

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
LITTLE ROCK DIVISION**

IN RE:	§	CHAPTER 11
	§	
ROGERS BANCSHARES, INC.,	§	
	§	CASE NO. 13-13838
DEBTOR.	§	

**JOINT PLAN OF LIQUIDATION FILED BY ROGERS BANCSHARES, INC.
AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

Dated February 13, 2014

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CHAPTER 11 PLAN OF LIQUIDATION

INTRODUCTION

This Joint Chapter 11 Plan of Liquidation (the "Plan"), dated February 13, 2014, is proposed by Rogers Bancshares, Inc. (the "Debtor") and the Official Committee of Unsecured Creditors (the "Committee") pursuant to chapter 11 of title 11 of the United States Code, 11 U.S.C. §101 *et seq.* Capitalized terms shall have the meanings set forth in Article 1 of this Plan, unless the context indicates otherwise.

ALL HOLDERS OF CLAIMS ARE ENCOURAGED TO READ THIS PLAN IN ITS ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THIS PLAN. SUBJECT TO CERTAIN RESTRICTIONS AND REQUIREMENTS SET FORTH IN SECTION 1127 OF THE BANKRUPTCY CODE, BANKRUPTCY RULE 3018 AND IN THIS PLAN, THE DEBTOR AND THE COMMITTEE RESERVE THE RIGHT TO ALTER, AMEND, MODIFY, REVOKE OR WITHDRAW THIS PLAN UNTIL ITS SUBSTANTIAL CONSUMMATION.

I. DEFINITIONS, INTERPRETATIONS AND EXHIBITS

A. Scope of Definitions. For purposes of this Plan, and to the extent not otherwise provided herein, the terms below shall have the respective meanings hereinafter set forth and designated with the initial letter of each word being capitalized and, unless otherwise indicated, the singular shall include the plural, the plural shall include the singular and capitalized terms shall refer to the terms as defined in this Article 1.

"363 Sale" means the sale of substantially all of the Debtor's assets, including the shares of Metropolitan National Bank, to Simmons First National Corporation authorized by the Order Authorizing the Sale of the Debtor's Shares and Other Purchased Assets to Simmons First National Corporation, the Successful Bidder, entered on September 13, 2013 [Docket No. 119].

"Administrative Claim" means a Claim for (a) any cost or expense of administration (including Professional Claims) of the Chapter 11 Case asserted or arising under sections 503, 507(a)(1), or 507(b) of the Bankruptcy Code, including without limitation expenses of Committee members, as Committee members, arising out of this Chapter 11 Case.

"Administrative Claims Bar Date" means 45 days after the Effective Date or such other date set by the Bankruptcy Court as the last date to request payment of Administrative Claims.

"Allowed" means any Claim or portion thereof against the Debtor, (a) proof of which was Filed within the applicable period of limitation fixed by the Bankruptcy Court in accordance with Bankruptcy Rule 3003(c) as to which (i) no objection to the allowance thereof, or action to equitably subordinate or otherwise limit recovery with respect thereto has been interposed within the applicable period of limitation fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules or a Final Order or (ii) any objection has been settled, waived, withdrawn or

denied by a Final Order, or (iii) if an objection has been interposed, to the extent such Claim has been allowed by a Final Order, (b) which, if no proof of claim was so Filed, has been listed by the Debtor in its Schedules as liquidated in an amount and not disputed or contingent as to which (i) no objection to the allowance thereof, or action to equitably subordinate or otherwise limit recovery with respect thereto has been interposed within the applicable period of limitation fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules or a Final Order or (ii) any objection has been settled, waived, withdrawn or denied by a Final Order, or (iii) if an objection has been interposed, to the extent such Claim has been allowed by a Final Order, (c) which Claim arises from the recovery of property under sections 550 or 553 of the Bankruptcy Code and is allowed in accordance with section 502(h) of the Bankruptcy Code, (d) which Claim is expressly allowed under this Plan, or (e) which Claim is allowed by a Final Order; provided, however, that the term "Allowed" shall not include, unless otherwise specified in this Plan, interest on any Claim from and after the Petition Date.

"Allowed Administrative Claim" means all or that portion of any Administrative Claim that is or has become an Allowed Claim.

"Assets" means all legal or equitable interests of the Debtor in any and all real or personal property of any nature, including any real estate, buildings, structures, improvements, privileges, rights, easements, leases, subleases, licenses, goods, materials, supplies, furniture, fixtures, equipment, work in process, accounts, chattel paper, cash, deposit accounts, reserves, deposits, contractual rights, intellectual property rights, Claims, Causes of Action and any other general intangibles, and the proceeds, product, offspring, rents or profits thereof.

"Available Cash" means Cash available to make payments pursuant to this Plan.

"Avoidance Action" means any and all causes of action which a trustee, debtor-in-possession, the estate or other legal representative or appropriate party-in-interest, including the Plan Agent, may assert, including those causes of action under sections 542, 543, 544, 545, 547, 548, 549, 550, 551 and 553 of the Bankruptcy Code, including the Debtor's rights of setoff, recoupment, contribution, reimbursement, subrogation or indemnity in connection herewith (as those terms are defined by the non-bankruptcy law of any relevant jurisdiction) and any other indirect claim of any kind whatsoever, whenever and wherever arising or asserted.

"Bankruptcy Code" means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as in effect on the Petition Date, together with all amendments and modifications thereto to the extent applicable to the Chapter 11 Case.

"Bankruptcy Court" means the United States Bankruptcy Court for the Eastern District of Arkansas, Little Rock Division, which has jurisdiction over the Chapter 11 Case, or such other court exercising bankruptcy jurisdiction.

"Bankruptcy Rules" means (a) the Federal Rules of Bankruptcy Procedure and the Official Bankruptcy Forms, as amended and promulgated under section 2075 of title 28 of the United States Code, (b) the Federal Rules of Civil Procedure, as amended and promulgated under section 2072 of title 28 of the United States Code, (c) the Local Rules of Civil Practice and Procedure of the United States District Court for the Eastern District of Arkansas, and

(d) any standing orders governing practice and procedure issued by the Bankruptcy Court, each as in effect on the Petition Date, together with all amendments and modifications thereto to the extent applicable to this Chapter 11 Case or proceedings therein, as the case may be.

"Business Day" means any day other than a Saturday, Sunday or "legal holiday" as such term is defined in Bankruptcy Rule 9006(a).

"Cash" means money, currency and coins, negotiable checks, balances in bank accounts and other lawful currency of the United States of America and its equivalents.

"Causes of Action" means any and all actions, claims, rights, defenses, impleader claims, damages, executions, demands, crossclaims, counterclaims, suits, causes of action, choses in action, controversies, agreements, promises, rights to legal remedies, rights to equitable remedies, rights to payment and claims whatsoever, whether known, unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured and whether asserted or assertable directly, indirectly or derivatively, at law, in equity or otherwise, accruing to the Debtor, including the Avoidance Actions.

"Chapter 11 Case" means the case under chapter 11 of the Bankruptcy Code commenced by the Debtor in the Bankruptcy Court on the Petition Date assigned as Case No. 13-13838, pending in the Bankruptcy Court.

"Claim" has the meaning assigned to such term in section 101(5) of the Bankruptcy Code.

"Claim 1-1" means that certain proof of claim filed by Wells Fargo Bank, National Association, as Paying Agent, Transfer Agent, and Registrar, in the amount of \$10,021,116.25 plus continuing fees and costs.

"Claim 5-1" means that certain proof of claim filed by Josephine R. Rogers concerning an indemnity claim under corporate documents.

"Claim 6-1" means that certain proof of claim filed by Lunsford Bridges concerning an indemnity claim under corporate documents.

"Claim 7-1" means that certain proof of claim filed by Susie Smith concerning an indemnity claim under corporate documents.

"Claim 8-1" means that certain proof of claim filed by Doyle W. Rogers, Jr. concerning an indemnity claim under corporate documents.

"Claim 9-1" means that certain proof of claim filed by Barbara Rogers Hoover concerning an indemnity claim under corporate documents.

"Claim 10-1" means that certain proof of claim filed by Paul Clabuesch concerning an indemnity claim under corporate documents.

"Claim 11-1" means that certain proof of claim filed by Larry Mingledorff concerning an indemnity claim under corporate documents.

"Claim 13-1" means that certain proof of claim filed by the United States Department of the Treasury in the amount of \$29,687,500 plus accrued interest.

"Claim Objection Deadline" means the date set by order of the Bankruptcy Court for objecting to Claims against the Estate.

"Class" means a group of Claims or Interests as classified in a particular class under this Plan pursuant to section 1122 of the Bankruptcy Code.

"Committee" means the statutory committee of unsecured creditors appointed in the Chapter 11 Case pursuant to section 1102 of the Bankruptcy Code as such committee thereafter was, and may be further, reconstituted.

"Confirmation" means the entry of an order confirming this Plan in accordance with section 1129 of the Bankruptcy Code.

"Confirmation Date" means the date on which the Confirmation Order is entered on the docket maintained by the Clerk of the Bankruptcy Court.

"Confirmation Hearing" means the hearing held before the Bankruptcy Court to consider Confirmation of this Plan pursuant to section 1128 of the Bankruptcy Code, as it may be continued from time to time.

"Confirmation Order" means the order issued and entered confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

"Debtor" means Rogers Bancshares, Inc., including in its capacity as debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

"Disallowed" means a Claim or any portion thereof that (a) has been disallowed by a Final Order, including without limitation, the Confirmation Order, (b) has been listed on the Schedules as zero or as contingent, disputed or unliquidated and as to which Bar Date has been established but no proof of claim or Equity Interest has been timely Filed or deemed timely Filed pursuant to either the Bankruptcy Code or any Final Order or otherwise deemed timely Filed under applicable law, or (c) is not listed on the Schedules and as to which the Bar Date has been set and no proof of claim or interest has been timely Filed or deemed timely Filed pursuant to either the Bankruptcy Code or any Final Order or otherwise deemed timely Filed under applicable law.

"Disclosure Statement" means the document entitled "Joint Disclosure Statement by Debtor and the Official Committee of Unsecured Creditors in Support of Plan of Liquidation," dated February 13, 2014, and filed in connection with the Chapter 11 Case pursuant to section 1125 of the Bankruptcy Code and approved by the Bankruptcy Court as containing "adequate information" as that term is defined in section 1125(a)(1) of the

Bankruptcy Code, any exhibits annexed thereto and any documents delivered in connection therewith, as the same may be amended or modified from time to time.

"Disputed Claims" means all Claims: (a) that are listed in the Schedules as disputed, contingent or unliquidated or (b) as to which (i) a proof of Claim has been filed, (ii) an objection, or request for estimation, has been timely filed (and not withdrawn) by any party in interest or this Plan provides for the disallowance of such Claim, and (iii) no Final Order has been entered thereon. Without limiting any of the above, a Claim that is the subject of a pending objection, motion, complaint, counterclaim, setoff, Avoidance Action or other defense, or any other proceeding seeking to disallow, subordinate or estimate such Claim, shall be deemed to constitute a Disputed Claim.

"Disputed Claims Reserve" means Cash set aside by the Plan Agent in an amount to cover distributions to each Disputed Claim that, as of the Effective Date, is neither an Allowed Claim nor a Disallowed Claim, and includes without limitation, a Claim that is the subject of an objection or request for estimation with the Bankruptcy Court, which has not been withdrawn, settled or overruled by a Final Order. Provided, however, if any dispute arises regarding any increase or reduction of the Disputed Claims Reserve, the Plan Agent, after obtaining approval of the Oversight Committee, shall obtain approval of the Bankruptcy Court, which shall have jurisdiction and power to set the amount of the reserve applying the principals of Bankruptcy Code section 502(c) to estimate any claim. Any unused amounts from the Disputed Claims Reserve shall become Cash for distribution to holders of Allowed Claims in accordance with the terms of this Plan.

"Effective Date" means the Business Day following the date upon which all conditions set forth in Article 13 shall have occurred or have been satisfied.

"Equity Interest" means (a) all rights arising from any equity (as the term is defined in section 101(16) of the Bankruptcy Code) of the Debtor, and (b) the legal, equitable, contractual or other rights of any person or entity to acquire or receive any of the foregoing or any right thereto or interest therein, including, but not limited to, all issued, unissued, authorized or outstanding shares.

"Estate" means the Debtor's bankruptcy estate created in the Chapter 11 Case pursuant to section 541 of the Bankruptcy Code.

"File" or **"Filed"** means file or filed with the Clerk of the Bankruptcy Case in the Chapter 11 case.

"Final Distribution" has the meaning set forth in Article 9.10.

"Final Distribution Date" means the date upon which the Final Distribution is made. The Final Distribution Date shall be determined by the Plan Agent, and shall be the date on or after which (a) all Assets of the Debtor (other than those Assets abandoned by the Debtor) are liquidated into Cash and all other sums due are collected by, or otherwise remitted or returned to, the Debtor's Estate, and (b) any and all remaining amounts in the Disputed Claims Reserve shall have become Available Cash.

"Final Order" means an order or judgment entered by the Bankruptcy Court, or another court of competent jurisdiction, in connection with the Chapter 11 Case, which has not been reversed, stayed, modified or amended, and as to which the time to appeal or to seek certiorari, review or rehearing has expired and as to which no appeal or petition for certiorari, review or rehearing is pending or as to which any right to appeal or to seek certiorari, review or rehearing has been waived in writing in a manner satisfactory to the Debtor.

"Impaired" when used in this Plan with reference to a Claim or an Interest, has the meaning assigned to such term in section 1124 of the Bankruptcy Code.

"Indemnity Claims" means all indemnity claims against the Debtor including, but not limited to, the indemnity claims under Rogers Bancshares, Inc.'s Articles of Incorporation; Rogers Capital Trust III Declaration of Trust Document; Rogers Capital Trust III Placement Agreement; Rogers Capital Trust III Indenture dated June 13, 2005; Rogers Capital Trust III Amended and Restated Declaration of Trust; Rogers Capital Trust III Guarantee Agreement; Rogers Bancshares Statutory Trust I Declaration of Trust; Rogers Statutory Trust I Placement Agreement; Rogers Bancshares Statutory Trust I Indenture; Rogers Bancshares Statutory Trust I Amended and Restated Declaration of Trust; Rogers Bancshares Statutory Trust I Guarantee Agreement; Consent Memorandum of Shareholders and Board of Directors of Rogers Bancshares, Inc.; Rogers Bancshares Statutory Trust II Indenture; Rogers Bancshares Statutory Trust II Amended and Restated Declaration of Trust; Rogers Bancshares Statutory Trust II Guarantee Agreement; the Noncumulative Perpetual Preferred Stock Purchase Agreement dated March 13, 2006; the Noncumulative Perpetual Series A Preferred Stock Purchase Agreement dated March 15, 2006; and the Troubled Asset Relief Program Capital Purchase Program Securities Purchase Agreement. Without limiting the foregoing in any way, Claim 5-1, Claim 6-1, Claim 7-1, Claim 8-1, Claim 9-1, Claim 10-1, and Claim 11-1 are Indemnity Claims.

"Indenture Agreements" means (a) Rogers Bancshares Statutory Trust I Indenture, dated March 15, 2006; (b) Rogers Bancshares Statutory Trust II Indenture, dated March 29, 2007; and (c) Rogers Capital Trust III Indenture, dated June 13, 2005.

"Indenture Trustees" means U.S. Bank National Association and Bank of New York Mellon Trust Company, as trustee under the Indenture Agreements.

"Initial Distribution" means the amount of Available Cash after payment of or reserve for Allowed Administrative Claims, Priority Tax Claims, Other Priority Claims, and post-confirmation administrative and wind-down expenses, that will be transferred to creditors on the Initial Distribution Date for payments on Allowed Claims pursuant to this Plan.

"Initial Distribution Date" means as soon as practicable, in the Plan Agent's discretion, after the Effective Date.

"Objection" means any objection, application, motion, complaint or any other legal proceeding, including, with respect to the terms of this Plan, seeking, in whole or in part, to disallow, determine, liquidate, classify, reclassify or establish the priority, expunge,

subordinate or estimate any Claim (including the resolution of any request for payment of any Administrative Claim) or Interest other than an Allowed Claim.

"Other Priority Claim" means a Claim accorded a priority in right of payment under section 507(a) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

"Oversight Committee" means that advisory committee appointed to take the actions identified in the Plan including, without limitation, overseeing the Plan Agent administer his/her duties with respect to this Plan. The Oversight Committee shall be comprised of the members of the Committee.

"Person" means an individual, corporation, partnership, limited liability company, joint venture, trust, estate, unincorporated association, unincorporated organization, governmental entity, or political subdivision thereof, or any other entity.

"Petition Date" means July 5, 2013.

"Plan" means this Chapter 11 Plan of Liquidation, as it may be amended or modified.

"Plan Agent" means any Person appointed as Plan Agent pursuant to this Plan, whose function shall be to take all other steps required, and when appropriate, take all actions authorized, under this Plan, including liquidating any remaining Assets, resolving Disputed Claims and distributing property under this Plan.

"Post-Confirmation Interest Rate" means the interest rate identified in the applicable Indenture Agreements.

"Post-Petition" means a date on or after the Petition Date.

"Pre-Petition" means a date prior to the Petition Date.

"Preferred Stock" means (i) the Noncumulative Perpetual Preferred Stock issued to Bear, Stearns & Co., Inc., as initial purchaser; (ii) the Noncumulative Perpetual Series B Preferred Stock held by certain individual investors; and (iii) the Cumulative Perpetual Preferred Stock, Series C and Series D, issued to the United States Treasury pursuant to the Troubled Asset Relief Program.

"Priority Claim" means all or that portion of any claim which is entitled to priority pursuant to 11 U.S.C. § 507(a) that is or has become Allowed.

"Priority Tax Claim" means any Allowed Claim against the Debtor in respect of any taxes for which the Debtor is liable and which is entitled to priority pursuant to 11 U.S.C. §507(a)(8).

"Professional" means a Person (a) employed in the Chapter 11 Case pursuant to a Final Order in accordance with sections 327, 328 and/or 1103 of the Bankruptcy Code and to

be compensated for services rendered prior to the Effective Date, pursuant to sections 327, 328, 329, 330, and/or 331 the Bankruptcy Code or (b) for which compensation and reimbursement has been allowed by the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code.

"Professional Claim" means a Claim of a Professional retained in the Chapter 11 Case pursuant to sections 327 and/or 1103 of the Bankruptcy Code or otherwise, for compensation or reimbursement of costs and expenses relating to services incurred after the Petition Date and prior to and including the Effective Date.

"Professional Fees" means Claims by Professionals retained by the Debtor or the Committee for compensation and reimbursement of expenses pursuant to sections 330 and 331 of the Bankruptcy Code.

"Property of the Estate" means all property of the Debtor and its Estate of every type and nature pursuant to section 541 of the Bankruptcy Code.

"Proponents" means the Debtor and the Committee; provided that to the extent that the Debtor wishes to amend or modify this Plan in a manner not agreed to by the Committee, the Committee shall be dropped as a Proponent and the Debtor shall proceed as the sole proponent.

"Released Claims" means collectively, (a) claims or causes of action that arise in, relate to, or have been or could have been asserted in the Chapter 11 Case or by the Debtor or by Creditors relating to Claims or by holders of Equity Interests relating to Equity Interests, as the case may be, against the Debtor or other Released Parties, and (b) claims that otherwise arise from or relate to the Chapter 11 Case, the Stock Purchase Agreement, the 363 Sale, the Plan, or the negotiations and compromises set forth in the Plan and Stock Purchase Agreement; provided, however, that "Released Claims" is not intended to release, nor shall it have the effect of releasing, any party from the performance of its obligations in accordance with the Confirmation Order or the Plan.

"Released Parties" means collectively, (a) the Debtor, its predecessors, successors and assigns (whether by operation of law or otherwise) and its respective affiliates, and each of the Debtor's and its affiliates current and former members, equity holders, officers, directors, employees, managers, shareholders, financial advisors, attorneys, accountants, investment bankers, consultants, agents and Professionals; (b) all members of the Committee and their predecessors, successors and assigns (whether by operation of law or otherwise) and their respective affiliates, and each of the members' and their affiliates current and former members, equity holders, officers, directors, employees, managers, shareholders, financial advisors, attorneys, accountants, investment bankers, consultants, agents and professionals, and the Professionals retained by the Committee in the chapter 11 case pursuant to an order of the Bankruptcy Court; and (c) holders of Indemnity Claims.

"Released Third Party Causes of Action" means any Claims or causes of action, whether known, unknown, reduced to judgment, not reduced to judgment, liquidated or unliquidated, fixed contingent, matured, unmatured, disputed, undisputed, secure or unsecured,

and whether asserted or assertable directly or derivatively, in law, equity or otherwise, whether asserted or unasserted as of the date of entry of the Confirmation Order, whether arising prior to or after the Petition Date, that are based upon, relate to, or arise out of or in connection with, in whole or in part any act, omission, transaction, event or other circumstance relating to the Debtor, any transaction directly or indirectly related to the Debtor, or the Debtor's Chapter 11 Case and taking place on or existing, or in arising prior to the Effective Date; provided, however, that "Released Third Party Causes of Action" is not intended to release, nor shall it have the effect of releasing, any party from the performance of its obligations in accordance with the Stock Purchase Agreement, the Confirmation Order or the Plan.

"Rogers Bancshares Statutory Trust I" means the trust formed pursuant to the Rogers Bancshares Statutory Trust I Declaration of Trust, dated March 15, 2006.

"Rogers Bancshares Statutory Trust II" means the trust formed pursuant to the Rogers Bancshares Statutory Trust II Declaration of Trust, dated March 29, 2007.

"Rogers Capital Trust III" means the trust formed pursuant to the Rogers Capital Trust III Declaration of Trust, dated June 13, 2005.

"Schedules" means the Debtor's Schedules of Assets and Liabilities and Statement of Financial Affairs, as amended from time to time, Filed by the Debtor with the Bankruptcy Court pursuant to Bankruptcy Rule 1007.

"Stock Purchase Agreement" means that certain Stock Purchase Agreement by and between the Debtor and Simmons First National Corporation, dated as of September 10, 2013.

"Supplemental Distribution" has the meaning set forth in Article 9.09.

"Supplemental Distribution Date" means the date(s) for the making of Supplemental Distributions in accordance with Article 9.10. A Supplemental Distribution Date shall be set by the Plan Agent after obtaining approval of the Oversight Committee.

"TruPS Trusts" means Rogers Bancshares Statutory Trust I, Rogers Bancshares Statutory Trust II, and Rogers Capital Trust III.

"Unclaimed Property" means any distribution of Cash or any other property made to the holder of an Allowed Claim pursuant to this Plan that (a) is returned to the Plan Agent as undeliverable and no appropriate forwarding address is received within the later of (i) 90 days after the Effective Date and (ii) 90 days after such distribution is made to such holder or (b) in the case of a distribution made in the form of a check, is not negotiated within 90 days and no request for reissuance is made. Unclaimed Property shall become Cash for distribution to holders of Allowed Claims in accordance with the terms of this Plan.

"Unimpaired" means any Claim that is not Impaired.

"United States Trustee" means the United States Trustee appointed under section 581(a)(3) of title 28 of the United States Code to serve in the Eastern District of Arkansas.

B. Rules of Interpretation. All references herein to "Plan" shall be construed, where applicable, to include references to this document and all its exhibits, appendices, schedules and annexes, if any (and any amendments thereto made in accordance with the Bankruptcy Code and the Bankruptcy Rules). Whenever from the context it appears appropriate, pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter. The words "herein," "hereof," "hereto," "hereunder," and other words of similar import refer to this Plan as a whole and not to any particular paragraph, subparagraph, or clause contained in this Plan. The words "includes" and "including" are not limiting and mean that the things specifically identified are set forth for purposes of illustration, clarity or specificity and do not in any respect qualify, characterize or limit the generality of the class within which such things are included. The captions, headings, and table of contents in this Plan are for convenience of reference only and shall not limit or otherwise affect the provisions hereof. Any term used in this Plan that is not defined in this Plan, either in Article 1 hereof or elsewhere, but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in (and shall be construed in accordance with the rules of construction under) the Bankruptcy Code or the Bankruptcy Rules (with the Bankruptcy Code controlling in the case of a conflict or ambiguity). Without limiting the preceding sentence, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply to this Plan, unless superseded herein. In computing any period of time prescribed or allowed by this Plan, the provisions of Bankruptcy Rule 9006(a) shall apply. Unless the context indicates otherwise, all references to "Article" shall refer to the Articles under this Plan. To the extent that the Disclosure Statement is inconsistent with any provisions contained in this Plan, the provisions in this Plan shall control.

C. Exhibits. All Exhibits to this Plan are incorporated into and are a part of this Plan as if set forth in full herein, regardless of when Filed.

II. TREATMENT OF UNCLASSIFIED, UNIMPAIRED CLAIMS

2.01 Administrative Claims

Subject to the allowance procedures and deadlines provided herein, on the Effective Date or as soon thereafter as is practicable, the holder of an Allowed Administrative Claim shall receive on account of such Allowed Administrative Claim and in full satisfaction, settlement, release and discharge of and in exchange for such Allowed Administrative Claim, (a) Cash equal to the unpaid portion of such Allowed Administrative Claim or (b) such other treatment as to which the Debtor (pre-Effective Date) or the Plan Agent (post-Effective Date) and the holder of such Allowed Administrative Claim have agreed upon in writing.

2.02 Statutory Fees

Notwithstanding any other provision of this Plan to the contrary, the Plan Agent shall pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930(a)(6), within ten days after the Confirmation Date for the period ending on the Confirmation Date and

simultaneously provide to the United States Trustee an appropriate affidavit indicating the cash disbursements for the period ending on the Confirmation Date. The Plan Agent shall further pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930(a)(6) for the period after the Confirmation Date within the time period set forth in 28 U.S.C. § 1930(a)(6) based upon disbursements made by the Plan Agent after the Confirmation Date, until the earlier of the closing of the Chapter 11 Case by the issuance of a Final Order by the Bankruptcy Court, or upon the entry of a Final Order by the Bankruptcy Court dismissing the Chapter 11 Case or converting the Chapter 11 Case to another chapter under the Bankruptcy Code. The Plan Agent shall provide to the United States Trustee, upon the making of each payment for the period prior to the Confirmation Date an appropriate affidavit indicating all the Cash disbursements for the relevant period.

2.03 Professional Claim

No later than the date that is 45 days after the Effective Date, each Professional shall File with the Bankruptcy Court its final fee application seeking final approval of all fees and expenses from the Petition Date through the Effective Date, subject to the limitations set forth below.

As of the Effective Date, any requirement that Professionals comply with sections 327 through 331 of the Bankruptcy Code in seeking retention or compensation for services rendered after the Effective Date will terminate.

2.04 Priority Tax Claims

Each holder of an Allowed Priority Tax Claim against the Debtor shall receive, at the discretion of the Plan Agent with the approval of the Oversight Committee, in full satisfaction of such holder's allowed Priority Tax Claim (1) the amount of such holder's Allowed Priority Tax Claim with interest, but excluding any associated fees, costs or charges, accruing after the Effective Date at the Post-Confirmation Interest Rate in full on the Initial Distribution Date.

2.05 Deadline for Filing Administrative Claims

Pursuant to this Plan in respect of the Administrative Claims, other than Claims of Professionals or other entities requesting compensation or reimbursement of expenses pursuant to sections 327, 328, 330, 331, 503(b) or 1103 of the Bankruptcy Code must be Filed no later than the Administrative Claims Bar Date. Objections to any such Administrative Claims must be Filed and served on the claimant on or before the later of (A) the first Business Day that is 45 days after the Administrative Claims Bar Date, (B) the first Business Day that is 45 days after such Administrative Claim is Filed, or (C) such other extended date granted by the Bankruptcy Court upon request by the Debtor or the Plan Agent. The Debtor or, after the Effective Date, the Plan Agent, after obtaining approval from the Oversight Committee, shall use reasonable efforts to promptly and diligently pursue resolution of any and all disputed Administrative Claims.

Holders of Administrative Claims that are required to File a request for payment of such Claims and that do not File such requests on or before the Administrative Claims Bar Date, shall

be forever barred from asserting such Claims against the Debtor, its Estate, the Plan Agent, any other Person, or any of their respective Assets.

III. CLASSIFICATION AND TREATMENT OF CLAIMS

3.01 *Classification and Treatment*

Pursuant to section 1122 of the Bankruptcy Code, set forth below is a designation of the classes of Claims and Equity Interests in the Debtor. A Claim or Equity Interest is placed in a particular Class only to the extent such Claim or Equity Interest is an Allowed Claim or Equity Interest in that Class and such Claim or Equity Interest has not been paid, released, or otherwise settled or paid prior to the Effective Date. Any claims not set forth in Article 3 are unclassified, and therefore, are not included in the classes below.

	Class	Status	Voting Rights
Class 1	Senior Debt	Impaired	Entitled to Vote
Class 2	Indenture Claims	Impaired	Entitled to Vote
Class 3	Pari Passu Claims	Impaired	Entitled to Vote
Class 4	Preferred Stock	Impaired	Not Entitled to Vote
Class 5	Equity Interest Holders	Impaired	Not Entitled to Vote

3.02 *Class 1—Senior Debt*

(a) *Classification:* Class 1 consists of the Allowed Claims for any and all Senior Debt, as defined in the trust preferred security agreements.

(b) *Treatment:* The Debtor asserts no Claims exist in this Class and this Class shall receive nothing on the Effective Date. If you think you have a Claim in this Class, you must File an objection to the Confirmation of this Plan.

(iii) *Voting:* Class 1 is Impaired. The holders of Class 1 Claims are entitled to vote to accept or reject this Plan.

3.03 *Class 2—Indenture Claims*

(i) *Classification:* Class 2 consists the Allowed Claims of the Indenture Trustees under the Indenture Agreements and corresponding documents issued in connection with Rogers Bancshares Statutory Trust I, Rogers Bancshares Statutory Trust II, and Rogers Capital Trust III.

(ii) *Treatment:* The Class 2 Claims shall be paid the net proceeds of the 363 Sale after payment of all Administrative Claims and costs of post-confirmation administration. The

Indenture Trustees shall be deemed to have Allowed Claims, not subject to objection, as follows, provided that to the extent such Allowed Claims are paid in full, remaining Cash will be used to pay post-petition interest on such Allowed Claims at the rates identified in the applicable Indenture Agreements:

<u>Issuance</u>	<u>Trustee</u>	<u>Principal</u>	<u>Interest and Expenses as of the Petition Date</u>	<u>Total Claim as of the Petition Date</u>
Junior Subordinated Debt Securities issued by Rogers Bancshares Statutory Trust I	U.S. Bank National Association	\$5,155,000.00	\$928,283.93	\$6,083,283.93
Junior Subordinated Debt securities issued by Rogers Bancshares Statutory Trust II	U.S. Bank National Association	\$10,310,000.00	\$2,650,297.27	\$12,960,297.27
Junior Subordinated Debt securities issued by Rogers Capital Trust III	The Bank of New York Mellon Trust Company	\$25,774,000.00	\$2,296,966.10	\$28,070,966.10

Distributions will be paid to the Indenture Trustees by the Plan Agent as soon as practicable, based on the Allowed Claims set forth above. The Plan Agent shall not make any payment to any other Person on account of, or related to, the Trust Preferred Securities (“TruPS”); accordingly, except with respect to any Allowed Administrative Claims, no distribution shall be paid by the Plan Agent directly to any collateral manager, TruPS holder, CDO holder or any other similarly situated person that may have any interest in the TruPS, other than the Indenture Trustees.

It shall be the responsibility of the Indenture Trustees to distribute any funds they receive to the appropriate parties, including the holders of actual TruPS as may be required by the existing documents governing such TruPS. Notwithstanding anything to the contrary herein, the Indenture Trustees and other entitled parties may collect their fees and expenses from such distributions received, to the extent provided in the documents governing their respective TruPS. Upon disbursing the Final Distribution in accordance with the respective Indenture Agreements, the Indenture Trustees shall be discharged of any further responsibility under this Plan.

(iii) *Voting*: Class 2 is Impaired. The holders of Class 2 Claims are entitled to vote to accept or reject this Plan.

3.04 Class 3 – *Pari Passu* Claims

(i) *Classification*: Class 3 consists of all Allowed Claims that are entitled to recover pari passu with the Indenture Claims. Claim 5-1, Claim 6-1, Claim 7-1, Claim 8-1, Claim 9-1, Claim 10-1 and Claim 11-1 are Class 3 Claims.

(ii) *Treatment:* The only Claims which the Debtor is aware of that may be Pari Passu Claims are the Indemnity Claims. The Indemnity Claims shall receive the benefit of the Releases and provided the Releases are approved as part of this Plan no other payment or reserve shall be made on account of such Indemnity Claims.

(iii) *Voting:* Class 3 is Impaired. The holders of Class 3 Claims are entitled to vote to accept or reject this Plan.

3.05 Class 4—Preferred Stock

(i) *Classification:* Class 4 consists of all Allowed Claims related to Preferred Stock, including, without limitation, claims for cumulative accrued undeclared dividends. Claim 1-1 and Claim 13-1 are Class 4 Claims.

(ii) *Treatment:* Class 4 Claims are Impaired. Through the Plan, Preferred Stock shall be cancelled and extinguished.

(iii) *Voting:* Class 4 is Impaired. However, because the holders of Class 4 Claims will receive no distribution under this Plan, they are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Consequently, holders of Class 4 Claims may not vote on this Plan.

3.06 Class 5—Equity Holders

(i) *Classification:* Class 5 consists of all common stock.

(ii) *Treatment:* Class 5 Claims are Impaired. Through the Plan, Equity Interests in Rogers Bancshares, Inc. evidenced by shares of common stock, shall be cancelled and extinguished.

(iii) *Voting:* Class 5 is Impaired. However, because the holders of Class 5 Claims will receive no distribution under this Plan, they are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Consequently, holders of Class 5 Claims may not vote on this Plan.

IV. IDENTIFICATION OF CLASSES OF CLAIMS AND EQUITY INTERESTS

4.01 Unimpaired Classes of Claims and Equity Interests

No Class is Unimpaired under the Plan.

4.02 Impaired Classes of Claims and Equity Interests

Classes 1, 2, 3, 4, and 5 are Impaired by this Plan.

V. CAUSES OF ACTION OF THE DEBTOR'S ESTATE

5.01 *Litigation*

The Debtor and Committee are not aware of any Avoidance Action or other Causes of Action under the Bankruptcy Code or otherwise and no Avoidance Action shall be preserved by this Plan.

VI. EXECUTORY CONTRACTS AND UNEXPIRED LEASES

6.01 *Approval of Rejection; Rejection Damages Claims Bar Date*

The Confirmation Order shall constitute an Order of the Bankruptcy Court approving rejections of all executory contracts and unexpired leases pursuant to section 365 of the Bankruptcy Code as of the Effective Date. Any Claim for damages arising from any such rejection must be Filed within 30 days after the mailing of notice of the entry of the Confirmation Order or such Claim shall be forever barred, shall not be enforceable against the Debtor, its Estate, the Plan Agent, or any of their respective properties and shall receive no distribution under this Plan or otherwise on account of such Claim.

6.02 *No Effect on Insurance*

The rejection of executory contracts shall not apply to, and shall have no effect upon, any insurance policy which the Debtor owns or pursuant to which the Debtor is an insured party or beneficiary.

VII. MEANS FOR EXECUTION AND IMPLEMENTATION OF THE PLAN

7.01 *Engagement of Plan Agent*

On November 7, 2013, the Debtor filed its Application to Employ Cheryl F. Shuffield as Chief Liquidation Officer ("CLO") and Frost PLLC as Accountants for the Debtor ("Application to Employ CLO"). [Docket No. 165]. The Court approved the Debtor's Application to Employ CLO and entered an Order Approving Application to Employ Cheryl F. Shuffield and Frost PLLC on November 25, 2013. [Docket No. 189]. Upon the Effective Date, the CLO shall become Plan Agent to assist the Debtor in the performance of its duties and obligations under this Plan and to act under the control of, and in accordance with instructions from the Oversight Committee.

The Oversight Committee, in its sole and absolute discretion, may terminate the Plan Agent at any time and appoint a new Plan Agent. Any subsequently appointed Plan Agent shall have all the rights, powers, duties and authority of the Plan Agent as set forth in this Plan. On the Effective Date, the Plan Agent shall be appointed the sole director, president and chief executive officer of the Debtor and shall perform the duties set forth in this Plan through the earlier of the date the Debtor is dissolved in accordance with Article 7.13 and the date the Plan Agent resigns, is unable to serve, or is terminated. Upon the Effective Date and without further action by the Bankruptcy Court or the Board of Directors of the Debtor, all of the directors of the Debtor shall be deemed to have resigned and all officers of the Debtor shall be deemed to have

been terminated without cause and such termination shall not give rise to any claim against the Debtor or the Estate.

7.02 *Covenants of the Plan Agent*

During the term of the Plan, the Plan Agent shall, unless otherwise waived in writing by the Oversight Committee, make periodic reports to the Oversight Committee, as requested by the Oversight Committee. The Plan Agent shall act under the control of the Oversight Committee. The Plan Agent shall follow written instructions received from the Oversight Committee, provided, however, that the Plan Agent and the Oversight Committee may waive the requirement that instructions be in writing.

7.03 *Plan Agent's Powers*

The Plan Agent shall serve without bond but subject to supervision and control of the Oversight Committee. Subject to the control of the Oversight Committee and the other provisions of the Plan, including the other provisions of Article 7, the Plan Agent shall have, without further notice or Bankruptcy Court approval, full and complete authority to:

- a. Control all operations and transactions of the Debtor and all of the rights, powers and duties of the Debtor as debtor in possession;
- b. Control all bank accounts of the Debtor;
- c. Control revenue received or owing to the Debtor;
- d. Control all payments or transfers by or for the benefit of the Debtor whether by check, wire transfer or otherwise, prior to any such payment or transfer being made.
- e. Pay and discharge any costs, expenses, or obligations of the Debtor;
- f. Purchase insurance of all kinds sufficient to protect fully the Estate's assets and to protect from liability;
- g. Enter into contracts and execute negotiable and non-negotiable obligations;
- h. When and if advisable, object to claims or seek subordination;
- i. When and if advisable, compromise controversies;
- j. Retain professionals to assist the Plan Agent in performing the Plan Agent's duties;
- k. Establish a reserve for the payment of future expenses and previously incurred, but not yet paid, expenses including professional fees incurred by the Debtor and the Committee;

- l. Withhold or make payments on any employment, income, or other taxes as is appropriate; and
- m. Take such other actions, as may be necessary and proper to consummate the Plan in her role as a fiduciary.

7.04 *Plan Agent Compensation*

The Plan Agent shall be paid in accordance with the fee structure identified in the Application for Order Authorizing the Employment and Retention of Cheryl F. Shuffield as Chief Liquidation Officer and Frost PLLC as Accountants for the Debtor.

7.05 *Maintenance of Records*

The Plan Agent shall keep or cause to be kept, books containing a description of all property from time to time constituting the Debtor's Assets, accounting of all receipts and disbursements.

7.06 *Debtor Expenses*

All costs, expenses and obligations incurred by the Debtor, the Plan Agent, and/or Oversight Committee in administrating the Debtor's Estate or in any manner connected, incidental or related thereto shall be a charge against the unencumbered properties owned by the Debtor and remaining from time to time in the hands of the Plan Agent.

7.07 *The Oversight Committee*

The Oversight Committee shall exist as of the Effective Date. The Oversight Committee will have the rights, powers, and authority identified in this Plan, including, without limitation, the authority to control the Plan Agent. The Oversight Committee may retain professionals, including the Professionals retained in the Chapter 11 Case, following the Effective Date to provide legal or other professional services to the Oversight Committee. Fees and expenses incurred by such professionals, and expenses of the Oversight Committee members, may be paid by the Plan Agent from Cash without the need for approval by the Bankruptcy Court after approval by the Oversight Committee. Neither the Oversight Committee nor any of its members shall be liable for any act the Oversight Committee or any of its members may do or omit to do hereunder or acting in good faith in the exercise of its best judgment, and the fact that such act or omission was advised, directed, or approved by an attorney acting as attorney for the Plan Agent or the Oversight Committee shall be conclusive evidence of such good faith and best judgment, nor shall the Oversight Committee or any of its members be liable in any event except for its own gross negligence or willful default or misconduct.

Notwithstanding anything herein, in exercising its authority over the Plan Agent, the Oversight Committee shall not prevent or restrict the Plan Agent from: (a) complying with the terms of this Plan, including the payment and/or the reserve for post-confirmation reasonable expenses, Administrative Claims or Disputed Claims; (b) complying with the various priority provisions of the Bankruptcy Code; or (c) complying with applicable bankruptcy and non-

bankruptcy laws. Any disputes regarding (a) through (c) may be submitted to and determined by the Bankruptcy Court.

7.08 *Limitation on Plan Agent's Liability*

The Plan Agent shall not be liable for any act she may do or omit to do as Plan Agent hereunder or acting in good faith in the exercise of her best judgment, and the fact that such act or omission was advised, directed or approved by the Oversight Committee or advised by an attorney acting as attorney for the Plan Agent or the Oversight Committee shall be conclusive evidence of such good faith and best judgment, nor shall the Plan Agent be liable in any event except for his own gross negligence or willful default or misconduct.

7.09 *Replacing the Plan Agent*

In the event of the death, resignation, or dismissal of the Plan Agent, a successor Plan Agent shall be appointed by the Oversight Committee. The Plan Agent may resign at any time by giving written notice addressed to the Chairman of the Oversight Committee and Oversight Committee Counsel of her intention to do so and giving at least 30 days' notice before the proposed effective date of resignation. The Plan Agent shall continue to serve as Plan Agent after the delivery of her resignation until the proposed effective date unless the Oversight Committee identifies an earlier effective date. The Plan Agent's resignation shall be acknowledged by the Oversight Committee in an instrument in writing and shall be delivered to the resigning Plan Agent within the 30 day time period.

7.10 *Post-Effective Date Professional Fees and Expenses*

Subject to the limitations set forth in this Plan, counsel to the Debtor, counsel to the Committee and other Professionals who may have been retained in the Chapter 11 Case may, from time to time, following the Effective Date, provide legal or other professional services to the Plan Agent and/or the Oversight Committee in connection with the Chapter 11 Case. Such services may be paid by the Plan Agent from Cash without the need for approval by the Bankruptcy Court, after approval by the Oversight Committee.

Counsel to the Debtor and counsel to the Committee shall continue to serve in such roles after the Effective Date for the sole purpose of reviewing, commenting, and objecting, if necessary, to Professionals' applications for payment of fees and reimbursement of expenses incurred prior to the Effective Date ("Fee Applications"). The Plan Agent, upon obtaining approval from the Oversight Committee, may pay for such services from Cash without the need for approval by the Bankruptcy Court provided, however, that if there is a dispute concerning such payment, counsel to the Debtor or counsel to the Committee may seek approval for such payment from the Bankruptcy Court. The Committee shall continue to exist post-confirmation for the sole purpose of reviewing, commenting, and objecting, if necessary, to Professionals' Fee Applications. Once all Fee Applications have been resolved by Final Order, the Committee shall automatically and immediately dissolve.

7.11 *Cancellation of Instruments, Securities and Other Documentation*

Except to the extent otherwise provided under this Plan or the Confirmation Order, upon the Effective Date, all Pre-Petition Date agreements (other than assumed contracts and third party guaranties and indemnities of the Debtor's obligations), credit agreements, Pre-Petition Date loan documents and Post-Petition Date loan documents to which the Debtor is a party, the TruPS Trusts, and all lien claims and other evidence of liens against the Debtor, shall be deemed to be cancelled and of no further force and effect, without any further action on the part of the Debtor or the Plan Agent. The holders of or parties to such cancelled instruments, agreements, securities and other documentation will have no remaining rights arising from or relating to such documents or the cancellation thereof, except the rights provided pursuant to this Plan and the Confirmation Order and any rights that, by the terms of the applicable agreement, survive the termination of such agreement, provided that notwithstanding Confirmation or the occurrence of the Effective Date, any such agreement that governs the rights of the Indenture Trustees or other parties concerning the TruPS Trusts shall continue in effect solely (i) with respect to any rights that, by the terms of the applicable agreement, survive the termination of such agreement; and (ii) for purposes of allowing the Indenture Trustees or other parties, as applicable, to (a) receive distributions under the Plan, (b) make distributions to holders of the TruPS, and (c) receive payment for their fees and expenses under the Indenture Agreements, the TruPS Trusts and related agreements, through the exercise of a charging lien or otherwise.

7.12 *Post-Confirmation Operations*

Following Confirmation and until its dissolution as set forth in Article 7.13, the Debtor shall execute such documents and take such other action as are necessary to effectuate the transactions provided for in this Plan.

7.13 *Post-Confirmation Funding of Operations and Funding of Plan*

This Plan shall be funded by (a) Cash of the Debtor on the Effective Date including all the remaining proceeds of the 363 Sale (b) funds added to Cash of the Debtor after the Effective Date from, among other things, the release of any escrowed amounts from the sale of the Debtor's business, the liquidation of the Debtor's remaining Assets and the prosecution and enforcement of Causes of Action, and (c) the release of any funds held in reserve in accordance with the terms thereof.

7.14 *Dissolution of the Debtor*

Upon the distribution of all Assets of the Debtor's Estate pursuant to this Plan (including the transfer of any amounts held in reserve) and the filing by or on behalf of the Debtor of a certification to that effect with the Bankruptcy Court, the Debtor will be dissolved without the necessity for any other or further actions to be taken by or on behalf of the Debtor or payments to be made in connection therewith. However, the Debtor shall file with the official public office for keeping corporate records in its state of incorporation or organization a certificate of dissolution or equivalent document and with the appropriate regulatory authority(ies) any and all such documents necessary to note its dissolution. Such documents and/or certificates of dissolution may be executed by the Plan Agent without need for any action by the Debtor. From

and after the Effective Date, the Debtor (a) for all purposes shall be deemed to have withdrawn its business operations from any state in which the Debtor was previously conducting, or is registered or licensed to conduct, its business operations, and shall not be required to file any document, pay any sum or take any other action, in order to effectuate such withdrawal and (b) shall be deemed to have cancelled pursuant to this Plan all Interests and all Claims.

7.15 *Closing of the Chapter 11 Case*

Notwithstanding anything to the contrary in the Bankruptcy Rules providing for earlier closure of the Chapter 11 Case, when all Disputed Claims against the Debtor have become Allowed Claims or have been Disallowed by Final Order, and all remaining Assets of the Debtor have been liquidated and converted into Cash (other than those Assets abandoned by the Debtor), and such Cash has been distributed in accordance with this Plan, or at such earlier time as the Plan Agent, with the approval of the Oversight Committee, deems appropriate, the Plan Agent shall seek authority from the Bankruptcy Court to close the Chapter 11 Case in accordance with the Bankruptcy Code and the Bankruptcy Rules.

VIII. POST-CONFIRMATION OBJECTIONS

8.01 *Objections to Claim*

Subject to applicable law and with the approval of the Oversight Committee, from and after the Effective Date, the Plan Agent shall have the sole authority to file, settle, compromise, withdraw, arbitrate or litigate to judgment objections to Claims pursuant to applicable procedures established by the Bankruptcy Code, the Bankruptcy Rules and this Plan. Except with respect to Administrative Claims and Claims for rejection damages, objections to Claims must be filed by the Claim Objection Deadline, as may be extended by the Bankruptcy Court from time to time.

An Objection to the allowance of a Claim or Interest shall be in writing and may be filed with the Bankruptcy Court by the Plan Agent, at any time on or before the Claim Objection Deadline, unless another date is established by the Bankruptcy Court or this Plan. The failure by the Debtor to object to any Claim or Interest for voting purposes shall not be deemed a waiver of the Debtor's right to object to, or re-examine, any such Claim in whole or in part.

IX. DISTRIBUTIONS

9.01 *Distributions by the Plan Agent*

Subject to Article 7, distributions (Initial, Supplemental and Final Distributions) under this Plan shall be made by the Plan Agent. All payments shall be made in accordance with the priorities established in the Bankruptcy Code unless otherwise provided in this Plan.

9.02 *Delivery of Distributions in General*

Distributions to holders of Allowed Claims shall be made: (a) at the addresses set forth in the proofs of Claim filed by such holders; (b) at the addresses set forth in any written notices of address change delivered to the Plan Agent after the date on which any related proof of Claim was filed, or after the date hereof if no proof of Claim was filed; or (c) at the addresses reflected

in the Schedules relating to the applicable Allowed Claim if no proof of Claim has been filed and the Plan Agent has not received a written notice of a change of address.

9.03 *Cash Payments*

Cash payments to be made pursuant to this Plan shall be made by checks drawn on a domestic bank or by wire transfer from a domestic bank, at the option of the Plan Agent.

9.04 *No De Minimis Distributions*

Other than in the Final Distribution, no payment of Cash in an amount of less than \$50 shall be made on account of any Allowed Claim. Such undistributed amount will instead be made part of the Available Cash of the Plan Agent for use in accordance with this Plan.

9.05 *Face Amount*

Unless otherwise expressly set forth herein with respect to a specific Claim or class of Claims, for the purpose of the provisions of this Article 9, the "Face Amount" of a Disputed Claim means the amount set forth on the proof of Claim unless the Disputed Claim has been estimated for distribution purposes or, in the alternative, if no proof of Claim has been timely filed or deemed filed, \$0.

9.06 *Failure to Negotiate Checks*

Checks issued in respect of distributions under this Plan shall be null and void if not negotiated within 90 days after the date of issuance. Any funds returned to the Plan Agent by reason of non-negotiated checks shall be held by the Plan Agent, until such time as they qualify for Unclaimed Property, or if earlier, a request for reissuance is received by the Plan Agent. Requests for reissuance of any such check shall be made, in writing, directly to the Plan Agent by the holder of the Allowed Claim with respect to which the check originally was issued. All Claims for which void checks were issued will be forever barred from asserting the Claim against the Debtor or the Plan Agent.

9.07 *Unclaimed Property*

All property distributed on account of Claims must be claimed within the later of (a) 90 days after the Effective Date or (b) 90 days after such distribution is made to the holder or, in the case of a distribution made in the form of a check, must be negotiated or a request for reissuance made as provided for in this Plan. All Unclaimed Property will be deposited back into the Debtor's Estate. All full or partial payments made by the Debtor and received by the holder of a Claim before the Effective Date shall be deemed to be payments under this Plan for purposes of satisfying the obligations of the Debtor pursuant to this Plan. Nothing contained in this Plan shall require the Debtor or the Plan Agent to attempt to locate any holder of an Allowed Claim other than by reviewing the proofs of Claim and records of the Debtor. All Claims for Unclaimed Property shall be deemed Disallowed, and the holder of any Claim Disallowed will be forever barred from asserting the Claim Disallowed in any manner against the Debtor or the Plan Agent.

9.08 *Initial Distribution*

As soon as practicable after the Effective Date, the Plan Agent shall obtain approval of a budget from the Oversight Committee, which budget will identify the amounts believed to be necessary to pay Administrative, Priority, post-confirmation administrative and wind-down expenses, and the amounts of any Disputed Claims. Based on this budget, on the Initial Distribution Date, the Plan Agent shall distribute the Initial Distribution to the holders of Allowed Claims pursuant to this Plan.

9.09 *Supplemental Distributions*

If the Plan Agent, with the approval of the Oversight Committee, determines that enough issues have been resolved with regards to Disputed Claims, Administrative, post-confirmation administrative and wind-down expenses, the Plan Agent shall make such additional distributions of funds to the holders of Allowed Claims as soon as reasonably practicable (each, a "Supplemental Distribution"). Each Supplemental Distribution will reduce the Disputed Claims Reserve, calculated based upon, following resolution of all disputes and allowance of any previously Disputed Claim, the reduction of the reserve by the amount previously allocated to the Disputed Claim Reserve on account of the Disputed Claim, as calculated prior to the date of the Supplemental Distribution. Supplemental Distributions shall be distributed after taking into account the distributions each holder of Allowed Claims would have been entitled to receive under Article 9, as if all amounts distributed as of such Supplemental Distribution Date were available for distribution by the Plan Agent on the date of the Initial Distribution.

9.10 *Final Distributions*

The Plan Agent shall, on the Final Distribution Date, distribute all Available Cash to the holders of Allowed Claims against the Debtor entitled thereto in accordance with the priorities and restrictions set forth herein (the "Final Distribution"). The Final Distribution shall be distributed after taking into account the distributions each holder of Allowed Claims would have been entitled to receive under Article 9, as if all amounts distributed as of the Final Distribution Date were available for distribution by the Plan Agent on the Effective Date.

9.11 *Disputed Claims Reserve*

To the extent there exist as of the Effective Date Disputed Claims in any Class, the Plan Agent shall reserve from any distribution of their Assets Cash in an amount equal to the pro rata portion of such distribution to which such Disputed Claim would be entitled if Allowed in the amount asserted by the holder of such Disputed Claim, as set forth in the definition of Disputed Claim Reserve. To the extent that any such Disputed Claim becomes an Allowed Claim, such reserved Cash shall be distributed to the holder of the Allowed Claim in a manner and amount consistent with the treatment of Allowed Claims in that Class, with any surplus Cash becoming generally available for use by the Plan Agent in accordance with the terms of this Plan.

9.12 *No Payment or Distribution Pending Allowance*

All references to Claims and amounts of Claims refer to the amount of the Claim Allowed by operation of law, the Final Order of the Bankruptcy Court or this Plan. Accordingly,

notwithstanding any other provision in this Plan, no payment or distribution shall be made on account of or with respect to any Claim to the extent it is a Disputed Claim, except that payment or distribution will be made on the undisputed part of the Claim, if there is any. Partial distributions will be made while an Objection is pending to the undisputed part of a Claim.

9.13 *Disputed Distribution*

The Plan Agent shall make a distribution on the undisputed part to such holder and place the disputed part (or any amount estimated pursuant to section 502(c) of the Bankruptcy Code) into the Estate's general fund until the disposition thereof shall be determined by Final Order of the Bankruptcy Court or by written agreement among the interested parties to such dispute.

9.14 *Estimation of Disputed Claims*

The Plan Agent, at any time, with the approval of the Oversight Committee, may request that the Bankruptcy Court fix, liquidate or estimate any contingent or unliquidated Claim or Equity Interest pursuant to section 502(c) of the Bankruptcy Code or other applicable law regardless of whether the Debtor has previously objected to such Claim, and the Bankruptcy Court will retain jurisdiction to estimate any Claim or Equity Interest at any time during litigation concerning any objection to any Claim or Equity Interest, including during the pendency of any appeal relating to any such objection to the extent permitted under section 502(c) of the Bankruptcy Code. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim or Equity Interest, such estimated amount will constitute either the Allowed amount of such Claim or a maximum limitation on such Claim or Equity Interest, as determined by the Bankruptcy Court. The Bankruptcy Court's entry of such an order may limit the distribution to be made on individual Disputed Claims or Equity Interests regardless of the amount finally Allowed on account of such Disputed Claims or Equity Interests, and no Holder will have recourse against the Debtor, its Estate, its assets or any of its respective Professionals. If the estimated amount constitutes a maximum limitation on such Claim or Equity Interest, the Plan Agent, with the approval of the Oversight Committee, may elect to pursue any supplemental proceedings to object to any ultimate payment on such Claim or Equity Interest. All of the aforementioned Claims or Equity Interests objection, estimation and resolution procedures are cumulative and not necessarily exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. In addition, the Plan Agent, with the approval of the Oversight Committee, may settle or compromise any such dispute with the agreement of the holder of such Claim or Equity Interest without the approval of the Bankruptcy Court. If a Claimant (including a Holder of an Insurance Claim) fails to seek estimation of a 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 on 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.

9.15 *Resolution of Disputed Claims and Interests*

Subject to obtaining the approval of the Oversight Committee and other conditions as set forth in Article 7, the Plan Agent shall have the right (a) to initiate and prosecute any Objections

to Claims, (b) to request estimation of each such Claim, (c) to litigate any Objection to Final Order, (d) to settle or to compromise any Claim without the approval of the Bankruptcy Court, or (e) to withdraw any Objection to any Claim (other than an Allowed Claim or a Claim that is deemed to be allowed pursuant to this Plan or a Final Order).

9.16 *Compliance with Tax Requirements*

In connection with this Plan and the distributions made in accordance thereto, to the extent applicable, the Plan Agent shall comply with all tax withholding and reporting requirements imposed on them by any governmental unit and all distributions pursuant to this Plan shall be subject to such withholding and reporting requirements. The Plan Agent shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements. The Plan Agent may withhold any distribution under the Plan to any Person that has not provided the Plan Agent with tax identification numbers or social security numbers, as applicable to such Person.

X. RELEASE OF LIENS

10.01 *Release of Liens*

Except as otherwise provided in this Plan or other agreement or document created in connection with this Plan, all liens, encumbrances and other security interests against Assets of the Debtor's Estate shall be deemed fully and completely released and discharged and all of the Assets of the Debtor's Estate shall be deemed free and clear of any such liens, claims and encumbrances on and after the Final Distribution Date.

XI. EFFECT OF CONFIRMATION

11.01 *Jurisdiction of Bankruptcy Court*

Until the Effective Date, the Bankruptcy Court shall retain jurisdiction over the Debtor, its Assets and its Estate. Thereafter, jurisdiction of the Bankruptcy Court over the Debtor, its Assets and its Estates shall be limited to the subject matters set forth in Article 16.

11.02 *Binding Effect*

Except as otherwise provided in section 1141(d) of the Bankruptcy Code, on and after the Confirmation Date, the provisions of this Plan shall bind any holder of a Claim against or Interest in the Debtor and such holder's respective successors and assigns, whether or not the Claim or Interest of such holder is Impaired under this Plan and whether or not such holder has accepted this Plan.

11.03 *Stay*

Unless otherwise provided herein, all injunctions or stays provided for in the Chapter 11 Case pursuant to section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Final Distribution Date.

11.04 *Exculpation*

The Debtor, the Committee (solely with respect to its conduct as a Committee and not with respect to the actions of its members as individual creditors), or any of its respective present members (solely with respect to each member's conduct in furtherance of its, his, or her duties as a member of the Committee, and not with respect to the actions of such members as individual creditors), and their representatives, advisors, attorneys, financial advisors, investment bankers or agents, shall neither have nor incur, and are hereby released from, any Claim, obligation, cause of action or liability to one another or to any holder of a Claim or an Interest, or any other party in interest, or any of its members, representatives, advisors, attorneys, financial advisors, investment bankers, agents, or affiliates, or any of its successors or assigns, for any act or omission in connection with, relating to, or arising out of, the Chapter 11 Case, the pursuit of Confirmation of the Plan, the consummation of this Plan, or the administration of this Plan or the property to be distributed under the Plan, except for (i) claims which arise or relate to actions or omissions occurring prepetition; (ii) actions taken by the Debtor post-petition outside the ordinary course of business without approval of the Court; and (iii) willful misconduct or gross negligence at any time. In all respects the Committee and/or the Debtor shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

11.05 *Releases*

On the Effective Date, for good and valuable consideration, and to the fullest extent permissible under applicable law, each Person that has held, currently holds, or may hold a Released Claim or any Released Third Party Causes of Action, shall be deemed to have and hereby does irrevocably and unconditionally, fully, finally, and forever waive, release, acquit and discharge (1) each and all of the Released Parties, from any and all Released Claims including, without limitation, any such claim demand, right, liability, or cause of action for indemnification, contribution or any other basis in law or equity for damages, costs or fees incurred by the releasers herein arising directly or indirectly from or otherwise relating thereto.

The treatment of Claims and Equity Interests under the Plan shall be, and shall be deemed to be, in exchange for and in complete satisfaction, settlement, discharge and release of, all Claims and any other obligations, suits, judgments, damages, debts, rights, remedies, Causes of Action or liabilities of any nature whatsoever, and of all Equity Interests, or other rights of a holder of an Equity Interest, relating to the Debtor or any of its respective assets, property and estate, or interests of any nature whatsoever, and regardless of whether any property will have been distributed or retained pursuant to the Plan on account of such Claims or other obligations, suits, judgments, damages, debts, rights, remedies, Causes of Action or liabilities, or Equity Interests or other rights of an holder of an equity security or other ownership interest. Upon the Effective Date, (i) the Debtor and its directors and officers shall be deemed released from any and all Claims and other obligations, suits, judgments, damages, debts, rights, remedies, Causes of Action or liabilities, and any Equity Interests or other rights of a holder of an equity security or ownership interest, of any nature whatsoever, including, without limitation, liabilities that arose before the Effective Date (including prior to the Petition Date), and all debts of a kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, whether or not (a) a proof of claim based upon such debt is filed or deemed filed under section 501 of the Bankruptcy

Code, (b) a Claim based upon such debt is allowed under section 502 of the Bankruptcy Code (or is otherwise resolved), or (c) the holder of a Claim based upon such debt voted to accept the Plan and (ii) all rights of any equity security holder in the Debtor and all Equity Interests shall be deemed terminated and cancelled.

Except as provided otherwise in the Plan or Confirmation Order, all entities shall be precluded from asserting against the Debtor, and its assets, property, and estate, any other or further Claims, or any other obligations, suits, judgments, damages, debts, rights, remedies, Causes of Action or liabilities of any nature whatsoever, and of all Equity Interests, or other rights of a holder of an Equity Interest, relating to the Debtor or its assets, property, and estate, including any interest accrued on such Claims from and after the Petition Date, and regardless of whether any property will have been distributed or retained pursuant to the Plan on account of such Claims or other obligations, suits, judgments, damages, debts, rights, remedies, Causes of Action or liabilities, or Equity Interests or other rights of a holder of an equity security or other ownership interest. In accordance with the foregoing, except as expressly provided in the Plan or Confirmation Order, the Confirmation Order shall constitute a judicial determination, as of the Effective Date, of the release of all such Claims or other obligations, suits, judgments, damages, debts, rights, remedies, Causes of Action or liabilities, and any Equity Interests, or other rights of a holder of an equity interest an determination of all rights of any such holder in the Debtor, pursuant to sections 523 and 1141 of the Bankruptcy Code, and such release shall void and extinguish any judgment obtained against the Debtor, its directors and officers, and their assets, property and estates at any time, to the extent such judgment is related to a discharged Claim, debt or liability or terminated right of any holder of any Equity Interest in the Debtor. As of the Effective Date, and in consideration for the value provided under the Plan, each holder of a Claim or Equity Interest in any Class under this Plan shall be and hereby is deemed to release and forever waive as against the Debtor and its assets, property, and estate, all such Claims and Equity Interests.

Except as otherwise expressly provided in the Plan or Confirmation Order, all Entities who have held, hold, or may hold Claims or any other debt or liability that is released or Equity Interests or other right of equity interests that is terminated or cancelled pursuant to the Plan, or who have held, hold, or may hold Claims or other debt or liability that is released pursuant to the Plan, are permanently enjoined, from and after the Effective Date, from (a) commencing or continuing, directly or indirectly, in any manner, any action or other proceeding (including, without limitation, any judicial, arbitral, administrative or other proceeding) of any kind on such Claim or other debt or liability that is released or Equity Interest that is released, terminated, cancelled, assumed or transferred pursuant to the Plan against any of the Released Parties or any of their respective assets, property or estates, (b) the enforcement, attachment, collection, or recovery by any manner or means of any judgment, award, decree or order against any of the Released Parties or any of their respective assets, property, or estates on account of any Claim or other debt or liability that is released or Equity Interest that is released, terminated, cancelled, assumed, or transferred pursuant to the Plan, (c) creating, perfecting, or enforcing any encumbrance of any kind against any of the Released Parties or any of their respective assets, property or estates on account of any Claim or other debt or liability that is released or Equity Interest that is released, terminated, cancelled, assumed or transferred pursuant to the Plan, and (d) except to the extent provided, permitted or preserved by sections 553, 555, 556, 559, or 560 of the Bankruptcy Code or pursuant to the common law right of recoupment, asserting any right

of setoff, subrogation or recoupment of any kind against any obligation due from any of the Released Parties or any of their respective assets, property or estate, with respect to any such Claim or other debt or liability that is released or Equity Interest that is released, terminated, cancelled, assumed, or transferred pursuant to the Plan; provided however, that such injunction shall not preclude the United States of America, any state or any of their respective police or regulatory agencies from enforcing their police or regulatory powers; and, provided, further, that, except in connection with a properly filed proof of Claim, the foregoing proviso does not permit the United States of America, any State or any of their respective police or regulatory agencies from obtaining any monetary recovery, including fines, restitution or forfeiture, from any of the Released Parties, including, without limitation, the Debtor or any of its respective assets, property or estate, with respect to any such Claim or other debt or liability that is discharged or Equity Interest or other right of equity interest that is released, terminated or cancelled pursuant to the Plan, including, without limitation, any monetary claim or penalty in furtherance of a police or regulatory power. Such injunction shall extend to all successors and assigns of the Released Parties and their respective assets, property, and estates.

Each of the injunction and release provisions provided in this Article is an integral part of the Plan and is essential to its implementation. Each of the Released Parties shall have the right to independently seek the enforcement of the discharge, injunction and release provisions set forth in this Article.

The Debtor, the Debtor's officers and directors, the Committee, its members, and each of their respective Professionals shall not have or incur any liability to any Entity for any act taken or omitted to be taken in connection with the Chapter 11 Case, the formulation, preparation, dissemination, implementation, Confirmation, or approval of the Plan or any compromises or settlements contained therein, the Disclosure Statement, or any contract, instrument, release or other agreement or document provided for in the Plan; provided, however, that the foregoing provisions shall not affect the liability of any Entity that otherwise would result from any such act or omission to the extent that such act or omission is determined in a Final Order to have constituted gross negligence or willful misconduct.

XII. ACCEPTANCE OR REJECTION OF THIS PLAN

12.01 Persons Entitled to Vote

Votes from holders of Class 1, 2 and 3 will be solicited. The Debtor asserts no claims in Class 1 exist in this case. Equity Interests, including Preferred Stock, in Class 4 and Class 5 are Impaired and are not entitled to distributions pursuant to this Plan. Class 4 Preferred Stock and Class 5 Equity Interests will be cancelled pursuant to this Plan and holders of such Preferred Stock in Class 4 and Equity Interests in Class 5 are deemed pursuant to section 1126(g) of the Bankruptcy Code to have rejected this Plan. Votes from holders of Class 4 Preferred Stock and Class 5 Equity Interests will not be solicited.

XIII. CONDITIONS TO THE EFFECTIVE DATE AND CONFIRMATION

13.01 Conditions to Effective Date

This Plan shall not become effective and the Effective Date shall not occur unless and until:

The Bankruptcy Court shall have entered the Confirmation Order authorizing and directing the Debtor to take all actions necessary or appropriate to enter into, implement, and consummate the contracts, instruments, releases, indentures and other agreements or documents created, amended, supplemented, modified, or adopted in connection with this Plan;

The Bankruptcy Court shall have approved the information contained in the Disclosure Statement as adequate pursuant to section 1125 of the Bankruptcy Code;

The 363 Sale is completed; and

No stay of the Confirmation Order shall be in effect at the time the other conditions set forth in this Article 13.1 are satisfied, or, if permitted, waived.

13.02 Notice of Effective Date

On the Effective Date, or as soon thereafter as is practicable, the Plan Agent shall file with the Bankruptcy Court a "Notice of Effective Date," which notice shall constitute appropriate and adequate notice that this Plan has become effective.

XIV. FINAL REPORT

At such time as all of the distributions provided for in Article 9 have been made and the reserves shall be reduced to zero, with the approval of the Oversight Committee, the Plan Agent shall file a final accounting with the Bankruptcy Court, together with the Final Report. Except as otherwise set forth in this Plan, the Plan Agent shall serve until such time as the entry of a Final Decree closing the Chapter 11 Case, at which time the Plan Agent shall be discharged.

XV. ABANDONMENT

With the approval of the Oversight Committee, the Plan Agent may abandon any property deemed to be burdensome or of inconsequential value by filing a Notice of Abandonment with the Bankruptcy Court and serving it on the United States Trustee and the Oversight Committee. No property shall be deemed abandoned unless the Plan Agent files and serves a Notice of Abandonment. Such abandonment shall be effective ten Business Days after the Notice of Abandonment is filed and served. Any party in interest may oppose such abandonment by filing an Objection or response thereto with the Bankruptcy Court.

XVI. RETENTION OF JURISDICTION

16.01 Exclusive Jurisdiction of Bankruptcy Court

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain after the Effective Date exclusive jurisdiction of all matters arising out of, arising in or related to, the Chapter 11 Case to the fullest extent permitted by applicable law, including, without limitation, jurisdiction to:

(a) allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Interest (whether filed before or after the Effective Date and whether or not contingent, disputed or unliquidated), including the compromise, settlement and resolution of any request for payment of any Administrative Claim or Priority Claim, the resolution of any objections to the allowance or priority of Claims or Interests and the resolution of any dispute as to the treatment necessary to reinstate a Claim pursuant to this Plan, and to hear and determine any other issue presented hereby or arising hereunder, including during the pendency of any appeal relating to any objection to such Claim or Interest (to the extent permitted under applicable law);

(b) 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;

(c) determine and resolve any matters related to the assumption, assumption and assignment, or rejection of any executory contract or unexpired lease to which the Debtor is a party or with respect to which the Debtor may be liable, and to hear, determine and, if necessary, liquidate any Claims arising there from;

(d) ensure that all payments due under this Plan and performance of the provisions of this Plan are accomplished as provided herein, and resolve any issues relating to distributions to holders of Allowed Claims pursuant to the provisions of this Plan;

(e) construe, take any action and issue such orders, prior to and following the Confirmation Date and consistent with section 1142 of the Bankruptcy Code, as may be necessary for the enforcement, implementation, execution and consummation of this Plan and all contracts, instruments, releases, indentures and other agreements or documents created in connection with this Plan, including, without limitation, the Disclosure Statement and the Confirmation Order, for the maintenance of the integrity of this Plan;

(f) determine and resolve any cases, controversies, suits or disputes that may arise in connection with the consummation, interpretation, implementation or enforcement of this Plan (and all Exhibits to this Plan) or the Confirmation Order, including the indemnification and injunction provisions set forth in and contemplated by this Plan or the Confirmation Order, or any Person's rights arising under or obligations incurred in connection therewith;

(g) modify this Plan before or after the Effective Date pursuant to section 1127 of the Bankruptcy Code and Article 17.4, or modify the Disclosure Statement, the Confirmation Order or any contract, instrument, release, indenture 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 Court order, this Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release, indenture 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, to the extent authorized by the Bankruptcy Code, this Plan;

(h) issue injunctions, enter, implement and enforce 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;

(i) enter, implement and enforce such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked or vacated;

(j) determine any other matters that may arise in connection with or relating to this Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, indenture or other agreement or document created in connection with this Plan, the Disclosure Statement or the Confirmation Order, except as otherwise provided in this Plan;

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

(l) continue to enforce the automatic stay through the Final Distribution Date;

(m) hear and determine (i) disputes arising in connection with the interpretation, implementation or enforcement of this Plan and the Confirmation Order, or (ii) issues presented or arising under this Plan and Confirmation Order, including disputes among holders and arising under agreements, documents or instruments executed in connection with this Plan, and Confirmation Order;

(n) shorten or extend, for cause, the time fixed for performance of any act or thing under this Plan and the Confirmation Order, on notice or *ex-parte*, as the Bankruptcy Court shall determine to be appropriate;

(o) enter any order, including injunctions, necessary to enforce the title, rights and powers of the Plan Agent, and to impose such limitations, restrictions, terms and conditions on such title, rights and powers as the Bankruptcy Court may deem necessary;

(p) adjudicate any settlements pursuant to Bankruptcy Rule 9019, if required under this Plan and the Confirmation Order and all other matters contained herein;

(q) enter a final decree closing the Chapter 11 Case or convert it to a chapter 7 case; and

(r) enter any orders necessary to effectuate the Confirmation.

16.02 *Failure of Bankruptcy Court to Exercise Jurisdiction*

If the Bankruptcy Court abstains from exercising or declines to exercise jurisdiction over any matter arising under, arising in or related to the Debtor's Estate, including with respect to the matters set forth in Article 16.1, this Article 16 shall not prohibit or limit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such subject matter.

XVII. MISCELLANEOUS PROVISIONS

17.01 *Binding Effect of Plan*

The provisions of this Plan and Confirmation Order shall be binding upon and inure to the benefit of the Debtor, the Estate, the Released Parties, any holder of any Claim or Equity Interest, including without limitation Released Claims, treated herein or any Person named or referred to in this Plan, and each of their respective heirs, executors, administrators, representatives, predecessors, successors, assigns, agents, officers and directors, and, as to the binding effect, to the fullest extent permitted under the Bankruptcy Code and other applicable law, each other Person affected by this Plan and Confirmation Order.

17.02 *Withdrawal of this Plan*

The Debtor reserves the right, at any time prior to the substantial consummation (as that term is defined in section 1101(2) of the Bankruptcy Code) of this Plan, to revoke or withdraw this Plan. If this Plan is revoked or withdrawn or if the Confirmation Date does not occur, this Plan shall be null and void and have no force and effect. In such event, nothing contained herein shall be deemed to constitute a waiver or release of any claims or interests by or against the Proponents or any other Person, constitute an admission of any fact or legal conclusion by the Debtor or any other Person or to prejudice in any manner the rights of the Debtor, the Committee, or any Person in any further proceedings involving the Debtor or the Committee.

17.03 *Final Order*

Except as otherwise expressly provided in this Plan, any requirement in this Plan for a Final Order may be waived by the Debtor and Committee or, after the Effective Date, the Plan Agent and the Oversight Committee upon written notice to the Bankruptcy Court. No such waiver shall prejudice the right of any party in interest to seek a stay pending appeal of any order that is not a Final Order.

17.04 *Modification of this Plan*

The Debtor may alter, amend, or modify this Plan under section 1127 of the Bankruptcy Code or as otherwise permitted at any time before the Confirmation Date. After the Confirmation Date and before the substantial consummation of this Plan, and in accordance with the provisions of section 1127(b) of the Bankruptcy Code and the Bankruptcy Rules, the Debtor and any party in interest may, so long as the treatment of holders of Claims under this Plan is not adversely affected, institute proceedings in the Bankruptcy Court to remedy any defect or omission or to reconcile any inconsistencies in this Plan, the Disclosure Statement, or the Confirmation Order and any other matters as may be necessary to carry out the purposes and

effects of this Plan. However, prior notice of such proceedings shall be served in accordance with Bankruptcy Rule 2002.

17.05 Severability of Plan Provisions

If prior to Confirmation any term or provision of this Plan that does not govern on appeal the treatment of Claims or Interests or the terms is held by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court shall 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 shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial determination and shall 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.

17.06 Governing Law

EXCEPT TO THE EXTENT THAT THE BANKRUPTCY CODE OR BANKRUPTCY RULES OR OTHER FEDERAL LAWS ARE APPLICABLE, AND SUBJECT TO THE PROVISIONS OF ANY OTHER AGREEMENT OR DOCUMENT ENTERED INTO IN CONNECTION WITH THIS PLAN THE CONSTRUCTION, IMPLEMENTATION AND ENFORCEMENT OF THIS PLAN AND ALL RIGHTS AND OBLIGATIONS ARISING UNDER THIS PLAN SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF ARKANSAS, WITHOUT GIVING EFFECT TO CONFLICTS OF LAW PRINCIPLES WHICH WOULD APPLY THE LAW OF A JURISDICTION OTHER THAN THE STATE OF ARKANSAS OR THE UNITED STATES OF AMERICA.

17.07 Notices

Any notice required or permitted to be provided under this Plan shall be in writing and served by either (a) certified mail, return receipt requested, postage prepaid, (b) hand delivery, or (c) reputable overnight delivery service, freight prepaid, to be addressed as follows:

To the Debtor:

Samuel M. Stricklin, Esq.
Lauren C. Kessler, Esq.
BRACEWELL & GIULIANI LLP
1445 Ross Ave., Suite 3800
Dallas, Texas 75201

- and -

W. Jackson Williams, Esq.
WILLIAMS & ANDERSON PLC
111 Center Street, 22nd Floor
Little Rock, AR 72201

To the Committee:

Tyler P. Brown, Esq.
Jason W. Harbour, Esq.
Henry (Toby) P. Long, Esq.
HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219

- and -

Jim Dowden, Esq.
DOWDEN LAW FIRM
212 Center Street, 10th Floor
Little Rock, AR 72201

To the United States Trustee:

Charles Tucker, Esq.
United States Trustee
200 W. Capitol, Ste. 1200
Little Rock, AR 72201

17.08 Filing of Additional Documents

On or before substantial consummation of this Plan, the Proponents shall issue, execute, deliver, and file with the Bankruptcy Court or record any agreements and other documents, and take any action as may be necessary or appropriate to effectuate, consummate and further evidence the terms and conditions of this Plan, including by making such supplemental disclosures or notices as the Proponents deems useful.

17.09 Successors and Assigns

The rights, benefits and obligations of any Person 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 Person.

17.10 Exemption from Certain Transfer Taxes

Pursuant to section 1146(c) of the Bankruptcy Code, the issuance, transfer or exchange of any security or the making or delivery of any instrument of transfer under this Plan may not be taxed under any law imposing a stamp tax, use tax, sales tax or similar tax. Any sale of any

Asset occurring before, after or upon the Effective Date shall be deemed to be in furtherance of this Plan.

17.11 *Preservation of Rights of Setoff*

The Plan Agent, with the approval of the Oversight Committee, may, but shall not be required to, set off against any Claim, and the payments or other distributions to be made pursuant to this Plan in respect of such Claim, claims of any nature whatsoever that the Debtor may have against the holder of such Claims; but neither the failure to do so nor the Allowance of any Claim hereunder shall constitute a waiver or release by the Debtor of any such claim that the Debtor may have against such holder.

17.12 *Defenses with Respect to Unimpaired Claims*

Except as otherwise provided in this Plan, nothing shall affect the rights and legal and equitable defenses of the Plan Agent or the Debtor with respect to any Unimpaired Claim, including all rights in respect of legal and equitable defenses to setoffs or recoupments against Unimpaired Claims.

17.13 *No Injunctive Relief*

No Claim or Interest shall under any circumstances be entitled to specific performance or other injunctive, equitable, or other prospective relief.

17.14 *No Admissions*

Notwithstanding anything herein to the contrary, nothing contained in this Plan shall be deemed an admission by the Proponents with respect to any matter set forth herein, including, without limitation, liability on any Claim or Equity Interest or the propriety of any classification of any Claim or Equity Interest.

17.15 *Entire Agreement*

This Plan sets forth the entire agreement and undertakings relating to the subject matter hereof and supersedes all prior discussions and documents. The Debtor, the Committee, the Plan Agent and the Oversight Committee shall not be bound by any terms, conditions, definitions, warranties, understandings, or representations with respect to the subject matter hereof, other than as expressly provided for herein or as may hereafter be agreed to by the applicable parties in writing.

Submitted by:

BRACEWELL & GIULIANI LLP

/s/ Samuel M. Stricklin

Samuel M. Stricklin

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