

NOTICE: This Disclosure Statement has not yet been approved by the Bankruptcy Court. It is not intended to solicit your vote for or against a plan of reorganization at this time. It is being sent to you pursuant to Rule 3017 of the Federal Rules of Bankruptcy Procedure to provide you an opportunity to participate in the process of approval of this document by the Bankruptcy Court, should you choose to so participate.  
[This notation to be removed upon Bankruptcy Court approval of this document]

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

**In re:** §  
§  
**MILLENNIUM MULTIPLE EMPLOYER** § **Case No. 10-13528**  
**WELFARE BENEFIT PLAN,** § **(Chapter 11)**  
§  
**Debtor.** §

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**DISCLOSURE STATEMENT OF MILLENNIUM MULTIPLE EMPLOYER WELFARE  
BENEFIT PLAN UNDER 11 U.S.C. § 1125 IN SUPPORT OF  
DEBTOR’S FIRST AMENDED PLAN OF REORGANIZATION**

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**DATED: March 10, 2011**

**LETTER FROM JONATHAN COCKS AND PLAN COMMITTEE SUPPORTING  
VOTE IN FAVOR OF THE DEBTOR'S LIQUIDATING PLAN**

March 10, 2011

**TO ALL CREDITORS OF MILLENNIUM MULTIPLE EMPLOYER WELFARE  
BENEFIT PLAN:**

Re: *Millennium Multiple Employer Welfare Benefit Plan*, Case No. 10-13528  
United States Bankruptcy Court, Western District of Oklahoma

The enclosed materials are being sent to you because you are, or have asserted that you are, a creditor of the Millennium Multiple Employer Welfare Benefit Plan. These materials are intended to provide you with adequate information to allow you the opportunity to vote your claim(s) to accept or reject the Plan of Liquidation we have proposed and filed in the Debtor's Chapter 11 case presently pending in the United States Bankruptcy Court for the Western District of Oklahoma (the "Bankruptcy Court").

Enclosed are copies of the following documents:

1. The Disclosure Statement under 11 U.S.C. § 1125 in Support of the Plan of Liquidation (the "Disclosure Statement").
2. The proposed Plan of Liquidation (the "Plan").
3. A Ballot for Accepting or Rejecting the Plan.
4. Ballot Instructions.
5. The Order (i) Approving Disclosure Statement in Support of Plan of Liquidation; (ii) Establishing Time for Filing Acceptances or Rejections of Plan of Liquidation; and (iii) Establishing Objection Deadlines.

The Debtor's Plan Committee urges you to please study this Disclosure Statement and the Plan carefully so you can determine the effect Plan has on any claim(s) you may have against the Debtor. **PLEASE NOTE THAT, PURSUANT TO THE ENCLOSED BANKRUPTCY COURT ORDER, YOUR BALLOT OR BALLOTS MUST BE DELIVERED TO FRANKLIN SKIERSKI LOVALL HAYWARD, LLP; ATTN: MELANIE HOLMES; 10501 N. CENTRAL EXPRESSWAY, SUITE 105, DALLAS, TEXAS 75231, AND MUST ACTUALLY BE RECEIVED, WHETHER BY MAIL, HAND DELIVERY, OR FACSIMILE, BY 4:00 P.M. CENTRAL TIME ON \_\_\_\_\_, 2011 (THE "VOTING DEADLINE").**

In order to have your vote on the Plan counted, you must submit the enclosed ballot by the Voting Deadline.

THE PLAN COMMITTEE STRONGLY BELIEVES THAT THE PLAN IS IN THE BEST INTERESTS OF ALL CREDITORS AND OTHER PARTIES IN INTEREST, AND WE URGE YOU TO **VOTE IN FAVOR OF THE PLAN.**

Our reasons for this Plan and requesting your vote in its favor are as follows:

1. While all of the Debtor's creditors are treated fairly and equitably, the Plan seeks to preserve substantially all of the Debtor's net assets for distribution to the Debtor's current Participants.
2. For those Participants who are interested in acquiring the life insurance policy owned by the Debtor that insures their life, the Plan provides a mechanism for each of them to acquire it.
3. All of the Debtor's current Participants have been placed in the same class -- Class 4 -- and receive equal treatment in this Class.
4. The Plan best preserves the Debtor's compliance with Internal Revenue Code Section 419A(f)(6). This protects, as much as possible, the Participants' and covered employers' tax position.
5. The provisions of the Plan are consistent with the terms and conditions of the Debtor's Master Plan document, which is the agreement that binds all of the Debtor's Participants.
6. Finally, the Plan is consistent with, and a prerequisite to, finalizing any settlement with the Internal Revenue Service.

**WE BELIEVE THIS PLAN TO BE FAIR, EQUITABLE AND IN THE BEST INTEREST OF THE DEBTOR'S CREDITORS. PLEASE STUDY THE ENCLOSED MATERIALS CAREFULLY AND VOTE YOUR CLAIM IN FAVOR OF THIS PLAN.**

Sincerely,

The Millennium Multiple Employer Welfare Benefit Plan Committee

By:[*Signature to be Provided Upon Approval of Disclosure Statement*]  
Jonathan Cocks, Chairman and General Manager

**FREQUENTLY ASKED QUESTIONS ABOUT CHAPTER 11, THE MILLENNIUM PLAN, VOTING AND WHAT WILL HAPPEN UPON CONFIRMATION OF THE PLAN**

To assist creditors in making the decision to vote on the Plan, the Debtor has prepared the following frequently asked questions (“FAQs”) and answers.

**THIS DISCLOSURE STATEMENT, TOGETHER WITH THE PLAN ATTACHED HERETO, SHOULD BE READ IN ITS ENTIRETY. FOR THE CONVENIENCE OF CREDITORS, THE TERMS OF THE PLAN ARE SUMMARIZED IN THIS DISCLOSURE STATEMENT, BUT ALL SUMMARIES ARE QUALIFIED IN THEIR ENTIRETY BY THE PLAN ITSELF, WHICH IS CONTROLLING IN THE EVENT OF ANY INCONSISTENCY.**

**A. FAQs about the Debtor and Chapter 11**

**1. Who is the Debtor?**

The Millennium Multiple Employer Welfare Benefit Plan (the “Debtor” or “Millennium”) is a Mississippi Trust, with its primary assets held and administrators located in Oklahoma. Its governing body is a Plan Committee, which includes three unpaid voting Participants (each of whom was designated by a Covered Employer) and a compensated non-voting Chairman and General Manager.

**2. What is or was the business of the Debtor?**

The Debtor provides medical, disability, long term care, severance and death benefits to its Participants (“Participants”), who are employees of the Covered Employers (“Covered Employers”), which are businesses that adopted Millennium for certain of their employees.

**3. How long has the Debtor Been in Chapter 11?**

The Debtor filed its voluntary petition for relief under chapter 11 of the United States Bankruptcy Code on June 9, 2010 (the “Petition Date”), in the United States Bankruptcy Court, Western District of Oklahoma.

**4. Who Makes Decisions for the Debtor?**

The Debtor has remained in possession and control of its property. Jonathan Cocks, its General Manager, and the other members of the Plan Committee, have continued to make decisions for the Debtor. The Official Committee of Unsecured Creditors (the “Committee”) has had substantial input into many decisions. If the Plan is confirmed, a Millennium Liquidation Trustee, who will be appointed by the Bankruptcy Court, will make decisions for the Debtor. The Bankruptcy Court has the authority to make final decisions on most important matters involving the Debtor.

**5. What is Chapter 11?**

Chapter 11 is the chapter of the Bankruptcy Code frequently used for the reorganization or liquidation of a business. Under Chapter 11, a company may attempt to restructure its finances or operations so that it can continue to operate its business or to liquidate its assets in an orderly manner. Here, the Debtor will be liquidated pursuant to a Plan of Liquidation (the “Plan”). Once Millennium filed Chapter 11, all efforts to collect on debts or claims that arose prior to the Petition Date were “stayed” by operation of section 362 of the Bankruptcy Code until a Chapter 11 Plan could be confirmed.

## **B. FAQs about the Plan of Liquidation**

### **6. What is a Chapter 11 Plan?**

A Chapter 11 plan sets forth and governs the treatment and rights to be afforded to creditors and interest holders with respect to their claims against and equity interests in a debtor. Here, the Debtor has no equity interests. Other than certain administrative and governmental unit claims, a plan classifies all claims against the Debtor. The Plan classifies creditor claims into 5 classes:

#### **Class 1—Priority Claims**

#### **Class 2—Secured Claims**

#### **Class 3—Unsecured Claims – Other than Participants**

#### **Class 4—Participant Claims**

#### **Class 5—Subordinated Claims**

### **7. If the Chapter 11 Plan Is the Document Which Governs How a Claim Will Be Treated, Why Am I Receiving This Disclosure Statement?**

In order to confirm a Chapter 11 Plan, the Bankruptcy Code requires that a proponent solicit acceptances of a proposed Chapter 11 Plan. However, before a proponent can solicit such acceptances, the Court must approve the information to be sent to the creditors, along with the proposed Chapter 11 Plan, to assure that the information provided is sufficient to allow the creditors to make an informed judgment about the Chapter 11 Plan. The purpose of this Disclosure Statement is to provide the information required by the Bankruptcy Code.

### **8. Has the Debtor Proposed a Chapter 11 Plan?**

Yes. On or about February 17, 2011, the Debtor filed its Plan, a copy of which is attached to this Disclosure Statement as Exhibit 1.

**9. What Type of Chapter 11 Plan was filed?** The Plan calls for an orderly liquidation of the Debtor’s assets and the distribution of the proceeds to Participants.

### **10. Has This Disclosure Statement Been Approved by the Bankruptcy Court?**

Yes. The Bankruptcy Court approved the Disclosure Statement, including all the related materials you are receiving.

### **11. Why is Confirmation of a Chapter 11 Plan Important?**

Confirmation of a Chapter 11 Plan is necessary for a debtor in Chapter 11 to provide the court-approved treatment to its creditors under its plan. Unless the Chapter 11 Plan is confirmed, the debtor is legally prohibited from providing you what has been proposed in the Plan.

### **12. What is Necessary to Confirm a Chapter 11 Plan?**

Confirmation of a Chapter 11 Plan requires, among other things, the vote in favor of the Plan of two-thirds in total dollar amount and a majority in number of claims actually voting in each voting class. (If the vote is insufficient, the Court can still confirm the Plan, but only upon being provided evidence that convinces the Court that the Plan should be confirmed despite the failure to accept by a voting class.)

### **13. What will Happen to My Life and Death Benefits following Confirmation of a Chapter 11 Plan?**

The Debtor has currently made only a death benefit available to each of its Participants. No life benefits were made available for the 2010 or 2011 Plan Years. Following the effective date of the propose Chapter 11 plan, for a limited period of time each participant will only be entitled to the lesser of their current death benefit or a modified death benefit. The difference between a Participant's current death benefit and the modified death benefit could be significant.

## **C. FAQs about Treatment under the Plan**

### **14. Am I Entitled to Vote on the Plan?**

Yes. Unless you hold only an Administrative Claim (a claim that arose only after the Petition Date), you are entitled to vote under the Plan. For example, if you provided trade credit to the Debtor after June 9, 2010, you are not a creditor entitled to vote, as you only hold an Administrative Claim and must be paid in full in the ordinary course of business or on the Effective Date.

All other claims are considered "impaired," in the sense that the Plan provides for paying you less than the amount you have claimed. The Plan provides that all such impaired classes of claimants are entitled to vote. Thus, if you entered into a contract, are think you are owed any monies from the Debtor or had any agreements with the Debtor prior to the Petition Date on which you have not been paid, you are a creditor entitled to vote.

### **15. How Do I Determine Which Class I Am In?**

To determine the class of your claim or interest, you first determine the nature of the claim against the Debtor (*i.e.*, as a Participant or for some other reason); then, turn to the Table of Contents, which will direct you to the discussion of the Plan and to the treatment provided to the

class in which you are grouped. The pertinent section of the Disclosure Statement dealing with that class will explain, among other things, who is in that class, the size of the class, what creditors in that class will receive if the Plan is confirmed, and when creditors in that class can expect to receive what has been promised in the Plan.

At the present time, the most significant distributions the Debtor anticipates making are to current Participants in the Millennium Plan. They are classified as Class 4 claimants and each will receive an Allowed Claim calculated as explained below. All current Participants are treated the same; the amount of a Participant's Allowed Claim does not depend on the amount on any Proof of Claim. You will be paid the Allowed Claim provided for in the Plan, and only that amount, if the requisite number of creditors votes for the Plan.

The majority of other claims filed in the Bankruptcy are considered to be contingent, unliquidated, and/or disputed and are dealt with in Class 3. These include claims filed by Covered Employers, Insurers, non-Participants, or persons or entities suing the Debtor or making demands upon the Debtor or persons who provided services to the Debtor before June 9, 2010. A total of \$1,000,000 has been set aside to pay all Class 3 claims. The Debtor believes that the amount of allowable claims in Class 3 totals less than \$500,000. If you are a Class 3 claimant, you can object to the Plan or vote against it if you are unhappy with your treatment under the Plan.

If you are a creditor and oppose your treatment under the Plan, you are entitled to (i) file an objection to the Plan in the Bankruptcy Court; or (ii) vote against it on the ballot that you have received along with this Disclosure Statement

#### **16. Do I Need to Vote?**

Every creditor is urged to cast a ballot.

#### **17. What Is the Deadline By Which I Need to Return My Ballot?**

May \_\_, 2011 is the deadline established by the Bankruptcy Court when your ballot must be returned in order to be counted for voting purposes.

#### **18. Where do I get a ballot?**

Two Ballots have been included in the packet of materials you have received – a Ballot for all creditors, except Class 4 Participants, is printed on blue paper and a Ballot for Participants in Class 4 is printed on green paper. The appropriate Ballot should be completed and returned by the voting deadline.

The Ballots have been printed with the return address on the back side. Please fold the Ballot so that the return address is shown on the front, staple or tape the Ballot closed, affix the appropriate postage, and return the Ballot by mail. The Ballot may also be sent by overnight courier or hand delivery. Ballots sent by facsimile or by e-mail will not be counted.

#### **19. Where do I send the completed Ballot?**



To ensure that your vote is counted, you must (i) complete the Ballot; (ii) indicate your decision to either accept or reject the Plan in Item 2 of the Ballot; and (iii) sign and return the Ballot in accordance with the instructions on the Ballot to Melanie Holmes, Franklin Skierski Lovall Hayward, LLP, Chase Bank Building, 10501 N. Central Expressway, Suite 106, Dallas, Texas 75231, so that it is actually received by the Voting Deadline.

## **20. Do I Have to Vote For The Plan to Receive a Distribution?**

Creditors in Classes 1, 2, 3, 4, and 5 are entitled to vote on the Plan. Voting is the best way to signal your preference for a treatment under the Plan, but you will receive a distribution even if you do not vote, or should you vote against the Plan, and the Plan is confirmed.

Additionally, as to Participants in Class 4 who did not file a lawsuit against the Debtor before June 9, 2010 (“Non-Litigation Participants”), the Plan has a mechanism whereby certain third parties (that is, persons other than the Debtor) who wish to avoid the risk of new lawsuits involving Millennium can pay Participants in Class 4 who have not filed a lawsuit against the Debtor before June 9, 2010 (“Non-Litigation Participants”) money in exchange for a release, which is a commitment not to sue in the future. If there are such arrangements with third parties and you are a Non-Litigation Participant, your Ballot will include a box for you to check if you wish to release your potential claims against that third party in exchange for a share in any of the money, called the “Settlement Fund” in the Plan.

## **21. Do I get my money after I complete the ballot?**

No. The Bankruptcy Court must “confirm” the Plan. The Bankruptcy Court will conduct a hearing and if it finds that the Plan has met the legal requirements under Bankruptcy Code § 1129, then the Court will sign an order confirming the Plan (the “Confirmation Order”).

Even if the Plan is confirmed, that does not necessarily mean that distributions can be made immediately after confirmation. That is because the Debtor currently does not have access to most of its assets. *See* **FAQ 27** for a discussion of that issue.

## **22. To What Address Will the Distribution be sent?**

Unless a creditor gives timely written notice of a change or correction in address, the distribution to each creditor will be sent to the address shown on the Ballot, or, if no Ballot is submitted, on the Proof of Claim filed by the creditor, or the address appearing in the Debtor’s Schedules, where no proof of Claim was filed. Any subsequent distributions will be sent to the same address, unless that address is superseded by a proof of claim or a transfer of claim filed pursuant to Bankruptcy Rule 3001 (or at the last known address of such creditor if the Millennium Liquidation Trustee has been notified in writing of a change of address).

## **D. Information About Important Plan Provisions**

### **23. Why Did the Debtor File Bankruptcy?**

Millennium has net assets of approximately \$80 million. It has already provided over \$28 million of benefits to more than 250 of its Participants, and has net assets that would allow it to continue to provide benefits for many years. There are several reasons why the Debtor filed for bankruptcy despite its financial strength.

First, the Participants face uncertainty about their tax situation and the Debtor has been pursuing a resolution with the Internal Revenue Service (“IRS”) for some time. From the beginning, it has been clear that a necessary part of any tax resolution would be the termination of the Debtor, and the current proposed settlement with the IRS (“IRS Settlement”) provides for a termination and liquidation of the Debtor. Under Millennium’s governing documents, the Plan Committee does not have the right to terminate Millennium and therefore the Plan Committee needed to seek court approval. Because of the protections of bankruptcy law, the Plan Committee believed that it would be a good forum for designing a fair termination plan and assuring that everyone affected has a chance to participate.

Second, Millennium has been engaged in litigation with a number of current and former Covered Employers, Participants and other parties for the last four years. Those lawsuits also name certain insurance companies as defendants. Four of these insurance companies took the position that they would not allow the Debtor to obtain access to its assets until the litigation was resolved. Without access to its assets, Millennium could not continue to offer benefits or defend the lawsuits against it. The Debtor believed that filing for bankruptcy would facilitate an end to the litigation and allow the Debtor to regain access to its assets.

#### **24. Why Does the Plan Provide for Termination of Millennium?**

The Plan provides for a termination of the Debtor and a distribution of its assets to Participants for several reasons. First, it is a prerequisite of the IRS Settlement, as explained above. Second, a survey of Participants indicated majority support for termination. Third, Millennium was designed with the assumption that there would be new, younger Participants joining over time. Because of the tax uncertainty, the sponsor of Millennium ceased seeking new entrants several years ago. Without new entrants, it is probable that the level of benefits the Debtor could provide would over time become much smaller than they are now, thereby frustrating the basic intent of Millennium to provide a robust level of benefits to Participants.

The Debtor understands that those Participants who rely on its Life Benefits, especially those Participants who have chronic illnesses and disabilities, may wish to continue Millennium, but a plan covering just those Participants is not actuarially feasible. The Plan does accommodate those Participants who are relying on the death benefits for estate planning by providing a mechanism for any Participant to obtain the life insurance policy on his or her life.

#### **25. What Will Participants Receive Under the Plan?**

Each Participant will be entitled to an “Allowed Claim” based on the percentage that the contributions made on his or her behalf (called “Attributed Contribution” in the Plan) bears to the total of all Attributed Contributions for all Participants (the “Total Contributions”) made to Millennium. The amount of each Participant’s Allowed Claim is calculated by multiplying his or her respective percentage of Total Contributions by the assets available for distribution. The

total value of the Debtor's distributable assets for purposes of calculating the Allowed Claims will vary depending on investment results, the proceeds that can be obtained from the Life Policies when they are liquidated, expenses of the Estate, claims paid, and other factors.

The Debtor is still compiling the information necessary to calculate each Participant's exact share of the assets and, as discussed above, it is impossible to determine now how much money will eventually be distributed. The best estimate the Debtor can provide at this time is that, if the assets were distributed now, there would be approximately \$80 million distributed to Participants. If a Participant knows the Attributed Contribution made on his or her behalf, the Participant can estimate the percentage of that total, and the distribution, by assuming that Total Contributions made to the Millennium Plan were \$160 million.

This is what the Allowed Claim calculation would look like for a Participant with an Attributed Contribution of \$100,000 using the above assumptions:

Attributed Contribution equals \$100,000  
Dividing the Attributed Contribution by \$160 million of Total Contributions equals .0625 percent  
Multiplying the estimated \$80 million of total assets available for distribution by .0625 percent equals \$50,000.

## **26. Why Is the Allocation For Participants Based On Contributions?**

Millennium's governing documents provide that each Participant will receive his or her Life Benefits at termination. The Debtor has decided to use the contribution methodology described above to define "Life Benefits" for purposes of termination, in part because that is the methodology contemplated by the IRS Settlement. The Debtor has not done alternative calculations, but it believes that other possible methodologies would lead to roughly the same results.

The Committee believes that Life Benefits previously paid to Participants should be taken into account for purposes of this distribution on the theory that it would be fairer to treat Participants who have already received benefits differently from those who have not. The Debtor understands the reasoning and has carefully considered that alternative. However, it does not believe that it would be appropriate to take the previous payment of Life Benefits into account for purposes of the final distribution for the following reasons:

- Millennium does not condition the payment of benefits on the prior claims experience of a Participant. Doing so is called "experience rating" or "separate accounting," and the presence of this feature in a plan like Millennium adversely affects the tax position of all Participants. If the IRS Settlement is not approved, or Participants elect not to participate in an IRS Settlement, accounting for prior Life Benefits paid could prejudice the tax position of the Participants.
- Taking previously paid Life Benefits into account would add complexity and expense to the calculation of the terminal distributions. That is because the amount of Life Benefits subtracted from a Participant's allocation formula would have to be

reallocated to everyone else. More than 250 Participants have received Life Benefits in the past so the reallocation process would be complex. In the end, it is unlikely that the Allowed Claims would be materially different, except in the case of Participants who have received large amounts of Life Benefits.

## **27. Why Are Participants Receiving Less Than The Amounts Contributed?**

Millennium's \$80 million of current Assets are approximately 50% of the \$160 million of contributions made. Prior to the bankruptcy filing, the Debtor produced audited financial statements that disclose prior expenses, and had provided Participants a detailed breakdown of all expenses, including administrative, legal, actuarial and investment management fees,

The principal use of the contributions has been to provide benefits. Millennium has made \$28 million in benefit payments. In addition, all Participants have received the benefit of having coverage for the welfare benefits whether or not they have made a claim. The tax laws require Millennium to report this "economic benefit" of the death benefit coverage plus the disability benefit afforded to each Participant every year and that amount has totaled over \$10 million. Participants have also received the economic benefit of having medical, long term care, and severance coverage.

The Debtor's earnings have offset benefits and administrative costs in most years. For example, its most recent audited statement, for Fiscal Year End 2009, shows a small increase in net assets.

The termination of Millennium eight years after inception has a significant cost. The intent of Millennium is to provide death benefit coverage at all times, while building up assets when the Participants are working so that there will be a large pool of available assets when the Participants need access to post-retirement welfare benefits. The growth in value within a permanent life insurance policy matches that benefit design. But when a benefit arrangement funded by permanent life insurance terminates much earlier than expected, its net asset value has not had time to grow within the policies. Specifically, the termination and consequent surrender of the policies at such an early stage triggers the assessment of charges. These "cash surrender charges" eventually disappear if the policy is held, as intended in Millennium, for a significant amount of time. The level of cash surrender charges associated with the early termination of the Debtor is a significant factor in the amount of assets available for distribution.

## **28. When Can Creditors with Allowed Claims Expect To Get Distributions?**

The Plan allows the Millennium Liquidation Trustee to make distributions at his discretion and it is expected that there will be more than one distribution. Unfortunately, no distribution can be made until the insurance companies allow access to the insurance policies so they can be surrendered for cash. This will occur when there is an order from a court requiring the insurance companies to allow access or a settlement of the claims between the plaintiffs or the Debtor and those insurance companies, which would resolve the legal issues that are causing the insurance companies to deny access. The Debtor is trying to resolve this policy access issue as soon as possible, but can provide no estimate of when it will regain access to its assets.

## **29. How Does the Plan Affect the Litigation That Has Been Filed Against the Debtor?**

Certain Covered Employers, Participants and other parties have filed lawsuits in which they allege that they were misled about important aspects of Millennium, including its tax status and fundamental design. These plaintiffs also allege that Millennium is required to transfer policies to Covered Employers upon request and that the Debtor has not been run properly. These cases seek over \$150 million in damages from Millennium.

The Plan provides for no distributions to any person, whether a Participant or Covered Employer, which would represent payment of damages on account of these allegations. The non-Participant plaintiffs in these lawsuits are Class 3 creditors, and all Participants are treated the same as Class 4 creditors whether or not they have formerly sued the Debtor.

The Debtor believes that there is no merit to these lawsuits and intends to object to all litigation-based claims. Both the Bankruptcy Court and a federal district court have held that all the Debtor's assets are held for the exclusive benefit of all the Participants so any damages paid to these plaintiffs would be at the expense of the other Participants. Particularly in light of the proposed termination, there is no reason to put the interests of this one group of Participants and Covered Employers ahead of others. Finally, the Bankruptcy Court recently rejected a proposed settlement between the Debtor and the plaintiffs in these lawsuits which would have granted the plaintiffs different rights from other Participants on the ground that it was not fair or in the interest of the creditors as a whole.

### **30. How Does the Plan Deal With The Debtor's Claims Against Others?**

The Debtor refers you to Schedule B, item 21, as Amended, which identifies the claims it believes that it has against others. These include claims against the Covered Employers who have sued Millennium and the insurance companies, among others. While there is no guarantee that the Debtor will be successful, any recoveries on these claims would be allocated and distributed to Class 4 Participants as set out above.

The Plan Committee currently has decision making authority for all existing and potential claims, but that authority will be transferred after confirmation to the Millennium Liquidation Trustee.

### **31. Does The Plan Address Claims Against Any Third Parties?**

Potentially. The Plan has a mechanism for persons other than the Debtor to resolve potential claims against them that could be asserted by any Participant who has not already filed a lawsuit against them. In the event a Third Party Defendant, such as an insurer, wished to resolve these unasserted claims, it would agree to pay a settlement amount to be held by the Debtor that would be distributed to any Participant (other than those who have previously filed a lawsuit involving Millennium) who wishes to settle his or her claim against that Third Party Defendant for a share of the settlement amount that the Third Party Defendant has agreed to pay. If you are such a Participant, you will receive a special ballot asking whether you wish to release a Third Party Defendant(s) in exchange for a share of the settlement amount to be paid by that Third Party Defendant. The Third Party Defendant settlement will become effective if the requisite number

of Participants agree to participate in it. Settlement proceeds will be paid to the Debtor and held in a Settlement Fund for the benefit of those Participants who choose to join in the settlement.

At the present time, there are no settlements with Third Party Defendants, but the Debtor is in ongoing discussions regarding such settlements.

### **32. What Will Happen to the Existing Millennium Plan and Trust Documents?**

Confirmation of the Plan will require certain changes to be made to the governing documents of Millennium and the Millennium Trust. The Debtor considered creating a new Trust, but determined that that might create unfavorable tax consequences for Participants. The purposes of the amendments are to recognize that Millennium will no longer be providing ongoing Life and Death Benefits, but rather will be engaged in a termination and liquidation process, and to incorporate provisions to allow the Millennium Liquidation Trustee to carry out his duties under the Plan.

### **33. What Are The Tax Consequences for Participants?**

As described in further detail in Section VIII of the Disclosure Statement, CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES TO CREDITORS WITH ALLOWED CLAIMS UPON LIQUIDATION, and subject to the exceptions and limitations set forth therein, a Participant generally should recognize gain or loss, for U.S. federal income tax purposes, on the value of the Allowed Claim less the Participant's adjusted tax basis in the Claim. The Debtor will withhold U.S. federal income taxes on any such distribution and remit such amounts to the IRS. Participants may be subject to other state, local or foreign taxes as a result of the distribution of a Life Benefit depending on their particular circumstances.

### **34. If I have a question that is not answered here, who can help me?**

There will be 4 "town meeting" telephone conferences, during which questions will be answered. Questions for these telephone conferences should be submitted no later than 24 hours in advance.

To the extent time permits, additional questions may be considered at the time of the teleconferences. The telephone conferences will be at the following dates and times:

1. [to be provided at time of approval of Disclosure Statement approval]
2. [to be provided at time of approval of Disclosure Statement approval]
3. [to be provided at time of approval of Disclosure Statement approval]
4. [to be provided at time of approval of Disclosure Statement approval]

The toll-free call-in number for these telephone conferences, and the participant code for those desiring to participate, will be: [To be provided at time of approval of Disclosure Statement approval]

Additionally, a paralegal have been set up to take your calls regarding process related matters (voting dates, access to ballots, and the like). Please feel free to call her and see if she can help

you. You are also free to call any of the attorneys representing the Debtor, whose names appear on the front of the Disclosure Statement.

Melanie Holmes  
Franklin Skierski Lovall Hayward LLP  
Paralegal for Counsel for the Debtor  
Phone Number: [972-755-7100]  
Email: [mholmes@fslhlaw.com]

**CLASSIFICATION CLAIM CHART**

**[To Be Provided Prior to the Confirmation hearing]**

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Exhibit 3	Millennium Master Plan
Exhibit 4	CV of Proposed Trustee of Liquidating Trust Agreement
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I.

**INTRODUCTION**

Millennium Multiple Employer Welfare Benefit Plan (the “Debtor” or “Millennium”) submits this Disclosure Statement (“Disclosure Statement”) pursuant to section 1125 of the Bankruptcy Code for use in the solicitation of votes on the Plan of Liquidation (the “Plan”), which is attached hereto as Exhibit 1.

This Disclosure Statement<sup>1</sup> discusses the confirmation process and the voting procedures that holders of Claims must follow for their votes to be counted. EACH CREDITOR AND PARTICIPANT IS URGED TO VOTE IN FAVOR OF THE PLAN BY CASTING THE APPROPRIATE BALLOT AND RETURNING IT TO Melanie Holmes BY NO LATER THAN [DATE TO BE SET BY BANKRUPTCY COURT, 2011].

The Disclosure Statement also sets forth certain relevant information regarding the Debtor’s prepetition operations and financial history and the need to seek Chapter 11 protection. The Disclosure Statement then describes the Plan’s terms and provisions, including certain alternatives to the Plan, effects of confirmation of the Plan, risk factors associated with the Plan, and the manner in which distributions will be made under the Plan. The Disclosure Statement also describes certain IRS and ERISA implications of confirming the Plan.

**EACH CREDITOR IS URGED TO CONSULT WITH HIS  
OR HER PERSONAL TAX AND BENEFITS COUNSEL FOR  
LEGAL ADVICE ON HOW THE PLAN MAY AFFECT A  
PARTICULAR CREDITOR**

**A. Filing of the Debtor’s Chapter 11 Case**

The Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code on June 9, 2010 (the “Petition Date”), in the United States Bankruptcy Court for the Western District of Oklahoma, Oklahoma City Division (the “Bankruptcy Court”). The Debtor has continued to manage its property and assets as a debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

The United States Trustee appointed a The Official Committee of Unsecured Creditors (the “Committee”) on June 22, 2010. As of December 31, 2010, the Committee consisted of seven members: John Malesovas, one of the co-chairmen, who represents various Participants; Lester Lewis, the other co-chairman; Kathryn Barnett, on behalf of various Participants, Vivek Khetpal, Juli Jessen, Jeffrey Epstein, and Shahe Vartivarian. On January 20, 2011, the United States Trustee added the following members to the Committee: Steven Beaver, Tom Matera, and Dan Townsend.

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<sup>1</sup> All capitalized terms shall have the same meaning as defined in the Plan unless context dictates otherwise.

**B. Purpose of the Disclosure Statement**

This Disclosure Statement is submitted in accordance with section 1125 of the Bankruptcy Code to solicit acceptances of the Plan from holders of impaired classes of Claims. The Plan seeks votes in favor of the acceptances of the Plan from creditors whose Claims are “impaired” (as that term is defined in section 1124 of the Bankruptcy Code) by the Plan. Holders of claims in Classes 1, 2, 3, and 4 are IMPAIRED and are being requested to vote on the Plan. There are no creditors in Class 5 as of the approval of this Disclosure Statement.

This Disclosure Statement was prepared pursuant to section 1125 of the Bankruptcy Code, which requires that a copy of the Plan, or a summary thereof, be submitted to all holders of Claims against, and Equity Interests in, the Debtor, along with a written disclosure statement containing adequate information about the Debtor of a kind, and in sufficient detail, as far as is reasonably practicable, that would enable a hypothetical, reasonable investor typical of Claimants and Equity Interest Holders to make an informed judgment in exercising their right to vote on the Plan.

The Bankruptcy Court approved the Disclosure Statement as containing adequate information to solicit votes on April \_\_, 2011. The Bankruptcy Code requires the Bankruptcy Court to find that the Disclosure Statement meets the requirements of section 1125 of the Bankruptcy Code and contains adequate information to permit the creditors and Participants to make an informed judgment regarding acceptance or rejection of the Plan. Once approved, the Debtor can solicit votes on the Plan.

**THE APPROVAL BY THE BANKRUPTCY COURT OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE AN ENDORSEMENT BY THE BANKRUPTCY COURT OF THE PLAN OR A GUARANTEE OF THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED HEREIN. THE MATERIAL CONTAINED HEREIN IS INTENDED SOLELY FOR THE USE OF THE DEBTOR’S CREDITORS IN EVALUATING THE PLAN AND VOTING TO ACCEPT OR REJECT THE PLAN AND, ACCORDINGLY, MAY NOT BE RELIED ON FOR ANY PURPOSE OTHER THAN THE DETERMINATION OF HOW TO VOTE ON, OR WHETHER TO OBJECT TO, THE PLAN. THE DEBTOR’S LIQUIDATION PURSUANT TO THE PLAN IS SUBJECT TO NUMEROUS CONDITIONS AND VARIABLES, AND THERE CAN BE NO ABSOLUTE ASSURANCE THAT THE PLAN WILL BE EFFECTUATED AS CONTEMPLATED.**

**THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY OTHER GOVERNMENTAL OR REGULATORY AUTHORITY, NOR HAS THE COMMISSION OR ANY AUTHORITY PASSED ON THE ACCURACY OR ADEQUACY OF THE**

**STATEMENTS CONTAINED HEREIN. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL. THE PLAN SHOULD BE REVIEWED CAREFULLY.**

**THE DEBTOR BELIEVES THAT THE PLAN AND THE TREATMENT OF CLAIMS UNDER THE PLAN IS IN THE BEST INTERESTS OF CLAIMANTS. THE DEBTOR URGES THAT YOU VOTE TO ACCEPT THE PLAN.**

**C. Hearing on Confirmation of the Plan**

The Bankruptcy Court has set June \_\_, 2011, at \_\_:00 \_\_.m. Central Time, as the time and date for the hearing to determine whether the Plan has been accepted by the requisite number of Claimants and whether the other requirements for confirmation of the Plan have been satisfied (the “Confirmation Hearing”). Holders of Claims against the Debtor may vote to accept or reject the Plan by completing and delivering the enclosed ballot to Melanie Holmes, on or before \_\_:00 \_\_.m. Central Time on May \_\_, 2011.

If the Plan is rejected by one or more impaired Classes of Claims, the Bankruptcy Court may still confirm the Plan, or a modification thereof, under section 1129(b) of the Bankruptcy Code (commonly referred to as a “cramdown”) if it determines, among other things, that the Plan does not discriminate unfairly and is fair and equitable with respect to the rejecting Class or Classes of Claims impaired under the Plan. In the event that the Plan is not confirmed for any reason, an alternative plan may be proposed by the Debtor, or if the Court permits, by any other party. The procedures and requirements for voting on the Plan are described in more detail below.

**D. Sources of Information and the Accounting Method Used**

**1. Sources of Information**

Except as otherwise expressly indicated, the information set forth in this Disclosure Statement and the attached exhibits was provided by the Debtor or its service providers. The Debtor provided the financial information in the exhibits to this Disclosure Statement, including any projections, and is based upon data generated by the Debtor or its service providers. In addition, certain materials contained in this Disclosure Statement are taken directly from other readily accessible documents or are digests of other documents.

While every effort has been made to retain the meaning of such other documents or portions that have been summarized, they urge that any reliance on the contents of such other documents should depend on a thorough review of the documents themselves. In the event of a discrepancy between this Disclosure Statement and the actual terms of a document, the actual terms of such document shall govern and apply.

The statements contained in this Disclosure Statement are made as of the date hereof unless another time is specified, and neither the delivery of this Disclosure Statement nor any exchange of rights made in connection with it shall, under any circumstances, create an implication that there has been no change in the facts set forth herein since the date of this Disclosure Statement.

No statements concerning the Debtor, the value of its Assets, or the value of any benefit offered to the holder of a Claim in connection with the Plan should be relied on other than as set forth in this Disclosure Statement. Certain statements in this Disclosure Statement and the related exhibits or incorporated by reference herein regarding the Debtor's financial position, plans of the Debtor's management regarding future events and other statements that are not historical facts, are "forward-looking statements" as that term is defined under applicable Federal securities laws. In some case, "forward-looking statements" can be identified by terminology such as "may," "will," "should," "expects," "plans," "anticipates," "contemplates," "proposes," "believes," "estimates," "predicts," "potential" or "continue" or the negative of such terms and other comparable terminology. Forward-looking statements are subject to risks, uncertainties and other factors that could cause actual results to differ materially from those expressed or implied by such statements. Such risks, uncertainties and factors include, but are not limited to, general economic conditions; insufficient cash flows; difficulties in obtaining financing or obtaining access to the Debtor's Assets; outstanding debt and other financial and legal obligations; regulatory changes; ongoing litigation, as well as other risks detailed in this Disclosure Statement, all of which are difficult to predict and many of which are beyond the Debtor's control.

In arriving at a decision, parties should not rely on any representation or inducement made to secure their acceptance or rejection that is contrary to information contained in this Disclosure Statement, and any such additional representations or inducements should be immediately reported to counsel for the Debtor, Doug Skierski at Franklin Skierski Lovall Hayward, LLP, 10501 N. Central Expressway, Suite 106, Dallas, Texas 75231 (Phone number (972) 755-7100).

## **2. Accounting Method, Significant Accounting Policies and Related Matters**

The Debtor's financial statements are prepared using the modified cash basis of accounting, which is a comprehensive basis of accounting other than accounting principles generally accepted in the United States of America. The principal differences between the "cash basis of accounting" and the "modified cash basis of accounting" are the recognition of fair value of the Debtor's investments in insurance contracts and the recording of policy loans and accumulated interest as liabilities.

As more fully discussed in the Master Plan document (capitalized terms in this section have the definition set forth in the Millennium Master Plan at Exhibit 3), a Qualifying Employer becomes a Covered Employer when the last of the following events occurs: (1) the third-party administrator receives an executed Adoption Agreement; (2) a resolution or consent from the

board of directors or other governing body of the Qualifying Employer authorizes the execution and delivery of the Adoption Agreement as set forth above, or ratifies such execution and delivery, and a copy of such resolution or consent is received by the third-party administrator; (3) the initial contributions or other initial payments identified in the Adoption Agreement are placed in the Plan's Escrow Account, which will be sent to the trustee following the issuance of the insurance policies set forth in the Adoption Agreement; (4) the insurance policies identified by the Adoption Agreement on the lives of those Eligible Employees the Qualifying Employer intends to be Participants in the Plan are issued to the Trust and received by the Trustee; and (5) the Eligible Employees designated in the Adoption Agreement and the underlying policies insuring their lives are successfully assigned to a Rating Group.

Following the completion of the above, the designated or eligible employee's participation in the Plan is recognized. If the Plan receives any assets (generally cash or insurance policies) prior to completion of the above, these assets are held in escrow by the Plan pending completion of the required actions.

Subsequent contributions are recognized as revenue on a cash basis in the Plan Year in which the contributions are received and benefits are recognized when the payments are disbursed. The Plan does not account for operating liabilities and, accordingly, recognizes costs and expenses when paid. Contributions received by the Plan prior to the issuance of insurance policies are deferred and recorded as contributions received in advance of participation.

### **3. Use of Estimates**

The preparation of financial statements in accordance with the modified cash basis of accounting requires the Debtor to make estimates and assumptions that affect the reported amounts of net assets, benefit obligations, and the disclosure of contingent assets and liabilities at the date of the financial statements, as well as the reported changes in net assets during the reporting period. Actual results could differ from those estimates. Significant estimates include the fair value of Life Policies and the impact certain litigation may have on the Debtor.

### **4. Investment Valuation, Income Recognition and Other Information Regarding Investments**

The Debtor's investments are stated at the net surrender values of the insurance contracts, as reported by the life insurance carriers. The net surrender values include adjustments, when applicable, for the accumulated interest due on any policy loan. Since the Debtor does not maintain current health or underwriting information on its Participants, the adjusted net surrender value is considered the best estimate of the fair value of the Debtor's investments.

Fair value is an estimate of the amount the Debtor would receive following the sale or liquidation of an investment in a timely transaction to an independent buyer. The Financial Accounting Standards Board (the "FASB") has established a three-tier hierarchy (Level 1, Level 2 or Level 3) based on the use of observable market data and unobservable inputs to establish

classification of fair value measurements for disclosure purposes. Inputs refer broadly to the assumptions that market Participants would use in pricing the asset or liability, including assumptions about uncertainty. Level 3 inputs (significant unobservable inputs; including the Debtor's own assumptions) were used by the Debtor in determining the fair value of the Debtor's investments. For additional information please go to the FASB's website, [www.fasb.org](http://www.fasb.org), and refer to Section 820 of the Accounting Standards Codification.

Participants annually recognize imputed income equal to the actuarial determined economic benefit value associated with the Debtor's benefits. The valuations used in the financial statements attached as Exhibit 2 are based on the presumption the Debtor would continue as a going concern; if the Debtor were to terminate, then different actuarial assumptions and other factors might be applicable.

The Debtor's assets, specifically cash and investments in insurance contracts, are financial instruments that potentially subject the Debtor to a variety of risks, including, but not necessarily limited to, counter-party and market-related risks.

The Debtor's cash is held by its trustee, RBT, in interest bearing accounts. The balance in the Debtor's cash accounts generally exceeds the maximum amount insured by the Federal Deposit Insurance Corporation. While the Debtor has not incurred any losses in its cash accounts, it does not require collateral from its trustee.

As stated above, the Debtor's insurance contracts were issued by nationally known life insurance carriers. At the time of original purchase, the applicable issuing carrier had an A.M. Best Company financial strength rating of "A-" or better. The "financial strength" rating of an insurance carrier represents A.M. Best Company's opinion of an insurance company's financial strength and ability to meet its ongoing insurance policy and other contract obligations. A.M. Best Company, which was founded in 1899, is a credit rating organization that is recognized as having particular expertise in the insurance and financial services industries.

A.M Best Company's "Secure" financial strength ratings are as follows:

A++ or A+ Superior

A or A- Excellent

B++ or B+ Good

A financial strength of "B" or lower means the insurance company is "Vulnerable." For additional information please refer to A.M. Best Company's website, [www.ambest.com](http://www.ambest.com).

The Debtor's life insurance contracts are broadly divided into two categories: (1) fixed policies (which include indexed policies), whose returns are set and paid by the applicable insurance companies, and (2) variable policies, whose returns are based on the investment performance of the applicable equity, fixed income or other mutual funds in which the available

policies proceeds are invested. The Debtor does not use any leverage in connection with its investments.

The primary risks associated with the Debtor's fixed policies include the risks generally associated with any equity or fixed income investment as well as the risk that an issuing insurance carrier is unable to perform any of its obligations under a fixed policy. A fixed policy's cash surrender value represents a claim on the issuing insurance carrier. If a carrier were placed into some form of regulatory supervision by the applicable state insurance regulator, the Debtor most likely would not have any further, or at best limited, access to that carrier's policies' cash values. In the worst case scenario, the applicable policies' death benefits could become an obligation of the applicable state's life insurance guaranty fund. In addition, the rate at which earnings are credited to a fixed policy (which results in the increase in a fixed policy's cash surrender value) is a function of the investment performance of each carrier's investment portfolio, subject to a guaranteed minimum crediting rate. The minimum crediting rate varies by type of policy and carrier.

Much like brokerage accounts, the principal risks associated with the Debtor's variable policies are those associated with investing in the fixed income, equity and commodities markets generally, including issuer-specific and general market, economic and political risks. A variable policy's cash surrender value is the aggregate value of its interests in certain investment funds (substantially all of which are open-end management investment companies registered under the Investment Company Act of 1940) made available by the applicable carriers, which invest in a variety of asset classes, pursuing one or more investment strategies. Investments are made using a diversified investment allocation that is periodically reviewed and approved by the Debtor's Plan Committee. Utilizing the services of a third-party investment advisor, the Debtor's trustee invests the assets of each variable policy among the available investment funds, consistent with this investment allocation. This investment allocation does not call for investment on a policy-by-policy basis, but rather considers the investment fund choices made available across the applicable carriers, allocating on a collective basis to those investment funds deemed most appropriate. As a result, any one specific variable policy may have all of its assets concentrated in one or a few investment funds, as opposed to the diverse investment allocation referenced above. The risks associated with a particular investment fund are a function of that fund's underlying investments, which are detailed in such fund's prospectus. As with the fixed policies, if a carrier were placed into some form of regulatory supervision, the applicable policies' death benefits could become an obligation of the applicable state's life insurance guaranty fund.

Given the range of insurance contracts that constitute the Debtor's investments, the underlying values will vary considerably over time as well as at any point in time. At any point in time, either realized or unrealized investment gains and losses are possible and such gains and losses could be material. The Debtor's investments are not insured by agencies of the United States government or any other person or institution. In addition, if any of the insurance carriers used by the Debtor were to experience a significant deterioration in its financial condition, as a practical matter, it would be exceptionally difficult for the Debtor to move or replace the affected policies in a timely manner. Any such move or replacement would likely subject the Debtor to a



significant cost.

While the Debtor's Plan Committee regularly reviews the Debtor's investment performance and periodically reviews the financial status of its insurance carriers, neither the Debtor's Plan Committee nor any other party associated with the Debtor can provide any guarantees or assurances regarding investment performance, losses or value depreciation. In all cases to date, the Debtor's insurance carriers have paid the contractually agreed-upon death benefit amounts following presentation of applicable claims.

## II.

### **EXPLANATION OF CHAPTER 11**

#### **A. Overview of Chapter 11**

Chapter 11 is the principal reorganization chapter of the Bankruptcy Code. The commencement of a Chapter 11 case creates an estate comprised of all of the Debtor's legal and equitable interests in property as of the date the Chapter 11 petition is filed. Sections 1101, 1107 and 1108 of the Bankruptcy Code provide that a Chapter 11 debtor may continue to control the assets of its estate as a "debtor-in-possession," as the Debtor has done in this case since the Petition Date.

The filing of a Chapter 11 petition also triggers the automatic stay under section 362 of the Bankruptcy Code. The automatic stay halts essentially all attempts to collect prepetition claims from the Debtor or to otherwise interfere with the Debtor's business or estate.

Formulation of a plan of reorganization or liquidation, as the case may be, is the principal purpose of a Chapter 11 case. The plan is the contractual document setting out the terms and conditions for paying claims of creditors against, and satisfying equity interests holders of a debtor. Here, the Debtor has claims against it which have been classified into 5 classes of creditors. The Debtor does not have any stockholders or equity interest holders requiring treatment under the Bankruptcy Code.

Under section 1121 of the Bankruptcy Code, a debtor has the "exclusive" right to: (i) file a plan of reorganization or liquidation during the first 120 days of its Chapter 11 case; and (ii) solicit acceptances of such a plan during the first 180 days of the case. These periods may be extended for "cause." Pursuant to section 1121 of the Bankruptcy Code, the Debtor's exclusive right to file a plan of reorganization, if not extended, would have expired on October 7, 2010, and the exclusive right to solicit acceptances of such plan would have expired on December 6, 2010.

However, the Debtor has the right to request extensions of the periods of exclusivity and on September 10, 2010, the Court entered an agreed order between the Debtor and the Committee extending the Debtor's exclusive period to file a plan of reorganization to November

6, 2010. The agreed order further extended the Debtor's exclusive right to solicit acceptances of a plan through January 5, 2011. The parties then agreed to, and the Court ordered, an additional extension of the exclusive right to solicit acceptances of a plan until February 7, 2011, with an additional thirty (30) day extension of the sixty (60) day period to April 8, 2011, to allow for the confirmation of any plan proposed by the Debtor. A final extension of the Debtor's exclusive right to file a plan was sought by the Debtor, to allow for the filing of a plan until February 17, 2011, and to solicit acceptances to April 18, 2011.

## **B. Plan of Reorganization/Liquidation**

A plan of reorganization or liquidation is the document which sets out the manner in which a debtor will satisfy the claims of its creditors. After a plan has been filed, the holders of claims against, or interests in, a debtor are permitted to vote on whether to accept or reject the plan. Chapter 11 does not require that each holder of a claim against, or interest in, a debtor vote in favor of a plan in order for confirmation of the plan. *At a minimum, however, a plan must be accepted by a majority in number (50%) and two-thirds in amount of those claims actually voting ("2/3 in amount") from at least one class of claims impaired under the plan.*

Classes of claims or interests that are not "impaired" under a plan of reorganization are conclusively presumed to have accepted the plan, and therefore are not entitled to vote. A class is "impaired" if the plan modifies the legal, equitable or contractual rights attaching to the claims or interests of that class. Classes of claims or interests that receive or retain no property under a plan of reorganization are conclusively presumed to have rejected the plan, and therefore not entitled to vote.

Even if all classes of claims and interests accept a plan of reorganization the Bankruptcy Court may nonetheless still deny confirmation. Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation and, among other things, requires that a plan be in the "best interests" of impaired and dissenting creditors and interest holders and that the plan be feasible. The "best interests" test generally requires that the value of the consideration distributed to impaired and dissenting creditors and interest holders under a plan may not be less than those parties would receive if the Debtor were liquidated under a hypothetical liquidation occurring under Chapter 7 of the Bankruptcy Code.

The Bankruptcy Court may confirm a plan of reorganization or liquidation even though fewer than all of the classes of impaired claims and interests accept it. The Court may do so under the "cramdown" provisions of section 1129(b) of the Bankruptcy Code. In order for a plan to be confirmed under the cramdown provisions, despite the rejection of a class of impaired claims or interests, the proponent of the plan must show, among other things, that the plan does not discriminate unfairly and that it is fair and equitable with respect to each impaired class of claims or interests that has not accepted the plan.

The Bankruptcy Court must further find that the economic terms of the particular plan meet the specific requirements of section 1129(b) of the Bankruptcy Code with respect to the subject objecting class. If the proponent of the plan proposes to seek confirmation of the plan under the provisions of section 1129(b) of the Bankruptcy Code, the proponent must also meet all applicable requirements of section 1129(a) of the Bankruptcy Code (except section 1129(a)(8)). Those requirements include the requirements that: (i) the plan comply with applicable Bankruptcy Code provisions and other applicable law; (ii) the plan be proposed in good faith; and (iii) at least one impaired class of creditors or interest holders has voted to accept the plan.

### III.

#### VOTING PROCEDURES AND CONFIRMATION REQUIREMENTS

##### A. Ballots and Voting Deadline

A ballot for voting to accept or reject the Plan is enclosed with this Disclosure Statement, and has been mailed to Claimants (or their authorized representative) entitled to vote. After carefully reviewing the Disclosure Statement, including all exhibits, each Claimant entitled to vote should indicate its vote on the enclosed ballot. All Claimants entitled to vote must: (i) carefully review the ballot and instructions thereon; (ii) execute the ballot; and (iii) return it to the address indicated on the ballot by the deadline for the ballot to be considered.

The Bankruptcy Court has directed that, in order to be counted for voting purposes, ballots for the acceptance or rejection of the Plan must be received no later than March \_\_, 2011, at \_\_:00 \_\_.m. Central Time, at the following address:

Melanie Holmes  
Franklin Skierski Lovall Hayward, LLP  
Chase Bank Building  
10501 N. Central Expressway, Suite 106  
Dallas, Texas 75231

**BALLOTS MUST BE RECEIVED AT THE ABOVE ADDRESS NO LATER THAN MAY \_\_, 2011, at \_\_:00 \_\_.M. CENTRAL TIME. ANY BALLOTS RECEIVED AFTER THAT DEADLINE WILL NOT BE COUNTED.**

##### B. Claimants Entitled to Vote

Any Claimant of the Debtor whose Claim is impaired under the Plan is entitled to vote if either: (i) the Debtor has scheduled the Claimant's Claim and such scheduled Claim is not identified as disputed, contingent or unliquidated; or (ii) the Claimant has filed a proof of Claim on or before the deadline set by the Bankruptcy Court for such filings and no objection to such claim is currently pending.

Any holder of a Claim as to which an objection has been filed (and such objection is still pending) is not entitled to vote, unless the Bankruptcy Court (on motion by a party whose Claim or interest is subject to an objection) temporarily allows the Claim in an amount that it deems proper for the purpose of accepting or rejecting the Plan. Such motion must be heard and determined by the Bankruptcy Court before the first date set by the Bankruptcy Court for the Confirmation Hearing of the Plan. In addition, a Claimant's vote may be disregarded if the Bankruptcy Court determines that the Claimant's acceptance or rejection was not solicited or procured in good faith or in accordance with the applicable provisions of the Bankruptcy Code.

In this case, the Debtor has obtained approval to solicit votes on Class 4 in a manner other than for holders of Claims in Classes 1-3 and 5. For holders of claims in Classes 1, 2, 3, and 5, the ballots will require each holder of a Claim to fill out what it believes is the amount of the claim held by such creditor. Such amount could be the amount of the claim as scheduled on the Schedules or the amount set out in the Proof of Claim filed by such creditor.

Class 4 consists of current Participants in the Millennium Plan. The source of their entitlement to a distribution is the Millennium Master Plan. That document provides that Participants will receive "Life Benefits" upon termination. The Plan Committee has the discretion to establish Life Benefits, and has done so for purposes of the Plan by making Life Benefits dependent upon the contributions made to the Debtor on behalf of the Participant. Specifically, each Participant has Life Benefits based upon both (a) the value of the Debtor's assets at the time of distribution, and (b) the percentage of total Life Benefits to which each Participant is entitled. The percentage of total Life Benefits to which a Participant is entitled is calculated by dividing a particular Participant's Attributed Contribution by the total of all Participants' Attributed Contributions. *See* FAQ 25.

There are other methods of allocating the Debtor's assets, and there would be differences in results, though the Debtor does not believe that those differences would be material. *See* FAQ 26.

The Bankruptcy Court has held as part of the Disclosure Statement approval process, that the Debtor may solicit votes in **Class 4** in the following manner.

***1. Each Participant shall be counted as one creditor for purposes of determining whether more than 1/2 in number have accepted the Plan as a Class 4 creditor.***

***2. Each Participant shall have a claim in an amount equal to his or her Life Benefit for purposes of voting on the Plan.***

***3. In the event there is controversy over whether sufficient number and amount have accepted the Plan, the Debtor shall seek a ruling from the Bankruptcy Court at or prior to the Confirmation Hearing.***

**C. Bar Date for Filing Proofs of Claim**

The Bankruptcy Court has previously established a bar date for filing proofs of Claim or Equity Interests in this Chapter 11 case of November 16, 2010. On October 25, 2010, the Court entered an order extending the deadline to file proofs of claim to January 14, 2011. On January 10, 2011, the Committee filed a motion requesting a thirty-day extension of the deadline to file proofs of claim. On January 13, 2011, the Court entered an order extending the deadline to file proofs of claim to February 14, 2011.

**D. Definition of Impairment**

Under section 1124 of the Bankruptcy Code, a class of claims or equity interests is impaired under a plan of reorganization/liquidation unless, with respect to each claim or equity interest of such class, the plan:

1. leaves unaltered the legal, equitable, and contractual rights of the holder of such claim or interest;
2. notwithstanding any contractual provision or applicable law that entitles the holder of a claim or interest to receive accelerated payment of his claim or interest after the occurrence of a default;
  - (a) cures any such default that occurred before or after the commencement of the case under the Bankruptcy Code, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code;
  - (b) reinstates the maturity of such claim or interest as it existed before the default;
  - (c) compensates the holder of such claim or interest for damages incurred as a result of reasonable reliance on such contractual provision or applicable law;
  - (d) if such claim or such interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a nonresidential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensates the holder of such claim or such interest (other than the debtor or an insider) for any actual pecuniary loss incurred by such holder as a result of such failure; and
  - (e) does not otherwise alter the legal, equitable, or contractual rights to which such claim or equity interest entitles the holder of such claim or interest.

**E. Classes Impaired Under the Plan**

All Classes of Claims are impaired under the Plan. Therefore, all holders of those Claims are eligible, subject to the limitations set forth above, to vote to accept or reject the Plan.

**F. Vote Required for Class Acceptance**

The Bankruptcy Code defines acceptance of a plan by a class of creditors as acceptance by holders of at least two-thirds in dollar amount and more than one-half in number of the claims of that class that actually cast ballots for acceptance or rejection of the plan. Acceptance takes place only if creditors holding claims constituting at least two-thirds in amount of the total amount of claims and more than one-half in number of the creditors *actually voting* cast their ballots in favor of acceptance.

**G. Information on Voting and Ballots**

**1. Transmission of Ballots to Creditors**

Except as otherwise provided in the **Order Approving Disclosure Statement Under 11 U.S.C. § 1125 in Support of the Plan of Reorganization, and Fixing Time for Filing Acceptances or Rejections of Plan, Combined with Notice** entered on March \_\_, 2011, ballots are being forwarded to all Claimants.

**2. Ballot Tabulation Procedures**

For purposes of voting on the Plan, the amount and classification of a Claim and the procedures that will be used to tabulate acceptances and rejections of the Plan shall be exclusively as follows:

- (a) If no proof of Claim has been timely filed, the voted amount of a Claim shall be equal to the amount listed for the particular Claim in the Schedules of Assets and Liabilities, as and if amended, to the extent such Claim is not listed as contingent, unliquidated or disputed, and the Claim shall be placed in the appropriate Class, based on the Debtor's records, and consistent with the Schedules of Assets and Liabilities, the Claims registry of the Clerk of the Bankruptcy Court;
- (b) Except as to Class 4, if a proof of Claim has been timely filed, and has not been objected to before the expiration of the Voting Deadline, the voted amount of that Claim shall be as specified in the proof of Claim filed with the Clerk;
- (c) Subject to subparagraph (d) below, a Claim that is the subject of an objection filed before the Voting Deadline shall be disallowed for voting purposes, except to the extent and in the manner that the Debtor indicates

in its objection that the Claim should be allowed for voting or other purposes;

- (d) If a Claim has been estimated or otherwise allowed for voting purposes by order of the Bankruptcy Court, the voted amount and classification shall be that set by the Bankruptcy Court;
- (e) If a Claimant or its authorized representative did not use the Ballot, as applicable, provided by the Debtor, or the Official Ballot Form authorized under the Federal Rules of Bankruptcy Procedure, such Ballot will not be counted;
- (f) If the Ballot is not received by the Debtor on or before the Voting Deadline at the place fixed by the Bankruptcy Court, the Ballot will not be counted;
- (g) If the Ballot is not signed by the Claimant or its authorized representative, the Ballot will not be counted;
- (h) If the individual or institution casting the Ballot (whether directly or as a representative) was not the holder of a Claim on the Voting Record Date (as that term is defined below), the Ballot will not be counted;
- (i) If no Ballots are received on or before the Voting Deadline with respect to a particular class of Claims, then the Debtor may ask the Bankruptcy Court to deem such class of Claims as accepting the Plan; and
- (j) Whenever a Claimant (or its authorized representative) submits more than one Ballot voting the same Claim(s) before the applicable deadline for submission of Ballots, except as otherwise directed by the Bankruptcy Court after notice and a hearing, the last such Ballot shall be deemed to reflect the voter's intent and shall supersede any prior Ballots.

### **3. Execution of Ballots by Representatives**

If a Ballot is signed by trustees, executors, administrators, guardians, attorneys-in-fact, officers of corporations, or others acting in a fiduciary or representative capacity, such persons must indicate their capacity when signing and, at the Debtor's request, must submit proper evidence satisfactory to the Debtor of their authority to so act.

### **4. Waivers of Defects and Other Irregularities Regarding Ballots**

Unless otherwise directed by the Bankruptcy Court, all questions concerning the validity, form, eligibility (including time of receipt), acceptance, and revocation or withdrawal of Ballots will be determined by the Debtor in its sole discretion, whose determination will be final and

binding. The Debtor reserves the right to reject any and all Ballots not in proper form, the acceptance of which would, in the opinion of the Debtor or its counsel, be unlawful. The Debtor further reserves the right to waive any defects or irregularities or conditions of delivery as to any particular Ballot. Unless waived, any defects or irregularities in connection with deliveries of Ballots must be cured within such time as the Debtor (or the Bankruptcy Court) determine. Neither the Debtor nor any other person will be under any duty to provide notification of defects or irregularities with respect to deliveries of Ballots, nor will any of them incur any liability for failure to provide such notification. Unless otherwise directed by the Bankruptcy Court, delivery of such Ballots will not be deemed to have been made until any irregularities have been cured or waived.

## **5. Withdrawal of Ballots and Revocation**

Any holder of a Claim (or its authorized representative) in an impaired Class who has delivered a valid Ballot for the acceptance or rejection of the Plan may withdraw such acceptance or rejection by delivering a written notice of withdrawal to counsel for the Debtor at any time before the Voting Deadline.

To be valid, a notice of withdrawal must: (i) contain the description of the Claims to which it relates and the aggregate principal amount represented by such Claims; (ii) be signed by the Claimant (or its authorized representative) in the same manner as the Ballot; and (iii) be received by counsel for the Debtor in a timely manner at the addresses set forth herein. The Debtor expressly reserves the absolute right to contest the validity of any such withdrawals of Ballots.

Unless otherwise directed by the Bankruptcy Court, a purported notice of withdrawal of Ballots that are not received in a timely manner by the Debtor will not be effective to withdraw a previously furnished Ballot.

Any Claimant (or its authorized representative) who has previously submitted a properly completed Ballot to counsel for the Debtor before the Voting Deadline may revoke such Ballot and change its vote by submitting to counsel for the Debtor before the Voting Deadline a subsequent, properly completed Ballot for acceptance or rejection of the Plan.

## **H. Confirmation of the Plan**

### **1. Solicitation of Acceptances**

The Debtor is soliciting your vote for acceptance of the Plan. The Debtor will bear the cost of any solicitation. No other additional compensation shall be received by any party for any solicitation other than as disclosed to the Bankruptcy Court.

**NO REPRESENTATIONS OR ASSURANCES, IF ANY, CONCERNING THE DEBTOR OR THE PLAN ARE AUTHORIZED BY THE DEBTOR OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT.**



**ANY REPRESENTATIONS OR INDUCEMENTS MADE BY ANY PERSON TO SECURE YOUR VOTE OTHER THAN THOSE CONTAINED IN THIS DISCLOSURE STATEMENT SHOULD NOT BE RELIED ON BY YOU IN ARRIVING AT YOUR DECISION, AND SUCH ADDITIONAL REPRESENTATIONS OR INDUCEMENTS SHOULD BE REPORTED TO COUNSEL FOR THE DEBTOR.**

**THIS IS A SOLICITATION SOLELY BY THE DEBTOR OF YOUR VOTES ON THE PLAN OF LIQUIDATION PROPOSED BY IT.**

The solicitation of votes on the Plan is governed by section 1125(b) of the Bankruptcy Code. Violation of section 1125(b) of the Bankruptcy Code may result in sanctions by the Bankruptcy Court, including disallowance of any improperly solicited vote.

## **2. Requirements for Confirmation of the Plan**

At the Confirmation Hearing, the Bankruptcy Court will determine whether the requirements of section 1129 of the Bankruptcy Code have been satisfied, in which event the Bankruptcy Court shall enter an Order confirming the Plan. For the Plan to be confirmed, section 1129 of the Bankruptcy Code requires that:

- (a) The Plan comply with the applicable provisions of the Bankruptcy Code;
- (b) The Debtor complies with the applicable provisions of the Bankruptcy Code;
- (c) The Plan be proposed in good faith and not by any means forbidden by law;
- (d) Any payment or distribution made or promised by the Debtor or by a person issuing securities or acquiring property under the Plan for services or for costs and expense in connection with the Plan be disclosed to the Bankruptcy Court, and any such payment made before the confirmation of the Plan is reasonable, or if such payment is to be fixed after confirmation of the Plan, such payment be subject to the approval of the Bankruptcy Court as reasonable;
- (e) The Debtor discloses the identity and affiliation of any individual proposed to serve, after confirmation of the Plan, as a director, officer or voting trustee of the Debtor, an affiliate of the Debtor participating in a Plan with the Debtor, or a successor to the Debtor under the Plan; the appointment to, or continuance in, such office of such individual is consistent with the interests of Creditors and Equity Interest holders and with public policy; and the Debtor disclose the identity of any insider that will be employed or

retained by the Debtor and the nature of any compensation for such insider;

- (f) With respect to each impaired Class of Claims or Equity Interests, either each holder of a Claim or Equity Interest of the Class has accepted the Plan, or will receive or retain under the Plan on account of that Claim or Equity Interest property of a value, as of the Effective Date of the Plan, that is not less than the amount that such holder would so receive or retain if the Debtor were liquidated on such date under Chapter 7 of the Bankruptcy Code. If section 1111(b)(2) of the Bankruptcy Code applies to the Claims of a Class, each holder of a Claim of that Class will receive or retain under the Plan on account of that Claim property of a value, as of the Effective Date, that is not less than the value of that holder's interest in the Debtor's interest in the property that secures that Claim;
- (g) Each Class of Claims or Equity Interests has either accepted the Plan or is not impaired under the Plan; (subject to the "cramdown" provisions discussed in section III (H)(4) below.)
- (h) Except to the extent that the holder of a particular Administrative Claim or Priority Claim has agreed to a different treatment of its Claim or as otherwise provided by the Bankruptcy Code, the Plan provides that Administrative Claims and Priority Claims shall be paid in full on the Effective Date or the date that such Administrative Claim or Priority Claim is Allowed;
- (i) If a Class of Claims is impaired under the Plan, at least one such Class of Claims has accepted the Plan, determined without including any acceptance of the Plan by any insider holding a Claim of that Class; and
- (j) Confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtor or any successor to the Debtor under the Plan, unless such liquidation or reorganization is proposed in the Plan.

The Debtor believes that the Plan satisfies all of the statutory requirements of the Bankruptcy Code for confirmation and that the Plan is proposed in good faith. The Debtor believes it has complied, or will have complied, with all the requirements of the Bankruptcy Code governing confirmation of the Plan.

### **3. Acceptances Necessary to Confirm the Plan**

Voting on the Plan by each holder of a Claim (or its authorized representative) is important. Chapter 11 of the Bankruptcy Code does not require that each holder of a Claim vote in favor of the Plan in order for the Court to confirm the Plan. Generally, to be confirmed under

the acceptance provisions of section 1126(a) of the Bankruptcy Code, the Plan must be accepted by each Class of Claims that is impaired under the Plan by parties holding at least two-thirds in dollar amount and more than one-half in number of the Allowed Claims of such Class actually voting in connection with the Plan. Even if all Classes of Claims accept the Plan, the Bankruptcy Court may refuse to confirm the Plan. In the event that the Plan is not confirmed for any reason, an alternative plan may be proposed by the Debtor, or if the Court permits, by any other party.

#### **4. Cramdown**

In the event that any impaired Class of Claims does not accept the Plan, the Bankruptcy Court may still confirm the Plan at the request of the Debtor if, as to each impaired Class that has not accepted the Plan, the Plan “does not discriminate unfairly” and is “fair and equitable.” A plan of reorganization does not discriminate unfairly within the meaning of the Bankruptcy Code if no Class receives more than it is legally entitled to receive for its Claims or Equity Interests. “Fair and equitable” has different meanings for holders of secured and unsecured Claims and Equity Interests.

With respect to a Secured Claim, “fair and equitable” means either: (i) the impaired Secured Creditor retains its liens to the extent of its Allowed Claim and receives deferred cash payments at least equal to the allowed amount of its Claims with a present value as of the Effective Date of the Plan at least equal to the value of such Creditor’s interest in the property securing its liens; (ii) property subject to the lien of the impaired Secured Creditor is sold free and clear of that lien, with that lien attaching to the proceeds of sale, and such lien proceeds must be treated in accordance with clauses (i) and (iii) hereof; or (iii) the impaired Secured Creditor realizes the “indubitable equivalent” of its Claim under the Plan.

With respect to an Unsecured Claim, “fair and equitable” means either: (i) each impaired Creditor receives or retains property of a value equal to the amount of its Allowed Claim; or (ii) the holders of Claims and Equity Interests that are junior to the Claims of the dissenting Class will not receive any property under the Plan.

In the event at least one Class of impaired Claims or Equity Interests rejects or is deemed to have rejected the Plan, the Bankruptcy Court will determine at the Confirmation Hearing whether the Plan is fair and equitable and does not discriminate unfairly against any rejecting impaired Class of Claims or Equity Interests.

The Debtor believes that the Plan does not discriminate unfairly and is fair and equitable with respect to each impaired Class of Claims and Equity Interests and is confirmable. Section 5.3 of the Plan constitutes the Debtor’s request, pursuant to section 1129(b)(1) of the Bankruptcy Code, that the Bankruptcy Court confirm the Plan notwithstanding the fact that the requirements of section 1129(a)(8) of the Bankruptcy Code may not be met and its intent to pursue a cramdown if necessary to confirm the Plan.

#### IV.

#### **BACKGROUND OF THE DEBTOR**

The following description of the Debtor is provided for general information purposes only. Parties should refer to the Debtor's Summary Plan Description and other Debtor documents (as amended) for more complete information.

##### **A. General**

The Debtor was established on November 1, 2002 for the purpose of providing certain welfare benefits to eligible Participants. The Debtor is a fully-insured multiple employer welfare arrangement ("MEWA") covering designated employees of Covered Employers and is subject to the provisions of the Employee Retirement Income Security Act of 1974 (referred to as "ERISA"). The Debtor provides eligible participating employees with fully-insured (through the Debtor's purchase of cash value life insurance policies – see "Investment Options" below) death benefits and other qualifying welfare benefits for life contingencies such as disability income, reimbursement of medical costs, dental care, vision care, long-term care and involuntary severance benefits. The Debtor is a taxable Mississippi trust designed to comply with the current provisions of Internal Revenue Code Section 419A(f)(6) and the related regulations. A copy of the Millennium Master Plan and Millennium Trust Agreement are attached hereto as Exhibit 3.

The Debtor is managed by a Plan Committee, which is the fiduciary body charged with the responsibility of, among other things, interpreting and applying the Millennium Master Plan's terms. The Plan Committee presently consists of four members: Jonathan Cocks (the Plan Committee's non-voting chairman and the Debtor's paid general manager), Larry Cress, David Esman, and Timothy O'Rourke. The members of the Plan Committee were selected from and designated by the Covered Employers.

The Debtor's assets are held by the trust department of Republic Bank & Trust in Norman, Oklahoma ("RBT"). The Debtor's third party administrator is SecurePlan Administrators, LLC ("SecurePlan") (a wholly-owned subsidiary of RBT) and its actuary is Milliman, Inc.

There are presently approximately 425 Participants, all of whom are segregated by Rating Group Indicator (hereinafter referred to as "Rating Groups") that consists of a Death Benefit Identifier and a Life Benefit Rating Group. A participant's Rating Group assignment is based upon actuarially-determined risk criteria, and determines their cost of coverage as well as the amount of the death and life benefits provided by the Debtor. Claims, expense, and investment experience risk are shared by the Debtor's Participants based on either the Participants' specific rating group assignments or by all Participants enrolled in the Debtor as a whole. The Debtor's promised death benefits are fully insured by nationally known insurance carriers. The aggregate promised life benefits are calculated based upon the value of the Debtor's net assets, including the total cash value of the life insurance contracts owned by the Debtor, at the beginning of each year.

## **1. Benefits**

Death Benefits are payable to designated beneficiaries following the death of a participant. As provided for in the Millennium Master Plan, Life Benefits can be paid to a participant for such things as a Participant's total disability, involuntary separation from employment, or for medical expense reimbursement (including long-term care needs).

## **2. Contributions**

Millennium received contributions from Covered (also referred to as "participating") Employers (there are presently approximately 225 Covered Employers) based upon the provisions of their respective written adoption agreements. Covered Employers are obligated to make contributions and other payments to the Plan in order to maintain the eligibility for benefits of the Participants identified in their respective adoption agreements, including payments for certain administration expenses as identified therein. There were no self-pay contributions by Participants.

If certain actuarial criteria are met and following approval by the Plan Committee, a Covered Employer can amend the previously agreed-upon contribution schedule. Such an amendment usually results in an immediate change to the affected Participants' benefits as dictated by the cost-requirements of the Rating Groups to which the affected Participants are assigned.

## **3. Participant's Benefit Amounts**

Participants are promised Plan Benefits on a Plan (calendar) Year basis, and they are set by the Plan Committee following consultations with and calculations by the Debtor's actuary using the following factors:

1. The uniform cost of the death Benefit and life Benefit associated with the participant's Rating Group assignment on a per \$1,000 of death benefit basis;
2. The fair value of the Debtor's net assets (see below);
3. A "hold-back" reserve established by the Plan Committee;
4. The investment experience of the Debtor as a whole.

The sum of the Debtor's loans and accumulated interest is used as a proxy for its claims and overall expense experience. This amount is allocated to the Rating Groups in proportion to cumulative Life Benefits paid within each Rating Group.

## **5. Payment of Benefits**

The Master Plan document includes a description of the Plan's benefit payment provisions.

Benefits are recorded when paid; no benefits are due to terminated Participants.

## **6. Forfeitures**

In the event a Covered Employer fails to pay the required contributions or administrative fees or otherwise defaults, the employer will be terminated from the Debtor and the Participants designated by the employer in its adoption agreement will cease to be entitled to benefits from the Debtor. The Debtor typically surrenders the policies on the lives of Participants who are no longer eligible for benefits and the proceeds are used to either defray the cost of the Debtor's administration or in some other manner to uniformly benefit the Debtor's remaining Participants.

## **7. Investment Options**

Following enrollment in the Debtor, the Debtor's trustee purchases the cash value life insurance policies selected by the Covered Employer, and, at the direction of the Plan Committee, elects the investment options to pursue within each policy. Neither the Covered Employers nor the Participants have the option to direct how the assets of any policy are invested, or the ability to control any of the Plan's assets. All assets are owned and managed by the trustee, with the assistance of an independent investment advisor, both of whom are directed and supervised by the Plan Committee.

## **8. Administrative Claims**

The Debtor is responsible for various expenses, including the actuarial, audit, investment advisory, legal, management and other fees and expenses directly attributable to the Debtor's operation. In the event the collected annual administrative fees from the Covered Employers are not sufficient to cover the combined cost of the Debtor's trustee and third-party administrator, the Plan is responsible for any difference. At February 15, 2011, the amount due from Covered Employers for unpaid annual administrative fees was approximately \$186,000.

## **9. Policy Loans**

The Debtor can instruct RBT to borrow from the cash values of the Debtor's Life Policies in order to fund the Debtor's benefit payments, costs and expenses. The amount of borrowings outstanding (including accumulated interest on these borrowings at interest rates ranging from 3.75% to 8.85%) at February 15, 2011 was approximately \$31 million. The final due date of any Debtor borrowing would be the date the Debtor surrenders the applicable policy. Policy loans will generally negatively impact the investment performance of the affected life insurance policies.

Contractual provisions in various Life Policies owned by the Debtor allow carriers to take up to six months to process a loan request.

## **10. Benefits and Other Plan Obligations**

Presently, the Debtor owns and is the beneficiary of various Life Policies with stated death

benefit values aggregating between \$900 million and \$1billion.

Since the Debtor reports on the modified cash basis of accounting and because benefits are either directly or indirectly subject to coverage by insurance policies, there are no recorded benefit obligations. In addition, the Plan does not report a net change in its annual benefit obligations.

Due to the refusal of certain life insurance carriers to allow the Debtor access to the Life Policies, the Debtor could not make Life Benefits available for 2010 and 2011.

## **11. Rating Groups**

Amounts available to Participants as Death and Life Benefits do not necessarily reflect the actual values associated with the policies insuring those Participants' lives. Amounts made available to Participants during any Plan Year reflect the experience of the participant's Rating Group. Consequently, values made available to a Participant in any given plan year reflect the contribution experience of the Covered Employers regarding Participants within the applicable Rating Groups, the actual claims experience within the applicable Rating Group, as well as other factors such as the investment performance and value of the Plan's assets, any "hold-back" reserve established by the Plan Committee and any costs and expenses of the Plan.

## **12. Tax Status**

As noted above, the Debtor is a taxable trust that annually files tax returns with the Internal Revenue Service (the "IRS"). No significant income taxes have been paid by the Debtor to date.

The IRS does not provide determination letters regarding whether welfare benefit plans (including the Plan) are designed in accordance with applicable sections of the Internal Revenue Code or operate in compliance with the applicable requirements. In October 2004, a request for private letter ruling was filed with the IRS. A private letter ruling is the IRS' interpretation of a tax statute or administrative rules and their application to a particular set of facts or circumstances. The purpose of a letter ruling is to advise the taxpayer with respect to the tax treatment it can expect from the IRS in the circumstances specified by the ruling. The ruling requested the IRS' guidance with respect to the following questions: (1) does the Debtor comply with the requirements of Internal Revenue Code Section 419A(f)(6) and the related regulations, and (2) is the Debtor a so-called "listed transaction."

On October 5, 2007, the IRS issued a private letter ruling which, in summary, stated that, in the IRS' opinion, the Debtor did not comply with Internal Revenue Code Section 419A(f)(6) and the related regulations and the Debtor is a "listed transaction." The Plan Committee strongly disagrees with the IRS' ruling and believes the Debtor is currently designed and operates in compliance with applicable requirements of the Internal Revenue Code. The Debtor and its Sponsor subsequently filed an action in the U.S. Tax Court requesting an order to prohibit the IRS from disclosing its ruling to the public or, alternatively, to significantly restrict what is

disclosed. Following an October 2009 hearing in the Tax Court regarding the government's motion for a summary judgment, the Debtor and the IRS held a series of meetings that resulted in an agreement regarding the contents of a published private letter ruling. The Tax Court accepted the parties' agreement and in May 2010 the private letter ruling was released for publication.

Neither the Plan Committee nor anyone associated with the Debtor can provide any assurance that the IRS will not challenge the tax treatment of any tax benefits (including deductions for contributions) claimed with respect to the Debtor. Among other things, transactional and other factors unique to each Covered Employer affect the tax treatment of the related transactions. Since the Debtor does not and cannot provide any legal or tax advice, employers and employee Participants should consult with their own legal or tax advisors regarding the tax or other consequences of the Debtor as applied to their own particular circumstances, including the IRS' position that an employer's participation in the Plan or the participation in the Debtor by certain employees of a Covered Employer is a "listed transaction."

As discussed in detail below, the Debtor currently anticipates entering into a settlement with the IRS that will provide for tax treatment unique to the Millennium Participants and Covered Employers that choose to enter into the IRS Settlement. The IRS Settlement does not affect two pending tax court cases involving Millennium participants and, if such cases proceed to a final decision, that could as a practical matter determine Millennium's status under IRC section 419A(f)(6).

### **13. Defense and Indemnification Commitments**

Prior to the filing of any lawsuits against the Debtor or others associated with it, the Debtor agreed to defend or indemnify Milliman, Inc. and SecurePlan against various or certain claims asserted against them in connection with their work on behalf of the Debtor. The indemnification does not apply if either party is found to have engaged in, among other things, gross negligence, breach of fiduciary duty, or a violation of ERISA or similar statutes. In the event of such a finding, SecurePlan and Milliman are obligated to return all moneys advanced to it by the Debtor under this indemnification. There has been no such finding to date.

The Millennium Master Plan includes a provision granting RBT a lien against the Debtor's assets for the amount of all fees, costs, charges and amounts that may be rightfully due it, including the cost of defending any lawsuit filed against it in connection with its services as the Debtor's trustee. This lien has priority over the claims of any participant or beneficiary. Any such obligation would be limited by the provisions of ERISA.

Milliman, Inc., RBT and SecurePlan are named as defendants in substantially all of the litigation that also names the Debtor as a defendant.

### **14. Other Commitments**

During 2007, the Plan Committee determined that, because of the size to which the



Debtor had grown, someone was needed to assume responsibility for the Debtor's day-to-day management as well as to coordinate its administrative activities and the efforts of its various service providers. Effective January 1, 2008, the Plan Committee hired Jonathan Cocks to perform these activities who is paid a fixed monthly fee of approximately \$32,100 and is reimbursed for certain expenses that directly relate to the Plan's activities. During 2009 the Plan's agreement with Mr. Cocks was amended to provide him with up to a six month continuation of the fixed monthly fee in the event a) his employment was involuntarily terminated without cause; b) a change in control of the Plan Committee occurred and his employment was subsequently terminated; or c) his employment ended because the Plan was terminated.

## **B. Explanation of the Prepetition Litigation**

### **1. Claims the Debtor has asserted against the United States of America**

In March 2006, the Debtor and its Sponsor filed an action in a U.S. District Court in Houston, Texas against the United States of America (regarding one of its agencies, the Internal Revenue Service), claiming damages arising from unlawful third-party disclosures by the IRS regarding the Debtor's confidential tax information and breach of the Freedom of Information Act's provisions. Through December 15, 2007, half of the litigation costs were the responsibility of the Debtor (as approved by the Plan Committee) and the remaining half were the Sponsor's responsibility. Subsequently, the Debtor assumed responsibility for the entire cost.

In June 2009 both parties moved for summary judgment on a number of the claims asserted. The United States' summary judgment motions sought dismissal of the entire case and all claims. In March 2010 the Court granted the United States' motions for summary judgment and denied the Debtor's motions for summary judgment (the government won, the Debtor lost). Following consultations with its attorneys, the Debtor decided to file a notice of appeal regarding the Court's rulings with the U.S. Court of Appeals for the Fifth Circuit.

### **2. Claims asserted by certain life insurance companies regarding the Debtor's Assets**

Three life insurance carriers have filed interpleader actions in the U.S. District Court for the Western District of Oklahoma. Each action requests that the Court determine whether the Debtor is the exclusive owner of the applicable insurance policies and entitled to exercise its exclusive ownership rights. These rights include, among other things, the ability to surrender the policy (for death benefit claims, etc.) and to request and receive policy borrowings. Each of these carriers is also a defendant in certain of the tort actions discussed in the topic below.

A fourth life insurance carrier filed claims in an existing Texas state court action arguing that it would not honor requests for Policy borrowings in order to finance the Debtor's activities. This carrier is also a defendant in certain of the tort actions discussed in the topic below.

In addition, these Insurance Companies have filed cross-claims against the Debtor in litigation brought by certain Covered Employers and others (described below) alleging that Millennium is required to indemnify them if there are judgments against them in the litigation.

The Debtor has attempted, without success, to negotiate resolutions of these actions with the applicable carriers. It has also filed claims against certain carriers and is considering what further legal action to take against the others. Over 70% of the Debtor's assets are invested in life insurance policies issued by these four companies. Consequently, it has become increasingly difficult for the Debtor to fund its operations, including Death and Life Benefit payments as well as the Debtor's operating expenses. These carriers' actions have also forced the Debtor to incur significant additional legal costs in an effort to gain access to the Debtor's assets.

There are numerous motions and pleadings in the Bankruptcy Court and the District Court dealing with the interpleaders and the Debtor's attempt to regain access to its assets. The Debtor expects that these issues will be resolved by one or both of those two courts, but cannot predict when such a resolution might occur or the specific basis upon which the issues might be resolved.

### **3. Claims others are asserting against the Debtor**

Presently, Participants and others have filed seven separate actions against the Plan and others (not including settled actions) in various state courts in Arkansas, Oklahoma, Tennessee and Texas. One of the Tennessee and two of the Texas actions include multiple plaintiff groups. Four of the actions were filed by the same attorneys. In addition to the Debtor, most of these actions name the Debtor's Sponsor, actuary, manager, third-party administrator and trustee as additional defendants. The two Texas actions involving multiple plaintiff groups have also asserted various claims, including breach of fiduciary responsibility claims, against the members of the Plan Committee.

While each complaint includes unique and specific allegations, in general, each seeks to hold the Debtor responsible for various alleged misrepresentations made to the applicable plaintiffs regarding their participation in the Debtor and also alleges the Debtor breached its contracts by refusing to allow certain plaintiffs to "void" their participation in Millennium and obtain Life Policies from the Debtor. Each complaint is in a different stage of the judicial process, but none has progressed beyond the discovery stage.

Prior to the bankruptcy filing, the Debtor had negotiated settlements in four cases. Two had been settled for the payment of \$5,000 each. The amounts of the settlements in the other two cases are confidential, but the Debtor can state that each settlement increased the Debtor's net assets because the plaintiffs agreed to withdraw from Millennium, thus relieving the Debtor of liabilities arising from the benefit entitlements of the withdrawing plaintiff Participants.

As a result of the Debtor's Chapter 11 filing all of these actions are now stayed (on hold). The Debtor has either begun the process of removing or has removed all of these remaining

actions to federal court and has further sought to have each of them decided by the Bankruptcy Court. The Debtor's intent is that all claims associated with these actions, as well as any other claims regarding the Debtor, be resolved during the course of the Chapter 11 proceeding. To that end, the non-Participant plaintiffs have been classified in Class 3 and the Plan does not contemplate making any distribution to them. Participant plaintiffs are in Class 4 and are treated the same as non-plaintiff Participants.

The lawsuits are as follows:

<b>Case</b>	<b>Original Court</b>	<b>Current Court</b>
<i>Young et al. v. Millennium Multiple Employee Benefit Plan et al.</i>	Dallas County, Tex.	Bankr. W.D. Okla. Adv. No. 10-01176
<i>Westfall et al. v. Bevan et al.</i>	Dallas County, Tex.	Bankr. W.D. Okla. Adv. No. 10-01175
<i>Passons et al. v. Aviva Life and Annuity Company et al.</i>	Davidson County, Tenn.	M.D. Tenn. Case No. 10-00575
<i>White et al. v. Aviva Life and Annuity Company et al.</i>	Madison County, Tenn.	Bankr. W.D. Okla. Adv. No. 10-01173
<i>Preston et al. v. Millennium Multiple Employer Welfare Benefit Plan et al.</i>	Sebastian County, Ark.	Bankr. W.D. Ark. Adv. No. 10-07081
<i>Embras et al. v. Fakouri et al.</i>	Dallas County, Tex.	Bankr. N.D. Tex. Adv. No. 10-03157
<i>Khetpal et al. v. Aviva Life and Annuity Company et al.</i>	Bryan County, Okla.	E.D. Okla. Case No. 10-00088
<i>Hassoun et al. v. Aviva Life and Annuity Company et al.</i>	Oklahoma County, Okla.	Bankr. W.D. Okla. Adv. No. 10-01117

The Debtor is an additional insured under an insurance policy that was originally obtained by the Sponsor. Both the Sponsor and the Debtor had rights to coverage under the policy as well as to its coverage limits and both were using the policy to pay for substantially all of their defense costs incurred in connection with these various actions. The Debtor's fiduciary insurance carriers (for both the original policy and a subsequent policy obtained for the Debtor only) have taken the position that either the applicable policy limit has been exhausted with respect to most of the actions set forth above or the policy does not provide coverage for the actions. While the Debtor is analyzing its insurance coverage and making every effort to maximize any possible recovery, at present the Debtor is prepared to pay, and is paying, substantially all litigation related expenses and any possible settlements in the pending cases from the Debtor's assets while reserving any and all rights with regard to its insurance carriers.

A law firm, which the Debtor contends was engaged by one of its insurance carriers to defend the Debtor in a tort action, filed suit against the Debtor in a Texas state court for unpaid legal fees in the amount of approximately \$146,000 plus attorney fees and costs. The Debtor

intends to vigorously contest any claim filed by this firm in the Debtor's Chapter 11 proceeding as well as assert various counter-claims.

### **C. Reasons for Filing Chapter 11**

Two factors drove the Debtor's decision to make its Chapter 11 filing. The most important was the ongoing refusal of a number of life insurance companies to honor the Debtor's contractual ownership rights with respect to the Life Policies it owns. These rights include the ability to request and receive advances against the policies' cash values. Despite having over \$85 million in net assets at June 9, 2010 (unaudited) and several hundred fully paid life insurance policies, without the ability to timely access its assets the Debtor cannot pay Death and Life Benefits or its other operating expenses.

Second, the continuing cost of the ongoing plaintiffs' tort litigation compelled the Debtor to seek a judicial forum that would facilitate a fair and global resolution of these asserted, as well as any unasserted, claims. *See FAQ 22* for a further discussion.

### **D. Capital Structure**

The Debtor does not have or use a traditional capital structure such as those used by a commercial, for-profit enterprise. Rather, the Debtor invested substantially all of the contribution proceeds received from the Covered Employers in a variety of fixed or variable life insurance policies. The fair value of these life insurance policies, along with any residual cash or cash equivalents, exceeds the fair value of the Debtor's obligations (including any borrowings from the Debtor's life insurance policies). This residual constitutes the Debtor's net assets and is the amount available for the Debtor's benefit and other claims or obligations.

### **E. Assets and Liabilities**

At the Petition Date the Debtor's total assets and total known obligations amounted to approximately \$116 million and \$29 million, respectively. At December 31, 2010, the Debtor's total assets and total known obligation amounted to approximately \$126 million and \$34.5 million, respectively (which included certain unpaid administrative expenses).

#### **1. Assets**

At the Petition date, the Debtor's assets consisted of cash (approximately \$700,000) held on deposit at RBT and the fair value of the Debtor's investment in over 400 Life Policies (approximately \$115.3 million). These amounts include certain assets (amounting to less than \$.1 million) the Debtor was holding in escrow.

Presently, the Debtor's assets still primarily consist of the fair value of the Debtor's investment in over 400 Life Policies. However, the fair value of these assets has increased by over \$10 million.

## **2. Liabilities**

The Debtor's obligations consisted of loans that were collateralized by its investments in life insurance contracts (approximately \$29 million including accumulated interest) as well as the Debtor's related obligations for the assets held in escrow (which also amounted to less than \$.1 million).

Since the Debtor is a MEWA it considers its Participants to be contingent unsecured creditors. The Debtor's maximum liability to its Participants is fixed annually and amounts to a percentage of the Debtor's net assets at the beginning of each Plan Year less certain adjustments. However, the Debtor only incurs an actual liability to a participant in the event the Debtor's Plan Committee makes life benefits available for the Plan Year in question and a participant incurs an actual benefit trigger, as defined. The Debtor's liability to a Participant cannot exceed that Participant's maximum life benefit amount for the Plan Year. A Participant must make a written claim for Life Benefits by a declared deadline (usually March 15<sup>th</sup> of the following year) and any unused Life Benefits do not carry over from year-to-year. All of the Debtor's life benefit claims for prior Plan Years were paid prior to the Petition Date and the Plan Committee did not make any life benefits available to its Participants for 2010.

The Debtor has two secured creditors, RBT and SecurePlan. At the Petition Date, the Debtor believes the amounts due, with the exception of any indemnification related obligations that are not known, the two creditors to be minimal.

Other parties may consider amounts due from the Debtor as of the Petition Date; the Debtor considers any actual amounts due to other parties to be nominal in relation to the Debtor's net assets as of the Petition Date.

Presently, the Debtor's known obligations primarily consist of loans that are collateralized by its investments in life insurance contracts (approximately \$31 million including accumulated interest) and unpaid administrative expenses related to its Chapter 11 proceeding (approximately \$4 to \$5 million).

## **V.**

### **POST-BANKRUPTCY OPERATIONS AND SIGNIFICANT EVENTS**

**A. Post-Bankruptcy Operations**

Since the Petition Date, the Debtor has continued to manage its assets and business for the benefit of creditors as a debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

**B. Professionals****1. Professionals Employed by the Debtor**

On June 9, 2010, the Debtor filed several applications to employ professionals to represent it in various matters. The professionals whom the Debtor seeks authority to retain, together with their proposed representation are:

Professional	Proposed Representation
Franklin Skierski Lovall Hayward LLP	General bankruptcy counsel to the Debtor
Mock, Schwabe, Waldo, Elder, Reeves & Bryant, PLLC	Local bankruptcy counsel to the Debtor
Stutzman Bromberg Esserman & Plifka, P.C.	Special counsel to the Debtor
Groom Law Group	Special Counsel to advise Debtor on employee benefit matters and representing Debtor in numerous pending lawsuits in Texas, California, Arkansas, Oklahoma, Tennessee, and Virginia to the extent such litigation is not stayed or the Debtor believes it is in its best interest to proceed to post-petition resolution
Dewey & LeBoeuf	Special Counsel to advise Debtor on certain tax matters primarily related to whether it qualifies for treatment under section 419(A)(f)(6) of the Internal Revenue Code and representing the Debtor in pending litigation in Tax Court and the U.S. District Court for the Southern District of Texas

Roberts Markel PC	Special Counsel to continue representation of the Debtor in pending litigation in Dallas County, Texas; Davidson County, Tennessee; Madison County, Tennessee; U.S. District Court for the Eastern and Western Districts of Oklahoma
Jackson Lewis LLP	Special Counsel to advise the Debtor on its structure, the interaction of ERISA and Plan documents, and related issues
Anderson Kill & Olick, LLP	Special Counsel to advise the Debtor on insurance coverage issues and represent the Debtor in prepetition litigation in the 334th District Court in Harris County, Texas
Little Pedersen Fankhauser	Local Counsel to represent the Debtor in prepetition litigation in the 334th District Court in Harris County, Texas that has now been transferred to Collin County
Gilbert Russell McWherter	Local Counsel to represent the Debtor in prepetition litigation in Madison County and Davidson County, Tennessee
Watts & Watts	Local Counsel to represent the Debtor prepetition litigation in five cases pending in the Eastern District of Oklahoma
Mitchell Williams Selig Gates & Woodyard, PLLC	Local Counsel to represent the Debtor in prepetition litigation in the Circuit Court of Sebastian County, Arkansas
Marcus & Cinelli, LLP	Special Counsel to advise the Debtor on issues related to the appeal to the 5th Circuit of a cause of action for damages against the United States
Edward Urquhart	Special Counsel to provide consulting services to Marcus & Cinelli related to the 5th Circuit appeal

Thompson & Knight, LLP	Special Counsel to provide input for the appellant brief to be filed in the 5th Circuit case and participate in oral argument for same. Additionally, will with assistance from Dewey & LeBoeuf, handle the trial of Buck v. USA in the U.S. District Court in Houston, Texas
Kurtzman Carson Consultants, LLC	Noticing Agent for the Debtor
Robert Goldstein, CPA	Debtor's auditor

The Bankruptcy Court has entered orders approving the Debtor's employment of Kurtzman Carson Consultants, LLC [Docket No. 119] and Robert Goldstein, CPA [Docket No. 118]. The Bankruptcy Court approved the remaining applications at a hearing conducted on October 21, 2010.

## **2. The Committee**

On June 22, 2010, the United States Trustee appointed the Committee, consisting of seven members. John Malesovas and Lester Lewis are the co-chairmen of the Committee.

As constituted on June 22, 2010, the U. S Trustee appointed the following persons to the Committee:

### **1. Various Participants**

Representative: John Malesovas  
816 Congress Avenue, Suite 1265  
Austin, TX 78701

### **2. Various Participants**

Representative: Kathryn E. Barnett  
1650 One Nashville Place  
150 Fourth Avenue North  
Nashville, TN 37219

### **3. Vivek Khetpal**

Representative: Vivek Khetpal  
1275 Mockingbird Lane  
Durant, OK 74701

### **4. Juli Jessen**

Representative: Christina Economou



370 South Main Street  
Yuma, AZ 85364

**5. Jeffrey Epstein**

Representative: Jeffrey Epstein  
1015 Redcedar Lane  
Houston, TX 77094

**6. Shahe E. Vartivarian**

Representative: Salpi Vartivarian  
7777 Southwest Freeway, Suite 610  
Houston, TX 77074

**7. Lester Lewis**

Representative: Lester Lewis  
9821 Spring Hill Drive  
Anchorage, AK 99507

The Committee sought Bankruptcy Court approval to retain the following professionals to represent the Committee.

Professional	Representation
Diamond McCarthy LLP	General bankruptcy counsel to the Committee
Conner & Winters, LLP	Local bankruptcy counsel to the Committee
Price & Associates, LLC	Special counsel to the Committee related to providing advice on tax related issues

The Bankruptcy Court approved the Committee's applications to employ professionals at a hearing conducted on October 21, 2010.

On January 20, 2011, the Office of the United States Trustee filed a "Notice of Appointment of Additional Members to the Official Unsecured Creditors' Committee by the Office of the United States Trustee" [Docket No. 837] (the "Notice of Additional Committee Members"). In the Notice of Additional Committee Members, the United States Trustee announced the appointment of the following additional Committee members:

**1. Legal Reprographics, Inc.**

Representative: Steven Beaver  
13151 Stone Canyon Road  
Poway, CA 92064-2175

**2. T. Matera & Associates, Inc.**

Representative: Tom Matera  
1518 Herbert Street  
Downers Grove, IL 60515

**3. Hugh M. Cunningham, Inc.**

Representative: Dan Townsend  
13755 Benchmark Drive  
Dallas, TX 75234

**C. POST-PETITION LEGAL EVENTS**

**1. Section 341 Meeting of Creditors**

On the Petition Date, the Debtor filed its Schedule of Assets and Liabilities (the “Schedules”). The Schedules list all assets and liabilities of the Debtor as of the Petition Date. The Schedules filed by the Debtor reflect assets valued at \$96,102,586.19, comprised primarily of the Life Policies, previously discussed, and liabilities of \$180,948.19. The Debtor subsequently amended Schedule B, a listing of personal property, on August 6, 2010, and January 13, 2011, to include more detailed information for each life insurance policy claimed as an asset.

On June 10, 2010, the Court issued a Notice of Chapter 11 Case, Meeting of Creditors, and Deadlines that set July 19, 2010, as the date for the section 341 meeting of creditors. The United States Trustee conducted a section 341 meeting of creditors in Oklahoma City, Oklahoma on July 19, 2010.

**2. Bar Date for Filing Proof of Claim**

On June 17, 2010, the Debtor filed a Motion to Set Last Day to File Proofs of Claim (“Original Bar Date Motion”) requesting that the Court approve the date of November 16, 2010, as the bar date for filing proofs of claims. The Court approved the Original Bar Date Motion by a court order on July 17, 2010.

On October 10, 2010, the Committee filed its Motion for an Order Extending Bar Date that requested an extension of the deadline to file proofs of claim until January 14, 2011 (“First Bar Date Extension Motion”). The Debtor joined the Committee in seeking the extension, with the Insurance Companies raising the only objections. The Court held a hearing on the First Bar Date Extension Motion on October 21, 2010. The Court entered an order extending the deadline to file proofs of claim until January 14, 2011.

On January 10, 2011, the Committee filed its Motion for a Thirty-Day Extension of the Bar Date (“Second Bar Date Extension Motion”), requesting an extension of the deadline to file proofs of claim until February 14, 2011. The Court held a hearing on the Second Bar Date

Extension Motion on January 13, 2011. On January 19, 2011, the Court entered an order approving the 30-day extension to file proofs of Claims until February 14, 2011.

### 3. Removal of Prepetition Lawsuits

After the Petition Date, the Debtor initiated: (a) the removal under 28 U.S.C. § 1452 of certain pre-petition Lawsuits in which it was named as a defendant; and (b) the transfer of those pre-petition Lawsuits to the Bankruptcy Court under 28 U.S.C. § 1412. As a result, after hearings in the various courts on the Motions to Transfer Venue and Motions to Remand, the following Lawsuits have been transferred to the United States Bankruptcy Court for the Western District of Oklahoma:

Case	Original Court	Current Court
<i>Young et al. v. Millennium Multiple Employee Benefit Plan et al.</i>	Dallas County, Tex.	Bankr. W.D. Okla. Adv. No. 10-01176
<i>Westfall et al. v. Bevan et al.</i>	Dallas County, Tex.	Bankr. W.D. Okla. Adv. No. 10-01175
<i>White et al. v. Aviva Life and Annuity Company et al.</i>	Madison County, Tenn.	Bankr. W.D. Okla. Adv. No. 10-01173
<i>Hassoun et al. v. Aviva Life and Annuity Company et al.</i>	Oklahoma County, Okla.	Bankr. W.D. Okla. Adv. No. 10-01117

### 4. Fee Application Procedure

On October 22, 2010, the Court entered an Agreed Order Establishing Procedures for Interim Monthly Compensation and Reimbursement of Expenses of Professionals (the "Fee Procedures Order"). Pursuant to the terms of the Fee Procedure Order, professionals employed by the Debtor and the Committee are to submit monthly applications of fees and expenses incurred to a group of reviewing parties for review and comment. In the event no objections are raised to a professional's monthly application, the Order gives the Debtor authority to pay eighty percent (80%) of non-objectionable fees and one hundred percent (100%) of non-objectionable expenses to that professional, following the filing of a certificate of no objection with the Bankruptcy Court. Professionals are also required to file quarterly interim applications for allowance of fees and expenses to obtain court approval of fees and expenses previously submitted on a monthly basis.

As a result of negotiations over the Settlement Agreement and the Plan under the Moratorium Agreements, the parties did not seek entry by the Bankruptcy Court of the Fee Procedures Order until 3 months after the Petition Date. Once in place, the professionals filed monthly fee statements for the time between the Petition Date and October, 2010.

Professionals subsequently filed additional fee applications covering time periods through and including December 31, 2010. The chart set forth below shows the total fees and expenses requested, and does not take into account any objections to such fees and expenses.

**FEES SOUGHT THROUGH 12/31/2010**

<b>APPLICANT</b>	<b>TIME PERIOD COVERED</b>	<b>FEE REQUEST</b>	<b>EXPENSE REQUEST</b>	<b>TOTAL REQUEST</b>
Watts & Watts	6/09/10 through 10/31/10	\$39,537.50	\$0.00	\$39,537.50
Franklin Skierski Lovall Hayward LLP	6/09/10 through 12/31/10	\$685,250.75	\$7,439.69	\$692,690.44
Mock Schwabe	6/09/10 through 12/31/10	\$253,211.00	\$1,648.10	\$254,859.10
Stutzman Bromberg Esserman & Plifka	6/09/10 through 12/31/10	\$176,066.25	\$724.38	\$176,790.63
Thompson & Knight	6/09/10 through 10/31/10	\$208,481.00	\$20,985.49	\$229,466.49
Roberts Markel PC	6/09/10 through 12/31/10	\$172,332.50	\$446.93	\$172,779.43
Mitchell Williams Selig Gates & Woodyard	6/09/10 through 12/31/10	\$14,667.00	\$1,114.74	\$15,781.74
Marcus & Cinelli LLP	6/09/10 through 10/31/10	\$4,202.50	\$455.30	\$4,657.80
Jackson Lewis LLP	6/09/10 through 9/30/10	\$37,090.00	\$2,113.09	\$39,203.09
Gilbert Russell McWherter PLC	6/09/10 through 10/31/10	\$25,440.00	\$536.73	\$25,976.73
Dewey & LeBoeuf LLP	6/09/10 through 11/30/10	\$1,484,373.25	\$47,365.31	\$1,531,738.56
Anderson Kill & Olick LLP	6/09/10 through 12/31/10	\$76,701.50	\$3,589.48	\$80,290.98
Groom Law Group	6/09/10 through 12/31/10	\$690,255.10	\$15,252.76	\$705,507.86
Diamond McCarthy LLP	6/25/10 through 12/31/10	\$666,787.00	\$28,425.58	\$695,212.58
Conner & Winters LLP	6/25/10 through 12/31/10	\$103,830.00	\$4,048.11	\$107,878.11
Price & Associates	6/25/10 through 12/31/10	\$86,812.50	\$992.53	\$87,805.03
<b>TOTAL</b>		<b>\$4,725,037.85</b>	<b>\$135,138.22</b>	<b>\$4,860,176.07</b>

**5. Trustee Motion**

Immediately after the Petition Date, certain plaintiffs that had filed lawsuits against the Debtor filed a Motion for Appointment of Trustee (the “Trustee Motion”), requesting that the Court appoint a chapter 11 trustee to oversee the management and operations of the Debtor’s business. The Motion has not been heard by the Bankruptcy Court.

**6. Motion to Dismiss**

On July 1, 2010, certain plaintiffs in the litigation filed against the Debtor filed a Motion to Dismiss the Debtor’s Bankruptcy Case (the “Motion to Dismiss”), stating that the interests of the creditors would be better served outside of Chapter 11. The Motion has not been heard by the Bankruptcy Court.

**7. Settlement Among the Debtor, the Committee, and Litigation Claimants**

In November, 2010, the Debtor, the Committee and certain Covered Employers and Participants filed a motion to approve a settlement of the claims made by those Covered Employers and Participants. The Bankruptcy Court conducted a three-day evidentiary hearing on the Settlement Motion and Motion to Assume on December 16, 17, and 20, 2010. On January 31, 2011, the Bankruptcy Court denied the motion.

**8. Extension of Exclusive Period to File Plan of Reorganization**

Pursuant to section 1121 of the Bankruptcy Code, the Debtor is given the exclusive right to file a plan of reorganization for the first 120 days after the filing of the chapter 11 petition. However, this date may be modified with approval by the Court and that is the case here. The original expiration date of exclusivity for the Debtor would have been October 7, 2010; however, pursuant to the terms of the two Moratorium Agreements described herein, the Committee agreed to extend the exclusive deadline to file a plan until January 7, 2011.

Following the settlement between the Debtor and Committee, the parties have been working together to propose a plan of liquidation. However, because of the complexity of the issues in this case, the parties agreed to an additional extension of time for the filing of a chapter 11 plan until February 7, 2011. The Bankruptcy Court approved the extension request.

On February 4, 2011, the Debtor filed a Motion for a Ten-Day Extension of the Exclusivity Period [Docket No. 886] requesting that the Court extend the exclusivity period to February 17, 2011. The Court has not yet ruled upon this motion.

**9. Preliminary Review of Proofs of Claim**

As of February 14, 2011, the deadline to file claims, 986 proofs of claims were filed.

**10. The Bankruptcy Court Interpleader Actions**

Both American General and Aviva have filed adversary proceedings in the Bankruptcy Court making essentially the same allegations as their prepetition interpleader actions; *American General Life Insurance Company v. Millennium Multiple Employer Welfare Benefit Plan*, Adversary No. 11-01014 (“American General II”); *Aviva Life and Annuity Company v. Millennium Multiple Employer Welfare Benefit Plan, et al.*; Adversary No. 10-01153 (“Aviva III”).

#### **11. The Motions to Withdraw the Reference and the Motions to Refer**

There have been numerous pleadings related to the Insurance Company interpleader actions. Aviva and American General have sought to withdraw the reference to the Bankruptcy Court of the prepetition litigation that was removed to the Bankruptcy Court, as well as the interpleader actions they filed as adversary proceedings. Their intent is to have the cases heard in the District Court. The Debtor filed motions seeking to move the pending District Court interpleader actions to Bankruptcy Court. The Debtor and Aviva have now filed a Joint Motion to Set Hearing(s) to Determine all Reference Issues Before a Single Court and Delay Hearings on Remand and Abstention Issues (the “Joint Motion to Determine Reference Issues”) in all the interpleader-related cases. The purpose of the Joint Motion to Determine Reference Issues is to allow either the Bankruptcy Court or the District Court to hear all motions to withdraw the reference and all motions to refer at once in order to provide a unified decision to each of the motions in order to preserve fairness and equity for all parties.

American General followed with a Motion to Set Hearing(s) to Determine all Reference Issues Before a Single Court and Delay Hearings on Remand and Abstention Issues and Joinder in the Joint Motion to Determine Reference Issues in its interpleader-related cases. The relief sought in American General’s motion is similar to the relief sought in the Joint Motion to Determine Reference Issues.

#### **12. The Turnover Motions**

Due to the refusal of certain Insurance Companies (Aviva, American General, and Penn Mutual) to fund policy loan requests made by the Debtor or to otherwise allow the Debtor access to its assets in their possession, the Debtor was forced to file Motions to Compel Turnover of Cash Value of Insurance Policies [Docket No. 826 – American General; Docket No. 827 – Aviva] (collectively, the “Turnover Motions”) on January 18, 2011. The Debtor’s purpose behind filing the Turnover Motions was to obtain the funding necessary to allow the Debtor to continue its operations towards the liquidation scheme set forth in the Plan. Aviva and American General each filed motions to strike the Turnover Motions [Docket No. 850 – American General; Docket No. 855 – Aviva].

The Debtor reached an agreement with American General wherein the American General Turnover Motion would be converted into an adversary proceeding and the trial deadlines would be set on an expedited basis. The turnover complaint against American General was filed on February 4, 2011; Adversary Case No. 11-0-1020. The Agreed Order expediting trial deadlines

in the American General turnover action was entered by the Court on February 7, 2011 [Docket No. 894]. The trial for the American General turnover action is set for April 27, 2011.

## VI.

### DESCRIPTION OF THE PLAN

#### **A. Designation and Treatment of Classes of Claims In the Plan**

In accordance with section 1123(a) (1) of the Bankruptcy Code, Administrative Claims are not classified into classes for voting purposes, but are included for informational purposes only.

A Claim is classified in a particular Class only to the extent that the Claim qualifies within the description of that Class, and is classified in another Class or Classes to the extent that any remainder of the Claim qualifies within the description of such other Class or Classes. A Claim is classified in a particular Class only to the extent that the Claim is an Allowed Claim in that Class and has not been paid, released or otherwise satisfied before the Effective Date. A Claim which is not an Allowed Claim is not in any Class. Notwithstanding anything to the contrary contained in the Plan, no distribution shall be made on account of any Claim that is not an Allowed Claim.

The Debtor has created 5 Classes of Creditors:

Class 1: Priority Claims

Class 2: Secured Claims

Class 3: Unsecured Claims – Other than Participant Claims

Class 4: Participant Claims

Class 5: Subordinated Claims

#### **B. Summary of Treatment of Creditors in each Class under the Plan**

##### **1. Treatment of Unclassified Claims**

###### **(a) Administrative Claims**

Holders of Administrative Claims, other than: (a) Allowed Administrative Claims; (b) Administrative Claims that represent liabilities incurred on or after the Petition Date, but prior to the Effective Date, in the ordinary course of the Debtor's business which may be paid in the ordinary course of the Debtor's business without order of the Bankruptcy Court; and (c)

Administrative Claims that constitute fees or charges assessed against the Estate under Chapter 123, Title 28, United States Code, must by no later than the Administrative Claims Bar Date: (i) file an application with the Bankruptcy Court for allowance of the Administrative Claim; and (ii) serve a copy of such application on counsel for the Debtor, counsel for the Committee, the United States Trustee, and all other parties otherwise entitled to notice thereof. Failure to file and serve such application and notice by the Administrative Claims Bar Date shall result in the Administrative Claim being forever barred and discharged.

(b) Allowance of Administrative Claims

An Administrative Claim with respect to which notice has been properly filed and served pursuant to the Plan shall become an Allowed Administrative Claim if no objection is filed within 30 days after the filing and service of the application seeking allowance of such Administrative Claim. If an objection is timely filed, the Administrative Claim shall become an Allowed Administrative Claim only to the extent allowed by Final Order. An Administrative Claim arising with respect to any professional compensation application, shall become an Allowed Administrative Claim only to the extent Allowed by Final Order.

In full and final satisfaction of Allowed Administrative Claims, each Allowed Administrative Claim shall, unless otherwise agreed, be paid by the Millennium Liquidation Trustee either (i) in full in Cash by no later than the later of: (a) fifteen (15) days after the Effective Date; or (b) fifteen (15) days after becoming an Allowed Administrative Claim; or (ii) if the holder of an Allowed Administrative Claim files an election to receive a different treatment, its claim will be paid as agreed.

Allowed Administrative Claims that represent liabilities incurred on or after the Petition Date, but prior to the Effective Date, in the ordinary course of the Debtor's business which may be paid in the ordinary course of the Debtor's business without order of the Bankruptcy Court, shall be paid by the Debtor and/or the Millennium Liquidation Trustee, as appropriate, and subject to the Debtor's and/or the Millennium Liquidation Trustee's, as appropriate, right to contest the allowance or payment of same; *provided further, however*, that from and after the Effective Date, any fees and charges which are assessed under Chapter 123, Title 28, United States Code, in relation to the Bankruptcy Case shall be paid by the Millennium Liquidation Trustee as they become due.

**2. Priority Claims.** Priority Claims shall be reviewed by the Debtor or the Millennium Liquidation Trustee, as appropriate, and shall be objected to or allowed, in the discretion of the Debtor or the Millennium Liquidation Trustee. Upon becoming an Allowed Priority Claim, each holder of an Allowed Priority Claim shall receive in full satisfaction, release, and discharge of and in exchange for such Claim: (a) the amount of such Allowed Priority Claim, in cash, on or as soon as practicable after the latest of (i) fifteen (15) days after the Effective Date, (ii) the date that is fifteen (15) Business Days after such Claim becomes an Allowed Priority Claim; or (iii) the date upon which the Millennium Liquidation Trustee obtains sufficient funds to pay Allowed Priority Claims; or (b) the time dictated by such other treatment as may be agreed upon in



writing by the holder of such Claim and the Debtor or the Millennium Liquidation Trustee, as applicable.

3. **Secured Claims.** Class 2 Secured Claims shall be reviewed by the Debtor or the Millennium Liquidation Trustee, as appropriate, and shall be objected to or allowed, in the discretion of the Debtor or the Millennium Liquidation Trustee. Upon becoming an Allowed Secured Claim, each holder of an Allowed Secured Claim shall receive in full satisfaction, release and discharge of and in exchange for such Claim: (a) the amount of such Allowed Secured Claim, in cash, on or as soon as practicable after the latest of (i) fifteen (15) days after the Effective Date, (ii) the date that is fifteen (15) Business Days after such Claim becomes an Allowed Secured Claim; or (iii) the date upon which the Liquidation Trustee obtains sufficient funds to pay Allowed Secured Claims; (b) all collateral securing such Allowed Secured Claim; or (c) such other treatment as may be agreed upon in writing by the holder of such Claim and the Debtor or the Millennium Liquidation Trustee, as applicable.

4. **Unsecured Claims Other than Participants.** Class 3 Claims shall be reviewed by the Debtor or the Millennium Liquidation Trustee, as appropriate, and shall be objected to or allowed, in the discretion of the Debtor or the Millennium Liquidation Trustee. One million dollars (\$1,000,000) in cash (and no more) shall be set aside for the payment of Allowed Class 3 Claims. If the Class 3 Claims that become Allowed Class 3 Claims total less than \$1,000,000, all Allowed Class 3 Claims will be paid in full in cash upon the resolution of all asserted Class 3 Claims. Upon the resolution of all asserted Class 3 Claims, if the Class 3 Claims that become Allowed Class 3 Claims total more than \$1,000,000, each holder of an Allowed Unsecured Claim in Class 3 shall receive in full satisfaction, release and discharge of and in exchange for such Claim its Pro Rata Share of the \$1,000,000 set aside for Class 3, plus its Pro Rata Share of any interest that may accrue on the \$1,000,000 while Class 3 claims are being resolved. If there are funds in excess of the funds necessary to pay all Allowed Class 3 Claims, the excess shall be used for the benefit of Allowed Class 4 Claimants.

5. **Participant Claims.** On the Effective Date, each Participant who files a claim: (a) shall have an Allowed Participant Claim equal to his or her Life Benefit, as calculated in accordance with section 4.4.1.2 of the Plan; (b) shall have an option to purchase the Life Policy insuring the life of the Participant, as provided in section 4.4.3 of the Plan; and (c) shall receive his or her Life Benefit, as provided in section 4.4.4 of the Plan, from the Millennium Trust, in full satisfaction, settlement, release, extinguishment, and discharge of his or her Allowed Participant Claim and any other Claim asserted against the Debtor or its Estate by the Participant.

a. **Participation in Third Party Settlements.** In addition, each Non-Litigation Participant who elects to participate in a settlement with a Third Party Defendant (any person other than the Debtor) shall have a distribution right from the Settlement Funds, if any. The Settlement Funds will be paid out by the Millennium Liquidation Trustee using a ratio determined by the percentage that each Settlement Participant's Life Benefit bears to the total Life Benefits of all Settlement Participants.

- b. Calculation of Distributions.** Each holder of an Allowed Participant Claim shall be entitled to receive a cash distribution from the Millennium Trust equal to his or her net Life Benefit. Alternatively, each holder of an Allowed Participant Claim may elect to credit the net Life Benefit amount to the purchase price of the Life Policy insuring the life of the Participant. With the advice of the Millennium Liquidation Plan Committee, the Millennium Liquidation Trustee shall determine the preliminary calculation of the Life Benefit in accordance with sections 1.16 and 5.03.b.vi of the Millennium Master Plan and the Plan as follows: (a) multiply the Life Benefit Ratio for the Participant by the Total Cash Surrender Value for all Life Policies in the Millennium Trust plus any un-segregated cash in the Millennium Trust; and (b) subtract any required or agreed-upon (with applicable governmental authorities) withholding. The gross Life Benefit (the sum of the net Life Benefit plus the governmental withholding amount) will be reported to the Participant and to the Internal Revenue Service. To determine un-segregated cash, the Millennium Liquidation Trustee shall establish such reserves as mandated by the Plan to pay Allowed Administrative Claims and Allowed Claims in Classes 1, 2, and 3 as estimated by the Millennium Liquidation Trustee, and in the discretion of the Millennium Liquidation Trustee, an amount for the estimated expenses of operating the Millennium Trust and liquidating the Assets.
- c. Death Benefits.** Each Participant (or his or her beneficiaries, as applicable) will remain eligible to receive the lesser of a modified Death Benefit, as calculated below, or the 2010 Death Benefit made available to the Participant by the Debtor through and including the date upon which a Participant's election is due pursuant to section 4.4.3.2 of the Plan. The modified Death Benefit will be the amount of the net proceeds (the policy death benefit less any policy loans and related loan costs that are deducted from the policy death benefit plus any interest paid by the Insurer from the date of the Participant's death) received by the Millennium Liquidation Trustee from the Life Policy or Policies insuring the Participant's life less the sum of 1) the Participant's gross Life Benefit calculated in accordance with Section 4.4.1.2 of the Plan plus 2) any interest paid by the Insurer from the date of the Participant's death.
- d. Option to Purchase Life Policy; Purchase Price.** In accordance with section 5.03 of the Millennium Master Plan, each holder of an Allowed Participant Claim may purchase the Life Policy insuring the life of the Participant, as-is and without warranty by any person. The purchase price of the Life Policy insuring the life of a Participant shall be the Life Policy's accumulation value less the amount of any policy loans (including accumulated interest on or other costs associated with the applicable loan).

- e. **Notices.** As soon as reasonably practicable after the Effective Date, the Millennium Liquidation Trustee shall calculate the Life Benefit as provided in paragraph 4.4.1.2 of the Plan and shall provide written notice of this calculation to each Participant. The written notice shall include the following information: (a) the purchase price of the Life Policy insuring the life of the Participant; (b) the Life Benefit net of governmental (tax) withholding pursuant to paragraph 4.4.1.2 of the Plan; (c) the effective date of the Life Benefit calculation; (d) information about the Life Policy insuring the life of the Participant, including its accumulation value, outstanding loans, and surrender charges; and (e) the deadline by which the Millennium Liquidation Trustee must receive notice of a Participant's decision to exercise the option to purchase the Life Policy pursuant to paragraph 4.4.3.2 of the Plan.
- f. **Election.** Within thirty (30) days after delivery of the written notice under paragraph 4.4.3.1 of the Plan, each Participant who wishes to purchase a Life Policy must provide a written response to the Millennium Liquidation Trustee stating (1) that the Participant elects to purchase the Life Policy insuring his or her life for the purchase price stated in the notice and (2) whether the Participant elects to apply the Life Benefit stated in the notice as a credit against the purchase price of the Life Policy insuring his or her life.
- g. **Purchase Implementation.** If a Participant elects to purchase the Life Policy insuring his or her life and further elects to use the Life Benefit net of the required withholding as a credit against the purchase price, the Participant shall remit the difference between the purchase price and the credit, if the purchase price is greater than the credit, to the Millennium Trust, in care of the Millennium Liquidation Trustee, within sixty (60) days after delivery of the written notice provided under paragraph 4.4.3.1 of the Plan. If the Participant elects to purchase the Life Policy without applying the credit, the Participant shall remit the purchase price to the Millennium Trust within sixty (60) days after delivery of the written notice provided under paragraph 4.4.3.1 of the Plan. Failure to remit the purchase price under either option in a timely manner shall be deemed an election to waive the option to purchase the Life Policy. In that event, the Participant retains the right to receive the distributions provided in paragraphs 4.4.2 and 4.4.4 of the Plan. If the Participant elects to purchase the Life Policy and to apply the credit, if the purchase price is less than the Participant's Life Benefit credit net of withholding, the Participant shall be paid the difference from the Millennium Trust when the Millennium Liquidation Trustee makes distributions pursuant to paragraphs 4.4.2 and 4.4.4 of the Plan.
- h. **Transfer of Life Policy.** Within ninety (90) days after delivery of the written notice provided under paragraph 4.4.3.1 of the Plan, the Millennium Liquidation Trustee shall complete any required documents necessary to

transfer the purchased Life Policies to the Participants purchasing such Life Policies.

- i. Surrender of Life Policies.** Upon passage of the deadline for Participants to make their election regarding the purchase of the Life Policies insuring their lives, the Millennium Liquidation Trustee shall take all actions necessary to surrender the Life Policies on those Participants who have either (a) elected not to purchase the Life Policies insuring their lives or (b) have made no election. Upon passage of the deadline for Participants who have elected to purchase the Life Policies insuring their lives to make payment for such Life Policies, if payment is not timely received from one or more Participants, the Millennium Liquidation Trustee may take all actions necessary to then surrender the Life Policies on the lives of those Participants who have elected to purchase the Life Policies on their lives, but have forfeited their election by failing to make the required payment by the deadline set forth in the Plan.
- j. Distributions.** Each holder of an Allowed Participant Claim shall receive a distribution or distributions from the Millennium Liquidation Trust pursuant to the following procedure.
- k. Credit.** For distributions to each Participant who elected to purchase the Life Policy insuring the life of the Participant by applying the net Life Benefit as a credit against the purchase price of the Life Policy, the Millennium Liquidation Trustee shall offset the amount of the distribution(s) under paragraph 4.4.4 of the Plan by the amount of the net Life Benefit. Participants who elect to purchase the Life Policies insuring their lives and actually purchase the Life Policies insuring their lives shall not receive any cash distributions unless and until the Participants not purchasing Life Policies receive an amount equal to the amount of the net Life Benefit calculation contained in section 4.4.1.2 of the Plan.
- l. Interim Distributions.** From time to time, the Millennium Liquidation Trustee shall set aside reserves for Allowed Administrative Claims and Allowed Claims in Classes 1, 2, and 3, for the operating expenses of the Millennium Trust, and for required withholding, and after consultation and with the consent of the Millennium Liquidation Plan Committee, the Millennium Liquidation Trustee shall make interim distributions of the Life Benefit to each holder of an Allowed Participant Claim if there is sufficient cash to do so. For this purpose, interim distributions for each Participant shall equal the Life Benefit Ratio of each Participant with an Allowed Participant Claim multiplied by the aggregate of the Assets the Millennium Liquidation Trustee has identified as available for interim distribution. It is intended that the Millennium Liquidation Trustee distribute funds to holders of Allowed Participant Claims up to the amount of the Life Benefit provided in paragraph

4.4.1.2 of the Plan as quickly as possible. For interim distribution(s), the Millennium Liquidation Trustee's distributions, in a total amount, will not exceed the Life Benefit provided in paragraph 4.4.1.2 of the Plan. Once the Millennium Liquidation Trustee has made distributions equal to the Life Benefit in the amount provided in paragraph 4.4.1.2 of the Plan to each holder of an Allowed Participant Claim, the Millennium Liquidation Trustee shall have the discretion to make supplemental Life Benefit distributions to each holder of an Allowed Participant Claim based on the Life Benefit Ratio, to include the distribution of any amounts received from the purchase of the Life Policies in excess of the net surrender values of the policies sold.

- m. Final Distributions.** Following the liquidation of the Assets, the satisfaction of the treatment of Allowed Administrative Claims and Allowed Claims in Classes 1, 2, and 3 as provided in the Plan, and the payment or establishment of reserves in the discretion of the Millennium Liquidation Trustee for the payment of all expenses of the Millennium Trust including the expenses for operating the Millennium Trust and liquidating the Assets, after consultation and with the consent of the Millennium Liquidation Plan Committee, the Millennium Trustee shall make a final distribution of the remaining Assets to each holder of an Allowed Participant Claim based on the Life Benefit Ratio.
- n. Distributions of Settlement Funds.** In addition to the distributions provided in paragraphs 4.4.2 and 4.4.4 of the Plan, a holder of an Allowed Non-Litigation Participant Claim may be eligible for distributions from a Settlement Funds or Funds, provided he or she elects to participate in the settlement.
- o. Distributions to Settlement Participants.** Each holder of an Allowed Non-Litigation Participant Claim who is a Settlement Participant shall receive his or her Pro Rata Share of any distributions of the applicable Settlement Fund or Funds. Distributions from the Settlement Funds shall be made by no later than sixty (60) days after the Effective Date. Persons who are not Settlement Participants shall not receive any portion of the Settlement Fund or Funds.

Notwithstanding the provision for payment in full of Administrative Claims, Class 1, Class 2, and Class 3 claims on the Effective Date, every voting class has been deemed *impaired* and votes will be solicited from holders of claims in each Class. In addition, it is anticipated that each Administrative Claimant will be contacted concerning the Debtor's ability to pay Allowed Administrative Claims on a date other than the Effective Date.

According to the Monthly Operating Report, dated January 31, 2011, the Debtor has cash on hand of \$212,199.00. In order to confirm the Plan in accordance with the Bankruptcy Code, the Debtor estimates that the Debtor will require that it have cash in the amount of six to eight

million dollars in order to pay all potentially allowable Administrative Claims and creditors in Classes 1, 2, and 3 on the Effective Date.

## **6. Subordinated Claims**

Holders of claims in Class 5 consist of creditors who have either by agreement or by court order subordinated the repayment on their claim to holders of Administrative Claimants and holders of Claims in Classes 1 through 4. There are no creditors who shall be treated in Class 5 as of the filing of the Disclosure Statement. Out of an abundance of caution, Class 5 has been created in order to assure that any creditor whose claim is subordinated through future litigation or through claims objection has a class in which their claim will be treated. The Debtor believes that once it objects to the claims of certain Insurers, that their claims may well be classified as Class 5 claims.

Each holder of an Allowed Subordinated Claim (except any holder that agrees to lesser or otherwise different treatment), in full satisfaction, settlement, release, extinguishment, and discharge of such Claim, shall be paid its pro rata share of the assets, if any exist, of the Millennium Liquidation Trust after the payment in full by the Millennium Liquidation Trustee of all Allowed Administrative Claims and all Allowed Claims in Classes 1, 2, 3 and 4. Any such payments by the Millennium Liquidation Trust will be made on the later of the Effective Date or the date on which such Subordinated Claim becomes an Allowed Claim.

Claimants in Class 5 are impaired.

## **C. Means of Implementation**

### **1. Appointment of the Millennium Liquidation Trustee.**

The Bankruptcy Court shall appoint \_\_\_\_\_ as the Millennium Liquidation Trustee in the Confirmation Order, who shall oversee the Debtor's affairs, serve as Trustee of the Millennium Trust and be the representative of the Estate as of the Effective Date. \_\_\_\_\_'s curriculum vitae will be provided in advance of the Confirmation Hearing and will be attached hereto as Exhibit 4 when a nomination is made.

### **2. Millennium Liquidation Advisory Committee.**

The initial members of the Millennium Liquidation Advisory Committee shall be those three to five Persons named in the Confirmation Order. Their job is to consult with and advise the Millennium Liquidation Trustee regarding the administration of the Debtor's affairs. Among other duties, the Millennium Liquidation Advisory Committee will receive and review reports from the Millennium Liquidation Trustee and review and approve, as necessary, proposed settlements of Claims, amendments to the Millennium Trust Agreement, actions of the Millennium Liquidation Trustee, invoices of the professionals and employees working for the Debtor, and the monthly budgets of the Millennium Liquidation Trustee. No person serving on

the Millennium Liquidation Advisory Committee shall be entitled to compensation for that service.

### **3. Purposes of the Millennium Trust Post-Confirmation.**

The purpose of the Millennium Trust post-confirmation is to, among other things, (a) resolve, pay and satisfy all Administrative Claims and all Allowed Claims in accordance with the Plan, the Millennium Trust Agreement and the Confirmation Order; (b) receive, preserve, hold, manage, liquidate and maximize the assets held by, or for the benefit of, the Debtor; (c) act as the representative of the Estate; and (d) take other actions deemed by the Millennium Liquidation Trustee to be in the best interest of Millennium's Creditors.

### **4. Transfers, Assignments, and Payments**

On the Effective Date, The Millennium Liquidation Trustee will assume control and authority over the Assets of the Estate. In addition, decision making authority over all choses in action, asserted or unasserted, that are held by the Debtor will be transferred to the Millennium Liquidation Trustee.

To the extent there have been any settlements with Third Party Defendants pursuant to the procedures set forth in the Plan, the Millennium Liquidation Trustee (or the Debtor if received prior to the Effective Date) shall deposit any Settlement Funds into an account separate from the Millennium Trust to be used for the benefit of Participants who elect to participate in a settlement with a Third Party Defendant by returning the appropriate ballot.

### **5. Assumption of Liabilities.**

On the Effective Date, the Millennium Trust shall be deemed, without need for further action, to have assumed responsibility and liability for all Administrative Claims and Allowed Claims.

### **6. Millennium Trust Expenses.**

The Millennium Trust shall pay all expenses of the Millennium Trust (including applicable taxes) from the Assets.

### **7. Distributions from the Millennium Trust.**

The Millennium Liquidation Trustee will make distributions from the Millennium Trust in the following order: (1) first, to pay the expenses of administering the Millennium Trust, including reasonable fees and expenses of any attorneys, advisors, other professionals, and employees employed by the Millennium Liquidation Trustee; (2) second, to make distributions to Claimants in accordance with the terms of the Plan and Millennium Trust Agreement.

### **8. Termination of the Millennium Trust.**

The Millennium Trust shall be dissolved ninety (90) days after the Millennium Liquidation Trustee decides to dissolve the Millennium Trust because all of the Millennium Trust Assets have been liquidated and all Administrative Claims and Allowed Claims have been paid to the extent possible based upon funds available through the Plan or have been disallowed by a Final Order.

**9. Termination of Millennium Liquidation Trustee.**

The duties, responsibilities, rights, and obligations of the Millennium Liquidation Trustee shall terminate in accordance with the terms of the Millennium Trust Agreement.

VII.

**MEANS OF IMPLEMENTATION OF THE PLAN**

The Plan provides that on the Effective Date, all of the Estate's Assets shall be free and clear of all liens, claims, interests, and encumbrances, except as specifically set forth in the Plan

**A. Confirmation Hearing**

After obtaining approval of the Disclosure Statement, balloting of creditors and filing of objections, if any, the Plan will be presented for confirmation by the Bankruptcy Court. If the Bankruptcy Court confirms the Plan, the Court will be provided with proposed findings of fact and conclusions of law for the Court to consider. On the date the Bankruptcy Court enters the Confirmation Order on its docket, the Plan will have been confirmed. The Effective Date of the Plan shall be fifteen (15) days from the date of entry of the Confirmation Order on the docket, assuming an objector has not filed pleadings to stay the Confirmation Order and posted any Court ordered bond associated with such appeal.

**1. Incorporation of Rule 9019**

To the extent necessary to effectuate and implement the releases contained in the Plan, the Plan shall be deemed to constitute a motion under Bankruptcy Rule 9019 seeking the Bankruptcy Court's approval of all of the compromises and releases contained therein.

**2. Incorporation of Section 363 of the Bankruptcy Code**

At the Effective Date, the assets of the Debtor shall be free and clear of all liens, claims, interests, and encumbrances under section 363(f) of the Bankruptcy Code, except as specifically provided for in the Plan and the Settlement Agreement, and any respective assignees shall be deemed to be a good faith transferee for value entitled to the full protections of section 363(m) and section 363(n) of the Bankruptcy Code. To the extent necessary to effectuate and implement the transfers contained in the Plan, the Plan shall be deemed to constitute a motion filed by the Debtor under section 363 of the Bankruptcy Code seeking the Court's approval of said transfers.



**3. Conditions Precedent to Confirmation**

Before the confirmed Plan can be confirmed, the Plan requires that a series of events take place or certain conditions to exist. The Plan shall not be confirmed until the following conditions shall have been satisfied or waived by the Debtor, as determined in its sole discretion:

(a) the Confirmation Order shall have been entered, in form and substance acceptable to the Debtor;

(b) the Debtor has satisfied all conditions required under section 1129 of the Bankruptcy Code;

(c) the Debtor is projected to have sufficient cash on hand in order to make the cash distributions required of the Plan as of the Effective Date;

(d) the Bankruptcy Court enters findings of fact that the United States Department of Labor and its agencies, the PBGC, and the Internal Revenue Service received adequate notice of the Debtor's bankruptcy and the confirmation hearings;

(e) the Bankruptcy Court enters findings of fact that the Debtor is eligible to be a debtor under the Bankruptcy Code;

(f) the Bankruptcy Court enters findings of fact that to the extent ERISA applies, there has been no post-petition breach of fiduciary duty, including in connection with the Plan and the confirmation process; and that all the actions and inactions of the Plan Committee, the members of the Plan Committee, RBT, SecurePlan, the Committee, the members of the Committee, and their respective agents, employees, and attorneys are, and at all times have been, in full and complete compliance with the Millennium Master Plan and the Millennium Trust Agreement, and with all the duties and obligations required under the Internal Revenue Code and of the Internal Revenue Service, and under ERISA, and of the United States Department of Labor and the Pension Benefit Guaranty Corporation;

(g) if required, the United States District Court has issued all findings, conclusions, and orders required to approve the confirmation of the Plan;

(h) the requisite number of Participants voting have accepted the Plan in Class 4; and

(i) all other conditions precedent have been satisfied to the satisfaction of the Debtor.

## **B. Events Occurring on the Effective Date**

### **1. Assets**

As of the Effective Date, the Debtor's major assets will be (a) Life Policies, and (b) Causes of Action either owned or held by the Debtor. Specifically, all Claims, causes of action, subordination rights, counterclaims, rights of offset or recoupment and rights and interests related thereto owned by the Debtor or by the Estate on the Effective Date and not otherwise specifically released under the Plan shall be preserved, including, without limitation, the Claims set forth in the Debtor's Schedules and/or as set forth in any lawsuit, court proceeding, adversary proceeding, or contested matter pending on or before the Effective Date. For the avoidance of doubt, no claims, causes of action, subordination rights, counterclaims, rights of offset or recoupment, or rights and interests related thereto owned by the Debtor as of the Petition Date or owned by the Estate at any time prior to the Effective Date are released, waived, or otherwise abandoned as a result of the confirmation of the Plan, except any of the foregoing specifically released in the Plan

### **2. Treatment of Executory Contracts and Unexpired Leases**

Effective on and as of the Effective Date, all of the Debtor's and the Estate's Executory Contracts that that Debtor has not previously sought to assume shall be deemed rejected pursuant to section 365 of the Bankruptcy Code. The Debtor has sought to assume the Life Policies, but has not yet had a ruling on its motion. Pursuant to the Order Granting Amended Joint Motion for Approval of Assumption of Executory (Life Insurance) Contracts, entered March 10, 2011 [Docket No. 977], the Bankruptcy Court has approved the Debtor's assumption of all of the Life Policies.

Claims for damages allegedly arising from the rejection pursuant to the Plan or the Confirmation Order of any Executory Contract, whether rejected prior to the Effective Date or deemed rejected as a result of the Plan, must be filed with the Bankruptcy Court and served on the Millennium Liquidation Trustee not later than thirty (30) days after the Effective Date. All Claims for such damages not timely filed and properly served as prescribed in the Plan shall be forever barred and the holder of such a Claim shall not be entitled to participate in any distribution or payment, on account of such Claim, under the Plan or payment from the Millennium Liquidation Trustee.

Any Claim arising from the rejection of an Executory Contract that is deemed a prepetition claim under the Bankruptcy Code shall, if Allowed, and only to the extent Allowed, be treated as a Claim in Class 3.

Parties-in-interest shall be entitled to file objections to Claims based on the rejection of an Executory Contract under the law, rules, and provisions governing standing otherwise applicable to objections to claims under the Bankruptcy Code; *provided, however*, that any such

objection shall be filed no later than one hundred and twenty days after the later: of (a) the date that such Claim is filed; or (b) the Effective Date.

### **C. Provisions Governing Distribution**

No payment or distribution shall be made by the Millennium Liquidation Trustee except on account of an Allowed Administrative Claim or an Allowed Claim, unless otherwise ordered by the Bankruptcy Court. No payments shall be made on account of any Disputed Claim until Allowed. Distributions to be made on the Effective Date shall be deemed actually made on the Effective Date if made either (a) on the Effective Date or (b) as soon as reasonably practicable thereafter.

#### **1. Dates of Distribution**

(a) The Millennium Liquidation Trustee shall make distributions to the holders of Allowed Claims in Classes 1, 2, 3, and 4 as soon as reasonably practical after the Millennium Liquidation Trustee has paid holders of Allowed Administrative Claims.

(b) The holders, if any exist, of Allowed Claims in Class 5 shall be paid their pro rata portion of the assets, if any exist, of the Millennium Liquidation Trust remaining after the payment in full by the Millennium Liquidation Trustee of all Allowed Administrative Claims and all Allowed Claims in Classes 1, 2, 3, and 4. Any such payment shall be made by the Millennium Liquidation Trustee as soon as practicable after the Millennium Liquidation Trustee has paid holders of Allowed Administrative Claims and Allowed Claims in Classes 1, 2, 3, and 4.

#### **2. Means of Cash Payment**

Cash payments from the Debtor or the Millennium Liquidation Trustee shall be made by check drawn on or by wire transfer from, a domestic bank.

#### **3. Delivery of Distributions**

Distributions and deliveries to the holders of Allowed Claims shall be made at the addresses set forth on the respective proofs of Claim filed in this case, unless a different address is provided to the Millennium Liquidation Trustee. If no proof of Claim is filed, distributions shall be made at the last known address or as reflected in the Schedules. If any distribution is returned as undeliverable, no further distribution shall be made on account of such Allowed Claim unless and until the Millennium Liquidation Trustee is notified of such holder's then current address, at which time all missed distributions shall be made to the holder of such Allowed Claim, unless forfeited as otherwise provided for in the Plan.

All claims for undeliverable distributions shall be made on or before the first anniversary of the attempted distribution. After such date, all unclaimed property shall be redistributed by the Millennium Liquidation Trustee to Classes 1-3 and, if applicable because the Allowed

Claims of the creditors in Classes 1 - 3 have been paid in full, to Class 4, and the Allowed Claim of any holder with respect to such unclaimed and redistributed property shall be discharged and forever barred.

**4. Time Bar to Cash Payments**

Checks issued by the Millennium Liquidation Trustee with respect to Allowed Claims shall be null and void if not cashed within ninety (90) days of the date of issuance thereof. Requests for reissuance of any check shall be made directly to the Millennium Liquidation Trustee by the holder of the Allowed Claim with respect to which such check originally was issued. Any Claim with respect to such a voided check shall be made on or before the first anniversary of the date of issuance of such check. After such date, all Allowed Claims with respect to void checks shall be discharged and forever barred.

**D. Contested and Contingent Claims**

**1. Standing to Object to Claims.**

Only the Debtor (through the Effective Date), the Committee (through the Effective Date, after consultation with and consent by the Debtor), the Millennium Liquidation Trustee, the United States Trustee, and all other holders of Claims shall have specific standing to object to the allowance of a Claim. Nothing herein shall preclude any other party in interest, including the Committee, from seeking authority from the Bankruptcy Court to file objections to Claims not otherwise objected to.

**2. Claim Objections.**

Unless arising from an Avoidance Action or rejection of an executory contract, any proof of Claim filed after the Effective Date shall be of no force and effect and need not be objected to. Any Disputed Claim may be litigated to Final Order.

**3. Creditor Response to Objection.**

With respect to any objection to a Claim, prior to the expiration of thirty (30) days from the date of service of the objection, the Creditor whose Claim was the subject of the objection must file with the Bankruptcy Court and serve a response to the objection upon the Debtor or Millennium Liquidation Trustee and all parties who request notice of such matters in the manner prescribed in the Notice of the Effective Date. Failure to file and serve such a response within the thirty (30) days shall cause the Bankruptcy Court to enter a default judgment against the non-responding Creditor and thereby grant the relief requested in the Objection.

**4. No Waiver of Right to Object.**

Except as expressly provided in the Plan, nothing contained in this Disclosure Statement, the Plan, or the Confirmation Order shall waive, relinquish, release or impair the Debtor's,

Millennium Liquidation Trustee's, or other appropriate party-in-interest's right to object to any Claim.

**5. Allowance of Disputed Claims.**

Nothing contained in this Disclosure Statement, the Plan, or Confirmation Order shall change, waive or alter any requirement under applicable law that the holder of a Disputed Claim must file a timely proof of Claim, and the holder of such Disputed Claim who is required to file a proof of Claim and fails to do so, shall receive no distribution through the Plan and the Claim shall be discharged. The adjudication and liquidation of Disputed Claims is a determination and adjustment of the debtor/creditor relationship, and is therefore an exercise of the Bankruptcy Court's equitable power to which the legal right of trial by jury is inapplicable. The holder of any Disputed Claim shall not have a right to trial by jury before the Bankruptcy Court with respect to any such Claim. Exclusive venue for any proceeding involving a Disputed Claim shall be in the Bankruptcy Court. Disputed Claims shall each be determined separately, except as otherwise ordered by the Bankruptcy Court. The Debtor or Millennium Liquidation Trustee shall retain all rights of removal to federal court as to any proceeding involving a Disputed Claim.

**6. Allowance of Certain Claims.**

All Disputed Claims shall be liquidated and determined as follows:

(a) Application of Adversary Proceeding Rules.

Unless otherwise ordered by the Bankruptcy Court, the proceeding involving a Disputed Claim for any objection to a Disputed Claim shall be subject to Rule 9014 of the Bankruptcy Rules. However, any party may move the Bankruptcy Court to apply the Bankruptcy Rules applicable to adversary proceedings to any proceeding involving a Disputed Claim. The Debtor or Millennium Liquidation Trustee may, at its election, make and pursue any Objection to a Claim in the form of an adversary proceeding.

(b) Scheduling Order.

Unless otherwise ordered by the Bankruptcy Court, or if the objection is pursued as an adversary proceeding, a scheduling order shall be entered as to each objection to Claim to which a response is filed. The Debtor or Millennium Liquidation Trustee shall tender a proposed scheduling order upon receipt of a response to such objection and include a request for a scheduling conference for the entry of a scheduling order. The scheduling order may include (a) a discovery cut-off, (b) deadlines to amend pleadings, (c) deadlines for designation of and objections to experts, (d) deadlines to exchange exhibit and witness lists and for objections to the same, and (e) such other matters as may be appropriate.

(c) Mediation.

The Bankruptcy Court may order the parties to mediate in connection with any objection to Claim. The Debtor or Millennium Liquidation Trustee may include a request for mediation in its objection, and request that the Bankruptcy Court require mediation as part of the scheduling order. Alternatively, the parties to any Claims objection may agree to submit the dispute to mediation.

(d) Substantial Consummation.

All distributions of any kind made to any of the holders of Allowed Claims after the Plan has been substantially consummated and any and all other actions taken under the Plan after substantially consummated shall not be subject to relief, reversal or modification by any court unless the implementation of the Confirmation Order is stayed by an order granted under Bankruptcy Rule 8005.

(e) Offsets.

The Debtor and Millennium Liquidation Trustee shall be vested with and retain all rights of offset or recoupment and all counterclaims against any holder of a Claim, unless specifically released in the Plan.

**7. Amendments to Claims; Claims Filed After the Confirmation Date.**

Except as otherwise provided in the Plan, a Claim may not be filed with the Bankruptcy Court or amended after the Confirmation Date without the prior authorization of the Bankruptcy Court. Except as otherwise provided in the Plan, any new or amended Claim filed with the Bankruptcy Court after the Confirmation Date shall be deemed disallowed in full and expunged without any action by the Millennium Liquidation Trustee.

**E. Retention of Jurisdiction by the Bankruptcy Court**

Following the Effective Date, and notwithstanding the entry of the Confirmation Order, the Bankruptcy Court shall retain jurisdiction of the Bankruptcy Case and all matters arising in, or related to, the Bankruptcy Case to the fullest extent permitted by law, including jurisdiction to:

(a) To hear and determine motions, applications, adversary proceedings, and contested matters pending or commenced after the Effective Date;

(b) To hear and determine objections (whether filed before or after the Effective Date) to, or requests for estimation of, any Claim, and to enter any order requiring the filing of proof of any Claim before a particular date;

(c) To ensure that distributions to holders of Allowed Claims are accomplished as provided in the Plan;

(d) To enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, or vacated;

(e) To construe and to take any action to enforce the Plan or the Confirmation Order;

(f) To issue such orders as may be necessary for the implementation, execution and consummation of the Plan and to hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan or the Confirmation Order;

(g) To enter such orders or judgments, including injunctions, as necessary to enforce the title, rights, and powers of the Debtor, the Millennium Trust, and the Millennium Liquidation Plan Trustee;

(h) To hear and determine any and all motions, applications or adversary proceedings related to (1) enforcement or interpretation of the Millennium Master Plan, the Millennium Trust Agreement, or the Plan, or (2) amendment, modification, alteration or repeal of any provision of the Millennium Master Plan, the Millennium Trust Agreement, or the Plan if such hearing and determination by the Bankruptcy Court is required pursuant to the Plan and the Millennium Trust Agreement;

(i) To enter and implement orders or take such other actions as may be necessary or appropriate to restrain interference by any Person with the consummation or implementation of the Plan, including, without limitation, to issue, administer, and enforce injunctions, releases, assignments, transfers of property or property rights, or other obligations contained in the Plan and the Confirmation Order;

(j) To hear and determine any applications to modify the Plan, to cure any defect or omission or to reconcile any inconsistency in the Plan, the Disclosure Statement or in any order of the Bankruptcy Court including, without limitation, the Confirmation Order;

(k) To hear and determine all applications for Administrative Claims;

(l) To hear and determine other issues presented or arising under the Plan, including disputes among holders of Claims and arising under agreements, documents or instruments executed in connection with the Plan;

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

(o) To hear and determine all questions and disputes regarding title to the assets of the Debtor, the Estate, or the Millennium Liquidation Trust;

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

(q) To enter the Final Decree upon request of the Millennium Liquidation Trustee; and

(r) To hear and determine any action concerning the recovery and liquidation of Assets, wherever located, including without limitation litigation to liquidate and recover Assets that consist of Claims, rights and causes of action against third parties and actions seeking declaratory relief with respect to issues relating to or affecting Assets; and to hear and determine any action concerning the determination of taxes, tax refunds, tax attributes, and tax benefits and similar or related matters with respect to the Debtor, the Estate, or the Millennium Trust, including, without limitation, matters concerning federal, state, local and other taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code.

If the Bankruptcy Court abstains from exercising or declines to exercise jurisdiction, or is otherwise without jurisdiction, over any matter arising under, arising in or related to the Bankruptcy Case, including with respect to the matters set forth above in the Plan, paragraph 13.1 of the Plan shall not prohibit or limit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such subject matter.

#### **F. Releases and Waivers.**

At the Effective Date, and upon order of the Bankruptcy Court, the Debtor, its professionals retained pursuant to Court order, the Committee, the Committee members, their professionals retained pursuant to Court order, RBT, SecurePlan, Milliman, the Plan Committee, and the Plan Committee members will receive a release and protection from claims that could be made by any creditor relating to actions taken after the filing of the bankruptcy on June 9, 2010.

### VIII.

#### **CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES TO CREDITORS WITH ALLOWED CLAIMS UPON LIQUIDATION**

The following discussion is a summary of certain U.S. federal income tax consequences of the implementation of the Plan to the Debtor and holders of Allowed Claims. The discussion is based on the Internal Revenue Code of 1986, as amended (the “Tax Code”), Treasury Regulations promulgated thereunder, judicial decisions and published administrative rules and pronouncements of the Internal Revenue Service (the “IRS”), each as in effect on the date hereof. Legislative, judicial or administrative changes or interpretations enacted or promulgated after the date hereof could alter or modify the discussion set forth below with respect to the U.S. federal income tax consequences of the Plan. Any such changes or interpretations may be



retroactive and could significantly affect the U.S. federal income tax consequences described herein.

This discussion does not apply to a holder that is not a “United States person,” as such term is defined in the Tax Code. The discussion does not address foreign, state or local tax consequences of the Plan, nor does it purport to address all aspects of U.S. federal income taxation that may be relevant to United States persons in light of their individual circumstances or to United States persons that may be subject to special tax rules, such as persons who are related to the Debtor within the meaning of the Tax Code. Moreover, the following discussion does not address U.S. federal taxes other than income taxes.

THE FOLLOWING SUMMARY OF CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED UPON THE INDIVIDUAL CIRCUMSTANCES PERTAINING TO A HOLDER. ALL HOLDERS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS AS TO THE U.S. FEDERAL, STATE, LOCAL AND NON-U.S. INCOME, ESTATE AND OTHER TAX CONSEQUENCES OF THE PLAN.

**IRS CIRCULAR 230 DISCLOSURE:** ANY TAX ADVICE CONTAINED IN THIS DISCLOSURE STATEMENT (INCLUDING ANY ATTACHMENTS) IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY ANY TAXPAYER FOR THE PURPOSE OF AVOIDING TAX-RELATED PENALTIES UNDER THE TAX CODE. TAX ADVICE CONTAINED IN THIS DISCLOSURE STATEMENT (INCLUDING ANY ATTACHMENTS) IS WRITTEN IN CONNECTION WITH THE PROMOTION OR MARKETING OF THE TRANSACTIONS OR MATTERS ADDRESSED BY THE DISCLOSURE STATEMENT. EACH TAXPAYER SHOULD SEEK ADVICE BASED ON THE TAXPAYER’S PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

A. CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES TO THE DEBTOR

**1. IRS Settlement**

The Debtor currently anticipates that the IRS will offer a global resolution of all issues pertaining to the U.S. federal income tax treatment of contributions to the Debtor (the “IRS Settlement”). The expected terms of the IRS Settlement will be reflected in a summary which the Debtor plans to distribute to all Participants if and when the IRS has finally approved the settlement and the related documentation. The IRS Settlement would then be presented for approval by the Bankruptcy Court. The terms of this settlement, if approved, would affect the Debtor’s obligations as set forth in this Plan, particularly as to tax withholding and reporting, as further described below. The consequences of the IRS Settlement to the Participants are also addressed below.

**2. Gain/Loss on Liquidation of Plan Assets**

Pursuant to the Plan, the Debtor will surrender or sell some or all of the Life Policies to the applicable insurer or Participant in exchange for cash payments. For U.S. federal income tax purposes, the Debtor should recognize taxable gain or loss on the surrender or sale of such policies equal to the difference between the cash payment received by the Debtor and the Debtor's basis or investment in the contract. To the extent that the Debtor sells, transfers or liquidates other assets pursuant to the Plan, the Debtor likewise should recognize gain or loss as a result of such sale, transfer or liquidation equal to the difference between the amount received by the Debtor and the Debtor's adjusted tax basis in the asset.

### **3. Deduction for Distributions of Life Benefits to Holders**

Pursuant to the Plan, the Debtor will distribute to each of the holders of an Allowed Participant Claim an amount equal to their Life Benefit, less applicable withholding as described further in *Reporting and Withholding on Distributions to Holders*. Although not free from doubt, the Debtor should be allowed a U.S. federal income tax deduction equal to the amount distributed to such holders as Life Benefits, to the extent of the Debtor's distributable net income (generally computed as the Debtor's taxable income subject to certain modifications). If the IRS were to disallow such deduction, the amount available to the Debtor to distribute to holders of Allowed Participant Claims would be reduced and potentially subject to other consequences.

### **4. Distributions to Settlement Participants**

Pursuant to the Plan, Non-Litigation Participants who elect to opt in as Settlement Participants are entitled to receive a pro rata portion of the Settlement Funds, if any. These Settlement Funds are contributed by the Participating Defendants for the benefit of such Non-Litigating Participants. It is expected that any such amounts received by the Settlement Participants will be treated the same as the distributions with respect to the Participants' Allowed Claims for purposes of the IRS Settlement, if approved, and should be subject to the same or similar reporting and withholding tax obligations discussed below.

### **5. Reporting and Withholding on Distributions to Holders**

Under the terms of the IRS Settlement, the Debtor would be required to withhold U.S. federal income tax equal to 20 percent of all Life Benefit distributions (whether as cash or the fair market value of property) to holders of Allowed Participant Claims and remit such amounts to the IRS, and to issue a Form 1099 reporting the amount of the proceeds paid to and amounts withheld from such holders. Similar reporting and withholding of tax would occur with respect to distributions of Settlement Funds to Settlement Participants. If the IRS does not approve the IRS Settlement, the Debtor could be obligated to withhold other taxes and amounts and remit such amounts to the IRS.

The Debtor will withhold all other amounts as required by law to be withheld from payments to holders of other Allowed Claims (except as otherwise provided for by the IRS Settlement). For example, for U.S. federal income tax purposes, certain reportable payments

(such as interest) may be subject to backup withholding at a rate of 28 percent. Backup withholding generally applies only if the holder (i) fails to furnish its social security number or other taxpayer identification number ("TIN"); (ii) furnishes an incorrect TIN; (iii) fails to properly report interest; or (iv) under certain circumstances fails to provide a certified statement, signed under penalties of perjury, that the TIN provided is its correct number and that it is not subject to backup withholding. Backup withholding is not an additional tax but merely an advance payment, which may be refunded to the extent it results in overpayment of tax. Certain persons are exempt from backup withholding, including corporations and financial institutions.

**B. CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES TO HOLDERS**

**1. IRS Settlement**

If the IRS Settlement is approved it is expected that Participants who have not yet been audited would not be audited with respect to contributions to the Debtor made on their behalf. Participants that have been audited (but have not litigated or previously resolved the issue) will be eligible to elect to accept the terms of the IRS Settlement. If a Participant does not agree to accept the terms of the IRS Settlement, such participant may be subject to further administrative and litigation tax proceedings pertaining to their participation in the Debtor, and any subsequent resolution with the IRS may not be on terms as favorable as those that are expected to be offered in the IRS Settlement. Participants should consult with their tax advisors as to the benefits and risks of electing to accept or reject the terms of the IRS Settlement.

**2. Gain/Loss to Holders on Distribution of Life Benefits and Settlement Funds**

Each holder of an Allowed Participant Claim generally should recognize gain or loss on the distribution of a Life Benefit, and, if such holder is a Non-Litigation Participant, on the distribution of the holder's pro rata share of Settlement Funds. Such gain or loss generally should be equal to the difference between (i) the amount of cash plus the fair market value of any property received with respect to the holder's Claim and, if applicable, as a distribution of Settlement Funds (each as reported on Form 1099) and (ii) the holder's adjusted tax basis in the Claim. Any such gain generally should constitute ordinary income to the holder. The IRS Settlement would provide that the adjusted tax basis of a holder's Claim will equal the amount previously included in income by the holder with respect to the holder's resolution with the IRS, if any (including through the IRS Settlement), of the U.S. federal income tax treatment of contributions made on his or her behalf to the Debtor. To the extent that a holder has not previously resolved his or her U.S. federal income tax treatment of contributions on his or her behalf to the Debtor, such holder should generally have no adjusted tax basis in his or her Claim. If the IRS does not approve the IRS Settlement, the tax treatment of a holder of an Allowed Participant Claim and a Non-Litigation Participant on the distribution of a Life Benefit and Settlement Funds could be different than that described above.

### **3. Withholding Taxes as Credit**

Each holder of an Allowed Participant Claim should be able to offset his or her U.S. federal income taxes resulting from the receipt of a Life Benefit with respect to his or her Claim, or from the receipt of a pro rata amount of Settlement Funds or any other unrelated income, by any U.S. federal income taxes withheld by the Debtor either pursuant to the IRS Settlement or as otherwise required by law.

### **4. Purchase of Life Insurance Policies**

If a holder of an Allowed Participant Claim elects the option to purchase from the Debtor the Life Policy covering his or her life, for U.S. federal income tax purposes such holder should be treated as first having received the Life Benefit distribution from the Debtor, including any applicable withholding taxes as described above, and then purchasing the policy using the net distribution proceeds and any additional amounts required. Because of the manner in which the purchase price is determined, this should not result in any additional tax to the holder.

### **5. Other Allowed Claims**

For U.S. federal income tax purposes, each holder of an Allowed Claim other than an Allowed Participant Claim (specifically, Allowed Priority Claims, Allowed Secured Claims and Allowed Unsecured Claims (other than Participant Claims)) generally should recognize gain or loss on the satisfaction of such Claim equal to the difference between (i) the amount of cash received with respect to the Claim and (ii) the holder's adjusted tax basis in its Claim. The character of any gain or loss as capital or ordinary income or loss and, in the case of capital gain or loss, as short term or long term, will depend on a number of factors, including: (i) the nature and origin of the Claim (e.g., Claims arising in the ordinary course of a trade or business or made for investment purposes); (ii) the tax status of the holder of the Claim; (iii) whether the Claim is a capital asset in the hands of the holder; (iv) whether the Claim has been held by the holder for more than one year; (v) the extent to which the holder previously has claimed a loss or bad debt deduction with respect to the Claim; and (vi) the extent to which the holder acquired the Claim at a market discount.

**THE FOREGOING SUMMARY IS PROVIDED FOR GENERAL INFORMATIONAL PURPOSES ONLY. HOLDERS ARE STRONGLY URGED TO CONSULT THEIR OWN TAX ADVISORS REGARDING U.S. FEDERAL, STATE, LOCAL AND NON-U.S. TAX CONSEQUENCES OF THE PLAN TO THEM.**

## **IX.**

### **ERISA IMPLICATIONS OF THE PLAN**

#### **The Applicability of ERISA**

The Employee Retirement Income Security Act of 1974 (“ERISA”) is a federal law that governs employer-provided welfare and pension benefits. In the case of welfare benefits, the principal requirements of ERISA relate to establishing a standard of care for those who control the assets or operation of a covered benefit plan. Whether or not ERISA applies to Millennium, and if so, in what ways, has been a matter of dispute between the Debtor and the Committee. The Debtor takes the position that ERISA applies to Millennium because certain of the Covered Employers established plans subject to ERISA when they agreed to adopt Millennium. The Debtor has also contended that all the assets in Millennium are held for the benefit of all the Participants, and that therefore, any action that affects the assets of Millennium must be consistent with the requirements of ERISA. In its January 31, 2011 order denying approval for the settlement agreement, the Bankruptcy Court held that ERISA applies and that all assets are held for the benefit of all Participants.

### **The Effect of ERISA on Participant Benefits**

ERISA protects the rights of participants to receive the benefits that have been promised to them at a certain period of time. However, ERISA does not provide that welfare benefits like disability, medical, severance or death benefits, are non-forfeitable; that is, the law allows an employer to change or even eliminate welfare benefits unless there has been an explicit promise to the employee participants that benefits will not change. In the case of Millennium, the Life Benefits change every year depending on the experience of the Ratings Groups and available assets, and the Millennium Master Plan contemplates that both Death and Life Benefits can be terminated.

Consequently, the Debtor does not believe that ERISA prohibits the changes to the Life Benefits contemplated in the Plan, including the calculation methodology or provisions on the timing of distributions presents ERISA issues. While the Plan would calculate Life Benefits differently from the methodology used in the past, this calculation would be done in connection with the contemplated termination of Millennium and not an ongoing plan. Moreover, as noted, the Millennium Master Plan assumes the possibility of the termination of Millennium and its benefits.

### **The Effect of ERISA on Decisions by Fiduciaries**

ERISA provides legal standards governing the process by which the decisions reflected in the Plan have been made. In the case of welfare benefit plans, the principal purpose of ERISA is to establish a standard of conduct for those who control the assets or operation of a covered plan. Such persons are called, “fiduciaries”, under ERISA. The Debtor believes that the Plan Committee and RBT are clearly ERISA fiduciaries.

The law requires these ERISA fiduciaries to act solely in the interest of all the Participants, not favoring any group, and to make decisions following a prudent procedure. This latter provision requires fiduciaries to engage in due diligence before making important

decisions, including such things as gathering all relevant information, considering alternatives, seeking advice from experts, having a thorough discussion before a final decision, etc.

This Disclosure Statement sets forth, among other things, the reasons for the Plan decisions made by the Plan Committee on behalf of the Debtor. The Plan Committee considered many alternatives and sought advice from tax, ERISA and other experts before making final decisions. The final product treats all Participants the same, regardless of whether they have previously filed a lawsuit against the Debtor. No member of the Plan Committee will receive any extra distribution in the Plan. In addition, the Debtor believes that RBT, as a directed trustee, is acting in a manner consistent with its responsibilities under ERISA by following directions of the Plan Committee as set forth in this Disclosure Statement.

ERISA does prohibit releases for fiduciaries under certain circumstances. Both the members of the Plan Committee and RBT have been previously sued for actions taken prior to the filing of the bankruptcy petition, and the Plan does not provide any release or protection for these ERISA fiduciaries. The Plan does provide for a release for post-petition actions. The Debtor believes that this is appropriate under ERISA because of the Bankruptcy Court's supervision and approval of post-petition actions and the confirmation process, which includes notice to the Department of Labor (which has authority over fiduciaries under ERISA) and a requirement that the Bankruptcy Court make findings under ERISA.

The Debtor has not evaluated, and expresses no opinion on whether persons other than the members of the Plan Committee or RBT have fiduciary responsibilities under ERISA or have acted consistent with them.

X.

## BEST INTEREST OF CREDITORS

### **A. Alternatives to the Plan**

The Plan reflects discussions held between the Debtor, the Committee, and governmental authorities. The Debtor has determined that the Plan is the most practical means of providing maximum recoveries to creditors. Alternatives to the Plan which have been considered and evaluated by the Debtor during the course of the Bankruptcy Case include (i) liquidation of the Debtor's assets under chapter 7 of the Bankruptcy Code and (ii) an alternative chapter 11 plan. The Debtor's thorough consideration of these alternatives to the Plan has led it to conclude that the Plan, in comparison, provides a greater recovery to creditors on a more expeditious timetable and in a manner which minimizes inherent risks than any other course of action available to the Debtor.

#### **1. Liquidation Under Chapter 7 of the Bankruptcy Code**

If the Plan or any other chapter 11 plan for the Debtor cannot be confirmed under section 1129(a) of the Bankruptcy Code, the Bankruptcy Case may be converted to a case under chapter

7 of the Bankruptcy Code, in which event a trustee would be elected or appointed to liquidate any remaining assets of the Debtor for distribution to creditors pursuant to chapter 7 of the Bankruptcy Code. A chapter 7 trustee, who would lack the Debtor's knowledge of their affairs, would be required to invest substantial time and resources to investigate the facts underlying the multitude of Claims filed against the Debtor's estate. If a trustee is appointed and the remaining assets of the Debtor are liquidated under chapter 7 of the Bankruptcy Code, all creditors holding Allowed Administrative Claims, Allowed Secured Claims; Allowed Priority Claims, Allowed Unsecured Claims, and Allowed Participant Claims may receive distributions of a lesser value on account of their Allowed Claims and likely would have to wait a longer period of time to receive such distributions than they would under the Plan. A liquidation under chapter 7 likely would result in smaller distributions made to creditors than that provided for in the Plan because of (i) additional Administrative Claims involved in the appointment of a chapter 7 trustee and (ii) additional expenses and Claims, some of which would be entitled to priority, which would be generated during the chapter 7 liquidation, (iii) additional interest that would accrue on policy loans, and (iv) diminution of the value of assets because additional premiums would become due and if there is no mechanism for a chapter 7 trustee to collect these premiums, Policies could be forfeited or additional policy loans would need to be taken.

## 2. Alternative Chapter 11 Plan

If the Plan is not confirmed, the Debtor or any other party in interest could attempt to formulate an alternative chapter 11 plan which might provide for the liquidation of the Debtor's assets and the treatment of Claims other than as provided in the Plan. Because the Debtor does not have a reasonable chance of reorganization, the Debtor believes that any alternative chapter 11 plan will necessarily be substantially similar to the Plan. Further, one of the reasons the Internal Revenue Service is considering entering into a settlement with the Debtor is that the Debtor would liquidate and cease to exist. If the Debtor were to reorganize, the Debtor would be back in a position to have the same tax compliance predicament it had pre-petition. Accordingly, the Debtor does not believe that a realistic alternative chapter 11 plan is likely or in the best interests of creditors.

## 3. Certain Risk Factors

In the event that the Plan is not confirmed or the Chapter 11 Case is converted to a case under chapter 7 of the Bankruptcy Code, the Debtor believes that such action or inaction, as the case may be, will cause the Debtor to incur substantial expenses and would cause certain of the Policies to diminish in value or be forfeited, and otherwise serve only to prolong unnecessarily the Bankruptcy Case and negatively affect creditors' recoveries on their Claims. Further, the proposed Plan provided that if a Participant dies, benefits will be paid to the Participant's beneficiaries. Such a mechanism may not exist under a chapter 7 liquidation and such benefits may not be paid to a Participant's beneficiaries.

**B. Best Interests Test**

The Bankruptcy Code requires that each holder of an impaired claim or equity interest either (i) accept the Plan or (ii) receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the value such holder would receive if the Debtor was liquidated under chapter 7 of the Bankruptcy Code.

The first step in determining whether this test has been satisfied is to determine the dollar amount that would be generated from the liquidation of the Debtor's assets in the context of a chapter 7 liquidation case. The gross amount of cash that would be available for satisfaction of claims and equity interests would be the sum consisting of the proceeds resulting from the disposition of the unencumbered assets of the Debtor, augmented by the unencumbered cash held by the Debtor at the time of the commencement of the liquidation case.

The next step is to reduce that gross amount by the costs and expenses of liquidation and by such additional administrative and priority claims that might result from the use of chapter 7 for the purposes of liquidation. Any remaining net cash would be allocated to creditors and shareholders in strict priority in accordance with section 726 of the Bankruptcy Code. Finally, the present value of such allocations (taking into account the time necessary to accomplish the liquidation) are compared to the value of the property that is proposed to be distributed under the Plan on the Effective Date.

The Debtor's cost of liquidation under chapter 7 would include the fees payable to a trustee in bankruptcy, as well as those fees that might be payable to attorneys and other professionals that such a trustee might engage. Other liquidation costs include the expenses incurred during the chapter 11 portion of the Bankruptcy Case allowed in the chapter 7 case, such as compensation for attorneys, accountants, and other professionals for the Debtor and the Committee appointed in the chapter 11 portion of the Bankruptcy Case, and costs and expenses of members of such committees, as well as other compensation claims. In addition, claims would arise by reason of the breach or rejection of obligations incurred and executory contracts assumed or entered into by the Debtor during the pendency of the chapter 11 portion of the Bankruptcy Case.

The foregoing types of claims, costs, expenses, fees, and such other claims that may arise in a liquidation case would be paid in full from the liquidation proceeds before the balance of those proceeds would be made available to pay prepetition priority and unsecured Claims.

The Debtor submits that each impaired Class will receive under the Plan a recovery at least equal in value to the recovery such Class would receive pursuant to a liquidation of the Debtors under chapter 7 of the Bankruptcy Code.

The Plan is a plan of liquidation without the additional costs and expenses attendant to a liquidation under chapter 7. After consideration of the effects that a chapter 7 liquidation would have on the ultimate proceeds available for distribution to creditors in the Bankruptcy Case,



including (i) the increased costs and expenses of a liquidation under chapter 7 arising from fees payable to a trustee in bankruptcy and professional advisors to such trustee and (ii) the substantial increases in claims that would be satisfied on a priority basis, the Debtor has determined that confirmation of the Plan will provide each holder of an Allowed Claim with a recovery that is not less than such holder would receive pursuant to liquidation of the Debtors under chapter 7.

The Debtor also believes that the value of any distributions to each Class of Allowed Claims in a chapter 7 case, including all Secured Claims, would be less than the value of distributions under the Plan because such distributions in a chapter 7 case would not occur for a substantial period of time. In the event litigation was necessary to resolve claims asserted in a chapter 7 case, the delay could be prolonged and Administrative Claims increased.

## XI.

### CONCLUSION

This Disclosure Statement has attempted to provide information regarding the Debtor's bankruptcy case and the potential benefits that accrue to holders of Claims against the Debtor under the Plan as proposed. The Debtor urges creditors to vote in favor of the Plan.

Dated: March 10, 2011.

#### **MILLENNIUM MULTIPLE EMPLOYER WELFARE BENEFIT PLAN**

By: *[Signature to be Provided Upon Approval of  
Disclosure Statement]*

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**Exhibit 1**

**Plan of Liquidation**

**CONFIDENTIAL SUBJECT TO RULE 408 SETTLEMENT PRIVILEGE**  
**NOT A SOLICITATION**  
**SUBJECT TO BANKRUPTCY PROCESS**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

**In re:** §  
§ **CASE NO. 10-13528**  
**MILLENNIUM MULTIPLE EMPLOYER** § **(Chapter 11)**  
**WELFARE BENEFIT PLAN** §  
§  
**Debtor.** §

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**DEBTOR’S FIRST AMENDED CHAPTER 11 PLAN OF LIQUIDATION**

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**DATED: March 10, 2011**

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## INTRODUCTION

Millennium Multiple Employer Welfare Benefit Plan hereby proposes this Debtor's First Amended Chapter 11 Plan of Liquidation pursuant to the provisions of section 1121 of the Bankruptcy Code. All parties-in-interest are encouraged to carefully read this Plan and the accompanying Disclosure Statement, which contains a summary and analysis of the Plan. No solicitation materials, other than the Disclosure Statement, its exhibits, and related materials have been approved by the Court for use in soliciting acceptances or rejections of this Plan. Solicitation of votes on the Plan is governed by section 1125 of the Bankruptcy Code.

## ARTICLE I DEFINITIONS AND INTERPRETATION

**1.1 Rules of Interpretation.** Unless otherwise specified, all article, section, paragraph, and exhibit references in this Plan are to the respective section in, paragraph of, or exhibit to this Plan, as the same may be amended, waived or modified from time to time. The headings in this Plan are for convenience of reference only and shall not limit or otherwise affect the provisions hereof. Words denoting the singular number shall include the plural number and vice versa. In construing this Plan, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply. In computing any period of time prescribed or allowed by this Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

**1.2 "Administrative Claim"** means a Claim for any cost or expense of administration of the Bankruptcy Case under section 503(b) of the Bankruptcy Code, including, without limitation, any fees or charges assessed against the Estate of the Debtor pursuant to 28 U.S.C. § 1930.

**1.3 "Administrative Claim Bar Date"** means the day that is thirty (30) days after the Effective Date, and represents the deadline for certain holders of Administrative Claims requiring approval from the Bankruptcy Court for the Allowance of the Administrative Claim to file applications requesting the Allowance of same as provided for in section 3.1 of the Plan.

**1.4 "All Contributions"** means all cash contributions by all Covered Employers to Millennium, plus, all accumulation values of any Life Policy transferred to or contributed to Millennium by any Covered Employer on the date nearest the date the Life Policy was received by Millennium (minus any existing policy loans as of the transfer date), as reflected in the Debtor's records and listed in Exhibit A to this Plan.

**1.5 "Allowed"** means, as it relates to any type of Claim provided for under the Plan, a Claim: (i) which has been scheduled as undisputed, non-contingent and liquidated in the Schedules and as to which: (a) no proof of Claim has been timely filed, and (b) no objection thereto has been timely filed; (ii) as to which a proof of Claim has been timely filed and either (a) no objection thereto has been timely filed, or (b) such Claim has been allowed (but only to the extent allowed) by a Final Order of the Bankruptcy Court; (iii) which has been expressly allowed under the provisions of the Plan; or (iv) which is an Administrative Claim approved by Final Order of the Bankruptcy Court.

**1.6 "Allowed Administrative Claim"** means: (i) an Administrative Claim that has been Allowed (but only to the extent Allowed), if approval from the Bankruptcy Court is required

in order to allow same; or (ii) an Administrative Claim which: (a) is incurred by the Debtor after the Petition Date in the ordinary course of its business operations or pursuant to an order entered by the Bankruptcy Court granting automatic administrative claim status; (b) is not disputed by the Debtor, the Committee, or the Millennium Liquidation Trustee; and (c) does not require approval from the Bankruptcy Court to become Allowed.

**1.7** “**Allowed Non-Litigation Participant Claim**” means a Claim by a Non-Litigation Participant that has been Allowed under section 4.4.1 of the Plan.

**1.8** “**Allowed Priority Claim**” means a Priority Claim that has been Allowed (but only to the extent Allowed).

**1.9** “**Allowed Secured Claim**” means a Secured Claim Allowed by Final Order of the Bankruptcy Court under section 506(a) of the Bankruptcy Code, but only to the extent, validity, and priority as are so Allowed.

**1.10** “**Assets**” means all property of the Debtor’s estate, as defined in section 541 of the Bankruptcy Code.

**1.11** “**Attributed Contribution**” means all cash contributions made to Millennium by a Covered Employer for a Participant, plus, if applicable, the accumulation values of any Life Policy transferred to or contributed to Millennium for the benefit of that Participant on the date nearest the date the Life Policy was received by Millennium (minus any existing policy loans as of the transfer date), as reflected in Debtor’s records, as set forth in **Exhibit A** to this Plan.

**1.12** “**Avoidance Actions**” means any and all rights, claims or actions which the Debtor may assert on behalf of the Estate under chapter 5 of the Bankruptcy Code, including actions under one or more provisions of sections 542, 544, 545, 546, 547, 548, 549, 550, 551 and/or 553 of the Bankruptcy Code, except to the extent that any such rights, claims, or actions are released or waived in the Plan.

**1.13** “**Ballot**” means the ballot, the form of which has been approved by the Bankruptcy Court, accompanying the Disclosure Statement provided to each holder of a Claim entitled to vote to accept or reject the Plan.

**1.14** “**Bankruptcy Case**” means the bankruptcy case initiated by the Millennium Multiple Employer Welfare Benefit Plan in the Bankruptcy Court on the Petition Date, numbered as Case No. 10-13528-11.

**1.15** “**Bankruptcy Code**” means 11 U.S.C. §§ 101, *et seq.*, in effect as of the Petition Date and as may have been or may be amended or supplemented since, to the extent that any such amendment or supplement is automatically applicable to the Bankruptcy Case by operation of law and not by operation of any election or choice.

**1.16** “**Bankruptcy Court**” means the United States Bankruptcy Court for the Western District of Oklahoma, or, if such court ceases to exercise jurisdiction, the court or adjunct thereof that exercises jurisdiction over the Bankruptcy Case.



**1.17** “**Bankruptcy Rules**” means the Federal Rules of Bankruptcy Procedure, together with the local bankruptcy rules for the Bankruptcy Court as now in effect or as the same may from time to time hereafter be amended.

**1.18** “**Business Day**” means any day which is not a Saturday, a Sunday, or a “legal holiday” within the meaning of Bankruptcy Rule 9006(a).

**1.19** “**Cash Surrender Value**” means the accumulation value of a Life Policy, minus the sum of (a) any loans, costs or expenses imposed by the Insurer associated with any loan, and (b) surrender charges.

**1.20** “**Claim**” means a claim against the Debtor, the Estate, and/or property of the Debtor or the Estate, as such term is defined in section 101(5) of the Bankruptcy Code.

**1.21** “**Claim Bar Date**” means February 14, 2011.

**1.22** “**Claim Objection Deadline**” means the date which, subject to extension upon request of the Millennium Liquidation Trustee, is 180 days after the Effective Date.

**1.23** “**Class**” means one of the categories of Claims established under Article II of the Plan.

**1.24** “**Creditor**” means the holder of any Claim entitled to distributions with respect to such Claim.

**1.25** “**Committee**” means the Official Unsecured Creditors Committee appointed in the Bankruptcy Case.

**1.26** “**Confirmation Date**” means the date of entry of the Confirmation Order.

**1.27** “**Confirmation Hearing**” means the hearing conducted by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code and Bankruptcy Rule 3020(b) to consider confirmation of the Plan, as the same may be continued from time to time.

**1.28** “**Confirmation Order**” means the order of the Bankruptcy Court confirming the Plan.

**1.29** “**Covered Employers**” means the persons listed on **Exhibit B** to this Plan.

**1.30** “**Death Benefit**” has the meaning ascribed to such term in the Millennium Master Plan.

**1.31** “**Debtor**” means the Millennium Multiple Employer Welfare Benefit Plan.

**1.32** “**Disallowed Claim**” means a Claim or portion thereof that (i) has been disallowed by a Final Order; (ii) is identified in the Schedules in an amount of zero dollars or as contingent, unliquidated, or disputed and as to which a proof of Claim was not filed by the Bar

Date; or (iii) is not identified in the Schedules and as to which no proof of Claim has been filed by the Bar Date or by the Debtor within the time prescribed by the Bankruptcy Code.

**1.33** “Disclosure Statement” means the Disclosure Statement with respect to this Plan, approved by the Bankruptcy Court as containing adequate information for the purpose of dissemination and solicitation of votes on confirmation of the Plan, or as it may be altered, amended or modified from time to time in accordance with sections 1125, 1126(b) and 1145 of the Bankruptcy Code and Bankruptcy Rules 3016 and 3017.

**1.34** “Disputed Claim” means any Claim or any portion thereof which has not become Allowed and which is not a Disallowed Claim. In the event that any part of a Claim is a Disputed Claim, such Claim in its entirety shall be deemed to constitute a Disputed Claim for purposes of distribution under the Plan unless the party responsible for the payment thereof, the objecting party, and the holder thereof agree otherwise or unless otherwise ordered by the Bankruptcy Court; *provided, however*, that nothing in this definition of “Disputed Claim” is intended to or does impair the rights of any holder of a Disputed Claim to pursue its rights under section 502(c) of the Bankruptcy Code. Without limiting any of the foregoing, but subject to the provisions of the Plan, a Claim that is the subject of a pending application, motion, complaint, objection, or any other legal proceeding seeking to disallow, limit, subordinate, or estimate such Claim shall be deemed to constitute a Disputed Claim unless and until the entry of a Final Order providing otherwise.

**1.35** “Effective Date” means the first Business Day that is fifteen (15) days after the Confirmation Date if the Confirmation Order is not stayed or, if the Confirmation Order is stayed, the first Business Day following the lifting, dissolution, or removal of such stay which is at least fifteen (15) days after the Confirmation Date.

**1.36** “ERISA” means 29 U.S.C. 1001 *et seq.*

**1.37** “Estate” means the estate created in the Bankruptcy Case pursuant to, *inter alia*, section 541 of the Bankruptcy Code.

**1.38** “Executory Contract” means, collectively, “executory contracts” and “unexpired leases” of the Debtor as of the Petition Date, as such terms are used within section 365 of the Bankruptcy Code.

**1.39** “Final Order” means (a) an Order for which the time to appeal, petition for writ of certiorari, or otherwise seek appellate review, or to move for re-argument, rehearing, or reconsideration, has expired and as to which no appeal, petition for writ of certiorari, or other appellate review, or proceedings for re-argument, rehearing, or reconsideration, shall then be pending; (b) an Order for which any right to appeal, petition for writ of certiorari, or move for re-argument or rehearing or reconsideration shall have been waived in writing by any person with such right; or (c) in the event that an appeal, writ of certiorari, or other appellate review or re-argument, rehearing, or reconsideration thereof has been sought, an Order that shall have been affirmed by the highest court to which such order was appealed or from which writ of certiorari or other appellate review or re-argument, rehearing, or reconsideration was sought, and as to which the time to take any further appeal, to petition for writ of certiorari, to otherwise seek appellate

review, or to move for re-argument, rehearing, or reconsideration shall have expired; provided, however, that the possibility that a motion under rule 59 or 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Federal Rules of Bankruptcy Procedure, may be filed with respect to such Order shall not cause such Order not to be a Final Order.

**1.40** “**Insurer**” means each Person issuing a Life Policy or Life Policies.

**1.41** “**IRS Settlement**” shall mean any settlement between Millennium and the Internal Revenue Service approved by the Bankruptcy Court pursuant to a motion under Federal Rule of Bankruptcy Procedure 9019 or as a part of the Confirmation Hearing.

**1.42** “**Life Benefit**” has the meaning ascribed to such term in the Millennium Master Plan and subject to, upon the Effective Date, the meaning ascribed in section 4.4.1.2 of this Plan.

**1.43** “**Life Benefit Ratio**” means an individual Participant’s Attributed Contribution divided by All Contributions.

**1.44** “**Life Policy**” or “**Life Policies**” means the life insurance policies held in the Millennium Trust.

**1.45** “**Litigation Claimants**” means the Persons listed on **Exhibit D** to this Plan.

**1.46** “**Millennium**” means the Millennium Multiple Employer Welfare Benefit Plan, as amended, and shall refer to the Debtor where the context so requires.

**1.47** “**Millennium Liquidation Plan Committee**” means the successor Plan Committee created pursuant to this Plan and section 1.05 of the Millennium Master Plan, as may be reconstituted from time to time in accordance with the terms thereof.

**1.48** “**Millennium Liquidation Trustee**” means the successor Trustee designated and submitted to the Bankruptcy Court for approval pursuant to sections 1.31 and 2.05.a of the Millennium Master Plan and section 6.1 of this Plan, and any disinterested successor thereto chosen in accordance with the aforementioned provisions who enters into the Millennium Trust Agreement as provided by Article I, section 1.22 of the Millennium Trust Agreement. The Millennium Liquidation Trustee shall have all the powers and authorities conferred upon it by or under this Plan, the Millennium Master Plan, and the Millennium Trust Agreement as set forth in section 2.05.b of the Millennium Master Plan.

**1.49** “**Millennium Master Plan**” means the Master Plan of the Millennium Multiple Employer Welfare Benefit Plan effective as amended on the 1<sup>st</sup> day of January 2005.

**1.50** “**Millennium Trust**” means the trust established under the Millennium Multiple Employer Welfare Benefit Plan.

**1.51** “**Millennium Trust Agreement**” means the Trust Agreement for the Millennium Multiple Employer Welfare Benefit Plan dated February 20, 2003.

**1.52** “**Non-Litigation Participants**” means Participants who are not Litigation Claimants.

**1.53** “**Non-Litigation Participant Claim**” means any claim by a Non-Litigation Participant.

**1.54** “**Participants**” means the Persons listed on **Exhibit C** to this Plan.

**1.55** “**Participant Claim**” means a Claim by a Participant against the Debtor or the Estate.

**1.56** “**Person**” means and includes natural persons, corporations, limited partnerships, general partnerships, joint ventures, trusts, land trusts, business trusts, unincorporated organizations, or other legal entities, including but not limited to limited liability corporations and limited liability partnerships, irrespective of whether they are governments, agencies or political subdivisions thereof.

**1.57** “**Petition Date**” means June 9, 2010.

**1.58** “**Plan**” means this *Debtor’s First Amended Chapter 11 Plan of Liquidation*, either in its present form or as it may be altered, amended or modified from time to time in accordance with the provisions of the Bankruptcy Code and the Bankruptcy Rules.

**1.59** “**Plan Committee**” means the Debtor’s governing committee, as it may be constituted or changed from time to time pursuant to the section 1.05 of the Millennium Master Plan, until the Effective Date.

**1.60** “**Plan Committee Members**” means Jonathan Cocks, Larry Cress, David Esman and Timothy O’Rourke.

**1.61** “**Priority Claim**” means a Claim entitled to priority in payment under section 507(a) of the Bankruptcy Code, excluding any Claim that is an Administrative Claim.

**1.62** “**Pro Rata**” or “**Pro Rata Share**” means, with respect to any Allowed Claim in any Class under this Plan of the Millennium Trust, the proportion that such Allowed Claim bears to the aggregate amount of all Allowed Claims in such Class.

**1.63** “**Rejection Claim**” means a Claim arising under section 502(g) of the Bankruptcy Code as a consequence of the rejection of any Executory Contract.

**1.64** “**Release**” means the release set forth in section 11.2.3 of this Plan.

**1.65** “**RBT**” means Republic Bank & Trust, located in Norman, Oklahoma, which acts as the trustee for Millennium, or its successor as trustee, but does not include the Millennium Liquidation Trustee.

**1.66** “**Schedules**” means the Schedules of Assets and Liabilities and the Statements of Financial Affairs filed by the Debtor in the Bankruptcy Case pursuant to Bankruptcy Rule 1007, as

they have been or may be amended or supplemented from time to time in accordance with Bankruptcy Rule 1009.

**1.67** “**SecurePlan**” means SecurePlan Administrators, LLC, which acts as the Debtor’s third party administrator.

**1.68** “**Secured Claim**” means a Claim that is alleged to be secured, in whole or in part, (i) by a lien against an asset of the Debtor or the Estate to the extent such lien is valid, perfected and enforceable under applicable non-bankruptcy law and is not subject to avoidance or subordination under the Bankruptcy Code or other applicable non-bankruptcy law, but only to the extent that such Claim is secured within the meaning of section 506(a) of the Bankruptcy Code; or (ii) as a result of rights of setoff under section 553 of the Bankruptcy Code.

**1.69** “**Secured Creditor**” means the holder of a Secured Claim.

**1.70** “**Settlement Contribution**” means the consideration, if any, paid by each of the Settling Defendants and held by the Debtor or the Millennium Liquidation Trustee for the benefit of Settlement Participants.

**1.71** “**Settlement Participants**” means all Non-Litigation Participants who cast a Ballot to accept the Plan and “opt in” to any settlement(s) with Settling Defendants by checking the applicable “opt in” box on the Ballot.

**1.72** “**Settlement Fund**” means a separate account or accounts held by the Millennium Trustee consisting of the Settlement Contributions, if any, received from Settling Defendants, if any.

**1.73** “**Settling Defendants**” means the Persons listed on **Exhibit E** to the Plan.

**1.74** “**Third Party Defendant**” means any of the parties, not including the Debtor, that have been sued by any of the Litigation Claimants as of the Confirmation Date.

**1.75** “**Total Cash Surrender Value**” means the aggregate of all Cash Surrender Values of all Life Policies in Millennium minus any amounts required for expenses or reserves set up by the Millennium Liquidation Trustee in consultation with the Millennium Liquidation Plan Committee.

**1.76** “**Unsecured Claim**” means any Claim that is not secured by a valid, enforceable, and unavoidable lien against any asset of the Debtor or the Estate, but excluding any Administrative Claim, Priority Claim, or Allowed Secured Claim, but including a Secured Claim to the extent it is not an Allowed Secured Claim.

**1.77** “**Unsecured Creditor**” means the holder of an Unsecured Claim.

## **ARTICLE II**

### **CLASSIFICATION OF CLAIMS**

**2.1 Classification Generally.** All Allowed Claims, except Allowed Administrative Claims, are placed in Classes under the Plan. A Claim is classified within a particular Class only to the extent that the Claim qualifies under the description of that Class. A Claim which is properly includible in more than one Class is only entitled to inclusion within a particular Class to the extent that it qualifies under the description of such Class, and shall be included within a different Class(es) to the extent that it qualifies under the description of such different Class(es).

**2.2 Unclassified Claims.** In accordance with section 123(a)(1) of the Bankruptcy Code, Administrative Claims are not classified under this Plan.

**2.3 Classified Claims and Interests.** Claims are classified under this Plan as follows:

**2.3.1 Class 1—Priority Claims.** Class 1 consists of Priority Claims.

**2.3.2 Class 2—Secured Claims.** Class 2 consists of Secured Claims.

**2.3.3 Class 3—Unsecured Claims -- Other than Participant Claims.** Class 3 consists of Unsecured Claims that do not constitute Administrative Claims, Priority Claims, Participant Claims, or Subordinated Claims.

**2.3.4 Class 4—Participant Claims.** Class 4 consists of Participant Claims.

**2.3.5 Class 5—Subordinated Claims.** Class 5 consists of Claims held by a creditor whose repayment by the Debtor is subordinated in right of payment by a contract right or a Final Order.

### **ARTICLE III TREATMENT OF UNCLASSIFIED CLAIMS**

#### **3.1 Administrative Claims.**

**3.1.1 Bar Date for Administrative Claims.** Holders of Administrative Claims, other than: (a) Allowed Administrative Claims; (b) Administrative Claims that represent liabilities incurred on or after the Petition Date, but prior to the Effective Date, in the ordinary course of the Debtor's business which may be paid in the ordinary course of the Debtor's business without order of the Bankruptcy Court; and (c) Administrative Claims that constitute fees or charges assessed against the Estate under Chapter 123, Title 28, United States Code, must by no later than the Administrative Claim Bar Date: (i) file an application with the Bankruptcy Court for allowance of the Administrative Claim; and (ii) serve a copy of such application on counsel for the Debtor, counsel for the Committee, the United States Trustee, the Millennium Liquidation Trustee, and all other parties otherwise entitled to notice thereof. *Failure to file and serve such application and notice by the Administrative Claims Bar Date shall result in the Administrative Claim being forever barred and discharged.*

**3.1.2 Treatment of Administrative Claims.** In full and final satisfaction of Allowed Administrative Claims, each Allowed Administrative Claim shall be paid by the Millennium Liquidation Trustee either (a) in full in Cash by no later than the later of: (i) fifteen

(15) days after the Effective Date; or (ii) fifteen (15) days after becoming an Allowed Administrative Claim; or (b) if the holder of an Allowed Administrative Claim agrees to receive a different treatment, as agreed. Allowed Administrative Claims that represent liabilities incurred on or after the Petition Date, but prior to the Effective Date, in the ordinary course of the Debtor's business which may be paid in the ordinary course of the Debtor's business without order of the Bankruptcy Court, shall be paid by the Debtor and/or the Millennium Liquidation Trustee, as appropriate, and subject to the Debtor's and/or the Millennium Liquidation Trustee's, as appropriate, right to contest the allowance or payment of same; *provided further, however*, that from and after the Effective Date, any fees and charges which are assessed under Chapter 123, Title 28, United States Code, in relation to the Bankruptcy Case shall be paid by the Millennium Liquidation Trustee as they become due.

**ARTICLE IV**  
**TREATMENT OF CLASSIFIED CLAIMS AND**  
**IDENTIFICATION OF IMPAIRED CLASSES**

**4.1 Class 1: Priority Claims.**

**4.1.1 Treatment.** Priority Claims shall be reviewed by the Debtor or the Millennium Liquidation Trustee, as appropriate, and shall be objected to or allowed, in the discretion of the Debtor or the Millennium Liquidation Trustee. Upon becoming an Allowed Priority Claim, each holder of an Allowed Priority Claim shall receive in full satisfaction, release, and discharge of and in exchange for such Claim: (a) the amount of such Allowed Priority Claim, in cash, on or as soon as practicable after the latest of (i) fifteen (15) days after the Effective Date, (ii) the date that is fifteen (15) Business Days after such Claim becomes an Allowed Priority Claim; or (iii) the date upon which the Millennium Liquidation Trustee obtains sufficient funds to pay Allowed Priority Claims; or (b) the time dictated by such other treatment as may be agreed upon in writing by the holder of such Claim and the Debtor or the Millennium Liquidation Trustee, as applicable.

**4.1.2 Impairment and Voting.** Class 1 is impaired under the Plan.

**4.2 Class 2: Secured Claims.**

**4.2.1 Treatment.** Secured Claims shall be reviewed by the Debtor or the Millennium Liquidation Trustee, as appropriate, and shall be objected to or allowed, in the discretion of the Debtor or the Millennium Liquidation Trustee. Upon becoming an Allowed Secured Claim, each holder of an Allowed Secured Claim shall receive in full satisfaction, release and discharge of and in exchange for such Claim: (a) the amount of such Allowed Secured Claim, in cash, on or as soon as practicable after the latest of (i) fifteen (15) days after the Effective Date, (ii) the date that is fifteen (15) Business Days after such Claim becomes an Allowed Secured Claim; or (iii) the date upon which the Liquidation Trustee obtains sufficient funds to pay Allowed Secured Claims; (b) all collateral securing such Allowed Secured Claim; or (c) such other treatment as may be agreed upon in writing by the holder of such Claim and the Debtor or the Millennium Liquidation Trustee, as applicable.

**4.2.2 Impairment and Voting.** Class 2 is impaired under the Plan.

### **4.3 Class 3: Unsecured Claims -- Other than Participant Claims.**

**4.3.1 Treatment.** Class 3 Claims shall be reviewed by the Debtor or the Millennium Liquidation Trustee, as appropriate, and shall be objected to or allowed, in the discretion of the Debtor or the Millennium Liquidation Trustee. One million dollars (\$1,000,000), and no more, in cash shall be set aside for the payment of Allowed Class 3 Claims. If the Class 3 Claims that become Allowed Class 3 Claims total less than \$1,000,000, all Allowed Class 3 Claims will be paid in full in cash upon the resolution of all asserted Class 3 Claims. Upon the resolution of all asserted Class 3 Claims, if the Class 3 Claims that become Allowed Class 3 Claims total more than \$1,000,000, each holder of an Allowed Unsecured Claim in Class 3 shall receive in full satisfaction, release and discharge of and in exchange for such Claim its Pro Rata Share of the \$1,000,000 set aside for Class 3, plus its Pro Rata Share of any interest that may accrue on the \$1,000,000 while Class 3 claims are being resolved. If there are funds in excess of the funds necessary to pay all Allowed Class 3 Claims, the excess shall be used for the benefit of Allowed Class 4 Claimants.

**4.3.2 Impairment and Voting.** Class 3 is impaired under the Plan.

### **4.4 Class 4: Participant Claims**

**4.4.1 Treatment.** On the Effective Date, each Participant: (a) shall have an Allowed Participant Claim equal to his or her Life Benefit, as calculated in accordance with section 4.4.1.2, below; and (b) shall have an option to purchase the Life Policy insuring the life of the Participant, as provided below; and (c) shall receive his or her Life Benefit and any additional distributions, as provided below, from the Millennium Trust, in full satisfaction, settlement, release, extinguishment, and discharge of his or her Allowed Participant Claim and any other Claim asserted against the Debtor or its Estate by the Participant.

**4.4.1.1 Participation in Settlements.** In addition, each Non-Litigation Participant who elects to be a Settlement Participant shall have a distribution right from the Settlement Fund, if any. The Settlement Fund will be paid out by the Millennium Liquidation Trustee using a ratio determined by the percentage that each Settlement Participant's Life Benefit bears to the total Life Benefits of all Settlement Participants.

**4.4.1.2 Calculation of Distributions.** Each holder of an Allowed Participant Claim shall be entitled to receive a cash distribution from the Millennium Trust equal to the net Life Benefit. Alternately, each holder of an Allowed Participant Claim may elect to credit the net Life Benefit amount to the purchase price of the Life Policy insuring the life of the Participant. With the advice of the Millennium Liquidation Plan Committee, the Millennium Liquidation Trustee shall determine the calculation of the net Life Benefit in accordance with sections 1.16 and 5.03.b.vi of the Millennium Master Plan and this Plan as follows: (a) multiply the Life Benefit Ratio for the Participant by the Total Cash Surrender Value for all Life Policies in the Millennium Trust plus any un-segregated cash in the Millennium Trust; and (b) subtract any required or agreed-upon (with applicable governmental authorities) withholding. The gross Life Benefit (the sum of the net Life Benefit plus the governmental withholding amount) will be reported to the Participant and to the Internal Revenue Service. To determine un-segregated cash, the Millennium Liquidation Trustee shall establish such reserves as mandated by this Plan



to pay Allowed Administrative Claims and Allowed Claims in Classes 1, 2, and 3, as estimated by the Millennium Liquidation Trustee, and in the discretion of the Millennium Liquidation Trustee, an amount for the estimated expenses of operating the Millennium Trust and liquidating the Assets.

**4.4.2 Death Benefits.** Each Participant (or his or her beneficiaries, as applicable) will remain eligible to receive the lesser of a modified Death Benefit, as calculated below, or the 2010 Death Benefit made available to the Participant by the Debtor through and including the date upon which a Participant's election is due pursuant to section 4.4.3.2, below. The modified Death Benefit will be the amount of the net proceeds (the policy death benefit less any policy loans and related loan costs that are deducted from the policy death benefit plus any interest paid by the Insurer from the date of the Participant's death) received by the Millennium Liquidation Trustee from the Life Policy or Policies insuring the Participant's life less the sum of 1) the Participant's gross Life Benefit calculated in accordance with Section 4.4.1.2 above plus 2) any interest paid by the Insurer from the date of the Participant's death.

**4.4.3 Option to Purchase Life Policy; Purchase Price.** In accordance with section 5.03(a) of the Millennium Master Plan, each holder of an Allowed Participant Claim may purchase the Life Policy insuring the life of the Participant, as-is and without warranty by any person. The purchase price of the Life Policy insuring the life of a Participant shall be the Life Policy's accumulation value less the amount of any policy loans (including accumulated interest on or other costs associated with the applicable loan), as shown on the records of the Debtor or the Millennium Trust.

**4.4.3.1 Notices.** As soon as reasonably practicable after the Effective Date, the Millennium Liquidation Trustee shall calculate the net Life Benefit as provided in section 4.4.1.2 of this Plan and shall send written notice of this calculation to each Participant. The written notice shall include the following information: (a) the purchase price of the Life Policy insuring the life of the Participant; (b) the Life Benefit net of tax withholding pursuant to section 4.4.1.2 of this Plan; (c) the effective date of the net Life Benefit calculation; (d) information about the Life Policy insuring the life of the Participant, including its accumulation value, outstanding loans, and surrender charges; and (e) the deadline by which the Millennium Liquidation Trustee must receive notice of a Participant's decision to exercise the option to purchase the Life Policy pursuant to section 4.4.3.2 of this Plan.

**4.4.3.2 Election.** Within thirty (30) days after the written notice under section 4.4.3.1 of this Plan has been sent, each Participant may provide a written response to the Millennium Liquidation Trustee stating (a) whether the Participant elects to purchase the Life Policy insuring his or her life for the purchase price stated in the notice and (b) if the Participant elects to purchase the Life Policy, whether the Participant elects to apply the Life Benefit stated in the notice (net of tax withholding) as a credit against the purchase price of the Life Policy insuring his or her life.

**4.4.3.3 Purchase Implementation.** If a Participant elects to purchase the Life Policy insuring his or her life and further elects to use the Life Benefit (net of tax withholding) as a credit against the purchase price, the Participant shall remit the difference between the purchase price and the credit, if the purchase price is greater than the credit, to the Millennium

Trust within sixty (60) days after delivery of the written notice provided under section 4.4.3.1 of this Plan. If the Participant elects to purchase the Life Policy without applying the credit, the Participant shall remit the purchase price to the Millennium Trust, in the care of the Millennium Liquidation Trustee, within sixty (60) days after delivery of the written notice provided under section 4.4.3.1 of this Plan. Failure to remit the purchase price under either option in a timely manner shall be deemed an election to waive the option to purchase the Life Policy. In that event, the Participant retains the right to receive the distributions provided in section 4.4.4 of this Plan. If the Participant elects to purchase the Life Policy and to apply the credit, if the purchase price is less than the Participant's Life Benefit credit (net of tax withholding), the Participant shall be paid the difference from the Millennium Trust when the Millennium Liquidation Trustee makes distributions pursuant to sections 4.4.2 and 4.4.4 of this Plan.

**4.4.3.4 Transfer of Life Policy.** Provided that the Millennium Liquidation Trustee has sufficient cash to fulfill the Debtor's withholding obligation, within ninety (90) days after delivery of the written notice provided under section 4.4.3.1 of this Plan, the Millennium Liquidation Trustee shall complete any required documents necessary to transfer the purchased Life Policies to the Participants purchasing such Life Policies.

**4.4.3.5 Surrender of Life Policies.** Upon passage of the deadline set forth in section 4.4.3.2 for Participants to make their election regarding the purchase of the Life Policies insuring their lives, the Millennium Liquidation Trustee shall take all actions necessary to surrender the Life Policies on those Participants who have either (a) elected not to purchase the Life Policies insuring their lives or (b) have made no election. Upon passage of the deadline for Participants who have elected to purchase the Life Policies insuring their lives to make payment for such Life Policies, if payment is not timely received from one or more Participants, the Millennium Liquidation Trustee may then take all actions necessary to surrender the Life Policies on the lives of those Participants who have elected to purchase the Life Policies on their lives, but have forfeited their election by failing to make the required payment by the deadline set forth herein.

**4.4.4 Distributions.** Each holder of an Allowed Participant Claim shall receive a distribution or distributions from the Millennium Trust pursuant to the following procedure.

**4.4.4.1 Credit.** For distributions to each Participant who elected to purchase the Life Policy insuring the life of the Participant by applying the net Life Benefit as a credit against the purchase price of the Life Policy, the Millennium Liquidation Trustee shall offset the amount of the distribution(s) under this section 4.4.4 by the amount of the Life Benefit net of withholding. Participants who elect to purchase the Life Policies insuring their lives and actually purchase the Life Policies insuring their lives shall not receive any cash distributions unless and until the Participants not purchasing Life Policies receive an amount equal to the amount of the Life Benefit calculation contained in section 4.4.1.2.

**4.4.4.2 Interim Distributions.** From time to time, the Millennium Liquidation Trustee shall set reserves for Allowed Administrative Claims and Allowed Claims in Classes 1, 2, and 3, and for the operating expenses of the Millennium Trust, and after consultation and with the consent of the Millennium Liquidation Plan Committee, the Millennium Liquidation Trustee

shall make interim distributions of the Life Benefit net of withholding to each holder of an Allowed Participant Claim if there is sufficient cash to do so. For this purpose, interim distributions for each Participant shall equal the Life Benefit Ratio of each Participant with an Allowed Participant Claim multiplied by the aggregate of the Assets the Millennium Liquidation Trustee has identified as available for interim distribution less required withholding. It is intended that the Millennium Liquidation Trustee distribute funds to holders of Allowed Participant Claims up to the amount of the Life Benefit net of withholding provided in section 4.4.1.2 of this Plan as quickly as possible. For interim distribution(s), the Millennium Liquidation Trustee's distributions, in a total amount, will not exceed the net Life Benefit provided in section 4.4.1.2 of this Plan. Once the Millennium Liquidation Trustee has made distributions equal to the Life Benefit in the amount provided in section 4.4.1.2 of this Plan to each holder of an Allowed Participant Claim, the Millennium Liquidation Trustee shall have the discretion to make supplemental Life Benefit distributions to each holder of an Allowed Participant Claim based upon the Life Benefit Ratio.

**4.4.4.3 Final Distributions.** Following the liquidation of the Assets, the satisfaction of the treatment of Allowed Administrative Claims and Allowed Claims in Classes 1, 2, and 3 as provided in this Plan, and the payment or establishment of reserves in the discretion of the Millennium Liquidation Trustee for the payment of all expenses of the Millennium Trust including the expenses for operating the Millennium Trust and liquidating the Assets, after consultation and with the consent of the Millennium Liquidation Plan Committee, the Millennium Trustee shall make a final distribution of the remaining Assets to each holder of an Allowed Participant Claim based on the Life Benefit Ratio, including the distribution of any amounts received from the purchase of the Life Policies in excess of the net surrender values of the policies sold.

**4.4.5 Distributions of Settlement Fund.** In addition to the distributions provided in sections 4.4.2 and 4.4.4 of this Plan, a holder of an Allowed Non-Litigation Participant Claim may be eligible for distributions from a Settlement Fund or Funds.

**4.4.5.1 Distributions to Settlement Participants.** Each holder of an Allowed Non-Litigation Participant Claim who is a Settlement Participant shall receive his or her Pro Rata Share of any distributions of the applicable Settlement Fund or Funds. Distributions from the Settlement Fund or Funds shall be made by no later than sixty (60) days after the Effective Date. Persons who are not Settlement Participants shall not receive any portion of the Settlement Fund or Funds.

**4.4.6 Impairment and Voting.** Class 4 is impaired under the Plan. Holders of Participant Claims are entitled to vote to accept or reject the Plan.

#### **4.5 Class 5: Subordinated Claims.**

**4.5.1 Treatment.** Each holder of an Allowed Subordinated Claim (except any holder that agrees to a lesser or otherwise different treatment), in full satisfaction, settlement, release, extinguishment, and discharge of such Claim, shall be paid its Pro Rata Share of the assets, if any exist, of the Millennium Trust after the payment in full by the Millennium Liquidation Trustee of all Allowed Administrative Claims and all Allowed Claims in Classes 1,

2, 3, and 4. Any such payments by the Millennium Trust will be made on the later of the date upon which such Subordinated Claim becomes an Allowed Claim or the date upon which all claims in Classes 1-4 have been satisfied in full.

**4.5.2 Impairment and Voting.** Class 5 is impaired under the Plan. Holders of Allowed Subordinated Claims are entitled to vote to accept or reject the Plan.

## **ARTICLE V**

### **ACCEPTANCE OR REJECTION OF PLAN**

**5.1 Impairment Controversies.** If a controversy arises as to whether any Class of Claims is impaired under this Plan, such Class shall be treated as specified in this Plan unless the Bankruptcy Court shall determine such controversy differently upon motion of the party challenging the characterization of a particular Class of Claims under this Plan. In such an event, the Debtor hereby moves the Bankruptcy Court to allow the Debtor to amend the Plan.

**5.2 Classes and Claims Entitled to Vote.** All Classes are impaired and the holders of Claims in all Classes are entitled to vote.

**5.3 Cramdown.** If the Bankruptcy Court determines that a Class is impaired, then this section of the Plan shall constitute the request by the Debtor, pursuant to section 1129(b) of the Bankruptcy Code, that the Bankruptcy Court confirm the Plan.

## **ARTICLE VI**

### **IMPLEMENTATION OF PLAN**

**6.1 Millennium Liquidation Trustee.** As of the Effective Date, the Millennium Liquidation Trustee shall be appointed in accordance with section 1123(b)(3)(B) of the Bankruptcy Code and shall enter into the Millennium Trust Agreement as set forth in Article I, section 1.22 of the Millennium Trust Agreement. The Debtor, in consultation with the Committee, will nominate the person to serve as the Millennium Liquidation Trustee to the Bankruptcy Court for approval and appointment, and will provide all disclosures required respecting the person pursuant to sections 1129(a)(4) and (a)(5) of the Bankruptcy Code, not less than ten (10) days before the Confirmation Hearing. The Millennium Liquidation Trustee shall be approved by the Court at the Confirmation Hearing. The Millennium Liquidation Trustee shall be responsible for, among other things, the following: (a) resolving, paying and satisfying all Administrative Claims and all Allowed Claims in accordance with this Plan, the Millennium Trust Agreement and the Confirmation Order; (b) receiving, preserving, holding, managing, liquidating and maximizing the Assets; (c) acting as the representative of the Estate, pursuant to section 1123(b)(3)(B) of the Bankruptcy Code; (d) pursuing, through litigation or otherwise, claims of the Debtor against any Person; (e) preparing and filing the Debtor's Final Form 5500 and making all other legally required final reports; and (f) taking other actions deemed to be in the best interests of the Estate and required under the Millennium Master Plan, as amended by this Plan and Millennium Trust Agreement. The powers and duties of the Millennium Liquidation Trustee shall be governed by the Millennium Trust Agreement, the Millennium

Master Plan, and this Plan. The Millennium Liquidation Trustee will have those powers and responsibilities given to the Sponsor and the Plan Committee in the Millennium Master Plan, Millennium Trust Agreement and this Plan.

**6.2 Millennium Liquidation Plan Committee.** The initial members of the Millennium Liquidation Plan Committee shall be the three to five Persons named in the Confirmation Order. The Debtor, in consultation with the Committee, will nominate the persons to serve on the Millennium Liquidation Plan Committee to the Bankruptcy Court for approval and appointment. They shall consult with and advise the Millennium Liquidation Trustee regarding the administration of the Millennium Trust, pursuant to the terms of this Plan, the Millennium Master Plan and the Millennium Trust Agreement. No member of the Millennium Liquidation Plan Committee shall receive compensation for serving on that body.

**6.3 Vesting of Assets in the Millennium Liquidation Trustee.** On the Effective Date, except as otherwise provided in this Plan, all Assets remaining in the Estate shall be vested in the Millennium Liquidation Trustee, free and clear of all claims and interests of creditors.

**6.4 Settlement Contribution.** Within five (5) Business Days of the Effective Date, subject to the condition precedent in section 11.2.1 of this Plan, Settlement Fund received by the Debtor shall vest in the Millennium Liquidation Trustee pursuant to 11 U.S.C. § 1123(b)(3)(B), who shall segregate and hold these funds for the benefit of the Settlement Participants. Persons who are not Settlement Participants shall not receive any distribution from or on account of the Settlement Fund.

**6.5 Termination of RBT and SecurePlan; Books and Records.** On the Effective Date, the Millennium Liquidation Trustee shall assume the role and duties set forth in Article VIII of the Millennium Master Plan and this Plan. On the Effective Date, RBT shall cease to be the Debtor's trustee and SecurePlan shall cease to be the Debtor's third party administrator.

**6.5.1 Assets of the Estate.** On the Effective Date, RBT and SecurePlan shall transfer, assign, and pay to the Millennium Liquidation Trustee for holding as set forth in the Millennium Trust Agreement, legal title to all Assets remaining in the Estate on the Effective Date, for the benefit of the Participants.

**6.5.2 Debtor's Books and Records.** On the Effective Date, the Debtor, the Plan Committee, RBT, and SecurePlan shall transfer to the Millennium Liquidation Trustee all of the Debtor's books and records within their possession, custody, or control.

**6.6 Expenses of Millennium Trust.** The Millennium Liquidation Trustee shall pay all expenses of the Millennium Trust (including applicable taxes) from the assets of the Millennium Trust.

**6.7 Termination of the Millennium Trust.** The Millennium Plan and Millennium Trust shall be dissolved ninety (90) days after the Millennium Liquidation Trustee determines the Assets have been liquidated and all Administrative Claims and Claims have been paid to the extent possible based upon funds available through this Plan or have been disallowed by a Final Order. The powers and duties of the Millennium Liquidation Trustee shall terminate in accordance with the terms of the Millennium Master Plan and Millennium Trust Agreement

following complete distribution of all Assets of the Millennium Trust and the filing of the Millennium Plan final Form 5500 with the Department of Labor and the Internal Revenue Service.

**ARTICLE VII**  
**PROVISIONS GOVERNING DISTRIBUTIONS UNDER PLAN**

**7.1 Distributions.** No payment or distribution shall be made by the Millennium Liquidation Trustee except on account of an Allowed Administrative Claim, an Allowed Claim, or the expenses authorized under the Millennium Master Plan, the Millennium Trust Agreement and this Plan unless otherwise ordered by the Bankruptcy Court. In the case of a conflict, the terms of this Plan govern. No payments shall be made on account of any Disputed Claim until it becomes an Allowed Claim. Distributions to be made on the Effective Date shall be deemed actually made on the Effective Date if made either (a) on the Effective Date or (b) as soon as reasonably practicable thereafter.

**7.2 Dates of Distribution.**

**7.2.1 Administrative Claims and Claims in Classes 1 and 2.** The Millennium Liquidation Trustee shall make distributions to holders of Allowed Administrative Claims and Allowed Claims in Classes 1 and 2 as and when provided in Article III and sections 4.1 and 4.2, above, respectively.

**7.2.2. Claims in Classes 3 and 4.** The Millennium Liquidation Trustee shall make distributions to the holders of Allowed Claims in Classes 3 and 4 as soon as reasonably practicable.

**7.2.3 Class 5 Claims.** The holders, if any, of Allowed Claims in Class 5 shall be paid their Pro Rata Share of the assets, if any, of the Millennium Trust remaining after the payment in full by the Millennium Liquidation Trustee of (i) all Allowed Administrative Claims, (ii) all Allowed Claims in Classes 1, 2, 3, and 4. Any such payment shall be made by the Millennium Liquidation Trustee as soon as practicable after the Millennium Liquidation Trustee has paid holders of Allowed Administrative Claims and Allowed Claims in Classes 1, 2, 3, and 4.

**7.2.4 Settlement Participants.** Distributions of Settlement Fund to the Settlement Participants shall be made as soon as reasonably practicable.

**7.3 Means of Cash Payment.** Cash payments from the Debtor or the Millennium Liquidation Trustee shall be made by check drawn on, or by wire transfer from, a domestic bank.

**7.4 Delivery of Distributions.** Distributions and deliveries to the holders of Allowed Claims in Classes 1, 2, 3, 4, and 5 shall be made at the addresses set forth on the respective proofs of Claim filed in this case, unless a different address is provided to the Millennium Liquidation Trustee. If no proof of Claim is filed, distributions shall be made at the creditor's last known address or as reflected in the Schedules. If any distribution is returned as undeliverable, no further distribution shall be made on account of such Allowed Claim unless and until the Millennium Liquidation Trustee is notified of such holder's then current address, at

which time all missed distributions shall be made to the holder of such Allowed Claim unless forfeited as otherwise provided for in this Plan. All claims for undeliverable distributions shall be made on or before the first anniversary of the attempted distribution. After such date, all unclaimed property shall be redistributed by the Millennium Liquidation Trustee to the holders of Allowed Claims in Classes 1, 2, 3, and 4 and, if applicable because the Allowed Claims of the creditors in such classes have been paid in full, to the holders of Allowed Claims in Class 5, and the Allowed Claim of any holder with respect to such unclaimed and redistributed property shall be discharged and forever barred.

**7.5 Time Bar to Cash Payments.** Checks issued by the Millennium Liquidation Trustee with respect to Allowed Claims shall be null and void if not cashed within ninety (90) days of the date of issuance thereof. The Millennium Trust checks shall include language reflecting the deadline for depositing such checks. Requests for reissuance of any check shall be made directly to the Millennium Liquidation Trustee by the holder of the Allowed Claim with respect to which such check originally was issued. Any request for reissuance with respect to such a voided check shall be made on or before the first anniversary of the date of the first issuance of such check. After such date, all Allowed Claims with respect to void checks shall be discharged and forever barred.

## **ARTICLE VIII**

### **PROVISIONS REGARDING DISPUTED AND CONTINGENT CLAIMS**

**8.1 Standing to Object to Claims.** The Debtor (through the Effective Date), the Committee (through the Effective Date, after consultation with and consent by the Debtor), the Millennium Liquidation Trustee, the United States Trustee, and all other holders of Class 1-5 Claims shall have specific standing to object to the allowance of a Claim. Nothing herein shall preclude any other party in interest, including the Committee, from seeking authority from the Bankruptcy Court to file objections to Claims not otherwise objected to by the enumerated parties in this section.

**8.2 Claim Objections.** Unless arising from an Avoidance Action or rejection of an executory contract, any proof of claim filed after the Bar Date shall be of no force and effect and need not be objected to. Any Disputed Claim may be litigated to a Final Order. The Millennium Liquidation Trustee may compromise and settle any Disputed Claim without the necessity of any further notice or approval of the Bankruptcy Court, and Bankruptcy Rule 9019 shall not apply to any settlement of a Disputed Claim after the Effective Date; ***provided, however,*** that nothing contained herein shall apply to the Allowance of an Administrative Claim for which approval from the Bankruptcy Court is required.

**8.3 Creditor Response to Objection.** With respect to any objection to a Claim, prior to the expiration of thirty (30) days from the date of service of the objection, the Creditor whose Claim was the subject of the objection must file with the Bankruptcy Court and serve a response to the objection upon the Debtor or Millennium Liquidation Trustee and all parties who request notice of such matters in the manner prescribed in the Notice of the Effective Date. Failure to file and serve such a response within the thirty (30) days shall cause the Bankruptcy Court to enter an order against the non-responding Creditor and thereby grant the relief requested in the Objection.

**8.4 No Waiver of Right to Object.** Except as expressly provided in this Plan, nothing contained in the Disclosure Statement, this Plan, or the Confirmation Order shall waive, relinquish, release, or impair the Debtor's, Millennium Liquidation Trustee's or other party-in-interest's right to object to any Claim.

**8.5 Allowance of Disputed Claims.** Nothing contained in this Plan, the Disclosure Statement, or Confirmation Order shall change, waive, or alter any requirement under applicable law that the holder of a Disputed Claim must file a timely proof of Claim. If the holder of such a Disputed Claim who is required to file a proof of Claim fails to do so, that holder shall receive no distribution through the Plan and the Claim shall be discharged. The adjudication and liquidation of Disputed Claims is a determination and adjustment of the debtor/creditor relationship, and is therefore an exercise of the Bankruptcy Court's equitable power to which the legal right of trial by jury is inapplicable. The holder of any Disputed Claim shall not have a right to trial by jury before the Bankruptcy Court with respect to any such Claim. Exclusive venue for any proceeding involving a Disputed Claim shall be in the Bankruptcy Court. Disputed Claims shall each be determined separately, except as otherwise ordered by the Bankruptcy Court. The Debtor or Millennium Liquidation Trustee shall retain all rights of removal to federal court as to any proceeding involving a Disputed Claim.

**8.6 Allowance of Certain Claims.** All Disputed Claims shall be liquidated and determined as follows:

**8.6.1 Application of Adversary Proceeding Rules.** Unless otherwise ordered by the Bankruptcy Court, the proceeding involving a Disputed Claim for any objection to a Disputed Claim shall be subject to Bankruptcy Rule 9014. However, any party may move the Bankruptcy Court to apply the Bankruptcy Rules applicable to adversary proceedings to any proceeding involving a Disputed Claim. The Debtor or Millennium Liquidation Trustee may, at its election, make and pursue any Objection to a Claim in the form of an adversary proceeding.

**8.6.2 Scheduling Order.** Unless otherwise ordered by the Bankruptcy Court, or if the objection is pursued as an adversary proceeding, a scheduling order shall be entered as to each objection to Claim to which a response is filed. The Millennium Liquidation Trustee shall tender a proposed scheduling order upon receipt of a response to such objection and include a request for a scheduling conference for the entry of a scheduling order. The scheduling order may include (a) a discovery cut-off, (b) deadlines to amend pleadings, (c) deadlines for designation of and objections to experts, (d) deadlines to exchange exhibit and witness lists and for objections to the same, and (e) such other matters as may be appropriate.

**8.6.3 Mediation.** The Bankruptcy Court may order the parties to mediate in connection with any objection to Claim. The Debtor or Millennium Liquidation Trustee may include a request for mediation in its objection, and request that the Bankruptcy Court require mediation as part of the scheduling order. Alternatively, the parties to any Claims objection may agree to submit the dispute to mediation.

**8.6.4 Substantial Consummation.** All distributions of any kind made to any of the holders of Allowed Claims after the Plan has been substantially consummated, and any and all other actions taken under the Plan after it has been substantially consummated, shall not be



subject to relief, reversal or modification by any court unless the implementation of the Confirmation Order is stayed by an order granted under Bankruptcy Rule 8005.

**8.6.5 Offsets.** The Debtor or Millennium Liquidation Trustee shall be vested with and retain all rights of offset or recoupment and all counterclaims against any holder of a Claim, unless specifically released in this Plan.

**8.7 Claims Filed After the Claim Bar Date.** Except as otherwise provided in this Plan, or by order of the Bankruptcy Court, a Claim may not be filed by a creditor with the Bankruptcy Court after the Claim Bar Date. Except as otherwise provided in the Plan or by order of the Bankruptcy Court, any new Claim filed by a creditor with the Bankruptcy Court after the Claim Bar Date shall be deemed disallowed in full and expunged without any action by the Millennium Liquidation Trustee.

## **ARTICLE IX EXECUTORY CONTRACTS**

**9.1 Assumption or Rejection.** Effective on and as of the Effective Date, all of the Debtor's and the Estate's Executory Contracts that the Debtor has not previously sought to assume shall be deemed rejected pursuant to section 365 of the Bankruptcy Code. Pursuant to the Order Granting Amended Joint Motion for Approval of Assumption of Executory (Life Insurance) Contracts, entered March 10, 2011 [Docket No. 977], the Bankruptcy Court has approved the Debtor's assumption of all of the Life Policies.

**9.2 Claims for Rejection Damages.** Claims for damages allegedly arising from the rejection pursuant to this Plan or the Confirmation Order of any Executory Contract, whether rejected prior to the Effective Date or deemed rejected as a result of this Plan, must be filed with the Bankruptcy Court and served on the Millennium Liquidation Trustee not later than thirty (30) days after the Effective Date. All Claims for such damages not timely filed and properly served as prescribed herein shall be forever barred and the holder of such a Claim shall not be entitled to participate in any distribution or payment, on account of such Claim, under the Plan or payment from the Millennium Liquidation Trustee.

**9.3 Responsibility for Rejection Damages.** Any Claim arising from the rejection of an Executory Contract that is deemed a prepetition claim under the Bankruptcy Code shall, if Allowed, and only to the extent Allowed, be treated as a Claim in Class 3 of this Plan.

**9.4 Objections to Claim Based On Rejection Damages.** Parties-in-interest shall be entitled to file objections to Claims based on the rejection of an Executory Contract in this Plan under the law, rules, and provisions governing standing otherwise applicable to objections to claims under the Bankruptcy Code; *provided, however*, that any such objection shall be filed no later than one hundred and twenty (120) days after the later of: (a) the date that such Claim is filed; or (b) the Effective Date.

## **ARTICLE X RETENTION OF CAUSES OF ACTION AND RIGHTS**

Unless specifically released herein, on the Effective Date, any and all causes of action,

Claims, rights, defenses, third-party claims, damages, executions, demands, cross-claims, counterclaims, suits, causes of action, choses in action, controversies, agreements, promises, rights to legal remedies, rights to equitable remedies, rights to payment and claims whatsoever, whether known, unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured and whether asserted or assertable directly, indirectly or derivatively, at law, in equity or otherwise shall be preserved, retained, transferred to and shall vest in the Millennium Trust by and through the Millennium Liquidation Trustee, including without limitation:

- (a) those set forth in the Schedules;
- (b) those set forth in any lawsuit, court proceeding, adversary proceeding or contested matter pending on or before the Effective Date;
- (c) any and all Avoidance Actions, Claims, causes of action or enforceable rights of the Debtor against third parties, or assertable by the Debtor on behalf of Creditors, its Estate, or itself for recovery, turnover or avoidance of obligations, or preferential or fraudulent transfers of property or interests in property and other types or kinds of property or interests in property recoverable or avoidable pursuant to Chapter 5 or other sections of the Bankruptcy Code or any applicable law including, without limitation, sections 502, 510, 522(f), 522(h), 542, 543, 544, 545, 547, 548, 549, 550, 551, or 553 of the Bankruptcy Code;
- (d) any and all Claims or causes of action of the Debtor or its Estate relating to any pre- or post-petition activities against: (i) the Debtor's current or former officers, directors, principals or advisors; (ii) any current or former members of the Plan Committee or Committee; (iii) RBT and any of its current or former officers, directors, principals, advisors or professionals; (iv) Milliman and any of its current or former officers, directors, principals or professionals; (v) Scott Ridge, Ridge Insurance, Inc., and any of its current or former officers, directors, principals, advisors or professionals; (vi) Norman Bevan, Innovus Financial Solutions, LLC, and any of its current or former officers, directors, principals, advisors or professionals; (vii) Whitaker, Chalk, Swindle & Sawyer LLP and any of its current or former officers, directors, principals, advisors or professionals; (viii) any of the Insurers, including, without limitation, Aviva, American General, American General Securities, Inc. (n/k/a Sagepoint Financial Advisors, Inc.), the United States Life Insurance Company in the City of New York, Penn Mutual Life Insurance Company, and any of their current or former officers, directors, principals, advisors or professionals; (ix) any of the Third Party Defendants; (x) any one or more of the Litigation Claimants, and their attorneys, experts, agents and representatives; and (x) any current or former professionals of the Debtor or Committee retained either pre- or post-petition (including, without limitation, legal, accounting, tax advisors or consultants, ERISA advisors or consultants) including, without limitation, claims or causes of action for: (i) alleged breaches of fiduciary duty; (ii) alleged fraud or fraudulent inducement; (iii) alleged negligence; (iv) alleged fraudulent or negligent misrepresentations; (v) alleged legal, accounting or other professional negligence or malpractice; (vi) alleged illegal dividends or payments received; (vii) objections to professional compensation

applications as well as any other claims by the Debtor or the Committee against their respective professionals; (viii) claims regarding any professional of the Debtor or the Committee relating to or arising from any professional compensation application; (ix) alleged civil conspiracy; (x) alleged fraudulent insurance acts; (xi) alleged violations of any consumer protection act or deceptive trade practice act; (xii) alleged unjust enrichment; (xiii) alleged breach of contract; (xiv) alleged tortious interference with contracts or prospective relations; (xv) alleged deceit by misrepresentation or concealment; or (xvi) alleged common law fraud; and

For the avoidance of doubt, the Millennium Liquidation Trustee is being designated and appointed as a representative of the Estate and is empowered to pursue all of the actions set for above. Further, no causes of action, claims, rights, defenses, third-party claims, damages, executions, demands, cross-claims, counterclaims, suits, causes of action, choses in action, controversies, agreements, promises, rights to legal remedies, rights to equitable remedies, rights to payment and claims whatsoever related thereto owned by the Debtor as of the Petition Date or owned by the Estate at any time prior to the Effective Date are released, waived, or otherwise abandoned as a result of the confirmation of the Plan, except any of the foregoing specifically released in the Plan.

**ARTICLE XI**  
**RELEASES AND WAIVERS**

**11.1 Exoneration and Reliance.** None of the Debtor, its professionals retained pursuant to Court order, the Committee, the Committee members, their professionals retained pursuant to Court order, RBT, SecurePlan, Milliman, the Plan Committee, and the Plan Committee members shall be liable (other than for criminal liability, willful misconduct or bad faith, or *ultra vires* acts) to any holder of a Claim or any other Person with respect to any action, omission, forbearance from action, decision, or exercise of discretion taken from the Petition Date through the Effective Date in connection with (a) the management or operation of the Debtor or the discharge of its duties under the Bankruptcy Code, (b) the solicitation, negotiation, or implementation of any of the transactions provided for, or contemplated in, this Plan, (c) any action taken in connection with either the enforcement of the rights of the Debtor against any Persons or the defense of Claims asserted against the Debtor with regard to the Bankruptcy Case, (d) any action taken in the negotiation, formulation, preparation, development, proposal, solicitation, disclosure, confirmation, or implementation of this Plan, or any related agreements, instruments or other documents, (e) the administration of the Plan or the assets and property to be distributed pursuant to this Plan or (f) the administration of the Debtor's Assets and Estate. The Debtor, its professionals retained pursuant to Court order, the Committee, the members of the Committee, their professionals retained pursuant to Court order, RBT, SecurePlan, the Plan Committee, and the Plan Committee members shall be deemed to have participated in the Bankruptcy Case in good faith and in compliance with all applicable provisions of the Bankruptcy Code and all other laws, if any, which are, or may be, applicable. Nothing in this section shall prevent the enforcement of the terms of the Plan, and the Bankruptcy Court shall retain exclusive jurisdiction over such matters.

**11.2 Third Party Defendant Settlement(s).** As of the Effective Date, a compromise and settlement by the Debtor with a Third Party Defendant shall occur subject to the following terms and conditions:

**11.2.1 Condition Precedent to Settlement.** A condition precedent to a settlement with a Third Party Defendant is that the Settlement Participants constitute at least eighty percent (80%) in number and amount of the Allowed Non-Litigation Participant Claims. Any Settling Defendant may waive this condition precedent with respect to its settlement by delivering a written notice to the Debtor or the Millennium Liquidation Trustee, as applicable.

**11.2.2 Settlement Contribution.** Within ten (10) days of the Effective Date, the Settling Defendants shall pay their respective Settlement Contribution(s), if any, to the Debtor or to the Millennium Liquidation Trustee as provided in the Confirmation order, as set forth in **Exhibit D** to the Plan.

**11.2.3 Release of Settling Defendants.** Upon funding and upon satisfaction or written waiver of the condition precedent in section 11.2.1 of this Plan, and for good and valuable consideration (including the Settlement Fund under this Plan), the receipt and sufficiency of which are acknowledged, (a) the Settling Defendants (acting in any capacity whatsoever) shall be forever released and discharged from any and all claims, obligations, actions, suits, rights, debts, accounts, causes of action, remedies, avoidance actions, agreements,

promises, damages, judgments, demands, defenses, or claims in respect of equitable subordination, and liabilities through the Effective Date (including all claims based on or arising out of facts or circumstances that existed as of or prior to the Plan, including claims based on negligence or strict liability, and further including any derivative claims asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise), **but excepting the contractual rights and claims of the Debtor under policies of life insurance issued by the Settling Defendants**, which any of the Debtor, the Estate, the Committee, the Millennium Trust, the Millennium Liquidation Trustee, or any Settlement Participant may have against any of the Settling Defendants in any way related to the Debtor; the Millennium Trust; the Debtor's reorganization and/or liquidation or action taken in connection therewith; participation in the Debtor, including any claim relating to taxes, penalties, and interest; and/or life insurance policies issued in connection with participating in the Debtor (other than contract rights pursuant to the life insurance policies if they are purchased by the Settling Participants) and (b) the Debtor, the Estate, the Committee, the Millennium Trust, the Millennium Liquidation Trustee, and all Settlement Participants shall be permanently and forever stayed, restrained, and enjoined from taking any action against any Settling Defendant (or any property or interest in property of a Settling Defendant) with respect to any and all claims, obligations, actions, suits, rights, debts, accounts, causes of action, remedies, avoidance actions, agreements, promises, damages, judgments, demands, defenses, or claims in respect of equitable subordination, and liabilities through the Effective Date (including all claims based on or arising out of facts or circumstances that existed as of or prior to the Effective Date, including claims based on negligence or strict liability, and further including any derivative claims asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise), **but excepting in respect of the contractual rights and claims of the Debtor under policies of life insurance issued by the Settling Defendants**, which any of the Debtor, the Estate, the Committee, the Millennium Trust, the Millennium Liquidation Trustee, or any Settlement Participant may have against any of the Settling Defendants in any way related to the Debtor; the Millennium Trust; the Debtor's reorganization and/or liquidation or action taken in connection therewith; participation in the Debtor, including any claim relating to taxes, penalties and interest; and/or life insurance policies issued in connection with participation in the Millennium Plan (other than contract rights pursuant to the Life Policies if they are purchased by the Settling Participants); **provided, however, that this paragraph shall not apply to any Person who is not a Settlement Participant.**

**11.2.4 Release by Settling Defendants.** On the Effective Date, upon satisfaction or written waiver of the condition precedent in paragraph 11.2.1 of this Plan, and for good and valuable consideration (including the release and injunction in paragraph 11.2.3 of this Plan), the receipt and sufficiency of which are acknowledged, the Debtor (including the Millennium Trust), the Estate, the Committee, and the Settlement Participants (acting in any capacity whatsoever) shall be forever released and discharged from any and all Claims, obligations, actions, suits, rights, debts, accounts, causes of action, remedies, avoidance actions, agreements, promises, damages, judgments, demands, defenses, or claims in respect of equitable subordination, and liabilities through the Effective Date (including all Claims based on or arising out of facts or circumstances that existed as of or prior to the Effective Date, including Claims based on negligence or strict liability, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise) which any of the Settling Defendants

may have against the Debtor, the Estate, the Committee, the Millennium Trust, the Millennium Liquidation Trustee, or the Settlement Participants in any way related to the Debtor (including the Millennium Trust), the Debtor's reorganization and/or liquidation, or actions taken to reorganize and/or liquidate the Debtor; **provided, however, that this paragraph shall not apply to any Person who is not a Settlement Participant**, and further provided that the Settling Defendants are not releasing any matter claimed in any timely filed proof of claim by a Settling Defendant or request for administrative charge, or any contractual rights relating to any policy loans or surrender including, but not limited to, interest, fees and charges and all rights of setoff and recoupment provided for under the applicable Life Policy(ies) issued by a Settling Defendant.

## **ARTICLE XII**

### **CONDITIONS PRECEDENT**

**12.1 Confirmation of Plan.** The Plan can be confirmed under section 1129(a) of the Bankruptcy Code, or in a non-consensual manner under section 1129(b) of the Bankruptcy Code.

**12.2 Conditions Precedent to Confirmation of Plan.** The Plan shall not be confirmed until the following conditions shall have been satisfied or waived by the, as determined in its sole discretion:

(a) the Confirmation Order shall have been entered, in form and substance acceptable to the Debtor;

(b) the Debtor has satisfied all conditions required under section 1129 of the Bankruptcy Code;

(c) the Debtor is projected to have sufficient cash on hand in order to make the cash distributions required of the Plan as of the Effective Date;

(d) the Bankruptcy Court enters findings of fact that the United States Department of Labor and its agencies, the PBGC, and the Internal Revenue Service received adequate notice of the Debtor's bankruptcy and the confirmation hearings;

(e) the Bankruptcy Court enters findings of fact that the Debtor is eligible to be a debtor under the Bankruptcy Code;

(f) the Bankruptcy Court enters findings of fact that to the extent ERISA applies, there has been no post-petition breach of fiduciary duty, including in connection with this Plan and the confirmation process; and that all the actions and inactions of the Plan Committee, the members of the Plan Committee, RBT, SecurePlan, the Committee, the members of the Committee, and their respective agents, employees, and attorneys are, and at all times have been, in full and complete compliance with the Millennium Master Plan and the Millennium Trust Agreement, and with all the duties and obligations required under the Internal Revenue Code and of the Internal Revenue Service, and under ERISA, and of the United States Department of Labor and the Pension Benefit Guaranty Corporation;

- (g) Requisite number of Participants voting have accepted the Plan;
- (h) if required, the United States District Court has issued all findings, conclusions, and orders required to approve the confirmation of the Plan; and
- (i) all other conditions precedent have been satisfied to the satisfaction of the Debtor.

**12.3 Notice of the Effective Date.** As soon as reasonably practicable after the occurrence of the Effective Date, but no later than fifteen (15) Business Days thereafter, the Millennium Liquidation Trustee shall file with the Bankruptcy Court and shall mail or cause to be mailed to all Persons served with a copy of the Disclosure Statement a Notice that informs such Persons of: (a) the occurrence of the Effective Date; (b) the deadline established under this Plan for the filing of Administrative Claims; (c) procedures for requesting notice; (d) the procedures for changing an address; and (e) other matters as the Millennium Liquidation Trustee deems appropriate.

### **ARTICLE XIII** **RETENTION OF JURISDICTION**

**13.1 Jurisdiction of Bankruptcy Court.** Following the Effective Date, and notwithstanding the entry of the Confirmation Order, the Bankruptcy Court shall retain jurisdiction of the Bankruptcy Case and all matters arising in, or related to, the Bankruptcy Case to the fullest extent permitted by law, including jurisdiction to:

- (a) To hear and determine motions, applications, adversary proceedings, and contested matters pending or commenced after the Effective Date;
- (b) To hear and determine objections (whether filed before or after the Effective Date) to, or requests for estimation of, any Claim, and to enter any order requiring the filing of proof of any Claim before a particular date;
- (c) To ensure that distributions to holders of Allowed Claims are accomplished as provided in the Plan;
- (d) To enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, or vacated;
- (e) To construe and to take any action to enforce this Plan or the Confirmation Order;
- (f) To issue such orders as may be necessary for the implementation, execution and consummation of this Plan and to hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of this Plan or the Confirmation Order;

(g) To enter such orders or judgments, including injunctions, as necessary to enforce the title, rights, and powers of the Debtor, the Millennium Trust, and the Millennium Liquidation Trustee;

(h) To hear and determine any and all motions, applications or adversary proceedings brought by or against the Millennium Trust related to (1) enforcement or interpretation of the Millennium Master Plan, Millennium Trust Agreement or this Plan, or (2) amendment, modification, alteration or repeal of any provision of the Millennium Master Plan, Millennium Trust Agreement, if such hearing and determination by the Bankruptcy Court is required pursuant to the Plan;

(i) To enter and implement orders or take such other actions as may be necessary or appropriate to restrain interference by any Person with the consummation or implementation of the Plan, including, without limitation, to issue, administer, and enforce injunctions, releases, assignments, transfers of property or property rights, or other obligations contained in the Plan and the Confirmation Order;

(j) To hear and determine any applications to modify this Plan, to cure any defect or omission or to reconcile any inconsistency in this Plan, the Disclosure Statement or in any order of the Bankruptcy Court including, without limitation, the Confirmation Order;

(k) To hear and determine all applications for Administrative Claims;

(l) To hear and determine other issues presented or arising under this Plan, including disputes among holders of Claims and arising under agreements, documents or instruments executed in connection with this Plan;

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

(n) To hear and determine all questions and disputes regarding title to the assets of the Debtor, the Estate, or the Millennium Trust;

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

(p) To enter the Final Decree upon request of the Millennium Liquidation Trustee; and

(q) To hear and determine any action concerning the recovery and liquidation of Assets, wherever located, including without limitation litigation to liquidate and recover Assets that consist of Claims, rights and causes of action against third parties and actions seeking declaratory relief with respect to issues relating to or affecting Assets; and to hear and determine any action concerning the determination of taxes, tax refunds, tax attributes, and tax benefits and similar or related matters with respect to the Debtor, the Estate, or the Millennium Trust, including, without limitation, matters concerning



federal, state, local and other taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code.

**13.2 Failure of Bankruptcy Court to Exercise Jurisdiction.** If the Bankruptcy Court abstains from exercising or declines to exercise jurisdiction, or is otherwise without jurisdiction, over any matter arising under, arising in or related to the Bankruptcy Case, including with respect to the matters set forth above in this Plan, section 13.1 of this Plan shall not prohibit or limit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such subject matter.

#### **ARTICLE XIV** **MISCELLANEOUS PROVISIONS**

**14.1 No Liability for Solicitation or Participation.** Pursuant to section 1125(e) of the Bankruptcy Code, Persons that solicit acceptances or rejections of this Plan and/or that participate in the offer, issuance, sale, or purchase of securities offered or sold under this Plan, in good faith and in compliance with the applicable provisions of the Bankruptcy Code, shall not be liable, on account of such solicitation or participation, for violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of this Plan or the offer, issuance, sale, or purchase of securities offered or sold under this Plan.

**14.2 Term of Injunctions and Stays.** Unless otherwise provided, all injunctions or stays provided for in this Bankruptcy Case pursuant to sections 105 or 362 of the Bankruptcy Code, or otherwise and in effect on the Confirmation Date, shall remain in full force and effect until the Effective Date of the Plan as to the Debtor and the Estate and all Assets; *provided, however,* that any injunction issued pursuant to this Plan and the Confirmation Order shall not be subject to the foregoing and shall be perpetual.

**14.3 Release of Liens.** Except as otherwise provided in this Plan or the Confirmation Order, all liens, security interests, deeds of trust, or mortgages against property of the Estate shall be released, terminated, and nullified, other than liens on Life Policies pursuant to the terms of the Life Policies and the liens, if any, of RBT and SecurePlan pursuant to their contracts with the Debtor.

**14.4 Modification of Plan.** The Debtor may alter, amend or modify this Plan under section 1127 of the Bankruptcy Code or as otherwise permitted by applicable law at any time prior to the Confirmation Date. After the Confirmation Date and prior to the Substantial Consummation of this Plan, any party in interest in the Bankruptcy Case may, so long as the treatment of holders of Claims under this Plan are not materially adversely affected, institute proceedings in the Bankruptcy Court to remedy any defect or omission or to reconcile any inconsistencies in this Plan, the Disclosure Statement or the Confirmation Order, and any other matters as may be necessary to carry out the purposes and effects of this Plan; *provided, however,* prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or order of the Bankruptcy Court.

**14.5 Incorporation of Bankruptcy Rule 9019.** To the extent necessary to effectuate and implement the releases contained herein, the Plan shall be deemed to constitute a motion

under Bankruptcy Rule 9019, seeking the Bankruptcy Court's approval of all of the compromises and releases contained herein.

**14.6 Incorporation of section 363 of the Bankruptcy Code.** The transfer of assets from the Debtor and the Estate to the Millennium Liquidation Trustee shall be free and clear of all liens, claims, interests, and encumbrances under section 363(f) of the Bankruptcy Code except as specifically provided for herein, and the Millennium Liquidation Trustee shall be deemed to be a good faith transferee for value entitled to the full protections of section 363(m) and section 363(n) of the Bankruptcy Code. To the extent necessary to effectuate and implement the transfers contained herein, the Plan shall be deemed to constitute a motion filed by the Debtor under section 363 of the Bankruptcy Code, seeking the Bankruptcy Court's approval of the transfers contained herein

**14.7 Incorporation of Section 365 of the Bankruptcy Code.** To the extent necessary to effectuate and implement the transfers contained herein, the Plan shall be deemed to constitute a motion filed by the Debtor under section 365 of the Bankruptcy Code, seeking the Bankruptcy Court's approval to assume and assign the Life Policies as described herein.

**14.8 Payment of Statutory Fees.** All fees payable pursuant to 28 U.S.C. § 1930, as determined by the Bankruptcy Court at the hearing pursuant to section 1128 of the Bankruptcy Code and arising prior to the Effective Date, shall be paid by the Estate on or before the Effective Date or by the Millennium Liquidation Trustee.

**14.9 Dissolution of Committee and Plan Committee.** The Committee and Plan Committee shall cease operating and dissolve on the Effective Date; *provided, however*, that notwithstanding said dissolution, the Committee and Plan Committee shall remain in existence and have standing for the purposes of filing, litigating, and obtaining payment on Allowed Administrative Claims asserted by the Committee, the Plan Committee or the Committee's and/or Debtor's professionals.

**14.10 No Admissions.** Notwithstanding anything herein to the contrary, nothing contained in this Plan shall be deemed an admission by the Debtor (including the Millennium Trust), the Plan Committee, the Plan Committee Members, the Committee, or the Settling Defendants with respect to any matter set forth herein including, without limitation, liability on any Claim or the propriety of any classification of any Claim.

**14.11 Plan Controls.** To the extent there is an inconsistency or ambiguity between any term or provision contained in any of (i) the Disclosure Statement, (ii) the Millennium Master Plan, or (iii) the Millennium Trust Agreement, and this Plan, the terms and provisions of this Plan shall control.

**14.12 Governing Law.** Except to the extent the Bankruptcy Code, the Bankruptcy Rules, or other federal or state laws are applicable, the laws of the State of Oklahoma shall govern the construction, implementation, and enforcement of this Plan and all rights and obligations arising under this Plan, without giving effect to the principles of conflicts of law.

**14.13 Successors and Assigns.** The rights, benefits and obligations of any Person named or referred to in this Plan will be binding upon, and will inure to the benefit of, the heir,

executor, administrator, representative, successor, or assign of such Person.

**14.14 Severability.** Should the Bankruptcy Court determine, on or prior to the Confirmation Date, that any provision of this Plan is either illegal or unenforceable on its face or illegal or unenforceable as applied to any Claim, the Bankruptcy Court, at the request of the Debtor or the Committee, shall have the power to alter and modify such provision to make it valid and enforceable to the maximum extent practicable consistent with the original purpose of such provision. Notwithstanding any such determination, interpretation, or alteration, the remainder of the terms and provisions of this Plan shall remain in full force and effect.

**14.15 Notices and Distributions.** On and after the Effective Date, all notices, requests and distributions to a holder of a Claim shall be sent to the last known address of: (a) the holder or its attorney of record as reflected in the holder's proof of Claim or Administrative Claim filed by or on behalf of such holder; or (b) if there is no such evidence of a last known address, to the last known address of the holder according to the books and records of the Debtor. Any holder of a Claim may designate another address for the purposes of this section by providing the Millennium Liquidation Trustee with written notice of such address, which notice will be effective upon receipt by the Millennium Liquidation Trustee.

**14.16 Binding Effect.** The Plan shall be binding on and inure to the benefit of the holders of Claims (whether or not they have accepted the Plan) and their respective personal representatives, successors and assigns.

**14.17 Withholding and Reporting.** In connection with this Plan and all instruments issued in connection therewith and distributions thereon, the Millennium Trust, RBT, and the Millennium Liquidation Trustee shall comply with all required or agreed-upon (with applicable governmental authorities) withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority and all distributions hereunder shall, to the extent applicable, be subject to any such withholding and reporting requirements. Notwithstanding anything herein to the contrary, in calculating and making the payments due to Allowed Claims hereunder, the Millennium Trust, RBT, or Millennium Liquidation Trustee shall be authorized to deduct from such payments any necessary withholding amount.

**14.18 Other Documents and Actions.** The Debtor, the Millennium Liquidation Trustee, and the Committee may execute such documents and take such other action as is reasonable, necessary, or appropriate to effectuate the transactions provided for in this Plan.

## **ARTICLE XV**

### **CONFIRMATION REQUEST**

The Debtor hereby requests that the Court confirm this Plan pursuant to section 1129(a) of the Bankruptcy Code or, if necessary, pursuant to section 1129(b) of the Bankruptcy Code.

**DATED: March 10, 2011.**

**MILLENNIUM MULTIPLE EMPLOYER WELFARE  
BENEFIT PLAN**

By: *[Signature to be Provided Upon Approval of  
Disclosure Statement]*

Jonathan Cocks, Chairman and General Manager

By: /s/Doug Skierski

Peter Franklin

State Bar No. 07378000

Doug Skierski

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Multiple Employer Welfare Benefit Plan*

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*Local Counsel for Debtor in Possession Millennium Multiple  
Employer Welfare Benefit Plan*

- Exhibit A – Contributions
- Exhibit B – Covered Employers
- Exhibit C – Participants
- Exhibit D – Litigation Claimants
- Exhibit D(1) – Non-Litigation Participants
- Exhibit E – Settling Defendants

**Exhibit A**

**Contributions**

*[To be provided before hearing on approval of the Disclosure Statement]*

**Exhibit B**

**Covered Employers**

## Covered Employers

21st Avenue Transportation Corp.  
A. Reese Brown, MD LLC  
Aathome Pediatric Nursing Team, Inc.  
Abby Consulting, LLC  
Aberty Corporation  
Accent Dental, LLC  
Action, Inc.  
AFMS, LLC  
Air-1 Wireless, Inc.  
Aligmantas L. Jecius, MD PSC  
Alma Discount Pharmacy, Inc.  
American Lecithin Co.  
Anant Shah, MD PC  
Architecture Plus, Inc.  
Arkansas Insurance Agency  
AS Dezign, Inc. dba Asphalt Design  
Ashraf Riad, MD PA  
Assured Associates, LTD  
Atlantic Orthopaedic Group  
Austin Paige, Inc.  
Bac Trac Plumbing, LP  
Barmor Properties, LLC  
BINL Incorporated  
Bith Group, Inc., The  
Blue Chip Manufacturing Corporation  
Brad Wysong, MD PA  
Brad's Plumbing  
Braswell & Associates  
Brian N. Kravitz, MD LLC  
Britt Hunt Company, LLC, The  
Buck's Bit Service, Inc.  
Burke Cordell Avenue Properties, LLC  
C&C Farms  
Calvert Wire & Cable Corp.  
Carter Aerospace Manufacturing, LLC  
CD Investigations, Inc.  
Ceramic Technologies  
Cevene Care Clinic, Inc.  
Chapter II, Inc.  
Charles J. Monier Jr., MD LLC  
Chattanooga Neurology & Headache Center, LLC  
Cimmaron Software Services  
Clayton Consulting, LLC  
Comware  
Curti Family, Inc.  
Curti Terra, Inc.  
Curtimade Dairy, Inc.  
Dale Crampton Company  
Dancor Transit, Inc.  
Daniel Drug, Inc.  
David W. French, MD PSC  
DBA Electric, Inc.  
Didier Communications Tower, Inc.  
Diego Bros., Inc.  
Diogenes Holdings, Inc.  
Doctors Emergency Physicians, Steven S. Remsen, MD PA  
Dome Resources, Inc.  
Donati Law Firm, LLP  
Dunham & Associates Investment Counsel, Inc.  
Dwight E. Harding, DDS PA  
Edward R. Petrucci



## Covered Employers

Edward Wade, MD PA  
Endocrine Center, The  
Eric A. Marks, MD PA  
Expert Radiology Network, PA  
Extra Effort Communications, LLP  
Eye Consultants of No. VA, PC  
Family Ear, Nose & Throat Services, PLLC  
FHN Family Dental Care, P.C.  
FJ Group, LLC  
Fletcher Law Firm  
Forsgren Associates, Inc.  
Fortin Electric Company  
Fownes Brothers & Co., Inc.  
FPK, Inc.  
Friedrich Business Group  
Gary A. Passons, MD PC  
Geiger Psychiatric Care, LLC  
Getman Orthodontics, PC  
Gilbert R. Schorlemmer, Inc.  
Glaforo E. Montemayor E Hijos, LLC  
Glenview Professional Pharmacy, Inc.  
Gowan Company, LLC  
Green Acres Contracting Company, Inc.  
Green Companies Development Group, Inc.  
Hales Corners Floor Covering, Inc.  
Haley Capital Management, Inc.  
Hammerhead Management, Inc./Hammerhead Rock Tools Ltd.  
Hanco & Associates, Inc.  
Harly Enterprise, LLC  
Harvey Preston Electric Co.  
HBH General Contracting, LLC  
Healthy Way Pharmacy, Inc.  
Heart and Medical Center, Inc.  
Henry Brandt & Co.  
Hernando C. Payne, MD PC  
Hoff Chiropractic Clinic, PC  
HSA Engineering Consulting Services, Inc.  
Hugh M. Cunningham, Inc.  
Husfeld Homes, Inc.  
ICON Information Consultants, LP  
Imaging Networks, Inc.  
Industrial Seal, Inc.  
Innovus Financial Solutions  
Insurepointe of Texas, Inc.  
Integrity Coal Sales, Inc.  
International Falcon Associates, Inc.  
International Motor Sports, Inc. dba Cedar Creek Motor Sports  
Iragorri Properties, Ltd.  
James Remersheid, PA  
James Slater, MD PC  
Jantran, Inc.  
JC Lee Construction and Supply Company, Inc.  
John Goyak and Associates, Inc.  
Kemick Construction Company  
Key Audiometrics, Inc.  
L.W. Fabricating, Inc.  
Larry Meyers, MD PC  
Lathrop Construction  
Lee Jackson Construction, Inc.  
Level 3, Inc.  
Liberty Fundraising Sales, Inc.

## Covered Employers

Luedtke Plumbing  
M&C Fencing  
M&P Development  
Madison Park Music, Inc.  
Marcor Associates, Ltd.  
Mark E. Wilson, DDS PC  
Massey's Plate Glass & Aluminum, Inc.  
Matrix Packaging Machinery, Inc.  
Melhem Family, LP  
Mesa Packing  
Metro ID Associates, Ltd., LLP  
Michael A. Sherman, DDS PA  
Michelle G. Johnson, DDS MS PC  
Midtown Physicians, Ltd., LLP  
Mission Ranches  
Monarch Holdings, LLC  
Montgomery Lighting Services, Inc.  
Mortgage Assistance Lending Group  
MTech Enterprises, Inc.  
Natasha Williams-Bell  
New Tech Engineering, LP  
Nini Collection, Ltd.  
Nursing Care, Inc.  
Omega Solutions, Inc.  
Paragon Primary Care Physicians, PA  
Paris Chiropractic, PC  
Parker Family Dental Center, LLC  
Pasha Group, The  
Paul Evert's R.V.  
Pel Industries  
Pelco Products, Inc.  
Pinner Wire Cable  
Polymath Research, Inc.  
Prestige Development and Management  
Property Sciences Group, Inc., The  
Psoriasis and Eczema Treatment Center of Western Michigan  
R & M Realty, Inc. dba Coldwell Banker Premier Realty  
Racine Emergency Physicians  
Rainbow Ponds, Inc.  
Randolph R. Evans, MD PC  
Ray Faris, Inc.  
RBV Associates dba Russian River Wine Co.  
Rebel Testers, Inc.  
Residential Pacific Mortgage  
Richard Hart, MD, Inc.  
RK Dairy Queen  
Roberts, Cherry, & Company  
Roger N. Bise, MD PA  
Ronald N. Hesser, DDS PC  
Ross Athletic Supply, Inc.  
RTL Enterprises, LLC  
Santarossa Mosaic & Tile, Inc.  
Satterfield Land Surveyors, PA  
Scott Robertson, MD PC  
Setters Medical Group, PA  
Sherrington, Inc.  
SJS Services, LP  
SNS International  
Somerset Investments, Inc. dba Bookbyte.com  
Sosa's Commercial Carpet, Inc.  
Southern Healthcare Providers, PA

Covered Employers

Southwestern Pathology Assoc., Inc.  
Star and Strand Transportation, Inc.  
Starr Group, Ltd.  
Summit Contracting, Ltd.  
Supplier Link Services, Inc.  
Sweeney Dental, LLC  
T. Matera & Associates, Inc.  
T.J. Hynes, PC  
Tallchamps, LLC  
Teamwork Ventures, LP  
Ted Bartko, CPA PC  
Texas Engineering and Mapping  
Tex-Style Fence, Inc.  
Thibodaux Endoscopy, LLC  
Tom Calabrese Trucking, Inc.  
Toothzone, LLC  
Urology and Urologic Surgery, PC  
Van De Poel, Levy & Allen, LLP  
Veisoh Family, LP  
Vincent J. Vaghi, MD & Jeanne M. Barbera, MD PC  
Wayne Hey Properties, FLP  
We Are Bulbs, Inc.  
Welman Architects, Inc.  
Wier Enterprises  
William E. Wolf, DDS, PC  
William Locante, DDS, PC  
Window Technology, Inc.  
Yellow Page Control  
Zion H. Chen, DDS  
Zoppo Construction, Inc.

**Exhibit C**

**Participants**

## Participants

Acord, Lorrie C.  
Adams, Franca D.  
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Al-Karadsheh, Amer  
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Anhalt, Renee  
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Arora, Shobhit  
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Bearden, Danny  
Beaver, Steven Michael  
Bender, David  
Berger, Robert E.  
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Bishop, Gerald  
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Boone, Harold Craig  
Brandt, Anita L.  
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Brown, Arthur R.  
Brownlow, Shirley  
Buck, Geoffrey N.  
Burke, D. Michael  
Burke, Frederick S.  
Calabrese, Thomas J.  
Carlson, Charles L.  
Carraro, Lewis L.  
Carter, Bonnie  
Carter, Charles  
Carter, Donald  
Cevene, Todd  
Chandler, Paul E.  
Chapin, Donald, Jr.  
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Connell, Judy  
Conover, Rudd

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Cowan, Larry B.  
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Curti, Ken J.  
Curti, Phillip A.  
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Diego, John E.  
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Ebel, Corrie  
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Faris, Ray  
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Green, Carolyn W.  
Green, Susan L.  
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Kemick, Melissa  
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Kemp, Earl  
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Khetpal, Vivek  
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Kravitz, Michelle B.



## Participants

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Locante, William M.  
Lockwood, Daniel R.  
Long, Susan D.  
Loyola, David J.  
Luedtke, April  
Luedtke, John E.  
Lyssand, Olav  
Magness, Robert D., Jr.  
Manske, Michael G.  
Marchese, Anthony G.  
Mardirian, Marine  
Marks, Eric A.  
Marks, Stuart  
Martellaro, Ricky  
Martinelli, Robert  
Massey, Laura J.  
Massey, Robert J.  
Matera, Katheryn A.  
Matera, Thomas J.  
May, Robert P.  
Mazzoni, Kathryn  
McCulloch, Susan A.  
McEvoy, Kevin  
McGinnis, Michael C.  
McHugh, J. B. Duke  
McLoughlin, Kristine  
Medsger, Walter  
Meixelsperger, Patricia  
Meixelsperger, Steven  
Melhem, Simon  
Meyers, Larry J.  
Miner, Chris A.  
Miner, Craig J.

## Participants

Minnis, Daniel N.  
Minnis, Jeannette M.  
Mirza, Razvan  
Mobley, Linda D.  
Mobley, Marvin J.  
Moeller, John  
Monier, Charles J.  
Montemayor, Glafiro E.  
Moreland, David W.  
Morreale, Ross N.  
Morris, Amanda G.  
Mountain, Clifton F.  
Mountain, Sherri D.  
Myers, Beverly House  
Naucke, Fredrick C.  
Naucke, Rodney D.  
Naucke, Rodney E.  
Noll, Richard  
Nostrant, Stuart Michael  
Nudler, Julie M.  
Obermann, William Kent  
Ocampo, Carolyn  
Oliver, David M.  
Opp, Kathleen L.  
O'Rourke, Pamela  
O'Rourke, Timothy L.  
Parduhn, A. P.  
Parelhoff, Edward  
Paris, Brian R.  
Pasha, George, IV  
Pasha, Janet  
Pasha, John  
Pasha, Mary Jane  
Pasha, Michael R.  
Passons, Gary  
Passons, Susan  
Payne, Hernando C.  
Peters, Leroy  
Peters, Lois E.  
Peterson, Michael  
Petrucci, Edward R.  
Pietro, Kathy  
Pinner, Lisa F.  
Pinner, Richard L.  
Pinner, Richard O.  
Pisula, Douglas J.  
Pisula, Gregory M.  
Pisula, Thomas Allen  
Polk, James R., Sr.

## Participants

Potter, Michael  
Pugh, Charles P.  
Pura, Stanley J.  
Ramirez, Antonio, Jr.  
Reddy, Pallavolu N.  
Remerscheid, James A.  
Remsen, Steven S.  
Riad, Ashraf  
Riad, Christina M.  
Rickman, Karla M.  
Riley, David V.  
Rizzo, Paul R.  
Rizzo, Phillip A.  
Rizzo, Phillip E.  
Roberson, Russell  
Robertson, Scott  
Romans, John  
Rose, Carl H.  
Salinas, Benito, Jr.  
Santarossa, David M.  
Santarossa, John M.  
Santarossa, Robert V.  
Satterfield, Clovis W.  
Saylor, Paul D.  
Schmidt, Greg  
Schneider, John M.  
Scholler, Steven M.  
Schorlemmer, Gilbert R.  
Schorlmemer, Rachel D.  
Schroeder, Allen  
Schroeder, Patricia L.  
Schwartz, Kenneth A.  
Schwartz, Virginia  
Shah, Anant V.  
Sherman, Michael  
Sherrington, John K.  
Simenz, David  
Simms, J. Thomas, III  
Slater, Andrea  
Slater, James C.  
Smith, Frank B., III  
Sosa, Kathie J.  
Sosa, Richard  
Soyka, James M.  
Starr, Mary L.  
Starr, Tim  
Stawiski, Liana  
Stawiski, Marek  
Steinberg, Fred

## Participants

Stephens, Peggy  
Stephenson, Jasper V., Jr.  
Stewart, Joy L  
Strauss, Craig O.  
Sweeney, Patrick  
Symonds, Margaret  
Talley, Scott R.  
Tan, Karen  
Tandy, James A.  
Ten Haken, Brenda K.  
Territo, James  
Thomas, Brinda  
Thomas, Gerald  
Thomure, Sherri L  
Townsend, Daniel R.  
Triplett, Marvin  
Triplett, Rosalind  
Tudyk, Timothy N.  
Vaghi, Vincent J.  
Van De Poel, John F., Jr.  
Vandenbroek, Mary K.  
Vartivarian, Salpi  
Vartivarian, Shahe  
Veiseh, David  
Wade, Edward C.  
Wallace, Robert L.  
Welman, Michael G.  
White, Claudia K.  
White, Eric B.  
White, Jerald W.  
White, Margaret A.  
Wier, Steven  
Wierzba, Gerald J.  
Wiley, Vanessa  
Willden, Charles Marcel  
Willden, Marc Petro  
Williams, Aaron  
Williams-Bell, Natasha  
Williams, Jackie L.  
Wilson, Mark E.  
Wischnewsky, Les  
Wischnewsky, Mark A.  
Wischnewsky, Randolph  
Wolf, William E.  
Wood, Tillman Deen, Jr.  
Wood, Regan D.  
Worth, Fred  
Wright, Alan  
Wysong, Charles Bradford

Participants

Yamaguchi, Glenn  
Zigmont, Karen P.  
Zigmont, Randall E.  
Zoppo, Raphael P., Jr.

**Exhibit D**

**Litigation Claimants**

*[To be provided before hearing on approval of the Disclosure Statement]*

**Exhibit D(1)**

**Non-Litigation Participants**

*[To be provided before hearing on approval of the Disclosure Statement]*

**Exhibit E**

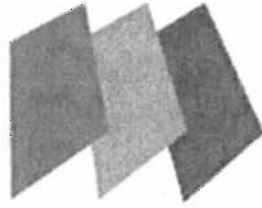
**Settling Defendants**

*[To be provided before hearing on approval of the Disclosure Statement]*



**Exhibit 2**

**Financial Statements and Notes to Financial Statement, dated December 31, 2009**



MILLENNIUM

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**MILLENNIUM MULTIPLE EMPLOYER  
WELFARE BENEFIT PLAN**

December 31, 2009

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# MILLENNIUM MULTIPLE EMPLOYER WELFARE BENEFIT PLAN

December 31, 2009 and 2008

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## Robert D. Goldstein, CPA

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Member of the TSCPA and the AICPA Employee Benefit Plan Audit Quality Center

### INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT'S REPORT

To the Plan Committee  
Millennium Multiple Employer Welfare Benefit Plan

I was engaged to audit the financial statements of the Millennium Multiple Employer Welfare Benefit Plan as of December 31, 2009 and 2008, and for the year ended December 31, 2008, and the supplemental schedule as of December 31, 2009 as listed in the accompanying table of contents. These financial statements and schedule are the responsibility of the Plan's management.

As permitted by 29 CFR 2520.103-8 of the Department of Labor's Rules and Regulations for Reporting and Disclosure under the Employee Retirement Income Security Act of 1974, the plan administrator instructed me not to perform, and I did not perform, any auditing procedures with respect to the information summarized in Notes I and K, which was certified by Republic Bank and Trust Company, the trustee of the Plan, except for comparing the information with the related information included in the financial statements and supplemental schedule. I have been informed by the plan administrator that the trustee holds the Plan's investment assets and executes investment transactions. The plan administrator has obtained a certification from the trustee as of and for the years ended December 31, 2009 and 2008, that the information provided to the plan administrator by the trustee is complete and accurate.

As described in Note D, these financial statements and supplemental schedule were prepared on a modified cash basis of accounting, which is a comprehensive basis of accounting other than accounting principles generally accepted in the United States of America.

The accompanying financial statements have been prepared assuming the Millennium Multiple Employer Welfare Benefit Plan will continue as a going concern. As discussed in Note A to the financial statements, on June 9, 2010 the Plan filed for Chapter 11 protection in the U.S. Bankruptcy Court for the Western District of Oklahoma. As further discussed in Note A and in Notes G and M, the Plan is subject to uncertainties and litigation claims, the outcome of which cannot be determined at this time. These matters raise substantial doubt about the Millennium Multiple Employer Welfare Benefit Plan's ability to continue as a going concern. Management's plans in regard to these matters are also described in Notes G and M. The financial statements do not include any adjustments that might result from the outcome of these uncertainties or claims.

Because of the significance of the information that I did not audit, and the significance of the uncertainties described in the preceding paragraph, I am unable to, and do not, express an opinion on the accompanying financial statements and schedule taken as a whole. The form and content of the information included in the financial statements and schedule, other than that derived from the information certified by the trustee or custodian, have been audited by me in accordance with auditing standards generally accepted in the United States of America and, in my opinion, are presented in compliance with the Department of Labor's Rules and Regulations for Reporting and Disclosure under the Employee Retirement Income Security Act of 1974.



Houston, Texas  
October 8, 2010

**Millennium Multiple Employer Welfare Benefit Plan**  
**STATEMENTS OF NET ASSETS AVAILABLE FOR BENEFITS**  
**MODIFIED CASH BASIS**  
**December 31, 2009 and 2008**

<i>ASSETS</i>	<u>2009</u>	<u>2008</u>
Cash	\$ 982,926	\$ 2,732,080
<b>Held in escrow:</b>		
Cash	1,948	1,948
Insurance contracts	<u>45,163</u>	<u>387,416</u>
	47,111	389,364
<b>Investments at fair value:</b>		
Insurance contracts	<u>113,099,650</u>	<u>100,934,623</u>
<b>Total Assets</b>	<u>\$ 114,129,687</u>	<u>\$ 104,056,067</u>
 <i>LIABILITIES</i>		
<b>Escrow related obligations:</b>		
Contributions and other amounts received in advance	\$ 1,789	\$ 1,789
Insurance contracts	<u>45,163</u>	<u>387,416</u>
	46,952	389,205
<b>Loans collateralized by insurance contracts:</b>		
Loan	19,571,638	10,910,000
Accumulated interest	<u>1,042,389</u>	<u>346,710</u>
	<u>20,614,027</u>	<u>11,256,710</u>
<b>Total Liabilities</b>	<u>20,660,979</u>	<u>11,645,915</u>
<b>NET ASSETS AVAILABLE FOR BENEFITS</b>	<u>\$ 93,468,708</u>	<u>\$ 92,410,152</u>

The accompanying notes are an integral part of these financial statements.

**Millennium Multiple Employer Welfare Benefit Plan**  
**STATEMENT OF CHANGES IN NET ASSETS AVAILABLE FOR BENEFITS-**  
**MODIFIED CASH BASIS**  
**Year Ended December 31, 2009**

**ADDITIONS:****Contributions**

Employer contributions received, net	\$	3,230,719
--------------------------------------	----	-----------

**Investment income**

Increase in the surrender value of life insurance contracts:

Amortization of surrender charges	\$	2,304,718
-----------------------------------	----	-----------

Decrease in escrow obligation for insurance contracts		342,253
---	--	---------

Net increase in the contracts' values		9,518,056
---------------------------------------	--	-----------

		12,165,027
--	--	------------

Dividends and interest		4,939
------------------------	--	-------

		12,169,966
--	--	------------

**Other**

Proceeds from surrender of life insurance policies		1,373,177
--	--	-----------

Reimbursements of administrative fees previously paid		32,000
---	--	--------

Settlement proceeds		50,000
---------------------	--	--------

		1,455,177
--	--	-----------

**Total Additions**

		16,855,862
--	--	------------

**DEDUCTIONS:****Benefits paid directly to participants or beneficiaries**

Life		3,132,009
------	--	-----------

**Insurance premiums**

Life insurance premiums paid (does not include any premium		3,834,277
--	--	-----------

payments made through automatic policy loans taken by		
the applicable life insurance carriers)		

Other insurance premiums paid		41,621
-------------------------------	--	--------

		3,875,898
--	--	-----------

**Interest**

Interest costs added to policy loans		695,679
--------------------------------------	--	---------

**Plan administration and management costs paid**

Expense reimbursements		52,794
------------------------	--	--------

Management fee		384,996
----------------	--	---------

Other		176
-------	--	-----

Reimbursement for unpaid administrative fees		120,775
--	--	---------

		558,741
--	--	---------

**Professional fees paid**

Actuarial		132,065
-----------	--	---------

Asset management		296,092
------------------	--	---------

Auditing and preparation of tax returns		56,500
---	--	--------

Legal		6,495,322
-------	--	-----------

		6,979,979
--	--	-----------

**Settlements paid**

		555,000
--	--	---------

**Total Deductions**

		15,797,306
--	--	------------

**NET INCREASE IN ASSETS AVAILABLE FOR BENEFITS**

		1,058,556
--	--	-----------

**NET ASSETS AVAILABLE FOR BENEFITS AT JANUARY 1, 2009**

		92,410,152
--	--	------------

**NET ASSETS AVAILABLE FOR BENEFITS AT DECEMBER 31, 2009**

		\$ 93,468,708
--	--	---------------

The accompanying notes are an integral part of this financial statement.

## MILLENNIUM MULTIPLE EMPLOYER WELFARE BENEFIT PLAN

### NOTES TO THE FINANCIAL STATEMENTS

#### A. CHAPTER 11 FILING (SUBSEQUENT EVENT)

On June 9, 2010 the Millennium Multiple Employer Welfare Benefit Plan (the "Plan") filed for Chapter 11 protection in the U.S. Bankruptcy Court for the Western District of Oklahoma. Information regarding the Plan and its accounting policies is set forth in Notes C and D.

As discussed in more detail throughout these notes, two factors drove the decision to make this Chapter 11 filing. First, the ongoing refusal of a number of life insurance companies to honor the Plan's contractual ownership rights with respect to the life insurance policies we own. These rights include the ability to request and receive advances against the policies' cash values. These insurers are also defendants in the tort litigation discussed in Note M and we believe they are attempting to use their control over the Plan's assets to reduce their exposure to damages. Despite having over \$85 million in net assets at June 9, 2010 (unaudited) and several hundred fully paid life insurance policies, without the ability to timely access its assets the Plan cannot pay death and life benefits or its other operating expenses.

Second, the continuing cost of the ongoing plaintiffs' tort litigation compelled the Plan to seek a judicial forum that would facilitate a fair and global resolution of these asserted, as well as any unasserted, claims. While the Plan has negotiated settlements, the most recent ones for de minimus amounts of \$5,000, this has not prevented plaintiffs' attorneys from continuing to pursue costly litigation. For example, certain plaintiffs' attorneys recently told a court they intend to take fifty depositions and spend \$2.5 million to prosecute the claim of one Plan participant and his covered employer. Such tactics force the Plan into a Hobson's choice – either agree to settlements that are not justified on the merits of the actions or spend ever increasing sums on defense costs.

#### B. SETTLEMENTS OF CERTAIN LEGAL ACTIONS (INCLUDING A SUBSEQUENT EVENT SETTLEMENT)

During 2009 the Plan settled three lawsuits in which it and others were defendants; a fourth settlement was agreed to in May 2010 and later finalized.

The first settlement involved litigation that was originally filed against the Plan in early 2007 by one of the insurance carriers from whom the Plan had purchased insurance contracts. The carrier filed a third-party complaint against the Plan and its Sponsor, Millennium Marketing Group, LLC (referred to as either "MMG" or the "Sponsor") in a Dallas, Texas state district court action, which was originally brought against the insurer and two of its agents by certain individual Plan participants. The third-party complaint sought indemnity and contribution from the Plan and others for any damages the carrier was ordered to pay in connection with the original complaint. The participants' original complaint alleged that the insurance agents made various misrepresentations regarding their participation in the Plan and the related underlying insurance policies. In late 2007 and again in 2008 the participants amended their complaints and brought direct claims against the Plan and others. The amended complaints sought to hold the Plan responsible for the various alleged misrepresentations made to them regarding their participation in the Plan. The amended complaint also alleged the Plan breached contracts with the individual participants by either refusing to allow them to "void" their Plan participation and/or by not refunding all of the contributions they made to the Plan.

This litigation originally consisted of twenty-one plaintiffs and thirteen defendants. By the time the trial began in February 2009, nine defendants had reached settlement agreements with the plaintiffs

## MILLENNIUM MULTIPLE EMPLOYER WELFARE BENEFIT PLAN

### NOTES TO THE FINANCIAL STATEMENTS

#### SETTLEMENTS OF CERTAIN LEGAL ACTIONS (INCLUDING A SUBSEQUENT EVENT SETTLEMENT), continued

and two were dropped from the litigation. This left only two defendants, the Plan and MMG, to proceed to trial. During the second week of the trial, the Court ordered the plaintiffs and the remaining two defendants (as well as the defendants' insurance carrier) to participate in a third mediation, which was ordered to be held at the start of the trial's third week.

The Plan was an additional insured under an insurance policy originally obtained by the Sponsor. Both MMG and the Plan had rights to coverage under the policy as well as to its coverage limits and both were using the policy to pay for substantially all of their defense costs incurred in connection with this and other litigation.

During a March 2009 court-ordered mediation, the Plan, MMG and its insurance carrier reached a settlement with the plaintiffs. In addition, a second insurance carrier contributed to the settlement in exchange for MMG and the Plan not pursuing certain claims against its insured. As part of the settlement, those plaintiffs who still remained in the Plan terminated their participation in the Plan and forfeited any remaining life and death benefits.

The second 2009 settlement involved litigation that was filed in January 2008 by a Plan participant against the Plan and others (including its Sponsor) in a U.S. District Court in Florida. The complaint purported to assert ERISA and state common law breach of contract claims arising out of the Plan's alleged refusal to honor an agreement allowing plaintiffs to void their Plan participation. After the Plan moved to dismiss the complaint, the plaintiffs were allowed to amend their complaint and discovery followed. Following the completion of a court-ordered mediation, settlement discussions continued and all of the parties (including, among others, the Plan and MMG) reached a settlement. As part of the settlement, the participant agreed to terminate her participation in the Plan and forfeit any remaining life and death benefits.

The next 2009 settlement involved litigation that was filed in October 2008 in the U.S. District Court for the Eastern District of Texas by a former Plan participant and covered employer against the Plan, the Plan's chairman and thirteen other defendants. Among other things, this complaint included various civil RICO allegations. The Plan and its chairman were the final parties to settle this action. The plaintiffs in this action had previously been terminated from the Plan and had forfeited all benefits.

The total cost of 2009 settlements was \$555,000; the amount of settlement proceeds paid the Plan during 2009 was \$50,000. None of the above settlements involved the transfer of any life insurance policy from the Plan to any former participant.

In May 2010 the Plan settled litigation that was filed in June 2008 in a California state court by a former Plan participant and covered employer against the Plan and twelve other defendants. The Plan was the final party to settle this action; the settlement amount paid was \$5,000. The plaintiffs in this action had previously been terminated from the Plan and had forfeited all benefits. Both the California state court as well as the U.S. Bankruptcy Court for the Western District of Oklahoma has approved this settlement and it is now final.



## MILLENNIUM MULTIPLE EMPLOYER WELFARE BENEFIT PLAN

### NOTES TO THE FINANCIAL STATEMENTS

#### C. DESCRIPTION OF PLAN

The following description of the Plan is provided for general information purposes only. Participants should refer to the Plan's Summary Plan Description and other Plan documents (as amended) for more complete information.

##### *General*

The Plan was established on November 1, 2002 for the purpose of providing certain welfare benefits to eligible participants. The Plan is a fully-insured welfare benefit plan covering designated employees of covered employers and is subject to the provisions of the Employee Retirement Income Security Act of 1974 (referred to as "ERISA"). The Plan provides eligible participating employees with fully-insured (through the Plan's purchase of cash value life insurance policies – see "Investment Options" below) death benefits and other qualifying welfare benefits for life contingencies such as disability income, reimbursement of medical costs, dental care, vision care, long-term care and involuntary severance benefits. The Plan is a taxable trust designed to comply with the current provisions of Internal Revenue Code Section 419A(f)(6) and the related regulations. A copy of the Master Plan document is available from or at the office of the Plan's third-party administrator, SecurePlan Administrators, LLC (referred to as "SecurePlan"), in Norman, Oklahoma.

The Plan is managed by a Plan Committee, which is the fiduciary body charged with the responsibility of, among other things, interpreting and applying the Plan's terms. The Plan's assets are held by the trust department of Republic Bank & Trust in Norman, Oklahoma (referred to as either the "trustee" or "Republic Bank"). SecurePlan is a wholly-owned subsidiary of Republic Bank. The Plan's actuary is Milliman, Inc.

Participants are segregated by Rating Group Indicator (hereinafter referred to as "Rating Groups") that consists of a Death Benefit Identifier and a Life Benefit Rating Group. A participant's Rating Group assignment is based upon actuarially-determined risk criteria, and determines their cost of coverage as well as the amount of the death and life benefits provided by the Plan. Claims, expense and investment experience risk are shared by the Plan's participants based on either the participants' specific rating group assignments or by all participants enrolled in the Plan as a whole. The Plan's promised death benefits are fully insured by nationally known insurance carriers. The aggregate promised life benefits are calculated based upon the value of the Plan's net assets, including the total cash value of the life insurance contracts owned by the Plan, at the beginning of each year.

##### *Benefits*

Death benefits are payable to designated beneficiaries following the death of a participant. As provided for in the Master Plan document, life benefits can be paid to a Plan participant for such things as a participant's total disability, involuntary separation from employment, or for medical expense reimbursement (including long-term care needs).

##### *Contributions*

During each of the years ended December 31, 2009 and 2008, the Plan received contributions from covered (also referred to as "participating") employers based upon the provisions of their respective written adoption agreements. Covered employers are obligated to make contributions and other payments to the Plan in order to maintain the eligibility for benefits of the participants identified in

## MILLENNIUM MULTIPLE EMPLOYER WELFARE BENEFIT PLAN

### NOTES TO THE FINANCIAL STATEMENTS

#### C. DESCRIPTION OF PLAN, continued

##### *Contributions (continued)*

their respective adoption agreements, including payments for Plan administration expenses as identified therein. There were no self-pay contributions by participants.

If certain actuarial criteria are met and following approval by the Plan Committee, a covered employer can amend the previously agreed-upon contribution schedule. Such an amendment usually results in an immediate change to the affected participants' Plan benefits as dictated by the cost-requirements of the Rating Groups to which the affected participants are assigned.

##### *Participant's Benefit Amounts*

Participants are promised Plan Benefits on a Plan (calendar) Year basis, which are set by the Plan Committee following consultations with and calculations by the Plan's actuary using the following factors:

1. The uniform cost of the death Benefit and life Benefit associated with the participant's Rating Group assignment on a per \$1,000 of death benefit basis;
2. The fair value of the Plan's net assets (see below);
3. A "hold-back" reserve established by the Plan Committee;
4. The investment experience of the Plan as a whole.

The sum of the Plan's loans and accumulated interest is used as a proxy for its claims and overall expense experience. This amount is allocated to the Rating Groups in proportion to cumulative life Benefits paid within each Rating Group.

##### *Forfeitures*

In the event a covered employer fails to pay the required contributions or administrative fees or otherwise defaults, the employer will be terminated from the Plan and the participants designated by the employer in its adoption agreement will cease to be entitled to benefits from the Plan. The Plan typically surrenders the policies on the lives of participants who are no longer eligible for benefits and the proceeds are used to either defray the cost of Plan administration or in some other manner to uniformly benefit the remaining Plan participants. Once an employer's contribution obligation is satisfied, the welfare benefits promised by the Plan for the applicable Plan year are not forfeitable, except in the case of a participant fraud upon the Plan or the nonpayment of administrative fees.

##### *Investment Options*

Following enrollment in the Plan, the Plan trustee purchases the cash value life insurance policies selected by the covered employer, and elects the investment options to pursue within each policy. Neither the covered employers nor the participants have the option to direct how the assets of any policy

## MILLENNIUM MULTIPLE EMPLOYER WELFARE BENEFIT PLAN

### NOTES TO THE FINANCIAL STATEMENTS

#### C. DESCRIPTION OF PLAN, continued

##### *Investment Options (continued)*

are invested, or the ability to control any of the Plan's assets. All assets are owned and managed by the trustee, with the assistance of an independent investment advisor, both of whom are supervised by the Plan Committee.

##### *Administrative Expenses*

The Plan is responsible for various expenses, including the actuarial, audit, investment advisory, legal, management and other fees and expenses directly attributable to the Plan's operation. In the event the collected annual administrative fees from the covered employers are not sufficient to cover the combined cost of the Plan's trustee and third-party administrator, the Plan is responsible for any difference. At December 31, 2009 and 2008, the amount due from covered employers for unpaid annual administrative fees was approximately \$125,000 and \$95,000, respectively.

##### *Policy Loans*

The Plan can instruct its trustee to borrow from the cash values of the Plan's life insurance policies in order to fund the Plan's benefit payments, costs and expenses. For each of the years ended December 31, 2009 and 2008, borrowing proceeds amounted to \$8,661,638 and \$8,390,000 (at interest rates ranging from 3.75% to 8.85%), respectively. No borrowings were repaid in either 2009 or 2008. The amount of borrowings outstanding (including accumulated interest on these borrowings) at December 31, 2009 and 2008 was \$20,614,027 and \$11,256,710, respectively. The Plan borrowed an additional \$9,090,000 in 2010 through the date these financial statements were issued. The final due date of any Plan borrowing would be the date the Plan surrenders the applicable policy. Policy loans will generally negatively impact the investment performance of the affected life insurance policies.

Contractual provisions in various life insurance policies owned by the Plan allow carriers to take up to six months to process a loan request. To date, the Plan's loan requests have generally been processed in approximately 30 days. Also, see Note M.

#### D. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

##### *Basis of Accounting*

The Plan's financial statements are prepared using the modified cash basis of accounting, which is a comprehensive basis of accounting other than accounting principles generally accepted in the United States of America. The principal differences between the "cash basis of accounting" and the "modified cash basis of accounting" are the recognition of fair value of the Plan's investments in insurance contracts and the recording of policy loans and accumulated interest as liabilities.

As more fully discussed in the Master Plan document, a Qualifying Employer becomes a Covered or Sponsoring Employer when the last of the following events occurs: (1) the third-party administrator receives an executed Adoption Agreement; (2) a resolution or consent from the board of directors or other governing body of the Qualifying Employer authorizes the execution and delivery of the Adoption Agreement as set forth above, or ratifies such execution and delivery, and a copy of such resolution or consent is received by the third-party administrator; (3) the initial contributions or other

MILLENNIUM MULTIPLE EMPLOYER WELFARE BENEFIT PLAN

NOTES TO THE FINANCIAL STATEMENTS

D. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES, continued

*Basis of Accounting (continued)*

initial payments identified in the Adoption Agreement are placed in the Plan's Escrow Account, which will be sent to the trustee following the issuance of the insurance policies set forth in the Adoption Agreement; (4) the insurance policies identified by the Adoption Agreement on the lives of those Eligible Employees the Qualifying Employer intends to be Participants in the Plan are issued to the Trust and received by the Trustee; and (5) the Eligible Employees designated in the Adoption Agreement and the underlying policies insuring their lives are successfully assigned to a Rating Group.

Following the completion of the above, the designated or eligible employee's participation in the Plan is recognized. If the Plan receives any assets (generally cash or insurance policies) prior to completion of the above, these assets are held in escrow by the Plan pending completion of the required actions.

Subsequent contributions are recognized on a cash basis in the Plan Year in which the contributions are received and benefits are recognized when the payments are disbursed. The Plan does not account for operating liabilities and, accordingly, recognizes costs and expenses when paid. Contributions received by the Plan prior to the issuance of insurance policies are deferred and recorded as contributions received in advance of participation.

*Use of Estimates*

The preparation of financial statements in accordance with the modified cash basis of accounting requires the Plan to make estimates and assumptions that affect the reported amounts of net assets, benefit obligations, and the disclosure of contingent assets and liabilities at the date of the financial statements, as well as the reported changes in net assets during the reporting period. Actual results could differ from those estimates. Significant estimates include the fair value of insurance contracts and the impact certain litigation may have on the Plan.

*Investment Valuation and Income Recognition*

The Plan's investments are stated at the net surrender values of the insurance contracts, as reported by the carriers. The net surrender values include adjustments, when applicable, for the accumulated interest due on any policy loan. Since the Plan does not maintain current health or underwriting information on its participants, the adjusted net surrender value is considered the best estimate of the fair value of the Plan's investments.

Fair value is an estimate of the amount the Plan would receive following the sale or liquidation of an investment in a timely transaction to an independent buyer. The Financial Accounting Standards Board (the "FASB") has established a three-tier hierarchy (Level 1, Level 2 or Level 3) based on the use of observable market data and unobservable inputs to establish classification of fair value measurements for disclosure purposes. Inputs refer broadly to the assumptions that market participants would use in pricing the asset or liability, including assumptions about uncertainty. Level 3 inputs (significant unobservable inputs; including the Plan's own assumptions) were used by the Plan in determining the fair value of the Plan's investments. For additional information please go to the FASB's website, [www.fasb.org](http://www.fasb.org), and refer to Section 820 of the Accounting Standards Codification.

## MILLENNIUM MULTIPLE EMPLOYER WELFARE BENEFIT PLAN

### NOTES TO THE FINANCIAL STATEMENTS

#### D. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES, *continued*

##### *Investment Valuation and Income Recognition (continued)*

Participants annually recognize imputed income equal to the actuarial determined economic benefit value associated with the Plan's benefits. The valuations used in the accompanying financial statements are based on the presumption the Plan will continue as a going concern; if the Plan were to terminate, then different actuarial assumptions and other factors might be applicable.

##### *Payment of Benefits*

The Master Plan document includes a description of the Plan's benefit payment provisions. Benefits are recorded when paid; no benefits are due to terminated participants. *Also, see Note K.*

#### E. PLAN TERMINATION

The Sponsor, with the approval of the Plan Committee, has the right to terminate the Plan at any time. In the event of the Plan's termination, its assets will be distributed to participants in the manner specified in the Master Plan document.

#### F. RATING GROUPS

Amounts available to participants as Death and Life Benefits do not necessarily reflect the actual values associated with the policies insuring those participants' lives. Federal tax law requires that amounts made available to participants during any Plan Year reflect the experience of the participant's Rating Group. Consequently, values made available to a participant in any given plan year reflect the contribution experience of the covered employers regarding participants within the applicable Rating Groups, the actual claims experience within the applicable Rating Group, as well as other factors such as the investment performance and value of the Plan's assets, any "hold-back" reserve established by the Plan Committee and any costs and expenses of the Plan.

#### G. TAX STATUS

The Plan is a taxable trust that annually files tax returns with the Internal Revenue Service (the "IRS"). No significant income taxes have been paid by the Plan to date.

The IRS does not provide determination letters regarding whether welfare benefit plans (including the Plan) are designed in accordance with applicable sections of the Internal Revenue Code or operate in compliance with the applicable requirements. In October 2004, a request for private letter ruling was filed with the IRS. A private letter ruling is the IRS' interpretation of a tax statute or administrative rules and their application to a particular set of facts or circumstances. The purpose of a letter ruling is to advise the taxpayer with respect to the tax treatment it can expect from the IRS in the circumstances specified by the ruling. The ruling requested the IRS' guidance with respect to the following questions: (1) does the Plan comply with the requirements of Internal Revenue Code Section 419A(f)(6) and the related regulations, and (2) is the Plan a so-called "listed transaction." On October 5, 2007, the IRS issued a private letter ruling which, in summary, stated that, in the IRS' opinion, the Plan did not comply with Internal Revenue Code Section 419A(f)(6) and the related regulations and the Plan is a "listed transaction." Both the Plan Committee and the Sponsor strongly disagree with the IRS' ruling and believe the Plan is currently designed and operates in compliance

## MILLENNIUM MULTIPLE EMPLOYER WELFARE BENEFIT PLAN

### NOTES TO THE FINANCIAL STATEMENTS

#### G. TAX STATUS, continued

with applicable requirements of the Internal Revenue Code. The Plan and its Sponsor subsequently filed an action in the U.S. Tax Court requesting an order to prohibit the IRS from disclosing its ruling to the public or, alternatively, to significantly restrict what is disclosed. Following an October 2009 hearing in the Tax Court regarding the government's motion for a summary judgment, the Plan and the IRS held a series of meetings that resulted in an agreement regarding the contents of a published private letter ruling. The Tax Court accepted the parties' agreement and in May 2010 the private letter ruling was released for publication.

Neither the Plan Committee nor anyone associated with the Plan can provide any assurance that the IRS will not challenge the tax treatment of any tax benefits (including deductions for contributions) claimed with respect to the Plan. Among other things, transactional and other factors unique to each participating employer affect the tax treatment of the related transactions. Since the Plan does not and cannot provide any legal or tax advice, employers and employee participants should consult with their own legal or tax advisors regarding the tax or other consequences of the Plan as applied to their own particular circumstances, including the IRS' position that an employer's participation in the Plan or the participation in the Plan by certain employees of a participating employer is a "listed transaction."

The Plan believes there will not be a resolution of any of the fundamental tax-related questions regarding the Plan, including those asked in its request for a private letter ruling, until the issues are considered and resolved in litigation. Cases are currently pending in the U.S. Tax Court involving IRS challenges related to several participating employers.

#### H. INVESTMENTS AND CONCENTRATIONS OF RISK

The Plan's assets, specifically cash and investments in insurance contracts, are financial instruments that potentially subject the Plan to a variety of risks, including, but not necessarily limited to, counter-party and market-related risks.

The Plan's cash is held by its trustee, Republic Bank, in interest bearing accounts. The balance in the Plan's cash accounts generally exceeds the maximum amount insured by the Federal Deposit Insurance Corporation. While the Plan has not incurred any losses in its cash accounts, it does not require collateral from its trustee.

As stated above, the Plan's insurance contracts are issued by nationally known insurance carriers. At the time of original purchase, the applicable issuing carrier had an A.M. Best Company financial strength rating of "A-" or better. The "financial strength" rating of an insurance carrier represents A.M. Best Company's opinion of an insurance company's financial strength and ability to meet its ongoing insurance policy and other contract obligations. A.M. Best Company, which was founded in 1899, is a credit rating organization that is recognized as having particular expertise in the insurance and financial services industries.

MILLENNIUM MULTIPLE EMPLOYER WELFARE BENEFIT PLAN

NOTES TO THE FINANCIAL STATEMENTS

H. INVESTMENTS AND CONCENTRATIONS OF RISK, *continued*

A.M Best Company's "Secure" financial strength ratings are as follows:

A++ or A+	Superior
A or A-	Excellent
B++ or B+	Good

A financial strength of "B" or lower means the insurance company is "Vulnerable." For additional information please refer to A.M. Best Company's website, [www.ambest.com](http://www.ambest.com).

## MILLENNIUM MULTIPLE EMPLOYER WELFARE BENEFIT PLAN

## NOTES TO THE FINANCIAL STATEMENTS

## H. INVESTMENTS AND CONCENTRATIONS OF RISK, continued

Recent financial strength ratings for the carriers whose life insurance policies are owned by the Plan are as follows:

<u>Carrier</u>	<u>Financial Strength Rating</u>
American General Life Insurance Company	A
American United Life Insurance Company	A
Aviva Life and Annuity Company (formerly known as Indianapolis Life Insurance Company)	A
Berkshire Life Insurance Company of America	A++
General American Life Insurance Company	A+
Guardian Life Insurance Company of America	A++
Hartford Life Insurance Company	A
ING Life Insurance and Annuity Company	A
Kansas City Life Insurance Company	A
Lincoln Life & Annuity Company of New York	A+
John Hancock Life Insurance Company	A+
Penn Mutual Life Insurance Company	A+
Phoenix Life Insurance Company	B+
Security Life of Denver Insurance Company	A
Security Mutual Life Insurance Company of New York	A-
Transamerica Life Insurance Company	A+
United States Life Insurance in the City of New York	A

The Plan's insurance contracts are broadly divided into two categories: (1) fixed policies (which include indexed policies), whose returns are set and paid by the applicable insurance companies, and (2) variable policies, whose returns are based on the investment performance of the applicable equity, fixed income or other mutual funds in which the available policies proceeds are invested. The Plan does not use any leverage in connection with its investments.

The primary risks associated with the Plan's fixed policies include the risks generally associated with



**MILLENNIUM MULTIPLE EMPLOYER WELFARE BENEFIT PLAN****NOTES TO THE FINANCIAL STATEMENTS****H. INVESTMENTS AND CONCENTRATIONS OF RISK, continued**

any equity or fixed income investment as well as the risk that an issuing insurance carrier is unable to perform any of its obligations under a fixed policy. A fixed policy's cash surrender value represents a claim on the issuing insurance carrier. If a carrier were placed into some form of regulatory supervision by the applicable state insurance regulator, the Plan most likely would not have any further, or at best limited, access to that carrier's policies' cash values. In the worst case scenario, the applicable policies' death benefits could become an obligation of the applicable state's life insurance guaranty fund. In addition, the rate at which earnings are credited to a fixed policy (which results in the increase in a fixed policy's cash surrender value) is a function of the investment performance of each carrier's investment portfolio, subject to a guaranteed minimum crediting rate. The minimum crediting rate varies by type of policy and carrier.

Much like brokerage accounts, the principal risks associated with the Plan's variable policies are those associated with investing in the fixed income, equity and commodities markets generally, including issuer-specific and general market, economic and political risks. A variable policy's cash surrender value is the aggregate value of its interests in certain investment funds (substantially all of which are open-end management investment companies registered under the Investment Company Act of 1940) made available by the applicable carriers, which invest in a variety of asset classes, pursuing one or more investment strategies. Investments are made using a diversified investment allocation that is periodically reviewed and approved by the Plan Committee. Utilizing the services of a third-party investment advisor, the Plan's trustee invests the assets of each variable policy among the available investment funds, consistent with this investment allocation. This investment allocation does not call for investment on a policy-by-policy basis, but rather considers the investment fund choices made available across the applicable carriers, allocating on a collective basis to those investment funds deemed most appropriate. As a result, any one specific variable policy may have all of its assets concentrated in one or a few investment funds, as opposed to the diverse investment allocation referenced above. The risks associated with a particular investment fund are a function of that fund's underlying investments, which are detailed in such fund's prospectus. As with the fixed policies, if a carrier were placed into some form of regulatory supervision, the applicable policies' death benefits could become an obligation of the applicable state's life insurance guaranty fund.

Given the range of insurance contracts that constitute the Plan's investments, the underlying values will vary considerably over time as well as at any point in time. At any point in time, either realized or unrealized investment gains and losses are possible and such gains and losses could be material. The Plan's investments are not insured by agencies of the United States government or any other person or institution. In addition, if any of the insurance carriers used by the Plan were to experience a significant deterioration in its financial condition, as a practical matter, it would be exceptionally difficult for the Plan to move or replace the affected policies in a timely manner. Any such move or replacement would likely subject the Plan to a significant cost.

While the Plan Committee regularly reviews the Plan's investment performance and periodically reviews the financial status of its insurance carriers, neither the Plan Committee, nor the Sponsor nor any other party associated with the Plan can provide any guarantees or assurances regarding investment performance, losses or value depreciation. In all cases to date, the Plan's insurance carriers have paid the contractually agreed-upon death benefit amounts following presentation of applicable claims.

## MILLENNIUM MULTIPLE EMPLOYER WELFARE BENEFIT PLAN

## NOTES TO THE FINANCIAL STATEMENTS

## I. INFORMATION CERTIFIED BY THE PLAN'S TRUSTEE AND CUSTODIAN

The Plan Committee has elected the method of compliance permitted by 29 Code of Federal Regulations 2520.103-8 of the U.S. Department of Labor's Rules and Regulations for Reporting and Disclosure under ERISA. Accordingly, the Plan's trustee has certified to the completeness and accuracy of the Plan's investments. As permitted by the aforementioned election, the Plan Committee has instructed its independent auditor not to perform auditing procedures with respect to the information certified by the trustee as complete and accurate, except for comparing such information to information included in the Plan's financial statements and supplemental schedule. Among other duties, the trustee receives Plan contributions, holds and invests the Plan's assets in accordance with the directions of the Plan Committee, and makes disbursements as directed by the Plan's third-party administrator or Plan Committee. The trustee and third-party administrator are collectively responsible for, among other things, recordkeeping, which includes maintaining complete and accurate records for all Plan participants as well as for the Plan as a whole.

## J. AGREEMENTS AND TRANSACTIONS WITH PERSONS KNOWN TO BE PARTIES-IN-INTEREST

Party-in-Interest	Function	Fees Paid By the Plan	
		2009	2008
SecurePlan Administrators, LLC	Recordkeeper/Third-party Administrator <sup>1</sup>	\$79,500	\$61,787
Republic Bank & Trust, N.A.	Plan Trustee <sup>1</sup>	\$41,275	\$33,800
Milliman, Inc.	Plan Actuary	\$93,804	\$116,332
Jonathan Cocks	Plan Manager <sup>2</sup>	\$437,790	\$500,638
Millennium Marketing Group, LLC	Plan Sponsor	-	-

<sup>1</sup> Generally funded by Plan's covered employers via fee payments made to the Sponsor.

<sup>2</sup> The amounts paid in 2009 and 2008 include management fees of \$384,996 and \$434,996, respectively, and expense reimbursements of \$52,794 and \$65,642, respectively.

## K. INVESTMENTS REPRESENTING 5% OR MORE OF TOTAL ASSETS

The following life insurance carriers have issued life insurance contracts, the cash surrender value of which represents 5% or more of the Plan's assets. All insurance contracts are held by Republic Bank, which has certified to their completeness and accuracy:

	2009	2008
American General Life Insurance Company	\$55,343,108	\$50,318,232
Aviva Life and Annuity Company (formerly known as Indianapolis Life Insurance Company)	\$17,957,541	\$15,249,226
Penn Mutual Life Insurance Company	\$14,774,389	\$13,686,100

## MILLENNIUM MULTIPLE EMPLOYER WELFARE BENEFIT PLAN

### NOTES TO THE FINANCIAL STATEMENTS

#### L. BENEFIT AND OTHER PLAN OBLIGATIONS

As of December 31, 2009 and 2008, the Plan owned and was the beneficiary of various life insurance contracts with stated death benefit values aggregating approximately \$1 billion. The accompanying financial statements reflect only the net cash surrender values of these contracts as reported to the trustee by the insurance carriers.

The Plan's life benefit payments during 2009 and 2008 were \$3,132,009 and \$2,600,120, respectively; the Plan's death benefit payments during 2009 and 2008 were \$0 and \$2,997,090, respectively. At December 31, 2009 and 2008 life benefit claims in the approximate amount of \$102,000 and \$1,307,000, respectively, had been incurred and received for processing by the Plan's third-party administrator but not yet paid; these claims were paid in the applicable subsequent year. In addition, claims in the approximate amount of \$875,000 had been incurred as of December 31, 2009 but were not reported to the Plan by participants until 2010.

Since the Plan reports on the modified cash basis of accounting and because benefits are either directly or indirectly subject to coverage by insurance policies, there were no recorded Plan obligations at December 31, 2009 and 2008. In addition, the Plan does not report a net change in its annual benefit obligations.

According to the Plan's actuary, the Plan's obligation for total life benefits aggregated approximately \$73.9 million at January 1, 2009. As discussed in Note M, due to the refusal of certain life insurance carriers to recognize or honor the Plan's exclusive ownership rights to its life insurance policies the Plan cannot at this time make life benefits available for 2010.

#### M. CONTINGENCIES AND COMMITMENTS (INCLUDING SUBSEQUENT EVENTS)

##### *Claims the Plan has asserted against the United States of America:*

In March 2006, the Plan and its Sponsor filed an action in a U.S. District Court in Houston, Texas against the United States of America (regarding one of its agencies, the Internal Revenue Service), claiming damages arising from unlawful third-party disclosures by the Service regarding the Plan's confidential tax information and breach of the Freedom of Information Act's provisions. Through December 15, 2007, half of the litigation costs were the responsibility of the Plan (as approved by the Plan Committee) and the remaining half were the Sponsor's responsibility. Subsequently, the Plan assumed responsibility for the entire cost.

In June 2009 both parties moved for summary judgment on a number of the claims asserted. The United States' summary judgment motions sought dismissal of the entire case and all claims. In March 2010 the Court granted the United States' motions for summary judgment and denied the Plan's motions for summary judgment (the government won, the Plan lost). Following consultations with its attorneys, the Plan has decided to file a notice of appeal regarding the Court's rulings with the U.S. Court of Appeals for the Fifth Circuit.

##### *Claims asserted by certain life insurance companies regarding the Plan's assets:*

Three life insurance carriers have filed interpleader actions in the U.S. District Court for the Western District of Oklahoma. Each action requests the Court to determine whether the Plan is the exclusive

MILLENNIUM MULTIPLE EMPLOYER WELFARE BENEFIT PLAN

NOTES TO THE FINANCIAL STATEMENTS

M. CONTINGENCIES AND COMMITMENTS (INCLUDING SUBSEQUENT EVENTS), *continued*

*Claims asserted by certain life insurance companies regarding the Plan's assets, continued:*

owner of the applicable insurance policies and entitled to exercise its exclusive ownership rights. These rights include, among other things, the ability to surrender the policy (for death benefit claims, etc.) and to request and receive policy borrowings. Each of these carriers is also a defendant in certain of the tort actions discussed in the topic below.

A fourth life insurance carrier filed claims in an existing Texas state court action for the same purpose. This carrier is also a defendant in certain of the tort actions discussed in the topic below.

The Plan has attempted, without success, to negotiate resolutions of these actions with the applicable carriers. It has also filed claims against certain carriers and is considering what further legal action to take against the others. Over 70% of the Plan's assets are invested in life insurance policies issued by these four companies. Consequently, it has become increasingly difficult for the Plan to fund its operations, including death and life benefit payments as well as the Plan's operating expenses. These carriers' actions have also forced the Plan to incur significant additional legal costs in an effort to gain access to the Plan's assets.

*Claims others are asserting against the Plan:*

Presently, Plan participants and others have filed seven separate actions against the Plan and others (not including settled actions) in various state courts in Arkansas, Oklahoma, Tennessee and Texas. One of the Tennessee and two of the Texas actions include multiple plaintiff groups. Four of the actions were filed by the same attorneys. In addition to the Plan, most of these actions name the Plan's Sponsor, actuary, manager, third-party administrator and trustee as additional defendants. The two Texas actions involving multiple plaintiff groups have also asserted various claims, including breach of fiduciary responsibility claims, against the members of the Plan Committee.

While each complaint includes unique and specific allegations, in general, each seeks to hold the Plan responsible for various alleged misrepresentations made to the applicable plaintiffs regarding their participation in the Plan and also alleges the Plan breached its contracts by refusing to allow certain plaintiffs to "void" their Plan participation. Each complaint is in a different stage of the judicial process, but none has progressed beyond the discovery stage. The Plan is, and will continue to, vigorously defend itself and its manager.

As a result of the Plan's Chapter 11 filing all of these actions are now stayed (on hold). The Plan has begun the process of removing all of these remaining actions to federal court and has further sought to have each of them decided by the Bankruptcy Court. The Plan's intent is that all claims associated with these actions, as well as any other claims regarding the Plan, be resolved during the course of the Plan's Chapter 11 proceeding.

The Plan is an additional insured under an insurance policy that was originally obtained by the Sponsor. Both the Sponsor and the Plan had rights to coverage under the policy as well as to its coverage limits and both were using the policy to pay for substantially all of their defense costs incurred in connection with these various actions. The Plan's fiduciary insurance carriers (for both the original policy and a subsequent policy obtained for the Plan only) have taken the position that

MILLENNIUM MULTIPLE EMPLOYER WELFARE BENEFIT PLAN

NOTES TO THE FINANCIAL STATEMENTS

M. CONTINGENCIES AND COMMITMENTS (INCLUDING SUBSEQUENT EVENTS), continued

*Claims others are asserting against the Plan, continued:*

either the applicable policy limit has been exhausted with respect to most of the actions set forth above or the policy does not provide coverage for the above actions. While the Plan is analyzing its insurance coverage and making every effort to maximize any possible recovery, at present the Plan is prepared to pay, and is paying, substantially all litigation related expenses and any possible settlements in the pending cases from the Plan's assets while reserving any and all rights with regard to its insurance carriers.

A law firm, which the Plan contends was engaged by one of its insurance carriers to defend it in a tort action, filed suit against the Plan in a Texas state court for unpaid legal fees in the amount of approximately \$146,000 plus attorney fees and costs. Due to the Plan's Chapter 11 filing the matter is presently stayed. The Plan intends to vigorously contest any claim filed by this firm in the Plan's Chapter 11 proceeding as well as assert various counter-claims.

*Defense and Indemnification Commitments:*

Prior to the filing of any lawsuits against the Plan or others associated with it, the Plan and its Sponsor agreed to defend or indemnify Milliman, Inc. and SecurePlan against various or certain claims asserted against them in connection with their work on behalf of the Plan. The indemnification does not apply if either party is found to have engaged in, among other things, gross negligence, breach of fiduciary duty, or a violation of ERISA or similar statutes. In the event of such a finding, SecurePlan is obligated to return all moneys advanced to it by the Plan under this indemnification. There has been no such finding to date.

The Master Plan document includes a provision granting the Plan's trustee a lien against the Plan's assets for the amount of all fees, costs, charges and amounts that may be rightfully due it, including the cost of defending any lawsuit filed against it in connection with its services as the Plan's trustee. This lien has priority over the claims of any Plan participant or beneficiary. Any such obligation would be limited by the provisions of ERISA.

As noted in the "Claims others are asserting against the Plan" section above, Milliman, Inc., Republic and SecurePlan are named as defendants in substantially all of the litigation that also names the Plan as a defendant.

During the year ended December 31, 2009 and 2008 the amount paid and expensed in connection with these defense and indemnification obligations was \$241,975 and \$14,800, respectively. The unpaid amount of these obligations at December 31, 2009 was approximately \$132,000.

*Other:*

During 2007, the Plan Committee determined that, because of the size to which the Plan had grown, someone was needed to assume responsibility for the Plan's day-to-day management as well as to coordinate its administrative activities and the efforts of its various service providers. Effective January 1, 2008, the Plan Committee hired an individual to perform these activities who is paid a fixed monthly fee of approximately \$32,100 and is reimbursed for certain expenses that directly relate to the Plan's activities. During 2009 the Plan's agreement with this individual was amended to

**MILLENNIUM MULTIPLE EMPLOYER WELFARE BENEFIT PLAN**

**NOTES TO THE FINANCIAL STATEMENTS**

**M. CONTINGENCIES AND COMMITMENTS (INCLUDING SUBSEQUENT EVENTS), continued**

*Other, continued:*

provide him with up to a six month continuation of the fixed monthly fee in the event a) his employment was involuntarily terminated without cause; b) a change in control of the Plan Committee occurred and his employment was subsequently terminated; or c) his employment ended because the Plan was terminated.

**N. SUBSEQUENT EVENTS**

All relevant subsequent events through October 8, 2010 (the date these financial statements were available to be issued) have been evaluated by management.

**O. RECONCILIATION OF FINANCIAL STATEMENTS TO FORM 5500**

The Plan's financial statements and Form 5500 were in agreement as of and for the year ended December 31, 2009 and 2008.

**MILLENNIUM MULTIPLE EMPLOYER WELFARE BENEFIT PLAN**

**NOTES TO THE FINANCIAL STATEMENTS**

**SUPPLEMENTAL INFORMATION**

## Millennium Multiple Employer Welfare Benefit Plan

### SCHEDULE OF ASSETS HELD FOR INVESTMENT PURPOSES AT END OF YEAR As of December 31, 2009

EIN: 01-0749180  
Plan Number: 501

(a) <u>Identity of Issue, Borrower Lessor or Similar Party</u>	(c) <u>Description of Investment</u>	(d) <u>Cost</u>	(e) <u>Current Value</u>
American General Life Insurance Company	Life Insurance	n/a	\$55,343,108
American United Life Insurance Company	Life Insurance	n/a	686,483
Aviva Life and Annuity Company (formerly known as Indianapolis Life Insurance Company)	Life Insurance	n/a	17,957,541
Berkshire Life Insurance Company of America	Life Insurance	n/a	31,515
General American Life Insurance Company	Life Insurance	n/a	2,202,917
Guardian Life Insurance Company of America	Life Insurance	n/a	2,895,663
Hartford Life Insurance Company	Life Insurance	n/a	2,678,364
ING Life Insurance and Annuity Company	Life Insurance	n/a	1,292,601
John Hancock Life Insurance Company	Life Insurance	n/a	1,204,712
Kansas City Life Insurance Company	Life Insurance	n/a	318,387
Lincoln Life & Annuity Company of New York	Life Insurance	n/a	858,622
Penn Mutual Life Insurance Company	Life Insurance	n/a	14,774,389
Phoenix Life Insurance Company	Life Insurance	n/a	4,558,703
Security Life of Denver Insurance Company	Life Insurance	n/a	1,888,974
Security Mutual Life Insurance Company of New York	Life Insurance	n/a	94,137
Transamerica Life Insurance Company	Life Insurance	n/a	1,821,607
United States Life Insurance Company in the City of New York	Life Insurance	n/a	4,537,090
Republic Bank & Trust	Cash account	n/a	984,874
			<u>\$114,129,687</u>

\*

\* denotes a party-in-interest



**Exhibit 3**

**Millennium Master Plan**

**MASTER PLAN OF THE  
MILLENNIUM  
MULTIPLE EMPLOYER WELFARE BENEFIT PLAN**

**Effective as Amended on the 1<sup>st</sup> day of January, 2005  
Copyright 2002, Millennium Marketing Group, LLC  
Patent Pending, 2002**

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**MASTER PLAN OF THE  
MILLENNIUM  
MULTIPLE EMPLOYER WELFARE BENEFIT PLAN**

This Millennium Multiple Employer Welfare Benefit Plan (the "Plan"), adopted as amended effective January 1, 2005, is a 10 or more employer plan within the meaning of Section 419A(f)(6) of the Internal Revenue Code of 1986, as amended (the "Code"). This Plan is established and sponsored for the purpose of providing death and other qualifying welfare benefits to Eligible Employees of Covered Employers under the terms and conditions stated herein.

This Plan is a 10 or more employer welfare benefit plan as defined by the Code and the Employee Retirement Income Security Act of 1974, as amended.<sup>1</sup> This Plan is intended to constitute a fully insured welfare benefit arrangement. The benefits provided by this Plan are funded solely through contributions of Covered Employers, and are held in trust for the exclusive benefit of Participant/Eligible Employees and their designated Beneficiaries. All assets held in trust under this Plan will be used to satisfy the Plan's obligations to pay benefits, and to cover the reasonable and necessary costs of administering the Plan and assuring the Plan's compliance with applicable state and federal laws.

This Plan supercedes any prior plan or arrangement under Code § 419A(f)(6) as to those Covered Employers who participate herein, and their Participant/Employees and designated Beneficiaries. Where the provisions of this Plan conflict with the terms of any Summary Plan Description issued under this Plan, or any Trust Agreement entered into pursuant to this Plan, the provisions of this Plan will control.

**ARTICLE I**

**DEFINITIONS**

- 1.01 "Adoption Agreement"** means the written agreement entered into by a Qualifying Employer under this Plan under which such Qualifying Employer adopts the Plan and agrees to abide by the Plan's provisions.
- 1.02 "Beneficiary"** means the person(s) identified by a Participant in a written "Designation of Beneficiary Form" as specified in Section 4.03.b of the Plan to receive Benefits and the automatic Beneficiary under Section 4.03.c.
- 1.03 "Benefit"** means any monetary amount or insurance policy paid from the Trust as provided by the Plan to a Participant in the Plan or a designated Beneficiary.

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<sup>1</sup> 29 U.S.C. § 1002(40); 29 U.S.C. § 1144(b)(6)(A).



- 1.04 **“Code”** means the Internal Revenue Code of 1986, as amended, as clarified and construed under Treasury Regulations and controlling federal case law.
- 1.05 **“Committee”** means the Plan Committee, comprised of five (5) to fifteen (15) individuals as appointed by the Plan Committee from time to time in accordance with the written procedures determined by the Plan Committee, who shall interpret the terms of the Plan in their sole and absolute discretion and shall undertake other functions as set forth herein.
- 1.06 **“Contribution”** means the amount paid by a Covered Employer to the Trust created as required by the Plan and as specified in the Adoption Agreement.
- 1.07 **“Covered Employer”** means a Qualified Employer who has entered into an Adoption Agreement and satisfied all the requirements of the Plan as to Covered Employer status.
- 1.08 **“Death Benefit”** means any Benefit due to be paid from the Plan to a Beneficiary upon the death of a Participant, net of any Life Benefit paid prior to the Participant’s death.
- 1.09 **“Effective Date”** means the initial effective date for the Plan: November 1, 2002.
- 1.10 **“Eligible Employee”** means an Employee of a Covered Employer who has satisfied the eligibility criteria established in the Adoption Agreement.
- 1.11 **“Employee”** means any individual lawfully employed to work in the United States by a Covered Employer who is an “employee” under federal common law, and to whom the Covered Employer pays wages or makes guaranteed payments.
- 1.12 **“Employer”** means any entity or individual that lawfully employs individuals to work in the United States and who pays them wages or guaranteed payments subject to withholdings for federal and state employment taxes.
- 1.13 **“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended and as clarified and construed by Department of Labor Regulations and controlling federal case law.
- 1.14 **“Fiduciary”** means a person who has discretionary powers and authorities with regard to the establishment, maintenance and administration of this Plan and includes the Sponsor, the Committee, and the Trustee and the Third Party Administrator.
- 1.15 **“Insurance”** means any policy of insurance issued by any legal reserve life insurance company under which that Underwriter is obligated to pay monies to

the Trust upon the occasion of the death of a Plan Participant or other triggering event under the Plan. Only "Insurance" issued by a carrier license to do business in the state of the insured and carrying an A+ rating or better as commercially reported by a major evaluator of insurance companies will be permitted to fund Benefits under this Plan. Further, "Insurance" shall be limited to those insurance products described in Exhibit "C," to this Plan.

- 1.16 "Life Benefit"** means the fixed Benefit or Insurance on a Participant paid by the Plan, or transferred to another trust from the Plan, in lieu of the Death Benefit upon the occurrence of certain triggering events during the Participant's lifetime. "Life Benefit(s)" are described in Exhibit "B" to the Plan and in each Participant's Certificate of Participation.
- 1.17 "Participant"** means an Eligible Employee identified in the Adoption Agreement of a Covered Employer for whom a policy of Insurance has been issued and is in full force and effect, and who has satisfied all other Plan requirements as to Participant status.
- 1.18 "Participation Date"** with regard to a particular Participant, means the first effective date of a policy of Insurance issued on the life of the Participant, or the first date of Participation under the terms of the Plan, if later.
- 1.19 "Plan"** means this Master Plan of the Millennium Multiple Employer Welfare Benefit Plan.
- 1.20 "Plan Assets"** means all Insurance, monies, real or personal property held in the Trust and any earnings, income, gain or loss, and appreciation or depreciation attributable thereto.
- 1.21 "Plan Year"** means the period from the Effective Date to December 31, 2002 and, thereafter, the period from January 1<sup>st</sup> to December 31<sup>st</sup> each calendar year.
- 1.22 "Qualifying Employer"** means an Employer who is a "C"-corporation, an "S"-corporation, a limited liability company, a limited liability partnership, a professional corporation or partnership recognized by state law.
- 1.23 "Rating Group"** means the class of similarly situated Participants for whom Covered Employers pay Contributions to the Trust as specified by this Plan.
- 1.24 "Reinsurer"** means any lawfully established and maintained insurance company that issues a policy of insurance to the Trust for the purpose of insuring the Trust against the risk of excess or unanticipated monetary loss or substandard performance of Plan Assets.
- 1.25 "Sponsor"** means the Plan Sponsor, Millennium Marketing Group, LLC.

- 1.26 “Summary Plan Description”** means the plain-language written summary of the plan document that conforms to the requirements stated in ERISA Regulation § 2520.102-3, as amended by 63 Fed. Reg. 48376, or other amending final regulation.
- 1.27 “Third Party Administrator”** means any individual or entity appointed by the Sponsor under an administrative services agreement whose primary responsibility is to administer claims of Participants and Beneficiaries, assure that disclosures and other required communications are accomplished, and conduct other business transactions required for this Plan to achieve its stated purposes.
- 1.28 “Triggering Event”** means an event that triggers the payment of a Death Benefit or a Life Benefit under the Plan as described in Section 5.03.b., herein.
- 1.29 “Trust Agreement”** means the written agreement between the Plan and the Trustee that establishes the Trust under this Plan, regardless of the date of execution of such agreement
- 1.30 “Trust”** means the Plan Assets held in accordance with the Trust Agreement.
- 1.31 “Trustee”** means the individual or entity that entered into the Trust Agreement with the Plan, or any successor thereto, including a temporary Trustee appointed by the Third Party Administrator.
- 1.32 “Underwriter”** means the issuer or issuers of Insurance selected by the Covered Employer in the Adoption Agreement.

## ARTICLE II

### ESTABLISHMENT OF TRUST POWERS OF THE TRUSTEE

#### **2.01 Trust and Trustee.**

All Plan Assets shall be held by the Trustee in Trust and administered by the Trustee at the direction of the Committee and in accordance with this Plan and the Trust Agreement. The initial Trustee, and any successor Trustee, shall be appointed by the Sponsor, with the approval of the Committee on behalf of the Plan, and shall be a federally insured bank, a licensed investment company, or a bonded and licensed trust company. Any temporary Trustee shall be appointed by the Committee and shall serve as Trustee until the Sponsor appoints a successor Trustee with the approval of the Committee.

**2.02 Trustee's Duty to Manage Plan Assets, Take in Contributions, and Make Distributions for Benefits and Plan Expenses.**

It shall be the duty of the Trustee to take Contributions and other payments into the Trust and to make payments out of the Trust to such persons or entities, in such a manner, at such times and in such amounts as may be specified (i) in written or oral (and later ratified, in writing) directions from the Third-Party Administrator or Committee received from time to time by the Trustee, or (ii) as may be expressly provided by the terms of this Plan. The specific rights and obligations of the Trustee shall be set forth in the Trust Agreement which is incorporated herein by reference and made a part of this Plan.

**2.03 General Powers of Trustee/Fiduciary Duties.**

Subject to any limitations expressly set forth herein, and upon direction by the Third Party Administrator or Committee, the Trustee shall have the powers set forth in the Trust Agreement. In acting on behalf of the Plan, the Trustee shall act with regard to the Plan as a reasonably prudent fiduciary with expertise and experience dealing with plan assets and plan transactions of the nature and kind set forth in this Plan.

**2.04 The Trustee's Accounting.**

The Trustee shall keep accurate and detailed accounts of all investments, receipts and disbursements and other financial transactions hereunder, and all accounts, books and records relating thereto shall be open to inspection and audit at all reasonable times by any authorized governmental agency, the Third Party Administrator, and any person or persons designated by a Covered Employer. Within six (6) months following the last day of each Plan Year, and within sixty (60) days after the removal or resignation of the Trustee, the Trustee shall file with the Third-Party Administrator and each Covered Employer, a written report setting forth all investments, receipts, disbursements, and other transactions effected by the Trustee during the period ending as of such period, including a description of all investments purchased and sold with the cost and net proceeds of such purchases or sales (accrued interest paid or received being shown separately), and showing all cash securities and other property held at the end of such period. If no written objection is filed by the Third-Party Administrator or any Covered Employer with respect to such report within ninety (90) days after its delivery by the Trustee, then the report shall be deemed to be accepted and shall be final and binding. In the absence of error, or other issue raised by an independent auditor pursuant to the annual audit of the Plan, neither a Covered Employer nor any other person shall have the right to demand or be entitled to any further or different accounting by the Trustee.

**2.05 Successor Trustee.**

- a. **Removal/Resignation of a Trustee.** The Committee may direct the Sponsor to remove the Trustee at any time, with or without cause, upon thirty (30) days notice in writing to the Trustee. The Trustee may resign at any time upon thirty (30) days notice in writing to the Third-Party Administrator. The Trustee's

resignation or removal shall be effective upon the expiration of such thirty (30) day period regardless of whether a successor Trustee is appointed. In no event shall the Trustee be liable to any Covered Employer, Participant, or Beneficiary for merely exercising its right to resign as Trustee or for merely being removed by the Sponsor. Upon receipt of the resignation of the Trustee, or upon the removal of the Trustee, the Sponsor, with the approval of the Committee shall appoint and designate a successor Trustee or Trustees, and the Trustee shall assign and transfer and pay over to such successor Trustee the funds and properties then constituting the Trust. If for any reason a successor Trustee is not appointed, within the thirty (30) day notice period provided herein, then the Plan Committee shall direct the Sponsor to appoint a temporary Trustee to serve until such time as the Sponsor appoints a successor Trustee.

**b. Power of the Successor Trustee/Limit of Liability.** Each successor Trustee shall have the same rights, titles, powers, duties, discretion and immunities and otherwise be in the same position as if originally named Trustee as set forth in this Plan and the Trust Agreement. No successor Trustee shall be liable for any act or failure to act of a predecessor Trustee. With the written approval of the Sponsor and Third Party Administrator, any successor Trustee may accept, in writing, the final accounting and written report of any predecessor Trustee, and such acceptance shall constitute the Plan's full release of liability of the predecessor Trustee for any act or omission with regard to the management of the Plan Assets, the acceptance of contributions, and the payment of Benefits and Plan expenses as set forth in the Trust Agreement and the Plan.

## **2.06 Bonding.**

To the extent required by federal law, the Trustee shall execute a bond to secure the full and faithful performance by it of its duties and obligations as Trustee, and shall also bond, or shall cause to be bonded, any other person it authorizes to handle the Plan Assets or to whom any or all of the Trustee's duties, obligations and responsibilities may be delegated. Such bonds shall at all time conform to any and all applicable requirements of state and federal law and shall be in such amounts as the Trustee shall deem appropriate under the circumstances.

## **2.07 Trustee's Fees and Expenses.**

**a. Compensation of the Trustee and Indemnification.** Subject to the Plan Committee's approval, the Sponsor and the Trustee (from time to time) shall agree upon a schedule of fees to compensate the Trustee for its services performed under the Plan and Trust Agreement. The Trustee shall be entitled to:

- i. be paid reasonable compensation for all services rendered by it (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

ii. be paid reimbursement, upon request, for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Plan (including the reasonable compensation and the expenses and disbursements of its counsel and its agents), except any such expense, disbursement or advance as may be attributable to its gross negligence, violation of ERISA or breach of trust; and

iii. be held harmless from and against any loss, liability or expense incurred without gross negligence, breach of fiduciary duty, violation of ERISA or breach of trust on its part, arising out of or in connection with the acceptance or administration of this Trust or its duties under the Plan and Trust Agreement, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties.

**b. Payment of the Trustee for Services.** The Trustee shall be paid from funds held in the Sponsor's business account at the direction of the Third Party Administrator or Plan Committee upon thirty (30) days of the Third Party Administrator's receipt of an invoice from the Trustee or as otherwise set forth in the Trust Agreement. If any payment properly due the Trustee for its reasonable fees, costs, expenses and fees of attorneys, certified public accountants, recognized authorities in their field and agents (not employees of the Trustee) incurred in performance of its duties is not paid at the direction of the Third Party Administrator, the Trustee shall have a lien against the Trust for the amount of all fees, costs, charges, and amounts that may be rightfully due it. The lien granted the Trustee hereunder shall have priority over the claims of any Participant or Beneficiary against the Trust.

## **2.08 Insurance as Plan Assets.**

The Trustee may hold in Trust Insurance on the lives of Participants as identified in Exhibit "C," according to the terms of the Rating Group description shown in Exhibit "B." Insurance shall be deemed Plan Assets and any contributions or premiums paid to Underwriters for such Insurance, and any proceeds derived from such Insurance shall also be deemed Plan Assets. Copies of Insurance policies shall be delivered to the Third Party Administrator by the Trustee. In no event shall the use of Insurance to fund Benefits under this Plan be deemed a breach of fiduciary duty on the part of the Trustee.

### ARTICLE III

#### ADOPTION OF PLAN BY QUALIFYING EMPLOYERS AND PARTICIPATION BY COVERED EMPLOYERS

##### **3.01 Adoption of Plan.**

A Qualifying Employer may adopt the Plan by executing and delivering to the Third Party Administrator an Adoption Agreement in substantially the form shown as Exhibit "A," hereto, by paying the initial Contributions and any administration fees required by the Adoption Agreement, and by satisfying the requirements of Covered Employer status as stated, below. The Adoption Agreement shall, among other things, identify those Eligible Employees of the Qualifying Employer that shall be given the opportunity to become Participants in the Plan.

##### **3.02 Covered Employer Status.**

A Qualifying Employer shall become a Covered Employer for purposes of this Plan upon the last to occur of the following events:

- i. the Third Party Administrator receives an executed Adoption Agreement;
- ii. a resolution or consent of the Board of Directors or other governing body of the Qualifying Employer authorizes the execution and delivery of the Adoption Agreement as set forth, above, or ratifies such execution and delivery, and a copy of such resolution or consent is received by the Third Party Administrator;
- iii. the initial Contributions or other initial payments identified in the Adoption Agreement are placed into the Plan Escrow Account to be forwarded to the Trustee upon issuance of Insurance as set forth in the Adoption Agreement;
- iv. Insurance identified by the Adoption Agreement on the lives of those Eligible Employees the Qualifying Employer intends to be Participants in the Plan are issued to the Trust and received by the Trustee.

##### **3.03 Limitation on Covered Employers.**

- a. **Minimum Number of Covered Employers.** In no event shall less than ten (10) Covered Employers participate in this Plan and make contributions as required under the terms of their respective Adoption Agreements. In the event that the number of Covered Employers participating in this Plan ever fall below ten (10) for one (1) full Plan Year, then this Plan shall immediately terminate and

all Plan Assets shall be distributed and the affairs of the Plan settled as set forth in Article VIII, below.

**b. Maximum Contributions.** The Plan Committee shall endeavor to assure that Contributions of a single Covered Employer do not:

- i. in the aggregate, exceed ten percent (10%) of the Plan Assets;
- ii. in the aggregate, exceed ten percent (10%) of all aggregate Contributions made to the Plan by all Covered Employers; or
- iii. in the aggregate, exceed ten percent (10%) of the Contributions made to any single Rating Group.

**c. Family Members.** For purposes of determining whether the maximum contribution limitations under Section 3.03.b are met, any Contributions by any Covered Employer shall be deemed to include amounts contributed for any family member of the Covered Employer's Participant made by any other Covered Employer participating in the Plan under a separate Adoption Agreement. Information pertaining to family members shall be disclosed by the Covered Employer in the Adoption Agreement.

**d. Adjustments to Conform with Limitations.** In the event the Contributions of any Covered Employer exceed the maximum Contribution limitations set forth, above, the Third Party Administrator, at the direction of the Committee, shall make such adjustments to Insurance, Rating Groups, premiums, terms of Adoption Agreements or Contribution amounts that are necessary to bring the Covered Employer's Contribution within such limitations, and shall direct the Trustee to make adjustments to Insurance or other Plan Assets to affect the changes required by the Third Party Administrator. The affected Covered Employer must comply with the Third Party Administrator's requests for adjustments under this section, or it will be deemed to be in default of the Adoption Agreement and its participation in the Plan will be terminated as set forth in Section 3.06.d, below.

### **3.04 Duration of Participation.**

Once the last of the events described in Section 3.02 have occurred, a Covered Employer will remain such, and will continue participating in the Plan until one or more of the following events **first** occurs:

- i. the Covered Employer ceases to make Contributions as identified in the Adoption Agreement or is otherwise deemed by the Third Party Administrator (with the approval of the Committee) to be in default of the Adoption Agreement as specified in Section 3.06.d, below;



- ii. thirty (30) days have expired since the Third Party Administrator sent written notice to the Covered Employer in a manner specified by Section 3.05, below, that the Covered Employer's participation is to be terminated for any reason for which the Third Party Administrator is authorized to provide such notice of termination to a Covered Employer under this Plan in non-default situations;
- iii. the Plan is terminated pursuant to Article VIII;
- iv. thirty (30) days have expired since the Covered Employer provided the Third Party Administrator with written notice in a manner specified by Section 3.05, below, that the Covered Employer wishes to withdraw from the Plan as set forth in Section 3.07, below, and the Third Party Administrator received such notice;
- v. the last of all Insurance issued on the lives of Eligible Employee/Participants of the Covered Employer lapse, are cancelled or are terminated by the insurance company issuing such policies; or
- vi. the last of any fixed Death Benefits or Life Benefits due and owing under the terms of this Plan and the Adoption Agreement are paid to Eligible Employee/Participants of the Covered Employer or their designated Beneficiaries.

### **3.05 Notices to Covered Employer or to the Third Party Administrator.**

Written notices by and between any Covered Employer and the Third Party Administrator shall be addressed as identified in the Adoption Agreement and shall be sent by certified mail, return receipt requested, or by next day delivery, return receipt requested by any commercial carrier.

### **3.06 Terms of Participation for Covered Employers.**

**a. Mandated Terms of the Adoption Agreement.** Adoption Agreements under the Plan will contain, at a minimum, the following provisions:

- i. a statement of the conditions for eligibility for Employees of the Covered Employer to become Participants in the Plan;
- ii. a statement that, upon the issuance of the first Insurance on the life of an Eligible Employee/Participant of the Covered Employer, the Participant shall be assigned to a Rating Group by the Third Party Administrator, based upon risks commonly recognized and actuarially taken into account by providers of death benefits or cash surrender value benefits in the insurance industry;

iii. a statement that the Covered Employer's fixed Contribution amount will be based upon an aggregate of all fixed Contribution amounts associated with all the Rating Groups to which the Covered Employer's Participants are assigned;

iv. a statement that the Benefits received by each Participant (or a designated Beneficiary of the Participant) of the Covered Employer shall be a guaranteed fixed amount determined by the Rating Group to which each Participant of all Covered Employers in the Plan is assigned and the length of time of participation;

v. a statement that, as to Plan Assets, the risk of gains or losses shall be borne by all Participants in the Plan within an assigned Rating Group, regardless of the Covered Employer employing them;

vi. a statement that, in no event, shall all or part of any Plan Assets or other sums held in Trust be paid to, accounted to or credited or deducted from an account of any particular Covered Employer participating in the Plan or any Eligible Employee/Participants of such Covered Employer;

vii. a statement that, in the event a Covered Employer decides to withdraw from the Plan and gives proper notice of such withdrawal, the Plan will pay only the fixed amount of Life Benefit attributable to the Rating Group assignment of each Participant of the Covered Employer as shown by Exhibit "B" to this Plan. Any excess amounts shall be forfeited to the Plan and shall be used to defray the normal costs of Plan administration for the benefit of all Participants and Beneficiaries of all Covered Employers participating in the Plan;

viii. a description of the Insurance and Underwriters selected by the Covered Employer to insure the lives of the Covered Employer's Participants;

ix. a statement obligating the Covered Employer to provide to the Third Party Administrator, and maintain, current contact information (i.e. address and telephone number) of all Eligible Employee/Participants of the Covered Employer; and

x. a statement that the Covered Employer will forfeit all Insurance and Contributions to the Plan in the event of default of the terms of the Adoption Agreement.

**b. Compliance with Terms of the Adoption Agreement/Right to Financial Disclosures.** During the term of participation in the Plan, Covered Employers shall comply with the terms of the Adoption Agreement, including but not limited to those terms specifying the amount, timing, and manner of payment

of Contributions. The Third Party Administrator, with the approval of the Committee, has sole and absolute discretion to determine whether a Covered Employer is meeting its obligations under the Adoption Agreement, and to take such action as is authorized by the Plan's terms in the event of a Covered Employer's default of the Adoption Agreement. So long as a Covered Employer has not received notice from the Third Party Administrator that the Covered Employer is in default of the terms of the Adoption Agreement, the Covered Employer shall be entitled (upon reasonable notice) to review and receive copies of the financial records and other disclosures of the Plan identified in Article VII. Reviews by the Covered Employer shall be conducted during normal business hours at the office of the Third Party Administrator.

**c. Obligation to Make Fixed Contributions.** Covered Employers shall make Contributions to the Plan in an amount specified in the Adoption Agreement, including Plan administration expenses identified therein. Contribution amounts shall be the aggregate of all the fixed amounts identified in Exhibit "B" attributable to the particular Rating Groups to which the Participants of the Covered Employers are assigned. Contribution amounts shall not be increased, nor decreased, except as increased or decreased for every Participant for every Covered Employer in a particular Rating Group as determined to be necessary by the Committee to maintain all the Insurance held in the Trust for that Rating Group.

**d. Failure to Make Fixed Contributions or Other Default and Forfeiture.** In the event a Covered Employer fails to make any Contribution required by the Adoption Agreement or otherwise becomes in default of the Adoption Agreement's terms for a period of thirty (30) days after which such Contribution became due or such default occurred, then the Third Party Administrator shall provide written notice to the Covered Employer of the Covered Employer's termination from Plan participation by default. Upon notice of termination from the Plan to the Covered Employer, all Insurance on the lives of the Covered Employer's Participants shall be terminated by the Trustee. Any cash value of such Insurance shall become a Plan Asset available for use by the Trustee, at the direction of the Committee, for the Benefit of all Plan Participants and Beneficiaries to defray the cost of Plan administration, and may be placed in a reserve account, a legal expense account, or applied in some other manner to uniformly benefit all Participants of the Plan.

**e. Refund of Initial Contribution.** If, for any reason, no policy of Insurance is issued by an Underwriter on any Eligible Employee of a Covered Employer, or no Rating Group assignment is made on any Eligible Employee of the Covered Employer, then any Contribution made by such Covered Employer to the Plan and/or Trustee shall be refunded to the Covered Employer, minus the administration fee identified in the Adoption Agreement, which shall be used to offset the Plan's reasonable administration expenses associated with initiating the Covered Employer's participation.

### **3.07 Covered Employer Termination of Participation.**

A Covered Employer may terminate participation in the Plan by providing written notice to the Third Party Administrator under 3.05. Upon the expiration of thirty (30) days of the Third Party Administrator's receipt of such notice, the Covered Employer's withdrawal shall be effective. Upon notice of termination by the Covered Employer, the Trustee shall transfer the fixed Life Benefit of the Participants of the Covered Employer to a trust under Code § 419(e), or make some other distribution as authorized by laws and regulations applicable to Code § 419A(f)(6) plans. Any residual cash or assets associated with such Insurance shall become a Plan Asset available for use by the Trustee, at the direction of the Committee for the Benefit of all Plan Participants and Beneficiaries to defray any of the costs of Plan administration.

## **ARTICLE IV**

### **PARTICIPATION BY ELIGIBLE EMPLOYEES**

#### **4.01 Eligibility Requirements.**

Employees who are eligible to participate in the Plan shall be identified by the Covered Employer in the Adoption Agreement. However, notwithstanding any provision in the Adoption Agreement, in no event shall any person be deemed an Eligible Employee where:

- i. the individual is under twenty-five (25) years of age;
- ii. the individual is deemed uninsurable and/or is determined by the Third Party Administrator, in its sole and absolute discretion, not to meet the criteria for assignment to any Rating Group identified in Exhibit "B" to the Plan; or
- iii. the individual does business as an individual, sole proprietorship or "dba" and not through a bona fide corporate entity or partnership recognized under applicable state laws.

#### **4.02 Issuance of Insurance Policy and Rating Group Assignment.**

**a. Issuance of Insurance Policy and Rating Group Assignment.** The identity of the Eligible Employees named in the Adoption Agreement of the Covered Employer shall be submitted to the Underwriter. Upon issuance of Insurance on the life of the Eligible Employee, the Third Party Administrator shall assign the Eligible Employee to a Rating Group identified in Exhibit "B," at the direction of the Committee, based upon the Underwriter's information. The Third Party Administrator shall forward all Insurance to the Trustee, but shall retain a copy of the Insurance policy.

**b. Notice of Rating Group Assignment.** Written notice of the Rating Group assignment for all Eligible Employee/Participants shall be sent to the Covered Employer by the Third Party Administrator within fourteen (14) business days from the Third Party Administrator's receipt of all the Insurance on the lives of the Covered Employer's Eligible Employees, along with a description of the fixed Contributions due as a result of the Rating Group assignments and the fixed Benefits associated with such Rating Group assignments.

**c. Binding Nature of Rating Group Assignment.** Both the Covered Employer and the Participants of such Covered Employer shall be bound by the determination of the Underwriter and Committee as to the Rating Group assignment of any Participant. The Underwriter and Committee shall have sole and absolute discretion with regard to the Rating Group assignment decision, and their decision shall be final and binding on the parties in all respects.

#### **4.03 Participation/Designation of Beneficiary.**

**a. Participation.** An Eligible Employee shall become a Participant in the Plan upon the *last* to occur of the following:

- i. The Qualifying Employer of the Eligible Employee has become a Covered Employer in accordance with Section 3.01;
- ii. the Underwriter issues a policy of Insurance on the life of the Eligible Employee;
- iii. the Eligible Employee is assigned a Rating Group as communicated by the Third Party Administrator and notice of such assignment is sent to the Covered Employer as described by Section 4.02.b, above;
- iv. the Covered Employer pays its Contribution to the Plan with respect to all Eligible Employee/Participants of that Covered Employer; and
- v. all Insurance on the Covered Employer's Eligible Employee/Participants and the fixed Contribution of the Covered Employer are received by the Trustee.

**b. Designation of Beneficiary.** Eligible Employees named in the Covered Employer's Adoption Agreement shall each fill out a designation of Beneficiary form as shown by the Exhibit "E," to the Adoption Agreement. The designation of Beneficiary form shall become effective upon the date that the Eligible Employee becomes a Participant under Section 4.03.a, and delivers the

designation of Beneficiary form to the Third Party Administrator by first class United States Mail.

**c. Automatic Beneficiary in the Event of No Designation.** In the event no designation of Beneficiary form is executed and delivered to the Third Party Administrator as set forth in Section 4.03.b, the Beneficiary of the Participant shall, first, be the Participant's legal spouse. If no legal spouse exists, the Beneficiary shall be deemed to be the Participant's legal estate under the laws of the state in which the Participant resided at the time of death. For purposes of this Section, "legal spouse" means the spouse of the Participant under the laws of the state in which the Participant resides on the date of the Participant's death.

**d. Assignment of Insurance.** Notwithstanding any provision of the Plan to the contrary, each Participant shall, as a condition to any entitlement to fixed Life Benefits or Death Benefits under the Plan, execute and deliver to the Plan such assignments or other written agreements necessary to cause the Insurance issued on the Participant's life by the Underwriter to be transferred and assigned to the Trust, and all proceeds from such Insurance payable upon the appropriate triggering event to the Trust.

#### **4.04. Termination of Plan Participation.**

Participation in the Plan by Participants shall continue until the *first* to occur of the following:

- i. the Participant dies and the fixed Death Benefit due any Beneficiary is paid by the Trustee as described by Article V;
- ii. the Covered Employer's participation in the Plan is terminated by the Third Party Administrator because of the Covered Employer's default of the Adoption Agreement;
- iii. the Covered Employer withdraws and any fixed Life Benefit due the Participant is transferred from the Plan;
- iv. the Participant's participation in the Plan is terminated by the Third Party Administrator because the Committee has determined that termination is necessary in order to maintain the Plan's status as a Code § 419A(f)(6) Plan and any fixed Life Benefit is paid out of the Plan;
- v. the Covered Employer terminates the Participant's employment or the Participant separates from employment and/or the full amount of any fixed Life Benefit is transferred from the Plan; or
- vi. the Plan is terminated and any fixed Life Benefit due the Participant under the terms of the Plan is paid by the Trustee.

Any amount remaining in Trust under the Plan shall, upon termination of participation of any Participant and the payment of any fixed Benefits to the Participant or any Beneficiary, as applicable, become a Plan Asset and shall be used for the benefit of all Plan Participants and Beneficiaries to offset the reasonable and customary expenses of Plan administration, and may be placed in a reserve account or otherwise used for the uniform benefit of Plan Participants.

#### **4.05 Notices Pertaining to Triggers for Benefits.**

When an event that triggers the obligation of this Plan to pay Benefits occurs (i.e., a "Triggering Event") the Covered Employer, Participant, or an authorized representative of the Covered Employer or Participant shall give notice, in writing, to the Third Party Administrator. The Third Party Administrator shall then request such documentation or evidence necessary to verify that a Triggering Event has, indeed, occurred.

### **ARTICLE V**

#### **ADMINISTRATION OF THE PLAN AND PAYMENT OF BENEFITS**

#### **5.01 Administration by Third Party Administrator.**

**a. Plan Administration.** The administration of the Plan's affairs, excluding transactions involving Plan Assets assigned to the Trustee under the Trust Agreement, shall be undertaken by the Third Party Administrator.

**b. Appointment of Third Party Administrator.** The Third Party Administrator shall be appointed by the Sponsor with the approval of the Committee. The Third Party Administrator's appointment and services, and payment for services, shall be described in a written agreement between the Plan and the Third Party Administrator. In no event shall the Third Party Administrator be the Sponsor, or any entity in which the Sponsor owns a 50% or more interest in the voting power, the voting common stock or ownership interest of the entity.

**c. Service and Termination of Service.** Once appointed by the Sponsor, the Third Party Administrator shall serve in that capacity until:

- i. thirty (30) days have elapsed since the Sponsor has delivered to the Third Party Administrator a notice of removal; or
- ii. thirty (30) days have elapsed since the Sponsor's receipt of written notice of the resignation of the Third Party Administrator.

**d. Appointment for Temporary Service as Trustee.** In the event that no person or entity has been appointed to serve as Trustee, the Third Party Administrator may ask the Committee to appoint an individual or entity to serve in that capacity on a temporary basis. In such event, the most recently executed Trustee Agreement then existing shall control the rights and obligations of the individual or entity the Plan Committee appoints as temporary Trustee.

**e. Duty to Wind Up Plan Affairs.** In the event of any Third Party Administrator's removal or resignation, the Third Party Administrator shall have a fiduciary duty to assist the Sponsor, Committee and Trustee to wind up the affairs of the Plan as to the transactions involving the Third Party Administrator. This duty shall include the delivery of copies or originals of all documents and records of the Plan to the Sponsor or successor Third Party Administrator within a commercially reasonable time period, not to exceed six (6) consecutive calendar months.

#### **5.02 Powers of Third Party Administrator.**

The Third Party Administrator shall have the powers and authorities conferred upon it under this Plan, which shall include, but not be limited to the power to terminate a Covered Employer as provided by the Plan, to assign Eligible Employees to Rating Groups as determined by the Committee in reliance upon the Underwriter's information, to direct the Trustee to pay Benefits and expenses of the Plan, to receive designation of Beneficiary forms, to correspond with Underwriters, and to take actions required for the continued operation of the Plan as set forth herein.

#### **5.03 Payment of Fixed Benefits Under the Plan.**

**a. Form of Fixed Benefit and Triggering Events.** The Third Party Administrator shall direct the Trustee to pay the fixed Death Benefit or Life Benefit upon receipt of written notice that an event triggering payment of Benefits under Section 5.03.b has occurred. Benefits due under the Plan may be paid in the form of a single lump sum cash payment, a series of payments in the case of Life Benefits paid for qualified medical costs or disability payments or, in the form of a policy of Insurance on the life of the Participant in an amount equal to the fixed Life Benefit due such Participant under the Rating Group to which the Participant is assigned, as appropriate to maintain the Plan under Code § 419A(f)(6).

**b. Payment of Fixed Benefits—Triggering Events.** Subject to current authorities promulgated under Code § 419A(f)(6), fixed Benefits will be due and payable to a Participant or a Beneficiary in an amount specified by the Participant's assigned Rating Group, as shown by Exhibit "B," under the following circumstances:

- i. the Participant has died (a Death Benefit shall be paid);



- ii. the Participant has terminated employment with the Covered Employer because of separation action by the Covered Employer (not to include the Participant's normal retirement), Total Disability, or illness that prevents the Participant from performing the essential functions of the job for a period exceeding twelve (12) work weeks (all or part of the Life Benefit shall be paid);
- iii. the Participant has applied for reimbursement of tax-qualified medical expenses as defined by Code § 213 (all or part of the Life Benefit shall be paid).
- iv. the Participant's participation has been terminated by the Third Party Administrator (a Life Benefit shall be paid);
- v. the Covered Employer withdraws from the Plan (a Life Benefit may be transferred to another qualified welfare benefit plan and trust); or
- vi. the Plan is terminated (a Life Benefit shall be paid).

The Trustee shall deliver the fixed Benefit due under the Plan by any commercially reasonable means within sixty (60) calendar days of the Third Party Administrator's receipt of notice of the occurrence of one of the events described, above. Where the fixed Benefit is a Life Benefit, the Trustee is authorized only to transfer the Life Benefit to a Code §§ 419A(f)(6), 419(e), or other employee welfare benefit plan sponsored by the Covered Employer, or pay such other cash distributions permitted by Code § 419A(f)(6) and the regulations promulgated thereunder as to standard welfare benefit triggers. Where the fixed Benefit is a Death Benefit, the Trustee shall pay the Death Benefit to the Beneficiary by delivering the Death Benefit via any commercially reasonable means within the time period provided herein.

**c. Forfeiture of Excess Proceeds to the Plan/No Reversion.** In the event proceeds from Insurance, of the cash value of Insurance exceed the amount of fixed Death Benefit or Life Benefit due any Participant or Beneficiary, or in the event the Third Party Administrator determines no Participant or Beneficiary exists to which to pay the fixed Benefit due under the Plan, the excess amounts or unpaid fixed Benefit amounts shall become Plan Assets available for use for the benefit of all Participants and Beneficiaries of the Plan and shall be utilized by the Trustee, at the direction of the Plan Committee, to defray the costs of Plan administration, including deposit into a reserve account, legal expense account or other uniform use for the benefit of all Plan Participants. In no event shall any excess proceeds of Insurance held in Trust, or any other Plan Asset, be utilized for the benefit of Covered Employers or revert to any Covered Employer or the Sponsor.

**d. Forfeiture of Fixed Benefit upon Default of the Covered Employer.** In the event that the Covered Employer is determined by the Third Party Administrator to be in default of the Adoption Agreement, then all fixed Benefits of such Participants and Beneficiaries shall be immediately forfeited to the Plan. Such forfeited amounts shall become Assets of the Plan and shall be used for the benefit of all Participants and Beneficiaries of the Plan to defray the cost of Plan administration and may be allocated to contingency reserve accounts, legal defense accounts, or used for the uniform benefit of all Plan Participants in the discretion of the Plan Committee.

**e. Forfeiture of Fixed Benefit Because of Disqualifying Event.** In the event a Participant's death is caused by suicide occurring within the first two (2) years of the Participant's participation in this Plan or on account of an event for which any Insurance held in the Rating Group to which Participant is assigned is contractually excused from paying death benefits, then the Participant shall absolutely forfeit any right to any Benefit under this Plan.

**f. Forfeiture of Death Benefit Equal to the Aggregate of Life Benefits Utilized.** A Participant shall forfeit to the Rating Group that portion of any Death Benefit equal to the aggregate of all Life Benefits claimed by the Participant during the Participant's lifetime.

**g. No Anticipation or Alienation.** Until a fixed Death Benefit or Life Benefit is due and payable to a Participant or Beneficiary upon the occurrence of an event identified in Section 5.03.b, it shall be solely and exclusively the property of the Trust. Neither the Participant nor any Beneficiary may anticipate, alienate or assign any interest in the Benefit prior to the occurrence of an event specified in Section 5.03.b. Plan Assets held in Trust shall not be deemed the property of any Covered Employer, Participant or Beneficiary, and shall not be alienable, assignable or subject to lien or attachment by them or for their benefit.

#### **5.04 Other Duties of Third Party Administrator.**

It shall be the responsibility of the Third Party Administrator to undertake all record-keeping and disclosure responsibilities described by Article VII of the Plan and, at the direction of the Committee, any acts deemed necessary to assure the Plan's compliance with the requirements of Code § 419A(f)(6) and all Treasury Regulations promulgated there under, as these may be amended from time to time. Fees and costs, including necessary professional fees, incurred by the Third Party Administrator or authorized by the Committee in connection with the performances of these services shall be deemed reasonable costs of Plan administration and shall be paid by the Trustee from the Trust.

#### **5.05 Duties and Limitations.**

As to the duties and responsibilities ascribed to the Third Party Administrator under the Plan, the Third Party Administrator shall act with the knowledge and skill of a reasonably

prudent person with experience and expertise in employee benefit plan administration. The Third Party Administrator's legal duties are limited to those activities specifically ascribed to that party under the Plan.

**5.06 Delegation of Duties/Retention of Experts and Professionals.**

With regard to its duties and responsibilities under this Plan, the Third Party Administrator may, with the permission of the Committee, retain such professionals or experts necessary to assist the Third Party Administrator to assure proper Plan administration, and may delegate its power and authority to such experts and professionals as is necessary to assure proper and prudent administration of the Plan. In no event, however, may the Third Party Administrator delegate all its duties and responsibilities ascribed to it under the Plan without the written approval of the Committee.

**5.07 Fees and Expenses of the Third Party Administrator/Indemnification.**

**a. Compensation and Indemnification.** Subject to the approval of the Committee, the Sponsor and the Third Party Administrator (from time to time) shall agree, in writing, upon a schedule of fees to compensate the Third Party Administrator for its services performed under the Plan. The Third Party Administrator shall be entitled to:

- i. be paid reasonable compensation for all services rendered by it;
- ii. be paid reimbursement, upon request, for all reasonable expenses, disbursements and advances incurred or made by the Third Party Administrator in accordance with any provision of this Plan (including the reasonable compensation and the expenses and disbursements of its counsel and its agents), except any such expense, disbursement or advance as may be attributable to its gross negligence, violation of ERISA or breach of fiduciary duty, and
- iii. be held harmless from and against any loss, liability or expense incurred without gross negligence, breach of fiduciary duty, or violation of ERISA or applicable state law, arising out of or in connection with the acceptance or administration of its duties under the Plan, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties.

**b. Payment of the Third Party Administrator for Services.** The Third Party Administrator shall be paid by the Trustee from the Sponsor's business account upon the approval of the Sponsor within thirty (30) days of the Trustee's receipt of an invoice from the Third Party Administrator or as otherwise set forth in the Third Party Administrator's services agreement with the Plan. If the Trustee fails to make any payment properly due the Third Party Administrator for

its reasonable fees, costs, expenses and fees of attorneys, certified public accountants, recognized authorities in their field and agents (not employees of the Third Party Administrator) incurred in performance of its duties, the Third Party Administrator shall have a lien against the Trust for the amount of all fees, costs, charges, and amounts that may be rightfully due it. The lien granted the Third Party Administrator hereunder shall have priority over the claims of any Participant or Beneficiary against the Trust.

## ARTICLE VI

### **TERMINATION OF PARTICIPATION OF COVERED EMPLOYER BY REASON OTHER THAN DEFAULT OF ADOPTION AGREEMENT OR WITHDRAWAL OF THE COVERED EMPLOYER**

#### **6.01 Termination of Participation of Covered Employer.**

The Third Party Administrator, at the direction of the Committee, may terminate the participation of any Covered Employer, for the following reasons:

- i. as specified in Section 3.04, above;
- ii. the Covered Employer refuses to cooperate with the requests of the Third Party Administrator (A) for information pertaining to Participants and Beneficiaries; or (B) for adjustment to Contribution amounts necessary to maintain the tax-qualified status of the Plan;
- iii. because of the insolvency or bankruptcy of the Covered Employer;
- iv. because the Covered Employer is a proprietorship or "d/b/a" (not a corporate entity, limited liability company, or partnership recognized by state law);
- v. because all Benefits due Participants and Beneficiaries of the Covered Employer have been paid in full by the Plan; or
- vi. because of the Covered Employer's failure to cooperate with the Third Party Administrator in the Plan's defense of an action or inquiry by a governmental agency including, but not limited to, the Internal Revenue Service.

#### **6.02 Manner of Termination of Participation.**

##### **a. Notice of Termination.**

- i. Where termination of participation is directed by the Third Party Administrator or is due to termination of the Plan under Article VIII, a

Covered Employer's termination of participation shall be accomplished by the Third Party Administrator by the expiration of thirty (30) days from the date the Third Party Administrator sends notice to the Covered Employer in accordance with Section 3.05.

ii. Where termination of participation is due to the withdrawal of the Covered Employer, the termination shall be accomplished by the expiration of thirty (30) days of the Third Party Administrator's receipt of notice from the Covered Employer of its desire to withdraw as provided in Section 3.05.

**b. Winding Up the Covered Employer's Affairs.** Upon the expiration of the thirty (30) day time periods stated in Section 6.02.a, the Third Party Administrator shall direct the Trustee to pay to the Participants of the Covered Employer any fixed Benefit due to the Participants. Payment of the fixed Benefit may be in any form authorized by Section 5.03. Payment of the fixed Benefit shall be made within sixty (60) calendar days from expiration date of the thirty (30) day time period stated in Section 6.02.a.

**c. Roll-Over of Fixed Benefit Amounts.** At the written direction of the Covered Employer, and with the written agreement of each Participant of the Covered Employer, the Third Party Administrator may direct the fixed Benefit amounts due the Covered Employer's Participants to be paid in the form of Insurance on the individual lives of the Participants. Such Insurance may be rolled directly to another Code § 419A(f)(6) 10 or more employer trust, a single employer trust under Code § 419(e), or other trust authorized by state or federal law. In the event of roll-over under this Section, the designation of Beneficiary forms held under the Plan shall be deemed null and void as to the Plan, and all obligations of the Plan and Trust satisfied as to the Covered Employer and its Participants and Beneficiaries.

## ARTICLE VII

### RECORDKEEPING AND DISCLOSURE REQUIREMENTS

#### **7.01 Maintenance of Records.**

The Third Party Administrator shall maintain records and documents pertaining to the Plan that are, in the opinion of the Committee, sufficient to demonstrate that the Plan satisfies Code § 419A(f)(6) and the Treasury Regulations promulgated there under. Records and documents maintained shall include, at a minimum:

i. current and past master plan documents, Summary Plan Descriptions of the Plan and summaries of material modifications or amendments, if any;

- ii. current and past Trust Agreements;
- iii. all forms, returns and reports filed or submitted to any state or federal agency, including but not limited to the Internal Revenue Service;
- iv. all correspondence or other documents relating to any legal opinion, professional consultation, legal action, claim or defense of the Plan or Trust;
- v. Adoption Agreements, marketing materials and correspondence by and between Covered Employers, Participants and Beneficiaries of the Plan;
- vi. Copies of Insurance policies held in Trust and all materials and other records pertaining to Plan Assets;
- vii. accounting statements and records of accounting from the Trustee, annual reports of the Plan and independent auditor reports; and
- viii. actuarial studies and reports.

Master plan documents and Summary Plan Descriptions of the Plan shall be maintained for as long as the Plan is in existence and for seven (7) years following Plan termination. Other records and documents shall be maintained by the Third Party Administrator for a minimum period of seven (7) years from the date of origination, submission to any entity or person, or expiration.

#### **7.02 Delegation of Record Retention Responsibilities.**

The Third Party Administrator may, in writing, delegate the responsibility to maintain records of the Plan to a third party, including the Trustee.

#### **7.03 Annual Report/ Forms Required by Law.**

Within six (6) months following the last day of the Plan Year, the Third Party Administrator and the Trustee shall cause the Plan to issue a written annual report disclosing the financial transactions and investment performance of the Plan Assets, the number of Covered Employers and Participants, the value of all Insurance held in Trust, a description of the Rating Groups contained in the Plan and the performance of Plan Assets by Rating Group, and other material information pertaining to the Plan's financial status. The annual report shall include a report by an independent auditor. The fees and costs associated with the audit conducted by an independent auditor shall be deemed reasonable costs of Plan administration and shall be paid from the Trust by the Trustee. The six (6) month time period for making reports under this section may be extended with the consent of the Committee.

The Sponsor or Plan Committee shall cause to be filed, within the time periods established under applicable federal and state law, any tax forms, reports or returns necessary under Code § 419A(f)(6) and state laws pertaining to fully insured multiple employer welfare associations.

#### **7.04 Mandatory Disclosures.**

The Third Party Administrator will cause the following disclosures to be delivered to Covered Employers, Participants and Beneficiaries, as applicable:

- i. a Summary Plan Description to Participants within ninety (90) days of the date the individual becomes a Participant;
- ii. copies of the master plan document of the Plan, the Trust Agreement, the Summary Plan Description and the Adoption Agreement of the Covered Employer shall be delivered to the Covered Employer within thirty (30) days of the issuance of Insurance on the lives of the Participants of the Covered Employer; and
- iii. copies of the Plan's annual report, along with a report of an independent auditor, shall be delivered to the Covered Employer and all Participants in the Plan before the expiration of six (6) calendar months following the last day of the Plan Year, or at such time as indicated by the Committee.

#### **7.05 Inspection of Books and Records.**

Upon the receipt of reasonable written notice (not less than fourteen (14) days), the Third Party Administrator and Trustee shall make available for inspection all plan documents, books, records, Plan disclosures and communications concerning any Covered Employer to that Covered Employer. Upon the receipt of reasonable written notice (not less than fourteen (14) days), the Third Party Administrator and Trustee shall make available for inspection all plan documents, books, records, notices and disclosures pertaining to the Plan to the Internal Revenue Service or other federal or state agency with authority or jurisdiction over matters pertaining to Code § 419A(f)(6) plans or to the Sponsor. This duty to permit inspection, however, shall not constitute a waiver by the Plan of the right and obligation of the Third Party Administrator to defend the Plan against invasions of privacy, disclosure or over-broad discovery efforts. Inspections of Plan records shall be conducted during normal business hours at the offices of the Sponsor.

## ARTICLE VIII

### AMENDMENT AND TERMINATION OF THE PLAN AND MISCELLANEOUS ADMINISTRATIVE MATTERS

#### **8.01 Plan Amendment.**

The Plan, Trust Agreement and any Adoption Agreement may be amended by the Sponsor with the approval of the Committee, in their respective sole and absolute discretion. No amendment or modification shall reduce the amount of fixed Benefit attributable to a Participant or Beneficiary under the terms of the Plan and as set forth in Exhibit "B" (as may be amended to accommodate investment performance of Plan Assets or to assure compliance with Code § 419A(f)(6)) where the Covered Employer has paid required Contributions under its Adoption Agreement.

#### **8.02 Plan Termination.**

The Plan and Trust Agreement may be terminated at any time by the Sponsor at the direction of the Committee. Termination of the Plan shall constitute a corresponding termination of the Trust Agreement and Trust. In the event of termination of the Plan and Trust Agreement the following provisions shall control:

- a. **Notice of Plan Termination.** The Third Party Administrator shall notify all Covered Employers and Participants of the Plan termination and the effective date of such termination by written notice.
- b. **Duties of Third Party Administrator and Trustee and Final Disclosures.** In the event of Plan termination the Third Party Administrator and Trustee shall, at the Committee's direction, take whatever action is necessary and reasonable to properly wind up the affairs of the Plan and maintain the Plan's qualification for Code § 419A(f)(6). After the distribution of all Plan Assets is accomplished, the Third Party Administrator and Trustee shall jointly prepare and distribute to the Sponsor, Committee Covered Employers, Participants and any Beneficiaries to whom fixed Benefits remain payable, a final report and accounting of the Plan disclosing all financial transactions, payments and disbursements from the Trust. The final report shall include a report and certification of an independent auditor.
- c. **Rights of Participants.** In the event of termination of the Plan, Participants shall be entitled to receive that fixed Benefit specified by their Rating Group and the duration of their participation in the Plan as shown by Exhibit "B." The Trustee shall deliver the fixed Benefits to Participants within sixty (60) days of the effective date of the Plan termination as stated in the Third Party Administrator's notice.



**d. Excess Plan Assets.** Any Plan Assets not allocated and distributed to Participants or used to pay the costs of administering and winding up the business affairs of the Plan shall be contributed to a 501(c)(3) charitable organization specified by the Sponsor. The Sponsor, Committee, Third Party Administrator and Trustee shall have no liability to any Participant or Employer as a result of these instructions.

**e. Finality of Termination.** The affairs of the Plan and Trust shall be deemed settled and resolved if, upon the expiration of ninety (90) days from the date of the delivery of the final report and accounting of the Plan and Trust as specified in Section 8.02.b, no notice of contest or claim is delivered to the Third Party Administrator by any Covered Employer, Participant or Beneficiary. The expiration of the ninety (90) day period stated herein shall constitute a final and conclusive legal bar and statute of limitations with regard to any further claim, dispute, cause of action or proceeding against the Plan, Trust, Trustee, Third Party Administrator, Committee or Sponsor with respect to the Plan or Trust as to the Covered Employers, Participants or Beneficiaries who have failed to provide notice required under this Section 8.02.e.

### **8.03 Fiduciary Appointments/Termination of Sponsor.**

The Plan Committee is authorized to make such appointments and delegations of authority and powers as necessary to assure the continued operation of the Plan's affairs, and such parties' appointed shall be deemed fiduciaries of the Plan within the scope of their responsibilities and duties to the Plan.

### **8.04 No Employment Contract.**

Nothing contained herein shall be construed to give rise to a contract of employment by or between a Covered Employer and any Participant of the Plan.

### **8.05 Benefits.**

Nothing in this Plan shall be construed to confer any right or claim upon any person other than the Covered Employers, the Participants and Beneficiaries. In no event shall Beneficiaries possess rights in excess of those expressly conferred upon Participants in the Plan.

### **8.06 No Guarantees/Resolutions of Disputes.**

**a. No Guarantee.** Neither the Sponsor, the Committee, the Third Party Administrator nor Trustee guarantees or assures the Trust against losses and/or depreciation of its values. No Benefit shall be payable unless and until the Third Party Administrator has verified the occurrence of the event giving rise to the Plan's duty to pay Benefits.

**b. Disputes.** Contests or disputes arising under the Plan may be filed by the contesting Covered Employer, Participant or Beneficiary by sending written notice to the Third Party Administrator at the address identified in the Summary Plan Description.

**c. Determination/Resolution of Disputes.** In the event a Participant, Beneficiary or Covered Employer contests the Third Party Administrator's determination regarding a claim for Benefits under the Plan, the contest shall be determined by the Committee in its sole and absolute discretion. The decision of the Committee shall be final and binding on the Participant, Beneficiary or Covered Employer. The Committee has sole and absolute discretion to interpret the provisions of the Plan and, in the event of any dispute or contest, its decision is final and binding on all parties. The Committee may establish appeal and dispute resolution procedures for the Plan and these shall be published in the Summary Plan Description.

#### **8.07 Withholding of Taxes and Legal Defense Fund.**

Trustee and any Underwriter shall withhold any taxes from the Trust Fund or from any distributions required to be made to Participants, Beneficiaries or otherwise which, by operation of any present or future law, is required to be withheld.

At the direction of the Committee, the Trustee or the Sponsor may hold in a separate business account a certain amount of administrative fees of the Covered Employers for the sole and exclusive purpose of providing a legal defense fund to be used for the benefit of all Plan Participants and their Beneficiaries to defend the Plan against challenge by the Internal Revenue Service, the Department of Labor or regulatory state agency. In the event such a legal defense fund is established, the amount of administrative fees to be invested by the Trustee for such fund shall be disclosed to each Covered Employer in a written agreement. Disbursements from the legal defense fund shall be made only after providing notice to the Committee.

#### **8.08 Duty to Investigate.**

The Third Party Administrator or Trustee shall have no obligation to determine, with or without investigation, the identity or mailing address of any Participant or Beneficiary entitled to any Benefits. The Third Party Administrator or Trustee shall have discharged their duties hereunder when they have transmitted Benefits payments, records, notices and other requisite documents, by First Class United States Mail, to the last address of the Covered Employer or its Participants and their Beneficiaries reported in writing to the Third Party Administrator by the Covered Employer.

#### **8.09 Third-Party Rights.**

Neither the creation of this Trust, the establishment of the Plan, nor the creation or existence of the Plan Assets, shall be construed to give any Participant or any other

person any legal right against the Committee, Third Party Administrator, Trustee, Sponsor or any other person or entity except as otherwise expressly provided for herein.

#### **8.10 Status and Adequacy of the Trust Fund.**

**a. One Fund and One Plan.** The Plan Assets held in Trust under the Trust Agreement, including any Insurance issued on the life of any Plan Participant, shall constitute one fund held under a single multiple employer plan.

**b. Status of Insurance Policies.** Insurance held in Trust under the Plan shall be deemed part of the Plan Assets and any payments from such policies or contributions to such policies shall be deemed payments from and contributions to the Plan.

**c. Benefits From Plan.** Any Benefits payable pursuant to the terms of this Plan to a Participant or Beneficiary of a Covered Employer shall be paid or provided solely from the Plan Assets. Neither the Sponsor, the Plan Committee, the Third Party Administrator, nor the Trustee, assumes any liability or responsibility for the adequacy thereof.

#### **8.11 Receipt and Release for Payments.**

Any payment of Benefits to any Participant, his legal estate, legal representative or Beneficiary, shall to the extent thereof, be in full satisfaction of all claims against the Plan, the Trustee and the Covered Employer, either of whom may require such Participant, his legal estate, legal representative or Beneficiary to execute a receipt and release thereof in such form as shall be determined by the Third Party Administrator as a condition of receipt of Benefits.

#### **8.12 Direct Transfers.**

This Plan may accept direct transfers of funds, including Insurance, from trustees of other Code § 419A(f)(6) plans and from single employer welfare benefit plans under Code § 419. On behalf of the Plan, the Trustee may accept direct transfers of funds or Insurance at the direction of the Plan Committee.

#### **8.13 The Plan.**

This Plan, Trust and the Adoption Agreement are both part of a single, integrated agreement entered into for the purpose of providing employee welfare benefits and shall be construed together. In the event a provision of any Summary Plan Description of this Plan conflicts with this Plan, the terms of the Plan will control. In the event the Employer without the express written approval of the Administrator and the Trustee makes any change in the Adoption Agreement, and such change is inconsistent with the terms of the Plan, the terms of this Plan shall govern.

**8.14 Reinsurance.**

The Trustee is empowered to secure such Insurance or reinsurance as the Trustee deems necessary and appropriate to secure the financial obligations of the Plan.

**8.15 Agent for Service of Process.**

The Third Party Administrator is hereby designated as Agent for Service of Process for all disputes arising from the Plan.

**8.16 Severability.**

If any provision of the Plan or Trust shall be determined to be invalid or unenforceable, the remaining provisions hereof shall continue to be fully effective.

**8.17 Applicable Law.**

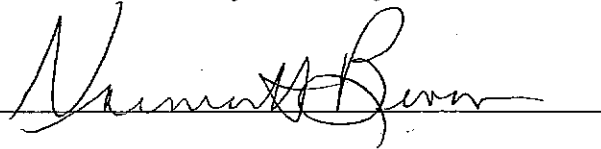
The construction and validity of the Plan, Trust Agreement, Adoption Agreements and other documents pertaining to the Plan shall be determined according to the laws of the State of Mississippi to the extent such laws are not pre-empted by federal law.

**8.18 Construction.**

The Committee shall have the sole and absolute discretion and authority to construe the terms of the Plan. Where any words are used in the Plan in the masculine, they shall be construed as though they were used in the feminine in all cases where they would so apply; and wherever any words are used herein in the singular or plural, they shall be construed as though they were used in the plural or singular, as the case may be, in all cases where they would so apply. Titles of Articles and Sections hereof are for general information only, and the Plan is not to be construed by reference thereto. Capitalized terms used herein shall have their meanings as defined in the Plan unless the context clearly indicates to the contrary.

**END OF PLAN TERMS**

**IN WITNESS WHEREOF**, the Sponsor has adopted and executed this Plan with the approval of the Plan Committee, as amended as of the 1st day of January, 2005.

BY: 

MILLENNIUM MARKETING GROUP, LLC

**EXHIBIT "A"**

**ADOPTION AGREEMENT**

**EXHIBIT "B"**

**RATING GROUP IDENTIFICATIONS  
WITH FIXED CONTRIBUTION  
AND SCHEDULE OF FIXED BENEFIT AMOUNTS**

**Please see the Rating Group Master Binder  
which is incorporated herein by reference and made a part hereof**

**EXHIBIT "C"**

**INSURANCE PRODUCTS OFFERED UNDER THE PLAN**



**TRUST AGREEMENT FOR THE  
MILLENNIUM  
MULTIPLE EMPLOYER WELFARE BENEFIT PLAN<sup>1</sup>**

THIS TRUST AGREEMENT (the “Agreement”) by and between Millennium Marketing Group, L.L.C. (the “Plan Sponsor”) and Republic Bank & Trust (the “Trustee”) is dated as of, but not necessarily on the 20<sup>th</sup> day of February, 2003 and is that Trust Agreement referenced in THE MILLENNIUM MULTIPLE EMPLOYER WELFARE BENEFIT PLAN dated the 1<sup>st</sup> day of November, 2002.

WHEREAS, the intent of the Plan Sponsor is to provide fully insured welfare benefits for Participants and their Beneficiaries of the Covered Employers of the Plan as set forth in the Plan (as defined below) of the Millennium Multiple Employer Welfare Benefit Plan (the “Plan”); and

WHEREAS, the Plan Sponsor intends that Qualifying Employers will enter into Adoption Agreements under the Plan from time to time; and

WHEREAS, the Plan Sponsor desires to fund Benefits as provided by the Plan as amended from time to time; and

WHEREAS, this Agreement creates a Trust to fund the Benefits provided by the Plan;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein, the Plan Sponsor and the Trustee agree as follows:

**ARTICLE I**

**DEFINITIONS**

- 1.01 “Adoption Agreement” means the written agreement entered into by a Qualifying Employer under this Plan under which such Qualifying Employer adopts the Plan and agrees to abide by the Plan’s provisions.
- 1.02 “Beneficiary” means the person(s) identified by a Participant in a written “Designation of Beneficiary Form” as specified in Section 4.03.b of the Plan to receive Benefits and the automatic Beneficiary under Section 4.03.c.
- 1.03 “Benefit” means any monetary amount paid from the Trust as provided by the Plan to a Participant in the Plan or a designated Beneficiary.
- 1.04 “Code” means the Internal Revenue Code of 1986, as amended, as clarified and construed under Treasury Regulations and controlling federal case law.

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<sup>1</sup> Copyright 2002. Millennium Marketing Group, LLC.

- 1.05 “Contribution” means the amount paid by a Covered Employer to the Trust created as required by the Plan and as specified in the Adoption Agreement.
- 1.06 “Covered Employer” means a Qualified Employer who has entered into an Adoption Agreement.
- 1.07 “Custodian” means any individual appointed by the Plan Sponsor under a custody agreement whose primary responsibility is to receive and hold amounts paid by a Covered Employer for payment for Insurance to be transferred to the Trustee as a Contribution.
- 1.08 “Effective Date” means the effective date of the Plan: November 1, 2002.
- 1.09 “Eligible Employee” means an Employee of a Covered Employer who has satisfied the eligibility criteria established in the Adoption Agreement of the Covered Employer and is therefore entitled to become a Participant in the Plan.
- 1.10 “Employee” means any individual lawfully employed to work in the United States by a Covered Employer who is an “employee” under federal common law, and for whom the Covered Employer is required to withhold amounts from the individual’s wages for state and federal employment taxes.
- 1.11 “Employer” means any entity or individual that lawfully employs individuals to work in the United States and who pays them wages subject to withholdings for federal and state employment taxes.
- 1.12 “Fiduciary” means a person who has discretionary powers and authorities with regard to the establishment, maintenance and administration of this Plan and includes the Plan Sponsor, the Plan Committee, the Trustee and the Third Party Administrator.
- 1.13 “Insurance” means any policy of insurance issued by any legal reserve life insurance company under which that insurer is obligated to pay monies to the Trust upon the occasion of the death of a Plan Participant or other triggering event under the Plan. Notwithstanding the foregoing, “Insurance” shall be limited to those insurance products described in Exhibit “C,” to the Plan.
- 1.14 “Participant” means an Eligible Employee identified in the Adoption Agreement of a Covered Employer for whom a policy of Insurance has been issued and is in full force and effect.
- 1.15 “Participation Date” with regard to a particular Participant, means the first effective date of a policy of Insurance issued on the life of the Participant, or the first date of Participation under the terms of the Plan, if later.
- 1.16 “Plan” means the Millennium Multiple Employer Welfare Benefit Plan.

- 1.17 “Plan Assets” means all Insurance, monies, real or personal property held in the Trust and any earnings or income attributable thereto.
- 1.18 “Plan Committee” means the Committee as defined by the Plan, comprised of five (5) individuals as appointed by the Plan Sponsor from time to time, who shall interpret the terms of the Plan in their sole and absolute discretion and shall undertake other functions as set forth herein.
- 1.18 “Plan Sponsor” means the Plan Sponsor, Millennium Marketing Group, L.L.C.
- 1.19 “Qualifying Employer” means an Employer employing two or more Employees who is a “C”-corporation, an “S”-corporation, a limited liability company, a limited liability partnership, a professional corporation, or partnership.
- 1.20 “Third Party Administrator” means any individual appointed by the Plan Sponsor under an administrative services agreement whose primary responsibility is to administer claims of Participants and Beneficiaries, assure that disclosures and other required communications are accomplished, and conduct other business transactions required for this Plan to achieve its stated purposes.
- 1.21 “Trust” means the Plan Assets held in accordance with this Agreement.
- 1.22 “Trustee” means the individual or entity that entered into this Agreement with the Plan, or any successor thereto.

## ARTICLE II

### PURPOSE

The sole purpose of the Trust is to fund the fixed Benefits provided by the Plan for Participants and any Beneficiary, and to cover the ordinary and necessary expenses of Plan administration. Except as otherwise provided herein, no part of the principal or income of the Trust shall be paid, or revert, to the Plan Sponsor or any Covered Employer, or be used in any manner other than for the exclusive benefit of Participants and Beneficiaries and ordinary and necessary Plan administration. All acts taken by the Trustee shall be uniform in their nature and application to all persons similarly situated, and no acts that shall be deemed to be discriminatory under the Code.

## ARTICLE III

### CONTRIBUTIONS AND PLAN ASSETS

3.01 Contributions. Covered Employers will make Contributions in cash to the Custodian, which shall purchase such property as instructed by the Plan Sponsor or Plan Committee, for subsequent transfer to the Trustee as set forth in the Adoption Agreements applicable to them. Other Contributions shall be made in cash or in the form of such other property as the Trustee

may from time to time deem acceptable and which shall have been delivered to the Trustee. All Contributions so received, together with the income therefrom and any other increment thereon shall be held, invested, reinvested and administered by the Trustee pursuant to the terms of this Agreement and the Plan Document. The Trustee shall not be responsible for the calculation of any Benefit or other benefit under the Plan or the collection of any contribution to the Trust, but shall be responsible only for property received by it pursuant to this Agreement.

3.02 Insurance as Plan Assets. The Trustee may hold in Trust Insurance on the lives of Participants as specified in the Plan. Insurance shall be deemed Plan Assets and any contributions or premiums paid to Underwriters for such Insurance, and any proceeds derived from such Insurance shall also be deemed Plan Assets.

#### **ARTICLE IV**

##### **PAYMENTS OF BENEFITS**

The Third Party Administrator or the Plan Committee, shall from time to time direct the Trustee to make payments out of the Trust to the persons or entities to whom such payments are to be made in accordance with the terms of the Plan, in such amounts and for such purposes as may be specified by the Third Party Administrator or the Plan Committee under the terms of the Plan. The Trustee shall be under no duty of inquiry and have no liability for any payment made pursuant to the direction of the Third Party Administrator or the Plan Committee.

#### **ARTICLE V**

##### **POWERS OF TRUSTEE**

The Trustee shall receive, hold, invest, and reinvest Contributions to the Trust, shall manage Insurance and receive Insurance proceeds, and shall make disbursements from the Trust pursuant to the directions of the Third Party Administrator or Plan Committee and in accordance with the terms of this Agreement, the Plan and the Funding Policy (as defined below). Subject only to restrictions or directions set forth in the Funding Policy established by the Plan Committee and approved by the Plan Sponsor and Third Party Administrator, the Trustee shall have the following powers and rights, in addition to any other powers granted to the Trustee by law or under the Trust:

- (a) to hold and safe keep the Plan Assets deposited, collect and receive all payment of benefits from Insurance, give receipts therefore, and hold, invest, disburse or otherwise dispose of Plan Assets held, or the proceeds therefrom, as directed from time to time by the Plan Committee;
- (b) to arbitrate, defend, enforce, release or settle any claim of or against the Trust;
- (c) to do all such acts, take all such proceedings, and exercise all such rights and privileges, although not specifically mentioned herein, as the Trustee may deem necessary to administer the Trust, and to carry out the purposes of this Trust;

(d) to take and hold all securities or other personal property in bearer form, in the name of any Trustee, or in the name of a nominee, with or without disclosing any fiduciary relationship, but the Trustee shall be liable for any wrongful act of the nominee with respect to such assets;

(e) to employ and pay reasonable compensation to agents, investment counsel and attorneys, including the Trustee and any person, partnership, or other entity with which the Trustee may be associated. The foregoing authority shall include, without limitation thereof, the power to authorize any Trustee, person or persons to withdraw funds from any bank account maintained by the trusts and/or to have access to any safe deposit box maintained by the trusts. In addition, any corporate Trustee acting hereunder is authorized to appoint and remove by written instrument, containing such terms and conditions as any such corporate Trustee may deem appropriate, any natural or legal person or persons as special Trustee or special Trustees to hold all or any part of any real property or other interest in property held in trust hereunder which any such corporate Trustee determines, in its sole discretion, it cannot or, because of legal limitations on its powers, it deems inadvisable to hold as Trustee hereunder, and any such special Trustee, except as specifically limited by the appointing instrument, shall have all the powers, authority and discretion herein granted to any such corporate Trustee with respect to the trust property held by any such special Trustee. No Trustee shall be liable for any neglect, omission, or wrongdoing of such agents, investment counsel, attorneys, or special Trustees, provided that any such corporate Trustee shall have exercised reasonable care in the selection of any such special Trustee;

(f) to execute and deliver all necessary or proper deeds or other instruments; and

(g) to take, hold and convey title to real estate or interests therein in the name of any Trustee or in the name of the nominee of the Trustee without disclosing the trusts; and in accepting title to the real estate neither the Trustee nor the nominee shall be held to have assumed the payment of any encumbrances thereon. All conveyances executed and delivered by the Trustee or the nominee shall be without covenants of warranty except as against the Trustee's or nominee's own acts.

## ARTICLE VI

### TRUSTEE'S DUTIES

6.01 General Duties and Commitments. The Trustee shall hold Contributions to the Trust, receive proceeds from Insurance, manage Insurance and make distributions from the Trust in accordance with the Plan, the directions of the Third Party Administrator or Plan Committee, and as required in order to pay all taxes of any kind that may be assessed against the Trust, and all expenses and fees for the Trust properly borne by the Trust in accordance with its terms. The Trustee shall work with the Third Party Administrator and Plan Committee in all business affairs of the Plan in the manner set forth by the Plan.

6.02 **Trustee's Discharge of Duties.** All authority and discretion with respect to the Plan Assets, shall be retained by the Plan Committee (or, in certain cases, the Plan Sponsor), and the Trustee shall discharge its duties only on the instructions the Plan Committee, Plan Sponsor, or the Third Party Administrator as set forth in the Plan.

6.03 **Scope of Duties and Obligations.** The duties and obligations of the Trustee shall be limited to those expressly imposed upon it by this Agreement.

6.04 **Funding Policy.** Within sixty (60) days of the execution and delivery of this Agreement to the Plan Sponsor, the Plan Committee shall develop and submit to the Plan Sponsor, the Third Party Administrator and Trustee a funding and investment policy (the "Funding Policy"). This Funding Policy shall set forth the Plan Committee's plan for investment of Plan Assets held in the Trust and shall describe the principals, guidelines and standards of investment of Plan Assets. The Plan Sponsor, Trustee and Third Party Administrator shall provide written approval of the Funding Policy within thirty (30) days of their receipt of the Funding Policy.

6.05 **Records and Disclosures.** The Trustee shall keep accurate and detailed accounts and records of all investments, receipts, disbursements, and other transactions, and shall make reports as set forth in the Plan, and within the time periods set by the Plan. For purposes of accounting and administration, the records of the Trust shall be maintained on a cash basis method. Disclosures and inspections of records of the Trust shall be made available as the Plan provides.

6.06 **Multiple Trustees.** Except as is otherwise expressly provided in this document, when there are two Trustees authorized to act with respect to any matter, the agreement of both Trustees shall be required. Each Trustee shall be liable only for the Trustee's own acts in the administration of the Trust. No Trustee shall be in any way or to any extent liable to the Participating Employees or Beneficiaries or others for anything done hereunder by a Co-Trustee to which the Trustee did not actively consent or of which the Trustee did not actively approve.

6.07 **Notices and Communications.** Notice and written communications by and between the Plan Sponsor, Plan Committee, Trustee and/or the Third Party Administrator shall be given as set forth below:

To the Plan Sponsor and Plan Committee:

Millennium Marketing Group, L.L.C.  
Att: Norm Bevan  
2777 Allen Parkway, Suite 1122  
Houston, Texas 77019

To the Third Party Administrator:

Mr. William E. MaGee, CPA  
BKD, LLP  
400 W. Capitol Avenue, Suite 2500  
P.O. Box 3667  
Little Rock, Arkansas 72203-3667

To the Trustee:

Mr. Chuck R. Thompson  
President and CEO  
Republic Bank & Trust  
401 West Main  
Norman, Oklahoma 73069

## ARTICLE VII

### LIABILITIES AND IMMUNITIES

7.01 Limitation of Liability. Except as otherwise provided by controlling law, neither the establishment of the Trust created hereunder nor any modification thereof nor the creation of any fund or account or the payment of any benefits shall be construed as giving to any Covered Employer, any Participant or Beneficiary hereunder any legal or equitable right against the Plan Sponsor, any officer, director, employer or agent of the Plan Sponsor, the Plan Committee, the or the Third Party Administrator, or against the Trustee or any other Plan Fiduciary, except as provided in this Agreement.

7.02 Limitation of Liability of Trustee. The Trustee will be accountable only for fraud, professional negligence, default of this Agreement or misuse of Plan Assets, and will act with regard to the Plan and Plan Assets as a reasonably prudent fiduciary with expertise and experience dealing with plan assets and plan transactions of the nature and kind set forth in this Plan. In no event shall the Trustee be liable for any acts of any predecessor Trustee of the Plan.

## ARTICLE VIII

### RESIGNATION, REMOVAL AND SUCCESSION OF TRUSTEE

8.01 Removal/Resignation of a Trustee. The Plan Sponsor or Plan Committee may remove the Trustee at any time, with or without cause, upon thirty (30) days notice in writing to the Trustee. The Trustee may resign at any time, with or without cause, upon thirty (30) days notice in writing to the Third-Party Administrator. The Trustee's resignation or removal shall be

effective upon the expiration of such thirty (30) day period regardless of whether a successor Trustee is appointed. In no event shall the Trustee be liable to any Covered Employer, Participant, or Beneficiary for merely exercising its right to resign as Trustee or for merely being removed by the Plan Sponsor. Upon receipt of the resignation of the Trustee, or upon the removal of the Trustee, the Plan Sponsor or Plan Committee shall appoint and designate a successor Trustee or Trustees, and the Trustee shall assign and transfer and pay over to such successor Trustee the funds and properties then constituting the Trust. If for any reason a successor Trustee is not appointed, within the thirty (30) day notice period provided herein, then the Plan Committee may appoint a temporary Trustee who shall serve according to this Agreement.

8.02 Power of the Successor Trustee/Limit of Liability. Each successor Trustee shall have the same rights, titles, powers, duties, discretion and immunities and otherwise be in the same position as if originally named Trustee as set forth in this Plan and the Trust Agreement. No successor Trustee shall be liable for any act or failure to act of a predecessor Trustee. With the written approval of the Plan Sponsor and Plan Committee, any successor Trustee may accept, in writing, the final accounting and written report of any predecessor Trustee, and such acceptance shall constitute the Plan's full release of liability of the predecessor Trustee for any act or omission with regard to the management of the Plan Assets, the acceptance of contributions, and the payment of Benefits and Plan expenses as set forth in the Trust Agreement and the Plan.

## ARTICLE IX

### CORRECTION OF ERRORS

9.01 Mistake. Any mistake in any payment or in any direction, certificate, notice or other document furnished or issued by the Plan Sponsor, Plan Committee, Third Party Administrator or by the Trustee in connection herewith may be corrected when the mistake becomes known, and the mistaken party may direct any adjustment or action which it deems practicable under the circumstances to remedy the mistake with the assistance of the Trustee.

9.02 Refund of Contribution. Except as provided by Section 3.06.e of the Plan as to initial Contributions, no Contribution made to the Trust may be refunded unless a Contribution was made:

- (a) Because of a mistake of fact;
- (b) Conditioned upon a continued favorable Internal Revenue Service ruling and such favorable ruling is revoked or not obtained; or
- (c) Conditioned upon being allowed as a tax deduction and such deduction is disallowed.



## ARTICLE X

### TRUSTEE'S FEES AND EXPENSES

10.01 Compensation of the Trustee and Indemnification. The Plan Sponsor or Plan Committee and the Trustee (from time to time) shall agree upon a schedule of fees to compensate the Trustee for its services performed under the Plan and Trust Agreement. Initially, the Trustee shall be entitled to:

(a) be paid reasonable compensation for all services rendered by it, in the amount of \$650.00, for each Covered Employer, annually.

(b) be paid reimbursement, upon request, for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Plan (including the reasonable compensation and the expenses and disbursements of its counsel and its agents), except any such expense, disbursement or advance as may be attributable to its gross negligence, breach of trust; and

(c) be held harmless from and against any loss, liability or expense incurred without gross negligence, breach of fiduciary duty, or breach of trust on its part, arising out of or in connection with the acceptance or administration of this Trust or its duties under the Plan and Trust Agreement, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties.

10.02 Payment of the Trustee for Services. The Trustee shall be paid from the funds held in Trust upon direction of the Plan Committee or Third Party Administrator upon thirty (30) days of the Third Party Administrator's receipt of an invoice from the Trustee. If the Third-Party Administrator or Plan Committee fails to direct payment due the Trustee for its reasonable fees, costs, expenses and fees of attorneys, certified public accountants, recognized authorities in their field and agents (not employees of the Trustee) incurred in performance of its duties, or if funds are not available in the Trust for payment, the Trustee shall have a lien against the Trust for the amount of all fees, costs, charges, and amounts that may be rightfully due it. The lien granted the Trustee hereunder shall have priority over the claims of any Participant or Beneficiary against the Trust.

## ARTICLE XI

### AMENDMENT AND TERMINATION

11.01 Amendments. This Agreement may be amended at any time, in whole or in part, by action of the Plan Sponsor in a written instrument. No such amendment shall have the effect of diverting any portion of the Trust for purposes other than the exclusive benefit of Participants and Beneficiaries. No amendment shall cause or permit any portion of the Trust to revert to or become the property of the Plan Sponsor or any Employer.

11.02 Termination of Plan. The Plan Sponsor may terminate the Plan at any time by and through a written instrument. Upon such termination, the Trust shall be paid out by the Trustee as provided in the Plan. In making such payments, the Trustee may reserve from the assets in the Trust such amount as it shall reasonably deem necessary to provide for any sums chargeable against the Trust for which the Trustee may be liable, or for payment of expenses in connection with the settlement of its accounts and the termination of this Agreement.

## ARTICLE XII

### GENERAL

12.01 Limitation on Liability. This Agreement shall not cause the Plan Sponsor, Plan Committee, Third Party Administrator or Trustee to be liable for any benefits or payments required under the Plan. Neither the Plan Sponsor, Plan Committee, Third Party Administrator nor the Trustee shall be responsible for the validity of any contract of Insurance issued in connection with the Plan or Trust or for the failure on the part of the Underwriter to make payments provided by such contract.

12.02 Protection Against Creditors. No payment under this Trust shall be subject in any way to alienation, sale, transfer, assignment, pledge, attachment, garnishment, execution or encumbrance of any kind, and any attempt to accomplish the same shall be void.

12.03 Employment Not Affected. The terms of employment of any Employee of the Covered Employers participating in the Plan shall not be affected in any way by the Trust nor shall this Trust be construed in any way so as to guarantee or extend the employment of any Employee.

12.04 Domicile of Trust and Construction of Trust. The Plan and this Trust are domiciled in the State of Mississippi. Notwithstanding its domicile, this Trust shall be construed and enforced according to the laws of the State of Oklahoma.

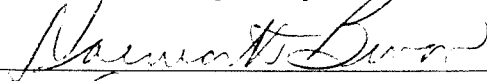
12.05 Severable Provisions. If any provision of this Trust shall be held illegal or invalid for any reason, such determination shall not affect the remaining provisions of the Trust.

12.06 Headings. The headings of this Trust are for convenience only and are not substantive terms of the Trust.

IN WITNESS WHEREOF, this Agreement has been executed by the Plan Sponsor and the Trustee as of the day and year first written above.

“PLAN SPONSOR”

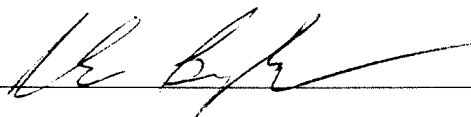
Millennium Marketing Group, LLC

By: 

Its: Pres. + CEO

“TRUSTEE”

REPUBLIC BANK & TRUST

By: 

Its: Vice President Trust

**Exhibit 4**

**CV of Proposed Trustee of Liquidation Trust Agreement**

*[To be Provided before the hearing on the Disclosure Statement]*

**Exhibit 5**

**Proposed Ballot for Class 4**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

**In re:** §  
§  
**MILLENNIUM MULTIPLE EMPLOYER** § **CASE NO. 10-13528**  
**WELFARE BENEFIT PLAN** § **(Chapter 11)**  
§  
**Debtor.** §

**BALLOT FOR ACCEPTING OR REJECTING THE PLAN OF REORGANIZATION  
OF THE MILLENNIUM MULTIPLE EMPLOYER WELFARE BENEFIT PLAN**

**CLASS 4: PARTICIPANT CLAIMS**

This ballot (the "Ballot") is to be used to vote to accept or reject the First Amended Chapter 11 Plan of Liquidation (the "Plan") filed by the Millennium Multiple Employer Welfare Benefit Plan (the "Debtor" or the "Plan Proponent"). Please refer to the voting instructions herein. Capitalized terms used in this Ballot but not otherwise defined herein shall have the meaning ascribed to such terms in the Plan.

This Ballot is being sent to you because records indicate that you are a holder of an Allowed Participant Claim in Class 4 as of \_\_\_\_\_ (the "Voting Record Date"), and accordingly, you have a right to vote to accept or reject the Plan. Your rights are described in the Disclosure Statement. The Plan and Disclosure Statement are included in the packet you are receiving with this Ballot (collectively, the "Solicitation Package").

**PLEASE READ AND FOLLOW THESE INSTRUCTIONS CAREFULLY AND  
RETURN YOUR BALLOT IN THE ENVELOPE PROVIDED.**

**THE VOTING DEADLINE IS 5:00 P.M. (PREVAILING CENTRAL TIME)  
ON \_\_\_\_\_**

**IMPORTANT**

**YOU SHOULD REVIEW THE DISCLOSURE STATEMENT AND THE PLAN FOR A DESCRIPTION OF THE PLAN AND ITS EFFECTS ON HOLDERS OF CLAIMS AGAINST THE DEBTOR BEFORE YOU VOTE. YOU MAY WISH TO SEEK LEGAL ADVICE CONCERNING THE PLAN AND YOUR CLASSIFICATION AND TREATMENT UNDER THE PLAN. YOUR CLAIM IS TREATED AS A CLASS 4 PARTICIPANT CLAIM UNDER THE PLAN.**

**PLEASE READ CAREFULLY AND FOLLOW THESE INSTRUCTIONS ON RETURNING YOUR BALLOT. FAILURE TO RETURN YOUR BALLOT SO THAT**

**IT IS ACTUALLY RECEIVED BY THE DEBTOR BY 5:00 P.M. (PREVAILING CENTRAL TIME) ON \_\_\_\_\_ WILL RESULT IN YOUR BALLOT NOT BEING COUNTED.**

YOU MUST SUBMIT YOUR BALLOT TO THE DEBTOR USING THE FOLLOWING ADDRESS:

MELANIE HOLMES  
FRANKLIN SKIERSKI LOVALL HAYWARD, LLP  
CHASE BANK BUILDING  
10501 N. CENTRAL EXPRESSWAY, SUITE 106  
DALLAS, TEXAS 75231

YOU MAY RETURN YOUR BALLOT BY MAIL, HAND DELIVERY, OR OVERNIGHT COURIER. BALLOTS SENT VIA FACSIMILE OR EMAIL WILL NOT BE COUNTED.

PLEASE TAKE NOTICE that the Plan provides for distributions to each holder of an Allowed Participant Claim. The amount of the Allowed Participant Claim is based upon the Participant's Life Benefit, as set forth in Article 4.4 of the Plan.<sup>1</sup> The Plan generally provides for the distribution of the Life Benefit as calculated pursuant to Article 4.4.1.2 of the Plan, and for distributions of supplemental Life Benefits of remaining funds after liquidation of assets in proportion to the Participant's Life Benefit.

In addition, in the event of settlements with certain Settling Defendants, the Plan provides for additional distributions to the holders of Allowed Participant Claims who did not file a lawsuit against the Debtor before June 9, 2010 ("Non-Litigation Participants"), as follows:

Subject to the condition precedent that at least eighty percent (80%) in number and amount of the Allowed Non-Litigation Participant Claims become Settlement Participants by accepting the third party settlement, each Settlement Participant shall receive his or her Pro Rata Share of any distributions of the Settlement Fund and, in exchange, grant a release to the Settling Defendants and agree to an injunction precluding litigation against the Settling Defendants.

In recognition that some holders of Allowed Non-Litigation Participant Claims may, for whatever reason, not wish to release and discharge the Settling Defendants and/or may not wish to be subject to the injunction provided in Section 11.2.3 of the Plan, the Ballot allows holders of Non-Litigation Participant Claims to reject the settlement payment.

In addition, in the event the holder of a Class 4 Participant Claim timely executes and returns its Ballot pursuant to the Voting Instructions accompanying the

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<sup>1</sup> The descriptions included herein are general in nature, and are superseded in all respects by the Plan. Please refer to the Plan and Disclosure Statement if you have any questions about the treatment of your Claim.

Ballots, but does not clearly indicate on the Ballot the Participant's acceptance or rejection of the Plan or the Participant's election to become a Settlement Participant, the Participant shall be deemed to have accepted the Plan and/or to have elected to become a Settlement Participant, as the case may be.

**PLEASE READ BOTH SIDES OF THIS BALLOT BEFORE COMPLETING. PLEASE COMPLETE, DATE AND SIGN THIS BALLOT AND RETURN IT TO THE DEBTOR IN ACCORDANCE WITH THE INSTRUCTIONS ACCOMPANYING THIS BALLOT. THIS BALLOT MUST BE RECEIVED BY THE DEBTOR ON OR BEFORE \_\_\_\_\_, 2011 AT 5:00 P.M., PREVAILING CENTRAL TIME.**

Please note that you must vote your entire Class 4 Participant Claim to accept or reject the Plan. You cannot split your vote. For purposes of tabulating the votes, you will be deemed to have voted the full amount of your Claim.

An authorized signatory of the holder of a Class 4 Participant Claim may execute this Ballot, but must provide the name and address of the holder of the Allowed Participant Claim on this Ballot and may be required to submit evidence to the Bankruptcy Court demonstrating the signatory's authorization to vote on behalf of the holder of the Allowed Participant Claim.

You must provide all of the information requested by this Ballot. Failure to do so may result in your vote not counting.

The Plan Proponent reserves the right to seek an extension of the Voting Deadline until properly completed Ballots indicating acceptance of the Plan in sufficient number and amount to meet the voting requirements prescribed by section 1126 of the Bankruptcy Code have been received.

Item 1: Voting Classification and Amount

The undersigned is a holder of an Allowed Participant Claim against the Debtor in the amount stated below for purposes of voting on the Plan.

Item 2: Vote

The undersigned hereby votes the Allowed Participant Claim as set forth in Item 1 above, and as otherwise provided for in the Plan, to **(check only one)**:

<input type="checkbox"/> <b>ACCEPT</b> the Plan	<input type="checkbox"/> <b>REJECT</b> the Plan.
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Item 3: Optional Election

**To Be Completed Only By Holders of Non-Litigation Participant Claims. You are entitled to complete this section if you are a Participant who did not file a lawsuit against the Debtor before June 9, 2010.**

The undersigned hereby elects to become a Settlement Participant and shall therefore be entitled to receive his or her Pro Rata Share of any distributions of the Settlement Fund. Election is at your option.

**ACCEPT the settlement payment.**       **REJECT the settlement payment.**

By checking "Accept", the holder of a Non-Litigation Participant Claim(s) in Class 4 has expressly elected to be treated as a Settlement Participant and will be entitled to receive his or her Pro Rata share of any distributions of the Settlement Fund and has thereby elected to grant the Release and injunction provided in Section 11.2.3 of the Plan.

Item 4: Certifications

Upon execution of this Ballot, the undersigned certifies that:

1. as of the Voting Record Date, the undersigned was the beneficial owner (or authorized signatory for a beneficial owner) of an Allowed Participant Claim;
2. the holder has received a copy of the Solicitation Package and acknowledges that the solicitation is being made pursuant to the terms and conditions set forth therein;
3. the holder has not relied on any statement made or other information received from any person with respect to the Plan other than the information contained in the Solicitation Package or other publicly available materials;
4. the holder understands and acknowledges that only the latest-dated Ballot cast and actually received by the Debtor prior to the Voting Deadline will be counted and, if any other Ballot has been previously cast with respect to the holder's Allowed Participant Claim, the other Ballot will be deemed revoked; and
5. the holder understands and acknowledges that all authority conferred or agreed to be conferred pursuant to this Ballot, and every obligation of the holder hereunder, shall be binding upon the transferees, successors, assigns, heirs, executors, administrators, and legal representatives of the holder and shall not be affected by, and shall survive, the death or incapacity of the holder.

***Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct and that I have authority under applicable law to cast this Ballot.***

Name of Creditor: \_\_\_\_\_  
(Print or Type)

By: \_\_\_\_\_  
(Signature of Creditor or Authorized Agent)

Print Name of Signatory: \_\_\_\_\_

Title: \_\_\_\_\_

(If Appropriate)

CLAIM AMOUNT FOR VOTING PURPOSES:  
\$ \_\_\_\_\_ (see Exhibit \_\_\_\_ to the Plan)

Street Address: \_\_\_\_\_

\_\_\_\_\_  
(City, State and Zip Code)

Telephone Number: \_\_\_\_\_

Date Completed: \_\_\_\_\_

IF YOU HAVE ANY QUESTIONS REGARDING THIS BALLOT OR THE  
VOTING INSTRUCTIONS, PLEASE CALL MELANIE HOLMES, FRANKLIN SKIERSKI  
LOVALL HAYWARD, LLP, CHASE BANK BUILDING, 10501 N. CENTRAL  
EXPRESSWAY, SUITE 106, DALLAS, TEXAS 75231  
AT (972) 755-7100

### VOTING INSTRUCTIONS

- A. The Plan can be confirmed by the Bankruptcy Court and thereby made binding upon you if it is accepted by the holders of at least two-thirds in amount and more than one-half in number of Claims in at least one class that votes on the Plan and if the Plan otherwise satisfies the requirements of confirmation provided by section 1129(a) of the Bankruptcy Code.
- B. To ensure that your vote is counted, you must (i) complete the Ballot; (ii) indicate your decision to either accept or reject the Plan in Item 2 of the Ballot; and (iii) sign and return

the Ballot in accordance with the instructions on the Ballot to Melanie Holmes, Franklin Skierski Lovall Hayward, LLP, Chase Bank Building, 10501 N. Central Expressway, Suite 106, Dallas, Texas 75231, so that it is actually received by the Voting Deadline. You may return your Ballot by mail, hand delivery, or overnight courier. **BALLOTS SENT VIA FACSIMILE OR EMAIL WILL NOT BE COUNTED.**

- C. If a Ballot is received after the Voting Deadline, it will not be counted unless the Debtor determines otherwise or as permitted by the Bankruptcy Court. In all cases, holders should allow sufficient time to assure timely delivery. No Ballot should be sent to the Debtor.
- D. If multiple Ballots are received from an individual holder with respect to the same Claim prior to the Voting Deadline, the last Ballot timely received will supersede and revoke any previously received Ballot.
- E. The Ballot does not constitute, and shall not be deemed to be: (i) a proof of claim; or (ii) an assertion or admission with respect to any Claim.
- F. Please be sure to sign and date your Ballot. If you are completing the Ballot on behalf of an entity, indicate your relationship with that entity and the capacity in which you are signing.
- G. You must vote your entire Allowed Participant Claim to either accept or reject the Plan and may not split your vote. Accordingly, a Ballot that partially rejects and partially accepts the Plan will not be counted.
- H. The following Ballots will not be counted in determining the acceptance or rejection of the Plan: (i) any Ballot that is illegible or contains insufficient information to permit the identification of the holder; (ii) any Ballot cast by a Person or entity that does not hold a Claim in a class that is entitled to vote on the Plan; (iii) any unsigned Ballot; (iv) any Ballot marked both to accept and reject the Plan; and/or (v) any Ballot submitted by a party not entitled to cast a vote with respect to the Plan.

**Exhibit 6**

**Proposed Ballot for Other Classes**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

**In re:** §  
§  
**MILLENNIUM MULTIPLE EMPLOYER** § **CASE NO. 10-13528**  
**WELFARE BENEFIT PLAN** § **(Chapter 11)**  
§  
**Debtor.** §

**BALLOT FOR ACCEPTING OR REJECTING THE PLAN OF  
REORGANIZATION OF THE MILLENNIUM MULTIPLE  
EMPLOYER WELFARE BENEFIT PLAN**

**THIS BALLOT IS TO BE USED BY HOLDERS OF THE FOLLOWING  
CLAIMS:**

- CLASS 1: PRIORITY CLAIMS**
- CLASS 2: SECURED CLAIMS**
- CLASS 3: UNSECURED CLAIMS – OTHER THAN PARTICIPANT  
CLAIMS**
- CLASS 5: SUBORDINATED CLAIMS**

This ballot (the “Ballot”) is to be used to vote to accept or reject the Joint Chapter 11 Plan of Liquidation (the “Plan”) filed by the Millennium Multiple Employer Welfare Benefit Plan (the “Debtor”) and The Official Unsecured Creditors Committee (the “Committee”, and collectively with the Debtor, the “Plan Proponents”). Please refer to the voting instructions herein. Capitalized terms used in this Ballot but not otherwise defined herein shall have the meaning ascribed to such terms in the Plan.

This Ballot is being sent to you because records indicate that you are a holder of an Allowed Claim in Classes 1, 2, 3 or 5 as of \_\_\_\_\_ (the “Voting Record Date”), and accordingly, you have a right to vote to accept or reject the Plan. Your rights are described in the Disclosure Statement. The Plan and Disclosure Statement are included in the packet you are receiving with this Ballot (collectively, the “Solicitation Package”).

**PLEASE READ AND FOLLOW THESE INSTRUCTIONS CAREFULLY AND  
RETURN YOUR BALLOT IN THE ENVELOPE PROVIDED.**

**THE VOTING DEADLINE IS 5:00 P.M. (PREVAILING CENTRAL TIME)  
ON \_\_\_\_\_**

**IMPORTANT**

**YOU SHOULD REVIEW THE DISCLOSURE STATEMENT AND THE PLAN FOR A DESCRIPTION OF THE PLAN AND ITS EFFECTS ON HOLDERS OF CLAIMS AGAINST THE DEBTOR BEFORE YOU VOTE. YOU MAY WISH TO SEEK LEGAL ADVICE CONCERNING THE PLAN AND YOUR CLASSIFICATION AND TREATMENT UNDER THE PLAN. YOUR CLAIM IS TREATED AS A CLASS 1 PRIORITY CLAIM, A CLASS 2 SECURED CLAIM, A CLASS 3 UNSECURED CLAIM – OTHER THAN PARTICIPANT CLAIMS, OR A CLASS 5 SUBORDINATED CLAIM UNDER THE PLAN.**

**PLEASE READ CAREFULLY AND FOLLOW THESE INSTRUCTIONS ON RETURNING YOUR BALLOT. FAILURE TO RETURN YOUR BALLOT SO THAT IT IS ACTUALLY RECEIVED BY THE DEBTOR BY 5:00 P.M. (PREVAILING CENTRAL TIME) ON \_\_\_\_\_ WILL RESULT IN YOUR BALLOT NOT BEING COUNTED.**

**YOU MUST SUBMIT YOUR BALLOT TO THE DEBTOR USING THE FOLLOWING ADDRESS:**

**MELANIE HOLMES  
FRANKLIN SKIERSKI LOVALL HAYWARD, LLP  
CHASE BANK BUILDING  
10501 N. CENTRAL EXPRESSWAY, SUITE 106  
DALLAS, TEXAS 75231**

**YOU MAY RETURN YOUR BALLOT BY MAIL, HAND DELIVERY, OR OVERNIGHT COURIER. BALLOTS SENT VIA FACSIMILE OR EMAIL WILL NOT BE COUNTED.**

**PLEASE READ BOTH SIDES OF THIS BALLOT BEFORE COMPLETING. PLEASE COMPLETE, DATE AND SIGN THIS BALLOT AND RETURN IT TO THE DEBTOR IN ACCORDANCE WITH THE INSTRUCTIONS ACCOMPANYING THIS BALLOT. THIS BALLOT MUST BE RECEIVED BY THE DEBTOR ON OR BEFORE \_\_\_\_\_, 2011 AT 5:00 P.M., PREVAILING CENTRAL TIME.**

Please note that you must vote your entire Claim to accept or reject the Plan. You cannot split your vote. For purposes of tabulating the votes, you will be deemed to have voted the full amount of your Claim.

An authorized signatory of the holder of an Allowed Claim may execute this Ballot, but must provide the name and address of the holder of the Allowed Claim on this Ballot and may be required to submit evidence to the Bankruptcy Court demonstrating the signatory's authorization to vote on behalf of the holder of the Allowed Claim.

You must provide all of the information requested by this Ballot. Failure to do so may result in your vote not counting.

The Plan Proponents reserve the right to seek an extension of the Voting Deadline until properly completed Ballots indicating acceptance of the Plan in sufficient number and amount to meet the voting requirements prescribed by section 1126 of the Bankruptcy Code have been received.

Item 1: Voting Classification and Amount

The undersigned is a holder of an Allowed Claim in Class \_\_\_\_\_ against the Debtor in the amount of \$\_\_\_\_\_ for purposes of voting on the Plan.

Item 2: Vote

The undersigned hereby votes the Allowed Claim as set forth in Item 1 above, and as otherwise provided for in the Plan, to **(check only one)**:

<input type="checkbox"/> <b>ACCEPT</b> the Plan	<input type="checkbox"/> <b>REJECT</b> the Plan.
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Item 3: Certifications

Upon execution of this Ballot, the undersigned certifies that:

1. as of the Voting Record Date, the undersigned was the beneficial owner (or authorized signatory for a beneficial owner) of an Allowed Claim;
2. the holder has received a copy of the Solicitation Package and acknowledges that the solicitation is being made pursuant to the terms and conditions set forth therein;
3. the holder has not relied on any statement made or other information received from any person with respect to the Plan other than the information contained in the Solicitation Package or other publicly available materials;
4. the holder understands and acknowledges that only the latest-dated Ballot cast and actually received by the Debtor prior to the Voting Deadline will be counted and, if any other Ballot has been previously cast with respect to the holder's Allowed Claim, the other Ballot will be deemed revoked; and
5. the holder understands and acknowledges that all authority conferred or agreed to be conferred pursuant to this Ballot, and every obligation of the holder hereunder, shall be binding upon the transferees, successors, assigns, heirs, executors, administrators, and legal representatives of the holder and shall not be affected by, and shall survive, the death or incapacity of the holder.

*Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct and that I have authority under applicable law to cast this Ballot.*

Name of Creditor: \_\_\_\_\_  
(Print or Type)

By: \_\_\_\_\_  
(Signature of Creditor or Authorized Agent)

Print Name of Signatory: \_\_\_\_\_

Title: \_\_\_\_\_  
(If Appropriate)

Street Address: \_\_\_\_\_  
\_\_\_\_\_  
(City, State and Zip Code)

Telephone Number: \_\_\_\_\_

Date Completed: \_\_\_\_\_

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- B. To ensure that your vote is counted, you must (i) complete the Ballot; (ii) indicate your decision to either accept or reject the Plan in Item 2 of the Ballot; and (iii) sign and return the Ballot in accordance with these instructions to Melanie



Holmes, Franklin Skierski Lovall Hayward, LLP, Chase Bank Building, 10501 N. Central Expressway, Suite 106, Dallas, Texas 75231, so that it is actually received by the Voting Deadline. You may return your Ballot by mail, hand delivery, or overnight courier. **BALLOTS SENT VIA FACSIMILE OR EMAIL WILL NOT BE COUNTED.**

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