

**THIS DRAFT PLAN OF LIQUIDATION IS NOT A SOLICITATION OF ACCEPTANCES OF A CHAPTER 11 PLAN PURSUANT TO SECTION 1125 OF THE BANKRUPTCY CODE. ANY SUCH SOLICITATION WILL BE MADE ONLY IN COMPLIANCE WITH APPLICABLE PROVISIONS OF THE BANKRUPTCY CODE.**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

In re:

NAILITE INTERNATIONAL, INC.,

Debtor.

Chapter 11

Case No. 09-10526(MFW)

**JOINT PLAN OF LIQUIDATION OF NAILITE INTERNATIONAL, INC.  
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

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Pursuant to title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*, the Debtor Nailite International, Inc. (the “Debtor”) and the Official Committee of Unsecured Creditors in the above-captioned case (collectively, the “Plan Proponents”) hereby respectfully propose the following plan of liquidation under chapter 11 of the Bankruptcy Code (the “Joint Plan”).

## ARTICLE I.

### DEFINED TERMS AND RULES OF INTERPRETATION

#### A. *Defined Terms*

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

- “APA” or “Asset Purchase Agreement” means that certain Asset Purchase Agreement between NAILITE INTERNATIONAL, INC., a Delaware corporation, as debtor and debtor-in-possession as seller and EXTERIA BUILDING PRODUCTS, LLC f/k/a PREMIER EXTERIORS, LLC, a Delaware limited liability company, as purchaser.

- “Accrued Professional Compensation” means, at any given moment, all accrued and/or unpaid fees and expenses (including, without limitation: (a) success fees allowed or awarded by a Final Order of the Bankruptcy Court or any other court of competent jurisdiction); and (b) fees or expenses allowed or awarded by a Final Order of the Bankruptcy Court or any other court of competent jurisdiction) for legal, financial advisory, accounting and other services and reimbursement of expenses that are awardable and allowable under sections 328, 330(a) or 331 of the Bankruptcy Code or otherwise rendered prior to the Effective Date, or thereafter in connection with (x) applications Filed pursuant to section 330 and 331 of the Bankruptcy Code and (y) motions seeking the enforcement of the provisions of the Joint Plan or Confirmation Order, by all Professionals in the Chapter 11 Case that the Bankruptcy Court has not denied by a Final Order, to the extent that any such fees and expenses have not previously been paid regardless of whether a fee application has been Filed for any such amount. To the extent that the Bankruptcy Court or any higher court denies by a Final Order any amount of a Professional’s fees or expenses, then those amounts shall no longer be Accrued Professional Compensation.

- “Administrative Claims” means Claims that have been timely Filed before the Bar Date, pursuant to the deadline and procedure set forth in the Bar Date Order (except as otherwise provided by a separate order of the Bankruptcy Court), for costs and expenses of administration under sections 503(b), 507(b) or 1114(e)(2) of the Bankruptcy Code, including, without limitation: 1. the actual and necessary costs and expenses incurred after the Petition Date of preserving the Estate and operating the businesses of the Debtor (such as wages, salaries or commissions for services and payments for goods and other services and leased premises); 2. Accrued Professional Compensation; and (c) all fees and charges assessed against the Estate under chapter 123 of title 28 United States Code, 28 U.S.C. §§ 1911 1930.

- “Affiliate” has the meaning set forth at section 101(2) of the Bankruptcy Code.

- “Allowed” means, with respect to any Claim or Equity Interest, except as otherwise provided herein: (a) a Claim or Equity Interest that has been scheduled by the Debtor in their schedules of liabilities as other than disputed, contingent or unliquidated and as to which the Debtor or other parties in interest have not Filed an objection by the Claims Objection Bar Date; (b) a Claim or Equity Interest that either is not Disputed or has been allowed by a Final Order; (c) a Claim or Equity Interest that is allowed: (i) in any stipulation of amount and nature of Claim executed prior to the entry of the Confirmation Order and approved by the Bankruptcy Court; (ii) in any stipulation with Debtor of amount and nature of Claim or Equity Interest executed on or after the entry of the Confirmation Order; or (iii) in or pursuant to any contract, instrument, indenture or other agreement entered into or assumed in connection herewith; (d) a Claim or Equity Interest that is allowed pursuant to the terms hereof; or (e) a Disputed Claim as to which a proof of claim has been timely Filed and as to which no objection has been Filed by the Claims Objection Bar Date.

- “Avoidance Actions” means any and all avoidance, recovery, subordination or other actions or remedies that may be brought on behalf of the Debtor or their Estate under the Bankruptcy Code or applicable non bankruptcy law, including, without limitation, actions or remedies under sections 510, 542, 543, 544, 545, 547, 548, 549, 550, 551, 552, 553(b) and 724(a) of the Bankruptcy Code. All Avoidance Actions, other than those against Insiders, shall be deemed abandoned as of the Effective Date.

- “Bankruptcy Code” means title 11 of the United States Code, and applicable portions of titles 18 and 28 of the United States Code.

- “Bankruptcy Court” means the United States District Court for the District of Delaware, having jurisdiction over the Chapter 11 Case and, to the extent of any reference made pursuant to Article 157 of title 28 of the United States Code and/or the General Order of the District Court pursuant to Article 151 of title 28 of the United States Code, the United States Bankruptcy Court for the District of Delaware.

- “Bankruptcy Rule(s)” means the Federal Rules of Bankruptcy Procedure, promulgated under 28 U.S.C. § 2075, the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, the Local Rules of Civil Practice and Procedure of the United States District Court for the District of Delaware, and general orders and chambers’ procedures of the Bankruptcy Court, each as applicable to the Chapter 11 Case and as amended from time to time.

- “Bar Date Order” means the Motion to Establish Deadline to File Proofs of Claim [Docket Entry No. 109].

- “General Bar Date” means May 18, 2009, the deadline for filing proofs of claim with respect to General Unsecured and Administrative Claims as established in the Bar Date Order.

- “Beneficiaries” means holders of Allowed Claims entitled to receive Distributions from the Liquidating Trust Fund under the Joint Plan, whether or not such Claims were Allowed Claims on the Effective Date.

- “Bid Procedures” means those certain Bid Procedures attached as Exhibit A to the Bid Procedures Order.

- “Bid Procedures Order” means that certain order entered by the Bankruptcy Court that among other things, approved the Bid Procedures. [Docket Entry No.53].

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

- “Cash” means legal tender of the United States of America or the equivalent thereof, including bank deposits, checks and readily marketable securities or instruments issued by an Entity, including, without limitation, readily marketable direct obligations of, or obligations guaranteed by, the United States of America, commercial paper of domestic corporations carrying a Moody’s rating of “A” or better, or equivalent rating of any other nationally recognized rating service, or interest bearing certificates of deposit or other similar obligations of domestic banks or other financial institutions having a shareholders’ equity or capital of not less than one hundred million dollars (\$100,000,000) having maturities of not more than one (1) year, at the then best generally available rates of interest for like amounts and like periods.

- “Cash Investment Yield” means the net yield earned by the Liquidating Trust from the investment of Cash held pending Distribution in accordance with the provisions of the Joint Plan and the Liquidating Trust Agreement.

- “Causes of Action” means all claims, actions, Causes of Action, chooses in action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, remedies, rights of set off, third party claims, subrogation claims, contribution claims, reimbursement claims, indemnity claims, counterclaims and crossclaims (including, without limitation, all claims and any avoidance, recovery, subordination or other actions against Insiders and/or any other entities under the Bankruptcy Code, including Avoidance Actions) of any of the Debtor, and/or the Estate (including, without limitation, those actions set forth in the Joint Plan Supplement) that are or may be pending on the Effective Date or instituted by the Liquidating Trustee after the Effective Date against any entity, based in law or equity, including, without limitation, under the Bankruptcy Code, whether direct, indirect, derivative or otherwise and whether asserted or unasserted as of the Confirmation Date; provided, however, that such definition shall not include any claims against Purchaser or the DIP Lender, which Causes of Action are being released pursuant to this Joint Plan.

- “Chapter 11 Case” means the Chapter 11 Case commenced when the Debtor Filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code on the Petition Date.

- “Claim” means a “claim” (as that term is defined in Section 101(5) of the Bankruptcy Code) against a Debtor.

- “Claims Objection Bar Date” means the bar date for objecting to proofs of claim, which shall be one year after the Effective Date; provided, however, that the Liquidating

Trustee may seek additional extensions of this date from the Bankruptcy Court.

- “Class” means a category of holders of Claims or Equity Interests as set forth in the Joint Plan pursuant to section 1122(a) of the Bankruptcy Code.
- “Committee” means the official committee of unsecured creditors for the Chapter 11 Case appointed by the U.S. Trustee for the District of Delaware, pursuant to Section 1102 of the Bankruptcy Code, on February 23, 2009. [Docket Entry No. 36].
- “Creditor Carveout” means cash in the amount of \$250,000.
- “Confirmation Date” means the date on which the Confirmation Order is entered by the Bankruptcy Court.
- “Confirmation Order” means the order of the Bankruptcy Court confirming the Joint Plan pursuant to section 1129 of the Bankruptcy Code.
- “D&O Claims” mean any Claims against any of the Debtor’s current or former officers, directors or management.
- “Debtor” means, Nailite International, Inc.
- “DIP Credit Agreement” means, as amended, supplemented or modified from time to time, that certain Secured, Super-Priority Debtor-in-Possession Credit Agreement among the Debtor and the DIP Lender approved by Final Order of the Bankruptcy Court on March 12, 2009 [Docket Entry No. 93].
- “DIP Facility” means the Debtor’s post-petition financing, which the Bankruptcy Court approved pursuant to the Final Post Petition Financing DIP Order. Docket Entry No. 93.
- “DIP Facility Claims” mean any Claims of the DIP Lender arising out of the DIP Facility or DIP Credit Agreement.
- “DIP Lender” means Premier Exteriors Holdings, L.P., and its Representatives.
- “Disclosure Statement” means the disclosure statement for the Joint Plan [Docket Entry No. \_\_], prepared and distributed in accordance with the Bankruptcy Code, Bankruptcy Rules and any other applicable law, as it is amended, supplemented or modified from time to time.
- “Disputed” means, with respect to any Claim or Equity Interest, any Claim or Equity Interest: (a) listed on the Schedules as unliquidated, disputed or contingent, unless a proof of Claim has been timely Filed; (b) as to which a timely objection or request for estimation in accordance with the Bankruptcy Code and the Bankruptcy Rules has been interposed; or (c) as otherwise disputed in accordance with applicable law, which objection, request for estimation or dispute has not been withdrawn or determined by a Final Order.

- “Disputed Reserve” means the reserve fund created pursuant to Article V.B.1 of the Joint Plan.

- “Distributions” means the distributions of Cash and beneficial interest in the Liquidating Trust to be made in accordance with the Joint Plan and/or the Liquidating Trust Agreement.

- “Effective Date” means the date selected by the Debtor and the Committee that is a Business Day after the entry of the Confirmation Order on which: (a) no stay of the Confirmation Order is in effect; and (b) all conditions specified in the Joint Plan have been satisfied or waived.

- “Encumbered Sale Proceeds” means the Sale Proceeds less the Unencumbered Sale Proceeds.

- “Entity” means an “entity” (as that term is defined in Section 101(15) of the Bankruptcy Code).

- “Equity Interest” means any equity interest in a Debtor that existed immediately prior to the Petition Date, including, without limitation: (a) any common equity interest in a Debtor that existed immediately prior to the Petition Date, including, without limitation, all issued, unissued, authorized or outstanding shares of common stock, together with any warrants, options or legal, contractual or equitable rights to purchase or acquire such interests at any time; and (b) any preferred equity interest in a Debtor that existed immediately prior to the Petition Date, including, without limitation, all issued, unissued, authorized or outstanding shares of preferred stock, together with any warrants, options or legal, contractual or equitable rights to purchase or acquire such interests.

- “Estate” means the estate of the Debtor created on the Petition Date by section 541 of the Bankruptcy Code.

- “Exculpated Parties” means, collectively, the Debtor, the DIP Lender, the Purchaser, the Committee and the individual members thereof, the Liquidating Trustee, and each of their respective Representatives (each of the foregoing in its individual capacity as such).

- “File” or “Filed” means, with respect to any pleading, entered on the docket of the Chapter 11 Case and properly served in accordance with the Bankruptcy Rules.

- “Final Order” means an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction with respect to the subject matter, which has not been reversed, stayed, modified or amended, and as to which the time to appeal, petition for certiorari or move for reargument or rehearing has expired and no appeal or petition for certiorari has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been or may be Filed has been resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought or has otherwise been dismissed with prejudice.



- “Garden City Group” or “GCG” means the Debtor’s Claims, Noticing and Balloting Agent.

- “General Unsecured Claims” means Claims against any Debtor that are not Administrative Claims, DIP Facility Claims, Priority Tax Claims, Other Priority Claims, Other Secured Claims, Intercompany Claims, Secured Lender Deficiency Claims, Insider Claims or Equity Interests.

- “Housing Starts” means the category of residential construction monitored by the Department of Commerce.

- “Impaired” means, with respect to a Claim, Equity Interest, or Class of Claims or Equity Interests, “impaired” within the meaning of Sections 1123(a)(4) and 1124 of the Bankruptcy Code.

- “Initial Distribution Date” means the date on which the Liquidating Trust shall make its initial Distribution, which shall be a date selected by the Liquidating Trustee.

- “Insider Claims” means any Claims held by an insider of the Debtor.

- “Intercompany Claims” means Claims held by a Debtor, Affiliate of the Debtor, against another Debtor or Affiliate of the Debtor.

- “Joint Plan Supplement” the compilation of documents and forms of documents, schedules and exhibits to the Joint Plan.

- “Joint Plan” means this joint Joint Plan of liquidation under chapter 11 of the Bankruptcy Code, either in its present form or as it may be altered, amended, modified or supplemented from time to time in accordance with the Bankruptcy Code, the Bankruptcy Rules or herewith, as the case may be, and the Joint Plan Supplement, which is incorporated herein by reference.

- “Lenders” means, collectively, Prepetition Agent and the Prepetition Secured Lenders.

- “Liquidating Trust” means the Entity described in Article IV.B that will succeed to all of the assets and liabilities of the Estate, subject to the terms of Joint Plan, as of the Effective Date.

- “Liquidating Trust Agreement” means that certain agreement establishing and delineating the terms and conditions of the Liquidating Trust, substantially in the form to be Filed as part of the Joint Plan Supplement.

- “Liquidating Trust Committee” means those individuals appointed in accordance with the Liquidating Trust Agreement with the powers and responsibilities set forth therein. The Liquidating Trust Committee shall consist of three representatives appointed by the Committee.

- “Liquidating Trust Expenses” means the reasonable expenses of the Liquidating Trustee and the Liquidating Trust Committee.

- “Liquidating Trust Fund” means the Cash funded by the Prepetition and/or DIP Lenders in the amount needed to fund all Allowed Administrative Claims (including Professional Fee Claims in the aggregate amounts permitted under the Final Post Petition Financing Order), Allowed Priority Tax Claims, Allowed Other Priority Claims, the Committee Carve-Out Cash and an amount to be agreed to by the Prepetition Agent and Lenders and the Committee to be included in the Liquidating Trust Agreement to cover the Liquidating Trust Expenses and the D&O Claims and any proceeds thereof.

- “Liquidating Trustee” means James Gallagher of Pine Brook Associates, LLC, the person appointed by the Committee in accordance with the Joint Plan to administer the Liquidating Trust.

- “Non-Acquired Assets” means any property of the Debtor that is not transferred to the Purchaser pursuant to the APA.

- “Other Priority Claims” means Claims accorded priority in right of payment under Section 507(a) of the Bankruptcy Code, other than Priority Tax Claims.

- “Other Secured Claims” means Claims against the Debtor (other than the DIP Facility Claims and Secured Lender Claims) that are secured by a lien on property in which the Estate have an interest, which liens are valid, perfected and enforceable under applicable law or by reason of a Final Order, or that are subject to setoff under Section 553 of the Bankruptcy Code, to the extent of the value of the Claim holder’s interest in the Estate’s interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to Section 506(a) of the Bankruptcy Code.

- “Petition Date” means February 13, 2008, the date on which the Debtor Filed the Chapter 11 Case.

- “Prepetition Agent” means the agent under the Secured Credit Agreement dated as of April 11, 2003.

- “Prepetition Lenders” means the lenders from time to time party under the Secured Credit Agreement dated as of April 11, 2003.

- “Priority Tax Claims” means Claims of governmental units of the kind specified in Section 507(a)(8) of the Bankruptcy Code.

- “Pro Rata” means the ratio of the amount of an Allowed Claim in a particular Class to the aggregate amount of all Allowed Claims in such Class.

- “Professional” means any person or Entity employed pursuant to a Final Order in accordance with Sections 327, 328 or 1103 of the Bankruptcy Code, and to be compensated for services rendered prior to and including the Effective Date pursuant to Sections 327, 328, 329, 330 or 331 of the Bankruptcy Code.

- “Purchaser” means Exteria Building Products, LLC f/k/a Premier Exteriors, LLC, a Delaware limited liability company and their Representatives.
- “Quarterly Distribution Date” means the first Business Day after the end of each quarterly calendar period (i.e., March 31, June 30, September 30 and December 31 of each calendar year).
- “Ratable Proportion” means, with reference to any Distribution on account of any Allowed Claim in any Class, the ratio (expressed as a percentage) that the amount of the Allowed Claim bears to the aggregate amount of all Allowed and Disputed Claims in that Class.
- “Record Date” means the record date for determining the entitlement of holders of Allowed Claims, to receive Distributions under the Joint Plan on account of Allowed Claims. The Record Date shall be the date on which the Disclosure Statement Order is entered.
- “Releasees” means, collectively, the Debtor, the Liquidating Trustee, the DIP Lender, the Purchaser, the Committee and each of their respective Representatives (each of the foregoing in its individual capacity as such); provided, however, nothing herein shall be deemed or construed as a release or waiver of any D&O Claims or Avoidance Actions against Insiders.
- “Releasing Parties” means, collectively, holders of Claims voting to accept the Joint Plan.
- “Representatives” means, with regard to an Entity, officers, directors, employees, advisors, attorneys, professionals, accountants, investment bankers, financial advisors, consultants, agents and other representatives (including their respective officers, directors, employees, members and professionals).
- “Sale” means the sale or sales of all or substantially all of the Debtor’s assets under the Sale Order.
- “Sale Order” means the order of the Bankruptcy Court, entered in the Chapter 11 Case, on April 13, 2009 [Docket Entry No. 134], approving the APA and the transactions contemplated thereby.
- “Sale Proceeds” means the Cash consideration received by the Debtor pursuant to the APA, including all Cash in escrow accounts established pursuant to the terms of the APA.
- “Schedules” mean the schedules of assets and liabilities, schedules of executory contracts and statements of financial affairs Filed by the Debtor pursuant to Section 521 of the Bankruptcy Code.
- “Secured Lender Claims” means, together with the DIP Facility Claims, the Claims arising under the Secured Credit Agreement that have been Allowed.

- “Secured Credit Agreement” means that certain credit agreement, dated as of April 11, 2003 among the Debtor and the Prepetition Agent and the other lenders who from time to time have been lender parties thereto, as lenders.

- “Secured Lender Deficiency Claim” means the amount, if any, by which the Allowed Secured Lender Claims exceeds the value of the Encumbered Sale Proceeds.

- “Unimpaired” means, with respect to a Claim, Equity Interest, or Class of Claims or Equity Interests, not “impaired” within the meaning of Sections 1123(a)(4) and 1124 of the Bankruptcy Code.

- “U.S. Trustee” means the United States Trustee appointed under Article 591 of title 28 of the United States Code to serve in the District of Delaware.

#### B. *Rules of Interpretation*

For purposes herein: C. in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neutral gender shall include the masculine, feminine and the neutral gender; D. any reference herein to a contract, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; E. any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented; F. unless otherwise specified, all references herein to “Articles” are references to Articles hereof or hereto; G. the words “herein,” “hereof” and “hereto” refer to the Joint Plan in its entirety rather than to a particular portion of the Plan; H. captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; I. the rules of construction set forth in Section 102 of the Bankruptcy Code shall apply; and J. any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be.

The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed hereby.

All references herein to monetary figures shall refer to currency of the United States of America, unless otherwise expressly provided.

#### K. *Exhibits*

The Joint Plan Supplement shall be Filed with the Clerk of the Bankruptcy Court not later than the earlier of (i) ten (10) days prior to the commencement of the hearing on confirmation of the Joint Plan and (ii) five (5) days prior to the deadline for filing objections to confirmation of the Joint Plan. Such exhibits may be inspected in the office of the Clerk of the Bankruptcy Court during normal hours of operation of the Bankruptcy Court. Holders of Claims or Equity Interests may also obtain a copy of such exhibits, once Filed, from the Debtor by a written request sent to the following addresses:

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**ARTICLE II.**

**ADMINISTRATIVE AND PRIORITY CLAIMS**

**A. Administrative Claims**

Subject to the provisions of sections 328, 330(a) and 331 of the Bankruptcy Code, the Liquidating Trust shall pay each holder of an Allowed Administrative Claim the full unpaid amount of such Allowed Administrative Claim in Cash: (1) on the Effective Date or as soon as practicable thereafter (or, if not then due, when such Allowed Administrative Claim is due or as soon as practicable thereafter); (2) if such Claim is Allowed after the Effective Date, on the date such Claim is Allowed or as soon as practicable thereafter (or, if not then due, when such Allowed Administrative Claim is due); (3) at such time and upon such terms as may be agreed upon by such holder and the Debtor's Estate; or (4) at such time and upon such terms as set forth in an order of the Bankruptcy Court; *provided, however*, that Administrative Claims do not include Administrative Claims Filed after the Bar Date or Administrative Claims due to Professionals in excess of the amounts provided for in the Final Post Petition Financing Order.

**Professional Compensation and Reimbursement Claims**

The Bankruptcy Court shall fix in the Confirmation Order a date for filing of, and a date to hear and determine, all applications for final allowances of compensation or reimbursement of

expenses under section 330 of the Bankruptcy Code or applications for allowance of Administrative Expenses arising under sections 503(b)(2), 503(b)(3), 503(b)(4) or 503(b)(6) of the Bankruptcy Code.

**B. *Priority Tax Claims***

The Debtor or the Liquidating Trustee shall pay each holder of an Allowed Priority Tax Claim the full unpaid amount of such Allowed Priority Tax Claim in Cash, on the latest of (i) the Effective Date, (ii) the date such Allowed Priority Tax Claim becomes Allowed and (iii) the date such Allowed Priority Tax Claim is payable under applicable non-bankruptcy law.

**C. *Other Priority Claims***

On or as soon as practicable after the Effective Date, the Debtor or the Liquidating Trustee shall pay each holder of an Allowed Other Priority Claim, in full and final satisfaction of such Allowed Other Priority Claim the full unpaid amount of such Allowed Other Priority Claim in Cash.

**ARTICLE III.**

**CLASSIFICATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS**

**A. *Summary***

This Joint Plan constitutes a separate chapter 11 plan of liquidation for the Debtor. Except for Administrative Claims, Priority Tax Claims and Other Priority Claims, all Claims against and Equity Interests in the Debtor are placed in Classes for the Debtor. In accordance with section 1123(a)(1) of the Bankruptcy Code, the Debtor has not classified Administrative Claims, Priority Tax Claims and Other Priority Claims, as described in Article II.

The following table classifies Claims against and Equity Interests in the Debtor for all purposes, including voting, confirmation and Distribution pursuant hereto and pursuant to Sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Joint Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and shall be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid or otherwise settled prior to the Effective Date.

*Summary of Classification and Treatment of Classified Claims and Equity Interests.*

| <u>Class</u> | <u>Claim</u>             | <u>Status</u> | <u>Voting Rights</u> |
|--------------|--------------------------|---------------|----------------------|
| 1            | Secured Lender Claims    | Impaired      | Entitled to Vote     |
| 2            | Other Secured Claims     | Unimpaired    | Deemed to<br>Accept  |
| 3            | General Unsecured Claims | Impaired      | Entitled to Vote     |
| 4            | Insider Claims           | Impaired      | Deemed to<br>Accept  |

| <u>Class</u> | <u>Claim</u>     | <u>Status</u> | <u>Voting Rights</u> |
|--------------|------------------|---------------|----------------------|
| 5            | Equity Interests | Impaired      | Deemed to<br>Reject  |

B. *Classification and Treatment of Claims and Equity Interests*

*Secured Lender Claims (Class 1)*

(a) *Classification:* Class 1 consists of the Secured Lender Claims.

(b) *Treatment:* To the extent not previously resolved by credit bid and/or payments made pursuant to the Sale Order or other Final Order, and exclusive of the Committee Carve-Out, D&O Proceeds and/or the proceeds of any Chapter 5 Claims, the Secured Lender Deficiency Claim, if any, shall be waived. The treatment afforded herein shall be in full and final satisfaction of the Allowed Secured Lender Claims.

(c) *Voting:* Class 1 is Impaired, and the Prepetition Lenders are entitled to vote to accept or reject the Plan.

*Other Secured Claims (Class 2)*

(d) *Classification:* Class 2 consists of Other Secured Claims.

(e) *Treatment:* The Liquidating Trustee shall place each holder of an Allowed Other Secured Claim in a separate Subclass, and will treat each Subclass as a separate class for Distribution purposes. On or as soon as practicable after the Effective Date, the Debtor or the Liquidating Trustee shall pay each holder of an Allowed Other Secured Claim, in full and final satisfaction of such Allowed Other Secured Claim, except to the extent any holder of an Allowed Other Secured Claim agrees to a different treatment, either:

- (i) The collateral securing such Allowed Other Secured Claims; or
- (ii) Cash in an amount equal to the value of such collateral.

(f) *Voting:* Class 2 is Unimpaired, and holders of Other Secured Claims are conclusively deemed to have accepted the Joint Plan. Only holders of Allowed Other Secured Claims shall receive a Distribution under the terms of the Joint Plan.

*General Unsecured Claims (Class 3)*

(g) *Classification:* Class 3 consists of General Unsecured Claims.

(h) *Treatment:* the holders of Allowed General Unsecured Claims shall receive their Pro Rata share of the Liquidating Trust Fund, after satisfaction of the Liquidating Trust Expenses and all Allowed Administrative Claims, Allowed Secured Claims and Allowed Priority Tax Claims.

(i) *Voting*: Class 3 is Impaired, and holders of General Unsecured Claims are entitled to vote to accept or reject the Joint Plan. For the purpose of clarity, only holders of Allowed General Unsecured Claims shall receive a Distribution under the Joint Plan.

*Insider Claims (Class 4)*

(j) *Classification*: Class 4 consists of Insider Claims.

(k) *Treatment*: Holders of Insider Claims shall receive no Distribution under the Joint Plan.

(l) *Voting*: Class 4 is Impaired, and holders of Insider Claims are conclusively deemed to accept the Joint Plan.

*Equity Interests (Class 5)*

(m) *Classification*: Class 5 consists of Equity Interests.

(n) *Treatment*: Holders of Equity Interests shall neither receive nor retain any property under the Joint Plan.

(o) *Voting*: Class 5 is Impaired, and holders of Equity Interests conclusively are deemed to reject the Joint Plan.

C. *Special Provision Governing Unimpaired Claims*

Except as otherwise provided in the Joint Plan, nothing under the Joint Plan shall affect the Debtor's rights in respect of any Unimpaired Claim, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupment against any such Unimpaired Claim.

D. *Non-Consensual Confirmation*

The Plan Proponents reserve the right to seek confirmation of the Joint Plan under Section 1129(b) of the Bankruptcy Code. To the extent that any Class votes to reject the Joint Plan, the Plan Proponents further reserve the right to modify the Joint Plan in accordance with Article XI.C.

**ARTICLE IV.**

**MEANS FOR IMPLEMENTATION OF THE JOINT PLAN**

A. *Appointment of a Liquidating Trustee and a Liquidating Trust Committee.*

The Committee hereby appoints James Gallagher of Pine Brook Associates LLC as the Liquidating Trustee. Additionally, on or prior to the Confirmation Date, the Committee shall appoint a three (3) member Liquidating Trust Committee. The Liquidating Trustee shall serve at the direction of the Liquidating Trust Committee, *provided, however*, the Liquidating Trust Committee may not direct the Liquidating Trustee or the members of the Liquidating Trust Committee to act inconsistently with their duties under the Liquidating Trust Agreement and the



Joint Plan. The Liquidating Trust Committee may terminate the Liquidating Trustee at any time in accordance with the provisions of the Liquidating Trust Agreement.

B. *The Liquidating Trust*

Formation of the Liquidating Trust

On the Effective Date, the Liquidating Trust shall be established pursuant to the Liquidating Trust Agreement for the purpose of (a) administering the Liquidating Trust Fund, (b) resolving all Disputed Claims, and (c) pursuing the D&O Claims and (d) making all Distributions to the Beneficiaries provided for under the Plan. The Liquidating Trust is intended to qualify as a liquidating trust pursuant to United States Treasury Regulation Article 301.7701-4(d).

Funding of the Liquidating Trust

On the Effective Date, the Debtor shall fund the Liquidating Trust Fund and these funds shall vest automatically in the Liquidating Trust. The Joint Plan shall be considered a motion pursuant to sections 105, 363 and 365 of the Bankruptcy Code for such relief. The transfer of the Liquidating Trust Fund to the Liquidating Trust shall be made for the benefit and on behalf of the Beneficiaries. The assets comprising the Liquidating Trust Fund will be treated for tax purposes as being transferred by the Debtor to the Beneficiaries pursuant to the Joint Plan in exchange for their Allowed Claims and then by the Beneficiaries to the Liquidating Trust in exchange for the beneficial interests in the Liquidating Trust. The Beneficiaries shall be treated as the grantors and owners of the Liquidating Trust. Upon the transfer of the Liquidating Trust Fund, the Liquidating Trust shall succeed to all of the Debtor's right, title and interest in the Liquidating Trust Fund and the Debtor will have no further interest in or with respect to the Liquidating Trust Fund.

As soon as possible after the Effective Date, but in no event later than sixty (60) days thereafter, (i) the Liquidating Trust Committee shall inform the Liquidating Trust in writing of the fair market value of the Liquidating Trust Fund as of the Effective Date, based on its good faith determination, and (ii) the Liquidating Trustee shall establish appropriate means to apprise the Beneficiaries of such valuation. The valuation shall be used consistently by all parties (including, without limitation, the Debtor, the Liquidating Trust, the Beneficiaries and the Liquidating Trust Committee) for all federal income tax purposes.

C. *Rights and Powers of the Liquidating Trustee*

The Liquidating Trustee shall be deemed the Estate's representative in accordance with section 1123 of the Bankruptcy Code and shall have all the rights and powers set forth in the Liquidating Trust Agreement, including, without limitation, the powers of a trustee under sections 704 and 1106 of the Bankruptcy Code and Rule 2004 of the Bankruptcy Rules (including without limitation, the right to (1) effect all actions and execute all agreements, instruments and other documents necessary to implement the provisions of the Joint Plan and the Liquidating Trust Agreement; (2) liquidate any Non-Acquired Assets; (3) prosecute, settle, abandon or compromise any D&O Claims, in consultation with the Lenders; (4) prosecute, settle, abandon or compromise any open issues or disputes under the APA, including, without limitation, collecting any funds make Distributions contemplated hereby, (5) establish and

administer any necessary reserves for Disputed Claims that may be required; (6) object to the Disputed Claims and prosecute, settle, compromise, withdraw or resolve in any manner approved by the Bankruptcy Court such objections; and (7) employ and compensate professionals and other agents, *provided, however*, that any such compensation shall be made only out of the Liquidating Trust Fund, to the extent not inconsistent with the status of the Liquidating Trust as a liquidating trust within the meaning of Treas. Reg. § 301.7701-4(d) for federal income tax purposes and further the retention and terms of engagement of any professionals retained in connection with the prosecution of the D&O Claims shall be made in consultation with the Lenders.

D. *Fees and Expenses of the Liquidating Trust*

Except as otherwise ordered by the Bankruptcy Court, the Liquidating Trust Expenses on or after the Effective Date shall be paid in accordance with the Liquidating Trust Agreement without further order of the Bankruptcy Court.

E. *Semi-Annual Reports to Be Filed by the Liquidating Trust*

The Liquidating Trust shall File semi-annual reports regarding the liquidation or other administration of property comprising the Liquidating Trust Fund, the Distributions made by it and other matters required to be included in such report in accordance with the Liquidating Trust Agreement. In addition, the Liquidating Trust will file tax returns as a grantor trust pursuant to United States Treasury Regulation Article 1.671-4(a).

F. *Directors/Officers/Equity/Assets on the Effective Date.*

On the Effective Date, the authority, power and incumbency of the persons then acting as directors and officers of the Debtor shall be terminated and such directors and officers shall be deemed to have resigned or to have been removed without cause.

On the Effective Date, all the then Equity Interests in the Debtor (including all instruments evidencing such Equity Interests) shall be canceled and extinguished without further action under any applicable agreement, law, regulation or rule.

G. *Liquidation of the Debtor*

The Debtor shall be deemed to have been liquidated as of the Effective Date, and all Equity Interests in the Debtor shall automatically be canceled and extinguished as of the Effective Date without the need for any further action by the Bankruptcy Court or any Entity.

Notwithstanding the foregoing, as soon as practicable after the Effective Date, the Liquidating Trustee shall: (a) file a certificate of dissolution, together with all other necessary corporate documents, to effect the Debtor's dissolution under the applicable laws of its state of incorporation; and (b) complete and file its final federal, state and local tax returns, and pursuant to section 505(b) of the Bankruptcy Code, request an expedited determination of any unpaid tax liability of the Debtor or its Estate for any tax incurred during the administration of such Debtor's Chapter 11 Case, as determined under applicable tax laws.

On the Effective Date, the Debtor's Estate shall assign, transfer and distribute to the Liquidating Trust (a) any of its remaining assets, properties or interests; and (b) all of its books and records relating to the foregoing. For purposes of this Article, books and records include computer generated or computer maintained books and records and computer data, as well as electronically generated or maintained books and records or data, along with books and records of the Debtor maintained by or in the possession of third parties, wherever located.

H. *Term of Injunctions or Stays*

Unless otherwise provided, all injunctions or stays provided for in the Chapter 11 Case pursuant to sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Chapter 11 Case is closed. Notwithstanding the foregoing, any releases, injunctions and/or stays previously approved pursuant to the Sale Order and APA shall permanently remain in full force and effect.

I. *Cancellation of Equity Interests*

On the Effective Date, except to the extent otherwise provided herein, all notes, stock, instruments, certificates and other documents evidencing Equity Interests shall be deemed automatically canceled, shall be of no further force, whether surrendered for cancellation or otherwise, and the obligations of the Debtor thereunder or in any way related thereto shall be discharged.

J. *Committee*

As of the Effective Date, the Committee shall dissolve, and its members shall be released and discharged from all further authority, duties, responsibilities and obligations relating to and arising from the Chapter 11 Case. The retention and employment of the Professionals retained by the Committee shall terminate as of the Effective Date, *provided, however*, that the Committee shall exist, and its Professionals shall be retained, after such date with respect to (a) applications Filed pursuant to sections 330 and 331 of the Bankruptcy Code and (b) motions seeking the enforcement of the provisions of the Joint Plan or the Confirmation Order.

**ARTICLE V.**

**PROVISIONS GOVERNING DISTRIBUTIONS**

A. *Initial Distribution Date*

On the Initial Distribution Date or as soon thereafter as is reasonably practicable, the Liquidating Trust shall make, or shall make adequate reserves for, the Distributions required to be made under the Joint Plan.

B. *Disputed Reserves*

**Establishment of Disputed Reserves**

On the Initial Distribution Date, and after making all Distributions required to be made on such date under the Joint Plan, the Liquidating Trustee shall establish a separate Disputed Reserve for Disputed Claims, each of which Disputed Reserves shall be administered by the

Liquidating Trustee. The Liquidating Trustee shall reserve in Cash or other property, for Distribution on account of each Disputed Claim, the full asserted amount (or such lesser amount as may be reasonably estimated by the Liquidating Trustee) with respect to each Disputed Claim.

#### Maintenance of Disputed Reserves

To the extent that the property placed in a Disputed Reserve consists of Cash, that Cash shall be deposited in an interest-bearing account. The Liquidating Trust shall hold property in the Disputed Reserves in trust for the benefit of the holders of Claims ultimately determined to be Allowed. Each Disputed Reserve shall be closed and extinguished by the Liquidating Trust when all Distributions and other dispositions of Cash or other property required to be made hereunder will have been made in accordance with the terms of the Joint Plan. Upon closure of a Disputed Reserve, all Cash (including any Cash Investment Yield) or other property held in that Disputed Reserve shall revert in and become the property of the Liquidating Trust. All funds or other property that vest or revert in the Liquidating Trust pursuant to this paragraph shall be (a) used to pay the fees and expenses of the Liquidating Trust as and to the extent set forth in the Liquidating Trust Agreement, and (b) thereafter distributed on a Pro Rata basis to holders of Allowed Claims.

#### C. *Quarterly Distributions*

Any Distribution that is not made on the Initial Distribution Date or on any other date specified herein because the Claim that would have been entitled to receive that Distribution is not an Allowed Claim on such date, shall be held by the Liquidating Trust in a Disputed Reserve pursuant to Article V.B and Distributed (in full, in the case of Administrative Expense Claims, Priority Tax Claims, or Other Priority Claims; and up to its Ratable Proportion with respect to the Claims in Class 3) on the first Quarterly Distribution Date after such Claim is Allowed. No interest shall accrue or be paid on the unpaid amount of any Distribution paid on a Quarterly Distribution Date in accordance with this Article V.C.

#### D. *Record Date for Distributions*

Except as otherwise provided in a Final Order of the Bankruptcy Court, the transferees of Claims that are transferred pursuant to Bankruptcy Rule 3001 on or prior to the Record Date will be treated as the holders of those Claims for all purposes, notwithstanding that any period provided by Bankruptcy Rule 3001 for objecting to the transfer may not have expired by the Record Date. The Liquidating Trust shall have no obligation to recognize any transfer of any Claim occurring after the Record Date. In making any Distribution with respect to any Claim, the Liquidating Trust shall be entitled instead to recognize and deal with, for all purposes hereunder, only the Entity that is listed on the proof of Claim filed with respect thereto or on the Schedules as the holder thereof as of the close of business on the Record Date and upon such other evidence or record of transfer or assignment that are known to the Liquidating Trust as of the Record Date.

#### E. *Delivery of Distributions*

#### General Provisions; Undeliverable Distributions

Subject to Bankruptcy Rule 9010 and except as otherwise provided herein, Distributions to the holders of Allowed Claims shall be made by the Liquidating Trust at (a) the address of each holder as set forth in the Schedules, unless superseded by the address set forth on proofs of Claim filed by such holder or (b) the last known address of such holder if no proof of Claim is filed or if the Debtor has been notified in writing of a change of address. If any Distribution is returned as undeliverable, the Liquidating Trust may, in its discretion, make such efforts to determine the current address of the holder of the Claim with respect to which the Distribution was made as the Liquidating Trust deems appropriate, but no Distribution to any holder shall be made unless and until the Liquidating Trust has determined the then-current address of the holder, at which time the Distribution to such holder shall be made to the holder without interest. Amounts in respect of any undeliverable Distributions made by the Liquidating Trust shall be returned to, and held in trust by, the Liquidating Trust until the Distributions are claimed or are deemed to be unclaimed property under section 347(b) of the Bankruptcy Code as set forth below in Article V.C.3. The Liquidating Trust shall have the discretion to determine how to make Distributions in the most efficient and cost-effective manner possible; *provided, however*, that its discretion may not be exercised in a manner inconsistent with any express requirements of the Joint Plan or the Liquidating Trust Agreement.

#### Minimum Distributions

Notwithstanding anything herein to the contrary, if a Distribution to be made to a holder of an Allowed Claim on the Initial Distribution Date or any subsequent date for Distributions (other than the final Distribution Date) would be \$50 or less in the aggregate, no such Distribution will be made to that holder unless a request therefor is made in writing to the Liquidating Trustee no later than twenty (20) days after the Effective Date.

#### Unclaimed Property

Except with respect to property not Distributed because it is being held in a Disputed Reserve, Distributions that are not claimed by the expiration of one year from the Effective Date shall be deemed to be unclaimed property under section 347(b) of the Bankruptcy Code and shall vest or revert in the Liquidating Trust, and the Claims with respect to which those Distributions are made shall be automatically canceled. After the expiration of that one-year period, the claim of any Entity to those Distributions shall be discharged and forever barred. Nothing contained in the Joint Plan shall require the Liquidating Trust to attempt to locate any holder of an Allowed Claim. All funds or other property that vests or reverts in the Liquidating Trust pursuant to this Article shall be distributed by the Liquidating Trustee to the other holders of Allowed Claims in accordance with the provisions of the Joint Plan or the Liquidating Trust Agreement.

#### F. *Surrender of Canceled Instruments and Securities*

##### Generally

Except as set forth in Article V.G hereof, as a condition precedent to receiving any Distribution hereunder on account of an Allowed Claim evidenced by instruments, securities or other documentation canceled pursuant to Article IV.I hereof, the holder of such Claim shall tender such instrument, security or other documentation evidencing such Claim to the Liquidating Trust (except as set forth in Article V.G hereof). Any Distributions pursuant to the

Plan on account of any Claim evidenced by such instruments, securities or other documentation shall, pending such surrender, will be treated as an undeliverable Distribution in accordance with Article V.E hereof; ***provided, however, all notes, instruments and other securities issued under the Senior Secured Credit Facility shall be deemed terminated and canceled upon the Effective Date to the extent not already surrendered and canceled as part of the closing of the Sale.***

If any holder of an Allowed Claim evidenced by instruments, securities or other documentation canceled pursuant to Article IV.I hereof, fails to surrender such instrument, security or other documentation or comply with the provisions of Article V.F hereof within one year after the Effective Date, its Claim for a Distribution under the Joint Plan on account of such instrument, security, or other documentation shall be discharged, and such holder shall be forever barred from asserting such Claim against the Liquidating Trust or its property. In such case, any property held on account of such Claim shall be disposed of pursuant to the provisions set forth in Article V.E.3 hereof.

G. *Lost, Stolen, Mutilated or Destroyed Instrument or Security*

Any holder of an Allowed Claim evidenced by instruments, securities or other documentation canceled pursuant to Article IV.I hereof that has been lost, stolen, mutilated or destroyed, shall, in lieu of surrendering such instrument, security or documentation: deliver to the Liquidating Trustee (i) an affidavit of loss reasonably satisfactory to the Liquidating Trustee setting forth the unavailability of such instrument, security, or other documentation and (ii) such additional security or indemnity as may reasonably be requested by the Liquidating Trustee to hold the Liquidating Trust harmless from any damages, liabilities, or costs incurred in treating such Entity as a holder of an Allowed. Upon compliance with this Article V.G by a holder of an Allowed Claim evidenced by such instrument, security or other documentation, such holder shall, for all purposes under the Joint Plan, be deemed to have surrendered such instrument, security or other documentation.

H. *Manner of Cash Payments Under the Joint Plan or the Liquidating Trust Agreement*

Cash payments made pursuant to the Joint Plan or the Liquidating Trust Agreement shall be in United States dollars by checks drawn on a domestic bank selected by the Liquidating Trust or by wire transfer from a domestic bank, at the option of the Liquidating Trust.

I. *Time Bar to Cash Payments by Check*

Checks issued by the Liquidating Trust on account of Allowed Claims shall be null and void if not negotiated within 90 days after the date of issuance thereof. Requests for the reissuance of any check that becomes null and void pursuant to this Article V.I. shall be made directly to the Liquidating Trustee by the holder of the Allowed Claim to whom the check was originally issued. Any Claim in respect of such voided check shall be made in writing on or before the later of the first anniversary of the Effective Date or the first anniversary of the date on which the Claim at issue became an Allowed Claim. After that date, all Claims in respect of void checks shall be discharged and forever barred and the proceeds of those checks shall revert in and become the property of the Liquidating Trust as unclaimed property in accordance with section 347(b) of the Bankruptcy Code and be distributed as provided in Article V.E.3.

J. *Limitations on Funding of Disputed Reserves*

Except as expressly set forth in the Joint Plan, neither the Debtor, the Committee, the Lenders, nor the Liquidating Trustee shall have any duty to fund the Disputed Reserves.

K. *Compliance with Tax Requirements*

In connection with making Distributions under this Joint Plan, to the extent applicable, the Liquidating Trustee shall comply with all tax withholding and reporting requirements imposed on it by any governmental unit, and all Distributions pursuant to this Joint Plan shall be subject to such withholding and reporting requirements. The Liquidating Trustee may withhold the entire Distribution due to any holder of an Allowed Claim until such time as such holder provides the necessary information to comply with any withholding requirements of any governmental unit. Any property so withheld will then be paid by the Liquidating Trustee to the appropriate authority. If the holder of an Allowed Claim fails to provide the information necessary to comply with any withholding requirements of any governmental unit within six months from the date of first notification to the holder of the need for such information or for the Cash necessary to comply with any applicable withholding requirements, then such holder's Distribution shall be treated as an undeliverable Distribution in accordance with Article V.E.1.

L. *No Payments of Fractional Dollars*

Notwithstanding any other provision of the Joint Plan to the contrary, no payment of fractional dollars shall be made pursuant to the Joint Plan. Whenever any payment of a fraction of a dollar under the Plan would otherwise be required, the actual Distribution made shall reflect a rounding down of such fraction to the nearest whole dollar.

M. *Interest on Claims*

Except as specifically provided for in the Joint Plan or the Confirmation Order, interest shall not accrue on Claims and no holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim. Interest shall not accrue or be paid on any Disputed Claim in respect of the period from the Petition Date to the date a final Distribution is made thereon if and after that Disputed Claim becomes an Allowed Claim. Except as expressly provided herein or in a Final Order of the Bankruptcy Court, no prepetition Claim shall be Allowed to the extent that it is for post petition interest or other similar charges.

N. *No Distribution in Excess of Allowed Amount of Claim*

Notwithstanding anything to the contrary contained in the Joint Plan, no holder of an Allowed Claim shall receive in respect of that Claim any Distribution in excess of the Allowed amount of that Claim.

O. *Setoff and Recoupment*

The Liquidating Trust may, but shall not be required to, setoff against, or recoup from, any Claim and the Distributions to be made pursuant to the Joint Plan in respect thereof, any claims or defenses of any nature whatsoever that any of the Debtor, the Estate or the Liquidating Trust may have against the holder of such Claim, but neither the failure to do so nor the

allowance of any Claim under the Joint Plan shall constitute a waiver or release by the Debtor, the Estate, or the Liquidating Trust of any right of setoff or recoupment that any of them may have against the holder of any Claim.

## **ARTICLE VI.**

### **DISPUTED CLAIMS**

#### **A. *No Distribution Pending Allowance***

Notwithstanding any other provision of the Joint Plan, the Liquidating Trustee shall not Distribute any Cash or other property on account of any Disputed Claim unless and until such Claim becomes Allowed.

#### **B. *Resolution of Disputed Claims.***

Unless otherwise ordered by the Bankruptcy Court after notice and a hearing, the Liquidating Trustee shall have the right to the exclusion of all others (except as to the Professionals' applications for allowances of compensation and reimbursement of expenses under sections 330 and 503 of the Bankruptcy Code) to make, File, prosecute, settle, compromise, withdraw or resolve in any manner approved by the Bankruptcy Court, objections to Claims. The costs of pursuing the objections to Claims shall be borne by the Liquidating Trust.

#### **C. *Objection Deadline***

All objections to Disputed Claims shall be Filed and served upon the holders of each such Claim not later than one year after the Effective Date, unless otherwise ordered by the Bankruptcy Court after notice and a hearing.

#### **D. *Estimation of Claims***

At any time, (a) prior to the Effective Date, the Debtor or the Committee, and (b) subsequent to the Effective Date, the Liquidating Trustee may request that the Bankruptcy Court estimate any contingent or unliquidated Claim to the extent permitted by section 502(c) of the Bankruptcy Code regardless of whether the Estate or the Liquidating Trust previously objected to such Claim or whether the Court ruled on any such objection, and the Bankruptcy Court shall have jurisdiction to estimate any Claim at any time during litigation concerning any objection to such Claim, including during the pendency of any appeal relating to any such objection. If the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount shall constitute either the Allowed amount of such Claim or a maximum limitation on the Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on the Claim, the Debtor, the Committee or the Liquidating Trust, as applicable, may elect to pursue supplemental proceedings to object to the ultimate allowance of the Claim. All of the aforementioned Claims objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court.



E. *Disallowance of Claims.*

Except as otherwise agreed, any and all proofs of Claim filed or asserted after the applicable Bar Date shall be deemed disallowed and expunged as of the Effective Date without any further notice to or action, order or approval of the Bankruptcy Court, and holders of such Claims may not receive any Distributions on account of such Claims, unless on or before the Confirmation Hearing the Bankruptcy Court has entered an order deeming such Claim to be timely filed.

**ARTICLE VII.  
TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

A. *Rejection of Executory Contracts and Unexpired Leases*

The Joint Plan shall constitute a motion to reject all executory contracts and unexpired leases not previously assumed or rejected by Final Order, and the Debtor's Estate shall have no further liability thereunder. The entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of any such rejections pursuant to sections 365(a) and 1123 of the Bankruptcy Code and that the rejection thereof is in the best interest of the Debtor, the Estate and all parties in interest in the Chapter 11 Case.

B. *Claims Based on Rejection of Executory Contracts or Unexpired Leases*

Claims created by the rejection of executory contracts and unexpired leases pursuant to Article VII.A of the Joint Plan, or the expiration or termination of any executory contract or unexpired lease prior to the Effective Date, must be Filed with the Bankruptcy Court and served on the Committee and the Debtor no later than thirty (30) days after the Effective Date. Any Claims arising from the rejection of an executory contract or unexpired lease pursuant to Article VII.A for which proofs of Claim are not timely filed within that time period will be forever barred from assertion against the Debtor, the Estate, their successors and assigns, and their assets and properties, unless otherwise ordered by the Bankruptcy Court or as otherwise provided herein. All such Claims shall, as of the Effective Date, be subject to the discharge and permanent injunction set forth in Article IX.F. Unless otherwise ordered by the Bankruptcy Court, all such Claims that are timely filed as provided herein shall be treated as General Unsecured Claims under the Joint Plan and shall be subject to the provisions of Article III of the Joint Plan.

**ARTICLE VIII.  
CONDITIONS PRECEDENT TO THE EFFECTIVE DATE**

A. *Conditions Precedent to the Effective Date*

The following are conditions precedent to the Effective Date that must be satisfied or waived:

The Confirmation Order has become a Final Order.

The Confirmation Order shall be in full force and effect.

The Debtor shall fund the Liquidating Trust Fund.

Notwithstanding the foregoing, the Plan Proponents reserve, in their sole discretion, the right to waive the occurrence of any condition precedent to the Effective Date or to modify any of the foregoing conditions precedent. Any such written waiver of a condition precedent set forth in this Article may be effected at any time, without notice, without leave or order of the Bankruptcy Court, and without any formal action other than proceeding to consummate the Joint Plan. Any actions required to be taken on the Effective Date shall take place and shall be deemed to have occurred simultaneously, and no such action shall be deemed to have occurred prior to the taking of any other such action.

## **ARTICLE IX.**

### **RELEASE, INJUNCTIVE AND RELATED PROVISIONS**

#### **A. *Compromise and Settlement***

Pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the Distributions and other benefits provided pursuant to the Joint Plan, the provisions of the Joint Plan shall constitute a good faith compromise of all Claims and Equity Interests. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all Claims and Equity Interests, as well as a finding by the Bankruptcy Court that such compromise or settlement is fair, equitable, reasonable and in the best interests of the Debtor, the Estate and holders of Claims and Equity Interests.

#### **B. *Releases***

##### **Releases by the Estate**

Pursuant to § 1123(b) of the Bankruptcy Code, as of the Confirmation Date, but subject to the occurrence of the Effective Date, the Debtor and the Debtor's estate shall be deemed to forever waive, release and discharge all Releasees from and with respect to all Claims, obligations, suits, causes of action, demands, judgments, debts, rights, liabilities, losses, whether known or unknown, in law or in equity, liquidated or unliquidated, fixed or contingent, matured or unmatured, foreseen or unforeseen, in law, equity or otherwise that are based in whole or in part on any act, omission, transaction, event or other occurrence taking place before the Effective Date in any way relating to the Debtor, the Debtor's business or affairs, the Chapter 11 Case, the Joint Plan or the Disclosure Statement that have been or could have been asserted by or on behalf of the Debtor or the Debtor's estate against the Releasees as of the Effective Date. The release of all such claims in favor of the Releasees shall bind all creditors, shareholders, the Liquidating Trustee, and other parties in interest in the Chapter 11 Case, provided, however, that the foregoing provisions of this Joint Plan shall not operate to waive or release any D&O Claims or Avoidance Actions against Insiders expressly set forth in and preserved by the Joint Plan or Joint Plan Supplement or any defenses thereto. ANY SUCH RELEASE SHALL ADDITIONALLY ACT AS AN INJUNCTION AGAINST ANY PERSON FROM COMMENCING OR CONTINUING ANY ACTION, EMPLOYMENT OF PROCESS OR ACT TO COLLECT, OFFSET, OR RECOVER ANY CLAIM THAT IS SO RELEASED. Without limitation, the

foregoing release shall include any claims which were available to Persons outside of bankruptcy but which the Estate became entitled to enforce under § 544 of the Bankruptcy Code.

### Third Party Releases

As of the Confirmation Date, but subject to the occurrence of the Effective Date, and except as otherwise expressly provided in the Confirmation Order or herein, for good and valuable consideration, the adequacy of which is hereby confirmed, each holder of a Claim that votes to accept the Plan as set forth on the relevant Ballot shall be deemed to have forever covenanted with the Debtor and with each of the Releasees to waive, release, and discharge all Claims, obligations, suits, causes of action, demands, judgments, debts, rights, liabilities, losses, whether known or unknown, in law or in equity, liquidated or unliquidated, fixed or contingent, matured or unmatured, foreseen or unforeseen, in law, equity or otherwise that are based in whole or in part on any act, omission, transaction, event or other occurrence taking place before the Effective Date in any way relating to the Debtor, the Debtor's business or affairs, the Chapter 11 Case, the Joint Plan or the Disclosure Statement that could have been asserted by such holder of a Claim or Interest against the Releasees as of the Effective Date (the "Released Claims") and such Released Claims shall not be preserved for the benefit of the beneficiaries of the Liquidating Trust and shall not be deemed to be among the assets transferred and assigned to the Liquidating Trust on the Effective Date.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the releases set forth in the Joint Plan pursuant to Bankruptcy Rule 9019 and its finding that they are:

(i) in exchange for good and valuable consideration, representing a good faith settlement and compromise of the Claims and Causes of Action thereby released; (ii) in the best interests of the Estate and all holders of Claims; (iii) fair, equitable and reasonable; (iv) approved after due notice and opportunity for hearing; and (v) a bar to the Estate or the Liquidating Trustee or any other affected Person and/or Entity.

### C. Exculpation

The Exculpated Parties and any property of or professionals retained by such parties, or direct or indirect predecessor-in-interest to any of the foregoing Persons, will not have or incur any liability to any Person for any act taken or omission occurring on or after the Petition Date or for any and all Claims and Causes of Action arising on or after the Petition Date, in connection with or related to the Debtor or the Liquidating Trust, including, but not limited to, (i) the commencement and administration of the Chapter 11 Case, (ii) the operation of the Debtor during the pendency of the Chapter 11 Case, including, but not limited to, the sale of its assets, (iii) formulating, negotiating, preparing, disseminating, soliciting, implementing, administering, confirming or consummating the Joint Plan, the Disclosure Statement, Liquidating Trust Agreement, DIP financing facility, or any other contract, instrument, release or other agreement or document created or entered into in connection with the Joint Plan or any other post petition act taken or omitted to be taken in connection with or in contemplation of the Settlement or the Sale or liquidation of the Debtor; (iv) submission of and statements made in, the Disclosure Statement or any contract, instrument, release or other agreement or document entered into, or any action taken or omitted to be taken in connection with the Joint Plan; or (v) any Distributions made pursuant to the Joint Plan, except for acts constituting willful misconduct or gross

negligence, and in all respects such parties shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Joint Plan. The entry of the Confirmation Order shall constitute a determination by the Court that the Debtor, the Liquidating Trustee and each of their Representatives shall have acted in good faith and in compliance with the applicable provisions of the Bankruptcy Code, pursuant to, among other provisions of law, § 1125(e) and 1129(a)(3) of the Bankruptcy Code, with respect to the foregoing, provided, further, that the foregoing provisions of the Joint Plan shall not apply to any acts, omissions, Claims, Causes of Action or other obligations expressly set forth in and preserved by the Joint Plan or Joint Plan Supplement or any defenses thereto.

D. *Preservation of Rights of Action*

*Vesting of Causes of Action*

(a) Except as otherwise provided in the Joint Plan or Confirmation Order, in accordance with section 1123(b)(3) of the Bankruptcy Code, any Causes of Action that the Debtor may hold against any Entity shall vest upon the Effective Date in the Liquidating Trust, with the exception of any Causes of Action (whether held by the Debtor or any other Person or Entity) related to the DIP Lender and/or Purchaser, all of which are released.

(b) Except as otherwise provided in the Joint Plan or Confirmation Order, after the Effective Date, the Liquidating Trustee shall have the exclusive right to institute, prosecute, abandon, settle or compromise any Causes of Action, in accordance with the terms of the Liquidating Trust Agreement and without further order of the Bankruptcy Court, in any court or other tribunal, including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case.

(c) Causes of Action and any recoveries therefrom shall remain the sole property of the Liquidating Trust (for the sole benefit of the holders of General Unsecured Claims), as the case may be, and holders of other Claims shall have no right to any such recovery.

*Preservation of All Causes of Action Not Expressly Settled or Released*

(d) Unless a Cause of Action against a holder or other Entity is expressly waived, relinquished, released, compromised or settled in the Joint Plan or any Final Order (including the Confirmation Order), the Liquidating Trustee expressly reserve such Cause of Action for later adjudication by the Debtor, the Committee or the Liquidating Trustee (including, without limitation, Causes of Action not specifically identified or described in the Joint Plan Supplement or elsewhere or of which the Estate may presently be unaware or which may arise or exist by reason of additional facts or circumstances unknown to Estate at this time or facts or circumstances which may change or be different from those the Estate now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches shall apply to such Causes of Action upon or after the entry of the Confirmation Order or Effective Date based on the Disclosure Statement, Joint Plan or Confirmation Order, except where

such Causes of Action have been released in the Joint Plan (including, without limitation, and for the avoidance of doubt, the releases contained in 0) or any other Final Order (including the Confirmation Order). In addition, the Liquidating Trustee expressly reserve the right to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits.

(e) Subject to the immediately preceding paragraph, any Entity to whom the Debtor has incurred an obligation (whether on account of services, purchase or sale of goods or otherwise), or who has received services from the Debtor or a transfer of money or property of the Debtor, or who has transacted business with the Debtor, or leased equipment or property from the Debtor should assume that any such obligation, transfer, or transaction may be reviewed by the Liquidating Trustee subsequent to the Effective Date and may be the subject of an action after the Effective Date, regardless of whether: (i) such Entity has filed a proof of claim in the Chapter 11 Case; (ii) an objection was Filed to any such Entity's proof of claim; (iii) any such Entity's Claim was included in the Schedules; (iv) an objection was Filed against any such Entity's scheduled Claim; or (v) any such Entity's scheduled Claim has been identified as disputed, contingent or unliquidated.

E. Indemnification

Notwithstanding anything to the contrary in this Joint Plan, the Debtor's obligations to indemnify Persons who served during the Chapter 11 Case as the Debtor's officers and employees existing under applicable nonbankruptcy law (whether arising under contract, bylaw, or certificate of incorporation) with respect to all present and future actions, suits, and proceedings against any of such indemnified Persons, based upon any act or omission related to service with, for, or on behalf of the Debtor at any time during the period from the Petition Date through the Effective Date (including acting as employee benefit plan fiduciaries or employee benefit administrative trustees), in all cases net of applicable insurance proceeds, other than for acts constituting willful misconduct or gross negligence, shall continue as obligations for the Liquidating Trust after the Effective Date; provided, however, that unless otherwise ordered by the Court (which order may be entered at any time) neither the Debtor nor the Liquidating Trust shall be required to reserve for any such obligations and such obligations shall be terminated and discharged upon the later to occur of the entry of a Final Order closing the Chapter 11 Case and the dissolution of the Liquidating Trust.

F. Injunction

All Persons who have held, hold, or may hold Claims against or Interests in the Debtor or Releasees shall, with respect to any such Claims or Interests, be permanently enjoined from and after the Confirmation Date, except for D&O Claims which are expressly preserved, from taking any of the following actions (other than actions to enforce any rights or obligations under the Plan): (i) commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor, the Estate, the Liquidating Trust, the Liquidating Trustee, the Releasees, or any of their respective property; (ii) enforcing, levying, attaching (including, without limitation, any pre-judgment attachment),

collecting or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree or order against the Debtor, the Estate, the Liquidating Trust, the Liquidating Trustee, the Releasees, or any of their respective property; (iii) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtor, the Estate, the Liquidating Trust, the Liquidating Trustee, the Releasees, or any of their property; (iv) asserting any right of setoff, directly or indirectly, against any obligation due the Debtor, the Estate, the Liquidating Trust, the Liquidating Trustee, the Releasees, or any of their property, except as contemplated or allowed by the Joint Plan or the Confirmation Order; (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Joint Plan; (vi) pursuing, prosecuting, or recovering proceeds on account of my claims belonging to transferred to, or conferred upon the Liquidating Trust (or which will belong to, be transferred to, or conferred upon the Liquidating Trust on the Effective Date) and (vii) prosecuting or otherwise asserting any right, claim, or cause of action released pursuant to the Joint Plan.

G. *Releases of Liens*

Except as otherwise provided in the Joint Plan or in any contract, instrument, release or other agreement or document created pursuant to the Joint Plan, on the Effective Date, all mortgages, deeds of trust, liens, pledges or other security interests against property of the Estate shall be fully released and discharged and all of the right, title and interest of any holder of such mortgages, deeds of trust, liens, pledges or other security interest shall revert to the Debtor and the Liquidating Trustee.

## **ARTICLE X.**

### **RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Debtor and the Joint Plan as is legally permissible, including, without limitation, jurisdiction to:

1. allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Equity Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the allowance or priority of Claims or Equity Interests;
2. grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Joint Plan, for periods ending on or before the Effective Date;
3. resolve any matters related to the assumption, assignment or rejection of any executory contract or unexpired lease to which a Debtor is party or with respect to which a Debtor may be liable and to hear, determine and, if necessary, liquidate, any Claims arising there from, including those matters related to any amendment to the Joint Plan after the Effective Date pursuant to the Joint Plan adding executory contracts or unexpired leases to the list of executory contracts and unexpired leases to be assumed;

4. ensure that Distributions to holders of Allowed Claims are accomplished pursuant to the provisions of the Joint Plan;
5. decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters and grant or deny any applications involving a Debtor that may be pending on the Effective Date or instituted by the Liquidating Trustee after the Effective Date, provided, however, that the Liquidating Trustee shall reserve the right to commence actions in all appropriate jurisdictions;
6. enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Joint Plan and all other contracts, instruments, releases, and other agreements or documents adopted in connection with the Joint Plan, Joint Plan Supplement or the Disclosure Statement;
7. resolve any cases, controversies, suits or disputes that may arise in connection with the Effective Date, interpretation or enforcement of the Joint Plan or any Entity's obligations incurred in connection with the Joint Plan;
8. issue injunctions, enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with the Effective Date or enforcement of the Joint Plan, except as otherwise provided in the Joint Plan;
9. enforce the Injunction set forth in the Joint Plan;
10. resolve any cases, controversies, suits or disputes with respect to the releases, injunction and other provisions contained in the Joint Plan, and enter such orders as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;
11. enter and implement such orders as necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;
12. resolve any other matters that may arise in connection with or relate to the Joint Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release, or other agreement or document adopted in connection with the Joint Plan or the Disclosure Statement; and
13. enter an order and/or the decree contemplated in Bankruptcy Rule 3022 concluding the Chapter 11 Case.

## **ARTICLE XI.**

### **MISCELLANEOUS PROVISIONS**

#### **A. *Final Fee Applications***

The deadline for submission by Professionals of applications for Bankruptcy Court approval of Accrued Professional Compensation shall be forty-five (45) days after the Effective Date.

B. *Payment of Statutory Fees*

All fees payable pursuant to Article 1930 of title 28 of the United States Code after the Effective Date, as determined by the Bankruptcy Court at a hearing pursuant to section 1128 of the Bankruptcy Code, shall be paid prior to the closing of the Chapter 11 Case on the earlier of when due or the Effective Date, or as soon thereafter as practicable.

C. *Modification of the Joint Plan*

Subject to the limitations contained in the Joint Plan: (1) the Plan Proponents reserve the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify the Joint Plan prior to the entry of the Confirmation Order, including amendments or modifications to satisfy section 1129(b) of the Bankruptcy Code; and (2) after the entry of the Confirmation Order, the Liquidating Trustee, as the case may be, may, upon order of the Bankruptcy Court, amend or modify the Joint Plan, in accordance with section 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency in the Joint Plan in such manner as may be necessary to carry out the purpose and intent of the Joint Plan.

D. *Revocation of Plan*

The Plan Proponents reserve the right to revoke or withdraw the Joint Plan prior to the entry of the Confirmation Order and to File subsequent chapter 11 plans. If the Plan Proponents revoke or withdraw the Joint Plan or if entry of the Confirmation Order or the Effective Date does not occur, then: (1) the Joint Plan shall be null and void in all respects.

E. *Successors and Assigns*

The rights, benefits and obligations of any Entity named or referred to herein shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of such Entity.

F. *Governing Law*

Except to the extent that the Bankruptcy Code or Bankruptcy Rules apply, and subject to the provisions of any contract, instrument, release, or other agreement or document entered into in connection herewith, the rights and obligations arising hereunder shall be governed by, and construed and enforced in accordance with, the laws of the state of Delaware, without giving effect to the principles of conflict of laws thereof.

G. *Reservation of Rights*

Except as expressly set forth herein, the Joint Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order. Neither the filing of the Joint Plan, any statement or provision contained herein, nor the taking of any action by the Debtor or any Entity with respect to the Joint Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor with respect to the holders of Claims or Equity Interests or other parties-in-interest; or (2) any holder of a Claim or other party-in-interest prior to the Effective Date.



H. *Article 1146 Exemption*

Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any stamp tax or other similar tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forego the collection of any such tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such tax or governmental assessment.

I. *Section 1125(e) Good Faith Compliance*

The Debtor, the Committee and its individual members, and each of their respective Representatives, shall be deemed to have acted in "good faith" under section 1125(e) of the Bankruptcy Code.

J. *Further Assurances*

The Debtor, the Liquidating Trustee, all holders of Claims receiving Distributions hereunder and all other parties in interest shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Joint Plan or the Confirmation Order.

K. *Service of Documents*

Any pleading, notice or other document required by the Joint Plan to be served on or delivered to the Debtor shall be sent by first class U.S. mail, postage prepaid as follows:

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L. *Filing of Additional Documents*

On or before the Effective Date, the Plan Proponents may File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

M. *No Stay of Confirmation Order*

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

N. *Aid and Recognition*

The Debtor, Committee or Liquidating Trustee, as the case may be, shall, as needed to effect the terms hereof, request the aid and recognition of any court or judicial, regulatory or administrative body in any province or territory of Canada or any other nation or state.

\* \* \* \* \*

Dated: \_\_\_\_\_, 2009

Respectfully submitted,