

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE  
SOUTHERN DIVISION**

<b>In re</b>	§	
	§	
<b>FABRICS ESTATE INC.,</b>	§	<b>Case No. 08-10249</b>
<b>FABRICS ESTATE HOLDINGS INC.,</b>	§	<b>Case No. 08-10250</b>
<b>CONCRETE ESTATE SYSTEMS</b>	§	
<b>CORPORATION,</b>	§	<b>Case No. 08-10252</b>
<b>FABRICS ESTATE INTERNATIONAL</b>	§	
<b>HOLDINGS I INC.,</b>	§	<b>Case No. 08-10253</b>
<b>FABRICS ESTATE INTERNATIONAL</b>	§	
<b>HOLDINGS II INC.,</b>	§	<b>Case No. 08-10254</b>
	§	
<b>Debtors.</b>	§	
	§	
	§	<b>Chapter 11</b>
	§	
	§	<b>Jointly Administered Under</b>
	§	<b>Case No. 08-10249</b>

**DEBTORS' FIRST AMENDED JOINT PLAN OF LIQUIDATION  
UNDER CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE**

Henry J. Kaim  
Mark W. Wege  
Edward L. Ripley  
KING & SPALDING LLP  
1100 Louisiana, Suite 4000  
Houston, TX 77002

- and -

Shelley D. Rucker  
Miller & Martin PLLC  
832 Georgia Avenue, Suite 1000  
Chattanooga, TN 37402-2289

**ATTORNEYS FOR THE DEBTORS**

## **INTRODUCTION**

The Debtors propose the Debtors' First Amended Joint Plan of Liquidation Under Chapter 11 of the United States Bankruptcy Code. This Plan supersedes the proposed Debtors' Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, filed in the Bankruptcy Court on October 29, 2008. (Docket No. 666). The Disclosure Statement for the Debtors' Plan, distributed with this Plan, contains a discussion of the Debtors' history, business, properties, and a summary of this Plan and certain other matters relating to confirmation of this Plan. The Debtors urge all holders of Impaired Claims and Interests in these Chapter 11 cases to review the Disclosure Statement and this Plan in full.

## **ARTICLE I.**

### **DEFINED TERMS, RULES OF INTERPRETATION AND COMPUTATION OF TIME**

**1.1** Defined Terms. As used in the Plan, Disclosure Statement and any Plan Documents, unless the context otherwise requires, capitalized terms shall have the meanings specified in the Glossary of Terms, submitted herewith.

**1.2** Rules of Interpretation

**1.2.1** For purposes herein: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neutral gender shall include the masculine, feminine or neutral gender; (b) any reference herein to a contract, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been filed or to be filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented; (d) unless otherwise specified, all references herein to "Articles" or "Sections" are references to Articles or Sections hereof or hereto; (e) the words "herein", "hereof", and "hereto" refer to this Plan in its entirety rather than to a particular portion of the Plan; (f) captions and headings of Articles and Sections are inserted for convenience of reference only and are not intended to be part of or affect the interpretation hereof; and (g) the rules of construction set forth in Bankruptcy Code section 102 shall apply.

**1.2.2** All references herein to a Debtor shall also refer to the applicable Debtor to the extent an event or action occurs after the Effective Date.

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

### **1.3 Computation of Time**

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

## **ARTICLE II.**

### **PROVISION FOR PAYMENT OF ADMINISTRATIVE EXPENSE CLAIMS AND PRIORITY TAX CLAIMS**

**2.1 Administrative Expense Claims.** Subject to the provisions of sections 330(a), 331, and 503(b) of the Bankruptcy Code, each 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.

**2.2 Bar Date for Filing Administrative Expense Claims But Excluding Ordinary Course Administrative Claims.** 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, the Liquidating Trustee, or the Liquidating Trust. Ordinary Course Administrative Claims, as set out in the Xerxes APA, shall be paid by the Purchaser in the ordinary course of business.

**2.3 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 this Plan, nothing herein 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.

**2.4** Treatment of Allowed Priority Tax Claims. 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.

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

### **ARTICLE III.**

#### **CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS**

**3.1** Creation of Classes. Administrative Expense Claims and Priority Tax Claims have not been classified and are excluded from the following Classes pursuant to Bankruptcy Code section 1123(a)(1). The Classes created herein do not include any Pre-Petition Secured Claims, as those claims have been waived by the Stipulation. The Classes created herein do not include any Intercompany Claims, all of which have been sold to the Purchaser. To the extent that any Intercompany Claims remain property of the Debtors' Estates, those Intercompany Claims are hereby cancelled. This Plan constitutes a single plan of liquidation for all Debtors and Classes 1-4 include Allowed Claims and Allowed Interests involving all Debtors except for Holdings. Class 5 includes Allowed Claims and Allowed Interests involving Holdings. A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes. A Claim or Interest is also placed in a particular Class for the purpose of receiving Distributions pursuant to this Plan only to the extent that such Claim or Interest is an Allowed Claim or Interest in that Class and such Claim or Interest has not been paid, released, or otherwise settled prior to the Effective Date. Pursuant to Bankruptcy Code section 1122, the Claims against and Interests in each of the respective Debtors are classified as follows:

### **3.1.1 Summary of Classification**

Class 1 - Allowed Secured Claims

Class 2 - Allowed Priority Claims

Class 3 - Allowed General Unsecured Claims

Class 4 - Allowed Interests

Class 5 - Allowed Holdings Claims and Interests

**3.2** Claims May be in More Than a Single Class. An Allowed Claim is placed in a particular Class only to the extent that such Claim meets the description of that Class and is part of a different Class to the extent that any other portion of the Claim or Interest falls within the description of such other Class.

## **ARTICLE IV.**

### **IDENTIFICATION OF IMPAIRED AND UNIMPAIRED CLASSES UNDER THE PLAN**

**4.1** Unimpaired Classes. Classes 1 and 2 are Unimpaired under the Plan. No votes will be solicited from any holders of Claims in either of these Classes.

**4.2** Impaired Classes. Classes 3, 4, and 5 are Impaired. Votes will be solicited from holders of Claims in Class 3. Votes will not be solicited from holders of Interests in Class 4 or Class 5 pursuant to Bankruptcy Code section 1126(g).

**4.3** Impairment Controversies. If any controversy arises as to whether any Class of Claims or Interests is Impaired under the Plan, such Class shall be treated as set forth in the Plan unless the Bankruptcy Court makes a different determination after a motion of a Creditor challenging the characterization of its particular Class.

## **ARTICLE V.**

### **TREATMENT OF CLASSES OF CLAIMS AND INTERESTS**

**5.1** 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 Debtors or 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) when and if such Claim is sought to be enforced by the holder of such Allowed Secured Claim.

**5.2** 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.

**5.3** 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.

**5.4** 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.

**5.5** 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.

**5.6** Allowance 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 Bankruptcy Court.

## **ARTICLE VI.**

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

**6.1** Impaired Classes of Claims Entitled to Vote. Subject to Sections 6.3 and 6.4 of this Plan, holders of Claims in each Impaired Class of Claims are entitled to vote as a Class to accept or reject this Plan.

**6.2** Acceptance by an Impaired Class. In accordance with section 1126(c) of the Bankruptcy Code and except as provided in section 1126(e) of the Bankruptcy Code, an Impaired Class of Claims shall have accepted this Plan if this Plan is accepted by the holders of at least two thirds (2/3) in dollar amount and more than one half (1/2) in number of the Allowed Claims of such Class that have timely and properly voted to accept or reject this Plan.

**6.3** Presumed Acceptances by Unimpaired Classes. Classes 1 and 2 are Unimpaired by this Plan. Under section 1126(f) of the Bankruptcy Code, holders of such Claims are conclusively presumed to accept this Plan, and the votes of the holders of such Claims will not be solicited.

**6.4** Classes Deemed to Reject Plan. By operation of law, the holders of Allowed Interests in Class 4 and holders of Allowed Claims and Allowed Interests in Class 5 are deemed to reject the Plan and are not, therefore, entitled to vote to accept or reject the Plan.

**6.5** Summary of Classes Voting on the Plan. As a result of the provisions of Sections 6.3 and 6.4 of this Plan, only the votes of holders of Claims in Class 3 will be solicited with respect to this Plan.

**6.6** Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code. The holders of Interests in Class 4 and Class 5 are deemed under the Plan to have rejected the Plan. Accordingly, the Debtor will seek confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code.

## **ARTICLE VII.**

### **PROCEDURES FOR RESOLVING AND TREATING CONTESTED AND DISPUTED CLAIMS UNDER THE PLAN**

**7.1** Responsibility for Objecting to Claims. The Debtors, 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, only the Liquidating Trust may file objections to Claims.

**7.2** Objections to Claims. 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 Debtors 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.

**7.3** 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.

**7.4** No Distributions Until Claim is an Allowed Claim. Notwithstanding any other provision of the Plan, 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.

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

## **ARTICLE VIII.**

### **MEANS FOR IMPLEMENTATION OF THE PLAN**

**8.1** 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 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.

**8.2** Transfer of Assets to the Liquidating Trust. On the Effective Date, 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 this Plan.

**8.3** Assumption of Liabilities. Except as otherwise provided herein, 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 this Plan.



#### **8.4 Powers and Duties of the Liquidating Trustee.**

**8.4.1 Maintenance, Safekeeping and Distribution of Trust 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. 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 will have the authority to pursue or not to pursue causes of action, file claim objections and set reserves, 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, (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.

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

**8.4.3 Avoidance Actions.** On and after the Effective Date, the Debtors will not be responsible for any review of causes of action, including Avoidance Actions. The Liquidating Trust will have all responsibility for reviewing, analyzing and prosecuting Avoidance Actions under this Plan and the Liquidating Trust Agreement. The Liquidating Trust will have the sole authority to prosecute Avoidance Actions, which include preferences and fraudulent transfers, as defined by the Bankruptcy Code and as discussed in more detail in the Disclosure Statement accompanying this Plan. ALL CREDITORS AND RECIPIENTS OF PAYMENTS OR TRANSFERS WITHIN 90 DAYS OF THE PETITION DATE (OR WITHIN ONE YEAR FOR INSIDERS) OR WHO RECEIVED PAYMENTS OR TRANSFERS FOR LESS THAN REASONABLY EQUIVALENT VALUE WITHIN FOUR YEARS OF THE PETITION DATE, WITH ACTUAL OR CONSTRUCTIVE NOTICE OF THESE BANKRUPTCY CASES, ARE HEREBY PUT ON NOTICE THAT SUCH TRANSACTIONS WILL BE REVIEWED FOR POTENTIAL RECOVERY. 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.

**8.5 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.

**8.6 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.

**8.7 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. 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 its 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.

**8.8 Payment of Post-Confirmation Fees.** The Liquidating Trustee shall timely pay from the Trust Assets all fees incurred pursuant to 28 U.S.C. § 1930(a)(6) until the clerk of the Court closes the Debtors' cases.

**8.9 Corporate Governance, Directors, Officers, and Corporate Action.** On the Effective Date, the Debtors' Boards of Directors will be disbanded and all actions thereafter shall be authorized by the Liquidating Trustee pursuant to the Liquidating Trust Agreement. All directors, officers, members and managers of the Debtors will be deemed to have resigned as of Effective Date with no further action required.

**8.10 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, Pre-Petition 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.

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

**8.12 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.

**8.13 Other Obligations of the Liquidating Trust.** The Liquidating Trust shall be obligated to file all applicable state and federal tax returns on behalf of the Estates. Payment of any fees and expenses of the Indenture Trustee, as described in section 2.3 of this Plan, shall be the sole responsibility of the Liquidating Trust.

## **ARTICLE IX.**

### **PROVISIONS GOVERNING DISTRIBUTIONS**

**9.1 Delivery of Distributions in General.** 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.

**9.2 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 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 of 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.

**9.3 Undeliverable and Unclaimed Distributions.** If any holder's Distribution is returned as undeliverable, no further Distributions to that holder shall be made unless and until the Liquidating Trust receives notice of the holder's then-current address, at which time all outstanding Distributions shall be made to such Claimant. Undeliverable Distributions made

through the Liquidating Trust shall be returned to the Liquidating Trust until such Distributions are claimed. The Liquidating Trustee shall establish a segregated account to serve as the Unclaimed Distribution Reserve, and all undeliverable and unclaimed Distributions shall be deposited therein, for the benefit of all similarly situated Persons until such time as a Distribution becomes deliverable or is claimed.

**9.4 Failure to Claim Undeliverable Distributions.** Any undeliverable or unclaimed Distribution under the Plan that does not become deliverable on or before six 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 that Claim and all other Claims against, or seeking to recover its Distribution from, the Debtors, any Estate, the Liquidating Trustee, the Liquidating Trust, or their property. After six months following the applicable Distribution Date, the Liquidating Trustee shall withdraw any amounts remaining in the Unclaimed Distribution Reserve for Distribution in accordance with this Plan.

**9.5 Withholding and Reporting Requirements.** 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 this 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.

**9.6 Interest On Claims.** Unless otherwise specifically provided for in this 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.

**9.7 Allocation of Plan Distributions Between Principal and Interest.** To the extent that any Allowed Claim entitled to a Distribution under this Plan is comprised of indebtedness and accrued but unpaid interest thereon, such Distribution shall, for all income tax purposes, be allocated to the principal amount of the Claim first and then, to the extent that the consideration exceeds the principal amount of the Claim, to the portion of such Claim representing accrued but unpaid interest.

**9.8 Setoffs.** 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 this Plan in respect of such Claim, or claims of any nature whatsoever that the Liquidating Trust or the Debtors 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.

**9.9** Certain Calculations. Unless otherwise provided herein, all calculations of percentages provided for in this Plan shall be made to three decimal places and rounded down to the next lower 1/100th of one percent.

## **ARTICLE X.**

### **TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**10.1** Rejection of Executory Contracts and Unexpired Leases. All executory contracts and unexpired leases in the Debtors' Estates that have not been rejected or assumed and assigned pursuant to the Sale Order are hereby rejected as of the Effective Date.

**10.2** Claims for Rejection Damages. Proofs of Claim for damages allegedly arising from the rejection pursuant to this Plan or the Confirmation Order of any executory contract or unexpired lease to which a Claimant is a party must be filed with the Bankruptcy Court and served on the Debtors and the Liquidating Trust not later than thirty (30) days after the Effective Date. All Proofs of Claim for such damages not timely filed and properly served as set forth herein shall be forever barred and discharged and the holder of such a Claim shall not be entitled to participate in any Distribution under this Plan.

**10.3** Objections to Proofs of Claim Based On Rejection Damages. An objection to any Proof of Claim based on the rejection of an executory contract or unexpired lease pursuant to this Plan will be pursuant to the procedures set forth in Article VII of the Plan.

## **ARTICLE XI.**

### **CONFIRMATION AND CONSUMMATION OF THE PLAN**

**11.1** Conditions Precedent to Effective Date. This Plan shall not become effective unless and until each of the following conditions shall have been satisfied in full in accordance with the provisions specified below:

- (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 to 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.

**11.2** Waiver of Conditions. Each of the conditions set forth in Article 11.1 of this Plan 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 must be given or denied only in the exercise of the Committee's reasonable discretion.

**11.3** Notice of Effective Date. Within ten (10) days after the occurrence of the Effective Date, the Debtors 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 Debtors.

## **ARTICLE XII.**

### **MODIFICATION OR WITHDRAWAL OF THE PLAN**

**12.1** Modification. 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 must be given or denied only in the exercise of the Committee's reasonable discretion. After the Confirmation Date and prior to the substantial consummation of this 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 this Plan; provided, however, prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or order of the Bankruptcy Court.

**12.2** Revocation, Withdrawal or Non-Consummation. The Debtors reserve the right to revoke or withdraw this Plan as to any or all of the Debtors prior to the Confirmation Date and to file subsequent plans of reorganization. If the Debtors revoke or withdraw this 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) this Plan shall be null and void in all respects, (b) any settlement or compromise embodied in this Plan (including the fixing or limiting to an amount certain any Claim or Interest or Class of Claims or Interests), rejection of executory contracts or leases affected by this Plan, and any document or agreement executed pursuant to this Plan shall be deemed null and void, and (c) nothing contained in this 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.

## **ARTICLE XIII.**

### **EFFECT OF PLAN CONFIRMATION**

**13.1 Injunction. THIS PLAN PROPOSES AN 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.

**13.2 No Liability for Solicitation or Participation.** Pursuant to Bankruptcy Code section 1125, Persons that solicit acceptances or rejections of this Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code, shall not be liable, on account of such solicitation or participation, for violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of this Plan.

**13.3 Releases and Limitation of Liability of Released Parties.**

**13.3.1** Except as otherwise specifically provided in the Plan, the Released Parties are hereby released from and shall not have or incur any liability for any act taken or omission made in good faith in connection with or in any way related to (a) negotiating, formulating, implementing, confirming, administering, or consummating the Plan, the Disclosure Statement or any Plan Document, or other agreement or document created in connection with or related to this Plan, the Disclosure Statement, any plan of reorganization or liquidation or disclosure statement of any of the Debtors, or the administration of these Chapter 11 Cases, or (b) any liability, Claim or Cause of Action, whether known or unknown, asserted or unasserted, belonging to or assertable by the Debtors or the Estates against the Released Parties, from the beginning of time until the Effective Date.

**13.3.2** 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, 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.

#### **13.4 Preservation of Rights of Action.**

**13.4.1** Except as otherwise provided in the Plan or the Confirmation Order, in accordance with Bankruptcy Code section 1123(b)(3), any Retained Causes of Action that any Debtor may hold against any entity shall vest upon the Effective Date in the Liquidating Trust. Except as otherwise provided in the Plan or the Confirmation Order, after the Effective Date, the Liquidating Trust shall have the exclusive right to institute, prosecute, abandon, settle or compromise any Retained Causes of Action, in its sole discretion and without further order of the Bankruptcy Court, in any court or other tribunal including, without limitation, any adversary proceeding filed in these Chapter 11 Cases. Retained Causes of Action and any recoveries therefrom shall remain the sole property of the Liquidating Trust and holders of Claims or Interests shall have no right to any such recovery. The Liquidating Trust will retain the right to pursue Avoidance Actions.

**13.4.2** Unless a Retained Cause of Action against an Entity is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order (including the Confirmation Order), the Debtors expressly reserve such Retained Cause of Action for later adjudication by the Liquidating Trust and, therefore, no issue preclusion, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel or laches shall apply to any Retained Cause of Action upon or after the entry of the Confirmation Order, except where such Cause of Action has been expressly released in the Plan or Confirmation Order. In addition, the Debtors expressly reserve the right to pursue or adopt any claims alleged in any lawsuit in which a Debtor is a defendant or an interested party, against any Entity, including, any plaintiffs or co-defendants in such lawsuits. Subject to the foregoing, any Entity to whom any Debtor has incurred an obligation or who has received services from a Debtor or a transfer of money or property of a Debtor, or who has transacted business with a Debtor, or leased equipment or property from a Debtor, should assume that any such obligation, transfer or transaction may be reviewed by a Debtor after the Effective Date and may be the subject of an action after the Effective Date, regardless of whether: (i) such Entity has filed a Proof of Claim against any Debtor in these Chapter 11 Cases; (ii) a Debtor has objected to any such Entity's Proof of Claim; (iii) any such Entity's Proof of Claim was included in the Schedules; (iv) a Debtor has objected to any such Entity's scheduled Claim;

or (v) any such Entity's scheduled Claim has been identified as disputed, contingent or unliquidated.

**13.5 Term of Injunctions and Stays.** 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.

**13.6 Release of Liens.** Except as set forth in section 8.10 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.

## **ARTICLE XIV.**

### **RETENTION OF JURISDICTION**

**14.1 Post Confirmation Date Jurisdiction of Bankruptcy Court.** Pursuant to Bankruptcy Code sections 105(a) and 1142, and notwithstanding the Plan's Confirmation and the occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of or related to these Chapter 11 Cases and the Plan, to the fullest extent permitted by law, including jurisdiction to:

- 14.1.1** 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;
- 14.1.2** 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;
- 14.1.3** 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;
- 14.1.4** 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;

- 14.1.5** 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;
- 14.1.6** 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;
- 14.1.7** 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;
- 14.1.8** 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;
- 14.1.9** 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;
- 14.1.10** 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;
- 14.1.11** hear and determine Causes of Action by or on behalf of the Debtors or the Liquidating Trust;
- 14.1.12** hear and determine matters concerning state, local and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

- 14.1.13** 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;
- 14.1.14** 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;
- 14.1.15** enforce all orders, judgments, injunctions, releases, exculpations, indemnifications, and rulings entered in connection with the Chapter 11 Cases;
- 14.1.16** 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;
- 14.1.17** hear and determine disputes with respect to compensation of the Debtors' professional advisors;
- 14.1.18** hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under the Bankruptcy Code; and
- 14.1.19** enter an order closing the Chapter 11 Cases.

**14.2** Failure of Bankruptcy Court to Exercise Jurisdiction. If the Bankruptcy Court abstains from exercising or declines to exercise jurisdiction, or is otherwise without jurisdiction, over any matter arising under, arising in or related to these Chapter 11 Cases, including with respect to the matters set forth above in Section 14.1 of the Plan, this Article shall not prohibit or limit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such subject matter.

## **ARTICLE XV.**

### **MISCELLANEOUS PROVISIONS**

**15.1** Effectuating Documents and Further Transactions. Each of the Debtors is authorized to execute, deliver, file, or record such contracts, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of this Plan.

**15.2** Corporate Action. Prior to, on, or after the Effective Date (as appropriate), all matters expressly provided for under this Plan that would otherwise require approval of the stockholders or directors of one (1) or more of the Debtors shall be deemed to have occurred and shall be in

effect prior to, on, or after the Effective Date (as appropriate) pursuant to the applicable general corporation law of the states in which the Debtors are incorporated without any requirement of further action by the stockholders or directors of the Debtors.

**15.3 Payment of Statutory Fees.** All fees payable pursuant to section 1930 of Title 28 of the United States Code, as determined by the Bankruptcy Court at the hearing pursuant to Bankruptcy Code section 1128, shall be paid on or before the Effective Date or when otherwise due.

**15.4 Committee.** The Committee shall cease operating and dissolve on the Effective Date, except the Committee shall remain in existence for the limited purposes of (i) filing fee applications for fees incurred in these Cases, and (ii) litigating any pending litigation or appeals to which the Committee is a party and is ongoing as of the Effective Date. 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.

**15.5 No Admissions.** Notwithstanding anything herein to the contrary, nothing contained in the Plan shall be deemed an admission by any Debtor or be used as the basis of a waiver or estoppel against any Debtor with respect to any matter set forth herein including, without limitation, liability on any Claim or Interest or the propriety of any classification of any Claim or Interest.

**15.6 Plan Controls.** To the extent there is an inconsistency or ambiguity between any term or provision contained in the Disclosure Statement and this Plan, the terms and provisions of this Plan shall control. To the extent there is an inconsistency or ambiguity between any term or provision contained in the Plan and any Plan Document, the terms and provisions of this Plan shall control.

**15.7 Substantial Consummation of Plan.** This Plan shall be deemed to be substantially consummated on the Effective Date.

**15.8 Successors and Assigns.** This Plan shall be binding upon and inure to the benefit of the Debtors, and their respective successors and assigns, including, without limitation, the Debtors. The rights, benefits, and obligations of any entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such entity.

**15.9 Severability of Plan Provisions.** If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of

the term or provision held to be invalid, void, or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

**15.10 Notices and Distributions.** All notices, requests and Distributions to a holder of a Claim or Interest shall be sent (i) to the last known address of the holder or its attorney of record as reflected in the holder's Proof of Claim or Administrative Expense Claim filed by or on behalf of such holder; or (ii) if there is no such evidence of a last known address, to the last known address of the holder according to the books and records of the Debtors. Any holder of a Claim or Interest may designate another address for the purposes of the Plan by providing the Liquidating Trustee written notice of such address which notice will be effective upon receipt by the Liquidating Trustee. Notices and requests may also be sent to a holder of a Claim or Interest at the fax number or email address provided on the Ballot or in the books and records of the Debtors. Notices and requests shall be deemed received by a holder of a Claim or Interest (i) if sent by mail, on the second, Business Day after deposit in the United States mail, postage prepaid, (ii) if sent by overnight courier, on the first Business Day after delivery to such courier, if (iii) if sent by fax or email on a Business Day prior to 5:00 p.m., eastern time, on such Business Day (or if after 5:00 p.m., eastern time or not on a Business Day, on the next Business Day).

**15.11 Unclaimed Property.** If any Distribution by the Liquidating Trustee remains unclaimed for a period of one (1) year after delivery (or delivery has been attempted) or has otherwise been made available, such unclaimed property shall be forfeited by the Person entitled to receive the property and the unclaimed property and the right to receive it shall revert to and vest in the Liquidating Trust free and clear of any rights, Claims or Interests of such Person. The use of regular mail, postage prepaid, to the last known address of a holder of a Claim shall constitute delivery for purposes of this Section.

**15.12 Suspense Funds and Funds Subject to Escheat.** Any benefit or obligation owing by a Debtor of funds which may be in suspense and attributable to a public or private entity, of which no party has asserted a Proof of Claim in this proceeding, shall be considered unclaimed property, as provided above, and such property shall revert to the Debtors.

**15.13 Responsible Party Injunction.** The Confirmation Order shall constitute and provide for an injunction by the Bankruptcy Court as of the Effective Date against any holder of a Tax Claim from commencing or continuing any action against any responsible person or officer or director of any Debtor or any of its Debtor Affiliates.

**15.14 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 this Plan.

**15.15 Disallowance and Subordination of Claims for Any Fine, Penalty, or Forfeiture, or Multiple, Exemplary or Punitive Damages.** The filing of this Plan and its submission to the holders of Claims which assert any fine, penalty, or forfeiture, or multiple, exemplary, or punitive damages as referenced in Bankruptcy Code section 726(a)(4) shall constitute an action seeking to subordinate all such Claims pursuant to section 510 of the Bankruptcy Code. The Confirmation Order, except as provided herein, shall constitute an order subordinating such Claims to all other Claims pursuant to section 510 of the Bankruptcy Code, and no Distribution shall be made on such Claims pursuant to this Plan.

**15.16 Governing Law.** Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or by the general corporation law, limited partnership law or limited liability company law or the law of the jurisdiction of organization of any entity governing the internal affairs of such entity, the internal laws of the State of Tennessee shall govern the construction and implementation of this Plan and any agreements, documents and instruments executed in connection with this Plan or the Bankruptcy case, including the Plan Documents, except as may otherwise be provided in such agreements, documents, instruments and this Plan.

**15.17 Defaults.** Any act or omission by a party in interest in contravention of a provision within this Plan shall be deemed an event of default under this Plan. Upon an event of default, the Debtors or the Liquidating Trust may seek to hold the defaulting party in contempt of the Confirmation Order. If such party in interest is found to be in default under this Plan, such party shall pay the reasonable attorneys' fees and costs of the Debtors or the Liquidating Trustee in pursuing such matter. Furthermore, upon the finding of such a default by a party in interest, the Bankruptcy Court may (i) designate a party to appear, sign and/or accept the documents required under this Plan on behalf of the defaulting party, in accordance with Federal Rules of Civil Procedure, Rule 70; or (ii) make such other order as may be equitable which does not materially alter the terms of this Plan as it is confirmed.

**15.18 Binding Effect.** This Plan shall be binding on and inure to the benefit of the Debtors, the holders of Claims or Interests (whether or not they have accepted this Plan) and their respective heirs, executors, administrators, representatives, successors and assigns. The Debtors or Liquidating Trust may treat as the "holder" of a Claim the Person who filed a Proof of Claim with respect thereto, and any subsequent transferee of such Person who had complied with the provisions of Rule 3001 of the Bankruptcy Rules, and the Debtors and/or Liquidating Trust shall have no obligation to treat or deal with as a "holder" any other Person. The Debtors or Liquidating Trust may, in their discretion, treat a beneficial owner of Pre-Petition Unsecured Notes, through a nominee as a "holder," including treating such a beneficial owner on the Record Date as the Record Date holder.

**15.19 Withholding and Reporting.** In connection with this Plan and all instruments issued in connection therewith and Distributions thereon, the Debtors or Liquidating Trust shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign

taxing authority and all Distributions hereunder shall, to the extent applicable, be subject to any such withholding and reporting requirements. Notwithstanding anything herein to the contrary, in calculating and making the payments due to Allowed Claims hereunder, the Debtors or Liquidating Trust shall be authorized to deduct from such payments any necessary withholding amount.

**15.20** Notices to Debtors. Any notice, request, or demand required or permitted to be made or provided to or upon the Debtors under the Plan shall be (i) in writing, (ii) served by (a) certified mail, return receipt requested, (b) hand delivery, (c) overnight delivery service, (d) first class mail, or (e) facsimile transmission, and (iii) deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

Debtors  
c/o  
WM McGee  
McGee & Associates, LLC  
2948 McLemore Circle  
Franklin, TN. 37064

with a copy to:

Henry J. Kaim  
Mark W. Wege  
Edward L. Ripley  
King & Spalding, LLP  
1100 Louisiana, Suite 4000  
Houston, Texas 77002



Dated: July 10, 2009

**FABRICS ESTATE , INC.**

By:\_\_\_\_\_

Name: Woody McGee\_\_\_\_\_

Title: CEO\_\_\_\_\_

**FABRICS ESTATE HOLDINGS, INC.**

By:\_\_\_\_\_

Name: Woody McGee\_\_\_\_\_

Title: CEO\_\_\_\_\_

**CONCRETE ESTATE SYSTEMS  
CORPORATION**

By:\_\_\_\_\_

Name: Woody McGee\_\_\_\_\_

Title: CEO\_\_\_\_\_

[signatures continue]

**FABRICS ESTATE INTERNATIONAL I  
HOLDINGS, INC.**

By:\_\_\_\_\_

Name: Woody McGee\_\_\_\_\_

Title: CEO\_\_\_\_\_

**FABRICS ESTATE INTERNATIONAL II  
HOLDINGS, INC.**

By:\_\_\_\_\_

Name: Woody McGee\_\_\_\_\_

Title: CEO\_\_\_\_\_