

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION — KALAMAZOO

In re:)	
)	
STAMP FARMS, LLC, et al ¹ ,)	Chapter 11
)	Hon. Scott W. Dales
)	Case No. 12-10410
Debtors.)	(Jointly Administered)
)	
)	
)	

JOINT CHAPTER 11 PLAN OF LIQUIDATION AND DISCLOSURE STATEMENT
OF THE DEBTORS AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS

May 9, 2013

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¹ This case is being jointly administered with the following cases: *In re: Stamp Farms Trucking, L.L.C.* (Case No. 12-10411); *In re Stamp Farms Custom AG, L.L.C.* (Case No. 12-10416); and *In re Royal Star Farms, L.L.C.* (Case No. 12-10417).

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Exhibit B	—	Liquidation Analysis

TABLE OF PLAN EXHIBITS¹

Exhibit 3.3.1	—	Liquidating Trust Agreement (forthcoming)
Exhibit 3.4.3	—	Recovery Actions (forthcoming)
Exhibit 4.1	—	Assumed Executory Contracts and Unexpired Leases (forthcoming)

¹ As set forth in Section 3.1 of the Plan, the Plan Exhibits shall be Filed with the Bankruptcy Court no later than five (5) business days following the entry of the Order approving this Disclosure Statement and shall be included in the solicitation materials sent with the approved Disclosure Statement to Creditors entitled to vote on the Plan.

DISCLOSURE STATEMENT³

A. PRELIMINARY STATEMENT AND OVERVIEW OF THE PLAN

Stamp Farms, LLC, Stamp Farms Trucking, LLC, Stamp Farms Custom AG, LLC and Royal Star Farms, LLC, each a Michigan limited liability company (collectively, the "Debtors"), are the debtors and debtors-in-possession in these jointly administered Chapter 11 cases (the "Cases"). As of the date of the Filing of the Chapter 11 petitions of the Debtors, the Debtors commonly owned and collectively operated a grain farming operation in southwestern Michigan which produced commercial corn and other oil seeds from approximately 27,000 acres of leased farmland. The principal offices of the Debtors were located in Decatur, Michigan. The Debtors also provided trucking services and custom farm labor to unrelated third parties, although their primary business was providing these services to Stamp Farms, LLC.

As described more fully in the Declaration of Patrick M. O'Keefe⁴ [Docket No. 24-1] Filed in support of the Debtors' motion for use of cash collateral, through a combination of factors, including poor business judgments, a very poor 2012 harvest due to severe drought conditions, grain inventory shortages resulting from accounting errors and misstatements, inadequate accounting systems and the failure to optimize grain marketing and hedging strategies, the Debtors' operations suffered significant losses and defaulted under their Credit Agreement with Wells Fargo. As a result, the Debtors no longer had access to working capital and had no realistic refinancing opportunities. O'Keefe & Associates determined that the only viable option was an orderly wind down and liquidation of the Debtors to maximize value for their creditors.

The foregoing is offered as a general description of the Debtors' history. It is not intended to be exhaustive or to exclude other factors that may have contributed to the Debtors' financial or operational distress or to the Debtors' eventual bankruptcy Filings.

Upon Filing for Chapter 11 protection on November 30, 2012, the Debtors sought an agreement with Wells Fargo for use of cash collateral to allow the Debtors to engage in an orderly liquidation of their assets. The Debtors and Wells Fargo reached an agreement for the use of cash collateral through March 8, 2013, which agreement was embodied in a Final Order [Docket No. 223]. The Debtors have continued to use a minimal amount of cash collateral after March 8, 2013 with the consent of Wells Fargo.

³ Any terms used in this section but not defined herein shall have the meanings provided for in the Bankruptcy Code, the Plan or the Defined Terms attached hereto as Exhibit A.

⁴ Patrick M. O'Keefe is the managing member of O'Keefe & Associates Consulting, LLC ("O'Keefe & Associates"), which was granted an irrevocable proxy by each of the sole members of the Debtors on November 6, 2012 and which expire on May 6, 2013. In connection with the granting of the irrevocable proxies, each Debtor also elected O'Keefe & Associates as its sole Manager and as its Chief Restructuring Officer.

On December 7, 2012, the United States Trustee Filed its Appointment of Committee of Creditors [Docket No. 61] appointing 5 creditors as the Official Committee of Unsecured Creditors (the "Committee").⁵

The Debtors simultaneously embarked upon an expedited process to market and sell the Debtors' farm assets and assign the Debtors farm leases to a single purchaser in bulk and to sell any remaining assets at auction and/or in private sale transactions (collectively, the "Sales"). These efforts were highly successful (as described in detail below) and have resulted in the sale of substantially all of the Debtors' operating assets, make provisional and final distributions to certain PMSI Secured Creditors and Wells Fargo and payment of approximately \$2.3 million in cure costs for farm lessors. Pursuant to an Order entered [May 10, 2013], any provisional distributions made thereunder to PMSI Secured Creditors must be objected to within 60 days or the distributions become final and not subject to challenge by the Debtors and any subsequent chapter 11 or chapter 7 trustee, if any.

The Debtors have also granted relief from stay to certain purchase money secured creditors with respect to certain assets not included in the Sales and in which the Debtors have no equity. The other remaining assets of the Debtors consist principally of (i) miscellaneous farm equipment and other personal property of *de minimus* value, (ii) claims under policies of crop insurance ("Crop Insurance Claims"), and (iii) Causes of Action, Avoidance Actions, D&O Actions and any other actions of the Debtors (hereinafter collectively and together with the Crops Insurance Claims, the "Recovery Actions").

The Debtors and the Committee jointly propose the Plan as the "Plan Proponent." The Plan provides for the transfer of the Debtors' undistributed and remaining assets, including the Recovery Actions, to a Liquidating Trust to be administered by O'Keefe & Associates as Liquidating Trustee and subject to the control and direction of a 3 member Steering Committee, comprised of one representative selected by each of Wells Fargo and the Committee and one representative selected by them jointly. The Liquidating Trustee, in accordance with the terms of the Plan and the Liquidating Trust Agreement, will liquidate and distributed the Debtors' remaining assets, pursue and prosecute any and all Recovery Actions, and make distributions to Creditors in accordance with the provisions of the confirmed Plan.

As of the date of Filing of the Plan, the Debtors' assets available for distribution to General Unsecured Creditors and to Wells Fargo on account of asserted blanket liens consist primarily of the remaining proceeds from Sales after payments to holders of Allowed Class 1 PMSI Secured Creditors and anticipated recoveries on Recovery Actions and Crop Insurance Claims. As more fully described below and in the Liquidation Analysis at Exhibit B hereto, the Plan Proponent strongly believes that (i) the anticipated proceeds to be collected and distributed by the Liquidating Trustee on behalf of the Liquidating Trust are likely to exceed the proceeds that would be collected in either a Chapter 7 bankruptcy proceeding or outside of bankruptcy if these Chapter 11 cases were dismissed, (ii) distributions to Creditors in all

⁵ The Committee retained Robbins, Salomon and Patt, Ltd. as counsel, whose retention was formally approved by the Bankruptcy Court on March 12, 2013 effective as of December 11, 2012 [Docket No. 582]. On February 21, 2013, the United States Trustee Filed its Amended Appointment of Committee of Creditors [Docket No. 498] reforming the Committee due to resignations.

classes will be made in a significantly shorter period of time through the Plan than would occur in a Chapter 7 case, and (iii) distributions to Creditors in Classes 2 and 3 can be calculated with certainty under the Plan whereas no such certainty exists were the case to be converted to a Chapter 7. In addition, through the Steering Committee to the Liquidating Trust, the Class 3 Creditors will be able to control the manner in which Recovery Actions are prosecuted and resolved whereas they would have no such input or control in a Chapter 7 case.

Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Plan Proponent reserves the right to alter, amend, modify, revoke or withdraw this Plan prior to its substantial consummation.

B. POSTPETITION LITIGATION; ESTATE CLAIMS; OTHER EVENTS OF SIGNIFICANCE

Postpetition, Debtor Stamp Farms initiated an adversary proceeding against Farm Credit Services of Mid-America, PCA seeking to avoid security interests in certain items of the Debtors' farm equipment sold in the Bulk Sale. The Committee has commenced investigations into potential Recovery Actions, including receiving approval from the Bankruptcy Court to conduct Bankruptcy Rule 2004 examinations against various third parties regarding pre-petition transactions involving the Debtors⁶.

Pursuant to the Plan, all rights, interest and standing of the Debtors and/or the Committee to investigate and pursue, whether through negotiation or litigation, any and all Recovery Actions and any other actions of the Debtors, including, but not limited to, those actions identified and set forth on Confirmation Exhibit 3.4.3, are preserved for the benefit of, and assigned to, the Liquidating Trust (except for professional malpractice actions which will remain with the Debtors, but the recoveries shall be paid over to the Liquidating Trust upon receipt by the Debtors).

Events of significance since the Petition Date include: (i) the cessation of the Debtors' farming operations; (ii) the entry of interim and final orders regarding the Debtors' use of cash collateral; (iii) the denial of the motion of the US Trustee seeking the appointment of a Chapter 11 Trustee in these Cases, (iv) the sale of a substantial portion of the Debtors' assets in bulk to a single purchaser (as more fully described below); and (v) the sale of certain remaining irrigation equipment assets by the Debtors as part of a public auction sale (the "Auction Sale" as more fully described below) of certain farmland titled in the name of Michael D. Stamp by Thomas R. Tibble, Chapter 11 Trustee (the "Mike Stamp Trustee") in In re: Michael D. Stamp, Case No. 12-10430 (the "Mike Stamp Case").

During the pendency of these Chapter 11 Cases, the Debtors negotiated with their principal secured creditor, Wells Fargo Bank, for the entry of an interim and a final Order authorizing the use of cash collateral (collectively, the "Cash Collateral Orders") to fund, among other things, the costs and expenses of an orderly wind down and liquidation of the Debtors' assets and payment of United States Trustee fees, all pursuant to a wind down budget for the period from the Petition Date through March 8, 2013. The Cash

⁶ Although this process has only recently been commenced by the Committee, it has already produced recoveries and information regarding several additional potential recoveries.

Collateral Orders granted replacement liens to Wells Fargo Bank in all property of the Debtors' Estates, except Recovery Actions (the "Replacement Liens").

The Debtors reached an agreement for a bulk sale of a substantial portion of the Debtors' operating assets (the "Bulk Sale") to Boersen Farms AG, LLC⁷ (the "Bulk Sale Purchaser"). The Bulk Sale was approved by the Bankruptcy Court on February 7, 2013 and was closed on February 25, 2013. The payment of substantially all of the delinquent rent under the Debtors' farm leases by the Purchaser reduced the potential unsecured claims of farm lease lessors in these Cases by approximately \$2.3 million (the "Farm Lease Cure Payments"). The proceeds of the Bulk Sale were allocated to the various PMSI Secured Creditors whose collateral was sold in the Bulk Sale [Docket No. 544] (the "Bulk Sale Allocations"). Disbursements of the Bulk Sale Allocations are ongoing.⁸

Thereafter, the Debtors arranged for the sale of a substantial portion of their remaining assets, consisting of miscellaneous irrigation equipment, as part of a public auction of approximately 2,200 acres of farmland by the Mike Stamp Trustee on March 27, 2013 (the "Auction Sale"). The proceeds of the Auction Sale were also allocated to the various PMSI Secured Creditors whose collateral was sold in the Bulk Sale (the "Auction Sale Allocations"). The Debtors have not as yet received their share of the proceeds of the Auction Sale attributable to the Debtors' irrigation equipment. When received, these Auction Sale Allocations will be disbursed to the applicable holders of Allowed PMSI Secured Creditors upon entry of appropriate orders by the Bankruptcy Court, with the remainder available for distribution to General Unsecured Creditors and to Wells Fargo on account of its asserted blanket liens.

The Debtors are also in the process of selling the few other remaining items of the Debtors' irrigation equipment in private sale transactions to the owners of the real estate upon which the irrigation equipment is located. In some instances, there are disputes regarding the ownership of the remaining irrigation equipment.⁹ In other instances, the Debtors have determined that a sale of the irrigation equipment will not provide any benefit to the Debtors' Estates, in which event the Debtors have and/or will grant relief from the automatic stay in favor of the applicable holder of the Allowed PMSI Secured Claim.

Prior to the Filing of the Plan, the Bankruptcy Court approved a settlement between the Debtors and Monsanto Company ("Monsanto") pursuant to an Order Granting Motion to Compromise Claims

⁷ The original purchaser was Boersen Farms, Inc., which assigned its rights under the purchase agreement to an affiliated newly formed entity, Boersen Farms AG, LLC, which consummated the Bulk Sale transaction as the Purchaser.

⁸ In some instances, these disbursements have been final. In other instances, due to the time involved for the Debtors and the Committee to fully review all perfection and other issues regarding certain PMSI Secured Claims, provisional disbursements have been made or have been proposed. A hearing on the Debtors' Motion for Approval of Disbursements of Bulk Sale Proceeds [Docket No. 700] has been scheduled for May 10, 2013.

⁹ In some of these instances, third party farm lessors have asserted that they purchased the irrigation equipment from the Debtors pre-petition, although the related PMSI Secured Creditors did not receive a payoff nor release their security interest therein. These transactions may be the subject of further investigation and potential litigation.

Pursuant to Bankruptcy Rule 9019 (Monsanto) [Docket No. 634]. Under the proposed settlement, Monsanto and the Debtors will split equally the proceeds of resale of seed corn the Debtors originally purchased from Monsanto in 2012, with the Debtors' share of the proceeds to be paid directly to Wells Fargo Bank.

The Debtors have filed a Proof of Claim in the Mike Stamp Case in the amount of \$30 million for claims based on numerous actions of Michael D. Stamp that damaged the Debtors, including, (A) breaches of fiduciary duty (including breaches of the duty of loyalty based on self-dealing), (B) fraud, (C) conversion, (D) waste of corporate assets, (E) unjust enrichment, (F) declaration of illegal dividends, (G) fraudulent transfers, (H) constructive trust, (I) resultant trust, (J) breaches of the operating agreements of each of the Stamp Farms Debtors, (K) alter ego, and (L) corporate veil piercing. If the Plan is confirmed, this Proof of Claim will be withdrawn and the Stamp Farms estate will receive no distribution in its capacity as unsecured creditor in the Mike Stamp Bankruptcy Case.

The Debtors have also Filed a motion in the Mike Stamp Case seeking an Order compelling payment to the Debtors for the Debtors' share of the sales proceeds of the Auction Sale pursuant to the Order granting the Trustee's motion to sell assets [Docket No. 166 in the Mike Stamp Case].

The Cash Collateral Order provided that the Committee had until sixty days following the March 12, 2013 entry of the order authorizing the retention of Committee counsel to commence an adversary proceeding or contested matter challenging the stipulations regarding the validity, extent, and priority of the claims and security interests of Wells Fargo Bank. The Committee and Wells Fargo Bank have agreed to entry of a stipulated Order, entered May [10], 2013, extending that deadline to July 12, 2013.

If the Plan is confirmed, all potential claims against Wells Fargo, including any challenges to the validity, extent, or priority of Wells Fargo's Claims shall be deemed settled and released and Wells Fargo shall receive the treatment in respect of its Claims provided in Class 2 of the Plan and have such other rights as are provided it in the Plan (including, without limitation, the right to appoint a member of the Steering Committee to the Liquidating Trust).

C. SUBSTANTIVE CONSOLIDATION OF THE DEBTORS UNDER THE PLAN

The Confirmation of the Plan shall effect the substantive consolidation of the Debtors as follows: (i) the assets of the Debtors shall be treated as a single consolidated estate; (ii) a Claim against any one of the Debtors shall be treated as a single claim against the consolidated estate; (iii) all intercompany Claims, if any,¹⁰ between and among the Debtors will be eliminated for purposes of this Plan so that such Claims shall not be classified, will not vote and will not receive any distribution under this Plan; and (iv) all Claims Filed by the same Creditor against more than one Debtor are eliminated to the extent that such Claims are duplicate Claims; and, (v) the separate limited liability structures of the Debtors shall continue. Substantive consolidation of the Debtors is necessary and appropriate because it is consistent with the way the Debtors conducted an integrated farming business and it is also in the best interest of all creditors, particularly given the commingling of the Debtors' operations and assets without regard to corporate separateness of the

¹⁰ The Debtors are unaware of any significant intercompany Claims.

various Debtors. Substantive consolidation is further warranted given that (i) the Debtors are highly interrelated, (ii) there is the common ownership, operation, and control by Michael D. Stamp and his wife, Melissa S. Stamp, the sole owners of the Debtors, (iii) Stamp Farms conducted a grain farming operation and the operations of the other Debtors were almost exclusively devoted to provide trucking, employee and insurance services to Stamp Farms, (iv) all of the Debtors have substantially identical creditors, (v) the Debtors other than Stamp Farms, L.L.C. have no material assets, and (vi) substantive consolidation will result in a more efficient administration of the remaining assets and distributions to creditors.

D. SUMMARY OF THE DEBTORS' LIABILITIES TO CREDITORS

Type of Claim	Summary of Claim
Secured Claims – PMSI Secured Lenders (Class 1)	As of the date of Filing of this Plan, proofs of claim have been Filed by several secured lenders ("PMSI Lenders") asserting purchase money security interests in specific farm equipment (both irrigation and non-irrigation) of the Debtors. Claims of Secured Creditors, except for Secured Tax Claims, are classified in 13 separate subclasses A through M within Class 1 of the Plan. Each subclass within Class 1 is deemed a separate Class for purposes of voting on the Plan. Allocated portions of the proceeds of the Sales have been and/or will be paid to the PMSI Lenders to the extent they hold properly perfected security interests in assets disposed of in the Sales, but not to exceed the net allocable amounts attributed to the collateral of the PMSI Lenders in the Sales. The Debtors will stipulate to relief from stay with respect to collateral of the PMSI Lenders not sold by the Debtors.
Claims of Wells Fargo Bank (Class 2)	As of the date of Filing of this Plan, Wells Fargo has not Filed any proofs of claim; however, the Debtors scheduled the secured claim of Wells Fargo in their respective Schedule D Filings in the amount of \$63,367,966.50. The Claims of Wells Fargo in Class 2 also include the Allowed Claims of Wells Fargo Equipment Finance, Inc. The Wells Fargo Claims are secured by substantially all personal property assets of the Debtors, the assets of Northstar Grain, LLC, an Affiliate of the Debtors, and a second mortgage on certain parcels of farm land title in the name of Michael D. Stamp which were sold in the Trustee Sale. Wells Fargo received a provisional disbursement of proceeds of the Bulk Sale in the amount of \$3,700,000, which included \$1,830,416 for the total cash collateral usage pursuant to the Cash Collateral Orders. The Plan provides that Wells Fargo will receive the Class 2 Allocation on account of its Allowed Class 2 Claims.
Unsecured Priority Tax Claims (Unclassified)	As of the date of Filing of this Plan, proofs of claim for unsecured Priority Tax Claims have been Filed against Debtor Stamp Farms Trucking, LLC (IRS - \$3,031; Michigan Treasury - \$19,041.68) and Debtor Stamp Farms Custom AG, LLC (IRS - \$24,735).

Unsecured Priority
Claims (Non-tax)
(Unclassified)

The Debtors have no scheduled claims listed on any of their respective Schedule E Filings for non-tax unsecured priority claims. As of the Filing date of this Plan, according to the Claims Registry Summary on PACER in these Chapter 11 Cases, proofs of claim asserting non-tax unsecured Priority Claims (other than Administrative Claims) have been Filed against Debtor Sramp Farms, LLC in the amount of \$57,176 aggregate, which include \$49,961 of claims of farm land lessors which represent cure payments which have been fully paid as part of the lease assumption and assignment process pursuant to the Bulk Sale; however, none of these Claims have been adjudicated.

General Unsecured
Claims
(Class 3)

The Debtors scheduled on Schedule F general unsecured claims in the aggregate amount of \$7,787,007.49, consisting primarily of unpaid trade debts, and not including any Remainder Claims asserted by Wells Fargo Bank or any of the PMSI Secured Lenders. The foregoing does not take into consideration the claims of non-debtor parties to rejected executory contracts and unexpired farm leases, however, a substantial portion of the potential claims for rejected unexpired farm leases have been eliminated as a result of the Farm Lease Cure Payments. As of the date of Filing of this Plan, according to the Claims Registry Summary on PACER in these Chapter 11 Cases, proofs of claim have been Filed asserting unsecured Claims in the approximate aggregate amount of \$2,330,957.13; however, none of these Claims have been adjudicated. These Claims also include claims Filed by lessors under farm land leases which have been paid by the Farm Lease Cure Payments. The eventual allowed amounts for the undersecured, non-priority and non-administrative portions of Claims Filed as secured, priority and/or administrative claims will increase the amount of General Unsecured Claims; however, none of those Claims have been adjudicated. The Plan Proponent currently projects based on available information that total General Unsecured Claims, including Deficiency Claims of holders of Class 1 Secured Claims (excluding, however, any Deficiency Claim of Wells Fargo), will aggregate approximately \$8 million. Wells Fargo's Deficiency Claim is fixed under the Plan at exactly 70% of all Allowed Claims in Class 3. The Class 3 Allocation is \$2,700,000.00 and accordingly the recoveries to holders of Class 3 General Unsecured Claims, excluding any Deficiency Claim of Wells Fargo, is estimated at 10%.

Administrative
Expense Claims
(Unclassified)

As of the date of Filing of this Plan, according to the Claims Registry Summary on PACER in these Chapter 11 Cases, one proof of claim asserting an Administrative Claim has been Filed against Debtor Stamp Farms Trucking, LLC (Michigan Treasury - \$374.50). Additionally, certain Professionals will have Administrative Claims for fees and expenses in addition to retainers and payments made during these Chapter 11 Cases. The Plan Proponent estimates that total remaining fees and expenses due to Professionals for services provided through the Effective Date, net of the Cash Collateral Budgeted Remainder, will not exceed \$695,000. Payments on account of Allowed Administrative Claims are described below in Section 2.1.1.a of the Plan.

Membership Interests (Class 4) The membership interests of the Debtors are titled in the names of Michael D. Stamp (100% sole member of each of Debtors Stamp Farms, LLC, Stamp Farms Trucking, LLC and Stamp Farms Custom AG, LLC) and Melissa S. Stamp (100% sole member of Debtor Royal Star Farms, LLC). Each of the estates of the Debtors is highly insolvent. The membership interests will be cancelled under the Plan and no distributions will be made to the Holders of the membership interests.

As set forth below, the Plan Proponent believes that the proposed terms of this Plan are in the best interest of the Estate and its Creditors, and will result in a greater recovery to Unsecured Creditors than if these Chapter 11 Cases were converted to Chapter 7 cases.

E. IMPLEMENTATION OF THE PLAN THROUGH THE LIQUIDATING TRUST

It is contemplated that the Liquidating Trustee will retain legal counsel and other professionals to represent, consult and assist in the administration of the Liquidating Trust and the pursuit and collection of the Liquidating Trust Assets. As more fully described in the Plan, the Liquidation Administrative Expenses will be paid from the Liquidating Trust Assets. The Liquidating Trust Initial Budget of \$500,000 shall be reserved from the Class 3 Allocation on to cover the expenses of the Liquidating Trust, including professional fees, expert witness fees, and other costs of prosecution of litigation in connection with the Recovery Actions. The Liquidating Trustee shall be entitled to compensation at \$300.00 per hour. Liquidating Trust Administration Expenses shall be paid only from the Liquidating Trust Initial Budget and the proceeds of Recovery Actions. The Plan provides that O'Keefe & Associates shall be the Liquidating Trustee.

The Liquidating Trust shall be managed by the Steering Committee, which shall be comprised of 3 members, one of whom will be selected by the Committee and two of whom will be selected by Wells Fargo.

F. INCOME TAX CONSEQUENCES

Since each of the Debtors is a single member Michigan limited liability company, all income tax consequences of the Plan pass-through to the sole member of each of the Debtors, who are Michael D. Stamp (as to Debtors Stamp Farms, LLC, Stamp Farms Trucking, LLC and Stamp Farms Custom AG, LLC) and Melissa S. Stamp (as to Debtor Royal Star Farms, LLC). As a result, there will be no income tax consequences to the Debtors under the Plan.

G. LIQUIDATION ANALYSIS

Pursuant to the Sale Orders and the related sale agreements, substantially all of the Debtor's assets, have been sold (except for accounts receivable, cash, proceeds of Crop Insurance Claims, other miscellaneous assets of the Debtors, and Recovery Actions). Taking into account the foregoing, a comparison of the assets which the Plan Proponent estimates would be available for distribution to creditors under this Plan versus under a Chapter 7 liquidation proceeding is as set forth on Exhibit B attached hereto.

The Plan Proponent believes the Liquidating Trustee, taking direction from the Liquidating Trust Steering Committee will be more efficient and responsive to creditor interests in the prosecution and collection of the Recovery Actions than would a Chapter 7 Trustee, allowing the Liquidating Trustee to maximize the value of the assets available for distribution. It also provides an estimated 10% recovery to Class 3 General Unsecured Creditors before allocation of net proceeds from Recovery Actions, which represents an amount in excess of that which would likely be recoverable by Class 3 General Unsecured

Creditors absent a settlement with or prosecution of lien avoidance actions against Wells Fargo, which has asserted a blanket security interest in all assets remaining after the payment of Allowed Class 1 PMSI Secured Claims, leaving nothing for Class 3 General Unsecured Claims).

The Plan Proponent therefore believes that acceptance of the Plan is in the best interests of the Debtors' Estates, as it will allow for the greatest possible recovery for creditors. The Plan provides further certainty that funds allocated to prosecution of Recovery Actions will not exceed \$500,000.00, which is all the Plan has allocated to cover the expenses of the Liquidating Trust. No such assurances exist in respect of a chapter 7 trustee prosecuting similar actions. In addition, 3% of all Recovery Actions would be retained by a chapter 7 trustee whereas no such contingency percentages will be payable to the Liquidating Trustee.

H. LEGAL REQUIREMENTS

(i) Voting Procedures

Under the Bankruptcy Code, the only classes that are entitled to vote to accept or reject a plan are classes of claims, or equity interest, that are impaired under the plan. Accordingly, classes of claims or interests that are not impaired are not entitled to vote on the Plan.

Creditors that hold claims in more than one impaired class are entitled to vote separately in each class. Such a creditor will receive a separate ballot for all of its claims in each class (in accordance with the records of the Clerk of the Court) and should complete and sign each ballot separately.

The following chart reflects the Classes of Claims that will be entitled to vote on the Plan:

<u>Class and Description</u>	<u>General Treatment</u>
Class 1 – PMSI Secured Claims (classified within each of Subclasses 1A through 1M of the Plan)	Unimpaired – nonvoting, except that Unsecured Deficiency Claims asserted by each holder of a Class 1 Secured Claim shall be eligible to vote a stipulated Deficiency Claim in Class 3 as set forth below.
Class 2 – Wells Fargo Secured Claims	Impaired – eligible to vote on the Plan.
Class 3 – General Unsecured Claims	Impaired – eligible to vote on the Plan.
Class 4 - Membership Interests	Impaired - nonvoting

For voting purposes, the following holders of Class 1 PMSI Claims shall be permitted to vote in Class 3 in the following amounts: (i) AGCO Leasing, LLC - \$175, 747; (ii) Ally Financial, Inc. - \$10,662; (iii) Deere & Company - \$226,530; (iv) Ford Motor Credit Company LLC - \$79,481; (v) Huntington National Bank - \$12,533; (vi) Irrigation Finance Solutions, LLC - \$168,250; and (vii) Key Equipment Finance, Inc. - \$913,538.

Votes on the plan will be counted only with respect to the following Claims: (a) Claims that are listed on the Debtor's Schedules of Assets and Liabilities other than as disputed, contingent or unliquidated; or (b) Claims for which a proof of claim was Filed on or before the bar date set by the Court for the Filing of proofs of claim (except for certain claims expressly excluded from that bar date or which are allowed by Court order). However, any vote by a holder of a Claim will not be counted if such claim has been

disallowed or is the subject of an unresolved objection, absent an order of the Court allowing such claim for voting purposes pursuant to 11 U.S.C. § 502 and Bankruptcy Rule 3018.

Voting on the plan by each holder of a claim or interest in an impaired class is important. After carefully reviewing the plan and disclosure statement, each holder of such a claim or interest should vote on the enclosed ballot either to accept or to reject the plan, and then return the ballot by mail to the attorney for the Committee by the deadline previously established by the court.

Any ballot that does not appropriately indicate acceptance or rejection of the plan will not be counted.

A ballot that is not received by the deadline will not be counted.

If a ballot is damaged, lost, or missing, a replacement ballot may be obtained by sending a written request to the attorney for the Committee.

(ii) Acceptance

The Bankruptcy Code defines acceptance of a plan by an impaired class of claims as acceptance by the holders of at least two-thirds in dollar amount, and more than one-half in number, of the claims of that class which actually cast ballots. The Bankruptcy Code defines acceptance of a plan by an impaired class of equity interests as acceptance by holders of at least two-thirds in number of the equity interests of that class that actually cast ballots. If no creditor or interest holder in an impaired class votes, then that class has not accepted the plan.

(iii) Confirmation

11 U.S.C. § 1129(a) establishes conditions for the confirmation of a plan. These conditions are too numerous and detailed to be fully explained here. Parties are encouraged to seek independent legal counsel to answer any questions concerning the Chapter 11 process.

Among the several conditions for confirmation of a plan under 11 U.S.C. §1129(a) are:

- (1) At least one class of impaired creditors must accept the plan, as described in the paragraph (ii), above.
- (2) Either each holder of a claim or interest in a class must accept the plan, or the plan must provide at least as much value as would be received upon liquidation under Chapter 7 of the Bankruptcy Code.

(iv) Modification

The Plan Proponent reserves the right to modify or withdraw the plan at any time before confirmation.

(v) Effect of Confirmation

If the plan is confirmed by the Court, its terms are binding on the Debtors, all creditors, interest holders and other parties in interest, regardless of whether they have accepted the Plan, except as provided in the Plan

I. APPROVAL AND SUPPORT OF PLAN BY PLAN PROPONENT; CHANGE IN PLAN PROPONENT

The Debtors and the Committee, as the Plan Proponent, approve and support the Plan; and, agree that if any change occurs in the current management of the Debtors, then at the election of the Committee, the Debtors shall be deemed deleted as a Plan Proponent and in addition, if appropriate in the discretion of the Committee, the Committee shall have the right to File an amended plan as the sole Plan Proponent.

**CHAPTER 11 PLAN OF LIQUIDATION
OF THE DEBTORS AND THE OFFICIAL COMMITTEE
OF UNSECURED CREDITORS**

**ARTICLE I
DEFINED TERMS, RULES OF INTERPRETATION
AND COMPUTATION OF TIME**

1.1 Defined Terms

As used in the Plan, capitalized terms have the meanings set forth in Exhibit A attached hereto. Any term that is not otherwise defined in this Plan, but that is used in the Bankruptcy Code or the Bankruptcy Rules, will have the meaning given to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable.

1.2 Rules of Interpretation and Computation of Time

1.2.1 Rules of Interpretation

For purposes of this Plan, unless otherwise provided in this Plan: (a) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, shall include both the singular and the plural; (b) unless otherwise provided in this Plan, any reference in this Plan to a contract, instrument, release, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions; (c) any reference in this Plan to an existing document or schedule Filed or to be Filed means such document or schedule, as it may have been or may be amended, modified, or supplemented pursuant to this Plan; (d) any reference to an entity or person as a Holder of a Claim includes that entity's or person's successors and assigns; (e) all references in this Plan to Sections, Articles, and Exhibits are references to Sections, Articles, and Exhibits of or to this Plan; (f) the words "in this Plan", "hereunder," and "hereto" refer to this Plan in its entirety rather than to a particular portion of this Plan; (g) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of this Plan; (h) subject to the provisions of any contract, certificates of formation, limited liability operating agreement, instrument, release, or other agreement or document entered into in connection with this Plan, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, federal law, including the Bankruptcy Code and Bankruptcy Rules; and (i) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply.

1.2.2 Computation of Time

In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) will apply.

ARTICLE II

CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS

All Claims, except Administrative Claims, statutory fees payable pursuant to 23 U.S.C. § 1930 and Priority Claims, are placed in the following Classes. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Statutory Fees and Priority Claims, as described in Section 2.1, are not classified for purposes of voting or receiving distributions under the Plan and thus are excluded from the following Classes (all such claims are instead treated separately pursuant to the terms set forth in 2.1 of this Article II). A Claim is classified in a particular Class only to the extent that the Claim qualifies within the description of that Class and is classified in other Classes to the extent that any remainder of the Claim qualifies within the description of such other Classes.

2.1 Unclassified Claims and Interests

2.1.1 Payment of Administrative Claims

a. Administrative Claims in General

Unless an order of the Bankruptcy Court provides otherwise or the holder of an Allowed Administrative Claim agrees to less favorable treatment, each holder of an Allowed Administrative Claim will receive, in full satisfaction of its Allowed Administrative Claim, Cash equal to the amount of such Allowed Administrative Claim on the later of (i) the Effective Date, (ii) the date on which such Administrative Claim becomes an Allowed Administrative Claim, or (iii) such other later date as the holder of such Administrative Claim shall agree. Allowed Administrative Claims shall be funded in part first from the Cash Collateral Budgeted Remainder, if any, which shall be released to the Liquidating Trust by Wells Fargo within 5 business days following the Effective Date and held in reserve by the Liquidating Trust for payment of Allowed Administrative Claims. All remaining Allowed Administrative Claims, up to \$695,000 in the aggregate shall be reserved from the Class 2 Allocation and paid *pro rata*. Any unpaid Allowed Administrative Claims in excess thereof, but not to exceed \$100,000 in the aggregate, shall be paid their *pro rata* share of that excess from the Class 3 Allocation. Any remaining unpaid Allowed Administrative Claims thereafter shall be paid only from net proceeds received by the Liquidating Trust from prosecution of Recovery Actions.

b. Statutory Fees

Each holder of an Allowed Administrative Claim for fees payable pursuant to 28 U.S.C. § 1930 will be paid as provided in Section 2.1.1(a).

c. Bar Dates for Administrative Claims

(i) General Administrative Claim Bar Date Provisions

Any Administrative Claim, other than Fee Claims and US Trustee Fees, is barred unless a Claim has been Filed on or prior to the Administrative Claims Bar Date, or the Bankruptcy Court has otherwise previously entered an order allowing such Claim. Any other requests for the payment or allowance of an Administrative Claim (other than the Fee Claims, dealt with in Section 2.1.1(c)(ii) below), shall be deemed discharged and barred forever and shall be unenforceable unless a request for the payment of such an Administrative Claim is Filed and served upon the Committee, if prior to the Effective Date and dissolution of the Debtor, and the Liquidating Trustee on or before the date that is thirty (30) days after the Effective Date.

(ii) Bar Dates for Professional Compensation

Unless previously ordered otherwise by the Bankruptcy Court, all Fee Claims by Professionals prior to the Effective Date shall be subject to final allowance or disallowance upon application to the Bankruptcy Court pursuant to sections 328, 330 or 503(b)(4) of the Bankruptcy Code. Final applications for allowance of Fee Claims for services rendered in connection with the Chapter 11 Case shall be Filed with the Bankruptcy Court no later than 90 days after the Effective Date. Objections to any Fee Claims must be Filed and served on the Notice Parties, listed on Exhibit B, attached hereto, and the requesting party in accordance with applicable Bankruptcy Rules.

2.1.2 Payment of Priority Claims

a. Priority Claims

Each holder of an Allowed Priority Claim will be paid after payment in full of all Administrative Expense Claims and after the Liquidating Trustee shall have made an adequate provision for payment of all Allowed Secured Claims and Disputed Secured Claims from and after the Effective Date until paid in full.

b. Other Provisions Concerning Treatment of Priority Claims

Notwithstanding the provisions of Section 2.1.2(a), the holder of an Allowed Priority Tax Claim will not be entitled to receive any payment on account of any penalty arising with respect to or in connection with the Allowed Priority Tax Claim. Any such Claim or demand for any such penalty will be subject to treatment in Class 5 (General Unsecured Claims), such penalty amounts is subordinated to Class 5 Claims pursuant to an Order of the Bankruptcy Court.

The holder of an Allowed Priority Tax Claim will not assess or attempt to collect such penalty from the Debtor, the Liquidating Trust or from the Liquidating Trust Assets (other than as a holder of a Class 5 Claim).

2.2 Classified Claims and Interests

Claims and Interests shall be classified and receive treatment under the Plan as follows:

2.2.1 PMSI Secured Claims (Class 1) – Unimpaired.

Claims of Secured Creditors, except for Secured Tax Claims, are classified in 15 separate subclasses A through N within Class 1 of the Plan. Each subclass within Class 1 is deemed a separate Class for purposes of voting on the Plan. The 15 subclasses within Class 1 (with the Debtors' estimate of the amount of the secured claim of each Secured Creditor as of the date of this Plan) are as follows.

Class 1A	AGCO Leasing, LLC - \$-0-
Class 1B	Ally Financial, Inc. - \$16,285
Class 1C	Deere & Company - \$102,596
Class 1D	Farm Credit Leasing Services Corporation - \$58,868
Class 1E	First Farmers Bank & Trust - \$1,604,428
Class 1F	Farm Credit Services of Mid-America, PCA - \$-0-
Class 1G	Ford Motor Credit Company LLC - \$92,728

Class 1H	Huntington National Bank - \$90,011
Class 1I	Industrial Leasing, LLC - \$-0-
Class 1J	Irrigation Finance Solutions, LLC - \$354,907
Class 1K	Key Equipment Finance, Inc.- \$955,979
Class 1L	KeyBank National Association - \$-0-
Class 1M	Mercedes-Benz Financial Services USA LLC - \$-0-

Except as set forth herein, Allowed Class 1 Secured Claims in each subclass shall receive the following treatment:

Except to the extent that a Holder of an Allowed Class 1 Secured Claim has agreed with the Debtors (before the Effective Date) or the Liquidating Trustee (after the Effective Date) to a different treatment of such Claim, and only to the extent that any such Allowed Class 1 Secured Claim has not been paid in full prior to the Effective Date from the Sale Proceeds or otherwise, in full and final satisfaction, settlement, release, and discharge of each Allowed Class 1 Secured Claim, each such Holder, at the option of the Liquidating Trustee, shall (i) be paid in full in Cash, but not to exceed the net allocable amounts attributed to the collateral of the PMSI Lenders in the Sales, (ii) receive the collateral securing its Allowed Class 1 Secured Claim (plus post-petition interest and other charges, but only to the extent required and Allowed under Bankruptcy Code section 506(b)), or (iii) receive other treatment rendering such Claim Unimpaired in accordance with section 1124 of the Bankruptcy Code, in each case on the later of the Effective Date and the date such Class 1 Secured Claim becomes an Allowed Class 1 Secured Claim, or as soon thereafter as is reasonably practicable. In the event the Debtors or the Liquidating Trustee treat a Claim under clause (i) of this Section, the Liens securing such Allowed Class 1 Secured Claim shall be deemed released, terminated and extinguished, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order or rule or the vote, consent, authorization or approval of any Person. The Debtors and the Liquidating Trustee specifically reserve the right to challenge the validity, nature, and perfection of, and to avoid pursuant to the provisions of the Bankruptcy Code and other applicable law, any purported Liens relating to the Class 1 Secured Claims. If an Allowed Class 1 Secured Claim exceeds the value of the collateral that secures such Allowed Class 1 Secured Claim, the Holder of such Allowed Class 1 Secured Claim will have a Class 3 General Unsecured Claim on account of such Deficiency Claim.

The following subclass within Class 1 shall receive treatment different from the foregoing general treatment of Allowed Class 1 Secured Claims:

- Class 1E (First Farmers Bank & Trust) shall receive no distributions on account of its Allowed Class 1 Secured Claims except to the extent that its Claims in the Mike Stamp Bankruptcy Case (which includes amounts represented by the Class 1E Claim) are not paid in full.

Each subclass within Class 1 is Unimpaired and is deemed to accept this Plan on account of its Allowed Secured Claim.

2.2.2 Wells Fargo Bank Claims (Class 2) – Impaired.

The Class 2 Claim consists of all the Allowed Claims of Wells Fargo Bank and Wells Fargo Equipment Finance, Inc., both secured and unsecured. Wells Fargo shall be deemed under the Plan to have an Allowed Secured Claim in an amount equal to the Class 2 Allocation and an Allowed Class 3 General Unsecured Claim in the amount representing exactly 70% of all Allowed General Unsecured Claims in Class 3. All actual or potential Recovery Actions against Wells Fargo of any kind shall be deemed settled and completely released as of the Effective Date. In addition, within ten (10) business days after the Effective Date, the Debtors shall withdraw all Proofs of Claim Filed in the Mike Stamp Bankruptcy Case. Wells Fargo shall receive the following distributions under the Plan on account of its Allowed Secured Claims and Allowed Unsecured Claims:

(A) Wells Fargo shall receive the Class 2 Allocation in full satisfaction of its Allowed Secured Claims;

(B) Wells Fargo shall hold an Allowed Class 3 General Unsecured Claim in an amount representing exactly 70% of all Allowed Claims in Class 3. Accordingly, Wells Fargo shall be entitled to a 70% share of the Class 3 Allocation.

2.2.3 General Unsecured Claims (Class 3) – Impaired.

Class 3 Claims shall consist of all Allowed General Unsecured Claims. Holders of all Allowed Class 3 General Unsecured Claims, except Wells Fargo, shall share Pro Rata in the 30% of the Class 3 Allocation. Wells Fargo shall receive 70% of the Class 3 Allocation.

If the holders of Allowed Claims in Class 3 do not accept the Plan, then the Plan Proponent shall seek confirmation of the Plan with regard to Class 3 under Bankruptcy Code section 1129(b).

2.2.4 Membership Interests (Class 4) – Impaired.

Class 4 Interests shall consist of the Allowed Interests of each of the Debtors. The Interests in each of the Debtors shall be cancelled. Distributions, if any, shall be made to the Holders of Allowed Class 4 Interests only after payment in full of all Administrative Claims, Priority Claims, Class 1 Claims, the Class 2 Claim and Class 3 Claims with Interest from the Effective Date.

2.3 Special Provisions Relating to the Rights of Setoff of Creditors

Nothing in this Plan shall expand or enhance a creditor's right of setoff, which shall be determined as of the Petition Date. Nothing in this Plan is intended to, or shall be interpreted to, approve any creditor's effectuation of a postpetition setoff without the prior written consent of the Committee, unless prior Bankruptcy Court approval has been obtained.

ARTICLE III MEANS FOR IMPLEMENTATION OF THIS PLAN

3.1 Plan Exhibits

All Plan Exhibits to this Plan shall be Filed with the Bankruptcy Court no later than 10 days before the Confirmation Hearing.

3.2 Dissolution of the Debtor

As of the later of the Effective Date or upon completion of the transfer of the Liquidating Trust Assets to the Liquidating Trust, the Debtors shall be deemed dissolved. Any final reporting or filing requirements shall become the obligation of the Liquidating Trustee.

3.3 Liquidating Trust

3.3.1 Liquidating Trust Generally

On or prior to the Effective Date, the Liquidating Trust shall be established pursuant to the Liquidating Trust Agreement for the purpose of liquidating remaining Assets and distributing the proceeds thereof to creditors in accordance with the terms of the Plan. The Liquidating Trust Agreement will establish the Liquidating Trust. On the date the Confirmation Order becomes a Final Order, the Liquidating Trust Agreement, and which is incorporated into this Plan, shall be deemed effective and approved by the Bankruptcy Court. Subject to and to the extent set forth in the Plan, the Confirmation Order, the Liquidating Trust Agreement or other agreement (or any other order of the Bankruptcy Court entered pursuant to or in furtherance hereof), the Liquidating Trust (and the Liquidating Trustee) shall be empowered to: (a) affect all actions and execute all agreements, instruments and other documents necessary to implement the Liquidating Trust provisions of the Plan; (b) accept, preserve, receive, collect, manage, invest, supervise, prosecute, settle and protect the Liquidating Trust Assets (directly or through its professionals, in accordance with the Plan); (c) sell, liquidate, transfer, distribute or otherwise dispose of the Liquidating Trust Assets (directly or through its professionals) or any part thereof or any interest in this Plan upon such terms as the Liquidating Trustee determines to be necessary, appropriate or desirable; (d) calculate and make distributions to holders of Allowed Claims pursuant to the procedures for allowing Claims and making distributions prescribed in the Plan; (e) comply with the Plan and exercise the Liquidating Trustee's rights and fulfill its obligations thereunder; (f) review, reconcile or object to Claims and resolve such objections as set forth in the Plan; (g) pursue the Recovery Actions transferred to the Liquidating Trust; (h) retain and compensate professionals to represent the Liquidating Trustee with respect to his responsibilities; (i) establish and maintain a Disputed Claims Reserve; (j) file appropriate Tax returns and other reports on behalf of the Liquidating Trust and pay Taxes or other obligations owed by the Liquidating Trust; (k) exercise any investigative and administrative powers and authority available to the Debtors or a trustee of the Estate in regards to the Liquidating Trust Assets, including, but not limited to, examinations of parties in interest under Bankruptcy Rule 2004; (l) exercise such other powers as may be vested in the Liquidating Trustee under the Liquidating Trust Agreement or the Plan, or as deemed by the Liquidating Trustee to be necessary and proper to implement the provisions of the Plan and the Liquidating Trust Agreement; (m) object to the amount of any Claim on any Schedule if the Liquidating Trustee determines in good faith that the Claim is invalid or has previously been paid or satisfied; (n) pay any and all residual statutory fees of the Debtors as provided in Section 2.1.1(b) of this Plan; and (o) dissolve the Liquidating Trust in accordance with the terms of the Liquidating Trust Agreement.

Notwithstanding anything to the contrary in this Section, the Liquidating Trust's primary purpose is liquidating the Assets transferred to it by the Debtors and making distributions of the assets of the Liquidating Trust to holders of Allowed Claims and Interests.

3.3.2 Funding of and Transfer of Assets into the Liquidating Trust

a. On the Effective Date, all of the Liquidating Trust Assets shall be transferred to the Liquidating Trust. The Liquidating Trust Assets shall vest in the Liquidating Trust on the Effective Date free and clear of all Claims, liens, encumbrances, charges and other interests, except as otherwise provided in this Plan. All property held for distribution pursuant to this Plan shall be held by the Liquidating Trust in trust for the Holders of Allowed Claims and Interests and shall not be deemed property

of the Debtor. Nothing in this Plan, however, shall preclude payment of: (i) statutory fees under 28 U.S.C. §1930 to the extent unpaid on the Effective Date; and (ii) the Liquidation Administrative Expenses in accordance with this Plan and the Liquidating Trust Agreement from the Liquidating Trust Assets. The are authorized to take such steps as may be necessary or appropriate to confirm such transfer and contribution of the Liquidating Trust Assets to the Liquidating Trust, subject to oversight from the Liquidating Trustee.

b. The Liquidating Trustee shall have the authority to create sub-accounts or sub-trusts within the Liquidating Trust, and into which the Liquidating Trustee may deposit any Unliquidated Assets, including real or personal property pending its liquidation. The Liquidating Trustee, as trustee of such sub-accounts or sub-trusts may hold legal title to such property. Once liquidated, any Cash proceeds of such sub-accounts or sub-trusts shall be deposited directly into the primary trust account.

c. The transfer of the assets in which any Secured Creditor holds any security or other interest to the Liquidating Trust shall not be construed to destroy, limit, or enlarge any such interest the Secured Creditor or the Debtors may have in the such assets or the proceeds of such assets. Any such interests shall be determined in accordance with the terms of this Plan or further Bankruptcy Court Order.

d. The act of transferring assets and rights to the Liquidating Trustee of the Liquidating Trust, as authorized by the Plan and Confirmation Order, shall not be construed to destroy or limit any such assets or rights or be construed as a waiver of any right, and such rights may be asserted by the Liquidating Trust as if the asset or right was still held by the Debtor.

e. The Liquidating Trustee shall have standing, in all respects, to enforce all rights of the Debtor, including but not limited to those set forth in the Plan, the Liquidating Trust Agreement and the Bankruptcy Code.

f. The Liquidating Trust shall be funded initially in the amount of \$500,000.00 through the Liquidating Trust Initial Budget, which sums shall be reserved from the Class 3 Allocation.

3.3.3 Liquidating Trustee

a. The Liquidating Trustee shall be O'Keefe & Associates.

b. All powers, rights and responsibilities of the Liquidating Trustee shall be as specified in the Plan and the Liquidating Trust Agreement. Other rights and duties of the Liquidating Trustee and the beneficiaries of the Liquidating Trust shall be as set forth in the Liquidating Trust Agreement.

c. As provided in the Liquidating Trust Agreement, the Liquidating Trustee shall have the authority to retain certain professionals to assist in performing his duties and obligations as trustee of the Liquidating Trust.

d. As provided in the Liquidating Trust Agreement, the Liquidating Trust shall be managed by the Steering Committee, which shall be comprised of 3 members, one of whom shall be selected by the Committee, one by Wells Fargo, and one jointly by the Committee and Wells Fargo.

3.3.4 Compensation

As provided in the Liquidating Trust Agreement, the Liquidating Trustee shall be entitled to compensation at \$300.00 per hour. Liquidating Trust Administration Expenses shall be paid only from the Liquidating Trust Initial Budget and the proceeds of Recovery Actions. The Liquidating Trustee shall pay

such Liquidation Administrative Expenses upon receipt of any invoice therefor without the need for further order of the Bankruptcy Court. No payments of Liquidation Trust Administration Expenses shall be made from distributions otherwise allocated to Creditors under Plan.

3.3.5 Liquidating Trust Agreement

The Liquidating Trust Agreement shall be substantially in the form provided as Confirmation Exhibit 3.3.1.¹¹ In the event of any discrepancies between the Liquidating Trust Agreement and this Plan, the terms of the Plan shall control.

3.3.6 Claims Against the Liquidating Trust

All persons having any claim against the Liquidating Trustee or the Liquidating Trustee's professionals in connection with the Liquidating Trustee's performance of his rights, powers and duties shall look only to the Recovery Actions for payment or satisfaction thereof.

3.3.7 Tax Treatment

The Liquidating Trust is intended to be treated for U.S. federal income tax purposes in part as a liquidating trust described in Treasury Regulation § 301.7701-4(d) taxed pursuant to Section 641 et seq. of the Internal Revenue Code or as disputed ownership funds described in Treasury Regulation § 1.468B-9. For federal income tax purposes, the transfer of assets by the Debtors to the Liquidating Trust will be treated in part as the transfer of assets by the Debtors to the holders of Allowed Claims, subject to any liabilities of the Debtors or the Liquidating Trust payable from the proceeds of such assets, followed by the transfer of such assets (subject to such liabilities) by such holders to the Liquidating Trust in exchange for interests in the trust. The holders of Allowed Claims will be treated for federal income tax purposes as the grantors and deemed owners of their respective shares of the assets in the Liquidating Trust (subject to such liabilities), depending on their rights to distributions under the Plan. As grantors and deemed owners of such assets, the holders of Allowed Claims will be required to include in income their respective shares of the income, deductions, gains, losses and credits attributable to such assets. The holders of Allowed Claims will be required to use the values assigned to such assets by the Liquidating Trustee for all federal tax purposes, including the recognition of income, deduction, gain or loss with respect to their Allowed Claims and any gain or loss recognized on the subsequent disposition of an asset in which the holder holds an interest.

The Liquidating Trust Agreement will contain certain provisions to comply with IRS guidance for trusts treated as liquidating trusts. Among other things, the agreement will: (a) require that the Liquidating Trust terminate no later than five years after the Effective Date, subject to extension with Bankruptcy Court approval, (b) limit the Liquidating Trustee's investment powers, (c) limit the business operations carried on

¹¹ As set forth in Section 3.1 of this Plan, Confirmation Exhibit 3.3.1, the Liquidating Trust Agreement shall be Filed with the Bankruptcy Court no later than five (5) days after entry of the Order approving the Disclosure Statement and shall be included in the solicitation materials sent with the approved Disclosure Statement to Creditors entitled to vote on the Plan.

by the Liquidating Trust to activities reasonably necessary to and consistent with the trust's liquidating purpose, (d) prohibit the Liquidating Trust from receiving or retaining Cash or Cash equivalents in excess of an amount reasonably necessary to meet Claims and contingent liabilities or to maintain the value of the trust assets during liquidation, and (e) distribute at least annually to the holders of Allowed Class 3 General Unsecured Claims the Liquidating Trust's net income and the net proceeds from the sale of Liquidating Trust Assets in excess of an amount reasonably necessary to meet senior Claims and contingent liabilities (including Disputed Claims) and to maintain the value of the Liquidating Trust Assets.

Liquidating Trust Assets reserved for holders of Disputed Claims will be treated as one or more Disputed Claims reserves for tax purposes, which will be subject to an entity-level Tax on some or all of their net income or gain. No holder of a Claim will be treated as the grantor or deemed owner of an asset reserved for Disputed Claims until such holder receives or is allocated an interest in such asset.

The Liquidating Trustee will file all Tax returns on a basis consistent with the treatment of the Liquidating Trust in part as a liquidating trust (and grantor trust pursuant to Treasury Regulation § 1.671-1(a)) and in part as one or more Disputed Claims reserves taxed as discrete trusts or disputed ownership funds, and will pay all Taxes owed from Liquidating Trust assets, provided that income taxes of the Disputed Claims reserves shall only be paid from the Liquidating Trust assets allocable to the Disputed Claims reserves.

3.3.8 Effectuating Documents; Further Transactions; Exemption from Certain Transfer Taxes

The Liquidating Trustee, on behalf of the Debtors, will be authorized to execute, deliver, file or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan. Pursuant to section 1146(a) of the Bankruptcy Code, the following will not be subject to any stamp Tax, real estate transfer Tax, mortgage recording Tax, sales or use Tax or similar Tax: (a) the creation of any mortgage, deed of trust, lien or other security interest; (b) the making or assignment of any lease or sublease; or (c) the making or delivery of any deed or other instrument of transfer under, in furtherance of or in connection with the Plan, including any merger agreements, agreements of consolidation, restructuring, disposition, liquidation or dissolution, deeds, bills of sale or assignments executed in connection with any of the foregoing or pursuant to the Plan.

3.3.9 Disposition of Assets by Liquidating Trust

On the Effective Date, all of the Liquidating Trust Assets shall be deemed transferred to the Liquidating Trust. The Liquidating Trustee may conduct any sales or liquidations of Unliquidated Assets from the Liquidating Trust in any manner authorized under the terms of this Plan, the Liquidating Trust Agreement or otherwise approved by the Bankruptcy Court.

3.3.10 Settlement of Recovery Actions and Disputed Claims

The Liquidating Trustee may settle, compromise, abandon or withdraw any Recovery Actions, on any grounds or terms he deems reasonable, without further order of the Bankruptcy Court. The Liquidating Trustee may settle or compromise any Disputed Claims on any terms he deems reasonable, without further order of the Bankruptcy Court.

3.3.11 Additional Obligations of Liquidating Trustee

The Liquidating Trustee shall comply with all post-confirmation obligations imposed by the Bankruptcy Code and the United States Trustee's Operating Instructions and Reporting Requirements,

including the timely payment of United States Trustee quarterly fees based upon disbursements from the Liquidating Trust, and the Filing with the Court, with service upon the United States Trustee, of monthly disbursement reports, until such time as the case is closed, dismissed or converted

3.4 Special Provisions

3.4.1 Liquidation of Tort Claims

All Tort Claims will be liquidated, determined or otherwise resolved in accordance with the provisions of section 502(c) of the Bankruptcy Code and will be subject to the Claims allowance process set forth in the Plan. Any unliquidated Tort Claims that are also Disputed Insured Claims may elect to proceed solely against the applicable insurance or seek relief from the automatic stay pursuant to section 362 of the Bankruptcy Code and seek that the Tort Claim be liquidated by the Bankruptcy Court.

3.4.2 Limitations on Amounts to Be Distributed to Holders of Allowed Insured Claims

Distributions under the Plan to each holder of an Allowed Insured Claim will be in accordance with the treatment provided under the Plan for the Class in which such Allowed Insured Claim is classified, but solely to the extent that such Allowed Insured Claim is not satisfied from proceeds payable to the holder thereof under any pertinent insurance policies and applicable law. Nothing in this Section 3.4.2 or Section 3.4.1 constitutes a waiver of any claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities that any entity may hold against any other entity, including the Debtor's insurance carriers.

3.4.3 Preservation of Recovery Actions

On the Effective Date, the Debtors will transfer to the Liquidating Trust, as the representative of the Estate under section 1123(b) of the Bankruptcy Code, all Recovery Actions, including but not limited to those items identified on Confirmation Exhibit 3.4.3. Any and all Recovery Actions are hereby deemed assigned to the Liquidating Trust on the following terms and conditions: (i) the proceeds of all such Recovery Actions shall inure to the benefit of all unpaid holders of Administrative and Priority Claims whose Claims are not otherwise projected to be paid under the Plan and thereafter for the benefit of Class 3 General Unsecured Creditors, and (ii) the Liquidating Trust Administration Expenses shall be payable exclusively from the Liquidating Trust Initial Budget and the net proceeds from Recovery Actions before payments to holders of Claims payable under the Plan.

Notwithstanding anything contained in this Section 3.4.3 or this Plan to the contrary, the Liquidating Trustee may assert any Recovery Action, including any Avoidance Action, as a defense where applicable. As of the Effective Date, the Liquidating Trustee shall control the privilege rights of the Debtors, including but not limited to the attorney/client privilege, related to the Recovery Actions.

3.4.4 Comprehensive Settlement of Claims and Controversies

Pursuant to Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided under the Plan, the provisions of the Plan will constitute a good faith compromise and settlement of all claims or controversies relating to the rights that a holder of a Claim or Interest may have with respect to any Allowed Claim or Allowed Interest or any distribution to be made pursuant to the Plan on account of any Allowed Claim. The entry of the Confirmation Order will constitute the Bankruptcy Court's approval, as of the Effective Date, of the compromise or settlement of all such Claims or Interests or controversies and the Bankruptcy Court's finding that such compromise or settlement is in the best interests of the

Debtors, their Estates and their respective property and Claim and Interest holders and is fair, equitable and reasonable.

3.4.5 Sales Proceeds Distribution

Nothing herein shall be construed as a determination of the respective rights of any Secured Creditor in any of the Sale Proceeds, nor shall give the Liquidating Trustee the right, power or authorization to distribute any of the Sale Proceeds absent further Bankruptcy Court Order determining the distribution scheme.

ARTICLE IV EXECUTORY CONTRACTS AND UNEXPIRED LEASES

4.1 Assumption and Assignment

Each Executory Contract, Unexpired Lease or other agreement listed on Confirmation Exhibit 4.1 has been or will be assigned to the Purchaser prior to the Effective Date. All other Executory Contracts, Unexpired Leases or other agreements are deemed rejected, unless otherwise provided through an Order of the Bankruptcy Court.

4.2 Cure of Defaults

Upon information and belief, all Cure Amount Claims have been satisfied or are in the process of being satisfied by the Purchaser in accordance with the terms and procedures of the Sale and related process.

4.3 Bar Date for Rejection Damage Claims

Claims arising out of the rejection of an Executory Contract or Unexpired Lease pursuant to Section 4.1 must be Filed with the Bankruptcy Court and served on the Committee, and after the Effective Date, on the Liquidating Trustee, by no later than 30 days after the later of (a) notice of the Effective Date or (b) notice of an amendment to Confirmation Exhibit 4.1, and upon allowance, shall be an Allowed General Unsecured Claim. Any Claims not Filed within such applicable time periods will be forever barred from receiving a distribution from the Debtor, the Estate, the Liquidating Trustee or the Liquidating Trust Assets.

4.4 Approval of Rejection

Entry of the Confirmation Order shall constitute, pursuant to sections 365 and 1123 of the Bankruptcy Code, the approval of the rejection of all Executory Contracts and Unexpired Leases pursuant to Section 4.1 to the extent not previously assumed or rejected by Order of the Bankruptcy Court.

ARTICLE V PROVISIONS GOVERNING DISTRIBUTIONS

5.1 Distributions for Claims Allowed as of the Effective Date

Except as otherwise provided in this Article V, distributions of Cash to be made on the Effective Date to holders of Claims as provided by Article II that are Allowed as of the Effective Date shall be deemed made on the Effective Date or as promptly thereafter as practicable, but in any event no later than 30 days after the Effective Date or no later than such later date as the holder agrees; or, with respect to undeliverable distributions, when the provisions of Section 5.4 are satisfied. Distributions on account of Claims that become Allowed Claims after the Effective Date will be made pursuant to Section 6.3.

5.2 Method of Distributions to Holders of Claims

The Liquidating Trustee will make all distributions of Cash and other instruments or documents required under the Plan.

5.3 Delivery of Distributions and Undeliverable or Unclaimed Distributions

5.3.1 Delivery of Distributions

Distributions to holders of Allowed Claims will be made: (i) at the addresses set forth on the respective proofs of Claim or request for payment of Administrative Claim Filed by holders of such Claims, as applicable; (ii) at the address for a Claim transferee set forth in a valid and timely notice of transfer of Claim Filed with the Bankruptcy Court; (iii) at the addresses set forth in any written notice of address change Filed with the Bankruptcy Court after the date of Filing of any related proof of Claim; (iv) at the addresses reflected in the Debtor's Schedules if no proof of Claim has been Filed; or (v) if clauses (i) through (iv) are not applicable, at the last address known or directed by such holder after such Claim becomes an Allowed Claim.

5.3.2 Undeliverable Distributions Held by the Liquidating Trustee

a. Holding of Undeliverable Distributions

Subject to Section 5.3.2(c), distributions returned to the Liquidating Trustee or otherwise undeliverable will remain in the possession of the Liquidating Trustee pursuant to this Section 5.3.2(a), until such time as a distribution becomes deliverable.

b. After Distributions Become Deliverable

On each Distribution Date, the Liquidating Trustee will make all distributions that became deliverable to holders of Allowed Claims at the next Distribution Date; provided, however, that the Liquidating Trustee may, in his sole discretion, establish a record date prior to each periodic Distribution Date, such that only Allowed Claims as of the record date will participate in such periodic distribution. Notwithstanding the foregoing, the Liquidating Trustee reserves the right, to the extent he determines a distribution on any periodic Distribution Date is uneconomical or unfeasible, or is otherwise unadvisable, to postpone a periodic Distribution Date.

c. Failure to Claim Undeliverable Distributions

Any holder of an Allowed Claim that does not assert its right to an undeliverable distribution prior to the date that is 60 days prior to the Final Distribution Date will be forever barred from asserting any such Claim against the Debtor, the Liquidating Trustee and their respective property or accounts. In such cases, unclaimed distributions held by the Liquidating Trustee will be retained by the Liquidating Trustee for distribution to other creditors. Any unclaimed distributions or any distributions that are returned as undeliverable and unclaimed pursuant to this Section 5.3.2(c) will be returned to the Liquidating Trust free of any restrictions thereon. Nothing contained in the Plan will require the Committee or the Liquidating Trustee to attempt to locate any holder of an Allowed Claim.

5.4 Distributions to the Liquidating Trustee and Its Counsel

Distributions of percentage fees payable to the Liquidating Trustee and distributions of fees payable to its legal counsel shall be paid by the Liquidating Trustee when recoveries are made on each Recovery Action without further order of the Bankruptcy Court.

5.5 Other Provisions Applicable to Distributions in All Classes

5.5.1 Postpetition Interest

Unless a Holder with a Claim under § 1129(a)(9) demands interest payments at the applicable statutory rate from the Effective Date to the date of payment, no interest shall have accrued on any Claim that is not an Allowed Secured Claim that is oversecured on and after the Petition Date.

5.5.2 Allocation of Distributions

All distributions to a holder of an Allowed Claim that has components of principal and interest will be deemed to apply first to the principal amount of such Claim until such principal amount is paid in full, and then the remaining portion of such distributions, if any, will be deemed to apply to any applicable accrued interest included in such Claim to the extent interest is payable under this Plan.

5.5.3 Holders of Record

Transferees of Claims that are transferred pursuant to Bankruptcy Rule 3001 for which a notice of transfer has been Filed on or prior to the Distribution Record Date will be treated as the holders of such Claims for all purposes, notwithstanding that any period provided by Bankruptcy Rule 3001 for objecting to such transfer has not expired by the Distribution Record Date. No transfers Filed with the Bankruptcy Court after the Distribution Record Date shall be recognized by the Liquidating Trustee.

5.6 Means of Cash Payments

Except as otherwise specified in this Plan, Cash payments made pursuant to the Plan will be in U.S. currency by checks drawn on a domestic bank selected by the Committee or the Liquidating Trustee, as applicable, by wire transfer, electronic funds or ACH from a domestic bank; provided, however, that Cash payments to foreign holders of Allowed Claims may be made, at the option of the Liquidating Trustee, in such funds and by such means as are necessary or customary in a particular foreign jurisdiction.

5.7 Withholding Requirements

5.7.1 Withholding

In connection with the Plan, to the extent applicable, the Liquidating Trustee will comply with all applicable Tax withholding and reporting requirements imposed on the Liquidating Trust by any governmental unit, and all distributions pursuant to the Plan will be subject to applicable withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Liquidating Trustee will be authorized to take any actions that may be necessary or appropriate to comply with such withholding and reporting requirements, including, without limitation, liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding Taxes or establishing any other mechanisms the Liquidating Trustee believes are reasonable and appropriate, including requiring Claim holders to submit appropriate Tax and withholding certifications. To the extent any Claim holder fails to submit appropriate Tax and withholding certifications as required by the Liquidating Trustee, such Claim holder's distribution will be deemed undeliverable and subject to Section 5.3.2 of the Plan.

5.7.2 Distributions

Notwithstanding any other provision of the Plan, each entity receiving a distribution of Cash pursuant to the Plan will have sole and exclusive responsibility for the satisfaction and payment of any Tax

obligations imposed on it by any governmental unit on account of the distribution, including income, withholding and other Tax obligations.

5.7.3 Allocations

The Debtors and the Liquidating Trustee, as applicable, reserve the right to allocate and distribute all distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support and other spousal awards, liens and similar encumbrances.

5.8 Setoffs

Except with respect to claims of the Debtors released pursuant to the Plan or any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, the Debtors (or the Liquidating Trustee on behalf of the Debtors) may, pursuant to section 553 of the Bankruptcy Code or applicable nonbankruptcy law, set off against any Allowed Claim and the distributions to be made pursuant to the Plan on account of such Claim (before any distribution is made on account of such Claim), the claims, rights and causes of action of any nature that the Debtors may hold against the holder of such Allowed Claim; provided, however, that neither the failure to effect a setoff nor the allowance of any Claim hereunder will constitute a waiver or release by the Debtors or the Liquidating Trustee of any claims, rights and causes of action that the Debtors may possess against a Claim Holder, which are expressly preserved under Section 3.4.3.

ARTICLE VI PROCEDURES FOR RESOLVING DISPUTED CLAIMS

6.1 Treatment of Disputed Claims

6.1.1 Disputed Insured Claims

The resolution of Disputed Insured Claims shall be subject to the provisions of Sections 3.4.1 and 3.4.2 of this Plan.

6.1.2 No Distributions Pending Allowance

Notwithstanding any other provision of this Plan, no payments or distributions will be made on account of a Disputed Claim until such Claim becomes an Allowed Claim, if ever.

6.2 Prosecution of Objections to Claims

6.2.1 Objections to Claims

All objections to Claims must be Filed and served on the holders of such Claims, and any amendment to the Schedules to reduce the scheduled Claim of such holder, must be made by the Debtors or the Liquidating Trustee by the Claims Objection Bar Date. If an objection has not been Filed to a Claim or an amendment has not been made to the Schedules with respect to a scheduled undisputed Claim by the Claims Objection Bar Date, the particular Claim will be treated as an Allowed Claim if such Claim has not been allowed earlier.

6.2.2 Authority to Prosecute Objections

On or after the Effective Date, the Liquidating Trustee shall have the sole authority to File, settle, compromise, withdraw or litigate to judgment objections to Claims.

6.2.3 Authority to Amend Schedules

The Debtors or the Liquidating Trustee, as applicable, will have the authority to amend the Schedules with respect to any Claim, and to make distributions based on such amended Schedules without approval of the Bankruptcy Court. If any such amendment to the Schedules reduces the amount of a Claim or changes the nature or priority of a Claim, the Debtors or the Liquidating Trustee, as applicable, will provide the holder of such Claim with notice of such amendment and such holder will have 30 days to File an objection to such amendment with the Bankruptcy Court.

Notwithstanding anything in this Section 6.2.3 or this Plan to the contrary, the Liquidating Trustee shall have the authority to object to the amount of any Claim indicated on the Schedules if the Liquidating Trustee determines in good faith that the Claim is invalid or has previously been paid or satisfied.

6.2.4 Request for Extension of Claims Objection Bar Date

Upon motion to the Bankruptcy Court, the Liquidating Trustee may request, and the Bankruptcy Court may grant, an extension to the Claims Objection Bar Date generally or with respect to a specific list of Claims. Any extension granted by the Bankruptcy Court shall not be considered to be a plan modification under section 1127 of the Bankruptcy Code.

6.3 Provisions Governing Disputed Claims Reserve

6.3.1 Funding.

At least thirty (30) days following the Effective Date or otherwise prior to any initial distribution under Section 5.4.2 of the Plan and Section 5.04 of the Liquidating Trust Agreement, the Disputed Claims Reserve will be established by the Liquidating Trustee pursuant to the Liquidating Trust Agreement for the benefit of holders of Disputed Claims that become Allowed Claims. For the purpose of calculating the Assets to be contributed to the Disputed Claims Reserve, all Disputed Claims will be treated (solely for purposes of establishing the Disputed Claims Reserve) as Allowed Claims in the Face Amount of such Claims as of the Effective Date, or in the event of a Disputed Administrative Claim as of the Bar Date provided in Section 2.1.1(c)(1) of the Plan. As Disputed Claims are resolved, the Liquidating Trustee shall make adjustments to the reserves for Disputed Claims, but the Liquidating Trustee shall not be required to increase such reserves from and after the date at which the Disputed Claims Reserve is established. The Liquidating Trustee may File a motion seeking an order of the Bankruptcy Court approving additional procedures for the establishment of the Disputed Claims Reserve.

6.3.2 Distributions.

The distributions received by the Liquidating Trustee on account of the Disputed Claims Reserve from the Liquidating Trust, along with any Cash Investment Yield held in the Disputed Claims Reserve, will (a) be deposited in a segregated bank account for the benefit of holders of Allowed Claims and Disputed Claims that become Allowed Claims and (b) accounted for separately. The Liquidating Trustee will invest any Cash held in the Disputed Claims Reserve in a manner consistent with the Liquidating Trust Agreement.

6.3.3 Recourse.

Each holder of an Allowed Claim and each holder of a Disputed Claim that ultimately becomes an Allowed Claim will have recourse only against the Disputed Claims Reserve and not to any other assets held by the Liquidating Trust, its property or any assets previously distributed on account of any Allowed Claim.

6.3.4 No Transfer of Rights.

The rights of holders of Allowed Claims to receive distributions from the Disputed Claims Reserve in accordance with the Plan will be non-transferable, except with respect to a transfer by will, the laws of descent and distribution or operation of law.

6.4 Distributions on Account of Disputed Claims Once Allowed

Distributions on account of Disputed Claims that become Allowed Claims after the Effective Date shall be made in accordance with Article V of the Plan.

ARTICLE VII CONFIRMATION OF THE PLAN

7.1 Conditions Precedent to Confirmation

The following conditions are conditions to the entry of the Confirmation Order unless such conditions, or any of them, have been satisfied or duly waived pursuant to Section 7.3:

- A. The Confirmation Order will be reasonably acceptable in form and substance to the Debtors and the Committee.
- B. The Plan shall not have been materially amended, altered or modified, unless such material amendment, alteration or modification has been made in accordance with Section 9.1 of the Plan.
- C. All Plan Exhibits to the Plan are in form and substance reasonably satisfactory of the Committee.

7.2 Conditions Precedent to the Effective Date

The Effective Date will not occur, and the Plan will not be consummated, unless and until each of the following conditions have been satisfied or duly waived pursuant to Section 7.3:

- A. The Bankruptcy Court shall have entered the Confirmation Order, and the Confirmation Order shall be a Final Order.
- B. No stay of the Confirmation Order shall then be in effect.
- C. The Liquidating Trustee shall have been appointed, and shall have accepted such appointment.
- D. The Plan and all Plan Exhibits to the Plan shall not have been materially amended, altered or modified from the Plan as confirmed by the Confirmation Order, unless such material amendment, alteration or modification has been made in accordance with Section 9.1 of the Plan.

7.3 Waiver of Conditions to Confirmation or Effective Date

The conditions to Confirmation and the conditions to the Effective Date may be waived in whole or in part at any time by the Committee without an order of the Bankruptcy Court.

7.4 Cramdown

The Plan Proponent requests Confirmation under section 1129(b) of the Bankruptcy Code with respect to any impaired Class that has not accepted or is deemed not to have accepted the Plan pursuant to section 1126 of the Bankruptcy Code.

7.5 Effect of Nonoccurrence of Conditions to the Effective Date

If each of the conditions to the Effective Date is not satisfied or duly waived in accordance with Section 7.3, then upon motion by the Plan Proponent made before the time that each of such conditions has been satisfied and upon notice to such parties in interest as the Bankruptcy Court may direct, the Confirmation Order will be vacated by the Bankruptcy Court; provided, however, that, notwithstanding the Filing of such motion, the Confirmation Order may not be vacated if each of the conditions to the Effective Date is satisfied or waived before the Bankruptcy Court enters an order granting such motion. If the Confirmation Order is vacated pursuant to this Section 7.5: (1) the Plan will be null and void in all respects; and (2) nothing contained in the Plan will (a) constitute a waiver or release of any Claims by or against the Debtors or (b) prejudice in any manner the rights of the Debtors or any other party in interest.

7.6 Effect of Confirmation of the Plan

7.6.1 Discharge of Claim and Termination of Interests

Pursuant to section 1141(d)(3) of the Bankruptcy Code, Confirmation will not discharge Claims against the Debtors; provided, however, that no holder of a Claim against the Debtors may, on account of such Claim, seek or receive any payment or other distribution from, or seek recourse against, the Debtors, the Liquidating Trustee or property of the Estate, except as expressly provided in the Plan.

7.6.2 Releases

Notwithstanding anything in the Plan to the contrary, as of the Effective Date, none of the O'Keefe & Associates or the Committee or any of their respective advisors, agents, members, representatives, employees, or attorneys (but, in each case, solely in their capacities as such) will have or incur any liability for any Claim, cause of action or other assertion of liability for any act taken or omitted to be taken in connection with, or arising out of, the Bankruptcy Cases, the formulation, dissemination, confirmation, consummation or administration of the Plan, property to be distributed under the Plan or any other act or omission in connection with the Bankruptcy Cases, the Plan, the Disclosure Statement or any contract, instrument, document or other agreement related thereto; provided, however, that the foregoing will not affect the liability of any person that otherwise would result from any such act or omission to the extent such act or omission is determined by a Final Order to have constituted willful misconduct or gross negligence. The Plan does not provide for broad third-party releases, but rather, limited exculpation for acts during these Bankruptcy Cases. The exculpation neither affects liability for prepetition actions nor absolves any parties from liability for gross negligence or willful misconduct during the Bankruptcy Cases.

7.6.3 Injunction

Except as provided in the Plan or the Confirmation Order, as of the Confirmation Date, all entities that have held, currently hold, or may hold a Claim or other debt or liability against the Debtors or an interest or other right of an equity security holder are permanently enjoined from taking any of the following actions on account of any such Claims, debts, liabilities, Interests or rights: (a) commencing or continuing in any manner any action or other proceeding against the Released Parties or their property; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against the Released Parties or their property; (c) creating, perfecting, or enforcing any lien or encumbrance against

the Released Parties or their property; (d) asserting a right of subordination of any kind against any debt, liability, or obligation due to the Released Parties or their property; and (e) commencing or continuing any action, in any manner, in any place that does not comply with or is inconsistent with the provisions of the Plan.

7.6.4 Exculpation

Subject to the occurrence of the Effective Date, none of the Exculpated Parties shall have or incur any liability to any holder of a Claim or Interest for any act or omission in connection with, related to, or arising out of, the Chapter 11 Case and the Plan, the pursuit of confirmation of the Plan, the consummation of the Plan or the administration of the Plan or the property to be distributed under the Plan; provided, that the Exculpated Parties shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan; provided, further, that nothing in the Plan shall, or shall be deemed to, release the Exculpated Parties, or exculpate the Exculpated Parties with respect to, their respective obligations or covenants arising pursuant to the Plan.

7.6.5 Request for Waiver of Stay of Confirmation Order

This Plan will serve as a motion seeking a waiver of the stay of the Confirmation Order imposed by Bankruptcy Rule 3020(e). Any objection to this request for waiver shall be Filed with the Bankruptcy Court and served on the parties listed on Exhibit C, attached hereto, on or before the Voting Deadline, or such other date as may be fixed by the Bankruptcy Court. In the event any such objections are timely Filed, a hearing with respect thereto will occur at the Confirmation Hearing.

ARTICLE VIII RETENTION OF JURISDICTION

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court will retain such jurisdiction over the Chapter 11 Case after the Effective Date as is legally permissible, including jurisdiction to:

- A. Allow, disallow, determine, liquidate, reduce, classify, re-classify, estimate or establish the priority or secured or unsecured status of any Claim, including the resolution of any request for payment of any Administrative Claim and the resolution of any objections to the amount, allowance, priority or classification of Claims;
- B. Resolve any issues arising under any purchase agreement or Sale Order;
- C. Either grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan for periods ending on or before the Effective Date;
- D. Resolve any matters related to the assumption, assumption and assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtors is a party or with respect to which the Debtors may be liable and to hear, determine and, if necessary, liquidate any Claims arising therefrom, including any Cure Amount Claims;
- E. Ensure that distributions on account of Allowed Claims are accomplished pursuant to the provisions of the Plan;

F. Decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters and either grant or deny any applications involving the Debtors that may be pending on the Effective Date or brought thereafter;

G. Enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all contracts, instruments, releases and other agreements or documents entered into or delivered in connection with the Plan, the Liquidating Trust Agreement, the Disclosure Statement or the Confirmation Order;

H. Resolve any cases, controversies, suits or disputes that may arise in connection with the consummation, interpretation or enforcement of the Plan, the Liquidating Trust Agreement or any contract, instrument, release or other agreement or document that is entered into or delivered pursuant to the Plan, the Liquidating Trust Agreement, or any entity's rights arising from or obligations incurred in connection with the Plan, the Liquidating Trust Agreement, or other such documents;

I. Modify the Plan before or after the Effective Date pursuant to section 1127 of the Bankruptcy Code; modify the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, the Disclosure Statement or the Confirmation Order; or remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court Order, the Plan, the Disclosure Statement, the Confirmation Order, the Liquidating Trust Agreement or any contract, instrument, release or other agreement or document entered into, delivered or created in connection with the Plan, the Disclosure Statement or the Confirmation Order, in such manner as may be necessary or appropriate to consummate the Plan;

J. Issue injunctions, enforce the injunctions contained in the Plan and the Confirmation Order, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any entity with consummation, implementation or enforcement of the Plan or the Confirmation Order;

K. Enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason or in any respect modified, stayed, reversed, revoked or vacated or distributions pursuant to the Plan are enjoined or stayed;

L. Determine any other matters that may arise in connection with or related to the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, the Disclosure Statement or the Confirmation Order;

M. Hear, decide and resolve motions, adversary proceedings, contested or litigated matters brought by the Debtors or the Liquidating Trustee in connection with the Recovery Actions;

N. Enforce or clarify any orders previously entered by the Bankruptcy Court in the Chapter 11 Case;

O. Enter a final decree closing the Chapter 11 Case;

P. Determine matters concerning state, local and federal Taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code, including any Disputed Claims for Taxes;

Q. Hear all matters arising out of the consummation of the Sale;

R. Recover all assets of the Debtors and the Estates, wherever located; and

- S. Hear any other matter not inconsistent with the Bankruptcy Code.

ARTICLE IX MISCELLANEOUS PROVISIONS

9.1 Modification of the Plan

Subject to the restrictions on alteration, amendment and modification set forth in section 1127 of the Bankruptcy Code, the Committee reserves the right to alter, amend or modify the Plan before the Effective Date.

9.2 Revocation of the Plan

The Plan Proponent reserves the right to revoke or withdraw the Plan prior to the Confirmation Date. If the Committee revokes or withdraws the Plan, or if Confirmation does not occur, then the Plan will be null and void in all respects, and nothing contained in the Plan will: (a) constitute a waiver or release of any Claims by or against the Debtors; (b) prejudice in any manner the rights of the Debtors or any other party in interest; or (c) constitute an admission of any sort by the Debtors or any other party in interest.

9.3 Severability of Plan Provisions

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

9.4 Dissolution of Committee

On the Effective Date the Committee and any other official committees appointed in the Chapter 11 Case will dissolve, and the members of the Committee and their respective Professionals, except as provided herein, will cease to have any duty, obligation or role arising from or related to the Chapter 11 Case. The Professionals retained by the Committee and the respective members thereof will not be entitled to assert any Fee Claim against the Debtors or the Estate for any services rendered or expenses incurred after the Effective Date in their capacity as Professionals for the Committee, except to the extent necessary to File, prepare and defend any fee application.

9.5 Successors and Assigns

The rights, benefits and obligations of any entity named or referred to in the Plan will be binding on, and will inure to the benefit of, any heir, executor, administrator, successor or assign of such entity.

9.6 Section 1125(e) Good Faith Compliance

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

9.7 Governing Law

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

Dated: May 9, 2013

Respectfully Submitted,

Debtors and Debtors-in-Possession
By: O'Keefe & Associates Consulting, LLC

By: /s/ Patrick M. O'Keefe
Name: Patrick M. O'Keefe
Title: Managing Member

The Official Committee of Unsecured Creditors
By: Its Chairman

By: /s/ Amy Cassiday
Name: Amy Cassiday of Wilbur-Ellis, Inc., not
Individually but Solely in Her Capacity
as Chairman of the Committee

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