

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

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In re:

CORNERSTONE HOMES, INC.,

CASE NO. 2-13-21103-PRW

CHAPTER 11

Debtor.

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THE SECURED LENDERS' JOINT PLAN

The Community Preservation Corporation (“CPC”), First Citizens National Bank (“First Citizens”), The Elmira Savings Bank, FSB (“ESB”), and Lyons National Bank (“LNB”) (CPC, First Citizens, ESB, and LNB referred to collectively as the “Secured Lenders”) hereby propose, pursuant to chapter 11 of title 11 of the United States Code, the following Plan of Reorganization:

ARTICLE I

DEFINITIONS

Capitalized terms used herein, but not otherwise defined herein shall have the meanings set forth below, and such meanings shall be equally applicable to the singular and plural forms of the terms defined, unless the context otherwise requires.

1.1 “Administrative Claim” shall mean a Claim for (a) any cost or expense of administration (including, without limitation, the fees and expenses of Professionals) of the Chapter 11 Case asserted or arising under sections 503, 507(a)(1), 507(b) or 1114(e)(2) of the Bankruptcy Code, including, without limitation, (i) any actual and necessary post petition cost or expense of preserving the Debtor’s Estate or operating the business of the Debtor; (ii) any payment to be made under this Plan to cure a default on an assumed executory contract or unexpired lease; (iii) any post-petition cost, indebtedness or contractual obligation duly and validly incurred or assumed by the Debtor in the ordinary course of its business; (iv) compensation or reimbursement of expenses of Professionals to the extent Allowed by the Bankruptcy Court under sections 330(a) or 331 of the Bankruptcy Code; and (v) all Allowed Claims that are entitled to be treated as Administrative Claims pursuant to a Final Order of the Bankruptcy Court under section 546(c)(2)(A) of the Bankruptcy Code; and (b) any U.S. Trustee’s Fee Claims.

1.2 “Allowed Claim” shall mean, with respect to a particular Claim, (a) the amount of the Claim that is listed in the Schedules as neither disputed, contingent nor unliquidated, if the Holder of such Claim did not duly file a proof of claim on or before the Bar Date; or (b) if the Holder of such Claim duly filed a proof of claim on or before the Bar Date (or filed a proof of claim after the Bar Date and such proof of claim is

deemed to be timely filed), then (i) the amount stated in such proof of claim, if no Objection thereto has been interposed within the applicable period of limitations fixed by this Plan or as otherwise fixed by the Bankruptcy Court; (ii) in the case of a Claim to which a timely Objection has been made, such amounts shall be fixed by a Final Order; (iii) with respect to a Professional Fee Claim, such amount as shall be fixed by a Final Order; or (iv) as to a Claim of the kind specified in subsection (a) above, such amount as the Debtor or the Reorganized Debtor shall agree to or such amount as shall be fixed by Final Order. For purposes of determining the amount of an Allowed Claim, there shall be deducted therefrom an amount equal to the amount of any Claim that the Debtor may have against the Holder thereof, to the extent such Claim may be set off pursuant to section 553 of the Bankruptcy Code or to the extent such Claim is subject to recoupment.

1.3 “Avoidance Action” shall mean any and all Causes of Action which a trustee, debtor-in-possession, the Estate or other appropriate party in interest may assert under sections 502, 510, 522(f), 522(h), 542, 543, 544, 545, 547, 548, 549, 550, 551, 553 and 724(a) of the Bankruptcy Code, including the Debtor’s rights of setoff, recoupment, contribution, reimbursement, subrogation or indemnity (as those terms are defined by the non bankruptcy law of any relevant jurisdiction) and any other indirect claim of any kind whatsoever, whenever and wherever arising or asserted.

1.4 “Ballot” shall mean the ballot accompanying the Disclosure Statement upon which Holders of Impaired Claims entitled to vote on this Plan shall indicate their acceptance or rejection of this Plan in accordance with the instructions regarding voting.

1.5 “Bankruptcy Code” shall mean title 11 of the United States Code, 11 U.S.C. §§ 101, et seq., together with all amendments, modifications, or replacements, as the same exist upon any relevant date, to the extent applicable to the Chapter 11 Case.

1.6 “Bankruptcy Court” shall mean the United States Bankruptcy Court for the Western District of New York with jurisdiction over the Chapter 11 Case, and to the extent of any withdrawal of reference made pursuant to 28 U.S.C. § 157, the United States District Court for the Western District of New York, or any appellate court with competent jurisdiction over the Chapter 11 Case or any particular proceeding within the Chapter 11 Case.

1.7 “Bankruptcy Rules” shall mean (i) the Federal Rules of Bankruptcy Procedure and the Official Bankruptcy Forms, as amended and promulgated under section 2075 of title 28 of the United States Code, (ii) the Federal Rules of Civil Procedure, as amended and promulgated under section 2072 of title 28 of the United States Code, (iii) the Local Rules of the Bankruptcy Court, and (iv) any standing orders governing practice and procedure issued by the Bankruptcy Court, each as in effect on the Petition Date, together with all amendments and modifications thereto that were subsequently made applicable to the Chapter 11 Case or proceedings therein, as the case may be.

1.8 “Bar Date” shall mean (a) the date to be fixed by the Bankruptcy Court pursuant to Bankruptcy Rules 2002(7) and 3003(c)(3) by which all Creditors asserting

Claims, other than Administrative Claims, against the Debtor are required to File proofs of claim or be forever barred from asserting such Claims against the Debtor or its Property and from voting on this Plan and/or sharing in any distribution hereunder; (b) solely with respect to Claims as to which the Debtor amends its Schedules subsequent to the Bar Date, the date which is thirty (30) days after notice of such amendment is given to the Holders of such affected Claims; or (c) solely with respect to Claims for alleged damages arising from the rejection of an executory contract or unexpired lease, the date which is thirty (30) days after entry of a Final Order (which may consist of the Confirmation Order) rejecting such contract or lease.

1.9 “Business Day” shall mean, with respect to any place, any day which is not a Saturday, a Sunday, a “legal holiday” as defined in Bankruptcy Rule 9006(a), or a day on which banking institutions conducting business in such place are authorized or obligated by law, executive order or governmental decree to be closed.

1.10 “Cash” shall mean money, currency and coins, negotiable checks, balances in bank accounts and other lawful currency of the United States of America and its equivalents.

1.11 “Causes of Action” shall mean any and all actions, claims, rights, defenses, third-party claims, damages, executions, demands, crossclaims, counterclaims, suits, causes of action, choses in action, controversies, agreements, promises, rights to legal remedies, rights to equitable remedies, rights to payment and claims whatsoever, whether known, unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured and whether asserted or assertable directly, indirectly or derivatively, at law, in equity or otherwise, accruing to the Debtor, including, without limitation, the Avoidance Actions.

1.12 “Chapter 11 Trustee” shall mean Michael Arnold who was appointed as Chapter 11 Trustee of the Debtor’s estate pursuant to an order of the Bankruptcy Court dated January 22, 2014.

1.13 “Claim” shall mean (i) any right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, Disputed, undisputed, legal, equitable, secured or unsecured or (ii) any right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, Disputed, undisputed, secured or unsecured.

1.14 “Class” shall mean any group of Claims or Interests as specified in Article IV hereof.

1.15 “CNY Holdings, Inc.” shall mean the entity set up by First Citizens National Bank to hold certain of its collateral pledged by the Debtor.

1.16 “Committee” shall mean the Official Committee of Unsecured Creditors which may be appointed in the Chapter 11 Case pursuant to section 1102(a) of the Bankruptcy Code by the United States Trustee, as the membership of such committee(s) is from time to time constituted and reconstituted.

1.17 “Confirmation” shall mean the entry by the Bankruptcy Court of the Confirmation Order.

1.18 “Confirmation Date” shall mean the date on which the Confirmation Order is entered by the Bankruptcy Court.

1.19 “Confirmation Hearing” shall mean the hearing to be held before the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code concerning confirmation of this Plan.

1.20 “Confirmation Order” shall mean the order of the Bankruptcy Court confirming this Plan and approving the transactions contemplated herein.

1.21 “Creditor” shall mean any Person that is the Holder of any Claim against the Debtor.

1.22 “Debtor” shall mean Cornerstone Homes, Inc.

1.23 “Disallowed Claim” shall mean, with respect to any Claim or Interest or portion thereof, any Claim against or Interest in the Debtor which (a) has been withdrawn, in whole or in part, by agreement of the Debtor or the Reorganized Debtor and the Holder thereof; (b) has been withdrawn, in whole or in part, by the Holder thereof; or (c) has been disallowed, in whole or part, by Final Order. In each case a Disallowed Claim or a Disallowed Interest is disallowed only to the extent of disallowance or withdrawal.

1.24 “Disallowed Interest” shall mean an Interest, or any portion thereof, that is Disallowed.

1.25 “Disclosure Statement” shall mean the Disclosure Statement to be filed by the Secured Lenders with the Bankruptcy Court with respect to this Plan, as amended from time to time, which has been circulated to all Creditors contemporaneously with this Plan or Reorganization.

1.26 “Disputed Claim” shall mean a Claim, or any portion thereof, as to which an objection has been filed.

1.27 “Disputed Interest” shall mean an Interest, or any portion thereof, that is disputed.

1.28 “Effective Date” shall mean the Business Day that is no more than ten (10) Business Days following the date on which all conditions to consummation set forth in Article XI hereof have been satisfied or, if capable of being duly and expressly waived,

any conditions to the occurrence of consummation set forth in this Plan have been satisfied or waived.

1.29 “Estate” shall mean the estate created in this Chapter 11 Case pursuant to section 541 of the Bankruptcy Code upon commencement of the Chapter 11 Case.

1.30 “File, Filed or Filing” shall mean file, filed or filing with the Bankruptcy Court in this Chapter 11 Case.

1.31 “Final Decree” shall mean the final decree entered by the Bankruptcy Court after the Effective Date and pursuant to section 350(a) of the Bankruptcy Code and Bankruptcy Rule 3022.

1.32 “Final Order” shall mean an order or judgment of a court as entered on the legal docket maintained by the clerk of such court that has not been reversed, stayed, modified, vacated, or amended.

1.33 “Holder” shall mean the beneficial owner of any Claim or Interest.

1.34 “Impaired” shall mean, when used with reference to a Claim or Interest, a Claim or Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

1.35 “Impaired Interest” shall mean an Interest which is Impaired.

1.36 “Interests” shall mean any and all equity interests, ownership interests or shares in the Debtor and issued by the Debtor prior to the Petition Date.

1.37 “Installment Land Contract” shall mean a contract with a prospective purchaser of the Debtor’s property which gives that potential purchaser the right to purchase and take title to the subject property at the end of a series of installment payments.

1.38 “Liens” shall mean, with respect to any asset or Property (or the rents, revenues, income, profits or proceeds therefrom), and in each case, whether the same is consensual or nonconsensual or arises by contract, operation of law, legal process or otherwise: (a) any and all mortgages, liens, pledges, attachments, charges, leases evidencing a capitalizable lease obligation, conditional sale or other title retention agreement, or other security interest or encumbrance or other legally cognizable security devices of any kind in respect of any asset or Property, or upon the rents, revenues, income, profits or proceeds therefrom; or (b) any arrangement, express or implied, under which any Property is transferred, sequestered or otherwise identified for the purpose of subjecting or making available the same for the payment of debt or performance of any other obligation in priority to the payment of general unsecured Creditors.

1.39 “Non-Tax Priority Claim” shall mean any Claim entitled to priority status pursuant to sections 507(a)(4) and 507(a)(7) of the Bankruptcy Code.

1.40 “Objection” shall mean any objection, application, motion, complaint or any other legal proceeding seeking, in whole or in part, to Disallow, determine, liquidate, classify, reclassify or establish the priority, expunge, subordinate or estimate any Claim (including the resolution of any request for payment of any Administrative Claim) or Interest other than a Claim or an Interest that is Allowed.

1.41 “Old Common Stock” shall mean all authorized, issued and outstanding shares of common stock of the Debtor issued by the Debtor as of the Petition Date, any other Interests in the Debtor relating to such common stock, and any contingent, disputed or unliquidated Claims related thereto or in connection therewith.

1.42 “Person” shall mean and include a natural person, individual, partnership, corporation (as defined in section 101(a) of the Bankruptcy Code), or organization including, without limitation, corporations, limited partnerships, limited liability companies, general partnerships, joint ventures, joint stock companies, trusts, land trusts, estate business trusts, unincorporated organizations or associations, or other organizations, irrespective of whether they are legal entities, governmental bodies (or any agency, instrumentality or political subdivision thereof), or any other form of legal entities; provided, however, “Person” does not include governmental units, except that a governmental unit that (A) acquires an asset from a Person (i) as a result of the operation of a loan guarantee agreement or (ii) as receiver or liquidating agent of a Person; (B) is a guarantor of a pension benefit payable by or on behalf of a Debtor; or (C) is the legal or beneficial owner of an asset of (i) an employee pension benefit plan that is a governmental plan, as defined in section 414(d) of the Internal Revenue Code of 1986 or (ii) an eligible deferred compensation plan, as defined in section 457(b) of the Internal Revenue Code of 1986, shall be considered for purposes of section 1102 of the Bankruptcy Code to be a Person with respect to such asset or such benefit.

1.43 “Petition Date” shall mean July 15, 2013, the date upon which the Debtor filed its voluntary petition for reorganization under chapter 11 of the Bankruptcy Code.

1.44 “Plan” shall mean this Plan of Reorganization filed by the Secured Lenders, and any amendments, modifications, or supplements hereof in accordance with a Final Order, the Bankruptcy Code, the Bankruptcy Rules, and/or this Plan.

1.45 “Pledged Property” shall mean any Property pledged by the Debtor or CNY Holdings, Inc. as collateral to the Secured Lenders.

1.46 “Priority Claims” shall mean Priority Tax Claims and Non-Tax Priority Claims, both individually and collectively.

1.47 “Priority Tax Claim” shall mean any Claim entitled to priority status pursuant to section 507(a)(8) of the Bankruptcy Code.

1.48 “Professional Fee Claim” shall mean a Claim for compensation or reimbursement of expenses pursuant to sections 327, 328, 330, 331, 503(b) and 1103 of the Bankruptcy Code in connection with an application made to the Bankruptcy Court in the Chapter 11 Case.

1.49 “Professionals” shall mean any professional employed in this Chapter 11 Case pursuant to sections 327 or 1103 of the Bankruptcy Code or to be compensated pursuant to sections 327, 328, 330, 331, 503(b)(2) or (4), or 1103 of the Bankruptcy Code.

1.50 “Property” shall mean all assets or property of the Debtor’s Estate of any nature whatsoever, real or personal, tangible or intangible, including contract rights, accounts and Causes of Action, previously or now owned by the Debtor, or acquired by the Debtor’s Estate., as defined in section 541 of the Bankruptcy Code.

1.51 “Reorganized Debtor” shall mean the Debtor on or after the Effective Date.

1.52 “Schedules” shall mean, collectively, the schedules filed in this Chapter 11 proceeding under section 521 (1) of the Bankruptcy Code by the Debtor as they may from time to time be amended in accordance with Bankruptcy Rule 1009.

1.53 “Secured Claim” shall mean any Claim that is (a) secured in whole or part by a Lien which is valid, perfected and enforceable under applicable law on Property in which the Debtor’s Estate has an interest and is not subject to avoidance under the Bankruptcy Code or applicable non bankruptcy law, or (b) subject to setoff under section 553 of the Bankruptcy Code, but, with respect to both case (a) and (b), only to the extent of the Estate’s interest in the value of the assets or Property securing any such Claim or the amount subject to setoff, as the case may be.

1.54 “Secured Lenders” shall mean collectively or individually, The Community Preservation Corporation, First Citizens National Bank, The Elmira Savings Bank, FSB, and Lyons National Bank.

1.55 “Secured Lenders’ Trust” shall mean the Trust formed pursuant to this Plan which is comprised of: the Pledged Property together with: the assignment of all leases and Land Contracts associated with the Pledged Properties; all tax payments held in escrow by the Chapter 11 Trustee in connection with the Pledged Properties; any proceeds from the sale of Pledged Property; any funds previously designated for repairs or maintenance of the Pledged Properties by the Trustee; all records and documents relating to the Pledged Properties; any insurance covering the Pledged Properties; all prepayments and security deposits made by tenants and Installment Land Contract vendees; and all escrowed funds held by the Secured Lenders.

1.56 “Tax” shall mean any tax, charge, fee, levy, impost or other assessment by any federal, state, local or foreign governmental authority, including, without limitation, income, excise, property, sales, transfer, employment, payroll, franchise, profits, license, use, ad valorem, estimated, severance, stamp, occupation and withholding tax, together with any interest, penalties, fines or additions attributable to, imposed on, or collected by any such federal, state, local or foreign governmental authority.

1.57 “Unclaimed Property” shall mean any distribution of Cash or any other Property made to the Holder of an Allowed Claim pursuant to this Plan that (a) is returned to the Reorganized Debtor as undeliverable and no appropriate forwarding address is received within the later of (i) one (1) year after the Effective Date and (ii) one (1) year after such distribution is made to such Holder; or (b) in the case of a distribution made in the form of a check, is not negotiated and no request for reissuance is made as provided for in Section 7.5 of this Plan.

1.58 “Unimpaired” shall mean any Claim that is not Impaired within the meaning of section 1124 of the Bankruptcy Code.

1.59 “United States Trustee” shall mean the United States Trustee appointed under section 581(a)(3) of title 28 of the United States Code to serve in the Western District of New York.

1.60 “U.S. Trustee’s Fee Claims” shall mean any fees or charges assessed against the Debtor’s Estate pursuant to section 1930(a)(6) of title 28 of the United States Code.

1.61 “Unsecured Claim” shall mean any Claim that is not an Administrative Claim, NonTax Priority Claim, Priority Tax Claim, or Secured Claim.

1.62 “Unsecured Creditors’ Trust” shall mean the Trust formed pursuant to this Plan which shall be comprised of all assets of the Debtor, including causes of action, other than those assets that are included in the Secured Lenders’ Trust.

ARTICLE II

UNCLASSIFIED CLAIMS

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, and Priority Tax Claims have not been classified.

ARTICLE III

TREATMENT OF UNCLASSIFIED CLAIMS

3.1 Administrative Claims. Administrative Claims are Unimpaired. Each Holder of an Administrative Claim shall receive from the Unsecured Creditors’ Trust (defined herein) administered by the Committee in full satisfaction, settlement, release, extinguishment and discharge of such Claim: (A) Cash equal to the amount of such unpaid Allowed Claim, without interest, (i) in order of priority as the trustee of the Unsecured Creditors’ Trust deems appropriate when sufficient cash becomes available, or (ii) on the date agreed to in writing by the Committee and the Holder of such Claim; or (B) such other, lesser treatment on such other terms and conditions as may be agreed

upon in writing by the Committee and the Holder of such Claim, or as the Bankruptcy Court may otherwise order.

3.2 Priority Tax Claims. Priority Tax Claims are Unimpaired. Each Holder of an Allowed Priority Tax Claim shall receive from the Unsecured Creditors' Trust (defined herein) administered by the Committee in full satisfaction, settlement, release, extinguishment and discharge of such Claim: (A) Cash equal to the Allowed amount of such Claim, without interest, on the later of (i) the date sufficient cash becomes available in the Unsecured Creditors' Trust; or (ii) the date agreed to in writing by the Committee and the Holder of such Claim; or (iii) in equal monthly installments, including interest at the rate of prime plus one (1) percent as of the Effective Date sufficient to pay such claims in sixty (60) equal monthly installments, or (B) such other, lesser treatment on such other terms and conditions as may be agreed upon in writing by the Committee and the Holder of such Claim, or as the Bankruptcy Court may otherwise order.

3.3 Non-Tax Priority Claims. Non-Tax Priority Claims are Unimpaired. Each Holder of an Allowed NonTax Priority Claim shall receive from the Unsecured Creditors' Trust (defined herein) administered by the Committee in full satisfaction, settlement, release, extinguishment and discharge of such Claim: (A) Cash equal to the Allowed amount of such Claim, without interest, on the later of (i) the date sufficient cash becomes available in the Unsecured Creditors' Trust; or (B) such other, lesser treatment on such other terms and conditions as may be agreed upon in writing by the Debtor or the Committee and the Holder of such Claim, or as the Bankruptcy Court may otherwise order.

ARTICLE IV

CLASSIFICATION OF CLAIMS AND INTERESTS

Classified Claims against, and Interests in, the Debtor are described below. A Claim or Interest will be deemed classified in a particular Class only to the extent that such Claim or Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Interest qualifies within the description of such different Class.

4.1 Class 1 – The Secured Lenders' Claims.

Class 1 consists of the Secured Claims of CPC, First Citizens, ESB and LNB.

4.2 Class 2 - Unsecured Claims.

Class 2 consists of all Unsecured Claims.

4.3 Class 3- Interests in the Debtor.

Class 3 consists of all Equity Interests in the Debtor as held on the Filing Date.

ARTICLE V

TREATMENT OF CLASSES OF CLAIMS AND INTERESTS

Except as otherwise provided in this Plan or the Confirmation Order, the treatment of and the consideration to be received by Holders of Allowed Claims or Holders of Interests pursuant to this Article V will be in full satisfaction and discharge of all such Claims or Interests. The Disbursing Agent will make all payments and other distributions to be made hereunder.

5.1 Class 1 - The Secured Lenders' Claims (Impaired)

(a) Treatment: On the Effective Date, the Secured Lenders will each receive an interest in the Secured Lenders' Trust which Trust shall be comprised of all of the assets of the Debtor which were pledged as collateral to the Secured Lenders as well as the assignment of all leases and Land Contracts associated with the Pledged Properties; all tax payments held in escrow by the Chapter 11 Trustee in connection with the Pledged Properties; any proceeds from the sale of Pledged Property; any funds designated for repairs or maintenance of the Pledged Properties by the Trustee; all records and documents relating to the Pledged Properties and the insurance coverage for the Pledged Properties; all prepayments and security deposits made by tenants and Land Contract vendees; all escrowed funds held by the Trustee for the Secured Lenders under the various cash collateral orders; and all escrowed funds held by the Secured Lenders. Each Secured Lender's interest in the Secured Lenders' Trust shall be equal to the value of that Secured Lender's collateral and may only look to their individual collateral for recovery on their claim. Each Secured Lender shall retain all pre-petition liens and security interests in the respective property of the Debtor which property shall constitute the Secured Creditors' Trust. The management of the Secured Lenders' Trust and the disposition of the assets held by the Secured Lenders' Trust will be subject to a separate agreement as agreed and executed by and among each of the Secured Lenders. The Secured Lenders will not receive any distribution or further payment from the Debtor and relinquish any unsecured claim they otherwise would have a right to assert and will look solely to the Secured Lenders' Trust for recovery on the Secured Lenders' Claims.

(b) Voting: Class 1 is Impaired by this Plan. The Holders of a Secured Lenders' Claim in Class 1 are Impaired in that they are giving up their right to assert any unsecured claim and will not be paid according to their respective agreements. As such Class 1 claimants are entitled to vote to accept or reject the Plan.

5.2 Class 2- Unsecured Creditors' Claims (Impaired)

(a) Treatment: Each Holder of an Allowed Unsecured Creditors' Claim in Class 2, shall receive, in full satisfaction, settlement, release, extinguishment and discharge of such Claim an amount equal to each Claimant's pro rata share of the Unsecured Creditors' Trust which shall be comprised of all assets of the Reorganized Debtor, including all properties not subject to the Secured Creditors' liens, together with any causes of action available to the Debtor, and any other assets not contained in the Secured Lenders' Trust. The Official Committee of Unsecured Creditors will manage the Unsecured Creditors'

Trust for the benefit of the Unsecured Creditors and may appoint any trustee or management company to administer the Unsecured Creditors' Trust on behalf of the Unsecured Creditors.

(b) Voting: Class 2 creditors are Impaired by this Plan, and the Holders of the Unsecured Creditors' Claims in Class 2 are entitled to vote to accept or reject this Plan.

5.3 Class 3 Interests in the Debtor (Impaired)

(a) Treatment: The Holder(s) of Class 3 Interests shall not receive or retain any payment or distribution under this Plan on account of such Interest. The Common Stock of the Debtor shall be deemed cancelled and extinguished and shall be of no further force or effect on and after the Effective Date.

(b) Voting: Class 3 is Impaired by this Plan, and shall be entitled to a vote to accept or reject the Plan.

ARTICLE VI

ACCEPTANCE OR REJECTION OF THIS PLAN;

6.1 Acceptance by Impaired Classes of Claims and Interests.

(a) Acceptance by an Impaired Class of Claims. Pursuant to section 1126(c) of the Bankruptcy Code, an Impaired Class of Claims shall have accepted this Plan if (a) the Holders of at least two-thirds (2/3) in amount of the Allowed Claims actually voting in such Class (other than Claims held by any Holder designated pursuant to section 1126(e) of the Bankruptcy Code) have timely and properly voted to accept this Plan, and (b) more than one-half (1/2) in number of the Holders of such Allowed Claims actually voting in such Class (other than Claims held by any Holder designated pursuant to section 1126(e) of the Bankruptcy Code) have timely and properly voted to accept this Plan.

6.2 Voting Classes. Except as otherwise required by the Bankruptcy Code or the Bankruptcy Rules or as otherwise provided in this Section, (i) the Holders of the Unsecured Creditors' Claims (Class 2) shall be entitled to vote as a Class to accept or reject this Plan in accordance with Section 6.1(a) of this Plan. The Secured Lenders (Class 1) shall not be required to cast Ballots accepting the Plan, and shall be conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code, and the votes of Holders in such Classes shall not be solicited. The Holder of the Interest in Class 3 shall be deemed to reject this Plan. Administrative Claims, Priority Tax Claims and Non-Tax Priority Claims are Unimpaired and not classified under this Plan and hence are not entitled to vote to accept or reject this Plan.

6.3 Ballot Instructions. Each Holder an Unsecured Noteholder Claim (Class 5) is required to complete and return a Ballot to the Voting Agent, on or before July 5, 2013.

All questions as to the validity, form, and eligibility (including time of receipt) of Ballots shall be resolved by The Voting Agent whose determination shall be final and binding, subject only to review by the Bankruptcy Court upon application with due notice to any affected parties in interest. The Voting Agent reserves the right to reject any and all Ballots not in proper form.

6.4 Cramdown. If all applicable requirements for Confirmation of this Plan are met as set forth in section 1129(a)(1) through (13) of the Bankruptcy Code except subsection (8) thereof, the Secured Lenders as the Plan proponents reserve the right to request that the Bankruptcy Court confirm this Plan in accordance with section 1129(b) of the Bankruptcy Code, notwithstanding the requirements of section 1129(a)(8) thereof, on the basis that this Plan is fair and equitable, and does not discriminate unfairly, with respect to each Class of Claims or Interests that is Impaired under, and has not accepted, this Plan. No re-solicitation of votes for this Plan as so modified shall be required.

ARTICLE VII

PROVISIONS GOVERNING DISTRIBUTIONS UNDER THIS PLAN

7.1 Distributions to Holders of Allowed Claims. Except as otherwise provided in this Plan, the Trustee or disbursing agent appointed by the Committee shall make the distributions from the Unsecured Creditors' Trust as required to be made to all Holders of Allowed Claims, including, but not limited to, Administrative Claims, Priority Claims and any sums due the United States Trustee in accordance with Article V herein, other than to the Secured Lenders. Holders of allowed claims other than the Secured Lenders shall receive distributions solely from the Unsecured Creditors' Trust. Secured Lenders will receive distributions solely from the Secured Lenders' Trust in accordance with a separate agreement executed by the Secured Lenders. If any dispute arises as to the allowance of or identity of a Holder of an Allowed Claim who is to receive any distribution, the Committee shall, in lieu of making such distribution to such Holder, delay such distribution until the disposition thereof shall be determined by Final Order of the Bankruptcy Court or by written agreement among the interested parties to such dispute.

7.2 Delivery of Distributions. Distributions to Holders of Allowed Claims, other than the Secured Lenders, shall be made by the Committee (A) at the address indicated on each such Holder's most recently filed proof of claim filed in the Chapter 11 Case; or (B) if no proof of claim has been filed, at the last ascertainable address of such Holder. Addresses shall be ascertained by the Committee utilizing commercially reasonable means, including the Debtor's records, website listings, governmental records and telephone directories to identify and locate a proper address to send distributions. If any Holder's distribution is returned as undeliverable, then after utilizing such additional efforts as are reasonably

designed to ascertain a correct address for such Holder, the distribution shall be re-sent to such newly ascertained address. If no such alternative address can be reasonably ascertained, or if the distribution is returned a second time, then no further distributions to such Holder shall be made unless and until the Reorganized Debtor is notified by the Holder of a current address to which the distribution should be sent. All distributions pursuant to this Plan shall be at the expense of the Unsecured Creditors' Trust.

7.3 Method of Cash Distributions. Any Cash payment to be made pursuant to this Plan may be made by Cash, draft, check, wire transfer, or as otherwise required or provided in any relevant agreement or applicable law at the option of the administrator of the Secured Lenders' Trust or the Unsecured Creditors' Trust, as applicable.

7.4 Failure to Present Checks. Checks issued in respect of distributions under this Plan shall be null and void if not presented to the drawee bank within ninety (90) days after the date of issuance. Any amounts returned to the Reorganized Debtor in respect of such non-presented checks shall be held by the Committee. If any check issued to a Holder of an Allowed Claim is not presented to the drawee bank within such time period, then after utilizing such additional efforts as are reasonably designed to ascertain a correct address for such Holder as set forth in Section 7.2 above, the check shall be reissued and the distribution shall be re-sent to such newly ascertained address. If no such alternative address can be reasonably ascertained, or if the reissued check is not presented within ninety (90) days of the date of issuance, then no further distributions to such Holder shall be made unless and until the Reorganized Debtor is notified by the Holder of a current address to which the distribution should be sent. Requests for reissuance for any such check shall be made directly to the Reorganized Debtor by the Holder of the Allowed Claim with respect to which such check(s) originally was issued. All amounts represented by any check voided under this Section will be held until the later of one (1) year after (A) the Effective Date or (B) the date that a particular Claim is Allowed, and all requests for reissuance by the Holder of the Allowed Claim in respect of a check voided under this Section are required to be made prior to such date. Thereafter, all such amounts shall be deemed to be Unclaimed Property, in accordance with Section 7.5 of this Plan, and all Claims in respect of void checks and the underlying distributions shall be forever barred, estopped and enjoined from assertion in any manner against the Debtor or its assets or Property, or the Reorganized Debtor or its assets or property.

7.5 Unclaimed Distributions. All Property distributed on account of Claims must be claimed within the later of (A) one (1) year after the Effective Date or (B) one (1) year after such distribution is made to such Holder or, in the case of a distribution made in the form of a check, must be presented to the drawee bank and a request for reissuance be made as provided for in Section 7.5 of this Plan. All Unclaimed Property shall be retained by and shall revert in the Reorganized Debtor and shall no longer be subject to distribution. All full or partial payments made by the Committee and received by the Holder of a Claim prior to the Effective Date shall be deemed to be payments under this Plan for purposes of satisfying the obligations of the Debtor or the Reorganized Debtor pursuant to this Plan. Pursuant to section 1143 of the Bankruptcy Code, all Claims in respect of Unclaimed Property shall be deemed Disallowed and the Holder of any Claim Disallowed in accordance with this Section shall be forever barred, expunged, estopped and enjoined from assertion in any manner against the Debtor or its assets or Property, or the Reorganized Debtor or its assets or property.

ARTICLE VIII

EXECUTORY CONTRACTS AND UNEXPIRED LEASES

8.1 Treatment of Executory Contracts and Unexpired Leases. Within thirty (30) days after the date of the order confirming the instant Plan, the Chapter 11 Trustee shall provide a list to each of the Secured Lenders of all contracts and unexpired leases in connection with the Pledged Properties. Each of the contracts and unexpired leases set forth on the list provided by the Chapter 11 Trustee to the Secured Lenders shall be deemed assumed by the Secured Lenders' Trust unless such contract and/or unexpired leases are specifically rejected by the Secured Lenders within forty-five (45) days of the Secured Creditors' receipt of such list from the Chapter 11 Trustee. Within the same thirty (30) day period, the Chapter 11 Trustee shall provide a list to the Committee of all of the Debtor's contracts and unexpired leases not included on the list prepared by the Chapter 11 Trustee and provided to the Secured Lenders. The contracts and unexpired leases included on the list provided to the Committee shall be deemed assumed by the Unsecured Creditors' Trust unless specifically rejected by the Committee or other trustee of the Unsecured Creditors' Trust within forty-five (45) days of the receipt thereof.

8.2 Cure of Defaults for Assumed Contracts and Leases. All undisputed cure and any other monetary default payments required by section 365(b)(1) of the Bankruptcy Code under which any executory contract and unexpired lease to be assumed pursuant to this Plan is in default shall be satisfied by either the Secured Lenders' Trust or the Unsecured Creditors' Trust in accordance with which Trust assumed the executory contract or unexpired lease in question (to the extent such obligations are enforceable under the Bankruptcy Code and applicable non-bankruptcy law), pursuant to section 365(b)(1) of the Bankruptcy Code, at the option of either the Secured Lenders or the Committee or other trustee of the Unsecured Creditors' Trust, as applicable : (A) by payment of such undisputed cure amount, without interest, in Cash within sixty (60) days following the Effective Date; (B) such other amount as ordered by the Bankruptcy Court; or (C) on such other terms as may be agreed to by the parties to such executory contract or unexpired lease. In the event of a dispute pursuant to Section 8.3 of this Plan, payment of the amount otherwise payable hereunder shall be made, without interest, in Cash (i) on or before the later of sixty (60) days following the Effective Date or thirty (30) days following entry of a Final Order liquidating and allowing any Disputed amount; or (ii) on such other terms as may be agreed to by the parties to such executory contract or unexpired lease.

8.3 Resolution of Objections to Assumption of Executory Contracts and Unexpired Leases; Cure Payments.

(a) Resolution of Objections to Assumption of Executory Contracts and Unexpired Leases. Any party objecting to the proposed assumption of an executory contract or unexpired lease or the ability of either the Secured Lenders' Trust or the Unsecured Creditors' Trust to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the contract or lease to be assumed shall File and serve on the Secured Lenders or the Committee, as applicable,

a written objection to the assumption of such contract or lease within thirty (30) days after the service of the notice of entry of the Confirmation Order. Failure to File an objection within the time period set forth above shall constitute the assumption and revestment of such contract or lease, including an acknowledgment that the proposed assumption provided adequate assurance of future performance. To the extent that any objections to the assumption of a contract or lease are timely Filed and served and such objections are not resolved between the Secured Lenders or the Committee and the objecting parties, the Bankruptcy Court shall resolve such disputes at a hearing to be held on a date to be determined by the Bankruptcy Court.

(b) Resolution of Cure Payments. If the counterparty to any assumed executory contract or unexpired lease believes that, as of the Confirmation Date, a cure payment is due and owing under such contract or lease, such counterparty shall File and serve on the Secured Lenders or the Committee, as applicable, a notification setting forth the amount of the cure payment which such party believes is due and owing, which notification shall be Filed and served no later than thirty (30) days after the service of the earlier of (A) notice of entry of the Confirmation Order; or (B) other notice that the executory contract or unexpired lease has been assumed pursuant to any other Final Order of the Bankruptcy Court. Failure to File such a notification within the time period set forth above shall constitute an acknowledgment that no cure payment is due and owing in connection with the assumption of such contract or lease and an acknowledgment that no other defaults exist under said contract or lease. To the extent that any such notifications are timely Filed and served and are not resolved between the Secured Lenders or the Committee and the applicable counterparty, the Bankruptcy Court shall resolve such disputes at a hearing to be held on a date to be determined by the Bankruptcy Court. The resolution of such disputes shall not affect either the Secured Lenders' or the Committee's assumption of the contracts or leases that are subject of such a dispute, but rather shall affect only the "cure" amount the Secured Lenders or the Committee must pay in order to assume such contract or lease. Notwithstanding the immediately preceding sentence, if the Secured Lenders or the Committee, in its discretion, determines that the amount asserted to be the necessary "cure" amount would, if ordered by the Bankruptcy Court, make the assumption of the contract or lease imprudent, then the Secured Lenders or the Committee may elect to (i) reject the contract or lease pursuant to Section 8.1 hereof; or (ii) request an expedited hearing on the resolution of the "cure" dispute, exclude assumption or rejection of the contract or lease from the scope of the Confirmation Order, and retain the right to reject the contract or lease pursuant to Section 8.1 hereof pending the outcome of such dispute.

8.4 Claims for Rejection Damages. Claims for damages allegedly arising from the rejection of any executory contract or unexpired lease pursuant to this Plan or the Confirmation Order shall be Filed with the Bankruptcy Court and served on counsel for the Secured Lenders or the Committee, as applicable not later than thirty (30) days after the service of the earlier of (A) notice of entry of the Confirmation Order; or (B) other notice that the executory contract or unexpired lease has been rejected pursuant to any other Final Order of the Bankruptcy Court. Any Holder of a Claim arising from the rejection of any executory contract or any unexpired lease that fails to File such objection on or before the dates specified in this paragraph shall be forever barred, estopped and

enjoined from asserting any Claims in any manner against the Debtor or its assets or Property, or the Reorganized Debtor or its assets or property, or the Secured Lenders or the Committee and the Debtor, the Reorganized Debtor, the Secured Lenders, and the Committee shall be forever discharged from all indebtedness or liability with respect to such Claims.

8.5 Treatment of Rejection Claims. The Secured Lenders and/or Committee, as applicable, shall have the right to object to any Claim for damages allegedly arising from the rejection of any executory contract or unexpired lease Filed pursuant to Section 8.4 hereof, or otherwise. The Bankruptcy Court shall determine any Objections Filed by the Secured Lenders or the Committee to any such Claim at a hearing to be held on a date to be determined by the Bankruptcy Court. Subject to any statutory limitation, including, without limitation, the limitations contained in sections 502(b)(6) and 502(b)(7) of the Bankruptcy Code, any Claims arising out of the rejection of executory contracts and unexpired leases shall, pursuant to section 502(g) of the Bankruptcy Code, be Unimpaired and treated as Unsecured Claims in Class 4 in accordance with Section 5.4 of this Plan.

ARTICLE IX

MEANS FOR IMPLEMENTATION OF THIS PLAN

9.1 Corporate Action. The entry of the Confirmation Order shall constitute authorization for and direction to the Debtor, the Reorganized Debtor, the Committee, and the Secured Lenders to take or cause to be taken all corporate actions necessary or appropriate to consummate and implement the provisions of this Plan prior to (consisting of the period from the Confirmation Date to the Effective Date), on and after the Effective Date, and all such actions taken or caused to be taken shall be deemed to have been authorized, approved and directed by the Bankruptcy Court. All such actions shall be deemed to have occurred and shall be in effect pursuant to applicable non-bankruptcy law and the Bankruptcy Code, without any requirement of further action by the partners, stockholders or directors of the Debtor or the Reorganized Debtor. On the Effective Date, the appropriate officers and directors of the Debtor and the Reorganized Debtor are authorized and directed to execute and deliver all exhibits hereto and all other agreements, documents and instruments contemplated by this Plan in the name and on behalf of the Debtor and the Reorganized Debtor.

9.2 CNY Holdings. The Plan shall constitute a motion to substantively consolidate the Debtor and CNY Holdings, Inc. Accordingly, on the Effective Date, except as otherwise provided in the Plan, all assets and liabilities of CNY Holdings, Inc. shall be merged into, and with, the assets of the Debtor. No distributions will be made under the Plan on account of any intercompany claims by and among the Debtor and CNY Holdings, Inc. All guaranty claims of the debtor on account of claims against CNY Holdings, Inc. shall be eliminated. Any liens of any Secured Lender against assets of CNY Holdings, Inc. shall be treated as a lien against the Debtor to the extent of the

collateral securing such lien and the property held in CNY Holdings will be treated as property of the Debtor as provided in this Plan.

9.3 The Secured Lenders' Trust. On the Effective Date, all of the Debtor's assets to be included in the Secured Lenders' Trust as defined in Sections 1.53 and 5.1(a) herein, shall be transferred to the Secured Lenders' Trust. The Trustee shall execute a durable power of attorney on behalf of the Debtor Cornerstone, as to each property being transferred into the Secured Creditors' Trust which will authorize the Secured Creditors' Trust to execute transfer documents, leases, and contracts as to each property currently being held in the name of Cornerstone. Each of the Secured Lenders will have an interest in the Secured Lenders' Trust equal to the value of their collateral and may only look to their individual collateral for recovery on their claim. Any claims for real estate taxes or other assessments against the Pledged Properties shall follow the respective properties and shall be claims against the assets of the Secured Lenders' Trust. The management of the Secured Lenders' Trust and the disposition of the assets held by the Secured Lenders' Trust will be subject to and governed by a separate agreement executed by and among each of the Secured Lenders. The Trustee of the Secured Lenders' Trust is hereby given authority pursuant to this Plan, to, manage, lease, contract for and dispose of the properties included in the Secured Lenders' Trust in the name of the Debtor pursuant to a limited power of attorney specifically created for such purpose.

9.4 The Unsecured Creditors' Trust. On the Effective Date, all of the assets of the Debtor, including all unencumbered property and all causes of action, other than the assets contained in the Secured Lenders' Trust, shall be transferred to the Unsecured Creditors' Trust, which will form the property of the Reorganized Debtor. Each Holder of an Allowed Unsecured Creditors' Claim shall receive an equity interest in the Reorganized Debtor based on the pro rata share of the Unsecured Creditors' Trust based on the amount of the creditors' Allowed Claim. Any claims for real estate taxes or other assessments against the unencumbered properties shall follow the respective properties and shall be claims against the assets of the Unsecured Creditors' Trust. The members of the Official Committee of Unsecured Creditors will serve as the Trustee of and manage the Unsecured Creditors' Trust for the benefit of the Holders of Allowed Unsecured Claims. As such Trustee, they may appoint any executives and/or managers and/or or management companies and/or professionals as they deem proper to administer the Unsecured Creditors' Trust on behalf of the Holders of Allowed Unsecured Claims, shall manage and dispose of the Unsecured Creditors' Trust property as they deem proper and make such cash distributions to the beneficiaries of the Unsecured Creditors' Trust as they deem appropriate

9.5 Issuance of New Stock. On the Effective Date, all stock existing on the Filing Date shall be cancelled and extinguished in accordance with Section 5.6 of this Plan. On or after the Effective Date, the Reorganized Debtor may issue stock as determined by the Committee consistent with section 9.4 above.

9.6 Operations Between the Confirmation Date and the Effective Date. The Debtor shall continue to operate as debtor-in-possession, during the period from the Confirmation Date through and until the Effective Date. Notwithstanding the foregoing, post-confirmation the Trustee shall not enter any new leases and/or Land Contracts or undertake

anything but emergency repairs of the Pledged Properties without the express written consent of the Secured Lenders.

9.7 Revesting of Assets. Except as otherwise expressly provided in this Plan, pursuant to sections 1123(a)(5), 1123(b)(3) and 1141(b) of the Bankruptcy Code, all Property comprising the Estate of the Debtor, including, without limitation, all Causes of Action shall automatically be retained and revert in the Reorganized Debtor, free and clear of all Claims, Liens, contractually-imposed restrictions, charges, encumbrances and Interests of Creditors and equity security holders on the Effective Date, with all such Claims, Liens, contractually-imposed restrictions, charges, encumbrances and Interests being extinguished except as otherwise provided in this Plan. As of the Effective Date, the Reorganized Debtor may operate its business and use, acquire and dispose of assets and property and settle and compromise Claims or Interests without supervision of the Bankruptcy Court free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules, other than those restrictions expressly imposed by this Plan and the Confirmation Order. Without limiting the foregoing, the Reorganized Debtor may pay the charges it incurs for professional fees, disbursements, expenses, or related support services incurred on or after the Effective Date without any application to the Bankruptcy Court.

ARTICLE X

PRESERVATION OF CAUSES OF ACTION AND RIGHT TO DEFEND AGAINST AND CONTEST CLAIMS AND INTERESTS

10.1 Preservation of Rights. Except to the extent that any Unsecured Claim is Allowed in an amount set forth in this Plan, which Allowed Claims shall not be subject to Objection by the Committee or the Reorganized Debtor at any time or for any reason, nothing, including, without limitation, the failure of the Committee, or the Reorganized Debtor to object to a Claim or an Interest for any reason during the pendency of the Chapter 11 Case, shall affect, prejudice, diminish or impair the rights and legal and equitable defenses of the Debtor or the Reorganized Debtor with respect to any Claim or Interest, including, without limitation, all rights of the Committee, the Debtor or the Reorganized Debtor (i) to contest or defend against such Claims or Interests in any lawful manner or forum when and if such Claim or Interest is sought to be enforced by the Holder thereof; or (ii) in respect of legal and equitable defenses to setoffs or recoupments against Claims or Interests, and the distributions provided for in Articles III and V of this Plan shall at all times be subject to this Section and to section 502(d) of the Bankruptcy Code, so long as any Objection is brought by the Committee or the Reorganized Debtor within sixty (60) days of the date of the Confirmation Order.

10.2 Rights of Action. Except as otherwise provided in this Plan, all Causes of Action, whether or not scheduled, shall automatically be retained and preserved and shall revert in the Unsecured Creditors' Trust for the benefit of the Unsecured Creditors. Pursuant to section 1123(b)(3) of the Bankruptcy Code, the Committee or any Trustee or other entity appointed by the Committee (as representative of the Debtor's Estate) shall retain and have the exclusive right to enforce and prosecute such Causes of Action against any Person, that arose before the Effective Date, other than those expressly

released or compromised as part of or pursuant to this Plan. Notwithstanding the foregoing, the right to assert any Causes of Action against the Secured Lenders shall be limited to those Causes of Action which are asserted no later than the date set for the hearing on confirmation of the instant Plan.

10.3 Setoffs. Except to the extent that any Claim is Allowed in an amount set forth in this Plan, the Debtor or the Reorganized Debtor, as the case may be, may, but shall not be required to, set off against any Claims and the payments or distributions to be made pursuant to this Plan in respect of such Claims, any and all debts, liabilities and claims of every type and nature whatsoever which the Estate, the Debtor or the Reorganized Debtor may have against the Creditors holding such Claims, and neither the failure to do so nor the allowance of any such Claims, whether pursuant to this Plan or otherwise, shall constitute a waiver to release by the Debtor or the Reorganized Debtor of any such claims the Debtor or the Reorganized Debtor may have against such Creditors, and all such claims shall be reserved to and retained by the Reorganized Debtor. In the event the Debtor or the Reorganized Debtor seeks to set off against any Claim or the payments or distributions to be made pursuant to the Plan in respect of such Claim, the Debtor or the Reorganized Debtor shall File an Objection or motion seeking entry of an order by the Bankruptcy Court granting such relief, and shall serve the Holder of such Claim with such Objection or motion and notice of the hearing thereon as otherwise required by the Bankruptcy Rules.

10.4 Objection Deadline. Objections to Claims or Interests, or complaints or motions to subordinate or estimate Claims or Interests, shall be filed by the Committee with the Bankruptcy Court, and served on the Holders of such Claims or Interests to which Objection is made, no later than (i) sixty (60) days after the Effective Date or (ii) thirty (30) days after the date any such Claim or Interest is Filed, whichever is later, unless otherwise ordered by the Bankruptcy Court.

10.5 No Payment or Distribution Pending Allowance. All references to Claims and amounts of Claims refer to the amount of the Claim Allowed by agreement of the Committee and the Holder of such Claim, by operation of law, by Final Order, or by this Plan. Notwithstanding any other provision in this Plan, no payment or distribution shall be made on account of or with respect to any Claim to the extent it is a Disputed Claim unless and until the Disputed Claim becomes an Allowed Claim.

10.6 Bar Date for Administrative Claims. Administrative Claims arising, accruing and/or incurred by the Debtor or the Estate on and after the Petition Date (other than Professional Fee Claims) shall be filed with the Bankruptcy Court no later than forty five (45) days after the Effective Date, unless otherwise ordered by the Bankruptcy Court. Any such Administrative Claims filed after this bar date shall be automatically deemed Disallowed in full.

ARTICLE XI

CONDITIONS TO CONSUMMATION OF THIS PLAN

11.1 Conditions to Consummation. This Plan shall not be consummated and the Effective Date shall not occur unless and until the following conditions have occurred or have been duly waived (if waivable) pursuant to Section 11.4 below:

(a) the Confirmation Order shall have been entered and shall have become a Final Order and such order shall not have been vacated, reversed, stayed, modified, amended, enjoined or restrained by order of a court of competent jurisdiction;

(b) all documents required to be executed or delivered under this Plan on or prior to the Effective Date shall have been executed and delivered by the parties thereto;

(c) the Bankruptcy Court shall have entered an order (contemplated to be part of the Confirmation Order) authorizing and directing the Debtor and the Reorganized Debtor to take all actions necessary or appropriate to enter into, implement, and consummate this Plan, and the contracts, instruments, releases, and other agreements or documents created, amended, supplemented, modified or adopted in connection with this Plan;

(d) all authorizations, consents and regulatory approvals required, if any, in connection with this Plan's effectiveness shall have been obtained.

OPERATION AND MANAGEMENT OF THE REORGANIZED DEBTOR

11.2 Post-Effective Date Operation of Business. From and after the Effective Date, the Reorganized Debtor shall continue to exist and engage in business, in accordance with the applicable law in the jurisdiction in which it is incorporated and pursuant to its articles of incorporation and by-laws in effect prior to the Effective Date, except to the extent such articles of incorporation and by-laws are amended or superseded pursuant to this Plan. Without in any way limiting the foregoing, from and after the Effective Date, the Reorganized Debtor shall operate its business with the assets contained in the Unsecured Creditors' Trust as determined by the Committee in its business judgment.

11.3 Post-Confirmation Officers and Directors. From and after the Effective Date, the officers and Board of Directors of the Reorganized Debtor shall be those Persons as determined by the Committee.

ARTICLE XII

EFFECTS OF CONFIRMATION

12.1 Discharge. To the fullest extent permitted by applicable law (including, without limitation, section 105 of the Bankruptcy Code), and except as otherwise provided in this Plan or in the Confirmation Order: (A) all consideration distributed under this Plan shall be in exchange for, and in complete satisfaction, settlement, discharge and release of, all Claims of any nature whatsoever against the Debtor or its assets or Property and, regardless of whether any Property shall have been distributed or retained pursuant to this Plan on account of such Claims, upon the Effective Date, the Debtor shall (i) be deemed discharged and released under section 1141(d)(1)(A) of the Bankruptcy Code from any and all Claims, including, without limitation, demands and liabilities that arose before the Confirmation Date, debts (as such term is defined in section 101(12) of the Bankruptcy Code), Liens, security interests, and encumbrances of and against all Property of the Debtor and the Estate that arose before Confirmation, including, without limitation, all debts of the kind specified in sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, whether or not (a) such Claim has been Allowed pursuant to section 502 of the Bankruptcy Code; or (b) the Holder of such Claim has voted to accept this Plan; and (ii) terminate all Interests of the Holders of stock of the Debtor, and otherwise; and (B) as of the Effective Date, all entities, including, without limitation, all Holders of Claims or Interests, shall be barred and enjoined from asserting against the Debtor or the Reorganized Debtor, their successors or their assets or property any other or further Claims, debts, rights, Causes of Action, liabilities or Interests relating to the Debtor based upon any act, omission, transaction or other activity of any nature that occurred prior to the Confirmation Date. In accordance with the foregoing, except as provided in this Plan or the Confirmation Order, the Confirmation Order shall be a judicial determination of discharge of all such Claims and other debts and liabilities against the Debtor and termination of all Interests of the Holders of stock of the Debtor, and otherwise, pursuant to sections 524 and 1141 of the Bankruptcy Code, and such discharge and termination shall void any judgment obtained against the Debtor at any time, to the extent that such judgment relates to a discharged Claim or terminated Interest. Notwithstanding the provisions of the paragraph. Holder of claims is Classes 1 and 2 shall retain unimpaired and undiminished all of their respective rights, remedies, defenses, and the right to resort to any policy of insurance obtained by the Debtor insuring against personal injury and/or property damage.

12.2 Injunction.

(a) Discharged Claims and Terminated Interests. Except as otherwise expressly provided for in this Plan or the Confirmation Order and to the fullest extent authorized or provided by the Bankruptcy Code, including sections 524 and 1141 thereof, the entry of the Confirmation Order shall, provided that the Effective Date occurs, permanently enjoin all Persons that have held, currently hold or may hold a Claim or other debt or liability that is discharged or an Interest or other right of an equity security holder that is Impaired or terminated pursuant to the terms of this Plan from taking any of the following actions against the Debtor, the Reorganized Debtor or their assets or

property on account of any such discharged Claims, debts or liabilities or such terminated Interests or rights: (a) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind; (b) enforcing, levying, attaching, collecting or otherwise recovering in any manner or by any means, whether directly or indirectly, any judgment, award, decree or order; (c) creating, perfecting or enforcing in any manner directly or indirectly, any Lien or encumbrance of any kind; (d) asserting any setoff, offset, right of subrogation or recoupment of any kind, directly or indirectly, against any debt, liability or obligation due to the Debtor or the Reorganized Debtor; and (e) proceeding in any manner in any place whatsoever, including employing any process, that does not conform to or comply with or is inconsistent with the provisions of this Plan.

(b) Released Claims. As of the Effective Date (and provided that all distributions to Holders of Allowed Claims required to be made under this Plan on the Effective Date have been made), the Confirmation Order shall constitute an injunction permanently enjoining any Person that has held, currently holds or may hold a Claim, demand, debt, right, Cause of Action or liability that is released pursuant to Section 13.3 of this Plan from enforcing or attempting to enforce any such Claim, demand, debt, right, Cause of Action or liability against (i) the Debtor or (ii) the Reorganized Debtor or any of their assets or property, based on, arising from or relating to, in whole or in part, any act, omission, or other occurrence taking place on or prior to the Effective Date with respect to or in any way relating to the Chapter 11 Case, all of which claims, demands, debts, rights, Causes of Action or liabilities shall be deemed released on the Effective Date; provided, however, that this injunction shall not apply to (a) any claims Creditors may assert under this Plan to enforce their rights hereunder to the extent permitted by the Bankruptcy Code or (b) any claims Creditors or other third parties may have against each other, which claims are not related to the Debtor and the Reorganized Debtor, it being understood, however, that any defenses, offsets or counterclaims of any kind or nature whatsoever which the Debtor may have or assert in respect of any of the claims of the type described in (a) or (b) of this proviso are fully preserved.

12.3 Releases by Holders of Claims and Interests. Effective as of the Confirmation Date, but subject to the occurrence of the Effective Date, and except as otherwise provided in this Plan or the Confirmation Order, to the fullest extent permitted under applicable law, in consideration for the obligations of the Persons set forth below under this Plan and, if applicable, the Cash, securities, contracts, releases and other agreements or documents to be delivered in connection with this Plan, each Holder (as well as any trustee or agent on behalf of each such Holder) of a Claim or an Interest shall be deemed to have forever waived, released and discharged the Debtor and the Reorganized Debtor from any and all claims, obligations, suits, judgments, damages, rights, Causes of Action and liabilities, whether for tort, fraud, contract, violations of federal or state securities laws, or otherwise, 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 that are based in whole or part on any act, omission, transaction, event or other occurrence taking place on or prior to the Effective Date relating to the Debtor, the Reorganized Debtor, the Chapter 11 Case or

this Plan, and/or which may have directly or indirectly impacted or harmed in any way the value of any Claim against or Interest in the Debtor.

12.4 Other Documents and Actions. The Debtor and the Reorganized Debtor are authorized and directed to execute such documents and take such other action as are necessary to effectuate the transactions provided for in this Plan.

12.5 Term of Injunctions or Stays. Unless otherwise provided herein or in the Confirmation Order, all injunctions or stays provided for in the Chapter 11 Case under sections 105(a) or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date.

12.6 Preservation of Insurance. Except as necessary to be consistent with this Plan, this Plan and the discharge provided herein shall not diminish or impair (A) the enforceability of insurance policies that may cover Claims against the Debtor or any other Person; or (B) the continuation of workers' compensation programs in effect, including self insurance programs.

12.7 Guaranties. Notwithstanding the existence of guaranties by the Debtor of obligations of any Person, and the Debtor's joint obligations with another Person with respect to the same obligations, all Claims against the Debtor based upon any such guaranties shall be satisfied, discharged and released in the manner provided in this Plan and the Holders of Claims shall be entitled to only one distribution with respect to any given obligation of the Debtor, except as to Holders of Claims in Classes 1, 2, 3, and 4.

12.8 Waiver of Subordination Rights. Any distributions under this Plan shall be received and retained free of and from any obligations to hold or transfer the same to any other Creditor, and shall not be subject to levy, garnishment, attachment or other legal process by any Holder by reason of claimed contractual subordination rights and the Confirmation Order shall constitute an injunction enjoining any Person from enforcing or attempting to enforce any contractual, legal or equitable subordination rights to Property distributed under this Plan, in each case other than as provided in this Plan.

12.9 No Successor Liability. Except as otherwise expressly provided in this Plan, the Reorganized Debtor does not, pursuant to this Plan or otherwise, assume, agree to perform, pay, or indemnify Creditors or otherwise have any responsibilities for any liabilities or obligations of the Debtor relating to or arising out of the operations of or assets or Property of the Debtor, whether arising prior to, on, or after the Confirmation Date. The Reorganized Debtor is not, and shall not be, a successor to the Debtor by reason of any theory of law or equity, and shall not have any successor or transferee liability of any kind or character, except that the Reorganized Debtor shall assume the obligations specified in this Plan and the Confirmation Order.

ARTICLE XIII

RETENTION OF JURISDICTION

13.1 Exclusive Jurisdiction of Bankruptcy Court. Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain after the Effective Date exclusive jurisdiction of all matters arising out of, arising in or related to, the Chapter 11 Case to the fullest extent permitted by applicable law, including, without limitation, jurisdiction to:

(a) classify or establish the priority, secured or unsecured status of any Claim or Interest (whether Filed before, on or after the Effective Date and whether or not contingent, Disputed or unliquidated) or resolve any dispute as to the treatment necessary to Reinstate a Claim pursuant to this Plan;

(b) (grant or deny any applications for allowance of compensation or reimbursement of expenses pursuant to sections 330, 331 or 503(b) of the Bankruptcy Code or otherwise provided for in this Plan, for periods ending on or before the Effective Date;

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

(d) ensure that all payments due under this Plan and performance of the provisions of this Plan are accomplished as provided herein and resolve any issues relating to distributions to Holders of Allowed Claims pursuant to the provisions of this Plan;

(e) construe, take any action and issue such orders, prior to and following the Confirmation Date and consistent with section 1142 of the Bankruptcy Code, as may be necessary for the enforcement, implementation, execution and consummation of this Plan and all contracts, instruments, releases and other agreements or documents created in connection with this Plan, including, without limitation, the Disclosure Statement and the Confirmation Order, for the maintenance of the integrity of this Plan and protection of the Reorganized Debtor in accordance with sections 524 and 1141 of the Bankruptcy Code following consummation;

(f) determine and resolve any cases, controversies, suits or disputes that may arise in connection with the consummation, interpretation, implementation or enforcement of this Plan (and all exhibits to this Plan) or the Confirmation Order, including the release and injunction provisions set forth in and contemplated by this Plan or the Confirmation Order, or any Person's rights arising under or obligations incurred in connection therewith;

(g) hear any application of the Debtor and/or the Reorganized Debtor on or after the Effective Date, to modify this Plan pursuant to section 1127 of the Bankruptcy Code and Section 15.4 hereof or modify the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document created in connection With this Plan, the Disclosure Statement or the Confirmation Order, or remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court order, this Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document created in connection with this Plan, the Disclosure Statement or the Confirmation Order, in such manner as may be necessary or appropriate to consummate this Plan, to the extent authorized by the Bankruptcy Code and this Plan;

(h) issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Person with consummation, implementation or enforcement of this Plan or the Confirmation Order;

(i) enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked or vacated;

(j) determine any other matters that may arise in connection with or relating to this Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release, or other agreement or document created in connection with this Plan, the Disclosure Statement or the Confirmation Order, except as otherwise provided in this Plan;

(k) determine such other matters and for such other purposes as may be provided in the Confirmation Order;

(l) hear and determine any other matters related hereto and not inconsistent with chapter 11 of the Bankruptcy Code;

(m) continue to enforce the automatic stay through the Effective Date;

(n) hear and determine (i) disputes arising in connection with the interpretation, implementation or enforcement of this Plan; or (ii) issues presented or arising under this Plan, including disputes among Holders and arising under this Plan, or other agreements, documents or instruments executed in connection with this Plan; and

(o) enter a final decree closing the Chapter 11 Case.

13.2 In no event shall the Court retain jurisdiction to enter an order which purports or could be interpreted to purport or has the effect, whether directly or indirectly, of or to modify, reduce, impair, limit, control, question, seek an accounting for or seek any damages due to, because of, relating to, or arising from the operation, liquidation or realization of value by the Secured lenders by or from the Secured Lenders or the Secured Lenders' Trust.

13.3 Non-Exclusive Jurisdiction of Bankruptcy Court. Following the Effective Date, the Bankruptcy Court shall retain non-exclusive jurisdiction of the Chapter 11 Case to the fullest extent permitted by applicable law, including, without limitation, jurisdiction to:

(a) allow, disallow, determine, liquidate or estimate any Claim or Interest, including the compromise, settlement and resolution of any request for payment of any Claim, the resolution of any Objections to the allowance of Claims or Interests and to hear and determine any other issue presented hereby or arising hereunder, including during the pendency of any appeal relating to any Objection to such Claim or Interest (to the extent permitted under applicable law);

(b) recover all assets of the Debtor and Property of its Estate, wherever located;

(c) hear and determine any motions or contested matters involving taxes, tax refunds, tax attributes and tax benefits and similar or related matters with respect to the Debtor or the Estate arising prior to the Effective Date or relating to the period of administration of the Chapter 11 Case, including, without limitation, matters concerning federal, state and local taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code;

(d) hear and determine any motions, applications, adversary proceedings, contested matters and other litigated matters pending on, Filed or commenced after the Effective Date that may be commenced by the Debtor thereafter, including proceedings with respect to the rights of the Debtor to recover Property under sections 542, 543 or 553 of the Bankruptcy Code, or to bring any Avoidance Action, or to otherwise collect to recover on account of any claim or Cause of Action that the Debtor may have; and

(e) hear any other matter not inconsistent with the Bankruptcy Code.

13.4 Failure of Bankruptcy Court to Exercise Jurisdiction. If the Bankruptcy Court abstains from exercising or declines to exercise jurisdiction over any matter arising under, arising in or related to the Debtor, including with respect to the matters set forth above in Section 14.1 and Section 14.2 hereof, this Article XIV shall not prohibit or limit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such subject matter.

ARTICLE XIV

MISCELLANEOUS PROVISIONS

14.1 Binding Effect of Plan. The provisions of this Plan shall be binding upon and inure to the benefit of the Debtor, the Estate, the Reorganized Debtor, any Holder of any Claim or Interest treated herein or any Person named or referred to in this Plan, and each of their respective heirs, executors, administrators, representatives, predecessors,

successors, assigns, agents, officers and directors, and, to the fullest extent permitted under the Bankruptcy Code and other applicable law, each other Person affected by this Plan.

14.2 Withdrawal of this Plan. The Debtor and/or Reorganized Debtor reserves the right at any time prior to Confirmation of this Plan, to revoke or withdraw this Plan. If this Plan is revoked or withdrawn or if the Confirmation Date does not occur, this Plan shall be null and void and have no force and effect.

14.3 Final Order. Except as otherwise expressly provided in this Plan, any requirement in this Plan for a Final Order may be waived by the Debtor and/or Reorganized Debtor before the Effective Date, or by the Debtor and/or the Reorganized Debtor on or after the Effective Date, upon written notice to the Bankruptcy Court.

14.4 Modification of this Plan. The Secured Lenders may alter, amend, or modify this Plan, including all exhibits to this Plan, in accordance with section 1127 of the Bankruptcy Code or as otherwise permitted at any time prior to the Confirmation Date. After the Confirmation Date and prior to the substantial consummation of this Plan, and in accordance with the provisions of section 1127(b) of the Bankruptcy Code and the Bankruptcy Rules, The Secured Lenders and/or the Committee may, so long as the treatment of Holders of Claims or Interests under this Plan is not adversely affected, institute proceedings in the Bankruptcy Court to remedy any defect or omission or to reconcile any inconsistencies in this Plan, the Disclosure Statement or the Confirmation Order and any other matters as may be necessary to carry out the purposes and effects of this Plan; provided, however, prior notice of such proceedings shall be served in accordance with Bankruptcy Rules 2002 and 9014.

14.5 Business Days. If any payment or act under this Plan is required to be made or performed on a day that is not a Business Day in any particular location where performance was to occur, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, without interest, but shall be deemed to have been completed as of the required day.

14.6 Severability. Should the Bankruptcy Court determine, on or prior to the Confirmation Date, that any provision of this Plan is either illegal on its face or illegal as applied to any Claim or Interest, such provision shall be unenforceable as to all Holders of Claims or Interests or to the specific Holder of such Claim or Interest, as the case may be, as to which such provision is illegal. Unless otherwise determined by the Bankruptcy Court, such a determination of unenforceability shall in no way limit or affect the enforceability and operative effect of any other provision of this Plan.

14.7 Governing Law. EXCEPT TO THE EXTENT THAT THE BANKRUPTCY CODE OR BANKRUPTCY RULES OR OTHER FEDERAL LAWS ARE APPLICABLE, AND SUBJECT TO THE PROVISIONS OF ANY CONTRACT, INSTRUMENT, RELEASE, OR OTHER AGREEMENT OR DOCUMENT ENTERED INTO IN CONNECTION WITH THIS PLAN, THE CONSTRUCTION, IMPLEMENTATION AND ENFORCEMENT OF THIS PLAN AND ALL RIGHTS

AND OBLIGATION ARISING UNDER THIS PLAN SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO CONFLICTS-OF-LAW PRINCIPLES WHICH WOULD APPLY THE LAW OF A JURISDICTION OTHER THAN THE STATE OF NEW YORK OR THE UNITED STATES OF AMERICA.

14.8 Payment of Statutory Fees. All U.S. Trustee's Fee Claims, as determined, if necessary, by the Bankruptcy Court at the hearing pursuant to section 1128 of the Bankruptcy Code, shall be paid on or before the Effective Date from funds of the Unsecured Creditors' Trust.

14.9 Filing of Additional Documents. On or before substantial consummation of this Plan, the Debtor and/or Reorganized Debtor, shall issue, execute, deliver, and File with the Bankruptcy Court or record any agreements and other documents, and take any action as may be necessary or appropriate to effectuate, consummate and further evidence the terms and conditions of this Plan.

14.10 Section 1146 Exemption. To the fullest extent permitted under section 1146(c) of the Bankruptcy Code, the issuance, transfer or exchange of any security under this Plan, if any, or the execution, delivery or recording of an instrument of transfer under this Plan, or the revesting, transfer or sale of any real or other property of or to the Debtor or the Reorganized Debtor or the Secured Lenders' trust or the Unsecured Lenders' Trust, shall not be taxed under any state or local law imposing a stamp tax, transfer tax or similar tax or fee. Consistent with the foregoing, each recorder of deeds or similar official for any county, city or governmental unit in which any instrument hereunder is to be recorded shall, pursuant to the Confirmation Order, be ordered and directed to accept such instrument, without requiring the payment of any documentary stamp tax, deed stamps, stamp tax, transfer tax, mortgage recording tax, intangible tax or similar tax.

14.11 Section 1145 Exemption. To the fullest extent permitted under section 1145 of the Bankruptcy Code, the issuance of the any new stock in the Reorganized Debtor shall be exempt from the registration requirements of section 5 of the Securities Act and any and all federal, state and local laws requiring the registration or licensing of an issuer, underwriter, broker or dealer in such securities. To the extent that section 1145(a)(1) is not applicable to such distribution, then such distribution shall be made in accordance with applicable law, including the federal securities laws.

14.12 Time. Unless otherwise specified herein, in computing any period of time prescribed or allowed by this Plan, the day of the act or event from which the designated period begins to run shall not be included. The last day of the period so computed shall be included, unless it is not a Business Day in any location where performance is to occur, in which event the period runs until the end of next succeeding day that is a Business Day. Otherwise, the provisions of Bankruptcy Rule 9006 shall apply.

14.13 No Attorneys' Fees. No attorneys' fees will be paid by the Debtor or the Reorganized Debtor with respect to any Claim or Interest except as expressly specified herein

or Allowed by a Final Order of the Bankruptcy Court. Secured Lenders may recover their attorneys fees from their collateral.

14.14 No Postpetition Interest. Except as expressly provided in this Plan or Allowed by Final Order of the Bankruptcy Court, no interest, penalty or late charge shall be Allowed on any Unsecured Creditors' Claim subsequent to the Petition Date.

14.15 No Injunctive Relief. No Claim or Interest shall under any circumstances be entitled to specific performance or other injunctive, equitable or other prospective relief.

14.16 Non-Voting Equity Securities. The Debtor and the Reorganized Debtor shall comply with the provisions of section 1123(a)(6) of the Bankruptcy Code.

14.17 No Admissions or Waivers. Notwithstanding anything herein to the contrary; nothing contained in this Plan shall be deemed an admission or waiver by the Debtor or Reorganized Debtor or Secured Lenders with respect to any matter set forth herein, including, without limitation, liability on any Claim or Interest or the propriety of any classification of any Claim or Interest.

14.18 Entire Agreement. This Plan and exhibits hereto set forth the entire agreement and undertakings relating to the subject matter hereof and they supersede all prior discussions and documents. The Debtor and/or Reorganized Debtor shall not be bound by any terms, conditions, definitions, warranties, understandings, or representations with respect to the subject matter hereof, other than as expressly provided for herein.

14.19 Headings. The headings of the Articles and Sections of this Plan are inserted for convenience only and shall not affect the interpretation hereof.

14.20 Successors and Assigns. The rights and obligations of any Person named or referred to in this Plan shall be binding upon, and inure to the benefit of, the successors and assigns of such Person.

14.21 Waiver. The Debtor and/or Reorganized Debtor, prior to the Effective Date, and the Reorganized Debtor on or after the Effective Date, reserves the right to waive any of the rights of the Debtor or the Reorganized Debtor under this Plan, and any conditions precedent provided for under this Plan.

14.22 Bar Date for Professionals. Applications for compensation for services rendered and reimbursement of expenses incurred by Professionals (a) from the later of the Petition Date or the date on which retention was approved through the Effective Date; or (b) at any time during the Chapter 11 Case when such compensation is sought pursuant to sections 503(b)(3) through (b)(5) of the Bankruptcy Code, shall be filed no later than forty-five (45) days after the Effective Date or such later date as the Bankruptcy Court approves, and shall be served on (i) the Reorganized Debtor; (ii) counsel to the Reorganized Debtor; (iii) counsel to the Committee, if applicable; and (iv) the United States Trustee. Applications that are not timely Filed shall not be considered by the Bankruptcy Court. The Reorganized Debtor reserves the right to File an objection to any application Filed by any Professional. The Reorganized Debtor may pay any Professional fees and expenses incurred after the Effective Date without any application to the Bankruptcy Court.