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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

* * *

In re:

ENDOSCOPY CENTER OF SOUTHERN
NEVADA, LLC, et al.,

Debtors.

Case No.: 09-22780 (MKN) (Lead Case)
(Jointly Administered with Case
Numbers BK-S-09-22776-MKN and BK-
S-22784-MKN)

Chapter 11 Cases

In re:

ENDOSCOPY CENTER OF SOUTHERN
NEVADA II, LLC

Debtor

Case No. 10-10470 (MKN)

Chapter 11 Case

In re:

DIPAK DESAI a/k/a DIPAK DESAI, M.D.,
CHARTERED,

Debtor.

Case No. 10-13050 (MKN)

Chapter 11 Case

1 In re:

2 HARI OM, A FAMILY LIMITED
3 PARTNERSHIP,

4 Debtor.
5

Case No. 10-14347 (MKN)

Chapter 11 Case

**PLAN PROPONENTS' JOINT
CHAPTER 11 PLAN, DATED
JANUARY 20, 2011**

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INTRODUCTION

Pursuant to Bankruptcy Code Section 1121(c), the official committee of unsecured creditors of Endoscopy Center of Southern Nevada, LLC, Gastroenterology Center of Nevada, LLP and Desert Shadow Endoscopy Center, LLC (the “Official Committee of the Center Debtors”), and the official committee of unsecured creditors of Dipak Desai (the “Official Committee of Desai,” and together with the Official Committee for the Center Debtors, the “Plan Proponents”), jointly propose this Chapter 11 Plan (the “Plan”) for Endoscopy Center of Southern Nevada, LLC, Gastroenterology Center of Nevada, LLP, Desert Shadow Endoscopy Center, Endoscopy Center of Southern Nevada II, LLC (together, the “Center Debtors”), Dipak Desai (“Desai”), and Hari Om, a family limited partnership (“Hari Om,” and together with the Center Debtors and Desai, the “Debtors”). The Plan contemplates the substantive consolidation of the Debtors. Thus, the classification of Claims and Interests set forth in Article III shall be deemed to apply with respect to each of the Debtors. The Plan also contemplates that Claims for liability to the extent of the Debtors’ Policy coverage are fully preserved and are not released pursuant to the Plan unless certain settlements as detailed in the Plan are reached between holders of such Claims, the Plan Proponents or Plan Trustee and NMIC with respect to such Claims.

All holders of Claims and Interests that are entitled to vote are encouraged to read the Plan and the Disclosure Statement in their entirety before voting to accept or reject the Plan.

ARTICLE I. DEFINED TERMS AND RULES OF INTERPRETATION

A) Defined Terms

Administrative Claim: A Claim for costs and expenses of administration pursuant to sections 503(b), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including, without limitation: (a) the actual and necessary costs and expenses of the Estates incurred after the Petition Date; (b) Allowed Professional Claims; and (c) all fees and charges assessed against the Estates pursuant to section 1930 of chapter 123 of title 28 of the United States Code.

Administrative Claim Bar Date: The deadline for filing requests for payment of Administrative Claims, which shall be 30 days after the Effective Date, unless otherwise ordered by the Bankruptcy Court, except with respect to Professional Claims, which shall be subject to the provisions of Article III.B.

Aggregate Settlement Amount: To be set forth in the Plan Supplement.

Allowed: Except as otherwise provided herein: (a) a Claim or Interest that is (i) listed in the Schedules as of the Effective Date as not disputed, not contingent, and not unliquidated, or (ii) evidenced by a valid Proof of Claim filed by the applicable Bar Date and as to which the Debtors, or other parties in interest have not filed an objection to the allowance thereof within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or (b) a Claim that is Allowed pursuant to the Plan or any stipulation approved by, or Final Order of, the Bankruptcy Court.

1 Avoidance Actions: Any and all avoidance, recovery, subordination, or other actions or
2 remedies that may be brought on behalf of the Debtors or their estates under the Bankruptcy
3 Code or applicable non-bankruptcy law, including actions or remedies under sections 544, 547,
4 548, 550, 551, 552, or 553 of the Bankruptcy Code.

5 Ballot: The form of ballot provided to holders of Claims or Interests pursuant to
6 Bankruptcy Rule 3017(d), by which each holder may accept or reject the Plan.

7 Bankruptcy Code: Title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as may be
8 amended from time to time.

9 Bankruptcy Court: The United States Bankruptcy Court for the District of Nevada
10 having jurisdiction over the Chapter 11 Cases and to the extent of the withdrawal of any
11 reference under section 157 of title 28 of the United States Code and/or order of a district court
12 pursuant to section 157(a) of title 28 of the United States Code, the United States District Court
13 for the District of Nevada.

14 Bankruptcy Rules: The Federal Rules of Bankruptcy Procedure as applicable to the
15 Chapter 11 Cases, and the general, local, and chambers rules of the Bankruptcy Court.

16 Bar Date: As applicable for creditors other than governmental creditors: (a) Endoscopy
17 Center of Southern Nevada, LLC – October 20, 2010; (b) Gastroenterology Center of Nevada,
18 LLP – October 20, 2010; (c) Desert Shadow Endoscopy Center, LLC – October 20, 2010; (d)
19 Endoscopy Center of Southern Nevada II, LLC – May 30, 2010; (d) Dipak Desai – June 4, 2010;
20 (e) Hari Om, a family limited partnership – July 28, 2010; or such other period of limitation as
21 may be specifically fixed by an order of the Bankruptcy Court for filing Claims. As applicable
22 for governmental creditors: (a) Endoscopy Center of Southern Nevada, LLC – November 15,
23 2010; (b) Gastroenterology Center of Nevada, LLP – November 15, 2010; (c) Desert Shadow
24 Endoscopy Center, LLC – November 15, 2010; (d) Endoscopy Center of Southern Nevada II,
25 LLC – April 26, 2010; (d) Dipak Desai – September 28, 2010; (e) Hari Om, a family limited
26 partnership – October 26, 2010; or such other period of limitation as may be specifically fixed by
27 an order of the Bankruptcy Court for filing Claims.

28 Business Day: Any day, other than a Saturday, Sunday, or a legal holiday, as defined in
Bankruptcy Rule 9006(a).

Cash: The legal tender of the United States of America or the equivalent thereof,
including bank deposits and checks.

Causes of Action: Any and all claims, actions, causes of action, choses in action, suits,
debts, damages, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants,
contracts, controversies, agreements, promises, variances, trespasses, damages, judgments,
remedies, rights of set-off, third-party claims, subrogation claims, contribution claims,
reimbursement claims, indemnity claims, counterclaims, and cross claims (including all claims
and any avoidance, recovery, subordination, or other actions against Insiders and/or any other
Entities under the Bankruptcy Code, including all Avoidance Actions) of any of the Debtors, the
debtors in possession, and/or the Estates (including those actions set forth in the Plan
Supplement), whether known or unknown, liquidated or unliquidated, fixed or contingent,
matured or unmatured, disputed or undisputed, that are or may be pending on the Effective Date

1 or instituted by the Plan Trustee, after the Effective Date against any Entity, based in law or
2 equity, including under the Bankruptcy Code, whether direct, indirect, derivative, or otherwise
and whether asserted or unasserted as of the date of entry of the Confirmation Order.

3 Center Debtors: Collectively, Endoscopy Center of Southern Nevada, LLC,
4 Gastroenterology Center of Nevada, LLP, Desert Shadow Endoscopy Center, and Endoscopy
Center of Southern Nevada II, LLC.

5 Chapter 11 Cases: The jointly administered Chapter 11 cases commenced by the Center
6 Debtors, with case numbers 09-22776, 09-22784 and 09-22780, and styled *In re Endoscopy*
7 *Center of Southern Nevada, LLC, et al.*, Case No. 09-22780 (MKN), the Chapter 11 case
8 *Endoscopy Center of Southern Nevada II, LLC*, Case No. 10-10470 (MKN), the Chapter 11 case
9 of *In re Dipak Desai a/k/a Dipak Desai, M.D., Chartered*, Case No. 10-13050 (MKN), and the
Chapter 11 case of *In re Hari Om, a family limited partnership*, Case No. 10-14347 (MKN), all
of which are currently pending before the Bankruptcy Court.

10 Chapter 11 Trustee: Brian D. Shapiro.

11 Claim: As defined in section 101(5) of the Bankruptcy Code.

12 Claimant: The holder of a Claim.

13 Claims Objection Deadline: The last day for filing objections to Claims, which (with
14 respect to any particular Claim) shall be the latest of: (A) 180 days after the Effective Date; (B)
90 days after the filing of a proof of claim or request for payment of an Administrative Claim; or
15 (C) such later date as may be approved by order of the Bankruptcy Court.

16 Class: A category of holders of Claims or Interests pursuant to section 1122(a) of the
Bankruptcy Code.

17 Confirmation: The entry of the Confirmation Order on the docket of the Chapter 11
18 Cases, subject to all conditions specified having been satisfied or waived.

19 Confirmation Date: The date upon which the Bankruptcy Court enters the Confirmation
20 Order on the docket of the Chapter 11 Cases, within the meaning of Bankruptcy Rules 5003 and
9021.

21 Confirmation Hearing: The hearing before the Bankruptcy Court pursuant to section 1128
22 of the Bankruptcy Code on the motion for entry of the Confirmation Order.

23 Confirmation Order: The order of the Bankruptcy Court confirming the Plan pursuant to
24 section 1129 of the Bankruptcy Code.

25 Consummation: The occurrence of the Effective Date.

26 Contributing Party: Any Person or Entity, other than the Debtors, who are contributing to
27 the payment of the Aggregate Settlement Amount through payment of the Direct Settlement
28 Payment. A complete schedule of the Contributing Parties will be attached to the Plan
Supplement.

1 Creditor: As defined in section 101(10) of the Bankruptcy Code.

2 Creditors' Trust: The trust established in connection herewith as of the Effective Date to
3 which all of the Trust Assets shall be contributed and which shall be established by the Trust
4 Agreement set forth in the Plan Supplement.

5 Debtors: Each of the following Entities, collectively: Endoscopy Center of Southern
6 Nevada, LLC; Gastroenterology Center of Nevada, LLP; Desert Shadow Endoscopy Center;
7 Endoscopy Center of Southern Nevada II, LLC; Dipak Desai; and Hari Om, a family limited
8 partnership.

9 Direct Settlement Payments: To be set forth in the Plan Supplement.

10 Disclosure Statement: The disclosure statement for the Plan, supplemented or modified
11 from time to time, including all exhibits and schedules thereto, and as approved by the
12 Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code.

13 Disputed Claim: Any Claim or Interest that is not yet Allowed.

14 Distribution Date: The date occurring as soon as the Plan Trustee determines it to be
15 reasonable and practicable after the Effective Date, upon which the Plan Trustee shall begin
16 making distributions to holders of Allowed Claims entitled to receive distributions under the
17 Plan.

18 Distribution Record Date: The date for determining which holders of Allowed Claims,
19 are eligible to receive distributions hereunder, which shall be (a) ten Business Days after entry of
20 the Confirmation Order or (b) such other date as designated in a Bankruptcy Court order.

21 Effective Date: The date that is the first Business Day after the Confirmation Date on
22 which: (a) no stay of the Confirmation Order is in effect; and (b) all conditions precedent to the
23 Effective Date have been satisfied or waived.

24 Entity: As defined in section 101(15) of the Bankruptcy Code.

25 Estate: The bankruptcy estate of any Debtor created pursuant to sections 301 and 541 of
26 the Bankruptcy Code upon the commencement of the Chapter 11 Cases.

27 Exculpated Claim: Any Claim related to any act or omission in connection with, relating
28 to, or arising out of the formulation, preparation, dissemination, negotiation, or filing of the
Disclosure Statement or Plan or any contract, instrument, release, or other agreement or
document created or entered into in connection with the Disclosure Statement, the Plan, the
pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of
the Plan, or the distribution of property under the Plan or any other agreement.

Exculpated Party: Each of the following in its capacity as such: (a) the Debtors; (b) the
Plan Proponents and the members thereof; (c) the Plan Trustee; (d) the Tort Claim Neutral; and
(e) with respect to each of the foregoing Entities in clauses (a) through (d), such Entities'
Professionals.

Executory Contract: A contract or lease to which one or more of the Debtors is a party

1 that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

2 Fee Stipulation Order: The Bankruptcy Court's *Order Approving Stipulation on Motion*
3 *for Authority to Draw Down on Chapter 11 Retainer* [Case No. 10-13050, Docket No. 275].

4 Final Decree: The decree contemplated under Bankruptcy Rule 3022.

5 Final Order: An order or judgment of the Bankruptcy Court or other court or competent
6 jurisdiction with respect to the subject matter, which has not been reversed, stayed, modified, or
7 amended, and as to which the time to appeal or seek certiorari has expired and no appeal or
8 petition for certiorari has been timely taken, or as to which any appeal that has been taken or any
9 petition for certiorari that has been or may be filed has been resolved by the highest court to
10 which the order or judgment was appealed or from which certiorari was sought; provided,
11 however, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure,
12 or any analogous rule under the Bankruptcy Rules or the Local Bankruptcy Rules, may be filed
13 relating to such order shall not prevent such order from being a Final Order.

14 Hepatitis Litigation: All litigation pending in the Eighth Judicial District Court for the
15 State of Nevada under the consolidated styling of "*In the Matter of Endoscopy Center and*
16 *Associates Businesses and Coordinated Cases*" and any appeals arising therefrom.

17 Impaired: With respect to any Class of Claims or Interests, a Claim or Interest that is not
18 Unimpaired.

19 Indemnification Obligation: A Debtor's obligation under an Executory Contract, or
20 corporate or other document, a postpetition agreement, through the Plan, or otherwise to
21 indemnify directors, officers, employees or contract counter-parties of the Debtor, with respect to
22 or based upon any act or omission taken or omitted in any of such capacities, or for or on behalf
23 of any Debtor, pursuant to and to the maximum extent provided by the Debtor's respective
24 articles of incorporation, certificates of formation, bylaws, similar corporate documents, and
25 applicable law, as in effect as of the Effective Date.

26 Infected Convenience Claim: Any Infected Hepatitis Claim for which the Claimant has
27 elected treatment in Class 3, the Convenience Class.

28 Infected Hepatitis Claim: A Claim by a plaintiff in the Hepatitis Litigation alleging
infection of Hepatitis C or Hepatitis B as a result of the Debtors in connection with treatment at
or by the Debtors.

Insider: As defined in section 101(31) of the Bankruptcy Code.

Inter-Debtor Claim: A Claim by a Debtor against another Debtor or a Claim by an
Affiliate of a Debtor against a Debtor.

Inter-Debtor Contract: A contract between two or more Debtors or a contract between
one or more Affiliates and one or more Debtors.

Inter-Debtor Interest: An Interest held by a Debtor or an Affiliate.

Interest: Any Equity Security of a Debtor existing immediately prior to the Effective

1 Date.

2 Lien: As defined in section 101(37) of the Bankruptcy Code.

3 Liquidated Personal Injury Tort Claims: The Claims identified in the Plan Supplement
4 that were liquidated by settlement agreement with NMIC but remain unpaid shall be excluded
5 from the definition of Personal Injury Tort Claims and treated as Class Five Claims under the
6 Plan unless such Claimant elects to treat its Claim as a Convenience Class Claim or chooses to
7 value its Claim pursuant to the procedures set forth in Article IX.C.

8 Net Recoveries: The amount, if any, recovered in resolution of the adversary proceeding
9 No. 10-01025 (MKN) brought by certain of the Debtors against NMIC, after payment of
10 attorneys' fees and costs to be paid from gross recoveries in said proceeding.

11 NMIC: Nevada Mutual Insurance Company, a Nevada corporation.

12 Official Committee of the Center Debtors: The Official Committee of Unsecured
13 Creditors of Endoscopy Center of Southern Nevada, LLC, Gastroenterology Center of Nevada,
14 LLP and Desert Shadow Endoscopy Center, LLC appointed pursuant to section 1102 of the
15 Bankruptcy Code by the United States Trustee for the District of Nevada on December 9, 2010,
16 as it may be reconstituted from time to time.

17 Official Committee of Desai: The Official Committee of Unsecured Creditors of Desai
18 appointed pursuant to section 1102 of the Bankruptcy Code by the United States Trustee for the
19 District of Nevada on June 4, 2010, as it may be reconstituted from time to time.

20 Other General Unsecured Claim: Any Claim other than Personal Injury Tort Claims,
21 Liquidated Personal Injury Tort Claims, Administrative Claims, Professional Claims, Priority
22 Tax Claims, Secured Claims, Other Priority Claims, and Section 510(b) Claims.

23 Other Priority Claim: Any Claim other than an Administrative Claim or a Priority Tax
24 Claim entitled to priority in right of payment under section 507(a) of the Bankruptcy Code.

25 Periodic Distribution Date: The Distribution Date, as to the first distribution made by the
26 Plan Trustee, and thereafter, such Business Days as determined by the Plan Trustee.

27 Person: As defined in section 101(41) of the Bankruptcy Code.

28 Personal Injury Tort Claim: Any Claim against a Debtor based on allegations of medical
malpractice, the operation of a medical practice in which malpractice was committed, and similar
claims related to the administration of medical procedures to claimants or to the claimants'
spouses or relatives of patients.

Petition Date: As applicable: (a) Endoscopy Center of Southern Nevada, LLC – July 17,
2009; (b) Gastroenterology Center of Nevada, LLP – July 17, 2009; (c) Desert Shadow
Endoscopy Center, LLC – July 17, 2009; (d) Endoscopy Center of Southern Nevada II, LLC –
January 13, 2010; (d) Dipak Desai – February 26, 2010; (e) Hari Om, a family limited
partnership – March 17, 2010.

Plan: The Plan Proponent's Chapter 11 plan as it may be altered, amended, modified, or

1 supplemented from time to time, including the Plan Supplement and all exhibits, supplements,
2 appendices, and schedules.

3 Plan Proponents: The Official Committee of the Center Debtors and the Official
4 Committee of Desai.

5 Plan Supplement: The supplement or supplements to the Plan containing certain
6 documents relevant to the implementation of the Plan, to be filed with the Bankruptcy Court, as
7 it may be amended prior to the Effective Date, which shall be in form and substance reasonably
8 acceptable to the Plan Proponents.

9 Plan Trustee: The Trustee appointed in accordance with the Trust Agreement.

10 Policy: That certain Policy Number NV00066-06 issued by NMIC to the Debtors and
11 other insureds.

12 Priority Claim: Collectively, Priority Tax Claims and Other Priority Claims.

13 Priority Tax Claim: Any Claim of a Governmental Unit of the kind specified in
14 section 507(a)(8) of the Bankruptcy Code.

15 Professional: An Entity: (a) employed in the Chapter 11 Cases pursuant to a Final Order
16 in accordance with sections 327 and 1103 of the Bankruptcy Code and to be compensated for
17 services rendered prior to or on the Effective Date, pursuant to sections 327, 328, 329, 330, and
18 331 of the Bankruptcy Code; or (b) for which compensation and reimbursement has been
19 Allowed by the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code.

20 Professional Claims: A Claim by a Professional seeking an award by the Bankruptcy
21 Court of compensation for services rendered or reimbursement of expenses incurred through and
22 including the Confirmation Date under sections 330, 331, 503(b)(2), 503(b)(3), 503(b)(4) or
23 503(b)(5) of the Bankruptcy Code.

24 Professional Compensation: All accrued fees and expenses for services rendered by all
25 Professionals through and including the Confirmation Date to the extent any such fees and
26 expenses have not been paid and regardless of whether a fee application has been filed for such
27 fees and expenses. To the extent there is a Final Order denying some or all of a Professional's
28 fees or expenses, such denied amounts shall no longer be considered Professional Compensation.

Professional Fee Escrow Account: An interest-bearing account in an amount equal to the
Professional Fee Reserve Amount and funded by the Debtors on the Confirmation Date.

Professional Fee Reserve Amount: Professional Compensation through the Confirmation
Date as estimated in accordance with ARTICLE III.B herein.

Proof of Claim: A proof of Claim filed against any of the Debtors in the Chapter 11
Cases.

Pro Rata: The proportion that an Allowed Claim in a particular Class bears to the
aggregate amount of Allowed Claims in that Class, or the proportion that a holder's portion of an
Allowed Claim of a particular Class bears to the aggregate Allowed Claim of that Class.

1 Released Party: Each of the following in its capacity as such: (a) the Debtors; (b) the
2 Chapter 11 Trustee; (c) the Plan Proponents; (d) the Plan Trustee; (e) the Tort Claim Neutral; and
3 for (a) – (e) each of those Entity’s Professionals.

4 Releasing Party: Each of the following in its capacity as such: (a) the Debtors; (b) the
5 Chapter 11 Trustee; (c) the Plan Proponents; (d) the Plan Trustee; and (e) the Tort Claim Neutral;
6 and for (a) – (e) each of those Entity’s Professionals.

7 Schedules: The schedules of assets and liabilities, schedules of Executory Contracts and
8 Unexpired Leases, and statements of financial affairs filed by the Debtors pursuant to
9 section 521 of the Bankruptcy Code and the Bankruptcy Rules.

10 Secured Claim: A Claim: (a) secured by a Lien on collateral to the extent of the value of
11 such collateral, as determined in accordance with section 506(a) of the Bankruptcy Code or (b)
12 subject to a valid right of setoff pursuant to section 553 of the Bankruptcy Code.

13 Secured Tax Claim: Any Secured Claim that, absent its secured status, would be entitled
14 to priority in right of payment under section 507(a)(8) of the Bankruptcy Code (determined
15 irrespective of time limitations), including any related Secured Claim for penalties.

16 Security: As defined in section 2(a)(1) of the Securities Act.

17 Solicitation Procedures Order: That certain Final Order approving certain procedures for
18 solicitation of votes on the Plan.

19 Subordinated Claim: Any Claim that is subordinated pursuant to section 510(b) or 510(c)
20 of the Bankruptcy Code, which shall include, without limitation, (a) any Claim arising from the
21 rescission of a purchase or sale of any Security of the Debtors, (b) any Claim for damages arising
22 from the purchase or sale of any Security of the Debtors, (c) any Claim for reimbursement,
23 contribution, or indemnification on account of any such Claim, (d) any Claim for similar
24 violations of the securities laws, misrepresentations, breaches of fiduciary duties, or any similar
25 claim related to the foregoing, or (e) any Claim for attorneys’ fees related to any of the
26 foregoing.

27 Tort Claim Neutral: The Entity selected pursuant to Article IX of the Plan.

28 Trust Agreement: The agreement establishing the Creditors’ Trust, substantially in the
form filed in the Plan Supplement.

Trust Assets: (a) the Aggregate Settlement Amount; (b) all other property of the Estates,
including interests in limited partnerships and limited liability companies; (c) all Causes of
Action; (d) all rights and remedies and evidentiary privileges (including the attorney-client
privilege) relating in any way to the Causes of Action, and the proceeds of the foregoing; and (e)
any contribution from a Contributing Party.

Trust Recoveries: The Trust Assets but only to the extent of Cash proceeds, net of (a)
taxes, and (b) fees, costs, and expenses of the Creditors’ Trust.

Unclaimed Distribution: Any distribution under the Plan on account of an Allowed
Claim to a holder that has not: (a) accepted a particular distribution or, in the case of distributions

made by check, negotiated such check; (b) given notice to the Plan Trustee of an intent to accept a particular distribution; (c) responded to the Plan Trustee's requests for information necessary to facilitate a particular distribution; or (d) taken any other action necessary to facilitate such distribution.

Unexpired Lease: A lease of nonresidential real property to which one or more of the Debtors is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

Unimpaired: With respect to a Class of Claims or Interests, a Class of Claims or Interests that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.

Uninfected Convenience Claim: Any Uninfected Hepatitis Claim for which the Claimant has elected treatment in Class 3, the Convenience Class.

Uninfected Hepatitis Claim: A Claim by a plaintiff in the Hepatitis Litigation that is not a Claim alleging infection of Hepatitis C or Hepatitis B as a result of the Debtors in connection with treatment at or by the Debtors.

Voting Deadline: That date which shall be the final date by which a holder of a Claim may vote to accept or reject the Plan, which date is set forth in the Solicitation Procedures Order.

Voting Record Date: That date for determining which holders of Claims are entitled to vote to accept or reject the Plan, which date is set forth in the Solicitation Procedures Order.

B) Rules of Interpretation

For purposes of the Plan: (a) in the appropriate context, 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) unless otherwise specified, any reference herein to a contract, lease, instrument, release, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions; (c) unless otherwise specified, any reference herein to an existing document, schedule, or exhibit, shall mean such document, schedule, or exhibit, as it may have been or may be amended, modified, or supplemented; (d) unless otherwise specified, all references herein to "Articles" are references to Articles hereof or hereto; (e) the words "herein," "hereof," and "hereto" refer to the Plan in its entirety rather than to any particular portion of the Plan; (f) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (g) unless otherwise specified herein, 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 applicable. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

1 **ARTICLE II. SUBSTANTIVE CONSOLIDATION COMPROMISE**

2 **A) Issue Subject to Compromise**

3 The Plan proposes, and its terms embody, a compromise and settlement of intercreditor
4 issues relating to whether the liabilities and properties of the Debtors should be substantively
5 consolidated for purposes of distributions under the Plan. These issues relate primarily to the
6 following: (i) whether the elements necessary to obtain an order of substantive consolidation are
7 satisfied in the Chapter 11 Cases; (ii) the value of the Debtors' Estates on an individual and a
8 consolidated basis, and the proper method of determining such value; (iii) whether the Estate of
9 each Debtor should be treated separately for purposes of making payments to holders of Claims;
10 (iv) whether it is possible to attribute particular Claims asserted in the Chapter 11 Cases to a
11 specific Debtor; (v) the strength of the relative rights and positions of the different Classes of
12 Claims with respect to disputes over substantive consolidation; and (vi) other issues having to do
13 with the rights of certain Estates, Claims, or Classes of Claims vis-à-vis other Estates, Claims, or
14 Classes of Claims.

15 **B) Effect of Compromise and Settlement**

16 As a result of the compromise and settlement of substantive consolidation issues
17 contained in the Plan, and only for purposes of distributions under the Plan, except as otherwise
18 provided in the Plan: (i) the separate Chapter 11 Cases of the Debtors shall be consolidated into
19 the case of Dipak Desai as a single consolidated case; (ii) all property of the Estate of each
20 Debtor shall be deemed to be property of the consolidated Estates; (iii) all Claims against each
21 Estate shall be deemed to be Claims against the consolidated Estates, any Proof of Claim filed
22 against one or more of the Debtors shall be deemed to be as single claim filed against the
23 consolidated Estates, and all duplicate Proofs of Claim for the same claim filed against more than
24 one Debtor shall be deemed expunged; (iv) except as otherwise provided in the Plan, no
25 distributions under the Plan shall be made on account of inter-Debtor Claims; and (v) except as
26 provided by the Plan, all Claims based upon prepetition unsecured guarantees by one Debtor in
27 favor of any other of the Debtors or other basis of co-Debtor liability shall be eliminated, and no
28 separate distributions under the Plan shall be made on account of Claims based upon such
guarantees or other basis of co-Debtor liability.

29 **C) Approval of Compromise and Settlement**

30 The Plan is deemed to be a motion under Sections 105, 363 and 1123 of the Bankruptcy
31 Code and Rule 9019 of the Bankruptcy Rules for approval of the compromise and settlement of
32 the issues described in Article II.A, and the confirmation of the Plan shall constitute approval of
33 the motion by the Bankruptcy Court, and the Confirmation Order shall contain findings
34 supporting and conclusions approving the compromise and settlement as fair and equitable and
35 within the bounds of reasonableness.

1 **ARTICLE III. ADMINISTRATIVE AND PRIORITY CLAIMS**

2 In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims,
3 Professional Claims, and Priority Tax Claims have not been classified and thus are excluded
4 from the Classes of Claims set forth in Article III.

5 **A) Administrative Claims**

6 Unless otherwise agreed to by the holder of an Allowed Administrative Claim each
7 holder of an Allowed Administrative Claim (other than a Professional Claim), will receive in full
8 and final satisfaction of its Administrative Claim an amount of Cash equal to the amount of such
9 Allowed Administrative Claim either: (1) on the Effective Date, or as soon as practicable
10 thereafter; (2) if the Administrative Claim is not Allowed as of the Effective Date, no later than
11 30 days after the date on which an order Allowing such Administrative Claims becomes a Final
12 Order, or as soon as reasonably practicable thereafter; or (3) if the Allowed Administrative
13 Claim is based on liabilities incurred by the Debtors in the ordinary course of their business after
14 the Petition Date, pursuant to the terms and conditions of the particular transaction giving rise to
15 such Allowed Administrative Claims, without any further action by the holder of such Allowed
16 Administrative Claims.

13 **B) Professional Claims**

14 Final Fee Applications. All final requests for payment of Claims of a Professional shall
15 be filed no later than 60 days after the Confirmation Date. After notice and a hearing in
16 accordance with the procedures established by the Bankruptcy Code and prior Bankruptcy Court
17 orders, the Allowed amounts of such Professional Claims shall be determined by the Bankruptcy
18 Court.

18 Professional Fee Escrow Amount. In accordance with ARTICLE II.B. hereof, on the
19 Confirmation Date, the Debtors shall establish and fund the Professional Fee Escrow Account
20 with Cash equal to the aggregate Professional Fee Reserve Amount for all Professionals. The
21 Professional Fee Escrow Account shall be maintained in trust for the Professionals. Such funds
22 shall not be considered property of the estates of the Debtors or the Creditors' Trust, as
23 applicable. The amount of Professional Claims owing to the Professionals shall be paid in Cash
24 to such Professionals by the Plan Trustee from the Professional Fee Escrow Account when such
25 Claims are Allowed by a Final Order. When all Professional Claims have been paid in full,
26 amounts remaining in the Professional Fee Escrow Account, if any, shall revert to the Creditors'
27 Trust.

24 Professional Fee Reserve Amount. To receive payment for unbilled fees and expenses
25 incurred through the Confirmation Date, the Professionals shall estimate their Professional
26 Compensation prior to and as of the Confirmation Date and shall deliver such estimate to the
27 Plan Proponents no later than 10 days prior to the Confirmation Date, provided, however, that
28 such estimate shall not be considered an admission with respect to the fees and expenses of such
Professional. If a Professional does not provide an estimate, the Plan Proponents may estimate
the unbilled fees and expenses of such Professional. The total amount so estimated as of the
Confirmation Date shall comprise the Professional Fee Reserve Amount.

1 **C) Priority Tax Claims**

2 Each holder of an Allowed Priority Tax Claim due and payable on or before the Effective
3 Date shall receive one of the following treatments on account of such Claim: (1) Cash in an
4 amount equal to the amount of such Allowed Priority Tax Claim; (2) Cash in an amount agreed
5 to by the Plan Proponents and such holder, provided, however, that such parties may further
6 agree for the payment of such Allowed Priority Tax Claim to occur at a later date; or (3) at the
7 option of the Plan Proponents, Cash in the aggregate amount of such Allowed Priority Tax Claim
8 payable in installment payments over a period not more than five years after the Petition Date
9 pursuant to section 1129(a)(9)(C) of the Bankruptcy Code.

10 **D) No "Substantial Contribution" Awards**

11 There shall be no "substantial contribution" awards under section 503 of the Bankruptcy
12 Code payable from the assets of the Estates or Creditors' Trust.

13 **ARTICLE IV. CLASSIFICATION OF CLAIMS AND INTERESTS**

14 **A) Introduction**

15 (i) In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative
16 Claims and Priority Tax Claims have not been classified, and the respective treatment of such
17 unclassified claims is set forth in Article III of the Plan.

18 (ii) A Claim or Interest is placed in a particular Class only to the extent that the Claim
19 or Interest falls within the description of that Class and such Claim or Interest has not been paid,
20 or released prior to the Effective Date. A Claim or Interest may be and is classified in other
21 Classes to the extent that any portion of the Claim or Interest falls within the description of such
22 other Classes.

23 **B) Unimpaired Classes of Claims**

24 The following Classes contain Claims that are not Impaired by the Plan, are deemed to
25 accept the Plan, and are not entitled to vote on the Plan.

26 *Class 1: Other Priority Claims*

27 Class 1 consists of all Other Priority Claims.

28 *Class 2: Secured Claims*

Class 2 consists of all Secured Claims against any of the Debtors.

C) Impaired / Voting Classes of Claims

The following Classes contain Claims that are Impaired by the Plan and are entitled to
vote on the Plan.

1 *Class 3: Convenience Class Claims*

2 Class 3 consists of all Convenience Class Claims.

3 *Class 4: Personal Injury Tort Claims*

4 Class 4 consists of all Personal Injury Tort Claims.

5 *Class 5: Liquidated Personal Injury Tort Claim*

6 Class 5 consists of all Liquidated Personal Injury Tort Claims.

7 *Class 6: Other General Unsecured Claims*

8 Class 6 consists of all Other General Unsecured Claims.

9
10
11 **D) Impaired / Non-Voting Classes of Claims**

12 The following Classes contain Claims and Interests that are Impaired by the Plan, are not
13 receiving any distribution under the Plan, are deemed to reject the Plan, and are not entitled to
14 vote on the Plan.

15 *Class 7: Inter-Debtor Claims*

16 Class 7 consists of all Inter-Debtor Claims.

17 *Class 8: Subordinated Claims*

18 Class 8 consists of all Subordinated Claims.

19 *Class 9: Interests*

20 Class 9 consists of all Interests in the Debtors.

21
22
23 **ARTICLE V. TREATMENT OF CLAIMS AND INTERESTS**

24 **A) Unimpaired Classes of Claims**

25 (i) Class 1: Other Priority Claims

26 On the applicable Distribution Date or such other date on which an Allowed
27 Other Priority Claim becomes payable pursuant to any agreement between the Plan Proponents
28 and the holder of such Other Priority Claim, each holder of an Allowed Other Priority Claim
shall receive, in full and final satisfaction, settlement, release, and discharge of an in exchange

for such Allowed Other Priority Claim, either (i) Cash equal to the unpaid portion of such Allowed Other Priority Claim or (ii) such different treatment as to which the Plan Proponents and such holder shall have agreed in writing.

(ii) Class 2: Secured Claims

Except to the extent that a holder of an Allowed Secured Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for such Allowed Secured Claim, each such holder of an Allowed Secured Claim, shall at the sole option of the Plan Proponents: (i) have its Allowed Secured Claim reinstated and rendered unimpaired in accordance with section 1124(2) of the Bankruptcy Code, notwithstanding any contractual provision or applicable non-bankruptcy law that entitles the holder of an Allowed Secured Claim to demand or receive payment of such Allowed Secured Claim prior to the stated maturity of such Allowed Secured Claim from and after the occurrence of a default; or (ii) receive Cash in an amount equal to such Allowed Secured Claim, including any interest on such Allowed Secured Claim required to be paid pursuant to section 506(b) of the Bankruptcy Code, on the later of the Effective Date and the date such Allowed Secured Claim becomes an Allowed Secured Claim, or as soon as practicable thereafter; or (iii) receive the collateral securing its Allowed Secured Claim and any interest on such Allowed Secured Claim required to be paid pursuant to section 506(b) of the Bankruptcy Code.

B) Impaired / Voting Classes of Claims

(i) Class 3: Convenience Class Claims

In compromise and settlement of the substantive consolidation issue, each holder of an Allowed Personal Injury Tort Claim or Allowed Liquidated Personal Injury Tort Claim, may elect to treatment as Class 3 Convenience Claims and shall be deemed Allowed upon the Claimant's election of treatment under Class 3, without any further adjudication, and treated under the Plan as follows:

(a) Each Infected Convenience Claim, regardless of the asserted amount of their Claim, shall receive a one-time payment of an amount to be set forth in the Plan Supplement from the Creditors' Trust, in full and final satisfaction, settlement, release and discharge of and in exchange for such Claim, except that such Claim will be fully preserved for liability to the extent of the Debtors' Policy coverage and not released under the Plan unless a settlement is reached between the holder of such Claim, the Plan Proponents or Plan Trustee and NMIC with respect to such Claim.

(b) Each Uninfected Convenience Claim, regardless of the asserted amount of their Claim, shall receive a one-time payment of an amount to be set forth in the Plan Supplement from the Creditors' Trust, in full and final satisfaction, settlement, release and discharge of and in exchange for such Claim, except that such Claim will be fully preserved for liability to the extent of the Debtors' Policy coverage and not released under the Plan unless a settlement is reached between the holder of such Claim, the Plan Proponents or Plan Trustee and NMIC with respect to such Claim.

(ii) Class 4: Personal Injury Tort Claims

In compromise and settlement of the substantive consolidation issue, each holder of an Allowed Personal Injury Tort Claim shall receive after completion of the claims allowance process described in Article IX, on the Distribution Date, in full and final satisfaction, settlement, release, and discharge of and in exchange for such Allowed Personal Injury Tort Claim, except that such Claim will be fully preserved for liability to the extent of the Debtors' Policy coverage and not released under the Plan unless a settlement is reached between the holder of such Claim, the Plan Proponents or Plan Trustee and NMIC with respect to such Claim, either:

(a) Cash in the amount of the Allowed Personal Injury Tort Claim by the Plan Trustee from funds held in the Creditors' Trust; provided there are sufficient funds in the Creditors' Trust to pay in full all holders of Allowed Convenience Class Claims, Allowed Personal Injury Tort Claims, Allowed Liquidated Personal Injury Tort Claims and Allowed Other General Unsecured Claims. In determining whether there are such sufficient funds, any portion of Net Recoveries from NMIC that represents the proceeds of certain of the Debtors' Policy with NMIC shall be allocated solely to the payment of holders of Allowed Personal Injury Tort Claims and Allowed Liquidated Personal Injury Tort Claims; or

(b) In the event the Plan Trustee determines that the Creditors' Trust holds all the funds that will be contributed to the Creditors' Trust from all sources available to the Creditors' Trust and the available funds are insufficient to pay the Allowed Personal Injury Tort Claims, Allowed Liquidated Personal Injury Tort Claims and Allowed Other General Unsecured Claims in full, the Plan Trustee shall distribute the funds as follows: (i) Net Recoveries from NMIC representing the proceeds of certain of the Debtors' Policy with NMIC shall be distributed Pro Rata to holders of Allowed Personal Injury Tort Claims and Allowed Liquidated Personal Injury Tort Claims; and (ii) remaining funds shall be distributed to holders of Allowed Personal Injury Tort Claims, Allowed Liquidated Personal Injury Tort Claims and Other General Unsecured Claims Pro Rata after reducing the Allowed Personal Injury Tort Claims and Allowed Liquidated Personal Injury Tort Claims by the amount paid pursuant to section (i) above.

(iii) Class 5: Liquidated Personal Injury Tort Claims

In compromise and settlement of the substantive consolidation issue, each holder of an Allowed Liquidated Personal Injury Tort Claim shall receive on the Distribution Date, in full and final satisfaction, settlement, release and discharge of and in exchange for such Allowed Liquidated Personal Injury Tort Claim, except that such Claim will be fully preserved for liability to the extent of the Debtors' Policy coverage and not released under the Plan unless a settlement is reached between the holder of such Claim, the Plan Proponents or Plan Trustee and NMIC with respect to such Claim, either:

(a) Cash in the amount of the Liquidated Personal Injury Tort Claim by the Plan Trustee from funds held in the Creditors' Trust; provided there are sufficient in the Creditors' Trust to pay in full all holders of Allowed Convenience Class Claims, Allowed Personal Injury Tort Claims, Allowed Liquidated Personal Injury Tort Claims and Allowed Other General Unsecured Claims. In determining whether there are such sufficient funds, any portion of Net Recoveries from NMIC that represents the proceeds of certain of the Debtors' Policy with NMIC shall be allocated solely to the payment of holders of Allowed Personal Injury Tort Claims and Allowed Liquidated Personal Injury Tort Claims; or

(b) In the event the Plan Trustee determines that the Creditors' Trust holds all the funds that will be contributed to the Creditors' Trust from all sources available to the Creditors' Trust and the available funds are insufficient to pay the Allowed Personal Injury Tort Claims, Allowed Liquidated Personal Injury Tort Claims and Allowed Other General Unsecured Claims in full, the Plan Trustee shall distribute the funds as follows: (i) Net Recoveries from NMIC representing the proceeds of certain of the Debtors' Policy with NMIC shall be distributed Pro Rata to holders of Allowed Personal Injury Tort Claims and Allowed Liquidated Personal Injury Tort Claims; and (ii) remaining funds shall be distributed to holders of Allowed Personal Injury Tort Claims, Allowed Liquidated Personal Injury Tort Claims and Other General Unsecured Claims Pro Rata after reducing the Allowed Personal Injury Tort Claims and Allowed Liquidated Personal Injury Tort Claims by the amount paid pursuant to section (i) above.

(iv) Class 6: Other General Unsecured Claims

In compromise and settlement of the substantive consolidation issue, each holder of an Allowed Other General Unsecured Claim shall receive on the Distribution Date, in full and final satisfaction, settlement, release, and discharge of and in exchange for such Allowed Other General Unsecured Claim, either:

(a) Cash in the amount of the Allowed Other General Unsecured Claim by the Plan Trustee from funds held in the Creditors' Trust; provided there are sufficient funds in the Creditors' Trust to pay in full all holders of Allowed Personal Injury Tort Claims, Allowed Liquidated Personal Injury Tort Claims and Allowed Other General Unsecured Claims. In determining whether there are such sufficient funds, any portion of Net Recoveries from NMIC that represents the proceeds of certain of the Debtors' Policy with NMIC shall be allocated solely to the payment of holders of Allowed Personal Injury Tort Claims and Allowed Liquidated Personal Injury Tort Claims; or

(b) In the event the Plan Trustee determines that the Creditors' Trust holds all the funds that will be contributed to the Creditors' Trust from all sources available to the Creditors' Trust and the available funds are insufficient to pay the Allowed Personal Injury Tort Claims, Allowed Liquidated Personal Injury Tort Claims and Allowed Other General Unsecured Claims in full, the Plan Trustee shall distribute the funds as follows: (i) Net Recoveries from NMIC representing the proceeds of certain of the Debtors' Policy with NMIC shall be distributed Pro Rata to holders of Allowed Personal Injury Tort Claims and Allowed Liquidated Personal Injury Tort Claims; and (ii) remaining funds shall be distributed to holders of Allowed Personal Injury Tort Claims, Allowed Liquidated Personal Injury Tort Claims and Other General Unsecured Claims Pro Rata after reducing the Allowed Personal Injury Tort Claims and Allowed Liquidating Personal Injury Tort Claims by the amount paid pursuant to section (i) above.

C) Impaired / Non-Voting Classes of Claims and Interests

(i) Class 7: Inter-Debtor Claims

No holder of an Inter-Debtor Claim shall receive or retain any property under the Plan on account of such Claim. All Inter-Debtor Claims shall be discharged as of the Effective Date.

(ii) Class 8: Subordinated Claims

The holders of Subordinated Claims shall not receive or retain any property under the Plan on account of such Claims. All Subordinated Claims shall be discharged as of the Effective Date.

(iii) Class 9: Interests

All Interest of the Debtors of any kind shall be cancelled as of the Effective Date and the holders thereof shall not receive or retain any property under the Plan on account of such Interests.

ARTICLE VI. PROVISIONS FOR IMPLEMENTATION OF THE PLAN

A) General Settlement of Claims

Except as otherwise provided in the Plan, pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, on the Effective Date, the provisions of the Plan shall constitute a good-faith compromise and settlement of all Claims and Interests and controversies resolved pursuant to the Plan.

For the avoidance of any doubt, all Claims for liability to the extent of the Debtors' Policy coverage are fully preserved herein, and are not released or settled pursuant to the Plan unless a settlement is reached between the holder of a Claim, the Plan Proponents or Plan Trustee and NMIC with respect to such Claim.

B) Subordination

The classification and treatment of all Claims and Interests under the Plan shall conform to and with the respective contractual, legal, and equitable subordination rights of such Claims and Interests, and any such rights shall be settled, compromised, and released pursuant to the Plan.

C) Vesting of Assets in the Creditors' Trust

Except as otherwise provided in the Plan or any agreement, instrument, or other document incorporated in the Plan, on the Effective Date, the Aggregate Settlement Payment, all property in each Estate, all Causes of Action, and any property acquired by any of the Debtors pursuant to the Plan shall vest in the Creditors' Trust, free and clear of all Liens, Claims, charges, or other encumbrances.

D) Post-Confirmation Property Sales

To the extent the Plan Trustee purchases or sells any property prior to or including the date that is one year after the Confirmation Date, the Plan Trustee may elect to purchase or sell such property pursuant to sections 363, 1123(a)(5)(D), 1141(c), and 1146(a) of the Bankruptcy Code.

1 **E) Section 1146(a) Exemption**

2 Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant to
3 the Plan shall not be subject to any document recording tax, stamp tax, conveyance fee,
4 intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording
5 tax, or other similar tax or governmental assessment, and upon entry of the Confirmation Order,
6 the appropriate state or local governmental officials or agents shall forgo the collection of any
such tax or governmental assessment and accept for filing and recordation any of the foregoing
instruments or other documents without the payment of any such tax, recordation fee, or
governmental assessment.

7 **F) Preservation of Causes of Action**

8 Unless any Causes of Action against an Entity are expressly waived, relinquished,
9 exculpated, released, compromised, or settled in the Plan or a Final Order issued by the
10 Bankruptcy Court, in accordance with section 1123(b) of the Bankruptcy Code, the Plan Trustee
11 shall retain and may enforce all rights to commence and pursue, as appropriate, any and all
12 Causes of Action, whether arising before or after the Petition Date, including any actions
13 specifically enumerated in the Plan Supplement. **No Entity may rely on the absence of a
specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any
Cause of Action against them as any indication that the Debtors, the Plan Proponents or
Plan Trustee will not pursue any and all available Causes of Action against them. The
Debtors, the Plan Proponents and the Plan Trustee expressly reserve all rights to prosecute
any and all Causes of Action, as applicable, against any Entity, except as otherwise
expressly provided in the Plan.**

15 Unless any Causes of Action against an Entity are expressly waived, relinquished,
16 exculpated, released, compromised, or settled in the Plan or a Bankruptcy Court order, the Plan
17 Trustee, expressly reserves all Causes of Action for later adjudication, and, therefore no
18 preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion,
19 claim preclusion, estoppel (judicial, equitable or otherwise), or laches, shall apply to such Causes
of Action upon, after, or as a consequence of Confirmation or Consummation.

20 In accordance with section 1123(b) of the Bankruptcy Code, any Causes of Action that a
Debtor may hold against any Entity shall vest in the Plan Trustee. The Plan Trustee, through its
21 authorized agents or representatives shall retain and may exclusively enforce any and all such
Causes of Action. The Plan Trustee shall have the exclusive right, authority and discretion to
22 determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release,
23 withdraw, or litigate to judgment any such Causes of Action and to decline to do any of the
foregoing without the consent or approval of any third party or any further notice to or action,
24 order, or approval of the Bankruptcy Court.

25 For the avoidance of any doubt, all Claims for liability to the extent of the Debtors'
26 Policy coverage are fully preserved herein, and are not released or settled pursuant to the Plan
27 unless a settlement is reached between the holder of a Claim, the Plan Proponents or Plan
Trustee and NMIC with respect to such Claim.
28

1 **ARTICLE VII. CREDITORS' TRUST**

2 **A) Appointment of Plan Trustee**

3 The Plan Trustee for the Creditors' Trust shall be designated by the Plan Proponents in
4 the Plan Supplement. The Plan Trustee shall be independent of the Debtors and Chapter 11
5 Trustee. The Person designated as Plan Trustee shall file an affidavit demonstrating that such
6 Entity is disinterested as defined by section 101(14) of the Bankruptcy Code. If approved by the
7 Bankruptcy Court, the Person so designated shall become the Plan Trustee on the Effective Date.
8 The Plan Trustee shall have and perform all of the duties, responsibilities, rights and obligations
9 set forth in the Trust Agreement.

8 **B) Compensation of Plan Trustee**

9 The Plan Trustee shall receive compensation equal to a percentage to be set forth in the
10 Plan Supplement of the Cash distributed by the Plan Trustee in payment of Allowed Claims, to
11 be paid simultaneously with each distribution to holders of Allowed Claims. Any professionals
12 employed by the Plan Trustee will be paid in Cash on the Distribution Date from the proceeds of
13 the Creditors' Trust, upon notice and order of the Bankruptcy Court.

12 **C) Duration of Plan Trustee Authority**

13 The Plan Trustee shall serve for the duration of the Creditors' Trust subject to the Plan
14 Trustee's death, incapacity, resignation or removal. The Plan Trustee may resign at any time by
15 written notice to the Bankruptcy Court specifying the date when such resignation shall take
16 effect. The Plan Trustee shall give notice of resignation not less than 30 days before such
17 resignation is to take effect. The Plan Trustee may be removed from office by the Bankruptcy
18 Court upon its own motion, or on the motion of the Plan Proponents or the United States Trustee.

19 In the event of death, incapacity, resignation or removal of the Plan Trustee prior to the
20 final distribution of the Creditors' Trust, a successor Plan Trustee shall be appointed by the
21 Bankruptcy Court. Upon the acceptance of the office by any successor Plan Trustee, all rights,
22 title, duties, powers and authority of the predecessor Plan Trustee under the Plan shall be
23 assumed by the successor Trustee. No successor Trustee shall be liable personally for any act or
24 omission of the Plan Trustee.

21 **D) Purpose: Transfer of Trust Assets to the Creditors' Trust**

22 On or prior to the Effective Date, the Creditors' Trust shall be established pursuant to the
23 Trust Agreement for the purpose of, among other things, and without limitation (1) investigating
24 potential and pending Causes of Action; (2) commencing, prosecuting, appealing, settling,
25 abandoning or compromising any Causes of Action; and (3) making distributions from the Trust
26 Recoveries.

26 On the Effective Date, the Debtors' Estates shall transfer and shall be deemed to have
27 irrevocably transferred to the Creditors' Trust, for and on behalf of the beneficiaries of the Trust,
28 with no reversionary interest in the Debtors, the Trust Assets. In addition, the Debtors shall
transfer to the Plan Trustee for the Creditors' Trust all rights and remedies relating to the Causes

1 of Action, including the Debtors' books and records, and evidentiary privileges (including the
2 attorney-client privilege) solely as they relate to the Causes of Action. Upon such transfer, the
3 Debtors, the Estates, and the Chapter 11 Trustee shall have no other or further rights or
4 obligations with respect thereto.

5 For the avoidance of any doubt, all Claims for liability to the extent of the Debtors'
6 Policy coverage are fully preserved herein, are not transferred to the Creditors' Trust and are not
7 released or settled pursuant to the Plan unless a settlement is reached between the holder of a
8 Claim, the Plan Proponents or Plan Trustee and NMIC with respect to such Claim.

9 **E) Creditors' Trust**

10 Without any further action of the Plan Proponents, the Debtors or the Chapter 11 Trustee,
11 on the Effective Date, the Trust Agreement shall become effective. The Plan Trustee shall
12 accept the Creditors' Trust and sign the Trust Agreement on the Effective Date and the
13 Creditors' Trust shall then be deemed created and effective.

14 **F) Maintenance of Causes of Action**

15 The Plan Trustee shall have all the rights and powers set forth in the Trust Agreement,
16 including the right to: (i) effect all actions and execute all agreements, instruments and other
17 documents necessary to implement the provisions of the Plan and the Trust Agreement; (2) to
18 investigate potential and pending Causes of Action, including the right to seek testimony and the
19 production of documents pursuant to all subpoenas issued under Rule 2004 of the Bankruptcy
20 Rules by either the Plan Proponents, the Debtors or the Chapter 11 Trustee before the Effective
21 Date or the Plan Trustee after the Effective Date; and (3) commence, prosecute, appeal, settle,
22 abandon or compromise any Cause of Action. The Plan Trustee may retain such law firms,
23 accounting firms, experts, advisors, consultants, investigators, appraisers, auctioneers, or other
24 professionals as it may deem necessary in its sole discretion, to aid in the performance of its
25 responsibilities pursuant to the terms of the Plan.

26 The Plan Trustee shall file periodic reports with the Bankruptcy Court in accordance with
27 the Trust Agreement. The Plan Trustee shall perform the duties and obligations imposed on the
28 Plan Trustee by the Trust Agreement with reasonable diligence and care under the
29 circumstances. The Plan Trustee shall not be personally liable to the Creditors' Trust, to any
30 beneficiary thereof, or any other person (or any predecessor or successor thereto) for any reason
31 whatsoever, except for such of its own acts as shall constitute willful misconduct, gross
32 negligence, willful disregard of the Plan Trustee's duties, or material breach of the Trust
33 Agreement.

34 **G) Distributions of Trust Recoveries**

35 Distributions of the Trust Recoveries shall be made in accordance with the provisions of
36 the Plan and the Trust Agreement.

37 **H) Partial Distributions**

38 Promptly following the date on which Convenience Class Claims, Personal Injury Tort
39 Claims and Other General Unsecured Claims become Allowed Claims, the Plan Trustee shall

1 have the discretion to distribute available funds in the Creditors' Trust to the holders of
 2 Convenience Class Claims, Allowed Personal Injury Tort Claims and Allowed Other General
 3 Unsecured Claims Pro Rata as provided in Article V.B. when it is economically feasible to do so,
 4 notwithstanding the anticipated receipt of further funds to be deposited in the Creditors' Trust.
 5 As further funds become available, the Plan Trustee shall likewise make partial distributions on
 6 the Distribution Date to the holders of Convenience Class Claims, Allowed Personal Injury Tort
 7 Claims and Allowed Other General Unsecured Claims when in the discretion of the Plan Trustee
 8 it is economically feasible to do so. This process shall continue until either: (a) all holders of
 9 Convenience Class Claims, Allowed Personal Injury Tort Claims and Allowed Other General
 10 Unsecured Claims have been paid in full; or (b) the Creditors' Trust has been exhausted as
 11 provided in Article V.B.

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

14 **A) Rejection of Executory Contracts and Unexpired Leases**

15 Except as otherwise provided herein, each Executory Contract and Unexpired Lease shall
 16 be deemed automatically rejected pursuant to sections 365 and 1123 of the Bankruptcy Code as
 17 of the Effective Date, unless any such Executory Contract or Unexpired Lease: (1) is listed on
 18 the schedule of "Assumed Executory Contracts and Unexpired Leases" in the Plan Supplement;
 19 (2) has been previously assumed by the Debtors by Final Order or has been assumed by the
 20 Debtors by order of the Bankruptcy Court as of the Effective Date, which order becomes a Final
 21 Order after the Effective Date; (3) is the subject of a motion to assume or reject pending as of the
 22 Effective Date; or (4) is otherwise assumed pursuant to the terms herein.

23 The Confirmation Order will constitute an order of the Bankruptcy Court approving such
 24 rejections pursuant to sections 365 and 1123 of the Bankruptcy Code as of the Effective Date.
 25 Counterparties to Executory Contracts or Unexpired Leases that are deemed rejected as of the
 26 Effective Date shall have the right to assert any Claim on account of the rejection of such
 27 Executory Contracts or Unexpired Leases, including under section 502(g) of the Bankruptcy
 28 Code, subject to compliance with the requirements herein.

29 **B) Assumption of Executory Contracts and Unexpired Leases**

30 On the Effective Date, the Plan Trustee shall assume the Executory Contracts and
 31 Unexpired Leases listed on the schedule of "Assumed Executory Contracts and Unexpired
 32 leases" in the Plan Supplement (or otherwise contained in (1) – (4) of the first paragraph of
 33 section A of this ARTICLE VIII). With respect to each such Executory Contract and Unexpired
 34 Lease listed on the schedule of "Assumed Executory Contracts and Unexpired Leases" in the
 35 Plan Supplement, the Plan Proponents shall have designated a proposed cure amount, and the
 36 assumption of such Executory Contracts and Unexpired Leases may be conditioned upon the
 37 disposition of all issues with respect to such Cure. The Confirmation Order shall constitute an
 38 order of the Bankruptcy Court approving any such assumptions pursuant to sections 365(a) and
 39 1123 of the Bankruptcy Code.

1 **C) Insurance Policies**

2 Each insurance policy, including the Policy shall be assumed by the applicable Debtor
3 effective as of the Effective Date, pursuant to sections 365 and 1123 of the Bankruptcy Code, to
4 the extent such insurance policy is executory, unless such insurance policy previously was
5 rejected by the Debtors pursuant to a Bankruptcy Court order, is the subject of a motion to reject
6 pending on the Effective Date, or is included in the schedule of "Rejected Executory Contracts
7 and Unexpired Leases" contained in the Plan Supplement.

8 **D) Cure of Defaults for Assumed Executory Contracts and Unexpired Leases**

9 With respect to each of the Executory Contracts and Unexpired Leases listed on the
10 schedule of "Assumed Executory Contracts and Unexpired Leases," the Plan Proponents shall
11 have designated a proposed cure amount, and the assumption of such Executory Contract or
12 Unexpired Lease shall be conditioned upon the disposition of all issues with respect to such cure
13 amount. Such cure amount shall be satisfied by the Plan Trustee, if any, by payment of the cure
14 amount in Cash on the Effective Date or as soon as reasonably practicable thereafter, or on such
15 other terms as may be ordered by the Bankruptcy Court or agreed upon by the parties to the
16 applicable Executory Contract or Unexpired Lease without any further notice to or action, order,
17 or approval of the Bankruptcy Court.

18 Prior to the Confirmation Hearing, the Plan Proponents shall file with the Bankruptcy
19 Court and serve upon counterparties to such Executory Contracts and Unexpired Leases a notice
20 of the proposed assumption that will (1) list the applicable cure amount, if any, (2) describe the
21 procedures for filing objections to the proposed assumption or such cure amount, and (3) explain
22 the process by which related disputes will be resolved by the Bankruptcy Court. Except with
23 respect to Executory Contracts and Unexpired Leases in which the Plan Proponents and the
24 applicable counterparties have stipulated in writing to payment of a cure amount, all requests for
25 payment of a cure amount that differ from the amounts proposed by the Plan Proponents must be
26 filed with the Bankruptcy Court on or before the cure bar date. Any request for payment of a
27 cure amount that is not timely filed shall be disallowed automatically and forever barred,
28 estopped, and enjoined from assertion and shall not be enforceable, without the need for any
objection by the Plan Trustee or any further notice to or action, order, or approval of the
Bankruptcy Court, and any such cure amount shall be deemed fully satisfied, released, and
discharged upon payment by the Plan Trustee of the amounts listed on the proposed cure
schedule, notwithstanding anything included in the schedules or in any Proof of Claim to the
contrary; provided, however, that nothing shall prevent the Plan Proponents or Plan Trustee from
paying any cure amount despite the failure of the relevant counterparty to file such request for
payment of such cure amount. The Plan Proponents or Plan Trustee also may settle any Cure
without any further notice to or action, order, or approval of the Bankruptcy Court.

If the Plan Proponents or Plan Trustee object to any cure amount or any other matter
related to assumption, the Bankruptcy Court shall determine the Allowed amount of such cure
and any related issues. If there is a dispute regarding such cure amount, the ability of the Plan
Trustee or any assignee to provide "adequate assurance of future performance" within the
meaning of section 365 of the Bankruptcy Code, or any other matter pertaining to assumption,
then payment of such cure amount shall occur as soon as reasonably practicable after entry of a
Final Order resolving such dispute, approving such assumption (and, if applicable, assignment),
or as may be agreed upon by the Plan Proponents or Plan Trustee, as applicable, and the

counterparty to the Executory Contract or Unexpired Lease. Any counterparty to an Executory Contract or Unexpired Lease that fails to object timely to the proposed assumption of any Executory Contract or Unexpired Lease and associated cure amount will be deemed to have consented to such assumption and such cure amount.

E) Preexisting Obligations to the Debtors

Rejection of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall not constitute a termination of pre-existing obligations owed to the Debtors under such contracts or leases.

F) Claims Based on Rejection of Executory Contracts or Unexpired Leases

Unless otherwise provided by a Bankruptcy Court order, Proofs of Claim asserting Claims arising from the rejection of the Executory Contracts or Unexpired Leases pursuant to the Plan or otherwise must be filed with the Bankruptcy Court no later than 30 days after the later of the Effective Date and the effective date of rejection. Any Proofs of Claim arising from the rejection of the Executory Contracts or Unexpired Leases that are not timely filed shall be disallowed automatically and forever barred, estopped, and enjoined from assertion and shall not be enforceable, without the need for any objection or any further notice to or action, order, or approval of the Bankruptcy Court, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed fully satisfied, released, and discharged, notwithstanding anything in the Schedules or a Proof of Claim to the contrary. All Allowed Claims arising from the rejection of the Executory Contracts and Unexpired Leases shall be classified as Other General Unsecured Claims.

G) Reservation of Rights

Neither the exclusion nor inclusion of any contract or lease in the Plan Supplement, nor anything contained in the Plan, shall constitute an admission that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that any Debtor has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Plan Proponents or Plan Trustee, shall have 45 days following entry of a Final Order resolving such dispute to alter the treatment of such contract or lease.

ARTICLE IX. PROCEDURES FOR RESOLVING CLAIMS

A) Appointment of Tort Claim Neutral

The Plan Proponents shall designate a Tort Claim Neutral in the Plan Supplement. The terms and conditions of the employment and compensation of the Tort Claim Neutral shall be set forth in the Plan Supplement. The Tort Claim Neutral shall be independent of the Debtors and Chapter 11 Trustee. The Person designated as Tort Claim Neutral shall file an affidavit demonstrating that such Entity is disinterested as defined by section 101(14) of the Bankruptcy Code. Any party in interest may object to the employment of the Tort Claim Neutral; however, such objections shall be limited to the issue of whether the Tort Claim Neutral is free of any conflict of interest. If approved by the Bankruptcy Court, the Person so designated shall become the Tort Claim Neutral on the Effective Date.

B) Selection of Representative Claims

As reflected on the Claims registered maintained by the Bankruptcy Court, the following law firms represent the majority of claimants in Class 4: Edward M. Bernstein & Associates, Glen J. Lerner & Associates, Mainor Eglet Cottle, The Drakulich Law Firm, and White & Wetherall. As soon as practicable after the Confirmation Date, the Tort Claim Neutral shall request that each of the above law firms designate for evaluation two Claims each that the law firm believes are representative Claims of the types of Claimants represented by the law firm. In addition, the Plan Proponents may designate two additional Claims for evaluation. Of the Claims designated, there shall be no less than two of the Claims being Uninfected Hepatitis Claims or Infected Hepatitis Claims, as to be determined by the designating parties.

C) Valuation of Personal Injury Tort Claims

Once the representative Claims are designated per Article IX.B, the Tort Claim Neutral shall establish a procedure for the valuation of the representative Claims. This procedure may include written and oral presentations by parties in interest as to the value that should be assigned to each representative Claim. Based on the evaluation of the representative Claims, the Tort Claim Neutral shall establish a matrix that will establish a means of determining the value of each Class 4 - Personal Injury Tort Claim.

D) Claims Determination Process

(i) Personal Injury Tort Claims

After the Plan Trustee's litigation to judgment, settlement or withdrawal of the Causes of Action against NMIC, excluding all Claims for liability to the extent of the Debtors' Policy coverage which are fully preserved herein unless a settlement is reached between the holder of such Claim, the Plan Proponents or Plan Trustee and NMIC with respect to such Claim, the Plan Trustee shall mail to the holder of each Personal Injury Tort Claim, a notice explaining the proposed amount of an Allowed Personal Injury Tort Claim that such holder shall be entitled to based on application of the matrix set forth in Article IX.C. The notice shall be accompanied by a form releasing the Plan Proponents, the Debtors, the Chapter 11 Trustee, the Plan Trustee and the Tort Claim Neutral from any further liability to the claimant executing the release, and providing the Claimant to grant or opt out of releasing the Contributing Parties set forth in the Plan Supplement. Upon receipt by the Plan Trustee of the signed release, the holder of the Personal Injury Tort Claim that signed the release shall be deemed to have an Allowed Claim in the amount stated in the notice.

If more than one-half in number and two-thirds in amount of holders of the Allowed Personal Injury Tort Claims sign releases, all holders of Allowed Personal Injury Tort Claims shall be deemed to have Allowed Claims in the amount determined by the matrix, and all holders of Allowed Personal Injury Tort Claims shall be subject to the Plan Injunction and discharge set forth in Article XI.

In the event that less than one-half in number and two-thirds in amount of holders of the Allowed Personal Injury Claims sign releases, the Claims of non-signatory Claimants shall be referred to the Bankruptcy Court for further proceedings herein. The Bankruptcy Court shall conduct pre-trial procedures (including disallowance of any Personal Injury Tort Claims as

legally insufficient) with respect to the Personal Injury Tort Claims of non-releasing holders. Upon completion of the pre-trial proceedings, the Bankruptcy Court shall certify to the District Court for trial pursuant to Local Rule 9015(g) all of the Personal Injury Tort Claims that have not been disallowed by the Bankruptcy Court as legally insufficient. Following this certification, the District Court shall establish procedures for the liquidation of the certified Personal Injury Tort Claims.

(ii) Liquidated Personal Injury Tort Claims

Holders of Liquidated Personal Injury Tort Claims may be treated as Class Five Claims as set forth in Article V.B or elect to treat such Claims as Convenience Class Claim Claims or elect to value such Claims pursuant to the procedures set forth in Article IX.C.

(iii) Other General Unsecured Claims

Other General Unsecured Claims shall be deemed Allowed in the amount shown on the Debtors' Schedules unless listed as disputed, contingent or unliquidated or in the amount listed on a timely filed Proof of Claim, unless an objection to such Other General Unsecured Claim is filed by the Claims Objection Deadline.

Except as otherwise specifically provided in the Plan, after the Effective Date, the Plan Trustee shall have the authority: (1) to file, withdraw, or litigate to judgment, objections to Other General Unsecured Claims; (2) to settle or compromise any Disputed Claim without any further notice to or action, order, or approval by the Bankruptcy Court; and (3) to administer and adjust the Claims register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court. The Plan Trustee shall have standing to appear and be heard on any issue relating to any Other General Unsecured Claim.

E) Other General Unsecured Claims of NMIC

Unless all matters relating to NMIC have been resolved to the reasonable satisfaction of the Plan Proponents and Plan Trustee, all Other General Unsecured Claims of NMIC are Disputed Claims, and distributions to NMIC on account of its Other General Unsecured Claims, if any, will be treated as Disputed Claims.

F) Expungement or Adjustment to Paid, Satisfied, or Superseded Claims

Any Claim that has been paid, satisfied, or superseded, or any Claim that has been amended or superseded, may be adjusted or expunged on the Claims register by the Plan Trustee without a claims objection having to be filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

G) No Interest

Unless otherwise specifically provided for in the Plan, required under applicable bankruptcy law, or agreed to by the Plan Proponents, the Confirmation Order, or a postpetition agreement in writing between the Plan Trustee and a holder of a Claim, postpetition interest shall not accrue or be paid on Claims, and no holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim or right. Additionally, and without limiting the

foregoing, interest shall not accrue or be paid on any Disputed Claim with respect to the period from the Effective Date to the date a final distribution is made on account of such Disputed Claim, if and when such Disputed Claim becomes an Allowed Claim.

H) Disallowance of Claims or Interests

EXCEPT AS OTHERWISE AGREED, ANY AND ALL PROOFS OF CLAIM FILED AFTER THE APPLICABLE DEADLINE FOR FILING SUCH PROOFS OF CLAIM SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE PROOF OF CLAIM IS DEEMED TIMELY FILED BY A FINAL ORDER OF THE BANKRUPTCY COURT ON OR BEFORE THE LATER OF (1) THE CONFIRMATION HEARING AND (2) 45 DAYS AFTER THE APPLICABLE DEADLINE FOR FILING SUCH PROOFS OF CLAIM.

I) Amendments to Claims

On or after the Effective Date, except as otherwise provided herein, a Claim may not be filed or amended without the prior authorization of the Bankruptcy Court or the Plan Trustee, and to the extent such prior authorization is not received, any such new or amended Claim filed shall be deemed disallowed in full and expunged without any further notice to or action, order, or approval of the Bankruptcy Court.

J) No Distributions Pending Allowance

If an objection to a Claim or portion thereof is filed prior to the Effective Date, no payment or distribution provided under the Plan shall be made on account of such Claim or portion thereof unless and until such Disputed Claim becomes an Allowed Claim.

K) Distributions After Allowance

To the extent that a Disputed Claim ultimately becomes an Allowed Claim, distributions, if any, shall be made to the holder of such Allowed Claim in accordance with the provisions of the Plan. As soon as practicable after the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim becomes a Final Order, the Plan Trustee shall provide to the holder of such Claim the distribution, if any, to which such holder is entitled under the Plan as of the Effective Date, without any interest to be paid on account of such Claim unless required under applicable bankruptcy law.

ARTICLE X. PROVISIONS GOVERNING DISTRIBUTIONS

A) Distributions on Account of Claims Allowed as of the Effective Date

Except as otherwise provided in the Plan, a Final Order, or as otherwise agreed to by the relevant parties on the Distribution Date, the Plan Trustee shall make initial distributions under the Plan on account of Claims Allowed on or before the Effective Date, subject to the Plan Trustee's right to object to Claims.

B) Distributions on Account of Claims Allowed After the Effective Date

Except as otherwise provided in the Plan, a Final Order, or as agreed to by the relevant parties, distributions under the Plan on account of Disputed Claims that become Allowed after the Effective Date shall be made on the Distribution Date that is at least 30 days after the Disputed Claim becomes an Allowed Claim.

Notwithstanding any provision otherwise in the Plan and except as otherwise agreed to by the relevant parties (a) no partial payments and no partial distributions shall be made with respect to a Disputed Claim until all such disputes in connection with such Disputed Claim have been resolved by settlement or Final Order, and (b) any Entity that holds both an Allowed Claim and a Disputed Claim shall not receive any distribution on the Allowed Claim unless and until all objections to the Disputed Claim have been resolved by settlement or Final Order or the Claims have been Allowed or expunged. All distributions made pursuant to the Plan on account of a Disputed Claim that is deemed an Allowed Claim by the Bankruptcy Court shall be made together with any dividends, payments, or other distributions made on account of, as well as any obligations arising from, the distributed property as if such Allowed Claim had been an Allowed Claim on the dates distributions were previously made to holders of Allowed Claims included in the applicable Class; provided, however, that no interest shall be paid on account to such Allowed Claims unless required under applicable bankruptcy law or set forth herein.

C) Delivery of Distributions

(i) Record Date for Distributions

On the Distribution Record Date, the Claims register shall be closed and the Plan Trustee shall be authorized and entitled to recognize only those record holders listed on the Claims register as of the close of business on the Distribution Record Date. Notwithstanding the foregoing, if a Claim or Interest, other than one based on a publicly traded Certificate, is transferred less than 20 days before the Distribution Record Date, the Plan Trustee shall make distributions to the transferee only to the extent practical and in any event only if the relevant transfer form contains an unconditional and explicit certification and waiver of any objection to the transfer by the transferor.

(ii) Distribution Process

The Plan Trustee shall make all distributions required under the Plan. Except as otherwise provided in the Plan, and notwithstanding any authority to the contrary, distributions to holders of Allowed Claims shall be made to holders of record as of the Distribution Record Date by the Plan Trustee: (a) to the address of the signatory set forth on any of the Proofs of Claim filed by such holder or other representative identified therein (or at the last known addresses of such holder if no Proof of Claim is filed or, if the Plan Proponents have been notified in writing of a change of address); (b) at the addresses set forth in any written notices of address changes delivered to the Plan Trustee after the date of any related Proof of Claim; (c) in accordance with Federal Rule of Civil Procedure 4, as modified and made applicable by Bankruptcy Rule 7004 if no Proof of Claim has been filed and the Plan Proponents or Plan Trustee has not received a written notice of a change of address; (d) at the addresses reflected in the Schedules if no Proof of Claim has been filed and the Plan Proponents or Plan Trustee has not received a written notice of a change of address; or (e) on any counsel that has appeared in

1 the Chapter 11 Cases on such holder's behalf. The Plan Proponents, Plan Trustee, Debtors and
2 Chapter 11 Trustee shall not incur any liability whatsoever on account of any distributions made
3 pursuant to the Plan.

3 (iii) Compliance Matters

4 In connection with the Plan, the Plan Trustee shall comply with all tax withholding and
5 reporting requirements imposed by any governmental unit, and all distributions pursuant to the
6 Plan shall be subject to such withholding and reporting requirements. Notwithstanding any
7 provision in the Plan to the contrary, the Plan Trustee shall be authorized to take all actions
8 necessary or appropriate to comply with such withholding and reporting requirements, including
9 liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to
10 pay applicable withholding taxes, withholding distributions pending receipt of information
11 necessary to facilitate such distributions, or establishing any other mechanisms they believe are
12 reasonable and appropriate. The Plan Trustee reserves the right to allocate all distributions made
13 under the Plan in compliance with all applicable wage garnishments, alimony, child support, and
14 other spousal awards, liens, and encumbrances.

11 (iv) Fractional, De Minimis, Undeliverable, and Unclaimed Distributions

12 a) Fractional Distributions

13 Notwithstanding any other provision of the Plan to the contrary, the Plan Trustee
14 shall not be required to make distributions or payments of fractions of dollars. Whenever any
15 payment of Cash of a fraction of a dollar pursuant to the Plan would otherwise be required, the
16 actual payment shall reflect a rounding of such fraction to the nearest whole dollar (up or down),
17 with half dollars or less being rounded down.

16 b) De Minimis Distributions

17 The Plan Trustee shall not be required to make a distribution on account of an
18 Allowed Claim if (i) the aggregate amount of all distributions authorized to be made on the
19 Distribution Date in question is or has an economic value less than \$50,000, or (ii) the amount to
20 be distributed to the specific holder of an Allowed Claim on the particular Distribution Date does
21 not constitute a final distribution to such holder.

21 c) Undeliverable Distributions

22 If any distribution to a holder of an Allowed Claim is returned to the Plan Trustee
23 as undeliverable, no further distributions shall be made to such holder unless and until the Plan
24 Trustee is notified in writing of such holder's then-current address, at which time all currently
25 due missed distributions shall be made to such holder on the next Distribution Date.
26 Undeliverable distributions shall remain in the possession of the Plan Trustee for the Creditors'
27 Trust until such time as a distribution becomes deliverable or such distribution reverts to the
28 Creditors' Trust.

d) Reversion

Any distribution under the Plan that is an Unclaimed Distribution for a period of six months after distribution shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and such Unclaimed Distribution shall revert in the Creditors' Trust. Upon such reversion, the Claim of any holder or its successors with respect to such property shall be cancelled, discharged, and forever barred notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws to the contrary.

D) Claims Paid or Payable by Third Parties

(i) Claims Paid by Third Parties

The Plan Trustee shall reduce in full a Claim, and such Claim shall be disallowed without an objection having to be filed and without any further notice to or action, order, or approval of the Bankruptcy Court, to the extent that the holder of such Claim receives payment in full on account of such Claim from a party that is not a Debtor. To the extent a holder of a Claim receives a distribution on account of such Claim and receives payment from a party that is not a Debtor on account of such Claim, such holder shall, within two weeks of receipt thereof, repay or return the distribution to the Plan Trustee, to the extent the holder's total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such distribution under the Plan.

(ii) Applicability of Insurance Policies

Except as otherwise provided in the Plan, distributions to holders of Allowed Claims shall be in accordance with the provisions of any applicable insurance policy. Nothing contained in the Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtors may hold against any other Entity, including insurers under any policies of insurance, including the Policy.

E) Setoffs

Except as otherwise provided for in the Plan, the Plan Trustee, pursuant to the Bankruptcy Code (including section 553 of the Bankruptcy Code), applicable non-bankruptcy law, or as may be agreed to by the holder of a Claim, may set off against any Allowed Claim and the distributions to be made pursuant to the Plan on account of such Allowed Claim (before any distribution is made on account of such Allowed Claim), any Claims, rights, and Causes of Action of any nature that the Debtors or Plan Trustee may hold against the holder of such Allowed Claim, to the extent such Claims, rights, or Causes of Action against such holder have not been otherwise compromised or settled on or prior to the Effective Date (whether pursuant to the Plan or otherwise); provided, however, that neither the failure to effect such a setoff nor the allowance of any Claim pursuant to the Plan shall constitute a waiver or release by the Plan Trustee of any such Claims, rights, and Causes of Action that the Plan Trustee may possess against such holder. In no event shall any holder of a Claim be entitled to set off any Claim against any Claim, right, or Cause of Action of the Debtors or Plan Trustee unless such holder has filed a motion with the Bankruptcy Court requesting the authority to perform such setoff on or before the Confirmation Date, and notwithstanding any indication in any Proof of Claim or

otherwise that such holder asserts, has, or intends to preserve any right of setoff pursuant to section 553 or otherwise.

ARTICLE XI. EFFECT OF CONFIRMATION OF THE PLAN

A) Discharge of Claims and Termination of Interests

Except as otherwise provided herein, and effective as of the Effective Date: (1) the rights afforded in the Plan and the treatment of all Claims and Interests shall be in exchange for and in complete satisfaction, discharge, and release of all Claims and Interests of any nature whatsoever, including any interest accrued on such Claims from and after the Petition Date, against the Debtors or any of their assets, property, or Estates; (2) the Plan shall bind all holders of Claims and Interests, notwithstanding whether any such holders failed to vote to accept or reject the Plan or voted to reject the Plan; (3) all Claims and Interests shall be satisfied, discharged, and released in full, and the Debtors' liability with respect thereto shall be extinguished completely, including any liability of the kind specified under section 502(g) of the Bankruptcy Code; and (4) all Entities shall be precluded from asserting against the Debtors, the Debtors' Estates, the reorganized Debtors, their successors and assigns, and their assets and properties any other Claims or Interests based upon any documents, instruments, or any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date. **However, for the avoidance of any doubt, Claims to liability to the extent of the Debtors' Policy coverage are expressly preserved under the Plan, and are not satisfied, enjoined, discharged, released or settled pursuant to the Plan unless a settlement is reached between the holder of such Claim, the Plan Proponents or Plan Trustee and NMIC with respect to such Claim.**

B) Subordinated Claims

The allowance, classification, and treatment of all Allowed Claims and Interests and the respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Plan Trustee reserves the right to re-classify any Allowed Claim or Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

C) Compromise and Settlement of Claims and Controversies

Pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to the Plan or any distribution to be made on account of an Allowed Claim or Interest, the provisions of the Plan shall constitute a good faith compromise of all Claims and Interests relating to the contractual, legal, and subordination rights that a holder of a Claim or Interest may have with respect to any Allowed Claim or Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims and Interests, as well as a finding by the Bankruptcy Court that substantive consolidation of the Debtors' estates and any such compromise or settlement is in the best interests of the Debtors, their Estates, and holders of

Claims and Interests and is fair, equitable, and reasonable. **However, for the avoidance of any doubt, Claims to liability to the extent of the Debtors' Policy coverage are expressly preserved under the Plan, and are not satisfied, enjoined, discharged, released or settled pursuant to the Plan unless a settlement is reached between the holder of such Claim, the Plan Proponents or Plan Trustee and NMIC with respect to such Claim.**

D) Releases by the Debtors

Pursuant to section 1123(b) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan, for good and valuable consideration, on and after the Effective Date, the Released Parties are deemed released and discharged by the Debtors, the reorganized Debtors, their Estates, the Plan Proponents and the Plan Trustee from any and all Claims, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever, including any derivative Claims, asserted on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, that the Debtors, the reorganized Debtors, their Estates, their Affiliates, the Plan Proponents or the Plan Trustee would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim or Interest or other Entity (other than for fraud, willful misconduct, or gross negligence), based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Chapter 11 Cases, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the negotiation, formulation, or preparation of the Plan and Disclosure Statement, or related agreements, instruments, or other documents, upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date of the Plan, other than Claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes willful misconduct or gross negligence, or as otherwise provided in the Plan. **For the avoidance of any doubt, no claims to liability to the extent of the Debtors' Policy coverage are released under this Plan, and such Claims are expressly preserved under the Plan.**

E) Releases by Releasing Parties

As of the Effective Date, the Releasing Parties are deemed to have released and discharged the Plan Proponents, the Plan Trustee, the Debtors, the reorganized Debtors, their Estates, and the Released Parties from any and all Claims, Interests, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever, including any derivative Claims, asserted on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, that such Entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Debtors' restructuring, the Chapter 11 Cases, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the negotiation, formulation, or preparation of the Plan, the Disclosure Statement, the Plan Supplement, or related agreements, instruments, or other documents, upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date of the Plan, other than Claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes willful misconduct or gross negligence.

Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release any post-Effective Date obligations of any party under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan. **For the avoidance of any doubt, no claims to liability to the extent of the Debtors' Policy coverage are released under this Plan, and such Claims are expressly preserved under the Plan.**

F) Exculpation

The Exculpated Parties shall neither have, nor incur any liability to any Entity for any Exculpated Claim; provided, however, that the foregoing "exculpation" shall have no effect on the liability of any Entity that results from any such act or omission that is determined in a Final Order to have constituted gross negligence or willful misconduct.

The Exculpated Parties have, and upon Confirmation shall be deemed to have, participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code with regard to the distributions pursuant to the Plan and, therefore, are not and shall not be liable at any time for the violations of any applicable, law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.

G) Injunction

From and after the Effective Date, all Entities are permanently enjoined from commencing or continuing in any manner, any suit, action, or other proceeding, on account of or respecting any Claim, demand, Lien, liability, obligation, debt, right, Cause of Action, Interest, or remedy released or to be released, exculpated or to be exculpated pursuant to the Plan or the Confirmation Order.

From and after the Effective Date, unless otherwise specified in this Plan or the Confirmation Order, all holders of Claims against and Interests in the Debtors are permanently restrained and enjoined: (a) from commencing or continuing in any manner, any action or other proceeding of any kind with respect to any such Claim or Interest against the Debtors, the Debtors' assets, the Plan Trustee or the Creditors' Trust; (b) from enforcing, attaching, collecting, or recovering by any manner or means, any judgment, award, decree, or order against the Debtors, the Debtors' assets, the Plan Trustee or the Creditors' Trust; (c) from creating, perfecting, or enforcing any encumbrance of any kind against the Debtors, the Debtors' assets, the Plan Trustee or the Creditors' Trust; (d) from asserting any setoff, right of subrogation, or recoupment of any kind against any obligation due the Debtors or the Plan Trustee; and (e) from performing any act, in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

However, for the avoidance of any doubt, Claims to liability to the extent of the Debtors' Policy coverage are expressly preserved under the Plan, and are not satisfied, enjoined, discharged, released or settled pursuant to the Plan unless a settlement is reached between the holder of such Claim, the Plan Proponents or Plan Trustee and NMIC with respect to such Claim.

H) Injunction in Favor of Contributing Party

Pursuant to the settlements, if any, between a Contributing Party, the Plan Proponents or Plan Trustee, and each holder of a Claim that agrees to release such Contributing Party as set forth in Article IX.D. above, and in exchange for the Direct Settlement Payment, the Confirmation Order shall provide such Contributing Party a release and related injunction.

I) Recoupment

In no event shall any holder of Claims or Interests be entitled to recoup any Claim or Interest against any Claim, right, or Cause of Action of the Debtors or Plan Trustee unless such holder actually has performed such recoupment and provided notice thereof in writing to the Plan Proponents and Plan Trustee on or before the Confirmation Date, notwithstanding any indication in any Proof of Claim or Interest or otherwise that such holder asserts, has, or intends to preserve any right of recoupment.

J) Reimbursement or Contribution

If the Bankruptcy Court disallows a Claim for reimbursement or contribution of an Entity pursuant to section 502(e)(1)(B) of the Bankruptcy Code, then to the extent that such Claim is contingent as of the Effective Date, such Claim shall be forever disallowed notwithstanding section 502(j) of the Bankruptcy Code, unless prior to the Effective Date (1) such Claim has been adjudicated as noncontingent or (2) the relevant holder of a Claim has filed a noncontingent Proof of Claim on account of such Claim and a Final Order has been entered determining such Claim as no longer contingent.

ARTICLE XII. CONDITIONS PRECEDENT TO CONSUMMATION OF THE PLAN

A) Conditions Precedent to the Effective Date

It shall be a condition to the Effective Date that the following conditions shall have been satisfied or waived pursuant to ARTICLE XII.B hereof:

1. the Confirmation Order shall have become a Final Order in form and substance acceptable to the Plan Proponents;

2. all actions, documents, and agreements necessary to implement the Plan shall have (a) all conditions precedent to such documents and agreements satisfied or waived pursuant to the terms of such documents or agreements, and (b) been effected or executed;

3. the Trust Agreement shall have been established in a form and substance acceptable to the Plan Proponents;

4. the Plan Trustee shall have been appointed and the Creditors' Trust establish and funded in a form and substance acceptable to the Plan Proponents; and

5. the Tort Claim Neutral shall have been appointed.

B) Waiver of Conditions Precedent

The Plan Proponents may waive any of the conditions to the Effective Date set forth in ARTICLE XII.A at any time without any notice to other parties in interest and without any further notice to or action, order, or approval of the Bankruptcy Court, and without any formal action other than proceeding to confirm or consummate the Plan.

C) Effect of Non-Occurrence of Conditions to Consummation

If, prior to Consummation, the Confirmation Order is vacated pursuant to a Final Order, then, except as provided in any order of the Bankruptcy Court vacating the Confirmation Order, the Plan will be null and void in all respects, and nothing contained in the Plan or Disclosure Statement shall (1) constitute a waiver or release of any Claims, Interests, or Causes of Action, (2) prejudice in any manner the rights of any Debtor or any other Entity, or (3) constitute an admission, acknowledgment, offer, or undertaking of any sort by any Debtor or any other Entity.

ARTICLE XIII. RETENTION OF JURISDICTION

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, or related to, the Chapter 11 Cases and the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including jurisdiction to:

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

2. decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan;

3. resolve any matters related to Executory Contracts or Unexpired Leases, including: (a) the assumption, assumption and assignment, or rejection of any Executory Contract or 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 cure amount or Claims arising therefrom, including pursuant to section 365 of the Bankruptcy Code; (b) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed; and (c) any dispute regarding whether a contract or lease is or was executory or expired;

4. ensure that distributions to holders of Allowed Claims are accomplished pursuant to the provisions of the Plan and adjudicate any and all disputes arising from or relating to distributions under the Plan;

5. adjudicate, decide, or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any applications involving a Debtor that may be pending on the Effective Date;

1 6. adjudicate, decide, or resolve any and all matters related to Causes of Action by or
on behalf of the Debtors, the Chapter 11 Trustee or the Plan Trustee;

2 7. adjudicate, decide, or resolve any and all matters related to section 1141 of the
3 Bankruptcy Code;

4 8. enter and implement such orders as may be necessary or appropriate to execute,
implement, or consummate the provisions of the Plan and all contracts, instruments, releases, and
5 other agreements or documents created in connection with the Plan or the Disclosure Statement
or approved by Final Order in the Chapter 11 Cases;

6 9. resolve any cases, controversies, suits, disputes, or Causes of Action that may
7 arise in connection with the Consummation, interpretation, or enforcement of the Plan or any
8 Entity's obligations incurred in connection with the Plan;

9 10. issue injunctions, enter and implement other orders, or take such other actions as
may be necessary or appropriate to restrain interference by any Entity with Consummation or
10 enforcement of the Plan;

11 11. resolve any cases, controversies, suits, disputes, or Causes of Action with respect
12 to the releases, injunctions, and other provisions contained in ARTICLE XI and enter such orders
as may be necessary or appropriate to implement such releases, injunctions, and other provisions;

13 12. hear and determine disputes arising in connection with the interpretation,
14 implementation or enforcement of the Creditors' Trust or the Trust Agreement;

15 13. enter and implement such orders as are necessary or appropriate if the
16 Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

17 14. consider any modifications of the Plan, to cure any defect or omission, or to
reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;

18 15. hear and determine matters concerning state, local, and federal taxes in
19 accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

20 16. hear and determine all disputes involving the existence, nature, or scope of the
21 Debtors' discharge;

22 17. enter an order or Final Decree concluding or closing the Chapter 11 Cases;

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

24 19. hear any other matter not inconsistent with the Bankruptcy Code.

1 **ARTICLE XIV. MISCELLANEOUS PROVISIONS**

2 **A) No Stay of Confirmation Order**

3 The Confirmation Order shall contain a waiver of any stay of enforcement otherwise
4 applicable, including pursuant to Bankruptcy Rules 3020(e) and 7062.

5 **B) Modification of Plan**

6 Effective as of the date hereof and subject to the limitations and rights contained in the
7 Plan (1) the Plan Proponents reserve the right, in accordance with the Bankruptcy Code and the
8 Bankruptcy Rules, to amend or modify the Plan before the entry of the Confirmation Order, and
9 (2) after the entry of the Confirmation Order, the Plan Proponents or Plan Trustee may, upon
10 order of the Bankruptcy Court, amend or modify the Plan, in accordance with section 1127(b) of
11 the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in the
12 Plan in such manner as may be necessary to carry out the purpose and intent of the Plan.

13 **C) Revocation or Withdrawal of Plan**

14 The Plan Proponents reserve the right to revoke or withdraw the Plan before the
15 Confirmation Date and to file subsequent chapter 11 plans. If the Plan Proponents revoke or
16 withdraw the Plan, or if Confirmation or the Effective Date does not occur, then (1) the Plan will
17 be null and void in all respects, (2) any settlement or compromise embodied in the Plan,
18 assumption or rejection of Executory Contracts or Unexpired Leases effected by the Plan, and
19 any document or agreement executed pursuant hereto will be null and void in all respects, and
20 (3) nothing contained in the Plan shall (a) constitute a waiver or release of any Claims, Interests,
21 or Causes of Action, (b) prejudice in any manner the rights of any Debtor or any other Entity, or
22 (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by any Debtor or
23 any other Entity.

24 **D) Confirmation of the Plan**

25 The Plan Proponents request Confirmation of the Plan under section 1129(b) of the
26 Bankruptcy Code with respect to any Impaired Class that does not accept the Plan pursuant to
27 section 1126 of the Bankruptcy Code. The Plan Proponents reserve the right to amend the Plan
28 to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code
requires modification.

29 **E) Additional Documents**

30 On or before the Effective Date, the Plan Proponents may file with the Bankruptcy Court
31 such agreements and other documents, as may be necessary or appropriate to effectuate and
32 further evidence the terms and conditions of the Plan.

33 **F) Payment of Statutory Fees**

34 All fees payable pursuant to 28 U.S.C. § 1930(a), as determined by the Bankruptcy Court
35 at a 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.

G) Dissolution of Creditors' Committees

On the Effective Date, the Official Committee of the Center Debtors and the Official Committee of Desai shall dissolve automatically, and its members shall be released and discharged from all rights, duties, responsibilities, and liabilities arising from, or related to, the Chapter 11 Cases; provided, however, that the Official Committee of the Center Debtors and the Official Committee of Desai shall exist and its retained Professionals shall be retained after such date with respect to: (a) preparing and prosecuting Professional Claims for its retained Professionals, including responding to any objections to such applications, whether formal or informal, and attendance at any hearings with respect to such applications; (b) preparing and prosecuting objections to Professional Claims, and (c) defending against any challenge to the provisions of the Plan or Confirmation Order, including appeals.

H) Reservation of Rights

Except as expressly set forth in the Plan, the Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order. None of the filing of the Plan, any statement or provision contained in the Plan, or the taking of any action by the Plan Proponents, any Debtor or the Chapter 11 Trustee with respect to the Plan, the Disclosure Statement, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of the Plan Proponents, any Debtor or the Chapter 11 Trustee with respect to the holders of Claims or Interests prior to the Effective Date.

I) Successors and Assigns

The rights, benefits, and obligations of any Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, affiliate, officer, director, agent, representative, attorney, beneficiaries, or guardian, if any, of each Entity.

J) Service of Documents

1. Any pleading, notice, or other document required by the Plan to be served on or delivered to the Plan Proponents shall be served on:

Counsel to the Plan Proponents	Counsel to Dipak Desai
Brown Rudnick LLP Seven Times Square New York, NY 10036 Attn: David J. Molton, Esq. Howard S. Steel, Esq.	Nossaman LLP 50 California Street, 34th Floor San Francisco, CA 94111 Attn: John T. Hansen, Esq. Kurt W. Melchior, Esq.

Counsel to Chapter 11 Trustee	Counsel to Hari Om, a family limited partnership
Diamond McCarthy LLP 909 Fannin, Suite 1500 Houston, TX 77010 Attn: Kyung S. Lee, Esq. Skip Scott, Esq.	Nossaman LLP 50 California Street, 34th Floor San Francisco, CA 94111 Attn: John T. Hansen, Esq. Kurt W. Melchior, Esq.
Office of the United States Trustee	
Office of the United States Trustee 300 Las Vegas Boulevard South Suite 4300 Las Vegas, NV 89101 Attn: Michal Bloom, Esq.	

K) Term of Injunctions or Stays

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

L) Entire Agreement

Except as otherwise indicated, the Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

M) Plan Supplement Exhibits

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. After the exhibits and documents are filed, copies of such exhibits and documents shall be made available upon written request to counsel for the Plan Proponents at the address above or by downloading such exhibits and documents from the Bankruptcy Court's website at www.nvb.uscourts.gov. Unless otherwise ordered by the Bankruptcy Court, to the extent any exhibit or document in the Plan Supplement is inconsistent with the terms of any part of the Plan that does not constitute the Plan Supplement, such part of the Plan that does not constitute the Plan Supplement shall control.

N) Severability

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted.

1 Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and
2 provisions of the Plan will remain in full force and effect and will in no way be affected,
3 impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order
4 shall constitute a judicial determination and shall provide that each term and provision of the
5 Plan, as it may have been altered or interpreted in accordance with the foregoing, is (1) valid and
6 enforceable pursuant to its terms, (2) integral to the Plan and may not be deleted or modified
7 without the Plan Proponents' consent, and (3) nonseverable and mutually dependent.
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1 **DATED** this 20th day of January, 2011

2 **BROWN RUDNICK LLP**

3 By: /s/ David J. Molton

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