

Because the Debtors have not yet conducted an in-depth analysis of the Claims to determine which Claims may be invalid, the Debtors opted for a conservative approach in determining the estimates provided in this Disclosure Statement. Therefore, the Debtors believe that the estimates provided herein represent the upper range of the amounts of Claims in the various Classes. Nevertheless, because the actual Allowed Amount of Claims will not be known until all Objections to Claims are resolved, it is possible that the actual allowed amount of Unsecured Claims will be greater than that estimated by the Debtors in this Disclosure Statement. **UPON THE EFFECTIVE DATE, ALL CLAIMS WILL BE TRANSFERRED TO THE LIQUIDATING TRUST AND THE LIQUIDATING TRUST WILL HAVE THE SOLE AUTHORITY TO REVIEW AND FILE, IN HIS DISCRETION, CLAIM OBJECTIONS.**

J. AVOIDANCE ACTIONS

On and after the Effective Date, the Liquidating Trustee will be a representative of the Debtors' Estates pursuant to Bankruptcy Code section 1123(b)(3) and as such will have the power to prosecute, in the name of the Liquidating Trust, the Debtors' Estates, or otherwise, any claims of the Debtors' Estates, including Avoidance Actions (which include preference actions and fraudulent transfer actions, as described in more detail below). **UPON THE EFFECTIVE DATE, ALL OF THE DEBTORS' AVOIDANCE ACTIONS WILL BE TRANSFERRED TO THE LIQUIDATING TRUST, AND THE LIQUIDATING TRUST WILL BE VESTED WITH THE SOLE AUTHORITY TO REVIEW, INITIATE, AND/OR PURSUE ANY AND ALL AVOIDANCE ACTIONS.**

1. Preferences

Under federal bankruptcy law, a debtor-in-possession may avoid pre-petition transfers of assets of a debtor as "preferential transfers." To constitute a preferential transfer, the transfer must be (1) of the debtor's property; (2) to or for an antecedent debt; (3) made while the debtor was insolvent; (4) made within 90 days before the filing of a bankruptcy petition or made within one year if to an "insider"¹³; and (5) a transfer that enables the creditor to receive more than it would receive under chapter 7 liquidation of the debtor's assets. For this purpose, the

¹³ Section 101(31) of the Bankruptcy Code defines an "insider", in relevant part, as:

(B) if the debtor is a corporation—

- (i) director of the debtor;
- (ii) officer of the debtor;
- (iii) person in control of the debtor;
- (iv) partnership in which the debtor is a general partner;
- (v) general partner of the debtor; or
- (vi) relative of a general partner, director, officer, or person in control of the debtor.

...

(E) affiliate or insider of an affiliate as if such affiliate were the debtor.

11 U.S.C. § 101(31).

Bankruptcy Code creates a rebuttable presumption that the debtor was insolvent during the 90 days immediately before the filing of the bankruptcy petition. All payments made by the Debtors to creditors within 90 days prior to the filing of the bankruptcy petition are listed under question 3(b) of the Debtors' statements of financial affairs. A copy of the relevant portions of the Debtors' statements of financial affairs relating to payments made within 90 days prior to the filing of the bankruptcy petition are attached hereto as Exhibit M. All payments made by the Debtors to "insiders" within one year prior to the filing of the bankruptcy petition are listed under question 3(c) of the Debtors' statements of financial affairs. A copy of the relevant portions of the Debtors' statements of financial affairs relating to payments made to insiders within one year prior to the filing of the bankruptcy petition are attached hereto as Exhibit N. **UPON THE EFFECTIVE DATE, THE LIQUIDATING TRUST WILL BE VESTED WITH THE SOLE AUTHORITY TO REVIEW, INITIATE, AND/OR PURSUE ANY AND ALL PREFERENCE ACTIONS.**

2. *Fraudulent Transfers*

Fraudulent transfer law generally is designed to avoid two types of transactions: (i) conveyances that constitute "actual fraud" upon creditors, and (ii) conveyances that constitute "constructive fraud" upon creditors. In the bankruptcy context, fraudulent transfer liability arises under sections 548 and 544 of the Bankruptcy Code. Section 548 permits the debtor-in-possession to "reach back" for a period of two years to avoid fraudulent transfers made by the debtors or fraudulent obligations incurred by the debtors, and Section 544 permits the debtor-in-possession to apply applicable state fraudulent transfer law to any such action. Assuming that Tennessee state law were to apply, the debtor-in-possession could challenge conveyances, transfers, or obligations made or incurred by the Debtors within the past four (4) years if similar requirements are met. **UPON THE EFFECTIVE DATE, THE LIQUIDATING TRUST WILL BE VESTED WITH THE SOLE AUTHORITY TO REVIEW, INITIATE, AND/OR PURSUE ANY AND ALL FRAUDULENT TRANSFER ACTIONS.**

ARTICLE IV.

SUMMARY OF THE PLAN

A. CLASSIFICATION OF CLAIMS AND INTERESTS

1. *Introduction*

The categories of Claims and Interests set forth below classify all Claims against and Interests in the Debtors for all purposes of the Plan. A Claim or Interest shall be deemed classified in a particular Class only to the extent the Claim or 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 Interest qualifies within the description of such different Class. A Claim or Interest is in a particular Class only to the extent that such Claim or Interest is Allowed in that Class and has not been paid, released, or otherwise settled prior to the Effective Date. **THE TREATMENT WITH RESPECT TO EACH CLASS OF CLAIMS AND**

INTERESTS PROVIDED FOR IN THE PLAN SHALL BE IN FULL AND COMPLETE SATISFACTION, RELEASE AND DISCHARGE OF SUCH CLAIMS AND INTERESTS.

2. Classification

The classification of Claims discussed in Article III of the Plan is as follows:

Summary of Estate Classification

<u>Class</u>	<u>Designation</u>	<u>Impairment</u>	<u>Entitled to Vote</u>
1	Allowed Secured Claims	Unimpaired	No
2	Allowed Priority Claims	Unimpaired	No
3	Allowed General Unsecured Claims	Impaired	Yes
4	Allowed Interests	Impaired	No, pursuant to Bankruptcy Code section 1126(g)
5	Allowed Holdings Claims and Interests	Impaired	No, pursuant to Bankruptcy Code section 1126(g)

The Classes of Claims and Interests, as well as their treatment and an analysis of whether they are impaired or unimpaired, are discussed in Articles IV and V of the Plan and in more detail as follows:

(a) Class 1 -- Allowed Secured Claims. At the option of the Liquidating Trustee, each holder of an Allowed Secured Claim shall receive, in full satisfaction, settlement, release and discharge of and, in exchange for, such Allowed Secured Claim, one of the following treatments: (i) Cash equal to the value of the Allowed Secured Claimant's interest in the property of the Estate that constitutes collateral for such Allowed Secured Claim, as described in section 506(a) of the Bankruptcy Code; (ii) Cash equal to the full amount of the Allowed Secured Claim; (iii) such other treatment as determined by the Liquidating Trustee and held by the Bankruptcy Court as constituting the indubitable equivalent of such Claimant's Allowed Secured Claim, in accordance with section 1129(b)(2)(A)(iii) of the Bankruptcy Code; or (iv) such other treatment as to which the Liquidating Trustee and the holder of such Allowed Secured Claim have agreed upon in writing. The Liquidating Trust's failure to object to any such Allowed Secured Claim shall be without prejudice to the Liquidating Trust's right to contest or otherwise defend against

such Claim in the Bankruptcy Court or other appropriate non-bankruptcy forum (at the option of the Debtors or the Liquidating Trustee) when and if such Claim is sought to be enforced by the holder of such Allowed Secured Claim.

Voting: Class 1 is an Unimpaired Class, and the holders of Claims in Class 1 are not entitled to vote.

(b) Class 2 -- Allowed Priority Claims. Each holder of an Allowed Priority Claim shall receive in full satisfaction, release and discharge of and in exchange for such Claim full payment of the amount of such Allowed Priority Claim, in Cash, (i) within thirty (30) days of the Effective Date or (ii) by such other date as may be agreed upon in writing by the holder of such Claim and the Debtors or the Liquidating Trust.

Voting: Class 2 is an Unimpaired Class, and the holders of Claims in Class 2 are not entitled to vote.

(c) Class 3 -- Allowed General Unsecured Claims. Class 3 consists of Allowed General Unsecured Claims, including without limitation, Allowed Pre-Petition Unsecured Note Claims. On the Effective Date, the Pre-Petition Unsecured Note Claims shall be allowed in the aggregate amount of \$152,000,000.00, which includes principal and accrued and unpaid interest on the Pre-Petition Unsecured Notes as of the Petition Date. Each holder of an Allowed General Unsecured Claim shall receive, in full and final satisfaction, settlement, release, and discharge of, and in exchange for, such Allowed General Unsecured Claim, its Pro Rata share of the General Unsecured Claim Distribution, if any, available from the Liquidating Trust after payment in full of Allowed Administrative Expense Claims, Allowed Priority Tax Claims, and all Class 1 and Class 2 claims.

Voting: Class 3 is an Impaired Class, and the holders of Claims in Class 3 are entitled to vote.

(d) Class 4 -- Allowed Interests. On the Effective Date, all Interests of the Debtors shall be cancelled and extinguished, and the holders of Allowed Interests shall not receive or retain any Distribution on account of such Allowed Interests.

Voting: Class 4 is an Impaired Class, but votes will not be solicited from holders of Interests in Class 4 pursuant to Bankruptcy Code section 1126(g).

(e) Class 5 -- Allowed Holdings Claims and Interests. Holdings has no assets with which to pay Claims or Interests. On the Effective Date, all Claims and Interests against Holdings shall be cancelled and extinguished, and the holders of Allowed Claims and Allowed Interests shall not receive or retain any Distribution on account of such Allowed Claims and Allowed Interests.

Voting: Class 5 is an Impaired Class, but votes will not be solicited from holders of Interests in Class 5 pursuant to Bankruptcy Code section 1126(g).

B. TREATMENT OF UNCLASSIFIED CLAIMS

1. Summary

Pursuant to section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims and Priority Tax Claims against the Debtors are not classified for purposes of voting on, or receiving Distributions under, the Plan. All such Claims are instead treated separately in accordance with Article II of the Plan and in accordance with the requirements set forth in section 1129(a)(9)(A) of the Bankruptcy Code.

2. Administrative Expense Claims

Administrative Expense Claims are claims for payment of administrative expenses of a kind specified in section 503(b) of the Bankruptcy Code and entitled to priority pursuant to section 507(a)(1) of the Bankruptcy Code. The Debtors currently estimate that, aside from fees of Professionals, Administrative Expense Claims will range from approximately \$47,000 to \$75,000. Subject to the provisions of sections 328, 330(a), and 331 of the Bankruptcy Code, the Plan provides that each holder of an Allowed Administrative Expense Claim shall be paid by the Liquidating Trustee, at his election, in full, in Cash, upon the later of (i) ten (10) Business Days after the Effective Date, (ii) the date upon which such Administrative Expense Claim becomes an Allowed Claim, (iii) the due date thereof in accordance with its terms or (iv) such other date as may be agreed upon between the holder of such Allowed Administrative Expense Claim and the Liquidating Trustee.

3. Bar Date for Filing Administrative Expense Claims But Excluding Ordinary Course Administrative Claims

The Bar Date for filing Administrative Expense Claims is discussed in Section 2.2 of the Plan. All requests for payment or assertion of an Administrative Expense Claim, other than Claims by Professionals that have not been paid, released, satisfied or otherwise settled, must be filed with the Bankruptcy Court no later than (i) the date established by the Bankruptcy Court as the Administrative Expense Claim Bar Date; or (ii) thirty (30) days after the Effective Date, if the Bankruptcy Court does not establish an Administrative Expense Claim Bar Date. Any request for payment of an Administrative Expense Claim that is not timely filed, as set forth above, will be forever disallowed and barred. In such event, Claimants will not be able to assert such Claims, in any manner whatsoever, against any Debtor. Ordinary Course Administrative Claims, as set out in the Xerxes APA, shall be paid by the Purchaser in the ordinary course of business.

4. *Special Provisions Regarding Indenture Trustee Fee Claims*

On or after the Effective Date, the Indenture Trustee Fee Claims shall be treated as an Administrative Claim against the Debtors pursuant to Section 503(b) of the Bankruptcy Code and shall be paid by the Liquidating Trust without the need for the Indenture Trustee to file an application for allowance with the Bankruptcy Court. To receive payment of the Indenture Trustee Fee Claims, the Indenture Trustee shall provide reasonable and customary detail or invoices in support of such Indenture Trustee Fee Claims to the Liquidating Trust no later than fifteen days after the Effective Date. The Liquidating Trust shall have the right to file an objection to such claim based on a "reasonableness" standard within twenty days after receipt of supporting documentation. The Liquidating Trust shall pay any such Indenture Trustee Fee Claims by the later of (i) thirty days after the receipt of supporting documentation from the Indenture Trustee or (ii) ten Business Days after the resolution of any objections to the claims of the Indenture Trustee with respect to the portion of the Indenture Trustee Fee Claims subject to such objection. Any disputed amount of the Indenture Trustee Fee Claims shall be subject to the jurisdiction of the Bankruptcy Court.

In the event that the Liquidating Trust and the Indenture Trustee are unable to resolve a dispute with respect to an Indenture Trustee Fee Claim, the Indenture Trustee may, in its sole discretion, elect to (i) submit any such dispute to the Bankruptcy Court for resolution or (ii) assert its Charging Lien to obtain payment of such disputed Indenture Trustee Fee Claim.

Distributions received by the holders of the Pre-Petition Unsecured Notes pursuant to the Plan will not be reduced on account of the payment of the Indenture Trustee Fee Claims.

Notwithstanding the foregoing and anything contained in the Plan, nothing therein shall be deemed to impair, waive, extinguish or negatively impact the Charging Lien. Indenture Trustee Fee Claims arising after the Effective Date shall be paid in the ordinary course by the Liquidating Trustee.

5. *Allowed Priority Tax Claims*

Priority Tax Claims include unsecured claims of governmental units for unpaid taxes entitled to priority under section 507(a)(8) of the Bankruptcy Code. Each holder of an Allowed Priority Tax Claim shall receive in full satisfaction, release and discharge of and in exchange for such Claim (i) the amount of such Allowed Priority Tax Claim, in one Cash payment, on or as soon as practicable after the later of (x) the Effective Date, or (y) the date that is ten (10) Business Days after the Allowance Date; or (ii) such other treatment as may be agreed upon in writing by the holder of such Claim and the Liquidating Trustee.

6. *Payment of Administrative Expense Claims and Priority Tax Claims*

Before any Distributions are made to creditors in Classes 1-3, the Liquidating Trustee shall satisfy or reserve in full for Allowed Administrative Expense Claims and Allowed Priority Tax Claims.

ARTICLE V.

MEANS FOR IMPLEMENTATION OF THE PLAN

A. SOURCES OF FUNDING FOR DISTRIBUTIONS UNDER THE PLAN

The Debtors' Estates currently have approximately \$2.1 million of cash on hand remaining from the proceeds of the Asset Sale (the "Sale Proceeds Account"). The Debtors' Estates also have an additional amount of approximately \$2.7 million of cash on hand (the "Carve Out Account"). The Carve Out Account will first be used to pay the fees and expenses of estate professionals, including Debtors' attorneys, the Committee's attorneys, and Woody McGee (the Debtors' Agent under this Plan), for work performed up to and including the Effective Date. Upon the Effective Date, the remaining proceeds from the Carve Out Account will be transferred to the Liquidating Trust and will be used to compensate the Liquidating Trustee for work performed in conjunction with managing the Liquidating Trust. To the extent there is cash remaining in the Carve Out Account after the payment of the Liquidating Trustee's fees and costs, such remaining proceeds from the Carve Out Account will be distributed to creditors by the Liquidating Trust.

Except as otherwise provided in the Plan or the Confirmation Order, all Cash necessary for the Liquidating Trust to make Distributions pursuant to the Plan shall be obtained from existing Cash balances, including the Sales Proceeds, the remaining portions of the Carve Out Account, and the other assets of the Liquidating Trust.

B. CREATION OF THE LIQUIDATING TRUST

Prior to the Effective Date, the Debtors' Agent will retain power and control over the Debtors' Estates. On the Effective Date, the employment of the Debtors' Agent will be terminated, and the Liquidating Trust will be established and become effective and title to the Trust Assets will automatically vest in the Liquidating Trust, without the need to execute any documents or instruments of transfer. **THE TRUST ASSETS (INCLUDING WITHOUT LIMITATION ALL AVOIDANCE ACTIONS) WILL BE RESERVED, PRESERVED, ASSIGNED, TRANSFERRED, AND CONVEYED, AS THE CASE MAY BE, TO THE LIQUIDATING TRUST FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES OR INTERESTS EXCEPT TO THE EXTENT THAT SUCH LIENS AND CLAIMS ARE RETAINED UNDER THE PLAN.** Gene Davis will serve as the Liquidating Trustee of the Liquidating Trust and the Liquidating Trust will assume liability for and incur the obligation to make the Distributions required to be made under this Plan.

C. POWERS AND DUTIES OF THE LIQUIDATING TRUSTEE

1. Maintenance, Safekeeping and Distribution of Assets

Subject to the provisions of the Liquidating Trust Agreement and the Plan, the Liquidating Trust will take possession of the Trust Assets and will conserve, protect, collect and liquidate or otherwise convert into cash all assets that constitute part of the Trust Assets and all

other property incidental thereto which may thereafter be acquired by the Liquidating Trust from time to time. To the end of accomplishing the purposes of the Plan and the Liquidating Trust, after the Effective Date the Liquidating Trust will make Distributions to creditors and the Liquidating Trustee will have the sole right, power and discretion to manage the affairs of the Liquidating Trust. On and after the Effective Date, the Liquidating Trust will be a representative of the Debtors' Estates pursuant to Bankruptcy Code section 1123(b)(3) and as such, the Liquidating Trustee will have the power to prosecute, in the name of the Liquidating Trust, the Debtors' Estates, or otherwise, any claims of the Debtors' Estates, including Avoidance Actions. Additionally, the Liquidating Trust will have the power to: (i) do all acts contemplated by the Plan to be done by the Liquidating Trust, and (ii) do all other acts that may be necessary or appropriate for the final distribution of Trust Assets, including the execution and delivery of appropriate agreements or other documents of disposition, liquidation, or dissolution containing terms that are consistent with the terms of the Plan and that satisfy the applicable requirements of applicable state law and such other terms to which the applicable entities may agree.

2. *Assumption of Liabilities*

Except as otherwise provided in the Plan, the Liquidating Trust shall assume liability for and incur the obligation to make the Distributions required to be made under this Plan and to handle all aspects of the claim contest and dispute process on and after the Effective Date, as described in Article VII of the Plan. Further, payment of any fees and expenses of the Indenture Trustee, as described in section 2.3 of the Plan, shall be the sole responsibility of the Liquidating Trust.

3. *Proceeds of Litigation*

Proceeds of any litigation conducted by the Liquidating Trust will be added to the assets of the Liquidating Trust, administered pursuant to the Liquidating Trust Agreement, and distributed pursuant to Article V of the Plan.

4. *Avoidance Actions*

The Liquidating Trust will have the sole authority to prosecute Avoidance Actions. **ALL CREDITORS AND RECIPIENTS OF PAYMENTS OR TRANSFERS THAT MAY BE DEEMED PREFERENCES OR FRAUDULENT TRANSFERS, WITH ACTUAL OR CONSTRUCTIVE NOTICE OF THESE BANKRUPTCY CASES ARE HEREBY PUT ON NOTICE THAT THE DEBTORS' STATEMENTS OF FINANCIAL AFFAIRS LIST THOSE PARTIES FROM WHOM THE LIQUIDATING TRUST MAY SEEK RECOVERIES. THIS PLAN IS NOT INTENDED AND DOES NOT WAIVE ANY OF THE DEBTORS' CHAPTER 5 CAUSES OF ACTION AS ALL SUCH ACTIONS ARE EXPRESSLY PRESERVED FOR THE BENEFIT OF THE LIQUIDATING TRUST.**

5. *Compensation of Liquidating Trustee*

The Liquidating Trustee shall be entitled to receive compensation for services rendered at customary rates charged by the Liquidating Trustee for the Liquidating Trustee's services. An engagement letter for the Liquidating Trustee will be filed as part of the Plan supplement.

6. *Reporting Duties*

Forty-five (45) days after the end of each annual calendar quarter and forty-five (45) days after termination of the Liquidating Trust, the Liquidating Trustee will file with the Court a written report showing (i) the assets and liabilities of the Liquidating Trust at the end of such quarter or upon termination and (ii) any material action taken by the Liquidating Trustee in the performance of his duties under the Liquidating Trust and under the Plan that has not been previously reported.

D. CANCELLATION OF NOTES, INSTRUMENTS, DEBENTURES, AND COMMON STOCK

ON THE EFFECTIVE DATE, EXCEPT AS OTHERWISE PROVIDED FOR HEREIN, (A) THE PREPETITION CREDIT AGREEMENT, THE INDENTURE, PREPETITION UNSECURED NOTES, COMMON STOCK AND ANY OTHER NOTES, BONDS (WITH THE EXCEPTION OF SURETY BONDS OUTSTANDING), INDENTURES, OR OTHER INSTRUMENTS OR DOCUMENTS EVIDENCING OR CREATING ANY INDEBTEDNESS OR OBLIGATIONS OF A DEBTOR THAT ARE IMPAIRED UNDER THIS PLAN SHALL BE CANCELLED, AND (B) THE OBLIGATIONS OF THE DEBTORS UNDER ANY AGREEMENTS, INDENTURES, OR CERTIFICATES OF DESIGNATION GOVERNING THE PREPETITION SECURED CLAIMS, COMMON STOCK AND ANY OTHER CLAIMS OR ANY NOTES, BONDS, INDENTURES, OR OTHER INSTRUMENTS OR DOCUMENTS EVIDENCING OR CREATING ANY CLAIMS AGAINST A DEBTOR THAT ARE IMPAIRED UNDER THIS PLAN SHALL BE ENJOINED. Notwithstanding the foregoing and anything contained in the Plan, the Indenture will continue in effect solely for the purposes of (a) allowing distributions to be made under the Plan pursuant to the Indenture and for the Indenture Trustee to perform such other necessary functions with respect thereto and to have the benefit of all the protections and other provisions of the Indenture in doing so, (b) permitting the Indenture Trustee to maintain or assert any rights or Charging Lien it may have on distributions pursuant to the terms of this Plan for Indenture Trustee Fee Claims, (c) permitting the Indenture Trustee to maintain and enforce any right to indemnification, contribution or other Claim it may have under the Indenture, (d) permitting the Indenture Trustee to exercise its rights and obligations relating to the interests of the holders of the Pre-Petition Unsecured Notes and its relationship with such holders and (e) appearing in these Chapter 11 cases. Following the completion of all Distributions to holders of the Pre-Petition Unsecured Notes set forth in the Plan, the Indenture Trustee shall be discharged of all further duties under the Indenture without any further notice or order by the Bankruptcy Court. As of the Effective Date, all Common Stock that has been authorized to be issued but that has not been issued shall be deemed cancelled and extinguished without any further action of any party.

E. PROFESSIONAL FEES

All unpaid Professional Fees incurred prior to and including the Effective Date shall be subject to final allowance or disallowance upon application to the Bankruptcy Court pursuant to sections 330 or 503(b)(4) of the Bankruptcy Code. Final applications for Professional Fees for services rendered in connection with the Chapter 11 Cases shall be filed with the Bankruptcy Court no later than [____]. The Debtors estimate that Professional Fees up to the Effective Date, including holdbacks, will range from approximately \$1.1 million to \$1.3 million.

F. TERMINATION OF LIQUIDATING TRUST

The Liquidating Trust will terminate, subject to this Court's approval, no later than at the end of three years from the Effective Date. Upon the completion of the Liquidating Trustee's duties the Liquidating Trustee may terminate the Liquidating Trust prior to the three-year period set forth above. On the termination date of the Liquidating Trust, the Liquidating Trustee will execute and deliver any and all documents and instruments reasonably requested to evidence such transfer. Upon termination and complete satisfaction of his duties under the Liquidating Trust Agreement, the Liquidating Trustee will be forever discharged and released from all powers, duties, responsibilities, and liabilities pursuant to the Liquidating Trust other than those attributable to the gross negligence or willful misconduct of the Liquidating Trustee

ARTICLE VI.

PROVISIONS REGARDING DISTRIBUTIONS

A. LIQUIDATING TRUSTEE OF THE LIQUIDATING TRUST

Unless otherwise provided for in the Plan, all Distributions under the Plan shall be made by Gene Davis, the Liquidating Trustee.

B. DISTRIBUTIONS OF CASH

Any Distribution of Cash made by the Liquidating Trustee pursuant to the Plan shall, at the Liquidating Trustee's option, be made by check.

C. NO INTEREST OR PENALTIES ON CLAIMS

Unless otherwise specifically provided for in the Plan, the Confirmation Order or other order of the Bankruptcy Court, or required by applicable bankruptcy law, postpetition interest shall not accrue or be paid on any Claims, and no holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim. Additionally, and without limiting the foregoing, interest shall not accrue or be paid on any Disputed Claim in respect of the period from the Effective Date to the Final Distribution Date when and if such Disputed Claim becomes an Allowed Claim.

D. DISTRIBUTIONS TO HOLDERS AS OF THE RECORD DATE

All Distributions on Allowed Claims shall be made to the Record Date Holders of such Claims. As of the close of business on the Record Date, the Claims register maintained by the Balloting and Claims Agent shall be closed, and there shall be no further changes in the Record Holder of any Claim. The Record Date shall be established in the Confirmation Order or other order entered by the Bankruptcy Court. The Liquidating Trustee shall have no obligation to recognize any transfer of any Claim occurring after the Record Date. The Liquidating Trustee shall instead be entitled to recognize and deal for all purposes under the Plan with the Record Date Holders as of the Record Date.

E. DELIVERY OF DISTRIBUTIONS

1. General Provisions Relating to Distributions

Except as otherwise agreed to by the Record Date Holder of an Allowed Claim and the Liquidating Trust, the Liquidating Trust shall make Distributions to such Claimants as provided in the Plan at the address reflected in the books and records of Debtors or as otherwise reflected on any Proof of Claim, proof of Interest, or notice of address or change of address filed in these Chapter 11 Cases. Any undeliverable or unclaimed Distribution under the Plan that does not become deliverable on or before six (6) months after the applicable Distribution Date shall be deemed to have been forfeited and waived, and the Person otherwise entitled thereto shall be forever barred and enjoined from asserting its Claim therefore against, or seeking to recover its Distribution from, the Debtors, any Estate, the Liquidating Trustee, the Liquidating Trust, or their property. Thereafter, the Liquidating Trustee shall withdraw any amounts remaining in the Unclaimed Distribution Reserve for Distribution in accordance with this Plan.

2. Distributions on Account of Pre-Petition Unsecured Note Claims

Distributions on account of holders of Allowed Pre-Petition Unsecured Note Claims shall be made to (a) the Indenture Trustee or (b) with the prior written consent of the Indenture Trustee, through the facilities of DTC, or, if applicable, the Liquidating Trustee. If a Distribution is made to the Indenture Trustee, the Indenture Trustee, in its capacity as a Disbursing Agent, shall administer the Distribution in accordance with the Plan and Indenture and be compensated in accordance with the procedures discussed below; provided, however, that nothing herein shall be deemed to impair, waive or extinguish any rights of the Indenture Trustee with respect to the Charging Lien.

Except as provided in the Plan, and subject to the requirements set forth above, Distributions to holders of Pre-Petition Unsecured Notes will be made to the record holders of the Pre-Petition Unsecured Note Claims as of the Distribution Date, as identified on a record holder register to be provided to the Liquidating Trust by the Indenture Trustee within five Business Days after the Distribution Date. This record holder register (a) will provide the name, address and holdings of each respective registered holder as of the Distribution Date and (b)

must be consistent with the applicable Pre-Petition Unsecured Note Claim, if filed, or as otherwise determined by the Bankruptcy Court.

With respect to the Allowed Pre-Petition Unsecured Note Claims, on the Effective Date (or as soon as practicable thereafter in accordance with the Plan and such other times as provided under the Plan), the Liquidating Trust will distribute to the Indenture Trustee all Distributions under the Plan on account of the Allowed Pre-Petition Unsecured Note Claims. The Indenture Trustee will then make Distributions to holders of the Allowed Pre-Petition Unsecured Note Claims in accordance with the Plan and the Indenture. For purposes of Distributions under this section, the Indenture Trustee shall be considered a Disbursing Agent.

Each Disbursing Agent providing services related to Distributions under the Plan will receive from the Liquidating Trust, without further Bankruptcy Court approval, reasonable compensation for such services and reimbursement of reasonable out-of-pocket expenses incurred in connection with such services. These payments will be made by the Liquidating Trust and will not be deducted from Distributions to be made pursuant to the Plan to holders of Allowed Claims receiving Distributions from a Disbursing Agent.

The Disbursing Agent shall only be required to act and make Distributions in accordance with the terms of the Plan and shall have no (a) liability for actions taken in accordance with the Plan or in reliance upon information provided to it in accordance with the Plan or (b) obligation or liability for Distributions under the Plan to any party who does not hold a Claim against the Debtors as of the Distribution Date or who does not otherwise comply with the terms of the Plan. Notwithstanding the foregoing and anything contained in the Plan, nothing herein shall be deemed to impair, waive, extinguish or negatively impact the Charging Lien.

Except as provided in the Plan for lost, stolen, mutilated or destroyed Pre-Petition Unsecured Notes, each holder of any Pre-Petition Unsecured Note not held through book entry must tender such Pre-Petition Unsecured Note to the Disbursing Agent in accordance with a letter of transmittal to be provided to such holders by the Disbursing Agent as promptly as practicable on the Effective Date. The letter of transmittal will include, among other provisions, customary provisions with respect to the authority of the holder of such Pre-Petition Unsecured Note to act and the authenticity of any signatures required thereon. All surrendered Pre-Petition Unsecured Notes will be marked as cancelled and delivered to the Liquidating Trust. If the record holder of a Pre-Petition Unsecured Note is DTC or its nominee or such other securities depository or custodian thereof or is held in book entry or electronic form pursuant to a global security held by DTC, then the beneficial holder of such a Pre-Petition Unsecured Note Claim shall be deemed to have surrendered such holder's security, note, debenture or other evidence of indebtedness upon surrender of such global security by DTC or such other securities depository or custodian thereof.

F. WITHHOLDING AND REPORTING REQUIRMENTS

In connection with the Plan and all Distributions hereunder, the Liquidating Trust shall, to the extent applicable, comply with all tax withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all Distributions hereunder shall be

subject to those requirements. The Liquidating Trust shall be authorized to take all actions necessary or appropriate to comply with those withholding and reporting requirements. Notwithstanding any other provision of the Plan, the holders of Claims or Interests of the Debtors shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any Governmental Authority, including income, withholding and other tax obligations, on account of the provisions of the Plan. Neither the Debtors nor the Liquidating Trust shall have any liability to either the holder of a Claim or Interest or any Governmental Authority with respect to any such tax or similar obligation owed by such holder.

G. DUTY TO FILE TAX RETURNS

On and after the Effective Date, the Liquidating Trust shall be obligated to file any and all applicable state and federal tax returns on behalf of the Debtors and their Estates.

H. SETOFFS

The Debtors or the Liquidating Trust may, pursuant to section 553 of the Bankruptcy Code or applicable non-bankruptcy laws, but shall not be required to, set off against any Claim, the payments or other Distributions to be made pursuant to the Plan in respect of such Claim, or claims of any nature whatsoever that the Debtors or the Liquidating Trust may have against the holder of such Claim; provided, however, that neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors or the Liquidating Trust of any such Claim that the Debtors or the Liquidating Trust may have against such holder.

ARTICLE VII.

PROCEDURES FOR TREATING AND RESOLVING DISPUTED CLAIMS

A. OBJECTIONS TO CLAIMS

The Debtors' Agent, a Creditor or party-in-interest (as decided by the Bankruptcy Court upon dispute) may file objections to Claims prior to the Effective Date. **FROM AND AFTER THE EFFECTIVE DATE, THE LIQUIDATING TRUST SHALL HAVE THE EXCLUSIVE AUTHORITY TO OBJECT TO CLAIMS SO THAT THE BANKRUPTCY COURT CAN DETERMINE THE ALLOWED AMOUNT, IF ANY, OF SUCH CLAIMS.** The Liquidating Trust may file an objection at any time prior to the Final Distribution Date, and may reserve (in lieu of payment or Distribution of a Claim) for any Claim that the Liquidating Trust may, in good faith, dispute. A Claimant whose Claim is the subject of an objection must file with the Bankruptcy Court and serve upon the Liquidating Trustee a response to the objection. Failure to file and serve a response within the applicable period required by the Bankruptcy Code and Bankruptcy Rules shall result in the entry of a default judgment against the non-responding Claimant and the granting of the relief requested in the objection.

B. AMENDMENTS TO CLAIMS; CLAIMS FILED AFTER THE CONFIRMATION DATE

All Proofs of Claim, and the assertion of any Claim, must be filed and occur by the applicable Bar Date or such Claim shall otherwise be barred. Moreover, any Proofs of Claim filed after the Bar Date shall be deemed Disallowed in full and expunged without any action by the Debtors or the Liquidating Trust, unless the Claimant obtains an order of the Bankruptcy Court authorizing a late filing. Nothing herein shall affect, amend or modify the Bar Date in these Chapter 11 Cases.

C. NO DISTRIBUTIONS UNTIL CLAIM IS AN ALLOWED CLAIM

No payment or distribution shall be made with respect to any Claim to the extent it is a Disputed Claim unless and until such Disputed Claim becomes an Allowed Claim.

D. ESTIMATION OF UNLIQUIDATED OR CONTINGENT CLAIMS

Pursuant to Bankruptcy Code Section 502(e), before the Effective Date, any Claimant or the Liquidating Trust may seek the estimation of any unliquidated claim or contingent claim. Any estimation of an unliquidated claim or a contingent claim shall constitute a final determination of such Claim for all purposes. To the extent an unliquidated claim or a contingent claim is estimated by Final Order of the Bankruptcy Court, it shall receive the treatment for the particular type of Claim set forth in Article V of the Plan in the amount estimated by the Bankruptcy Court. If a Claimant fails to seek estimation of its Claim at any time prior to the Final Distribution Date, such Claim shall be treated as a Disallowed Claim without further Order of the Bankruptcy Court at the Final Distribution Date. Any unliquidated claim or contingent claim shall be treated as a Disputed Claim until and unless it becomes an Allowed Claim pursuant to a Final Order of the Court.

E. VOTING

Holders of Disputed Claims shall not be entitled to vote with respect to the Plan unless such Claims are estimated, for voting purposes, by order of the Court. Only the Record Date holder is entitled to vote any Claim which is not a Disputed Claim.

F. RESOLUTION OF CLAIMS OBJECTIONS

On and after the Effective Date, the Liquidating Trustee shall have the sole authority to compromise, settle, otherwise resolve, or withdraw any objections to Claims without approval of the Bankruptcy Court.

G. DISTRIBUTIONS AFTER ALLOWANCE

As soon as practicable after (i) the occurrence of the applicable Objection Deadline, if no Objection to such Claim has been timely filed, or (ii) the Disputed Claim becomes an Allowed Claim, the Liquidating Trustee shall distribute to the holder thereof all Distributions to which such holder is then entitled under the Plan.

ARTICLE VIII.

CONDITIONS PRECEDENT TO THE EFFECTIVE DATE

A. CONDITIONS TO EFFECTIVE DATE

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

- (i) The Confirmation Order confirming this Plan shall have been entered and become a Final Order in form and substance reasonably acceptable to the Debtors and the Committee, in the exercise of the Committee's reasonable discretion.
- (ii) All other Plan Documents and agreements necessary to implement this Plan on the Effective Date shall be reasonably acceptable to the Debtors and the Committee, in the exercise of the Committee's reasonable discretion, and have been executed and delivered and all other actions required to be taken in connection with the Effective Date shall have occurred.

B. NOTICE OF EFFECTIVE DATE

Within ten (10) days after the occurrence of the Effective Date, the Liquidating Trustee shall file with the Bankruptcy Court and cause to be mailed to all holders of Claims and Interests a notice of (i) the Effective Date; (ii) the Bar Date for the filing of Administrative Expense Claims; and (iii) any other matters deemed appropriate by the Liquidating Trustee.

C. WAIVER OF CONDITIONS

Under Article XI of the Plan, each of the conditions set forth above may be waived in whole or in part by the Debtors without any other notice to parties in interest or the Bankruptcy Court and without a hearing, except that such conditions cannot be waived without the Committee's consent, which may be given or denied in the exercise of the Committee's reasonable discretion.

ARTICLE IX.

CERTAIN EFFECTS OF CONFIRMATION

A. RELEASE BY DEBTORS OF CERTAIN PARTIES

On the Effective Date, the individuals described in the following sentence shall be forever irrevocably and unconditionally released and discharged from any and all Claims, actions, suits, debts, accounts, Causes of Action, agreements, promises, damages, judgments, demands and liabilities which the Debtors may have against them, whether held directly, indirectly, or derivatively, which are in any way related to the Debtors, and arise from facts,

circumstances, events or conditions occurring or otherwise existing prior to the Effective Date. The Persons released hereby are all the Debtors' representatives, including all Persons who have served as directors or officers or Persons serving in similar capacities of any of the Debtors on and after the Petition Date and all Professionals employed during the bankruptcy cases, including but not limited to William C. Oehmig, T. Hunter Nelson, Richard D. Paterson, Gene G. Stoevers, Perry D. Odak, Woody McGee, William S. Brant, Hugh McClain, Randy Powell, Martin T. (Tim) deVries, Lee McCarter and Richard Franks.

B. INJUNCTION

PROVIDED THAT THE EFFECTIVE DATE OCCURS, THE ENTRY OF THE CONFIRMATION ORDER SHALL BE DEEMED TO PERMANENTLY ENJOIN ALL PERSONS THAT HAVE HELD, CURRENTLY HOLD OR MAY HOLD A CLAIM AGAINST, OR BE OWED OBLIGATIONS BY, THE ESTATES, OR WHO HAVE HELD, CURRENTLY HOLD OR MAY HOLD AN INTEREST IN ANY DEBTOR, FROM TAKING ANY OF THE FOLLOWING ACTIONS ON ACCOUNT OF SUCH CLAIM OR INTEREST: (I) COMMENCING, CONDUCTING, OR CONTINUING IN ANY MANNER, DIRECTLY OR INDIRECTLY, ANY SUIT, ACTION OR OTHER PROCEEDING OF ANY KIND AGAINST ANY DEBTOR, ANY OF THEIR REPRESENTATIVES, OR THE LIQUIDATING TRUST; (II) ENFORCING, LEVYING, ATTACHING, COLLECTING, OR OTHERWISE RECOVERING IN ANY MANNER OR BY ANY MEANS, DIRECTLY OR INDIRECTLY, ANY JUDGMENT, AWARD, DECREE, OR ORDER AGAINST ANY DEBTOR, ANY OF THEIR REPRESENTATIVES, OR THE LIQUIDATING TRUST; (III) CREATING, PERFECTING OR ENFORCING IN ANY MANNER, DIRECTLY OR INDIRECTLY, ANY LIEN, CHARGE, ENCUMBRANCE OR OTHER LIEN OF ANY KIND AGAINST ANY DEBTOR, THEIR PROPERTY, ANY OF THEIR REPRESENTATIVES, OR THE LIQUIDATING TRUST; (IV) ASSERTING ANY SETOFF, RIGHT OF SUBROGATION OR RECOUPMENT OF ANY KIND, DIRECTLY OR INDIRECTLY, AGAINST ANY DEBT, LIABILITY OR OBLIGATION DUE TO ANY DEBTOR, ANY OF THEIR REPRESENTATIVES, OR THE LIQUIDATING TRUST; AND (V) PROCEEDING IN ANY MANNER, DIRECTLY OR INDIRECTLY, IN ANY PLACE WHATSOEVER AGAINST ANY DEBTOR, ANY OF THEIR REPRESENTATIVES, OR THE LIQUIDATING TRUST.

UNLESS OTHERWISE SPECIFICALLY PROVIDED IN THE PLAN OR THE CONFIRMATION ORDER, ALL INJUNCTIONS OR STAYS PROVIDED FOR IN THESE CHAPTER 11 CASES PURSUANT TO BANKRUPTCY SECTIONS 105, 362 OR 524 OR OTHERWISE AND IN EFFECT ON THE CONFIRMATION DATE SHALL REMAIN IN FULL FORCE AND EFFECT UNTIL THE EFFECTIVE DATE.

C. NO LIABILITY FOR SOLICITATION OR PARTICIPATION

Pursuant to Bankruptcy Code section 1125, Persons that solicit acceptances or rejections of the Plan, in good faith and in compliance with the applicable provisions of the Bankruptcy Code, shall not be liable, on account of such solicitation or participation, for violation of any

applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan.

D. RELEASE OF LIENS

Except as set forth in section 8.10 of the Plan and otherwise specifically provided in the Plan or the Confirmation Order, all Liens, security interests, deeds of trust, or mortgages against any Debtor or property of the Estates shall and shall be deemed to be released, terminated, and nullified as of the Effective Date. Pursuant to Bankruptcy Code section 1142(b), the Debtors are authorized to execute and file any release of Lien, in their sole business judgment, to assist in consummation of the Plan if the holder of such Lien fails to execute such a release of Lien.

E. PRE-PETITION LAWSUITS

On the Effective Date, all lawsuits, litigation, administrative actions or other proceedings, judicial or administrative, relating to pre-petition events or conduct of the Debtors, in connection with the assertion of a Claim, shall be dismissed as to the Debtors. Such dismissal shall be with prejudice to the assertion of such Claim in any manner other than as prescribed by the Plan. Confirmation of the Plan and entry of the Confirmation Order shall have no effect on insurance policies of the Debtor.

F. MISCELLANEOUS PLAN PROVISIONS

1. Modification of Plan

The Debtors reserve the right to modify the Plan either before or after Confirmation, to the fullest extent permitted under Bankruptcy Code section 1127 and Bankruptcy Rule 3019. However, modifications to the Plan or to any Plan Documents requires the Committee's consent, which may be given or denied in the exercise of the Committee's reasonable discretion. After the Confirmation Date and prior to the substantial consummation of the Plan, any party in interest in these chapter 11 Cases may, so long as the treatment of holders of Claims or Interests under the Plan are not materially adversely affected, institute proceedings in the Bankruptcy Court to remedy any defect or omission or to reconcile any inconsistencies in the Plan, the Disclosure Statement or the Confirmation Order, and any other matters as may be necessary to carry out the purposes and effects of the Plan; provided, however, prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or order of the Bankruptcy Court.

2. Revocation, Withdrawal or Non-Consummation

The Debtors reserve the right to revoke or withdraw the Plan as to any or all of the Debtors prior to the Confirmation Date and to file subsequent plans of liquidation. If the Debtors revoke or withdraw the Plan as to any or all of the Debtors, or if confirmation or consummation as to any or all of the Debtors does not occur, then, with respect to such Debtors, (a) the Plan shall be null and void in all respects, (b) any fixing or limiting to an amount certain any Claim or

Interest or Class of Claims or Interests shall be deemed null and void, and (c) nothing contained in the Plan shall (i) constitute a waiver or release of any Claims by or against, or any Interests in, such Debtors or any other Person, (ii) prejudice in any manner the rights of such Debtors or any other Person, or (iii) constitute an admission of any sort by the Debtors or any other Person.

3. *Retention of Jurisdiction*

The Plan provides that subsequent to the Effective Date, the Bankruptcy Court shall have or retain jurisdiction for the following purposes:

- (i) allow, disallow, determine, liquidate, classify, estimate, or establish the priority or secured or unsecured status of any Claim or Interest, including the resolution of any request for payment of any Administrative Expense Claim or Priority Claim and the resolution of any objections to the allowance or priority of Claims or Interests;
- (ii) grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan for periods ending on or before the Effective Date;
- (iii) resolve any matters related to the rejection of any executory contract or unexpired lease to which any Debtor is a party or with respect to which any Debtor may be liable and to hear, determine, and, if necessary, liquidate any Claims arising therefrom;
- (iv) ensure that Distributions to holders of Allowed Claims are accomplished by the Liquidating Trust pursuant to the provisions of this Plan and the Liquidating Trust Agreement;
- (v) decide or resolve any motions, adversary proceedings, contested, or litigated matters and any other matters and grant or deny any applications involving the Debtors that may be pending on the Effective Date;
- (vi) enter such orders as may be necessary or appropriate to implement or consummate the provisions of this Plan and all contracts, instruments, releases, and other agreements or documents created in connection with this Plan, the Disclosure Statement, or the Confirmation Order;
- (vii) resolve any cases, controversies, suits, or disputes that may arise in connection with the consummation, interpretation, or enforcement of this Plan or any contract, instrument, release, or other agreement or document that is executed or created pursuant to this Plan, or any entity's rights arising from or obligations incurred in connection with this Plan or such documents;
- (viii) approve any modification of this Plan before or after the Effective Date pursuant to section 1127 of the Bankruptcy Code or approve any modification of the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, or other agreement or document created in connection with this Plan, the Disclosure Statement or the Confirmation Order, or remedy any defect or omission or reconcile any inconsistency in any Bankruptcy

Court order, this Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, or other agreement or document created in connection with this Plan, the Disclosure Statement, or the Confirmation Order, in such manner as may be necessary or appropriate to consummate this Plan;

- (ix) hear and determine all applications for compensation and reimbursement of expenses of Professionals under this Plan or under sections 330, 331, 503(b), 1103, and 1129(c)(9) of the Bankruptcy Code, which shall be payable by the Liquidating Trust only upon allowance thereof pursuant to the order of the Bankruptcy Court, provided, however, that the fees and expenses of the Liquidating Trust, incurred after the Effective Date, including counsel fees, may be paid by the Liquidating Trust in the ordinary course of business and shall not be subject to the approval of the Bankruptcy Court;
- (x) issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any entity with consummation, implementation, or enforcement of this Plan or the Confirmation Order;
- (xi) hear and determine Causes of Action by or on behalf of the Debtors or the Liquidating Trust;
- (xii) hear and determine matters concerning state, local and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;
- (xiii) enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason or in any respect modified, stayed, reversed, revoked, or vacated, or Distributions pursuant to this Plan are enjoined or stayed;
- (xiv) determine any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, or other agreement, or document created in connection with this Plan, the Disclosure Statement or the Confirmation Order;
- (xv) enforce all orders, judgments, injunctions, releases, exculpations, indemnifications, and rulings entered in connection with the Chapter 11 Cases;
- (xvi) hear and determine all matters related to (i) the property of the Liquidating Trust from and after the Confirmation Date and (ii) the activities of the Liquidating Trustee;
- (xvii) hear and determine disputes with respect to compensation of the Debtors' professional advisors;
- (xviii) hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under the Bankruptcy Code; and
- (xix) enter an order closing the Chapter 11 Cases.

4. Limited Role of Creditors' Committee On and After Effective Date

On and after the Effective Date, the Committee shall continue to exist for the limited purposes of (i) filing fee applications for fees and expenses incurred in these Cases, and (ii) litigating and/or settling any pending litigation or appeal that is still ongoing as of the Effective Date and in which the Committee is a party. On the Effective Date, other than with respect to its duty to maintain the confidentiality of protected, confidential or commercially sensitive information concerning the Debtors in accordance with applicable agreements, orders of the Bankruptcy Court or the Committee's by-laws (which duty shall continue), its members and their Representatives shall be deemed released of all of their duties, responsibilities and obligations in connection with the chapter 11 Cases and the retention and employment of the Committee's Professionals shall terminate without further order of the Bankruptcy Court.

ARTICLE X.

CONFIRMATION AND CONSUMMATION PROCEDURE

A. GENERAL INFORMATION

All creditors whose Claims are impaired by the Plan (except those parties holding Interests or who are unimpaired) may cast their votes for or against the Plan. As a condition to confirmation of the Plan, the Bankruptcy Code requires that one Class of Impaired Claims votes to accept the Plan. Section 1126(c) of the Bankruptcy Code defines acceptance of a plan by a Class of Impaired Claims as acceptance by holders of at least two thirds of the dollar amount of the class and by more than one half in number of Claims. Holders of Claims who fail to vote are not counted as either accepting or rejecting a plan. Voting is accomplished by completing, dating, signing and returning the ballot form (the "Ballot") by the Voting Deadline. Ballots will be distributed to all creditors entitled to vote on the Plan and is part of the Solicitation Package accompanying the Disclosure Statement. The Ballot indicates (i) where the Ballot is to be filed and (ii) the deadline by which creditors must return their Ballots. See Article I of this Disclosure Statement for a more detailed explanation of who will receive Ballots and voting procedures.

B. SOLICITATION OF ACCEPTANCES

This Disclosure Statement has been approved by the Bankruptcy Court as containing "adequate information" to permit creditors and equity interest holders to make an informed decision whether to accept or reject the Plan. Under the Bankruptcy Code, your acceptance of the Plan may not be solicited unless you receive a copy of this Disclosure Statement prior to, or concurrently with, such solicitation.

C. ACCEPTANCES NECESSARY TO CONFIRM THE PLAN

At the Confirmation Hearing, the Bankruptcy Court shall determine, among other things, whether the Plan has been accepted by the Debtors' creditors. Class 3 will be deemed to accept the Plan if at least two thirds (2/3) in dollar amount and more than one half (1/2) in number of the Allowed Claims in each Class timely and properly vote to accept the Plan.

D. CONSIDERATIONS RELEVANT TO ACCEPTANCE OF THE PLAN

The Debtors' recommendation that all Creditors should vote to accept the Plan is premised upon the Debtors' view that the Plan is preferable to other alternatives, such as conversion of the Bankruptcy Cases to a chapter 7 bankruptcy case which would likely be more time-consuming, more expensive, and likely result in lower distributions to creditors. It appears unlikely to the Debtors that an alternate plan of reorganization or liquidation can be proposed that would provide for payments in an amount equal or greater than the amounts proposed under the Plan. If the Plan is not accepted, it is likely that the interests of all creditors will be further diminished.

ARTICLE XI.

FEASIBILITY OF THE PLAN AND BEST INTERESTS TEST

A. FEASIBILITY OF THE PLAN

The Bankruptcy Code requires that, for the Plan to be confirmed, the Debtors must demonstrate that consummation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtors. The Plan contemplates the winding down of the Debtors' Estates; therefore, no subsequent liquidation or reorganization will ensue after the Effective Date. The Debtors believe that they will be able to timely perform all obligations described in the Plan and, therefore, that the Plan is feasible.

HOLDERS OF CLAIMS AND INTERESTS ARE ADVISED TO REVIEW CAREFULLY THE RISK FACTORS INCLUDED IN ARTICLE XIV OF THIS DISCLOSURE STATEMENT THAT MAY AFFECT THE FINANCIAL FEASIBILITY OF THE PLAN.

B. BEST INTEREST OF CREDITORS TEST

In certain circumstances, to be confirmed, the Plan must pass the "Best Interest Of Creditors Test" incorporated in section 1129(a)(7) of the Bankruptcy Code. The test applies to individual creditors and Interest holders (stockholders) that are both (i) in Impaired Classes under the Plan, and (ii) do not vote to accept the Plan. Section 1129(a)(7) of the Bankruptcy Code requires that such Creditors and Interest holders receive or retain an amount under the Plan not less than the amount that such holders would receive or retain if the Debtors were to be liquidated under chapter 7 of the Bankruptcy Code.

In a typical chapter 7 case, a trustee is elected or appointed to liquidate the debtor's assets for distribution to creditors in accordance with the priorities set forth in the Bankruptcy Code. Secured creditors generally are paid first from the sales proceeds of properties securing their liens. If any assets are remaining in the bankruptcy estates after the satisfaction of secured creditors' claims from their collateral, Administrative Claims generally are next to receive payment. Unsecured creditors are paid from any remaining sales proceeds, according to their respective priorities. Unsecured creditors with the same priority share in proportion to the amount of their allowed claims in relationship to the total amount of allowed claims held by all

unsecured creditors with the same priority. Finally, equity interest holders receive the balance that remains, if any, after all creditors are paid.

C. APPLICATION OF BEST INTERESTS TEST TO THE LIQUIDATION ANALYSIS AND VALUATION OF THE DEBTORS

The Debtors believe that the Plan meets the “best interests” test of section 1129(a)(7) of the Bankruptcy Code because members of each Impaired Class will receive a more valuable distribution under the Plan than they would in a liquidation in a hypothetical chapter 7 case. Creditors will receive a better recovery through the distributions contemplated by the Plan because the professionals proposing this Plan have been working in these Bankruptcy Cases since their inception and are familiar with the background and progress of these bankruptcy cases. On the other hand, conversion of these Bankruptcy Cases to a chapter 7 liquidation proceeding will require the appointment of a trustee, who more than likely will need additional time to become familiar with the Bankruptcy Cases, and a statutory fee will be paid to the chapter 7 trustee. While gaining familiarity with these cases, a chapter 7 trustee will expend time payable by the remaining cash on hand in the Debtors’ Estates, thereby reducing the potential distribution to creditors. Under this Plan, the payment of remaining cash on hand in the Debtors’ Estates will be paid on the Effective Date after confirmation of this Plan, whereas conversion of this case to a chapter 7 liquidation proceeding will substantially delay distributions and reduce the amount of distributions currently available to creditors. The Debtors believe that the Plan satisfies the “best interests” test.

ARTICLE XII.

ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN

The Debtors believe that the Plan affords holders of Claims the potential for the greatest return and, therefore, is in the best interests of such holders. If the Plan is not confirmed, however, the theoretical alternatives include: (a) an alternative plan or plans of liquidation; or (b) conversion of these Bankruptcy Cases to a chapter 7 bankruptcy case. The Debtors believe that the Plan provides a substantially greater return to holders of Claims than would an alternative plan of liquidation or conversion of these Bankruptcy Cases under chapter 7 of the Bankruptcy Code.

ARTICLE XIII.

CERTAIN RISK FACTORS TO CONSIDER

The following disclosures are not intended to be inclusive and should be read in connection with the other disclosures contained in this Disclosure Statement and the exhibits attached hereto. You should carefully consider the risks described below in addition to the other information contained in this document. It is recommended that you consult your legal, financial, and tax advisors regarding the risks associated with the Plan and the distributions you may receive thereunder.

A. CLAIMS ESTIMATION

There can be no assurance that the estimated Claim amounts assumed for the purposes of preparing the Plan are correct. The actual amount of Allowed Claims likely will differ in some respect from the estimates. The estimated amounts are subject to certain risks, uncertainties, and assumptions. Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, the actual amount of Allowed Claims may vary from those estimated for the purpose of preparing the Plan. Depending on the outcome of claims objections, the estimated recovery percentages provided in this Disclosure Statement may be different than the actual recovery percentages that are realized under the Plan.

B. CERTAIN RISKS OF NONCONFIRMATION

There can be no assurance that the requisite acceptances to confirm the Plan will be received. Even if the requisite acceptances are received, there can be no assurance that the Bankruptcy Court will confirm the Plan. A rejecting Creditor or holder of an Interest might challenge the balloting procedures and results as not being in compliance with the Bankruptcy Code or Bankruptcy Rules. Even if the Bankruptcy Court were to determine that the balloting procedures and results were appropriate, the Bankruptcy Court could still decline to confirm the Plan if it were to find that any of the statutory requirements for confirmation had not been met. Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation and requires, among other things, a finding by the Bankruptcy Court that the confirmation of the Plan is not likely to be followed by a liquidation or a need for further financial reorganization.

ARTICLE XIV.

CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES

THE DEBTORS HAVE NOT SOUGHT OR OBTAINED ANY RULING FROM THE INTERNAL REVENUE SERVICE OR FROM ANY OTHER TAXING AUTHORITY WITH RESPECT TO ANY OF THE TAX CONSEQUENCES OF THE PLAN, NOR HAVE THE DEBTORS SOUGHT OR OBTAINED AN OPINION OF COUNSEL WITH RESPECT TO ANY SUCH TAX CONSEQUENCES. NO REPRESENTATIONS OR ASSURANCES ARE MADE WITH RESPECT TO THE FEDERAL INCOME TAX CONSEQUENCES AS SUMMARIZED HEREIN. CERTAIN TYPES OF CREDITORS MAY BE SUBJECT TO SPECIAL RULES NOT ADDRESSED IN THIS SUMMARY OF FEDERAL INCOME TAX CONSEQUENCES. FURTHER, CREDITORS MAY BE SUBJECT TO STATE, LOCAL, OR FOREIGN TAX CONSEQUENCES THAT ARE NOT ADDRESSED HEREIN. BECAUSE THE TAX CONSEQUENCES OF THE PLAN ARE COMPLEX AND MAY VARY BASED ON INDIVIDUAL CIRCUMSTANCES, EACH CREDITOR SHOULD CONSULT WITH ITS OWN TAX ADVISOR REGARDING THE SPECIFIC TAX CONSEQUENCES OF ANY ASPECT OF THE PLAN WITH RESPECT TO SUCH CREDITOR.

IRS CIRCULAR 230 NOTICE: TO ENSURE COMPLIANCE WITH REQUIREMENTS IMPOSED BY THE IRS, YOU ARE HEREBY ADVISED THAT ANY DISCUSSION OF

TAX MATTERS CONTAINED IN THIS DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY ANY TAXPAYER FOR THE PURPOSE OF AVOIDING TAX-RELATED PENALTIES UNDER THE INTERNAL REVENUE CODE. THE DISCUSSION OF TAX MATTERS CONTAINED IN THIS DISCLOSURE STATEMENT WAS WRITTEN TO SUPPORT THE PROMOTION OF THE TRANSACTIONS DESCRIBED IN THIS DISCLOSURE STATEMENT. EACH TAXPAYER SHOULD SEEK ADVICE BASED ON THE TAXPAYER'S PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

A. INTRODUCTION

A summary description of certain United States federal income tax consequences of the Plan is provided below. This description is for informational purposes only and, due to a lack of definitive judicial or administrative authority or interpretation, substantial uncertainties exist with respect to various tax consequences of the Plan as discussed herein. Only the principal United States federal income tax consequences of the Plan to the holders who are entitled to vote to accept or reject the Plan are described below. No opinion of counsel has been sought or obtained with respect to any tax consequences of the Plan. No rulings or determinations of the Internal Revenue Service (the "IRS") or any other tax authorities have been sought or obtained with respect to any tax consequences of the Plan, and the discussion below is not binding upon the IRS or such other authorities. No representations are being made regarding the particular tax consequences of the confirmation and consummation of the Plan to the Debtors or any holder. No assurance can be given that the IRS would not assert, or that a court would not sustain, a position different from any discussed herein.

The discussion of United States federal income tax consequences below is based on the Internal Revenue Code of 1986, as amended (the "IRC"), Treasury Regulations, judicial authorities, published positions of the IRS and other applicable authorities, all as in effect on the date of this document and all of which are subject to change or differing interpretations (possibly with retroactive effect).

The following discussion does not address foreign, state or local tax consequences of the Plan, nor does it purport to address the United States federal income tax consequences of the Plan to special classes of taxpayers (e.g., banks and certain other financial institutions, insurance companies, tax-exempt organizations, governmental entities, persons that are, or hold their Claims through, pass-through entities, persons whose functional currency is not the United States dollar, foreign persons, dealers in securities or foreign currency, employees, and persons who received their Claims pursuant to the exercise of an employee stock option or otherwise as compensation). Furthermore, the following discussion does not address United States federal taxes other than income taxes.

Each holder is strongly urged to consult its own tax advisor regarding the United States federal, state, and local and any foreign tax consequences of the transactions described herein and in the Plan.

B. UNITED STATES FEDERAL INCOME TAX CONSEQUENCES TO HOLDERS OF CLAIMS

The following discusses certain United States federal income tax consequences of the transactions contemplated by the Plan to holders that are “United States Holders,” as defined below. The United States federal income tax consequences of the transactions contemplated by the Plan to holders of Claims (including the character, timing and amount of income, gain or loss recognized) will depend upon, among other things, (1) the manner in which a holder acquired a Claim; (2) the length of time the Claim has been held; (3) whether the Claim was acquired at a discount; (4) whether the holder has taken a bad debt deduction with respect to the Claim (or any portion thereof) in the current or prior years; (5) whether the holder has previously included in its taxable income accrued but unpaid interest with respect to the Claim; (6) the holder’s method of tax accounting; and (7) whether the Claim is an installment obligation for federal income tax purposes. In addition, special tax considerations not discussed herein may apply to holders subject to special treatment under the U.S. federal income tax laws (including, for example, banks, governmental authorities or agencies, pass-through entities, dealers and traders in securities, insurance companies, and regulated investment companies, and persons holding Claims as part of a hedge, straddle, conversion or constructive sale transaction). Therefore, holders should consult their own tax advisors for information that may be relevant to their particular situations and circumstances and the particular tax consequences to them of the transactions contemplated by the Plan. This discussion assumes that the holder has not taken a bad debt deduction with respect to a Claim (or any portion thereof) in the current or any prior year and such Claim did not become completely or partially worthless in a prior taxable year. Moreover, the Debtors intend to claim deductions to the extent they are permitted to deduct pursuant to the Plan.

For purposes of the following discussion, a “United States Holder” is a holder that is (1) a citizen or individual resident of the United States (as determined for United States federal income tax purposes), (2) a corporation (or other entity treated as a corporation for United States federal income tax purposes) created or organized in the United States or under the laws of the United States, any State within the United States, or the District of Columbia, (3) an estate the income of which is subject to United States federal income taxation regardless of its source, or (4) a trust if: (i) a court within the United States is able to exercise primary supervision over the administration of the trust and one or more United States persons have the authority to control all substantial decisions of the trust or (ii) the trust was in existence on August 20, 1996 and properly elected to be treated as a United States person. If a partnership (or other entity treated as a partnership for United States federal income tax purposes) is a holder of Claims, the tax treatment of a partner as a beneficial owner thereof will generally depend on the status of the partner and the activities of the partnership.

1. Holders of Claims

A Holder who receives cash in exchange for its Claim pursuant to the Plan generally will recognize income, gain or loss for United States federal income tax purposes in an amount equal to the difference between (1) the amount of cash received in exchange for its Claim and (2) the Holder’s adjusted tax basis in its Claim. The character of such gain or loss as capital gain or loss

or as ordinary income or loss will be determined by a number of factors, including the tax status of the Holder, the nature of the Claim in such Holder's hands, whether the Claim constitutes a capital asset in the hands of the Holder, whether the Claim was purchased at a discount, and whether and to what extent the Holder has previously claimed a bad debt deduction with respect to its Claim.

2. *Allocation of Plan Distributions Between Principal and Interest*

In general, a holder that was not previously required to include in taxable income any accrued but unpaid interest on such holder's Claim may be required to take such amount into income as taxable interest. A holder that was previously required to include in taxable income any accrued but unpaid interest on the Claim may be entitled to recognize a deductible loss to the extent that such interest is not satisfied under the Plan. Such loss may be ordinary, but the tax law is unclear on this point.

The extent to which the consideration received by a holder of a surrendered Claim will be attributable to accrued interest on the debt constituting the Claims is unclear. Certain Treasury Regulations generally treat a payment under a debt instrument first as a payment of accrued and unpaid interest and then as a payment of principal. Application of this rule to a final payment on a debt instrument being discharged at a discount in bankruptcy is unclear. In this regard, the Plan provides that, to the extent that any Allowed Claim entitled to a Distribution under the Plan is composed of indebtedness and accrued but unpaid interest thereon, such distribution shall, to the extent permitted by applicable law, be allocated for United States federal income tax purposes to the principal amount of the Claim first and then, to the extent the consideration exceeds the principal amount of the Claim, to the portion of the Claim representing accrued but unpaid interest. The provisions of the Plan are not binding on the IRS or a court with respect to the appropriate tax treatment for creditors. Holders are advised to consult their own tax advisors to determine the amount, if any, of consideration received under the Plan that is allocable to interest.

3. *Market Discount*

The market discount provisions of the IRC may apply to holders of certain Claims. In general, a debt obligation other than a debt obligation with a fixed maturity of one year or less that is acquired by a holder in the secondary market (or, in certain circumstances, upon original issuance) is a "market discount bond" as to that holder if its stated redemption price at maturity (or, in the case of a debt obligation having original issue discount, the revised issue price) exceeds the adjusted tax basis of the bond in the holder's hands immediately after its acquisition. However, a debt obligation will not be a "market discount bond" if such excess is less than a statutory de minimis amount (equal to 0.25% of the debt obligation's stated redemption price at maturity or revised issue price, in the case of a debt obligation issued with original issue discount, multiplied by the number of complete years remaining to maturity as of the time the Holder acquired the debt obligation). Gain recognized by a creditor with respect to a "market discount bond" will generally be treated as ordinary interest income to the extent of the market discount accrued on such bond during the creditor's period of ownership, unless the creditor elected to include accrued market discount in taxable income currently. A holder of a market

discount bond that is required under the market discount rules of the IRC to defer deduction of all or a portion of the interest on indebtedness incurred or maintained to acquire or carry the bond may be allowed to deduct such interest, in whole or in part, on disposition of such bond.

4. *Holders of Interests*

A holder of an Interest in the Fabrics Holdings, Inc. that is cancelled under the Plan will be allowed a “worthless stock deduction” in an amount equal to the holder’s adjusted basis in such Interest. A “worthless stock deduction” is a deduction allowed to a holder of a corporation’s stock for the taxable year in which such stock becomes worthless (which year may differ from the year the Plan is confirmed). If the holder held the Interest as a capital asset, the loss will be treated as a loss from the sale or exchange of such capital asset on the last day of the holder’s taxable year.

5. *Information Reporting and Backup Withholding*

Certain payments, including payments in respect of accrued interest or market discount, are generally subject to information reporting by the payer to the IRS. Moreover, such reportable payments are subject to backup withholding under certain circumstances. Under the IRC’s backup withholding rules, a United States holder may be subject to backup withholding at the applicable rate with respect to certain distributions or payments pursuant to the Plan, unless the holder (a) comes within certain exempt categories (which generally include corporations) and, when required, demonstrates this fact or (b) provides a correct United States taxpayer identification number and certifies under penalty of perjury that the holder is a U.S. person, the taxpayer identification number is correct and that the holder is not subject to backup withholding because of a failure to report all dividend and interest income.

Backup withholding is not an additional tax. Amounts withheld under the backup withholding rules may be credited against a Holder’s United States federal income tax liability, and a holder may obtain a refund of any excess amounts withheld under the backup withholding rules by filing an appropriate claim for refund with the IRS.

THE FOREGOING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN, AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE ABOVE DISCUSSION IS FOR INFORMATION PURPOSES ONLY AND IS NOT TAX ADVICE. 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 INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.

ARTICLE XV.

RECOMMENDATION

Based on the foregoing analysis of the Debtors, their remaining assets, and the Plan, the Debtors believe that the best interests of all parties would be served through confirmation of the Plan. **FOR THESE REASONS, THE DEBTORS URGE ALL CREDITORS TO VOTE TO “ACCEPT” THE PLAN.**

Dated this 10th day of July 2009.

Respectfully submitted,

FABRICS ESTATE INC.

By: /s/
Name: Woody McGee
Title: CEO

FABRICS HOLDINGS INC.

By: /s/
Name: Woody McGee
Title: CEO

**FABRICS CONCRETE SYSTEMS
CORPORATION**

By: /s/
Name: Woody McGee
Title: CEO

**FABRICS ESTATE INTERNATIONAL
HOLDINGS I INC.**

By: /s/
Name: Woody McGee
Title: CEO

**FABRICS ESTATE INTERNATIONAL
HOLDINGS II INC.**

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ATTORNEYS FOR THE DEBTORS

EXHIBITS TO DISCLOSURE STATEMENT

Exhibit A	Order Approving Disclosure Statement
Exhibit B	First Amended Joint Plan of Liquidation
Exhibit C	Glossary of Defined Terms
Exhibit D	Notice to Voting Classes
Exhibit E	Ballot
Exhibit F	List of Executory Contracts and Unexpired Leases Assumed and Assigned under the Xerxes APA
Exhibit G	Debtors' Monthly Operating Report
Exhibit H	Stipulation
Exhibit I	Schedule 2.2(a)(iv) of the Xerxes APA
Exhibit J	Schedule 2.2(a)(vi) of the Xerxes APA
Exhibit K	Schedule 2.2(a)(vii) of the Xerxes APA
Exhibit L	Schedule 2.2(a)(xiii) of the Xerxes APA
Exhibit M	Portions of question 3(b) of the Debtors' statements of financial affairs
Exhibit N	Portions of question 3(c) of the Debtors' statements of financial affairs