

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re:

Chapter 11

Case No. 8:12-bk-13635-KRM

PHIL'S CAKE BOX BAKERIES, INC.
d/b/a Alessi's Bakery,

Debtor.

**DISCLOSURE STATEMENT FOR
PHIL'S CAKE BOX BAKERIES, INC.'S PLAN OF
REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

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Dated as of February 20, 2013

THIS DISCLOSURE STATEMENT (THE “**DISCLOSURE STATEMENT**”) MAY NOT BE RELIED ON FOR ANY PURPOSE OTHER THAN TO DETERMINE HOW TO VOTE ON THE PLAN OF REORGANIZATION FOR PHIL’S CAKE BOX BAKERIES, INC. D/B/A ALESSI’S BAKERY (THE “**PLAN OF REORGANIZATION**” OR THE “**PLAN**”), AND NOTHING CONTAINED IN THIS DISCLOSURE STATEMENT WILL CONSTITUTE AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY, OR BE ADMISSIBLE IN ANY PROCEEDING INVOLVING THE DEBTOR OR ANY OTHER PARTY, OR BE DEEMED CONCLUSIVE ADVICE ON THE TAX OR OTHER LEGAL EFFECTS OF THE PLAN ON HOLDERS OF CLAIMS AGAINST OR INTERESTS IN THE DEBTOR.

THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION, NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED HEREIN.

THE DESCRIPTION OF THE DEBTOR’S PLAN OF REORGANIZATION CONTAINED IN THIS DISCLOSURE STATEMENT IS INTENDED AS A SUMMARY ONLY AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE PLAN ITSELF. **EACH CREDITOR AND HOLDER OF AN INTEREST SHOULD READ, CONSIDER AND CAREFULLY ANALYZE THE TERMS AND PROVISIONS OF THE PLAN.**

THE SOLICITATION OF ACCEPTANCES OF THE PLAN OR THE GIVING OF ANY INFORMATION OR THE MAKING OF ANY REPRESENTATION OTHER THAN AS CONTAINED IN THIS DISCLOSURE STATEMENT AND THE EXHIBITS OR DOCUMENTS ATTACHED HERETO OR INCORPORATED BY REFERENCE OR REFERRED TO HEREIN IS NOT AUTHORIZED BY THE PLAN PROPONENT, AND IF GIVEN OR MADE, SUCH INFORMATION OR REPRESENTATION MAY NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED BY THE DEBTOR. SUCH ADDITIONAL REPRESENTATIONS SHOULD BE REPORTED TO COUNSEL FOR THE DEBTOR, WHO IN TURN WILL DELIVER SUCH INFORMATION TO THE BANKRUPTCY COURT FOR ACTION AS MAY BE DEEMED APPROPRIATE. THE DELIVERY OF THIS DISCLOSURE STATEMENT WILL NOT UNDER ANY CIRCUMSTANCES IMPLY THAT THE INFORMATION HEREIN IS CORRECT AS OF ANY TIME SUBSEQUENT TO THE DATE HEREOF. CREDITORS AND HOLDERS OF INTERESTS ARE ENCOURAGED TO REVIEW THE BANKRUPTCY DOCKET IN THE LEAD CASE IN ORDER TO EVALUATE EVENTS WHICH OCCUR BETWEEN THE DATE OF THIS DISCLOSURE STATEMENT AND THE DATE OF THE CONFIRMATION HEARING. **ALL CREDITORS THAT ARE ENTITLED TO VOTE ARE ENCOURAGED TO READ AND CAREFULLY CONSIDER THIS ENTIRE DISCLOSURE STATEMENT, INCLUDING THE PLAN OF REORGANIZATION AND THE MATTERS DESCRIBED IN THIS DISCLOSURE STATEMENT, PRIOR TO SUBMITTING A BALLOT PURSUANT TO THIS SOLICITATION.**

IN THE EVENT THAT ANY OF THE CLASSES OF HOLDERS OF IMPAIRED CLAIMS VOTE TO REJECT THE PLAN (1) THE DEBTOR MAY ALSO SEEK TO SATISFY THE REQUIREMENTS FOR CONFIRMATION OF THE PLAN WITH RESPECT TO THAT CLASS UNDER THE SO-CALLED “CRAMDOWN” PROVISIONS OF SECTION 1129(b) OF THE BANKRUPTCY CODE (11 U.S.C. § 1129(b)) AND, IF REQUIRED, MAY FURTHER AMEND THE PLAN TO CONFORM TO SUCH REQUIREMENTS OR (2) THE PLAN MAY BE OTHERWISE MODIFIED OR WITHDRAWN AS PROVIDED THEREIN. THE REQUIREMENTS FOR CONFIRMATION, INCLUDING THE VOTE OF HOLDERS OF IMPAIRED CLAIMS TO ACCEPT THE PLAN AND CERTAIN OF THE STATUTORY FINDINGS THAT MUST BE MADE BY THE BANKRUPTCY COURT, ARE SET FORTH UNDER THE CAPTION “VOTING ON AND CONFIRMATION OF THE PLAN.”

APPROVAL OF THIS DISCLOSURE STATEMENT BY THE BANKRUPTCY COURT DOES NOT INDICATE THAT THE BANKRUPTCY COURT RECOMMENDS EITHER ACCEPTANCE OR REJECTION OF THE PLAN, NOR DOES SUCH APPROVAL CONSTITUTE A DETERMINATION BY THE BANKRUPTCY COURT OF THE FAIRNESS OR MERITS OF THE PLAN OR OF THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT.

THE DEBTOR BELIEVES THAT THE PLAN IS IN THE BEST INTERESTS OF CREDITORS AND HOLDERS OF INTERESTS. ALL CREDITORS AND HOLDERS OF INTERESTS ARE THEREFORE URGED TO VOTE IN FAVOR OF THE PLAN. TO BE COUNTED, YOUR BALLOT MUST BE COMPLETED AND EXECUTED AND RECEIVED BY NO LATER THAN THE TIME SET BY THE COURT.

**INDEX TO EXHIBITS TO
DISCLOSURE STATEMENT**

EXHIBIT A - PRO FORMA FINANCIAL PROJECTIONS

EXHIBIT B - LIQUIDATION ANALYSIS

EXHIBIT C - BUDGET TO ACTUAL REPORT

**DISCLOSURE STATEMENT FOR
PHIL'S CAKE BOX BAKERIES, INC. D/B/A ALESSI'S BAKERY**

Phil's Cake Box Bakeries, Inc. d/b/a Alessi's Bakery, the Debtor and Debtor in Possession in this Reorganization Case (the "**Debtor**"), submits this Disclosure Statement pursuant to Section 1125 (11 U.S.C. § 1125) of the Bankruptcy Code, 11 U.S.C. § 101, *et seq.* (the "**Bankruptcy Code**"), in connection with the solicitation of votes on the Plan from holders of impaired Claims against the Debtor and the hearing on confirmation of the Plan scheduled by the Bankruptcy Court.

This Disclosure Statement is subject to the approval of the Bankruptcy Court in accordance with Section 1125(b) of the Bankruptcy Code as containing information of a kind and in sufficient detail adequate to enable a hypothetical reasonable investor typical of the holders of Claims of the relevant Voting Classes (as defined below) to make an informed judgment whether to accept or reject the Plan. Effort has been made to provide meanings of capitalized and other terms used in this Disclosure Statement. Reference is made to the Plan, however, for the actual meanings of all capitalized and other terms used in this Disclosure Statement and in the Plan and for controlling language with respect to any provision referenced in this Disclosure Statement or in the Plan. Terms used in this Disclosure Statement and in the Plan are defined in Article II of the Plan. In the event of a conflict between the definition of any term or any other provision contained in this Disclosure Statement and the corresponding definition or provision contained in the Plan, the definition or provision contained in the Plan shall control.

In the opinion of the Debtor, the treatment of Claims and Interests under the Plan contemplates a substantially greater recovery than that which is likely to be achieved under other alternatives for the reorganization or liquidation of the Debtor. If the Plan is not confirmed, there is a substantial likelihood that unsecured creditors will be left with no recovery at all.

The Debtor believes that confirmation of the Plan is clearly in the best interests of Creditors and Holders of Interests, and strongly recommends that Creditors holding Allowed Claims in the Voting Classes vote to accept the Plan.

PURPOSE OF DISCLOSURE STATEMENT

The purpose of this Disclosure Statement is to provide the Creditors of the Debtor with adequate information to make an informed judgment about the Plan. This information includes, among other things, the history of the Debtor prior to the filing of the Reorganization Case under Chapter 11, the events leading to the filing of the Reorganization Case, a brief summary of significant events to date in the Reorganization Case, and a summary explanation of how the Plan will function.

This Disclosure Statement contains important information about the Plan and considerations pertinent to a vote for or against the confirmation of the Plan. All Holders of Claims and Interests are encouraged to carefully review this Disclosure Statement and the Plan.

VOTING INSTRUCTIONS

Who May Vote

Only the Holders of Claims and Interests that are deemed “allowed” under the Bankruptcy Code and that are “impaired” under the terms and provisions of the Plan (the “**Voting Classes**”) are permitted to vote to accept or reject the Plan. For purposes of the Plan, only the holders of Allowed Claims in the Voting Classes are impaired under the Plan and thus may vote to accept or reject the Plan. Under the Plan, the Claims classified in Classes 2, 3, 4, 7, 8, 9, 10, 11 and 12 are impaired under the Plan and are entitled to vote to accept or reject the Plan and thus constitute the “Voting Classes” thereunder.

How to Vote

Each holder of a Claim in a Voting Class should read this Disclosure Statement, together with the Plan and other exhibits, in their entirety. After carefully reviewing the Plan and this Disclosure Statement and their respective exhibits, please complete the enclosed Ballot, including indicating your vote thereon with respect to the Plan, and return the Ballot as provided below. Please note that your vote and election cannot count unless you return the enclosed Ballot.

If you are a member of a Voting Class and did not receive a Ballot, if your Ballot is damaged or lost, or if you have any questions concerning voting procedures, please contact Michelle Clift at (813) 229-0144.

YOU SHOULD COMPLETE AND SIGN THE ENCLOSED BALLOT AND RETURN IT AS DESCRIBED BELOW. IN ORDER TO BE COUNTED, BALLOTS MUST BE DULY COMPLETED AND EXECUTED AND RECEIVED BY NO LATER THAN THE DATE FIXED BY THE BANKRUPTCY COURT IN THE ENCLOSED ORDER APPROVING DISCLOSURE STATEMENT AND FIXING DATES FOR CONFIRMATION (THE “BALLOT DEADLINE”).

Completed Ballots should be sent by regular mail, hand delivery, overnight delivery, or electronically **SO AS TO BE RECEIVED NO LATER THAN THE BALLOT DEADLINE**, to:

Clerk of the United States Bankruptcy Court
Sam M. Gibbons United States Courthouse
801 N. Florida Avenue, Suite 555
Tampa, Florida 33602

or electronically through the Court’s website at: <https://pacer.flmb.uscourts.gov>.

A copy of the Ballot should also be sent to:

Daniel R. Fogarty, Esquire
Stichter Riedel Blain & Prosser, P.A.
110 E. Madison Street, Suite 200
Tampa, Florida 33602

Acceptance of Plan and Vote Required for Class Acceptance

As the holder of an Allowed Claim in the Voting Classes, your vote on the Plan is extremely important. In order for the Plan to be accepted and thereafter confirmed by the Bankruptcy Court without resorting to the “cramdown” provisions of Section 1129(b) of the Bankruptcy Code as to other classes of Allowed Claims, votes representing at least two-thirds in amount and more than one-half in number of Allowed Claims of each impaired Class of Claims that are voted must be cast for the acceptance of the Plan. The Debtor is soliciting acceptances only from members of the Voting Classes. The Debtor or its agents may contact you with regard to your vote on the Plan.

To meet the requirement for confirmation of the Plan under the “cramdown” provisions of the Bankruptcy Code with respect to any impaired Class of Claims or Interests which votes to reject the Plan (a “**Rejecting Class**”), the Debtor would have to show that all Classes junior to the Rejecting Class will not receive or retain any property under the Plan unless all holders of Claims in the Rejecting Class receive, under the Plan, property having a value equal to the full amount of their Allowed Claims.

Confirmation Hearing

The Bankruptcy Court will schedule a hearing to consider confirmation of the Plan (the “**Confirmation Hearing**”), which may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement of the adjourned date made at the Confirmation Hearing. The Bankruptcy Court has directed that any objection to confirmation of the Plan must be in writing and specify in detail the name and address of the objector, the basis for the objection and the specific grounds for the objection, and the amount of the Claim held by the objector. Consistent with Rule 3020(b) of the Federal Rules of Bankruptcy Procedure and Local Rule 3020-1(a), any such objection must be filed with the Bankruptcy Court and served upon each of the following parties, so as to be actually received on or before the deadline set by the Court:

Debtor: Daniel R. Fogarty, Esquire
Stichter Riedel Blain & Prosser, P.A.
110 East Madison Street, Suite 200
Tampa, Florida 33602

U.S. Trustee: Denise E. Barnett, Esquire
Assistant United States Trustee
501 East Polk Street, Suite 1200
Tampa, Florida 33602

HISTORY OF THE DEBTOR AND EVENTS LEADING TO THE FILING OF THE REORGANIZATION CASE

Alessi's has been a family-owned bakery and catering business, specializing in the manufacturing and retail sale of fine Italian desserts and has been owned and operated in Tampa by four generations of the Alessi family. Prior to the Petition Date, Alessi's operations grew from a small bakery delivering bread by horse and wagon, to the current 100,000 square foot manufacturing facility serving retail customers nationwide. Alessi's operates from a manufacturing facility and a retail bakery. The manufacturing facility (the "**Eagle Trail Facility**") is located at 5202 Eagle Trail Drive, Tampa, Florida, and the retail bakery facility is located at 2909 West Cypress Street, Tampa, Florida.

Anticipating increased growth in its business and revenues, Alessi's purchased the Eagle Trail Facility in March 2007. The acquisition was funded in part by a loan facility from Zions First National Bank ("**Zions**"). In addition to purchasing the real property, Alessi's invested significant capital for build-out of the Eagle Trail Facility, which formerly housed a furniture manufacturing operation, including significant investments in modular freezer and cold storage equipment. Almost immediately after the company invested and borrowed heavily for the plant expansion, Alessi's revenues declined, primarily as a result of the recession. Although sales declined, fixed costs to fund the expansion remained, and Debtor was unable to reduce its variable costs as quickly as it would have liked, resulting in significant losses that were covered in part by loans to the Debtor from Phil Alessi, Sr. Increases in major commodity raw materials, such as flour, sugar, and butter, created pressures on margins.

In addition, Zions, as the holder of the first mortgage on the Eagle Trail Facility, filed a foreclosure action. In order to avoid a foreclosure sale, the Debtor filed this chapter 11 case.

SIGNIFICANT EVENTS TO DATE IN THE REORGANIZATION CASE

On September 5, 2012, the Debtor filed its Voluntary Petition for Relief under Chapter 11 of the Bankruptcy Code.

Cash Collateral

The initial stages of the Bankruptcy Case were focused on the terms and conditions of the Debtor's use of cash collateral, including payments necessary to provide adequate protection to Southern Commerce, and the validity, priority, and extent of liens on cash collateral. On September 6, 2012, the Debtor filed its cash collateral motion. As a result of negotiations between the Debtor and Southern Commerce, the Court entered its Agreed Interim Bridge Order and has entered a series of interim orders approving the use of cash collateral subject to various terms and conditions.

Other First-Day Motions

On September 6 and 7, 2012, the Debtor filed the following additional first day pleadings with the Court: (1) Emergency Motion for Authorization to Pay Prepetition Wages, Salaries, and Other Employee Benefits (the “**Wages Motion**”); (2) Emergency Application for Authorization to Pay Affiliate Officer’s Salary (the “**Salary Motion**”); and (3) Emergency Motion for Order Prohibiting Utilities from Altering, Refusing or Discontinuing Service on Account of Prepetition Invoices; Approving Debtor’s Proposed Adequate Assurance of Payment; and Establishing Procedures for Determining Additional Requests for Adequate Assurance of Payment (the “**Utilities Motion**”). The Court has entered orders approving the relief requested.

Employment and Compensation of Professionals

The Debtor has received authorization to employ the following professionals in the Bankruptcy Case: Stichter, Riedel, Blain & Prosser, P.A., as Counsel for the Debtor in Possession; William Maloney and Bill Maloney Consulting as Chief Restructuring Advisor; Baumann Raymondo, a Skoda Minotti CPA Firm as 401(k) Plan Audit Accountants; Rick Fernandez as Rental Real Estate Property Manager; and, Levin, Papantonio, et al. as Special Counsel - BP Claims.

Plan and Extensions of Deadlines for Exclusivity

On September 28, 2012, the Court entered its Order Establishing Deadline for Filing Plan and Disclosure Statement which set the date of November 26, 2012 for the Debtor to file its Plan and Disclosure Statement. On November 26, 2012, the Debtor filed its Motion for Extension of Time to File Chapter 11 Plan and Disclosure Statement, seeking an extension through and including January 3, 2013 in which to file its Plan and Disclosure Statement. Subsequently, the Debtor requested and received an additional extension of time to file its Plan and Disclosure Statement through February 20, 2013.

Additional Relief Requested

During the pendency of this case, the Debtor has requested and received the following additional relief:

Motion for Authorization to Honor Prepetition Gift Certificates Issued to Customers prior to the Petition Date in the ordinary course of business.

Motion for Authorization to Continue Use of Broker Network with respect to food brokers utilized in the ordinary course of business.

Pursuant to agreement of the parties, the Debtor sought to abandon to the FDIC, as receiver for Heritage Bank of Florida, residential real property located at 903 N. Excelda Avenue and 1014 Paddock Street, Tampa, Florida subject of the liens of Heritage Bank, as the property was deemed unnecessary and burdensome to the estate.

Sale by Zions First National Bank of Claims Against the Debtor

On the Petition Date, the secured creditor asserting the largest claim against the Debtor by dollar amount was Zions First national Bank. As discussed above, the foreclosure action filed by Zions was a precipitating event of the filing of the Bankruptcy Cases. During the initial stages of the Bankruptcy Case, the Debtor discussed initial proposals for plan treatment, in addition to responding to various information requests from Zions. Shortly after it filed a motion seeking the appointment of a trustee, Zions sold its claims against the Debtor to a third party, Eagle Trail Drive. Subsequent to the assignment by Zions, the Debtor has been in on-going discussions with Eagle Trial Drive and its principals. As of the date of this Disclosure Statement, those discussions remain on-going, and in order to allow the discussions to mature, the Debtor has reserved treating the Class 3 Secured Claims of Eagle Trail Drive under the Plan until a consensual resolution is reached, or at least has a chance to come to fruition.

Summary of Post-Petition Financial Performance

The Debtor's post-petition financial performance is summarized in the monthly operating reports filed in the Bankruptcy Case, as well as the most recent cash collateral report attached hereto as **Exhibit C** and incorporated herein by reference.

SUMMARY OF PLAN OF REORGANIZATION

Introduction

The Debtor believes that the Plan provides the greatest possible recovery to the Debtor's Creditors. The Debtor therefore believes that acceptance of the Plan is in the best interest of each and every Class of Claims and Interests and recommends that the Voting Classes vote to accept the Plan.

A summary of the principal provisions of the Plan is set forth below. This summary is qualified in its entirety by reference to the provisions of the Plan and, to the extent there is any conflict between this summary and the Plan, the language of the Plan will govern. All terms stated in initial capital letters in this summary are defined in the Plan.

Claims and Interests will be treated under the Plan in the manner set forth in Article 5 of the Plan. Except as otherwise specifically provided in the Plan, the treatment of, and the consideration to be received by, Holders of Allowed Claims and Holders of Allowed Interests pursuant to the Plan will be in full and final satisfaction, settlement, release, extinguishment and discharge of their respective Allowed Claims (of any nature whatsoever) and Allowed Interests.

**TREATMENT OF ADMINISTRATIVE
EXPENSE CLAIMS AND PRIORITY TAX CLAIMS**

In accordance with Section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims and Priority Tax Claims have not been classified in the Plan. The treatment accorded to

Administrative Expense Claims and Priority Tax Claims is set forth below in this Article.

Administrative Expense Claims.

Except as otherwise provided in Articles 2.1.2 – 2.1.4 below, each Holder of an Allowed Administrative Expense Claim shall be paid (a) on the Effective Date, an amount, in Cash equal to the Allowed Amount of its Administrative Expense Claim, in accordance with Section 1129(a)(9)(A) of the Bankruptcy Code, or (b) under such other terms as may be agreed upon by both the Holder of such Allowed Administrative Expense Claim and the Debtor, or (c) as otherwise ordered by order of the Bankruptcy Court.

All fees and charges assessed against the Estate under Chapter 123 of Title 28, United States Code, 28 U.S.C. §§ 1911-1930, through the Effective Date shall be paid to the United States Trustee by the Reorganized Debtor by no later than thirty (30) days following the Effective Date. At the time of such payment, the Reorganized Debtor shall provide to the United States Trustee an appropriate affidavit indicating the disbursements for the relevant periods. Following the Effective Date, any such fees required pursuant to 28 U.S.C. §1930(a)(6) arising or accruing from distributions made by the Reorganized Debtor or made under the Plan shall also be paid by the Reorganized Debtor. All such payments to the United States Trustee shall be in the appropriate sum required pursuant to 28 U.S.C. §1930(a)(6) based upon the applicable disbursements for the relevant post-confirmation periods and shall be made within the time period set forth in 28 U.S.C. §1930(a)(6), until the earlier of (i) the closing of the Reorganization Case by the issuance of a Final Order by the Bankruptcy Court on the Final Decree Date, or (ii) the entry of an order by the Bankruptcy Court dismissing the Reorganization Case or converting the Reorganization Case to another chapter under the Bankruptcy Code. The Reorganized Debtor shall provide to the United States Trustee at the time of each post-confirmation payment an appropriate affidavit indicating the disbursements for the relevant periods.

All Allowed Administrative Expense Claims with respect to liabilities incurred by the Debtor in the ordinary course of business during the Bankruptcy Case shall be paid by the Reorganized Debtor in the ordinary course of business in accordance with contract terms or as may be otherwise agreed upon by both the Holder of such Allowed Administrative Expense Claim and the Debtor or the Reorganized Debtor as the case may be.

Priority Tax Claims.

Except as otherwise expressly provided in the Plan, each Holder of an Allowed Priority Tax Claim shall be paid by the Debtor or the Reorganized Debtor, as the case may be, deferred equal quarterly Cash payments, commencing on the fifteenth day of the first month of the first calendar quarter following the Effective Date and payable on the first day of each calendar quarter following, so as to be paid by September 5, 2017.

Holders of Allowed Priority Tax Claims will receive interest on account of its Allowed Priority Tax Claims to the extent allowed under Section 511 of the Bankruptcy Code.

Notwithstanding the above, each Holder of an Allowed Priority Tax Claim may be paid

under such other terms as may be agreed upon by both the Holder of such Allowed Priority Tax Claim and the Debtor or the Reorganized Debtor, as the case may be

DESIGNATION OF CLASSES OF CLAIMS AND INTERESTS

Pursuant to Section 1122 of the Bankruptcy Code, set forth below is a designation of Classes of Claims and Interests. A Claim or Interest (a) is classified in a particular Class only to the extent the Claim or Interest qualifies within the description of that Class and (b) is classified in a different Class to the extent the Claim or Interest qualifies within the description of that different Class. Unless otherwise expressly stated, the Classes of Claims set forth below include Claims against the Debtor that qualify within the description of that Class. For purposes of the Plan, the Claims and Interests are classified as follows:

Class 1: Priority Claims.

Class 1 consists of all Priority Claims.

Class 2: Secured Claims of Southern Commerce.

Class 2 consists of the Secured Claims of Southern Commerce under the Southern Commerce Loans, secured by Liens on the SCB Real Property Collateral and the SCB Personal Property Collateral.

Class 3: Secured Claim of Eagle Trail Drive.

Class 3 consists of the Secured Claims of Eagle Trail Drive, secured by a senior mortgage on the Eagle Trail Facility, including a senior Lien on fixtures and the Eagle Trail Facility Freezers.

Class 4: Secured Claim of the SBA.

Class 4 consists of the Secured Claim of the SBA by virtue of a junior mortgage on the Eagle Trail Facility and equipment located at the Eagle Trail Facility.

Class 5: Secured Claim of the FDIC.

Class 5 consists of the Secured Claim of the FDIC, secured by a Lien on the Debtor's real property located at 903 Excelda Avenue, Tampa, Florida, and 1014 Paddock Street, Tampa, Florida.

Class 6: Secured Tax Claims.

Class 6 consists of Secured Tax Claims against the Debtor's real property or tangible personal property.

Class 7: Secured Claims of TCF.

Class 7 consists of the Secured Claim of TCF by virtue of that certain capitalized Lease Agreement with respect to one (1) Texwrap Model 2219 Automatic L-Bar Wrapper.

Class 8: Secured Claims of Ford Motor Credit.

Class 8 consists of Secured Claim of Ford Motor Credit by virtue of its Lien on a 2010 Ford F350 truck, VIN No. 1FTWW3DR9AEB40152.

Class 9: Secured Claims of Baytree Leasing.

Class 9 consists of the Secured Claim of Baytree Leasing by virtue of that certain capitalized Lease Agreement with respect to certain software and hardware.

Class 10: Secured Claims of BB&T.

Class 10 consists of the Secured Claim of BB&T secured by a Lien on the Debtor's real property located at 1009 Excelda Ave. and 1017 Excelda Ave., Tampa, FL 33607.

Class 11: Unsecured Claims.

Class 11 consists of all Unsecured not otherwise classified in the Plan.

Class 12: Interests.

Class 12 consists of all Interests in the Debtor.

TREATMENT OF CLASSES OF CLAIMS AND INTERESTS

Claims and Interests shall be treated under the Plan in the manner set forth in this Article. Except as otherwise specifically provided in the Plan, the treatment of, and the consideration to be received by, Holders of Allowed Claims and Holders of Allowed Interests pursuant to the Plan shall be in full and final satisfaction, settlement, release, extinguishment and discharge of their respective Allowed Claims (of any nature whatsoever) and Allowed Interests.

Unclassified Claims.

Holders of Allowed Administrative Expense Claims and Allowed Priority Tax Claims shall receive the treatment set forth in Article 3 of the Plan.

Class 1: Priority Claims.

Class 1 Priority Claims shall be satisfied as follows: Each Holder of an Allowed Priority Claim shall be paid (a) on the Effective Date, an amount, in Cash, by the Reorganized Debtor

equal to the Allowed Amount of its Priority Claim, in accordance with Section 1129(a)(9)(B) of the Bankruptcy Code, (b) as otherwise agreed to by the Debtor and the Holder of an Allowed Priority Claim, or (c) as otherwise ordered by a Final Order of the Bankruptcy Court.

Class 1 is Unimpaired.

Class 2: Secured Claims of Southern Commerce.

The Class 2 Secured Claims of Southern Commerce consisting of the SCB Loans shall be satisfied as follows:

Loan Number	Identified Collateral	Principal Balance
2178126 (“ Line of Credit ”)	Accounts Receivable, Inventory	\$ 658,009
1000501344	Accounts Receivable, Inventory; Real Property as reflected in Mortgages (Instrument Nos. 201039201; 2010392904)	\$ 523,003
2178119	Equipment, Real Property as described in Mortgage (Instrument No. 2004280064)	\$ 357,053
2178125	Equipment, Inventory, Accounts Receivable; Real Property as described in Mortgage (Instrument No. 2005459219)	\$ 51,336
Total		\$1,589,401

Retention of Liens.

Southern Commerce shall retain its liens on the SCB Real Property Collateral. Southern Commerce’s first-priority lien on the Real Property Collateral shall be confirmed by the Confirmation Order, subject only to the liens and exceptions contained in an existing title policy. The Debtor shall propose to Southern Commerce release prices for the SCB Residential Real Estate Collateral, to be applied to non–Line of Credit SCB Loans, as agreed to between the Debtor and Southern Commerce, and may in the absence of agreement seek an order of the Bankruptcy Court, by motion, amendment or modification to the Plan, or otherwise.

With respect to all existing personal property collateral securing any or all of Southern Commerce’s Claims, including the SCB Personal Property Collateral, Southern Commerce shall retain its first-priority lien (except as otherwise provided by agreement in the Foreclosure Action with respect to the liens of Eagle Trail Facility Freezers. Southern Commerce’s first-priority lien on the SCB Personal Property Collateral shall be confirmed by the Confirmation Order.

The Southern Commerce Liens shall continue to secure those SCB Loans, and only those SCB Loans, as identified in Section 5.3.1 of the Plan.

Payment Terms.

The SCB Loans shall mature on the sixth anniversary of the Effective Date of the Plan.

Upon confirmation, the Line of Credit shall become a term loan facility. The Debtor shall have no further ability to borrow any additional amounts under the Line of Credit. The

Debtor shall make monthly interest and principal based on a ten-year amortization. Such payments shall be due throughout the term of the SCB Loans, and shall begin on the first day of the month following the Effective Date, continuing on the same day of each month thereafter until the SCB Loans mature.

For the loans other than the Line of Credit, Debtor shall pay interest-only for twelve (12) months, and thereafter the Debtor shall make payments of principal and interest on a monthly basis based upon a 27.5 year amortization. Such payments shall be due throughout the term of the SCB Loans, and shall begin on the first day of the month following the Effective Date, continuing on the same day of each month thereafter until the SCB Loans mature.

The applicable non-default contract rate for each of the SCB Loans will be as follows:

Loan Number	Interest Rate
2178126	5%
1000501344	5%
2178119	5.25%
2178125	4.75%

Non-Monetary Terms.

The Debtor shall be permitted to pre-pay the SCB Loans at any time, in whole or in part. In connection with a pre-payment of the SCB Loans, in whole or in part, Southern Commerce shall execute lien releases as to such collateral subject to Liens which have been satisfied.

The Debtor shall provide to Southern Commerce reports as reasonable requested by Southern Commerce, in format acceptable to Southern Commerce.

No financial covenants or other technical defaults will exist post-confirmation. Post-confirmation defaults shall consist of monetary defaults only.

Class 2 is Impaired.

Class 3: Secured Claims of Eagle Trail Drive.

As of the date of the Plan, the Debtor is engaged in on-going discussions with the Holder of the Class 3 Secured Claims of Eagle Trail Drive, as to the treatment of the Class 3 Secured Claims under the Plan, and is optimistic that a consensual resolution is forthcoming. The Debtor will modify or amend the Plan prior to Confirmation to detail the resolution if one is reached, or to propose treatment of the Class 3 Secured Claims to be treated otherwise under the Plan. To the extent that the Claim of Eagle Trail Drive is bifurcated into secured and unsecured components, the Unsecured portion of the Claim shall be treated as a Class 11 Unsecured Claim.

Class 3 will be Impaired.

Class 4: Secured Claims of the SBA.

The Class 4 Secured Claims SBA shall be deemed fully unsecured, the property subject to the Liens of the SBA shall revert in the Debtor free and clear of all Liens of the SBA, and the Allowed Claim of the SBA shall be treated as a Class 11 Unsecured Claim.

Class 4 is Impaired.

Class 5: Secured Claim of the FDIC.

The Class 5 Claim of the FDIC shall be treated consistent with the FDIC Surrender Order. To the extent not already transferred, on the Effective Date, the FDIC shall receive title to the property subject of its Secured Claim in full satisfaction of the Class 5 Claim. To the extent that the FDIC timely asserts that its Claims are not satisfied in full by the transfer of the FDIC Property, the Bankruptcy Court shall make a determination, and any remaining Allowed Claims shall be treated as Class 11 Unsecured Claims.

Class 5 is Unimpaired.

Class 6: Secured Tax Claims.

Class 6 Secured Tax Claims shall be satisfied as follows: Each Holder of an Allowed Secured Tax Claim secured by Property not surrendered or abandoned under the Plan shall retain its Liens on its Collateral. Each Holder of an Allowed Secured Tax Claim secured by Property not surrendered or abandoned under the Plan shall be paid (a) in equal quarterly installments commencing on the first day of the third month of the calendar quarter following the quarter in which the Effective Date of the Plan occurs, and each calendar quarter thereafter, which payments will result in the Allowed Secured Tax Claims being paid on the date that is five (5) years following the Petition Date, with an interest rate equal to the interest rate in effect pursuant to applicable non-bankruptcy law, or (b) under such other terms as may be agreed upon by both the Holder of such Allowed Secured Tax Claim and the Debtor.

Each Holder of an Allowed Secured Tax Claim secured by Property to be surrendered or abandoned under the Plan shall retain its Lien(s), and shall have full and final relief from the automatic stay to pursue any and all *in rem* remedies under applicable non-bankruptcy law with respect to the respective Holders' Collateral. The Holders of an Allowed Secured Tax Claim secured by Property surrendered or abandoned under the Plan shall not have any further Claims, either under Class 6, Class 11, or otherwise, against the Debtor or the Reorganized Debtor.

Class 6 is Unimpaired.

Class 7: Secured Claims of TCF.

Class 7 consists of the Secured Claim of TCF by virtue of that certain capitalized Lease Agreement with respect to one (1) Texwrap Model 2219 Automatic L-Bar Wrapper. As of the Effective Date, the Holder of the Allowed Class 7 Secured Claim shall retain the Lien securing

such Claim to the extent of the Allowed Amount of such Claim. The Allowed Class 7 Secured Claim shall be paid in equal monthly installments over 60 months, commencing thirty (30) days following the Effective Date, with interest at 5.25% per annum, or such other terms as the Debtor and Holder of the Allowed Class 7 Secured Claim may agree.

Class 7 is Impaired.

Class 8: Secured Claims of Ford Motor Credit.

Class 8 consists of all Secured Claims of Ford Motor Credit. As of the Effective Date, the Holder of the Allowed Class 8 Secured Claim shall retain the Lien securing such Claims to the extent of the Allowed Amount of such Claims. The Allowed Class 8 Secured Claim shall be paid in equal monthly installments so as to be paid in full by the contractual maturity date, with interest at 5.25% per annum.

Class 8 is Impaired.

Class 9: Secured Claims of Baytree Leasing.

Class 9 consists of all Secured Claims of BayTree Leasing, secured by a junior interest in certain personal Property assets of the Debtor. As of the Effective Date, the Holder of the Allowed Class 9 Secured Claim shall retain the Lien securing such Claim to the extent of the Allowed Amount of such Claim. The Allowed Class 9 Secured Claim shall be paid in equal monthly installments over 60 months, commencing thirty (30) days following the Effective Date, with interest at 5.25% per annum, or such other terms as the Debtor and Holder of the Allowed Class 9 Secured Claim may agree.

Class 9 is Impaired.

Class 10: Secured Claims of BB&T.

Class 10 consists of the Secured Claim of BB&T secured by a Lien on the Debtor's real property located at 1009 Excelda Ave. and 1017 Excelda Ave., Tampa, FL 33607. The Debtor, at its election made on or before the date that is five (5) days before the Voting Deadline, shall surrender or retain the Property securing the Class 10 Claim. In the event the Debtor elects to surrender, the Debtor shall transfer to the Holder of the Class 10 Claim any Property securing its Secured Claim in full and final satisfaction of the Secured Claim. Any deficiency owing to a Secured Creditor with respect to a Class 10 Claim shall be classified and treated as a Class 11 Unsecured Claim to the extent Allowed by a Final Order of the Bankruptcy Court. Alternatively, if the Debtor elects to retain the Property securing the Class 10 Secured Claim, the Holder of the Allowed Class 10 Secured Claim shall retain the Lien securing such Claim to the extent of the Allowed Amount of such Claim and to the extent of the value of such Property. The Allowed Class 10 Secured Claim shall be paid in equal monthly installments over 60 months, commencing thirty (30) days following the Effective Date, with interest at 5.25% per annum, or such other terms as the Debtor and Holder of the Allowed Class 10 Secured Claim may agree.

Class 10 is Impaired.

Class 11: Unsecured Claims.

Class 11 Unsecured Claims shall be satisfied as follows: Holders of Allowed Class 11 Unsecured Claims shall be paid on account of their Allowed Unsecured Claims their Pro Rata Share of the Unsecured Creditor Distribution Fund, which shall be in the amount of \$250,000.00. The Reorganized Debtor shall make deposits to the Unsecured Creditor Distribution Fund in five (5) equal annual installments, beginning one year from the Effective Date. Distributions from the Unsecured Creditor Distribution Fund shall be made in accordance with Article 9 of the Plan.

Class 11 is Impaired.

Class 12: Interests.

Class 12 Interests in the Debtor shall be treated as follows: On the Effective Date, all of the Interests shall be deemed cancelled, annulled, extinguished, and surrendered without any further action by any party and shall be of no further force and effect. The Holders of the Interests will not receive or retain any Property or equity interest under the Plan on account of such Interests. Accordingly, the Reorganized Debtor will not make any Distribution or establish any reserve under the Plan for the Interests.

Class 12 is Impaired.

ACCEPTANCE OR REJECTION OF THE PLAN

Each Impaired Class Entitled to Vote Separately.

Except as otherwise provided in Article 5.4, the Holders of Claims or Interests in each Impaired Class of Claims or Interests shall be entitled to vote separately to accept or reject the Plan.

Acceptance by Impaired Classes.

Classes 2, 3, 4, 7, 8, 9, 10, 11 and 12 are Impaired under the Plan, and Holders of Claims in such Classes are entitled to vote to accept or reject the Plan. Pursuant to Section 1126(c) of the Bankruptcy Code, an Impaired Class of Claims shall have accepted the Plan if (a) the Holders (other than any Holder designated pursuant to Section 1126(e) of the Bankruptcy Code) of at least two-thirds in dollar amount of the Allowed Claims actually voting in such Class have voted to accept the Plan and (b) the Holders (other than any Holder designated pursuant to Section 1126(e) of the Bankruptcy Code) of more than one-half in number of the Allowed Claims actually voting in such Class have voted to accept the Plan. If a Holder of a Claim holds more than one Claim in any one Class, all Claims of such Holder in such Class shall be aggregated and deemed to be one Claim for purposes of determining the number of Claims in such Class voting on the Plan. Pursuant to Section 1126(d) of the Bankruptcy Code, an Impaired Class of Interests shall have accepted the Plan if the Holders (other than any Holder designated pursuant to Section 1126(e) of the Bankruptcy Code) of at least two-thirds in amount of the Allowed Interests actually voting in such Class have voted to accept the Plan.

Presumed Acceptance of Plan by Unimpaired Classes.

Classes 1, 5, and 6 are Unimpaired under the Plan. Pursuant to Section 1126(f) of the Bankruptcy Code, each such Class and the Holders of Claims in such Class are conclusively presumed to have accepted the Plan and, thus, are not entitled to vote on the Plan. Accordingly, votes of Holders of Claims in such Class are not being solicited by the Debtor. Except as otherwise expressly provided in the Plan, nothing contained herein or otherwise shall affect the rights and legal and equitable claims or defenses of the Debtor or the Reorganized Debtor in respect of any Unimpaired Claims, including all rights in respect of legal and equitable defenses to setoffs or recoupments against Unimpaired Claims.

Deemed Non-Acceptance of Plan.

Holders of Class 12 Equity Interests will not receive or retain any Property or equity interest under the Plan on account of such Equity Interests and, therefore, Class 12 is deemed not to have accepted the Plan pursuant to Section 1126(g) of the Bankruptcy Code. Accordingly, votes of Holders of Class 12 Equity Interests are not being solicited by the Debtor.

TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Assumption or Rejection of Executory Contracts and Unexpired Leases.

Pursuant to Sections 365(a) and 1123(b)(2) of the Bankruptcy Code, all executory contracts and unexpired leases, including any modifications, amendments, supplements, restatements, or other agreements made directly or indirectly in connection with such executory contracts and unexpired leases that exist between any of the Debtor and any Person or Entity shall be deemed assumed by the Debtor (the “**Assumed Contracts**”), as of the Effective Date, except for any executory contract or unexpired lease (i) that has been rejected pursuant to an

order of the Bankruptcy Court entered prior to the Effective Date, (ii) as to which a motion for approval of the rejection of such executory contract or unexpired lease has been filed and served prior to the Effective Date, or (iii) that is specifically designated as a contract or lease to be rejected in this Plan (the “**Rejected Contracts**”); provided, however, that the Debtor reserves the right, on or prior to the Confirmation Date, to amend the Plan to identify any executory contract or unexpired lease which is to be rejected. The Debtor shall provide notice of any addition or deletion of contracts or leases to the Plan to the parties to the executory contracts and unexpired leases affected thereby. The listing of a document shall not constitute an admission by the Debtor that such document is an executory contract or an unexpired lease or that the Debtor have any liability thereunder. Entry of the Confirmation Order shall constitute approval of the assumption of the Assumed Contracts, and the rejection of the Rejected Contracts. The Debtor reserves the right to file motions to assume or reject any unexpired lease or executory contract not specifically listed herein.

Assumption of Certain Executory Contracts and Unexpired Leases.

Any lessor or other party to an Assumed Contract asserting a Cure Claim in connection with the assumption of any unexpired lease or executory contract under Article 7.1, as contemplated by Section 365(b) of the Bankruptcy Code, must file such Cure Claim with the Bankruptcy Court on or before the Cure Claim Submission Deadline asserting all alleged amounts accrued or alleged defaults through the Effective Date. Any lessor or other party to an Assumed Contract failing to submit a Cure Claim by the Cure Claim Submission Deadline shall be forever barred from asserting, collecting or seeking to collect any amounts or defaults relating thereto against the Debtors or the Reorganized Debtor. The Reorganized Debtor shall have thirty (30) days from the Effective Date to file an objection to any Cure Claim. Any disputed Cure Claims shall be resolved either consensually or by the Bankruptcy Court. Except as may otherwise be agreed to by the parties, within thirty (30) days after the Effective Date, the Reorganized Debtor shall cure any and all undisputed Cure Claims. All disputed Cure Claims shall be cured either within five (5) Business Days after the entry of a Final Order determining the amount, if any, of the Debtor’s liability with respect thereto, or as may otherwise be agreed to by the parties.

Claims under Rejected Executory Contracts and Unexpired Leases.

Any Claim for damages arising by reason of the rejection of any executory contract or unexpired lease must be filed with the Bankruptcy Court on the earlier of (1) thirty (30) days following the date of any order approving the rejection or (2) thirty (30) days following the Confirmation Date and served upon the Debtor or such Claim shall be forever barred and unenforceable against the Debtor. Such Claims, once fixed and liquidated by the Bankruptcy Court and determined to be Allowed Claims, shall be Class 11 Allowed Claims. Any such Claims that become Disputed Claims shall be Class 11 Disputed Claims for purposes of administration of distributions under the Plan to Holders of Class 11 Allowed Claims. The Plan and any other order of the Bankruptcy Court providing for the rejection of an executory contract or unexpired lease shall constitute adequate and sufficient notice to Persons or Entities which may assert a Claim for damages from the rejection of an executory contract or unexpired lease of the Bar Date for filing a Claim in connection therewith.

MEANS OF IMPLEMENTATION OF THE PLAN

General Overview of the Plan.

The Plan provides for the payment of Claims from the continued business operations of the Debtor. The Debtor intends to retain its current management team in place and has and will continue to implement changes in its business model for more cost-effective operations, in addition to pursuing new product development lines and new customer opportunities.

Vesting of Assets.

On the Effective Date, except as otherwise expressly provided in the Plan, all Property of the Estate shall revert in the Reorganized Debtor free and clear of any and all Liens, Debts, obligations, Claims, Liabilities, Interests, and all other interests of every kind and nature, and the Confirmation Order shall so provide.

Continued Corporate Existence.

The Debtor will continue to exist after the Effective Date as a corporation with all of the powers of a corporation under Florida law and pursuant to its articles of organization or other organizational documents in effect prior to the Effective Date, without prejudice to any right to terminate such existence (whether by merger, dissolution or otherwise) under applicable law after the Effective Date.

Issuance of Reorganized Debtor Equity Interests.

On the Effective Date, the Reorganized Debtor shall issue and distribute, in accordance with the provisions of the Plan, shares of the Reorganized Debtor Interests to the New Equity Holder. The Reorganized Debtor Interests shall be subject to dilution in connection with exit financing or post-confirmation capital events which the Reorganized Debtor may contemplate pursuing, including in connection with the treatment of the Class 3 Claims or otherwise.

Corporate Action.

All matters provided for under the Plan involving the corporate structure of the Debtor or the Reorganized Debtor, or any corporate action to be taken by or required of the Debtor or the Reorganized Debtor, shall, as of the Effective Date, be deemed to have occurred and be effective as provided herein, and shall be authorized and approved in all respects without any requirement for further action by the management of the Debtor or the Reorganized Debtor.

Section 1146 Exemption.

Pursuant to Section 1146(a) of the Bankruptcy Code, the issuance, distribution, transfer or exchange of any security or the making, delivery or recording of any instrument of transfer pursuant to, in implementation of or as contemplated by the Plan or any Plan Document, or the

revesting, transfer or sale of any real or personal Property of, by or in the Debtor or the Reorganized Debtor pursuant to, in implementation of or as contemplated by the Plan or any Plan Document, or any transaction arising out of, contemplated by or in any way related to the foregoing, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangible or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, or other similar tax or governmental assessment, and the appropriate state or local governmental officials or agents shall be, and hereby are, directed to forego the collection of any such tax or governmental assessment and to accept for filing and recording any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment. This section shall apply to any transactions on or after the Effective Date, as well as any transactions necessary to effectuate the Plan.

Management of the Reorganized Debtor.

The management of the Debtor will remain the same and shall serve from and after the Effective Date until successors are duly elected or appointed and qualified or until its earlier resignation or removal in accordance with the Debtor's articles of organization and by-laws. The Debtor shall continue to honor the pre-petition compensation structures for its managers.

Preservation of Causes of Action.

On the Effective Date, the Causes of Action shall be vested in the Reorganized Debtor, except to the extent a Creditor or other third party has been specifically released from any Cause of Action by the terms of the Plan or by Final Order. The Debtor is currently not in a position to express an opinion on the merits of any of the Causes of Action or on the recoverability of any amounts as a result of any such Causes of Action. For purposes of providing notice, the Debtor states that any party in interest that engaged in business or other transactions with the Debtor Prepetition or that received payments from the Debtor Prepetition may be subject to litigation to the extent that applicable bankruptcy or non-bankruptcy law supports such litigation.

No Creditor or other party should vote for the Plan or otherwise rely on the Confirmation of the Plan or the entry of the Confirmation Order in order to obtain, or on the belief that it will obtain, any defense to any Cause of Action. No Creditor or other party should act or refrain from acting on the belief that it will obtain any defense to any Cause of Action. ADDITIONALLY, THE PLAN DOES NOT, AND IS NOT INTENDED TO, RELEASE ANY CAUSES OF ACTION OR OBJECTIONS TO CLAIMS, AND ALL SUCH RIGHTS ARE SPECIFICALLY RESERVED IN FAVOR OF THE REORGANIZED DEBTOR. Creditors are advised that legal rights, claims and rights of action the Debtors may have against them, if they exist, are retained under the Plan for prosecution unless a specific order of the Bankruptcy Court authorizes the Debtor to release such claims. As such, Creditors are cautioned not to rely on (i) the absence of the listing of any legal right, claim or right of action against a particular Creditor in the Disclosure Statement, the Plan, or the Schedules or (ii) the absence of litigation or demand prior to the Effective Date of the Plan as any indication that the Debtor or the Reorganized Debtor does not possess or does not intend to prosecute a particular claim or cause of action if a particular Creditor votes to accept the Plan. It is the expressed intention of the Plan to preserve

rights, Claims, and rights of action of the Debtor, whether now known or unknown, for the benefit of the Reorganized Debtor and the Debtor's Creditors. A Cause of Action shall not, under any circumstances, be waived as a result of the failure of the Debtor to describe such Cause of Action with specificity in the Plan or the Disclosure Statement.

The Debtor does not presently know the full extent of the Causes of Action and, for purposes of voting on the Plan, all Creditors are advised that the Reorganized Debtor will have substantially the same rights that a Chapter 7 trustee would have with respect to the Causes of Action. Accordingly, neither a vote to accept the Plan by any Creditor nor the entry of the Confirmation Order will act as a release, waiver, bar or estoppel of any Cause of Action against such Creditor or any other Person or Entity, unless such Creditor, Person or Entity is specifically identified by name as a released party in the Plan, in the Confirmation Order, or in any other Final Order of the Bankruptcy Court. Confirmation of the Plan and entry of the Confirmation Order is not intended to and shall not be deemed to have any res judicata or collateral estoppel or other preclusive effect which would precede, preclude, or inhibit prosecution of such Causes of Action following Confirmation of the Plan

Effectuating Documents; Further Transactions.

The current management of the Debtor shall be authorized to execute, deliver, file, or record such contracts, instruments, releases, mortgages, and other agreements or documents, and take such actions as may be necessary or appropriate, to effectuate and further evidence the terms and conditions of the Plan and the Plan Documents or to otherwise comply with applicable law.

PROVISIONS GOVERNING DISTRIBUTIONS

Establishment of Reserves; Distributions.

The Unsecured Claims shall be paid as described in Article 5.

Determination of Claims.

Unless otherwise ordered by the Bankruptcy Court, and except as to any late-filed Claims and Claims resulting from the rejection of executory contracts or unexpired leases, if any, all objections to Claims shall be filed with the Bankruptcy Court by no later than sixty (60) days following the Effective Date (unless such period is extended by the Bankruptcy Court upon motion of the Reorganized Debtor), and the Confirmation Order shall contain appropriate language to that effect. Holders of Unsecured Claims that have not filed such Claims on or before the Bar Date shall serve notice of any request to the Bankruptcy Court for allowance to file late Unsecured Claims on (i) the Reorganized Debtor and (ii) such other parties as the Bankruptcy Court may direct. If the Bankruptcy Court grants the request to file a late Unsecured Claim, such Unsecured Claim shall be treated in all respects as a Class 11 Unsecured Claim. Objections to late-filed Claims and Claims resulting from the rejection of executory contracts or unexpired leases shall be filed on the later of (a) ninety (90) days following the Effective Date or (b) the date sixty (60) days after the Debtor receives actual notice of the filing of such Claim.

Notwithstanding any authority to the contrary, an objection to a Claim shall be deemed properly served on the Holder of the Claim if the Debtor effects service in any of the following manners: (a) in accordance with Rule 4 of the Federal Rules of Civil Procedure, as modified and made applicable by Bankruptcy Rule 7004, (b) to the extent counsel for the Holder of a Claim is unknown, by first class mail, postage prepaid, on the signatory on the Proof of Claim or other representative identified on the Proof of Claim or any attachment thereto, or (c) by first class mail, postage prepaid, on any counsel that has filed a notice of appearance in the Reorganization Case on behalf of the Holder of a Claim. Notwithstanding any authority to the contrary, an objection to a Claim shall be deemed properly served on the Holder of the Claim if the Debtor effects service in any of the following manners: (a) in accordance with Federal Rule of Civil Procedure 4, as modified and made applicable by Bankruptcy Rule 7004, (b) to the extent counsel for the Holder of a Claim is unknown, by first class mail, postage prepaid, on the signatory on the Proof of Claim or other representative identified on the Proof of Claim or any attachment thereto, or (c) by first class mail, postage prepaid, on any counsel that has filed a notice of appearance in the Bankruptcy Case on behalf of the Holder of a Claim.

Disputed Claims shall be fixed or liquidated in the Bankruptcy Court as core proceedings within the meaning of 28 U.S.C. §157(b)(2)(B) unless the Bankruptcy Court orders otherwise. If the fixing or liquidation of a contingent or unliquidated Claim would cause undue delay in the administration of the Reorganization Case, such Claim shall be estimated by the Bankruptcy Court for purposes of allowance and distribution. Upon receipt of a timely-filed Proof of Claim, the Debtor or other party in interest may file a request for estimation along with an objection to the Claim set forth therein. The determination of Claims in Estimation Hearings shall be binding for purposes of establishing the maximum amount of the Claim for purposes of allowance and distribution. Procedures for specific Estimation Hearings, including provisions for discovery, shall be set by the Bankruptcy Court giving due consideration to applicable Bankruptcy Rules and the need for prompt determination of the Disputed Claim.

Unclaimed Distributions.

If the Holder of an Allowed Claim fails to negotiate a check issued to such Holder within 90 days of the date such check was issued, then the Reorganized Debtor will provide written notice to such Holder stating that unless such Holder negotiates such check within 30 days of the date of such notice, the amount of Cash attributable to such check will be deemed to be unclaimed, such Holder's Claim will no longer be deemed to be Allowed, and such Holder will be deemed to have no further Claim in respect of such check and will not participate in any further distributions under the Plan.

If a distribution pursuant to the Plan to any Holder of an Allowed Claim is returned to the Reorganized Debtor due to an incorrect or incomplete address (as determined by the address listed in the Schedules, on a proof of claim, or on the most current version of the Court's mailing matrix for the Reorganization Case) for the Holder of such Allowed Claim, and no claim is made to the Reorganized Debtor as to such distribution within 120 days of the return of such distribution, then the amount of Cash attributable to such distribution will be deemed to be unclaimed and such Holder will be deemed to have no further Claim in respect of such distribution and will not participate in any further distributions under the Plan.

Any unclaimed distribution described above shall become the property of the Reorganized Debtor.

Transfer of Claim.

In the event that the Holder of any Claim shall transfer such Claim on and after the Effective Date, such Holder shall immediately advise the Debtor in writing of such transfer and provide sufficient written evidence of such transfer. The Debtor shall be entitled to assume that no transfer of any Claim has been made by any Holder unless and until the Debtor shall have received written notice to the contrary. Each transferee of any Claim shall take such Claim subject to the provisions of the Plan and to any request made, waiver or consent given or other action taken hereunder and, except as otherwise expressly provided in such notice, the Debtor shall be entitled to assume conclusively that the transferee named in such notice shall thereafter be vested with all rights and powers of the transferor under the Plan.

De Minimis Distributions.

To avoid the disproportionate expense and inconvenience associated with making *de minimis* distributions, the Reorganized Debtor will not be required to make, and will be excused from making, distributions in amounts of less than five dollars (\$5.00) each to Holders of Allowed Class 11 Claims.

CONDITIONS PRECEDENT TO THE EFFECTIVE DATE

Conditions Precedent to the Effective Date.

The following are conditions precedent to the occurrence of the Effective Date, each of which must be satisfied or may be waived by the Debtor in accordance with Article 10.3 of the Plan:

The Bankruptcy Court shall have entered the Confirmation Order in form and substance satisfactory to the Debtor on the Docket of the Bankruptcy Case, and no stay of the Confirmation Order shall be in effect.

The entry and effectiveness of all necessary orders by the Bankruptcy Court and any appellate court exercising jurisdiction over the Bankruptcy Case.

The Debtor shall have filed a notice of Effective Date in the Docket in the Bankruptcy Case.

Waiver of Conditions to the Effective Date.

The conditions precedent set forth in Article 10.2 of the Plan may be waived by the Debtor unless the Bankruptcy Court has entered an order prohibiting any such waiver.

DISCHARGE, EXCULPATION FROM LIABILITY, AND GENERAL INJUNCTION

Discharge of Claims.

Except as otherwise expressly provided in the Plan or in the Confirmation Order, the Confirmation Order shall operate as a discharge, pursuant to Section 1141(d) of the Bankruptcy Code, to the fullest extent permitted by applicable law, as of the Effective Date, of the Debtor and the Reorganized Debtor from any and all Debts of and Claims of any nature whatsoever against the Debtor that arose at any time prior to the Effective Date, including any and all Claims for principal and interest, whether accrued before, on or after the Petition Date. Except as otherwise expressly provided in the Plan or in the Confirmation Order, but without limiting the generality of the foregoing, on the Effective Date, the Debtor and the Reorganized Debtor, and their respective successors or assigns, shall be discharged from any Claim or Debt that arose prior to the Effective Date and from any and all Debts of the kind specified in Section 502(g), 502(h), or 502(i) of the Bankruptcy Code, whether or not (a) a Proof of Claim based on such Debt was filed pursuant to Section 501 of the Bankruptcy Code, (b) a Claim based on such Debt is an Allowed Claim pursuant to Section 502 of the Bankruptcy Code, or (c) the Holder of a Claim based on such Debt has voted to accept the Plan. As of the Effective Date, except as otherwise expressly provided in the Plan or in the Confirmation Order, all Persons and Entities, including all Holders of a Claim, shall be forever precluded and permanently enjoined to the fullest extent permitted by applicable law from asserting directly or indirectly against the Debtor or the Reorganized Debtor, or any of their respective successors and assigns, or the assets or Properties of any of them, any other or further Claims, Debts, rights, causes of action, remedies, or Liabilities based upon any act, omission, document, instrument, transaction, event, or other activity of any kind or nature that occurred prior to the Effective Date or that occurs in connection with implementation of the Plan, and the Confirmation Order shall contain appropriate injunctive language to that effect. In accordance with the foregoing, except as otherwise expressly provided in the Plan or in the Confirmation Order, the Confirmation Order shall be a judicial determination of the discharge or termination of all such Claims and other Debts and Liabilities against the Debtor, pursuant to Sections 524 and 1141 of the Bankruptcy Code, and such discharge shall void any judgment obtained against the Debtor, at any time, to the extent that such judgment relates to a discharged or terminated Claim, Liability, or Debt. Notwithstanding the foregoing, the Reorganized Debtor shall remain obligated to make payments to Holders of Allowed Claims as required pursuant to the Plan. Without limiting the foregoing, except as to any person whose employment was approved by the Bankruptcy Court, any Claims of any broker or similar person providing similar services to the Debtor or any other person in connection with or as a result of the pursuit of the Note Transfer shall be discharged and disallowed in full.

Exculpation from Liability.

The Debtor, the Reorganized Debtor, their respective managers, directors, and officers, and the Professionals for the Debtor (acting in such capacity) (collectively, the “Exculpated Parties”) shall neither have nor incur any liability whatsoever to any Person or Entity for any

act taken or omitted to be taken in good faith in connection with or related to the formulation, preparation, dissemination, implementation, or confirmation, of the Plan, the Disclosure Statement, any Plan Document, or any contract, instrument, release, or other agreement or document created or entered into, or any other act taken or omitted to be taken, in connection with the Plan or the Bankruptcy Case, in each case for the period on and after the Petition Date; provided, however, that this exculpation from liability provision shall not be applicable to any liability found by a court of competent jurisdiction to have resulted from bad faith of any such party. The rights granted under this Article 11.3 are cumulative with (and not restrictive of) any and all rights, remedies, and benefits that the Exculpated Parties have or obtain pursuant to any provision of the Bankruptcy Code or other applicable law. In furtherance of the foregoing, the Exculpated Parties shall have the fullest protection afforded under Section 1125(e) of the Bankruptcy Code and all applicable law from liability for violation of any applicable law, rule or regulation governing the solicitation of acceptance or rejection of a plan or the offer, issuance, sale or purchase of securities. This exculpation from liability provision is an integral part of the Plan and is essential to its implementation. Notwithstanding anything to the contrary contained herein, the provisions of this Article 11.3 shall not release, or be deemed a release of, any of the Causes of Action.

ANY BALLOT VOTED IN FAVOR OF THE PLAN SHALL ACT AS A CONSENT BY THE CREDITOR CASTING SUCH BALLOT TO THIS EXCULPATION FROM LIABILITY PROVISION. MOREOVER, ANY CREDITOR WHO DOES NOT VOTE IN FAVOR OF THE PLAN MUST FILE A CIVIL ACTION IN THE BANKRUPTCY COURT ASSERTING ANY SUCH LIABILITY WITHIN THIRTY (30) DAYS FOLLOWING THE EFFECTIVE DATE OR SUCH CLAIMS SHALL BE FOREVER BARRED.

General Injunction.

Pursuant to Sections 105, 1123, 1129 and 1141 of the Bankruptcy Code, in order to preserve and implement the various transactions contemplated by and provided for in the Plan, as of the Effective Date, except as otherwise expressly provided in the Plan or in the Confirmation Order, all Persons or Entities that have held, currently hold or may hold a Claim, Debt, Liability or Equity Interest that is discharged or terminated pursuant to the terms of the Plan are and shall be permanently enjoined and forever barred to the fullest extent permitted by law from taking any of the following actions on account of any such discharged or terminated Claims, Debts, Liabilities, or Equity Interests, other than actions brought to enforce any rights or obligations under the Plan: (a) commencing or continuing in any manner any action or other proceeding against the Debtor, the Reorganized Debtor, or their respective Properties; (b) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order against the Debtor, the Reorganized Debtor, or their respective Properties; (c) creating, perfecting or enforcing any Lien or encumbrance against the Debtor, the Reorganized Debtor, or their respective Properties; (d) asserting a setoff, right of subrogation or recoupment of any kind against any debt, liability or obligation due to the Debtor or the Reorganized Debtor; (e) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of the Plan or the Confirmation Order, or (f) interfering with or in any manner whatsoever disturbing the rights and remedies of the Debtor, or the Reorganized Debtor under the Plan and the documents executed in connection therewith.

The Debtor and the Reorganized Debtor shall have the right to independently seek enforcement of this general injunction provision. This general injunction provision is an integral part of the Plan and is essential to its implementation. This provision is cumulative with both the Debtor's and the Reorganized Debtor's other legal rights and remedies.

Term of Certain Injunctions and Automatic Stay.

Except as otherwise ordered by this Court, all injunctions or automatic stays provided for in the Reorganization Case pursuant to Sections 105, 362 or other applicable provisions of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date. Any preliminary or permanent injunction entered by the Bankruptcy Court shall continue in full force and effect following the Confirmation Date and the Final Decree Date, unless otherwise ordered by the Bankruptcy Court.

With respect to all lawsuits pending in courts in any jurisdiction (other than the Bankruptcy Court) that seek to establish the Debtor's liability on Prepetition Claims asserted therein and that are stayed pursuant to Section 362 of the Bankruptcy Code, such lawsuits shall be deemed dismissed as of the Effective Date, unless the Debtor affirmatively elects to have the Debtor's liability established by such other courts, and any pending motions seeking relief from the automatic stay for purposes of continuing any such lawsuits in such other courts shall be deemed denied as of the Effective Date, and the automatic stay shall continue in effect, unless the Debtor affirmatively elects to have the automatic stay lifted and to have the Debtor's liability established by such other courts; and the Prepetition Claims at issue in such lawsuits shall be determined and either Allowed or disallowed in whole or part by the Bankruptcy Court pursuant to the applicable provisions of the Plan, unless otherwise elected by the Debtor as provided herein.

No Liability for Tax Claims.

Unless a taxing Governmental Authority has asserted a Claim against the Debtor before the Bar Date or Administrative Expense Claims Bar Date established therefore, no Claim of such Governmental Authority shall be Allowed against the Debtor or the Reorganized Debtor or their respective members, officers or agents for taxes, penalties, interest, additions to tax or other charges arising out of (i) the failure, if any, of the Debtor, any of its Affiliates, or any other Person or Entity to have paid tax or to have filed any tax return (including any income tax return or franchise tax return) in or for any prior year or period, or (ii) an audit of any return for a period before the Petition Date.

RETENTION OF JURISDICTION

General Retention.

The Plan provides for the retention of jurisdiction by the Bankruptcy Court following the Effective Date to, among other things, determine all disputes relating to Claims, Interests and other issues presented by or arising under the Plan. The Bankruptcy Court will also retain

jurisdiction under the Plan for any actions brought in connection with the implementation and consummation of the Plan and the transactions contemplated thereby.

Specific Purposes.

In addition to the general retention of jurisdiction set forth in Article 12.1 of the Plan, after Confirmation of the Plan and until the Bankruptcy Case is closed, the Bankruptcy Court shall retain jurisdiction of the Bankruptcy Case for the specific purposes set forth in Article 12.2 of the Plan.

Closing of the Bankruptcy Case.

In addition to the retention of jurisdiction set forth in Articles 12.1 and 12.2 of the Plan, the Bankruptcy Court shall retain jurisdiction of the Bankruptcy Case to enter an order reopening the Bankruptcy Case after it has been closed.

CERTAIN FEDERAL INCOME TAX CONSEQUENCES

General

The tax consequences of the Plan to the Debtor and to Holders of Claims and Interests are discussed below. This discussion of the federal income tax consequences of the Plan to the Debtor and Holders under U.S. federal income tax law, including the Internal Revenue Code of 1986, as amended (the “**Tax Code**”), is provided for informational purposes only. While this discussion addresses certain of the material tax consequences of the Plan, it is not a complete discussion of all such consequences and is subject to substantial uncertainties. Moreover, the consequences to a Holder may be affected by matters not discussed below (including, without limitation, special rules applicable to certain types of persons, such as persons holding non-vested stock or otherwise subject to special rules, nonresident aliens, life insurance companies, and tax-exempt organizations) and by such Holders’ particular tax situations. In addition, this discussion does not address any state, local, or foreign tax considerations that may be applicable to particular Holders.

HOLDERS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS REGARDING THE TAX CONSEQUENCES TO THEM OF THE TRANSACTIONS CONTEMPLATED BY THE PLAN, INCLUDING STATE, LOCAL AND FOREIGN TAX CONSEQUENCES.

THE DEBTOR’S GENERAL BANKRUPTCY COUNSEL HAS NO TAX EXPERTISE AND HAS NOT RESEARCHED OR ANALYZED TAX CONSEQUENCES RESULTING FROM THE PLAN.

SOME OF THE ISSUES DISCUSSED BELOW ARE COMPLEX, AND THERE CAN BE NO ASSURANCE OF THE ACCURACY OF THIS INFORMATION.

General Federal Income Tax Consequences to Holders

In General. The following discussion addresses certain of the material consequences of the Plan to Holders. Under the Plan, the tax consequences of the Plan to a Holder will depend, in part, on the type of consideration received in exchange for the Claim or Interest and the tax status of the Holder, such as whether the Holder is an individual, corporation or other entity, whether the Holder is a resident of the United States, the accounting method of the Holder, and the tax classification of the Holder's particular Claim or Interest. **HOLDERS ARE STRONGLY ADVISED TO CONSULT THEIR OWN TAX ADVISORS WITH RESPECT TO THE TAX TREATMENT UNDER THE PLAN OF THEIR PARTICULAR CLAIM OR INTEREST.**

Tax Consequences to Holders of Claims and Interests. The Holders of Claims against and Interests in the Debtor are urged to consult with their tax advisors as to the consequences of the Plan to them. Among the issues the Holders of Claims and/or Interests and their advisors may wish to consider are:

- (1) The extent to which the Holder of a Claim and/or Interest is entitled to a bad debt deduction or a worthless securities loss.
- (2) The extent to which the Holder of a Claim or Interest recognizes gain or loss on the exchange of its Claim or Interest for property, debt, and stock of the Debtor and the character of that gain or loss.
- (3) The basis and the holding period for any property, debt, and stock received by the Holder of a Claim or Interest.
- (4) Whether the original issue discount rules, market discount rule, and amortizable bond premium rules apply to any debt received by the Holder of a Claim or Interest.
- (5) The treatment of property, stock, or debt, if any, received by the Holder of a Claim or Interest in satisfaction of accrued interest.
- (6) The effect of a Holder of a Claim or Interest receiving a deferred distribution or distribution that is contingent in amount.

Certain Federal Income Tax Consequences to the Debtor

Cancellation of Indebtedness Income. Generally, cancellation of indebtedness triggers ordinary income to a debtor equal to the adjusted issue price (as determined for federal income tax purposes) of the indebtedness cancelled. If debt is discharged in a Chapter 11 case, however, a debtor does not recognize cancellation of indebtedness income. Instead, certain tax attributes otherwise available to the debtor are reduced by the amount of the indebtedness cancelled. Tax attributes subject to reduction include: (i) net operating losses (NOL) and NOL carryforwards; (ii) most credit carryforwards; (iii) capital losses and carryforwards; (iv) the tax basis of the debtor's depreciable and non-depreciable assets; (v) passive activity loss and credit carryovers; and (vi) foreign tax credit carryforwards.

Under Sections 108(b) and 1017 of the Tax Code, attributes are reduced in the following order: first, net operating loss carryover; second, general business credit carryovers; third, capital loss carryovers; and fourth, tax basis. In lieu of reducing net operating loss and carryovers, the taxpayer can elect to reduce tax basis first. Such an election shall not apply to an amount greater than the aggregate adjusted bases of depreciable property held by the taxpayer as of the beginning of the taxable year following the taxable year in which the discharge occurs.

Therefore, any cancellation of indebtedness income realized by the Debtor would require a reduction in their NOLs or other tax attributes. Because attribute reduction is calculated only after the tax for the year of discharge has been determined, however, the realization of substantial amounts of cancellation of indebtedness income as a result of implementation of the Plan should not diminish the NOLs and NOL carryforwards otherwise available to offset other income recognized in the year in which the Plan is consummated.

Additionally, any sale of Collateral pursuant to the Plan may result in taxable income to the Debtor if the tax basis in the Collateral is less than the sales price.

The Debtor does not believe that a principal purpose of the Plan is the avoidance of federal income tax within the meaning of Section 269 of the Internal Revenue Code.

Importance of Obtaining Professional Tax Assistance

This discussion is intended only as a summary of certain federal income tax consequences of the Plan and is not a substitute for careful tax planning with a tax professional. The tax consequences are in many cases uncertain and may vary depending on a Holder's individual circumstances. Accordingly, Holders are urged to consult with their tax advisors about the federal, state, local and foreign tax consequences of the Plan.

VOTING ON AND CONFIRMATION OF THE PLAN

Confirmation and Acceptance by All Impaired Classes

At the Confirmation Hearing, the Bankruptcy Court will confirm the Plan if all of the requirements of Bankruptcy Code Section 1129 are met. Among the requirements for confirmation of a plan are that the Plan be accepted by all impaired classes of claims and Interests, and satisfaction of the matters described below.

Feasibility. A plan may be confirmed only if it is not likely to be followed by the liquidation or the need for further financial reorganization of a debtor. The Debtor believes that it has the ability to perform its obligations under the Plan without further financial reorganization and the projections attached hereto support this.

The obligations under the Plan to Holders of contingent, unliquidated, and Disputed Claims cannot be ascertained without the determination of the validity and amount of those Claims by the Bankruptcy Court. Until the Claim determination process is complete, the exact amount to be received by Unsecured Creditors cannot be ascertained. As to Unsecured

Creditors, because the Plan proposes to pay the lesser of a fixed percentage of the allowed Unsecured Claims or fixed total amount, the ultimately amount of Claims of Unsecured Creditors does not affect the feasibility of the Plan.

Best Interests Standard. The Bankruptcy Code requires that the Plan meet the "best interest" test, which requires that members of a Class must receive or retain under the Plan, property having a value not less than the amount which the Class members would have received or retained if the Debtor was liquidated under Chapter 7 on the same date. The Debtor believes, and the liquidation analysis attached hereto demonstrates, that distributions to all Impaired Classes of Claims in accordance with the terms of the Plan would exceed the net distribution that would otherwise take place in Chapter 7.

Confirmation Without Acceptance by All Impaired Classes

If one or more of the Impaired Classes of Claims or Interests does not accept the Plan, the Plan may nevertheless be confirmed and be binding upon the non-accepting Impaired Class under the "cram-down" provisions of the Bankruptcy Code, if the Plan does not "discriminate unfairly" and is "fair and equitable" to the non-accepting Impaired Classes under the Plan.

Discriminate Unfairly. The Bankruptcy Code requirement that a plan not "discriminate unfairly" means that a dissenting class must be treated equally with respect to other classes of equal rank. The Debtor believes that the Plan does not "discriminate unfairly" with respect to any Class of Claims or Interests because no class is afforded treatment which is disproportionate to the treatment afforded other Classes of equal rank.

Fair and Equitable Standard. The "fair and equitable" standard, also known as the "absolute priority rule," requires that a dissenting class receive full compensation for its allowed claims or interests before any junior class receives any distribution. The Debtor believes the Plan is fair and equitable to all Classes pursuant to this standard.

With respect to the Impaired Classes of Secured Claims, Bankruptcy Code Section 1129(b)(2)(A) provides that a plan is "fair and equitable" if it provides for any of the treatment set forth in Section 1129(b)(2)(A)(i)-(iii). *See*, Section 1129(b)(2)(A) (using the term "or"). As to the Holders of Claims in Impaired Classes of Secured Claims, the Debtor believes that the Plan meets these standards.

With respect to the Impaired Classes of Unsecured Claims, Bankruptcy Code Section 1129(b)(2)(B) provides that a plan is "fair and equitable" if it provides that (i) each holder of a claim of such a class receives or retains on account of such claim, property of a value as of the effective date of the plan equal to the allowed amount of such claim; or (ii) the Holder of any claim or interest that is junior to the claims of such class will not receive or retain any property under the plan on account of such junior claim or interest. The Debtor believes the Plan satisfies the "fair and equitable" standard with respect to the Holders of Allowed Unsecured Claims.

Absolute Priority Rule

The Bankruptcy Code and other applicable law establish the priority for distribution of funds in bankruptcy cases. These priority provisions are sometimes referred to as the "absolute priority" rule. Normally, and subject to exceptions not relevant here, valid secured claims are first paid to the extent of the amount of the claim or the value of the claimant's collateral (if less than the claim).

Any property in the Estate, net of the valid secured claims described above, is first distributed to holders of priority claims, including (a) the costs of administering the case; (b) certain wage and benefit claims; and (c) certain tax claims. After payment of priority claims, unsecured creditors share pro rata in the remaining funds until paid in full. Equity holders (i.e., stockholders) are paid only after all creditors have been paid.

The Debtor intends to evaluate the results of the balloting and determine whether to seek Confirmation of the Plan in the event that less than all the Impaired Classes of Claims do not vote to accept the Plan. The determination as to whether to seek Confirmation under such circumstances will be announced before or at the Confirmation Hearing.

Non-Confirmation of the Plan

If the Plan is not confirmed by the Bankruptcy Court, the Court may permit the filing of an amended plan, dismiss the case, or convert the case to Chapter 7. In Chapter 7 case, the Debtor's assets would be sold and distributed to the Unsecured Creditors after the payment of all Secured Claims, costs of administration, and the payment of priority claims.

The cost of distributing the Plan and this Disclosure Statement, as well as the costs, if any, of soliciting acceptances, will be borne by the Estate.

ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN

If the Plan is not confirmed, the potential alternatives include (a) alternative plans under Chapter 11 (including a liquidation plan), (b) dismissal of the case, or (c) conversion of the case to a case under Chapter 7 of the Bankruptcy Code.

Alternative Plans of Reorganization

If the Plan is not confirmed, the Debtor could attempt to formulate and propose a different plan or plans. The Debtor believes that the Plan will enable Creditors to be paid the maximum amount possible for their Allowed Claims.

Liquidation under Chapter 7

If a plan is not confirmed, the Reorganization Case may be converted to a Chapter 7 liquidation case. In a Chapter 7 case, a trustee would be appointed to liquidate the assets of the Debtor. Converting the case to Chapter 7 would simply add an additional layer of administrative expenses to the Estate which would eliminate any funds available for distribution to Unsecured

Creditors. The proceeds of the liquidation would be distributed to the Creditors of the Debtor in accordance with the priorities established by the Bankruptcy Code.

In general, the Debtor believes that liquidation under Chapter 7 would result in diminution of the value of the interests of the Creditors because of (a) additional administrative expenses involved in the appointment of a trustee and attorneys, accountants, and other professionals to assist such trustee; (b) additional expenses and claims, some of which might be entitled to priority, which would arise by reason of the liquidation; (c) failure to realize the full value of the Debtor's assets; (d) the inability to utilize the work-product and knowledge of the Debtor and its Professionals; (e) the substantial delay which would elapse before Creditors would receive any distribution in respect of their Claims; and (f) the loss to Unsecured Creditors of the payments proposed in the Plan.

As discussed above in connection with the "Best Interests of Creditors Test", the Debtor believes that the Plan is superior to liquidation under Chapter 7.

SUMMARY, RECOMMENDATION AND CONCLUSION

The Debtor believes that the Plan is in the best interests of all Creditors, even though Unsecured Creditors will not be paid in full. In the event of a liquidation of the Debtor's assets under Chapter 7 of the Bankruptcy Code, the Debtor believes there would be little or no distribution to Unsecured Creditors. By contrast, the Plan provides for payment of at least \$250,000 over five years to Holders of Allowed Unsecured Claims. For these reasons, the Debtor urges that the Plan is in the best interests of all Creditors and that the Plan be accepted.

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Dated: February 20, 2013

Respectfully submitted,

PHIL'S CAKE BOX BAKERIES, INC.

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