIMS.**

1. **Allowance and Payment of Administrative Expense Claims Other than Fee Claims and Goods Claims.** Pursuant to section 502 of the Bankruptcy Code, requests for payment of an Administrative Expense Claim, other than Fee Claims and Goods Claims, arising before the Effective Date must be Filed and served on the Debtors, the Lenders, the Plan Committee, the Liquidating Trustee and the Bankruptcy Administrator, pursuant to procedures set forth in the Confirmation Order, no later than thirty (30) days after the Effective Date; provided, however, all requests for payment of Administrative Expense Claims that are subject to the April 1, 2009 Bar Date and not filed before such Bar Date shall be denied, barred and discharged as untimely. Each such request for payment of an Administrative Expense Claim must include, at a minimum, (i) the



name of the Holder of the Claim, (ii) the amount of the Claim, (iii) the basis for the Claim and (iv) documents evidencing or supporting the Claim. Failure to timely and properly file a request for payment of an Administrative Expense Claim as set forth herein shall result in the Administrative Expense Claim being forever barred and discharged. Objections to any such request may be made by the Debtors, the ~~Liquidation~~Liquidating Trustee, or any party in interest, and such objections, if any, must be filed and served on the Debtors, the Bankruptcy Administrator, the Lenders, the Plan Committee, the Liquidating Trustee and the requesting party by the later of twenty (20) days after the Effective Date or twenty (20) days after the filing of the applicable request for payment. Any ~~allowed~~Allowed Administrative Expense Claim, other than Fee Claims and Goods Claims, unpaid as of the Effective Date, shall be paid ~~on~~within five (5) Business Days of the Effective Date, or, if later, not later than the fifteenth (15) Business Day after such Administrative Expense Claim becomes ~~allowed~~Allowed, in Cash from the Available Funds, in an amount equal to such Allowed Administrative Expense Claim ~~from the Available Funds~~.

2. **Allowance and Payment of Fee Claims.** Except as provided by prior order of the Bankruptcy Court, Professionals or other entities asserting a Fee Claim must File and serve on the Debtors, the Bankruptcy Administrator, the Lenders, the Plan Committee, the Liquidating Trustee and such other entities as are designated by the Bankruptcy Rules, the Confirmation Order or other Final Order of the Bankruptcy Court, an application for final allowance of compensation and reimbursement of expenses no later than thirty (30) days after the Effective Date. Such application may include fees and expenses of the applicant incurred after the Confirmation Date but prior to the Effective Date. Failure to timely and properly File an application for Allowance of a Fee Claim as set forth herein shall result in such Fee Claim being forever barred and discharged. Objections to an application for allowance of a Fee Claim must be Filed and served on the Debtors, the Bankruptcy Administrator, the Lenders, the Committee, the Liquidating Trustee and the applicant no later than twenty (20) days after the Filing of the application for allowance of such Fee Claim. Any Allowed Fee Claim unpaid as of the Effective Date shall be paid ~~on~~within five (5) Business Days of the Effective Date or, if later, not later than the fifteenth (15th) Business Day after such Fee Claim becomes Allowed, in Cash from the Available Funds, in an amount equal to such Allowed Fee Claim ~~from the Available Funds~~.

3. **Allowance and Payment of Goods Claims.** Subject to the allowance procedures set forth herein, unless such Holder agrees to other treatment (in which event, such other agreement shall govern), each Holder of an Allowed Goods Claim shall, to the extent not already paid, be paid ~~on~~within five (5) Business Days of the Effective Date, in Cash, in an amount equal to such Allowed Goods Claim from the Available Funds of the Debtors, to the extent funds are available, provided, however, that such Goods Claim was filed by the April 1, 2009 Bar Date, as all such Goods Claims not filed by the April 1, 2009 Bar Date shall be denied, barred and discharged as untimely.

### SECTION III

#### **CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS AND INTEREST.**

##### A. INTRODUCTION.

The Plan divides Claims and Interests into Classes and sets forth the treatment for each Class (other than Administrative Expense Claims, including Fee Claims and Goods Claims, which

are not classified). This Plan further classifies Claims against and ~~Interest~~Interests in the Debtors into Classes that contain Claims and Interests that are substantially similar to the other Claims and Interests in that Class. A Claim or Interest will be classified in a particular Class only if that Claim or Interest qualifies within the description of that Class, and will be classified in a different Class if any remainder of such Claim or Interest qualifies within the description of such different Class. A Claim ~~or Interest~~ will only receive Distributions pursuant to this Plan if the Claim ~~or Interest~~ is an Allowed Claim ~~or Allowed Interest~~ in which such Claim ~~or Interest~~ is classified and such Claim ~~or Interest~~ has not been paid, released, settled or otherwise satisfied prior to the Effective Date. Nothing in this Plan is intended to or will waive or otherwise compromise the Liquidating Trustee or the Plan Committee's right to object to the Allowance or Distribution on account of any Claim or Interest based upon applicable law, including Bankruptcy Code section 502, except as expressly set forth in this Plan.

## **B. CLASSIFICATION OF CLAIMS.**

Pursuant to section 1122 of the Bankruptcy Code, set forth below is a designation of Classes of Claims. Administrative Expense Claims, including Fee Claims and Goods Claims, have not been classified and are excluded from the following Classes in accordance with section 1123(a)(1) of the Bankruptcy Code. For purposes of organization, voting and all confirmation matters with respect to other Claims, the Plan classifies the Claims against each individual Debtor as follows:

**Class 1** - Employee Wage Claims (§ 507(a)(4)). Class 1 shall consist of Allowed Employee Wage Claims.

**Class 2** — Priority WARN Act Claims (§ 507(a)(4)). Class 2 shall consist of Allowed Priority WARN Act Claims.

**Class 3** - Priority Benefit Claims (§ 507(a)(5)). Class 3 shall consist of Allowed Priority Benefit Claims.

**Class 4** - Priority Deposit Claims (§ 507(a)(7)). Class 4 shall consist of Allowed Priority Deposit Claims.

**Class 5** - Priority Tax Claims (§ 507(a)(8)). Class 5 shall consist of Allowed Priority Tax Claims.

**Class 6** - Secured Claims. Class 6 shall consist of Allowed Secured Claims.

**Class 7** - General Unsecured Claims. Class 7 shall consist of all Allowed Unsecured Claims, other than Class 1 Claims, Class 2 Claims, Class 3 Claims, Class 4 Claims and Class 5 Claims.

**Class 8** - Interests. Class 8 shall consist of all Interests in the Debtors.

## **C. TREATMENT OF CLASSES OF CLAIMS AND IDENTIFICATION OF CLASSES OF CLAIMS THAT ARE IMPAIRED UNDER THE PLAN.**



1. **Class 1 - Allowed Priority Employee Claims (§ 507(a)(4)).**

(a) Unless such Holder agrees to other treatment (in which event, such other agreement shall govern), each Holder of an Allowed Class 1 Claim shall be paid in full and final satisfaction of such Claim, on the Initial Distribution Date, from the Available Funds of the Debtors, in Cash, in an amount equal to such Allowed Employee Wage Claim, to the extent funds are available after all Allowed Administrative Expense Claims have been paid in full.

(b) Claims in Class 1 are unimpaired under the Plan. Therefore, pursuant to section 1126(a) of the Bankruptcy Code, the Holders of Claims in Class 1 are not entitled to vote to accept or reject the Plan.

2. **Class 2 – ~~Priority~~ WARN Act ~~Settlement~~ Claims (§ 507(a)(4)).**

(a) Unless such Holder agrees to other treatment (in which event, such other agreement shall govern), each Holder of an Allowed Class 2 Claim shall be paid in full and final satisfaction of such Claim, on the Initial Distribution Date, from the Available Funds of the Debtors, in Cash, in an amount equal to such Allowed Class 2 Claim, to the extent funds are available after all Allowed Administrative Expense Claims and Allowed Class 1 Claims have been paid in full. The Holders of Allowed Class 2 Claims, as a Class, shall receive sixty-seven point five percent (67.5 %) of any such Distribution that the Holders of Allowed Class 2 Claims would be entitled to receive under section 507(a)(4) of the Bankruptcy Code, with the remaining thirty-two point five percent (32.5 %) of such Distribution to be paid to Holders of Allowed Claims in Class 3, Class 4, Class 5, and Class 7, including members of the WARN Act Settlement Class holding Allowed Claims in such Classes; provided, however, once the Holders of Allowed Class 2 Claims, as a Class, have received \$8.25 million in Distributions toward their collective Class 2 Claims, the Holders of Allowed Class 2 Claims, as a Class, shall then receive fifty percent (50%) of any Distribution under the Plan, and the remaining fifty percent (50%) shall be paid to Holders of Allowed Claims in Class 3, Class 4, Class 5, and Class 7, including members of the WARN Act Settlement Class holding Allowed Claims in such Classes.

(b) The first \$20,000, with no withholdings for attorney fees, expenses or costs, of any Distribution to Holders of Class 2 Claims shall be paid to and evenly split between Adam Kettell and Edward Kratzel, in addition to their WARN Act Claims, for their services in the WARN Act Litigation.

(c) All Distributions made to Holders of Class 2 Claims shall be in proportion to such Holder's Allowed Priority WARN Act Claim as set forth in section 507(a)(4) of the Bankruptcy Code, minus any Distribution received by such Holder under Section III.C.1 of the Plan. The amount of each Class 2 Claim shall be calculated in accordance with the WARN Act and based upon the Debtors' books and records. The portion of such Class 2 Claim entitled to priority shall be based upon Debtors' books and records and subject to challenge by any member of the WARN Act Settlement Class as provided for in Section IX.A.4 of the Plan. A WARN Act Claim that is in excess of such Holders' statutory cap under section 507(a)(4) of the Bankruptcy Code shall be treated as a Class 7 General Unsecured Claim and also be subject to challenge by any members of the WARN Act Settlement Class. Morris Conchin & King, P.C., The Gardner Firm, P.C. and Lankenau & Miller, LLP, as WARN Act Settlement Class counsel, shall be entitled to one

third of each distribution made to the WARN Act Settlement Class on their WARN Act Claims from such distributions and at the time such distribution is made.

(d) WARN Act Settlement Class counsel shall make diligent efforts to locate Holders of Allowed Class 2 and Class 7 WARN Act ~~claims~~Claims whose WARN Act Distribution has been returned as undeliverable. Debtors' counsel will provide WARN Act Settlement Class counsel with information it deems appropriate to aid in locating such Holders. After a period of three months from the date of ~~distributions~~Distributions to Holders of Allowed Class 2 ~~and/or~~ Class 7 WARN Act claims has passed, the ~~distribution~~Distribution to any Class ~~Member~~member who WARN Act Settlement Class counsel has been unable to locate shall be deemed an undeliverable ~~distribution~~Distribution subject to the provisions of Section IX. B. 2 of the Plan.

(e) Claims in Class 2 are impaired under the Plan. Therefore, pursuant to section 1126(a) of the Bankruptcy Code, the Holders of Claims in Class 2 are entitled to vote to accept or reject the Plan.

3. **Class 3 - Allowed Priority Benefit Claims (§ 507(a)(5)).**

(a) Unless such Holder agrees to other treatment (in which event, such other agreement shall govern), each Holder of an Allowed Class 3 Claim shall be paid in full and final satisfaction, on the Initial Distribution Date, from the Available Funds of the Debtors, in Cash in an amount equal to such Allowed Priority Benefit Claim, to the extent funds are available after all Allowed Administrative Expense Claims and Allowed Class 1 Claims are paid in full and the Allowed Class 2 Claims, as a Class, have received sixty-seven point five percent (67.5%) of any such Distribution. Thereafter, each Holder of an Allowed Class 3 Claim shall be paid in full from the thirty-two point five percent (32.5%) of the Distribution made to ~~creditors~~Creditors following payment in full of Class 1, until all Allowed Class 3 Claims are paid in full. However, if the Class 2 Claims, as a Class, have received \$8.25 million in Distributions toward their Allowed Class 2 Claims and Allowed Class 1 Claims have been paid in full, at which time, Allowed Class 3 Claims, as a Class, shall then receive fifty percent (50%) of any subsequent Distribution until all Allowed Class 3 Claims have been paid in full.

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

4. **Class 4 – Allowed Priority Deposit Claims (§ 507(a)(7)).**

(a) Unless such Holder agrees to other treatment (in which event, such other agreement shall govern), each Holder of an Allowed Class 4 Claim shall be paid in full and final satisfaction, on the Initial Distribution Date, from the Available Funds of the Debtors, in Cash in the amount equal to such Allowed Priority Deposit Claim, to the extent funds are available after all Allowed Administrative Expense Claims, Allowed Class 1 Claims, and Allowed Class 3 Claims have been paid in full and after Allowed Class 2 Claims, as a Class, have received sixty-seven point five percent (67.5%) of any such Distribution. Thereafter, each Holder of an Allowed Class 4 Claim shall be paid in full from the thirty-two point five percent (32.5%) of the Distribution made to ~~ereditors~~Creditors. However, if Class 2 Claims, as a Class, have received \$8.25 million in Distributions toward their Allowed Class 2 Claims and Allowed Class 1 Claims, and Allowed Class 3 Claims have been paid in full, Allowed Class 4 Claims, as a Class, shall then receive fifty percent (50%) of any subsequent Distributions until all Allowed 4 Class Claims have been paid in full.

(b) Claims in Class 4 are impaired under the Plan. Therefore, pursuant to section 1126(a) of the Bankruptcy Code, Holders of Claims in Class 4 are entitled to vote to accept or reject the Plan.

5. **Class 5 - Allowed Priority Tax Claims (§ 507(a)(8)).**

(a) Unless such Holder agrees to other treatment (in which event, such other agreement shall govern), each Holder of an Allowed Class 5 Claim shall be paid in full and final satisfaction, on the Initial Distribution Date, from the Available Funds of the Debtors, in Cash in an amount equal to such Allowed Priority Tax Claims, to the extent funds are available, after all Allowed Administrative Expense Claims, Allowed Class 1 Claims, Allowed Class 3 Claims and Allowed Class 4 Claims have been paid in full and after Allowed Class 2 Claims, as a Class, have received sixty-seven point five percent (67.5%) of any such Distribution. Thereafter, each Holder of an Allowed Class 5 Claim shall be paid in full from the thirty-two point five percent (32.5%) of the Distribution made to ~~ereditors~~Creditors. However, if the Class 2 Claims, as a Class, have received \$8.25 million in Distributions toward their Allowed Class 2 Claims, and Allowed Class 1 Claims, Allowed Class 3 Claims and Allowed Class 4 Claims have been paid in full, Allowed Class 5 Claims, as a Class, shall then receive fifty percent (50%) of any subsequent Distributions until all Allowed 5 Class Claims have been paid in full.

(b) Claims in Class 5 are impaired under the Plan. Therefore, pursuant to section 1126(a) of the Bankruptcy Code, Holders of Claims in Class 5 are entitled to vote to accept or reject the Plan.

6. **Class 6 – Secured Claims.**

(a) The Holders of Allowed Class 6 Claims shall receive the return of the Collateral securing their Liens, or the proceeds from the sale of their collateral, on or as soon as reasonably practicable after, the Effective Date. To the extent the Holder of Allowed Class 6 Claims is undersecured, the undersecured portion of the Claim will be treated as a Class 7 General Unsecured Claim against the Debtors.

(b) Claims in Class 6 are unimpaired under the Plan. Therefore, pursuant to section 1126(a) of the Bankruptcy Code, Holders of Claims in Class 6 are not entitled to vote to accept or reject the Plan.

7. **Class 7 – General Unsecured Claims.**

(a) Unless such Holder agrees to other treatment (in which event, such other agreement shall govern), each Holder of an Allowed Class 7 Claim shall be paid in full and final satisfaction, on the Initial Distribution Date, in Cash, a Pro Rata share of any Distribution to Holders of General Unsecured Claims, from the Available Funds of the Debtors, after all Allowed Administrative Expense Claims, Allowed Class 1 Claims, Allowed Class 3 Claims, Allowed Class 4 Claims and Allowed Class 5 Claims have been paid in full and after Allowed Class 2 Claims, as a Class, have received sixty-seven point five percent (67.5%) of any such Distribution. Thereafter, each Holder of an Allowed Class 7 Claim shall be paid in full from the thirty-two point five percent (32.5%) of the Distribution made to ~~ereditors~~Creditors until all Allowed Class 7 Claims are paid in full. However, if the Class 2 Claims, as a Class, have received \$8.25 million in Distributions toward their Allowed Class 2 Claims, and Allowed Class 1 Claims, Allowed Class 3 Claims ~~and~~, Allowed Class 4 Claims, and Allowed Class 5 Claims have been paid in full, Allowed Class 7 Claims shall then receive fifty percent (50%) of any subsequent Distributions until all Allowed 7 Class Claims have been paid in full.

(b) Claims in Class 7 are impaired under the Plan. Therefore, pursuant to section 1126(a) of the Bankruptcy Code, Holders of Claims in Class 7 Claims are entitled to vote to accept or reject the Plan.

8. **Class 8 – Interests.**

(a) All Interests, and all stock certificates, instruments and other documents evidencing such Interests, shall be cancelled as of the Effective Date. The Holders of Interests in Class 8 shall not receive or retain any Distribution or other property on account of such Interests.

(b) Pursuant to section 1126(g) of the Bankruptcy Code, Holders of Interests in Class 8 are deemed to have rejected the Plan and are not entitled to vote to accept or reject the Plan.

**D. CLAIMS IN MORE THAN ONE CLASS.**

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

**SECTION IV**  
**ACCEPTANCE OR REJECTION OF THE PLAN; CRAMDOWN**

**A. VOTING CLASSES.**

Except as otherwise provided by the Bankruptcy Code, the Bankruptcy Rules or order of the Bankruptcy Court, each Holder of a Claim in Classes 2, 3, 4, 5, and 7 is impaired and may vote to accept or reject the Plan. Only those votes cast timely by Holders of Allowed Claims in these Classes will be counted in determining whether acceptances have been received in sufficient number and amount to obtain Class acceptance and to confirm the Plan. Holders of Interests in Class 8 of the Plan are deemed to have rejected this Plan and are therefore not entitled to vote on the Plan. Holders of a Claim in Classes 1 and 6 are unimpaired and are deemed to have voted in favor of this Plan.

**B. BALLOT INSTRUCTIONS.**

To have a vote count towards confirmation of the Plan, each Holder of a Claim entitled to vote on the Plan must complete and timely return a Ballot to the Voting Agent, which will compile the votes received.

**C. CRAMDOWN.**

If all applicable requirements for confirmation of this Plan are met as set forth in Bankruptcy Code sections 1129(a)(1) through (13), except subsection (8), the Plan Proponents will request that the Bankruptcy Court confirm the Plan in accordance with Bankruptcy Code section 1129(b), notwithstanding the failure to satisfy the requirements of section 1129(a)(8), on the basis that this Plan is fair and equitable and does not discriminate unfairly with respect to each Class of Claims that is impaired under, and has not accepted, the Plan.

**SECTION V**  
**PROVISIONS FOR AMENDING CLAIMS**

~~Aaccept~~Except as otherwise provided in the Plan, a Claim may not be ~~filed~~Filed or amended after the Confirmation Date without prior authorization of the Bankruptcy Court. Except as otherwise provided in the Plan, any new or amended Claim ~~filed~~Filed after the Confirmation Date shall be deemed disallowed in full and expunged without any action by the Debtors or the Committee.

**SECTION VI**  
**TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

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

Each party to an executory contract or unexpired lease rejected pursuant to the Plan (and only such entities) asserting a Claim for damages arising from such rejection shall File, not later

than ~~thirty (30) days following the Confirmation Date (the "Rejection Damages Bar Date")~~, a proof of such Claim; *provided, however*, that the Rejection Damages Bar Date shall not apply to Persons that may assert a Claim on account of an executory contract or unexpired lease that was rejected by a Debtor before the Confirmation Date for which a prior Bar Date was established. Any Person asserting a claim for rejection damages that does not timely File a proof of claim in accordance with the Plan shall be forever enjoined and barred from asserting such Claim against the Debtors, the Estates or any property of the Estates.

## **SECTION VII**

### **CONFIRMATION AND CONSUMMATION OF THE PLAN**

#### **A. CONDITIONS PRECEDENT TO CONFIRMATION.**

The Plan shall not be confirmed until and unless all of the conditions precedent set forth below have been met:

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

#### **B. CONDITIONS PRECEDENT TO THE EFFECTIVE DATE.**

The Plan shall not become effective and operative unless and until the Effective Date occurs. The Effective Date shall occur after, and only after, all of the conditions precedent set forth below have been met:

1. The Confirmation Order shall have been entered and become a Final Order and shall provide that the Liquidating Trustee is authorized and directed to take all actions necessary or appropriate to enter into, implement and consummate the contracts, instruments, releases, leases, indentures and other agreements or documents created in connection with the Plan or effectuate, advance or further the purposes thereof;
2. All Plan Exhibits shall be, in form and substance, reasonably acceptable to the ~~Debtors and the Committee~~[Plan Proponents](#) and shall have been executed and delivered by all parties' signatory thereto;
3. The Liquidating Trustee shall be authorized and directed to take all actions necessary or appropriate to enter into, implement and consummate the contracts, instruments, releases, leases, indentures and the agreements or documents created in connection with the Plan;
4. All other actions, documents and agreements necessary to implement the Plan shall have been effected or executed; and



5. The Debtors shall have sufficient Cash to make all required payments to be made on the Initial Distribution Date and to fund the ~~reserve for~~ Disputed Claims Reserve.

**C. WAIVER OF CONDITIONS.**

Each of the conditions set forth in Sections VII.A and VII.B of the Plan may be waived in whole or in part by the Debtors with the approval of the Committee which approval shall be in the Committee's sole and absolute discretion. The failure of a party to exercise any of the foregoing rights shall not be deemed a waiver of any other rights, and each such right shall be deemed an ongoing right that may be asserted at any time.

**D. CONSEQUENCES OF NON-OCCURRENCE OF THE EFFECTIVE DATE.**

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

**SECTION VIII  
IMPLEMENTATION OF PLAN**

**A. SUBSTANTIVE CONSOLIDATION.**

The Plan is premised upon the substantive consolidation of the Estates. As of the Effective Date, the Estates shall be substantively consolidated, such that (i) all Intercompany Claims are canceled and disallowed and no distributions shall be made on account thereof; (ii) all guarantees of any of the Debtors of the payment, performance or collection of obligations of any of the other Debtors are eliminated and canceled, and Claims on account of such ~~guarantees~~ guaranties are disallowed; (iii) any obligations of the Debtors and all guarantees thereof executed by the other Debtors are treated as a single obligation and are deemed a single Claim against the consolidated Estates; (iv) all joint obligations of the Debtors, and all multiple Claims against such entities on account of such joint obligations, are deemed a single Claim against the consolidated Estates, and any such multiple Claims are disallowed and (v) each Claim filed in the Bankruptcy Case is deemed filed against the consolidated Estates.

1. The WARN Act Settlement

The linchpin of the Plan is the proposed compromise and settlement of the claims and issues arising in the WARN Act Litigation. As part of the settlement of the WARN Act Litigation, the Debtors' Estates will be substantively consolidated for purposes of distributions under the Plan.

2. Effect of Compromise and Settlement



As a result of the compromise and settlement of the WARN Act Litigation contained in the Plan, (i) the separate chapter 11 cases of the Debtors shall be consolidated into the case of BHE as a single consolidated case; and (ii) all property of the Estate of each Debtor shall be deemed to be property of the consolidated Estate. As a result, (a) all Intercompany Claims are canceled and disallowed and no Distributions shall be made on account thereof; (b) all guarantees of any of the Debtors of the payment, performance or collection of obligations of any of the other Debtors are eliminated and canceled, and Claims on account of such guarantees are disallowed; (c) any obligations of the Debtors and all guarantees thereof executed by the other Debtors are treated as a single obligation and are deemed a single Claim against the consolidated Estates; (d) all joint obligations of the Debtors, and all multiple Claims against such entities on account of such joint obligations, are deemed a single Claim against the consolidated Estates, and any such multiple Claims are disallowed and (e) each Claim filed in the Bankruptcy Case is deemed filed against the consolidated Estates.

The Plan shall not result in the merger or otherwise affect the separate legal existence of each Debtor, other than with respect to distribution rights under the Plan. The substantively consolidated plan structure will not (i) have the effect of creating a Claim in a Class different from the Class in which a Claim would have been placed in the absence of such structure; or (ii) affect the obligation of the Debtors to pay quarterly fees to the Office of the Bankruptcy Administrator until such time as each particular Debtor's case is closed.

## **B. LIQUIDATING TRUSTEE.**

1. **Appointment.** The Liquidating Trustee shall be selected by the Committee by majority vote, pursuant to its bylaws, announced at the Confirmation Hearing, and appointed as of the Effective Date. In the event of the death, resignation, incapacity, disqualification or misconduct of the Liquidating Trustee or in the event that the Committee is unable to select a Liquidating Trustee by the Effective Confirmation Date, the Bankruptcy Court shall appoint ~~a successor trustee~~ the Liquidating Trustee. The Debtors shall retain and have all of the rights, powers and duties necessary to carry out their responsibilities under this Plan, provided that the rights, powers and duties shall be exercisable solely by the Liquidating Trustee.

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

3. **Powers and Duties.** The Liquidating Trustee shall serve under this Plan and shall discharge all of the rights, powers and duties set forth in this Plan, including the rights, powers, and duties of a trustee under sections 704(a)(1), (2), (4), (5) and (7) and 1106(a)(6) and (7) of the Bankruptcy Code. Without limiting the generality of the foregoing, the Liquidating Trustee, acting on behalf of the Debtors, shall have the following rights, powers and duties:

- (a) to administer the Available Funds, pursuant to the terms of the Plan;
- (b) to use, acquire and dispose of property free of any restrictions imposed under the Bankruptcy Code;

(c) to employ, retain, and replace such persons, including actuaries, attorneys, accountants, auctioneers, brokers, managers, consultants, other professionals, agents, investigators, expert witnesses, consultants and advisors as necessary to discharge the duties of the Liquidating Trustee under the Plan and to pay the reasonable fees and costs of such employment without the need to seek approval from the Bankruptcy Court. [The Liquidating Trustee is authorized, but not required, to employ Coventry Healthcare, Inc. with respect to processing and administering payment, if possible, of employee claims for health insurance coverage.](#)

(d) to object to the Allowance of Claims or seek equitable subordination of Claims, pursuant to the terms of the Plan;

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

(f) to investigate, analyze, commence, prosecute, litigate, collect and otherwise administer the Disputed Claims, Liens and Causes of Action;

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

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

(i) to seek the examination of any entity under and subject to the provisions of Bankruptcy Rule 2004;

(j) to pay any Bankruptcy Administrator fees;

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

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

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

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

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

4. **Fees and Expenses.** Compensation of the Liquidating Trustee and the costs and expenses of the Debtors (including, without limitation, professional fees and expenses) shall be paid from the Available Funds. Without limitation of the foregoing, the Liquidating Trustee shall pay, without further order, notice or application to the Bankruptcy Court, the reasonable fees and expenses of the Liquidating Trustee and the Liquidating Trustee's professionals, as necessary to discharge the Liquidating Trustee's duties under the Plan. The payment of fees and expenses of the Liquidating Trustee and the Liquidating Trustee's professionals shall be from Available Funds and be made in the ordinary course of business and shall not be subject to the prior approval of the Bankruptcy Court, provided, however, the fees and expenses of such professionals, including, without limitation, the Liquidating Trustee's fees and expenses shall be paid within ten (10) Business Days after submission of a detailed invoice thereof to the Debtors' and the Plan Committee by directing it to the Liquidating Trustee and a representative for the Plan Committee. If the Liquidating Trustee or the Plan Committee dispute the reasonableness of any such invoice, then the objecting party or the affected professional may submit such dispute to the Bankruptcy Court for determination of reasonableness of such invoice and the disputed portion of such invoice shall not be paid until the dispute is resolved.

5. **Compromising Disputed Claims, Liens and Causes of Action.** The Liquidating Trustee is authorized to: (i) compromise and settle any Causes of Action, Liens and Disputed Claims; and (ii) execute necessary documents, including stipulations of settlement or release, without notice to any party other than the Plan Committee and without further order of the Bankruptcy Court.

### C. **DISPOSITION OF PROPERTY BY THE LIQUIDATING TRUSTEE.**

1. **Vesting of Assets.** Unless otherwise dealt with under the Plan by a prior Final Order, on the Effective Date all property of the Estates (including all Causes of Action) will remain vested in the Estates and shall continue to be subject to the jurisdiction of the Bankruptcy Court following confirmation of this Plan until distributed to Holders of Allowed Claims in accordance with the provisions of this Plan and the Confirmation Order. From and after the Effective Date, all property of the Estates shall be free and clear of all liens, claims and interests of Holders of Claims and Interests, except as otherwise provided in the Plan. All such property of the Estates shall be distributed in accordance with the provisions of this Plan and the Confirmation Order.

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

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

#### **D. PRESERVATION OF CAUSES OF ACTION; RESULTING CLAIM TREATMENT**

Under the Plan, Causes of Action consist of claims, rights of action, suits or proceedings, whether in law or in equity, whether known or unknown, that the Debtors or their estates may hold against any Person (except to the extent such claims are expressly released under the Plan.). The Plan provides that except as otherwise provided in the Plan or the Confirmation Order, or in any contract, instrument, release, indenture, or other agreement entered into in connection with the Plan, in accordance with Bankruptcy Code section 1123(b), on the Effective Date, each Debtor will retain all of the respective Causes of Action that such Debtor may hold against any Person. Each Debtor will retain and may enforce, sue on, settle, or compromise (or decline to do any of the foregoing) all such Causes of Action. Each Debtor or their respective successor(s) may pursue such retained Causes of Action, as appropriate, in accordance with the best interests of the Debtors or their successor(s) who hold such rights in accordance with applicable law and consistent with the terms of the Plan.

Causes of Action include (but are not limited to) potential avoidance or other bankruptcy causes of action. Such causes of action may exist, among other things, as a result of “preferential” payments or other transfers made by the Debtors on account of antecedent debt within 90 days of the Petition Date, or one year in the case of Insiders. The deadline for commencing any avoidance actions including, but not limited to, preference and fraudulent transfer actions, is two years after the Petition Date. A decision with respect to whether to pursue such transfers will be made by the Liquidating Trustee prior to the expiration of that deadline. All creditors and other parties who received potentially preferential payments are advised that such payments are subject to possible avoidance in proceedings to be commenced by the Debtors of the Liquidating Trustee on behalf of the Debtors.

In addition, Causes of Action include non-bankruptcy claims, rights of action, suits, or proceedings that arise in the ordinary course of the Debtors’ businesses. The Debtors currently hold certain claims or rights of action against a number of parties. The Debtors reserve their rights to continue to prosecute all of these unless settled on terms acceptable to them. The Debtors also have claims against certain parties that may ripen into litigation. The Debtors have disclosed potential Causes of Action as well as potential defendants on Exhibit F to the Disclosure Statement.

Unless a claim or Cause of Action is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order (including, without limitation, the Confirmation Order), the Debtors expressly reserve such Cause of Action for later adjudication by the Debtors or the Liquidating Trustee on behalf of the Debtors (including, without limitation, Causes of Action not specifically identified or of which the Debtors may presently be unaware or which may arise or exist by reason of additional facts or circumstances unknown to the Debtors at this time or facts or circumstances that may change or be different from those the Debtors now believe to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches shall apply to such Causes of Action upon or after the confirmation or consummation of the Plan based on the Disclosure Statement, the Plan or the Confirmation Order, except where such Causes of Action have been expressly released in the Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the Debtors expressly reserve the right to pursue or adopt any claims alleged in any lawsuit in which

the Debtors are a plaintiff, defendant or an interested party, against any entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits.

The Debtors reserve the right to pursue, settle, or otherwise not pursue any pending or potential claims, rights of action, suits, or proceedings against any of the parties described herein. Neither the listing nor the failure to list any party herein will prejudice the Debtors' rights to pursue any claims, rights of action, suits, or proceedings that have arisen or may arise in the future in the ordinary course of the Debtors' businesses.

If, as a result of the pursuit of any Causes of Action, a Claim would arise from a recovery pursuant to Bankruptcy Code section 550 after distributions under the Plan have commenced, making it impracticable to treat the claim in accordance with the applicable provision of Section III of the Plan, the Debtors shall be permitted to reduce the recovery by an amount that reflects the value of the treatment that would have been accorded to the Claim under the Plan, thereby effectively treating the Claim through the reduction.

**E. ~~D.~~ SETTLEMENT, RELEASE, SATISFACTION AND INJUNCTION.**

1. **Settlement of WARN Act Litigation.** This Plan is intended to, among other things, compromise and settle the WARN Act Litigation. Upon Confirmation of Plan, all WARN Act Settlement Class members shall be paid, in full and final satisfaction, settlement and discharge of all liabilities of and Claims against the Debtors arising out of the WARN Act Litigation. Nothing in this Plan or in the Disclosure Statement shall be construed as an admission by the Debtors of liability under the WARN Act or any enterprise theory recognized in WARN Act jurisprudence.

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

3. **EXCULPATION. FROM AND AFTER THE EFFECTIVE DATE, (A) THE DEBTORS; (B) ALL CURRENT OFFICERS AND DIRECTORS, AND ALL OTHER AGENTS, EMPLOYEES, PROFESSIONALS AND REPRESENTATIVES OF THE DEBTORS; (C) THE LIQUIDATING TRUSTEE; (D) ALL AGENTS, EMPLOYEES, PROFESSIONALS AND REPRESENTATIVES OF THE LIQUIDATING TRUSTEE; (E) THE COMMITTEE, ITS MEMBERS AND ITS PROFESSIONALS (COLLECTIVELY, WITH EACH OF THEIR PREDECESSORS AND SUCCESSORS IN INTEREST AND THEIR RESPECTIVE GENERAL AND LIMITED PARTNERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, PROFESSIONALS AND OTHER REPRESENTATIVES, THE "EXCULPATED PARTIES") SHALL NEITHER HAVE NOR INCUR ANY LIABILITY TO ANY PERSON OR ENTITY FOR ANY ACT TAKEN OR OMITTED TO BE TAKEN FROM AND AFTER THE PETITION DATE IN CONNECTION WITH OR RELATED TO THE FORMULATION, PREPARATION, DISSEMINATION, IMPLEMENTATION, ADMINISTRATION, CONFIRMATION OR CONSUMMATION OF THE PLAN, THE ASSET SALES, THE DISCLOSURE**

**STATEMENT OR ANY CONTRACT, INSTRUMENT, RELEASE OR OTHER AGREEMENT OR DOCUMENT CREATED OR ENTERED INTO IN CONNECTION WITH THE PLAN. HOWEVER, THAT THE FOREGOING PROVISIONS OF THIS SECTION VIII SHALL HAVE NO EFFECT ON THE LIABILITY OF ANY PERSON OR ENTITY THAT RESULTS FROM ANY SUCH ACT OR OMISSION THAT IS DETERMINED IN A FINAL ORDER TO HAVE CONSTITUTED GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. FROM AND AFTER THE CONFIRMATION DATE, ALL PERSONS ARE PERMANENTLY ENJOINED FROM COMMENCING OR CONTINUING IN ANY MANNER, ANY SUIT, ACTION OR OTHER PROCEEDING, ON ACCOUNT OF OR RESPECTING ANY CLAIM, OBLIGATION, DEBT, RIGHT, CAUSE OF ACTION, REMEDY OR LIABILITY RELEASED OR TO BE RELEASED AGAINST AN EXCULPATED PARTY PURSUANT TO THE PLAN.**

4. **INJUNCTION. EXCEPT AS OTHERWISE PROVIDED IN THE PLAN, THE CONFIRMATION ORDER SHALL PROVIDE, AMONG OTHER THINGS, THAT FROM AND AFTER THE EFFECTIVE DATE ALL PERSONS WHO HAVE HELD, HOLD OR MAY HOLD CLAIMS AGAINST OR INTERESTS IN ANY DEBTOR ARE PERMANENTLY ENJOINED FROM TAKING ANY OF THE FOLLOWING ACTIONS AGAINST THAT DEBTOR OR ITS ESTATE, OR ANY OF ITS PROPERTY ON ACCOUNT OF ANY SUCH CLAIMS OR INTERESTS: (A) COMMENCING OR CONTINUING, IN ANY MANNER OR IN ANY PLACE, ANY ACTION OR OTHER PROCEEDING; (B) ENFORCING, ATTACHING, COLLECTING OR RECOVERING IN ANY MANNER ANY JUDGMENT, AWARD, DECREE OR ORDER; (C) CREATING, PERFECTING OR ENFORCING ANY LIEN OR ENCUMBRANCE; (D) ASSERTING A SETOFF, RIGHT OF SUBROGATION OR RECOUPMENT OF ANY KIND AGAINST ANY DEBT, LIABILITY OR OBLIGATION DUE TO ANY DEBTOR; AND (E) COMMENCING OR CONTINUING, IN ANY MANNER OR IN ANY PLACE, ANY ACTION THAT DOES NOT COMPLY WITH OR IS INCONSISTENT WITH THE PROVISIONS OF THE PLAN, PROVIDED HOWEVER, THAT NOTHING CONTAINED IN THE PLAN SHALL PRECLUDE SUCH PERSONS FROM EXERCISING THEIR RIGHTS PURSUANT TO AND CONSISTENT WITH THE TERMS OF THE PLAN OR THE CONFIRMATION ORDER.**

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

6. **Indemnification Obligations.** Except as otherwise provided in the Plan or any contract, instrument, release or other agreement or document entered into in connection with the Plan, any and all indemnification obligations that the Debtors have pursuant to a contract, instrument, agreement, certificate of incorporation, bylaw, comparable organizational document or any other document or applicable law shall be deemed rejected (if and to the extent executory) as of the Effective Date.

7. **Reservation of Police and Regulatory Powers of Governmental Units.** Notwithstanding any other provision in the Plan, any discharge, release, exculpation or injunction



provided in the Plan shall not preclude any action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power.

8. **Insurance Claims for Personal Injury or Wrongful Death Claims.**

Notwithstanding any other provision of the Plan, any discharge or injunction contained in the Plan shall not prejudice, impair or increase any right of the Holder of any personal injury or wrongful death Claim to collect from any insurer of the Debtors or the insurer of any agent of the Debtors under any applicable property, liability or casualty insurance policy. On the Effective Date the stay shall be modified pursuant to section 362(d) of the Bankruptcy Code to the extent necessary to allow any such Holder of a personal injury or wrongful death claim to collect from any insurer of the Debtors or the insurer of any agent of the Debtors under any applicable property, liability or casualty insurance policy; provided, however, that any such claim may be liquidated and enforced only in accordance with the Plan. In such instance, the Holders of those Claims may proceed against the Debtors in name only and are entitled to no recovery from the Debtors or their Estates.

**F.** ~~**E.**~~ **PLAN ADMINISTRATION.**

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

2. **Cancellation of Equity Interests.** Upon the Effective Date, the Interests and any other promissory notes, share certificates, whether for preferred or common stock (including treasury stock), other instruments evidencing any Interests, and all options, warrants, calls, rights, puts, awards, commitments or any other agreements of any character to acquire such Interests shall be deemed of no further force and effect against the Debtors, without any further act or action under any applicable agreement, law, regulation, order or rule, and the obligations of the Debtors under the notes, share certificates and other agreements an instruments governing such Interests shall be discharged; provided, however, that certain instruments, documents and credit agreements related to Claims shall continue in effect solely for the purposes of allowing the agents to make distributions to the beneficial holders and lenders thereunder. The Holders of or parties to such notes, share certificates and other agreement and instruments shall have no rights arising from or relating to such notes, share certificates and other agreements and instruments against the Debtors or their Estates except the rights provided pursuant to the Plan.

3. **Debtors' Directors, Officers, Members and Managers.** On the Effective Date, all officers, directors, members and managers of the Debtors shall be deemed to have resigned and shall be discharged from any further duties and responsibilities in such capacity. From and after the Effective Date, the Liquidating Trustee shall serve as the sole officer, sole director, sole member or sole manager of each of the Debtors. All bylaws, articles, certificates of incorporation, and related corporate documents are deemed amended by the Plan to permit and authorize such sole appointment.

4. **Debtors' Existence.** From and after the Effective Date, each Debtor shall continue in existence for the purpose of (i) winding up ~~their~~its affairs as expeditiously as possible; (ii)



liquidating, by conversion to Cash or other methods, any remaining ~~assets~~Assets as expeditiously as reasonably possible, (iii) enforcing and prosecuting claims, interests, rights and privileges of the Debtors, including, without limitation, the prosecution of the Causes of Action ~~(if any)~~, (iv) having Disputed Claims resolved, (v) administering the Plan, (vi) filing appropriate tax returns and (vii) dissolution. Upon the Effective Date, all transactions and applicable matters provided for under the Plan shall be deemed to be authorized and approved by each Debtor without any requirement of further action by such Debtor. On and after the Effective Date, each of the Debtors' remaining assets and affairs shall be administered and managed by the Liquidating Trustee in accordance with the Plan.

5. **Dissolution of the Debtors.** Upon a certification to be ~~filed~~Filed with the Court of the Final Distribution and completion of all duties under the Plan and entry of a Final Decree closing the Cases, the Debtors shall be deemed to be dissolved without any further action by the Debtors, including the filing of any documents in any filing office in any jurisdiction where any Debtor is organized. However, the Liquidating Trustee shall have the authority to take all necessary actions to dissolve the Debtors in any applicable state or commonwealth. Further, upon the aforementioned certification and entry of Final Decree, the Liquidating Trustee shall be authorized, in his sole discretion, to discard or destroy any and all of the Debtors' pre-petition books and records. The Debtors shall continue to preserve ~~its~~their post-petition books and records, subject to further Court order.

6. **Dissolution of Committee.** On the Effective Date, (a) the Committee shall dissolve and its members shall be released of their respective duties, responsibilities and obligations in connection with the Cases or the Plan; and (b) the retention or employment of the Committee's respective professionals and agents shall be terminated, other than with respect to Filing of and objecting to fee applications.

7. **Plan Committee.** On the Effective Date, the Plan Committee shall be formed and constituted from members of the Committee. The bylaws of the Committee shall be adopted as the bylaws of the Plan Committee. The Plan Committee members' identities shall be disclosed to the Bankruptcy Court on or prior to the Confirmation Date. If no one is willing to serve on the Plan Committee or there shall have been no Plan Committee members for a period of thirty (30) consecutive days, then the Liquidating Trustee may, during the vacancy and thereafter, ignore any reference in this Plan or the Confirmation Order to the Plan Committee, and all references to the Plan Committee's ongoing duties and rights in the Plan shall be null and void. The Plan Committee shall have all of the rights, powers and duties provided for in the Plan, including the right and authority to employ and compensate professionals, whether currently employed by the Committee or such other professionals as the Plan Committee may select and consistent with Section 1103(b) of the Bankruptcy Code. The Plan Committee shall be authorized to:

- (a) Consult with the Liquidating Trustee concerning the administration of the Estates and all property of the Estates;
- (b) Object to Claims to the extent the Liquidating Trustee has not filed an objection;
- (c) Review objections to and propose settlements of Disputed Claims;

(d) Review proposed settlements to Causes of Action and consent or object thereto; and

(e) Perform such other services as are specifically authorized by this Plan.

8. **No Compensation to Members of the Plan Committee.** Members of the Plan Committee serve without compensation but may be reimbursed for their reasonable out-of-pocket expenses. Professionals may be retained by the Plan Committee in the ordinary course of business and without prior approval of the Bankruptcy Court; provided, however, that, upon retaining any professional, the Plan Committee shall ~~file~~[File](#) a notice of such retention with the Bankruptcy Court, and such retention shall be subject to review and objection by any party in interest, with any such objection which cannot be resolved by agreement of the parties to be determined by the Bankruptcy Court, but the ~~filing~~[Filing](#) of any such objection shall not operate to preclude such retention; provided further, however, that professionals retained by the Plan Committee shall not be entitled to be compensated from the Available Funds except for services rendered in order to facilitate the Plan Committee's discharge of its authority described in clauses (a) through (f) above in this Section VIII.D and such other matters as shall be authorized by the Bankruptcy Court after notice and a hearing. Such professionals shall provide the Liquidating Trustee monthly statements for services rendered and expenses incurred which fees and expenses shall be paid with fifteen (15) days of submission of an invoice. Any objection to such fees and expenses shall be resolved by the Bankruptcy Court, but the ~~filing~~[Filing](#) of any such objection shall not operate to defer the payment of any such fees and expenses. Neither the Plan Committee, nor any of its members or designees, nor their respective employees or professionals shall be liable for any act or omission of any other member, designee, agent or representative of the Plan Committee, nor shall any member be liable for any act or omission taken or omitted to be taken in its capacity as a member of the Plan Committee, other than acts or omissions resulting from such member's willful misconduct or negligence.

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

## **SECTION IX**

### **PROVISIONS GOVERNING CLAIM RESOLUTION AND DISTRIBUTIONS**

#### **A. PROCEDURE FOR DETERMINATION OF CLAIMS.**

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

2. **Stay of Claims Objection Process and Liquidation of Claims.** The process of objecting to Claims in a particular Class or liquidating Claims in a particular Class shall be stayed until it is evident that there are funds available from the Available Funds to make a Distribution to Holders of a Claim in that Class. The process of objecting [to Claims](#) or liquidating a particular Class of Claims shall only begin after it is evident that there will be funds available to make a

Distribution to that particular Class. Notwithstanding the foregoing, the Debtors shall have the right to object to the Claims of any Person who is the subject of an adversary proceeding asserting any Cause of Action, including, but not limited to, assertion of objections pursuant to section 502(d) of the Bankruptcy Code.

3. **Disputed Claims.** Payments or Distributions under the Plan on Account of Disputed Claims shall be held in ~~reserve~~ (the "Disputed Claims Reserve") pending the Allowance or disallowance of the Claim. To the extent any property is distributed to an entity on account of a Claim that is not an Allowed Claim, such property shall promptly be returned to the Liquidating Trustee. To the extent that a Disputed Claim ultimately becomes an Allowed Claim, payments and Distributions on account of such Allowed Claim shall be made in accordance with the provisions of the Plan. On the Distribution Date next following the date that the order or judgment ~~of the Bankruptcy Court~~ allowing such Claim becomes a Final Order, any property held in reserve pursuant to the Plan that would have been distributed prior to the date on which a Disputed Claim becomes an Allowed Claim shall be distributed to the Holder of such Allowed Claim, together with any dividends, payments or other distributions made on account of such property from the date such Distributions would have been due had such Claim then been an Allowed Claim to the date such Distributions are made. Notwithstanding the foregoing or any other term or provision of the Plan, until Allowed, no Claim shall delay or otherwise affect Distributions on account of Allowed Claims. Without limitation, the Liquidating Trustee shall not reserve from any Distribution on account of Allowed Claims any amount otherwise allocable to a Claim that is a Disputed Claim; ~~notwithstanding the possibility that such Claim may be Allowed as a Claim to the extent unpaid as a result of an insufficiency in the Fund. The holder.~~ The Holder of any Claim Allowed as a Claim shall share Pro Rata in any Distribution to which it is entitled occurring after such Claim is Allowed but shall be entitled to no share of any prior Distribution.

4. **Procedure to Challenge WARN Act Claims.** As set forth in Section III.C.2.(c), all Distributions made to members of the WARN Act Settlement Class shall be in proportion to such member's WARN Act Claim as set forth in section 507(a)(4) of the Bankruptcy Code, minus any other Distributions received by such member under Section III.C.1 of the Plan. The amount of each member's WARN Act Claim shall be calculated in accordance with the WARN Act and based upon Debtors' books and records and subject to challenge by any member of the WARN Act Settlement Class. If a Holder of a WARN Act Claim disputes any of the amounts shown on the Debtors' books and records, he or she may dispute such amounts by mailing a "Claim Challenge" containing the following: 1) the caption of this action shown above on the first page; 2) the WARN Settlement Class member's name, address, and telephone number; 3) the basis for the dispute and 4) documentation supporting the WARN Settlement Class member's position. This detailed written statement must be mailed to 1) WARN Act Settlement Class counsel: The Gardner Firm, P.C., P.O. Drawer 3103, Mobile, AL 36652, Attn: Mary Olsen; 2) Debtors' counsel: Dent Morton, Burr & Forman LLP, 420 North 20th Street, Suite 3400, Birmingham, AL 35203; and 3) Committee Counsel: John Mills, Kilpatrick Stockton, LLP, Suite 2800, 1100 Peachtree Street, Atlanta, GA 30309-4530; and 4) The Liquidating Trustee \_\_\_\_\_, 4530. **Claim Challenges must be received by the above no later than \_\_\_\_\_, 2009. September 17, 2009.** Counsel will attempt in good faith to resolve the dispute among themselves, but if they are unable to do so counsel for any party may submit the matter to the Court for resolution.

## **B. DISTRIBUTIONS.**

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

2. **Disbursing Agent.** The Debtors or their duly authorized agent shall make all Distributions required under the Plan, subject to the terms and provisions of the Plan. The party making the Distributions shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court. The party making the distributions shall be authorized and directed to rely upon the Debtors' books and records and its representatives and professionals in determining Allowed Claims entitled to Distribution under the Plan.

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

4. **3-Manner of Payment.** Distributions under the Plan may be made, at the option of the Liquidating Trustee, in Cash, by wire transfer or by check drawn on such accounts established by the Liquidating Trustee as necessary to effectuate the Plan.

5. **4-Interest.** Unless otherwise required by Final Order of the Bankruptcy Court, interest shall not accrue or be paid after the Petition Date on any Claims, and no Holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim.

6. ~~5.~~ **Fractional Dollars; *De Minimis* Distributions.**

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

(b) No interim Distribution will be made on account of any Allowed Class 7 Claim if the amount of such Distribution is less than \$25.00. On the Final Distribution Date, the Liquidating Trustee shall (i) aggregate the amount of all Distributions that would have been made on account of an Allowed Claim in Class 7 but for this *de minimis* provision and (ii) make a Distribution on account of such Allowed Claim in accordance with the Plan.

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

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

8. **Disputed Claims Reserves.** Except as otherwise provided in the Plan, no Distributions shall be made on account of a Disputed Claim until such Claim becomes an Allowed Claim. In making any Distribution on Allowed Class 7 Claims, the Liquidating Trustee shall calculate the amount of such Distribution (for purposes of making a Pro Rata calculation) as if each Disputed Class 7 Claim were an Allowed Claim, unless the Bankruptcy Court enters an order specifying that the Disputed Claim should be treated as being a different amount for purposes of such calculation. Subject to Section IX.A.3 of the Plan (a) the Liquidating Trustee shall reserve from Distributions a sufficient amount to make a Distribution on a Disputed Claim in the event it becomes an Allowed Claim (unless the Bankruptcy Court orders otherwise); and (b) to the extent a



Disputed Claim is disallowed pursuant to a Final Order, any reserves attributable to the disallowed portion of the Disputed Claim shall be distributed on account of Allowed Claims pursuant to the terms of the Plan.

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

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

### ~~C. — RESERVATION OF RIGHTS OF THE ESTATES.~~

~~All claims, rights to payment, causes of action, cross-claims and counterclaims of the Debtors of any kind or nature whatsoever including, without limitation, Causes of Action and Avoidance Actions, against third parties arising before the Confirmation Date, that have not been disposed of prior to the Effective Date, shall be preserved and treated in accordance with the Plan, except to the extent released or enjoined by the Plan or pursuant to a Final Order. Without limitation of the foregoing, pursuant to section 1123(b) of the Bankruptcy Code, the Liquidating Trustee is empowered and authorized to enforce: (a) the Causes of Action, including, Avoidance Actions; and (b) all other Claims, causes of action, rights to payment and related recoveries of any nature or type whatsoever, at law or in equity, against any Person or entity, other than the Exculpated Parties, only to the extent exculpated or released pursuant to the Plan, or any other Person released pursuant the Plan or to a Final Order, whether or not filed prior to the Effective Date.~~

## **SECTION X** **RETENTION OF JURISDICTION**

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

1. Allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Interest, including the resolution of any request for payment of any Administrative Expense Claim, the resolution of any objections to the Allowance or priority of Claims or Interests and the determination of requests for the payment of claims entitled to priority under section 507(a)(1) of the Bankruptcy Code, including compensation of any reimbursement of expenses of parties entitled thereto;

2. Hear and determine all applications for compensation and reimbursement of expenses of Professionals under the Plan or under sections 330, 331, 503(b), 1103 and 1129(a)(4) of the Bankruptcy Code;

3. Hear and determine all matters with respect to the assumption or rejection of any executory contract or unexpired lease to which a Debtor is a party or with respect to which a Debtor may be liable, and to hear, determine and, if necessary, liquidate any Claims arising therefrom;

4. Effectuate performance of and payments under the provisions of the Plan;

5. Hear and determine any and all adversary proceedings, motions, applications and contested or litigated matters arising out of, under or related to the chapter 11 Cases or the Plan;

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

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

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

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

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

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

12. Enforce all orders, judgments, injunctions, releases, exculpations, indemnifications and rulings entered in connection with the chapter 11 Cases;

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

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



15. Hear and determine all matters related to the property of the ~~Estate~~Estates from and after the Confirmation Date;
16. Hear and determine the Causes of Action;
17. Hear and determine all disputes involving the existence, nature or scope of the injunctions, indemnification, exculpation and releases granted pursuant to this Plan.
18. Hear and determine all disputes or other matters arising in connection with the interpretation, implementation or enforcement of the Asset Sales;
19. Hear and determine all matters related to (i) the property of the Estates from and after the Confirmation Date, (ii) the winding up of the Debtors' affairs and (iii) the activities of Debtors, including (A) challenges to or approvals of Debtors' activities, (B) resignation, incapacity or removal of the Liquidating Trustee, (C) reporting by, termination of and accounting by Debtors' and (D) release of the Liquidating Trustee from his duties;
20. Hear and determine disputes with respect to compensation of the Debtors' professionals;
21. Hear and determine all disputes involving the existence, nature and/or scope of the injunctions and releases provided by the Plan including any dispute relating to any liability arising out of any termination of employment or the termination of any employee or retiree benefit provision, regardless of whether such termination occurred prior to or after the Effective Date;
22. Hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under, or not inconsistent with, provision of the Bankruptcy Code;
23. Enforce all orders previously entered by the Bankruptcy Court; and
24. Enter a final decree closing the Cases.

## **SECTION XI**

### **MISCELLANEOUS PROVISIONS**

#### **A. INSURANCE PRESERVATION.**

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

#### **B. TAX INJUNCTION.**

In accordance with section 346 of the Bankruptcy Code for purposes of any state or local law imposing a tax, income will not be realized by a Debtor or by reason of forgiveness or

discharge or indebtedness resulting from the Cases. As a result, each state or local taxing authority is permanently enjoined and restrained, after the Confirmation Date, from commencing, continuing or taking any act to impose, collect or recover in any manner any tax against the Debtors arising by reason of the forgiveness or discharge of any such Person under the Plan. Notwithstanding any other provision of the Plan, each Person or entity receiving a Distribution pursuant to the Plan shall have sole and exclusive responsibility for the payment and satisfaction of ~~Tax-Claims~~tax claims or obligations imposed by any ~~governmental-unit~~Governmental Unit on account of, arising out of or related to any such Distribution, including, without limitation, income and withholding taxes.

**C. EFFECTUATING DOCUMENTS; FURTHER TRANSACTION; EXEMPTION FROM TRANSFERS TAXES.**

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

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

**D. MODIFICATION OF PLAN.**

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

**E. PLAN SUPPLEMENT(S).**

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

#### F. NOTICE.

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

1. **If to the Debtors:**

Robert B. Rubin  
Derek F. Meek  
Marc P. Solomon  
BURR & FORMAN LLP  
420 North 20<sup>th</sup> Street, Suite 3400  
Birmingham, Alabama 35203  
Facsimile: (205) 458-5100

2. **If to the Committee:**

John W. Mills, III  
KILPATRICK STOCKTON LLP  
Suite 2800  
1100 Peachtree Street  
Atlanta, GA 30309-4530  
Facsimile: (404) 541-3236

3. **If to the Liquidating Trustee:**

As set forth in the Confirmation Order.

4. **If to the Bankruptcy Administrator:**

Richard Blythe  
Office of the Bankruptcy Administrator  
United States Bankruptcy Court  
400 Wells Street  
P.O. Box 3045  
Decatur, AL 35602

**G. SEVERABILITY.**

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

**H. CONFLICT OF TERMS.**

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

**I. SUCCESSORS AND ASSIGNS.**

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

**J. PAYMENT OF BANKRUPTCY ADMINISTRATOR FEES.**

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

**K. TAX REPORTING AND COMPLIANCE.**

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

**CONFIRMATION REQUEST**

The Debtors and the Committee hereby request confirmation of the Plan pursuant to section 1129(a) of the Bankruptcy Code or, in the event that the Plan is not accepted by each of those Classes entitled to vote, section 1129(b) of the Bankruptcy Code.

Dated: ~~June 19,~~ July 31, 2009

BILL HEARD ENTERPRISES, INC.; BILL HEARD CHEVROLET COMPANY; TOM JUMPER CHEVROLET, INC.; BILL HEARD CHEVROLET, INC - HUNTSVILLE; LANDMARK CHEVROLET, LTD.; BILL HEARD CHEVROLET, LTD.; BILL HEARD CHEVROLET CORPORATION NASHVILLE; BILL HEARD CHEVROLET CORPORATION - ORLANDO; BILL HEARD CHEVROLET, INC. - UNION CITY; BILL HEARD CHEVROLET AT TOWN CENTER, LLC; BILL HEARD CHEVROLET, INC. - COLLIERVILLE; BILL HEARD CHEVROLET, INC. - SCOTTSDALE; BILL HEARD CHEVROLET, INC. - PLANT CITY; BILL HEARD CHEVROLET, INC. - BUFORD; BILL HEARD CHEVROLET CORPORATION - LAS VEGAS; BILL HEARD CHEVROLET CORPORATION - N.W. LAS VEGAS; TWENTIETH CENTURY LAND CORP.; ENTERPRISE AVIATION, INC.; CENTURY LAND CORPORATION; CENTURY LAND COMPANY - TENNESSEE; BILL HEARD MANAGEMENT, LLC; LANDMARK VEHICLE MGT., LLC; GEORGIA SERVICES GROUP, LLC; COLUMBUS TRANSPORTATION, LLC; AND AIRPORT CHEVROLET, INC.

/s/ Richard Young

Richard Young as Debtors' Authorized Agent

Presented by:

/s/ Derek F. Meek

Robert B. Rubin  
Derek F. Meek  
Marc P. Solomon  
BURR & FORMAN LLP  
420 North 20<sup>th</sup> Street, Suite 3400  
Birmingham, Alabama 35203  
Facsimile: (205) 458-5100

*Counsel to the Debtors and Debtors in Possession*

/s/ John W. Mills, III

John W. Mills, III  
KILPATRICK STOCKTON LLP  
Suite 2800  
1100 Peachtree Street  
Atlanta, GA 30309-4530  
Facsimile: (404) 541-3236

*Counsel to the Official Committee of Unsecured Creditors*



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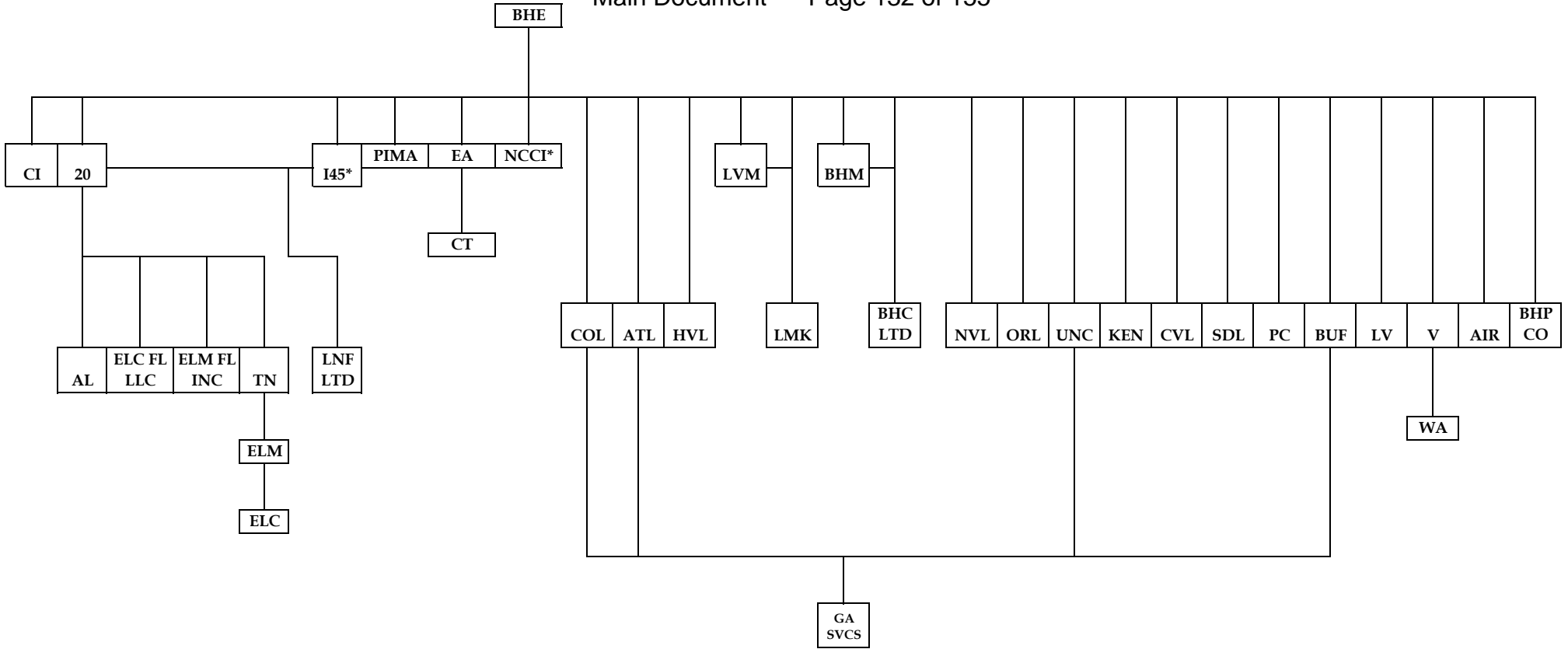


**Exhibit B**

**EXHIBIT B**

**ORGANIZATIONAL CHART OF DEBTORS**

~~[TO BE FILED PRIOR TO HEARING ON DISCLOSURE STATEMENT]~~



**KEY**

**AIR:** Airport Chevrolet, Inc.; **AL:** Century Land Corporation; **ATL:** Tom Jumper Chevrolet, Inc.; **BHC LTD:** Bill Heard Chevrolet, Ltd.; **BHE:** Bill Heard Enterprises, Inc.; **BHM\*:** Bill Heard Management, LLC; **BHP CO\*:** Bill Heard Property, Inc. - Colonial Drive; **BUF:** Bill Heard Chevrolet, Inc. - Buford; **CI\*:** Casualty Insurance Company, LTD; **COL:** Bill Heard Chevrolet Company; **CT:** Columbus Transportation, LLC; **CVL:** Bill Heard Chevrolet, Inc. - Collierville; **EA:** Enterprise Aviation, Inc.; **ELC\*:** Eagle Land Company, LLC; **ELC FL LLC\*:** Eagle Land Company-FLA, LLC; **ELM\*:** Eagle Land Manager, Inc.;

**ELM FL INC\*:** Eagle Land Manager-FLA, Inc.; **GA SVCS:** Georgia Services Group, LLC; **HVL:** Bill Heard Chevrolet, Inc. - Huntsville; **I45\*:** Landmark I45; **KEN:** Bill Heard Chevrolet at Town Center, LLC; **LMK:** Landmark Chevrolet, Ltd.; **LNF LTD\*:** Landmark North Freeway, Ltd.; **LV:** Bill Heard Chevrolet Corporation - Las Vegas; **LVM:** Landmark Vehicle Management, LLC; **NCCI\*:** National Car Credit, Inc.;

**NVL:** Bill Heard Chevrolet Corporation - Nashville; **ORL:** Bill Heard Chevrolet Corporation - Orlando; **PC:** Bill Heard Chevrolet, Inc. - Plant City; **PIMA\*:** Pima Road Property, LLC; **SDL:** Bill Heard Chevrolet, Inc. - Scottsdale; **TN:** Century Land Company - Tennessee; **20:** Twentieth Century Land Corp.; **UNC:** Bill Heard Chevrolet, Inc. - Union City; **V:** Bill Heard Chevrolet Corporation - N.W. Las Vegas

\* These entities are non-debtor affiliates.

**EXHIBIT C**

Exhibit C

CHART OF DEBTORS' LIABILITIES

~~[TO BE FILED PRIOR TO HEARING ON DISCLOSURE STATEMENT]~~

**EXHIBIT C**

**Chart of Debtors' Liabilities By Entity and in Total<sup>1</sup>**

|   | <i>Wages and Related Claims pursuant to § 507(a)(4)</i> | <i>Employee Benefit Claims pursuant to § 507(a)(5)</i> | <i>Deposit Claims pursuant to § 507(a)(7)</i> | <i>Tax Claims pursuant to § 507(a)(8)</i> | <i>General Unsecured Claims<sup>2</sup></i> | <i>Priority Claims for Warn Act Claims<sup>3</sup> pursuant to § 507(a)(4)</i> |
|---|---|--|---|---|---|--|
| <i>Bill Heard Enterprises, Inc.</i>                 | -0-   | \$1,500  | -0-   | -0-                                       | \$1,876                                     | \$173  |
| <i>Bill Heard Chevrolet Inc. - Huntsville</i>       | \$163   | -0-  | \$1   | \$131                                     | \$2,055                                     | \$847  |
| <i>Bill Heard Chevrolet Company</i>                 | \$164   | -0-  | \$5   | \$74                                      | \$2,617                                     | \$1,632  |
| <i>Tom Jumper Chevrolet, Inc.</i>                   | \$170   | -0-  | \$17  | \$313                                     | \$1,609                                     | \$654  |
| <i>Bill Heard Chevrolet Inc. - Buford</i>           | \$42  | -0-  | \$1   | \$221                                     | \$1,169                                     | \$741  |
| <i>Landmark Chevrolet, Ltd.</i>                     | \$48  | -0-  | \$168   | 0   | \$1,921                                     | \$1,784  |
| <i>Bill Heard Chevrolet Corporation - Las Vegas</i> | \$330   | -0-  | \$64  | \$108                                     | \$1,605                                     | \$1,181  |

<sup>1</sup> Amounts listed are in thousands. Amounts listed are based upon the Debtors' Schedules of Assets and Liabilities and do not reflect proofs of claim filed in the Debtors' bankruptcy cases. Additionally, intercompany balances and claims of affiliates and administrative expense claims are not included in this chart. The Tax Claims are estimated balances from the Scheduled amounts.

<sup>2</sup> These amounts do not include potential deficiency claims of Secured Creditors. The amounts listed are based on the Schedules plus the Debtors' estimates of the unsecured portion of the disputed WARN Act claims.

<sup>3</sup> The Debtors dispute any liability for any alleged violations of the WARN Act. However, in conjunction with the Plan, the Debtors have entered into a settlement with the WARN claimants. An estimation of the priority amount of the WARN claimants damages by Debtor is included here.

|  | <i>Wages and Related<br/>Claims pursuant to<br/>§ 507(a)(4)</i> | <i>Employee Benefit<br/>Claims pursuant to<br/>§ 507(a)(5)</i> | <i>Deposit Claims<br/>pursuant to<br/>§ 507(a)(7)</i> | <i>Tax Claims<br/>pursuant to<br/>§ 507(a)(8)</i> | <i>General<br/>Unsecured<br/>Claims<sup>2</sup></i> | <i>Priority Claims for<br/>Warn Act Claims<sup>3</sup><br/>pursuant to<br/>§ 507(a)(4)</i> |
|--|---|--|---|---|---|--|
| <i>Bill Heard Chevrolet<br/>Corporation - N.W. Las Vegas</i> | \$290   | -0-  | \$55  | -0-   | \$1,826   | \$563  |
| <i>Bill Heard Chevrolet<br/>Corporation - Orlando</i>        | \$53  | -0-  | \$44  | -0-   | \$1,730   | \$983  |
| <i>Bill Heard Chevrolet at<br/>Town Center, LLC</i>          | \$170   | -0-  | \$7   | \$157   | \$1,023   | \$748  |
| <i>Bill Heard Chevrolet, Inc. -<br/>Collierville</i>         | \$8   | -0-  | \$18  | \$124   | \$3,419   | \$963  |
| <i>Bill Heard Chevrolet, Ltd.<br/>(Sugar Land)</i>           | \$183   | -0-  | \$252   | -0-   | \$4,399   | \$1,783  |
| <i>Bill Heard Chevrolet, Inc. -<br/>Plant City</i>           | \$5   | -0-  | \$5   | -0-   | \$1,288   | \$851  |
| <i>Bill Heard Chevrolet, Inc. -<br/>Union City</i>           | \$23  | -0-  | \$22  | -0-   | \$1,520   | \$1,118  |
| <i>Bill Heard Chevrolet, Inc. -<br/>Scottsdale</i>           | \$39  | -0-  | \$19  | \$18  | \$1,363   | \$891  |
| <i>Twentieth Century Land Corp.</i>                          | -0-   | -0-  | -0-   | -0-   | \$234   | -0-  |
| <i>Century Land Corp.</i>                                    | -0-   | -0-  | -0-   | -0-   | -0-   | -0-  |
| <i>Airport Chevrolet, Inc.</i>                               | -0-   | -0-  | -0-   | -0-   | -0-   | -0-  |
| <i>Bill Heard Management, LLC</i>                            | -0-   | -0-  | -0-   | -0-   | -0-   | -0-  |



|   | <i>Wages and Related<br/>Claims pursuant to<br/>§ 507(a)(4)</i> | <i>Employee Benefit<br/>Claims pursuant to<br/>§ 507(a)(5)</i> | <i>Deposit Claims<br/>pursuant to<br/>§ 507(a)(7)</i> | <i>Tax Claims<br/>pursuant to<br/>§ 507(a)(8)</i> | <i>General<br/>Unsecured<br/>Claims<sup>2</sup></i> | <i>Priority Claims for<br/>Warn Act Claims<sup>3</sup><br/>pursuant to<br/>§ 507(a)(4)</i> |
|---|---|--|---|---|---|--|
| <i>Bill Heard Chevrolet<br/>Corporation - Nashville</i> | -0-   | -0-  | -0-   | -0-   | -0-   | -0-  |
| <i>Enterprise Aviation, Inc.</i>                        | -0-   | -0-  | -0-   | -0-   | -0-   | -0-  |
| <i>Landmark Vehicle Mgt., LLC</i>                       | -0-   | -0-  | -0-   | -0-   | -0-   | -0-  |
| <i>Georgia Services Group, LLC</i>                      | -0-   | -0-  | -0-   | -0-   | \$18  | -0-  |
| <i>Columbus Transportation, LLC</i>                     | -0-   | -0-  | -0-   | -0-   | -0-   | -0-  |
| <i>Century Land Company -<br/>Tennessee</i>             | -0-   | -0-  | -0-   | -0-   | -0-   | -0-  |
| <b><u>TOTAL FOR ALL DEBTORS:</u></b>                    | \$1,688   | \$1,500  | \$678   | \$1,146   | \$29,672  | \$14,912   |

**Exhibit D**

**CHART OF POTENTIAL UNENCUMBERED PROCEEDS OF DEALERSHIP SALES**

**EXHIBIT D**

**~~[TO BE FILED PRIOR TO HEARING ON DISCLOSURE STATEMENT]~~**

**LIQUIDATION ANALYSIS**

**Potential Liquidation Analysis and  
Summary of Estimated Unencumbered Assets  
As of June 1, 2009**

|  | <i>Preliminary</i>                                |  |                         |                                |                                      |
|--|---|--|-------------------------|--------------------------------|--------------------------------------|
|  | <u>Potential<br/>Excess Floor<br/>Plan Assets</u> | <u>Potential<br/>Pre Petition<br/>Cash</u> | <u>Other<br/>Assets</u> | <u>Total<br/>Except<br/>GM</u> | <u>GM<br/>Constructive<br/>Trust</u> |
| GMAC Locations                                     | 3,616,688   | 1,382,915                                  |                         | 4,999,603                      | 3,290,283                            |
| Alphera Locations                                  | 3,999,748   | 907,070                                    |                         | 4,906,818                      | 570,000                              |
| Scottsdale/Chase                                   | -   | 120,546                                    |                         | 120,546                        | 74,000                               |
| Nashville Dealership<br>(cash only)                |   | 37,252                                     |                         | 37,252                         |                                      |
| 20th Century-Sugarland Real Estate (cash escrow)   |   |  | 1,496,911               | 1,496,911                      |                                      |
| BHE:   |   |  |                         |                                |                                      |
| Cash   |   |  | 994,231                 | 994,231                        |                                      |
| Insurance Trust Receivable                         |   |  |                         |                                |                                      |
| William Heard III                                  |   |  | 1,200,000               | 1,200,000                      |                                      |
| Edward Heard                                       |   |  | 1,274,493               | 1,274,493                      |                                      |
| Employee Deferred Comp Issue                       | -   | -  | 2,334,000               | 2,334,000                      | -                                    |
|  | -   | -  |                         |                                | -                                    |
| <b>Total Potential Estimated Unencumbered Cash</b> | <b><u>7,616,436</u></b>                           | <b><u>2,447,783</u></b>                    | <b><u>7,299,635</u></b> | <b><u>17,363,854</u></b>       | <b><u>3,934,283</u></b>              |

**Summary of Estimated Administrative & Priority Claims:**

|   | <u>All Entities</u>      |
|---|--------------------------|
| Post Petition Professional Fees as of 6-1-09  | 1,900,000                |
| Estimated 503(B)9 Claims  | 750,000                  |
| Other Misc Admin Expenses   | 100,000                  |
| Scheduled Priority Wage Claims  | 1,688,000                |
| Disputed Priority WARN Claims   | 14,900,000               |
| Employee Medical Claims   | 1,500,000                |
| Sales Taxes (filed claims are 3,010,000; should be lower due to return of spotted cars) | 1,146,000                |
| Customer Deposits   | 678,000                  |
|   | <b><u>22,662,000</u></b> |

**Summary of Estimated Unsecured Claims:**

|   |                          |
|---|--------------------------|
| Trade   | 22,761,000               |
| Disputed WARN Claims in Excess of Priority                    | 6,800,000                |
| Estimated Mortgage and Other Secured Lender Deficiency Claims | 50,750,000               |
| Other Rejection Damage Claims                                 | ??                       |
|   | <b><u>80,311,000</u></b> |

**Analysis excludes recovery estimate on following potential claims:**

- All section 5 recoveries
- Houston/Landmark mortgage dispute with Autostar
- Franchise infringement claim against GM for Houston dealership.
- Dispute with CB&T regarding "lot 5" for Heard personal residence in Columbus, GA.
- Potential causes of action against third parties

BHE  
GMAC Floor Plan Locations  
As of June 1, 2009

|   | Sold            | Sold                | Sold                       | Sold                   | Sold                | Sold                 | Closed/Auction   | Closed/Auction       | Closed/Auction   | Closed/Auction   | Alpha             | Total             | Notes    |
|---|-----------------|---------------------|----------------------------|------------------------|---------------------|----------------------|------------------|----------------------|------------------|------------------|-------------------|-------------------|----------|
|   | Kennesaw, GA    | Collierville, TN    | Las Vegas<br>(Vista)       | Columbus, GA           | Buford, GA          | Huntsville, AL       | Atlanta, GA      | Houston, TX          | Orlando, FL      | Las Vegas, NV    | Sugarland         | (18,400,000)      |          |
| <b>Est GMAC Debt at 6/1/09</b>                                |                 |                     |                            |                        |                     |                      |                  |                      |                  |                  |                   |                   |          |
| <b>Adorno &amp; Yoss Escrow:</b>                              |                 |                     |                            |                        |                     |                      |                  |                      |                  |                  |                   |                   |          |
| FF&E Sale Proceeds  | 164,568         | 582,771             | 2,649,814                  | 1,000,000              | 1,100,000           | 441,829              | 169,334          | 395,152              | 325,026          | 327,132          |                   | 7,155,626         |          |
| Goodwill Sale Proceeds  | 50,000          | 1,000               | 2,714,182                  |                        | 1                   | 1,000                |                  |                      |                  |                  |                   | 2,766,183         |          |
| GM Parts Repurchase   |                 |                     |                            |                        |                     |                      | 2,062,857        | 1,857,208            | 981,001          | 1,264,450        |                   | 6,165,516         |          |
| Misc Parts Sale Proceeds                                      |                 |                     |                            |                        |                     |                      | 75,747           |                      | 26,962           |                  |                   | 102,709           |          |
| GM Open Acct Proceeds   | 365,289         | 402,590             | 294,099                    | 22,221                 | 395,353             | 343,778              | -                | -                    | -                | -                | -                 | 1,823,330         |          |
| <b>Subtotal</b>   | <b>579,857</b>  | <b>986,361</b>      | <b>5,658,095</b>           | <b>1,022,221</b>       | <b>1,495,354</b>    | <b>786,607</b>       | <b>2,307,938</b> | <b>2,252,360</b>     | <b>1,332,989</b> | <b>1,591,582</b> | <b>-</b>          | <b>18,013,364</b> |          |
| <b>GMAC Unapplied Funds:</b>                                  |                 |                     |                            |                        |                     |                      |                  |                      |                  |                  |                   |                   |          |
| Cash Received, Not Applied                                    |                 |                     |                            |                        |                     |                      |                  |                      |                  |                  |                   | 3,610,821         | 1        |
| Alpha Settlement  |                 |                     |                            |                        |                     |                      |                  |                      |                  |                  | 3,320,743         | 3,320,743         |          |
| Unreconciled  | -               | -                   | -                          | -                      | -                   | -                    | -                | -                    | -                | -                | -                 | (431,564)         | 1        |
| <b>Subtotal</b>   | <b>-</b>        | <b>-</b>            | <b>-</b>                   | <b>-</b>               | <b>-</b>            | <b>-</b>             | <b>-</b>         | <b>-</b>             | <b>-</b>         | <b>-</b>         | <b>3,320,743</b>  | <b>6,500,000</b>  | <b>1</b> |
| <b>Net GMAC Bal</b><br><i>(before competing claims)</i>       |                 |                     |                            |                        |                     |                      |                  |                      |                  |                  |                   | <b>6,113,364</b>  |          |
| <b>Competing Claims:</b>                                      |                 |                     |                            |                        |                     |                      |                  |                      |                  |                  |                   |                   |          |
| CB&T  |                 |                     |                            |                        |                     |                      |                  |                      |                  |                  |                   |                   |          |
| Estimated FMV Equip<br>Gross Claim                            |                 |                     |                            |                        |                     |                      | (2,138,604)      |                      |                  |                  |                   | (2,138,604)       | 2        |
| Mass Mutual   |                 |                     |                            |                        |                     |                      |                  |                      |                  |                  |                   |                   |          |
| Estimated FMV Equip<br>Gross Claim                            |                 | (20,000)            | Equip Returned<br>(28,047) | (99,515)<br>(541,065)  |                     | (30,000)<br>(40,423) |                  | (30,000)<br>(39,857) |                  |                  |                   | (179,515)         |          |
| DLL   |                 |                     |                            |                        |                     |                      |                  |                      |                  |                  |                   |                   |          |
| Estimated FMV Equip<br>Gross Claim                            |                 | (7,500)<br>(16,103) | (7,500)<br>(16,947)        | (7,750)<br>(346,055)   | (7,500)<br>(17,214) | (7,500)<br>(16,103)  |                  | (7,500)<br>(23,281)  |                  |                  |                   | (45,250)          |          |
| Wells Fargo   |                 |                     |                            |                        |                     |                      |                  |                      |                  |                  |                   |                   |          |
| Estimated FMV Equip<br>Gross Claim                            |                 |                     |                            | (100,000)<br>(530,134) |                     |                      |                  |                      |                  |                  |                   | (100,000)         |          |
| Falcon Financial  |                 |                     |                            | ??                     |                     |                      |                  |                      |                  |                  |                   |                   |          |
| Estimated FMV Equip<br>Gross Claim                            |                 | ???                 |                            |                        |                     |                      |                  | ???                  |                  |                  |                   | (452,232)         |          |
| Seminole County-Taxes   |                 |                     |                            |                        |                     |                      |                  |                      |                  | (33,307)         |                   | (33,307)          |          |
| GM  | ???             | ???                 | ???                        | ???                    | ???                 | ???                  | ???              |                      |                  |                  |                   | ???               | 3        |
| Others ????   |                 |                     |                            |                        |                     |                      |                  |                      |                  |                  |                   | ???               | 4        |
| <b>Net Surplus(Deficit) After Identified Competing Claims</b> |                 |                     |                            |                        |                     |                      |                  |                      |                  |                  |                   | <b>3,616,688</b>  |          |
| <b>GM Constructive Trust Settlement Per Court Order</b>       |                 |                     |                            |                        |                     |                      |                  |                      |                  |                  |                   | <b>3,200,000</b>  |          |
| "Frozen" Pre Petition Cash                                    | -               | 259,643             | 50,647                     | 702,905                | -                   | 452,877              | 632              | 12,916               | 209,124          | 100,866          |                   | 1,789,610         |          |
| USP Corp Claims   | (16,378)        | (56,113)            | (53,158)                   | (211,397)              | (30,384)            | (6,293)              | (17,962)         | (26,314)             | (60,460)         | (8,237)          |                   | (486,696)         | 5        |
|   | <b>(16,378)</b> | <b>203,530</b>      | <b>(2,511)</b>             | <b>491,508</b>         | <b>(30,384)</b>     | <b>446,584</b>       | <b>(17,330)</b>  | <b>(13,398)</b>      | <b>148,664</b>   | <b>92,629</b>    | <b>Pos Totals</b> | <b>1,382,915</b>  |          |

1. Unapplied cash per Jan'09 analysis received from GMAC. Estimated unapplied amt per GMAC as of 6-1-09.
2. For this analysis, assumed CB&T entitled to 100% of inventory proceeds (worst case).
3. GM may have damage and preference claims to offset amounts paid on the GM Open Account and/or on the Constructive Trust agreement.
4. Other claims may include warranty providers, other retail lenders (unpaid trade in claims) or other claims on cash proceeds received by dealerships.
5. USP Corp claims are for warranty contract proceeds collected from retail customers, allegedly not remitted to USP
6. Analysis does not include pending spare parts proceeds from Columbus truck operation for approx 336,000, which is has undisputed lien by CB&T.

**BHE**  
**Alphera Floor Plan Locations**  
**As of June 1, 2009**

|   | <u>Sold</u>      | <u>Sold</u>       | <u>Closed/Auction</u> | <u>Total</u>     | <u>Sugarland RE</u> |              |
|---|------------------|-------------------|-----------------------|------------------|---------------------|--------------|
|   | <u>Sugarland</u> | <u>Plant City</u> | <u>Union City</u>     | <u>Alphera</u>   | <u>20th Century</u> | <u>Notes</u> |
| <b>Estimated Loan Deficit</b><br>(Subject to Final Expenses)  |                  |                   |                       | <b>1,417,405</b> |                     |              |
| <b>Burr Forman Escrow:</b>                                    |                  |                   |                       |                  |                     |              |
| FF&E Sales  | 2,272,962        | 816,881           | -                     | 3,089,843        |                     |              |
| Real Estate Sale  |                  |                   |                       | -                | 1,496,911           |              |
| Net Bal Bef Competing Claims                                  |                  |                   |                       | 4,507,248        | 1,496,911           |              |
| Mass Mutual   |                  |                   |                       |                  |                     |              |
| Est FMV   | (50,000)         | (30,000)          |                       | (80,000)         |                     |              |
| Gross Claim   | (56,672)         | (35,649)          |                       |                  |                     |              |
| DDL   |                  |                   |                       |                  |                     |              |
| Est FMV   | (12,500)         | (15,000)          |                       | (27,500)         |                     |              |
| Gross Claim   | (17,762)         | (19,880)          |                       |                  |                     |              |
| Wells   |                  |                   |                       |                  |                     |              |
| Est FMV   | (400,000)        |                   |                       | (400,000)        |                     |              |
| Gross Claim   | (1,163,601)      |                   | -                     |                  |                     |              |
| GM  | ??               | ??                | ??                    | ??               |                     |              |
| Contingency/Unknown Est                                       | ??               | ??                | ??                    | ??               |                     |              |
| <b>Net Surplus(Deficit) After Identified Competing Claims</b> |                  |                   |                       | <b>3,999,748</b> |                     |              |
| GM Constructive Trust Settlement Per Court Order              |                  |                   |                       | ??               |                     |              |
| "Frozen" Pre Petition Cash                                    | 1,306,631        | 439               |                       | 1,307,070        |                     |              |
| Chase Retail Claims ??  | (400,000)        |                   |                       | (400,000)        |                     | 1            |
| USP Corp Claims ??  | ??               | ??                | ??                    | ??               |                     | 2            |
|   | <b>906,631</b>   | <b>439</b>        | <b>-</b>              | <b>907,070</b>   |                     |              |

- Note:**
1. Chase claim represents potential claim for damages from certain retail contracts.
  2. USP Corp claims are for warranty contract proceeds collected from retail customers, allegedly not remitted to USP

**BHE**  
**Chase Floor Plan Location**  
**As of June 1, 2009**

**Closed**

**Scottsdale**

|  |                        |
|--|------------------------|
| Chase Estimated Balance                            | (71,472)               |
| Remaining Assets:                                  |                        |
| Burr Forman Escrow:                                |                        |
| GM Open Account                                    | 83,922                 |
| Parts Return                                       | <u>295,004</u>         |
|  | <u>378,926</u>         |
| <br>   |                        |
| Net Chase Surplus(Deficit)                         | <b>307,454</b>         |
| <br>   |                        |
| Autostar   | (307,454)              |
| GM   | <u>??</u>              |
| <br>   |                        |
| <b>Net Surplus(Deficit) After Competing Claims</b> | <b><u><u>-</u></u></b> |
| <br>   |                        |
| "Frozen" Pre Petition Cash                         | 120,546                |
| USP Corp Claims ??                                 | <u>(?)</u>             |
|  | <u><u>120,546</u></u>  |



**BHE**  
**Corporate**  
**As of June 1, 2009**

|   |                                  |
|---|----------------------------------|
| Operating Cash Account:                       |                                  |
| General                                       | 358,518                          |
| Colonial Bank Account                         | 510,097                          |
| Asset Proceeds Account                        | 125,616                          |
| Reserved for final Sugarland expenses         | 67,564                           |
| Reserved for final 20th Century expenses      | <u>128,918</u>                   |
|   | 196,482                          |
| Less potential payable for Sugarland location | <u>(196,482)</u>                 |
|   | <u>-</u>                         |
| <br>BHE Unencumbered Cash                     | <br><b><u><u>994,231</u></u></b> |

**EXHIBIT E**

**Exhibit E**

**CHART OF ASSET SALES OF DEBTORS' DEALERSHIPS**

Bill Heard Enterprises  
Dealership Sales

| Date of Closing                                      | Date of Approving Order                        | Real Estate Sales Price | Fixed Assets Sale Price | Good Will & Intangibles Sales Price | Name of Real Property Seller          | Name of Dealership Seller                                | Location of Dealership                         |
|--|--|-------------------------|-------------------------|-------------------------------------|---------------------------------------|--|--|
| 12/3/2008  | 12/1/08  | \$10,000,000.00         | \$592,065.00            | \$1,000.00                          | Eagle Land Company, LLC               | Bill Heard<br>Chevrolet, Inc.<br>Collierville            | 4605 Houston Levee,<br>Collierville, TN        |
| 12/10/2008<br>(Closed)<br>12/11/2008<br>(Funded)     | 11/14/08                                       | n/a                     | \$2,726,948.80          | \$2,793,066.00                      | n/a                                   | Bill Heard<br>Chevrolet<br>Corporation-N.W.<br>Las Vegas | 5501 Deroxel Road, Las Vegas,<br>NV            |
| 12/17/2008   | 11/14/2008 (APA)<br>and 12/15/2008<br>(REC)    | \$15,000,000.00         | \$814,000.00            | \$1,000.00                          | Eagle Land Company-<br>Florida, LLC   | Bill Heard<br>Chevrolet Plant<br>City                    | 2002 N. Frontage Road, Plant<br>City, FL       |
| 12/17&18/ 2008<br>(Closed)<br>12/19/2008<br>(Funded) | 12/2/2008 (initial)<br>12/16/2008<br>(amended) | \$11,488,500.00         | \$1,000,000.00          | \$1,000.00                          | Twentieth Century Land<br>Corporation | Bill Heard<br>Chevrolet<br>Company                       | 3615 N. Manchester<br>Expressway, Columbus, GA |
| 12/19/2008   | 11/14/2008                                     | n/a                     | n/a                     | n/a                                 | n/a                                   | Bill Heard<br>Chevrolet at<br>Town Center                | 950 Barrett Parkway,<br>Kennesaw, GA           |
| 2/20/2009  | 11/14/2008 (initial)<br>2/19/2009<br>(amended) | \$11,000,000.00         | \$1,470,000.00          | \$800,000.00                        | Twentieth Century Land<br>Corporation | Bill Heard<br>Chevrolet, Ltd.                            | 13115 S.W. Freeway, Sugar<br>Land, TX          |
| 3/2/2009 (Closed)<br>3/4/2009 (Funded)               | 12/19/2008                                     | \$6,000,000.00          | \$441,829.44 *          | \$1,000.00                          | Century Land<br>Corporation           | Bill Heard<br>Chevrolet, Inc. -<br>Huntsville            | 4930 University Drive N.W.,<br>Huntsville, AL  |

FF&E price net of \*  
personal property tax lien  
(REC \$500,000)

## EXHIBIT F

### POTENTIAL CAUSES OF ACTION

This Exhibit F (which is incorporated into Section VIII.D of the Plan and into certain definitions in the Plan) is a nonexclusive list and attempt to identify certain Persons against whom the Debtors, may have Causes of Action or Avoidance Actions, but against whom the Debtors have or have not commenced legal proceedings because the Causes of Action or Avoidance Actions with respect to such Persons are not fully developed either factually or legally. Investigations concerning potentially responsible parties are ongoing, and additional Persons and Causes of Action and Avoidance Actions may be identified in the future as facts are developed. This Exhibit is therefore not a complete list of all Causes of Action and Avoidance Actions that the Debtors may have. Accordingly, no Person may rely on the fact that the Plan, Disclosure Statement and accompanying exhibits and schedules do not identify a particular Person, Avoidance Action or Cause of Action, and the fact that such particular Person, Avoidance Action or Cause of Action is not identified in the Plan, Disclosure Statement and the accompanying exhibits or schedules do not constitute a waiver of any Avoidance Action or Cause of Action by the Debtors or the Liquidating Trustee. The Debtors expressly reserve and retain all Avoidance Actions and Causes of Action.

The Debtors, and therefore the Liquidating Trustee, may have Causes of Action or Avoidance Actions, including but not limited to, under state, federal or local law, for such theories as breach of contract, breach of fiduciary duty, breach of agency, breach of duty of loyalty, breach of duty of good faith and fair dealing, breach of trust, malpractice, negligence, negligent or intentional misrepresentation, fraud, conversion, unjust enrichment, fraudulent schemes or practices, fraudulent transfer, aiding and abetting breach of fiduciary duty, lender liability, subordination, common law fraud, or intentional torts,<sup>10</sup> against any and all Persons, including the following Persons, their predecessors, successors, assigns and affiliated parties or entities, officers, directors, employees, brokers, representatives and agents:

ADP, Inc. Dealer Services Group

ADP Commercial Leasing, LLC

Edward Allen

Alphera Financial Services, a division of BMW Financial Services NA, LLC

Billy Altstatt

AmeriCredit Financial Services, Inc.

Andy Kessner

Astar Finance LLC

Astar Finance Falcon II, LLC

Autofair Investors, LP

Autofair Realty, LP

AXIS Reinsurance Company

Paul Baker

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<sup>10</sup> A general cause of action shall deemed to include a more specific cause of action and a specific cause of action shall be deemed to include its more general cause of action.

[Bank One, N.A.](#)  
[Bill Heard Property, Inc. – Colonial Drive](#)  
[Laura Brummett](#)  
[Burr & Forman LLP](#)  
[Casualty Insurance, Ltd.](#)  
[Laura A. Chaffin](#)  
[Dave Chidester](#)  
[Cisco System Capital Corporation](#)  
[Citicorp Vendor Finance, Inc.](#)  
[John C. Clark](#)  
[Henry Colotta](#)  
[Columbus Bank & Trust](#)  
[Comerica Bank](#)  
[Coventry Healthcare, Inc.](#)  
[Zac Cypert](#)  
[De Lage Landen Financial Services](#)  
[Development Specialists, Inc.](#)  
[Drive-Time](#)  
[Dixon Hughes PLLC](#)  
[William K. Durand](#)  
[Eagle Land Company, LLC](#)  
[Eagle Land Manager, Inc.](#)  
[Eagle Land Manager Florida, Inc.](#)  
[Falcon Financial II, LLC](#)  
[Ronald Feldner](#)  
[First Commercial Bank of Huntsville](#)  
[Pete Fisher](#)  
[Fisher & Phillips, LLP](#)  
[GE Commercial Finance Business Property Corporation](#)  
[General Electric Capital Corporation](#)  
[General Motors](#)  
[Karen Glisson](#)  
[GMAC, LLC](#)  
[Hatcher Stubbs](#)  
[Edward B Heard](#)  
[William T. Heard, Jr.](#)  
[William T. Heard, III](#)  
[Michael Hegert](#)  
[Stephen Heise](#)  
[Howard Herman](#)  
[Bradley Hickman](#)  
[Honda Finance](#)  
[Rick Hovind](#)  
[HSBC Bank, N.A.](#)  
[Earl Hudson](#)  
[Interstate Billing Service, Inc.](#)

[Bobby D. Johnson](#)  
[James F. Johnson](#)  
[J.P. Morgan Chase Bank, NA](#)  
[Joezel Kennerly, Jr.](#)  
[Kilpatrick Stockton LLP](#)  
[Landmark I-45, Inc.](#)  
[Don Macbeth](#)  
[MassMutual Asset Finance LLC](#)  
[Bill Mastroianni](#)  
[Carl Mauldin](#)  
[Jim Mesne](#)  
[Najjar Denaburg, P.C.](#)  
[National Car Credit, Inc.](#)  
[Navistar Financial Corporation](#)  
[Nelson Neal](#)  
[The Official Committee of Unsecured Creditors of Bill Heard Enterprises, Inc., et al.](#)  
[Parts Distributors, Inc.](#)  
[Jerry Patterson](#)  
[Pima Federal Credit Union](#)  
[Pima Road Company, LLC](#)  
[Peoples Bank & Trust](#)  
[Mike Raines](#)  
[Regions Bank](#)  
[Regions Interstate Billing Service, Inc.](#)  
[James Robinson](#)  
[John Smith](#)  
[SunTrust Bank](#)  
[Synovus Trust](#)  
[Joseph Triola](#)  
[United Service Protection Corporation](#)  
[United Service Protection, Inc.](#)  
[J. Barrington Vaught](#)  
[Wachovia Bank, NA](#)  
[Joe Wagner](#)  
[Wells Fargo Equipment Finance, Inc.](#)  
[Wholesale Parts, Inc.](#)  
[Grady Woodliff](#)  
[Bonnie Wrana](#)  
[Phillip Wright](#)  
[Richard Young](#)

[In addition to the foregoing, the Debtors, and therefore, the Liquidating Trustee may have Avoidance Actions against any Person that appears on any of the Debtors' Statement of Financial Affairs as having received a payment or transfer within 90 days immediately preceding the Petition Date and against Insiders who received a payment or transfer from the Debtors within one year prior to the Petition Date.](#)

Any and all claims, Causes of Action, rights of action, suits, and proceedings in favor of the Debtors or their Estates against and their affiliates and subsidiaries

The Debtors reserve their right to modify this list to amend, add or remove parties or otherwise update this list, but disclaim any obligation to do so.

~~**[TO BE FILED PRIOR TO HEARING ON DISCLOSURE STATEMENT]**~~



**EXHIBIT G**

**WARN SETTLEMENT AGREEMENT**

*Kettell v. Bill Heard Enterprises, Inc. et al* (Adv. Pro. No. 08-80153), pending in the United States Bankruptcy Court for the Northern District of Alabama

**SETTLEMENT TERM SHEET**

**1. Subject to Client Approval.** All terms set forth herein are subject to approval of each of the parties listed below.

**2. Parties**

- a. Adam Kettell, as Named Plaintiff and Settlement Class Representative
- b. Bill Heard Enterprises, Inc. *et al.* (the “Debtors”)
- c. The Official Committee of Unsecured Creditors of Bill Heard Enterprises, Inc. and Related Debtors

**3. Plan of Liquidation.** The terms of the settlement will be embodied in the terms of a Chapter 11 Liquidating Plan (the “Plan”) to be filed in the case of Bill Heard Enterprises, Inc. (Case No. 08-83029), pending in the United States Bankruptcy Court for the Northern District of Alabama on or about June 19, 2009.

**a. Substantive Consolidation.** The Plan shall propose substantive consolidation.

**4. Treatment of WARN Act Claims under the Plan of Liquidation.**

a. All claims under section 507(a)(1) through (3) of the Bankruptcy Code, which include administrative expenses, as well as individual non-WARN Act priority section 507(a)(4) wage claims, shall have priority over the WARN Act claims.

b. The “WARN Settlement Class” shall consist of the individuals appearing on the employee lists sent to Kettel’s counsel in the WARN litigation by the Debtors, regardless of whether they have filed individual proofs of claim and other individuals subsequently agreed by counsel for the parties to be in the Settlement Class (hereinafter the “WARN Settlement Class”); provided, that no such person who worked for a Debtor for 60 calendar days after the September 24, 2008 layoffs shall be entitled to recover.

c. All WARN Settlement Class Members shall be paid on their WARN claims in accordance with section 507(a)(4) of the Bankruptcy Code, subject to the following:

i. With respect to any distribution under the Plan to unsecured creditors to which the WARN Settlement Class would be entitled to receive as claimants under section

507(a)(4) of the Bankruptcy Code, the WARN Settlement Class agrees that it will receive 67.5% of any such distribution and the remaining 32.5% of such distribution shall be paid to creditors with priority claims under sections 507(a)(5) through (a)(7) of the Bankruptcy Code and general unsecured creditors (including WARN Settlement Class members holding non-priority WARN claims and/or other allowed general unsecured claims); provided, however, that once the WARN Settlement Class has received \$8.25 million in distributions toward their priority WARN claims, the WARN Settlement Class shall then receive 50% of any distribution under the Plan and 50% shall be paid to creditors with priority claims under sections 507(a)(5) through (a)(7) of the Bankruptcy Code and general unsecured creditors (including WARN Settlement Class members holding non-priority WARN claims and/or other allowed general unsecured claims) . The first \$20,000 of any distribution to the WARN Settlement Class shall be paid to Adam Kettell and Edward Kratzel, as Settlement Class Representatives, in addition to their WARN claims, for their services in this matter. No attorney fees will be withheld from these service payments. The WARN Settlement Class agrees that non-WARN priority wage claims under section 507(a)(4) of the Bankruptcy Code shall be paid in full prior to any distribution to the WARN Settlement Class.

ii. All priority WARN payments made to WARN Settlement Class members shall be in proportion to their maximum priority WARN claim minus any other non-WARN priority payment under section 507(a)(4) of the Bankruptcy Code made to such claimant. The amount of each Settlement Class Member's WARN claim shall be calculated in accordance with the WARN Act and based upon debtors' books and records and the portion of such claim entitled to priority shall be based upon Debtors books and records and subject to challenge by any member of the WARN Settlement Class through a procedure which shall be set forth in the Plan.

iii. Any WARN Settlement Class member's claim that is in excess of the claimants' statutory cap under section 507(a)(4) of the Bankruptcy Code shall be treated as a general unsecured claim.

5. Morris Conchin & King , P.C., The Gardner Firm, P.C. and Lankenau & Miller, LLP, shall serve as Settlement Class counsel and shall be entitled to one third of each distribution made to the Settlement Class on their WARN claims, plus reimbursement of out of pocket expenses, from such distributions and at the time such distribution is made.

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