

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re

: **Chapter 11**

:

:

OLD FENM INC., et al.,

: **Jointly Administered**

: **Case No. 13-12569 (KJC)**

Debtors.

:

:

OLD FEPC LLC

: **Case No. 13-12570 (KJC)**

:

**JOINT CHAPTER 11 PLAN OF
REORGANIZATION OF
OLD FENM INC. AND OLD FEPC LLC**

:

: Mark D. Collins (DE 2981)
: John H. Knight (DE 3848)
: 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, 2014

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Exhibit II	Executory Contracts and Unexpired Leases to be Assumed
Exhibit III	Reorganized Debtors' Organizational Documents
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

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.

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.

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 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.

**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**

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, 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]