

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

_____)	Chapter 11
In re:)	
_____)	Case No. 06-10578 (KJC)
WERNER HOLDING CO. (DE), INC., et al.,)	
_____)	(Jointly Administered)
Debtors.)	
_____)	

**FIRST AMENDED LIQUIDATING PLAN PURSUANT TO CHAPTER 11
OF THE UNITED STATES BANKRUPTCY CODE FILED BY THE
OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

DATED ~~JUNE 19~~, SEPTEMBER 10, 2007

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**FIRST AMENDED LIQUIDATING PLAN PURSUANT TO
CHAPTER 11 OF THE
UNITED STATES BANKRUPTCY CODE**

Pursuant to title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*, the Official Committee of Unsecured Creditors in the above-captioned and numbered cases, hereby respectfully proposes the following First Amended Liquidating Plan under Chapter 11 of the Bankruptcy Code (as defined):

ARTICLE I

**DEFINED TERMS, RULES OF INTERPRETATION,
COMPUTATION OF TIME AND GOVERNING LAW**

A. *Rules of Interpretation, Computation of Time and Governing Law*

1. For purposes herein: (a) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, instrument, release, indenture 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 herein to an existing document or exhibit Filed, or to be Filed, shall mean such document or exhibit, as it may have been or may be amended, modified or supplemented; (d) unless otherwise specified, all references herein to Sections and Articles are references to Sections and Articles hereof or hereto; (e) the words “herein,” “hereof” and “hereto” refer to the Plan in its entirety rather than to a particular portion of the Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; and (h) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to such term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be.

2. In computing any period of time prescribed or allowed hereby, the provisions of Fed. R. Bankr. P. 9006(a) shall apply.

3. Except to the extent that the Bankruptcy Code or Bankruptcy Rules apply, and subject to the provisions of any contract, instrument, release, indenture or other agreement or document entered into in connection herewith, the rights and obligations arising hereunder shall be governed by, and construed and enforced in accordance with, the laws of the State of Pennsylvania without giving effect to the principles of conflict of laws thereof.

B. *Proponent of Plan*

The Committee is the proponent of the Plan. Article IV contains the classification and treatment of Claims and Equity Interests against the Debtors.

C. *Defined Terms*

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. “Additional Funding Stipulation” means that certain Stipulation Regarding Additional Wind-Down Funding; Order Thereon. A copy of the Additional Funding Stipulation is annexed to the Disclosure Statement as Exhibit III.

2. ~~1.~~ “Administrative Claim” means a Claim under section 503(b), 507(a)(2) or 1114(e)(2) of the Bankruptcy Code, including, but not limited to: (i) the actual and necessary costs and expenses incurred after the Petition Date of preserving the Estates and operating the businesses of the Debtors; (ii) Allowed Professional Fee Claims and all other Claims for compensation for legal, financial advisory, accounting and other services and reimbursement of expenses awarded or allowed under sections 328, 330(a), 331 or 363 of the Bankruptcy Code or otherwise for the period commencing on the Petition Date and ending on the Confirmation Date; ~~and~~ (iii) the Wind-Down Administrative Claims; and (iv) all fees and charges assessed against the Estates under 28 U.S.C. §1930, but shall not include any DIP Facility Claims, First Lien Claims or Second Lien Claims.

3. ~~2.~~ “Administrative Claim Bar Date” means July 9, 2007.

4. ~~3.~~ “Administrative Claim Bar Date Order” means that certain Order Establishing Final Date To File Requests For Allowance Of Administrative Expense Claims And Approving The Form And Manner Of Notice Thereof, which was entered by the Bankruptcy Court on June 14, 2007.

~~4. “ADR Procedures” means the alternative dispute resolution procedures included in the Plan Supplement established for the purpose of resolving and liquidating Tort Claims.~~

5. “Affiliate” means, with respect to the Debtors or any other Entity, an affiliate as defined in section 101(2) of the Bankruptcy Code.

6. “Allowed” means, with respect to Claims or Equity Interests, (i) any Claim against or Equity Interest in a Debtor, proof of which is timely Filed, or by order of the Bankruptcy Court is not or will not be required to be Filed, (ii) any Claim or Equity Interest that has been or is hereafter listed in the Schedules as neither disputed, contingent or unliquidated, and for which no timely proof of Claim has been Filed, or (iii) any Claim Allowed pursuant to the Plan or by a Final Order of the Bankruptcy Court; provided, however, with respect to any Claim or Equity Interest described in clauses (i) or (ii) immediately above, such Claim or Equity Interest shall be Allowed only if ~~(xv)~~ no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy

Rules or the Bankruptcy Court or (yx) such an objection is so interposed and the Claim or Equity Interest shall have been Allowed by a Final Order (but only if such allowance was not solely for the purpose of voting to accept or reject the Plan); and *further provided* that ~~no(y) no~~ Administrative Claim, Claim or Equity Interest that is an Assumed Liability shall be Allowed for purposes of voting or distribution under the Plan or Liquidation Trust unless such distribution is to be made by the Buyer or with funds provided by the Buyer, and (z) no Administrative Claim, Claim or Equity Interest shall be Allowed to the extent that the Holder thereof is subject to any pending or preserved claim, Cause of Action, or right of setoff or recoupment by the Debtors, the Estates or the Liquidation Trust, and such claim, Cause of Action, or right of setoff or recoupment has not been resolved in favor of such Holder pursuant to a Final Order. Except as otherwise specified in the Plan or a Final Order of the Bankruptcy Court, the amount of an Allowed Claim shall not include interest on such Claim from and after the Petition Date.

7. “*Asset Purchase Agreement*” means that certain Asset Purchase Agreement dated as of March 20, 2007 among Werner Holding Co. (DE), Inc. and certain of its Affiliates and New Werner Holding Co. (DE), LLC, BDCM Opportunity Fund II, L.P., BDC Finance, L.L.C. and Brencourt BD, LLC, as amended and supplemented and as approved by the Sale Order. A copy of the Asset Purchase Agreement is attached as Exhibit A to the Sale Order, which is annexed to the Disclosure Statement as Exhibit ~~IV~~V.

8. “*Assumed Liabilities*” means the Assumed Liabilities as defined in the Asset Purchase Agreement and as provided in the Sale Order, including, without limitation, payment of the Allowed Wind-Down Administrative Claims up to the Wind-Down Amount.

9. “*Ballot*” or “*Ballots*” mean the ballots accompanying the Disclosure Statement upon which Holders of Impaired Claims entitled to vote shall indicate their acceptance or rejection of the Plan in accordance with the Plan and the Voting Instructions.

10. “*Balloting Agent*” means Kurtzman Carson Consultants LLC, whose offices are maintained at 12910 Culver Blvd., Suite I, Los Angeles, California 90066.

11. “*Bankruptcy Code*” means title 11 of the United States Code and applicable portions of titles 18 and 28 of the United States Code.

12. “*Bankruptcy Court*” means the United States Bankruptcy Court for the District of Delaware, or any other court having jurisdiction over the Chapter 11 Cases.

13. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure, as amended from time to time, as applicable to the Chapter 11 Cases, promulgated under 28 U.S.C. § 2075 and the General, Local and Chambers Rules of the Bankruptcy Court, as amended from time to time.

14. “*Beneficial Holder*” means the Person or Entity holding the beneficial interest in a Claim or Equity Interest.

15. “*Beneficiaries*” means the Holders of the Allowed Non-Wind-Down Administrative Claims, Allowed Priority Tax Claims, Allowed Other Priority Claims, the

LLCP Second Lien Claim, Allowed General Unsecured Claims, or the Allowed Jefferies ~~Transaction Fees and Allowed Rothschild~~ Transaction Fees.

16. “*Bid Sponsors*” means Black Diamond, Brencourt, TCW, Schultze, and the LLCP Entities.

17. “*Black Diamond*” means BDCM Opportunity Fund II, L.P. and BDC Finance, L.L.C., together with their respective Affiliates, successors and assigns.

18. “*Brencourt*” means Brencourt BD, LLC, together with its Affiliates, successors and assigns.

19. “*Budget*” means the Budget attached to the Additional Funding Stipulation approved by the Bankruptcy Court.

20. ~~19.~~ “*Business Day*” means any day, other than a Saturday, Sunday, “legal holiday” (as defined in Fed. R. Bankr. P. 9006(a)) or any other day on which commercial banks in New York, New York are required or are authorized to close by law or executive order.

21. ~~20.~~ “*Buyer*” means New Werner Holdings Co (DE), LLC, a Delaware limited liability company, or such other Buyer as defined in the Asset Purchase Agreement.

22. ~~21.~~ “*Cash*” means legal tender of the United States of America or the equivalent thereof, including bank deposits and checks.

23. ~~22.~~ “*Cash Consideration*” means the Cash Consideration as defined in the Asset Purchase Agreement and as provided in the Sale Order.

24. ~~23.~~ “*Causes of Action*” means all Claims, actions, causes of action, choses in action, suits, debts, dues, damages, judgments, third-party claims, counterclaims, and crossclaims (including, but not limited to, all claims arising under state, federal or other non-bankruptcy law, and any avoidance, recovery, subordination or other actions against insiders and/or any other Persons or Entities under the Bankruptcy Code, including sections 506, 510, 542, 543, 544, 545, 547, 548, 549, 550, 551, and 553 of the Bankruptcy Code or otherwise) of the Debtors or any Debtor, the Estates or any Estate (including, but not limited to, those actions described in Article XII hereof) that are or may be pending or existing on the Effective Date against any Person or Entity, based in law or equity, including, but not limited to, under the Bankruptcy Code, whether direct, indirect, known or unknown, derivative, or otherwise and whether asserted or unasserted as of the date of entry of the Confirmation Order, and including the Unknown Causes of Action. Causes of Action do not include any such actions included in the Purchased Assets or any such actions that have been or are released under the Stipulation or the Plan.

25. ~~24.~~ “*Chapter 11 Cases*” means the chapter 11 cases styled *In re Werner Holding Co. (DE), Inc., et al.*, Case Number 06-10578-KJC (Jointly Administered), pending in the Bankruptcy Court.

26. ~~25.~~ “*Claim*” means a claim (as defined in section 101(5) of the Bankruptcy Code).

27. ~~26.~~ “*Claims Objection Deadline*” means five years after the Effective Date, or such later date as may be ordered by the Bankruptcy Court.

28. ~~27.~~ “*Class*” means a category of Holders of Claims or Equity Interests as set forth in Article IV herein.

29. ~~28.~~ “*Committee*” means the Official Committee of Unsecured Creditors constituted in the Chapter 11 Cases.

30. ~~29.~~ “*Committee Members*” means the current and former members of the Committee, each in their capacity as a member of the Committee.

31. ~~30.~~ “*Confirmation*” means the entry on the docket by the Clerk of the Bankruptcy Court of the Confirmation Order, subject to all conditions specified in Article X.A herein having been satisfied or waived pursuant to Article X.C herein.

32. ~~31.~~ “*Confirmation Date*” means the date upon which the Confirmation Order is entered by the Bankruptcy Court on its docket, within the meaning of Fed. R. Bankr. P. 5003 and Fed R. Bankr. P. 9021.

33. ~~32.~~ “*Confirmation Hearing*” means the hearing at which the Bankruptcy Court considers entry of the Confirmation Order.

34. ~~33.~~ “*Confirmation Order*” means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

35. ~~34.~~ “*Creditor*” means any Holder of an Allowed Claim.

36. ~~35.~~ “*Creditor Representative*” means the Committee Member selected by the Committee to serve as Creditor Representative under the Liquidation Trust Agreement, or any successor thereto.

37. ~~36.~~ “*Debtors*” or “*Debtors-in-Possession*” means Werner Holding Co. (DE), Inc., Werner Holding Co. (PA), Inc., Werner Co. and WIP Technologies, Inc. as debtors-in-possession in the Chapter 11 Cases.

38. ~~37.~~ “*DIP Credit Agreement*” means the Superpriority Debtor in Possession Credit and Guaranty Agreement, dated as of June 14, 2006, among the Debtors, the lenders from time to time a party thereto, and Black Diamond Commercial Finance, L.L.C., as Administrative, Collateral and Documentation Agent and Sole Bookrunner and Lead Arranger, and all attendant notes, instruments, agreements and other documents that Debtors were authorized to enter into by the Bankruptcy Court, all as amended, modified or supplemented from time to time.

39. ~~38.~~ “*DIP Facility Claims*” means any and all Claims of the DIP Lenders derived from, arising under or based upon the DIP Credit Agreement and/or the Final DIP Order.

40. ~~39.~~ “*DIP Financing Payoff Amount*” means the DIP Financing Payoff Amount as provided in the Asset Purchase Agreement.

41. ~~40.~~ “*DIP Lenders*” means the financial institutions and other non-Debtor Entities party to the DIP Credit Agreement from time to time, including, without limitation, Black Diamond Commercial Finance, L.L.C., The CIT Group/Business Credit, Inc., and Morgan Stanley Senior Funding, and any and all of their successors and assigns, and any other Entity holding or asserting, directly or indirectly, a DIP Facility Claim.

42. ~~41.~~ “*Director*” means the Liquidation Trustee prior to the Effective Date.

43. ~~42.~~ “*Disclosure Statement*” means the Disclosure Statement for the Plan dated ~~June 13,~~ September 10, 2007, as amended, supplemented, or modified from time to time, describing the Plan, that is prepared and distributed in accordance with sections 1125, 1126(b) and/or 1145 of the Bankruptcy Code and Bankruptcy Rule 3018 and/or other applicable law.

44. ~~43.~~ “*Disputed*” means, with respect to any Claim or Equity Interest, as of the date of determination, any Claim or Equity Interest: (a) listed on the Schedules as unliquidated, disputed or contingent, unless and until it is Allowed pursuant to an order that is a Final Order; (b) as to which any Debtor or any other party-in-interest has Filed a timely objection or request for estimation in accordance with the Bankruptcy Code and the Bankruptcy Rules, which objection or request for estimation has not been withdrawn or determined by a Final Order; (c) as to which the deadline for filing objections has not passed (whether or not an objection has been filed), unless and to the extent such Claim or Equity Interest has been Allowed pursuant to an order that is a Final Order; or (d) that is otherwise disputed by any of the Debtors, the Liquidation Trustee or any other party in interest, or is subject to any right of setoff or recoupment, or the Holder thereof is subject to any Claim or Cause of Action, in accordance with applicable law, which dispute, right of setoff or recoupment, Claim or Cause of Action, has not been withdrawn or determined in favor of such Holder by a Final Order.

45. ~~44.~~ “*Effective Date*” means the date which is the first Business Day after the Confirmation Date on which: (a) no stay of the Confirmation Order is in effect, and (b) all conditions specified in Article X.B herein have been (x) satisfied or (y) waived pursuant to Article X.C herein.

46. ~~45.~~ “*Entity*” means an entity as defined in section 101(15) of the Bankruptcy Code.

47. ~~46.~~ “*Equity Interest*” means all equity interests in any of the Debtors, including, but not limited to, all issued, unissued, authorized or outstanding shares of stock together with any warrants, options or contract rights to purchase or acquire such interests at any time.

48. ~~47.~~ “*Estates*” means the collective estates of each of the Debtors created by section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Cases for each of the Debtors.

49. ~~48.~~ “*Excluded Assets*” means the Excluded Assets as defined in the Asset Purchase Agreement and as provided in the Sale Order.

~~49. — “*Excluded Liabilities*” means the Excluded Liabilities as defined in the Asset Purchase Agreement and as provided in the Sale Order.~~

50. “*Exculpated Parties*” means the Committee, the Committee Members and all officers, directors, employees, members, managers, partners (general and limited), attorneys, actuaries, financial advisors, accountants, investment bankers, agents, professionals and representatives of each of the foregoing (whether current or former, in each case in their capacity as such, and only if serving in one such capacity on the Petition Date or thereafter).

51. “*File*” or “*Filed*” means file or filed with the Bankruptcy Court in the Chapter 11 Cases.

52. “*Final Decree*” means the decree contemplated under Fed. R. Bankr. P. 3022.

53. “*Final DIP Order*” means that certain Final Order (I) *Authorizing Debtors (A) To Obtain Postpetition Financing Pursuant to 11 U.S.C. §§105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e), and (B) To Utilize Cash Collateral Pursuant to 11 U.S.C. §363; (II) Granting Liens, Security Interests And Superpriority Claims; and (III) Granting Adequate Protection To Prepetition Secured Parties Pursuant To 11 U.S.C. §§361, 362, 363 and 364* entered by the Bankruptcy Court in the Chapter 11 Cases and dated July 25, 2006.

54. “*Final Order*” means an order of the Bankruptcy Court (i) as to which the time to appeal, petition for certiorari or move for reargument, reconsideration or rehearing has expired and as to which no appeal, petition for certiorari or other proceedings for reargument, reconsideration or rehearing is pending; or (ii) if an appeal, writ of certiorari, reargument or rehearing thereof has been sought, such order has been affirmed by the highest court to which such order was appealed or from which certiorari was sought, reargument, reconsideration or rehearing has been denied or resulted in no modification of such order, and the time to take any further appeal, petition for certiorari or move for reargument, reconsideration or rehearing has expired; *provided, however*, that the possibility of a motion under Rule 59 or 60 of the Federal Rules of Civil Procedure or any analogous Bankruptcy Rule being Filed with respect to such order, shall not cause such order to be deemed a non-Final Order.

55. “*First Lien Claim*” means any and all Claims of the First Lien Lenders derived from, arising under or based upon the First Lien Documents and/or the Final DIP Order.

56. “*First Lien Documents*” means that certain Credit Agreement dated as of June 11, 2003 among Werner Holding Co. (DE), Inc., the several lenders from time to time party thereto, Citigroup Global Markets Inc., as Syndication Agent, J.P. Morgan Securities, Inc. and Citigroup Global Markets, Inc., as Joint Lead Arrangers and Joint Bookrunners, and JPMorgan Chase Bank (or any successor thereto), as Administrative Agent and Collateral Agent, and all attendant notes, instruments, agreements and other documents, as the same have been amended, modified or supplemented from time to time.

57. “*First Lien Lenders*” means the syndicate of financial institutions providing financing or otherwise participating in the First Lien Documents, any and all of their successors and assigns, and any other Entity holding or asserting, directly or indirectly, a First Lien Claim.

58. “*General Unsecured Claim*” means any Claim against any Debtor, including Tort Claims, the Claims of Subordinated Noteholders, the LLC Unsecured Claim and any deficiency Claims of the Second Lien Lenders under the Second Lien Documents, but not including any

Claim that is a/an (i) DIP Facility Claim, (ii) Administrative Claim, (iii) Priority Tax Claim, (iv) First Lien Claim, (v) LLC Second Lien Claim, (vi) Other Secured Claim, (vii) Other Priority Claim; or (viii) a deficiency ~~claims~~claim of any of the Bid Sponsors, whether under the First Lien Documents, Second Lien Documents, Final DIP Order or otherwise.

59. “*Governmental Unit*” has the meaning ascribed to it in section 101(27) of the Bankruptcy Code.

60. “*Holder*” means the Beneficial Holder of an Equity Interest or Claim.

61. “*Impaired*” means with respect to any Class of Claims or Equity Interests, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

62. “*Impaired Claim*” or “*Impaired Equity Interest*” means a Claim or Equity Interest, as the case may be, classified in an Impaired Class.

63. “*Indenture*” means that certain Indenture dated as of November 24, ~~2007~~1997, under which the Debtors issues the Subordinated Notes, as amended, supplemented or modified from time to time.

64. “*Indenture Trustee*” means Bank of New York, or any successor trustee thereof.

65. “*Insurance Policies*” means, collectively, all rights, interests and claims under or relating to, and all proceeds of, the Debtors’ insurance policies that are not otherwise Purchased Assets, including, without limitation: (i) the Employment Practices Liability Policy, Number 004925317, issued by National Union Fire Insurance Company of Pittsburgh, PA; (ii) the Private Edge Directors, Officers and Private Company Liability Insurance Policy, Number 004925306, issued by National Union Fire Insurance Company of Pittsburgh, PA; and (iii) the Employee Benefit Plan Fiduciary Liability Insurance, Number 006728737, issued by American Home Assurance Company.

66. “*Intercompany Claim*” means any Claim held by any direct or indirect subsidiary of any Debtors against any Debtor, or by any Debtor against any other Debtor.

67. “*Intercompany Interests*” means any and all Equity Interests of a Debtor or any subsidiary of a Debtor that are owned by any Debtor or any subsidiary of any Debtor as of the Record Date.

68. “*Jefferies Transaction Fees*” means any and all Allowed transaction and success fees, and all other compensation ~~that is not based on a monthly fee, expenses and reimbursement~~, payable to Jefferies & Company, Inc. that is not otherwise an Assumed Liability, in an amount as may be determined by a Final Order or otherwise agreed upon by the Committee.

69. “*Letter of Credit Amount*” means the Letter of Credit Amount as defined in the Asset Purchase Agreement.

70. “*Lien*” means any charge, lien, or encumbrance against, or interest in, property to secure payment of a debt or performance of an obligation, including a right of set off to secure payment of a debt or performance of an obligation.

71. “*Liquidation Trust*” means the trust to be created on the Effective Date in accordance with the Plan and the Liquidation Trust Agreement for the benefit of the Beneficiaries.

72. “*Liquidation Trust Agreement*” means the trust agreement, in form and substance satisfactory to the Committee and the LLCP Entities, that, among other things, creates and establishes the Liquidation Trust, describes the powers, duties and responsibilities of the Liquidation Trustee and Litigation Designee, provides for the liquidation and distribution of proceeds of the Liquidation Trust Assets, and describes the powers, duties and responsibilities of the Creditor Representative.

73. “*Liquidation Trust Assets*” means all assets of the Debtors and the Estates as of the Effective Date, including, without limitation, the Causes of Action, the Excluded Assets, the Insurance Policies, and all rights of setoff and recoupment and other defenses that the Debtors and the Estates may have with respect to Allowed Claims.

74. “*Liquidation Trustee*” means Charles A. Stanziale, Jr., or such other Person appointed by the mutual agreement of the Creditor Representative and LLCP, or as otherwise determined by the Bankruptcy Court.

75. “*Litigation Designee*” means LLCP, or such other Person designated by LLCP and identified in the Plan Supplement.

76. “*LLCP*” means Levine Leichtman Capital Partners III, L.P.

77. “*LLCP ~~Unsecured Claim~~Entities*” means ~~the Claims of LLCP arising under the Subordinated Notes, LLCP and Milk Street, and each of their respective Affiliates, successors and assigns.~~

78. “*LLCP Second Lien Claim*” means, collectively, the Second Lien Claims of the LLCP Entities, both in their individual capacity and as assignee of the Second Lien Claims of Arrow Distressed Securities Fund, BDCM Opportunity Fund II, L.P., Brencourt Distressed Securities Master, Ltd., Distressed Securities and Special Situations Fund, LLCP, Man Mac Schreckhorn 14B Ltd., Schultze Master Fund Ltd., TCW, and TCW Shared Opportunity Fund V, L.P., which Second Lien Claim is Allowed as an unsecured super-priority claim pursuant to section 507(b) of the Bankruptcy Code in the amount of \$96,910,583.88, plus all accrued interest thereon accruing until the date of payment, plus all other Allowed amounts entitled to priority under section 507(b) under the Final DIP Order which may be assigned to either or both of the LLCP Entities.

79. “*LLCP ~~Entities~~*” means ~~LLCP and Milk Street Investors LLC, and each of their respective Affiliates, successors and assigns.~~ *Unsecured Claim*” means the Claims of LLCP arising under the Subordinated Notes, which, subject to documentation acceptable to the Committee and the Debtors, shall be allowed in the amount of \$56,858,958.33.

80. “*Master Ballots*” mean the master ballots accompanying the Disclosure Statement upon which Holders of Impaired Claims or Impaired Equity Interests shall indicate their acceptance or rejection of the Plan in accordance with the Voting Instructions.

81. [“Milk Street” means Milk Street Investors LLC.](#)

82. [“Milk Street Additional Funding” has the meaning set forth in the Additional Funding Stipulation.](#)

83. [“Non-Wind-Down Administrative Claim” means any Administrative Claim that is \(i\) not a Wind-Down Administrative Claim, \(ii\) not a Claim based on the Jefferies Transaction Fees nor the Rothschild Transaction Fees, \(iii\) not an Assumed Liability, \(iv\) not a Claim paid or payable from the Second Lien Payment, or \(v\) not a Claim paid or payable from the Letter of Credit Amount component of the Cash Consideration.](#)

84. ~~81.~~ “*Official Bankruptcy Forms*” means the Official and Procedural Bankruptcy Forms, prescribed by the Judicial Conference of the United States, in accordance with Fed. R. Bankr. P. 9009.

85. ~~82.~~ “*Other Priority Claims*” means any and all Claims accorded priority in right of payment under section 507(a) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

86. ~~83.~~ “*Other Secured Claims*” means any and all Secured Claims other than the DIP Facility Claims, First Lien Claims, and Second Lien Claims.

87. ~~84.~~ “*Person*” means a person as defined in section 101(41) of the Bankruptcy Code.

88. ~~85.~~ “*Petition Date*” means June 12, 2006.

89. ~~86.~~ “*Plan*” means this [First Amended](#) Liquidating Plan pursuant to Chapter 11 of the Bankruptcy Code, together with all exhibits hereto, either in its present form or as it may be altered, amended, modified or supplemented from time to time in accordance with the terms hereof, the Bankruptcy Code and the Bankruptcy Rules.

90. ~~87.~~ “*Plan Supplement*” means the compilation of documents and form of documents, schedules and exhibits to be Filed on or before ten (10) days prior to the Voting Deadline and which may be amended from time to time until Confirmation.

~~88.—“Priority Non-Tax Claim” means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code other than a Priority Tax Claim.~~

91. ~~89.~~ “*Priority Tax Claim*” means a Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

92. ~~90.~~ “*Professional,*” or collectively “*Professionals*” means a Person or Entity employed pursuant to a Final Order in accordance with sections 327 and 1103 of the Bankruptcy

Code and to be compensated for services rendered prior to the Confirmation Date, pursuant to sections 327, 328, 329, 330 and 331 of the Bankruptcy Code, or for which compensation and reimbursement has been allowed by the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code.

93. ~~91.~~ “*Professional Fee Claims*” means all fees and expenses (including, but not limited to, transaction fees and success fees) for services rendered by Professionals in the Chapter 11 Cases.

94. ~~92.~~ “*Pro Rata*” means the proportion that an Allowed Claim in a particular Class bears to the aggregate amount of Allowed Claims in such Class.

95. ~~93.~~ “*Proof of Claim*” has the meaning ascribed to it in Fed. R. Bankr. P. 3001.

96. ~~94.~~ “*Proponent*” means the Committee.

97. ~~95.~~ “*Purchased Assets*” means the Purchased Assets as defined in the Asset Purchase Agreement and as provided in the Sale Order.

98. ~~96.~~ “*Record Date*” means ~~July 24,~~September 12, 2007, as the date to be established for the purpose of determining those Holders of Allowed Claims and Equity Interests that are entitled to vote to accept or reject this Plan.

99. ~~97.~~ “*Rothschild Transaction Fees*” means any and all Allowed transaction and success fees, and all other compensation ~~that is not based on a monthly fee,~~ expenses and reimbursement, payable to Rothschild Inc. that is not otherwise an Assumed Liability.

100. ~~98.~~ “*Sale Order*” means that certain order of the Bankruptcy Court dated April 25, 2007 approving, among other things, the Asset Purchase Agreement and authorizing the Debtors to sell the Purchased Assets to the Buyer in accordance therewith, together with the Order Correcting Scrivener’s Error Contained in Decretal Paragraph 15 of the Sale Order. A copy of the Sale Order is annexed to the Disclosure Statement as Exhibit ~~IV~~V.

101. ~~99.~~ “*Sale Transaction*” means the transaction evidenced by the Asset Purchase Agreement.

102. ~~100.~~ “*Schedules*” mean the schedules of assets and liabilities, schedules of executory contracts, and the statement of financial affairs that the Bankruptcy Court requires the Debtors to file pursuant to section 521 of the Bankruptcy Code, the Official Bankruptcy Forms and the Bankruptcy Rules, as they may be amended and supplemented from time to time.

103. ~~101.~~ “*Schultze*” means Schultze Master Fund, Ltd., Schultze Offshore Fund, Ltd., Schultze Partners, L.P. and Schultze Asset Management, LLC, and their respective Affiliates, successors and assigns.

104. ~~102.~~ “*Second Lien Claim*” means all Claims derived from, arising under or based upon the Second Lien Documents or the Final DIP Order, including, without limitation, all

Secured Claims, adequate protection claims, and claims under Section 507(b) of the Bankruptcy Code.

105. ~~103.~~ “*Second Lien Documents*” means that certain Credit Agreement dated as of May 10, 2005 among Werner Holding Co. (DE), Inc., the lenders thereto, Credit Suisse First Boston, as administrative agent, joint bookrunner and joint lead arranger, Morgan Stanley Senior Funding, Inc., as joint bookrunner and joint lead arranger, and the guarantees and other documents entered into in connection therewith, as any of such documents may have been amended, modified, supplemented or refinanced.

106. ~~104.~~ “*Second Lien Lenders*” means the syndicate of financial institutions providing financing or otherwise participating in the Second Lien Documents, any and all of their successors and assigns, and any other Person holding or asserting, directly or indirectly, a Second Lien Claim.

107. ~~105.~~ “*Second Lien Payment*” means the Second Lien Payment as defined in the Asset Purchase Agreement.

108. ~~106.~~ “*Secured Claim*” means (a) a Claim that is secured by a lien on property in which the Estate has an interest, which lien is valid, perfected and enforceable under applicable law or by reason of a Final Order, or that is subject to setoff under section 553 of the Bankruptcy Code, to the extent of the value of the Creditor’s interest in the Estate’s interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code, or (b) a Claim Allowed under this Plan as a Secured Claim.

109. ~~107.~~ “*Stipulation*” means that certain Stipulation Regarding Settlement of Certain Disputes and Objections, Creation of Litigation Trust and Funding, Management and Distributions With Respect to the Litigation Trust; Order Thereon dated as of April 23, 2007, which was approved by the Bankruptcy Court as part of the Sale Order. A copy of the Stipulation is annexed to the Disclosure Statement as Exhibit II.

110. ~~108.~~ “*Subordinated Notes*” means those unsecured 10% Senior Subordinated Notes due on or about November 15, 2007 that were issued by Werner Holding Co. (DE), Inc. under the Indenture.

111. ~~109.~~ “*Subordinated Noteholders*” means the Holders of the Subordinated Notes.

112. ~~110.~~ “*Substantive Consolidation Order*” means the Order of the Bankruptcy Court substantively consolidating the Estates (which may be part of the Confirmation Order).

113. ~~111.~~ “*TCW*” means TCW Shared Opportunity Fund V, L.P., TCW Shared Opportunity Fund IV, L.P., TCW Shared Opportunity Fund IVB, L.P., TCW/Drum Special Situation Partners, LLC, and TCW Shared Opportunity Fund III, L.P., together with their respective Affiliates, successors and assigns.

114. ~~112.~~ “*Tort Claims*” means any and all Claims against the Debtors, as of the Petition Date, asserting damages for personal injuries or property damage, which are not Assumed Liabilities.

115. ~~113.~~ “Trust Funding” shall have the meaning provided in Article VI of the Plan.

116. ~~114.~~ “Unimpaired” means, with respect to a Class of Claims or Equity Interests, a Claim or Equity Interest that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.

117. ~~115.~~ “Unimpaired ~~Classes~~ Class” means ~~Classes 1 and~~ Class 2, which ~~are~~ is not an impaired ~~Classes~~ Class within the meaning of section 1124 of the Bankruptcy Code.

118. ~~116.~~ “Unknown Causes of Action” has the meaning set forth in Article XII.B of the Plan.

119. ~~117.~~ “Voting Deadline” means ~~August 16,~~ October 15, 2007, the deadline to vote on the Plan.

120. ~~118.~~ “Voting Instructions” means the instructions for voting on the Plan contained in Article V of the Disclosure Statement and in the Ballots and the Master Ballots.

121. “Wind-Down Administrative Claims” means the Wind-Down Expenses (as defined in the Additional Funding Stipulation) in the aggregate amounts and for the time period as set forth in the Budget.

122. ~~119.~~ “Wind-Down Amount” means the Wind-Down Amount as defined in the Asset Purchase Agreement and as provided in the Sale Order.

ARTICLE II

SUBSTANTIVE CONSOLIDATION OF ASSETS AND LIABILITIES OF DEBTORS; CANCELLATION OF INTERCOMPANY CLAIMS

A. *Substantive Consolidation*

Pursuant to the Substantive Consolidation Order, upon the Effective Date, the Debtors’ Estates and all of the debts of all of the Debtors will be substantively consolidated for purposes of treating the Claims pursuant to Article IV hereof, including for voting, confirmation and distribution purposes. The entry of the Substantive Consolidation Order shall not be interpreted or enforced in any way so as to enhance any right, claim, lien, mortgage or security interest of any Holder of a Secured Claim. The Estates shall be substantively consolidated as of the Effective Date of the Plan. Nothing in the Substantive Consolidation Order shall: (i) alter the state of incorporation of any Debtor for purposes of determining the applicable law of any of the Causes of Action, (ii) alter or impair the legal and equitable rights of the Liquidation Trust to enforce any of the Causes of Action, or (iii) otherwise impair, release, discharge, extinguish or affect any of the Causes of Action or issues raised as a part thereof.

In the event that the Substantive Consolidation Order is not entered, then the Liquidation Trustee will use his or her best efforts to allocate distributions received on account of the LLC Second Lien Claim among the various Estates, and then make pro rata distributions to the

Holders of Allowed General Unsecured Claims of those Estates. In the event the Liquidation Trustee determines, in his or her discretion, that it is impossible or impractical to allocate distributions received on account of the LLC Second Lien Claim among the various Estates on an estate-by-estate basis, then any such distributions shall be distributed pro rata to all Holders of Allowed General Unsecured Claims, following ten (10) days' notice to the Creditor Representative, the LLC Entities and the United States Trustee.

B. *Cancellation of Intercompany Claims*

In the event the Estates are substantively consolidated, all Intercompany Claims and Intercompany Interests will be extinguished except as necessary to preserve the Causes of Action and the other Liquidation Trust Assets. Further, all Claims which lie or could lie against more than one Debtor will be Allowed, if at all, solely against the primary obligor, and any guarantee or cross-guarantee Claims against other Debtors are hereby extinguished.

ARTICLE III

UNCLASSIFIED CLAIMS AGAINST THE DEBTORS

A. *Administrative Claims*

1. Administrative Claims Bar Dates

Any request for allowance of an Administrative Claim that must be filed pursuant to the Administrative Claim Bar Date Order shall be Filed no later than the Administrative Claim Bar Date in accordance with the Administrative Claim Bar Date Order. **Any request for allowance of any other Administrative Claim, including, without limitation, Professional Fee Claims, and Administrative Claims accruing between June 9, 2007 and the Effective Date, shall be Filed no later than thirty (30) days after the Effective Date.** Any holder of an Administrative Claim who fails to file a timely request for the allowance of an Administrative Claim: (i) shall be forever barred, estopped and enjoined from asserting such Administrative Claim against the Debtors **or the Liquidation Trust Assets** (or filing a request for the allowance thereof), and the Debtors ~~and~~, their property **and the Liquidation Trust Assets** shall be forever discharged from any and all indebtedness or liability with respect to such Administrative Claim; and (ii) such holder shall not be permitted to participate in any distribution under the Plan on account of such Administrative Claim.

2. Wind-Down Administrative Claims

Except as otherwise set forth in the Plan, subject to the provisions of sections 328, 330(a) and 331 of the Bankruptcy Code, each Holder of an Allowed **Wind-Down** Administrative Claim shall be paid ~~by~~, **up to the aggregate amount set forth in the Budget for such Claim: (a) first, Cash from** the Buyer, on behalf of the Debtors, from the Wind-Down Amount ~~the full unpaid amount of such Allowed Administrative Claim in Cash (i) on the Effective Date or as soon thereafter as is practicable, (ii) if such Administrative Claim is Allowed, and (b) second, to the extent there are insufficient funds in the Wind-Down Amount to pay such Claim in full, Cash from the Milk Street Additional Funding until such Claim, up to the aggregate~~

amount set forth in the Budget for such Claim, is paid in full, subject to the provisions of the Additional Funding Stipulation.

The Wind-Down Amount shall be paid by the Buyer to such Holder and, notwithstanding any provision contained herein, payment of the Allowed Wind-Down Administrative Claims, up to the Wind-Down Amount, is and shall remain an Assumed Liability. Unless otherwise directed by the Proponent, the Buyer shall pay the Holders of Allowed Wind-Down Administrative Claims, as provided herein, as soon as is practicable following the deadline to file any such claims with the Bankruptcy Court and the time when the total amount of Allowed Wind-Down Administrative Claims can be determined. The Milk Street Additional Funding shall be paid by Milk Street or its designee, to such Holder, subject to the provisions of the Additional Funding Stipulation. Pursuant to the Additional Funding Stipulation, fees and expenses in excess of the aggregate amounts shown on the Budget shall be automatically disallowed and in no event shall be a liability of the Debtors, their estates, or the Liquidation Trust, unless those excess fees and expenses are authorized by the LLCP Entities.

3. Non-Wind-Down Administrative Claims and the Jefferies and Rothschild Transaction Fees

Except as otherwise set forth in the Plan and the Liquidation Trust Agreement, subject to the provisions of sections 328, 330(a) and 331 of the Bankruptcy Code, each Holder of an Allowed Non-Wind-Down Administrative Claim shall be paid Cash, as soon as is practicable after the Effective Date, ~~on the date such Administrative Claim is Allowed, or as soon thereafter as is practicable, or (iii) upon such other terms as may be agreed upon by such Holder and the Proponent or otherwise upon a Final Order of the Bankruptcy Court, provided, however, that~~ from the proceeds of the Liquidation Trust Assets, prior to any distribution of such proceeds on account of the Allowed Class 3 Claim, Priority Tax Claims and Other Priority Claims, but subject to (i) payment of the Liquidation Trust expenses, (ii) reserves for future Liquidation Trust expenses, and (iii) repayment obligations of the Liquidation Trust for Trust Funding,

Any Allowed Claim based on the Jefferies Transaction Fees shall either (i) receive Cash from the Liquidation Trust Assets on a first priority basis from the sharing distributions made to the Holders of Allowed Class 4 Claims from the Cash distributions made on account of the Allowed LLCP Second Lien Claim, or (ii) be treated as otherwise agreed by the Holder of such Claim, the Proponent and the LLCP Entities.

Any Allowed Claim based on the Rothschild Transaction Fees shall either: (i) be released and discharged against the Debtors, their property, the Wind-Down Amount and the Liquidation Trust Assets in exchange for a release from the Debtors, the Liquidation Trust and the LLCP Entities, from any and all claims, Causes of Action and liabilities, for any act or omission relating to the Debtors or the Chapter 11 Cases, or (ii) be treated as otherwise agreed by the Holder of such Claim, the Proponent and the LLCP Entities.

4. Assumed and Other Administrative Claims

Notwithstanding the foregoing provisions, any Administrative Claim, including a Professional Fee Claim, that is an Assumed Liability under Section 2.3 of the Asset Purchase Agreement shall be paid solely by the Buyer in accordance with the Asset Purchase Agreement and Sale Order without any reduction of the Wind-Down Amount and the Estates shall have no liability therefor; and further provided, that notwithstanding the foregoing provision, (a) any Allowed Administrative Claim of the Second Lien Lenders (but not including the LLC Second Lien Claim) shall behave been paid by the Debtors solely from the Second Lien Payment component of the Cash Consideration without any reduction of the Wind-Down Amount, and (b) any Allowed Administrative Claim arising from the collateralization of any outstanding letters of credit shall behave been paid by the Debtors solely from the Letter of Credit Amount component of the Cash Consideration without any reduction of the Wind-Down Amount, ~~and (c) any and all Allowed Administrative Claims based on Jefferies Transaction Fees or Rothschild Transaction Fees shall be paid and satisfied solely from the proceeds of the Liquidation Trust Assets as set forth in the Liquidation Trust Agreement.~~

~~If the Holder of an Allowed Administrative Claim agrees, as part of the treatment of its Claim under the Plan, to have all or part of such Claim paid under the Liquidation Trust, then such Claim shall be paid senior to any direct distributions made to the Holders of Allowed General Unsecured Claims (which do not include distributions to the Holders of Allowed General Unsecured Claims as part of the LLC Second Lien Claim), and shall be paid junior to any and all distributions made on account of the LLC Second Lien Claim. No such agreement, and nothing contained herein, shall be deemed to impair the right of the Liquidation Trustee and the Holders of Allowed General Unsecured Claims to receive the share of distributions made to the LLC Entities on account of the LLC Second Lien Claim, as otherwise set forth herein, in the Stipulation, and the Liquidation Trust Agreement.~~

B. *Priority Tax Claims*

~~On the Effective Date or as soon as practicable thereafter~~ Except as otherwise set forth in the Plan and the Liquidation Trust Agreement, each Holder of an Allowed Priority Tax Claim shall ~~be paid by the Buyer, on behalf of the Debtors, from the Wind-Down Amount the full unpaid~~ receive Cash payments, from the proceeds of the Liquidation Trust Assets, in regular installments after payment of Allowed Non-Wind-Down Administrative Claims and Allowed Other Priority Claims and ending no later than five (5) years after the Petition Date, of a total value, as of the Effective Date, equal to the amount of such Allowed Priority Tax Claim ~~in Cash (i) on the Effective Date or as soon thereafter as is practicable, (ii) if such Priority Tax Claim is Allowed after the Effective Date, on the date such Priority Tax Claim is Allowed, or as soon thereafter as is practicable, or (iii) upon such other terms as may be agreed upon by such Holder and the Proponent or otherwise upon a Final Order of the Bankruptcy Court, provided, however, that~~ Notwithstanding the foregoing, any Priority Tax Claim that is an Assumed Liability under Section 2.3 or 8.1(b) of the Asset Purchase Agreement shall be paid solely by the Buyer in accordance with the Asset Purchase Agreement and Sale Order without any reduction of the Wind-Down Amount and the Estates shall have no liability therefor. ~~If the Holder of an Allowed Priority Tax Claim agrees, as part of the~~

~~treatment of its Claim under the Plan, to have all or part of such Claim paid under the Liquidation Trust, then such Claim shall be paid senior to any direct distributions made to the Holders of Allowed General Unsecured Claims (which do not include distributions to the Holders of Allowed General Unsecured Claims as part of the LLC Second Lien Claim), and shall be paid junior to any and all distributions made on account of the LLC Second Lien Claim. No such agreement, and nothing contained herein, shall be deemed to impair the right of the Liquidation Trustee and the Holders of Allowed General Unsecured Claims to receive the share of distributions made to the LLC Entities on account of the LLC Second Lien Claim, as otherwise set forth herein, in the Stipulation, and the Liquidation Trust Agreement.~~

ARTICLE IV

CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS AND EQUITY INTERESTS

A. *Summary*

The categories of Claims and Equity Interests listed below classify Claims against and Equity Interests in the Debtors for all purposes, including voting, confirmation and distribution pursuant hereto and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or Equity Interest shall be deemed classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and shall be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that such Claim or Equity Interest is Allowed in that Class and has not been paid or otherwise satisfied prior to the Effective Date.

THIS PLAN SEEKS TO SUBSTANTIVELY CONSOLIDATE THE DEBTORS' ESTATES AS FURTHER DESCRIBED IN ARTICLE II HEREIN. IF THE BANKRUPTCY COURT AUTHORIZES AND ORDERS SUCH SUBSTANTIVE CONSOLIDATIONS, THE COMBINED CASH AND OTHER ASSETS OF ALL OF THE DEBTORS SHALL SATISFY THE ALLOWED CLAIMS AGAINST THE DEBTORS OR THEIR ESTATES AS PROVIDED HEREIN.

Summary of Classification and Treatment of Claims and Equity Interests

<u>Class</u>	<u>Claim</u>	<u>Status</u>	<u>Voting Right</u>
1	Other Priority Claims	Unimpaired Impaired	Deemed Entitled to Accept vote
2	Other Secured Claims	Unimpaired	Deemed to Accept
3	LLCP Second Lien Claim	Impaired	Entitled to vote
4	General Unsecured Claims	Impaired	Entitled to vote
5	Equity Interests	Impaired	Deemed to reject

B. *Classification and Treatment of Classified Claims and Equity Interests:*

1. Class 1—Other Priority Claims

(a) *Classification:* Class 1 comprises the Other Priority Claims against the Debtors.

(b) *Treatment:* ~~On the Effective Date or as soon as practicable thereafter~~Except as otherwise set forth in the Plan and the Liquidation Trust Agreement, each Holder of an Allowed Other Priority Claim shall ~~be paid by the Buyer, on behalf of the Debtors, from the Wind-Down Amount the full unpaid amount of such Allowed Other Priority Claim in Cash (i) on the Effective Date or as soon thereafter as is practicable, (ii) if such Other Priority Claim is Allowed after the Effective Date, on the date such Other Priority Claim is Allowed, or as soon thereafter as is practicable, or (iii) upon such other terms as may be agreed upon by such Holder and the Proponent or otherwise upon a Final Order of the Bankruptcy Court, provided, however, that any Other Priority Claim that is an Assumed Liability under Section 2.3 of the Asset Purchase Agreement shall be paid solely by the Buyer in accordance with the Asset Purchase Agreement and Sale Order without any reduction of the Wind-Down Amount~~receive (a) if Class 1 has accepted the Plan, deferred Cash payments from the proceeds of the Liquidation Trust Assets, after payment of Allowed Non-Wind-Down Administrative Claims, of a value, as of the Effective Date, equal to the Allowed amount of such Claim, or (b) if Class 1 has rejected the Plan, Cash equal to the Allowed amount of such Claim, either on the Effective Date or as soon as practicable following the date on which such Claim becomes an Allowed Claim under the Plan.

~~If the Holder of an Allowed Other Priority Claim agrees, as part of the treatment of its Claim under the Plan, to have all or part of such Claim paid under the Liquidation Trust, then such Claim shall be paid senior to any direct distributions made to the Holders of Allowed General Unsecured Claims (which do not include distributions to the Holders of Allowed General Unsecured Claims as part of the LLC Second Lien Claim), and shall be paid junior to any and all distributions made on account of the LLC Second Lien Claim. No such agreement, and nothing contained herein, shall be deemed to impair the right of the Liquidation Trustee and the Holders of Allowed General Unsecured Claims to receive the share of distributions made to the LLC Entities on account of the LLC Second Lien Claim, as otherwise set forth herein, in the Stipulation, and the Liquidation Trust Agreement.~~

(c) *Voting:* Class 1 is ~~Unimpaired~~Impaired and the Holders of Class 1 Claims are ~~conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Claims in Class 1 are not~~ entitled to vote to accept or reject the Plan.

2. Class 2—Other Secured Claims

(a) *Classification:* Class 2 comprises the Other Secured Claims.

(b) *Treatment:* The Plan will not alter any of the legal, equitable and contractual rights of the Holders of Class 2 Claims. Unless otherwise agreed to by the Holder of an Allowed Class 2 Claim and the Proponent, each Holder of an Allowed Class 2 Claim shall receive, in full and final satisfaction of such Allowed Class 2 Claim, one of the following treatments, in the sole discretion of the Proponent:

(i) the payment of the sale or disposition proceeds of the collateral securing each such Allowed Class 2 Claim to the extent of the value of the Holder's interest in such property;

(ii) the surrender to each Holder of all collateral securing each such Allowed Class 2 Claim without representation or warranty by or further recourse against the relevant Debtor or the Liquidation Trust; or

(iii) treatment in any other manner so as to render the Allowed Class 2 Claim otherwise Unimpaired.

(c) *Voting:* Class 2 is Unimpaired and the Holders of Class 2 Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Claims in Class 2 are not entitled to vote to accept or reject the Plan.

3. Class 3—LLCP Second Lien Claim

(a) *Classification:* Class 3 comprises the LLCP Second Lien Claim.

(b) *Treatment:* The Class 3 Claim is deemed Allowed under the Plan. The Holders of the Allowed Class 3 Claim shall receive, in full and final satisfaction of such Allowed Class 3 Claim, distributions from the proceeds of the Liquidation Trust Assets after payment of the Allowed Non-Wind-Down Administrative Claims, Class 1 Claims and Priority Tax Claims, to be shared with the Holders of Allowed General Unsecured Claims other than the LLCP Unsecured Claim, as set forth in the Liquidation Trust Agreement.

(c) *Voting:* Class 3 is Impaired and the Holders of Class 3 Claim are entitled to vote to accept or reject the Plan.

4. Class 4—General Unsecured Claims

(a) *Classification:* Class 4 comprises the General Unsecured Claims against the Debtors.

(b) *Treatment:* Holders of Allowed Class 4 Claims shall receive, in full and final satisfaction of their Allowed Class 4 Claims, (i) after payment of the Allowed Jefferies Transaction Fees, distributions from the proceeds of the Liquidation Trust Assets, to be shared with the Holders of the Allowed Class 3 Claim, as set forth in the

Liquidation Trust Agreement, provided, however, that there shall be no distribution accruing or made on account of the LLC Unsecured Claim until the LLC Second Lien Claim is paid in full in Cash, and (ii) all other distributions from the proceeds of the Liquidation Trust Assets after the Allowed Class 3 Claim has been paid in full.

(c) *Voting*: Class 4 is Impaired and the Holders of Class 4 Claims are entitled to vote to accept or reject the Plan.

5. Class 5—Equity Interests

(a) *Classification*: Class 5 comprises the Equity Interests in the Debtors.

(b) *Treatment*: On the Effective Date, Class 5 Equity Interests will be cancelled and the Holders thereof will receive no distribution on account of their Interests.

(c) *Voting*: Class 5 is Impaired and the Holders of Class 5 Equity Interests are conclusively deemed to have rejected the Plan. Holders of Class 5 Equity Interests shall not be entitled to vote to accept or reject the Plan.

ARTICLE V

ACCEPTANCE OR REJECTION OF THE PLAN

A. *Voting Classes*

Holders of Claims in each Impaired Class of Claims are entitled to vote as a class to accept or reject the Plan. Each Holder of an Allowed Class 1 Claim, Class 3 Claim or Allowed Class 4 Claim shall be entitled to vote to accept or reject the Plan.

B. *Acceptance by Impaired Classes*

An Impaired Class of Claims shall be deemed to have accepted the Plan if (a) the Holders (other than any Holder designated under section 1126(e) of the Bankruptcy Code) of at least two-thirds in amount of the Allowed Claims actually voting in such Class have voted to accept the Plan and (b) the Holders (other than any Holder designated under section 1126(e) of the Bankruptcy Code) of more than one-half in number of the Allowed Claims actually voting in such Class have voted to accept the Plan.

C. *Presumed Acceptance of the Plan*

~~Classes 1 and Class 2~~ are ~~is~~ Unimpaired under the Plan, and, therefore, are presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code.

D. *Presumed Rejection of the Plan*

Class 5 is deemed to reject the Plan.

E. *Non-Consensual Confirmation*

To the extent that any Impaired Class rejects this Plan or is deemed to have rejected this Plan, the Proponent will request confirmation of this Plan as it may be modified from time to time, under section 1129(b) of the Bankruptcy Code. The Proponent reserves the right to alter, amend, modify, revoke or withdraw this Plan or any document in the Plan Supplement, including to amend or modify it to satisfy the requirements of section 1129(b) of the Bankruptcy Code, if necessary.

ARTICLE VI

PROVISIONS FOR IMPLEMENTATION OF THE PLAN

A. *Sale of Purchased Assets; Assumption of Assumed Liabilities; Payment of Cash Consideration*

Prior to the Effective Date, the Debtors consummated the Sale Transaction pursuant to the Asset Purchase Agreement and in accordance with the Sale Order. As consideration for the Purchased Assets, the Buyer (i) credit bid, on behalf of the Bid Sponsors and all First Lien Lenders, the full amount of the First Lien Claims; (ii) assumed the Assumed Liabilities, including those Assumed Liabilities under Section 2.3 of the Asset Purchase Agreement and the Assumed Liabilities to be paid from the Wind-Down Amount pursuant to Paragraph 43 of the Sale Order; and (iii) paid the Cash Consideration to the Debtors. The Cash Consideration consists of (i) the DIP Financing Payoff Amount; (ii) the Letter of Credit Amount; and (iii) the Second Lien Payment.

Prior to the Effective Date, the Debtors used the DIP Financing Payoff Amount to pay the DIP Facility Claims in full. Moreover, on or prior to the Effective Date, the Debtors: (i) used the Letter of Credit Amount to collateralize and secure any outstanding letters of credit; and (ii) used the Second Lien Payment to make a pro-rata distribution to the Second Lien Lenders as provided in the Asset Purchase Agreement.

In addition to paying the Assumed Liabilities under Section 2.3 of the Asset Purchase Agreement, the Buyer, on behalf of the Debtors, shall pay under the Plan, and as additional Assumed Liabilities, any and all Allowed Wind-Down Administrative ~~Claims (other than Allowed Administrative Claims (i) of the Second Lien Lenders, (ii) arising from the collateralization of any outstanding letters of credit, or (iii) based on Jefferies Transaction Fees or Rothschild Transaction Fees), Allowed Priority Tax Claims and Allowed Other Priority~~ Claims, up to the Wind-Down Amount, no later than three (3) Business Days of a request by the Debtors to pay any such ~~Claim(s)~~ Claims.

B. *Establishment of the Liquidation Trust*

On the Effective Date, the Debtors, the Liquidation Trustee and the Litigation Designee shall execute the Liquidation Trust Agreement and shall take all other steps necessary to establish the Liquidation Trust in accordance with the Plan and the Stipulation. Notwithstanding any prohibition of assignability under applicable non-bankruptcy law, on the Effective Date and periodically thereafter if additional Liquidation Trust Assets become available, the Debtors shall

be deemed to have automatically transferred to the Liquidation Trust all of their right, title, and interest in and to all of the Liquidation Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, all such assets shall automatically vest in the Liquidation Trust free and clear of all Claims and Liens, subject only to the Allowed ~~Class 3 Claim, Allowed Class 4 Claims, the Allowed Jefferies Transaction Fees, the Allowed Rothschild Transaction Fees,~~Claims of the Beneficiaries as set forth in the Plan and the expenses of the Liquidation Trust as provided in the Liquidation Trust Agreement. On the Effective Date, the Debtors shall have no interest in or with respect to the Liquidation Trust Assets or the Liquidation Trust. In connection with the vesting and transfer of the Liquidation Trust Assets, including rights and Causes of Action, any attorney-client privilege, work-product protection, or other privilege or immunity attaching to any documents or communications (whether written or oral) transferred to the Liquidation Trust shall vest in the Liquidation Trust. The Debtors, the Liquidation Trustee and the Litigation Designee are authorized to take all necessary actions to effectuate the transfer of such privileges, protections and immunities.

The Buyer has acquired the Purchased Assets formerly owned by the Debtors, including records and information necessary for the investigation and prosecution of the Causes of Action. The Debtors, the Committee, the Director, the Liquidation Trustee, the Bid Sponsors, and the Buyer, shall and shall cause Buyer: (1) to provide the Litigation Designee, and its counsel and representatives reasonable access to Buyer's employees, financial advisors, accountants, attorneys and any other professional persons and shall encourage such persons and parties to meet and confer with Litigation Designee counsel and representatives as reasonably necessary for the Litigation Designee's prosecution of the Causes of Action, or as are otherwise necessary to take full advantage of the Liquidation Trust Assets; (2) to assist the Litigation Designee and its counsel and representatives in contacting former employees of the Debtors and encourage such former employees to meet and confer with the Litigation Designee counsel and representatives as reasonably necessary for the Litigation Designee's prosecution of the Causes of Action, including seeking cooperation agreements from such former employees. Such employees, former employees, financial advisors, accountants, attorneys and other professional persons shall owe the same duties, including but not limited to the duty to cooperate fully in all necessary investigations, to the Litigation Designee and its counsel and representatives as they would to the Debtors and/or the Buyer.

To effectively investigate, defend or pursue the Causes of Action and the Liquidation Trust Assets, the Buyer, the Bid Sponsors, the Debtors, and the Liquidation Trust and Litigation Designee, and all counsel thereto, must be able to exchange information with each other on a confidential basis and cooperate in common interest efforts without waiving any applicable privilege. Given the common interests of the parties and the Liquidation Trust's position as successor to the Causes of Action, sharing such information between the Buyer, the Bid Sponsors, the Debtors, and the Liquidation Trust and Litigation Designee or their counsel shall not waive or limit any applicable privilege or exemption from disclosure or discovery related to such information.

C. *Treatment of Liquidation Trust for Federal Income Tax Purposes; No Successor-in-Interest*

The Liquidation Trust shall be established for the primary purpose of liquidating its assets, in accordance with Treas. Reg. § 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidation Trust. Accordingly, the Litigation Designee (with respect to the Causes of Action) and the Liquidation Trustee (with respect to the other Liquidation Trust Assets) shall, in an expeditious but orderly manner, liquidate and convert to Cash the Liquidation Trust Assets, make timely distributions to the Beneficiaries and not unduly prolong its duration. The Liquidation Trust shall not be deemed a successor-in-interest of the Debtors for any purpose other than as specifically set forth herein or in the Liquidation Trust Agreement.

The Liquidation Trust is intended to qualify as a “grantor trust” for federal income tax purposes with the Beneficiaries treated as grantors and owners of the Liquidation Trust. For all federal income tax purposes, all parties (including, without limitation, the Buyer, the Debtors, the Liquidation Trustee, the Litigation Designee, the LLCP Entities and the Beneficiaries) shall treat the transfer of the Liquidation Trust Assets by the Debtors to the Liquidation Trust, as set forth in the Liquidation Trust Agreement, as a transfer of such assets by the Debtors to the Holders of Allowed Claims of Beneficiaries entitled to distributions from the Liquidation Trust Assets, followed by a transfer by such Holders to the Liquidation Trust. Thus, the Beneficiaries shall be treated as the grantors and owners of a grantor trust for federal income tax purposes.

As soon as practicable after the Effective Date, the Liquidation Trustee (to the extent that the Liquidation Trustee deems it necessary or appropriate in his or her sole discretion), in consultation with the Litigation Designee, shall value the Liquidation Trust Assets based on the good faith determination of the Liquidation Trust and shall apprise the Creditor Representative and Litigation Designee of such valuation. The valuation shall be used consistently by all parties (including the Debtors, the Buyer, the Liquidation Trustee, the Litigation Designee, the LLCP Entities and the Beneficiaries) for all federal income tax purposes. The Bankruptcy Court shall resolve any dispute regarding the valuation of the Liquidation Trust Assets.

The right and power of the Liquidation Trustee to invest the Liquidation Trust Assets transferred to the Liquidation Trust, the proceeds thereof, or any income earned by the Liquidation Trust, shall be limited to the right and power to (i) invest such Liquidation Trust Assets (pending distributions in accordance with the Plan) in (a) short-term direct obligations of, or obligations guaranteed by, the United States of America, (b) short-term obligations of any agency or corporation which is or may hereafter be created by or pursuant to an act of the Congress of the United States as an agency or instrumentality thereof or (c) such other investments as the Bankruptcy Court may approve from time to time; or (ii) deposit such assets in demand deposits or certificates of deposit at any bank or trust company, which has, at the time of the deposit, a capital stock and surplus aggregating at least \$1,000,000,000 (collectively, the “**Permissible Investments**”); *provided, however*, that the scope of any such Permissible Investments shall be limited to include only those investments that a liquidating trust, within the meaning of Treas. Reg. § 301.7701-4(d), may be permitted to hold, pursuant to the Treasury

Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings, other IRS pronouncements or otherwise.

Subject to the provisions of this Article VI, the Liquidation Trustee shall distribute to the Beneficiaries all net cash income plus all net cash proceeds from the liquidation of the Liquidation Trust Assets (including as Cash for this purpose, all cash equivalents) at such time intervals as decided by the Liquidation Trustee in its discretion, pursuant to the terms of the Plan. The Liquidation Trust shall make distributions no less frequently than once per twelve-month period, such period to be measured from the Effective Date; *provided however*, that the Liquidation Trustee may, in its sole discretion, cause the Liquidation Trust to retain an amount of net cash proceeds or net cash income reasonably necessary to maintain the value of its assets or to meet Claims and contingent liabilities (including Disputed Claims).

The Liquidation Trustee shall require any Beneficiary or other distributee to furnish to the Liquidation Trustee in writing his or its Employer or Taxpayer Identification Number as assigned by the Internal Revenue Service and the Liquidation Trustee may condition any distribution to any Beneficiary or other distributee upon receipt of such identification number.

D. *Funding of the Liquidation Trust*

The LLC Entities shall provide Cash funding to pay the fees, costs and expenses of the Estates, Liquidation Trust, Liquidation Trustee, Litigation Designee and Creditor Representative as follows: (i) up to \$1,900,000 less the amount of the Milk Street Additional Funding actually funded (or such greater amount as may be agreed upon by the LLC Entities in their sole discretion, but subject to approval of the Liquidation Trustee) to the Litigation Designee to be used solely for the fees, costs and expenses relating to the prosecution, settlement and liquidation of the Causes of Action, including the payment to third-party counsel or advisors of out-of-pocket litigation expenses incurred in connection therewith; (ii) \$100,000 to the Liquidation Trustee on the Effective Date to be used solely for the fees, costs and expenses of the Liquidation Trustee, the Creditor Representative and the Liquidation Trust for administering the Liquidation Trust and the Liquidation Trust Assets other than the Causes of Action, including the payment of trust expenses and professionals, advisors and employees retained by the Liquidation Trustee, as approved by the Creditor Representative; (iii) \$50,000 to the Liquidation Trustee on each of the first and second anniversaries of the Effective Date to be used solely for the fees, costs and expenses of the Liquidation Trustee, the Creditor Representative and the Liquidation Trust for administering the Liquidation Trust and the Liquidation Trust Assets other than the Causes of Action, including the payment of trust expenses and professionals, advisors and employees retained by the Liquidation Trustee, as approved by the Creditor Representative; ~~and~~ (iv) \$25,000 to the Liquidation Trustee on each of the third and fourth anniversaries of the Effective Date to be used solely for the fees, costs and expenses of the Liquidation Trustee, the Creditor Representative and the Liquidation Trust for administering the Liquidation Trust and the Liquidation Trust Assets other than the Causes of Action, including the payment of trust expenses and professionals, advisors and employees retained by the Liquidation Trustee, as approved by the Creditor Representative ~~-(i) thru (iv); (v) the Milk Street Additional Funding; and (vi) LLC's advances for their own attorneys' fees and expenses from and after August 1, 2007 and until the Effective Date, but not to exceed \$250,000 (i) thru (vi)~~ above, collectively, the "Trust Funding"); provided, however, that the amount of the Trust Funding

provided in (i) above shall be reduced by the amount of the Milk Street Additional Funding that is actually funded; and further provided, that none of the Trust Funding provided in (ii) thru (iv) above shall be used for any payments to, or to pay any fees, costs or expenses of or incurred by, the Litigation Designee, the LLCP Entities or their professionals, employees and advisors; and **further, provided,** that the Trust Funding provided in (iii) and (iv) above shall be reduced to the extent that the Liquidation Trustee has received Cash distributions from the proceeds of the Causes of Action. The Trust Funding shall accrue interest at a rate of fifteen percent (15%) per annum, compounded and paid-in-kind quarterly, and shall be secured by **a first-priority security interest (subject to no other security interests or liens) in the Causes of Action and the proceeds of** the Causes of Action. In the event the LLCP Entities or the Litigation Designee exercise any security interest in and to the Causes of Action, the proceeds of the Causes of Action nonetheless shall be distributed in accordance with the general distribution provisions of the Liquidation Trust Agreement. The Trust Funding may be prepaid at any time without penalty or premium out of the proceeds of the Causes of Action, or otherwise upon reasonable approval of the Liquidation Trustee and the Creditor Representative. The Trust Funding shall mature and be due and payable five (5) years from the date the Trust Funding is provided and shall otherwise contain no defaults, covenants or representations.

In the event the LLCP Entities or the Litigation Designee exercise any security interest in and to the Causes of Action, the proceeds of the Causes of Action nonetheless shall be distributed in accordance with the general distribution provisions of the Liquidation Trust Agreement. The Trust Funding may be prepaid at any time without penalty or premium out of the proceeds of the Causes of Action, or otherwise upon reasonable approval of the Liquidation Trustee and the Creditor Representative. The Trust Funding shall mature and be due and payable five (5) years from the date the Trust Funding is provided and shall otherwise contain no defaults, covenants or representations.

E. *Appointment of the Liquidation Trustee*

On the Effective Date, the Liquidation Trustee shall serve as trustee of the Liquidation Trust, and shall have all powers, rights and duties of a trustee, except those powers, rights and duties provided exclusively to the Litigation Designee. Among other things, the Liquidation Trustee shall (i) hold and administer the Liquidation Trust Assets other than the Causes of Action, (ii) have the power and authority to retain, as an expense of the Liquidation Trust, attorneys, advisors, other professionals and employees as may be appropriate to perform the duties required of the Liquidation Trustee hereunder or in the Liquidation Trust Agreement, (iii) have the right and duty to monitor the actions of the Litigation Designee and to receive monthly status reports from the Litigation Designee as to the status of the litigation, settlement, administration and pursuit of the Causes of Action, (iv) make distributions to the Beneficiaries as provided in the Liquidation Trust Agreement, (v) have the right to receive reasonable compensation for performing services as Liquidation Trustee and to pay the reasonable fees, costs and expenses of any counsel, professionals, advisors or employees as may be necessary to assist the Liquidation Trustee in performing the duties and responsibilities required under the Plan and the Liquidation Trust Agreement, and (vi) provide periodic reports and updates to the Creditor Representative regarding the status of the administration of the Liquidation Trust Assets, other than the Causes of Action, and the assets, liabilities and transfers of the Liquidation Trust. The Liquidation Trustee shall have access to all reports, documents, memoranda and

other work product of the Litigation Designee related to the Causes of Action, and, to the extent such items are subject to any privilege or protection against disclosure, the Liquidation Trustee and Litigation Designee shall entered into a common interest and joint privilege agreement containing customary terms and conditions. In the event the Liquidation Trustee is no longer willing or able to serve as trustee, then the successor shall be appointed by the mutual agreement of the Creditor Representative and LLCP, or as otherwise determined by the Bankruptcy Court, and notice of the appointment of such Liquidation Trustee shall be filed with the Bankruptcy Court.

F. *Appointment of the Litigation Designee*

The Causes of Action shall be owned by the Liquidation Trust, however, the Litigation Designee shall have the sole authority and discretion on behalf of the Liquidation Trust to evaluate and determine strategy with respect to the Causes of Action, and to litigate, settle, transfer, release or abandon any and all Causes of Action on behalf of the Liquidation Trust, in each case, on any terms and conditions as it may determine in good faith based on the best interests of the Beneficiaries. The Litigation Designee also shall have the sole and exclusive right to (i) retain legal counsel for the Liquidation Trust to pursue Causes of Action, (ii) pay all reasonable out-of-pocket costs and expenses incurred in connection with the pursuit of the Causes of Action out of the Trust Funding or proceeds of the Causes of Action, but not including any fees, costs, expenses, or other reimbursement of or to the LLCP Entities or any Person retained by the LLCP Entities (except as provided in the Additional Funding Stipulation), (iii) make distributions of proceeds of the Causes of Action as set forth in the Liquidation Trust Agreement, and (iv) borrow funds from the Trust Funding as may be necessary to pursue the Causes of Action. The Litigation Designee shall provide monthly status reports to the Liquidation Trustee and the Creditor Representative as to the status of the litigation, settlement, administration and pursuit of the Causes of Action. The LLCP Entities shall have the sole and exclusive right to replace the Litigation Designee, at which time the LLCP Entities shall promptly provide written notice to the Liquidation Trustee and the Creditor Representative as to the identity of the successor Litigation Designee, including the name, address, telephone number and fax number of the successor Litigation Designee. The LLCP Entities also shall file a notice of such replacement with the Bankruptcy Court.

G. *Appointment of the Creditor Representative*

No later than the Effective Date, the Committee shall appoint one Committee Member to serve as the Creditor Representative under the Liquidation Trust Agreement. In the event such Committee Member is no longer willing or able to serve as Creditor Representative, then such Committee Member may thereafter appoint any other Committee Member to serve as successor Creditor Representative by providing notice to the Liquidation Trustee and the Litigation Designee. The Liquidation Trustee shall file notice of such appointment with the Bankruptcy Court. The Creditor Representative shall (i) have access to all reports, documents, memoranda and other work product of the Litigation Designee related to the Causes of Action, and, to the extent such items are subject to any privilege or protection against disclosure, the Creditor Representative and Litigation Designee shall entered into a common interest and joint privilege agreement containing customary terms and conditions, (ii) have the right to monitor the actions of the Litigation Designee and to receive monthly status reports from the Litigation Designee as

to the status of the litigation, settlement, administration and pursuit of the Causes of Action, (iii) have the right of reimbursement from the Liquidation Trust Assets of any reasonable and necessary expenses incurred in connection with serving as Creditor Representative under the Liquidation Trust Agreement, and (iv) have the right to monitor and receive periodic reports and updates from the Liquidation Trustee regarding the status of the administration of the Liquidation Trust Assets, other than the Causes of Action, and the assets, liabilities and transfers of the Liquidation Trust.

H. *Termination of the Liquidation Trust*

The Liquidation Trust will terminate as soon as practicable, but in no event later than the seventh (7th) anniversary of the Effective Date; *provided, however*, that, on or prior to the date of such termination, the Bankruptcy Court, upon motion by a party in interest, may extend the term of the Liquidation Trust for a finite period, if such an extension is necessary to liquidate the Liquidation Trust Assets or for other good cause. Notwithstanding the foregoing, multiple extensions may be obtained so long as Bankruptcy Court approval is obtained prior to the expiration of each extended term; *provided, however*, that the Liquidation Trustee receives an opinion of counsel or a favorable ruling from the Internal Revenue Service that any further extension would not adversely affect the status of the Liquidation Trust as a grantor trust for federal income tax purposes.

I. *Termination of Liquidation Trustee, Litigation Designee and Creditor Representative*

The duties, responsibilities and powers of the Liquidation Trustee, Litigation Designee and Creditor Representative shall terminate in accordance with the terms of the Liquidation Trust Agreement.

J. *Exculpation; Indemnification*

The Liquidation Trustee, Litigation Designee and Creditor Representative, and their respective professionals, shall be exculpated and indemnified pursuant to the terms of the Liquidation Trust Agreement.

K. *Preservation of Records and Documents*

The Litigation Designee and Liquidation Trustee shall, and the Bid Sponsors shall cause the Buyer to, (i) take commercially reasonable efforts to preserve all records and documents (including any electronic records or documents) related to the Causes of Action and the Liquidation Trust Assets for a period of five (5) years from the closing of the Sale Transaction or, if actions with respect to the Causes of Action are then pending, until the Litigation Designee notifies the Debtors and the Buyer that such records are no longer required to be preserved; and (ii) provide the Liquidation Trustee and Litigation Designee, and their respective counsel, agents and advisors, with reasonable access to such records and documents.

L. *Corporate Action*

Upon the entry of the Confirmation Order by the Bankruptcy Court, all matters provided under the Plan involving the corporate structure of the Debtors shall be deemed authorized and

approved without any requirement of further action by the Debtors, the Debtors' shareholders or the Debtors' boards of directors. To the extent such action has not been completed subsequent to the entry of the Substantive Consolidation Order, the Debtors (and their boards of directors) shall dissolve or otherwise terminate their existence following the Effective Date and are authorized to dissolve or terminate the existence of wholly-owned non-Debtor subsidiaries following the Effective Date as well as any remaining health, welfare or benefit plans.

M. *Cancellation of Notes, Instruments, Debentures and Equity Securities*

On the Effective Date, except to the extent provided otherwise in the Plan, all notes, instruments, certificates and other documents evidencing Claims and all Equity Interests in any of the Debtors shall be canceled and deemed terminated. However, the provisions of the Indenture which authorize the Indenture Trustee to make distributions to the Subordinated Noteholders and provide for the charging lien of the Indenture Trustee shall remain in full force and effect.

ARTICLE VII

EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. *Assumption and Rejection of Executory Contracts and Unexpired Leases*

Any executory contracts or unexpired leases that have not expired by their own terms on or prior to the Effective Date, which the Debtors have not assumed and assigned or rejected with the approval of the Bankruptcy Court (whether as part of the Sale Transaction or otherwise), or that are not the subject of a motion to assume the same pending as of the Effective Date, shall be deemed rejected by the Debtors on the Effective Date and the entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such rejections pursuant to sections 365(a) and 1123 of the Bankruptcy Code. The cure costs for any and all executory contracts and unexpired leases that are assumed and assigned to the Buyer as part of the Sale Transaction shall be paid solely by the Buyer, without any reduction of the Wind-Down Amount.

B. *Rejection Claims; Cure of Defaults*

If the rejection of an executory contract or unexpired lease results in damages to the other party or parties to such contract or lease, any Claim for such damages, if not heretofore evidenced by a Proof of Claim that has been Filed, shall be forever barred and shall not be enforceable against the Debtors, the Liquidation Trust, or their properties, successors or assigns, unless a Proof of Claim is Filed and served upon (i) the Liquidation Trustee, and (ii) any counsel for the Liquidation Trustee, on or before thirty (30) days after the later to occur of (i) the Effective Date; and (ii) the date of entry of an order by the Bankruptcy Court authorizing rejection of a particular executory contract or unexpired lease.

ARTICLE VIII

PROVISIONS REGARDING DISTRIBUTIONS

A. *Time and Method of Distributions*

The Buyer and ~~the Debtors~~ Milk Street or its designee, as applicable, will make the distributions due under the Plan to the Holders of Allowed Wind-Down Administrative ~~Claims, Priority Tax Claims and Other Priority~~ Claims. The Liquidation Trustee and Litigation Designee, on behalf of the Liquidation Trust, or such other Entity as may be designated in accordance with the Liquidation Trust Agreement, will make the distributions to Beneficiaries required under the Plan in accordance with the Liquidation Trust Agreement. The Liquidation Trustee will make distributions to Holders of Allowed General Unsecured Claims in consultation with the Creditor Representative. All distributions to the Subordinated Noteholders shall be made by the Liquidation Trustee to the Indenture Trustee. The Litigation Designee will make distributions of the proceeds from the Causes of Action to the LLC Entities and to the Liquidation Trustee as provided in the Liquidation Trust Agreement, provided, however, that no such distribution may be made until five (5) Business Days after the LLC Entities and the Litigation Designee provide the Liquidation Trustee and Creditor Representative with a written accounting with regard to such distributions and only if the Liquidation Trustee or Creditor Representative have not filed an objection to such accounting with the Bankruptcy Court (if closed, the Chapter 11 Cases shall be reopened to consider such objection). Whenever any distribution to be made under the Plan or the Liquidation Trust Agreement is due on a day other than a Business Day, such distribution shall be made, without interest, on the immediately succeeding Business Day, but any such distribution will have been deemed to have been made on the date due.

B. *Reserve for Disputed Claims*

The Liquidation Trustee shall maintain a reserve for any distributable amounts required to be set aside on account of Disputed Claims and shall distribute such amounts (net of any expenses, including any taxes relating thereto), as provided herein and in the Liquidation Trust Agreement, as such Disputed Claims are resolved by Final Order, and such amounts shall be distributable in respect of such Disputed Claims as such amounts would have been distributable had the Disputed Claims been Allowed Claims as of the Effective Date.

C. *Manner of Payment under the Plan and Liquidation Trust*

Any payment in Cash to be issued hereunder shall, at the election of the issuer, be made by check drawn on a domestic bank or by wire transfer from a domestic bank.

D. *Delivery of Distributions*

Subject to the provisions of Fed. R. Bankr. P. 2002(g), and except as otherwise provided herein, distributions and deliveries to Holders of record of Allowed Claims shall be made at the address of each such Holder set forth on the Debtors' books and records unless superseded by the address set forth on proofs of claim filed by any such Holders. By no later than the Effective Date, the Debtors and Buyer shall provide the Liquidation Trustee with the addresses and other

books and records relating to the Beneficiaries, including, without limitation, all taxpayer identification information.

E. *Undeliverable Distributions*

1. Holding of Undeliverable Distributions:

If any distribution hereunder to any Holder is returned as undeliverable, no further distributions shall be made to such Holder unless and until the issuer of the distribution is notified in writing of such Holder's then-current address. All Entities ultimately receiving undeliverable Cash shall not be entitled to any interest or other accruals of any kind. Nothing contained in the Plan or Liquidation Trust Agreement shall require the issuer of any distribution to attempt to locate any Holder of an Allowed Claim or an Allowed Interest.

2. Failure to Claim Undeliverable Distributions:

Any holder of an Allowed Claim that does not assert its rights pursuant to the Plan or Liquidation Trust Agreement to receive a distribution within three (3) months from and after the date such distribution is returned as undeliverable shall have such holder's Claim for such undeliverable distribution discharged and shall be forever barred from asserting any such Claim against the Debtors, Liquidation Trust, the Liquidation Trustee and their respective professionals, or the Liquidation Trust Assets. In such case, any consideration held for distribution on account of such Claim or Interest shall belong to the Liquidation Trust for distribution by the Liquidation Trustee to the Beneficiaries in accordance with the terms of the Plan and Liquidation Trust Agreement.

F. *Compliance with Tax Requirements/Allocation*

The issuer of any distribution under the Plan or Liquidation Trust shall comply with all applicable tax withholding and reporting requirements imposed by any Governmental Unit, and all distributions pursuant to the Plan and Liquidation Trust shall be subject to any such applicable withholding and reporting requirements. For tax purposes, distributions received in respect of Allowed Claims will be allocated first to the principal amount of such Claims, with any excess allocated to unpaid accrued interest.

G. *Time Bar to Cash Payments*

Checks issued on account of Allowed Claims shall be null and void if not negotiated within forty-five (45) days from and after the date of issuance thereof. Requests for reissuance of any check shall be made directly to the issuer of the check by the holder of the Allowed Claim with respect to which such check originally was issued. Any claim in respect of such a voided check shall be made within six (6) months from and after the date of issuance of such check. After such date, all Claims in respect of voided checks shall be discharged and forever barred and the Liquidation Trust shall be entitled to retain all monies related thereto for distribution to the Beneficiaries in accordance with the terms of the Plan and the Liquidation Trust Agreement.

H. *Distributions after Effective Date*

Distributions made after the Effective Date to Holders of Claims that are not Allowed Claims as of the Effective Date, but which later become Allowed Claims, shall be deemed to have been made on the Effective Date. Except with respect to the LLC Second Lien Claim, and unless otherwise specifically provided in the Plan or the Liquidation Trust Agreement, no interest shall be payable on account of any Claim not paid on the Effective Date.

I. *Fractional Dollars; De Minimis Distributions*

Notwithstanding anything contained herein to the contrary, payments of fractions of dollars will not be made. Whenever any payment of a fraction of a dollar under the Plan or Liquidation Trust would otherwise be called for, the actual payment made will reflect a rounding of such fraction to the nearest dollar (up or down), with half dollars being rounded down. No payment shall be made on account of any distribution less than Fifty Dollars (\$50) with respect to any Allowed Claim unless a request therefor is made in writing to the issuer of such payment on or before ninety (90) days after the Effective Date.

J. *Setoffs*

The Liquidation Trustee may, pursuant to sections 502(d) or 553 of the Bankruptcy Code or applicable nonbankruptcy law, set off against any Allowed Claim or Allowed Administrative Claim and the distributions to be made pursuant to the Liquidation Trust Agreement on account thereof (before any distribution is made on account of such Claim), the Claims, rights and Causes of Action of any nature that it may hold against the Holder of such Allowed Claim or Allowed Administrative Claim; provided, however, that neither the failure to effect such a set-off nor the allowance of any Claim hereunder shall constitute a waiver or release of any such claims, rights and Causes of Action that the Liquidation Trust may possess against such Holder.

K. *Preservation of Subordination Rights*

Except as otherwise provided herein or in the Stipulation, all subordination rights and claims relating to the subordination by the Debtors or the Liquidation Trustee of any Allowed Claim shall remain valid, enforceable and unimpaired in accordance with section 510 of the Bankruptcy Code or otherwise.

L. *Waiver by Creditors of All Subordination Rights*

Except as otherwise ordered by the Bankruptcy Court, each Holder of a Claim shall be deemed to have waived all contractual, legal and equitable subordination rights that they may have, whether arising under general principles of equitable subordination, section 510(c) of the Bankruptcy Code or otherwise, with respect to any and all distributions to be made under the Plan, and all such contractual, legal or equitable subordination rights that each holder of a Claim has individually and collectively with respect to any such distribution made pursuant to this Plan shall be discharged and terminated, and all actions related to the enforcement of such subordination rights will be permanently enjoined.

M. *Settlement of Claims and Controversies*

Pursuant to Fed. R. Bankr. P. 9019 and in consideration for the distributions and other benefits provided under the Plan, the provisions of this Plan shall constitute a good faith compromise and settlement of claims or controversies relating to the contractual, legal and subordination rights that a Holder of a Claim may have with respect to any Allowed Claim, or any distribution to be made on account of any such Allowed Claim.

ARTICLE IX

**PROCEDURES FOR RESOLUTION OF DISPUTED, CONTINGENT
AND UNLIQUIDATED CLAIMS OR EQUITY INTERESTS**

A. *Objections to Claims; Prosecution of Disputed Claims*

1. The Debtors, prior to the Effective Date, and thereafter the Liquidation Trustee in accordance with the Liquidation Trust Agreement, shall have the right to object to the allowance of Claims or Equity Interests Filed with the Bankruptcy Court with respect to which they dispute liability or allowance in whole or in part. All objections shall be litigated or settled prior to Final Order; provided, however, that the Liquidation Trustee (within any parameters as may be established by the Liquidation Trust Agreement) shall have the authority to file, settle, compromise or withdraw any objections to Claims, without approval of the Bankruptcy Court.

2. Notwithstanding the foregoing, the Liquidation Trustee, on behalf of the Liquidation Trust, shall have the ~~exclusive~~-right to object to the allowance of any Non-Wind-Down Administrative Claims, Priority Tax Claims, and Class 1 and Class 4 Claims, and any other Claims asserted against the Liquidation Trust or the Liquidation Trust Assets, by no later than the Claim Objection Deadline. In addition, LLCP shall have the right to object to the allowance of any Non-Wind-Down Administrative Claims, Priority Tax Claims, Class 1 Claims and any other Claims asserted against the Liquidation Trust or the Liquidation Trust Assets (excluding the Class 4 Claims), by no later than the Claim Objection Deadline.

B. *Estimation of Claims*

The Debtors, prior to the Effective Date, and thereafter the Liquidation Trustee in accordance with the Liquidation Trust Agreement, may at any time request that the Bankruptcy Court estimate any contingent or ~~Disputed~~unliquidated Claim pursuant to section 502(c) of the Bankruptcy Code regardless of whether the Debtors or the Liquidation Trustee previously have objected to such Claim or whether the Bankruptcy Court has ruled on any such objection. The Bankruptcy Court will retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including, without limitation, during the pendency of any appeal relating to any such objection. Subject to the provisions of section 502(j) of the Bankruptcy Code, in the event that the Bankruptcy Court estimates any contingent or ~~Disputed~~unliquidated Claim, the amount so estimated shall constitute the maximum allowed amount of such Claim. If the estimated amount constitutes a maximum limitation on the amount of such Claim, the Debtors or the Liquidation Trustee may pursue supplementary proceedings to object to the allowance of such Claim. All of the aforementioned objection, estimation and

resolution procedures are intended to be cumulative and not necessarily exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court.

C. *Controversy Concerning Impairment*

If a controversy arises as to whether any Claims or Class of Claims are Impaired under the Plan, the Bankruptcy Court shall, after notice and a hearing, determine that controversy before the Confirmation Date.

D. *Payments and Distributions on Disputed Claims*

1. Notwithstanding any provision hereof to the contrary, any issuer of a distribution hereunder may, in its discretion, pay the undisputed portion of a Disputed Claim. Notwithstanding the foregoing, the issuer of a distribution hereunder will set aside for each Holder of a Disputed Claim such portion of Cash as may be necessary to provide required distributions if that Claim were an Allowed Claim, either based upon the amount of the Claim as filed with the Bankruptcy Court or the amount of the Claim as estimated by the Bankruptcy Court.

2. At such time as a Disputed Claim becomes, in whole or in part an Allowed Claim, the issuer of a distribution hereunder shall distribute to the Holder thereof the distributions, if any, to which such Holder is then entitled under the Plan or the Liquidation Trust. Such distribution, if any, will be made as soon as practicable after the date that the order or judgment of the Bankruptcy Court allowing such Disputed Claim becomes a Final Order. No interest will be paid on Disputed Claims that later become Allowed or with respect to any distribution in satisfaction thereof to a Holder.

E. *Tort Claims*

All Tort Claims, as well as any and all Claims against the Debtors arising after the Petition Date asserting damages for personal injuries or property damage, are Disputed Claims unless and until Allowed by a Final Order. Any Tort Claim ~~as to which a proof of claim was timely filed in the Chapter 11 Cases~~ or any other claim asserting damages for personal injuries or property damage shall be determined and liquidated ~~in accordance with the ADR Procedures~~ by a court of competent jurisdiction. Any Tort Claim determined and liquidated ~~in accordance with the ADR Procedures~~ shall be deemed an Allowed Class 4 Claim in such liquidated amount and satisfied by and from the Liquidation Trust in accordance with the Plan. Nothing contained in the Plan shall be deemed a waiver of any Cause of Action that the Debtors or the Liquidation Trust may hold against any entity, including, without limitation, in connection with or arising out of any Tort Claim.

ARTICLE X

CONDITIONS PRECEDENT TO CONFIRMATION AND EFFECTIVE DATE OF THE PLAN

A. *Conditions Precedent to Confirmation*

The following are conditions precedent to confirmation of this Plan that must be (i) satisfied or (ii) waived in accordance with Article X.C below.

1. The entry of the Confirmation Order and the Substantive Consolidation Orders in form and substance satisfactory to the Proponent and to LLCP.

2. The Plan Supplement and all of the schedules, documents, and exhibits contained therein shall have been filed in form and substance reasonably acceptable to the Proponent and to LLCP.

3. Bankruptcy Court disallowance (by way of motion or claim objection) of any administrative or priority claims in excess of \$100,000 not provided for in the Budget.

4. The unpaid administrative priority claims of the Pension Benefit Guaranty Corporation, the Jefferies Transaction Fees and Rothschild Transaction Fees are either (a) treated as provided for in this Plan, by the consent of the claimholders, (b) otherwise resolved with the consent of LLCP, or (c) withdrawn, disallowed, or reclassified to non-administrative and non-priority claims in their entirety.

5. The Bankruptcy Court's entry of an order authorizing and directing the Debtors to cease funding any retiree benefit plans of the Debtors that are subject to Bankruptcy Code section 1114 (if any) or otherwise resolves such funding in a manner satisfactory to LLCP.

6. The Bankruptcy Court's entry of an order authorizing and directing the Debtors to cease funding the Directors' Insurance (as defined in the Committee's motion regarding same) or otherwise resolves such funding in a manner satisfactory to LLCP.

7. All of the conditions of the Additional Funding Stipulation have been satisfied or waived by the LLCP.

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

The following are conditions precedent to the Effective Date of the Plan that must be (i) satisfied or (ii) waived in accordance with Article X.C below:

1. The Sale Transaction shall have closed and the Cash Consideration shall have been paid by the Buyer to the Debtors in accordance with the Asset Purchase Agreement and the Sale Order.

2. All other actions and documents necessary to implement the Plan shall have been effected or executed, including the Liquidation Trust Agreement.

3. There shall be sufficient Cash to permit payment of all amounts required to be paid on the Effective Date.

4. The ~~Insurance Policies shall have been purchased, paid in full, and shall be in place.~~ Effective Date occurs on or before October 31, 2007.

~~5. The ADR Procedures shall have been approved by the Bankruptcy Court.~~

C. *Waiver of Conditions Precedent*

~~The Only the~~ Proponent together with LLCP, in ~~its sole~~ their joint discretion, may waive the conditions listed in Article X.A and X.B ~~above~~ of the Plan, except that the condition in Article X.B(3) may not be waived.

D. *Effect of Non-Occurrence of the Effective Date*

If the Confirmation Order is vacated, this Plan shall be null and void in all respects and nothing contained in this Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtors; (2) prejudice in any manner the rights of the Debtors or any other party; or (3) constitute an admission, acknowledgment, offer or undertaking by the Debtors in any respect.

ARTICLE XI

EXCULPATION, INJUNCTIVE AND RELATED PROVISIONS

A. *Exculpation*

The Exculpated Parties shall neither have, nor incur any liability to any Person or Entity for any post-petition act taken or omitted to be taken in connection with, or related to formulating, negotiating, preparing, disseminating, implementing, administering, confirming or consummating the Plan, the Disclosure Statement, or any contract, instrument, release or other agreement or document created or entered into in connection with the Plan or any other post-petition act taken or omitted to be taken in connection with or in contemplation of the restructuring of the Debtors; provided, however, that the foregoing 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, recklessness or willful misconduct, and, provided further, that each Exculpated Party shall be entitled to rely upon the advice of counsel concerning his, her or its duties pursuant to, or in connection with, the Plan.

B. *Release and Satisfaction of Claims; Termination of Equity Interests; Injunction*

Except as otherwise provided herein, and as set forth in the Confirmation Order and except with respect to the Liquidation Trust: (a) the rights afforded herein and the treatment of all Claims and Equity Interests herein, shall be in exchange for and in complete satisfaction and

release of, all Claims and Equity Interests of any nature whatsoever, including any interest accrued on Claims from and after the Petition Date, against the Debtors or any of their assets and properties, (b) on the Effective Date, all such Claims against, and Equity Interests in, the Debtors shall be satisfied and released in full, and (c) all Persons shall be precluded from asserting against the Debtors, the Liquidation Trust, their successors or their assets or properties, any other or further Claims or Equity Interests based upon any act or omission, transaction or other activity of any kind or nature that occurred prior to the Effective Date.

C. ~~Stay and Injunction~~ Releases by Holders of Tort Claims and Interests

~~From and after the Effective Date of the Plan, all Tort Claims against the Debtors or the Liquidation Trust shall be stayed. Except as provided in the ADR Procedures, all Holders of Tort Claims are enjoined from commencing or continuing any judicial, administrative or other action or proceeding against the Debtors, the Liquidation Trust, the Liquidation Trustee or the Liquidation Trust Assets in connection with any Tort Claim or to recover any Tort Claim.~~

As of the Effective Date, in consideration for the obligation of the LLCP Entities to fund under the Additional Funding Stipulation and to fund certain litigation expenses of the Liquidation Trust as more particularly set forth herein and in the Stipulation, each Holder (other than a Debtor) shall be deemed to have forever released, waived and discharged all claims, demands, debts, rights, causes of action or liabilities, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise against any of the LLCP Entities and their respective officers, directors, parties, employees, partners (general and limited), members, managers and agents that are based in whole or in part on any act or omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to any of the Debtors, the Chapter 11 Cases, this Plan or the Disclosure Statement; provided, nothing herein shall release any of the LLCP Entities from their obligations under the Stipulation, the Additional Funding Stipulation or this Plan; provided, further, that each Holder may elect not to grant the releases set forth in this section by filing with the Bankruptcy Court and serving upon the Debtors, the Committee and the LLCP Entities an "Opt-out Notice" on or before the last day fixed by the Bankruptcy Court for filing objections to the Plan. The Opt-out Notice must expressly state that such Holder is affirmatively electing not to grant the releases set forth in this Section C. All Holders who do not "opt-out" by timely filing such notice shall be bound by the releases contained herein.

D. Releases by the Debtors

As of the Effective Date, each of the Debtors shall be deemed to have forever released, waived and discharged all claims, demands, debts, rights, causes of action or liabilities, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise against any of the LLCP Entities and their respective officers, directors, parties, employees, partners (general and limited), members, managers and agents that are based in whole or in part on any act or omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to any of the Debtors, the Chapter 11

Cases, this Plan or the Disclosure Statement; provided, that, nothing herein shall release any of the LLC Entities from their obligations under the Stipulation, the Additional Funding Stipulation, the Plan or the Liquidation Trust Agreement.

E. Fee Shifting

In any action, suit or proceeding by any Holder or other party in interest contesting any action by, or non-action of, the LLC Entities, or their respective affiliates, officers, directors, shareholders, members, representatives, attorneys, financial advisors, and agents as not being in good faith, the reasonable attorneys' fees and costs of the prevailing party shall be paid to the losing party and as a condition to going forward with such action, suit, or proceeding at the outset thereof, all parties thereto shall be required to provide appropriate proof and assurances of their capacity to make such payments of reasonable attorneys' fees and costs in the event they fail to prevail.

ARTICLE XII

RETENTION AND PRESERVATION OF CAUSES OF ACTION

A. Retention of Causes of Action

The retention and preservation of the Causes of Action, and their prosecution and liquidation by the Litigation Designee, on behalf of the Liquidation Trust and Liquidation Trustee, is an integral part of the Plan. Proceeds from the Causes of Action are the primary source of distributions to the Holders of Allowed General Unsecured Claims and the other Beneficiaries, and therefore, any proceeding involving a Cause of Action will directly affect the implementation, consummation, execution and administration of the Plan. All Causes of Action, of any kind or nature whatsoever, whether arising under the Bankruptcy Code or non-bankruptcy law, shall be preserved and shall remain within the jurisdiction of the Bankruptcy Court.

Except as otherwise provided in the Plan, all Causes of Action that the respective Debtors and their Estates may hold against any Person or Entity shall automatically vest in the Liquidation Trust. The Liquidation Trust shall have the exclusive right, authority, and discretion to institute, prosecute, abandon, settle, or compromise any and all such Causes of Action without the consent or approval of any third party and without any further order of the Bankruptcy Court, except as otherwise provided herein or in the Liquidation Trust Agreement. On the Effective Date, the Litigation Designee, in accordance with section 1123(b)(3) of the Bankruptcy Code, and on behalf of the Liquidation Trust, shall serve a representative of the estate and shall retain and possess the sole and exclusive right to commence and pursue, as appropriate, any and all Causes of Action, whether arising before or after the Petition Date, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in one or more of the Chapter 11 Cases, including, but not limited to, the actions specified in the Plan Supplement.

B. Preservation of All Causes of Action Not Expressly Settled or Released

The Committee and the LLC Entities are currently investigating potential Causes of Action against certain Persons or Entities but have not yet completed their investigations. Therefore, on the Effective Date, all Causes of Action shall vest in the Liquidation Trust, which

shall hold and possess all rights on behalf of the Debtors, their Estates and the Liquidation Trust to commence and pursue any and all Causes of Action (under any theory of law, including, without limitation, the Bankruptcy Code, and in any court or other tribunal including, without limitation, in any adversary proceeding Filed in the Chapter 11 Cases). The Litigation Designee, on behalf of the Liquidation Trust, shall pursue such Causes of Action as set forth herein and in the Liquidation Trust Agreement.

The potential Causes of Action currently being investigated by the Committee and the LLC Entities, which may be pursued by the Litigation Designee, on behalf of the Liquidation Trust, after the Effective Date, include, without limitation, the Causes of Action listed or described on the Schedule of Causes of Action set forth in the Plan Supplement. The Debtors and, after the Effective Date, the Litigation Designee, on behalf of the Liquidation Trust, reserve all rights to pursue any and all Causes of Action, whether or not listed or described on the Schedule of Causes of Action set forth in the Plan Supplement. In addition to the Causes of Action listed on the Schedule of Causes of Action set forth in the Plan Supplement, the Debtors hereby reserve the rights of the Liquidation Trust and the Litigation Designee, on behalf of the Liquidation Trust, to pursue, administer, settle, litigate, enforce and liquidate:

- (a) Any other Causes of Action, whether legal, equitable or statutory in nature;
- (b) Any and all actions arising under the Bankruptcy Code, including, without limitation, sections 544, 545, 547, 548, 549, 550, 551, 553(b) and/or 724(a) of the Bankruptcy Code; and
- (c) Any other Causes of Action that currently exist or may subsequently arise and which have not been otherwise set forth herein or in the Plan Supplement, because the facts upon which such Causes of Action are based are not currently or fully known by the Debtors, the Committee or the LLC Entities (collectively, the “**Unknown Causes of Action**”). The failure to list or describe any such Unknown Cause of Action herein, or in the Plan Supplement, is not intended to limit the rights of the Litigation Designee, on behalf of the Liquidation Trust, to pursue any Unknown Cause of Action.

Unless Causes of Action against a Person or Entity are expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order, the Debtors (before the Effective Date) and the Litigation Designee, on behalf of the Liquidation Trust (post-Effective Date), expressly reserve all Causes of Action (including the Unknown Causes of Action) for later adjudication and therefore, no preclusion doctrine or other rule of law, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches, shall apply to such Causes of Action upon, after, or as a result of the confirmation or Effective Date of the Plan, or the Confirmation Order. In addition, the Debtors and the Litigation Designee, on behalf of the Liquidation Trust, and any successors-in-interest thereto, expressly reserve the right to pursue or adopt any Claims not so waived, relinquished, released, compromised or settled that are alleged in any lawsuit in which the Debtors are a defendant or an interested party, against any Person or Entity, including, without limitation, the plaintiffs and co-defendants in such lawsuits.

ARTICLE XIII

RETENTION OF JURISDICTION

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain such jurisdiction over any matter arising under the Bankruptcy Code, or arising in or related to the Chapter 11 Cases or the Plan after Confirmation and after the Effective Date, and any other matter or proceeding that is within the Bankruptcy Court's jurisdiction pursuant to 28 U.S.C. §1334 or 28 U.S.C. §157, including, without limitation, jurisdiction to:

1. Allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Equity Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the allowance or priority of Claims or Equity Interests;

2. Grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan, for periods ending on or before the Effective Date;

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

4. Ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions hereof;

5. Decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters, including all Causes of Action and objections or estimations to Claims or Equity Interests, and grant or deny any applications involving a Debtor that may be pending on the Effective Date, or that, pursuant to the Plan, may be instituted by the Liquidation Trustee, Litigation Designee or the Liquidation Trust or any other Person or Entity after the Effective Date; provided, however that the Liquidation Trustee, Litigation Designee and the Liquidation Trust shall reserve the right to prosecute the Causes of Action in all proper jurisdictions;

6. Enter such orders as may be necessary or appropriate to implement or consummate the provisions hereof and all contracts, instruments, releases, indentures and other agreements or documents created in connection with the Plan, the Disclosure Statement or the Liquidation Trust Agreement;

7. Resolve any cases, controversies, suits or disputes that may arise in connection with the consummation, interpretation or enforcement of the Plan, the Liquidation Trust Agreement, or any Person's or Entity's obligations incurred in connection with the Plan or the Liquidation Trust Agreement, including, relating to determining the scope and extent of the Liquidation Trust Assets;

8. Issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Person or Entity with consummation or enforcement of the Plan, except as otherwise provided herein;

9. Resolve any cases, controversies, suits or disputes with respect to the releases, injunction and other provisions contained in Article XI hereof and enter any orders that may be necessary or appropriate to implement such releases, injunction and other provisions;

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

11. Determine any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Liquidation Trust Agreement or any contract, instrument, release, indenture or other agreement or document created in connection with the Plan or the Disclosure Statement or the Liquidation Trust Agreement; and

12. Enter an order and/or final decree concluding the Chapter 11 Cases.

ARTICLE XIV

MISCELLANEOUS PROVISIONS

A. *Modification of Plan Supplement*

Modification of or amendments to the Plan Supplement, may be Filed with the Bankruptcy Court before the Confirmation. Any such modification or supplement shall be considered a modification of the Plan and shall be made in accordance with the Plan. Upon its Filing, the Plan Supplement may be inspected in the office of the clerk of the Bankruptcy Court or its designee during normal business hours. Holders of Claims and Equity Interests may obtain a copy of the Plan Supplement by contacting Kurtzman Carson Consultants LLC, 2335 Alaska Avenue, El Segundo, CA 90245. The documents contained in the Plan Supplement are an integral part of the Plan and shall be approved by the Bankruptcy Court pursuant to the Confirmation Order.

B. *Effectuating Documents, Further Transactions and Corporation Action*

Each of the Debtors is authorized to execute, deliver, file or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement and further evidence the terms and conditions hereof.

Prior to, on or after the Effective Date (as appropriate), all matters provided for hereunder that would otherwise require approval of the shareholders or directors of the Debtors shall be deemed to have occurred and shall be in effect prior to, on or after the Effective Date (as appropriate) pursuant to the general corporation laws of the applicable States without any requirement of further action by the shareholders or directors of the Debtors.

C. *Dissolution of Committee*

Upon the Effective Date, the Committee shall dissolve, except with respect to any appeal of an order or other pending matter in the Chapter 11 Cases, and any applications for Professional Fee Claims, and the Committee Members and the Committee's Professionals shall be relieved and discharged of all duties related to the Chapter 11 Cases.

D. *Payment of Statutory Fees*

After the closing of the Sale Transaction, all fees payable pursuant to section 1930(a) of title 28 of the United States Code, as determined by the Bankruptcy Court at the hearing pursuant to section 1128 of the Bankruptcy Code, shall be paid for each quarter (including any fraction thereof) until the Chapter 11 Cases are converted, dismissed or closed, whichever occurs first.

E. *Modification of Plan*

Subject to the limitations contained in the Plan:

1. The Proponent reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify the Plan, with the consent of the LLCP Entities, prior to the entry of the Confirmation Order; and

2. After the entry of the Confirmation Order, the Proponent may, with the consent of the LLCP Entities, upon order of the Bankruptcy Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan.

F. *Revocation of Plan*

The Proponent reserves the right to revoke or withdraw the Plan prior to the Confirmation Date and to file subsequent plans of reorganization. If the Proponent revokes or withdraws the Plan, or if Confirmation or the Effective Date does not occur, then (a) the Plan shall be null and void in all respects, (b) except for the Stipulation and the Additional Funding Stipulation, any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain any Claim or Equity Interest or Class of Claims or Equity Interests), assumption or rejection of executory contracts or leases affected by the Plan, and any document or agreement executed pursuant hereto, shall be deemed null and void, and (c) nothing contained in the Plan shall (i) constitute a waiver or release of any Claims by or against, or any Equity Interests in, such Debtor or any other Person, (ii) prejudice in any manner the rights of such Debtor or any other Person, or (iii) constitute an admission of any sort by such Debtor or any other Person.

G. *Successors and Assigns*

The rights, benefits and obligations of any Person or Entity named or referred to herein shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign of such Person or Entity.

H. *Reservation of Rights*

Except as expressly set forth herein, this Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order. None of the filing of this Plan, any statement or provision contained herein, or the taking of any action by any Debtor with respect to this Plan, the Disclosure Statement or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of any Debtor with respect to the Holders of Claims or Equity Interests prior to the Effective Date.

I. *Section 1146 Exemption*

Pursuant to section 1146(c) of the Bankruptcy Code, under this Plan, (i) the issuance, distribution, transfer or exchange of any debt, equity security or other interest in the Debtors; (ii) the creation, modification, consolidation or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (iii) the making, assignment or recording of any lease or sublease; or (iv) the making, delivery or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, this Plan, including any deeds, bills of sale, assignments or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to this Plan shall not be subject to any document recording tax, mortgage recording tax, stamp tax or similar government assessment, and the appropriate state or local government official or agent shall be directed by the Bankruptcy Court to forego the collection of any such tax or government assessment and to accept for filing and recording any of the foregoing instruments or other documents without the payment of any such tax or government assessment.

All subsequent issuances, transfers or exchanges of securities, or the making or delivery of any instrument of transfer by the Debtors in the Chapter 11 Cases, whether in connection with a sale under section 363 of the Bankruptcy Code or otherwise, shall be deemed to be or have been done in furtherance of this Plan.

J. *Further Assurances*

The Holders of Claims or Equity Interests receiving distributions hereunder and all other parties in interest shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Liquidation Trust Agreement.

K. *Service of Documents*

Any pleading, notice or other document required by the Plan to be served on or delivered upon the Debtors or the Committee shall be sent by first class U.S. mail, postage prepaid, as follows:

To the Debtors:

Matthew A. Feldman
Morris J. Massel
Carolynn H. G. Callari
WILLKIE FARR & GALLAGHER LLP
787 Seventh Avenue
New York, New York 10019
Tel: (212) 728-8000

Robert S. Brady
Joel A. Waite
Matthew B. Lunn
YOUNG CONAWAY STARGATT &
TAYLOR, LLP
The Brandywine Building
1000 West Street, 17th Floor
Wilmington, Delaware 19801
Tel: (302) 571-6600

To the Committee:

Nancy A. Mitchell
Nancy A. Peterman
David W. Baddley
GREENBERG TRAURIG LLP
77 West Wacker Drive, Suite 2500
Chicago, Illinois 60657
Tel: (312) 456-8400

Diane E. Vuocolo
Victoria W. Counihan
Dennis A. Meloro
GREENBERG TRAURIG LLP
The Nemours Building
1007 N. Orange Street, Suite 1200
Wilmington, Delaware 19801
Tel: (302) 661-7000

L. *Transactions on Business Days*

If the date on which a transaction may occur under this Plan shall occur on a day that is not a Business Day, then such transaction shall instead occur on the next succeeding Business Day.

M. *Filing of Additional Documents*

On or before the Effective Date, the Debtors may file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

N. *Post-Effective Date Fees and Expenses*

From and after the Effective Date, the Liquidation Trustee, on behalf of the Liquidation Trust, shall, in the ordinary course of business and without the necessity for any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Liquidation Trust related to the consummation and to the implementation of this Plan, except as otherwise provided in the Liquidation Trust Agreement.

O. *Severability*

The provisions of this Plan shall not be severable unless such severance is agreed to by the Proponent or, if after the Effective Date, by the Liquidation Trustee, on behalf of the Liquidation Trust, and such severance would constitute a permissible modification of this Plan pursuant to section 1127 of the Bankruptcy Code.

P. *Conflicts*

To the extent any provision of the Liquidation Trust Agreement, the Disclosure Statement, or any document executed in connection therewith or any documents executed in connection with the Confirmation Order (or any exhibits, schedules, appendices, supplements or amendments to any of the foregoing) conflicts with, or is in any way inconsistent with, the terms of this Plan, the terms and provisions of this Plan shall govern and control, provided however that nothing in this Plan shall be deemed to modify or supersede the Sale Order.

Q. *Term of Injunctions or Stays*

Unless otherwise provided herein or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases under sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court, and still extant on the Confirmation Date (excluding any injunctions or stays contained in this Plan or the Confirmation Order), shall remain in full force and effect until the Effective Date. All injunctions or stays contained in this Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.

R. *Entire Agreement*

This Plan and the Plan Supplement (as amended) supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings and representations on such subjects, all of which have become merged and integrated into this Plan.

S. *Closing of the Chapter 11 Cases*

The Liquidation Trustee shall promptly, upon the full administration of the Chapter 11 Cases, File with the Bankruptcy Court all documents required by the Bankruptcy Rules and any applicable order of the Bankruptcy Court to close the Chapter 11 cases.

Dated: ~~June 19~~, September 10, 2007

Respectfully Submitted,

[Signatures on Following Page]

THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS

By: _____

Name: Joseph Galzerano

Title: Co-Chair

By: _____

Name: John Bolduc

Title: Co-Chair

Document comparison by Workshare Professional on Monday, September 10, 2007
8:04:30 AM

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Description	#56788516v5<CHI> - Plan of Liquidation (Filed Version) [WERNER]
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Legend:	
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Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

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Format changed	0
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