

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re

OLD FENM INC., *et al.*,

Debtors.

Chapter 11

Jointly Administered

Case No. 13-12569 (KJC)

OLD FEPC LLC

Case No. 13-12570 (KJC)

**FIRST AMENDED DISCLOSURE STATEMENT
PURSUANT TO SECTION 1125 OF THE
BANKRUPTCY CODE WITH RESPECT TO THE
JOINT CHAPTER 11 PLAN OF
REORGANIZATION OF OLD FENM INC. AND
OLD FEPC LLC**

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-and-

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ACCEPTANCES OR REJECTIONS OF THE
PLAN. ACCEPTANCES OR REJECTIONS MAY
NOT BE SOLICITED UNTIL A DISCLOSURE
STATEMENT HAS BEEN APPROVED BY THE
BANKRUPTCY COURT AS CONTAINING
ADEQUATE INFORMATION WITHIN THE
MEANING OF SECTION 1125 OF THE
BANKRUPTCY CODE. THIS DISCLOSURE
STATEMENT IS BEING SUBMITTED FOR
APPROVAL BUT HAS NOT BEEN APPROVED
BY THE BANKRUPTCY COURT. CERTAIN
EVENTS, TRANSACTIONS AND OTHER
MATTERS DISCUSSED IN THIS DISCLOSURE
STATEMENT HAVE NOT YET OCCURRED OR
REMAIN SUBJECT TO BANKRUPTCY COURT
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~~April 25~~ May 29, 2014

NYL-4543735v18

NYL-4589936v1

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DISCLOSURE STATEMENT, DATED APRIL ~~25~~²⁴, 2014SUMMARY OF THE
JOINT PLAN OF REORGANIZATION OF OLD FENM INC. AND OLD FEPC LLC¹

The Debtors believe that the Joint Plan of Reorganization of Old FENM Inc. and Old FEPC LLC, dated April 21, 2014 and attached as Exhibit I (the "Plan") is in the best interests of creditors and interest holders. As set forth in detail herein and in the Plan, the Plan effectuates a global settlement with the Debtors' indirect parent and largest creditor, Tesco PLC ("Tesco" and together with its various affiliates (other than the Debtors), the "Tesco Entities"). As a result of the terms of this settlement, the Plan provides for the payment in full, in Cash of all Allowed non-insider Claims against the Debtors and the release by the Debtors and their creditors of, generally, all claims and causes of action related to the Debtors, their estates and these chapter 11 cases. Because the Plan provides for the payment in full and unimpairment of all Allowed Claims, all creditors are presumed to accept the Plan. The terms of the releases are set forth in Section VIII.D hereof.

As discussed below, the effectiveness of the proposed Plan is subject to material conditions precedent, some of which may not be satisfied.

In connection with the Plan, the Debtors have provided no person with authorization to give any information or to make any representation, other than as contained in this Disclosure Statement and the exhibits attached hereto or incorporated by reference or referred to herein. To the extent an entity other than the Debtors has provided any such information, you should not rely upon such information. The delivery of this Disclosure Statement will not under any circumstances imply that the information herein is correct as of any time after the date hereof.

By an order dated [____], 2014, the Bankruptcy Court approved this Disclosure Statement as containing "adequate information" for creditors and equity security holders of the Debtors in accordance with section 1125 of the Bankruptcy Code.] The Bankruptcy Code defines "adequate information" as "information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and the history of the debtor and the condition of the debtor's books and records . . . that would enable . . . a hypothetical investor [typical of the holders of claims or interests in the case] of the relevant class to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan" 11 U.S.C. § 1125(a)(1).

The Debtors encourage all creditors to read and carefully consider this entire Disclosure Statement, including the Plan attached as Exhibit I and the Risk Factors described in Article XIII hereof.

The summaries of the Plan and other documents contained in this Disclosure Statement are qualified in their entirety by reference to the Plan itself, the exhibits thereto and documents described therein. The Debtors will file all exhibits to the Plan with the Bankruptcy Court and make them available for review on the Document Website (<http://cases.primeclerk.com/FreshAndEasy>) no later than 14 days prior to the Confirmation Hearing.

The information contained in this Disclosure Statement, including the information regarding the history, businesses and operations of the Debtors and other information regarding the Debtors, is included for purposes of reviewing the Plan, but, as to contested matters and adversary proceedings, is not to be construed as admissions or stipulations, but rather as statements made in settlement negotiations.

¹ - All capitalized terms used in this Disclosure Statement and not otherwise defined herein will have the meanings given to them in the Plan.

FORWARD-LOOKING STATEMENTS

This Disclosure Statement contains forward-looking statements based primarily on the current expectations of the Debtors and projections about future events and financial trends affecting the value of the Debtors' remaining assets and the size of disputed claims. In many instances, the words "believe," "may," "estimate," "continue," "anticipate," "intend," "expect" and similar expressions identify these forward-looking statements. The forward-looking statements contained in the Disclosure Statement are subject to a number of risks, uncertainties and assumptions, including those described below under the caption "Risk Factors" in Article XIII hereof. In light of these risks and uncertainties, the forward-looking events and circumstances discussed in this Disclosure Statement may not occur, and actual results could differ materially from those anticipated in the forward looking statements. The Debtors do not undertake any obligation to update or revise publicly any forward looking statements, whether as a result of new information, future events or otherwise.

No regulatory body, including the United States Securities and Exchange Commission (the "SEC"), any state securities commission or any securities exchange or association, (i) has approved or disapproved this Disclosure Statement or (ii) passed upon the accuracy or adequacy of the statements contained in this Disclosure Statement.

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EXHIBIT II Chapter 7 Liquidation Analysis

I. PRELIMINARY STATEMENT

As discussed below, among other things, the Debtors' Plan effectuates a global settlement with Tesco, the Debtors' shareholder and largest creditor. Pursuant to this settlement, Tesco has agreed to, among other things, subordinate recovery on account of its intercompany claims so that all of the Debtors' non-insider creditors can be paid in full, in cash on account of their Allowed Claims. As a result, all of the Debtors' creditors are unimpaired by this Plan and are presumed to accept the Plan, and the Debtors are not required to solicit acceptances of the Plan. As consideration, pursuant to the terms of the settlement, the Debtors and their creditors will be granting Tesco a release of all claims and causes of action they may have which relate to the Debtors, their estates or these chapter 11 cases. The terms of the releases are set forth in Section VIII.D hereof.

The Debtors commenced these bankruptcy cases with the intention of selling their grocery operations as a going concern business to maximize value and preserve as many jobs for the Debtors' employees as possible. The Debtors accomplished this goal when they closed the sale (the "YFE Sale") of the Debtors' ongoing operations to YFE Holdings, Inc. ("YFE"), a company associated with the Yucaipa Companies, LLC, on November 26, 2013. As part of the consideration for the YFE Sale, the Debtors received warrants (the "Warrants") executable for 22.5 percent of YFE's outstanding equity at the time of the YFE Sale.

In addition to the YFE Sale, the Debtors have sold four other categories of assets. On December 31, 2013, the Debtors closed the sale of the Debtors' right to designate certain unexpired leases for assumption and assignment (the "Designation Rights Sale"). In connection with the Designation Rights Sale, the Debtors were paid \$1.5 million in Cash, which represented the carrying costs of the leases that were the subject of the sale for the months of November and December 2013, plus the buyer reimbursed the Debtors for the carrying costs of leases that remained subject to assumption and assignment after December 2013. On February 20, 2014, the Debtors closed the sale of certain real property assets consisting primarily of 53 parcels of real property in Arizona, California and Nevada (the "Real Property Assets Sale"). In connection with the Real Property Sale, the Debtors received approximately \$41.5 million in Cash. Finally, on March 20, 2014, the Debtors closed the sale of their inactive distribution center in Stockton, California (the "Stockton Facility Sale"). In connection with the Stockton Facility Sale, the Debtors received approximately \$53.5 million in Cash.

The Debtors also have undertaken efforts to sell a variety of miscellaneous assets, such as liquor licenses, equipment, computers, officer furniture and various other types of personal property (collectively, the "Miscellaneous Asset Sales" and, together with the YFE Sale, the Real Property Assets Sale, the Designation Rights Sale and the Stockton Facility Sale, the "Sales"). The Debtors anticipate that no individual Miscellaneous Asset Sale will be for consideration in excess of \$250,000, and that total gross proceeds from all Miscellaneous Asset Sales will total approximately \$271,500.

Having concluded the majority of the Sales, as of the Effective Date, the Debtors estimate that they will have approximately \$101 million in Cash on hand, plus remaining Miscellaneous Assets to be sold with an estimated value of approximately \$271,500 and the Warrants. The Debtors estimate that the total amount of Allowed Claims is approximately \$40 million.

The Plan settles, compromises or otherwise disposes of certain claims and interests on terms that the Debtors believe to be fair and reasonable and in the best interests of the Debtors' respective Estates and creditors. The Debtors believe the Plan maximizes the value of the ultimate recoveries to all creditor groups on a fair and equitable basis. Other than affiliates of the Debtors, all creditors holding Allowed Claims will receive payment in full under the Plan, thus rendering such creditors unimpaired. As set forth herein, the Debtors were able to accomplish this result through a settlement with their ultimate parent, Tesco PLC. Pursuant to this settlement, the Tesco Entities agreed to subordinate their approximately \$581 million net Claim and waive, for Plan purposes only, any recovery on account of their Claims other than as provided in the settlement. As a result, Tesco is unimpaired by the Plan and is presumed to accept the Plan. In return, the Plan provides for a release of the Tesco Entities by the Debtors and their creditors, the exact terms of which are set forth in Section VIII hereof.

As the Plan (i) renders all holders of Allowed Claim unimpaired; and (ii) Tesco is presumed to have accepted the Plan pursuant to the terms of the Tesco Settlement, there exists no need for the Debtors to solicit votes on the Plan. Following confirmation of the Plan, the Debtors intend to reorganize with the Warrants as their principal asset.

II. HISTORY OF THE DEBTORS

A. Historical Overview

Prior to the sale of their operating businesses, the Debtors operated a chain of grocery stores in California, Nevada and Arizona. The Debtors focused their business strategy on offering healthy and wholesome foods, including prepared foods, at affordable prices. The Debtors were founded in 2006 as a wholly-owned subsidiary of Tesco and quickly expanded to a total of 200 operating stores by 2012. The majority of the Debtors' individual stores utilized a 10,000 square foot format, with some 7,000 square foot stores as well. These larger grocery stores provided customers with the ability to fulfill all of the requirements of a full weekly shopping trip. The Debtors complemented these larger grocery stores with 3,000 square foot markets that focused more on convenient shopping and fresh meal solutions.

As of the Petition Date, the Debtors operated 167 store locations. Of these, the Debtors owned 25 freehold properties, leased 50 properties pursuant to ground leases and leased 92 locations pursuant to store leases. The Debtors also owned an additional 61 non-operating store locations and were a party to leases for 36 non-operating store locations (six pursuant to ground leases and 30 pursuant to store leases).

In addition to their stores portfolio, the Debtors operated state of the art production facilities in Riverside, California (the "Campus"), including meat and produce facilities and a kitchen, each housed in its own building. The Campus allowed the Debtors to provide "Fresh & Easy" branded fresh food products. The Debtors also owned one active distribution center, located in close proximity to the Campus, and a second, inactive distribution center, located in Stockton, California. The integrated approach to the preparation of meats, produce and manufacturing of prepared meals allowed the Debtors to achieve high marks in range and quality standards, with approximately 60 percent of all its fresh food sales in 2012 processed through the Campus.

III. CORPORATE AND CAPITAL STRUCTURE AS OF THE PETITION DATE²

A. General Corporate Structure and Old Common Stock

Buttoncable Ltd., a Tesco Entity, is the direct parent of both Debtor Old FENM Inc. (f/k/a Fresh & Easy Neighborhood Market Inc.) and Old FEHC Inc. (f/k/a Fresh & Easy Holding Company), a non-debtor affiliate of Old FENM Inc. Old FEHC Inc. is the sole member of Debtor Old FEPC LLC (f/k/a Fresh & Easy Property Company LLC), which owned a majority of the Debtors' real property. Old FENM Inc., which housed the Debtors' retail grocery operations and employed approximately 4,187 total employees prior to the closing of the YFE Sale, leased and operated the Debtors' store locations and was the owner of the inventory and fixtures in the stores.

B. Secured Debt

As of the Petition Date, the Debtors were not party to any credit or other agreements that included a grant of a lien or other security interest in the Debtors' property.

C. Unsecured Debt

1. Intercompany Debt

As of the Petition Date, the Debtors owed over \$907 million in principal amount to Tesco on account of various intercompany loans provided by Tesco to the Debtors (the "Intercompany Loans").³ As a result of the amounts owed under the Intercompany Loans, Tesco is by far the Debtors' largest single creditor.

² Nothing in this Article III is an admission as to the proper characterization of the transactions and liabilities discussed herein.

2. Trade Debt

In addition to the amounts owed under the Intercompany Loans, the Debtors historically purchased goods and services from over 800 vendors. As of the Petition Date, the Debtors estimated that they owed approximately \$18.4 million to vendors for goods and services. After payment of claims pursuant to orders granting certain of the First Day Motions (as defined below), the Debtors estimate that approximately \$1.3 million remains unpaid to vendors for goods and services.

3. Leasehold Obligations

As of the Petition Date, the Debtors also had significant liabilities arising from their leased stores in California, Arizona and Nevada, which leases were entered into prior to the Petition Date. In addition, the Debtors were responsible for lease payments for certain equipment used at their facilities. Prior to the Petition Date (and disregarding the impact of certain lease termination agreements), the Debtors' annual expense for leased properties was approximately \$72 million. In addition, prior to the Petition Date, the Debtors' approximate annual expense for leased equipment was \$3.5 million.

IV. EVENTS LEADING UP TO THE DEBTORS' CHAPTER 11 FILINGS

After its founding in 2006, the Debtors built a substantial store base and an extensive infrastructure with a core of strong brand advocates. Over the course of 2006 and 2007, Tesco invested over \$610 million to rapidly build out the business and to create substantial capacity for future growth. The business proved successful on many fronts, growing to approximately \$1.2 billion in annualized sales from launch to 2012. Many of Debtors' own-label brands outperformed national brands in its stores.

The economic downturn beginning in 2008 adversely affected the entire retail grocery industry, including the Debtors' business. Many of Debtors' leases were substantially above market relative to its competitors. Given the Debtors' geographic focus on California, Nevada and Arizona, the effect of the real estate market correction was especially pronounced. Additionally, the Debtors' retail format had been unsuccessful in obtaining a sufficiently broad customer-base. As a result, the Debtors incurred annual operating losses in each year they operated.

From 2008-2013, Tesco continued to provide significant amounts of additional funds (in the form of both debt and equity) to the Debtors to support their business operations. In spite of these efforts, in its last fiscal year ending in February 2013, the Debtors averaged \$22 million in losses per month and were never able to generate a profit. As a result, in September 2012, Tesco retained Greenhill & Co., Inc. ("Greenhill") to help conduct a strategic review of the Debtors' business, including an exploration of multiple restructuring or other strategic alternatives.

Despite Tesco's continuing belief in the Debtors' business concept, Tesco determined that a shift in the Debtors' business structure and strategy was necessary for the Debtors to achieve profitability. This required shift in the Debtors' structure and strategy meant that the Debtors' business model would no longer align with Tesco's other global business operations and core business strategy. As a result, Tesco made the decision to exit the U.S. market. To appropriately accomplish this exit, Tesco tasked Greenhill with pursuing a sale of the Debtors' business with the goal of continuing the Debtors as a going concern, which Tesco felt would be in the best interests of the Debtors' creditors, employees, vendors and other stakeholders.

Beginning in December 2012, with the aid of Greenhill, Tesco and the Debtors investigated numerous sale opportunities, evaluating each not only in terms of the monetary consideration, but also for each proposed transaction's effect on the Debtors' stakeholders and its prospects for a successful turnaround of the Debtors' business. Beginning in January 2013, with the aid of Greenhill, Tesco and the Debtors developed a list of over 65 potentially interested parties and solicited initial interest in a going concern transaction that would transfer a

(continued...)

³ - Tesco's net claim against the Debtors is approximately \$581 million, which represents the aggregate of all the claims that the Tesco Entities possess against the Debtors, net of the obligations owed by Tesco to the Debtors under the Tax Sharing Agreement.

substantial portion of the Debtors' assets to a new owner. Thereafter, the Debtors signed nondisclosure agreements and provided a confidential information memorandum to approximately 45 parties. This marketing process resulted in the submission of 16 preliminary indications of interest for various assets of the Debtors, including four indications of interest for the entire company.

Following the receipt of indications of interest, frequent conversations with the potential buyers occurred through the professionals, advisors and senior management of both Tesco and the Debtors. Such conversations included discussions with parties interested in a going concern transaction as well as parties interested in select assets sales and liquidation oriented transactions.

After significant analysis of the benefits of each transaction for the Debtors' creditors, employees, vendors and other stakeholders, the Debtors determined that YFE's offer, which called for the continued operation of approximately 150 of the Debtors' stores and the Campus and Riverside distribution facilities, was the best alternative for the Debtors' stakeholders. Following intense, arm's length and good faith negotiations, the Debtors and YFE agreed to the terms of a stalking horse purchase agreement (the "YFE APA") under which YFE agreed to serve as a stalking horse bidder for the sale of a substantial portion of the Debtors' grocery operations as a going concern under section 363 of the Bankruptcy Code.

After entering into the YFE APA, the Debtors determined that it was necessary to obtain their own investment banker to further evaluate the proposed transaction with YFE and to perform additional marketing of the Debtors' assets. As a result, the Debtors retained Alvarez & Marsal Securities, LLC ("A&M-S") on September 16, 2013. After its retention, A&M-S acted as the Debtors primary advisor with respect to the Debtors' proposed sale of their operating business and led the additional marketing of these assets prior to the closing of the YFE Sale.

With a stalking horse bidder in place, the Debtors commenced these Bankruptcy Cases to, among other things, effectuate the sale of their operating business to YFE, with plans to market and sell the Debtors' remaining assets during the course of the Bankruptcy Cases to fund, among other things, distributions to the Debtors' creditors under a chapter 11 plan.

V. EVENTS DURING THE BANKRUPTCY CASES

A. Commencement of the Chapter 11 Cases

On September 30, 2013 (the "Petition Date"), the Debtors commenced these Bankruptcy Cases through the Filing of voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). The Bankruptcy Court is jointly administering the Bankruptcy Cases as *In re Old FENM Inc., et al.* (Case No. 13-12569).

B. First Day Relief

On the Petition Date, the Debtors filed a number of motions and other pleadings seeking immediate relief from the Bankruptcy Court (collectively, the "First Day Motions"), the most significant of which are described below. The Debtors filed the First Day Motions to minimize business disruptions and ensure an orderly transition into chapter 11.

The key First Day Motions included:

- motions seeking to honor and pay various prepetition obligations, including (i) certain employee wage and benefit obligations, (ii) certain insurance and workers' compensation obligations, (iii) certain tax obligations, (iv) claims of certain holders of claims under section 503(b)(9) of the Bankruptcy Code, (v) claims of PACA and PASA claimants, (vi) claims of certain distribution network vendors and (vii) certain obligations to customers;
- a motion to establish procedures for determining adequate assurance for the provision of utility services;

- a motion relating to the continued use of the Debtors' existing cash management system, bank accounts and business forms; and
- motions relating to case administration and the use of Prime Clerk LLC as the Debtors' claims, noticing and balloting agent.

The Bankruptcy Court granted the First Day Motions with certain adjustments or modifications to accommodate the concerns of the Bankruptcy Court, the Office of the United States Trustee for Region 3 (the "U.S. Trustee") and other parties in interest.

C. Appointment of the Creditors' Committee

On October 9, 2013, the U.S. Trustee appointed the Creditors' Committee. The current membership of the Creditors' Committee is as follows:

Creditors' Committee Members:

Highland La Quinta II, LLC
Isabella Lahhan
RR Donnelley & Sons
Willow Glen Shopping Center
Wood Ranch Center, LLC

Counsel: Pachulski Stang Ziehl & Jones LLP

Financial Advisors: FTI Consulting, Inc.

In accordance with section 341 of the Bankruptcy Code, the U.S. Trustee held a meeting of creditors on November 5, 2013 at 10:00 a.m. (ET) at the J. Caleb Boggs Federal Building in Wilmington, Delaware. That meeting was adjourned and continued until November 22, 2013 at 10:00 a.m. (ET) at the J. Caleb Boggs Federal Building in Wilmington, Delaware, on which subsequent date the meeting was concluded.

D. Retention of Advisors for the Debtors

In accordance with section 341 of the Bankruptcy Code, the Debtors obtained Bankruptcy Court approval of the retention of: (1) Jones Day as counsel (Docket No. 173); (2) Richards, Layton & Finger, P.A. as co-counsel (Docket No. 171); (3) Pillsbury Winthrop Shaw Pittman LLC as special corporate counsel (Docket No. 180); (4) Alvarez & Marsal North America, LLC as financial advisors and A&M-S as investment bankers (Docket No. 239); (5) the joint venture of Gordon Brothers Group, LLC and certain of its affiliates and Tiger Capital Group LLC as a consultant to assist in the disposition of various real estate and other property not included in the YFE Sale (Docket No. 189); and (6) Prime Clerk LLC as claims and noticing agent and an administrative advisor (Docket No. 172).

E. The Tesco Adequate Protection Motion

On August 25, 2010, Old FENM Inc. and Tesco entered into a Tax Sharing Agreement (the "Tax Sharing Agreement") that provided for payment by Tesco to Old FENM Inc. for the use of certain tax benefits arising from the Debtors' operating losses. As of the Petition Date, the Debtors estimated the amount owed to Old FENM Inc. under the Tax Sharing Agreement was \$165 million (the "Tax Sharing Obligation").

In the months leading up to the Petition Date, the Debtors met their liquidity needs primarily through advances by Tesco against the anticipated amount of the Tax Sharing Obligation. In addition to providing the Debtors with necessary liquidity, Tesco took other measures to support the Debtors' restructuring as a going concern. These measures included, among other things, funding or guaranteeing certain of the Debtors' employee obligations and voluntary severance payments and agreeing to provide \$120 million in financing to YFE in connection with the YFE Sale.

To the extent similar funding from Tesco became necessary after the Petition Date and to induce Tesco to provide such funding, the Debtors filed a motion (Docket No. 33) seeking to provide Tesco with adequate protection claims and liens. The purpose of the adequate protection was to ensure that Tesco suffered no economic harm if it

advanced additional amounts owed under the Tax Sharing Agreement after the Petition Date; which, absent the Debtors' agreement to provide adequate protection, may have reduced the amounts owed under the Tax Sharing Agreement that Tesco may have utilized for purposes of setoff against the Intercompany Loans. An order granting the motion was entered by the Bankruptcy Court on November 7, 2013 (Docket No. 238). Ultimately, it was not necessary for Tesco to provide any such additional funding.

F. The YFE Sale

As noted above, the Debtors commenced these Bankruptcy Cases with the objective of consummating a going concern sale of their businesses to YFE pursuant to section 363 of the Bankruptcy Code. Accordingly, on the Petition Date, the Debtors filed a motion (Docket No. 34) seeking, among other things, approval of the YFE Sale. On October 24, 2013, the Bankruptcy Court entered an order (Docket No. 186) approving the sale process in connection with the YFE APA, which contemplated a bidding deadline of November 15, 2013 for any competing qualified bids, an auction, if necessary, on November 19, 2013, and a sale hearing to commence on November 22, 2013. Despite robust additional marketing efforts by the Debtors and their professional advisors, including A&M-S, the Debtors received no qualified bids prior to the bid deadline and therefore cancelled the proposed auction (Docket No. 330).

On November 22, 2013, the Bankruptcy Court entered an order approving the YFE Sale, as well as the assumption and assignment to YFE of many of the Debtors' executory contracts and unexpired leases (Docket No. 378). Under the terms of the YFE APA, YFE acquired approximately 76 percent of the Debtors' total assets (the "Acquired Assets") and assumed approximately \$130 million in liabilities and contracts of the business. An affiliate of Tesco helped fund the transaction by providing YFE with a \$120 million loan, secured by the Campus. As consideration for the provision of the funding, the affiliate of Tesco received warrants to purchase 10 percent of YFE's outstanding equity as of the date of the YFE Sale's closing.⁴ On November 26, 2013, the Debtors closed the YFE Sale. As consideration for the YFE Sale, the Debtors received warrants to purchase 22.5 percent of YFE's total outstanding equity as of the date of the YFE Sale's closing. The YFE Sale also preserved the jobs of more than 4,000 of the Debtors' 4,187 employees as of the Petition Date and kept approximately 150 of the Debtors' stores open.

G. Other Sales Completed by the Debtors During the Bankruptcy Cases

After entering into the YFE APA, the Debtors increased their focus on specifically marketing and selling assets excluded from the YFE Sale. As described in Article I above, these assets fell into four principal buckets: (1) certain real property assets consisting primarily of 53 parcels of real estate in Arizona, California and Nevada; (2) the Debtors' inactive distribution center in Stockton, California; (3) the Debtors' right to designate certain unexpired real property leases for assumption and assignment; and (4) a variety of miscellaneous assets, such as liquor licenses. The sale efforts with regard to each of category of assets is described in greater detail immediately below.

1. The Real Property Assets Sale

After the YFE Sale closed, the Debtors continued to own 53 parcels of real estate (the "Properties" and, together with certain improvements, fixtures and tangible personal property at certain of the Properties, the "Real Property Assets"). Twenty-nine of the Properties were located in California, 16 were located in Arizona and 8 were located in Nevada. The Real Property Assets included 20 Properties that had buildings generally ranging in size from 14,000 square feet to 17,000 square feet. One Property contained a 44,000 square foot building. The remaining 33 Properties were each land-only pad sites, end-caps and in-line locations that ranged in size from approximately 1 acre to 2.7 acres.

While generally marketed in conjunction with the other assets that were part of the YFE Sale, beginning in September 2013, the Debtors, with the help of DJM Real Estate, a Gordon Brothers Company ("DJM"), undertook a more expansive marketing process focused exclusively on the Real Property Assets. Of the potential purchasers

⁴ Pursuant to the terms of the YFE APA and as set forth in detail therein, these warrants can be extinguished in whole or in part if YFE repays the loan within certain time periods.

who received information regarding the sale of the Real Property Assets, 206 executed confidentiality agreements in order to obtain more detailed information about the Real Property Assets, and approximately 70 responded and expressed an interest in potentially purchasing some or all of the Real Property Assets. Ultimately, 23 parties presented offers to the Debtors for some or all of the Real Property Assets. Of those offers, the offer from EM-50 UAV Darko LLC ("Darkco"), a company associated with Drawbridge Special Opportunities Fund, was the highest and best.

Accordingly, following intense, arm's length and good faith negotiations, the Debtors and Darkco agreed to the terms of a stalking horse Agreement to Sell and Purchase and Escrow Instructions (the "Darkco APA") under which Darkco agreed to serve as a stalking horse bidder for the sale of the Real Property Assets under section 363 of the Bankruptcy Code. The Debtors and Darkco executed the Stalking Horse APA on November 13, 2013, and on the same date, the Debtors promptly filed a motion (Docket No. 308) seeking approval of sale and bidding procedures in connection with the Real Property Assets Sale.

Pursuant to the terms of the Darkco APA, the purchase price for the Real Property Assets was \$41.5 million, payable all in Cash. While the purchase price was subject to certain reductions based on ongoing due diligence, such reductions were subsequently eliminated pursuant to a first amendment to the Darkco APA in exchange for the Debtors agreeing to replace HVAC systems at certain of the Properties, which amendment was filed with the Bankruptcy Court on December 19, 2013 (Docket No. 445).

On November 22, 2013, the Bankruptcy Court entered an order (Docket No. 380) approving bidding and sale procedures in connection with the Real Property Assets Sale. Among other things, the order approved Darkco as the stalking horse purchaser in connection with the Real Property Assets Sale, granted Darkco certain bidder protections, established a bid deadline of December 10, 2013 for other qualified bids for the Real Property Assets, scheduled an auction for December 12, 2013 in the event more than one qualified bid was received for the Real Property Assets prior to the bid deadline and scheduled a hearing to approve the sale of the Real Property Assets for December 19, 2013.

Despite significant efforts by the Debtors and their professionals, the Debtors received no additional qualified bids for the Real Property Assets prior to the December 10th bid deadline. Accordingly, the Debtors filed a notice (Docket No. 430) cancelling the scheduled auction for the Real Property Assets.

After conducting a hearing on December 19, 2013, the Bankruptcy Court entered an order (Docket No. 448) approving the sale of the Real Property Assets to Darkco. On February 20, 2014, the Debtors closed the Real Property Assets Sale and received approximately \$41.5 million in Cash proceeds in accordance with the terms of the Darkco APA.

2. The Stockton Facility Sale

The Debtors also were able to sell their inactive distribution center located in Stockton, California (the "Stockton Facility"). The Stockton Facility consists of an approximately 750,561 square foot distribution and freezer / cooling facility located on approximately 71.98 acres and an approximately 165,474 square foot distribution facility located on approximately 10.16 acres.

While generally marketed in conjunction with the other assets included in the YFE Sale, beginning in September 2013, the Debtors, with the help of DJM, undertook an even more expansive marketing process focused exclusively on the Stockton Facility. Over 60 parties executed confidentiality agreements in order to obtain more detailed information about the Stockton Facility, and approximately 23 parties responded and expressed an interest in potentially purchasing the Stockton Facility. Ultimately, five parties presented offers to the Debtors for the Stockton Facility, and of those offers, the offer from U.S. Real Estate Limited Partnership ("U.S. Real Estate"), a Texas limited partnership, was the highest and best offer.

Following intense, arm's length and good faith negotiations, the Debtors and U.S. Real Estate agreed to the terms of a stalking horse asset purchase agreement (the "Stockton APA") under which U.S. Real Estate agreed to serve as a stalking horse bidder for the sale of the Stockton Facility under section 363 of the Bankruptcy Code. The Debtors and the U.S. Real Estate executed the Stockton APA on December 31, 2013. Under the terms of the

Stockton APA, the total consideration that U.S. Real Estate agreed to pay for the Stockton Facility was \$53.5 million.

On December 31, 2013, the Debtors filed a motion (Docket No. 469) seeking approval of sale and bidding procedures in connection with the Stockton Facility Sale. On January 23, 2014, the Bankruptcy Court entered an order (Docket No. 506) approving bidding and sale procedures in connection with the Stockton Facility Sale. Among other things, that order approved U.S. Real Estate as the stalking horse purchaser in connection with the Stockton Facility Sale, granted U.S. Real Estate certain bidder protections, established a bid deadline of February 14, 2014 for other qualified bids for the Stockton Facility, scheduled an auction for February 18, 2014 in the event more than one qualified bid was received for the Stockton Facility prior to the bid deadline and scheduled a hearing to approve the sale of the Stockton Facility for February 20, 2014.

Despite significant efforts by the Debtors and their professionals, the Debtors received no additional qualified bids for the Stockton Facility prior to the February 14th bid deadline. Accordingly, the Debtors filed a notice (Docket No. 545) cancelling the scheduled auction for the Stockton Facility.

The Debtors filed a certificate of no objection regarding the Debtors motion to sell the Stockton Facility (Docket No. 554) on February 17, 2014, and the hearing to approve the sale was cancelled (Docket No. 557). The Bankruptcy Court entered an order (Docket No. 558) approving the sale of the Stockton Facility to U.S. Real Estate. On March 20, 2014, the Debtors closed the Real Property Assets Sale and received approximately \$53.5 million in Cash proceeds in accordance with the terms of the Stockton APA.

3. The Designation Rights Sale

The Debtors were party to 33 store leases that were excluded from the YFE Sale (the "DRA Leases"). The Debtors initially intended to reject these store leases and filed a motion on the Petition Date (Docket No. 32) seeking authority to effectuate such rejection (the "DRA Lease Rejection Motion").

Shortly after the Petition Date, however, the Debtors identified Alamo Group, LLC ("Alamo") as a potential stalking horse bidder to purchase the Debtors' right to designate the DRA Leases for assumption and assignment (the "Designation Rights"). Following intense, arm's length and good faith negotiations, the Debtors and Alamo agreed to the terms of a designation rights agreement (the "DRA") under which Alamo agreed to serve as a stalking horse bidder for the sale of the Designation Rights under section 363 of the Bankruptcy Code. The DRA generally provided that Alamo would acquire the Designation Rights in exchange for \$1.5 million in Cash, subject to certain reductions in accordance with the terms of the DRA. This purchase price equaled the Debtors' carrying costs for the DRA Leases for the months of November and December 2013. The DRA required that Alamo reimburse the Debtors for the carrying costs associated with the DRA Leases that remained subject to the DRA after December 2013.

After entering into the DRA, the Debtors' avoided the immediate need to reject the DRA Leases and, on October 28, 2013, the Debtors withdrew the DRA Lease Rejection Motion (Docket No. 195).

On the same date, the Debtors filed a motion (Docket No. 215) seeking to approve sale and bidding procedures in connection with the sale of the Designation Rights to Alamo pursuant to the terms of the DRA. On November 22, 2013, the Bankruptcy Court entered an order (Docket No. 379) approving sale and bidding procedures in connection with the Designation Rights Sale. Among other things, the order approved Alamo as the stalking horse bidder in connection with the Designation Rights Sale; provided Alamo with certain bidder protections; established a bid deadline of December 9, 2013 for other qualified bids for the Designation Rights; scheduled an auction for December 12, 2013 in the event more than one qualified bid was received for the Designation Rights prior to the bid deadline; and scheduled a hearing to approve the sale of the Designation Rights for December 19, 2013.

Despite additional marketing efforts, the Debtors received no additional qualified bids for the Designation Rights prior to the December 9th bid deadline. Accordingly, the Debtors filed a notice (Docket No. 427) cancelling the scheduled auction for the sale of Designation Rights.

After conducting a hearing on December 19, 2013, the Bankruptcy Court entered an order (Docket No. 447) approving the sale of the Designation Rights to Alamo and, among other things, establishing certain procedures for the assumption and assignment of the DRA Leases. Alamo has identified assignees for two of the DRA Leases and intends to assign those two leases in accordance with the DRA. Alamo provided notice to the Debtors that it was unable to locate acceptable assignees with respect to the remaining 31 DRA Leases. The Debtors filed a motion seeking to reject such DRA Leases effective as of December 31, 2013 (Docket No. 452). The Bankruptcy Court entered an order (Docket No. 507) approving that rejection motion on January 23, 2014.

4. The Miscellaneous Asset Sales

In addition to the more significant asset sales described above, the Debtors also have a variety of non-inventory miscellaneous assets, including liquor licenses, equipment, computers, office furniture and various other types of personal property remaining in their possession. In anticipation of selling such miscellaneous assets, the Debtors filed a motion (Docket No. 216) seeking to establish procedures for the sale of assets for consideration of less than \$250,000. The Bankruptcy Court entered an order granting the motion on November 26, 2013 (Docket No. 394) (the "Miscellaneous Asset Sale Procedures Order").

As of April 23, 2014, the Debtors had entered into escrow agreements to sell 19 liquor licenses for between \$5,000 and \$95,000 per license. The total consideration to be received for these 19 liquor licenses is approximately \$340,000. The Debtors and their professionals are continuing to market the Debtors' non-inventory miscellaneous assets.

H. Bar Date Motion

By motion dated November 19, 2013 (Docket No. 346) (the "Bar Date Motion"), the Debtors sought the Bankruptcy Court's authorization to establish certain bar dates for filing proofs of claim against the Debtors' Estates and seeking allowance of certain administrative expense claims. By order dated December 11, 2013 (Docket No. 428) (the "Bar Date Order"), the Bankruptcy Court granted the Bar Date Motion, establishing January 22, 2014 at 4:00 p.m. (ET) as the bar date (the "General Bar Date") for filing proofs of claim against the Debtors' Estates that arose prior to the Petition Date, including secured claims, unsecured claims (including, without limitation, claims entitled to priority under sections 503(b)(9), 507(a)(4) and 507(a)(5) of the Bankruptcy Code). On December 11, 2013, the Debtors served, among other things, notice of the General Bar Date in accordance with the Bar Date Order.

On March 24, 2014, the Debtors filed their first amended schedules of assets and liabilities, which reflected amendments to their Schedule F. In connection therewith, creditors of the Debtors affected by the amendments were given until April 23, 2014 to file their proofs of claim against the Debtors' Estates (the "Amended General Claim Bar Date"). The General Claim Bar Date remained unchanged for those creditors not impacted by the amendments to the Debtors' schedules. As of the Amended General Claims Bar Date, the Debtors had received or scheduled the following claims:

<u>Claim Priority</u>	<u>Total Number of Claims Filed/Scheduled</u>	<u>Total Face Amount of Claims Filed/Scheduled</u> ⁵
Old FENM Inc. Administrative Claims	40	\$5,212,181.80
Old FEPC LLC Administrative Claims	1	\$8,000.00

⁵ - The figures reflected herein reflect the amounts asserted in proofs of claim or as scheduled by the Debtors. There are claims asserted against, or scheduled by the Debtors that are contingent, unliquidated, or disputed, for which no monetary value has been assigned herein.

Old FENM Inc. Secured Claims	33	\$172,511,846.60
Old FEPC LLC Secured Claims	14	\$169,655,553.08
Old FENM Inc. Priority Claims	36	\$3,575,148.58
Old FEPC LLC Priority Claims	2	\$19,200.00
Old FENM Inc. General Unsecured Claims	1,272	\$651,120,029.66
Old FEPC LLC General Unsecured Claims	24	\$89,080,045.29

The Debtors are currently in the process of reviewing proofs of claim filed against their Estates and prosecuting claims objections in that regard. On February 21, 2014, the Debtors filed their First Omnibus Objection (Non-Substantive) to Certain (I) Multi-Debtor Duplicate Claims, (II) Duplicative Claims, (III) Amended and Superseded Claims and (IV) No Supporting Documentation Claims (Docket No. 570) (the "First Omnibus Claims Objection"). On March 21, 2014, the Debtors filed (i) the Objection to Claim of EB Megdal Investments Stockton, LLC (Proof of Claim No. 352) and Motion to Reduce Such Claim (Docket No. 648) and (ii) the Second Omnibus Objection (Substantive) to Claim Nos. 215, 216, 218 and 292 Filed by Rite Aid Corporation and Claim Nos. 217, 289, 290 and 291 filed by Thrifty Payless Inc. (Docket No. 651) (the "Second Omnibus Claims Objection"). The First Omnibus Claims Objection was sustained by the Bankruptcy Court on April 1, 2014. The Debtors and EB Megdal Investments Stockton, LLC announced to the Bankruptcy Court at a hearing on April 22, 2014 that Proof of Claim No. 352 had been resolved and that the parties would be submitting a proposed order to the Bankruptcy Court under certification of counsel on or about April 24, 2014. The Second Omnibus Claims Objection currently is set for hearing on May 28, 2014.

I. Extension of Exclusivity

The Debtors' exclusive right to File a chapter 11 plan was initially scheduled to expire on January 28, 2014. To continue their efforts to complete and close several of the Sales and to work with other stakeholders to develop and obtain confirmation of a chapter 11 plan, the Debtors filed a motion (Docket No. 470) requesting an extension of the Debtors' exclusive right to File a chapter 11 plan to April 1, 2014 and the exclusive right to solicit acceptances thereof until May 30, 2014. The Bankruptcy Court entered an order granting the motion on January 17, 2014 (Docket No. 494). The Debtors filed a motion (Docket No. 634) requesting a further extension of the Debtors' exclusive right to File a chapter 11 plan to May 30, 2014 and the exclusive right to solicit acceptances thereof until July 29, 2014. On April 3, 2014, the Bankruptcy Court entered an order granting the motion in part, extending the Debtors' exclusive right to File a chapter 11 plan to April 30, 2014 and the exclusive right to solicit acceptances thereof until June 29, 2014 (Docket No. 694).

VI. OVERVIEW OF THE PLAN⁶

A. Introduction

The confirmation of a chapter 11 plan, which is the vehicle for satisfying the rights of holders of claims against and equity interests in a debtor, is the overriding purpose of a chapter 11 case. Upon confirmation of the

⁶ The overview of the Plan set forth herein is designed to provide a summary of the Plan's terms. To the extent that anything set forth in this Disclosure Statement is inconsistent with the terms of the Plan, the Plan will govern.

plan, it becomes binding on the debtor and all of its creditors and stakeholders, and the obligations owed by the debtor to those parties are compromised and exchanged for the obligations specified in the plan.

In this case, due to the Debtors' efforts to maximize the value of their estates and Tesco's agreement to reach a global settlement and, among other things, subordinate recovery on account of their intercompany claims, the Plan provides for the payment in full and unimpairment of all non-insider Allowed Claims against the Debtors. The Plan also provides for, among other things: (i) the resolution of all Claims against each of the Debtors in the manner described below; (ii) the rejection of all unexpired Executory Contracts and Unexpired Leases to which any Debtor is a party that are not included on Exhibit II to the Plan or that have not been assumed and assigned in connection with one of the Sales, or otherwise previously assumed, assumed and assigned, or rejected by the Debtors; (iii) the continued existence of the Debtors; and (iv) certain other transactions necessary to effectuate the terms of the Plan.

Each holder of an Allowed Claim in Classes 1, 2 and 3 shall receive Cash equal to the amount of such Allowed Claim plus Interest in full satisfaction of its Claim either (i) as soon as reasonably practicable after the Effective Date or (ii) if such Claim is not Allowed as of the Effective Date of the Plan, 30 days after the date on which such Claim becomes an Allowed Claim. On account of the Class 4 Claim, and in full satisfaction of the Tesco Claim, Tesco shall receive the Tesco Settlement Distribution, which consists of (i) distribution on the Effective Date of the Old FENM Inc. New Securities and the Old FEPC LLC New Securities and (ii) any Surplus Cash available for distribution from time to time. No property will be distributed to or retained by the holders of Allowed Interests in Class 5, and such Interests will be canceled on the Effective Date.

Because all creditors are unimpaired under the Plan, all creditors are presumed to accept the Plan and no creditor is entitled to vote to accept or reject the Plan. As a result, there is no need for the Debtors to solicit votes on the Plan. At the Confirmation Hearing, the Bankruptcy Court will confirm the Plan only if all of the applicable requirements of section 1129 of the Bankruptcy Code are met. Among the requirements for confirmation of a chapter 11 plan are that the plan: (1) is accepted by the requisite holders of claims and interests in impaired classes of the debtor; (2) is in the "best interests" of each holder of a claim or interest in each impaired class under the plan for the debtor; and (3) complies with the applicable provisions of the Bankruptcy Code. See Section VII.C of this Disclosure Statement for a discussion of Bankruptcy Code requirements for Plan confirmation.

B. Tesco Settlement

The Plan effectuates a global settlement of claims with the Debtors' ultimate parent, Tesco Plc. Pursuant to the settlement, Tesco has agreed to subordinate recoveries on over \$581 million in net Claims against the Debtors and to contribute assets from Old FEPC LLC to Old FENM Inc. so that the Debtors may pay all other Allowed Claims in full (including Interest) in Cash. In exchange, and the Plan provides for the general release of all claims by the Debtors and their creditors against Tesco and its representatives and affiliates. ~~Tesco will receive, on the Effective Date,~~ The releases are a key component of the Debtors' settlement with Tesco and the Debtors' ability to render all Allowed Claims other than the Tesco Claims unimpaired. The Debtors believe the releases are appropriate under applicable law and reflect that the Debtors would be unable to achieve a better result for their creditors than the Tesco Settlement provides under any circumstances; even if the Debtors expended the resources necessary to litigate the validity of the Tesco Claims and ultimately prevailed in that litigation.

On the Effective Date, Tesco also will receive the Tesco Settlement Distribution, which consists of (i) the authorized common stock or membership interests for Reorganized Old FENM Inc. and Reorganized Old FEPC LLC and (ii) any Surplus Cash available for distribution from time to time. In addition, Tesco has agreed, for Plan purposes only, to waive any recoveries on account of its intercompany claim other than as provided by the Tesco and to be treated as unimpaired under the Plan.

C. Summary of Classes and Treatment of Claims and Interests

The estimated aggregate amount of claims in each class and the estimated amount and nature of consideration to be distributed to each class is summarized in the table below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims have not been classified. The Debtors' estimates for recoveries by holders of Allowed Claims in Classes 1, 2 and 3 are based on, among other

things, the Debtors' current view of the likely amount of Allowed Administrative Claims incurred by the Debtors through confirmation of the Plan, the costs of administering the Debtors' Estates, the estimated amount of Allowed Claims and the terms of the Tesco Settlement.

The estimated amount of Allowed Claims set forth in the table below are based upon the Debtors' review of their books and records and may be revised following further analysis. For purposes of computations of Claim amounts, Administrative Claims and other expenses and for similar computational purposes, the Effective Date is assumed to occur on July 15, 2014. There can be no assurance, however, if or when the Effective Date will actually occur.

SUMMARY OF CLASSIFICATION AND TREATMENT UNDER THE PLAN

CLASS	TREATMENT	STATUS/ RIGHT TO VOTE	ESTIMATED AGGREGATE AMOUNT OF ALLOWED CLAIMS OR INTERESTS	ESTIMATED PERCENTAGE RECOVERY
Class 1 (Secured Claims)	Unless the holder of an Allowed Secured Claim agrees to less favorable treatment, each holder of an Allowed Secured Claim in Class 1 shall receive Cash equal to the amount of such Allowed Secured Claim, payable by the Reorganized Debtors from the Administrative/Priority Claims Reserve, in full satisfaction of its Secured Claim either (i) as soon as reasonably practicable after the Effective Date or (ii) if the Secured Claim is not Allowed as of the Effective Date, 30 days after the date on which such Secured Claim becomes an Allowed Secured Claim.	Unimpaired Presumed to Accept	\$0.00	100%
Class 2 (Priority Claims)	Unless the holder of an Allowed Priority Claim agrees to less favorable treatment, each holder of an Allowed Priority Claim in Class 2 shall receive Cash equal to the amount of such Allowed Priority Claim, payable by the Reorganized Debtors from the Administrative/Priority Claims Reserve, in full satisfaction of its Priority Claim either (i) as soon as reasonably practicable after the Effective Date or (ii) if the Priority Claim is not Allowed as of the Effective Date, 30 days after the date on which such Priority Claim becomes an Allowed Priority Claim.	Unimpaired Presumed to Accept	\$0.00	100%

CLASS	TREATMENT	STATUS/ RIGHT TO VOTE	ESTIMATED AGGREGATE AMOUNT OF ALLOWED CLAIMS OR INTERESTS	ESTIMATED PERCENTAGE RECOVERY
Class 3 General Unsecured Claims	Unless the holder of an Allowed General Unsecured Claim agrees to less favorable treatment, each holder of an Allowed General Unsecured Claims in Class 3 shall receive Cash, payable by the Reorganized Debtors from the General Unsecured Claims Trust Account, in an amount equal to the amount of such Allowed General Unsecured Claim plus the Post-Petition Interest Amount in respect of such Allowed General Unsecured Claim, in full satisfaction of its General Unsecured Claim either (i) within 30 days after the Effective Date or (ii) if the General Unsecured Claim is not Allowed as of the Effective Date, 30 days after the date on which such General Unsecured Claim becomes an Allowed General Unsecured Claim.	Unimpaired Presumed to Accept	\$40,512,000.00	100%
Class 4 Tesco Claims	Tesco shall receive, on the Effective Date, on account of the Tesco Claim, the Tesco Settlement Distribution in full satisfaction of the Tesco Claim.	Unimpaired Presumed to Accept	\$907,175,400.00	6.4%
Class 5 Interests	No property will be distributed to or retained by the holders of Allowed Interests in Class 5, and such Interests will be canceled on the Effective Date.	Deemed to Reject	N/A	0%

VII. VOTING ON AND CONFIRMATION OF THE PLAN

A. Voting Procedures and Requirements

Pursuant to the Bankruptcy Code, only classes of claims against or equity interests in a debtor that are "impaired" under the terms of a chapter 11 plan and who receive distributions under such plan, possess the right to vote to accept or reject the plan. Generally, a class is "impaired" under a plan unless the plan leaves unaltered the legal, equitable or contractual rights to which a claim or interest entitles the holder of such claim or interest. Classes of claims and interests that are unimpaired under a plan possess no right to vote on that plan and are conclusively presumed to have accepted the plan.

As set forth in the above chart, all holders of Claims are unimpaired by the Plan, and therefore do not possess the right to vote on the Plan. As a result, there exists no need for the Debtors to solicit votes on the Plan.

B. Confirmation Hearing

The Bankruptcy Code requires the Bankruptcy Court, after proper notice to parties in interest, to hold a hearing on whether the Debtors have fulfilled the confirmation requirements of section 1129 of the Bankruptcy Code. The Confirmation Hearing with respect to the Plan has been scheduled for July 15, 2014 at 10:00 a.m. (Eastern time) before the Honorable Kevin J. Carey, United States Bankruptcy Judge of the United States Bankruptcy Court for the District of Delaware at 824 North Market Street, 5th Floor, Wilmington, Delaware 19801. Once it has commenced, the Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice, except for an announcement of the adjourned date made at the Confirmation Hearing. Any objection to confirmation must be made in writing and must specify in detail the name and address of the objecting party, all grounds for the objection and the amount of the Claim or Interest held by the objecting party. Any such objections must be Filed and served upon the persons designated in the notice of the Confirmation Hearing and in the manner and by the deadline described therein.

C. Confirmation Requirements

To confirm the Plan, the Bankruptcy Code requires that the Bankruptcy Court make a series of findings concerning the Plan and the Debtors, including, without limitation, that:

- the Plan has classified Claims and Interests in a permissible manner;
- the Plan complies with the applicable provisions of the Bankruptcy Code;
- the Debtors have complied with the applicable provisions of the Bankruptcy Code;
- the Debtors, as proponents of the Plan, have proposed the Plan in good faith and not by any means forbidden by law;
- the disclosure regarding the Plan required by section 1125 of the Bankruptcy Code has been made;
- the Plan has been accepted by all impaired classes of claims and interests by the requisite number of votes;
- the Plan is feasible;
- all fees and expenses payable under 28 U.S.C. § 1930, as determined by the Bankruptcy Court at the Confirmation Hearing, have been paid or the Plan provides for the payment of such fees on the Effective Date;
- the Plan provides for the continuation after the Effective Date of all retiree benefits, as defined in section 1114 of the Bankruptcy Code, at the level established at any time prior to Confirmation pursuant to section 1114(e)(1)(B) or 1114(g) of the Bankruptcy Code, for the duration of the period that the applicable Debtor has obligated itself to provide such benefits; and
- the disclosures required under section 1129(a)(5) of the Bankruptcy Code concerning the identity and affiliations of persons who will serve as officers, directors and voting trustees of the Debtors or the successors to the Debtors have been made.

D. Feasibility

In connection with Confirmation of the Plan, the Bankruptcy Court would have to determine that the Plan is feasible pursuant to section 1129(a)(11) of the Bankruptcy Code, which requires that the Confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtors (unless such liquidation or reorganization is proposed by the Plan). Because the Plan proposes to make distributions of Cash in the Debtors' accounts, for purposes of this test the Debtors have analyzed the ability of the Reorganized

Debtors to meet their payment obligations under the Plan, including the payment by the Reorganized Debtors of all Allowed Secured Claims, Allowed Administrative Claims, Allowed Priority Tax Claims and Allowed Priority Claims, and the payment by the Reorganized Debtors of all Allowed Old FENM Inc. General Unsecured Claims and Allowed Old FEPC LLC General Unsecured Claims in accordance with the terms of the Plan. Based on the Debtors' analysis, the Reorganized Debtors will more than twice the amount of assets needed to make the payments to accomplish their tasks under the Plan.⁷ Other than affiliates of the Debtors, all creditors holding Allowed Claims will receive payment in full under the Plan. Therefore, the Debtors believe that the Plan meets the feasibility requirements of the Bankruptcy Code.

E. Best Interests Test; Liquidation Analysis

In order to confirm the Plan, the Bankruptcy Court also must determine that the Plan is in the best interests of each holder of a Claim or Interest in any such impaired Class who has not voted to accept the Plan. Accordingly, if an impaired Class does not accept the Plan as required under the Bankruptcy Code, the "best interests" test requires that the Bankruptcy Court find that the Plan provides to each member of such impaired Class a recovery on account of the member's Claim or Interest that has a value, as of the Effective Date, at least equal to the value of the distribution that each such member would receive if the applicable Debtor or Debtors were liquidated under chapter 7 of the Bankruptcy Code on such date. The Plan satisfies the "best interests" test, because (i) the plan renders all holders of Claims unimpaired, and, therefore, each Class of Claims is presumed to have accepted the Plan in accordance with section 1126(f) and (ii) as set forth in Exhibit II, there would be no distributions on account of Class 5 Interests if the Debtors were liquidated in accordance with the provisions of Chapter 7 of the Bankruptcy Code.

F. Conditions Precedent to the Effective Date of the Plan

In addition to the requirements for confirmation set forth in the Bankruptcy Code, the Plan itself sets forth certain conditions that must be met before the Effective Date can occur and the Plan can be consummated. These conditions include:

Conditions to Confirmation

The Bankruptcy Court will not be requested to enter an order confirming the Plan unless and until the following conditions have been satisfied or duly waived pursuant to Section VIII.C of the Plan:

1. The Confirmation Order shall be in form and substance reasonably satisfactory to the Debtors and Tesco, and shall, *inter alia*, provide for approval of the Tesco Settlement as set forth in the Plan.
2. All Exhibits to the Plan are in form and substance reasonably satisfactory to the Debtors and Tesco.

Conditions to the Effective Date

The Effective Date will not occur, and the Plan will not be consummated unless and until the following conditions have been satisfied or duly waived pursuant to Section VIII.C of the Plan:

1. The Bankruptcy Court shall have entered the Confirmation Order, and there shall not be a stay or injunction in effect with respect thereto.
2. Either (a) the settlement of the California Class Action set forth in the Class Action Settlement Motion has been approved by the Bankruptcy Court by Final Order and there

⁷ - As set forth in Exhibit II, the estimated total amount of all Allowed Claims is approximately \$39.5 million and the total amount of assets available for distribution to all creditors as of the Effective Date is approximately \$94.5 million.

are no conditions to the effectiveness of the settlement set forth therein, other than the occurrence of the Effective Date or (b) there is sufficient Cash and Cash investments held by the Debtors to fund the Administrative/Priority Claims Reserve, the General Unsecured Claims Trust Account, the CCMF Claims Reserve and Reorganized Debtor Cash as determined on the Effective Date.

The conditions to Confirmation and the conditions to the Effective Date in Sections VIII.A and VIII.B of the Plan may be waived in whole or part at any time by agreement of the Debtors and Tesco without an order of the Bankruptcy Court.

G. Effect of Nonoccurrence of Conditions to the Effective Date and Amendments to or Revocation of the Plan

If each of the conditions to the Effective Date is not satisfied or duly waived in accordance with Section VIII.C of the Plan, then upon motion by the Debtors or any party in interest made before the time that each of such conditions has been satisfied and upon notice to such parties in interest as the Bankruptcy Court may direct, the Confirmation Order shall be vacated by the Bankruptcy Court; *provided, however*, that, notwithstanding the Filing of such motion, the Confirmation Order may not be vacated if each of the conditions to the Effective Date is satisfied before the Bankruptcy Court enters an order granting such motion. If the Confirmation Order is vacated pursuant to this Section VIII.D of the Plan: (1) the Plan shall be null and void in all respects and (2) nothing contained in the Plan shall (a) constitute a waiver or release of any Claims by or against, or any Interest in, any Debtor or (b) prejudice in any manner the rights of the Debtors or any other party in interest.

H. Alternatives to Confirmation and Consummation of the Plan

If no plan under chapter 11 of the Bankruptcy Code can be confirmed, the Bankruptcy Cases may be converted to chapter 7 cases. As previously discussed, in a liquidation case under chapter 7 of the Bankruptcy Code, a trustee or trustees would be appointed to liquidate the remaining assets of each Debtor and distribute proceeds to creditors. The proceeds of the liquidation would be distributed to the respective creditors of the Debtors in accordance with the priorities established by chapter 7 of the Bankruptcy Code. The Debtors believe that Confirmation and consummation of the Plan is preferable to a conversion of these chapter 11 cases to chapter 7.

VIII. MEANS FOR IMPLEMENTATION OF THE PLAN

A. Tesco Settlement and Compromise

Pursuant to Bankruptcy Rule 9019 and in consideration for, among other things, the release of any and all Claims and Causes of Action against the Tesco Released Parties by the Debtors and holders of Claims that are unimpaired by the Plan, Tesco shall take the actions and be entitled to the consideration and described immediately below.

1. Tesco Actions

- a) Contribution of Distributions on Account of Tesco Claims to Class 3 Claimants

The Tesco Entities consent to the use of any Cash that would otherwise be distributable to Tesco on account of the Tesco Claims to make the payments required in respect of the Allowed Claims of Class 3 Claimants in accordance with the provisions of the Plan.

- b) Substantive Consolidation of the Debtors for Plan Purposes

The Tesco entities consent to the substantive consolidation of the Estates for Plan purposes, as set forth in more detail in Section IV.C.1 of the Plan.

- c) Reduction of Tesco Claims for Plan Distribution Purpose

In exchange for the consideration the Tesco Entities will receive under the Plan, including the releases set forth in Section IV.D of the Plan, for Plan distribution purposes only, Tesco shall agree to waive any recoveries on account of the Tesco Claim, other than the Tesco Settlement Distribution, and to be treated as unimpaired under the Plan.

d) Release of Claims and Rights of Setoff

In exchange for the consideration the Tesco Entities will receive under the Plan, including the releases set forth in Section IV.D of the Plan, Tesco, on its own behalf and on behalf of each of the Tesco Entities, shall fully and forever release any Claims or Causes of Action the Tesco Entities may have against the Debtor Released Parties, each Class 3 Claimant, and the Representatives of the foregoing arising out of or relating to the Debtors, except to the extent necessary to enforce the terms of this Plan and the settlement embodied herein.

Further, Tesco shall fully and forever release any Claims or Causes of Action it may have against any of the Debtors; and any rights of setoff the Tesco Entities may have against any of the Debtors, including, without limitation, any right of setoff arising from obligations owed under the Tax Sharing Agreement, shall be deemed to have been exercised and fully satisfied.

2. Tesco Consideration

a) Tesco Settlement Distribution

Except as expressly provided in the Plan, as of the Effective Date, all obligations of the Tesco Entities to the Debtors, including, without limitation, under the Tax Sharing Agreement, shall, except as otherwise provided in the Plan, be deemed satisfied and extinguished. On account of the Tesco Claims and in exchange for Tesco's agreement to the terms of the Tesco Settlement, Tesco Entities as designated by Tesco shall receive, on the Effective Date, the Tesco Settlement Distribution.

b) Release of Tesco Released Parties

The Debtors, all holders of Secured Claims, Administrative Claims, Priority Tax Claims, Priority Claims and General Unsecured Claims shall forever release, waive and discharge all Claims and Causes of Action in any way relating to any Debtor, the Reorganization Cases or the Plan that such Entity has, had or may have against any Tesco Released Party.

Further, the Debtors shall fully and forever release any rights of setoff they may have against any Tesco Entity.

c) Waiver and Release of Chapter 5 Claims

Without limiting the generality of the releases contained in Section IV.A.1 and Section IV.A.2 of the Plan, pursuant to such releases, all Chapter 5 Claims and related state-law causes of action that could have been asserted are settled and compromised and shall be deemed forever waived and released and may not be asserted by the Debtors or any other parties.

B. General Settlement and Compromise

Pursuant to Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided under the Plan, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims or controversies relating to the rights that a holder of a Claim or Interest may have with respect to any Claim or Interest or any distribution to be made pursuant to the Plan on account of any Claim or Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, as of the Effective Date, of the compromise or settlement of all such Claims or controversies and the Bankruptcy Court's finding that such compromise or settlement is in the best interests of the Debtors, the Reorganized Debtors, the Estates and their respective property and Claim and Interest holders and is fair, equitable and reasonable.

C. The Reorganized Debtors

1. Substantive Consolidation for Plan Purposes Only

In furtherance of the settlements contained in the Plan, and given that the Plan provides for the unimpairment of all Allowed Claims under the Plan, the Debtors are proposing, solely for administrative convenience, to consolidate their respective Estates for certain purposes. Entry of the Confirmation Order shall constitute the approval, pursuant to section 105(a) of the Bankruptcy Code, effective as of the Effective Date, of the limited substantive consolidation of the Bankruptcy Cases solely for Plan purposes. On and after the Effective Date, (i) all assets to be used for distributions to creditors of either Debtor will be treated as though they were merged into the Reorganized Debtors; (ii) any obligation of either Debtor and all guarantees thereof executed by, or joint liability of, either Debtor will be treated as one obligation of the Reorganized Debtors for distribution purposes pursuant to the Plan; and (iii) any Claims filed against either Debtor shall be treated as a single Claim filed against the Reorganized Debtors, for distribution purposes pursuant to the Plan.

Notwithstanding the foregoing, the substantive consolidation of the Debtors for Plan purposes shall not affect or impair (i) any rights, Claims or remedies or defenses of the separate Debtors as of the Petition Date; (ii) the legal and organizational structure of either Debtor; and (iii) claims under or with respect to any insurance policy of either Debtor (or any right to the proceeds of any such policy or policies).

Except as otherwise provided in the Plan, each Debtor shall, as a Reorganized Debtor, continue to exist after the Effective Date as a separate legal entity, each with all the powers of a corporation under the laws of its respective jurisdiction of organization and without prejudice to any right to alter or terminate such existence (whether by merger or otherwise) under applicable state law.

2. Continued Corporate Existence

Except as otherwise provided in the Plan, each Debtor shall, as a Reorganized Debtor, continue to exist after the Effective Date as a separate legal entity, each with all the powers of corporation or limited liability company, as applicable, under the laws of its respective jurisdiction of organization and without prejudice to any right to alter or terminate such existence (whether by merger or otherwise) under applicable state law.

3. Cancellation of Interests and Issuance of New Securities

Notwithstanding the substantive consolidation referenced in the foregoing section, on the Effective Date: (a) all of the issued and outstanding Interests in the Debtors shall be cancelled; and (b)(i) Reorganized Old FENM Inc. shall issue the Old FENM Inc. New Securities to a Tesco Entity designated by Tesco and (ii) Reorganized Old FEPC LLC shall issue the Old FEPC LLC New Securities to a Tesco Entity designated by Tesco.

4. Section 1145 Exemption

To the maximum extent provided by section 1145 of the Bankruptcy Code and applicable non-bankruptcy law, the issuance under the Plan of the Old FENM Inc. New Securities and the Old FEPC LLC New Securities will each be exempt from registration under the Securities Act.

5. Revesting of Reorganized Debtors' Assets in the Reorganized Debtors

Except as otherwise expressly provided in this Plan, pursuant to sections 1123(a)(5), 1123(b)(3) and 1141(b) of the Bankruptcy Code, all of the Reorganized Debtors' Assets shall automatically be retained and revested in the relevant Reorganized Debtor or its respective successor, free and clear of all Claims, Liens, contractually-imposed restrictions, charges, encumbrances and Interests of creditors and equity security holders on the Effective Date, with all such Claims, Liens, contractually-imposed restrictions, charges, encumbrances and Interests being extinguished except as otherwise provided in this Plan. The Reorganized Debtors' Assets include certain warrants to purchase equity in the Going Concern Purchaser, which the Going Concern Sale Agreement requires remain as assets of the Reorganized Debtors for a period of no less than two years following the closing of the Going Concern Sale.

As of the Effective Date, the Reorganized Debtors may acquire and dispose of property and settle and compromise Secured Claims, Administrative Claims, Priority Tax Claims, Priority Claims and General Unsecured Claims without supervision of the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules, other than those restrictions expressly imposed by this Plan and the Confirmation Order. Without limiting the foregoing, the Reorganized Debtors may pay the charges they incur for professional fees, disbursements, expenses or related support services after the Effective Date without any application to the Bankruptcy Court.

6. Termination of All Employee and Workers' Compensation Benefits

All existing employee benefit plans and workers' compensation benefits not previously expired or terminated by the Debtors will be terminated on or before the Effective Date.

7. Compliance with Section 1114 of the Bankruptcy Code

The Debtors have no obligations to pay retiree benefits (as defined in section 1114(a) of the Bankruptcy Code).

8. Corporate Action

Pursuant to section 1142 of the Bankruptcy Code, section 303 of the Delaware General Corporation Law and any comparable provisions of the business corporation law of any other state, the entry of the Confirmation Order shall constitute authorization for the Debtors, the Reorganized Debtors and the Tesco Entities to take or cause to be taken all corporate and limited liability company actions necessary or appropriate to consummate and implement the provisions of this Plan prior to, on and after the Effective Date, and all such actions taken or caused to be taken shall be deemed to have been authorized and approved by the Bankruptcy Court, including, without limitation: (a) the cancellation of all of the issued and outstanding Interests in Old FENM Inc. and Old FEPC LLC; (b) the issuance of the Old FENM Inc. New Securities and the Old FEPC LLC New Securities; (c) the election of directors, managers and officers of the Reorganized Debtors in accordance with this Plan; (d) the adoption of the Reorganized Debtors' Organizational Documents, which shall supersede the prior certificates of incorporation, articles of organization, limited liability company agreements, by-laws or other organizational documents, as appropriate, of each of the Reorganized Debtors; and (e) actions as are necessary or appropriate to close or dismiss any or all of the Bankruptcy Cases. All such actions shall be deemed to have occurred and shall be in effect pursuant to applicable non-bankruptcy law and the Bankruptcy Code, without any requirement of further action by the members, stockholders, directors or managers of the Debtors, the Reorganized Debtors or any of their Affiliates. On the Effective Date, the appropriate officers, directors, members and managers of the Debtors and the Reorganized Debtors are authorized and directed to execute and deliver the agreements, documents and instruments contemplated by this Plan in the name of and on behalf of the Debtors and/or the Reorganized Debtors, as applicable.

9. Reorganized Debtors' Organizational Documents

The Reorganized Debtors' Organizational Documents shall contain such provisions as are required to satisfy the provisions of this Plan and the Bankruptcy Code and shall include, among other things: (a) authorization for Reorganized Old FENM Inc. to issue the Old FENM Inc. New Securities and Reorganized Old FEPC LLC to issue the Old FEPC LLC New Securities; (b) a prohibition on the issuance of nonvoting equity securities to the extent, and only to the extent, required by section 1123(a)(6) of the Bankruptcy Code; and (c) other provisions ordinary and customary in such situations so long as they are not inconsistent with ~~the~~ Section IV.C.9 of the Plan.

10. Post-Effective Date Management

On the Effective Date, the management, control and operation of each Reorganized Debtor shall become the general responsibility of its respective board of directors, board members and/or officers in accordance with applicable non-bankruptcy law. Except as provided on Exhibit IV to the Plan, on the Effective Date, each member of the existing board of directors and each officer of each of the Debtors shall be deemed to have resigned. Subject to any requirement of Bankruptcy Court approval pursuant to section 1129(a)(5) of the Bankruptcy Code, the initial

directors and officers of each Reorganized Debtor shall be comprised of the individuals set forth on Exhibit IV to the Plan. Each such director and officer will serve from the Effective Date until his or her successor is duly elected or appointed and qualified or until his or her earlier death, resignation or removal in accordance with the terms of the certificate of incorporation and bylaws (or comparable constituent documents) of the respective Reorganized Debtor and state law.

11. New Employment, Indemnification and Other Related Agreements

As of the Effective Date, the Reorganized Debtors shall have authority, as determined to enter into new employment, retirement, welfare, severance, indemnification and other agreements for the Reorganized Debtors' directors, officers and employees.

12. Approval of Agreements

Classes of Claims under this Plan shall be deemed to have approved by the holders of Claims of all other agreements and transactions contemplated by this Plan. Entry of the Confirmation Order shall constitute approval of such agreements and transactions and the Confirmation Order shall so provide.

13. Change of Control

The transactions contemplated under this Plan shall not be deemed or considered a change of control that would result in any acceleration, vesting or similar change of control rights under any agreements or arrangements triggered by the consummation of the Plan.

14. Establishment of the Administrative/Priority Claims Reserve

Under the Plan, on the Effective Date, the Debtors or Reorganized Debtors will create and fund the Administrative/Priority Claims Reserve with Cash in the initial amount equal to 125% of the Debtors' best estimate, after consultation with the Creditors' Committee, as of the Effective Date of the sum of the projected aggregate amount of all Allowed Secured Claims, Allowed Administrative Claims, Allowed Priority Tax Claims and Allowed Priority Claims. The Reorganized Debtors will deposit additional amounts in the Administrative/Priority Claims Reserve to the extent required for the payment of Allowed Claims payable under the Plan from the Administrative/Priority Claims Reserve. The bank account holding the Administrative/Priority Claims Reserve will be established and maintained by Reorganized Old FENM Inc. in a federally insured domestic bank in the name of Reorganized Old FENM Inc.

Upon payment in full of all Allowed Claims required to be paid from the Administrative/Priority Claims reserve, any remaining funds in the Administrative/Priority Claims Reserve shall be released to Reorganized Old FENM Inc.

15. Establishment of the General Unsecured Claims Trust Account

Under this Plan, on the Effective Date, the Debtors or the Reorganized Debtors will create and fund the General Unsecured Claims Trust Account with Cash or Cash investments in an amount equal to the sum of the aggregate amount at such time of all unpaid General Unsecured Claims that have been Allowed or are Disputed Claims with respect to which any objection has not yet been resolved. The General Unsecured Claims Trust Account will be established and maintained by Reorganized Old FENM Inc. in a federally insured domestic bank as a trust account for the benefit of the holders of Allowed Claims in Class 3, subject to the release of amounts in the General Unsecured Claims Trust Account to the Reorganized Debtors as provided below. Except as expressly provided in the Plan, the General Unsecured Claims Trust Account shall not be exposed to claims against the Reorganized Debtors or utilized to pay any post-Effective Date expenses of the Reorganized Debtors.

If, at any time, the amount of Cash in the General Unsecured Claims Trust Account is greater than the amount of unpaid General Unsecured Claims that have been Allowed or are Disputed Claims with respect to which any objection has not yet been resolved, such excess Cash shall be released to Reorganized Old FENM Inc. Reorganized Old FENM Inc. will provide three (3) Business Days advance notice to the Post-Effective Date

Committee prior to any release of funds to Reorganized Old FENM Inc. from the General Unsecured Claims Trust Account.

16. Settlement of Claims by the Reorganized Debtors

Except as otherwise provided in the Plan, on and after the Effective Date, the Reorganized Debtors may in their sole discretion compromise, settle and pay any Secured Claim, Administrative Claim, Priority Tax Claim, Priority Claim or General Unsecured Claim without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

17. Sale of Assets by the Reorganized Debtors

The Reorganized Debtors may conduct any Other Sales or liquidations of their non-Cash assets on any terms it deems reasonable, without further order of the Bankruptcy Court; provided, however, that any Other Sales in excess of \$250,000 shall require the prior written approval of the Tesco. The Reorganized Debtors, in their discretion, may seek the approval of the Bankruptcy Court of any Other Sales.

D. Release of Claims; Limitation of Liability

Section IV.D the Plan contain certain releases, exculpation provisions and other similar items (collectively, the "Releases"). The Releases are an essential component of the Plan and the Debtors believe the Releases are beneficial to the estate and appropriate under applicable law. The Released Parties have expended significant efforts to the Debtors' chapter 11 cases and the efforts of the Released Parties have resulted in a Plan that renders all Allowed Claims other than the Tesco Claims unimpaired. Because all Allowed Claims (other than the Tesco Claims) will be paid in full and rendered unimpaired by the Plan, there should be no valid causes of action against the Released Parties. Nevertheless, responding to and defending against any claims could impose material unwarranted costs on the Released Parties and on the Reorganized Debtors. The Releases will protect the Reorganized Debtors and the other Released Parties from having to unnecessarily expend resources to defend against such claims.

1. General Releases by the Debtors

Without limiting any applicable provisions of, or releases contained in, the Sale Orders or the Plan, as of the Effective Date, the Debtors, on behalf of themselves, their Estates and their respective successors, assigns and any and all Entities who may purport to claim by, through, for or because of them, shall be deemed to forever release, waive and discharge all Causes of Action, including but not limited to any Chapter 5 Claims and Affiliate Causes of Action, arising prior to the Effective Date that such Entity has, had or may have against each of the Released Parties; provided, however, that the releases provided in this paragraph shall have no effect on: (a) the liability of any Entity that would otherwise result from the failure to perform or pay any obligation or liability under the Plan, or any contract, instrument, release or other agreement or document to be assumed, entered into or delivered in connection with the Plan; or (b) the liability of any Entity that would otherwise result from any act, omission or occurrence since the Petition Date to the extent that such act, omission or occurrence is determined in a Final Order to have constituted gross negligence or willful misconduct.

2. Third Party Releases

Without limiting any other applicable provisions of, or releases contained in, the Plan or the Bankruptcy Code, as of the Effective Date, in consideration for the consideration provided to the Debtors by the Tesco Settlement and the payment in full and unimpairment of Allowed Secured Claims, Administrative Claims, Priority Tax Claims, Priority Claims and General Unsecured Claims, each holder of a Secured Claim, Administrative Claim, Priority Tax Claim, Priority Claim, and General Unsecured Claim shall be deemed to forever release, waive and discharge all Claims and Causes of Action in any way relating to any Debtor, the Reorganization Cases or the Plan that such Entity has, had or may have against any of the Released Parties (which release shall be in addition to the injunction of Claims provided herein and under the

Confirmation Order and the Bankruptcy Code), excluding only any obligations of any of the Released Parties under the Plan.

3. Injunction Related to Releases

As further provided in Section IX.A of the Plan, the Confirmation Order will enjoin permanently the commencement or prosecution by any Entity, whether directly, derivatively or otherwise, of any Claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action or liabilities released pursuant to the Plan, including, without limitation, the Chapter 5 Claims released pursuant to Section IV.A.2.c of the Plan.

4. Limitation of Liability

a) From and after the Effective Date, the Exculpated Parties shall neither have nor incur any liability to any Entity or be subject to any Cause of Action for any act taken or omitted to be taken in connection with, related to or arising out of the Bankruptcy Cases, the Debtors, their Estates or the consideration, formulation, preparation, dissemination, implementation, Confirmation, consummation or administration of the Plan, the Disclosure Statement, the Sales, any Other Sales or any transaction proposed in connection with the Bankruptcy Cases or any contract, instrument, release or other agreement or document created or entered into, or any other act taken or omitted to be taken, in connection therewith; provided, however, that the provisions of Section IV.D.4 of the Plan shall have no effect on: (i) the liability of any Entity that would otherwise result from the failure to perform or pay any obligation or liability under the Plan or any contract, instrument, release or other agreement or document to be assumed, entered into or delivered in connection with the Plan, or (ii) the liability of any Entity that would otherwise result from any such act, omission or occurrence to the extent that such act, omission or occurrence is determined in a Final Order to have constituted gross negligence or willful misconduct.

b) Notwithstanding any other provision of this Plan, no holder of a Claim or Interest, no other party in interest, none of their respective agents, employees, representatives, financial advisors, attorneys or affiliates, and no successors or assigns of the foregoing, shall have any right of action against any Exculpated Party for any act or omission in connection with, relating to or arising out of the Bankruptcy Cases, the Debtors, their Estates or the consideration, formulation, preparation, dissemination, implementation, Confirmation, consummation or administration of the Plan, the Disclosure Statement, the Sales, any Other Sales or any transaction or document created or entered into, or any other act taken or omitted to be taken, in connection therewith, except for: (i) the liability of any Entity that would otherwise result from the failure to perform or pay any obligation or liability under the Plan or any contract, instrument, release or other agreement or document to be assumed, entered into or delivered in connection with the Plan, or (ii) the liability of any Entity that would otherwise result from any such act, omission or occurrence to the extent that such act, omission or occurrence is determined in a Final Order to have constituted gross negligence or willful misconduct.

E. Special Provisions Regarding Insured Claims

Distributions under the Plan to each holder of an Allowed Insured Claim shall be in accordance with the treatment provided under the Plan for the Class in which such Allowed Insured Claim is classified, but solely to the extent that such Allowed Insured Claim is not satisfied from proceeds payable to the holder thereof under any pertinent insurance policies and applicable law. Nothing in Section IV.E of the Plan shall constitute a waiver of any Claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action or liabilities that any Entity may hold against any other Entity, including the Debtors' insurance carriers.

F. Release of Liens

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document to be assumed, entered into or delivered in connection with the Plan, on the Effective Date and consistent with the treatment provided for Claims and Interests in Article III of the Plan, all Liens on, in or against the Reorganized Debtors' Assets shall be fully released and discharged, and all of the right, title and interest of any

holder of Liens, including any rights to any Collateral thereunder, shall revert to the Reorganized Debtors and their successors and assigns. As of the Effective Date, the Reorganized Debtors shall be authorized but not required to execute and file Form UCC-3 Termination Statements or such other forms as may be necessary or appropriate to implement the provisions of Section IV.F of the Plan.

G. Effectuating Documents; Further Transactions; Exemption from Certain Transfer Taxes

The Reorganized Debtors and Tesco or their designees, as applicable, shall be authorized to (i) execute, deliver, file or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of the Plan; and (ii) certify or attest to any of the foregoing actions. Pursuant to section 1146(a) of the Bankruptcy Code, the following will not be subject to any stamp tax, real estate transfer tax, sales and use tax or similar tax: (a) any transaction undertaken to implement the terms of this Plan; (b) the transfer to the Reorganized Debtors of any Reorganized Debtors' Assets at any time; or (c) the making or delivery of any deed or other instrument of transfer under, in furtherance of or in connection with the Plan, including any merger agreements or agreements of consolidation, disposition, liquidation or dissolution executed in connection with any transaction pursuant to the Plan.

IX. PROVISIONS GOVERNING DISTRIBUTIONS

A. Method of Distributions to Holders of Allowed Claims

The Reorganized Debtors, acting as Disbursing Agent, or such Third Party Disbursing Agent as the Reorganized Debtors may employ in their sole discretion, shall make all Distributions required under the Plan. The Reorganized Debtors acting as Disbursing Agent shall serve without bond, and may employ or contract with other Entities to assist in or make the Distributions required by the Plan. At the sole discretion of the Reorganized Debtors, any Third Party Disbursing Agent selected by the Reorganized Debtors will serve with bond or similar financial instrument, and any Third Party Disbursing Agent may employ or contract with other Entities to assist in or make the distributions required by the Plan.

B. Compensation and Reimbursement for Services Related to Distributions and Cash Investment Yield

1. Compensation and Reimbursement

Any Third Party Disbursing Agent providing services related to distributions pursuant to the Plan will receive from the Reorganized Debtors, without further Bankruptcy Court approval, reasonable compensation for such services and reimbursement of reasonable, necessary and documented out-of-pocket expenses incurred in connection with such services. These payments will be made on terms agreed to with the Reorganized Debtors, and will not be deducted from distributions (including any distributions of Cash Investment Yield) to be made pursuant to the Plan to holders of Allowed Claims receiving distributions from a Third Party Disbursing Agent.

2. Investment of Cash Related to Distributions

To assist in making distributions under the Plan, the Administrative/Priority Claims Reserve may be held in the name of a Third Party Disbursing Agent for the benefit of holders of Allowed Claims under the Plan. The Third Party Disbursing Agent shall invest the Cash in the Administrative/Priority Claims Reserve as directed by the Reorganized Debtors; *provided, however*, that should the Reorganized Debtors, as applicable, determine, in their sole discretion, that the administrative costs associated with such investment will exceed the return on such investment, they may direct the Third Party Disbursing Agent to not invest such Cash. Distributions of Cash from accounts held by a Third Party Disbursing Agent will include the Cash Investment Yield, if any, from such investment of Cash.

C. Delivery of Distributions and Undeliverable or Unclaimed Distributions**1. Delivery of Distributions to Holders of Allowed Claims**

Distributions to holders of Allowed Claims will be made by a Disbursing Agent (a) at the addresses reflected in the applicable Debtor's Schedules if no proof of Claim has been Filed and the Disbursing Agent has not received a written notice of a change of address; (b) at the addresses set forth on the respective proofs of Claim, requests for payment of Administrative Claim or similar document Filed by holders of such Claims; or (c) at the addresses set forth in any written certification of address change delivered to the Disbursing Agent (including pursuant to a letter of transmittal delivered to the Disbursing Agent) after the date of Filing of any related proof of Claim, requests for payment of Administrative Claim or similar document.

2. Undeliverable Distributions Held by Disbursing Agent**a) Holding of Undeliverable Distributions**

Subject to Section VI.C.2.b of the Plan, distributions returned to the Disbursing Agent or otherwise undeliverable will remain in the custody or within the control of the Disbursing Agent.

b) Failure to Claim Undeliverable Distributions

Any holder of an Allowed Claim that does not assert a Claim pursuant to the Plan for an undeliverable distribution to be made by the Disbursing Agent within 180 days after the later of (i) the Effective Date and (ii) the last date on which a distribution was deliverable to such holder will have its Claim for such undeliverable distribution deemed satisfied, waived and released and will be forever barred from asserting any such Claim against the Debtors or the Reorganized Debtors and their respective property or the Administrative/Priority Claims Reserve, as applicable. In such cases, unclaimed distributions will be maintained in the Administrative/Priority Claims Reserve or otherwise, as applicable, for redistribution to other claimants or the Reorganized Debtors, as applicable.

D. Means of Cash Payments

Except as otherwise specified herein, Cash payments made pursuant to the Plan will be in U.S. currency by checks drawn on the Administrative/Priority Claims Reserve, the General Unsecured Claims Trust Account, the CCMF Claims Reserve or otherwise, as applicable, or, at the option of the Reorganized Debtors, by wire transfer from a domestic bank.

E. Timing and Calculation of Amounts to Be Distributed**1. Allowed Claims**

Distributions on account of Allowed Claims in Classes 1, 2, 3, and 4 shall be made at the times specified in Articles III and IV of the Plan, as and when Claims are Allowed.

Each holder of an Allowed Claim will receive the full amount of the distributions that the Plan provides for Allowed Claims in the applicable Class pursuant to the terms and conditions of the Plan, subject to any setoffs or deductions set forth therein. Holders of partially Allowed General Unsecured Claims shall receive partial distributions as provided for in Section VII.C.1.b of the Plan. No holder of any Claim shall be entitled to receive, and the Reorganized Debtors shall not be entitled to make, any payment in an amount greater than what is allowed under section 502 of the Bankruptcy Code.

2. Compliance with Tax Requirements; Responsibility for Taxes

a) Each Disbursing Agent will comply with all Tax withholding and reporting requirements imposed on it by any governmental unit, and all distributions pursuant to the Plan will be subject to such withholding and reporting requirements. Each Disbursing Agent will be authorized to take any actions that it

determines, in its reasonable discretion, to be necessary or appropriate to comply with such withholding and reporting requirements.

b) Each Entity receiving a distribution pursuant to the Plan will be solely responsible for all Taxes owed with respect to such distribution.

F. Setoffs

Except with respect to Claims of a Debtor released pursuant to the Plan or any contract, instrument, release or other agreement or document to be assumed, entered into or delivered in connection with the Plan, a Disbursing Agent or a Third Party Disbursing Agent, as instructed by the Reorganized Debtors, pursuant to section 553 of the Bankruptcy Code or applicable nonbankruptcy law, may setoff against any Allowed Claim and the distributions to be made pursuant to the Plan on account of such Claim (before any distribution is made on account of such Claim) the Claims, rights and Causes of Action of any nature that the applicable Debtor may have held against the holder of such Allowed Claim prior to the Effective Date; *provided, however*, that neither the failure to effect a setoff nor the allowance of any Claim hereunder will constitute a waiver or release by the Reorganized Debtors, as applicable, of any Claims, rights and Causes of Action that the Reorganized Debtors (by virtue of the transfer to it of the Reorganized Debtors' Assets) may possess against such a Claim holder, which are expressly preserved and vested in the Reorganized Debtors as Reorganized Debtors' Assets.

X. PROCEDURES FOR RESOLVING DISPUTED CLAIMS

A. Prosecution of Objections to Claims

1. Objections to Claims

Any objections to Claims must be Filed on the Bankruptcy Court's docket and served on the holders of such Claims on or before the Claims Objection Bar Date. If an objection has not been Filed to a proof of Claim or a scheduled Claim by the Claims Objection Bar Date, the Claim to which the proof of Claim or scheduled Claim relates shall be treated as an Allowed Claim if such Claim has not been allowed earlier.

2. Authority to Prosecute Objections

After the Effective Date, only the Reorganized Debtors shall have the authority to File, settle, compromise, withdraw or litigate to judgment objections to Claims, including pursuant to any alternative dispute resolution or similar procedures approved by the Bankruptcy Court; *provided, however*, that the Reorganized Debtors shall not be entitled to File an objection to any Claim that has been expressly allowed by Final Order or under the Plan. The Reorganized Debtors may settle or compromise any such Claims that are Disputed Claim or any objection or controversy relating to any such Claim without approval of the Bankruptcy Court, subject to Section IV.C.16 of the Plan.

B. Estimation of Claims

The Debtors or the Reorganized Debtors may, in their sole and absolute discretion, determine, resolve and otherwise adjudicate Disputed Claims in the Bankruptcy Court or such other court of the Debtors' or Reorganized Debtors' choice having jurisdiction over the validity, nature or amount thereof. The Debtors or the Reorganized Debtors may at any time request that the Appropriate Court estimate any Disputed Claim pursuant to section 502(c) of the Bankruptcy Code for any reason or purpose, regardless of whether any of the Debtors or the Reorganized Debtors have previously objected to such Claim or whether the Appropriate Court has ruled on any such objection. The Appropriate Court shall retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including, without limitation, during the pendency of any appeal relating to any such objection. In the event that the Appropriate Court estimates any Disputed Claim, that estimated amount shall constitute the maximum limitation on such Claim and the Debtors or the Reorganized Debtors, as applicable, may pursue supplementary proceedings to object to the ultimate allowance of such Claim.

All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Appropriate Court. Notwithstanding section 502(j) of the Bankruptcy Code, in no event shall any holder of a Claim that has been estimated pursuant to section 502(c) of the Bankruptcy Code or otherwise be entitled to seek reconsideration of such Claim unless the holder of such Claim has filed a motion requesting the right to seek such reconsideration on or before 20 calendar days after the date such Claim is estimated by the Appropriate Court.

C. Treatment of Disputed Claims

1. Partial Distributions Pending Allowance

a) Notwithstanding any other provision in the Plan, no payments or distributions will be made on account of a Disputed Claim unless and until all objections to such Disputed Claim have been settled or withdrawn or have been determined by a Final Order, and such Disputed Claim becomes an Allowed Claim.

b) Notwithstanding Section VII.C.1.a of the Plan, holders of Disputed Claims in Classes 1, 2, and 3 shall be entitled to distributions on account of the Allowed portion, if any, of such Disputed Claims pending final resolution of the disputed portion of such Claim.

2. Distributions on Account of Disputed Claims Once Allowed

Distributions on account of previously Disputed or partially Disputed Claims, shall be made in accordance with Article VI of the Plan.

D. No Amendments to Claims

On or after the Effective Date, the holder of a Claim (other than an Administrative Claim or a Professional Fee Claim) must obtain prior authorization from the Bankruptcy Court or Reorganized Debtors to file or amend a Claim. Any new or amended Claim (other than Claims filed by the deadline set forth in Section V.B of the Plan that are related to Executory Contracts or Unexpired Leases rejected pursuant to the Plan or a Final Order of the Bankruptcy Court) filed after the Effective Date without such prior authorization will not appear on the register of claims and will be deemed disallowed in full and expunged without any action required of the Debtors or the Reorganized Debtors and without the need for any court order.

E. Payment of Creditors' Committee Member Fee Claims

Section III.A.3 of the Plan contemplates the payment of the Creditors' Committee Member Fee Claims. The United States Trustee has informed the Creditors Committee and the Debtors that she may object to the payment of the Creditors' Committee Member Fee Claims pursuant to the Plan. The United States Trustee asserts that any payment of the Creditors' Committee Member Fee Claims must involve the filing of a formal application seeking compensation for "substantial contribution" pursuant to sections 503(b)(3)(D) and (4) of the Bankruptcy Code. Pursuant to Section XI.B of the Plan, the Debtors shall be authorized to consummate the Plan even if the Creditors' Committee Member Fee Claims have not been expressly authorized by Final Order prior to the Effective Date.

XI. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Executory Contracts and Unexpired Leases to Be Rejected

On the Effective Date, except for the Executory Contracts or Unexpired Leases listed on Exhibit II to the Plan, if any, and except to the extent that a Debtor either previously has assumed, assumed and assigned or rejected an Executory Contract or Unexpired Lease by an order of the Bankruptcy Court, including, but not limited to, the Sale Orders, or has filed a motion to assume or assume and assign an Executory Contract or Unexpired Lease prior to the Effective Date, each Executory Contract and Unexpired Lease entered into by a Debtor prior to the Petition

Date that has not previously expired or terminated pursuant to its own terms will be rejected pursuant to section 365 of the Bankruptcy Code. Each such contract and lease will be rejected only to the extent that any such contract or lease constitutes an Executory Contract or Unexpired Lease. The Confirmation Order will constitute an order of the Bankruptcy Court approving such rejections, pursuant to section 365 of the Bankruptcy Code, as of the Effective Date. Notwithstanding the foregoing, any contract of insurance not listed on Exhibit II to the Plan in favor of the Debtors, or rights of the Estates thereunder or to the proceeds thereto, shall be preserved from and after the Effective Date.

B. Bar Date for Rejection Claims

Notwithstanding anything in the Bar Date Order to the contrary, if the rejection of an Executory Contract or Unexpired Lease pursuant to the Plan gives rise to a Claim by the other party or parties to such contract or lease, such Claim will be forever barred and will not be enforceable against the Reorganized Debtors unless a proof of Claim is Filed and served on the Reorganized Debtors, pursuant to the procedures specified in the Confirmation Order and the notice of the Effective Date or another order of the Bankruptcy Court, no later than 30 days after the Effective Date.

C. Executory Contracts and Unexpired Leases to Be Assumed

1. Assumption Generally

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into in connection with the Plan, on the Effective Date, pursuant to section 365 of the Bankruptcy Code, the Debtors shall assume each of the respective Executory Contracts and Unexpired Leases, if any, listed on Exhibit II to the Plan and assign such Executory Contracts and Unexpired Leases to the Reorganized Debtors; provided, however, that the Debtors reserve the right, at any time prior to the Effective Date, to amend Exhibit II to the Plan to: (a) delete any Executory Contract or Unexpired Lease listed therein, thus providing for its rejection pursuant hereto; or (b) add any Executory Contract or Unexpired Lease to Exhibit II to the Plan, thus providing for its assumption and assignment pursuant to Section V.C.1 of the Plan. The Debtors shall provide notice of any amendments to Exhibit II to the Plan to the parties to the Executory Contracts or Unexpired Leases affected thereby and to the parties on the then-applicable service list in the Bankruptcy Cases. Nothing herein nor in the Plan shall constitute an admission by the Debtors that any contract or lease is an Executory Contract or Unexpired Lease or that a Debtor has any liability thereunder.

2. Assumptions of Executory Contracts and Unexpired Leases

Each Executory Contract or Unexpired Lease assumed and assigned under Section V.C.1 of the Plan shall include any modifications, amendments, supplements or restatements to such contract or lease.

3. Assignments Related to Post-Effective Date Transactions

As of the Effective Date, any Executory Contract or Unexpired Lease assumed under Section V.C.1 of the Plan shall be deemed assigned to the Reorganized Debtors, pursuant to section 365 of the Bankruptcy Code.

4. Approval of Assumptions and Assumption Procedures

The Confirmation Order shall constitute an order of the Bankruptcy Court approving the assumptions and assignments described in Section V.C of the Plan, pursuant to section 365 of the Bankruptcy Code, as of the Effective Date. The procedures for assumption of an Executory Contract or Unexpired Lease are set forth in Section V.C.4 of the Plan.

D. Payments Related to the Assumption of Executory Contracts and Unexpired Leases

To the extent that such Claims constitute monetary defaults, the Cure Amount Claims associated with each Executory Contract and Unexpired Lease to be assumed pursuant to the Plan shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code: (1) by payment of the Cure Amount Claim in Cash on or after the Effective Date

from the Administrative/Priority Claims Reserve; or (2) on such other terms as are agreed to by the parties to such Executory Contract or Unexpired Lease. Pursuant to section 365(b)(2)(D) of the Bankruptcy Code, no Cure Amount Claim shall be allowed for a penalty rate or other form of default rate of interest. If there is an unresolved dispute regarding: (1) the amount of any Cure Amount Claim; (2) the ability of the Reorganized Debtors or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the contract or lease to be assumed; or (3) any other matter pertaining to assumption of such contract or lease, the payment of any Cure Amount Claim required by section 365(b)(1) of the Bankruptcy Code shall be made following the resolution of such dispute by the parties or the entry of a Final Order resolving the dispute and approving the assumption.

XII. INJUNCTION, SUBORDINATION RIGHTS AND THE AUTOMATIC STAY

A. Injunction

1. Claims Enjoined

Except as provided in the Plan or the Confirmation Order, as of the Effective Date, all Entities that have held, currently hold or may hold a Claim or other debt or liability that would be discharged upon Confirmation but for the provision of section 1141(d)(3) of the Bankruptcy Code or an Interest or other right of an equity security holder that is terminated pursuant to the terms of the Plan will be permanently enjoined from taking any of the following actions on account of any such Claims, debts, liabilities, Interests or rights: (a) commencing or continuing in any manner any action or other proceeding against the Debtors or the Reorganized Debtors, other than to enforce any right to receive a distribution under the Plan; (b) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order against the Debtors or the Reorganized Debtors other than as permitted pursuant to (a) above; (c) creating, perfecting or enforcing any Lien or encumbrance against the Debtors or the Reorganized Debtors, their respective property; (d) asserting a setoff (except as otherwise permitted under the Plan) or a right of subrogation of any kind against any debt, liability or obligation due to the Debtors or the Reorganized Debtors; and (e) commencing or continuing any action, in any manner, in any place that does not comply with or is inconsistent with the provisions of the Plan.

2. Enforcement Enjoined

Except as provided in the Plan or the Confirmation Order, as of the Effective Date, all Entities that have held, currently hold or may hold any Claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action or liabilities that are released, waived, settled or deemed satisfied pursuant to the Plan will be permanently enjoined from taking any of the following actions against any released Entity or its property on account of such Claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action or liabilities: (a) commencing or continuing in any manner any action or other proceeding; (b) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order; (c) creating, perfecting or enforcing any Lien or encumbrance; (d) asserting a setoff (except as otherwise provided in Section IX.A.2 of the Plan) or a right of subrogation of any kind against any debt, liability or obligation due to any released Entity; and (e) commencing or continuing any action, in any manner, in any place that does not comply with or is inconsistent with the provisions of the Plan.

3. Consent to Injunction

By accepting distributions pursuant to the Plan, each holder of an Allowed Claim that receives a distribution under the Plan will be deemed to have specifically consented to the injunctions set forth in Section IX.A of the Plan.

B. Subordination Rights

The classification and manner of satisfying Claims and Interests under the Plan does not take into consideration subordination rights among and between holders of Claims against the Debtors, and nothing in the Plan or Confirmation Order shall affect any subordination rights among and between holders of Claims against the

Debtors with respect to any distribution to be made pursuant to the Plan, whether arising under general principles of equitable subordination, contract, section 510(c) of the Bankruptcy Code or otherwise.

C. Automatic Stay

Except as provided in the Plan or otherwise determined by order of the Bankruptcy Court, the automatic stay imposed by operation of section 362 of the Bankruptcy Code shall remain in full force and effect until the earlier of the time the Bankruptcy Cases are closed or dismissed.

XIII. RISK FACTORS

Each holder of an Allowed Claim should consider carefully the risk factors described below, as well as all of the information contained in this Disclosure Statement, including the Exhibits hereto. These risk factors should not, however, be regarded as constituting the only risks involved in connection with the Plan and its implementation.

A. Risk of Non-Confirmation of the Plan

As set forth above, section 1129 of the Bankruptcy Code sets forth the requirements for plan confirmation. Although the Debtors believe that the Plan will meet all applicable tests, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

B. Delays of Confirmation and/or Effective Date

Any delay in confirmation and effectiveness of the Plan could result in, among other things, increased Administrative Claims. These or any other negative effects of delays in confirmation or effectiveness of the Plan could endanger the ultimate approval of the Plan by the Bankruptcy Court and reduce recoveries to holders of Claims.

C. Allowance of Claims

The estimates of Allowed Claims in this Disclosure Statement are based on the Debtors' review of their books and records. As set forth above, although the General and Amended General Claim Bar Dates and the Administrative Claim Bar Date have passed, the Debtors generally have not reconciled or settled all Claims. Upon the completion of further analyses of the proofs of Claim, the completion of Claims litigation and related matters, the total amount of Claims that ultimately become Allowed Claims in these Bankruptcy Cases may differ from the Debtors' estimates, and such difference could be material. With respect to Class 3 in particular, the actual ultimate aggregate amount of Allowed General Unsecured Claims may differ significantly from the estimates set forth in this Disclosure Statement. Accordingly, the amount of distributions that may be received by a particular holder of an Allowed General Unsecured Claim in Class 3 may be adversely or favorably affected by the aggregate amount of Claims ultimately allowed in such Class.

XIV. CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF CONSUMMATION OF THE PLAN

As described in Sections VI.A~~-~~ and VII.A above, because all creditors are unimpaired under the Plan, all creditors are presumed to accept the Plan and no creditor is entitled to vote to accept or reject the Plan. As a result, there is no need for the Debtors to solicit votes on the Plan from the creditors. Nor will the Debtors solicit votes on the Plan from holders of Interests. Accordingly, the Debtors have determined that there is no need for disclosure relating to the tax consequences to holders of Claims or Interests, or to the Reorganized Debtors, of implementation of the Plan.

For the avoidance of doubt, amounts paid to holders of Claims pursuant to the Plan in satisfaction thereof shall be allocated first to the principal amounts of such Claims, with any excess being allocated to accrued but unpaid interest on such Claims.

HOLDERS ARE URGED TO CONSULT WITH THEIR TAX ADVISORS ABOUT THE FEDERAL, STATE, LOCAL AND NON-U.S. INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.

XV. ADDITIONAL INFORMATION

Any statements in this Disclosure Statement concerning the provisions of any document are not necessarily complete, and in each instance reference is made to such document for the full text thereof. Certain documents described or referred to in this Disclosure Statement have not been attached as exhibits because of the impracticability of furnishing copies of these documents to all recipients of this Disclosure Statement. The Debtors will file all exhibits to the Plan with the Bankruptcy Court and make them available for review on the Document Website (<http://cases.primeclerk.com/FreshAndEasy>) no later than 14 days prior to the Confirmation Hearing.

XVI. RECOMMENDATION AND CONCLUSION

For all of the reasons set forth in this Disclosure Statement, the Debtors believe that the Confirmation and consummation of the Plan is preferable to all other alternatives. Consequently, the Debtors urge all holders of Claims to support the confirmation of the Plan.

| Dated: ~~April 25~~May 29, 2014

Respectfully submitted,

OLD FENM INC. and OLD FEPC LLC

By: /s/ Mary Kasper
Name: Mary Kasper
Title: Vice President and Secretary

EXHIBIT I

JOINT PLAN OF REORGANIZATION OF OLD FENM INC. AND OLD FEPC LLC

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re	:	Chapter 11
	:	
	:	
OLD FENM INC., <i>et al.</i> ,	:	Jointly Administered
	:	Case No. 13-12569 (KJC)
Debtors.	:	
<hr/>		
OLD FEPC LLC	:	Case No. 13-12570 (KJC)
<hr/>		
<u>FIRST AMENDED</u> JOINT CHAPTER 11	:	Mark D. Collins (DE 2981)
PLAN OF REORGANIZATION OF	:	John H. Knight (DE 3848)
OLD FENM INC. AND OLD FEPC LLC	:	RICHARDS, LAYTON & FINGER, P.A.
	:	One Rodney Square
	:	920 North King Street
	:	Wilmington, Delaware 19801
	:	Telephone: (302) 651-7700
	:	Facsimile: (302) 651-7701
	:	
	:	-and-
	:	
	:	Paul D. Leake
	:	Lisa Laukitis
	:	JONES DAY
	:	222 East 41st Street
	:	New York, New York 10017
	:	Telephone: (212) 326-3939
	:	Facsimile: (212) 755-7306
	:	
	:	
	:	ATTORNEYS FOR DEBTORS

~~April 21~~ May 29, 2014

NYI-4578820v5
RLF1 10355140v.1
NYI-4589937v2
RLF1 10355140v.1

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TABLE OF EXHIBITS¹

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Exhibit IV	Reorganized Debtors' Directors and Officers

¹ To the extent certain exhibits are not included herein, such exhibits to this joint plan will be filed with the Bankruptcy Court no later than 14 days prior to the Confirmation Hearing. The exhibits will be available on the Document Website once they are filed. The Debtors reserve the right to modify, amend, supplement, restate or withdraw the exhibits after they are filed and shall promptly make such changes available on the Document Website.

INTRODUCTION²

Debtors Old FENM Inc. (f/k/a Fresh & Easy Neighborhood Market Inc.) and Old FEPC LLC (f/k/a Fresh & Easy Property Company LLC) (collectively, the "Debtors") propose the following plan (the "Plan") for the reorganization of the Debtors and the resolution of the outstanding Claims against and equity interests in the Debtors. The Debtors are proponents of the Plan within the meaning of section 1129 of the Bankruptcy Code, 11 U.S.C. § 1129. Reference is made to the Debtors' Disclosure Statement (as such term is defined below) for a discussion of the Debtors' history, businesses, assets, and other pertinent information, and for a summary and analysis of the Plan. There also are other agreements and documents, which are or will be filed with the United States Bankruptcy Court for the District of Delaware, that are referenced in the Plan or the Disclosure Statement and that will be available for review.

This Plan effectuates a global settlement of claims with the Debtors' ultimate parent, Tesco Plc. Pursuant to the settlement, Tesco has agreed to subordinate recoveries on over \$581 million in claims against the Debtors and to contribute assets from Old FEPC LLC to Old FENM Inc. so that all other Allowed Claims against the Debtors can be paid in full in cash, and the Plan provides for the general release of all claims by the Debtors and their creditors against Tesco and its representatives and affiliates.

ARTICLE I DEFINED TERMS, RULES OF INTERPRETATION AND COMPUTATION OF TIME

A. Defined Terms

As used in the Plan, capitalized terms have the meanings set forth below. Any term that is not otherwise defined herein, but that is used in the Bankruptcy Code or the Bankruptcy Rules (as each term is defined below), shall have the meaning given to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable.

1. "Administrative Claim" means a Claim for costs and expenses of administration allowed under sections 503(b), 503(c), 507(a) or 507(b) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred after the Petition Date of preserving the respective Estates and operating the businesses of the Debtors (such as wages, salaries, commissions for services and payments for inventories, leased equipment and premises); (b) compensation for legal, financial advisory, accounting and other services and reimbursement of expenses awarded or allowed under sections 330(a) or 331 of the Bankruptcy Code, including Professional Fee Claims; (c) Claims, pursuant to section 503(b)(9) of the Bankruptcy Code, for the value of goods received by the Debtors in the 20 days immediately prior to the Petition Date and sold to the Debtors in the ordinary course of the Debtors' businesses; (d) all fees and charges

² Capitalized terms used but not defined in this Introduction shall have the meaning ascribed to such term in Article I of this Plan.

assessed against the Estates under chapter 123 of title 28, United States Code, 28 U.S.C. §§ 1911-1930; and (e) Cure Amount Claims.

2. "Administrative/Priority Claims Reserve" means a segregated account created by the Reorganized Debtors on the Effective Date with available Cash and Cash investments at such time in an amount equal to 125% percent of the Debtors' best estimate, after consultation with the Creditors' Committee as of the Effective Date of the sum of the projected aggregate amount of unpaid Allowed Secured Claims, Allowed Administrative Claims, Allowed Priority Tax Claims and Allowed Priority Claims, as such reserve may be supplemented by the Reorganized Debtors from time to time.

3. "Affiliate" means an "affiliate" as defined in section 101(2) of the Bankruptcy Code.

4. "Affiliate Causes of Action" means any Causes of Action that a Debtor has against any of its Affiliates.

5. "Allowed Claim" means:

a. a Claim that (i) has been listed by a particular Debtor on its Schedules as other than disputed, contingent or unliquidated and (ii) is not a Disputed Claim;

b. a Claim (i) for which a proof of Claim or request for payment of Administrative Claim (or similar request) has been Filed by the applicable Bar Date or otherwise has been deemed timely Filed under applicable law and (ii) that is not a Disputed Claim; or

c. a Claim that is allowed: (i) in any Stipulation of Amount and Nature of Claim executed by or on behalf of (a) the applicable Debtor and Claim holder, or, if entered into on or after the Effective Date, (b) the applicable Reorganized Debtor and such Claim holder; (ii) in any contract, instrument or other agreement entered into in connection with the Plan and, if prior to the Effective Date, approved by the Bankruptcy Court; (iii) to the extent provided in section 502 of the Bankruptcy Code, pursuant to a Final Order; or (iv) pursuant to the terms of the Plan.

6. "Allowed . . . Claim" means an Allowed Claim in the particular Class or category specified. Any reference herein to a particular Allowed Claim includes both the secured and unsecured portions of such Claim.

7. "Appropriate Court" means, for a particular Claim, the Bankruptcy Court or, if the Bankruptcy Court does not have competent jurisdiction over the validity, nature or amount of such Claim, as applicable, such other court having the necessary competent jurisdiction.

8. "Bankruptcy Case" means: (a) when used with reference to a particular Debtor, the chapter 11 case pending for that Debtor in the Bankruptcy Court; and (b) when used without reference to a particular Debtor, the chapter 11 cases pending for the Debtors in the Bankruptcy Court.

9. "Bankruptcy Code" means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as now in effect or hereafter amended, applicable to these Bankruptcy Cases.

10. "Bankruptcy Court" means the United States District Court having jurisdiction over the Bankruptcy Cases and, to the extent of any reference made pursuant to 28 U.S.C. § 157, the bankruptcy unit of such District Court.

11. "Bankruptcy Rules" means, collectively, the Federal Rules of Bankruptcy Procedure and the local rules of the Bankruptcy Court, as now in effect or hereafter amended, applicable to these Bankruptcy Cases.

12. "Bar Date" means the applicable bar date by which a proof of Claim or request for payment of Administrative Claim must be or must have been Filed, as established by an order of the Bankruptcy Court, including the Bar Date Order and the Confirmation Order.

13. "Bar Date Order" means the Order (I) Establishing Bar Dates for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof (Docket No. 428), entered by the Bankruptcy Court on December 11, 2013.

14. "Business Day" means any day, other than a Saturday, Sunday or "legal holiday" (as defined in Bankruptcy Rule 9006(a)).

15. "California Class Action" means the "Actions" as defined in the Class Action Settlement Motion.

16. "Cash" means legal tender of the United States of America and equivalents thereof.

17. "Cash Investment Yield" means the net yield earned by a Disbursing Agent from the investment of Cash, if any, held in the Administrative/Priority Claims Reserve pending distribution pursuant to the Plan. Any such investment will be in a manner consistent with the provisions of the Plan. Net yield means the cash yield net of any investment and other expenses and taxes payable thereon.

18. "Causes of Action" means a Claim, obligation, suit, judgment, damage, demand, debt right, cause of action or liability, arising on, prior to or after the Petition Date, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising in law, equity or otherwise, that is based in whole or in part on any act, event, injury, omission, transaction, agreement, employment, exposure or other occurrence in any way relating to any Debtor, the Bankruptcy Cases or the Plan.

19. "CCMF Claims Reserve" means a segregated bank account funded by the Reorganized Debtors on the Effective Date with \$250,000 in Cash to be held for the payment of Creditors' Committee Member Fee Claims expressly authorized to be paid by a Final Order, whether under the Plan or otherwise, with any funds determined not to be needed for such purposes to be released to the Reorganized Debtors.

20. "Chapter 5 Claims" means all of the Estates' claims, causes of action and rights of action arising or that may be asserted under chapter 5 of the Bankruptcy Code, whether or not asserted by the Debtors in the Bankruptcy Cases.

21. "Claim" means a "claim," as defined in section 101(5) of the Bankruptcy Code, against any Debtor.

22. "Claims Objection Bar Date" means, for all Claims, other than Administrative Claims, 30 days after the Effective Date.

23. "Class" means a class of Claims or Interests, as described in Article II.

24. "Class Action Settlement Motion" means the Joint Motion Seeking to (I) Approve a Settlement, (II) Certify a Class of California Wage and Hour Claimants for Settlement Purposes Only, (III) Appoint Class Counsel and Class Representatives, (IV) Preliminarily Approve the Settlement Agreement, (V) Approve the Form and Manner of Notice to Class Members of the Class Certification and Settlement, (VI) Schedule a Fairness Hearing to Consider Final Approval of the Settlement, (VII) Finally Approve the Settlement After the Fairness Hearing, and (VIII) Grant Related Relief (Docket No. 611).

25. "Collateral" means any property or interest in property, whether tangible, intangible or otherwise, pledged by a Debtor to a creditor as security for a Secured Claim.

26. "Confirmation" means the entry of the Confirmation Order on the docket of the Bankruptcy Court.

27. "Confirmation Date" means the date on which the Bankruptcy Court enters the Confirmation Order on its docket, within the meaning of Bankruptcy Rules 5003 and 9021.

28. "Confirmation Hearing" means the hearing held by the Bankruptcy Court on confirmation of the Plan, as such hearing may be continued from time to time.

29. "Confirmation Order" means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code and providing for, *inter alia*, approval of the Tesco Settlement as provided in the Plan.

30. "Creditors' Committee" means the statutory official committee of unsecured creditors of the Debtors appointed by the United States Trustee in the Bankruptcy Cases pursuant to section 1102 of the Bankruptcy Code, as such committee may be reconstituted from time to time.

31. "Creditors' Committee Member Fees" means the reasonable and documented fees and expenses of professionals employed by members of the Creditors' Committee relating solely to their service in such capacity.

32. "Creditors' Committee Member Fee Claims" means reasonable and documented requests for reimbursement of Creditors' Committee Member Fees in an aggregate amount not to

exceed \$250,000, the payment of which, whether pursuant to the Plan or otherwise, is expressly authorized by Final Order.

33. "Cure Amount Claim" means a Claim based upon a Debtor's monetary defaults under an Executory Contract or Unexpired Lease at the time such contract or lease is assumed by that Debtor under section 365 of the Bankruptcy Code. Each Allowed Cure Amount Claim shall constitute an Administrative Claim.

34. "Debtor Released Parties" means, collectively and individually, the Debtors and their present or former directors, officers, employees, members, managers, agents, attorneys, representatives, professionals and advisors, acting in such capacity.

35. "Debtors" means, collectively, the above-captioned debtors and debtors in possession specifically identified on the cover page to this Plan.

36. "Designation Rights Sale" means the sale to Alamo Group, LLC of the sole and exclusive right to designate whether and to whom certain of the Debtors' leases would be assumed and assigned, which sale closed on December 31, 2013.

37. "Designation Rights Sale Order" means the Order (I) Approving the Sale of Designation Rights with Respect to Certain of the Debtors' Leases Free and Clear of Liens, Claims, Encumbrances and Other Interests, (II) Establishing Assumption and Assignment Procedures and (III) Granting Certain Related Relief (Docket No. 447), entered by the Bankruptcy Court on December 19, 2013.

38. "Disbursing Agent" means the Reorganized Debtors in their capacities as disbursing agent pursuant to Section VI.A, or any Third Party Disbursing Agent (acting at the direction of the Reorganized Debtors).

39. "Disclosure Statement" means the disclosure statement (including all exhibits and schedules thereto or referenced therein) that relates to the Plan and has been prepared and distributed by the Debtors, as plan proponents, as approved by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code, as the same may be amended, modified or supplemented.

40. "Disputed Claim" means:

a. if no proof of Claim or request for payment of Administrative Claim has been Filed by the applicable Bar Date or has otherwise been deemed timely Filed under applicable law, a Claim that, at the time of the Effective Date, is (i) listed on a Debtor's Schedules as disputed, contingent or unliquidated or (ii) a Claim that is not listed on a Debtor's Schedules;

b. if a proof of Claim or request for payment of Administrative Claim has been Filed by the applicable Bar Date or has otherwise been deemed timely Filed under applicable law, a Claim for which an objection, complaint or request for estimation has been Filed by the Debtors or, after the Effective Date, the Reorganized Debtors, as applicable, or, prior to the Confirmation Date, any other party in interest, by the Claims Objection Bar Date, and such objection has not been withdrawn or denied in its entirety by a Final Order; or

c. a Claim for which a proof of Claim or request for payment of Administrative Claim is required to be Filed under the Plan and no such proof of Claim or request for payment of Administrative Claim is timely Filed.

41. "Document Website" means the internet site address <http://cases.primeclerk.com/FreshAndEasy>, at which all of the exhibits and schedules to the Plan and the Disclosure Statement shall be available, without charge, to any party in interest and the public.

42. "Effective Date" means a day designated by the Debtors that is a Business Day as soon as practicable after, but, unless otherwise ordered by the Bankruptcy Court, in no event more 15 Business Days after, the date on which all conditions to the effectiveness of the Plan set forth in Section VIII.B have been met or waived in accordance with Section VIII.C.

43. "Entity" means an individual, corporation, partnership, limited liability company, association, joint stock company, joint venture, estate, trust, unincorporated organization or government or any political subdivision thereof, or other person or entity.

44. "Estate" means, as to each Debtor, the estate created for that Debtor in its Bankruptcy Case pursuant to section 541 of the Bankruptcy Code.

45. "Exculpated Parties" means, collectively and individually, the Debtors, any Disbursing Agent (solely in such capacity), the Creditors' Committee and its members (solely in their capacity as such), the Tesco Entities and the Representatives of each of the foregoing.

46. "Executory Contract or Unexpired Lease" means a prepetition contract or lease to which a Debtor is a party that is subject to assumption, assumption and assignment or rejection under section 365 of the Bankruptcy Code and includes any modifications, amendments, addenda or supplements thereto or restatements thereof.

47. "Exhibit" means an exhibit to the Plan as identified on the Table of Exhibits, as the same may be amended, modified or supplemented.

48. "Federal Judgment Rate" means the rate of interest set forth in 28 U.S.C. § 1961(a).

49. "File," "Filed" or "Filing" means file, filed or filing with the Bankruptcy Court or its authorized designee in the Bankruptcy Cases.

50. "Final Order" means an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction, as entered on the docket in any Bankruptcy Case or the docket of any other court of competent jurisdiction, that has not been reversed, stayed, modified or amended, and as to which the time to appeal or seek certiorari or move for a new trial, reargument or rehearing has expired, and no appeal or petition for certiorari or other proceedings for a new trial, reargument or rehearing has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been timely filed has been withdrawn or resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought

or the new trial, reargument or rehearing shall have been denied or resulted in no modification of such order.

51. "General Unsecured Claim" means any Claim that is unpaid as of the Effective Date that is not a Secured Claim, Administrative Claim, Priority Claim, Priority Tax Claim, Cure Amount Claim, Tesco Claim or Interdebtor Claim.

52. "General Unsecured Claims Trust Account" means a segregated account created by the Reorganized Debtors on the Effective Date which shall at all times contain Cash and Cash investments in an amount that is not, at any time, less than the aggregate unpaid amount of all General Unsecured Claims that have been Allowed or are Disputed Claims with respect to which any objection has not yet been resolved, held in trust for the benefit of holders of Allowed Class 3 Claims subject to Section IV.C.15 of the Plan.

53. "Going Concern Purchaser" means YFE Holdings, Inc., a Delaware corporation.

54. "Going Concern Sale" means the sale approved pursuant to the Going Concern Sale Order.

55. "Going Concern Sale Agreement" means that certain Asset Purchase Agreement, by and among the Going Concern Purchaser and the Debtors, dated as of September 10, 2013 (as it has been or may be amended or modified).

56. "Going Concern Sale Order" means the Order (I) Approving the Sale of a Substantial Portion of the Debtors' Assets Free and Clear of All Non-Assumed Liens, Claims, Encumbrances and Interests, (II) Approving the Assumption of Certain Executory Contracts and Unexpired Leases, and (III) Granting Related Relief (Docket No. 378), entered by the Bankruptcy Court on November 22, 2013.

57. "Insured Claim" means that portion of any Claim arising from an incident or occurrence alleged to have occurred prior to the Effective Date that is covered under an insurance policy applicable to the Debtors or their businesses.

58. "Interdebtor Claim" means any Claim held by one Debtor against the other Debtor.

59. "Interest" means the rights and interests of the holders of the common stock, equity or membership interest of any Debtor, any other instruments evidencing an ownership interest in a Debtor and the rights of any Entity to purchase or demand the issuance of any of the foregoing, including: (a) redemption, conversion, exchange, voting, participation and dividend rights (including any rights in respect of accrued and unpaid dividends); (b) liquidation preferences; and (c) stock options and warrants.

60. "Liens" means any mortgage, pledge, deed of trust, assessment, security interest, lease, lien, adverse Claim, levy, charge or other encumbrance of any kind, including any "lien" as defined in section 101(37) of the Bankruptcy Code, or a conditional sale contract, title retention contract or other contract to give any of the foregoing.

61. "Miscellaneous Asset Sales" means the sales of assets that were undertaken in accordance with the Miscellaneous Asset Sales Procedures Order.

62. "Miscellaneous Asset Sales Procedures Order" means the Order Establishing Procedures for Miscellaneous Asset Sales (Docket No. 394), entered by the Bankruptcy Court on November 26, 2013.

63. "NewCo Equity" means the Debtors' warrant to purchase shares of the common stock of the Going Concern Purchaser as described in the Going Concern Sale Agreement.

64. "Old FENM Inc. New Securities" means the authorized common stock or membership interests for Reorganized Old FENM Inc. to be issued on the Effective Date to a Tesco Entity designated by Tesco in accordance with Section III.B.4 of this Plan.

65. "Old FEPC LLC New Securities" means the authorized common stock or membership interests for Reorganized Old FEPC LLC to be issued on the Effective Date to a Tesco Entity designated by Tesco in accordance with Section III.B.4 of this Plan.

66. "Ordinary Course Professionals Order" means the Order Authorizing the Retention and Payment of Legal Professionals Utilized by the Debtors in the Ordinary Course of Business (Docket No. 169), entered by the Bankruptcy Court on October 23, 2013.

67. "Other Sales" means the sale(s) of any of the Debtors' remaining assets free and clear of all liens and encumbrances in accordance with the provisions of this Plan.

68. "Petition Date" means September 30, 2013, the date on which the Debtors Filed their petitions for relief commencing their Bankruptcy Cases.

69. "Plan" means this joint plan of the Debtors, to the extent applicable to either Debtor, and all Exhibits attached hereto or referenced herein, as the same may be amended, modified or supplemented.

70. "Post-Effective Date Committee" means the Creditors' Committee as reconstituted as of the Effective Date to include those holders of Allowed Claims in Class 3 identified on a notice that the Creditors' Committee shall file with the Bankruptcy Court no later than 14 days prior to the Confirmation Hearing, which shall operate pursuant to and in accordance with Section XI.A of the Plan, as such committee may be reconstituted with up to three holders of Allowed Class 3 Claims from time to time.

71. "Post-Effective Date Committee Fees" means the reasonable and documented fees and expenses of professionals retained by the Post-Effective Date Committee, which shall be paid by the Reorganized Debtors as a post-Effective Date obligation, in an aggregate amount not to exceed \$25,000.

72. "Post-Petition Interest Amount" means, with respect to an Allowed General Unsecured Claim, simple interest thereon from the Petition Date to the Effective Date at a rate per annum equal to the Federal Judgment Rate.

73. "Priority Claim" means an unsecured Claim that is entitled to priority in payment pursuant to section 507(a) of the Bankruptcy Code that is not an Administrative Claim or a Priority Tax Claim.

74. "Priority Tax Claim" means a Claim that is entitled to priority in payment pursuant to section 507(a)(8) of the Bankruptcy Code.

75. "Professional" means any professional employed in the Bankruptcy Cases pursuant to sections 327, 328 or 1103 of the Bankruptcy Code or any professional or other Entity seeking compensation or reimbursement of expenses from the Debtors in connection with the Bankruptcy Cases pursuant to section 503(b)(4) of the Bankruptcy Code.

76. "Professional Fee Claim" means a Claim against one or more of the Debtors under sections 328, 330(a), 331, 503 or 1103 of the Bankruptcy Code for compensation of a Professional or other Entity for services rendered or expenses incurred in the Bankruptcy Cases.

77. "Professional Fee Order" means the Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals (Docket No. 170), entered by the Bankruptcy Court on October 23, 2013.

78. "Real Property Assets Sale" means the sale of certain parcels of real estate owned by the Debtors in Arizona, California and Nevada and certain related assets to EM-80 UAV Darkco LLC, which sale closed on February 20, 2014.

79. "Real Property Asset Sale Order" means the Order (I) Approving the Sale of Certain of the Debtors' Assets Free and Clear of All Non-Assumed Liens, Claims, Encumbrances and Interests, (II) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (III) Granting Related Relief (Docket No. 448), entered by the Bankruptcy Court on December 19, 2013.

80. "Released Parties" means, individually and collectively, (i) the Debtor Released Parties, (ii) the Tesco Released Parties and (iii) the Creditors' Committee and its members, and each of the present or former directors, officers, employees, members, subsidiaries, Affiliates, managers, agents, attorneys, representatives, professionals and advisors of the Creditors' Committee and its members, in each case acting in such capacity.

81. "Reorganized Debtors" means, collectively, Reorganized Old FENM Inc. and Reorganized Old FEPC LLC.

82. "Reorganized Old FENM Inc." means Old FENM Inc. as of and following the Effective Date

83. "Reorganized Old FEPC LLC" means Old FEPC LLC as of and following the Effective Date

84. "Reorganized Debtors' Assets" means all assets of the Debtors as of the Effective Date, including, without limitation, the Debtors' interest, as set forth in this Plan, in the Administrative/Priority Claims Reserve, the General Unsecured Claims Trust Account and the

CCMF Claims Reserve, the NewCo Equity, the benefits attributable to any net operating losses of the Debtors accrued prior to the Petition Date, the Retained Causes of Action and all documents and information in the possession of, and all privileges controlled by, the Debtors.

85. "Reorganized Debtor Cash" means, at any time the amount of Cash and Cash investments determined by the Debtors to be necessary to adequately capitalize and fund the ongoing operations of the Reorganized Debtors.

86. "Reorganized Debtors' Claims Reconciliation Expenses" means any and all reasonable fees, costs and expenses incurred by the Reorganized Debtors on or after the Effective Date in connection with reconciliation, objection to, administration and payment of Secured Claims, Administrative Claims, Priority Tax Claims and Priority Claims.

87. "Reorganized Debtors' Organizational Documents" means the amended and restated certificates of incorporation, articles of organization, limited liability company agreements, partnership agreements, by-laws or other organizational documents, as appropriate, of each of the Reorganized Debtors. The forms of the Reorganized Debtors' Organizational Documents in substantially the form to be implemented on the Effective Date are attached hereto as Exhibit III.

88. "Representatives" means, with respect to any Entity: successor, predecessor, officer, director, partner, employee, agent, attorney, advisor, investment banker, financial advisor, accountant or other professional of such Entity, and committee of which such Entity is a member, in each case in such capacity, serving on or after the Petition Date.

89. "Retained Causes of Action" means all Causes of Action of the Debtors, including, without limitation, the Causes of Action arising as a result of any order issued by the Bankruptcy Court; other than (a) any Claims or Causes of Action released pursuant to this Plan, (b) any Chapter 5 Claims or (c) any Affiliate Causes of Action.

90. "Sale Orders" means the Going Concern Sale Order, the Real Property Asset Sale Order, the Designation Rights Sale Order, the Stockton Sale Order and the Miscellaneous Asset Sales Procedures Order.

91. "Sales" means the Going Concern Sale, the Real Property Assets Sale, the Designation Rights Sale, the Stockton Sale and any Miscellaneous Asset Sales that close prior to the Effective Date.

92. "Schedules" means the schedules of assets and liabilities and the statements of financial affairs Filed by the Debtors, as required by section 521 of the Bankruptcy Code, as the same may have been or may be amended, modified or supplemented.

93. "Secondary Liability Claim" means a Claim that arises from a Debtor being liable as a guarantor of, or otherwise being jointly, severally or secondarily liable for, any contractual, tort, guaranty or other obligation of another Debtor, including any Claim based on: (a) vicarious liability; (b) liabilities arising out of piercing the corporate veil, alter ego liability or similar legal theories; (c) guaranties of collection, payments or performance; (d) indemnity bonds, obligations to indemnify or obligations to hold harmless; (e) performance bonds; (f) contingent liabilities

arising out of contractual obligations or out of undertakings (including any assignment or transfer) with respect to leases, operating agreements or other similar obligations made or given by a Debtor or relating to the obligations or performance of another Debtor; (g) several liability of a member of a consolidated (or equivalent) group of corporations for Taxes of other members of the group or of the entire group; or (h) any other joint or several liability, including Claims for indemnification or contribution, that any Debtor may have in respect of any obligation that is the basis of a Claim.

94. "Secured Claim" means a Claim that is secured by a Lien on property in which an Estate has an interest or that is subject to setoff under section 553 of the Bankruptcy Code, to the extent of the value of the Claim holder's interest in such Estate's interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to sections 506(a) and, if applicable, 1129(b) of the Bankruptcy Code.

95. "Securities Act" means the Securities Act of 1933, as amended.

96. "Stipulation of Amount and Nature of Claim" means (a) prior to the Effective Date, a stipulation or other agreement between the applicable Debtor and a holder of a Claim, or an agreed order of the Bankruptcy Court, establishing the Allowed amount and nature of a Claim or (b) after the Effective Date, (i) a stipulation or other agreement between the applicable Reorganized Debtor and a holder of a Secured Claim, Administrative Claim, Priority Tax Claim, Priority Claim or General Unsecured Claim or (ii) an agreed order of the Bankruptcy Court, establishing the Allowed amount and nature of a Claim.

97. "Stockton Sale" means the sale of the Debtors' inactive distribution center in Stockton, California to US Real Estate Limited Partnership, which sale closed on March 20, 2014.

98. "Stockton Sale Order" means the Order (I) Approving the Sale of Certain of the Debtors' Assets Free and Clear of All Non-Assumed Liens, Claims, Encumbrances and Interests, (II) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (III) Granting Related Relief (Docket No. 558), entered by the Bankruptcy Court on February 19, 2014.

99. "Surplus Cash" means, any Cash or Cash investments held by, or in the custody and control of, the Reorganized Debtors, other than the Reorganized Debtor Cash, the Administrative/Priority Claims Reserve, the General Unsecured Claims Trust Account and the CCMF Claims Reserve.

100. "Tax" means: (a) any net income, alternative or add-on minimum, gross income, gross receipts, sales, use, ad valorem, value added, transfer, franchise, profits, license, property, environmental or other tax, assessment or charge of any kind whatsoever (together in each instance with any interest, penalty, addition to tax or additional amount) imposed by any federal, state or local taxing authority; or (b) any liability for payment of any amounts of the foregoing types as a result of being a member of an affiliated, consolidated, combined or unitary group, or being a party to any agreement or arrangement whereby liability for payment of any such amounts is determined by reference to the liability of any other Entity.

101. "Tax Refund" means any refund on account of any Taxes paid by the Debtors at any time prior to the Effective Date.

102. "Tax Sharing Agreement" means that certain Tax Sharing Agreement, dated August 25, 2010, by and between Tesco and Old FENM Inc.

103. "Tesco" means Tesco PLC.

104. "Tesco Claims" means the aggregate of all the Claims that Tesco Entities possess against the Debtors, net of the obligations owed by Tesco to the Debtors under the Tax Sharing Agreement. In the aggregate, the Tesco Claims shall not exceed the amount allowed in Section III.B.4 of this Plan.

105. "Tesco Entities" means Tesco and its Affiliates, other than the Debtors.

106. "Tesco Released Parties" means collectively and individually, the Tesco Entities and their present or former directors, officers, employees, members, subsidiaries, Affiliates, managers, agents, attorneys, representatives, professionals and advisors, in each case acting in such capacity.

107. "Tesco Settlement" means the settlement among the Debtors and Tesco.

108. "Tesco Settlement Distribution" means (a) all of the Old FENM Inc. New Securities and the Old FEPC LLC New Securities and (b) the Surplus Cash.

109. "Third Party Disbursing Agent" means an Entity designated by the Reorganized Debtors to act as a Disbursing Agent pursuant to Section VI.A of this Plan.

110. "United States Trustee" means the Office of the United States Trustee for the District of Delaware.

B. Rules of Interpretation and Computation of Time

1. Rules of Interpretation

For purposes of the Plan, unless otherwise provided herein: (i) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, shall include both the singular and the plural; (ii) unless otherwise provided in the Plan, any reference in the Plan to a contract, instrument, release or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions; (iii) any reference in the Plan to an existing document or Exhibit Filed or to be Filed means such document or Exhibit, as it may have been or may be amended, modified or supplemented pursuant to the Plan or Confirmation Order; (iv) any reference to an Entity as a holder of a Claim or Interest includes that Entity's successors, assigns and Affiliates; (v) all references in the Plan to Sections, Articles and Exhibits are references to Sections, Articles and Exhibits of or to the Plan, unless otherwise specified; (vi) the words "herein," "hereunder" and "hereto" refer to the Plan in its entirety rather than to a particular portion of the Plan; (vii) captions and headings to Articles and Sections are inserted for

convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (viii) subject to the provisions of any contract, certificates of incorporation, bylaws, similar constituent documents, instrument, release or other agreement or document entered into or delivered in connection with the Plan, the rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, federal law, including the Bankruptcy Code and the Bankruptcy Rules; and (ix) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply.

2. Computation of Time

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

ARTICLE II CLASSES OF CLAIMS AND INTERESTS

All Claims and Interests, except Administrative Claims and Priority Tax Claims, are placed in the following Classes. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims, as described in Section III.A, have not been classified and thus are excluded from the following Classes. A Claim or Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any remainder of the Claim or Interest qualifies within the description of such other Classes.

- 1. Class 1 (Secured Claims):** Secured Claims against either of the Debtors.
- 2. Class 2 (Priority Claims):** Unsecured Claims against either of the Debtors that are entitled to priority under section 507(a) of the Bankruptcy Code, other than Administrative Claims and Priority Tax Claims.
- 3. Class 3 (General Unsecured Claims):** General Unsecured Claims against either of the Debtors.
- 4. Class 4 (Tesco Claims):** All Claims of any Tesco Entities against either of the Debtors.
- 5. Class 5 (Interests):** Interests outstanding with respect to either Debtor.

ARTICLE III TREATMENT OF CLAIMS AND INTERESTS

A. Unclassified Claims

1. Payment of Administrative Claims

a. Administrative Claims in General

Except as specified in this Section III.A.1, and subject to the Bar Date provisions herein, unless the holder of an Administrative Claim agrees to less favorable treatment, or unless an order of the Bankruptcy Court provides otherwise, each holder of an Allowed Administrative Claim shall receive Cash equal to the amount of such Allowed Administrative Claim, payable by the Reorganized Debtors from the Administrative/Priority Claims Reserve, in full satisfaction of its Administrative Claim either (i) as soon as reasonably practicable after the Effective Date or (ii) if the Administrative Claim is not Allowed as of the Effective Date, within 30 days after the date on which such Administrative Claim becomes an Allowed Administrative Claim; *provided, however,* that Allowed Administrative Claims with respect to liabilities incurred by the Debtors in the ordinary course of business prior to the Effective Date may be paid as directed by the Reorganized Debtors in the ordinary course of business in accordance with the terms and conditions of any agreements relating thereto.

b. Statutory Fees and Reporting

Prior to the Effective Date, all fees due and payable pursuant to section 1930 of title 28 of the United States Code will be paid by the Debtors. On or after the Effective Date, Administrative Claims for fees payable pursuant to 28 U.S.C. § 1930 shall be paid in Cash equal to the amount of such Administrative Claims. All fees payable pursuant to 28 U.S.C. § 1930 after the Effective Date shall be paid by the Reorganized Debtors from the Administrative/Priority Claims Reserve until the earlier of the conversion or dismissal of the applicable Bankruptcy Case under section 1112 of the Bankruptcy Code, or the closing of the Bankruptcy Cases pursuant to section 350(a) of the Bankruptcy Code. After the Effective Date, the Debtors will file with the Bankruptcy Court quarterly reports in a form reasonably acceptable to the Office of the United States Trustee until the earliest of each Debtor's case being closed, dismissed or converted to a case under chapter 7 of the Bankruptcy Code.

c. Bar Dates for Administrative Claims

i. General Bar Date Provisions

Except as otherwise provided in an order of the Bankruptcy Court and excluding Professional Fee Claims, unless previously Filed, requests for payment of Administrative Claims must be Filed and served on the Reorganized Debtors and Tesco pursuant to the procedures specified in the Confirmation Order and the notice of occurrence of the Effective Date, no later than 30 days after the Effective Date. Holders of such Administrative Claims that are required to File and serve a request for payment of such Administrative Claims and that do not File and serve such a request by the applicable Bar Date shall be forever barred from asserting such Administrative Claims against the Debtors, the Reorganized Debtors or their respective property,

and such Administrative Claims shall be deemed discharged as of the Effective Date. Objections to such requests must be Filed and served on the requesting party no later than 90 days after the Effective Date.

ii. Bar Date for Professional Fee Claims

Professionals or other Entities asserting a Professional Fee Claim for services rendered before the Effective Date must, unless previously Filed, File and serve on the Reorganized Debtors, Tesco and such other Entities who are designated by the Bankruptcy Rules, the Professional Fee Order, the Confirmation Order or other order of the Bankruptcy Court an application for final allowance of such Professional Fee Claim no later than 45 days after the Effective Date; provided, *however*, that any Professional who may receive compensation or reimbursement of expenses pursuant to the Ordinary Course Professionals Order may continue to receive such compensation and reimbursement of expenses for services rendered before the Effective Date pursuant to the Ordinary Course Professionals Order without further Bankruptcy Court review or approval (except as provided in the Ordinary Course Professionals Order). Objections to any Professional Fee Claim must be Filed and served on the Reorganized Debtors, Tesco and the requesting party by the later of (A) 60 days after the Effective Date, (B) 20 days after the Filing of the applicable request for payment of the Professional Fee Claim or (C) such other period of limitation as may be specifically fixed by a Final Order for objecting to such Professional Fee Claims. To the extent necessary, the Confirmation Order shall amend and supersede any previously entered order of the Bankruptcy Court regarding the payment of Professional Fee Claims.

2. Payment of Priority Tax Claims

Unless the holder of an Allowed Priority Tax Claim agrees to less favorable treatment, each holder of an Allowed Priority Tax Claim will receive, payable by the Reorganized Debtors from the Administrative/Priority Claims Reserve, in full satisfaction of its Priority Tax Claim, Cash in an amount equal to such Priority Tax Claim (i) as soon as reasonably practicable after the Effective Date or (ii) if the Priority Tax Claim is not Allowed as of the Effective Date, no later than 30 days after the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim.

3. Payment of Creditors' Committee Member Fee Claims

Subject to Section XI.B of this Plan, as soon as reasonably practicable following the later of the Effective Date and the date on which the Debtors receive an appropriately documented request for payment of a Creditors' Committee Member Fee Claim, each holder of a Creditors' Committee Member Fee Claim shall receive from the CCMF Claims Reserve, Cash equal to the lesser of (i) the amount of such Creditors' Committee Member Fee Claim or (ii) a pro rata share of \$250,000. In no event shall the Reorganized Debtors be required to pay more than \$250,000 in the aggregate on account of all Creditors' Committee Member Fee Claims. Documentation of Creditors' Committee Member Fee Claims shall include the amount of eligible professional fees and expenses incurred by the Committee member as well as hours billed by each individual professional for whom reimbursement of fees is sought and reasonable documentation of expenses. To be eligible for payment, a request for payment of a Creditors'

Committee Member Fee Claim containing documentation evidencing such Claim must be received by the Reorganized Debtors within 30 days after the Effective Date.

B. Classified Claims and Interests

1. Class 1 Claims (Secured Claims) are unimpaired. Unless the holder of an Allowed Secured Claim agrees to less favorable treatment, each holder of an Allowed Secured Claim in Class 1 shall receive Cash equal to the amount of such Allowed Secured Claim, payable by the Reorganized Debtors from the Administrative/Priority Claims Reserve, in full satisfaction of its Secured Claim either (i) as soon as reasonably practicable after the Effective Date or (ii) if the Secured Claim is not Allowed as of the Effective Date, 30 days after the date on which such Secured Claim becomes an Allowed Secured Claim. Each holder of a Secured Claim is deemed to have accepted the Plan.

2. Class 2 Claims (Priority Claims) are unimpaired. Unless the holder of an Allowed Priority Claim agrees to less favorable treatment, each holder of an Allowed Priority Claim in Class 2 shall receive Cash equal to the amount of such Allowed Priority Claim, payable by the Reorganized Debtors from the Administrative/Priority Claims Reserve, in full satisfaction of its Priority Claim either (i) as soon as reasonably practicable after the Effective Date or (ii) if the Priority Claim is not Allowed as of the Effective Date, 30 days after the date on which such Priority Claim becomes an Allowed Priority Claim. Each holder of a Priority Claim is deemed to have accepted the Plan.

3. Class 3 Claims (General Unsecured Claims) are unimpaired. Unless the holder of an Allowed General Unsecured Claim agrees to less favorable treatment, each holder of an Allowed General Unsecured Claims in Class 3 shall receive Cash, payable by the Reorganized Debtors from the General Unsecured Claims Trust Account, in an amount equal to the amount of such Allowed General Unsecured Claim plus the Post-Petition Interest Amount in respect of such Allowed General Unsecured Claim, in full satisfaction of its General Unsecured Claim either (i) within 30 days after the Effective Date or (ii) if the General Unsecured Claim is not Allowed as of the Effective Date, 30 days after the date on which such General Unsecured Claim becomes an Allowed General Unsecured Claim. Each holder of a General Unsecured Claim is deemed to have accepted the Plan.

4. Class 4 Claim (Tesco Claim) is unimpaired. Tesco shall receive on account of the Tesco Claim, and in full satisfaction thereof, the Tesco Settlement Distribution, which shall consist of (i) distribution on the Effective Date of the Old FENM Inc. New Securities and the Old FEPC LLC New Securities and (ii) any Surplus Cash available for distribution from time to time. Tesco is deemed to have accepted the Plan.

5. Class 5 (Interests) are impaired. No property will be distributed to or retained by the holders of Allowed Interests in Class 5, and such Interests will be canceled on the Effective Date. Each holder of an Interest is deemed to reject the Plan.

C. Prepetition Interdebtor Claims

No property shall be distributed to or retained on account of an Interdebtor Claim that arose before the Petition Date.

D. Maximum Recovery for Secondary Liability Claims

Holders of Allowed Secondary Liability Claims against any Debtor shall be entitled to only one distribution in respect of the liabilities related to such Allowed Secondary Liability Claim and shall be deemed satisfied in full by the distributions on account of the related underlying Allowed Claim. Notwithstanding the existence of a Secondary Liability Claim, no multiple recoveries on account of any Allowed Claim against any Debtor shall be provided or permitted.

**ARTICLE IV
MEANS FOR IMPLEMENTATION OF THE PLAN**

A. Tesco Settlement and Compromise

Pursuant to Bankruptcy Rule 9019 and in consideration for, among other things, the release of any and all Claims and Causes of Action against the Tesco Released Parties by the Debtors and holders of Claims that are unimpaired by the Plan, Tesco shall take the actions and be entitled to the consideration and described immediately below.

1. Tesco Actions

a. Contribution of Distributions on Account of Tesco Claims to Class 3 Claimants

The Tesco Entities consent to the use of any Cash that would otherwise be distributable to Tesco on account of the Tesco Claims to make the payments required in respect of the Allowed Claims of Class 3 Claimants in accordance with the provisions of the Plan.

b. Substantive Consolidation of the Debtors for Plan Purposes

The Tesco entities consent to the substantive consolidation of the Estates for Plan purposes, as set forth in more detail in Section IV.C.1 of the Plan.

c. Reduction of Tesco Claims for Plan Distribution Purposes

In exchange for the consideration the Tesco Entities will receive under the Plan, including the releases set forth in Section IV.D of the Plan, for Plan distribution purposes only, Tesco shall agree to waive any recoveries on account of the Tesco Claim other than the Tesco Settlement Distribution, and to be treated as unimpaired under the Plan.

d. Release of Claims and Rights of Setoff

In exchange for the consideration the Tesco Entities will receive under the Plan, including the releases set forth in Section IV.D of the Plan, Tesco, on its own behalf and on behalf of each of the Tesco Entities, shall fully and forever release any Claims or Causes of Action the Tesco Entities may have against the Debtor Released Parties, each Class 3 Claimant, and the Representatives of the foregoing arising out of or relating to the Debtors, except to the extent necessary to enforce the terms of this Plan and the settlement embodied herein.

Further, Tesco shall fully and forever release any Claims or Causes of Action it may have against any of the Debtors; and any rights of setoff the Tesco Entities may have against any of the Debtors, including, without limitation, with respect to the Tax Sharing Agreement, shall be deemed to have been exercised and fully satisfied.

2. Tesco Consideration

a. Tesco Settlement Distribution

Except as expressly provided in the Plan, as of the Effective Date, all obligations of the Tesco Entities to the Debtors, including, without limitation, under the Tax Sharing Agreement, shall, except as otherwise provided in the Plan, be deemed satisfied and extinguished. On account of the Tesco Claims and in exchange for Tesco's agreement to the terms of the Tesco Settlement, Tesco Entities as designated by Tesco shall receive the Tesco Settlement Distribution. The equity portion of the Tesco Settlement Distribution shall be distributed to the designated Tesco Entities on the Effective Date and the Cash portion of the Tesco Settlement Distribution shall be distributed to the designated Tesco Entities from time to time in accordance with Section VI of the Plan.

b. Release of Tesco Released Parties

The Debtors, all holders of Secured Claims, Administrative Claims, Priority Tax Claims, Priority Claims and General Unsecured Claims shall forever release, waive and discharge all Claims and Causes of Action in any way relating to any Debtor, the Reorganization Cases or the Plan that such Entity has, had or may have against any Tesco Released Party.

Further, the Debtors shall fully and forever release any rights of setoff they may have against any Tesco Entity.

c. Waiver and Release of Chapter 5 Claims

Without limiting the generality of the releases contained in section IV.A.1 and Section IV.A.2 of the Plan, pursuant to such releases, all Chapter 5 Claims and related state-law causes of action that could have been asserted are settled and compromised and shall be deemed forever waived and released and may not be asserted by the Debtors or any other parties.

B. General Settlement and Compromise

Pursuant to Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided under the Plan, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims or controversies relating to the rights that a holder of a Claim or Interest may have with respect to any Claim or Interest or any distribution to be made pursuant to the Plan on account of any Claim or Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, as of the Effective Date, of the compromise or settlement of all such Claims or controversies and the Bankruptcy Court's finding that such compromise or settlement is in the best interests of the Debtors, the Reorganized Debtors, the Estates and their respective property and Claim and Interest holders and is fair, equitable and reasonable.

C. The Reorganized Debtors

1. Substantive Consolidation for Plan Purposes Only

In furtherance of the settlements contained in the Plan, and given that the Plan provides for the unimpairment of all Allowed Claims under the Plan, the Debtors are proposing, solely for administrative convenience, to consolidate their respective Estates for certain purposes. Entry of the Confirmation Order shall constitute the approval, pursuant to section 105(a) of the Bankruptcy Code, effective as of the Effective Date, of the limited substantive consolidation of the Bankruptcy Cases solely for Plan purposes. On and after the Effective Date: (i) all assets to be used for distributions to creditors of either Debtor will be treated as though they were merged into the Reorganized Debtors; (ii) any obligation of either Debtor and all guarantees thereof executed by, or joint liability of, either Debtor will be treated as one obligation of the Reorganized Debtors for distribution purposes pursuant to the Plan; and (iii) any Claims filed against either Debtor shall be treated as a single Claim filed against the Reorganized Debtors, for distribution purposes pursuant to the Plan.

Notwithstanding the foregoing, the substantive consolidation of the Debtors for Plan purposes shall not affect or impair (i) any rights, Claims or remedies or defenses of the separate Debtors as of the Petition Date; (ii) the legal and organizational structure of either Debtor; and (iii) claims under or with respect to any insurance policy of either Debtor (or any right to the proceeds of any such policy or policies).

Except as otherwise provided in the Plan, each Debtor shall, as a Reorganized Debtor, continue to exist after the Effective Date as a separate legal entity, each with all the powers of a corporation under the laws of its respective jurisdiction of organization and without prejudice to any right to alter or terminate such existence (whether by merger or otherwise) under applicable state law.

2. Continued Corporate Existence

Except as otherwise provided in the Plan, each Debtor shall, as a Reorganized Debtor, continue to exist after the Effective Date as a separate legal entity, each with all the powers of corporation or limited liability company, as applicable, under the laws of its respective jurisdiction of organization and without prejudice to any right to alter or terminate such existence (whether by merger or otherwise) under applicable state law.

3. Cancellation of Interests and Issuance of New Securities

Notwithstanding the substantive consolidation referenced in the foregoing Section, on the Effective Date: (a) all of the issued and outstanding Interests in the Debtors shall be cancelled; and (b)(i) Reorganized Old FENM Inc. shall issue the Old FENM Inc. New Securities to a Tesco Entity designated by Tesco and (ii) Reorganized Old FEPC LLC shall issue the Old FEPC LLC New Securities to a Tesco Entity designated by Tesco.

4. Section 1145 Exemption

To the maximum extent provided by section 1145 of the Bankruptcy Code and applicable non-bankruptcy law, the issuance under the Plan of the Old FENM Inc. New Securities and the Old FEPC LLC New Securities will each be exempt from registration under the Securities Act.

5. Revesting of Reorganized Debtors' Assets in the Reorganized Debtors

Except as otherwise expressly provided in this Plan, pursuant to sections 1123(a)(5), 1123(b)(3) and 1141(b) of the Bankruptcy Code, all of the Reorganized Debtors' Assets shall automatically be retained and revested in the relevant Reorganized Debtor or its respective successor, free and clear of all Claims, Liens, contractually-imposed restrictions, charges, encumbrances and Interests of creditors and equity security holders on the Effective Date, with all such Claims, Liens, contractually-imposed restrictions, charges, encumbrances and Interests being extinguished except as otherwise provided in this Plan. As of the Effective Date, the Reorganized Debtors may acquire and dispose of property and settle and compromise Secured Claims, Administrative Claims, Priority Tax Claims, Priority Claims and General Unsecured Claims without supervision of the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules, other than those restrictions expressly imposed by this Plan and the Confirmation Order. Without limiting the foregoing, the Reorganized Debtors may pay the charges they incur for professional fees, disbursements, expenses or related support services after the Effective Date without any application to the Bankruptcy Court.

6. Termination of All Employee and Workers' Compensation Benefits

All existing employee benefit plans and workers' compensation benefits not previously expired or terminated by the Debtors will be terminated on or before the Effective Date.

7. Compliance with Section 1114 of the Bankruptcy Code

The Debtors have no obligations to pay retiree benefits (as defined in section 1114(a) of the Bankruptcy Code).

8. Corporate Action

Pursuant to section 1142 of the Bankruptcy Code, section 303 of the Delaware General Corporation Law and any comparable provisions of the business corporation law of any other state, the entry of the Confirmation Order shall constitute authorization for the Debtors, the Reorganized Debtors and the Tesco Entities to take or cause to be taken all corporate and limited liability company actions necessary or appropriate to consummate and implement the provisions of this Plan prior to, on and after the Effective Date, and all such actions taken or caused to be taken shall be deemed to have been authorized and approved by the Bankruptcy Court, including, without limitation: (a) the cancellation of all of the issued and outstanding Interests in Old FENM Inc. and Old FEPC LLC; (b) the issuance of the Old FENM Inc. New Securities and the Old FEPC LLC New Securities; (c) the election of directors, managers and officers of the Reorganized Debtors in accordance with this Plan; (d) the adoption of the Reorganized Debtors'

Organizational Documents, which shall supersede the prior certificates of incorporation, articles of organization, limited liability company agreements, by-laws or other organizational documents, as appropriate, of each of the Reorganized Debtors; and (e) actions as are necessary or appropriate to close or dismiss any or all of the Bankruptcy Cases. All such actions shall be deemed to have occurred and shall be in effect pursuant to applicable non-bankruptcy law and the Bankruptcy Code, without any requirement of further action by the members, stockholders, directors or managers of the Debtors, the Reorganized Debtors or any of their Affiliates. On the Effective Date, the appropriate officers, directors, members and managers of the Debtors and the Reorganized Debtors are authorized and directed to execute and deliver the agreements, documents and instruments contemplated by this Plan in the name of and on behalf of the Debtors and/or the Reorganized Debtors, as applicable.

9. Reorganized Debtors' Organizational Documents

The Reorganized Debtors' Organizational Documents shall contain such provisions as are required to satisfy the provisions of this Plan and the Bankruptcy Code and shall include, among other things: (a) authorization for Reorganized Old FENM Inc. to issue the Old FENM Inc. New Securities and Reorganized Old FEPC LLC to issue the Old FEPC LLC New Securities; (b) a prohibition on the issuance of nonvoting equity securities to the extent, and only to the extent, required by section 1123(a)(6) of the Bankruptcy Code; and (c) other provisions ordinary and customary in such situations so long as they are not inconsistent with this Section IV.C.9.

10. Post-Effective Date Management

On the Effective Date, the management, control and operation of each Reorganized Debtor shall become the general responsibility of its respective board of directors, board members and/or officers in accordance with applicable non-bankruptcy law. Except as provided on Exhibit IV, on the Effective Date, each member of the existing board of directors and each officer of each of the Debtors shall be deemed to have resigned. Subject to any requirement of Bankruptcy Court approval pursuant to section 1129(a)(5) of the Bankruptcy Code, the initial directors and officers of each Reorganized Debtor shall be comprised of the individuals set forth on Exhibit IV. Each such director and officer will serve from the Effective Date until his or her successor is duly elected or appointed and qualified or until his or her earlier death, resignation or removal in accordance with the terms of the certificate of incorporation and bylaws (or comparable constituent documents) of the respective Reorganized Debtor and state law.

11. New Employment, Indemnification and Other Related Agreements

As of the Effective Date, the Reorganized Debtors shall have authority, as determined to enter into new employment, retirement, welfare, severance, indemnification and other agreements for the Reorganized Debtors' directors, officers and employees.

12. Approval of Agreements

Classes of Claims under this Plan shall be deemed to have approved by the holders of Claims of all other agreements and transactions contemplated by this Plan. Entry of

the Confirmation Order shall constitute approval of such agreements and transactions and the Confirmation Order shall so provide.

13. Change of Control

The transactions contemplated under this Plan shall not be deemed or considered a change of control that would result in any acceleration, vesting or similar change of control rights under any agreements or arrangements triggered by the consummation of the Plan.

14. Establishment of the Administrative/Priority Claims Reserve

Under the Plan, on the Effective Date, the Debtors or Reorganized Debtors will create and fund the Administrative/Priority Claims Reserve with Cash in the initial amount equal to 125% of the Debtors' best estimate, after consultation with the Creditors' Committee, as of the Effective Date of the sum of the projected aggregate amount of all Allowed Secured Claims, Allowed Administrative Claims, Allowed Priority Tax Claims and Allowed Priority Claims. The Reorganized Debtors will deposit additional amounts in the Administrative/Priority Claims Reserve to the extent required for the payment of Allowed Claims payable under the Plan from the Administrative/Priority Claims Reserve. The bank account holding the Administrative/Priority Claims Reserve will be established and maintained by Reorganized Old FENM Inc. in a federally insured domestic bank in the name of Reorganized Old FENM Inc.

Upon payment in full of all Allowed Claims required to be paid from the Administrative/Priority Claims reserve, any remaining funds in the Administrative/Priority Claims Reserve shall be released to Reorganized Old FENM Inc.

15. Establishment of the General Unsecured Claims Trust Account

Under this Plan, on the Effective Date, the Debtors or the Reorganized Debtors will create and fund the General Unsecured Claims Trust Account with Cash or Cash investments in an amount equal to the sum of the aggregate amount at such time of all unpaid General Unsecured Claims that have been Allowed or are Disputed Claims with respect to which any objection has not yet been resolved. The General Unsecured Claims Trust Account will be established and maintained by Reorganized Old FENM Inc. in a federally insured domestic bank as a trust account for the benefit of the holders of Allowed Claims in Class 3, subject to the release of amounts in the General Unsecured Claims Trust Account to the Reorganized Debtors as provided below. Except as expressly provided in the Plan, the General Unsecured Claims Trust Account shall not be exposed to claims against the Reorganized Debtors or utilized to pay any post-Effective Date expenses of the Reorganized Debtors.

If, at any time, the amount of Cash in the General Unsecured Claims Trust Account is greater than the amount of unpaid General Unsecured Claims that have been Allowed or are Disputed Claims with respect to which any objection has not yet been resolved, such excess Cash shall be released to Reorganized Old FENM Inc. Reorganized Old FENM Inc. will provide three (3) Business Days advance notice to the Post-Effective Date Committee prior to any release of funds to Reorganized Old FENM Inc. from the General Unsecured Claims Trust Account.

16. Settlement of Claims by the Reorganized Debtors

Except as otherwise provided in the Plan, on and after the Effective Date, the Reorganized Debtors may in their sole discretion compromise, settle and pay any Secured Claim, Administrative Claim, Priority Tax Claim, Priority Claim or General Unsecured Claim without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

17. Sale of Assets by the Reorganized Debtors

The Reorganized Debtors may conduct any Other Sales or liquidations of their non-Cash assets on any terms it deems reasonable, without further order of the Bankruptcy Court; *provided*, however, that any Other Sales in excess of \$250,000 shall require the prior written approval of the Tesco. The Reorganized Debtors, in their discretion, may seek the approval of the Bankruptcy Court of any Other Sales.

D. Release of Claims; Limitation of Liability

1. General Releases by the Debtors

Without limiting any applicable provisions of, or releases contained in, the Sale Orders or the Plan, as of the Effective Date, the Debtors, on behalf of themselves, their Estates and their respective successors, assigns and any and all Entities who may purport to claim by, through, for or because of them, shall be deemed to forever release, waive and discharge all Causes of Action, including but not limited to any Chapter 5 Claims and Affiliate Causes of Action, arising prior to the Effective Date that such Entity has, had or may have against each of the Released Parties; *provided, however*, that the releases provided in this paragraph shall have no effect on: (a) the liability of any Entity that would otherwise result from the failure to perform or pay any obligation or liability under the Plan, or any contract, instrument, release or other agreement or document to be assumed, entered into or delivered in connection with the Plan; or (b) the liability of any Entity that would otherwise result from any act, omission or occurrence since the Petition Date to the extent that such act, omission or occurrence is determined in a Final Order to have constituted gross negligence or willful misconduct.

2. Third Party Releases

Without limiting any other applicable provisions of, or releases contained in, the Plan or the Bankruptcy Code, as of the Effective Date, in consideration for the consideration provided to the Debtors by the Tesco Settlement and the payment in full and unimpairment of Allowed Secured Claims, Administrative Claims, Priority Tax Claims, Priority Claims and General Unsecured Claims, each holder of a Secured Claim, Administrative Claim, Priority Tax Claim, Priority Claim, and General Unsecured Claim shall be deemed to forever release, waive and discharge all Claims and Causes of Action in any way relating to any Debtor, the Reorganization Cases or the Plan that such Entity has, had or may have against any of the Released Parties (which release shall be in addition to the injunction of Claims provided herein and under the Confirmation Order and the

Bankruptcy Code), excluding only any obligations of any of the Released Parties under the Plan.

3. Injunction Related to Releases

As further provided in Section IX.A, the Confirmation Order will enjoin permanently the commencement or prosecution by any Entity, whether directly, derivatively or otherwise, of any Claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action or liabilities released pursuant to the Plan, including, without limitation, the Chapter 5 Claims released pursuant to Section IV.A.2.c of the Plan.

4. Limitation of Liability

a. From and after the Effective Date, the Exculpated Parties shall neither have nor incur any liability to any Entity or be subject to any Cause of Action for any act taken or omitted to be taken in connection with, related to or arising out of the Bankruptcy Cases, the Debtors, their Estates or the consideration, formulation, preparation, dissemination, implementation, Confirmation, consummation or administration of the Plan, the Disclosure Statement, the Sales, any Other Sales or any transaction proposed in connection with the Bankruptcy Cases or any contract, instrument, release or other agreement or document created or entered into, or any other act taken or omitted to be taken, in connection therewith; *provided, however*, that the foregoing provisions of this Section IV.D.4 shall have no effect on: (i) the liability of any Entity that would otherwise result from the failure to perform or pay any obligation or liability under the Plan or any contract, instrument, release or other agreement or document to be assumed, entered into or delivered in connection with the Plan, or (ii) the liability of any Entity that would otherwise result from any such act, omission or occurrence to the extent that such act, omission or occurrence is determined in a Final Order to have constituted gross negligence or willful misconduct.

b. Notwithstanding any other provision of this Plan, no holder of a Claim or Interest, no other party in interest, none of their respective agents, employees, representatives, financial advisors, attorneys or affiliates, and no successors or assigns of the foregoing, shall have any right of action against any Exculpated Party for any act or omission in connection with, relating to or arising out of the Bankruptcy Cases, the Debtors, their Estates or the consideration, formulation, preparation, dissemination, implementation, Confirmation, consummation or administration of the Plan, the Disclosure Statement, the Sales, any Other Sales or any transaction or document created or entered into, or any other act taken or omitted to be taken, in connection therewith, except for: (i) the liability of any Entity that would otherwise result from the failure to perform or pay any obligation or liability under the Plan or any contract, instrument, release or other agreement or document to be assumed, entered into or delivered in connection with the Plan, or (b) the liability of any Entity that would otherwise result from any such act, omission or occurrence to the extent that such act, omission or occurrence is determined in a Final Order to have constituted gross negligence or willful misconduct.

E. Special Provisions Regarding Insured Claims

Distributions under the Plan to each holder of an Allowed Insured Claim shall be in accordance with the treatment provided under the Plan for the Class in which such Allowed Insured Claim is classified, but solely to the extent that such Allowed Insured Claim is not satisfied from proceeds payable to the holder thereof under any pertinent insurance policies and applicable law. Nothing in this Section IV.E shall constitute a waiver of any Claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action or liabilities that any Entity may hold against any other Entity, including the Debtors' insurance carriers.

F. Release of Liens

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document to be assumed, entered into or delivered in connection with the Plan, on the Effective Date and consistent with the treatment provided for Claims and Interests in Article III, all Liens on, in or against the Reorganized Debtors' Assets shall be fully released and discharged, and all of the right, title and interest of any holder of Liens, including any rights to any Collateral thereunder, shall revert to the Reorganized Debtors and their successors and assigns. As of the Effective Date, the Reorganized Debtors shall be authorized but not required to execute and file Form UCC-3 Termination Statements or such other forms as may be necessary or appropriate to implement the provisions of this Section IV.F.

G. Effectuating Documents; Further Transactions; Exemption from Certain Transfer Taxes

The Reorganized Debtors and Tesco or their designees, as applicable, shall be authorized to (i) execute, deliver, file or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of the Plan and (ii) certify or attest to any of the foregoing actions. Pursuant to section 1146(a) of the Bankruptcy Code, the following will not be subject to any stamp tax, real estate transfer tax, sales and use tax or similar tax: (a) any transaction undertaken to implement the terms of this Plan; (b) the transfer to the Reorganized Debtors of any Reorganized Debtors' Assets at any time; or (c) the making or delivery of any deed or other instrument of transfer under, in furtherance of or in connection with the Plan, including any merger agreements or agreements of consolidation, disposition, liquidation or dissolution executed in connection with any transaction pursuant to the Plan.

ARTICLE V
TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Executory Contracts and Unexpired Leases to Be Rejected

On the Effective Date, except for the Executory Contracts or Unexpired Leases listed on Exhibit II, if any, and except to the extent that a Debtor either previously has assumed, assumed and assigned or rejected an Executory Contract or Unexpired Lease by an order of the Bankruptcy Court, including, but not limited to, the Sale Orders, or has filed a motion to assume or assume and assign an Executory Contract or Unexpired Lease prior to the Effective Date, each Executory Contract and Unexpired Lease entered into by a Debtor prior to the Petition Date that

has not previously expired or terminated pursuant to its own terms will be rejected pursuant to section 365 of the Bankruptcy Code. Each such contract and lease will be rejected only to the extent that any such contract or lease constitutes an Executory Contract or Unexpired Lease. The Confirmation Order will constitute an order of the Bankruptcy Court approving such rejections, pursuant to section 365 of the Bankruptcy Code, as of the Effective Date. Notwithstanding the foregoing, any contract of insurance not listed on Exhibit II in favor of the Debtors, or rights of the Estates thereunder or to the proceeds thereto, shall be preserved from and after the Effective Date.

B. Bar Date for Rejection Claims

Notwithstanding anything in the Bar Date Order to the contrary, if the rejection of an Executory Contract or Unexpired Lease pursuant to the Plan gives rise to a Claim by the other party or parties to such contract or lease, such Claim will be forever barred and will not be enforceable against the Reorganized Debtors unless a proof of Claim is Filed and served on the Reorganized Debtors, pursuant to the procedures specified in the Confirmation Order and the notice of the Effective Date or another order of the Bankruptcy Court, no later than 30 days after the Effective Date. [Objections to Claims relating to the rejection of an Executory Contract or Unexpired Lease occurring pursuant to Section V.A must be Filed and served on the requesting party no later than 60 days after the Effective Date.](#)

C. Executory Contracts and Unexpired Leases to Be Assumed

1. Assumption Generally

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into in connection with the Plan, on the Effective Date, pursuant to section 365 of the Bankruptcy Code, the Debtors shall assume each of the respective Executory Contracts and Unexpired Leases, if any, listed on Exhibit II and assign such Executory Contracts and Unexpired Leases to the Reorganized Debtors; *provided, however*, that the Debtors reserve the right, at any time prior to the Effective Date, to amend Exhibit II to: (a) delete any Executory Contract or Unexpired Lease listed therein, thus providing for its rejection pursuant hereto; or (b) add any Executory Contract or Unexpired Lease to Exhibit II, thus providing for its assumption and assignment pursuant to this Section V.C.1. The Debtors shall provide notice of any amendments to Exhibit II to the parties to the Executory Contracts or Unexpired Leases affected thereby and to the parties on the then-applicable service list in the Bankruptcy Cases. Nothing herein shall constitute an admission by the Debtors that any contract or lease is an Executory Contract or Unexpired Lease or that a Debtor has any liability thereunder.

2. Assumptions of Executory Contracts and Unexpired Leases

Each Executory Contract or Unexpired Lease assumed and assigned under Section V.C.1 shall include any modifications, amendments, supplements or restatements to such contract or lease.

3. Assignments Related to Post-Effective Date Transactions

As of the Effective Date, any Executory Contract or Unexpired Lease assumed under Section V.C.1 shall be deemed assigned to the Reorganized Debtors, pursuant to section 365 of the Bankruptcy Code.

4. Approval of Assumptions and Assumption Procedures

The Confirmation Order shall constitute an order of the Bankruptcy Court approving the assumptions and assignments described in Section V.C, pursuant to section 365 of the Bankruptcy Code, as of the Effective Date. The procedures for assumption of an Executory Contract or Unexpired Lease are as follows:

a. After the entry of the Confirmation Order, the Reorganized Debtors shall, subject to the prior written consent of Tesco or one of its designees, serve upon each party to an Executory Contract or Unexpired Lease being assumed and assigned pursuant to the Plan notice of: (i) the contract or lease being assumed and assigned; (ii) the Cure Amount Claim, if any, that the Reorganized Debtors believe they would be obligated to pay in connection with such assumption; and (iii) the procedures for such party to object to the assumption and assignment of the applicable contract or lease or the amount of the proposed Cure Amount Claim.

b. Any Entity wishing to object to (i) the proposed assumption and assignment of an Executory Contract or Unexpired Lease under the Plan or (ii) the proposed amount of the related Cure Amount Claim must File and serve on counsel to the Reorganized Debtors and Tesco a written objection setting forth the basis for the objection within 20 days of service of the notice described in Section V.C.4.a.

c. If no objection to the proposed assumption and assignment or Cure Amount Claim is properly Filed and timely served prior to the objection deadline with respect to an Executory Contract or Unexpired Lease: (i) the proposed assumption and assignment of the Executory Contract or Unexpired Lease shall be approved in accordance with the Plan and the Confirmation Order, effective as of the Effective Date, without further action of the Bankruptcy Court; and (ii) the Cure Amount Claim identified by the Reorganized Debtors in the notice shall be fixed and shall be paid in accordance with the Plan on or after the Effective Date, without further action of the Bankruptcy Court, to the appropriate contract or lease party identified on the notice.

d. If an objection to the proposed assumption and assignment or Cure Amount Claim is properly Filed and served prior to the objection deadline with respect to an Executory Contract or Unexpired Lease, the Reorganized Debtors, in consultation with Tesco or one of its designees, and the objecting party may resolve such objection by stipulation, without further action of the Bankruptcy Court.

e. If an objection to the proposed assumption or Cure Amount Claim is properly Filed and timely served prior to the objection deadline with respect to an Executory Contract or Unexpired Lease and the parties are unable to resolve such objection: (i) the Reorganized Debtors or Tesco may File a reply to such objection no later than 30 days after the Filing and service of such objection and ask the Bankruptcy Court to schedule a hearing on the

particular objection and the related reply at an appropriate time; or (ii) the Reorganized Debtors, subject to the prior written consent of Tesco or one of its designees, may designate the Executory Contract or Unexpired Lease underlying such objection for rejection pursuant to Section V.A and amend Exhibit II accordingly.

D. Payments Related to the Assumption of Executory Contracts and Unexpired Leases

To the extent that such Claims constitute monetary defaults, the Cure Amount Claims associated with each Executory Contract and Unexpired Lease to be assumed pursuant to the Plan shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code: (1) by payment of the Cure Amount Claim in Cash on or after the Effective Date from the Administrative/Priority Claims Reserve; or (2) on such other terms as are agreed to by the parties to such Executory Contract or Unexpired Lease. Pursuant to section 365(b)(2)(D) of the Bankruptcy Code, no Cure Amount Claim shall be allowed for a penalty rate or other form of default rate of interest. If there is an unresolved dispute regarding: (1) the amount of any Cure Amount Claim; (2) the ability of the Reorganized Debtors or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the contract or lease to be assumed; or (3) any other matter pertaining to assumption of such contract or lease, the payment of any Cure Amount Claim required by section 365(b)(1) of the Bankruptcy Code shall be made following the resolution of such dispute by the parties or the entry of a Final Order resolving the dispute and approving the assumption.

**ARTICLE VI
PROVISIONS GOVERNING DISTRIBUTIONS**

A. Method of Distributions to Holders of Allowed Claims

The Reorganized Debtors, acting as Disbursing Agent, or such Third Party Disbursing Agent as the Reorganized Debtors may employ in their sole discretion, shall make all Distributions required under the Plan. The Reorganized Debtors acting as Disbursing Agent shall serve without bond, and may employ or contract with other Entities to assist in or make the Distributions required by the Plan. At the sole discretion of the Reorganized Debtors, any Third Party Disbursing Agent selected by the Reorganized Debtors will serve with bond or similar financial instrument, and any Third Party Disbursing Agent may employ or contract with other Entities to assist in or make the distributions required by the Plan.

B. Compensation and Reimbursement for Services Related to Distributions and Cash Investment Yield

1. Compensation and Reimbursement

Any Third Party Disbursing Agent providing services related to distributions pursuant to the Plan will receive from the Reorganized Debtors, without further Bankruptcy Court approval, reasonable compensation for such services and reimbursement of reasonable, necessary and documented out-of-pocket expenses incurred in connection with such services. These payments will be made on terms agreed to with the Reorganized Debtors, and will not be deducted from distributions (including any distributions of Cash Investment Yield) to be made

pursuant to the Plan to holders of Allowed Claims receiving distributions from a Third Party Disbursing Agent.

2. Investment of Cash Related to Distributions

To assist in making distributions under the Plan, the Administrative/Priority Claims Reserve may be held in the name of a Third Party Disbursing Agent for the benefit of holders of Allowed Claims under the Plan. The Third Party Disbursing Agent shall invest the Cash in the Administrative/Priority Claims Reserve as directed by the Reorganized Debtors; *provided, however*, that should the Reorganized Debtors, as applicable, determine, in their sole discretion, that the administrative costs associated with such investment will exceed the return on such investment, they may direct the Third Party Disbursing Agent to not invest such Cash. Distributions of Cash from accounts held by a Third Party Disbursing Agent will include the Cash Investment Yield, if any, from such investment of Cash.

C. Delivery of Distributions and Undeliverable or Unclaimed Distributions

1. Delivery of Distributions to Holders of Allowed Claims

Distributions to holders of Allowed Claims will be made by a Disbursing Agent (a) at the addresses reflected in the applicable Debtor's Schedules if no proof of Claim has been Filed and the Disbursing Agent has not received a written notice of a change of address; (b) at the addresses set forth on the respective proofs of Claim, requests for payment of Administrative Claim or similar document Filed by holders of such Claims; or (c) at the addresses set forth in any written certification of address change delivered to the Disbursing Agent (including pursuant to a letter of transmittal delivered to the Disbursing Agent) after the date of Filing of any related proof of Claim, requests for payment of Administrative Claim or similar document.

2. Undeliverable Distributions Held by Disbursing Agent

a. Holding of Undeliverable Distributions

Subject to Section VI.C.2.b, distributions returned to the Disbursing Agent or otherwise undeliverable will remain in the custody or within the control of the Disbursing Agent.

b. Failure to Claim Undeliverable Distributions

Any holder of an Allowed Claim that does not assert a Claim pursuant to the Plan for an undeliverable distribution to be made by the Disbursing Agent within 180 days after the later of (i) the Effective Date and (ii) the last date on which a distribution was deliverable to such holder will have its Claim for such undeliverable distribution deemed satisfied, waived and released and will be forever barred from asserting any such Claim against the Debtors or the Reorganized Debtors and their respective property or the Administrative/Priority Claims Reserve, as applicable. In such cases, unclaimed distributions will be maintained in the Administrative/Priority Claims Reserve or otherwise, as applicable, for redistribution to other claimants or the Reorganized Debtors, as applicable.

D. Means of Cash Payments

Except as otherwise specified herein, Cash payments made pursuant to the Plan will be in U.S. currency by checks drawn on the Administrative/Priority Claims Reserve, the General Unsecured Claims Trust Account, the CCMF Claims Reserve or otherwise, as applicable, or, at the option of the Reorganized Debtors, by wire transfer from a domestic bank.

E. Timing and Calculation of Amounts to Be Distributed**1. Allowed Claims**

Distributions on account of Allowed Claims in Classes 1, 2, 3, and 4 shall be made at the times specified in Articles III and IV, as and when Claims are Allowed.

Each holder of an Allowed Claim will receive the full amount of the distributions that the Plan provides for Allowed Claims in the applicable Class pursuant to the terms and conditions of the Plan, subject to any setoffs or deductions set forth therein. Holders of partially Allowed General Unsecured Claims shall receive partial distributions as provided for in Section VII.C.1.b. No holder of any Claim shall be entitled to receive, and the Reorganized Debtors shall not be entitled to make, any payment in an amount greater than what is allowed under section 502 of the Bankruptcy Code.

2. Compliance with Tax Requirements; Responsibility for Taxes

a. Each Disbursing Agent will comply with all Tax withholding and reporting requirements imposed on it by any governmental unit, and all distributions pursuant to the Plan will be subject to such withholding and reporting requirements. Each Disbursing Agent will be authorized to take any actions that it determines, in its reasonable discretion, to be necessary or appropriate to comply with such withholding and reporting requirements.

b. Each Entity receiving a distribution pursuant to the Plan will be solely responsible for all Taxes owed with respect to such distribution.

F. Setoffs

Except with respect to Claims of a Debtor released pursuant to the Plan or any contract, instrument, release or other agreement or document to be assumed, entered into or delivered in connection with the Plan, a Disbursing Agent or a Third Party Disbursing Agent, as instructed by the Reorganized Debtors, pursuant to section 553 of the Bankruptcy Code or applicable nonbankruptcy law, may setoff against any Allowed Claim and the distributions to be made pursuant to the Plan on account of such Claim (before any distribution is made on account of such Claim) the Claims, rights and Causes of Action of any nature that the applicable Debtor may have held against the holder of such Allowed Claim prior to the Effective Date; *provided, however,* that neither the failure to effect a setoff nor the allowance of any Claim hereunder will constitute a waiver or release by the Reorganized Debtors, as applicable, of any Claims, rights and Causes of Action that the Reorganized Debtors (by virtue of the transfer to it of the Reorganized Debtors' Assets) may possess against such a Claim holder, which are expressly preserved and vested in the Reorganized Debtors as Reorganized Debtors' Assets.

ARTICLE VII PROCEDURES FOR RESOLVING DISPUTED CLAIMS

A. Prosecution of Objections to Claims

1. Objections to Claims

~~Any~~ Except as otherwise set forth in this Plan, any objections to Claims must be Filed on the Bankruptcy Court's docket and served on the holders of such Claims on or before the Claims Objection Bar Date. If an objection has not been Filed to a proof of Claim or a scheduled Claim by the Claims Objection Bar Date, the Claim to which the proof of Claim or scheduled Claim relates shall be treated as an Allowed Claim if such Claim has not been allowed earlier.

2. Authority to Prosecute Objections

After the Effective Date, only the Reorganized Debtors shall have the authority to File, settle, compromise, withdraw or litigate to judgment objections to Claims, including pursuant to any alternative dispute resolution or similar procedures approved by the Bankruptcy Court; *provided, however*, that the Reorganized Debtors shall not be entitled to File an objection to any Claim that has been expressly allowed by Final Order or under the Plan. The Reorganized Debtors may settle or compromise any such Claims that are Disputed Claim or any objection or controversy relating to any such Claim without approval of the Bankruptcy Court, subject to Section IV.C.16.

B. Estimation of Claims

The Debtors or the Reorganized Debtors may, in their sole and absolute discretion, determine, resolve and otherwise adjudicate Disputed Claims in the Bankruptcy Court or such other court of the Debtors' or Reorganized Debtors' choice having jurisdiction over the validity, nature or amount thereof. The Debtors or the Reorganized Debtors may at any time request that the Appropriate Court estimate any Disputed Claim pursuant to section 502(c) of the Bankruptcy Code for any reason or purpose, regardless of whether any of the Debtors or the Reorganized Debtors have previously objected to such Claim or whether the Appropriate Court has ruled on any such objection. The Appropriate Court shall retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including, without limitation, during the pendency of any appeal relating to any such objection. In the event that the Appropriate Court estimates any Disputed Claim, that estimated amount shall constitute the maximum limitation on such Claim and the Debtors or the Reorganized Debtors, as applicable, may pursue supplementary proceedings to object to the ultimate allowance of such Claim.

All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Appropriate Court. Notwithstanding section 502(j) of the Bankruptcy Code, in no event shall any holder of a Claim that has been estimated pursuant to section 502(c) of the Bankruptcy Code or otherwise be entitled to seek reconsideration of such Claim unless the holder of such Claim has filed a motion

requesting the right to seek such reconsideration on or before 20 calendar days after the date such Claim is estimated by the Appropriate Court

C. Treatment of Disputed Claims

1. Partial Distributions Pending Allowance

a. Notwithstanding any other provision in the Plan, no payments or distributions will be made on account of a Disputed Claim unless and until all objections to such Disputed Claim have been settled or withdrawn or have been determined by a Final Order, and such Disputed Claim becomes an Allowed Claim.

b. Notwithstanding Section VII.C.1.a, holders of Disputed Claims in Classes 1, 2, and 3 shall be entitled to distributions on account of the Allowed portion, if any, of such Disputed Claims pending final resolution of the disputed portion of such Claim.

2. Distributions on Account of Disputed Claims Once Allowed

Distributions on account of previously Disputed or partially Disputed Claims, shall be made in accordance with Article VI of the Plan.

D. No Amendments to Claims

On or after the Effective Date, the holder of a Claim (other than an Administrative Claim or a Professional Fee Claim) must obtain prior authorization from the Bankruptcy Court or Reorganized Debtors to file or amend a Claim. Any new or amended Claim (other than Claims filed by the deadline set forth in Section V.B herein that are related to Executory Contracts or Unexpired Leases rejected pursuant to the Plan or a Final Order of the Bankruptcy Court) filed after the Effective Date without such prior authorization will not appear on the register of claims and will be deemed disallowed in full and expunged without any action required of the Debtors or the Reorganized Debtors and without the need for any court order. Objections to any new or amended Claim must be Filed by 30 days after the date on which the Bankruptcy Court authorizes the Filing of such new or amended Claim.

**ARTICLE VIII
CONDITIONS PRECEDENT TO
CONFIRMATION AND CONSUMMATION OF THE PLAN**

A. Conditions to Confirmation

The Bankruptcy Court shall not be requested to enter the Confirmation Order, unless and until the following conditions have been satisfied or duly waived pursuant to Section VIII.C:

1. The Confirmation Order shall be in form and substance reasonably satisfactory to the Debtors and Tesco, and shall, *inter alia*, provide for approval of the Tesco Settlement as set forth in the Plan.

2. All Exhibits to the Plan are in form and substance reasonably satisfactory to the Debtors and Tesco.

B. Conditions to the Effective Date

The Effective Date shall not occur, and the Plan shall not be consummated unless and until the following conditions have been satisfied or duly waived pursuant to Section VIII.C:

1. The Bankruptcy Court shall have entered the Confirmation Order, and there shall not be a stay or injunction in effect with respect thereto.

2. Either (a) the settlement of the California Class Action set forth in the Class Action Settlement Motion has been approved by the Bankruptcy Court by Final Order and there are no conditions to the effectiveness of the settlement set forth therein, other than the occurrence of the Effective Date or (b) there is sufficient Cash and Cash investments held by the Debtors to fund the Administrative/Priority Claims Reserve, the General Unsecured Claims Trust Account, the CCMF Claims Reserve and Reorganized Debtor Cash as determined on the Effective Date.

C. Waiver of Conditions to Confirmation or the Effective Date

The conditions to Confirmation and the conditions to the Effective Date in Section VIII.A and Section VIII.B may be waived in whole or part at any time by agreement of the Debtors and Tesco without an order of the Bankruptcy Court.

D. Effect of Nonoccurrence of Conditions to the Effective Date

If each of the conditions to the Effective Date is not satisfied or duly waived in accordance with Section VIII.C, then upon motion by the Debtors or any party in interest made before the time that each of such conditions has been satisfied and upon notice to such parties in interest as the Bankruptcy Court may direct, the Confirmation Order shall be vacated by the Bankruptcy Court; *provided, however*, that, notwithstanding the Filing of such motion, the Confirmation Order may not be vacated if each of the conditions to the Effective Date is satisfied before the Bankruptcy Court enters an order granting such motion. If the Confirmation Order is vacated pursuant to this Section VIII.D: (1) the Plan shall be null and void in all respects and (2) nothing contained in the Plan shall (a) constitute a waiver or release of any Claims by or against, or any Interest in, any Debtor or (b) prejudice in any manner the rights of the Debtors or any other party in interest.

ARTICLE IX

**INJUNCTION, SUBORDINATION RIGHTS ~~and the Automatic Stay~~ AND THE
AUTOMATIC STAY**

A. Injunctions

1. Claims Enjoined

Except as provided in the Plan or the Confirmation Order, as of the Effective Date, all Entities that have held, currently hold or may hold a Claim or other debt or

liability that would be discharged upon Confirmation but for the provision of section 1141(d)(3) of the Bankruptcy Code or an Interest or other right of an equity security holder that is terminated pursuant to the terms of the Plan will be permanently enjoined from taking any of the following actions on account of any such Claims, debts, liabilities, Interests or rights: (a) commencing or continuing in any manner any action or other proceeding against the Debtors or the Reorganized Debtors, other than to enforce any right to receive a distribution under the Plan; (b) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order against the Debtors or the Reorganized Debtors other than as permitted pursuant to (a) above; (c) creating, perfecting or enforcing any Lien or encumbrance against the Debtors or the Reorganized Debtors, their respective property; (d) asserting a setoff (except as otherwise permitted under the Plan) or a right of subrogation of any kind against any debt, liability or obligation due to the Debtors or the Reorganized Debtors; and (e) commencing or continuing any action, in any manner, in any place that does not comply with or is inconsistent with the provisions of the Plan.

2. Enforcement Enjoined

Except as provided in the Plan or the Confirmation Order, as of the Effective Date, all Entities that have held, currently hold or may hold any Claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action or liabilities that are released, waived, settled or deemed satisfied pursuant to the Plan will be permanently enjoined from taking any of the following actions against any released Entity or its property on account of such Claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action or liabilities: (a) commencing or continuing in any manner any action or other proceeding; (b) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order; (c) creating, perfecting or enforcing any Lien or encumbrance; (d) asserting a setoff (except as otherwise provided in this Section IX.A.2) or a right of subrogation of any kind against any debt, liability or obligation due to any released Entity; and (e) commencing or continuing any action, in any manner, in any place that does not comply with or is inconsistent with the provisions of the Plan.

3. Consent to Injunction

By accepting distributions pursuant to the Plan, each holder of an Allowed Claim that receives a distribution under the Plan will be deemed to have specifically consented to the injunctions set forth in this Section IX.A.

B. Subordination Rights

The classification and manner of satisfying Claims and Interests under the Plan does not take into consideration subordination rights among and between holders of Claims against the Debtors, and nothing in the Plan or Confirmation Order shall affect any subordination rights among and between holders of Claims against the Debtors with respect to any distribution to be made pursuant to the Plan, whether arising under general principles of equitable subordination, contract, section 510(c) of the Bankruptcy Code or otherwise.

C. Automatic Stay

Except as provided herein or otherwise determined by order of the Bankruptcy Court, the automatic stay imposed by operation of section 362 of the Bankruptcy Code shall remain in full force and effect until the earlier of the time the Bankruptcy Cases are closed or dismissed.

**ARTICLE X
RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain such exclusive jurisdiction over the Bankruptcy Cases after the Effective Date as is legally permissible, including jurisdiction to:

1. allow, disallow, determine, liquidate, reduce, classify, re-classify, estimate or establish the priority or secured or unsecured status of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any objections to the amount, allowance, priority or classification of Claims or Interests;
2. grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan for periods ending on or before the Effective Date;
3. resolve any matters related to the assumption, assumption and assignment or rejection of any Executory Contract or Unexpired Lease to which any Debtor is a party or with respect to which any Debtor, any Reorganized Debtor may be liable and to hear, determine and, if necessary, liquidate any Claims arising therefrom, including any Cure Amount Claims;
4. ensure that distributions to holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;
5. decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters and grant or deny any applications involving any Debtor that may be pending on the Effective Date or brought thereafter;
6. enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all contracts, instruments, releases and other agreements or documents entered into or delivered in connection with the Plan, the Disclosure Statement or the Confirmation Order;
7. resolve any cases, controversies, suits or disputes that may arise in connection with the consummation, interpretation or enforcement of the Plan or any contract, instrument, release or other agreement or document that is entered into or delivered pursuant to the Plan, or any Entity's rights arising from or obligations incurred in connection with the Plan or such documents;
8. modify the Plan before or after the Effective Date pursuant to section 1127 of the Bankruptcy Code; modify the Confirmation Order or any contract, instrument, release or other

agreement or document entered into or delivered in connection with the Plan, or the Confirmation Order; or remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court order, the Plan, the Confirmation Order or any contract, instrument, release or other agreement or document entered into, delivered or created in connection with the Plan or the Confirmation Order, in such manner as may be necessary or appropriate to consummate the Plan;

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

10. enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason or in any respect modified, stayed, reversed, revoked or vacated or distributions pursuant to the Plan are enjoined or stayed;

11. determine any other matters that may arise in connection with or relate to the Plan, the Confirmation Order, or any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan or the Confirmation Order;

12. enter a final decree closing the Bankruptcy Cases;

13. determine matters concerning state, local and federal Taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code, including any Disputed Claims for Taxes and the right of the Reorganized Debtors to receive Tax Refunds under the Plan;

14. recover all assets of the Estates, wherever located;

15. enforce or clarify any orders previously entered by the Bankruptcy Court in the Bankruptcy Cases; and

16. hear any other matter not inconsistent with the Bankruptcy Code.

ARTICLE XI MISCELLANEOUS PROVISIONS

A. Post-Effective Date Committee

On the Effective Date, the Creditors' Committee shall be reconstituted as the Post-Effective Date Committee consisting of the holders of Allowed Claims in Class 3 identified on a notice that the Creditors' Committee shall file with the Bankruptcy Court no later than 14 days prior to the Confirmation Hearing. The members of the Creditors' Committee who are not members of the Post-Effective Date Committee shall be released and discharged from all duties and obligations arising from or related to their membership. The Professionals retained by the Creditors' Committee and the respective members thereof shall not be entitled to assert any Professional Fee Claims for any services rendered or expenses incurred on behalf of the Creditors' Committee after the Effective Date, except for fees for time spent and expenses incurred: (1) in connection with any applications for allowance of compensation and reimbursement of expenses pending on the Effective Date or Filed and served after the Effective

Date pursuant to Section III.A.1.c.ii; or (2) in connection with any appeal pending as of the Effective Date, including any appeal of the Confirmation Order.

The Post-Effective Date Committee's duties shall consist solely of monitoring the Reorganized Debtors' performance under the Plan and conduct of the Claims resolution process. The Reorganized Debtors shall pay the Post-Effective Date Committee Fees as post-Effective Date obligations, provided that in no event shall the Post-Effective Date Committee Fees exceed \$25,000. The Post-Effective Date Committee shall dissolve upon resolution and/or payment of all Class 3 Claims.

B. Severability of Payment of Creditors' Committee Member Fee Claims

To the extent the payment of the Creditors' Committee Member Fee Claims has not been expressly authorized by Final Order prior to the Effective Date, the Debtors shall be authorized to consummate the Plan and the funds for payment of the Creditors' Committee Member Fee Claims shall remain segregated in the CCMF Claims Reserve until such payment is expressly authorized by a Final Order, or such relief has been finally denied or the request for such an order has been withdrawn, whereupon such funds will be released to the Reorganized Debtors. To the extent there is any appeal arising out of or relating to the payment of Creditors' Committee Member Fee Claims, the prosecution and/or defense of such appeal shall be the sole and exclusive cost and responsibility of the individual members of the Creditors' Committee making such claims (and such claimants are hereby acknowledged to have standing to prosecute and/or defend such appeal) and neither the Debtors nor the Creditors' Committee shall be party to or have any obligation or responsibility (including, without limitation, with respect to fees, costs or expenses) with respect to such appeal, and the Debtors shall be authorized to proceed to consummate the Plan.

To the extent the payment of the Creditors' Committee Member Fee Claims pursuant to Section III.A.3 of this Plan is not approved without an order pursuant to section 503(b)(3)(D) of the Bankruptcy Code, the Debtors and Tesco shall consent to and file statements in support of the relief requested in one or more motions by the members of the Creditors' Committee for reimbursement of a Creditors' Committee Member Fee Claims, provided that such Creditors' Committee Member Fee Claims shall be paid only upon entry of one or more Final Orders expressly authorizing such payment. The aggregate amount of Creditors' Committee Member Fee Claims paid pursuant to this paragraph shall, under no circumstances, exceed \$250,000.

C. Modification of the Plan

Subject to the restrictions on modifications set forth in section 1127 of the Bankruptcy Code, the Debtors reserve the right, in consultation with Tesco and the Creditors' Committee, to alter, amend or modify the Plan before the Effective Date; *provided, however*, that the Debtors shall not make any material alteration, amendment or modification to the Plan without the consent of Tesco and the Creditors' Committee. Notwithstanding the foregoing, in the event the Confirmation Order is appealed by a party objecting to the treatment of Creditors' Committee Member Fee Claims under the Plan or the payment thereof, and a stay of the Confirmation Order or consummation of the Plan is obtained, the Debtors reserve the right to

amend the Plan, without the consent of any party other than Tesco, as they deem necessary (including, without limitation, by removing any or all provisions providing for the payment of Creditors' Committee Member Fee Claims, subject to the proviso below) to avoid the imposition of any such stay or delay of the Effective Date of the Plan, provided, however, that the Debtors and Tesco shall not withdraw their support of payment of the Creditors' Committee Member Fee Claims pursuant to section 503(b)(3)(D) of the Bankruptcy Code and shall create the CCMF Claims Reserve for the payment of such Claims pending entry of a Final Order resolving such Claims.

D. Revocation of the Plan

The Debtors reserve the right, in consultation with Tesco, to revoke or withdraw the Plan prior to the Effective Date. If the Debtors revoke or withdraw the Plan, or if Confirmation does not occur, then the Plan shall be null and void in all respects, and nothing contained in the Plan shall: (1) constitute a waiver or release of any Claims by or against, or any Interests in, any Debtor; (2) prejudice in any manner the rights of any Debtor, or any other party in interest; or (3) constitute an admission of any sort by any Debtor or any other party in interest.

E. 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 of such Entity.

F. Service of Certain Plan and Disclosure Statement Exhibits

With respect to any Exhibits that are not being Filed or served with copies of the Plan and the Disclosure Statement, the Debtors shall File such Exhibits and make available for review the relevant Exhibits on the Document Website (<http://cases.primeclerk.com/FreshAndEasy>).

G. Service of Documents

Any pleading, notice or other document required by the Plan or the Confirmation Order to be served on or delivered to the Debtors or the Reorganized Debtors must be sent by overnight delivery service, facsimile transmission, courier service or messenger to those parties specified in the Confirmation Order.

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Dated: ~~April 21~~May 29, 2014

Respectfully submitted,

OLD FENM INC. and OLD FEPC LLC

By: /s/ Mary Kasper
Name: Mary Kasper
Title: Vice President and Secretary

Plan Exhibit I
Retained Causes of Action

[To be filed]

Plan Exhibit II
Executory Contracts and Unexpired Leases to be Assumed

[To be filed]

Plan Exhibit III
Reorganized Debtors' Organizational Documents

[To be filed]

Plan Exhibit IV
Reorganized Debtors' Directors and Officers

[To be filed]

EXHIBIT II
CHAPTER 7 LIQUIDATION ANALYSIS

CHAPTER 7 LIQUIDATION ANALYSIS

INTRODUCTION

The following is a liquidation analysis (the “Liquidation Analysis”) for the Debtors. The Liquidation Analysis reflects the projected outcome of a hypothetical, orderly liquidation of the Debtors under chapter 7 of the Bankruptcy Code. Any estimates relating to Claims or other liabilities of the Debtors or the value of the Debtors’ assets are not an admission by the Debtors as to the actual amount or value of any such Claims, liabilities or assets.

If the Debtors’ chapter 11 cases were converted to cases under chapter 7 of the Bankruptcy Code, a chapter 7 trustee would be elected or appointed to liquidate the Debtors’ remaining assets for distribution to holders of Allowed Claims. The cash amount available for distribution to general unsecured creditors in a chapter 7 case consists of the proceeds resulting from the disposition of assets of the Debtors reduced by the amount of secured debt, costs of liquidation and the amount of Allowed Administrative Claims, Priority Claims and Priority Tax Claims.

The Liquidation Analysis assumes that, in a chapter 7 liquidation, the chapter 7 trustee will seek to liquidate the Debtors’ remaining assets, object to and resolve claims and otherwise wind down the Debtors’ bankruptcy estates over approximately one and half years following conversion, although the vast majority of activities would likely take place during the first 12 months. The period of time necessary to liquidate the entirety of the Debtors’ assets is a result of the illiquid nature of certain of those assets.

A. Assumptions

The Liquidation Analysis considers many factors and makes certain assumptions. Under the facts and circumstances of these cases, as of the date hereof, the Debtors submit that the assumptions are reasonable. These assumptions are described below.

1. General Assumptions

The Liquidation Analysis assumes that the Bankruptcy Cases are converted to cases under chapter 7 on July 15, 2014 (the “Effective Date”).

The Debtors are still in the process of reviewing and analyzing Claims. Thus, the amounts used in the Liquidation Analysis are subject to material change, and the actual amount of Allowed Claims could vary materially from the estimates utilized in the Liquidation Analysis.

2. Assets

The following are assumptions with respect to the Liquidation Analysis.

- a. **Cash:** This category reflects the Debtors’ projected cash balance as of Effective Date. This estimate does not assume any significant investment income exists.

- b. **Other Assets:** This category reflects the estimated value of the Debtors' assets other than cash as of Effective Date. This category includes cash collateral accounts and other deposits currently outstanding. The Debtors also hold certain warrants that they received in connection with the sale of substantially all of the Debtors' assets to YFE Holdings, Inc., but the value of the warrants is unknown and was not included in this Liquidation Analysis. The value of the warrants is irrelevant for purposes of this Liquidation Analysis, as the Plan provides for the payment of all general unsecured claims held by non-insiders in full and the sole insider holding claims is deemed to have voted in favor of the Plan pursuant to the Tesco Settlement.

3. Post-Effective Date Income / (Expenses)

- a. **Miscellaneous Income:** The Debtors project that the estimated proceeds from the post-Effective Date sale of remaining non-core assets, such as liquor licenses and miscellaneous equipment, will total \$271,500.
 - b. **Operating Expenses:** The estimated wind-down expenses include ongoing expenses necessary to wind down the Debtors' estates, including income taxes, consulting fees and other miscellaneous expenses. These expenses are estimated to be \$748,000.
 - c. **Professional Fees:** The Debtors estimate \$4,262,900 in professional fees, which includes estimated fees and expenses (including holdback) incurred pre-Effective Date as well as professional fees to be incurred from the Effective Date through April 2015 for the winddown of the Debtors' estates.
 - d. **Chapter 7 Trustee Fees:** The Liquidation Analysis assumes that a chapter 7 trustee would receive approximately 3 percent of the amount distributed to creditors as payment for administering the chapter 7 cases.
- 4. Administrative Claims:** The Debtors anticipate that they have paid or will pay the vast majority of administrative claims in the ordinary course of the Debtor's post-petition operations. The Debtors believe any claims filed as administrative claims have been or will be reclassified as general unsecured claims.
- 5. Priority Tax Claims:** The estimate of priority tax claims relates to the Internal Revenue Service penalty from late submission of payroll taxes on or around the Petition Date.
- 6. Secured Claims:** The Debtors estimate that no secured claims will be outstanding as of the Effective Date.
- 7. Priority Non-Tax Claim:** The Debtors anticipate that Priority Non-Tax Claims will be paid current at the Effective Date or will be *de minimis* relative to other claims with no significant impact to projected recoveries.

8. **General Unsecured Claims:** Under the Plan, Tesco has entered into a settlement pursuant to which, among other things, it has agreed to subordinate recovery on its claims to that of all other general unsecured creditors. If these cases were converted to Chapter 7, it is expected that Tesco would not enter into such a settlement.
9. **Tesco Claims:** If these cases were converted to Chapter 7, it is expected that Tesco would not enter into a settlement and would receive the same treatment as all other general unsecured creditors, thus increasing the general unsecured claims pool by approximately \$907 million.¹

B. Disclaimers and Variances

The process of estimating recoveries in a chapter 7 case is uncertain due to economic, business, litigation and other contingencies. The underlying estimates and projections utilized by the Debtors to develop the attached Liquidation Analysis have been prepared by the Debtors and have not been examined by independent accountants.

The Debtors make no representations of the accuracy of these estimates and projections or a chapter 7 trustee's ability to meet the estimates and projections as the assumptions underlying the estimates and projections are subject to significant uncertainties. Unanticipated results, positive or negative, may occur. The Liquidation Analysis is, by its nature, uncertain. Nonetheless, the Liquidation Analysis represents the Debtors' current and best estimate of the financial results from the conversion of the Bankruptcy Cases to cases under chapter 7 and the associated liquidation of assets under the circumstances described above.

¹ Tesco's net claim against the Debtors would be approximately \$581 million, which represents the aggregate of all the claims that Tesco possesses against the Debtors, net of the obligations owed by Tesco to the Debtors under their tax sharing agreement.

Exhibit II
Old FENM Inc., et. al.,
Liquidation Analysis

(\$ in 000s)

<u>Assets</u>	<u>Notes</u>	<u>Estimated Value</u>	<u>Liquidation Analysis</u>		<u>Estimated Plan Recovery %</u>
			<u>Recovery Amount</u>	<u>Recovery %</u>	
Cash	(1)	\$ 101,056.8	\$ 101,056.8	100.0%	
Other Assets	(2)	1,200.0	1,200.00	100.0%	
Gross Estimated Proceeds Available for Distribution			\$ 102,256.8		
Post-Effective Date Income / (Expenses):					
Miscellaneous Income	(3)		\$ 271.5		
Operating Expenses	(4)		(748.0)		
Professional Fees	(5)		(4,262.9)		
Chapter 7 Trustee Fees	(6)		(2,978.8)		
Net Operating Income / (Expenses)			\$ (7,718.2)		
Net Estimated Proceeds Available for Distribution			\$ 94,538.6		
Administrative Claims	(7)	-	-	N/A	N/A
Priority Tax Claims		8.0	8.0	100.0%	100.0%
Class 1 - Secured Claims	(8)	-	-	N/A	N/A
Class 2 - Priority Non-Tax Claims	(9)	-	-	N/A	N/A
Class 3 - General Unsecured Claims	(10)	39,512.0	3,945.4	10.0%	100.0%
Class 4 - Tesco Claims	(10)	907,175.4	90,585.2	10.0%	6.4% (11)
Class 5 - Interests		-	-	N/A	N/A
Total Recoveries			\$ 94,538.6		

1. Projected cash balance as of the Effective Date.

2. Includes cash collateral accounts and other deposits currently outstanding.

3. Includes estimated proceeds from the sale of remaining non-core assets, including liquor licenses and miscellaneous equipment.

4. Relates to ongoing expenses necessary to wind down the Estate, including income taxes and other miscellaneous expenses.

5. Professional Fees includes estimated fees and expenses (including holdback) incurred pre-Effective Date as well as professional fees to be incurred from the Effective Date through April 2015 for the wind down of the Estate.

6. Chapter 7 Trustee Fees are estimated in accordance with Section 326 of the Bankruptcy Code.

7. The Debtors anticipate that they have paid or will pay the vast majority of administrative claims in the ordinary course of the Debtor's post-petition operations. The Debtors believe any claims filed as administrative claims have been or will be reclassified as general unsecured claims.

8. The Debtors estimate that no Secured Claims will be outstanding as of the Effective Date.

9. The Debtors anticipate that Priority Non-Tax Claims will be paid current at the Effective Date or will be de minimis relative to other claims with no significant impact to projected recoveries.

10. Under the Plan, has entered into a settlement pursuant to which, among other things, it has agreed to subordinate recovery on its claims to that of all other general unsecured creditors. If these cases were converted to Chapter 7, it is expected that Tesco would not enter into such a settlement and would receive the same treatment as all other general unsecured creditors, thus increasing the general unsecured claims pool by approximately \$907 million.

11. Tesco has consented to receive a lower recovery than it would otherwise receive if the cases were converted to Chapter 7.