

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

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In re: )  
 ) Case No. 12-00581  
 )  
THE SHOREBANK CORPORATION, et al., ) (Jointly Administered)  
 )  
Debtors. ) *Chapter 11*  
 )  
 ) Hon. A. Benjamin Goldgar  
 )  
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**DISCLOSURE STATEMENT WITH RESPECT TO JOINT PLAN OF LIQUIDATION  
OF THE SHOREBANK CORPORATION AND ITS AFFILIATED DEBTORS AND  
DEBTORS-IN-POSSESSION**

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Dated: Chicago Illinois  
January 31, 2012

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## SUMMARY OF THE PLAN

*The following introduction and summary is a general overview only and is qualified in its entirety by, and should be read in conjunction with, the more detailed discussions and information appearing elsewhere in the Disclosure Statement and the Plan. All capitalized terms not defined in the Disclosure Statement have the meanings ascribed to such terms in the Plan. A copy of the Plan is annexed hereto as Appendix A. To the extent there are any inconsistencies between the Plan and the Disclosure Statement, the terms of the Plan shall govern. To the extent there are any inconsistencies between the Plan and the terms of the FDIC Treatment, the terms of the FDIC Treatment shall govern.*

The Disclosure Statement contains, among other things, descriptions and summaries of provisions of the Plan being proposed by The ShoreBank Corporation ("SBK") and 11 of its subsidiaries and affiliates (the "Affiliate Debtors"), the debtors and debtors-in-possession in the above-captioned jointly administered Chapter 11 Cases (collectively, the "Debtors" or the "Company"), as filed on January 9, 2012 (the "Petition Date"), with the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division (the "Bankruptcy Court"). Certain provisions of the Plan, and thus the descriptions and summaries contained herein, are or may become the subject of continuing negotiations among the Debtors and various parties and, therefore, remain subject to modification. The Debtors do not anticipate that such modifications will have a material effect on the distributions contemplated by the Plan and any such modifications will be disclosed at the Confirmation Hearing.

### A. Overview

On the Petition Date, the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court. The cases were jointly administered pursuant to an Order entered by the Bankruptcy Court on January 11, 2012. Since the Petition Date, the Debtors have continued to manage their businesses as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Debtors' Chapter 11 Cases.

The Debtors' core assets on the Petition Date consisted primarily of: (a) SBK's bank account deposits in the approximate amount of \$4,100,000; (b) SBK's interest in a Federal Income Tax Refund arising as a result of losses for tax purposes during prior tax years, in the amount of approximately \$10,700,000 (the "Federal Income Tax Refund"); (c) SBK's interest in a state income tax refund receivable stemming from losses for tax purposes during prior years in Illinois in an amount of approximately \$75,000 (the "State Income Tax Refund Receivable"); (d) SBK's equity interests in certain subsidiaries; and (e) other longer-term assets, all as described more fully herein (collectively, the "Core Assets"). See Section III.D. of the Disclosure Statement for a more detailed description of the Debtors' Core Assets.

The Plan is predicated on a settlement reached with the FDIC and sought to be implemented as part of the Plan. Absent the settlement with the FDIC, based on other bank holding company bankruptcy cases currently pending across the United States, there would

likely be costly and uncertain litigation between the FDIC and SBK on a variety of issues, including (i) whether SBK made a commitment to maintain the capital of its former bank subsidiary, ShoreBank (the "Bank"); and (ii) ownership of certain tax refunds. While SBK does not believe there was a commitment made to maintain the capital of the Bank, if the FDIC were successful in any such litigation, the FDIC would be entitled to a priority claim that would likely be in an amount in excess of SBK's total distributable value, meaning there would be no recovery available for general unsecured creditors. In addition, absent the settlement, the FDIC contends, on one or more theories, that some or all of the consolidated tax refunds belong to it, and are property of the FDIC. If the FDIC were successful in asserting it owned the consolidated tax refunds, it would get all of any such refunds. On the other hand, SBK contends, on one or more theories, including, in part, as a result of the effect of a tax sharing agreement, that some or all of the consolidated tax refunds, including the Federal Income Tax Refund, belong to it, and are now property of the Debtors' estates. Even if the Debtors' view is correct, it is likely that the FDIC would assert (and the Debtors might dispute) that the FDIC has a general unsecured claim in an amount that approximates the Federal Income Tax Refund. If allowed, the FDIC's general unsecured claim under this scenario would entitle the FDIC to its pro-rata share of SBK's distributable assets.

Instead of engaging in costly and uncertain litigation, prior to the Petition Date, the Debtors and their advisors engaged in fruitful settlement negotiations with the FDIC and its advisors, which ultimately resulted in a settlement (the "FDIC Treatment"). The FDIC Treatment will settle claims that the FDIC would otherwise assert against SBK. Specifically, under the FDIC Treatment, made a part of the Plan, the FDIC will receive \$8,500,000 payable out of the Federal Income Tax Refund in full and complete settlement of all of the FDIC's claims it may have against the Debtors with respect to the FDIC's receivership of the Bank, subject to certain carve outs as described in more detail herein and in the FDIC Treatment. For an additional description of the risks associated with other alternatives to the Plan that do not include the FDIC Treatment and instead result in litigation with the FDIC, see Section C of the Summary below and Articles VI and VIII of the Disclosure Statement.

Since the Petition Date, the Debtors have focused their efforts on pursuing and monetizing the Core Assets. This process will continue through 2012, and longer for certain assets that cannot, for various reasons, be monetized on a short-term basis. For example, certain longer-term assets require the approval of regulators in countries outside the United States.

In furtherance of the Debtors' goal to liquidate their assets and distribute the proceeds thereof to their creditors, the Debtors have prepared the Disclosure Statement and the Plan. The Plan provides for the liquidation of the Debtors' remaining assets and for the distribution of the proceeds to creditors in order of their relative priority of distribution under the Bankruptcy Code. The Plan contemplates substantive consolidation of the Debtors. In the event substantive consolidation is not approved, it is likely that creditors of any Debtor other than SBK would only receive a de minimis, if any, distribution. The Debtors reserve the right to deconsolidate any Debtor entity, prior to the Effective Date, in which case, the creditors of such Debtor would likely receive a de minimis, if any, distribution.

On the Effective Date, and pursuant to the Plan and the Liquidation Trust Agreement, the Liquidation Trust Assets shall be transferred to the Liquidation Trust for the benefit of the Liquidation Trust Beneficiaries. At least seven (7) days prior to the Voting Deadline, the Debtors will designate the Liquidation Trust Administrator, as well as the members of the Liquidation Trust Advisory Board. Under the Plan, the Liquidation Trust Administrator will continue the task of liquidating the assets of the Debtors and distributing the proceeds of these assets to the Debtors' creditors in accordance with the Plan. After confirmation of the Plan, the Liquidation Trust Administrator, acting on behalf of the Debtors and Debtors-in-Possession, will be authorized to pursue, collect, and monetize the remaining assets of the Debtors and Debtors-in-Possession.

## **B. General Structure of the Plan**

Each of SBK and its 11 Affiliate Debtors (the "Plan Proponents") is a proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code. The Plan provides for the liquidation of the Debtors and their estates and the distribution of the proceeds thereof in resolution of the outstanding claims against and interests in the Debtors, consistent with the priority provisions of the Bankruptcy Code.

Under the Plan, the Debtors are:

- A. SBK
- B. ShoreBank Pacific Corporation ("PacCorp")
- C. ShoreBank Lands Corporation ("SLC")
- D. ShoreBank Capital Corporation ("CapCorp")
- E. ShoreBank Development Corporation ("SDC")
- F. ShoreCap Management, Ltd. ("SCM")
- G. Shore Overseas Corporation ("SOC")
- H. ShoreBank New Markets Fund, Inc. ("NMTC")
- I. SBK NMTC Fund I, LLC
- J. SBK NMTC Fund II, LLC
- K. SBK NMTC Fund III, LLC
- L. SBK NMTC Fund IV, LLC

### **C. Summary of Treatment of Claims and Interests Under the Plan**

The Plan constitutes a single plan for all of the Debtors.

As contemplated by the Bankruptcy Code, Administrative Claims and Priority Tax Claims are not classified and will be paid in full under the Plan. See Article II of the Plan for a summary of the treatment proposed under the Plan for Administrative Claims and Priority Tax Claims. All other Claims against and Interests in the Debtors are divided into Classes according to their relative seniority and other criteria.

Under the Plan, the FDIC would receive in full satisfaction, settlement, release, and discharge of, and in exchange for, each and every FDIC Claim, the FDIC Treatment. In general, the FDIC Treatment provides that the FDIC shall receive \$8.5 million in Cash, payable out of the Federal Income Tax Refund, as set forth more fully in Exhibit A to the Plan. In addition, the FDIC is still entitled to continue to collect payments stemming from the sale of ShoreBank Pacific pursuant to a stock purchase agreement that separately governs that transaction.

Notably, the FDIC Treatment provides assurance that there will be a recovery for Holders of Allowed General Unsecured Claims. By contrast, any plan that does not include the FDIC Treatment, or similarly resolve the FDIC Claim, would result in significant burdens, distractions, delays, costs, and uncertainties to the Debtors' Estates. In addition, depending on how any such disputes regarding the FDIC Claim were resolved, there are scenarios in which no creditor other than the FDIC would receive a distribution from the Debtors' Estates. Specifically, if the FDIC's claims are not settled, it is likely that the FDIC would assert a claim under section 365(o) of the Bankruptcy Code seeking priority payment under section 507(a)(9) of the Bankruptcy Code on the theory that SBK made a commitment to maintain the capital of the Bank. While the Debtors dispute that any such capital maintenance obligation exists, if the FDIC were successful, it is likely that the FDIC would be entitled to priority payment in an amount well in excess of the Debtors' remaining assets, meaning General Unsecured Creditors would not get any recovery. Moreover, throughout the discussions with SBK, the FDIC has consistently maintained, on one or more theories, that the FDIC owns substantially all of the proceeds of the Federal Income Tax Refund. While SBK believes that under the Tax Sharing Agreement, SBK owns the tax refunds, including the Federal Income Tax Refund, if the FDIC were successful, it would get all of the Federal Income Tax Refund. Even if the Debtors' view regarding the Tax Sharing Agreement is correct, it is likely that the FDIC would assert (and the Debtors might dispute) that the FDIC has a general unsecured claim in an amount that approximates the Federal Income Tax Refund. In addition, the FDIC might also try to assert various other claims. Instead, under the FDIC Treatment, the FDIC will receive \$8.5 million in full and complete satisfaction of all the FDIC's claims against SBK. A more detailed description of the FDIC Treatment is contained herein.

As summarized in the table below and set forth in more detail in the Plan, the Plan essentially provides for Holders of General Unsecured Claims to recover their Pro Rata share of the Debtors' remaining assets after the FDIC Claims are satisfied pursuant to the proposed settlement. As reflected in the Plan and in accordance with the subordination provisions in the Subordinated Indentures and the Trust Agreements, Holders of Allowed Class 6 Subordinated

Note Claims shall not receive or retain a distribution from the Liquidation Trust unless and until all Holders of Allowed Class 4 Senior Indebtedness Claims are paid in whole. Instead, interests in the Liquidation Trust otherwise distributable to or for the benefit of Holders of Allowed Class 6 Claims shall be distributed by the Disbursing Agent to Holders of Allowed Class 4 Claims pursuant to the subordination provisions of the Subordinated Indentures and the Trust Agreements until Holders of Allowed Class 4 Claims are paid in full. Under current estimates, which are subject to change, the Debtors do not expect Holders of Allowed Senior Indebtedness Claims in Class 4 to be paid in full. Consequently, at this time, the Debtors do not expect Holders of Allowed Class 6 Claims to receive any distribution from the Estates.

While SBK does not know the exact amount, for purposes of estimating distributions, SBK assumes that approximately \$1 million will be required to fund the Cash Reserves for the payment of Administrative Claims, Priority Tax Claims, if any, and other payments required under the Plan, as well as to pay for anticipated post-confirmation operating expenses in connection with the remaining wind down of SBK's affairs such as, among other things, resolving Avoidance Actions to be brought, if any, reconciling Disputed Claims, and funding the operating expenses of the Liquidation Trust. In addition, as noted above, \$8.5 million of the \$10.7 million Federal Income Tax Refund will go to the FDIC under the FDIC Treatment. Thus, as of the Effective Date, SBK estimates that, as a result of its continuing wind down efforts, there will be approximately \$5.3 million of Cash for distribution to Holders of Allowed Claims against SBK (other than the FDIC Claim, which will be satisfied out of the FDIC Treatment). SBK estimates that an additional amount of approximately \$5 million will be available for distribution to creditors of SBK after the Effective Date. Consequently, SBK estimates that total distributable value to Holders of Allowed Claims against SBK (other than the FDIC, which, under a settlement would receive \$8.5 million) will be approximately \$10.3 million after SBK monetizes all of its assets. The actual recoveries under the Plan by the Debtors' creditors will be dependent upon, among other things, whether, and in what amount, the Debtors are able to sell or otherwise dispose of their remaining non-Cash assets and the ultimate amount of Allowed Claims.

The table below summarizes the classification and treatment of the Claims and Interests under the Plan, as well as the Debtors' estimates of the amount of Claims that will ultimately become Allowed in each Class and an estimated percentage recovery for Holders of Claims in each Class. **THE TABLE IS INTENDED FOR ILLUSTRATIVE PURPOSES ONLY AND DOES NOT ADDRESS ALL ISSUES REGARDING CLASSIFICATION, TREATMENT, AND ULTIMATE RECOVERIES AND IS NOT A SUBSTITUTE FOR A REVIEW OF THE PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY.** In addition, the Plan provides for a Disputed Claims Reserve to be established with respect to Disputed Claims and the creation of a Liquidation Trust to distribute the Net Available Cash pursuant to the Plan and the Liquidation Trust Agreement. As a result, the process of distributing all of the property to be distributed to Holders of Claims under the Plan will be completed over time.

<u>Class Description</u>	<u>Treatment Under The Plan</u>
<b>Class 1 Secured Claims</b>	<b>Class 1 Is Unimpaired by the Plan.</b>

	The legal, equitable, and contractual rights of the Holders of Allowed Class 1 Claims against the Debtors, if any, are unaltered by the Plan. As set forth herein and in the Plan, any such claim will be paid in cash or be reinstated.
	<b>Estimated Amount of Allowed Claims: \$0</b>
<b>Class 2 Non-Tax Priority Claims</b>	<b>Class 2 Is Unimpaired by the Plan.</b>  The legal and equitable rights of the Holders of Class 2 Claims against the Debtors, if any, are unaltered by the Plan. As set forth herein and in the Plan, any such claim will be paid in full.
	<b>Estimated Amount of Allowed Claims: \$0</b>
<b>Class 3 FDIC Claim</b>	<b>Class 3 is Impaired by the Plan.</b>  On the Effective Date, or as soon thereafter as is reasonably practicable, the FDIC shall receive in full satisfaction, settlement, release, and discharge of, and in exchange for, each and every Class 3 Claim against the Debtors, the FDIC Treatment payable out of the Federal Income Tax Refund Receivable (defined in the FDIC Treatment) currently held in an escrow account.
	<b>Estimated Amount of Allowed Claims: Indeterminate. Estimated Recovery: \$8,500,000</b>
<b>Class 4 Senior Indebtedness Claims</b>	<b>Class 4 Is Impaired by the Plan.</b>  On the Effective Date, or as soon thereafter as is reasonably practicable, and on each Subsequent Distribution Date, the Disbursing Agent shall receive on behalf of each and every Holder of an Allowed Class 4 Claim against the Debtors, in full satisfaction, settlement, release, and discharge of, and in exchange for, each and every Class 4 Claim against the Debtors, (i) the Pro Rata interest in the Liquidation Trust, as to which all Holders of Allowed Class 4 Claims would be entitled if Classes 4, 5, and 6 were a single class, which the Disbursing Agent will distribute to each holder of an Allowed Class 4 Claim on a Pro Rata basis within such Class, and (ii) the Subordinated Notes Redistribution Interests, which the Disbursing Agent will distribute Pro Rata to or for the benefit of Holders of Allowed Class 4 Claims until the Holders of Allowed Class 4 Claims are paid in full.
	<b>Estimated Amount of Allowed Claims: \$12,300,000 Estimated Recovery: 78%</b>
<b>Class 5</b>	<b>Class 5 Is Impaired by the Plan.</b>

<b>General Unsecured Claims</b>	On the Effective Date, or as soon thereafter as is reasonably practicable, and on each Subsequent Distribution Date, the Disbursing Agent shall receive on behalf of each and every Holder of an Allowed Class 5 Claim against the Debtor, in full satisfaction, settlement, release, and discharge of, and in exchange for, each and every Class 5 Claim against the Debtor, the Pro Rata interest in the Liquidation Trust, as to which all Holders of Allowed Class 5 Claims would be entitled if Classes 4, 5, and 6 were a single class, which the Disbursing Agent will distribute to each holder of an Allowed Class 5 Claim on a Pro Rata basis within such Class.
	<b>Estimated Amount of Allowed Claims: \$3,700,000</b> <b>Estimated Recovery: 19%</b>
<b>Class 6 Subordinated Note Claims</b>	<b>Class 6 Is Impaired by the Plan.</b>  As reflected in the treatment of Class 4, and in accordance with the Subordinated Notes Subordination Rights, Holders of Class 6 Claims shall not receive or retain a distribution from the Liquidation Trust until Holders of Allowed Class 4 Claims are paid in full. Instead, interests in the Liquidation Trust otherwise distributable to or for the benefit of Holders of Allowed Class 6 Claims shall instead be distributed by the Disbursing Agent to Holders of Allowed Class 4 Claims pursuant to the subordination provisions of the Subordinated Indenture and Trust Agreements until the Holders of Allowed Class 4 Claims are paid in full. At this time, it is not expected that the Holders of Subordinated Note Claims will retain any distribution on account of their claims.
	<b>Estimated Amount of Allowed Claims: \$39,100,000</b> <b>Estimated Recovery: 0%.</b>
<b>Class 7 Other Subordinated Claims</b>	<b>Class 7 Is Impaired by the Plan.</b>  Holders of Other Subordinated Claims shall not receive nor retain any distribution on account of such Other Subordinated Claims. Because Holders of Other Subordinated Claims are not receiving or retaining any property under the Plan, they are conclusively presumed to have rejected the Plan and therefore are not entitled to vote to accept or reject the Plan.
	<b>Estimated Amount of Allowed Claims: \$0</b> <b>Estimated Recovery: 0%</b>
<b>Class 8 Old Equity Interests</b>	<b>Class 8 Is Impaired by the Plan.</b>  On the Effective Date, the Old Equity Interests will be cancelled

	and the Holders of Old Equity shall not receive nor retain any distribution on account of such Old Equity Interests. Because Holders of Old Equity Interests are not receiving or retaining any property under the Plan, they are conclusively presumed to have rejected the Plan and therefore are not entitled to vote to accept or reject the Plan.
	<b>Estimated Amount of Allowed Claims: \$0</b> <b>Estimated Recovery: 0%</b>

**THE DEBTORS BELIEVE THAT THE PLAN PROVIDES THE BEST RECOVERIES POSSIBLE FOR THE HOLDERS OF CLAIMS AGAINST THE DEBTORS AND THUS STRONGLY RECOMMEND THAT YOU VOTE TO ACCEPT THE PLAN.**

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## **APPENDICES**

Appendix A — Joint Plan of Liquidation of The ShoreBank Corporation and its Affiliated Debtors and Debtors-in-Possession

**DISCLOSURE STATEMENT WITH RESPECT TO THE JOINT PLAN  
OF LIQUIDATION OF THE SHOREBANK CORPORATION AND ITS AFFILIATED  
DEBTORS AND DEBTORS-IN-POSSESSION**

**I. INTRODUCTION**

The ShoreBank Corporation ("SBK") and 11 of its subsidiaries (collectively, the "Debtors" and "Debtors-in-Possession" in the above-captioned chapter 11 cases (the "Chapter 11 Cases"), submit this disclosure statement (the "Disclosure Statement") pursuant to section 1125 of title 11, United States Code (the "Bankruptcy Code"), to Holders of Claims against and Interests in the Debtors in connection with (i) the solicitation of acceptances of the Plan of Liquidation of The ShoreBank Corporation and its Affiliated Debtors and Debtors-in-Possession, dated January 31, 2012, as may be amended (the "Plan"), filed by the Debtors with the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division (the "Bankruptcy Court"), and (ii) the hearing to consider confirmation of the Plan (the "Confirmation Hearing") scheduled for [April 18, 2012], at [10:30] a.m., prevailing Central Time. A copy of the Plan is attached hereto as Appendix A.

On January 9, 2012 (the "Petition Date"), the Debtors each filed a voluntary petition (each, a "Voluntary Petition") for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court. The cases were jointly administered pursuant to an Order entered by the Bankruptcy Court on January 11, 2012. Since the Petition Date, the Debtors have continued to manage their businesses as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Debtors' Chapter 11 Cases.

Prior to the Petition Date, SBK, incorporated under the laws of the state of Illinois and headquartered in Chicago, was a registered bank holding company for its subsidiary, ShoreBank, headquartered in Chicago, Illinois, a state chartered non-member bank (the "Bank"), as well as the direct or indirect parent of certain other subsidiaries, including all of the other Debtors, and certain other non-debtor subsidiaries, as described in more detail below.

On August 20, 2010, the Illinois Department of Financial and Professional Regulation ("IDFPR") closed the Bank (the "Bank Closure"), and the FDIC was appointed as receiver (the "FDIC"). A consortium of investors, primarily foundations and financial institutions, many of which had previously invested in SBK, raised funds and capitalized a newly chartered institution called Urban Partnership Bank ("Urban"). Urban purchased most of the assets of the Bank and assumed all of the Bank's non-brokered deposits from the FDIC pursuant to a purchase and assumption agreement (the "Bank Sale").

SBK is the holder of 100 percent of the common stock of the Bank, which was SBK's primary asset. The Bank and its subsidiaries are not debtors in these proceedings. As a result of the Bank Closure and the Bank Sale, SBK's interest in the stock of the Bank is effectively worthless. The other Debtors are all non-operating companies with minimal, or, in some cases, no assets.

The Debtors now seek confirmation of the Plan. The Disclosure Statement is designed to provide parties entitled to vote on the Plan with adequate information to enable them to make a decision whether to vote for or against the Plan.

The Plan sets forth how Claims against and Interests in the Debtors will be treated if the Plan is confirmed by the Bankruptcy Court. The Disclosure Statement describes among other things: (i) voting instructions, (ii) classification of claims against the Debtors, (iii) payment of Claims under the Plan, and (iv) the Debtors' former operations, significant events occurring in the Debtors' Chapter 11 Cases, and other related matters. The Disclosure Statement also contains a summary and analysis of the Plan. **FOR A COMPLETE UNDERSTANDING OF THE PLAN, YOU SHOULD READ THE DISCLOSURE STATEMENT, THE PLAN, AND THE EXHIBITS THERETO IN THEIR ENTIRETY.**

FOR A DESCRIPTION OF THE PLAN AND VARIOUS RISK AND OTHER FACTORS PERTAINING TO THE PLAN AS IT RELATES TO CLAIMS AGAINST AND INTERESTS IN THE DEBTORS, PLEASE SEE ARTICLES V AND VI OF THE DISCLOSURE STATEMENT.

THE DISCLOSURE STATEMENT CONTAINS SUMMARIES OF CERTAIN PROVISIONS OF THE PLAN, CERTAIN DOCUMENTS RELATED TO THE PLAN, CERTAIN EVENTS IN THE CHAPTER 11 CASES, CERTAIN FINANCIAL INFORMATION, AND CERTAIN CLAIMS AGAINST THE DEBTORS. ALTHOUGH THE DEBTORS BELIEVE THAT SUCH SUMMARIES ARE FAIR AND ACCURATE, SUCH SUMMARIES ARE QUALIFIED TO THE EXTENT THAT THEY DO NOT SET FORTH THE ENTIRE TEXT OF SUCH DOCUMENTS. FACTUAL INFORMATION CONTAINED IN THE DISCLOSURE STATEMENT HAS BEEN PROVIDED BY THE DEBTORS' MANAGEMENT OR ITS ADVISORS, EXCEPT WHERE OTHERWISE SPECIFICALLY NOTED. THE DEBTORS DO NOT WARRANT OR REPRESENT THAT THE INFORMATION CONTAINED HEREIN, INCLUDING THE FINANCIAL INFORMATION, IS WITHOUT ANY MATERIAL INACCURACY OR OMISSION.

FOR THE CONVENIENCE OF HOLDERS OF CLAIMS AND INTERESTS, THE DISCLOSURE STATEMENT SUMMARIZES THE TERMS OF THE PLAN, BUT THE PLAN ITSELF QUALIFIES ALL SUMMARIES. IF ANY INCONSISTENCY EXISTS BETWEEN THE PLAN AND THE DISCLOSURE STATEMENT, THE TERMS OF THE PLAN ARE CONTROLLING.

## **II. PLAN VOTING INSTRUCTIONS AND PROCEDURES**

### **A. Definitions**

Except as otherwise defined herein, capitalized terms not otherwise defined in the Disclosure Statement have the meanings ascribed to them in the Plan. All references in the Disclosure Statement to monetary figures refer to United States currency.

**B. Notice to Holders of Claims and Interests**

The Disclosure Statement is being transmitted to Holders of Claims that under the Bankruptcy Code are entitled to vote on the Plan as well as to other parties in interest. See Article X of the Disclosure Statement for a discussion and listing of those Holders of Claims that are entitled to vote on the Plan and those Holders of Claims and Interests that are not entitled to vote on the Plan. The purpose of the Disclosure Statement is to provide adequate information to enable such Holders to make a reasonably informed decision with respect to the Plan prior to exercising their right to vote to accept or reject the Plan.

On [●], 2012, the Bankruptcy Court entered an order (the "Solicitation Procedures Order") approving the Disclosure Statement as containing information of a kind and in sufficient and adequate detail to enable such Holders to make an informed judgment with respect to acceptance or rejection of the Plan. THE BANKRUPTCY COURT'S APPROVAL OF THE DISCLOSURE STATEMENT DOES NOT CONSTITUTE EITHER A GUARANTEE OF THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED HEREIN OR AN ENDORSEMENT OF THE PLAN BY THE BANKRUPTCY COURT.

ALL HOLDERS OF CLAIMS AGAINST AND INTERESTS IN THE DEBTORS ARE ENCOURAGED TO READ THE DISCLOSURE STATEMENT AND ITS APPENDICES CAREFULLY AND IN THEIR ENTIRETY BEFORE DECIDING TO VOTE EITHER TO ACCEPT OR TO REJECT THE PLAN. The Disclosure Statement contains important information about the Plan, considerations pertinent to acceptance or rejection of the Plan, and developments concerning the Chapter 11 Cases.

THE DISCLOSURE STATEMENT IS THE ONLY DOCUMENT AUTHORIZED BY THE BANKRUPTCY COURT TO BE USED IN CONNECTION WITH THE SOLICITATION OF VOTES ON THE PLAN. No solicitation of votes may be made except after distribution of the Disclosure Statement, and no person has been authorized to distribute any information concerning the Debtors other than the information contained herein.

CERTAIN OF THE INFORMATION CONTAINED IN THE DISCLOSURE STATEMENT IS BY ITS NATURE FORWARD LOOKING AND CONTAINS ESTIMATES, ASSUMPTIONS, AND PROJECTIONS THAT MAY BE MATERIALLY DIFFERENT FROM ACTUAL FUTURE RESULTS. Except as otherwise specifically and expressly stated herein, the Disclosure Statement does not reflect any events that may occur subsequent to the date hereof and that may have a material impact on the information contained in the Disclosure Statement. The Debtors do not intend to update the Disclosure Statement; thus, the Disclosure Statement will not reflect the impact of any subsequent events not already accounted for herein. Further, the Debtors do not anticipate that any amendments or supplements to the Disclosure Statement will be distributed to reflect such occurrences. Accordingly, the delivery of the Disclosure Statement will not under any circumstance imply that the information herein is correct or complete as of any time subsequent to the date hereof.

**C. Solicitation Package**

Accompanying the Disclosure Statement are copies of (i) the Plan (Appendix A hereto); (ii) the notice of, among other things, the time for submitting Ballots to accept or reject the Plan, the date, time, and place of the hearing to consider confirmation of the Plan and related matters, and the time for filing objections to confirmation of the Plan (the "Confirmation Hearing Notice"); and (iii) (a) if you are the Holder of a Claim(s) entitled to vote on the Plan, one or more Ballots (and return envelopes) to be used by you in voting to accept or to reject the Plan and (b) if you are the Holder of a Claim or Interest not entitled to vote on the Plan, a notice of non-voting status.

**D. Voting Procedures, Ballots, and Voting Deadline**

If you are a Holder of a Claim entitled to vote on the Plan and a Ballot is included herewith, after carefully reviewing the Plan, the Disclosure Statement, and the detailed instructions accompanying your Ballot, please indicate your acceptance or rejection of the Plan by voting in favor of or against the Plan on the enclosed Ballot. Please complete and sign your original Ballot (copies, facsimiles, and electronic transmissions will not be accepted) and return it in the envelope provided.

Each Ballot has been coded to reflect the Class of Claims it represents. Accordingly, in voting to accept or reject the Plan, you must use only the coded Ballot or Ballots sent to you with the Disclosure Statement.

**IN ORDER FOR YOUR VOTE TO BE COUNTED, YOUR BALLOT MUST BE PROPERLY COMPLETED AS SET FORTH ABOVE AND IN ACCORDANCE WITH THE VOTING INSTRUCTIONS ON THE BALLOT AND RECEIVED NO LATER THAN [APRIL 11, 2012], AT 5:00 P.M. (PREVAILING CENTRAL TIME) (THE "VOTING DEADLINE") BY GCG, INC. (THE "VOTING AGENT").**

**If by hand delivery or overnight mail to:**

**THE SHOREBANK CORPORATION BANKRUPTCY ADMINISTRATION  
C/O GCG  
5151 BLAZER PARKWAY, SUITE A  
DUBLIN, OH 43017**

**If by regular mail to:**

**SBK BANKRUPTCY ADMINISTRATION  
C/O GCG  
P.O. BOX 9855  
DUBLIN, OHIO 43017-5755.**

**IF YOU ARE A HOLDER OF STOCK CERTIFICATES OR DEBT INSTRUMENTS, DO NOT RETURN YOUR STOCK CERTIFICATE OR DEBT**

**INSTRUMENTS WITH YOUR BALLOT.** If you have any questions about (1) the procedure for voting your Claim with respect to the packet of materials that you have received or (2) the amount of your Claim, you should contact the Voting Agent at the address set forth above, or at 1-888-421-9899.

If you are a Holder of a Claim entitled to vote on the Plan and did not receive a Ballot, received a damaged Ballot, or lost your Ballot, please contact the Voting Agent at the address or telephone number set forth above.

If you wish to obtain, at your own expense, unless otherwise specifically required by Federal Rule of Bankruptcy Procedure 3017(d), an additional copy of the Plan, the Disclosure Statement, or any Appendices or Exhibits to such documents, please contact the Voting Agent at the address or telephone number set forth above. Copies of the Plan and the Disclosure Statement (including, after the Exhibit Filing Date, all Exhibits and Appendices) and all pleadings and orders of the Bankruptcy Court are publicly available at the Bankruptcy Court's general website at: <http://www.ilnb.uscourts.gov> for a nominal fee (a Pacer account is required), or at the Voting Agent's general website address [www.shorebankrestructuring.com](http://www.shorebankrestructuring.com) free of charge.

**[THE BANKRUPTCY COURT, IN THIS CASE, HAS ADOPTED A PRESUMPTION THAT IF THERE ARE NO VOTES CAST IN A PARTICULAR CLASS ENTITLED TO VOTE ON THE PLAN, THEN THE PLAN WILL BE DEEMED ACCEPTED BY SUCH CLASS. ACCORDINGLY, IF YOU DO NOT WISH SUCH A PRESUMPTION WITH RESPECT TO ANY CLASS FOR WHICH YOU HOLD CLAIMS OR INTERESTS TO BECOME EFFECTIVE, YOU SHOULD TIMELY SUBMIT A BALLOT ACCEPTING OR REJECTING THE PLAN FOR ANY SUCH CLASS.]**

FOR FURTHER INFORMATION AND INSTRUCTION ON VOTING TO ACCEPT OR REJECT THE PLAN, SEE ARTICLE X OF THE DISCLOSURE STATEMENT.

**E. Confirmation Hearing and Deadline for Objections to Confirmation**

Pursuant to section 1128 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 3017(c), the Bankruptcy Court has scheduled the Confirmation Hearing for **[April 18, 2012], at [10:30] a.m.** (prevailing Central Time), before the Honorable A. Benjamin Goldgar, United States Bankruptcy Judge, in the United States Courthouse, 219 South Dearborn Street, Chicago, Illinois 60604, Courtroom 613. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for the announcement of the adjournment date made at the Confirmation Hearing or at any subsequent adjourned Confirmation Hearing. The Bankruptcy Court has directed that objections, if any, to confirmation of the Plan be Filed, together with proof of service, with the Bankruptcy Court at the Office of the Clerk of the Court, Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, Illinois, 60604, and served so that they are **RECEIVED** on or before **[April 11,] 2012, at 5:00 p.m.** (prevailing Central Time) by the following parties (the "Notice Parties"):

The Debtors:

The ShoreBank Corporation  
135 South LaSalle Street, Suite 2040  
Chicago, IL 60603 (Attn: George Surgeon, President and C.E.O)

Counsel for the Debtors:

Skadden, Arps, Slate, Meagher & Flom LLP  
155 North Wacker Drive, Suite 2700  
Chicago, Illinois 60606  
Attn: George N. Panagakis, Esq.

Counsel for the Creditors' Committee:

[•]

United States Trustee:

The Office of the United States Trustee  
219 S. Dearborn Street, Suite 873  
Chicago, Illinois 60604  
Attn: Roman L. Sukley, Esq.

**III. HISTORY OF THE DEBTORS**

**A. The Debtors and Their Businesses**

**1. SBK**

SBK directly or indirectly owns 100% of the common stock of all of the other Debtors.

Prior to the Bank Closure, SBK, incorporated under the laws of the state of Illinois and headquartered in Chicago, was a registered bank holding company for the Bank, whose deposits were insured by the FDIC up to the maximum amount permitted by law, as well as certain other subsidiaries.

Prior to its closing, the Bank was subject to oversight and regulation by its primary regulator, the IDFPR. As a bank holding company, SBK was subject to regulations under the Bank Holding Company Act of 1956, as amended, and was registered with the Federal Reserve Board ("FRB").

Organized in 1973, SBK was America's first and leading community development and environmental bank holding company. As such, SBK was committed to building vibrant communities by providing financial services and information to create economic equity and a healthy environment. SBK had a "Triple Bottom Line" focus, simultaneously trying to meet

three objectives: (1) community economic development; (2) environmental sustainability; and (3) profitable operations. A pioneer in developing programs and services that catalyzed economic opportunity, social equity, and environmental sustainability, SBK provided innovative financial services, products, and knowledge and played a founding role in the creation of a development finance industry committed to serving the needs of lower-income communities. SBK contributed to the development of the policy and institutional infrastructure that supported development finance both nationally and internationally. It was an inspiration for the United States Treasury Department's Community Development Financial Institutions Fund.

Prior to the Bank Closure, the Bank, SBK's largest subsidiary and primary asset, was the nation's largest certified community-development bank, with more than \$2 billion in assets and more than \$1.5 billion in total deposits. The Bank provided a broad range of financial services to customers. Specifically, the Bank, through its fifteen branches including those in Chicago, Cleveland, and Detroit, provided direct lending services to underserved areas to revitalize neighborhoods. For example, the Bank and its affiliates made approximately \$3.9 billion in loans and investments for affordable housing, small businesses, and community organizations since 1973. In addition, SBK advised financial institutions on how to provide financial services in underserved communities internationally.

Prior to the Petition Date, SBK sold all of the outstanding capital stock of its wholly owned subsidiary ShoreBank International, an Illinois corporation ("SBI") to Triodos Ventures BV, a Netherlands corporation. SBI is an international advisory company that delivers services and solutions to financial institutions that extend access to capital, information, and services to underserved individuals and small businesses in emerging market economies. The sale of SBI closed on January 11, 2011 (and was announced to the public on January 17, 2011), and SBK realized approximately \$3.85 million in cash proceeds at closing. In addition, SBK will receive 80 percent of the net proceeds upon the sale of certain interests owned by SBI in TBC Kredit in Azerbaijan (a regulated finance company) and Belarusian Bank for Small Business, a commercial bank. The two equity investments have a book value of approximately \$2.2 million. As part of the sale process SBI received a valuation of SBI as of June 2010 from Plante & Moran of \$3.3 million plus whatever could be realized on SBI's investments in TCB Kredit and Belarusian Bank for Small Business.

In addition, SBK controlled a number of board seats for certain affiliated nonprofits including: ShoreBank Enterprise Cascadia, Northern Initiatives, and ShoreCap Exchange. Executive officers and directors of SBK personally held a number of board seats for certain other affiliated nonprofits including: ShoreBank Neighborhood Institute, ShoreBank Enterprise Cleveland, ShoreBank Enterprise Detroit, and Center for Financial Services Innovation ("CFSI"). SBK and the Bank provided certain human resources and accounting services to the nonprofits on a fee basis, but neither had nor has any ownership of any of the nonprofit affiliates. SBK was also a fund advisor to National Community Investment Fund ("NCIF"), an independent charitable trust that invests in community development banks, thrifts, and credit unions.

SBK is the only Debtor that had employees as of the Petition Date. Specifically, SBK has a skeletal staff of just four employees to help the Debtors wind down their estates.

**2. ShoreBank Pacific Corporation**

ShoreBank Pacific Corporation ("PacCorp") was a holding company for ShoreBank Pacific, a Washington chartered bank, which is not a Debtor in the Chapter 11 Cases, and ShoreBank Lands Corporation ("SLC"), which is a Debtor. All of the common stock of ShoreBank Pacific was owned by PacCorp. In turn, PacCorp was a wholly owned subsidiary of SBK. Prior to the Petition Date, PacCorp sold all the issued and outstanding shares of ShoreBank Pacific to One PacificCoast Bank, f/k/a OneCalifornia Bank, FSB pursuant to a Stock Purchase Agreement (the "Pacific Sale").

Under federal banking law, ShoreBank Pacific and the Bank were commonly controlled at the time of the Bank Closure. Therefore, it was possible that ShoreBank Pacific could incur a cross-guaranty liability to the FDIC of more than \$350 million. A condition to the closing of the Pacific Sale was that the FDIC would waive any cross-guaranty liability in exchange for the FDIC getting a large portion of the proceeds of the sale. The sale closed on December 30, 2010. SBK realized \$308,201 in cash at closing to reimburse SBK for certain out-of-pocket expenses incurred and paid by SBK as part of the sale. SBK received an additional \$50,000 on October 4, 2011, and SBK anticipates that it may receive additional funds up to approximately \$100,000. The balance of any other proceeds from the Pacific Sale will be paid to the FDIC in exchange for the FDIC's waiver of the cross-guaranty liability. For the avoidance of doubt, in addition to any proceeds the FDIC is to receive under the FDIC Treatment, it will still continue to be able to collect payments stemming from the sale of ShoreBank Pacific pursuant to the stock purchase agreement governing that transaction

PacCorp never had employees and only serves as a holding company for Debtor SLC, which also has no employees.

**3. ShoreBank Capital Corporation**

ShoreBank Capital Corporation ("CapCorp") is a wholly owned subsidiary of SBK. It was the result of the merger of two other SBK subsidiaries ShoreBank BIDCO ("BIDCO") and The Neighborhood Fund. BIDCO was a business and industrial loan company licensed and regulated by the state of Michigan. The Neighborhood Fund was a small business investment company (an "SBIC") licensed and regulated by the United States Small Business Administration. CapCorp has been inactive for several years, and is no longer either a business and industrial loan company or an SBIC.

**4. ShoreBank Development Corporation**

ShoreBank Development Corporation ("SDC") is a wholly owned subsidiary of SBK. It was a real estate development company serving the south and west sides of Chicago. Its primary business was to provide rehabilitated rental housing for low-income families through real estate partnerships, where it was general partner with fractional ownership positions. The nature of the partnerships was such that SDC's ownership positions had no value. SDC also built new affordable for-sale single family homes (stand-alone structures and condominiums). In 1999,

SDC decided to complete projects in progress, to cease developing new projects, and to divest itself of its partnership positions. SDC completed most of this divestiture program by mid-2005. The limited partner in Rainbow's End Limited Partnership ("Rainbow's End") would not allow SDC to withdraw, so an unrelated co-general partner with managing responsibilities was brought into Rainbow's End in 2010.

**5. ShoreCap Management, Ltd.**

ShoreCap Management, Ltd. ("SCM") is a wholly owned subsidiary of SBK. In 2003, SBK created SCM to provide management services to investment funds investing capital and providing capacity-building services to regulated microfinance institutions and small business banks in Africa, Asia, and parts of Eastern Europe. Specifically, SCM acted as the fund manager of two funds: (i) ShoreCap International, Ltd. ("Fund I"), which is a \$28 million fully-invested and fully-committed fund that has invested in regulated development finance institutions in fifteen different countries and (ii) ShoreCap II Limited ("Fund II"), which is partially-funded and committed to invest in regulated financial institutions in Africa and Asia. SCM also provided management and administrative services to ShoreCap Exchange, a 501(c)(3) non-profit organization that raises funds to support the provision of technical assistance to Fund I and Fund II portfolio companies and to other regulated microfinance institutions and small business banks in Africa and Asia.

In 2010, the Federal Reserve Board refused to approve any investments by Fund II because of the involvement of SBK in Fund II. Given SCM's inability to obtain FRB approval of investments, the investors in Fund II, who had broad ability to discharge SCM, formally terminated the contract between Fund II and SCM. Specifically, the employees of SCM created a new employee-owned fund management firm, called Equator Capital Partners LLC ("Equator"). The investors in Fund II then terminated SCM and hired Equator as manager of Fund II. Investors in Fund I also agreed to subcontract fund management from SCM to Equator. In exchange, SBK was granted a release from its obligation to make a \$1 million dollar investment in Fund II. SBK also recovered the entire \$41,030 investment that it had made in Fund II.

**6. Shore Overseas Corporation**

Shore Overseas Corporation ("SOC") was established in 1995 to allow SBI to conduct business in particular countries for a short period of time. It is now inactive.

**7. ShoreBank Lands Corporation**

SLC was incorporated to function as a real estate development company, but it never became operational, and it remains inactive.

**8. ShoreBank New Markets Fund, Inc., SBK NMTC Fund I, LLC, SBK NMTC Fund II, LLC, SBK NMTC Fund III, LLC and SBK NMTC Funds IV, LLC**

ShoreBank New Markets Funds, Inc., SBK NMTC Fund I, LLC, SBK NMTC Fund II, LLC, SBK NMTC Fund III, LLC, and SBK NMTC Fund IV, LLC (collectively, the "New Markets Funds") were all community development entities formed to hold new markets tax credit allocations ("NMTC").

The Community Development Financial Institutions Fund of the U.S. Treasury ("CDFI") indicated it would not allow SBK to sell its NMTC to Urban or any other entity. Consequently, SBK wrote to CDFI asking that SBK be relieved of its NMTC and suggesting that CDFI redirect the allocation to another community development financial institution or Chicago Neighborhood Initiatives. Thereafter, the CDFI rescinded the NMTC, and it is no longer property of the Debtors' estate.

**B. Events Leading up to the Commencement of the Chapter 11 Cases**

**1. Declining Real Estate Market and Increasing Unemployment**

The Bank's primary deposit products were checking, savings, and time deposit accounts, and its primary lending products were single and multi-family residential mortgage, commercial, and faith-based organization loans. The Bank's low income and minority priority communities were substantially impacted by the subprime crisis and the global economic recession. Many of the Bank's lending neighborhoods in Chicago, Cleveland, and Detroit had some of the nation's highest unemployment rates, record numbers of foreclosures devastated neighborhoods, and real estate values dropped significantly. Specifically, the continued weakening of the housing, employment, and credit markets contributed to increased levels of nonperforming assets, charge-offs, and credit loss reserves at the Bank.

While the neighborhoods that the Bank served were especially stressed by the global recession, the Bank was not alone. As has been well documented, bank failures have hit near record levels in recent years, with 140 banks failing in 2009, 157 more bank failures in 2010, and 92 in 2011, including more than 30 bank failures in the Chicago-area alone since 2009.

**2. Capital Raising Efforts**

SBK sought both private capital and access to money from the Troubled Asset Relief Program, better known as "TARP." Specifically, SBK sought to raise \$200 million, including (i) the issuance of common shares to private investors in the amount of approximately \$125 million and (ii) SBK also submitted an application for \$74.6 million to the United States Treasury Department's Community Development Capital Initiative. Although SBK exceeded its goal for raising private capital, it was unable to access TARP funding, and thus the capital raising efforts ultimately were not successful.

### **3. Regulatory Oversight and Other FDIC Matters**

As a result of the declining loan values, the Bank's regulatory agencies took a series of regulatory actions that increasingly constrained the operations of both SBK and the Bank. In February of 2010, the FDIC deemed the Bank "critically undercapitalized" under applicable regulatory guidelines, which include the prompt corrective action ("PCA") provisions of the Federal Deposit Insurance Corporation Improvement Act ("FDICIA"). According to Part 325 of Subpart B of the FDICIA, an insured depository institution is deemed to be "critically undercapitalized" if it has a ratio of tangible assets that is equal to or less than two percent.

On July 14, 2009, the Bank agreed to the issuance of a consent order (the "Bank Consent Order"). On January 8, 2010, SBK entered into a written agreement with the Federal Reserve Bank of Chicago (the "FRB Agreement"), which, among other things required SBK to submit a written capital plan and restrict payment of dividends by SBK to its shareholders without prior written approval of certain of its regulators. In March 2010, the FDIC amended the Bank Consent Order to include requirements with regard to the Bank's capital position.

Moreover, because the Bank was deemed undercapitalized within the meaning of the PCA provisions of the FDICIA it was required to submit a capital restoration plan (a "CRP"). See 12 U.S.C. § 1831o(e)(2)(A). Consequently, the Bank developed a CRP and submitted it to the FDIC on March 11, 2010. According to Part 325.104(c) of the FDICIA, the FDIC is required to provide written notice within sixty days of receiving a CRP as to whether the CRP has been approved. The FDIC, however, did not provide written notification to SBK about whether the CRP had been approved.

The CRP submitted to the FDIC by the Bank contained a PCA Guarantee and Assurances (the "CRP Guarantee Agreement"), whereby SBK, subject to limited liability provisions of the FDICIA, said it would utilize its available assets "when directed to do so by the FDIC, to enable the Bank to implement the Capital Plan." The FDIC never directed SBK to utilize its assets in this regard. Moreover, as outlined above, the FDIC never accepted the Bank's CRP.

### **4. Bank Closure and Sale of Bank**

On August 20, 2010, IDFP closed the Bank, and the FDIC was appointed as receiver. A consortium of investors, primarily foundations and financial institutions many of which had previously invested in SBK, raised funds and capitalized a newly chartered institution called Urban. Urban purchased most of the assets of the Bank and assumed all of the Bank's non-brokered deposits from the FDIC pursuant to a purchase and assumption agreement. The Bank was SBK's primary operating subsidiary. As a result of the Bank Closure and the Bank Sale, SBK's remaining tangible assets are substantially less in value than its aggregate liabilities.

## **5. Negotiations with the FDIC**

Based upon the actions of the FDIC in other recent bankruptcy proceedings involving bank holding companies, it could be anticipated that the FDIC might assert certain claims in these Chapter 11 Cases, including, but not limited to, claims under Bankruptcy Code sections 365(o) and 507(a)(9), and claims to certain tax refunds and proceeds (collectively, the "FDIC Claim").

Debtors in other similar bank holding company bankruptcy cases have expended considerable funds and resources in litigating the merits of such claims of the FDIC. Therefore, prior to the Petition Date, the Debtors, through their counsel, and the FDIC, through its counsel, engaged in ultimately fruitful negotiations with the aim of consensually resolving the FDIC Claim.

First, on October 25, 2010, SBK and the FDIC entered into an agreement regarding the establishment of a bank account to hold all consolidated tax refunds (as amended, the "Tax Escrow Agreement") pending resolution of the ownership dispute over the tax refunds. The Tax Escrow Agreement was amended as of August 29, 2011 to make the FDIC a joint signatory on the escrow account. Under the Tax Escrow Agreement, SBK and the FDIC agreed to establish an interest bearing account at The Northern Trust Company into which all tax refunds to the consolidated group issued by various taxing authorities, including the IRS, would be placed pending resolution of the ownership dispute over the tax refunds. On September 1, 2011, the FDIC sent the escrow agent five US Treasury tax refund checks in the aggregate amount of approximately \$10,638,000 that the FDIC had received from the IRS stemming from tax years 2004, 2005, 2006, 2007, and 2008.

As a further result of the settlement negotiations, the Debtors and the FDIC worked together to create the FDIC Treatment, which, if the Plan is confirmed, would be given to the FDIC in full satisfaction, settlement, release, and discharge of, and in exchange for, each and every Class 3 Claim against the Debtors. The FDIC Treatment is set out in Exhibit A to the Plan. To implement the settlement with the FDIC, the Debtors have included the FDIC Treatment in the Plan, which it is now seeking to confirm. Accordingly, after the FDIC and the Debtors had agreed to the key terms of the FDIC Treatment, the Debtors determined it was necessary and appropriate to file for relief under Chapter 11 of the Bankruptcy Code to implement the FDIC Treatment and distribute their remaining assets for the benefit of all of their creditors.

If the Plan is confirmed by the Bankruptcy Court and it goes effective, then the FDIC Treatment would resolve the ownership dispute over the tax refunds and any dispute over whether a capital maintenance obligation exists. If, however, the Plan is not confirmed, then costly and expensive litigation with the FDIC over ownership of the various tax refunds and whether a capital maintenance obligations exists would likely ensue. As noted above, if the FDIC were successful in any litigation concerning ownership of the tax refunds, the FDIC would get all of the Federal Income Tax Refund, and SBK's distributable value would be reduced by approximately \$10,638,000. If the FDIC were successful in any litigation concerning whether a

capital maintenance obligation exists, then the Debtors would likely not have any value to distribute to Holders of General Unsecured Claims.

### **C. Capital Structure**

SBK is a holding company. Prior to the Petition Date, its principal asset was 100 percent of the common stock it owned in the Bank, as well as the stock it owned in its Debtor and non-Debtor subsidiaries. As a result of the Bank Closure, SBK's investment in the Bank has become effectively worthless, and SBK's remaining tangible assets are substantially less in value than its aggregate liabilities. Specifically, as of the Petition Date, SBK had assets of approximately \$19.2 million (including approximately \$10.7 million in disputed tax refunds, of which \$8.5 million would go to the FDIC under the FDIC Treatment) and liabilities totaling approximately \$55.1 million (not including claims by the FDIC, which are sought to be resolved by the FDIC Treatment). The Debtors other than SBK are non-operating companies with minimal, if any, assets.

#### **1. JPM Credit Facility.**

SBK has a \$12 million credit facility with JP Morgan Chase Bank, N.A. ("JPM"), pursuant to that certain loan agreement, dated as of December 31, 2004, as amended (the "JPM Credit Agreement"). As of the Petition Date, the credit facility was fully drawn. Consequently, as of the Petition Date, the balance due under the JPM Credit Agreement consisted of principal in the amount of \$12,000,000 and accrued interest in the amount of \$303,914, for an aggregate amount of \$12,303,914 (the "Aggregate Amount").

The JPM Credit Agreement is secured by that certain Securities Pledge Agreement, dated as of March 31, 2009 between SBK and JPM (the "Securities Pledge Agreement"). Under the Securities Pledge Agreement, SBK granted a security interest in, among other things, all shares of the Bank (the "Pledged Collateral"). As a result of the Bank Closure and Bank Sale, the Pledged Collateral is worthless, and therefore the debt owed by SBK under the JPM Credit Agreement will be treated under the Plan as an unsecured Claim.

#### **2. Junior Subordinated Debentures and Trust Securities.**

SBK is obligated under three separate subordinated indentures (each a "Subordinated Indenture" and collectively, the "Subordinated Indentures") and their related guaranty agreements in the aggregate principal amount of \$33,000,000. Specifically, SBK is obligated under (i) a Subordinated Indenture, dated as of March 23, 2000 between SBK as Issuer and The Bank of New York as Trustee for \$10,000,000 in principal amount on certain junior subordinated deferrable interest debentures due 2030; (ii) a Subordinated Indenture, dated as of April 10, 2002 between SBK as Issuer and Wilmington Trust Company as Trustee for \$8,000,000 in principal amount on certain junior subordinated deferrable interest debentures due 2032; and (iii) a Subordinated Indenture, dated as of October 10, 2003 between SBK as Issuer and Wells Fargo Bank, National Association as Trustee for \$15,000,000 in principal amount in certain junior

subordinated deferrable interest debentures due 2033. Currently, there remains approximately \$6 million in aggregate amount of interest outstanding and due on a subordinated basis.

SBK formed three unconsolidated, single-purposes trusts (each, a "Trust" and collectively, the "Trusts"). The Trusts issued common and capital securities (collectively, the "Trust Securities") to investors, and then the Trusts used the proceeds from the issuances of the Trust Securities to purchase junior subordinated debentures (collectively, the "Junior Subordinated Debentures") from SBK, with terms essentially identical to the Trust Securities. Pursuant to certain guarantee agreements, SBK guaranteed certain performance obligations that the Trusts owed the holders of the Trust Securities. Trust Securities, also known as TRUPS or TOPRS, are hybrid securities, possessing characteristics of both debt and equity. Given certain regulatory and tax advantages, TRUPS have been a preferred method to raise capital for certain bank holding companies, including SBK.

The sole asset of each Trust is a Junior Subordinated Debenture issued by SBK, and the sole obligations of each Trust relate to the Trust Securities it issued. As a result, the Trusts are essentially conduits, or pass-through entities, organized for the primary purpose of paying amounts received on the Junior Subordinated Debentures to the Holders of the Trust Securities. The Junior Subordinated Debentures are governed by Subordinated Indentures and the Trust Securities are governed by declarations of trust (collectively, the "Trust Agreements"), with one institution generally serving as trustee under both the Subordinated Indenture and the Trust Agreement for each Trust (collectively, the "Subordinated Indenture Trustees").

Pursuant to the terms of the Subordinated Indentures and the Trust Agreements, the holders of the Junior Subordinated Debentures and Trust Securities are subordinated to all senior debt of SBK. Therefore, distributions under the Plan will be made in a manner to give full contractual effect to the subordination provisions of the Subordinated Indentures and the Trust Agreements. SBK takes the position that Senior Indebtedness Claims under the Plan include the JPM Claim. Therefore, as reflected in the treatment of Class 4 under the Plan, and in accordance with the Subordinated Notes Subordination Rights, Holders of Class 6 Claims shall not receive or retain a distribution from the Liquidation Trust until all Allowed Class 4 Claims are paid in full. Instead, interests in the Liquidation Trust otherwise distributable to or for the benefit of Holders of Allowed Class 6 Claims shall instead be redistributed by the Disbursing Agent to Holders of Allowed Class 4 Claims pursuant to the subordination provisions of the Subordinated Indenture until all Holders of Allowed Class 4 Claims are paid in full. After the Allowed Claims of Holders of Class 4 have been paid in full, distributions of Net Available Cash otherwise distributable with respect to the Holders of Class 4 Claims shall instead be redistributed by the Disbursing Agent to the Subordinated Indenture Trustees on account of the Subordinated Note Claims; however, at this time, the Debtors are estimating that Class 4 will not be paid in full, thus the Debtors are not expecting any distribution to be available to Holders of Allowed Class 6 Claims.

Under the Subordinated Indentures, upon an event of default, each Indenture Trustee is empowered to institute actions against SBK for payment of amounts due under the Junior Subordinated Debentures and, in the event of a pending bankruptcy of SBK, each Indenture

Trustee is entitled to intervene in the Chapter 11 Cases by filing Proofs of Claim and taking certain other actions; however, the Indenture Trustees are not authorized to consent to, accept, adopt, or vote with respect to any chapter 11 plan of SBK on behalf of the Trusts. Instead, the holders of the Trust Securities have that right.

**3. Other liabilities.**

SBK has approximately \$3.7 million in other liabilities, which includes approximately \$3.1 million in accrued expenses for a supplemental executive retirement plan and approximately \$600,000 in severance, incentive payables, as well as other various miscellaneous expenses.

**4. Equity.**

As of the Petition Date, there were approximately 79 shareholders of SBK, consisting of financial institutions, foundations, insurance companies, faith-based institutions, trusts, and individuals. SBK had five (5) classes of shares (collectively, the "Old Equity Interests"): Voting Common (5,426 shares), Non-Voting Common (11,523 shares), Jumbo Non-Voting Common (242 shares), Series E Preferred (3,053.125 shares), and Series F Preferred (425 shares).

As of the Petition Date, the three largest holders of voting common shares were the Illinois Prepaid Tuition Trust Fund (513 shares), the John D. and Catherine T. MacArthur Foundation (453 shares), and the Leonard and Sophie Davis Fund (355 shares). As of the Petition Date, the three largest equity holders based on the number of common equivalent shares (voting and non-voting) were BankAmerica Investment Corporation and affiliates (2,014 common equivalent shares), the Illinois Prepaid Tuition Trust Fund (1,668.4 common equivalent shares), and The Prudential Insurance Company of America (1,210 common equivalent shares). The Holders of Old Equity Interests are not receiving any distribution under the Plan and therefore are deemed to reject the Plan pursuant to 1126(g) of the Bankruptcy Code.

**D. Debtors' Assets**

SBK's tangible assets on its balance sheet, as of the Petition Date, consisted of the property in the subsections below. In addition, CapCorp's assets total approximately \$480,000 and consist of one performing loan, one non-performing loan, one equity investment, several collection accounts with no value, and cash. SDC's ownership position at 0.05% in Rainbow's End has no economic value, and is SDC's only asset other than an indemnification agreement. SCM has cash in a checking account in the amount of approximately \$35,000. PacCorp anticipates approximately \$100,000 in additional proceeds for the sale of ShoreBank Pacific. The rest of the Debtors have no assets.

**1. SBK's Bank Account Deposits**

As of the Petition Date, SBK had deposits in two accounts at The Northern Trust Company in the aggregate amount of approximately \$4.1 million in cash.

**2. SBK's Interest in Tax Refunds**

As described above, SBK is the taxpayer under a consolidated tax group that includes SBK and the Bank, among other SBK current and former subsidiaries. For many years prior to the Petition Date, SBK and its subsidiaries elected to file consolidated federal and state tax returns. SBK believes its largest remaining asset is the Federal Income Tax Refund. If the Plan is confirmed, then under the FDIC Treatment, \$8.5 million of the approximately \$10.7 million Federal Income Tax Refund would be paid over to the FDIC. In addition, SBK is owed approximately \$75,000 in state tax refunds from Illinois.

SBK and its subsidiaries, including the Bank, established and operated in the ordinary course of business pursuant to the terms of the Tax Sharing Agreement, and SBK's actions with regard to tax matters were in each case implemented pursuant to the Tax Sharing Agreement, including its annual filing of the consolidated federal and state income tax returns, the payment of estimated tax liabilities to the IRS and the states of Illinois and Michigan, and, as discussed below, SBK's request for tax refunds.

A dispute exists between the Debtors and the FDIC regarding ownership to the Tax Refunds (defined below). Namely, the FDIC argues it owns the portion of the Federal Income Tax Refund that pertains to taxes paid on earlier income earned by the Bank. The Debtors dispute the FDIC's position, and instead argue that under the Tax Sharing Agreement and/or other applicable law, the Tax Refunds are property of the Debtors' estates. Absent a final adjudication of ownership or settlement of this dispute with the FDIC, it is not possible to state with certainty the amount of the Debtors' entitlement to any of the Tax Refunds, including the Federal Income Tax Refund.

Currently, Tax Refunds received by the Debtors or the FDIC are required to be deposited in a separate, segregated interest-bearing account at The Northern Trust Company pending resolution of the issue of ownership. Specifically, on October 25, 2010, the FDIC and SBK entered into the Tax Escrow Agreement. Under the Tax Escrow Agreement, the FDIC and SBK agreed to put refunds issued by the IRS and/or by other taxing authorities with respect to activities of the Consolidated Tax Group (the "Tax Refunds") in an interest-bearing account; however, nothing in the Tax Escrow Agreement constitutes a finding for any purpose of the relative ownership of, or other rights with respect to, the Tax Refunds. In fact, the issue of ownership of the Tax Refunds was explicitly reserved for future determination.

On September 1, 2011, the FDIC sent the escrow agent five US Treasury tax refund checks in the aggregate amount of \$10,637,949.88 that the FDIC had received from the IRS stemming from tax years 2004, 2005, 2006, 2007, and 2008. They will remain in the escrow account pending resolution of the issue of ownership.

Absent the FDIC Treatment, the Debtors and the FDIC would likely have to engage in costly litigation to determine ownership of the Tax Refunds. Moreover, to the extent that the Debtors prevail in any litigation on their position regarding ownership of the Tax Refunds, the FDIC would likely contend (and the Debtors might dispute) that the FDIC holds a General Unsecured Claim against the Debtors in the approximate amount of the Federal Income Tax Refund.

### **3. Furniture, Fixtures, and Equipment**

During the ordinary course of its operations, the Debtors accumulated certain assets consisting of furniture, furnishings, and office equipment, including, but not limited to computers, printers, and office chairs (the "FFE"). Thus far, SBK has sold furniture and computer equipment to Urban for \$7,238. In addition, SCM sold computer equipment to Equator for \$3,314. The prices for these assets were determined by third parties or by consulting eBay and other used equipment websites. Additional sales of other furniture and equipment to CFSI, SBI, NCIF, and several individuals were completed in the aggregate amount of \$3,758. The remaining FFE has no book value. Under the Plan, the Debtors seek the authority to have the Debtors or the Liquidation Trust Administrator sell or abandon any remaining FFE, with a book value of \$50,000 or less, without further approval of the Bankruptcy Court. Accordingly, the Debtors seek to abandon the remaining FFE.

### **4. Claims against FDIC**

SBK holds 100% of the common equity interests in the Bank and certain claims against the Bank as a result of pre-petition events. Pursuant to Section 1821(d) of Title 12 of the United States Code, the FDIC set November 24, 2010, as the last day to file claims in the receivership proceeding of the Bank that are claims against the Bank and/or the FDIC. On or about November 8, 2010, SBK timely filed a proof of claim in the receivership (the "Receivership Proof of Claim"), describing in detail numerous claims against the receivership estate of the Bank to the extent known by SBK as of November 8, 2010, based on the records in its possession. On February 16, 2011, the FDIC disallowed the Receivership Proof of Claim, stating "[t]he proof of claim as presented fails to prove it's [sic] claim to the satisfaction of the Receiver." The Receivership Proof of Claim alleges among other things claims to:

- Taxes
- Intercompany Receivables
- Claims arising out of capital contributions and certain other transfers
- Preference Claims
- Vendor Contract Claims
- Improper Asset Possession and Sales
- Deposit Claims
- Administrative Claims
- Employee/Employer Related Costs

- Insurance Claims
- Indemnification Claims
- Other Contingent, Unliquidated Claims
- Fees and Expenses
- Interest

Even if the Receivership Proof of Claim were ultimately allowed in whole or in part, it is likely that the FDIC presently does not have funds in the receivership estate of the Bank with which to pay any of such claim and it is uncertain whether the FDIC will ever have sufficient funds, after payment of statutorily preferred claims, to make any meaningful distribution to other claimants, including the Debtors. For that reason, among others, SBK has decided to release such claims under the FDIC Treatment.

#### **5. Other Equity Interests and Miscellaneous Assets**

On May 31, 2011, SBK sold its corporate condominium in the Hyde Park neighborhood of Chicago for \$135,000, netting \$121,623 after customary credits and closing costs. The funds were deposited into one of SBK's Bank Accounts. Moreover, SBK sold a 2.27% equity interest in First Affirmative, a closely-held financial advisory firm. All investors and employees of First Affirmative were solicited regarding their interest to purchase SBK's interest. Other investors offered to acquire the shares through a Dutch auction for \$22,229. The transaction closed in November 2010.

Among the other assets that SBK, and or the Liquidation Trust Administrator on behalf of SBK and its estate, as the case may be, will seek to monetize are: (i) an 8.67% limited partnership interest in SB Partners Capital Fund, L.P., a middle-market private equity fund with a book value of approximately \$680,000; (ii) a 2.38% limited partnership interest in MWV Capital Pinnacle Fund, L.P., a middle market private equity fund, with a book value of approximately \$360,000; (iii) an approximately 8% equity interest in ShoreCap International Ltd., with a book value of approximately \$107,000; (iv) a 40% of carried interest in SCI, with no book value; (v) a 100% common equity investment in CapCorp, with a book value of approximately \$480,000; and (vi) a 100% common equity investment in SCM, with a book value of approximately \$35,000.

#### **6. Intellectual Property**

Three service marks and 62 domain names/URLs were sold to Urban for \$12,000 in the aggregate. One PacificCoast Bank has agreed to buy two others for \$6,500. Two service marks were transferred to Equator as part of the transaction described above. The remaining marks were transferred to Enterprise Cascadia to protect them as they had no market value.

**7. NOLs**

The Debtors have significant amounts of income tax related assets, including Federal and Illinois Net Operating Loss ("NOL") carryforwards. For example, SBK's 2010 consolidated income tax filed with the IRS includes a schedule that reflects a cumulative NOL carryforward (in gross dollars) of \$150,854,195 (of which \$1,913,624 will be used by the purchaser of ShoreBank Pacific, a former subsidiary of SBK that was sold in December, 2010). These NOL carryforwards and other income tax related assets are reflected in the Debtors' accounting records at zero value (due to an offsetting valuation allowance), since it is assumed that these tax attributes have no value in the absence of a properly-structured transaction in bankruptcy, which is not expected at this time.

**E. Debtors' Benefit Plans.**

**1. 401(k) Plan**

Prior to the Petition Date, SBK maintained the ShoreBank Retirement Savings Plan, a defined contribution plan (the "401(k) Plan"), which had a 401(k) component (employee contributions with discretionary employer match). At the time of the Bank Closure, there were approximately 600 remaining participants in the 401(k) Plan. Shortly after the Bank Closure, SBK sought to fully terminate and wind up the 401(k) Plan, with such termination effective November 30, 2010. Funds from the 401(k) Plan were distributed to all of the approximately 600 participants by the end of January 2011, and final tax and audit reports were prepared and filed with the appropriate authorities. A determination letter was received from the IRS on October 7, 2011 assuring that the termination does not adversely affect the 401(k) Plan's qualifications for federal tax purposes.

**2. Long-Term Incentive Plan**

Certain employees of SBK and its affiliates also participated in a long-term incentive plan sponsored by SBK, which provided incentive compensation related to the overall financial performance of SBK and its affiliates and the achievement of their community development and conservation missions. Each performance period extended for three years, and the amount of payment was contingent upon SBK and its subsidiaries and affiliates meeting stated performance targets over the specified performance period. To the extent targets were met, plan participants were eligible to be paid, in cash, an amount not to exceed 28% of their base compensation at the beginning of the three-year performance period. If minimum performance thresholds were not met, no payments were made. Certain claimants have Claims stemming from the long-term incentive plan that became due in 2009, but were not paid. The long-term incentive plan has been terminated by the compensation committee of the SBK board of directors, and, thus, is no longer in existence.

**F. Prepetition Corporate Structure.**

SBK is a holding company, which owned 100% of the outstanding common stock of the Bank. SBK also directly or indirectly owned all of the Debtors in the Chapter 11 Cases. In addition, SBK established three separate Trusts (as outlined above), as unconsolidated subsidiaries, for the sole purpose of issuing and selling certain securities representing undivided beneficial interests in the assets of the Trusts. SBK holds all the Common Securities in the Trusts, which collectively represents approximately three (3) percent of all of the securities issued by each of the Trusts. The holders of the Capital Securities own the remaining majority interest in each of the Trusts.

As of the Petition Date, SBK's Board of Directors consisted of thirteen (13) members, as follows: Mary Cahillane, Stan Amy, John Berdes, Alfred Glancy III, Carlton L. Guthrie, Steven Hamp, David K. Korslund, Robert B. Lifton, Luther Ragin, Jr., Nicolas Retsinas, Adele S. Simmons, George Surgeon, and Russell Zimmermann. The Board of Directors oversees the business and affairs of SBK.

The following is a list of the executive officers of SBK, as of the Petition Date: George Surgeon, President and Chief Executive Officer; Geoffrey Renk, Senior Vice President and Controller; Beth Wagner, Vice President; and Lynn Railsback, Secretary.

**G. Regulatory Proceedings and Litigation Against the Debtors**

Since the Petition Date, the Debtors have remained as debtors-in-possession subject to the supervision of the Bankruptcy Court and in accordance with the Bankruptcy Code. As debtors-in-possession, the Debtors are authorized to operate their businesses in the ordinary course of business, with transactions out of the ordinary course of business requiring Bankruptcy Court approval.

An immediate effect of the filing of the Debtors' bankruptcy petitions was the imposition of the automatic stay under the Bankruptcy Code which, with limited exceptions, enjoined the commencement or continuation of all collection efforts by creditors, the enforcement of liens against property of the Debtors, and the continuation of litigation against the Debtors, subject to a possible grant of relief from the automatic stay by the Bankruptcy Court. This relief provided the Debtors with the "breathing room" necessary to assess their businesses and determine how to maximize the value of their Estates. The Debtors are aware of the following regulatory actions and litigation commenced against the Debtors.

**1. Regulatory Orders.**

In February of 2010, the FDIC deemed the Bank "critically undercapitalized" under applicable regulatory guidelines, including the PCA provisions of the FDICIA. According to Part 325 of Subpart B of the FDICIA, an insured depository institution is deemed to be "critically undercapitalized" if it has a ratio of capital to tangible assets that is equal to or less than two percent.

On July 14, 2009, the Bank agreed to the issuance of the Bank Consent Order. On January 8, 2010, SBK entered into the FRB Agreement, which, among other things required SBK to submit a written capital plan and restrict payment of dividends by SBK to its shareholders without prior written approval of certain of its regulators. In March, 2010, the FDIC amended the Bank Consent Order to include requirements with regard to the Bank's capital position.

Moreover, because the Bank was deemed undercapitalized within the meaning of the PCA provisions of the FDICIA it was required to submit a CRP. See 12 U.S.C. § 1831o(e)(2)(A). Consequently, the Bank developed a CRP and submitted it to the FDIC on March 11, 2010. According to Part 325.104(c) of the FDICIA, the FDIC is required to provide written notice within sixty days of receiving a CRP as to whether the CRP has been approved. The FDIC, however, did not provide written notification to SBK about whether the CRP had been approved.

The CRP submitted to the FDIC by the Bank contained the CRP Guarantee Agreement, whereby SBK, subject to limited liability provisions of the FDICIA said it would utilize its available assets "when directed to do so by the FDIC, to enable the Bank to implement the Capital Plan." The FDIC never directed SBK to utilize its assets in this regard. Moreover, as outlined above, the FDIC never accepted the Bank's CRP.

**2. Litigation Against the Debtors.**

On or about May 4, 2010, SDC was served with a first amended complaint filed by Jamil Moore, a minor, by his mother and next friend, Jennifer E. Wynn in the Circuit Court of Cook County, Illinois, Law Division, Case No. 09 L 12983, alleging that SDC, Realty and Mortgage Co., and Dharill Management, Inc. were negligent in operating and managing an apartment building that allegedly contained lead-bearing substances that were allegedly ingested by Jamil Moore.

Specifically, Realty and Mortgage Co. was the property manager for a partnership, South Shore Associates General Partnership, that owned the building at the time, but subsequently sold it in 2005. SDC was a general partner in that partnership and was in the business of developing and managing affordable housing projects. The first amended complaint seeks an amount in excess of \$50,000. SDC's last development activities were in 1998 for rental housing, and its last sale of new construction housing occurred in 2003. SDC sold or otherwise disposed of all but one of its partnership interests in rental projects to unrelated owners on or before May 31, 2005.

Consequently, SDC has de minimis assets. In addition, the liability insurance policies covering the partnership explicitly excluded lead-related claims. Accordingly, SDC has not defended itself in this lawsuit, and a default judgment for an unspecified amount was entered against SDC on January 13, 2011. No notices have been received by SDC since then.

On August 29, 2011, a complaint was filed by the Michigan Indiana Condominium Association and its board of directors against Michigan Place, LLC and SDC, as a member manager of Michigan Place, as well as against a construction company and others in Case No. 11 M1 157148 filed in the circuit court of Cook County, Civil Division, 1st Municipal Division. The Complaint alleges poor workmanship and failure to construct the buildings comprising the Michigan Indiana Condominium Association in accordance with industry standards as allegedly being the causes of water infiltrations. SDC has no assets.

On or about August 12, 2011, Canon Financial Services, Inc. filed a complaint against The ShoreBank Corporation in the Superior Court of New Jersey Law Division, docket no. L-002644-11, alleging SBK defaulted on the terms of a copier lease, and seeking \$30,071.59. SBK was served with the complaint after the Petition Date.

On November 21, 2011, Success Factors, Inc. filed a breach of contract lawsuit against SBK in the Superior Court of California, County of San Mateo, case no. CIV 509855, stemming from a software use agreement.

As noted above, the Debtors believe that all litigation against them is stayed by the filing of the Chapter 11 Cases unless and until otherwise ordered by the Court. The Debtors' exposure, if any, to an award of damages in these cases is not susceptible to an accurate determination at this time.

#### **IV. THE CHAPTER 11 CASES**

##### **A. Summary of Certain Relief Obtained at the Outset of the Chapter 11 Cases**

##### **1. First Day Orders**

On the Petition Date, or soon thereafter, the Debtors filed several motions seeking the relief provided by certain so-called "first day orders." First day orders are intended to facilitate the transition between a debtor's prepetition and postpetition business operations by approving certain regular business conduct that may not be authorized specifically under the Bankruptcy Code or as to which the Bankruptcy Code requires prior approval by the Bankruptcy Court.

The first day motions in this Chapter 11 Case requested, among other things:

- the maintenance of the Debtors' bank accounts and operation of their cash management system substantially as such system existed prior to the Petition Date;
- the joint administration of each of the Debtors' bankruptcy cases;

- the payment of certain prepetition claims, such as employees' accrued prepetition wages, employee benefits, and employment and withholding taxes;
- the retention of GCG as claims agent;
- an administrative order authorizing certain case management procedures and setting omnibus hearing dates.

Copies of the First Day Orders, as entered by the Bankruptcy Court, are available free of charge on the Voting Agent's website: [www.shorebankrestructuring.com](http://www.shorebankrestructuring.com).

## **2. First Meeting of Creditors**

The first meeting of creditors required under Bankruptcy Code § 341 was held and concluded on [February 15, 2012].

## **3. Appointment of Creditors' Committee**

As of the date hereof, the United States Trustee for the Northern District of Illinois has not appointed a Creditors' Committee pursuant to section 1102(a) of the Bankruptcy Code to represent the unsecured creditors of the Debtors.

## **4. Other Material Bankruptcy Court Orders**

Various other forms of relief were sought and obtained from the Bankruptcy Court during the Chapter 11 Cases. The relief included:

- the retention of Skadden, Arps, Slate, Meagher & Flom to serve as counsel to the Debtors;
- an order authorizing procedures for interim compensation and reimbursement of expenses of professionals; and
- an order authorizing the Debtors to retain and pay Ordinary Course Professionals.

## **B. Summary of Claims Process, Bar Date, and Claims Filed**

### **1. Schedules and Statements of Financial Affairs**

On January 9, 2012, the Debtors each filed their Schedule of Assets and Liabilities (the "Schedules") and Statements of Financial Affairs (the "Statements," and together with the Schedules, the "Schedules and Statements") with the Bankruptcy Court. Among other things, the Schedules and Statements set forth the Claims of known creditors against the Debtors as of the Petition Date based upon the Debtors' books and records.

The amount of Senior Indebtedness Claims, General Unsecured Claims, and Subordinated Note Claims scheduled by SBK, including contingent and disputed Claims, in its Schedules totals approximately \$55 million (this figure does not include the FDIC Claims). The only other Debtor who Scheduled any Claims, including contingent and disputed Claims, is SDC, as outlined above in the litigation section of the Disclosure Statement. All of the Debtors reserve their rights to object to any and all Claims.

## **2. Claims Bar Date**

On January 12, 2012, the Bankruptcy Court entered an order, as amended (the "Bar Date Order") establishing February 27, 2012 as the deadline for filing Claims (the "General Bar Date"). The Bar Date Order also established July 11, 2012 as the deadline for governmental units, as defined in the Bankruptcy Code, to file proofs of claim (the "Governmental Bar Date" together with the General Bar Date, the "Bar Dates"). The Debtors' claims and notice agent, GCG, provided notice of the Bar Dates by mailing (i) a notice of the Bar Dates and (ii) an individualized proof of claim form to each person listed in the Schedules. In addition, the Debtors published notice of the Bar Dates in the national edition of the Chicago Tribune and the Wall Street Journal. The Debtors and the Liquidation Trust Administrator have the right under the Plan to object to any Claim.

## **3. Proofs of Claim**

As of [●], no proofs of claim were Filed against any of the Debtors. The Debtors are not aware of any Claims against the Debtors other than those identified in the Debtors' Schedules filed with the Bankruptcy Court and those Claims discussed in the Disclosure Statement.

## **4. Claims Administration**

To be entitled to receive a Distribution under the Plan, a Holder must have an Allowed Claim. The Debtors have not yet begun the process of reviewing Filed proofs of claim, if any, for the purpose of determining whether objections are appropriate. References to any particular Holder of a Claim in the Disclosure Statement or the Plan should not be construed to mean that such Claim has been Allowed by the Bankruptcy Court or will not be objected to by the Debtors or any other party in interest having standing to object. The Debtors expressly reserve their rights to object to the allowance, and to seek subordination of all or any part of any claim or equity interest.

## **V. SUMMARY OF THE PLAN**

THIS SECTION PROVIDES A SUMMARY OF THE STRUCTURE, CLASSIFICATION, TREATMENT, AND IMPLEMENTATION OF THE PLAN AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE PLAN, WHICH ACCOMPANIES THE DISCLOSURE STATEMENT AS APPENDIX A, AND TO THE EXHIBITS ATTACHED THERETO, OR FILED BY THE EXHIBIT FILING DATE.

ALTHOUGH THE STATEMENTS CONTAINED IN THE DISCLOSURE STATEMENT INCLUDE SUMMARIES OF THE PROVISIONS CONTAINED IN THE PLAN AND IN DOCUMENTS REFERRED TO THEREIN, THE DISCLOSURE STATEMENT DOES NOT PURPORT TO BE A PRECISE OR COMPLETE STATEMENT OF ALL THE TERMS AND PROVISIONS OF THE PLAN OR DOCUMENTS REFERRED TO THEREIN, AND REFERENCE IS MADE TO THE PLAN AND TO SUCH DOCUMENTS FOR THE FULL AND COMPLETE STATEMENTS OF SUCH TERMS AND PROVISIONS.

THE PLAN ITSELF AND THE DOCUMENTS REFERRED TO THEREIN WILL CONTROL THE TREATMENT OF CREDITORS AND EQUITY SECURITY HOLDERS UNDER THE PLAN AND WILL, UPON THE EFFECTIVE DATE, BE BINDING UPON HOLDERS OF CLAIMS AGAINST, AND INTERESTS IN, THE DEBTORS AND OTHER PARTIES IN INTEREST.

**A. Overall Structure of the Plan**

The Plan calls for the liquidation of all assets of the Debtors and the distribution of the proceeds to the Debtors' creditors, as outlined below. It is predicated on the FDIC Treatment. After the Plan is confirmed by the Bankruptcy Court, and once it goes Effective, the Liquidation Trust Administrator will be authorized to continue the task begun by the Debtors of pursuing, collecting, and liquidating the remaining assets of the Debtors.

The proceeds of this liquidation effort will be used to pay the outstanding Claims against the Debtors in accordance with the classifications and order of priority of these Claims under the Plan. Under the Plan, Claims against, and Interests in, the Debtors are divided into eight (8) Classes according to their relative seniority and other criteria.

If the Plan is confirmed by the Bankruptcy Court and consummated, (1) the Holders of Allowed Class 1 Claims, if any, will be reinstated, (2) the Holders of Allowed Class 2 Claims, if any, will be paid in full, (3) the Holders of Allowed Class 3 Claims will receive the FDIC Treatment, (4) the Holders of Allowed Class 4 Claims will receive distributions constituting a partial recovery on such Allowed Claims, (5) the Holders of Allowed Claims in Class 5 will receive distributions constituting a partial recovery on such Allowed Claims, (6) the Disbursing Agent will receive distributions constituting a partial recovery on account of Allowed Claims in Class 6; provided, however, that the Disbursing Agent shall redistribute such distributions to Holders of Allowed Class 4 Claims pursuant to the subordination provisions of the Subordinated Indentures and related Trust Agreements until Holders of Allowed Class 4 Claims are paid in full, therefore it is unlikely that Holders of Allowed Class 6 Claims will receive any distributions on such Allowed Claims, (7) the Holders of Allowed Claims in Class 7 will not receive any distributions on such Allowed Claims, and (8) the Holders of Allowed Interests in Class 8 will not receive any distributions on such Allowed Interests.

On the Initial Distribution Date, and at certain times thereafter, the Disbursing Agent will distribute Cash to Holders of certain Classes of Claims as provided in the Plan. Additionally, as of the Effective Date, a Liquidation Trust will be created and will distribute the Liquidation Trust

Assets pursuant to the Plan and the Liquidation Trust Agreement. The Classes of Claims against the Debtors created under the Plan and the treatment of those Classes under the Plan are described below.

## **B. Substantive Consolidation and Intercompany Claims**

The Plan contemplates entry of an order substantively consolidating the Debtors' estates (the "Substantive Consolidation Order"), which may be the Confirmation Order. The Substantive Consolidation Order shall substantively consolidate the Debtors' Estates and Chapter 11 Cases for purposes of all actions associated with confirmation and consummation of the Plan. The Plan constitutes a request to approve such substantive consolidation such that on the Effective Date (i) all Intercompany Claims by, between and among the Debtors will be eliminated, (ii) all assets and liabilities of the Affiliate Debtors will be merged or treated as if they were merged with the assets and liabilities of SBK, (iii) any obligation of a Debtor and all guarantees thereof by one (1) or more of the other Debtors will be deemed to be one (1) obligation of SBK, (iv) the Affiliate Interests will be cancelled, and (v) each Claim Filed or to be Filed against any Debtor will be deemed Filed only against SBK and will be deemed a single Claim against and a single obligation of SBK. On the Effective Date, and in accordance with the terms of the Plan and the consolidation of the assets and liabilities of the Debtors, all Claims based upon guarantees of collection, payment or performance made by the Debtors as to the obligations of another Debtor will be released and of no further force and effect. If the Substantive Consolidation Order is not the Confirmation Order, then such order shall only be entered if the Bankruptcy Court enters the Confirmation Order.

On the Effective Date or as soon thereafter as practicable, (a) the members of the board of directors of each of the Affiliate Debtors shall be deemed to have resigned, (b) each of the Affiliate Debtors shall be merged with and into SBK, and (c) the Chapter 11 Cases of the Affiliate Debtors shall be closed, following which any and all Causes of Action or other proceedings that were or could have been brought or otherwise commenced in the Chapter 11 Case of any Affiliate Debtor, whether or not actually brought or commenced, may be continued, brought, or otherwise commenced in SBK's Chapter 11 Case.

### **1. Discussion of Substantive Consolidation Generally**

Generally, substantive consolidation of the estates of multiple debtors in a bankruptcy case effectively combines the assets and liabilities of the multiple debtors for certain purposes under a plan. The effect of consolidation is the pooling of the assets of, and claims against, the consolidated debtors; satisfying liabilities from a common fund; and combining the creditors of the debtors for purposes of voting on chapter 11 plans. In re Augie/Restivo Baking Co., 860 F.2d 515, 518 (2d Cir. 1988). There is no statutory authority specifically authorizing substantive consolidation. The authority of a Bankruptcy Court to order substantive consolidation is derived from its general equitable powers under section 105(a) of the Bankruptcy Code, which provides that the court may issue orders necessary to carry out the provisions of the Bankruptcy Code. In re DRW Property Co., 82, 54 B.R. 489, 494 (Bankr. N.D.Tex. 1985). Nor are there statutorily

prescribed standards for substantive consolidation. Instead, judicially developed standards control whether substantive consolidation should be granted in any given case.

The propriety of substantive consolidation must be evaluated on a case-by-case basis. See FDIC v. Colonial Realty Co., 966 F.2d 57 (2d Cir.1992). The extensive list of elements and factors frequently cited and relied upon by courts in determining the propriety of substantive consolidation may be viewed as variants on two critical factors, namely, (i) whether creditors dealt with the entities as a single economic unit and did not rely on their separate identity in extending credit or (ii) whether the affairs of the debtors are so entangled that consolidation will benefit all creditors. In re Augie/Restivo Baking Co., 860 F.2d at 518. Some courts have viewed these elements and factors as examples of information that may be useful to courts charged with deciding whether there is substantial identity between the entities to be consolidated and whether consolidation is necessary to avoid some harm or to realize some benefit.

Among the specific factors or elements looked to by courts are the following:

- the degree of difficulty in segregating and ascertaining the individual assets and liabilities of the entities to be consolidated;
- the presence or absence of consolidated financial statements among the entities to be consolidated;
- the commingling of assets and business functions among the entities to be consolidated;
- the unity of interests and ownership among the various entities;
- the existence of parent and intercorporate guarantees on loans to the various entities;
- the transfer of assets to and from the various entities without formal observance of corporate formalities; and
- the effect on the percentage recovery of a claim if substantive consolidation is allowed compared to administrative consolidation.

Substantive consolidation is an equitable remedy that a bankruptcy court may be asked to apply in chapter 11 cases involving affiliated debtors. Substantive consolidation involves the pooling of the assets and liabilities of the affected debtors. All of the debtors in the substantively consolidated group are treated as if they were a single corporate and economic entity. Consequently, a creditor of one of the substantively consolidated debtors is treated as a creditor of the substantively consolidated group of debtors, and issues of individual corporate ownership of property and individual corporate liability on obligations are ignored. Substantive consolidation of two or more debtors' estates generally results in the deemed consolidation of the assets and liabilities of the debtors, the elimination of multiple and duplicative creditor claims, joint and several liability claims and guarantees and the payment of allowed claims from a

common fund. Absent such substantive consolidation, payment of such duplicative claims would be dilutive of the amounts ultimately payable to certain Holders of Allowed Claims against the Debtors.

## **2. Application to the Debtors**

Many of the facts and circumstances surrounding the historical business operations of SBK and the Affiliate Debtors support several of the factors considered in deciding whether substantive consolidation is warranted in the Chapter 11 Cases. Importantly, at this time, the Debtors do not believe that any of the Debtors other than SBK have significant assets or liabilities, therefore substantive consolidation will have minimal effect other than to make the bankruptcy case run more smoothly and efficiently. In addition, SBK and most of the Affiliate Debtors historically have issued consolidated financial statements and filed consolidated federal tax returns. SBK directly or indirectly owns 100% of the Affiliate Debtors. SBK and the Affiliate Debtors have common officers and directors; they have shared key employees and outside professionals, including, but not limited to, employees of SBK who performed human resources, legal, and risk management services for the benefit of all the Debtors and accounting firms, law firms, engineers, and consultants who rendered services to all of the Debtors. In addition, intercompany loans routinely were made by and between SBK and the Affiliate Debtors (and by and between the Affiliate Debtors themselves) in the ordinary course of the Debtors' business.

Moreover, in this case, the small amount of assets and claims that exist in entities other than SBK combined with the cost that would be required to treat the claims relative to their assets justify substantive consolidation. In addition, substantive consolidation, in these cases, should have minimum effect on the Debtors' creditors. In fact, in the absence of substantive consolidation, it is likely that creditors of Debtors other than SBK would likely get a de minimis distribution, if any. The Debtors reserve the right to deconsolidate any Debtor, at any time prior to the Effective Date. To the extent that the Debtors deconsolidate any particular Debtor, creditors of that Debtor's estate would get little, if any, distribution.

Accordingly, for the reasons stated above, the Debtors believe substantive consolidation is warranted in light of the criteria established by the courts in ruling on the propriety of substantive consolidation in other cases.

## **C. Classification and Treatment of Claims and Interests**

Section 1122 of the Bankruptcy Code requires that a chapter 11 plan classify the claims of a debtor's creditors and the interests of its equity Holders. The Bankruptcy Code also provides that, except for certain claims classified for administrative convenience, a chapter 11 plan may place a claim of a creditor or an interest of an equity holder in a particular class only if such claim or interest is substantially similar to the other claims of such class.

The Debtors believe that they have classified all Claims and Interests in compliance with the requirements of section 1122 of the Bankruptcy Code. If a Creditor or Interest Holder

challenges such classification of Claims or Interests and the Bankruptcy Court finds that a different classification is required for the Plan to be confirmed, the Debtors, to the extent permitted by the Bankruptcy Court, intend to make such reasonable modifications of the classifications of Claims or Interests under the Plan to provide for whatever classification might be required by the Bankruptcy Court for confirmation. EXCEPT TO THE EXTENT THAT SUCH MODIFICATION OF CLASSIFICATION ADVERSELY AFFECTS THE TREATMENT OF A HOLDER OF A CLAIM OR INTEREST AND REQUIRES RESOLICITATION, ACCEPTANCE OF THE PLAN BY ANY HOLDER OF A CLAIM PURSUANT TO THIS SOLICITATION WILL BE DEEMED TO BE A CONSENT TO THE PLAN'S TREATMENT OF SUCH HOLDER OF A CLAIM REGARDLESS OF THE CLASS AS TO WHICH SUCH HOLDER ULTIMATELY IS DEEMED TO BE A MEMBER.

**1. Classification of Claims and Interests**

Pursuant to section 1122 of the Bankruptcy Code, set forth below is a designation of classes of Claims against and Interests in the Debtors. A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes. A Claim is also placed in a particular Class for the purpose of voting on, and receiving distributions pursuant to, the Plan only to the extent that such Claim is an Allowed Claim in that Class and such Claim has not been paid, released, or otherwise settled prior to the Effective Date. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims have not been classified, and their treatment is set forth in Article II of the Plan.

**2. Treatment of Unclassified Claims Under the Plan**

The Bankruptcy Code requires that a chapter 11 plan provide the same treatment for each claim or interest of a particular class unless the Holder of a particular claim or interest agrees to a less favorable treatment of its claim or interest. The Debtors believe that the Plan complies with such standard. If the Bankruptcy Court finds otherwise, it could deny confirmation of the Plan if the Holders of Claims and Interests affected do not consent to the treatment afforded them under the Plan.

**(a) Administrative Claims**

Administrative Claims consist of the costs and expenses of the administration of the Chapter 11 Cases incurred by the Debtors. Such costs and expenses may include, but are not limited to, Claims arising under the cost of operating or liquidating the Debtors' businesses since the Petition Date, the outstanding unpaid fees and expenses of the Professionals retained by the Debtors as approved by the Bankruptcy Court, and the payments necessary to cure prepetition defaults on unexpired leases and executory contracts that are being assumed under the Plan. All payments to Professionals in connection with the Chapter 11 Cases for compensation and reimbursement of expenses will be made in accordance with the procedures established by the Bankruptcy Code and the Bankruptcy Rules and are subject to approval of the Bankruptcy Court as being reasonable.

Subject to the provisions of Article XI of the Plan, on, or as soon as reasonably practicable after, the later of (i) the Effective Date or (ii) the date on which an Administrative Claim becomes an Allowed Administrative Claim, each Holder of an Allowed Administrative Claim shall receive, in full satisfaction, settlement, release, and discharge of, and in exchange for, such Allowed Administrative Claim, (A) Cash equal to the unpaid portion of such Allowed Administrative Claim or (B) such other less favorable treatment to the Holders of an Allowed Administrative Claim as to which the Debtors and the Holder of such Allowed Administrative Claim shall have agreed upon in writing; provided, however, that Allowed Administrative Claims against the Debtors with respect to liabilities incurred in the ordinary course of business during the Chapter 11 Cases may be paid in the ordinary course of business in accordance with the terms and conditions of any agreements relating thereto at the discretion of the Debtors.

**(b) Priority Tax Claims**

On, or as soon as reasonably practicable after, the later of (i) the Effective Date or (ii) the date on which a Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim against the Debtors shall receive in full satisfaction, settlement, release, and discharge of, and in exchange for, such Allowed Priority Tax Claim, (A) Cash equal to the amount of such Allowed Priority Tax Claim, (B) such other less favorable treatment to the Holders of an Allowed Priority Tax Claim as to which the Debtors and the Holder of such Allowed Priority Tax Claims shall have agreed upon in writing, or (C) at the option of the Debtors or Liquidation Trust Administrator, Cash in an aggregate amount of such Allowed Priority Tax Claim payable in installment payments over a period of not more than five years after the Petition Date, pursuant to 1129(a)(9)(c) of the Bankruptcy Code.

**3. Treatment of Classified Claims and Interests**

**(a) Unimpaired Classes of Claims against the Debtors**

**(i) Class 1 (Secured Claims).** The legal, equitable, and contractual rights of the Holders of Allowed Secured Claims against the Debtors, if any, are unaltered by the Plan. On, or as soon as reasonably practicable after, the later of (i) the Effective Date, or (ii) the date on which such Secured Claim becomes an Allowed Secured Claim, each Holder of an Allowed Secured Claim shall receive, in full satisfaction, settlement, release, and discharge of, and in exchange for, such Allowed Secured Claim, at the election of the Debtors or Liquidation Trust Administrator, (x) Cash equal to the amount of such Allowed Secured Claim or (y) such other less favorable treatment that will not impair the Holder of such Allowed Secured Claim pursuant to section 1124 of the Bankruptcy Code; provided, however, that any Secured Claim not due and owing on the Effective Date will be paid in accordance with this section if and when such Claim becomes Allowed and is due and owing. Any default with respect to any Allowed Secured Claim that existed immediately prior to the Petition Date will be deemed cured on the Effective Date.

**(ii) Class 2 (Non-Tax Priority Claims).** The legal, equitable, and contractual rights of the Holders of Allowed Non-Tax Priority Claims against the Debtors, if any, are unaltered by the Plan. On, or as soon as reasonably practicable after, the later of (i) the Effective Date, or (ii) the date on which such Non-Tax Priority Claim becomes an Allowed Non-Tax Priority Claim, each Holder of an Allowed Non-Tax Priority Claim shall receive, in full satisfaction, settlement, release and discharge of, and in exchange for, such Allowed Non-Tax Priority Claim, at the election of the Debtors or Liquidation Trust Administrator, (x) Cash equal to the amount of such Allowed Non-Tax Priority Claim or (y) such other less favorable treatment that will not impair the Holder of such Allowed Non-Tax Priority Claim pursuant to section 1124 of the Bankruptcy Code; provided, however, that any Non-Tax Priority Claim not due and owing on the Effective Date will be paid in accordance with this section when such Claim becomes due and owing. Any default with respect to any Allowed Non-Tax Priority Claim that existed immediately prior to the Petition Date will be deemed cured on the Effective Date.

**(b) Impaired Classes of Claims Against and Interests in the Debtors**

**(i) Class 3 (FDIC Claims).** On the Effective Date, or as soon thereafter as is reasonably practicable, the FDIC shall receive in full satisfaction, settlement, release, and discharge of, and in exchange for, each and every FDIC Claim against the Debtors, the FDIC Treatment.

**(ii) Class 4 (Senior Indebtedness Claims).** On the Initial Distribution Date, or as soon thereafter as is reasonably practicable, and on each Subsequent Distribution Date, the Disbursing Agent shall receive on behalf of each and every Holder of an Allowed Senior Indebtedness Claim against the applicable Debtor, in full satisfaction, settlement, release, and discharge of, and in exchange for, each and every Senior Indebtedness Claim against the applicable Debtor, (i) the Pro Rata interest in the Liquidation Trust, as to which all Holders of Allowed Senior Indebtedness Claims would be entitled if Classes 4, 5, and 6 were a single class, which the Disbursing Agent will distribute to each holder of an Allowed Class 4 Claim on a Pro Rata basis within such Class, (ii) the Subordinated Notes Redistribution Interests, which the Disbursing Agent will distribute Pro Rata to or for the benefit of Holders of Allowed Class 4 Claims until the Holders of Allowed Class 4 Claims are paid in full.

**(iii) Class 5 (General Unsecured Claims).** On the Initial Distribution Date, or as soon thereafter as is reasonably practicable, and on each Subsequent Distribution Date, the Disbursing Agent shall receive on behalf of each and every Holder of an Allowed Class 5 Claim against the Debtors, in full satisfaction, settlement, release, and discharge of, and in exchange for, each and every Class 5 Claim against the Debtors, the Pro Rata interest in the Liquidation Trust, as to which all Holders of Allowed Class 5 Claims would be entitled if Classes 4, 5, and 6 were a single class, which the Disbursing Agent will distribute to each holder of an Allowed Class 5 Claim on a Pro Rata basis within such Class.

(iv) **Class 6 (Subordinated Note Claims).** As reflected in the treatment of Class 4, and in accordance with the Subordinated Notes Subordination Rights, Holders of Class 6 Claims shall not receive or retain a distribution from the Liquidation Trust until and unless the Holders of Allowed Class 4 Claims are paid in full. Instead, interests in the Liquidation Trust otherwise distributable to or for the benefit of Holders of Allowed Class 6 Claims shall instead be redistributed by the Disbursing Agent to Holders of Allowed Class 4 Claims pursuant to the subordinated provisions of the Subordinated Indentures and related Trust Agreements until and unless the Holders of Allowed Class 4 Claims are paid in full. After the Holders of Allowed Class 4 Claims are paid in full, then Holders of Allowed Class 6 Claims will be subrogated to the Holders of the Allowed Class 4 Claims and will begin to collect a pro rata distribution on account of Classes 4 and 6. It is unlikely that Holders of Allowed Class 4 Claims will be paid in full however and therefore, no distribution is expected to be made to Holders of Allowed Class 6 Claims.

(v) **Class 7 (Other Subordinated Claims).** Holders of Other Subordinated Claims shall not receive nor retain any distribution on account of such Other Subordinated Claims.

(vi) **Class 8 (Old Equity Interests).** On the Effective Date, the Old Equity Interests will be cancelled and the Holders of Old Equity shall not receive nor retain any distribution on account of such Old Equity Interests.

#### **D. Distributions Under the Plan**

##### **1. Time of Distributions**

Except as otherwise provided in the Plan or as ordered by the Bankruptcy Court, distributions to be made on account of Claims that are Allowed Claims as of the Effective Date shall be made on, or as soon thereafter as is practicable, the Effective Date or the Initial Distribution Date, as applicable. Any payment or distribution required to be made under the Plan on a day other than a Business Day shall be made on the next succeeding Business Day. Distributions on account of Claims that first become Allowed Claims after the Effective Date shall be made pursuant to Articles IX and X of the Plan.

##### **2. Interest on Claims**

Unless otherwise specifically provided for in the Plan, the Confirmation Order, or required by applicable bankruptcy law, postpetition interest shall not accrue or be paid on Claims, and no Claim Holder shall be entitled to interest accruing on or after the Petition Date on any Claim. To the extent otherwise provided for in the Plan, the Confirmation Order, or required by applicable bankruptcy law, postpetition interest shall accrue on Claims at the applicable non-default rate. Unless otherwise specifically provided for in the Plan, the Confirmation Order, or required by applicable bankruptcy law, interest shall not accrue or be paid upon any Disputed Claim in respect of the period from the Petition Date to the date a final distribution is made

thereon if and after such Disputed Claim becomes an Allowed Claim. Until the Effective Date, nothing herein shall waive the right of any creditor to seek postpetition interest.

**3. Disbursing Agent**

The Disbursing Agent shall make all distributions required under the Plan.

**4. Delivery of Distributions and Undeliverable or Unclaimed Distributions**

Distributions to Holders of Allowed Claims shall be made by the Disbursing Agent (i) at the addresses set forth on the proofs of claim filed by such Claim Holders (or at the address set forth in any applicable notice of assignment of claim or notice of change of address), (ii) at the addresses set forth in any written notices of address changes delivered to the Disbursing Agent after the date of any related proof of claim, or (iii) at the addresses reflected in the Schedules if no proof of claim has been filed and the Disbursing Agent has not received a written notice of a change of address.

If any Claim Holder's distribution is returned as undeliverable, no further distributions to such Claim Holder shall be made unless and until the Disbursing Agent is notified of such Claim Holder's then current address, at which time all missed distributions shall be made to such Claim Holder without interest. Amounts in respect of undeliverable distributions shall be returned to the Disbursing Agent with respect to all other claims, until such distributions are claimed. All claims for undeliverable distributions shall be made on the later of the first anniversary of the Effective Date or ninety (90) days from the date the Claim becomes an Allowed Claim. After such date, all unclaimed property relating to distributions to be made on account of such Claims shall revert to the Liquidation Trust, free of any restrictions thereon or Claims of such Holder and notwithstanding any federal or state escheat laws to the contrary. Nothing contained in the Plan shall require any Disbursing Agent to attempt to locate any Holder of an Allowed Claim.

**5. Cancellation of Existing Securities, Subordinated Notes, and Trust Securities**

Except as otherwise provided in the Plan and in any contract, instrument, or other agreement or document created in connection with the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to Article IX of the Plan, the Existing Securities, promissory notes, share certificates (including treasury stock), other instruments evidencing any Claims or Interests, and all options, warrants, calls, rights, puts, awards, commitments, or any other agreements of any character to acquire such Existing Securities shall be deemed canceled and of no further force and effect, without any further act or action under any applicable agreement, law, regulation, order, or rule, and the obligations of the Debtors under any notes, share certificates, and other agreements and instruments governing such Claims and Interests shall be discharged. The Holders of or parties to such canceled notes, share certificates, and other agreements and instruments shall have no rights arising from or

relating to such notes, share certificates, and other agreements and instruments or the cancellation thereof, except the rights provided pursuant to the Plan.

In addition, on the Effective Date, all documents evidencing the Subordinated Note Claims, including the Subordinated Indentures, the Subordinated Notes, the Guarantee Agreements, the Purchase Agreements, the Trust Agreements, any other guarantees, any other purchase agreements, debenture subscription agreements, declarations of trust, Capital Securities, and Common Securities shall be deemed cancelled, shall be of no further force, whether surrendered for cancellation or otherwise, and neither the Debtors nor the other parties thereto, including, but not limited to the Subordinated Indenture Trustee, shall have any further rights or obligations thereunder.

**6. Procedures for Resolving Disputed, Contingent, and Unliquidated Claims**

**(a) Objection Deadline; Prosecution of Objections**

The Debtors (or the Liquidation Trust Administrator as the case may be) shall be responsible for administering, disputing, objecting to, compromising, or otherwise resolving and making distributions on account of the respective Claims against the Debtors. No later than the Claims Objection Deadline (unless extended by an order of the Bankruptcy Court), the Debtors (or the Liquidation Trust Administrator, as the case may be) shall File objections to Claims with the Bankruptcy Court and serve such objections upon the Holders of each of the Claims to which objections are made. Nothing contained in the Plan, however, shall limit the Liquidation Trust Administrator's right to object to Claims, if any, Filed or amended after the Claims Objection Deadline. Moreover, notwithstanding the expiration of the Claims Objection Deadline and unless subsequently ordered for good cause shown to shorten time, the Liquidation Trust Administrator shall continue to have the right to amend any objections and to File and prosecute supplemental objections and counterclaims to a Disputed Claim until such Disputed Claim is Allowed.

**(b) No Distributions Pending Allowance**

Notwithstanding any other provision of the Plan, no payments or distributions shall be made with respect to all or any portion of a Disputed Claim unless and until all objections to such Disputed Claim have been settled or withdrawn or have been determined by Final Order, and the Disputed Claim, or some portion thereof, has become an Allowed Claim and the remainder has become a Disallowed Claim.

**(c) Disputed Claims Reserve**

Reserve(s) shall be established for the payment of Disputed Claims to the extent required by the Plan. The Disbursing Agent shall withhold the Disputed Claims Reserve from the Net Available Cash and beneficial interests in the Liquidation Trust to be distributed to particular classes under the Plan. The Disputed Claims Reserve shall be equal to 100% of distributions to

which Holders of Disputed Claims would be entitled under the Plan as of such date if such Disputed Claims were Allowed Claims in their (i) Face Amount (or if a Disputed Claim is unliquidated with no Face Amount, then based upon the good faith estimate of such Disputed Claim as estimated by the Debtors or the Liquidation Trust Administrator, as the case may be) or (ii) estimated amount of such Disputed Claims as approved in an Order by the Bankruptcy Court. The Debtors (or the Liquidation Trust Administrator, as the case may be) may request estimation for any Disputed Claim including, without limitation, any Disputed Claim that is contingent or unliquidated. If practicable and as set forth in the Plan and the Liquidation Trust Agreement, the Debtors (or the Liquidation Trust Administrator, as the case may be) will invest any Cash that is withheld as the applicable Disputed Claims Reserve in an appropriate manner to insure the safety of the investment. Nothing in the Plan or the Disclosure Statement shall be deemed to entitle the holder of a Disputed Claim to postpetition interest on such Claim.

**(d) Distributions After Allowance**

Payments and distributions from the Disputed Claims Reserve shall be made as appropriate to the Holder of any Disputed Claim that has become an Allowed Claim, as soon thereafter as is reasonably practicable after the date such Disputed Claim becomes an Allowed Claim. Such distributions shall be based upon the cumulative distributions that would have been made to the Holder of such Claim under the Plan if the Disputed Claim had been Allowed on the Effective Date (excluding any present value calculations) and shall not be limited by the Disputed Claim amounts previously reserved with respect to such Disputed Claim to the extent that additional amounts are available therefore, but only to the extent that such additional amounts have not yet been distributed to Holders of Allowed Claims. Upon such distribution, the reserve shall be reduced by an amount equal to the amount reserved with respect to such Disputed Claim. To the extent the amount reserved for such Disputed Claim exceeds the Allowed Amount, if any, of such Claim, the remainder shall be deposited in the Supplemental Distribution Account and distributed to Holders of Allowed Claims in accordance with the provisions of Article V of the Plan.

**7. De Minimis Distributions**

Notwithstanding any other provision of the Plan, the Disbursing Agent shall have no obligation to make a distribution on account of an Allowed Claim from any Cash Reserve or account to a specific Holder of an Allowed Claim if the amount to be distributed to that Holder on the Initial Distribution Date or any Subsequent Distribution Date (i) does not constitute a final distribution to such Holder and (ii) is less than \$50.00. In addition, the Debtors and the Liquidation Trust Administrator, as the case may be, reserve the right to request subsequent relief from the Bankruptcy Court to exclude Holders of smaller Claims from the final distribution under the Plan to the extent that the amounts otherwise distributable to such Claim Holders in connection with such final distribution would be de minimis or create undue administrative expense.

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

To the extent that any Allowed Claim entitled to a distribution under the Plan is composed of indebtedness and accrued but unpaid interest thereon, such distribution shall, to the extent permitted by applicable law, be allocated to the principal amount of the Claim first and then, to the extent the consideration exceeds the principal amount of the claim, to the portion of such Claim representing accrued but unpaid interest.

**9. Allowance of Certain Claims**

**(a) Professional Fee Claims**

All Professionals or other entities requesting compensation or reimbursement of expenses pursuant to sections 327, 328, 330, 331, 503(b), and 1103 of the Bankruptcy Code for services rendered on or before the Effective Date (including compensation and expenses for making a substantial contribution in the Chapter 11 Cases) shall file with the Bankruptcy Court, and serve such applications on counsel for the Debtors, the United States Trustee, and as otherwise required by the Bankruptcy Court and the Bankruptcy Code, an application for final allowance of compensation and reimbursement of expenses no later than forty-five (45) days after the end of the month in which the Effective Date occurred. Objections to applications of Professionals and other entities for compensation and reimbursement of expenses must be filed with the Bankruptcy Court no later than twenty-one (21) days after the filing and service of a Professional's application. All compensation and reimbursement of expenses allowed by the Bankruptcy Court shall be paid fourteen (14) days after the entry of an Order allowing such fees and expenses, or as soon thereafter as practicable.

All Professional fees for services rendered by the Debtor's Professionals in connection with the Chapter 11 Cases and the Plan after the Effective Date, are to be paid by the Liquidation Trust Administrator upon receipt of an invoice for such services, or on such other terms as the Liquidation Trust Administrator may agree to, without the need for further Bankruptcy Court authorization or entry of a Final Order.

**(b) Other Administrative Claims**

All other requests for payment of an Administrative Claim must be Filed with the Bankruptcy Court and served on counsel for the Debtors no later than the Administrative Claims Bar Date. Unless the Debtors (or the Liquidation Trust Administrator as the case may be) objects to an Administrative Claim within ninety (90) days after the Administrative Claims Bar Date, such Administrative Claim shall be deemed allowed in the amount requested. In the event that the Debtors (or the Liquidation Trust Administrator as the case may be) objects to an Administrative Claim, and the Debtors (or the Liquidation Trust Administrator as the case may be) and such claimant are unable to resolve their dispute consensually, then the Debtors (or the Liquidation Trust Administrator as the case may be) shall File a motion for determination thirty (30) days following the request of such claimant. Thereafter, the Bankruptcy Court shall determine the Allowed amount of such Administrative Claim. Notwithstanding the foregoing,

the Debtors (or the Liquidation Trust Administrator as the case may be) may pay, in their discretion, in accordance with the terms and conditions of any agreements relating thereto, any Administrative Claim as to which no request for payment has been timely filed but which is paid or payable by the Debtors in the ordinary course of business.

**(c) Administrative Claims Bar Date Notice**

On the Effective Date, or as soon thereafter as is reasonably practicable, the Debtors (or the Liquidation Trust Administrator as the case may be) will provide written notice of the Administrative Claims Bar Date, which may be included in the notice of occurrence of the Effective Date.

**E. The Liquidation Trust**

**1. Appointment of Liquidation Trust Administrator**

The Liquidation Trust Administrator shall be designated by the Debtors. At least seven (7) days prior to the Voting Deadline, the Debtors shall File with the Bankruptcy Court a notice designating the Person whom it has selected as Liquidation Trust Administrator; provided, however, that if and to the extent the Debtors fail to File such notice or otherwise give notice of the designation of the Person it has selected as Liquidation Trust Administrator prior to or at the Confirmation Hearing, the Debtors shall designate the Liquidation Trust Administrator by announcing the identity of such Person at the Confirmation Hearing.

The Person so designated by the Debtors shall become the Liquidation Trust Administrator upon the Bankruptcy Court entering an order approving the Liquidation Trust Administrator designated by the Debtors after consideration of the same and any objections thereto at the Confirmation Hearing (which such order may be the Confirmation Order).

The Liquidation Trust Administrator shall have and perform all of the duties, responsibilities, rights, and obligations set forth in the Liquidation Trust Agreement and Article XIII of the Plan and shall be entitled to reasonable compensation as set forth therein without further application to or order of the Bankruptcy Court. Additionally, to the extent any property or other assets are not transferred to the Liquidation Trust, but rather, remain in the Debtors' Estates, the Liquidation Trust Administrator, as more fully set forth in the Liquidation Trust Agreement, shall have all necessary authority to take whatever actions are necessary to sell, transfer, or otherwise dispose of such property and any necessary actions related thereto; provided, however, that, the Liquidation Trust Administrator, upon the Effective Date, shall forever be discharged from, and shall not be responsible for, any and all duties and obligations in connection with maintaining or preserving any such property or assets that remain in the Debtors' Estates.

**2. Assignment of Liquidation Trust Assets to the Liquidation Trust**

On the Effective Date, the Debtors shall transfer and shall be deemed to have transferred to the Liquidation Trust, for and on behalf of the beneficiaries of the Liquidation Trust, the Liquidation Trust Assets including the Liquidation Trust Claims.

**3. The Liquidation Trust**

Without any further action of the directors, officers, or shareholders of the Debtors, on the Effective Date, the Liquidation Trust Agreement, substantially in the form of Exhibit B to the Plan, shall become effective. The Liquidation Trust Administrator shall accept the Liquidation Trust and sign the Liquidation Trust Agreement on that date and the Liquidation Trust will then be deemed created and effective.

Interests in the Liquidation Trust shall be uncertificated and shall be non-transferable except upon death of the interest holder or by operation of law. Holders of interests in the Liquidation Trust shall have no voting rights with respect to such interests. The Liquidation Trust shall have a term of five (5) years from the Effective Date, without prejudice to the rights of the Liquidation Trust Administrator, subject to the consent of the Liquidation Trust Advisory Board, to extend such term conditioned upon the Liquidation Trust's not then becoming subject to the Exchange Act. The terms of the Liquidation Trust may be amended by the Debtors prior to the Effective Date and, subject to the consent of the Liquidation Trust Advisory Board, which consent shall not be unreasonably withheld, by the Liquidation Trust Administrator after the Effective Date to the extent necessary to ensure that the Liquidation Trust will not become subject to the Exchange Act.

The Liquidation Trust Administrator shall have full authority to take any steps necessary to administer the Liquidation Trust Agreement, including, without limitation, the duty and obligation to liquidate Liquidation Trust Assets, to make distributions to the holders of Claims entitled to distributions from the Liquidation Trust and, if authorized by majority vote of those members of the Liquidation Trust Advisory Board authorized to vote, to pursue and settle Liquidation Trust Claims. Upon such assignments (which, as stated above, shall be transferred on the Effective Date), the Liquidation Trust Administrator, on behalf of the Liquidation Trust, shall assume and be responsible for all of the Debtors' responsibilities, duties, and obligations with respect to the subject matter of such assignments, and the Debtors shall have no other further rights or obligations with respect thereto.

To the extent the Liquidation Trust Administrator believes any asset may cost more to remove or sell than such asset is worth, or which the Liquidation Trust Administrator determines to be of inconsequential value and had an original cost value equal to or less than \$5,000, then the Liquidation Trust Administrator, in its sole discretion, may abandon, destroy, or contribute to a charitable organization such property, including but not limited to the furniture, fixtures, and equipment, without the need to file any other motion and without notice to any Person.

The Liquidation Trust Administrator shall take such steps as it deems necessary (having first obtained such approvals from the Liquidation Trust Advisory Board as may be necessary, if any) to reduce the Liquidation Trust Assets to Cash to make distributions required hereunder, provided that the Liquidation Trust Administrator's actions with respect to disposition of the Liquidation Trust Assets should be taken in such a manner so as reasonably to maximize the value of the Liquidation Trust Assets.

Subject to the distribution provisions of Section 13.5 of the Plan, all costs and expenses associated with the administration of the Liquidation Trust, including allowed fees and expenses of the Liquidation Trust Professionals (defined below) (collectively, such expenses, the "Liquidation Trust Expenses") shall be the responsibility of and paid by the Liquidation Trust from the Operating Reserve and the Liquidation Trust, to the extent there are insufficient funds in the Operating Reserve. Notwithstanding the foregoing, the Debtors shall cooperate with the Liquidation Trust Administrator in pursuing such Liquidation Trust Recoveries.

The Liquidation Trust Administrator may retain such law firms, accounting firms, experts, advisors, consultants, investigators, appraisers, auctioneers, or other professionals as it may deem necessary (collectively, the "Liquidation Trust Professionals"), in its sole discretion, to aid in the performance of its responsibilities pursuant to the terms of the Plan including, without limitation, the liquidation and distribution of Liquidation Trust Assets.

The Liquidation Trust Administrator shall be responsible for filing all federal, state, and local tax returns for the Liquidation Trust. The Liquidation Trust Administrator shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all distributions made by the Liquidation Trust Administrator shall be subject to any such withholding and reporting requirements. The Liquidation Trust Administrator shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements. Notwithstanding any other provision of the Plan or the Liquidation Trust Agreement: (a) each holder of an Allowed Claim that is to receive a distribution pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding, and other tax obligations, on account of such distribution, and (b) no distribution shall be made to or on behalf of such Holder pursuant to the Plan unless and until such Holder has made arrangements satisfactory to the Liquidation Trust Administrator for the payment and satisfaction of such tax obligations. The Liquidation Trust Administrator shall make available to holders of interests in the Liquidation Trust copies of annual, audited financial statements.

The Liquidation Trust Administrator shall be entitled to compensation in accordance with the Liquidation Trust Agreement and to reimbursement of the reasonable and necessary expenses incurred by him/her in carrying out the purpose of the Liquidation Trust.

**4. The Liquidation Trust Advisory Board**

The Trust Advisory Board shall be composed of three (3) members, as designated by the Debtors. On or before the date that is seven (7) days prior to the Voting Deadline, the Debtors shall file with the Bankruptcy Court a notice of the identities of such members. The Liquidation Trust Advisory Board shall adopt such bylaws as it may deem appropriate. The Liquidation Trust Administrator shall consult, when advisable, and as necessary, with the Liquidation Trust Advisory Board when carrying out the purpose and intent of the Liquidation Trust. Members of the Liquidation Trust Advisory Board shall be entitled to compensation in accordance with the Liquidation Trust Agreement and to reimbursement of the reasonable and necessary expenses incurred by them in carrying out the purpose of the Liquidation Trust Advisory Board, without further application to or order of the Bankruptcy Court. Reimbursement of the reasonable and necessary expenses of the members of the Liquidation Trust Advisory Board and their compensation to the extent provided for in the Liquidation Trust Agreement shall be payable by the Liquidation Trust.

In the case of an inability or unwillingness of any member of the Liquidation Trust Advisory Board to serve, such member shall be replaced by designation of the remaining members of the Liquidation Trust Advisory Board. If any position on the Liquidation Trust Advisory Board remains vacant for more than thirty (30) days, such vacancy shall be filled within fifteen (15) days thereafter by the designation of the Liquidation Trust Administrator without the requirement of a vote by the other members of the Liquidation Trust Advisory Board.

Upon the certification by the Liquidation Trust Administrator that all assets transferred into Liquidation Trust have been distributed, abandoned, or otherwise disposed of, the members of the Liquidation Trust Advisory Board shall resign their positions, whereupon they shall be discharged from further duties and responsibilities.

The Liquidation Trust Advisory Board may, by majority vote, approve all settlements of Liquidation Trust Claims which the Liquidation Trust Administrator may propose, subject to Bankruptcy Court approval of such settlements after notice and a hearing, provided, however, that the Liquidation Trust Administrator may seek Bankruptcy Court approval of a settlement of a Liquidation Trust Claim if the Liquidation Trust Advisory Board fails to act on a proposed settlement of such Liquidation Trust Claim within thirty (30) days of receiving notice of such proposed settlement by the Liquidation Trust Administrator.

The Liquidation Trust Advisory Board may, by majority vote, authorize the Liquidation Trust Administrator to invest the corpus of the Liquidation Trust in prudent investments other than those described in section 345 of the Bankruptcy Code.

The Liquidation Trust Advisory Board may remove the Liquidation Trust Administrator in the event of gross negligence or willful misconduct. In the event the requisite approval is not obtained, the Liquidation Trust Administrator may be removed by the Bankruptcy Court for cause shown. In the event of the resignation or removal of the Liquidation Trust Administrator,

the Liquidation Trust Advisory Board shall, by majority vote, designate a person to serve as successor Liquidation Trust Administrator.

The Liquidation Trust Advisory Board shall govern its proceedings through the adoption of bylaws, which the Liquidation Trust Advisory Board may adopt by majority vote. No provision of such bylaws shall supersede any express provision of the Plan.

## **5. Distributions of Liquidation Trust Recoveries**

The Liquidation Trust Administrator shall make distributions of Liquidation Trust Recoveries as follows: first, to pay the Liquidation Trust Expenses to the extent there are insufficient funds in the Operating Reserve; second, to repay amounts, if any, borrowed by the Liquidation Trust Administrator in accordance with the Liquidation Trust Agreement; third, to Holders of Allowed General Unsecured Claims and any other Claimholders entitled to receive distributions from the Liquidation Trust as required by the Plan. The Liquidation Trust Administrator shall make distributions of Liquidation Trust Recoveries to Claimholders entitled to receive distributions from the Liquidation Trust at least semi-annually beginning with a calendar quarter that is not later than the end of the second calendar quarter after the Effective Date; provided, however, that, the Liquidation Trust Administrator shall not be required to make any such semi-annual distribution in the event that the aggregate amount of Liquidation Trust Recoveries available for distribution to such Claimholders is not sufficient, in the Liquidation Trust Administrator's discretion (after consultation with the Liquidation Trust Advisory Board) to distribute monies to such Claimholders. From time to time, but no less frequently than quarterly, the Liquidation Trust Administrator, in consultation with the Liquidation Trust Advisory Board, shall estimate the amount of Liquidation Trust Recoveries required to pay then outstanding and reasonably anticipated Liquidation Trust Expenses. The Cash portion of Liquidation Trust Recoveries in excess of such actual and estimated Liquidation Trust Expenses shall be made available for distribution to Claimholders in the amounts, on the dates, and subject to the other terms and conditions provided in the Plan. The Liquidation Trust Administrator will make continuing efforts to dispose of the Liquidation Trust Assets, make timely distributions, and not unduly prolong the duration of the Liquidation Trust.

## **F. Dissolution of Creditors' Committee**

As of the date hereof, no Creditors' Committee has yet been formed. To the extent one is formed, it shall be dissolved as of the Effective Date.

## **G. Miscellaneous Matters**

### **1. Treatment of Executory Contracts and Unexpired Leases**

The Debtors are party to numerous leases and executory contracts with various parties.

**(a) Generally**

Except as otherwise provided in the Plan, or in any contract, instrument, release, or other agreement, or document entered into in connection with the Plan, pursuant to sections 365 and 1123(b) of the Bankruptcy Code, all prepetition executory contracts and unexpired leases that exist between the Debtors and any Person shall be deemed rejected by the Debtors effective as of the Effective Date (or if other than the Effective Date, on such other date as listed on Exhibit C to the Plan), except for executory contracts and unexpired leases which:

- (i) have been assumed, assumed and assigned, or rejected, as applicable, pursuant to an order of the Court entered prior to the Effective Date; or
- (ii) as of the Effective Date, are subject to a pending motion for approval of the assumption, assumption and assignment, or rejection, as applicable; or
- (iii) are otherwise being assumed or assumed and assigned as set forth in Exhibit D to the Plan.

The Confirmation Order will constitute an order of the Bankruptcy court approving such rejections pursuant to section 365 of the Bankruptcy Code as of the Effective Date.

**(b) Approval of Assumption and Assignment or Rejection of Executory Contracts and Unexpired Leases**

Subject to the Effective Date, entry of the Confirmation Order shall constitute, as of the Confirmation Date (or other such date listed on Exhibit C or D to the Plan), the approval, pursuant to sections 365 and 1123(b) of the Bankruptcy Code, of the assumption, assumption and assignment, or rejection, as applicable, of the executory contracts and unexpired leases assumed, assumed and assigned, or rejected pursuant to Article VIII of the Plan.

Each executory contract and unexpired lease that is assumed and relates to the use, ability to acquire, or occupancy of real property, if any, will include (i) all modifications, amendments, supplements, restatements, assignments, subleases, or other agreements made directly or indirectly by any agreement, instrument or other document that in any manner affect such executory contract or unexpired lease and (ii) all executory contracts or unexpired leases appurtenant to the premises, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, powers, uses, reciprocal easement agreements and any other interests in real estate or rights in rem related to such premises, unless any of the foregoing agreements has been rejected pursuant to a Final Order of the Bankruptcy Court or is otherwise rejected as a part of the Plan.

**(c) Cure of Defaults of Assumed Executory Contracts and Unexpired Leases**

Any monetary amounts by which each executory contract and unexpired lease to be assumed pursuant to the Plan is in default, if any, will be satisfied, under section 365(b)(1) of the Bankruptcy Code, by Cure, with such Cure being provided by, at the option of the Debtor-party to such contract or lease, either (x) the Debtor-party to such contract or lease or (y) the assignee of such Debtor-party to whom such contract or lease is being assigned. If there is a dispute regarding (i) the nature or amount of any Cure, (ii) the ability of the Debtor or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the contract or lease to be assumed, or (iii) any other matter pertaining to assumption, Cure shall occur following the entry of a Final Order resolving the dispute and approving the assumption or assumption and assignment, as the case may be; provided that if there is a dispute as to the amount of Cure that cannot be resolved consensually among the parties, the Debtor will have the right to reject the contract or lease for a period of fourteen (14) days after entry of a final order establishing a Cure amount in excess of that provided by the Debtor. The Confirmation Order, if applicable, will contain provisions providing for notices of proposed assumptions and proposed cure amounts to be sent to applicable third parties and for procedures for objecting thereto (which will provide not less than twenty (21) days' notice of such procedures and any deadlines pursuant thereto) and resolution of disputes by the Bankruptcy Court.

**(d) Rejection Damages Bar Date**

If the rejection by the Debtors of an executory contract or unexpired lease pursuant to the Plan results in a Claim, then such Claim shall be barred and will not be enforceable against the Debtors or their property unless a proof of claim is filed with the Bankruptcy Court, and served upon counsel to the Debtors, within thirty (30) days after service of the earlier of (i) notice of the effective date of rejection of such executory contract or unexpired lease as determined in accordance with Section 8.1 of the Plan or (ii) other notice that the executory contract or unexpired lease has been rejected. Nothing in the Plan shall revive or deem to revive a previously Disallowed Claim or extend a previously established bar date, if applicable. The bar date for filing a Claim with respect to an executory contract or unexpired lease other than pursuant to the Plan will be as set forth in the Bar Date Order or the Final Order approving such rejection.

**(e) Miscellaneous**

Notwithstanding any other provision of the Plan, the Debtors will retain the right to, at any time prior to the Effective Date, modify or supplement Exhibit C or Exhibit D to the Plan, including, without limitation, the right to add any executory contract or unexpired lease to, or delete any executory contract or unexpired lease from such Plan Schedules. Listing an executory contract or unexpired lease on Exhibit C or Exhibit D to the Plan will not constitute an admission by the Debtors that such contract or lease (including any related agreements that may exist) is an executory contract or unexpired lease or that the Debtors has any liability thereunder.

**2. No Discharge of Claims Against Debtors**

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 any Debtor may, on account of such Claim, seek or receive any payment or other distribution from, or seek recourse against, the Debtors, their successors, or their property, except as expressly provided in the Plan.

**3. Exculpation and Limitation of Liability**

**The Debtors, any present or former members, officers, directors, employees, advisors, representatives, the Professionals, or agents, including the Released Parties, and any of all such parties' predecessors, successors and assigns, and all of their respective officers, directors, agents, employees and attorneys, shall not have or incur, and are hereby released from, any claim, obligation, Cause of Action, or liability to one another or to any Holder of any Claim or Interest, or any other party in interest, or any of their respective agents, employees, representatives, financial advisors, attorneys or affiliates, or any of their successors or assigns, for any act or omission in connection with, or arising out of the Chapter 11 Cases, the pursuit of confirmation of the Plan, the consummation of the Plan, the administration of the Plan, or the property to be distributed under the Plan except for their gross negligence or willful misconduct and in all respects shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.**

**Notwithstanding any other provision of the Plan, no Claim Holder or Interest Holder, or other party in interest, none of their respective agents, employees, representatives, financial advisors, attorneys or affiliates, and no successors or assigns of the foregoing, will have any right of action against the Released Parties for any act or omission in connection with, relating to, or arising out of the Chapter 11 Cases, the pursuit of confirmation of the Plan, the consummation of the Plan, the administration of the Plan, or the property to be distributed under the Plan except for their gross negligence or willful misconduct.**

**4. Releases by Debtors and Debtors-in-Possession**

Pursuant to section 1123(b)(3) of the Bankruptcy Code, effective as of the Effective Date, the Debtors, in their individual capacities and as Debtors in Possession, for and on behalf of their Estates, will release and forever unconditionally release all Released Parties for and from any and all claims or Causes of Action existing as of the Effective Date in any manner arising from, based on or relating to, in whole or in part, the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between the Debtors or any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, or any act, omission, occurrence, or event in any manner related to any such Claims, Interest, restructuring or the Chapter 11 Cases.

No provision of the Plan or of the Confirmation Order, including without limitation any release or exculpation provision, will modify, release, or otherwise limit the liability of any Person not specifically released hereunder (or, as to the FDIC, under the FDIC Treatment), including without limitation any Person that is a co-obligor or joint tortfeasor of a Released Party or that otherwise is liable under theories of vicarious or other derivative liability.

The Liquidating Trust Administrator and any newly formed entities that will be liquidating the Debtors' assets after the Effective Date will be bound, to the same extent the Debtors are bound, by all of the releases set forth above.

**5. Release by Holders of Claims, Parties-in-Interest, and Other Persons**

ON THE EFFECTIVE DATE (A) EACH PERSON THAT VOTES TO ACCEPT THE PLAN, AND (B) ALL CREDITORS, HOLDERS OF CLAIMS, PARTIES-IN-INTEREST, AND OTHER PERSONS, TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, AS SUCH LAW MAY BE EXTENDED OR INTERPRETED SUBSEQUENT TO THE EFFECTIVE DATE, IN CONSIDERATION FOR THE OBLIGATIONS OF THE DEBTORS UNDER THE PLAN AND THE CASH AND OTHER CONTRACTS, INSTRUMENTS, RELEASES, AGREEMENTS, OR DOCUMENTS TO BE DELIVERED IN CONNECTION WITH THE PLAN, EACH ENTITY (OTHER THAN THE DEBTORS) THAT HAS HELD, HOLDS, OR MAY HOLD A CLAIM, AS APPLICABLE, (EACH A "RELEASE OBLIGOR") SHALL HAVE CONCLUSIVELY, ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY, AND FOREVER RELEASED EACH RELEASED PARTY FROM ANY CLAIM OR CAUSE OF ACTION EXISTING AS OF THE EFFECTIVE DATE ARISING FROM, BASED ON, OR RELATING TO, IN WHOLE OR IN PART, THE SUBJECT MATTER OF, OR THE TRANSACTION OR EVENT GIVING RISE TO, THE CLAIM OF SUCH RELEASE OBLIGOR, AND ANY ACT, OMISSION, OCCURRENCE, OR EVENT IN ANY MANNER RELATED TO SUCH SUBJECT MATTER, TRANSACTION OR OBLIGATION; PROVIDED, HOWEVER, THAT SECTION 14.5 OF THE PLAN WILL NOT RELEASE ANY RELEASED PARTY FROM ANY CAUSE OF ACTION

EXISTING AS OF THE EFFECTIVE DATE, BASED ON (I) THE INTERNAL REVENUE CODE OR OTHER DOMESTIC STATE, CITY, OR MUNICIPAL TAX CODE, (II) THE ENVIRONMENTAL LAWS OF THE UNITED STATES OR ANY DOMESTIC STATE, CITY, OR MUNICIPALITY, AS TO REMEDIATION MATTERS, (III) ANY CRIMINAL LAWS OF THE UNITED STATES OR ANY DOMESTIC STATE, CITY, OR MUNICIPALITY, (IV) THE SECURITIES EXCHANGE ACT OF 1934, AS NOW IN EFFECT OR HEREAFTER AMENDED, THE SECURITIES ACT OF 1933, AS NOW IN EFFECT OR HEREAFTER AMENDED, OR OTHER SECURITIES LAWS OF THE UNITED STATES OR ANY DOMESTIC STATE, CITY, OR MUNICIPALITY, (V) SECTIONS 1104-1109 AND 1342(D) OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED, (VI) ANY PROFESSIONAL LIABILITY CLAIMS THAT THE FDIC COULD ASSERT UNDER APPLICABLE BANKING LAWS FOR ACTIONS TAKEN UP TO AND THROUGH THE BANK CLOSURE, AND (VII) AS MORE SPECIFICALLY SET FORTH IN THE FDIC TREATMENT, THE FDIC'S RIGHT TO SEEK DISMISSAL OF, OR OTHERWISE CHALLENGE IN AN APPROPRIATE COURT OF COMPETENT JURISDICTION, ANY CLAIM WHICH THE DEBTORS MAY ASSERT, INCLUDING BUT NOT LIMITED TO CLAIMS AGAINST DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, ATTORNEYS, AND ADVISORS OF EITHER THE DEBTORS OR THE BANK, AS BEING A DERIVATIVE CLAIM THAT BELONGS TO THE FDIC PURSUANT TO 12 U.S.C. § 1821(d)(2)(A)(i) OR OTHER APPLICABLE BANKING LAWS.

**6. Injunction**

The satisfactions and releases pursuant to Article XIV of the Plan shall also act as a permanent injunction against any Person commencing or continuing any action, employment of process, or act to collect, offset, or recover any Claim or Cause of Action satisfied or released under the Plan to the fullest extent authorized or provided by the Bankruptcy Code, including, without limitation, to the extent provided for or authorized by sections 524 and 1141 thereof.

**7. Subordination Rights and Settlement of Related Claims and Controversies**

The classification and manner of satisfying all Claims and Interests under the Plan take into consideration all subordination rights, arising under section 510 of the Bankruptcy Code, or otherwise. Except as provided in the Plan, all such subordination rights that a Holder of a Claim or Interest may have with respect to any distribution to be made pursuant to the Plan will be cancelled and terminated, and all actions related to the enforcement of such subordination rights will be permanently enjoined. Accordingly, distributions pursuant to the Plan to Holders of Allowed Claims or Allowed Interests will not be subject to payment to a beneficiary of such terminated subordination rights, or to levy, garnishment, attachment, or other legal process by a beneficiary of such terminated subordination rights. Nothing in Section 14.2 of the Plan will be deemed to release the rights, if any, that the Debtors or any creditor may have to seek to equitably subordinate any Claim pursuant to section 510 of the Bankruptcy Code or otherwise.

## **8. Request for Court Hearing**

The Debtors and/or the Liquidation Trust Administrator will have the right to request a hearing before the Court on any and all matters raised in connection with or related to the Plan.

### **H. Severance**

Prior to the Petition Date, SBK maintained a severance policy in the ordinary course of its business pursuant to which employees were entitled to severance upon their termination other than for cause, according to a predetermined schedule as set forth in the employee handbook. For example, any employees who had four or more years of service were entitled to one (1) week of pay for every year of service up to nine (9) weeks. Consequently, any remaining employee who is still owed severance shall be entitled to payment of such severance on the Effective Date in accordance with the severance policy. SBK has only two employees left who are still entitled to severance. Such payments in the aggregate will total less than \$45,000.

### **I. Preservation of Rights of Action**

Maintenance of Causes of Action. Except as otherwise provided in the Plan, on the Effective Date, all of the Debtors' rights to commence and pursue, as appropriate, any and all Causes of Action, whether arising before or after the Petition Date, in any court or other tribunal in an adversary proceeding or contested matter Filed in the Chapter 11 Cases, including the following actions, will be transferred to the Liquidation Trust: (a) objections to Claims under the Plan; and (b) any other Causes of Action, whether legal, equitable, or statutory in nature, arising out of, or in connection with the Debtors' business assets or operations, or otherwise affecting the Debtors, including possible claims against the following types of parties, both domestic and foreign, for the following types of claims: (i) Causes of Action against vendors, suppliers of goods or services, or other parties for overpayments, back charges, duplicate payments, improper holdbacks, deposits, warranties, guarantees, indemnities, or setoff; (ii) Causes of Action against utilities, vendors, suppliers of services or goods, or other parties for wrongful or improper termination, suspension of services or supply of goods, or failure to meet other contractual or regulatory obligations; (iii) Causes of Action against vendors, suppliers of goods or services, or other parties for failure to fully perform or to condition performance on additional requirements under contracts with the Debtors before the assumption or rejection of the subject contracts; (iv) Causes of Action for any liens, including mechanic's, artisan's, materialmen's, possessory, or statutory liens held by the Debtors; (v) Causes of Action for payments, deposits, holdbacks, reserves or other amounts owed by any creditor, lessor, utility, supplier, vendor, insurer, surety, lender, bondholder, lessor, or other party; (vi) Causes of Action against any current or former director, officer, employee, or agent of the Debtors arising out of employment related matters; (vii) Causes of Action against any professional services provider or any other party arising out of financial reporting; (viii) Causes of Action arising out of environmental or contaminant exposure matters against landlords, lessors, environmental consultants, environmental agencies, or suppliers of environmental services or goods; (ix) Causes of Action against insurance carriers, reinsurance carriers, underwriters or surety bond issuers relating to coverage, indemnity,

contribution, reimbursement, or other matters; (x) counterclaims and defenses relating to notes, bonds, or other contract obligations; (xi) Causes of Action against local, state, federal, and foreign taxing authorities for refunds of overpayments or other payments; (xii) Causes of Action against attorneys, accountants, consultants, or other professional service providers relating to services rendered; (xiii) contract, tort, or equitable Causes of Action that may exist or subsequently arise; (xiv) any intracompany or intercompany Causes of Action; (xv) Causes of Action of the Debtors arising under section 362 of the Bankruptcy Code; (xvi) equitable subordination Causes of Action arising under section 510 of the Bankruptcy Code or other applicable law; (xvii) turnover Causes of Action arising under sections 542 or 543 of the Bankruptcy Code; (xviii) Causes of Action arising under chapter 5 of the Bankruptcy Code, including, but not limited to, preferences under section 547 of the Bankruptcy Code; and (xix) Causes of Action for fraud, misrepresentation, unfair competition, interference with contract or potential business advantage, conversion, infringement of intellectual property, or other business tort claims.

The foregoing Causes of Action will be transferred to the Liquidation Trust notwithstanding the rejection of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan. In accordance with section 1123(b)(3) of the Bankruptcy Code and except as otherwise provided in the Plan, any claims, rights, and Causes of Action that the Debtors may hold against any Person will vest in the Liquidation Trust. The Liquidation Trust, through its authorized agents or representatives, will have and may exclusively enforce any and all such claims, rights, or Causes of Action transferred to it, and all other similar claims arising pursuant to applicable state laws, including fraudulent transfer claims, if any, and all other Causes of Action of a trustee and debtor in possession pursuant to the Bankruptcy Code in accordance with the provisions of the Liquidation Trust Agreement. The Liquidation Trust will have the exclusive right, authority, and discretion to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any and all such claims, rights, and Causes of Action transferred to it, and to decline to do any of the foregoing in accordance with the terms of the Liquidation Trust Agreement.

Preservation of All Causes of Action Not Expressly Settled or Released. Unless a claim or Cause of Action against a creditor or other Person is expressly waived, relinquished, released, compromised, or settled in the Plan or any Final Order, the Debtors expressly reserve such claim or Cause of Action for later adjudication by the Liquidation Trust, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable, or otherwise), or laches will apply to such claims or Causes of Action upon or after the Confirmation or Consummation of the Plan based on the Disclosure Statement, the Plan, or the Confirmation Order, except where such claims or Causes of Action have been expressly waived, relinquished, released, compromised, or settled in the Plan or a Final Order. In addition, the Liquidation Trust expressly reserves the right to pursue or adopt any claims or Causes of Action not so waived, relinquished, released, compromised, or settled that are alleged in any lawsuit in which any of the Debtors is a defendant or an interested party, against any Person, including the plaintiffs or co-defendants in such lawsuits. Any Person to whom any of the Debtors incurred an obligation, or who received

services from any of the Debtors or a transfer of money or property of any of the Debtors, or who has transacted business with any of the Debtors, in each case prior to the Petition Date, should assume that such obligation, transfer, or transaction may be reviewed by the Liquidation Trust subsequent to the Effective Date and may, to the extent not theretofore expressly waived, relinquished, released, compromised, or settled, be the subject of an action after the Effective Date, whether or not: (a) such Person has filed a Proof of Claim against the Debtors in the Chapter 11 Cases; (b) an objection has been filed to such Person's Proof of Claim; (c) such Person's Claim was included in the Debtors' Schedules; or (d) the Debtors have objected to such Person's scheduled Claim or identified such Claim as contingent, unliquidated, or disputed.

#### **J. Closing of Chapter 11 Cases**

On the Effective Date or as soon thereafter as practicable, the members of the board of directors and officers of the Debtors shall be deemed to have resigned. From and after the Effective Date, the Liquidation Trust Administrator shall serve as the sole officer and director of the Debtors. The Liquidation Trust Administrator shall be authorized to execute, deliver, File, or record such documents, instruments, releases, and other agreements and take such actions as set forth in the Plan or the Liquidation Trust Agreement or take any such other actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

When all Disputed Claims Filed against the Debtors have become Allowed Claims or have been disallowed, and all remaining assets of the Debtors have been liquidated and converted into Cash (other than those assets abandoned by the Debtors or the Liquidation Trust Administrator), and such Cash has been distributed in accordance with the Plan, or at such earlier time as the Debtors, or the Liquidation Trust Administrator as the case may be, deems appropriate, the Debtors, or the Liquidation Trust Administrator as the case may be, shall seek authority from the Bankruptcy Court to close the Chapter 11 Cases in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules.

### **VI. CERTAIN FACTORS TO BE CONSIDERED**

The Holder of a Claim against the Debtors should read and carefully consider the following factors, as well as the other information set forth in the Disclosure Statement (and the documents delivered together herewith and/or incorporated by reference herein), before deciding whether to vote to accept or to reject the Plan. These factors should not, however, be regarded as constituting the only factors involved in connection with the Plan and its implementation.

#### **A. General Considerations**

The formulation of a chapter 11 plan is the principal purpose of a chapter 11 case. The Plan sets forth the means for satisfying the Claims against and Interests in the Debtors. Certain Classes of Claims will not be paid in full pursuant to the Plan, and Other Subordinated Claims and Equity Interests will not receive any distributions pursuant to the Plan.

## **B. Certain Bankruptcy Law Considerations**

If the Plan is not confirmed and consummated, there can be no assurance that the Chapter 11 Cases will continue rather than be converted to Chapter 7 liquidation cases or that any alternative chapter 11 plan would be on terms as favorable to the Holders of Claims as the terms of the Plan. Moreover, any plan that does not resolve the FDIC Claim would result in more uncertainty and costs to the Debtors' Estates. Specifically, absent the FDIC Treatment, although the Debtors do not believe that the FDIC Claim should be allowed, if it is Allowed, depending on its priority, it could result in the FDIC reaping the benefit of all, or substantially all, of the remaining assets of the Estates, leaving General Unsecured Creditors with little or no distribution. Accordingly, if a Chapter 7 liquidation or protracted chapter 11 cases were to occur, there is a material risk that the value of the Debtors' remaining assets would be substantially eroded to the detriment of all stakeholders.

## **C. Risk Factors Related to Estimates and Assumptions**

As with any plan of liquidation or other financial transaction, there are certain risk factors that must be considered. All risk factors cannot be anticipated, some events will develop in ways that were not foreseen, and many or all of the assumptions that were used in the Disclosure Statement and the Plan will not be realized exactly as assumed. Some or all such variations may be material. While efforts have been made to be reasonable in this regard, there can be no assurance that subsequent events will bear out the analysis set forth in the Disclosure Statement.

## **D. Claims Estimations**

There can be no assurance that the estimated Claim amounts set forth herein are correct. In addition, certain of the Claims against the Debtors are in unliquidated amounts. The Debtors' estimation of Allowed Claims assumes that such unliquidated amounts will not have a material impact on the actual aggregate dollar amount of Allowed Claims. The actual amount of Allowed Claims likely will differ in some respect from the estimates. The estimated amounts are subject to certain risks, uncertainties, and assumptions. Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, the actual amount of Allowed Claims may vary from those estimated herein. Moreover, the Administrative Claims Bar Date will be set at a date following the Effective Date. Therefore, while an estimated amount of unpaid Administrative Claims incurred during the Chapter 11 Cases has been factored into the estimated recovery values, the actual amount of Allowed Administrative Claims may vary significantly from those estimated herein.

## **E. Causes of Action**

The proceeds, if any, recovered by the Debtors from the disposition of its causes of action are uncertain. Specifically, the Avoidance Actions, if any, will involve litigation that has not yet been (and may never be) commenced and the results of such actions are uncertain. Accordingly,

the recovery estimates indicated in the Disclosure Statement and the Plan do not include recoveries the Debtors may obtain on account of Avoidance Actions, if any.

#### **F. Other Assets**

The estimated recovery values reflect an estimation of Net Proceeds to be realized from other assets held and subsequently disposed by the Debtors. Market factors, the level of ongoing capital expenditures, and other factors could affect the amount of Net Proceeds ultimately realized by the Debtors. In addition, certain of these assets are more long-term holdings, thus the timing of such realization of value may vary. Moreover, certain of these assets are in countries across the world where monetizing them may be difficult for a variety of reasons, including the need for approval of certain regulators in countries other than the United States.

#### **G. Operating Reserve**

The estimated recovery values include a reserve for estimated operating expenses to complete the Debtors' wind down, including estimated operating expenses of the Liquidation Trust. Any shortfalls in such estimate could materially affect the amounts otherwise distributable from assets to be sold or the proceeds realized from any Causes of Action.

#### **H. Employees**

There can be no assurance that the Debtors will be able to retain certain key employees throughout the wind down of its business and disposition of its remaining assets. If the Debtors are not able to retain these employees, who have important institutional knowledge, the ability of the Debtors to maximize the value of their remaining assets may be negatively impacted.

### **VII. CERTAIN MATERIAL UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

**TO ENSURE COMPLIANCE WITH TREASURY DEPARTMENT CIRCULAR 230, HOLDERS OF CLAIMS ARE HEREBY NOTIFIED THAT: (A) ANY DISCUSSION OF FEDERAL TAX ISSUES IN THE DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE RELIED UPON, AND CANNOT BE RELIED UPON, BY THE DEBTORS OR HOLDERS OF CLAIMS FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON HOLDERS OF CLAIMS UNDER THE INTERNAL REVENUE CODE; (B) SUCH DISCUSSION IS BEING USED IN CONNECTION WITH THE PROMOTION OR MARKETING (WITHIN THE MEANING OF CIRCULAR 230) BY THE DEBTORS OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN; AND (C) HOLDERS OF CLAIMS SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.**

The following discussion summarizes certain anticipated U.S. federal income tax consequences of the transactions proposed by the Plan that are applicable to the Debtors and

holders of Allowed Class 4 Claims, holders of Allowed Class 5 Claims, and holders of Allowed Class 6 Claims. This summary is provided for informational purposes only and is based on the Internal Revenue Code of 1986, as amended (the "IRC"), Treasury regulations promulgated thereunder, judicial authorities, and current administrative rulings and practice, all as in effect as of the date hereof and all of which are subject to change or differing interpretations, possibly with retroactive effect.

This summary does not address all aspects of U.S. federal income taxation that may be relevant to the Debtors or to a particular holder of an Allowed Class 4 Claim, an Allowed Class 5 Claim, or an Allowed Class 6 Claim in light of its particular facts and circumstances or to certain types of holders of Allowed Class 4 Claims, Allowed Class 5 Claims, or Allowed Class 6 Claims subject to special treatment under the IRC (for example, non-U.S. taxpayers, financial institutions, broker-dealers, life insurance companies, cooperatives, tax-exempt organizations, persons whose functional currency is not the U.S. dollar, and holders of claims that are, or hold Allowed Class 4 Claims, Allowed Class 5 Claims, or Allowed Class 6 Claims through, a partnership or other pass-through entity). This summary does not discuss any aspects of state, local, or non-U.S. taxation or U.S. federal taxation other than income taxation. Furthermore, this summary does not address the U.S. federal income tax consequences applicable to "Non-U.S. Holders" of Claims (as defined below) or to any holders other than holders of Allowed Class 4 Claims, Allowed Class 5 Claims, and Allowed Class 6 Claims.

A substantial amount of time may elapse between the date of the Disclosure Statement and the receipt of a final distribution under the Plan. Events subsequent to the date of the Disclosure Statement, such as additional tax legislation, court decisions, or administrative changes, could affect the U.S. federal income tax consequences of the Plan and the transactions contemplated thereunder. No ruling has been or will be sought from the Internal Revenue Service (the "IRS") with respect to any of the tax aspects of the Plan and no opinion of counsel has been or will be obtained by the Debtors with respect thereto. This discussion is not binding upon the IRS or other taxing authorities. No assurance can be given that the IRS or another authority would not assert, or that a court would not sustain, a different position from any discussed herein. Accordingly, each holder of a Claim is strongly urged to consult its tax advisor regarding the U.S. federal, state, local, and non-U.S. tax consequences of the Plan to such holder.

**NO REPRESENTATIONS ARE MADE REGARDING THE PARTICULAR TAX CONSEQUENCES OF THE PLAN TO THE DEBTORS OR TO A HOLDER OF A CLAIM. EACH HOLDER OF A CLAIM IS STRONGLY URGED TO CONSULT ITS TAX ADVISOR REGARDING THE U.S. FEDERAL, STATE, LOCAL, AND NON-U.S. TAX CONSEQUENCES OF THE TRANSACTIONS DESCRIBED HEREIN AND IN THE PLAN.**

**A. Certain U.S. Federal Income Tax Consequences to the Debtor**

Federal income taxes, like many other taxes, are priority Claims. Accordingly, such Claims must be satisfied before most other Claims may be paid. If the Debtors do not have sufficient net operating losses and net operating loss carryovers ("NOLs") available to offset its

taxable income (including income, if any, from the transactions pursuant to the Plan), any such income generally will be subject to income taxation, materially reducing any recovery to holders of more junior Claims. In addition, a corporation or a consolidated group of corporations may incur alternative minimum tax liability even where NOL carryovers and other tax attributes are sufficient to eliminate its taxable income as computed under the regular corporate income tax. It is possible that the Debtors will be liable for the alternative minimum tax.

## **B. Certain U.S. Federal Income Tax Consequences to U.S. Holders of Claims**

For purposes of the following discussion, a "U.S. Holder" is a holder of an Allowed Class 4 Claim, an Allowed Class 5 Claim, or an Allowed Class 6 Claim who is (1) a citizen or individual resident of the United States, (2) a corporation created or organized in the United States or under the laws of the United States or any political subdivision thereof, (3) an estate the income of which is subject to federal income taxation regardless of its source, or (4) a trust if (i) a court within the United States is able to exercise primary supervision over the administration of the trust and one or more United States fiduciaries have the authority to control all substantial decisions of the trust or (ii) the trust was in existence on August 20, 1996 and properly elected to be treated as a U.S. person. A "Non U.S. Holder" is a holder of an Allowed Claim (other than an entity treated as a partnership or other flow-through entity and its beneficial owners) that is not a U.S. Holder.

The U.S. federal income tax treatment of a partner or other beneficial owner in a partnership or other flow-through entity generally will depend on the status of the partner and the activities of such partnership. Partners and partnerships (including beneficial owners of pass-through entities and such entities themselves) should consult their own tax advisors as to the particular U.S. federal income tax consequences applicable to them.

The U.S. federal income tax consequences of the Plan to U.S. Holders and the character, amount, and timing of income, gain, or loss recognized as a consequence of the Plan and the distributions provided for by the Plan generally will depend upon, among other things, (i) the manner in which a holder acquired a Claim; (ii) the length of time a Claim has been held; (iii) whether the Claim was acquired at a discount; (iv) whether the holder has taken a bad debt deduction in the current or prior years; (v) whether the holder has previously included accrued but unpaid interest with respect to a Claim; (vi) the holder's method of tax accounting; (vii) whether the holder will realize foreign currency exchange gain or loss with respect to a Claim; (viii) whether a Claim is an installment obligation for federal income tax purposes; and (ix) whether the transaction is treated as a "closed transaction" or an "open transaction." Therefore, holders of Claims are urged to consult their tax advisors for information that may be relevant to their particular situation and circumstances and the particular tax consequences to such holders as a result thereof.

### **1. General**

The U.S. federal income tax consequences of the Plan to a U.S. Holder generally will depend on the nature of the Allowed Class 4 Claim, the Allowed Class 5 Claim, or the Allowed

Class 6 Claim, as applicable, and its character in the hands of the U.S. Holder. Accordingly, any gain or loss with respect to the receipt of consideration in respect of such Claim pursuant to the Plan generally will be treated as capital gain or loss or ordinary income or deduction. Capital losses may generally offset only capital gains, although individuals may, to a limited extent, offset ordinary income with capital losses. In addition, U.S. Holders may be subject to other special tax rules that affect the character, timing, and amount of any income, gain, loss, or deduction. Accordingly, U.S. Holders are urged to consult their own tax advisors regarding the tax consequences of the Plan to them.

The U.S. federal income tax consequences of the Plan to a U.S. Holder are not entirely clear. In general, the receipt of Cash, Liquidation Trust interests, and/or rights to distributions from the Disputed Claims Reserve and the Supplemental Distribution Account in exchange for an Allowed Class 4 Claim, an Allowed Class 5 Claim, or an Allowed Class 6 Claim, as applicable, should result in the recognition of gain or loss in an amount equal to the difference, if any, between (i) the sum of the amount of any Cash and the fair market value of any Liquidation Trust interests and/or rights to distributions from the Disputed Claims Reserve and the Supplemental Distribution Account received (other than any Cash, Liquidation Trust interests and/or rights to distributions from the Disputed Claims Reserve and the Supplemental Distribution Account attributable to accrued but unpaid interest) and (ii) the U.S. Holder's tax basis in its Allowed Claim (other than any Claim for accrued but unpaid interest). Because Holders of Allowed Class 4 Claims and Holders of Allowed Class 5 Claims may receive additional consideration from the Liquidation Trust, the Disputed Claims Reserve, and/or the Supplemental Distribution Account, it may be that losses with respect to their Claims will be deferred until all assets are distributed from the Liquidation Trust, the Disputed Claims Reserve, and the Supplemental Distribution Account. If amounts are received by a Holder in more than one taxable year, a portion of such amounts may be characterized as interest.

The U.S. federal income tax treatment of a U.S. Holder will also depend in part on how each of the Liquidation Trust, the Disputed Claims Reserve, and the Supplemental Distribution Account, respectively, is treated for U.S. federal income tax purposes. Such treatment is uncertain, and depends in part on terms and mechanics of the Liquidation Trust, the Disputed Claims Reserve, and the Supplemental Distribution Account, which have not yet been determined. The Liquidation Trust, the Disputed Claims Reserve, and/or the Supplemental Distribution Account may generally be treated for U.S. federal income tax purposes as contractual arrangements, grantor trusts, partnerships, complex trusts, or as funds subject to section 468B of the IRC. Holders of Allowed Class 4 Claims and Allowed Class 5 Claims are urged to consult their own tax advisors regarding the potential U.S. federal income tax treatment of an interest in, and right to receive distributions from, the Liquidation Trust, the Disputed Claims Reserve, and the Supplemental Distribution Account, and any tax consequences to such U.S. Holder relating thereto (including the tax consequences of distributions from the Liquidating Trust, the Disputed Claims Reserve), and/or the Supplemental Distribution Account.

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

To the extent that any Allowed Class 4 Claim, Allowed Class 5 Claim, or Allowed Class 6 Claim is treated as a debt instrument for U.S. federal income tax purposes and comprises principal and accrued but unpaid interest thereon, the Debtor intends to take the position that, for U.S. federal income tax purposes, the distribution will be allocated first to the principal amount of the Allowed Class 4 Claim, Allowed Class 5 Claim, or Allowed Class 6 Claim, as applicable, and then, to the extent the consideration exceeds the principal amount of the Claim, to the portion of such Claim representing accrued but unpaid interest. No assurances can be given in this regard. If, contrary to the Debtor's intended position, such a distribution were treated as being allocated first to accrued but unpaid interest, a Holder would first realize ordinary income with respect to the distribution in an amount equal to the accrued but unpaid interest not already taken into income under the U.S. Holder's method of accounting, regardless of whether the holder otherwise realizes a loss as a result of the Plan.

**3. Market Discount**

If an Allowed Class 4 Claim, Allowed Class 5 Claim, or Allowed Class 6 Claim is treated as a debt instrument for U.S. federal income tax purposes and the U.S. Holder acquired the Claim after its original issuance at a "market discount" (generally defined as the amount, if any, by which the debt obligation's adjusted issue price exceeds the Holder's tax basis in a debt obligation immediately after its acquisition, subject to a *de minimis* exception), the U.S. Holder generally will be required to treat any gain recognized pursuant to the transactions contemplated by the Plan as ordinary income to the extent of the market discount accrued during the Holder's period of ownership, unless the Holder elected to include the market discount in income as it accrued.

**4. Information Reporting and Backup Withholding**

Certain payments, including payments in respect of Claims pursuant to the Plan, are generally subject to information reporting to the IRS. Moreover, such reportable payments may be subject to backup withholding at a rate of 28% unless the U.S. Holder (i) comes within certain exempt categories (which generally include corporations) and, when required, demonstrates this fact or (ii) provides a correct taxpayer identification number and certifies under penalty of perjury that the taxpayer identification number is correct and that the taxpayer is not subject to backup withholding because of a failure to report all dividend and interest income.

**5. Importance of Obtaining Professional Tax Assistance**

THE FOREGOING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE ABOVE DISCUSSION IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A CLAIM HOLDER'S PARTICULAR CIRCUMSTANCES. ACCORDINGLY, HOLDERS OF CLAIMS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS ABOUT THE U.S. FEDERAL, STATE, LOCAL, AND APPLICABLE NON-U.S. INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.

**VIII. CONFIRMATION**

**A. Section 1129 of the Bankruptcy Code**

Section 1129 of the Bankruptcy Code, which sets forth the requirements that must be satisfied in order for the Plan to be confirmed, lists the following requirements, among others:

- A plan must comply with the applicable provisions of the Bankruptcy Code;
- The proponent of a plan must comply with the applicable provisions of the Bankruptcy Code;
- A plan must be proposed in good faith and not by any means forbidden by law;
- Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under a plan, for services or for costs and expenses in or in connection with the case, or in connection with such plan and incident to the case, must be approved by, or be subject to the approval of, the bankruptcy court, as reasonable;
- The proponent of a plan must disclose the identity and affiliations of any individual proposed to serve, after confirmation of such plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under such plan.

**B. Feasibility of the Plan**

Section 1129(a)(11) of the Bankruptcy Code requires that confirmation of the Plan not be likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtors or any successors to the Debtors under the Plan, unless such liquidation or reorganization is proposed in the Plan. The Plan proposed by the Debtors provides for a liquidation of the Debtors' remaining assets and a distribution of Cash to creditors in accordance with the priority scheme of the Bankruptcy Code and the terms of the Plan and the Liquidation

Trust Agreement. The ability of the Debtors to make the distributions described in the Plan does not depend on future earnings of the Debtors; rather, the Plan is based entirely on existing cash and property of the Debtor's Estate. Accordingly, the Debtors believe that the Plan is feasible and meets the requirements of section 1129(a)(11) of the Bankruptcy Code.

### **C. Acceptance of the Plan**

As a condition to Confirmation, the Bankruptcy Code requires that each Class of Impaired Claims vote to accept the Plan, except under certain circumstances (as described below).

Section 1126(c) of the Bankruptcy Code defines acceptance of a plan by a class of impaired claims as acceptance by Holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of claims in that class, but for that purpose counts only those who actually vote to accept or to reject the Plan. Thus, a Class will have voted to accept the Plan only if two-thirds (2/3) in amount and a majority in number actually voting cast their Ballots in favor of acceptance.

**[THE BANKRUPTCY COURT, IN THIS CASE, ADOPTED A PRESUMPTION THAT IF THERE ARE NO VOTES CAST IN A PARTICULAR CLASS ENTITLED TO VOTE ON THE PLAN, THEN THE PLAN WILL BE DEEMED ACCEPTED BY SUCH CLASS. ACCORDINGLY, IF YOU DO NOT WISH SUCH A PRESUMPTION WITH RESPECT TO ANY CLASS FOR WHICH YOU HOLD CLAIMS OR INTERESTS TO BECOME EFFECTIVE, YOU SHOULD TIMELY SUBMIT A BALLOT ACCEPTING OR REJECTING THE PLAN FOR ANY SUCH CLASS.]**

### **D. Liquidation Analysis**

Many of the Debtors' assets have already been liquidated before or during the Chapter 11 Cases. Therefore, the Debtors' Estates consist primarily of the remaining proceeds from such sales, Cash, and minimal additional assets that need to be monetized. Although the Plan's proposed liquidation and a chapter 7 liquidation would have the same goal of liquidating the remainder of the Debtors' Estates and distributing all of the proceeds to creditors, the Debtors believe that the Plan provides a more efficient vehicle to accomplish this goal. Liquidating the Debtors' Estates pursuant to a chapter 7 liquidation would require the appointment of a chapter 7 trustee. The appointment of the chapter 7 trustee, as well as any professionals retained by the chapter 7 trustee, would increase the operating costs associated with the liquidation of the Debtors' Estates.

Accordingly, the Debtors believe that it will cost less to liquidate its remaining assets under the Plan, because there will be no need for the appointment of a trustee and its advisor(s) to familiarize themselves with matters upon which the Debtors and their advisors already have vast institutional knowledge, including certain tax, insurance, document maintenance, and regulatory matters. More importantly, given the settlement that has been reached with the FDIC pursuant to the Plan, Holders of General Unsecured Claims are ensured a sizeable recovery

under the Plan. Alternatively, key components of the Plan, including the FDIC Treatment would likely not occur in a chapter 7 liquidation. Consequently, in a chapter 7, there are scenarios where there could be no distributions to Holders of General Unsecured Claims.

After considering the effects that a chapter 7 liquidation would have on the ultimate proceeds available for distribution to creditors in the Chapter 11 Cases, the Debtors have determined that a chapter 7 liquidation might result in a substantial diminution in the value to be realized by the Holders of certain Claims and a delay in making distributions to all Classes of Claims entitled to a distribution. Therefore, the Debtors believe that the Plan satisfies the requirements of section 1129(a)(7) of the Bankruptcy Code.

#### **E. "Best Interests" Test**

Even if a plan is accepted by each class of Claim Holders and Interest Holders, the Bankruptcy Code requires the Bankruptcy Court to determine that the plan is in the best interests of all Claim Holders and Interest Holders that are impaired by the plan and that have not accepted the plan. The so-called "best interests" test, as set forth in section 1129(a)(7) of the Bankruptcy Code, requires that a bankruptcy court find either that all members of an impaired class of claims have accepted the plan or that the plan will provide a member who has not accepted the plan with a recovery of property of a value, as of the Effective Date of the plan, that is not less than the amount that such Holder would recover if the debtor were liquidated under Chapter 7 of the Bankruptcy Code. The best interests test does not apply to Holders of Claims that are Unimpaired.

Importantly, any chapter 7 bankruptcy case would not include the FDIC Treatment. Notably, the FDIC Treatment provides assurance that there will be a recovery for Holders of Allowed General Unsecured Claims. By contrast, any plan that does not include the FDIC Treatment, or similarly resolve the FDIC Claim, would result in significant burdens, distractions, delays, costs, and uncertainties to the Debtors' Estates. In addition, depending on how any such disputes regarding the FDIC Claim were resolved, there are scenarios in which no creditor other than the FDIC would receive a distribution from the Debtors' Estates. Specifically, if the FDIC's claims are not settled, it is likely that the FDIC would assert a claim under section 365(o) of the Bankruptcy Code seeking priority payment under section 507(a)(9) of the Bankruptcy Code on the theory that SBK made a commitment to maintain the capital of its former bank subsidiary. While the Debtors dispute that any such capital maintenance obligation exists, if the FDIC were successful, it is likely that the FDIC would be entitled to priority payment in an amount well in excess of the Debtors' remaining assets, meaning General Unsecured Creditors would not get any recovery. Moreover, throughout the discussions with SBK, the FDIC has consistently maintained, on one or more theories, that the FDIC owns substantially all of the proceeds of the Federal Income Tax Refund. While SBK believes that under the Tax Sharing Agreement, SBK owns the tax refunds, including the Federal Income Tax Refund, if the FDIC were successful, it would get all of the Federal Income Tax Refund. Even if the Debtors' view regarding the Tax Sharing Agreement is correct, it is likely that the FDIC would assert (and the Debtors might dispute) that the FDIC has a general unsecured claim in an amount that approximates the Federal Income Tax Refund. In addition, the FDIC might also try to assert various other claims. Instead,

under the FDIC Treatment, the FDIC will get \$8.5 million in full and complete satisfaction of all the FDIC's claims against SBK.

Consequently, the Debtors believe that the members of each Class of Impaired Claims will receive more under the Plan than they would receive if the Debtors were liquidated under Chapter 7.

**F. Confirmation Without Acceptance of All Impaired Classes: The "Cramdown" Alternative**

In the event that a Class of Claims does not accept the Plan or is deemed to have rejected the Plan, the Debtors intend to seek confirmation of the Plan pursuant to the "cramdown" provisions of the Bankruptcy Code. Specifically, section 1129(b) of the Bankruptcy Code provides that a plan can be confirmed even if the plan is not accepted by all impaired classes, as long as at least one impaired class of Claims has accepted it. The Bankruptcy Court may confirm the Plan at the request of the Debtors if the Plan "does not discriminate unfairly" and is "fair and equitable" as to each impaired class that has not accepted the Plan. A plan does not discriminate unfairly within the meaning of the Bankruptcy Code if a dissenting class is treated equally with respect to other classes of equal rank.

A plan is fair and equitable as to a class of unsecured claims which rejects a plan if the plan provides: (1) for each holder of a claim included in the rejecting class to receive or retain on account of that claim property that has a value, as of the effective date of the plan, equal to the allowed amount of such claim; or (2) that the holder of any claim or interest that is junior to the claims of such class will not receive or retain on account of such junior claim or interest any property at all.

A plan is fair and equitable as to a class of equity interests that rejects a plan if the plan provides: (1) that each holder of an interest included in the rejecting class receive or retain on account of that interest property that has a value, as of the effective date of the plan, equal to the greater of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such Holder is entitled, or the value of such interest; or (2) that the holder of any interest that is junior to the interest of such class will not receive or retain under the plan on account of such junior interest any property at all.

At the Confirmation Hearing, the Debtors will request confirmation pursuant to section 1129(b) of the Bankruptcy Code with respect to each class of Claims or Interests that does not or is deemed not to have accepted the Plan. See Section X.B of the Disclosure Statement for a summary of those Claims deemed not to have accepted the Plan.

As described above, Holders of Claims and Interests in Class 7 and Class 8 will not receive or retain any property under the Plan on account of their Claims and Interests in such Classes. Accordingly, under section 1126(g) of the Bankruptcy Code, such classes are presumed to have rejected the Plan. The Debtors (a) request confirmation of the Plan under section 1129(b) of the Bankruptcy Code notwithstanding the deemed rejection of the Plan by Class 7 and Class 8

and (b) reserve the right to seek confirmation of the Plan under section 1129(b) of the Bankruptcy Code notwithstanding the rejection of the Plan by the other Classes of Claims. The Debtors believe that the Plan may be confirmed pursuant to the above-described "cramdown" provisions, over the dissent of certain Classes of Claims and Interests, in view of the treatment proposed for such Classes. The Debtors believe that the treatment under the Plan of the Holders of Claims and Interests in Class 7 and Class 8 satisfies the "fair and equitable" test since, although no distribution will be made in respect of Claims and Interests in such Classes and, as a result, such classes will be deemed to have rejected the Plan, no class junior to such non-accepting Class will receive or retain any property under the Plan. In addition, the Debtors do not believe that the Plan unfairly discriminates against any dissenting Class because all dissenting Classes of equal rank are treated equally under the Plan.

**G. Conditions to Confirmation and/or Consummation**

**1. Conditions to Confirmation**

The following condition precedent to confirmation of the Plan may be satisfied or waived in accordance with Section 12.3 of the Plan and to the extent permitted under the Bankruptcy Code:

(a) The Bankruptcy Court shall have approved by Final Order a Disclosure Statement with respect to the Plan in form and substance reasonably acceptable to the Debtors.

(b) The Confirmation Order shall determine the approval of the substantive consolidation of the Chapter 11 Cases and Estates and shall in all other respects be in form and substance reasonably acceptable to the Debtors.

(c) The Confirmation Order shall approve the FDIC Treatment attached as Exhibit A to the Plan.

**2. Conditions to Effective Date**

The following are conditions precedent to the occurrence of the Effective Date:

(a) The Debtors shall have Cash on hand sufficient to fund the Cash Reserves and make any payments required to be paid under the Plan by the Debtors on or as soon as practicable after the Effective Date.

(b) The Confirmation Order shall be in form and substance acceptable to the Debtors and shall have been entered by the Bankruptcy Court and shall be a Final Order, and no request for revocation of the Confirmation Order under section 1144 of the Bankruptcy Code shall have been made or, if made, shall remain pending.

(c) All relevant transactions set forth in Article VII of the Plan will have been entered into and all conditions precedent to the consummation thereof will have been satisfied.

(d) Any order necessary to satisfy any condition to the effectiveness of the Plan will have become a Final Order, and all documents provided for under the Plan will have been executed and delivered by the parties thereto.

(e) The settlement agreement with the FDIC has not been materially amended or terminated.

#### **H. Waiver of Conditions**

The conditions set forth in Sections 12.1 and 12.2 of the Plan may be waived, in whole or in part, by the Debtors without notice or a hearing. The failure to satisfy or waive any condition to the Confirmation Date or the Effective Date may be asserted by the Debtors in their reasonable discretion based on the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtors to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each such right will be deemed an ongoing right, which may be asserted at any time.

#### **I. Retention of Jurisdiction**

Pursuant to sections 105(c) and 1142 of the Bankruptcy Code and notwithstanding entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court will retain exclusive jurisdiction over all matters arising out of, and related to, the Chapter 11 Cases and the Plan to the fullest extent permitted by law, (but with respect to the FDIC, subject to the FDIC Treatment), including, among other things, jurisdiction to:

1. Allow, disallow, determine, liquidate, classify, estimate, or establish the priority or secured or unsecured status of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any objections to the allowance or priority of Claims or Interests;
2. 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;
3. Resolve any matters related to the assumption, assumption and assignment, or rejection of any executory contract or unexpired lease to which any of the Debtors is a party or with respect to which any of the Debtors may be liable and to hear, determine and, if necessary, liquidate any Claims arising therefrom;
4. Resolve any matters relating to the pre- and post-confirmation sales of the Debtors' assets;

5. Enforce, implement or clarify all orders, judgments, injunctions, and rulings entered by the Bankruptcy Court;
6. Ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;
7. Decide or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters and grant or deny any applications involving the Debtors that may be pending on the Effective Date;
8. 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 created in connection with the Plan, the Disclosure Statement, or the Confirmation Order, including the Liquidation Trust Agreement;
9. Resolve any cases, controversies, suits, or disputes that may arise in connection with the consummation, interpretation, or enforcement of the Plan or any contract, instrument, release, or other agreement or document that is executed or created pursuant to the Plan, including the Liquidation Trust Agreement, or any Person's rights arising from or obligations incurred in connection with the Plan or such documents;
10. Modify the Plan before or after the Effective Date pursuant to section 1127 of the Bankruptcy Code or modify the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, or other agreement or document created 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, or any contract, instrument, release, or other agreement or document created in connection with the Plan, the Disclosure Statement, or the Confirmation Order, including the Liquidation Trust Agreement, in such manner as may be necessary or appropriate to consummate the Plan;
11. Hear and determine all applications for compensation and reimbursement of expenses of Professionals under the Plan or under sections 330, 331 503(b), 1103, and 1129(c)(9) of the Bankruptcy Code, provided, however, that from and after the Effective Date the payment of fees and expenses of the Debtors will be made as set forth in Article XI of the Plan.
12. Issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any entity with consummation, implementation, or enforcement of the Plan or the Confirmation Order;
13. Hear and determine any other Causes of Action by or on behalf of the Debtors;
14. Hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

15. 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;
16. Determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, or other agreement or document created in connection with the Plan, the Disclosure Statement, or the Confirmation Order, including the Liquidation Trust Agreement;
17. Enforce all orders, judgments, injunctions, releases, exculpations, indemnifications, and rulings entered in connection with the Chapter 11 Cases;
18. Hear and determine all matters related to (i) the property of the Estate from and after the Confirmation Date, (ii) the winding up of the Debtors' affairs, and (iii) the activities of the Debtors, including (A) challenges to or approvals of the Debtors' activities, (B) resignation, incapacity, or removal of the Liquidation Trust Administrator and selection of a successor Liquidation Trust Administrator, (C) reporting by, termination of, and accounting by the Debtors, and (D) release of the Liquidation Trust Administrator from its duties;
19. Hear and determine disputes with respect to compensation of the Debtors' professional advisors;
20. Hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under the Bankruptcy Code;
21. Adjudicate any and all Causes of Action, adversary proceedings, applications, and contested matters that have been or hereafter are commenced or maintained in or in connection with the Chapter 11 Cases or the Plan, including, without limitation, any adversary proceeding or contested matter, proceedings to adjudicate the allowance of Disputed Claims, and all controversies and issues arising from or relating to any of the foregoing;
22. Hear and determine all matters relating to the enforcement and interpretation of Section 14.4 of the Plan;
23. Hear and determine all matters involving Claims or Causes of Action involving the Debtors or their property; and
24. Enter an order closing the Chapter 11 Cases.

Notwithstanding anything contained herein to the contrary, the Bankruptcy Court retains exclusive jurisdiction to hear and determine disputes concerning (i) Claims or (ii) Causes of Action and any motions to compromise or settle such disputes. Despite the foregoing, if the Bankruptcy Court is determined not to have jurisdiction with respect to the foregoing, or if the

Debtors choose to pursue any Claim or Cause of Action (as applicable) in another court of competent jurisdiction, the Debtors will have authority to bring such action in any other court of competent jurisdiction.

## **IX. ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN**

The Debtors believe that the Plan affords Holders of Claims the potential for the greatest realization on the Debtors' assets and, therefore, is in the best interests of such Holders.

If the Plan is not confirmed, however, the theoretical alternatives include (a) continuation of the pending Chapter 11 Cases, (b) an alternative chapter 11 plan or plans of liquidation proposed at a later date (that if it does not include the FDIC Treatment will likely be after all material litigation with the FDIC has been finally adjudicated or settled, resulting in long delays until distributions are made), or (c) liquidation of the Debtors under chapter 7 of the Bankruptcy Code.

Since the Debtors have no ongoing operations, the alternatives to the Plan are very limited and not likely to benefit creditors.

### **A. Continuation of the Chapter 11 Cases**

If the Debtors remain in Chapter 11, the Debtors could continue to wind down their businesses and liquidate their remaining properties as Debtor in Possession, but it would remain subject to the restrictions imposed by the Bankruptcy Code. Ultimately, the Debtors (or other parties in interest) could propose another plan or liquidate under Chapter 7. But the Debtors would continue to incur costs of remaining in bankruptcy until any such alternative plan could be proposed or while (and after) the case was being converted to a chapter 7.

### **B. Alternative Chapter 11 Plans**

If the Plan is not confirmed, the Debtors, or, if the Bankruptcy Court did not grant further extensions of the Debtors' exclusive period in which to solicit a chapter 11 plan, any other party in interest in the Chapter 11 Cases, could attempt to formulate and propose a different plan or plans seeking to liquidate the Debtors' assets. The Debtors believe that the Plan provides the best return for all stakeholders. Moreover, any plan that does not resolve the FDIC Claim would result in more delay, uncertainty, and costs to the Debtors' estates. Although, absent the FDIC Treatment, the Debtors do not believe the FDIC Claim should be Allowed, if it were Allowed, depending on its priority, it could result in the FDIC reaping the benefit of all, or substantially all of the remaining assets of the Estates, leaving Holders of General Unsecured Claims with little or no distribution.

In addition, the Plan has been developed after several months of analysis to produce a structure for liquidating the Debtors' assets as quickly and efficiently as possible, while minimizing the Debtors' time in bankruptcy, all to the benefit of all creditors. There is little

possibility that consensual, viable alternatives could be proposed and confirmed, especially considering that the FDIC Treatment only came about after months of negotiations with the FDIC.

The Plan establishes a framework and vehicle for the settlement of claims and the prompt distribution of Estate Property to Holders of Claims at the time when barriers to such distribution have been eliminated, whether as the result of entry of final orders in litigation, approved settlements, or claims estimation by the Bankruptcy Court. It also allows the Debtors to have an exit strategy, so that they are only in bankruptcy for as long as needed to implement the foregoing structure.

### **C. Liquidation Under Chapter 7**

If no plan is confirmed, the Debtors' Chapter 11 Cases may be converted to a case under Chapter 7 of the Bankruptcy Code. As noted above, in a Chapter 7 case, a trustee or trustees would be appointed to liquidate the assets of the Debtors. It is impossible to predict precisely how the proceeds of the liquidation would be distributed to the respective Holders of Claims.

The Debtors believe, after considering all relevant factors in these Chapter 11 Cases, that all Impaired Classes will receive under the Plan property of a value that is at least as much as (and very likely more than) they would receive in a chapter 7 liquidation.

The Debtors believe that in liquidation under Chapter 7, before creditors receive any distribution, additional administrative expenses involved in the appointment of a trustee or trustees and attorneys, accountants, and other professionals to assist such trustees would cause a substantial diminution in the value of the Estates. The assets available for distribution to creditors would be reduced by such additional expenses, as well as the loss of the institutional knowledge of the Debtors' remaining officers and the benefit that such continuity provides. Consequently, there is little likelihood that a chapter 7 liquidation would produce any costs savings and likely would increase costs due to the chapter 7 trustee's unfamiliarity with the Debtors and pending claims brought by and against the Debtors. To react quickly and cost-effectively, a chapter 7 trustee would have to overcome substantial hurdles at the outset, including understanding the relationship between the Debtors and their affiliates.

Furthermore, key components of the Plan, including the FDIC Treatment, would likely not occur in a chapter 7 liquidation. Accordingly, the Debtors believe the Holders of Allowed General Unsecured Claims would receive less than anticipated under the Plan if the Chapter 11 Cases were converted to chapter 7 cases.

## **X. VOTING REQUIREMENTS**

On [●], the Bankruptcy Court entered the Solicitation Procedures Order approving, among other things, the Disclosure Statement, setting voting procedures, and scheduling the hearing on confirmation of the Plan. A copy of the Notice of Confirmation Hearing is enclosed

with the Disclosure Statement. The Notice of the Confirmation Hearing sets forth in detail, among other things, the voting deadlines and objection deadlines. The Notice of Confirmation Hearing and the instructions attached to the Ballot should be read in connection with this section of the Disclosure Statement.

If you are the Holder of a Claim entitled to vote on the Plan and you have any questions about (a) the procedure for voting your Claim, (b) the packet of materials that you have received, or (c) the amount of your Claim, or if you wish to obtain, at your own expense, unless otherwise specifically required by Federal Rule of Bankruptcy Procedure 3017(d), an additional copy of the Plan, the Disclosure Statement, or any appendices or exhibits to such documents, please contact GCG, at the following address:

SBK Bankruptcy Administration,  
c/o GCG  
P.O. Box 9855  
Dublin, Ohio 43017-5755  
Phone: 1-888-421-9899

The Bankruptcy Court may confirm the Plan only if it determines that the Plan complies with the technical requirements of Chapter 11 of the Bankruptcy Code and that the disclosures by the Debtors concerning the Plan have been adequate and have included information concerning all payments made or promised by the Debtor in connection with the Plan and the Chapter 11 Case. In addition, the Bankruptcy Court must determine that the Plan has been proposed in good faith and not by any means forbidden by law and, under Bankruptcy Rule 3020(b)(2), it may do so without receiving evidence if no objection is timely filed.

In particular, the Bankruptcy Code requires the Bankruptcy Court to find, among other things, that (a) the Plan has been accepted by the requisite votes of all Classes of Impaired Claims and Interests unless approval will be sought under section 1129(b) of the Bankruptcy Code in spite of the dissent of one or more such Classes, (b) the Plan is "feasible" under section 1129(a)(11) of the Bankruptcy Code, and (c) the Plan is in the "best interests" of all Claim Holders, which means that such Holders will receive at least as much under the Plan as they would receive in a liquidation under Chapter 7 of the Bankruptcy Code. The Bankruptcy Court must find that all conditions mentioned above are met before it can confirm the Plan. Thus, even if all the Classes of Impaired Claims against the Debtors accept the Plan by the requisite votes, the Bankruptcy Court must make an independent finding that the Plan conforms to the requirements of the Bankruptcy Code, that the Plan is feasible, and that the Plan is in the best interests of the Holders of Claims against the Debtor. These statutory conditions to confirmation are discussed above.

UNLESS THE BALLOT OR MASTER BALLOT BEING FURNISHED IS TIMELY SUBMITTED TO THE VOTING AGENT ON OR PRIOR TO THE VOTING DEADLINE TOGETHER WITH ANY OTHER DOCUMENTS REQUIRED BY SUCH BALLOT, THE DISCLOSURE STATEMENT ORDER PROVIDES FOR THE REJECTION OF SUCH BALLOT AS INVALID. IN NO CASE SHOULD A BALLOT BE DELIVERED TO THE DEBTORS OR ANY OF THEIR ADVISORS.

**[THE BANKRUPTCY COURT, IN THIS CASE, HAS ADOPTED A PRESUMPTION THAT IF THERE ARE NO VOTES CAST IN A PARTICULAR CLASS ENTITLED TO VOTE ON THE PLAN, THEN THE PLAN WILL BE DEEMED ACCEPTED BY SUCH CLASS. ACCORDINGLY, IF YOU DO NOT WISH SUCH A PRESUMPTION WITH RESPECT TO ANY CLASS FOR WHICH YOU HOLD CLAIMS OR INTERESTS TO BECOME EFFECTIVE, YOU SHOULD TIMELY SUBMIT A BALLOT ACCEPTING OR REJECTING THE PLAN FOR ANY SUCH CLASS.]**

**A. Parties in Interest Entitled to Vote**

Under section 1124 of the Bankruptcy Code, a class of claims is deemed to be "impaired" under a plan unless (1) the plan leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the Holder thereof, or (2) notwithstanding any legal right to an accelerated payment of such claim or interest, the plan cures all existing defaults (other than defaults resulting from the occurrence of events of bankruptcy) and reinstates the maturity of such claim or interest as it existed before the default.

In general, a Holder of a claim or interest may vote to accept or to reject a plan if (1) the claim or interest is "allowed" for voting purposes, which means generally that no party in interest has objected to such claim or interest as of the Voting Deadline, and (2) the claim or interest is impaired by the Plan. If the Holder of an impaired claim or interest will not receive any distribution under the plan in respect of such claim or interest, the Bankruptcy Code deems such Holder to have rejected the plan. If the claim or interest is not impaired, the Bankruptcy Code deems that the Holder of such claim or interest has accepted the plan and the plan proponent need not solicit such Holder's vote.

The Holder of a Claim against the Debtors that is "impaired" under the Plan is entitled to vote to accept or reject the Plan if (1) the Plan provides for a distribution in respect of such Claim, and (2) (a) the Claim has been scheduled by the Debtors (and such claim is not scheduled as disputed, contingent or unliquidated), or (b) it has filed a proof of claim on or before the bar date applicable to such Holder, pursuant to sections 502(a) and 1126(a) of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure 3003 and 3018. Any Claim as to which an objection has been timely filed and has not been withdrawn or dismissed is not entitled to vote, except to the extent that a portion of such Claim has not been objected to, unless the Bankruptcy Court, pursuant to Federal Rule of Bankruptcy Procedure 3018(a), upon application of the Holder of the Claim with respect to which there has been an objection, temporarily allows the Claim in an amount that the Bankruptcy Court deems proper for the purpose of accepting or rejecting the Plan.

A vote may be disregarded if the Bankruptcy Court determines, pursuant to section 1126(e) of the Bankruptcy Code, that it was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code. The Disclosure Statement Order also sets forth assumptions and procedures for tabulating Ballots that are not completed fully or correctly.

**[THE BANKRUPTCY COURT, IN THIS CASE, HAS ADOPTED A PRESUMPTION THAT IF THERE ARE NO VOTES CAST IN A PARTICULAR CLASS ENTITLED TO VOTE ON THE PLAN, THEN THE PLAN WILL BE DEEMED ACCEPTED BY SUCH CLASS. ACCORDINGLY, IF YOU DO NOT WISH SUCH A PRESUMPTION WITH RESPECT TO ANY CLASS FOR WHICH YOU HOLD CLAIMS OR INTERESTS TO BECOME EFFECTIVE, YOU SHOULD TIMELY SUBMIT A BALLOT ACCEPTING OR REJECTING THE PLAN FOR ANY SUCH CLASS.]**

**B. Classes Impaired Under the Plan**

**1. Voting Impaired Classes of Claims**

The following Classes are Impaired under, and entitled to vote on, the Plan:

<b>Class 3</b>	(FDIC Claims)
<b>Class 4</b>	(Senior Indebtedness Claims)
<b>Class 5</b>	(General Unsecured Claims)
<b>Class 6</b>	(Subordinated Note Claims)

**2. Non-Voting Impaired Classes of Claims and Interests**

The Classes listed below are not entitled to receive or retain any property under the Plan. Under section 1126(g) of the Bankruptcy Code, Claim Holders and Interest Holders in such Classes are deemed to reject the Plan, and the votes of such Claim Holders and Interest Holders will not be solicited.

<b>Class 7</b>	(Other Subordinated Claims)
<b>Class 8</b>	(Old Equity Interests)]

**3. Unimpaired Classes of Claims**

The Classes of Claims listed below are Unimpaired under the Plan and deemed under section 1126(f) of the Bankruptcy Code to have accepted the Plan. Their votes to accept or reject the Plan will not be solicited. Acceptances of the Plan are being solicited only from those who hold Claims in an Impaired Class whose members will receive a distribution under the Plan.

<b>Class 1</b>	(Secured Claims)
<b>Class 2</b>	(Non-Tax Priority Claims)

**XI. CONCLUSION**

The Disclosure Statement was approved by the Bankruptcy Court after notice and a hearing. The Bankruptcy Court has determined that the Disclosure Statement contains

information adequate to permit Claim Holders and Interest Holders to make an informed judgment about the Plan. Such approval, however, does not mean that the Bankruptcy Court recommends either acceptance or rejection of the Plan.

**A. Hearing on and Objections to Confirmation**

**1. Confirmation Hearing**

The hearing on confirmation of the Plan has been scheduled for **[April 18], 2012, in Courtroom 613, at [10:30] a.m.** (prevailing Central Time) at the Bankruptcy Court. Such hearing may be adjourned from time to time by announcing such adjournment in open court, all without further notice to parties in interest, and the Plan may be modified by the Debtor pursuant to section 1127 of the Bankruptcy Code prior to, during, or as a result of that hearing, without further notice to parties in interest. At the Confirmation Hearing, the Debtors will present the results of the voting on the Plan, and the Bankruptcy Court will consider all conditions precedent to confirmation of the Plan under the Bankruptcy Code, as well as any objections to the Plan that are timely Filed.

**2. Date Set for Filing Objections to Confirmation**

The time by which all objections to confirmation of the Plan must be Filed with the Bankruptcy Court and received by the parties listed in the Confirmation Hearing Notice has been set for **[April 11], 2012, at 5:00 p.m.** (prevailing Central Time). A copy of the Confirmation Hearing Notice has been provided with the Disclosure Statement.

**B. Recommendation**

The Plan provides for an equitable and timely distribution to the Debtors' Creditors. The Debtors believe that any alternative to confirmation of the Plan, such as liquidation or attempts by another party in interest to file a plan, could result in significant delays, litigation, and costs. Moreover, the Debtors believe that creditors will receive greater and earlier recoveries under the Plan than those that would be achieved in a Chapter 7 liquidation, and thus the Debtors believe the Plan is in the best interest of all Holders of Claims.

**THE DEBTORS BELIEVE THAT THE PLAN PROVIDES THE BEST RECOVERIES POSSIBLE FOR THE HOLDERS OF CLAIMS AGAINST THE DEBTORS. ACCORDINGLY, THE DEBTORS STRONGLY RECOMMEND THAT YOU VOTE TO ACCEPT THE PLAN.**

Dated: Chicago, Illinois  
January 31, 2012

Respectfully submitted,

THE SHOREBANK CORPORATION  
(for itself and on behalf of the Affiliate Debtors)

By: /s/ George P. Surgeon  
Name: George P. Surgeon  
Title: President and CEO, The ShoreBank Corporation

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(312) 407-0700

Counsel for the Debtors  
and Debtors-in-Possession

**APPENDIX A**

**JOINT PLAN OF LIQUIDATION OF THE SHOREBANK CORPORATION AND ITS  
AFFILIATED DEBTORS**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

-----  
In re: ) Case No. 12-00581  
 )  
THE SHOREBANK CORPORATION, et al., ) (Jointly Administered)  
 )  
Debtors. ) *Chapter 11*  
 )  
 ) Hon. A. Benjamin Goldgar  
 )  
-----

**JOINT PLAN OF LIQUIDATION OF THE SHOREBANK  
CORPORATION AND ITS AFFILIATED DEBTORS AND  
DEBTORS-IN-POSSESSION**

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Dated: Chicago, Illinois  
January 31, 2012

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**EXHIBITS**

- Exhibit A FDIC Treatment
- Exhibit B Form of Liquidation Trust Agreement
- Exhibit C List of Unexpired Leases and Executory Contracts to be Rejected on a Date Other Than the Effective Date
- Exhibit D List of Unexpired Leases and Executory Contracts to be Assumed

## INTRODUCTION

The ShoreBank Corporation ("SBK") and 11 of its subsidiaries and affiliates (the "Affiliate Debtors"), the debtors and debtors-in-possession in the above-captioned jointly administered Chapter 11 Cases (collectively, the "Debtors"), hereby propose the following joint plan that provides for the liquidation of the Debtors' assets and the distribution of the proceeds thereof in resolution of the outstanding Claims against and Interests in the Debtors. Capitalized terms used herein shall have the meanings ascribed to such terms in Article I.

At this time, the Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly administered pursuant to an order of the Bankruptcy Court. As set forth in Section 7.1 of the Plan, however, the Plan contemplates the substantive consolidation of the Affiliate Debtors into SBK. Each Debtor is a proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code.

A complete list of the Debtors is set forth below. The list identifies each Debtor by its case number in the Chapter 11 Cases.

### The Debtors

- The ShoreBank Corporation (Case No. 12-00581)
- ShoreBank Development Corporation (Case No. 12-00589)
- ShoreBank Capital Corporation (Case No. 12-00593)
- ShoreBank Pacific Corporation (Case No. 12-00590)
- Shore Overseas Corporation (Case No. 12-00605)
- ShoreCap Management, Ltd. (Case No. 12-00591)
- ShoreBank Lands Corporation (Case No. 12-00594)
- ShoreBank New Markets Fund, Inc. (Case No. 12-00597)
- SBK NMTC Fund I, LLC (Case No. 12-00599)
- SBK NMTC Fund II, LLC (Case No. 12-00602)
- SBK NMTC Fund III, LLC (Case No. 12-00606)
- SBK NMTC Fund IV, LLC (Case No. 12-00607)

Under section 1125(b) of the Bankruptcy Code, a vote to accept or reject the Plan cannot be solicited from the Holder of a Claim or Interest until such time as the Disclosure Statement has been approved by the Bankruptcy Court and distributed to Claim and Interest Holders. The Disclosure Statement was approved by the Bankruptcy Court by order entered on [●] and has been distributed simultaneously with the Plan to all parties whose votes are being solicited. The Disclosure Statement contains, among other things, a discussion of the Debtors' history, businesses, and former and current operations, a summary and analysis of the Plan, and certain related matters. **ALL HOLDERS OF CLAIMS AND INTERESTS ARE ENCOURAGED TO READ THE PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.**

Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Fed. R. Bankr. P. 3019 and those restrictions on modifications set forth in Article XVI of the Plan, each of the Debtors expressly reserves its respective rights to alter, amend, modify, revoke, or withdraw the Plan with respect to such Debtor, one or more times, prior to its substantial consummation.

ARTICLE I  
DEFINED TERMS AND RULES OF INTERPRETATION

A. Definitions.

For purposes of the Plan, except as otherwise provided or unless the context otherwise requires, all capitalized terms not otherwise defined shall have the meanings set forth below. Any term that is not otherwise defined herein, 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.

1.1. *"Administrative Claim"* means a Claim for payment of an administrative expense of a kind specified in section 503(b) of the Bankruptcy Code and entitled to priority pursuant to section 507(a)(1) of the Bankruptcy Code, including, but not limited to, (a) any actual and necessary costs and expenses, incurred after the Petition Date, of preserving the Estates and operating and liquidating the business of the Debtors (including wages, salaries, or commissions for services rendered after the Petition Date), (b) Professional Fee Claims, and (c) all fees and charges assessed against the Estate under chapter 123 of title 28, United States Code.

1.2. *"Administrative Claims Bar Date"* means, except as modified by Section 11.1 and 11.2 of the Plan, the deadline for filing proofs of Administrative Claims which shall be thirty (30) days after the date on which the Debtors mail written notice of the occurrence of the Effective Date as specified in Section 11.3 of the Plan, unless otherwise ordered by the Bankruptcy Court.

1.3. *"Administrative Claims Reserve"* means the reserve established to pay Administrative Claims, Priority Tax Claims, Secured Claims, Non-Tax Priority Claims, Cure Claims, and other payments required under the Plan.

1.4. *"Affiliate Debtors"* means, individually or collectively, a Debtor or Debtors other than SBK, as applicable.

1.5. *"Affiliate Interest"* means the rights of any current or former Holder or owner of any shares of Old Equity of any of the Affiliate Debtors authorized and issued prior to the Confirmation Date.

1.6. *"Affiliates"* has the meaning given such term by section 101(2) of the Bankruptcy Code.

1.7. *"Allowed ... Claim"* means a Claim or any portion thereof:

(a) that has been allowed by a Final Order, or

(b) as to which no proof of claim has been timely Filed with the Bankruptcy Court pursuant to any applicable order of the Bankruptcy Court establishing a bar date as to a category of claims, or, if none, as prescribed by the Bankruptcy Code or other applicable bankruptcy law or rule and (i) the liquidated and noncontingent amount of which is Scheduled other than at zero, in an unknown amount, or as disputed and (ii) no objection to its allowance has been Filed, or is intended to be Filed by the Debtors, within the periods of limitation fixed by the Plan, the Bankruptcy Code, or by any order of the Bankruptcy Court, or

(c) as to which a proof of claim has been timely Filed with the Bankruptcy Court pursuant to any applicable order of the Bankruptcy Court establishing a bar date as to a category of claims, or, if none, as prescribed by the Bankruptcy Code or other applicable bankruptcy law or rule but only to the extent that such claim is identified in such proof of claim in a liquidated and noncontingent amount, and either (i) no objection to its allowance has been Filed, or is intended to be Filed, within the periods of limitation fixed by the Plan, the Bankruptcy Code, or by any order of the Bankruptcy Court or (ii) any objection to its allowance has been settled or withdrawn, or has been denied by a Final Order, or

(d) that is expressly allowed in a liquidated amount in the Plan.

1.8. *"Applicable Banking Laws"* means any and all laws of the United States and any state applicable to the Debtors, governing the organization, operation, business, insurance of deposits, merger, acquisition, control, reorganization, dissolution, or liquidation of commercial banks, including without limitation the FDICIA, the FIRREA, and the BHCA.

1.9. *"Avoidance Actions"* means Causes of Action arising under sections 502, 510, 541, 542, 544, 545, 547 through 551, or 553 of the Bankruptcy Code, or under similar or related state or federal statutes and common law, including fraudulent transfer laws, whether or not litigation is commenced to prosecute such Causes of Action.

1.10. *"Ballot"* means each of the ballot form or forms distributed to each Holder of an Impaired Claim entitled to vote, on which the Holder is to indicate acceptance or rejection of the Plan.

1.11. *"Bank"* means ShoreBank headquartered, in Chicago, Illinois, a state chartered non-member bank.

1.12. *"Bankruptcy Code"* means title 11, United States Code, as now in effect or hereafter amended.

1.13. *"Bankruptcy Court"* means the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division, or any other court with jurisdiction over the Chapter 11 Cases.

1.14. *"Bankruptcy Rules"* means the Federal Rules of Bankruptcy Procedure and the local rules of the Bankruptcy Court, as now in effect or hereafter amended.

1.15. *"Bar Date"* means the deadline for filing proofs of claim established by the Bankruptcy Court as February 27, 2102 (and July 11, 2012 for all governmental units as defined in section 101(27) of the Bankruptcy Code), pursuant to the Bar Date Order and any supplemental bar dates established by the Bankruptcy Court pursuant to the Bar Date Order or other Final Order.

1.16. *"Bar Date Order"* means the order entered by the Bankruptcy Court on January 12, 2012, as amended, which established the Bar Date.

1.17. *"BHCA"* means the Bank Holding Company Act of 1956, as amended.

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

1.19. *"Capital Securities"* means any and all of the capital securities issued by the Trusts, which represent undivided beneficial interests in the respective Trust, including, without limitation: (i) those certain 10 7/8% fixed rate capital trust pass-through securities issued by ShoreBank Capital Trust I; (ii) those certain floating rate TRUPS issued by ShoreBank Capital Trust II; and (iii) those certain TP securities issued by ShoreBank Capital Trust III.

1.20. *"Cash"* means legal tender of the United States of America and equivalents thereof.

1.21. *"Cash Reserves"* means the cash reserved, as determined by the Debtors or the Liquidation Trust Administrator, as the case may be, for the funding of the Administrative Claims Reserve, the Disputed Claims Reserve, and the Operating Reserve.

1.22. *"Causes of Action"* means any and all actions, causes of action, suits, accounts, controversies, agreements, promises, rights to legal remedies, rights to equitable remedies, rights to payment and claims, whether known, unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured and whether asserted or assertable directly or derivatively, in law, equity, or otherwise, including the Avoidance Actions.

1.23. *"Chapter 11 Cases"* means (a) when used with reference to a particular Debtor, the chapter 11 case pending for that Debtor in the Bankruptcy Court and (b) when used with reference to all Debtors, the chapter 11 cases pending for the Debtors in the Bankruptcy Court.

1.24. "*Claim*" means a "claim," as defined in section 101(5) of the Bankruptcy Code.

1.25. "*Claims Objection Deadline*" means as applicable (except for Administrative Claims) (a) the day that is the later of (i) the first Business Day that is ninety (90) days after the Effective Date, and (ii) as to proofs of claim Filed after the Bar Date, the first Business Day that is ninety (90) days after a Final Order is entered deeming the late Filed claim to be treated as timely Filed, or (b) such later date as may be established by the Bankruptcy Court as may be requested by the Debtors or the Liquidation Trust Administrator.

1.26. "*Class*" means a category of Holders of Claims or Interests, as described in Articles II and III of the Plan.

1.27. "*Common Securities*" means the common securities issued by the Trusts, with a liquidation amount of \$1,000 per security representing undivided beneficial interests in the respective Trust.

1.28. "*Confirmation Date*" means the date on which the Clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

1.29. "*Confirmation Hearing*" means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of the Plan, as such hearing may be adjourned or continued from time to time.

1.30. "*Confirmation Order*" means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

1.31. "*Creditors' Committee*" means the statutory committee, if any, of unsecured creditors appointed in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code, as reconstituted from time to time.

1.32. "*Cure*" means the distribution within a reasonable period of time following the Effective Date of Cash, or such other property as may be agreed upon by the parties or ordered by the Bankruptcy Court, with respect to the assumption or assumption and assignment of an executory contract or unexpired lease, pursuant to section 365(b) of the Bankruptcy Code, in an amount equal to all unpaid monetary obligations, without interest, or such other amount as may be agreed upon by the parties under such executory contract or unexpired lease, to the extent such obligations are enforceable under the Bankruptcy Code and applicable bankruptcy law.

1.33. "*Debtor(s)*" means individually, SBK or any of the Affiliate Debtors and, collectively, all of the above-captioned debtors and debtors-in-possession.

1.34. "*Deficiency Claim*" means, in the case of a Claim Holder who asserts a Secured Claim against the Debtors, a Claim equal to the amount by which such Claim exceeds the secured portion thereof as determined pursuant to section 506 of the Bankruptcy Code.

1.35. *"Disallowed Claim"* means a Claim, or any portion thereof, that (a) has been disallowed by either a Final Order or pursuant to a settlement, or (b) (i) is Scheduled at zero or as contingent, disputed, or unliquidated and (ii) as to which a Bar Date has been established but no proof of claim has been filed or deemed timely filed with the Bankruptcy Court pursuant to any applicable order of the Bankruptcy Court establishing a bar date as to a category of claims, or, if none, as prescribed by the Bankruptcy Code or other applicable bankruptcy law or rule.

1.36. *"Disbursing Agent"* means the Debtors, or the Liquidation Trust Administrator, or any party designated by the Debtors to serve as disbursing agent under the Plan.

1.37. *"Disclosure Statement"* means the written disclosure statement (including all appendices thereto or referenced therein) that relates to the Plan, as approved by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code, as the same may be amended, modified, or supplemented.

1.38. *"Disclosure Statement Hearing"* means the hearing before the Bankruptcy Court held to consider the adequacy of the Disclosure Statement as such hearing may be adjourned or continued from time to time.

1.39. *"Disputed Claim"* means a Claim, or any portion thereof, that is neither an Allowed Claim nor a Disallowed Claim.

1.40. *"Disputed Claims Reserve"* means one or more reserves of Cash established and maintained by the Liquidation Trust Administrator \ on account of Disputed Claims.

1.41. *"Effective Date"* means the Business Day the Plan becomes effective as provided in Section 12.2 of the Plan.

1.42. *"Estate(s)"* means, individually, the estate of SBK or any of the Affiliate Debtors and, collectively, the estates of all of the Debtors created under section 541 of the Bankruptcy Code.

1.43. *"Exhibit"* means an exhibit annexed to either the Plan or as an appendix to the Disclosure Statement.

1.44. *"Exhibit Filing Date"* means the date by which all Exhibits shall be Filed with the Bankruptcy Court, which date shall be at 5:00 p.m. (prevailing Central Time) at least seven (7) days prior to the Voting Deadline or such later date as may be approved by the Bankruptcy Code.

1.45. *"Existing Securities"* means Old Equity, including any such securities that have been authorized but not issued.

1.46. *"Face Amount"* means (a) when used in reference to a Disputed Claim or Disallowed Claim, the full stated amount of the Claim claimed by the Holder in any proof of claim

timely filed with the Bankruptcy Court or otherwise deemed timely filed by any Final Order of the Bankruptcy Court or other applicable bankruptcy law, and (b) when used in reference to an Allowed Claim, the allowed amount of such Claim.

1.47. *"FDIC"* means the Federal Deposit Insurance Corporation as receiver to the Bank, unless otherwise noted to include the FDIC in its corporate capacity.

1.48. *"FDIC Claim"* means any and all Claims that have been made or could have been made by the FDIC, including the FDIC in its corporate capacity, against the Debtors. For the avoidance of doubt, the FDIC Claims include, but are not limited to, any claim under section 365(o) or 507(a)(9) of the Bankruptcy Code, any claims to certain tax and insurance refunds, and any setoff claims.

1.49. *"FDICIA"* means the Federal Deposit Insurance Corporation Improvement Act.

1.50. *"FDIC Treatment"* means the treatment the FDIC is prescribed to receive pursuant to the Plan, as set forth on Exhibit A attached hereto.

1.51. *"File, Filed, or Filing"* means file, filed, or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Cases.

1.52. *"Final Order"* means an order or judgment, the operation or effect of which has not been stayed, reversed, or amended and as to which order or judgment (or any revision, modification, or amendment thereof) the time to appeal or seek review or rehearing has expired and as to which no appeal or petition for review or rehearing was filed or, if filed, remains pending.

1.53. *"FIRREA"* means the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

1.54. *"GCG"* means GCG, Inc., the Debtors' claims and noticing agent.

1.55. *"General Unsecured Claim"* means a Claim that is not an Administrative Claim, Priority Tax Claim, Non-Tax Priority Claim, Secured Claim, FDIC Claim, Senior Indebtedness Claim, Subordinated Note Claim, or an Other Subordinated Claim.

1.56. *"Guarantee Agreements"* means the guarantee agreements with respect to the Capital Securities, including, without limitation: (i) that certain guarantee agreement, dated as of March 23, 2000 between SBK and the Bank of New York, as trustee, for the benefit of holders of the Capital Securities of the ShoreBank Trust I; (ii) that certain guarantee agreement between SBK and Wilmington Trust Company, as trustee, for the benefit of holders of the Capital Securities of ShoreBank Trust II; and that certain guarantee agreement between SBK and Wells Fargo Bank, National Association, as trustee, for the benefit of holders of the Capital Securities of ShoreBank Trust III.

1.57. *"Holder"* means a Person holding a Claim or Interest and, with respect to the Trust Securities and the Existing Securities, the beneficial holder as of the Voting Record Date or Record Date, as appropriate, or any authorized agent who has completed and executed a Ballot in accordance with the voting instructions.

1.58. *"Impaired"* means, when used in reference to a Claim or Interest, a Claim or Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

1.59. *"Indemnification Rights"* means any obligations or rights of any of the Debtors to indemnify or contribute to the losses, liabilities, or expenses of an Indemnitee pursuant to the Debtor's charter, by-laws, or policy of providing employee indemnification, or applicable state law or specific agreement in respect of any claims, demands, suits, causes of action, or proceedings against an Indemnitee based upon any act or omission related to an Indemnitee's service with, for, or on behalf of such Debtor.

1.60. *"Indemnitee"* means all present and former directors, officers, employees, consultants, agents, or representatives of a Debtor who are entitled to assert Indemnification Rights.

1.61. *"Initial Distribution"* means the distribution occurring on the Initial Distribution Date.

1.62. *"Initial Distribution Date"* means the date occurring as soon as possible after the Administrative Claims Bar Date as determined by the Debtors upon which distributions are made with respect to Holders of Allowed Claims pursuant to Article IX.

1.63. *"Intercompany Claim"* means (a) any account reflecting intercompany book entries by one Debtor with respect to any other Debtor or (b) any Claim that is not reflected in such book entries and is held by a Debtor against any other Debtor.

1.64. *"Interest"* means the legal, equitable, contractual, and other rights of the Holders of Old Equity.

1.65. *"IRC"* means the Internal Revenue Code of 1986, as amended.

1.66. *"JPM"* means JPMorgan Chase Bank, N.A.

1.67. *"JPM Claim"* means any Claim against the Debtors on account of the JPM Credit Agreement.

1.68. *"JPM Credit Agreement"* means that certain credit agreement, dated as of December 31, 2004, as amended, between SBK and JPM.

1.69. *"Lien"* means a charge against or interest in property to secure payment of a debt or performance of an obligation.

1.70. *"Liquidation Trust"* means that certain liquidation trust to be created on the Effective Date in accordance with the provisions of Article VII of the Plan and the Liquidation Trust Agreement.

1.71. *"Liquidation Trust Administrator"* means the Person designated by the Debtors at least seven (7) days prior to the Voting Deadline and retained as of the Effective Date to administer the Liquidation Trust in accordance with the Plan and the Liquidation Trust Agreement, and any successor appointed in accordance with the Liquidation Trust Agreement.

1.72. *"Liquidation Trust Advisory Board"* means the board that is to be created pursuant to Section 13.4 of the Plan for the purpose of advising the Liquidation Trust Administrator with respect to decisions affecting the Liquidation Trust to the extent set forth in the Liquidation Trust Agreement.

1.73. *"Liquidation Trust Agreement"* means that certain trust agreement, substantially on the terms set forth on Exhibit B and in form and substance acceptable to the Debtors, that, among other things: (a) establishes and governs the Liquidation Trust; and (b) describes the powers, duties, and responsibilities of the Liquidation Trust Administrator, the liquidation of the Liquidation Trust Assets, and the distribution of the proceeds thereof.

1.74. *"Liquidation Trust Assets"* means all assets (and any and all proceeds therefrom and interest accruing with respect thereto) of the Debtors (unless listed on an exhibit to the Liquidation Trust Agreement as an excluded asset), and the Liquidation Trust Claims, which will be transferred on the Effective Date to, and owned by, the Liquidation Trust.

1.75. *"Liquidation Trust Beneficiaries"* means the Holders of Claims that are to be satisfied under the Plan by post-Effective Date distributions to be made from the Liquidation Trust.

1.76. *"Liquidation Trust Claims"* means those Causes of Action identified in the Liquidation Trust Agreement, which will include certain Causes of Action arising under chapter 5 of the Bankruptcy Code, the Plan, or other Bankruptcy Court-approved settlements.

1.77. *"Liquidation Trust Distribution Property"* means the Liquidation Trust Recoveries and the Liquidation Trust Assets to be distributed in accordance with Section 13.5 of the Plan.

1.78. *"Liquidation Trust Expenses"* shall have the meaning ascribed to such term in Section 13.3(e) of the Plan.

1.79. *"Liquidation Trust Professionals"* shall have the meaning ascribed to such term in Section 13.3(f) of the Plan.

1.80. *"Liquidation Trust Recoveries"* mean any and all proceeds received by the Liquidation Trust from the prosecution of the Liquidation Trust Claims.

1.81. *"Net Available Cash"* means the net cash of the Debtors available after funding the Administrative Claims Reserve, the Disputed Claims Reserve, and the Operating Reserve.

1.82. *"Net Proceeds"* means all proceeds from the sale or other disposition of an asset minus all reasonable out-of-pocket direct costs, fees, and expenses incurred in connection with such sale or other disposition, provisions for any sales or other tax due and owing as a consequence of such sale or other disposition, and other customary prorations in connection with such sale or other disposition.

1.83. *"NOLs"* means net operating losses.

1.84. *"Non-Tax Priority Claim"* means a Claim, if any, other than an Administrative Claim or Priority Tax Claim, that is entitled to priority in payment pursuant to section 507(a) of the Bankruptcy Code.

1.85. *"Old Equity"* means, collectively, the common stock, preferred stock, or other equity interest of SBK and the Affiliate Debtors outstanding immediately prior to the Petition Date, including treasury stock and all options, warrants, calls, rights, puts, awards, commitments, or any other agreements of any character to acquire such common stock, preferred stock, or other equity interest.

1.86. *"Operating Reserve"* means the reserve account to be established and maintained, into which the Debtors shall from time to time deposit Cash to fund, among other things, the expenses of the Debtors and the Liquidation Trust Administrator, including, among other things, the fees and expenses of the Debtors and its Professionals and the Liquidation Trust Administrator and its Professionals.

1.87. *"Other Subordinated Claims"* means any Claims, other than the Subordinated Note Claims, that are subordinated pursuant to section 510 of the Bankruptcy Code, or otherwise, including such Claims arising under Securities Litigation, if any.

1.88. *"Person"* means an individual, corporation, partnership, joint venture, association, joint stock company, limited liability company, limited liability partnership, trust, estate, unincorporated organization, or other entity.

1.89. *"Petition Date"* means January 9, 2012, the date on which each of the Debtors Filed petitions for relief commencing the Chapter 11 Cases.

1.90. *"Plan"* means this joint chapter 11 plan for the Debtors as herein proposed, including all supplements, appendices, and Exhibits thereto, either in its present form or as the same may be further altered, amended, or modified from time to time in accordance with the Bankruptcy Code.

1.91. *"Priority Tax Claim"* means a Claim of a governmental unit of the kind specified in sections 502(i) and 507(a)(8) of the Bankruptcy Code.

1.92. *"Pro Rata"* means, with respect to a distribution regarding a particular Class, the proportion that (a) the Face Amount of a Claim in a particular Class bears to (b) the aggregate Face Amount of all Claims in such Class, unless the Plan provides otherwise.

1.93. *"Professional"* means (a) any professional employed in the Chapter 11 Cases pursuant to section 327 or 1103 of the Bankruptcy Code or otherwise and (b) any professional or other entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to section 503(b)(4) of the Bankruptcy Code and supported by the Debtors.

1.94. *"Professional Fee Claim"* means an Administrative Claim under section 330(a), 331, 503, or 1103 of the Bankruptcy Code for compensation of a Professional or other entity for services rendered or expenses incurred in the Chapter 11 Cases on or prior to the Effective Date (including expenses of the members of the Creditors' Committee incurred as members of the Creditors' Committee in discharge of their duties as such).

1.95. *"Purchase Agreement"* means the purchase agreements in connection with the issuance and sale of the Capital Securities.

1.96. *"Record Date"* means the record date for purposes of making distributions under the Plan on account of Allowed Claims, which date shall be [April 18, 2012], the date that is initially set for the Confirmation Hearing.

1.97. *"Released Party"* means, collectively, pursuant to section 1123(b)(3) of the Bankruptcy Code, effective as of the Effective Date, any officers of each of the Debtors, any directors of each of the Debtors, and any employees of each the Debtors serving as such as of the Petition Date and the Professionals, and all other former directors and former officers of each of the Debtors who vote in favor of the Plan.

1.98. *"Scheduled"* means, with respect to any Claim, the status and amount, if any, of such Claim as set forth in the Schedules.

1.99. *"Schedules"* means the schedules of assets and liabilities and the statements of financial affairs Filed by the Debtors on January 9, 2012, as such schedules and statements have been or may be further modified, amended, or supplemented in accordance with Fed. R. Bankr. P. 1009 or Orders of the Bankruptcy Court.

1.100. *"Secured Claim"* means a Claim, if any, that is secured by a Lien on property in which an Estate has an interest or that is subject to setoff under section 553 of the Bankruptcy Code, to the extent of the value of the Claim Holder's interest in the Estate's interest in

such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code.

1.101. "*Securities Litigation*" means any litigation arising from rescission of a purchase or sale of a security of the Debtors, for damages arising from the purchase or sale of such a security, or for reimbursement or contribution allowed under section 502 of the Bankruptcy Code on account of such a claim.

1.102. "*Senior Indebtedness Claim*" means any Claim that falls within the definition of Senior Indebtedness as defined in the Subordinated Indenture, including the JPM Claim.

1.103. "*SBK*" means The ShoreBank Corporation.

1.104. "*Solicitation Order*" means the order entered by the Bankruptcy Court establishing procedures with respect to the solicitation and tabulation of votes to accept or reject the Plan.

1.105. "*Subordinated Indentures*" means, collectively, (i) the subordinated indenture, dated as of March 23, 2000, between the Debtor, as issuer, and The Bank of New York, as trustee for certain fixed rate junior subordinated deferred interest debentures due 2030; (ii) the subordinated indenture, dated as of April 10, 2002 between the Debtor, as issuer, and Wilmington Trust Company, as trustee for certain floating rate junior subordinated debentures due 2032; and (iii) the subordinated indenture, dated as of October 10, 2003 between the Debtor, as issuer, and Wells Fargo Bank, National Association, as trustee for certain junior subordinated debt securities due October 7, 2033, and any amendments or supplements thereto. "*Subordinated Indenture Trustees*" means, collectively, (i) the Bank of New York, in its capacity as trustee under the Subordinated Indenture; (ii) the Wilmington Trust Company, in its capacity as trustee under the Subordinated Indenture; and/or (iii) Wells Fargo Bank, National Association, in its capacity as trustee under the Subordinated Indenture, and any of their successors and assigns, as applicable.

1.107. "*Subordinated Noteholders*" means the Holders of the Subordinated Notes (including, without limitation, the Subordinated Indenture Trustees in their roles as institutional trustees) and the Holders of the Trust Securities.

1.108. "*Subordinated Note Claims*" means any Claims by any Subordinated Noteholder against the Debtors, including but not limited to, any Claims against the Debtors arising under or in connection with the Subordinated Indentures, the Subordinated Notes, the Guarantee Agreements, the Purchase Agreements, the Trust Agreements, the Trust Securities, and any related declarations and ancillary agreements of any of the foregoing.

1.109. "*Subordinated Notes*" means, collectively, (i) the fixed rate junior subordinated debentures due 2030, issued under a Subordinated Indenture; (ii) the floating rate

junior subordinated debentures due 2032, issued under a Subordinated Indenture; and/or (iii) the junior subordinated debentures due October 7, 2033, issued under a Subordinated Indenture.

1.110. "*Subordinated Notes Redistribution Interests*" means the beneficial interest in the Liquidation Trust that, but for the Subordinated Notes Subordination Rights, the Disbursing Agent would distribute Pro Rata to or for the benefit of Holders of Allowed Class 6 Claims as if Classes 4, 5, and 6 were a single Class, but will instead redistribute to or for the benefit of Holders of Allowed Class 4 Claims.

1.111. "*Subordinated Notes Subordination Rights*" means the subordination rights of the Holders of the Senior Indebtedness Claims pursuant to the Trust Agreements, Subordinated Indentures, and the related Guarantee Agreements, or any supplemental trust agreements, indentures, or guarantee agreements thereto.

1.112. "*Subsequent Distribution*" means any distribution after the Initial Distribution.

1.113. "*Subsequent Distribution Date*" means the date upon which the Debtors or the Liquidation Trust Administrator, as the case may be, determines, in accordance with the Plan, to conduct a Subsequent Distribution.

1.114. "*Supplemental Distribution Account*" means, collectively, (a) the Cash or other property reserved on account of a Disputed Claim after such claim becomes an Allowed Claim or a Disallowed Claim, (b) the portion of the Net Proceeds from any and all sales or other dispositions of the Debtors' non-Cash assets occurring subsequent to the Initial Distribution Date that the Debtors or the Liquidation Trust Administrator determine to constitute Net Available Cash (with the remaining portion of the Net Proceeds being deposited into the Cash Reserve by the Debtors), and which is not necessary, as determined by the Debtor or the Liquidation Trust Administrator, to fund the Operating Reserve, and (c) any remaining Cash Reserve after all obligations for which such reserves were established are satisfied and the Chapter 11 Cases are closed.

1.115. "*Tax Escrow Agreement*" means that certain agreement dated as of October 25, 2010, as amended, entered into between the FDIC and SBK regarding the establishment of a segregated bank account to hold all consolidated tax refunds pending resolution of ownership of such funds.

1.116. "*Tax Sharing Agreement*" means that certain agreement to allocate consolidated income tax liabilities and benefits, dated as of January 1, 2009.

1.117. "*Trusts*" means (i) ShoreBank Capital Trust I; (ii) ShoreBank Capital Trust II; and/or (iii) ShoreBank Capital Trust III, as applicable.

1.118. *"Trust Agreements"* means (i) the Declaration of Trust dated as of March 7, 2000, as amended and restated, that established ShoreBank Capital Trust I; (ii) the Declaration of Trust dated as of March 25, 2002, as amended, that established ShoreBank Capital Trust II; and (iii) the Declaration of Trust dated as of October 8, 2003, as amended, that established ShoreBank Capital Trust III.

1.119. *"Trust Securities"* means the Capital Securities together with the Common Securities issued by the Trusts.

1.120. *"Unimpaired Claim"* means a Claim that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

1.121. *"Voluntary Petition"* means the voluntary petitions for relief under chapter 11 of the Bankruptcy Code filed by SBK and the Affiliate Debtors on the Petition Date, in the Bankruptcy Court.

1.122. *"Voting Agent"* means GCG, or such other entity designated by the Debtors.

1.123. *"Voting Deadline"* means [April 11, 2012] at 5:00 p.m. (prevailing Central Time), as the last day and time for submitting Ballots to accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code as specified in the Solicitation Order.

1.124. *"Voting Record Date"* means the date and time established by the Bankruptcy Court in the Solicitation Order for determining those Holders of Claims against the Debtor entitled to vote on the Plan.

B. Rules of Interpretation.

For purposes of the Plan, unless otherwise provided herein: (a) whenever it appears appropriate for the context, each term stated in the singular or the plural includes the singular and the plural, and each pronoun stated in the masculine, feminine, or neuter includes the masculine, feminine, and neuter; (b) unless otherwise provided in the Plan, any reference in the 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 will be substantially in such form or substantially on such terms and conditions; (c) any reference in the 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 the Plan; (d) any reference to an entity as a Holder of a Claim or Interest includes that entity's successors and assigns; (e) all references in the Plan to Sections and Articles are references to Sections and Articles of the Plan; (f) the words "herein," "hereunder," and "hereto" refer to the Plan in its entirety rather than to a particular portion of the 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 the Plan; (h) subject to the provisions of any contract, Certificates of Incorporation, By-laws, instrument, release, or other agreement or document entered into in connection with the Plan, the rights and obligations arising under the 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 will apply.

In the event of any conflict between the Plan and the FDIC Treatment, the terms of the FDIC Treatment shall govern.

C. Computation of Time.

In computing any period of time prescribed or allowed by the Plan, unless otherwise expressly provided for, the provisions of Bankruptcy Rule 9006(a) shall apply.

D. Exhibits.

All Exhibits are incorporated into and are a part of the Plan as if set forth in full herein and, to the extent not annexed hereto, such Exhibits shall be filed with the Bankruptcy Court on or before the Exhibit Filing Date.

ARTICLE II  
ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS

2.1 Administrative Claims. Subject to the provisions of Article XI of the Plan, on, or as soon as reasonably practicable after, the later of (a) the Effective Date, or (b) the date on which an Administrative Claim becomes an Allowed Administrative Claim, each Holder of an Allowed Administrative Claim shall receive, in full satisfaction, settlement, release, and discharge

of, and in exchange for, such Allowed Administrative Claim, (i) Cash equal to the unpaid portion of such Allowed Administrative Claim or (ii) such other less favorable treatment to the Holders of an Allowed Administrative Claim as to which the Debtors and the Holder of such Allowed Administrative Claim shall have agreed upon in writing; provided, however, that Allowed Administrative Claims against a Debtor with respect to liabilities incurred in the ordinary course of business during the Chapter 11 Cases may be paid in the ordinary course of business in accordance with the terms and conditions of any agreements relating thereto at the sole discretion of the Debtors.

2.2 Priority Tax Claims. On, or as soon as reasonably practicable after, the later of (a) the Effective Date, or (b) the date on which a Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim against a Debtor shall receive in full satisfaction, settlement, release, and discharge of, and in exchange for, such Allowed Priority Tax Claim, (i) Cash equal to the amount of such Allowed Priority Tax Claim, or (ii) such other less favorable treatment to the Holders of an Allowed Priority Tax Claim as to which the Debtors and the Holder of such Allowed Priority Tax Claims shall have agreed upon in writing, or (iii) at the option of the Debtors or the Liquidation Trust Administrator, Cash in an aggregate amount of such Allowed Priority Tax Claim payable in installment payments over a period of not more than five years after the Petition Date, totaling the principal amount of such Priority Tax Claim plus simple interest on any outstanding balance from the Effective Date calculated at the interest rate required under applicable nonbankruptcy law, and in a manner not less favorable than the most favored non-priority unsecured claim provided for by the Plan (other than cash payments made to a Class of creditors under section 1122(b)); provided, however, that any Priority Tax Claim that is not an Allowed Claim, including any Allowed Priority Tax Claim not due and owing on the Effective Date, will be paid in accordance with this section when such Claim becomes Allowed and due and owing; further provided, however, that any Claim or demand for payment of a penalty (other than a penalty of the type specified in section 507(a)(8)(G) of the Bankruptcy Code) shall be disallowed pursuant to the Plan, and the Holder of an Allowed Priority Tax Claim shall not be allowed to assess or attempt to collect such penalty from the Debtors or their Estates.

### ARTICLE III CLASSIFICATION OF CLAIMS AND INTERESTS

Pursuant to section 1122 of the Bankruptcy Code, set forth below is a designation of classes of Claims against and Interests in the Debtors. All Claims and Interests, except Administrative Claims and Priority Tax Claims, are placed in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims have not been classified and their treatment is set forth in Article II above.

A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class, and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes. A Claim

is also placed in a particular Class for the purpose of voting on, and receiving distributions pursuant to, the Plan only to the extent that such Claim is an Allowed Claim in that Class and such Claim has not been paid, released, or otherwise settled prior to the Effective Date.

3.1 Classification of Claims Against and Interests in the Debtors.

- (a) **Class 1:** Class 1 consists of all Secured Claims, if any, that may exist against the Debtors. At this time, the Debtors do not believe that any Secured Claims exist.
- (b) **Class 2:** Class 2 consists of all Non-Tax Priority Claims, if any, that may exist against the Debtors. At this time, the Debtors do not believe that any Non-Tax Priority Claims exist.
- (c) **Class 3:** Class 3 consists of the FDIC Claim.
- (d) **Class 4:** Class 4 consists of all Senior Indebtedness Claims against the Debtors.
- (e) **Class 5:** Class 5 consists of all General Unsecured Claims against the Debtors.
- (f) **Class 6:** Class 6 consists of all Subordinated Note Claims against the Debtors.
- (g) **Class 7:** Class 7 consists of all Other Subordinated Claims against the Debtors.
- (h) **Class 8:** Class 8 consists of all Old Equity Interests in the Debtors.

ARTICLE IV  
IDENTIFICATION OF CLASSES OF CLAIMS AND  
INTERESTS IMPAIRED AND NOT IMPAIRED BY THE PLAN

4.1 Unimpaired Classes of Claims. The Classes listed below are Unimpaired

by the Plan:

**Class 1** (Secured Claims)

**Class 2** (Non-Tax Priority Claims)

4.2 Impaired Classes of Claims and Interests. The Classes listed below are Impaired by the Plan:

**Class 3** (FDIC Claim)

**Class 4** (Senior Indebtedness Claims)

**Class 5** (General Unsecured Claims)

**Class 6** (Subordinated Note Claims)

**Class 7** (Other Subordinated Claims)

**Class 8** (Old Equity Interests)

ARTICLE V  
PROVISIONS FOR TREATMENT OF CLAIMS AND INTERESTS

5.1 Unimpaired Classes of Claims Against the Debtors.

(a) Class 1 (Secured Claims). The legal, equitable, and contractual rights of the Holders of Allowed Class 1 Claims against the Debtors, if any, are unaltered by this Plan. On, or as soon as reasonably practicable after, the later of (i) the Effective Date, or (ii) the date on which such Class 1 Claim becomes an Allowed Class 1 Claim, each Holder of an Allowed Class 1 Claim shall receive, in full satisfaction, settlement, release, and discharge of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtors or the Liquidation Trust Administrator, (x) Cash equal to the amount of such Allowed Class 1 Claim or (y) such other less favorable treatment that will not impair the Holder of such Allowed Class 1 Claim pursuant to section 1124 of the Bankruptcy Code; provided, however, that any Class 1 Claim not due and owing on the Effective Date will be paid in accordance with this section if and when such Claim becomes Allowed and is due and owing. Any default with respect to any Allowed Class 1 Claim that existed immediately prior to the Petition Date will be deemed cured on the Effective Date.

(b) Class 2 (Non-Tax Priority Claims). The legal and equitable rights of the Holders of Class 2 Claims against the Debtors, if any, are unaltered by this Plan. On, or as soon as reasonably practicable after, the later of (i) the Effective Date, or (ii) the date on which such Class 2 Claim becomes an Allowed Class 2 Claim, each Holder of an Allowed Class 2 Claim shall receive, in full satisfaction, settlement, release and discharge of, and in exchange for, such Allowed Class 2 Claim, at the election of the Debtors or the Liquidation Trust Administrator, (x) Cash equal to the amount of such Allowed Class 2 Claim or (y) such other less favorable treatment that will not impair the Holder of such Allowed Class 2 Claim pursuant to section 1124 of the Bankruptcy Code; provided, however, that any Class 2 Claim not due and owing on the Effective Date will be paid in accordance with this section when such Claim becomes due and owing. Any

default with respect to any Allowed Class 2 Claim that existed immediately prior to the Petition Date will be deemed cured on the Effective Date.

5.2 Impaired Classes of Claims Against and Interests in the Debtors.

(a) Class 3 (FDIC Claims). On the Effective Date, or as soon thereafter as reasonably practicable, the FDIC shall receive in full satisfaction, settlement, release, and discharge of, and in exchange for, each and every Class 3 Claim against the Debtors, the FDIC Treatment payable out of the Federal Income Tax Refund Receivable (as defined in the FDIC Treatment) currently held in an escrow account.

(b) Class 4 (Senior Indebtedness Claims). On the Initial Distribution Date, or as soon thereafter as is reasonably practicable, and on each Subsequent Distribution Date, the Disbursing Agent shall receive on behalf of each and every Holder of an Allowed Class 4 Claim against the Debtors, in full satisfaction, settlement, release, and discharge of, and in exchange for, each and every Class 4 Claim against the Debtors, (i) the Pro Rata interest in the Liquidation Trust, as to which all Holders of Allowed Class 4 Claims would be entitled if Classes 4, 5, and 6 were a single Class, which the Disbursing Agent will distribute to each holder of an Allowed Class 4 Claim on a Pro Rata basis within such Class, (ii) the Subordinated Notes Redistribution Interests, which the Disbursing Agent will distribute Pro Rata to or for the benefit of Holders of Allowed Class 4 Claims.

(c) Class 5 (General Unsecured Claims). On the Initial Distribution Date, or as soon thereafter as is reasonably practicable, and on each Subsequent Distribution Date, the Disbursing Agent shall receive on behalf of each and every Holder of an Allowed Class 5 Claim against the Debtors, in full satisfaction, settlement, release, and discharge of, and in exchange for, each and every Class 5 Claim against the Debtors, the Pro Rata interest in the Liquidation Trust, as to which all Holders of Allowed Class 5 Claims would be entitled if Classes 4, 5, and 6 were a single Class, which the Disbursing Agent will distribute to each holder of an Allowed Class 5 Claim on a Pro Rata basis within such Class.

(d) Class 6 (Subordinated Note Claims). As reflected in the treatment of Class 4, and in accordance with the Subordinated Notes Subordination Rights, Holders of Class 6 Claims shall not receive or retain a distribution from the Liquidation Trust unless and until the Holders of the Senior Indebtedness Claims are paid in full. Instead, interests in the Liquidation Trust otherwise distributable to or for the benefit of Holders of Allowed Class 6 Claims shall instead be redistributed by the Disbursing Agent to be distributed to Holders of Allowed Class 4 Claims pursuant to the subordination provisions of the Subordinated Indentures and related Guarantee Agreements until such time as the Holders of Allowed Class 4 Claims are paid in full. After the Holders of Allowed Class 4 Claims are paid in full, then Holders of Allowed Class 6

Claims will be subrogated to the Holders of the Allowed Class 4 Claims and will begin to collect a Pro Rata distribution on account of Classes 4 and 6.

On the Effective Date, all documents evidencing the Subordinated Note Claims, including the Subordinated Indentures, the Subordinated Notes, the Guarantee Agreements, the Purchase Agreements, the Trust Agreements, any other guarantees, any other purchase agreements, debenture subscription agreements, declarations of trust, the Capital Securities, and the Common Securities shall be terminated, and neither the Debtors nor the other parties thereto, including, but not limited to the Subordinated Indenture Trustees, shall have any further rights or obligations thereunder.

(e) Class 7 (Other Subordinated Claims). Holders of Other Subordinated Claims shall not receive nor retain any distribution on account of such Other Subordinated Claims.

(f) Class 8 (Old Equity Interests). On the Effective Date, the Old Equity Interests will be cancelled and the Holders of Old Equity shall not receive nor retain any distribution on account of such Old Equity Interests.

5.3 Special Provision Regarding Unimpaired Claims. Except as otherwise provided in the Plan, nothing shall affect the Debtors' rights and defenses, both legal and equitable, with respect to any Unimpaired Claims, including, but not limited to, all rights with respect to legal and equitable defenses to setoffs or recoupments against Unimpaired Claims.

## ARTICLE VI ACCEPTANCE OR REJECTION OF THE PLAN

6.1 Classes Entitled to Vote. Subject to Section 6.3 and 6.4 of this Plan, Claim and Interest Holders in Impaired Classes of Claims and Interests are entitled to vote as a class to accept or reject this Plan.

6.2 Acceptance by Impaired Classes. In accordance with section 1126(c) of the Bankruptcy Code and except as provided in section 1126(e) of the Bankruptcy Code, an Impaired Class of Claims shall have accepted the Plan if the Plan is accepted by the Holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Allowed Claims of such Class that have timely and properly voted to accept or reject the Plan. In accordance with section 1126(d) of the Bankruptcy Code and except as provided in section 1126(e) of the Bankruptcy Code, an Impaired Class of Interests entitled to vote shall have accepted the Plan if the Plan is accepted by Holders of at least two-thirds (2/3) in amount of the Allowed Interests in such Class that have timely and properly voted to accept or reject the Plan. If there are no votes cast in

a particular Class that is entitled to vote on the Plan, then the Plan shall be deemed accepted by such Class.

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

6.4 Classes Deemed to Reject Plan. Class 7 and Class 8 are not entitled to receive or retain any property under the Plan. Under section 1126(g) of the Bankruptcy Code, Holders of Claims and Interests in these Classes are deemed to reject the Plan and their votes will not be solicited.

6.5 Summary of Classes Voting on the Plan. As a result of the provisions of Sections 6.1, 6.3, and 6.4 of the Plan, the votes of Holders of Claims in Class 3, Class 4, Class 5, and Class 6 will be solicited with respect to the Plan.

6.6 Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code. To the extent that any Impaired Class entitled to vote rejects the Plan or is deemed to have rejected the Plan, the Debtors will request confirmation of the Plan, as it may be modified from time to time, under section 1129(b) of the Bankruptcy Code.

6.7 Confirmability and Severability of a Plan. Due to the fact that the Plan requests and contemplates the substantive consolidation of the Affiliate Debtors into SBK, the confirmation requirements of section 1129 of the Bankruptcy Code must be satisfied with respect to SBK only. The Debtors reserve the right to alter, amend, modify, revoke, or withdraw the Plan as it applies to SBK or any particular Debtor or any Exhibit. A determination by the Bankruptcy Court that the Plan is not confirmable pursuant to section 1129 of the Bankruptcy Code shall not limit or affect the Debtors' ability to modify the Plan to satisfy the confirmation requirements of section 1129 of the Bankruptcy Code.

## ARTICLE VII MEANS FOR IMPLEMENTATION OF THE PLAN

7.1 Substantive Consolidation. The Plan contemplates entry of an order which shall substantively consolidate the Debtors' Estates and the Chapter 11 Cases for the purposes of all actions associated with confirmation and consummation of the Plan (which may be the Confirmation Order) (the "Substantive Consolidation Order"). The Plan constitutes a request to approve such substantive consolidation such that on the Effective Date, (i) all Intercompany Claims by, between, and among the Debtors shall be eliminated, (ii) all assets and liabilities of the Affiliate Debtors shall be merged or treated as if they were merged with the assets and liabilities of SBK, (iii) any obligation of a Debtor and all guarantees thereof by one (1) or more of the other Debtors shall be deemed to be one (1) obligation of SBK, (iv) the Affiliate Interests shall be cancelled, and (v) each Claim Filed or to be Filed against any Debtor shall be deemed Filed only against SBK and shall be deemed a single Claim against and a single obligation of SBK. On the

Effective Date, and in accordance with the terms of the Plan and the consolidation of the assets and liabilities of the Debtors, all Claims based upon guarantees of collection, payment, or performance made by the Debtors as to the obligations of another Debtor shall be released and of no further force and effect. If the Substantive Consolidation Order is not the Confirmation Order, then such order shall only be entered if the Bankruptcy Court enters the Confirmation Order. The Debtors reserve the right, at any time prior to the Effective Date, to deconsolidate any Debtor, in which case the creditors of such Debtor would likely receive a de minimis, if any, distribution.

7.2 Liquidation Trust. On the Effective Date, the Debtors, on their own behalf and on behalf of Holders of Allowed Claims entitled to receive Liquidation Trust Plan Distribution Property pursuant to the Plan will execute the Liquidation Trust Agreement and will take all other steps necessary to establish the Liquidation Trust pursuant to the Liquidation Trust Agreement as further described in Article XIII herein. On the Effective Date, and in accordance with and pursuant to the terms of the Plan, all of the Estates' rights, title, and interests in all of the Liquidation Trust Assets and Liquidation Trust Claims will be transferred to the Liquidation Trust. In connection with the transfer of such assets, any attorney-client privilege, work-product privilege, or other privilege or immunity attaching to any documents or communications (whether written or oral) transferred to the Liquidation Trust will vest in the Liquidation Trust and its representatives, and the Debtors and the Liquidation Trust are authorized to take all necessary actions to effectuate the transfer of such privileges.

(a) Prosecution of Liquidation Trust Claims. Liquidation Trust Claims may be prosecuted or settled only by the Liquidation Trust. The Liquidation Trust Claims will be transferred to the Liquidation Trust as of the Effective Date.

(b) Distributions from the Liquidation Trust. Distributions from the Liquidation Trust will occur as set forth in Article XIII and in accordance with the terms of the Liquidation Trust Agreement.

(c) Funding Expenses of the Liquidation Trust. As more fully described in the Liquidation Trust Agreement, the Liquidation Trust Assets will be reduced to Cash. Expenses of the Liquidation Trust shall be paid out of the Operating Reserve.

(d) Appointment of the Liquidation Trust Administrator. As more fully set forth in Article XIII, on the Effective Date and in compliance with the provisions of the Plan, the Liquidation Trust Administrator will be appointed by the Debtors in accordance with the Liquidation Trust Agreement and after the Effective Date, the Liquidation Trust Administrator will administer the Liquidation Trust in accordance with the Liquidation Trust Agreement. Except as otherwise provided in the Liquidation Trust Agreement, the Liquidation Trust Administrator may control and exercise authority over the Liquidation Trust Assets, over the acquisition, management, and disposition thereof and over the management and conduct of the activities of the

Liquidation Trust (including, but not limited to, taking any and all necessary actions to effectuate any necessary documentation to purchase, sell, or otherwise transfer any real property) to the same extent as if the Liquidation Trust Administrator were the sole owner of the Liquidation Trust Assets in its own right. The Liquidation Trust Administrator will prepare and make available to Liquidation Trust Beneficiaries, on a semi-annual basis, a written report detailing, among other things, the litigation status of claims or Liquidation Trust Claims, if any, transferred to the Liquidation Trust, any settlements entered into by the Liquidation Trust, the proceeds recovered to date from the Liquidation Trust Assets, and the distributions made by the Liquidation Trust.

7.3 Dissolution of Creditors' Committee. The Creditors' Committee, if any, shall continue in existence until the Effective Date to exercise those powers and perform those duties specified in section 1103 of the Bankruptcy Code and shall perform such other duties as it may have been assigned by the Bankruptcy Court prior to the Effective Date. On the Effective Date, the Creditors' Committee shall be dissolved and its members shall be deemed released of all their duties, responsibilities, and obligations in connection with the Chapter 11 Cases or the Plan and its implementation, and the retention or employment of the Creditors' Committee's attorneys, accountants, financial advisors, and other agents shall terminate. All expenses of Creditors' Committee members and the fees and expenses of their Professionals through the Effective Date shall be paid in accordance with the terms and conditions of any relevant order entered by the Bankruptcy Court and the Plan.

7.4 Vesting of Assets. Except as otherwise provided herein, all property of the Debtors' Estates shall remain property of, and be consolidated into, the Estate of SBK and continue to be subject to the jurisdiction of the Bankruptcy Court following confirmation of the Plan and shall not be vested in the Debtors on or following the Confirmation Date or the Effective Date. From and after the Effective Date, all such property shall be distributed in accordance with the provisions of the Plan and the Confirmation Order, and the transfer of the Debtors' Assets from the Estates to the Liquidation Trust will be deemed final and irrevocable and distributions may be made from the Liquidation Trust in accordance with the Plan and the Liquidation Trust Agreement.

7.5 Funding of Cash Reserves. On or before the Effective Date, the Debtors shall fund the Cash Reserves in such amounts as determined by the Debtors as necessary to be able to make the required future payments under the Administrative Claims Reserve, the Disputed Claims Reserve, and the Operating Reserve. The Cash Reserves shall be supplemented as determined to be necessary by the Debtors or the Liquidation Trust Administrator after the Effective Date.

7.6 Funding of Supplemental Distribution Account.

(a) Resolution of Disputed Claims. The Debtors or the Liquidation Trust Administrator, as the case may be, shall remove any and all Cash remaining in the applicable Disputed Claims Reserve to the extent that a Disputed Claim is Disallowed or is Allowed in an amount less than the amount reserved for such Disputed Claim and deposit such Cash into the Supplemental Distribution Account.

(b) Disposition of Remaining Non-Cash Assets. The Debtors or the Liquidation Trust Administrator, as the case may be, may sell or otherwise dispose of any and all non-Cash assets in accordance with the provisions of the Plan and/or the Liquidation Trust Agreement. As soon as reasonably practicable thereafter, the Liquidation Trust Administrator shall determine what portion of the Net Proceeds from any and all such sales occurring subsequent to the Initial Distribution Date constitutes Net Available Cash and deposit such Cash into the Supplemental Distribution Account (with the remaining portion of the Net Proceeds being deposited into the Cash Reserves by the Liquidation Trust Administrator) to be used and distributed in accordance with the provisions of the Plan, the Confirmation Order, and the Liquidation Trust Agreement.

7.7 Preservation of Rights of Action.

(a) Maintenance of Causes of Action. Except as otherwise provided in the Plan, on the Effective Date, all of the Debtors' rights to commence and pursue, as appropriate, any and all Causes of Action, whether arising before or after the Petition Date, in any court or other tribunal in an adversary proceeding or contested matter Filed in the Chapter 11 Cases, including the following actions, will be transferred to the Liquidation Trust: (a) objections to Claims under the Plan; and (b) any other Causes of Action, whether legal, equitable, or statutory in nature, arising out of, or in connection with the Debtors' businesses, assets, or operations, or otherwise affecting the Debtors, including possible claims against the following types of parties, both domestic and foreign, for the following types of claims: (i) Causes of Action against vendors, suppliers of goods or services, or other parties for overpayments, back charges, duplicate payments, improper holdbacks, deposits, warranties, guarantees, indemnities, or setoff; (ii) Causes of Action against utilities, vendors, suppliers of services or goods, or other parties for wrongful or improper termination, suspension of services or supply of goods, or failure to meet other contractual or regulatory obligations; (iii) Causes of Action against vendors, suppliers of goods or services, or other parties for failure to fully perform or to condition performance on additional requirements under contracts with any one or more of the Debtors before the assumption or rejection of the subject contracts; (iv) Causes of Action for any liens, including mechanic's, artisan's, materialmen's, possessory, or statutory liens held by any one or more of the Debtors; (v) Causes of Action for payments, deposits, holdbacks, reserves, or other amounts owed by any

creditor, lessor, utility, supplier, vendor, insurer, surety, lender, bondholder, lessor, or other party; (vi) Causes of Action against any current or former director, officer, employee, or agent of the Debtors arising out of employment related matters; (vii) Causes of Action against any professional services provider or any other party arising out of financial reporting; (viii) Causes of Action arising out of environmental or contaminant exposure matters against landlords, lessors, environmental consultants, environmental agencies, or suppliers of environmental services or goods; (ix) Causes of Action against insurance carriers, reinsurance carriers, underwriters or surety bond issuers relating to coverage, indemnity, contribution, reimbursement, or other matters; (x) counterclaims and defenses relating to notes, bonds, or other contract obligations; (xi) Causes of Action against local, state, federal, and foreign taxing authorities for refunds of overpayments or other payments; (xii) Causes of Action against attorneys, accountants, consultants, or other professional service providers relating to services rendered; (xiii) contract, tort, or equitable Causes of Action that may exist or subsequently arise; (xiv) any intracompany or intercompany Causes of Action; (xv) Causes of Action of the Debtors arising under section 362 of the Bankruptcy Code; (xvi) equitable subordination Causes of Action arising under section 510 of the Bankruptcy Code or other applicable law; (xvii) turnover Causes of Action arising under sections 542 or 543 of the Bankruptcy Code; (xviii) Causes of Action arising under chapter 5 of the Bankruptcy Code, including, but not limited to, preferences under section 547 of the Bankruptcy Code; and (xix) Causes of Action for fraud, misrepresentation, unfair competition, interference with contract or potential business advantage, conversion, infringement of intellectual property, or other business tort claims.

The foregoing Causes of Action will be transferred to the Liquidation Trust notwithstanding the rejection of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan. In accordance with section 1123(b)(3) of the Bankruptcy Code and except as otherwise provided in the Plan, any claims, rights, and Causes of Action that the respective Debtors may hold against any Person will vest in the Liquidation Trust. The Liquidation Trust, through its authorized agents or representatives, will have and may exclusively enforce any and all such claims, rights, or Causes of Action transferred to it, and all other similar claims arising pursuant to applicable state laws, including fraudulent transfer claims, if any, and all other Causes of Action of a trustee and debtor in possession pursuant to the Bankruptcy Code in accordance with the provisions of the Liquidation Trust Agreement. The Liquidation Trust will have the exclusive right, authority, and discretion to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any and all such claims, rights, and Causes of Action transferred to it, and to decline to do any of the foregoing in accordance with the terms of the Liquidation Trust Agreement; provided, however, that the Plan, including the FDIC Treatment, shall not release, eliminate, or modify in any way the FDIC's right to seek dismissal of, or otherwise challenge in an appropriate court of competent jurisdiction, any claim which the Debtors may assert, including but not limited to claims against directors, officers, employees, agents, attorneys, and advisors of either the Debtors or the Bank, as being a derivative claim that belongs to the FDIC pursuant to 12 U.S.C. § 1821(d)(2)(A)(i) or other Applicable Banking Laws.

(b) Preservation of All Causes of Action Not Expressly Settled or Released. Unless a claim or Cause of Action against a creditor or other Person is expressly waived, relinquished, released, compromised, or settled in the Plan or any Final Order, the Debtors expressly reserve such claim or Cause of Action for later adjudication by the Liquidation Trust, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable, or otherwise), or laches will apply to such claims or Causes of Action upon or after the Confirmation or Consummation of the Plan based on the Disclosure Statement, the Plan, or the Confirmation Order, except where such claims or Causes of Action have been expressly waived, relinquished, released, compromised, or settled in the Plan or a Final Order. In addition, the Liquidation Trust expressly reserves the right to pursue or adopt any claims or Causes of Action not so waived, relinquished, released, compromised, or settled that are alleged in any lawsuit in which the Debtors are a defendant or an interested party, against any Person, including the plaintiffs or co-defendants in such lawsuits. Any Person to whom the Debtors incurred an obligation, or who received services from the Debtors or a transfer of money or property of the Debtors, or who has transacted business with the Debtors, in each case prior to the Petition Date, should assume that such obligation, transfer, or transaction may be reviewed by the Liquidation Trust subsequent to the Effective Date and may, to the extent not theretofore expressly waived, relinquished, released, compromised, or settled, be the subject of an action after the Effective Date, whether or not: (a) such Person has filed a Proof of Claim against the Debtors in the Chapter 11 Cases; (b) an objection has been filed to such Person's Proof of Claim; (c) such Person's Claim was included in the Debtors' Schedules; or (d) the Debtors have objected to such Person's scheduled Claim or identified such Claim as contingent, unliquidated, or disputed.

7.8 Cancellation of Existing Securities, Subordinated Notes, and Trust Securities. Except as otherwise provided in this Plan and in any contract, instrument, or other agreement or document created in connection with the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to Article IX of this Plan, the Existing Securities, promissory notes, share certificates (including treasury stock), other instruments evidencing any Claims or Interests, and all options, warrants, calls, rights, puts, awards, commitments, or any other agreements of any character to acquire such Existing Securities shall be deemed canceled and of no further force and effect, without any further act or action under any applicable agreement, law, regulation, order or rule, and the obligations of the Debtors under any notes, share certificates, and other agreements and instruments governing such Claims and Interests shall be discharged. The Holders of or parties to such canceled notes, share certificates, and other agreements and instruments shall have no rights arising from or relating to such notes, share certificates, and other agreements and instruments or the cancellation thereof, except the rights provided pursuant to the Plan.

On the Effective Date, all documents evidencing the Subordinated Note Claims, including the Subordinated Indentures, the Subordinated Notes, the Guarantee Agreements, the Purchase Agreements, the Trust Agreements, any other guarantee agreements, any other purchase agreements, any other debenture subscription agreements, any other declarations of trust, the

Capital Securities, and the Common Securities shall be deemed cancelled, shall be of no further force, whether surrendered for cancellation or otherwise, and neither the Debtors nor the other parties thereto, including, but not limited to the Subordinated Indenture Trustees, shall have any further rights or obligations thereunder.

7.9 Payment of Severance. Prior to the Petition Date, SBK maintained a severance policy in the ordinary course of its business, pursuant to which employees were entitled to severance upon their termination other than for cause, according to a predetermined schedule. Any remaining employee who is still owed severance shall be entitled to payment of such severance, to the extent not already paid, on the Effective Date in accordance with the terms of the severance policy.

7.10 Continued Corporate Existence and Closing of Affiliate Debtors' Chapter 11 Cases.

(a) On the Effective Date or as soon thereafter as practicable, (i) the members of the board of directors and officers of each of the Debtors shall be deemed to have resigned, (ii) each of the Affiliate Debtors shall be merged with and into SBK, and (iii) the Chapter 11 Cases of the Affiliate Debtors shall be closed, following which any and all proceedings that could have been brought or otherwise commenced in the Chapter 11 Cases of any Affiliate Debtor shall be brought or otherwise commenced in the Chapter 11 Case of SBK. The clerk of the Bankruptcy Court, immediately upon receiving notice of the Effective Date, shall enter an order and decree closing each of the Affiliate Debtors' Chapter 11 Cases.

(b) From and after the Effective Date, the Liquidation Trust Administrator shall serve as the sole officer and director of SBK. The Liquidation Trust Administrator shall be authorized to execute, deliver, File, or record such documents, instruments, releases, and other agreements and take such actions as set forth in this Plan or the Liquidation Trust Agreement or take any such other actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

7.11 Closing of SBK Chapter 11 Case. When all Disputed Claims Filed against the Debtors have become Allowed Claims or have been disallowed, and all remaining assets of the Debtors have been liquidated and converted into Cash (other than those assets abandoned by the Debtors or the Liquidation Trust Administrator), and such Cash has been distributed in accordance with this Plan, or at such earlier time as the Liquidation Trust Administrator deems appropriate, the Liquidation Trust Administrator shall seek authority from the Bankruptcy Court to close the Chapter 11 Cases in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules.

ARTICLE VIII  
TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

8.1 Generally. Except as otherwise provided in this Article VIII, pursuant to sections 365 and 1123(b) of the Bankruptcy Code, all prepetition executory contracts and unexpired leases that exist between the Debtors and any Person shall be deemed rejected by the applicable Debtor or Debtors, effective as of the Effective Date (or if other than the Effective Date, on such other date as listed on Exhibit C), except for executory contracts and unexpired leases which:

- (a) have been assumed, assumed and assigned, or rejected, as applicable, pursuant to an order of the Court entered prior to the Effective Date; or
- (b) as of the Effective Date, are subject to a pending motion for approval of the assumption, assumption and assignment, or rejection, as applicable; or
- (c) are otherwise being assumed or assumed and assigned as set forth in Exhibit D.

The Confirmation Order will constitute an order of the Bankruptcy court approving such rejections pursuant to section 365 of the Bankruptcy Code as of the Effective Date (or if other than the Effective Date, on such other date as listed on Exhibit C).

8.2 Approval of Assumption and Assignment or Rejection of Executory Contracts and Unexpired Leases. Subject to the Effective Date, entry of the Confirmation Order shall constitute, as of the Confirmation Date (or other such date listed on Exhibit C or D), the approval, pursuant to sections 365 and 1123(b) of the Bankruptcy Code, of the assumption, assumption and assignment, or rejection, as applicable, of the executory contracts and unexpired leases assumed, assumed and assigned, or rejected pursuant to this Article VIII.

Each executory contract and unexpired lease that is assumed and relates to the use, ability to acquire, or occupancy of real property, if any, shall include (a) all modifications, amendments, supplements, restatements, assignments, subleases, or other agreements made directly or indirectly by any agreement, instrument, or other document that in any manner affect such executory contract or unexpired lease and (b) all executory contracts or unexpired leases appurtenant to the premises, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, powers, uses, reciprocal easement agreements, and any other interests in real estate or rights in rem related to such premises, unless any of the foregoing agreements has been rejected pursuant to a Final Order of the Bankruptcy Court or is otherwise rejected as a part of the Plan.

8.3 Cure of Defaults of Assumed Executory Contracts and Unexpired Leases.

Any monetary amounts by which each executory contract and unexpired lease to be assumed pursuant to the Plan is in default, if any, shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by Cure, with such Cure being provided by, at the option of the Debtor-party to such contract or lease, either (x) the Debtor-party to such contract or lease or (y) the assignee of such Debtor-party to whom such contract or lease is being assigned. If there is a dispute regarding (a) the nature or amount of any Cure, (b) the ability of the Debtors or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the contract or lease to be assumed, or (c) any other matter pertaining to assumption, Cure shall occur following the entry of a Final Order resolving the dispute and approving the assumption or assumption and assignment, as the case may be; provided that if there is a dispute as to the amount of Cure that cannot be resolved consensually among the parties, the Debtors shall have the right to reject the contract or lease for a period of fourteen (14) days after entry of a final order establishing a Cure amount in excess of that provided by the Debtor. The Confirmation Order, if applicable, shall contain provisions providing for notices of proposed assumptions and proposed cure amounts to be sent to applicable third parties and for procedures for objecting thereto (which shall provide not less than twenty-one (21) days' notice of such procedures and any deadlines pursuant thereto) and resolution of disputes by the Bankruptcy Court. To the extent the Debtor who is party to the executory contract or unexpired lease is to be merged with SBK as part of the Substantive Consolidation Order, the nondebtor parties to such executory contract or unexpired lease shall, upon assumption as contemplated herein, be deemed to have consented to the assignment of such executory contract or unexpired lease to SBK that is the surviving entity after entry of the Substantive Consolidation Order.

8.4 Rejection Damages Bar Date. If the rejection by a Debtor of an executory contract or unexpired lease pursuant to the Plan results in a Claim, then such Claim shall be forever barred and shall not be enforceable against any Debtor or the properties of any of them unless a proof of claim is filed with the Debtors' Voting Agent and served upon counsel to the Debtors, within thirty (30) days after service of the earlier of (a) notice of the effective date of rejection of such executory contract or unexpired lease as determined in accordance with Section 8.1 of the Plan or (b) other notice that the executory contract or unexpired lease has been rejected. Nothing in this Section 8.4 shall revive or deem to revive a previously Disallowed Claim or extend a previously established bar date, if applicable. The bar date for filing a Claim with respect to an executory contract or unexpired lease other than pursuant to the Plan shall be as set forth in the Bar Date Order or the Final Order approving such rejection.

8.5 Postpetition Executory Contracts and Unexpired Leases. All rights in connection with all executory contracts and unexpired leases assumed by the Debtors or entered into after the Petition Date and that have not been assigned to a third party shall remain property of the Estates.

8.6 Miscellaneous. Notwithstanding any other provision of the Plan, the Debtors shall retain the right to, at any time prior to the Effective Date, modify or supplement Exhibit C or D, including, without limitation, the right to add any executory contract or unexpired

lease to, or delete any executory contract or unexpired lease from such Exhibits. Listing an executory contract or unexpired lease on Exhibit C or D shall not constitute an admission by any of the Debtors that such contract or lease (including any related agreements that may exist) is an executory contract or unexpired lease or that the applicable Debtor has any liability thereunder.

## ARTICLE IX PROVISIONS GOVERNING DISTRIBUTIONS

9.1 Distributions for Claims Allowed as of the Effective Date. Except as otherwise provided herein or as ordered by the Bankruptcy Court, distributions to be made on account of Claims that are Allowed Claims as of the Effective Date shall be made on the Initial Distribution Date or as soon thereafter as is practicable. Any distribution to be made on the Effective Date pursuant to this Plan shall be deemed as having been made on the Effective Date if such distribution is made on the Effective Date or as soon thereafter as is practicable. Any payment or distribution required to be made under the Plan on a day other than a Business Day shall be made on the next succeeding Business Day. Distributions on account of Claims that first become Allowed Claims after the Effective Date shall be made pursuant to Articles IX and X of this Plan.

9.2 Disbursing Agent. The Disbursing Agent shall make all distributions required under the Plan.

9.3 Subsequent Distributions. The Liquidation Trust Administrator shall determine, in accordance with the Plan, when to make a Subsequent Distribution based on the amount of Cash then currently available in the Supplemental Distribution Account.

9.4 Interest on Claims. Unless otherwise specifically provided for in the Plan, the Confirmation Order, or required by applicable bankruptcy law, postpetition interest shall not accrue or be paid on Claims, and no Claim Holder shall be entitled to interest accruing on or after the Petition Date on any Claim. To the extent otherwise provided for in the Plan, the Confirmation Order, or required by applicable bankruptcy law, postpetition interest shall accrue on Claims at the applicable non-default rate. Unless otherwise specifically provided for in the Plan, the Confirmation Order, or required by applicable bankruptcy law, interest shall not accrue or be paid upon any Disputed Claim in respect of the period from the Petition Date to the date a final distribution is made thereon if and after such Disputed Claim becomes an Allowed Claim. Until the Effective Date, nothing herein shall waive the right of any creditor to seek postpetition interest.

9.5 Surrender of Securities and Instruments. On or before the date that distributions are first made by the Disbursing Agent, each Holder of an instrument evidencing a Claim, if any (a "Certificate"), shall surrender such Certificate to the Disbursing Agent, and such Certificates shall be cancelled in accordance with Section 7.8 of the Plan and delivered to the Disbursing Agent. No distribution of property hereunder shall be made to or on behalf of any such

Holder unless and until such Certificate is received by the Disbursing Agent or the unavailability of such Certificate is reasonably established to the satisfaction of the Disbursing Agent. Any Holder who fails to surrender or cause to be surrendered such Certificate, or fails to execute and deliver an affidavit of loss and indemnity reasonably satisfactory to the Disbursing Agent prior to the first (1st) anniversary of the Effective Date, shall be deemed to have forfeited all rights and Claims in respect of such Certificate and shall not participate in any distribution hereunder, and all property in respect of such forfeited distribution, including any interest attributable thereto, shall revert to the Liquidation Trust notwithstanding any federal or state escheat laws to the contrary. Upon compliance with this Section 9.5 by a Holder of a Claim evidenced by a Certificate, such Holder shall, for all purposes under the Plan, be deemed to have surrendered such note or other security.

9.6 Delivery of Distributions and Undeliverable or Unclaimed Distributions.

(a) Distributions to Holders of Allowed Claims shall be made by the Disbursing Agent (i) at the addresses set forth on the proofs of claim filed by such Claim Holders (or at the address set forth in any applicable notice of assignment of claim or notice of change of address), (ii) at the addresses set forth in any written notices of address changes delivered to the Disbursing Agent after the date of any related proof of claim, (iii) at the addresses reflected in the Schedules if no proof of claim has been filed and the Disbursing Agent has not received a written notice of a change of address, or (iv) as to any defendant to a Cause of Action who has not otherwise filed a proof of claim, at the address of such defendant's counsel of record or to such party as counsel of record directs or specifies.

(b) If any Claim Holder's distribution is returned as undeliverable, no further distributions to such Claim Holder shall be made unless and until the Disbursing Agent is notified of such Claim Holder's then current address, at which time all missed distributions shall be made to such Claim Holder without interest. Amounts in respect of undeliverable distributions shall be returned to the Disbursing Agent with respect to all claims, until such distributions are claimed. All claims for undeliverable distributions shall be made on the later of the first (1st) anniversary of the Effective Date or ninety (90) days from the date the Claim becomes an Allowed Claim. After such date, all unclaimed property relating to distributions to be made on account of such Claims shall revert to the Liquidation Trust, free of any restrictions thereon or Claims of such Holder and notwithstanding any federal or state escheat laws to the contrary. Nothing contained in the Plan shall require the Disbursing Agent to attempt to locate any Holder of an Allowed Claim.

9.7 Record Date for Distributions. The Debtors or the Disbursing Agent shall have no obligation to recognize the transfer of, or the sale of any participation in, any Allowed Claim or Interest that occurs after the Record Date, and will be entitled for all purposes herein to recognize and distribute only to those Holders of Allowed Claims who are Holders of such Claims, or participants therein, as of the Record Date. The Debtors or the Disbursing Agent shall instead be entitled to recognize and deal with for all purposes under the Plan with only those record

Holders stated on the official claims register or the official transfer ledger, as the case may be, as of the Record Date. On the Record Date, the transfer ledgers of the institutional trustee for the Trust Securities, or other agents and servicers of the Trust Securities, and the transfer registers of the Old Equity shall be closed, and there shall be no further changes in the record Holders of the Trust Securities or the Old Equity. The Disbursing Agent shall have no obligation to recognize any transfer of the Trust Securities or the Old Equity occurring after the Record Date. The Debtors or the Disbursing Agent shall be entitled instead to recognize and deal for all purposes hereunder with only those record Holders stated on the transfer ledgers as of the Record Date.

9.8 Allocation of Plan Distributions Between Principal and Interest. To the extent that any Allowed Claim entitled to a distribution under the Plan is composed of indebtedness and accrued but unpaid interest thereon, such distribution shall, to the extent permitted by applicable law, be allocated to the principal amount of the Claim first and then, to the extent the consideration exceeds the principal amount of the claim, to the portion of such Claim representing accrued but unpaid interest.

9.9 Means of Cash Payment. Payments of Cash made pursuant to the Plan shall be in U.S. dollars and shall be made, at the option and in the discretion of the Disbursing Agent, by (a) checks drawn on or (b) wire transfer from a domestic bank selected by Disbursing Agent.

9.10 Setoffs. The Debtors, or the Liquidation Trust Administrator, as the case may be, may, but shall not be required to, set off against any Claim and the payments or other distributions to be made pursuant to the Plan in respect of such Claim, claims of any nature whatsoever that the Debtors, or the Liquidation Trust Administrator, as the case may be, may have against the Holder of such Claim; provided, however, that neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors, or the Liquidation Trust Administrator, as the case may be, of any such claim that the Debtors, or the Liquidation Trust Administrator, as the case may be, may have against such Holder.

9.11 De-Minimis Distributions. Notwithstanding any other provision of the Plan, the Disbursing Agent shall have no obligation to make a distribution on account of an Allowed Claim from the Cash Reserves or account to a specific Holder of an Allowed Claim if the amount to be distributed to that Holder on the Initial Distribution Date or Subsequent Distribution Date (1) does not constitute a final distribution to such Holder and (2) is less than \$50. In addition, the Debtors and the Liquidation Trust Administrator reserve the right to request subsequent relief from the Bankruptcy Court to exclude Holders of smaller claims from the final distribution under the Plan to the extent that the amounts otherwise distributable to such claimholders in connection with such final distribution would be de-minimis or create undue administrative expense.

9.12 Release of Liens. Except as otherwise provided in the Plan or in any contract, instrument, release, or other agreement or document created or assumed in connection with the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to Articles IX and X of the Plan, all mortgages, deeds of trust, liens, pledges, or other security interests against the property of any Debtor's Estate shall be fully released and discharged,

and all of the right, title, and interest of any Holder of such mortgages, deeds of trust, liens, pledges, or other security interests shall revert to the Estate of SBK and its successors and assigns. To the extent that any termination statements, instruments of satisfaction, or other similar releases of interests necessary to terminate or otherwise remove from title or record any filed financing statements, mortgages, or other documents or agreements evidencing a security interest in the Debtors' assets shall not have been delivered to the Debtors in proper form for filing and executed by the appropriate parties prior to, or in connection with, the satisfaction of the Secured Claims, then the Debtors are hereby authorized to (a) execute and file such statements, instruments, releases, or other documents on behalf of the Holder of the Secured Claim with respect to the encumbered assets and (b) to file, register, or otherwise record a certified copy of the Confirmation Order, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all security interests in the Debtors' assets of any kind or nature whatsoever.

## ARTICLE X PROCEDURES FOR RESOLVING DISPUTED, CONTINGENT, AND UNLIQUIDATED CLAIMS

10.1 Objection Deadline; Prosecution of Objections. The Debtors or the Liquidation Trust Administrator, as the case may be, shall be responsible for administering, disputing, objecting to, compromising, or otherwise resolving and making distributions on account of the respective Claims against the Debtors. No later than the Claims Objection Deadline (unless extended by an order of the Bankruptcy Court), the Debtors or the Liquidation Trust Administrator, as the case may be, shall File objections to Claims with the Bankruptcy Court and serve such objections upon the Holders of each of the Claims to which objections are made. Nothing contained herein, however, shall limit the Debtors' or the Liquidation Trust Administrator's, as the case may be, right to object to Claims, if any, Filed or amended after the Claims Objection Deadline. Moreover, notwithstanding the expiration of the Claims Objection Deadline and unless subsequently ordered for good cause shown to shorten time, the Debtors, or the Liquidation Trust Administrator, as the case may be, shall continue to have the right to amend any objections and to File and prosecute supplemental objections and counterclaims to a Disputed Claim until such Disputed Claim is Allowed. Subject to the limitations set forth in Article VII of this Plan, the Debtors, or the Liquidation Trust Administrator, as the case may be, shall be authorized to, and shall, resolve all Disputed Claims by withdrawing or settling such objections thereto, or by litigating to judgment in the Bankruptcy Court or such other court having jurisdiction on the validity, nature, and/or amount thereof.

10.2 No Distributions Pending Allowance. Notwithstanding any other provision of the Plan, no payments or distributions shall be made with respect to all or any portion of a Disputed Claim unless and until all objections to such Disputed Claim have been settled or withdrawn or have been determined by Final Order, and the Disputed Claim, or some portion thereof, has become an Allowed Claim and the remainder has become a Disallowed Claim.

10.3 Disputed Claims Reserve. The Disbursing Agent shall withhold the Disputed Claims Reserve from the Net Available Cash and beneficial interests in the Liquidation

Trust to be distributed to particular classes under the Plan. The Disputed Claims Reserve shall be equal to 100% of the distributions to which Holders of Disputed Claims in Classes 3, 4, and 5 would be entitled under the Plan as of such date if such Disputed Claims in Classes 3, 4 and 5 were Allowed Claims in their (a) Face Amount (or if a Disputed Claim is unliquidated with no Face Amount, then based upon the good faith estimate of such Disputed Claim as estimated by the Debtor) or (b) estimated amount of such Disputed Claim in Classes 3, 4 and 5 as approved in an Order by the Bankruptcy Court. The Debtors, or the Liquidation Trust Administrator, as the case may be, may request estimation for any Disputed Claim including, without limitation, any Disputed Claim that is contingent or unliquidated. If practicable, the Disbursing Agent will invest any Cash that is withheld as the applicable Disputed Claims Reserve in an appropriate manner to insure the safety of the investment. Nothing in the Plan or the Disclosure Statement shall be deemed to entitle the holder of a Disputed Claim to postpetition interest on such Claim.

10.4 Distributions After Allowance. Payments and distributions from the Disputed Claims Reserve shall be made as appropriate to the Holder of any Disputed Claim that has become an Allowed Claim, as soon thereafter as is reasonably practicable after the date such Disputed Claim becomes an Allowed Claim. Such distributions shall be based upon the cumulative distributions that would have been made to the Holder of such Claim under the Plan if the Disputed Claim had been Allowed on the Effective Date (excluding any present value calculations) and shall not be limited by the Disputed Claim amounts previously reserved with respect to such Disputed Claim to the extent that additional amounts are available therefor, but only to the extent that such additional amounts have not yet been distributed to Holders of Allowed Claims. Upon such distribution, the Disputed Claims Reserve shall be reduced by an amount equal to the amount reserved with respect to such Disputed Claim. To the extent the amount reserved for such Disputed Claim exceeds the Allowed Amount, if any, of such Claim, the remainder shall be deposited in the Supplemental Distribution Account and distributed in accordance with the provisions of Articles V and IX of the Plan.

## ARTICLE XI ALLOWANCE AND PAYMENT OF CERTAIN ADMINISTRATIVE CLAIMS

11.1 Professional Fee Claims. All Professionals or other entities requesting compensation or reimbursement of expenses pursuant to sections 327, 328, 330, 331, 503(b), and 1103 of the Bankruptcy Code for services rendered on or before the Effective Date (including compensation and expenses for making a substantial contribution in the Chapter 11 Cases) shall File with the Bankruptcy Court and serve such applications on counsel for the Debtors, the United States Trustee, and as otherwise required by the Bankruptcy Court and the Bankruptcy Code, an application for final allowance of compensation and reimbursement of expenses no later than forty-five (45) days after the end of the month in which the Effective Date occurred. Objections to applications of Professionals and other entities for compensation and reimbursement of expenses must be Filed with the Bankruptcy Court no later than twenty-one (21) days after the Filing and service of a Professional's application. All compensation and reimbursement of expenses allowed by the Bankruptcy Court shall be paid seven (7) days after the entry of an Order allowing such fees and expenses, or as soon thereafter as practicable.

All Professional fees for services rendered by the Debtor's Professionals in connection with the Chapter 11 Cases and the Plan after the Effective Date, are to be paid by the Liquidation Trust Administrator upon receipt of an invoice for such services, or on such other terms as the Liquidation Trust Administrator may agree, without the need for further Bankruptcy Court authorization or entry of a Final Order.

11.2 Other Administrative Claims. All other requests for payment of an Administrative Claim (other than as set forth in Section 11.1 of the Plan), must be Filed with the Bankruptcy Court and served on counsel for the Debtors no later than the Administrative Claims Bar Date. Unless the Debtors, or the Liquidation Trust Administrator, as the case may be, objects to an Administrative Claim within ninety (90) days after the Administrative Claims Bar Date, such Administrative Claim shall be deemed allowed in the amount requested. In the event that the Debtors, or the Liquidation Trust Administrator, as the case may be, objects to an Administrative Claim and the Debtors or the Liquidation Trust Administrator, as the case may be, and such claimant are unable to resolve their dispute consensually, then the Debtors or the Liquidation Trust Administrator shall file a motion for determination thirty (30) days following the request of such claimant. Thereafter, the Bankruptcy Court shall determine the Allowed amount of such Administrative Claim. Notwithstanding the foregoing, the Debtors, or the Liquidation Trust Administrator, may pay, in its discretion, in accordance with the terms and conditions of any agreements relating thereto, any Administrative Claim as to which no request for payment has been timely filed but which is paid or payable by the Debtor in the ordinary course of business.

11.3 Administrative Claims Bar Date Notice. On the Effective Date, or as soon thereafter as is reasonably practicable, the Debtors shall provide written notice of the Administrative Claims Bar Date, which may be included in the notice of occurrence of the Effective Date.

## ARTICLE XII CONFIRMATION AND CONSUMMATION OF THE PLAN

12.1 Conditions to Confirmation. The following condition precedent to confirmation of the Plan may be satisfied or waived in accordance with Section 12.3 of the Plan:

(a) The Bankruptcy Court shall have approved by Final Order the Disclosure Statement with respect to the Plan in form and substance reasonably acceptable to the Debtors.

(b) The Confirmation Order shall determine the approval of the substantive consolidation of the Chapter 11 Cases and Estates and shall in all other respects be in form and substance reasonably acceptable to the Debtors.

(c) The Confirmation Order shall approve the FDIC Treatment attached as Exhibit A to the Plan.

12.2 Conditions to Effective Date. The following are conditions precedent to the occurrence of the Effective Date:

(a) The Debtors shall have Cash on hand sufficient to fund the Cash Reserves and make any other payments required to be paid under the Plan by the Debtors on or as soon as practicable after the Effective Date.

(b) The Confirmation Order shall be in form and substance acceptable to the Debtors and shall have been entered by the Bankruptcy Court and shall be a Final Order, and no request for revocation of the Confirmation Order under section 1144 of the Bankruptcy Code shall have been made, or, if made, shall remain pending.

(c) All relevant transactions set forth in Article VII of the Plan shall have been entered into and all conditions precedent to the consummation thereof shall have been satisfied.

(d) Any order necessary to satisfy any condition to the effectiveness of the Plan shall have become a Final Order and all documents provided for under the Plan shall have been executed and delivered by the parties thereto.

(e) The settlement agreement with the FDIC has not been materially amended or terminated.

12.3 Waiver of Conditions. The conditions set forth in Sections 12.1 and 12.2 of the Plan may be waived, in whole or in part, by the Debtors without notice or a hearing. The failure to satisfy or waive any condition to the Confirmation Date or the Effective Date may be asserted by the Debtors in their reasonable discretion based on the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtors to exercise any of the foregoing rights shall not be deemed a waiver of any other rights, and each such right shall be deemed an ongoing right, which may be asserted at any time.

### ARTICLE XIII LIQUIDATION TRUST

13.1 Appointment of Liquidation Trust Administrator.

(a) The Liquidation Trust Administrator shall be designated by the Debtors. At least seven (7) days prior to the Voting Deadline, the Debtors shall File with the Bankruptcy Court a notice designating the Person whom it has selected as Liquidation Trust Administrator; provided, however, that if and to the extent the Debtors fail to File such notice or otherwise give notice of the designation of the Person they have selected as Liquidation Trust Administrator prior to or at the Confirmation Hearing, the Debtors shall designate the Liquidation Trust Administrator by announcing the identity of such Person at the Confirmation Hearing. The Person so designated by the Debtors shall become the Liquidation Trust Administrator upon the Bankruptcy Court entering an order approving the Liquidation Trust Administrator designated by the Debtors after consideration of the same and any objections thereto at the Confirmation Hearing (which such order may be the Confirmation Order).

(b) The Liquidation Trust Administrator shall have and perform all of the duties, responsibilities, rights, and obligations set forth in the Liquidation Trust Agreement and the Plan and shall be entitled to reasonable compensation as set forth in the Plan and the Liquidation Trust Agreement without further application to or order of the Bankruptcy Court. Specifically, the Liquidation Trust Administrator shall receive, as compensation for his or her services rendered pursuant to the Plan and the Liquidation Trust Agreement, payment comparable to that which a chapter 7 trustee receives under section 326(a) of the Bankruptcy Code (plus reimbursement of reasonable costs and expenses incurred in furtherance of the Liquidation Trust Administrator's Duties under the Plan and this Trust Agreement) from the Operating Reserve. In addition, the Liquidation Trust Administrator shall receive an additional \$5,000 for each of the first three months and \$2,500 per month thereafter.

(c) To the extent any property or other assets are not transferred to the Liquidation Trust, but rather, remain in the Debtors' Estates, the Liquidation Trust Administrator, as more fully set forth in the Liquidation Trust Agreement, shall have all necessary authority to take whatever actions are necessary to sell, transfer, abandon, or otherwise dispose of such property and any necessary actions related thereto; provided, however, that, the Liquidation Trust Administrator, upon the Effective Date, shall forever be discharged from, and shall not be responsible for, any and all duties and obligations in connection with maintaining or preserving any such property or assets that remain in the Debtors' Estates. Notwithstanding any other provision of the Plan or the Liquidation Trust Agreement, to the extent the Liquidation Trust Administrator believes, in its sole discretion, that any asset may cost more to remove or sell than such asset is worth, the Liquidation Trust Administrator, in its sole discretion, may abandon such property, including but not limited to the furniture, fixtures, and equipment, without the need to file any other motion.

13.2 Assignment of Liquidation Trust Assets to the Liquidation Trust. On the Effective Date, the Debtors shall transfer and shall be deemed to have transferred to the Liquidation Trust, for and on behalf of the beneficiaries of the Liquidation Trust, the Liquidation Trust Assets including the Liquidation Trust Claims.

### 13.3 The Liquidation Trust.

(a) Without any further action of the directors, officers, or shareholders of the Debtors, on the Effective Date, the Liquidation Trust Agreement, substantially in the form of Exhibit B to the Plan, shall become effective. The Liquidation Trust Administrator shall accept the Liquidation Trust and sign the Liquidation Trust Agreement on that date and the Liquidation Trust will then be deemed created and effective.

(b) Interests in the Liquidation Trust shall be uncertificated and shall be non-transferable except upon death of the interest holder or by operation of law. Holders of interests in the Liquidation Trust shall have no voting rights with respect to such interests. The Liquidation Trust shall have a term of five (5) years from the Effective Date, without prejudice to the rights of the Liquidation Trust Administrator, subject to the consent of the Liquidation Trust Advisory Board, to extend such term conditioned upon the Liquidation Trust's not then becoming subject to the Exchange Act. The terms of the Liquidation Trust may be amended by the Debtors prior to the Effective Date and, subject to the consent of the Liquidation Trust Advisory Board, which consent shall not be unreasonably withheld, by the Liquidation Trust Administrator after the Effective Date to the extent necessary or advisable to ensure that the Liquidation Trust will not become subject to the Exchange Act.

(c) The Liquidation Trust Administrator shall have full authority to take any steps necessary to administer the Liquidation Trust Agreement, including, without limitation, the duty and obligation to liquidate Liquidation Trust Assets, to make distributions to the Holders of Claims entitled to distributions from the Liquidation Trust, and, if authorized by majority vote of those members of the Liquidation Trust Advisory Board authorized to vote, to pursue, and to settle Liquidation Trust Claims. Upon such assignments (which, as stated above, shall be transferred on the Effective Date), the Liquidation Trust Administrator, on behalf of the Liquidation Trust, shall assume and be responsible for all of the Debtors' responsibilities, duties, and obligations with respect to the subject matter of such assignments, and the Debtors shall have no other further rights or obligations with respect thereto.

(d) The Liquidation Trust Administrator shall take such steps as it deems necessary (having first obtained such approvals from the Liquidation Trust Advisory Board as may be necessary, if any) to reduce the Liquidation Trust Assets to Cash to make distributions required hereunder, provided, that, the Liquidation Trust Administrator's actions with respect to disposition of the Liquidation Trust Assets shall be taken in such a manner so as reasonably to maximize the value of the Liquidation Trust Assets.

(e) Subject to the distribution provisions of Section 13.5 herein, all costs and expenses associated with the administration of the Liquidation Trust, including allowed

fees and expenses of the Liquidation Trust Professionals (defined below) (collectively, such expenses, the "Liquidation Trust Expenses") shall be the responsibility of and paid by the Liquidation Trust from the Operating Reserve. Notwithstanding the foregoing, the Debtors shall cooperate with the Liquidation Trust Administrator in pursuing Liquidation Trust Recoveries.

(f) The Liquidation Trust Administrator may retain such law firms, accounting firms, experts, advisors, consultants, investigators, appraisers, auctioneers, or other professionals as it may deem necessary (collectively, the "Liquidation Trust Professionals"), in its sole discretion, to aid in the performance of its responsibilities pursuant to the terms of the Plan including, without limitation, the liquidation and distribution of Liquidation Trust Assets. The Liquidation Trust Professionals shall continue to prepare statements in the same manner and in the same detail as required by the Bankruptcy Code, and the Liquidation Trust Professionals shall serve such statements on each member of the Liquidation Trust Advisory Board. In the event two or more members of the Liquidation Trust Advisory Board object to the reasonableness of such fees and expenses, the matter shall be submitted to the Bankruptcy Court for approval of the reasonableness of such fees and expenses.

(g) The Liquidation Trust Administrator shall be responsible for filing all federal, state, and local tax returns for the Liquidation Trust. The Liquidation Trust Administrator shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all distributions made by the Liquidation Trust Administrator shall be subject to any such withholding and reporting requirements. The Liquidation Trust Administrator shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements. Notwithstanding any other provision of the Plan or the Liquidation Trust Agreement: (a) each holder of an Allowed Claim that is to receive a distribution pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding, and other tax obligations, on account of such distribution, and (b) no distribution shall be made to or on behalf of such Holder pursuant to the Plan unless and until such Holder has made arrangements satisfactory to the Liquidation Trust Administrator for the payment and satisfaction of such tax obligations. The Liquidation Trust Administrator shall make available to holders of interests in the Liquidation Trust copies of annual, compiled financial statements.

13.4 The Liquidation Trust Advisory Board.

(a) The Trust Advisory Board shall be composed of three (3) members as designated by the Debtors. On or before the date that is seven (7) days prior to the Voting Deadline, the Debtors shall file with the Bankruptcy Court a notice of the identities of such members; provided, however, that if and to the extent the Debtors fail to File such notice or otherwise give notice of the identities of such members prior to or at the Confirmation Hearing, the Debtors shall designate the members of the Liquidation Trust Advisory Board by announcing their identities at the Confirmation Hearing. The Liquidation Trust Advisory Board shall adopt such bylaws as it may deem appropriate. Members of the Liquidation Trust Advisory Board shall be entitled to compensation in accordance with the Liquidation Trust Agreement and to reimbursement of the reasonable and necessary expenses incurred by them in carrying out the purpose of the Liquidation Trust Advisory Board, without further application to or order of the Bankruptcy Court. Reimbursement of the reasonable and necessary expenses of the members of the Liquidation Trust Advisory Board and their compensation to the extent provided for in the Liquidation Trust Agreement shall be payable by the Liquidation Trust.

(b) In the case of an inability or unwillingness of any member of the Liquidation Trust Advisory Board to serve, such member shall be replaced by designation of the remaining members of the Liquidation Trust Advisory Board. If any position on the Liquidation Trust Advisory Board remains vacant for more than thirty (30) days, such vacancy shall be filled within fifteen (15) days thereafter by the designation of the Liquidation Trust Administrator without the requirement of a vote by the other members of the Liquidation Trust Advisory Board.

(c) Upon the certification by the Liquidation Trust Administrator that all assets transferred into Liquidation Trust have been distributed, abandoned, or otherwise disposed of, the members of the Liquidation Trust Advisory Board shall resign their positions, whereupon they shall be discharged from further duties and responsibilities.

(d) The Liquidation Trust Advisory Board may, by majority vote, approve all settlements of Liquidation Trust Claims which the Liquidation Trust Administrator may propose, subject to Bankruptcy Court approval of such settlements after notice and a hearing, provided, however, that the Liquidation Trust Administrator may seek Bankruptcy Court approval of a settlement of a Liquidation Trust Claim if the Liquidation Trust Advisory Board fails to act on a proposed settlement of such Liquidation Trust Claim within thirty (30) days of receiving notice of such proposed settlement by the Liquidation Trust Administrator.

(e) The Liquidation Trust Advisory Board may, by majority vote, authorize the Liquidation Trust Administrator to invest the corpus of the Liquidation Trust in prudent investments other than those described in section 345 of the Bankruptcy Code.

(f) The Liquidation Trust Advisory Board may remove the Liquidation Trust Administrator in the event of gross negligence or willful misconduct. In the event the requisite approval is not obtained, the Liquidation Trust Administrator may be removed by the Bankruptcy Court for cause shown. In the event of the resignation or removal of the Liquidation Trust Administrator, the Liquidation Trust Advisory Board shall, by majority vote, designate a person to serve as successor Liquidation Trust Administrator.

13.5 Distributions of Liquidation Trust Recoveries. The Liquidation Trust Administrator shall make distributions of Liquidation Trust Recoveries as follows: first, to pay the Liquidation Trust Expenses to the extent there are insufficient funds in the Operating Reserve; second, to repay amounts, if any, borrowed by the Liquidation Trust Administrator in accordance with the Liquidation Trust Agreement; third, to Holders of Claims entitled to receive distributions from the Liquidation Trust as required by this Plan. The Liquidation Trust Administrator shall make distributions of Liquidation Trust Recoveries to Claimholders entitled to receive distributions from the Liquidation Trust at least semi-annually beginning with a calendar quarter that is not later than the end of the second calendar quarter after the Effective Date; provided, however, that, the Liquidation Trust Administrator shall not be required to make any such semi-annual distribution in the event that the aggregate amount of Liquidation Trust Recoveries available for distribution to such Claimholders is not sufficient, in the Liquidation Trust Administrator's discretion (after consultation with the Liquidation Trust Advisory Board, if necessary) to distribute monies to such Claimholders. From time to time, but no less frequently than quarterly, the Liquidation Trust Administrator, in consultation with the Liquidation Trust Advisory Board, shall estimate the amount of Liquidation Trust Recoveries required to pay then outstanding and reasonably anticipated Liquidation Trust Expenses. The Cash portion of Liquidation Trust Recoveries in excess of such actual and estimated Liquidation Trust Expenses shall be made available for distribution to Claimholders in the amounts, on the dates and subject to the other terms and conditions provided in this Plan. The Liquidation Trust Administrator will make continuing efforts to dispose of the Liquidation Trust Assets, make timely distributions, and not unduly prolong the duration of the Liquidation Trust.

#### ARTICLE XIV

##### EFFECT OF PLAN CONFIRMATION ON CLAIMS AND INTERESTS

14.1 No Discharge of Claims Against Debtors; Preliminary Injunction. Pursuant to section 1141(d)(3) of the Bankruptcy Code, Confirmation will not discharge Claims against the Debtors; provided, however, that the Holders of Claims against the Debtors are preliminarily enjoined from seeking or receiving any payment or other distribution from, or seeking recourse against the Liquidation Trust or any of its property on account of such Claims, provided that (a) nothing contained herein shall preclude such Holders from exercising their rights pursuant to and consistent with the terms of the Plan and (b) the preliminary injunction of actions against the Liquidation Trust and its property shall be dissolved and terminate one (1) day following the dissolution of the Liquidation Trust and the completion and winding-up of its affairs.

14.2 Termination of Subordination Rights and Settlement of Related Claims and Controversies. The classification and manner of satisfying all Claims and Interests under the Plan take into consideration all subordination rights, arising under section 510 of the Bankruptcy Code, or otherwise. Except as provided in the Plan, all such subordination rights that a Holder of a Claim or Interest may have with respect to any distribution to be made pursuant to the Plan will be cancelled and terminated, and all actions related to the enforcement of such subordination rights will be permanently enjoined. Accordingly, distributions pursuant to the Plan to Holders of Allowed Claims or Allowed Interests will not be subject to payment to a beneficiary of such terminated subordination rights, or to levy, garnishment, attachment, or other legal process by a beneficiary of such terminated subordination rights. Nothing in this Section shall be deemed to release the rights, if any, that the Debtors or any creditor may have to seek to equitably subordinate any Claim pursuant to section 510 of the Bankruptcy Code or otherwise.

14.3 Exculpation and Limitation of Liability. The Released Parties, and any of all such parties' predecessors, successors and assigns, and all of their respective officers, directors, agents, employees, and attorneys, shall not have or incur, and are hereby released from, any claim, obligation, Cause of Action, or liability to one another or to any Holder of any Claim or Interest, or any other party in interest, or any of their respective agents, employees, representatives, financial advisors, attorneys or affiliates, or any of their successors or assigns, for any act or omission in connection with, or arising out of the Chapter 11 Cases, the pursuit of confirmation of the Plan, the consummation of the Plan, the administration of the Plan, or the property to be distributed under the Plan except for their gross negligence or willful misconduct and in all respects shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

Notwithstanding any other provision of the Plan, no Claim Holder or Interest Holder, or other party in interest, none of their respective agents, employees, representatives, financial advisors, attorneys or affiliates, and no successors or assigns of the foregoing, shall have any right of action against the Released Parties, including the Debtors, for any act or omission in connection with, relating to, or arising out of the Chapter 11 Cases, the pursuit of confirmation of the Plan, the consummation of the Plan, the administration of the Plan, or the property to be distributed under the Plan except for their gross negligence or willful misconduct.

14.4 Releases by Debtors and Debtors-in-Possession.

(a) Pursuant to section 1123(b)(3) of the Bankruptcy Code, effective as of the Effective Date, each Debtor, in its individual capacity and as a Debtor-in-Possession, for and on behalf of its Estate and any successor thereto, shall release and forever unconditionally release all Released Parties for and from any and all claims or Causes of Action existing as of the Effective Date in any manner arising from, based on, or relating to, in whole or in part, the Debtors, the subject matter of, or the transactions or

events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor or any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, or any act, omission, occurrence, or event in any manner related to any such Claims, Interest, restructuring, or the Chapter 11 Cases.

(b) No provision of this Plan or of the Confirmation Order, including without limitation, any release or exculpation provision, shall modify, release, or otherwise limit the liability of any Person not specifically released hereunder (or, as to the FDIC, under the FDIC Treatment), including without limitation, any Person that is a co-obligor or joint tortfeasor of a Released Party or that otherwise is liable under theories of vicarious or other derivative liability.

(c) The Liquidation Trust Administrator and any newly-formed entities that will be liquidating the Debtors' businesses after the Effective Date shall be bound, to the same extent the Debtors are bound, by all of the releases set forth above.

14.5 Release by Holders of Claims, Parties-in-Interest, and Other Persons. On the Effective Date (a) each Person that votes to accept the Plan and (b) to the fullest extent permissible under applicable law, as such law may be extended or interpreted subsequent to the Effective Date, all other Holders of Claims and Interests, as applicable, in consideration for the obligations of the Debtors under the Plan and the Cash and other contracts, instruments, releases, agreements, or documents to be delivered in connection with the Plan, each entity (other than the Debtors) that has held, holds, or may hold a Claim, as applicable, (each, a "Release Obligor") shall have conclusively, absolutely, unconditionally, irrevocably, and forever, released each Released Party from any claim or Cause of Action existing as of the Effective Date arising from, based on, or relating to, in whole or in part, the subject matter of, or the transaction or event giving rise to, the Claim or Cause of Action of such Release Obligor, and any act, omission, occurrence, or event in any manner related to such subject matter, transaction, or obligation; provided, however, that this Section 14.5 shall not release any Released Party from any Cause of Action existing as of the Effective Date, based on (i) the IRC or other domestic state, city, or municipal tax code, (ii) the environmental laws of the United States or any domestic state, city, or municipality as to remediation matters, (iii) any criminal laws of the United States or any domestic state, city, or municipality, (iv) the Securities Exchange Act of 1934, as now in effect or hereafter amended, the Securities Act of 1933, as now in effect or hereafter amended, or other securities laws of the United States or any domestic state, city, or municipality, (v) Sections 1104-1109 and 1342(d) of the Employee Retirement Income Security Act of 1974, as amended, (vi) any professional liability claims that the FDIC could assert under Applicable Banking Laws for actions taken up to and through August 20, 2010; and (vii) the FDIC's right to seek dismissal of, or otherwise challenge in an appropriate court of competent jurisdiction, any claim which the Debtors may assert, including but not

**limited to claims against directors, officers, employees, agents, attorneys, and advisors of either the Debtors or the Bank, as being a derivative claim that belongs to the FDIC pursuant to 12. U.S.C. § 1821(d)(2)(A)(i) or other Applicable Banking Laws.**

**14.6 Injunction. The satisfactions and releases pursuant to this Article XIV of the Plan, excluding the preliminary injunction set forth in Section 14.1, shall also act as a permanent injunction against any Person commencing or continuing any action, employment of process, or act to collect, offset, or recover any Claim or Cause of Action satisfied or released under this Plan to the fullest extent authorized or provided by the Bankruptcy Code, including, without limitation, to the extent provided for or authorized by sections 524 and 1141 thereof.**

#### ARTICLE XV RETENTION OF JURISDICTION

Pursuant to sections 105(c) and 1142 of the Bankruptcy Code and notwithstanding entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court will retain exclusive jurisdiction over all matters arising out of, and related to, the Chapter 11 Cases and the Plan to the fullest extent permitted by law, (but with respect to the FDIC, subject to the FDIC Treatment), including, among other things, jurisdiction to:

(a) Allow, disallow, determine, liquidate, classify, estimate, or establish the priority or secured or unsecured status of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any objections to the allowance or priority of Claims or Interests;

(b) 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;

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

(d) Resolve any matters relating to the pre- and post-confirmation sales of the Debtors' assets;

(e) Enforce, implement, or clarify all orders, judgments, injunctions, and rulings entered by the Bankruptcy Court;

(f) Ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;

(g) Decide or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters and grant or deny any applications involving the Debtors that may be pending on the Effective Date;

(h) 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 created in connection with the Plan, the Disclosure Statement, or the Confirmation Order, including the FDIC Treatment and the Liquidation Trust Agreement;

(i) Resolve any cases, controversies, suits, or disputes that may arise in connection with the consummation, interpretation, or enforcement of the Plan or any contract, instrument, release, or other agreement or document that is executed or created pursuant to the Plan, including the Liquidation Trust Agreement, or any entity's rights arising from or obligations incurred in connection with the Plan or such documents;

(j) Modify the Plan before or after the Effective Date pursuant to section 1127 of the Bankruptcy Code or modify the Disclosure Statement, the Confirmation Order or any contract, instrument, release, or other agreement or document created 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, or any contract, instrument, release, or other agreement or document created in connection with the Plan, the Disclosure Statement, or the Confirmation Order, including the Liquidation Trust Agreement, in such manner as may be necessary or appropriate to consummate the Plan;

(k) Hear and determine all applications for compensation and reimbursement of expenses of Professionals under the Plan or under sections 330, 331, 503(b), 1103, and 1129(c)(9) of the Bankruptcy Code, provided, however, that from and after the Effective Date the payment of fees and expenses of the Debtors shall be made as set forth in Article XI of this Plan.

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

(m) Hear and determine any Causes of Action by or on behalf of the Debtors;

(n) Hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

(o) 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;

(p) Determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, or other agreement or document created in connection with the Plan, the Disclosure Statement, or the Confirmation Order, including the Liquidation Trust Agreement;

(q) Enforce all orders, judgments, injunctions, releases, exculpations, indemnifications, and rulings entered in connection with the Chapter 11 Cases;

(r) Hear and determine all matters related to (i) the property of the Estates from and after the Confirmation Date, (ii) the winding up of the Debtors' affairs, and (iii) the activities of the Debtors, including (A) challenges to or approvals of the Debtors' activities, (B) resignation, incapacity, or removal of the Liquidation Trust Administrator and selection of a successor Liquidation Trust Administrator, (C) reporting by, termination of, and accounting by the Debtors, and (D) release of the Liquidation Trust Administrator from its duties;

(s) Hear and determine disputes with respect to compensation of the Debtors' Professionals;

(t) Hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under the Bankruptcy Code;

(u) Adjudicate any and all Causes of Action, adversary proceedings, applications, and contested matters that have been or hereafter are commenced or maintained in or in connection with the Chapter 11 Cases or the Plan, including, without limitation, any adversary proceeding or contested matter, proceedings to adjudicate the allowance of Disputed Claims, and all controversies and issues arising from or relating to any of the foregoing;

(v) Hear and determine all matters involving Claims or Causes of Action involving the Debtors or their property;

(w) Hear and determine all matters relating to the enforcement and interpretation of Section 14.4 of this Plan; and

(x) Enter an order closing the Chapter 11 Cases.

Notwithstanding anything contained herein to the contrary, the Bankruptcy Court retains exclusive jurisdiction to hear and determine disputes concerning (i) Claims or (ii) Causes of Action and any motions to compromise or settle such disputes. Despite the foregoing, if the Bankruptcy Court is determined not to have jurisdiction with respect to the foregoing, or if the Debtors choose to pursue any Claim or Cause of Action (as applicable) in another court of competent jurisdiction, the Debtors will have authority to bring such action in any other court of competent jurisdiction.

#### ARTICLE XVI MISCELLANEOUS PROVISIONS

16.1 Binding Effect. The Plan shall be binding upon and inure to the benefit of the Debtors, all present and former Holders of Claims and Interests, other parties in interest and their respective successors and assigns as of the entry of the Confirmation Order.

16.2 Payment of Statutory Fees. All statutory fees payable in the Chapter 11 Cases shall be paid in accordance with 28 U.S.C. § 1930 (a) through the Effective Date by the Debtors and (b) after the Effective Date with respect to the Chapter 11 Cases (including with respect to disbursements from the Liquidation Trust) by the Debtors or the Liquidation Trust; provided, however, that the statutory fees owed for any calendar quarter shall be based on the total disbursements made by the Debtors and the Liquidation Trust.

16.3 Amendment or Modification of this Plan. Subject to section 1127 of the Bankruptcy Code and, to the extent applicable, sections 1122, 1123, and 1125 of the Bankruptcy Code, alterations, amendments, or modifications of the Plan or Exhibits thereto may be proposed in writing by the Debtors at any time prior to or after the Confirmation Date but prior to the substantial consummation of this Plan. A Holder of a Claim or Interest that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended, or modified, if the proposed alteration, amendment, or modification does not materially and adversely change the treatment of the Claim or Interest of such Holder.

16.4 Revocation, Withdrawal, or Non-Consummation. The Debtors reserve the right to revoke or withdraw the Plan as to any or all of the Debtors prior to the Effective Date and to File subsequent chapter 11 plans. If the Debtors revoke or withdraw the Plan, or if Confirmation or Consummation does not occur, then (a) the Plan shall be null and void in all respects, (b) any

settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain any Claim or Class of Claims), assumption or rejection of executory contracts or leases affected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void, and (c) nothing contained in the Plan shall (i) constitute a waiver or release of any Claims by or against, or any Interests in, such Debtors or any other Person, (ii) prejudice in any manner the rights of such Debtors or any other Person, or (iii) constitute an admission of any sort by the Debtors or any other Person.

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

16.6 Corporate Action. Prior to, on or after the Effective Date (as appropriate), all matters provided for under the Plan that would otherwise require approval of the stockholders or directors of one or more of the Debtors shall be deemed to have occurred and shall be in effect prior to, on or after the Effective Date (as appropriate) pursuant to the applicable general corporation law of the state in which the Debtors are incorporated without any requirement of further action by the stockholders or directors of the Debtors.

16.7 Exemption from Transfer Taxes. Pursuant to section 1146(c) of the Bankruptcy Code: (a) the creation of any mortgage, deed of trust, lien, pledge, or other security interest; (b) the making or assignment of any lease or sublease; (c) the making or delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including, without limitation, any restructuring, disposition, liquidation, or dissolution, deeds, bills of sale, transfers of tangible property or the transfers, sales, and assignments of the Debtors' owned and leased real property pursuant to the Plan or otherwise; or (d) any transfers from the Debtors pursuant to the Plan or otherwise will not be subject to any document recording tax, stamp tax, conveyance fee, personal property tax, real estate transfer tax, intangibles or similar tax, mortgage tax, stamp act, mortgage recording tax, or other similar tax or governmental assessment, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forgo the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

16.8 Severability of Plan Provisions. If, prior to the Confirmation Date, any term or provision of the Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, but subject to Section 16.4 of the Plan, 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.

16.9 Successors and Assigns. The Plan shall be binding upon and inure to the benefit of the Debtors, and their respective successors and assigns. The rights, benefits, and obligations of any entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor, or assign of such entity.

16.10 Notice. All notices, requests, and demands to or upon the Debtors to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered and addressed as follows:

If to the Debtors:

THE SHOREBANK CORPORATION  
135 South LaSalle Street, Suite 2040  
Chicago, IL 60603  
Attn: George P. Surgeon  
President and CEO

with copies to:

Counsel for the Debtors:

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP  
155 North Wacker Drive, Suite 2700  
Chicago, Illinois 60606-1720  
Telephone: (312) 407-0700  
Attn: George N. Panagakis

[If to the Creditors Committee:]

[●]

If to the Liquidation Trust Administrator: at the address set forth in the Liquidation Trust Agreement.

16.11 Governing Law. Except to the extent the Bankruptcy Code, the Bankruptcy Rules, or other federal law is applicable, or to the extent an Exhibit to this Plan provides otherwise, the rights and obligations arising under the Plan and any agreements, documents, and instruments executed in connection with the Plan shall be governed by, and construed and enforced in accordance with, the laws of Illinois, without giving effect to the principles of conflicts of law of such jurisdiction.

16.12 Tax Reporting and Compliance. The Debtors, the Disbursing Agent, the Liquidation Trust Administrator, or the Subordinated Indenture Trustee, as the case may be, shall be authorized to take any and all actions that may be necessary or appropriate to comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all payments and distributions hereunder shall be made subject to such withholding and reporting requirements. Notwithstanding any other provision of the Plan or the Liquidation Trust Agreement: (a) each Holder of an Allowed Claim that is to receive a distribution pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding, and other tax obligations, on account of such distribution, and (b) no distribution shall be made to or on behalf of such Holder pursuant to the Plan unless and until such Holder has made arrangements satisfactory to the Debtors, the Disbursing Agent, the Liquidation Trust Administrator, or the Subordinated Indenture Trustee, as the case may be, for the payment and satisfaction of such tax obligations. The Debtors are hereby authorized, to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtors for all taxable periods ending after the Petition Date through, and including, the Effective Date.

16.13 Filing of Additional Documents. On or before substantial consummation of the Plan, the Debtors shall File such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

16.14 Term of Bankruptcy Injunction or Stays. All injunctions or stays provided for in the Chapter 11 Cases under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until all property of the Estates of the Debtors has been distributed.

16.15 No Waiver or Estoppel. Each Claim Holder or Interest Holder shall be deemed to have waived any right to assert that its Claim or Interest should be Allowed in a certain amount, in a certain priority, secured or not subordinated by virtue of an agreement made with the Debtors and/or their counsel; the Creditors' Committee, if any, and/or its counsel; or any other party, if such agreement was not disclosed in the Plan, the Disclosure Statement, or papers filed with the Bankruptcy Court.

16.16 Request for Court Hearing. The Debtors or Liquidation Trust Administrator, shall have the right to request a hearing before the Court on any and all matters raised in connection with or related to the Plan.

Dated: Chicago, Illinois  
January 31, 2012

Respectfully submitted,

The ShoreBank Corporation  
(for itself and on behalf of its Affiliate Debtors)

By: /s/ George P. Surgeon  
Name: George P. Surgeon  
Title: President and CEO of The ShoreBank Corporation

George N. Panagakis (ARDC No. 06205271)  
Justin M. Winerman (ARDC No. 6298779)  
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP  
155 North Wacker Drive  
Chicago, Illinois 60606  
(312) 407-0700

COUNSEL FOR THE DEBTORS  
AND DEBTORS-IN-POSSESSION

**EXHIBIT A**

**FDIC Treatment**

**FDIC TREATMENT**

Under the Plan, on the Effective Date, or as soon thereafter as reasonably practicable, the FDIC shall receive in full satisfaction, settlement, release, and discharge of, and in exchange for, each and every Class 3 Claim against the Debtors, the FDIC Treatment. The FDIC Treatment shall consist of the terms set forth in the settlement agreement.

**SETTLEMENT AGREEMENT**

This settlement agreement (the "**Agreement**") is made and entered this 31<sup>st</sup> day of January, 2012, by and between the Federal Deposit Insurance Corporation, as receiver for ShoreBank (the "**FDIC-R**") and The ShoreBank Corporation ("**SBK**") (the FDIC-R and SBK, each a "**Party**" and, collectively, the "**Parties**").

**WHEREAS**, SBK was a registered bank holding company for its subsidiary, ShoreBank headquartered, in Chicago, Illinois, a state chartered non-member bank (the "**Bank**"); and

**WHEREAS**, on August 20, 2010, the Bank was closed by The Illinois Department of Financial & Professional Regulation, and the FDIC-R was named as the Bank's receiver (the "**Receivership**"); and

**WHEREAS**, as a result of the Receivership, by operation of law, the FDIC-R succeeded to "all rights, titles, powers, and privileges" of the Bank; and

**WHEREAS**, based upon the actions of the FDIC-R in other recent bankruptcy proceedings involving bank holding companies, it could be anticipated that the FDIC-R might assert certain claims against SBK, including, but not limited to, capital maintenance obligation claims, claims to certain tax and insurance refunds and proceeds, and certain rights to setoff; and

**WHEREAS**, the Parties have engaged in extensive, good faith negotiations in an effort to resolve their disputes, and desire to reach an amicable resolution of all claims the FDIC-R may have against SBK (collectively, the "**FDIC Claim**") in order to avoid the expense, inconvenience, and delay involved with complex litigation; and

**WHEREAS**, the negotiations have resulted in the settlement set forth in the Agreement; and

**WHEREAS**, SBK intends to file a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Northern District of Illinois, Eastern Division where it will seek approval of the Agreement either pursuant to a motion under Bankruptcy Rule 9019 or under a plan of liquidation (a "**Plan**").

**NOW THEREFORE**, in consideration of the agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto hereby mutually agree as follows:

1. **Settlement Amount.** On the Effective Date (defined below), the FDIC-R shall receive from SBK, in full and final satisfaction, settlement, release, and discharge of, and in exchange for, the FDIC Claim, payment of \$8,500,000 (the "**Settlement Amount**"), payable out of the federal income tax refund receivable, which arose as a result of losses for tax purposes during prior tax years (the "**Federal Income Tax Refund Receivable**"). The FDIC-R agrees

*Handwritten initials: JN*

and acknowledges that other than the Settlement Amount, it shall not be entitled to any other distributions from SBK or its estate. For the avoidance of doubt, notwithstanding the foregoing, the FDIC-R is entitled to continue to collect payments stemming from the sale of ShoreBank Pacific pursuant to the stock purchase agreement governing that transaction.

2. **Mutual Releases.**

(a) On the Effective Date, SBK, on its own behalf and on behalf of its affiliates, and each of their respective Representatives (the "**SBK Releasors**") releases and discharges the FDIC-R and its Representatives (the "**FDIC-R Releasees**") from any and all rights, claims, obligations, suits, judgments, damages, demands, liabilities, and causes of action of any nature whatsoever whether direct or derivative, liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity, or otherwise that the SBK Releasors had, have, or hereafter can, shall, or may have against the FDIC-R Releasees, including but not limited to any claims asserted in SBK's Proof of Claim filed in the Receivership. Notwithstanding the foregoing, this release shall not release (x) the FDIC-R Releasees from any rights, claims, obligations, suits, judgments, damages, demands, liabilities, and causes of action that (i) the SBK Releasors would otherwise have against the FDIC-R Releasees if a third party brings any action or asserts any claim against the SBK Releasors, or (ii) relates to any funds not otherwise provided for in the Agreement which a third party pays or distributes to the FDIC-R Releasees in which the SBK Releasors claim an interest; or (y) the FDIC-R Releasees from any counterclaims that SBK's or its affiliates' respective Representatives could otherwise assert that arise from claims that the FDIC-Releasors assert pursuant to clause (i) of Section 2(b) of the FDIC Treatment.

(b) On the Effective Date, the FDIC-R, on its own behalf and on behalf of its Representatives (the "**FDIC-R Releasors**") releases and discharges SBK, on its own behalf and on behalf of its affiliates, and each of their respective Representatives (the "**SBK Releasees**") from any and all rights, claims, obligations, suits, judgments, damages, demands, liabilities, and causes of action of any nature whatsoever whether direct or derivative, liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity, or otherwise that the FDIC-R Releasors had, have, or hereafter can, shall, or may have against the SBK Releasees; provided, however, the release shall not release SBK's or its affiliates' respective Representatives (including, without limitation, for purposes of this Section 2(b), the Representatives of the Bank) from any professional liability claims that the FDIC-R Releasors could assert under federal banking or other applicable law for actions taken up to and through August 20, 2010. Finally, this release shall not release the SBK Releasees from any rights, claims, obligations, suits, judgments, damages, demands, liabilities, and causes of action that (i) the FDIC-R Releasors would otherwise have against the SBK Releasees if a third party brings any action or asserts any claim against the FDIC-R Releasors, (ii) relates to any funds not otherwise provided for in this treatment which a third party pays or distributes to the SBK Releasees in which the FDIC-R Releasors claims an interest, or (iii) arise

from an obligation of an SBK Releasee that is independent of said SBK Releasee's duties for SBK.

(c) Nothing contained in the Agreement shall release any claim that any Party has or may have arising under the Agreement.

(d) The FDIC-R shall not object to SBK either preserving or releasing any third party claims, in a Plan or otherwise, so long as the FDIC-R is excluded as a releasing party with respect to any such third party.

(e) The term "Representatives" shall mean the administrators, employees, agents, attorneys, advisors, constituents, representatives, directors, officers, successors, and assigns of any entity to which it refers.

3. **Cooperation.**

(a) The Parties agree to cooperate reasonably with each other with respect to the implementation of this Agreement.

(b) The Parties shall reasonably cooperate in seeking bankruptcy court approval of the Agreement.

4. **Conditions to Effectiveness of the Agreement.** Other than Section 3 of the Agreement, which shall become effective immediately upon execution of the Agreement, the Agreement shall become effective (the "**Effective Date**") upon the satisfaction of all of the following conditions:

(a) The execution and delivery of the Agreement by a duly authorized signatory on behalf of each Party.

(b) With respect to the FDIC-R, approval of the Agreement by the Board of Directors of the Federal Deposit Insurance Corporation Board (the "**FDIC Board**") or a person other than the FDIC Board exercising appropriate delegated authority on behalf of the FDIC-R.

(c) With respect to SBK, the bankruptcy court shall confirm a Plan, which includes a settlement containing the terms substantially as set forth in the Agreement (and which is not materially inconsistent with the Agreement), and the conditions to the Effective Date, as set forth in Section 12.2 of the Plan have meet met.

5. **Termination.** The Agreement may be terminated by any Party, in its sole discretion, by delivering a written notice to the other Party, but only following the occurrence of any one of the following events (before the occurrence of any of the following, the terms of the Agreement must remain open):

(a) The Agreement is not approved by the FDIC Board or a person other than the FDIC Board exercising appropriate delegated authority on behalf of the FDIC-R on or before January 31, 2012.

(b) The bankruptcy court has not confirmed a Plan, which includes a settlement containing the terms substantially as set forth in the Agreement (and which is not materially inconsistent with the Agreement) nor approved the Agreement pursuant to a motion brought by SBK under Bankruptcy Rule 9019, in either case, on or before July 9, 2012.

(c) The Disclosure Statement filed by SBK in its bankruptcy case is materially inconsistent with the financial representations made by SBK to the FDIC in connection with the negotiation of this Agreement.

(d) The FDIC has not been paid the Settlement Amount within 45 days of a Plan, which includes a settlement containing the terms substantially as set forth in the Agreement, being confirmed by the bankruptcy court.

6. **Effect of Termination.** If any Party terminates the Agreement pursuant to Section 5, the Agreement shall become null and void and shall be deemed of no force and effect, with no liability on the part of any Party (or of any director, officer, employee, attorney, agent, or other representative of any Party), and no Party shall have any obligations to any other Party arising out of the Agreement.

7. **Jurisdiction.** Once a bankruptcy proceeding is commenced, the bankruptcy court shall have and retain jurisdiction to hear and consider any dispute between or among the Parties arising out of, connected with, or related to the Agreement. The Parties expressly reserve all other jurisdictional arguments as to any other matter, including the proper forum for resolution of the Parties' underlying disputes in the event that the Agreement is terminated or otherwise fails to become effective.

8. **Notices.** All notices and other communications required or permitted under the Agreement must be in writing (an email shall constitute a writing) and must be sent to the Party at that Party's address set forth below or at whatever other address the Party specifies in writing:

(a) To SBK:

George N. Panagakis  
Skadden, Arps, Slate, Meagher & Flom LLP  
155 North Wacker Drive  
Chicago, Illinois 60606  
gpanagakis@skadden.com

(b) To the FDIC-R:

Alan P. Solow  
DLA Piper LLP (US)  
203 North LaSalle Street, Suite 1900  
Chicago, Illinois 60601-1293  
alan.solow@dlapiper.com

9. **Entire Agreement.** The Agreement constitutes the entire agreement among the Parties and supersedes all prior negotiations, representations, promises, or warranties (oral or otherwise) made by any Party with respect to the subject matter hereof. No Party has entered into the Agreement in reliance on any other Party's prior representation, promise, or warranty (oral or otherwise) except for those that may be expressly set forth in the Agreement. The Agreement is intended by the Parties as a final and complete expression of their agreement and understanding with respect to its subject matter.

10. **Amendments.** The terms of the Agreement are contractual and may not be modified or amended without the written agreement of both Parties.

11. **Mutual Contribution.** The language of the Agreement is a product of the mutual effort of the Parties. The Agreement shall be construed fairly as to all Parties and it shall not be construed for or against any of the Parties based upon the extent to which that Party participated in drafting it.

12. **Severability.** If any non-material portion, provision, or part of the Agreement is held, determined, or adjudicated to be invalid, unenforceable, or void for any reason whatsoever, each such portion, provision or part shall be severed from the remaining portions, provisions, or parts of the Agreement and shall not affect the validity or enforceability of any remaining portions, provisions, or parts.

13. **No Admission.** The Agreement and the settlement reflected herein constitute a compromise of the Parties' disputes. Nothing contained herein shall constitute or be deemed to be an admission by any Party as to any matter. Other than in a dispute seeking enforcement of the Agreement, neither the Agreement nor any of its terms shall be admissible in evidence in any matter or proceeding among the Parties.

14. **No Third Party Beneficiary.** Nothing in the Agreement, express or implied, is intended to, or shall be construed to, confer upon any person other than the Parties and their respective successors and assigns, any right, remedy, or claim under or by reason of the Agreement, which is and shall be for the sole and exclusive benefit of the Parties.

15. **Governing Law.** The Agreement shall be governed by and construed in accordance with the internal laws of the state of Illinois, without giving effect to the conflict of law provisions thereof, and applicable federal law.

16. **Headings.** The headings of the Sections of the Agreement are inserted for convenience only and do not in any way limit or modify its terms.

17. **Due Authorization.** Each person signing the Agreement on behalf of a Party represents that he or she has been duly authorized to sign the Agreement and to bind the Party on whose behalf the Agreement is being signed by that signatory.

18. **Counterparts.** The Agreement may be executed in one or more counterparts, each of which shall be deemed an original copy of the Agreement and all of which, when taken together, shall constitute one and the same Agreement. Copies of executed counterparts transmitted by telecopy or other method of electronic transmission shall be considered original executed counterparts, provided receipt of copies of such counterparts is confirmed.

19. **Construction.** All references in the Agreement to Sections refer to the Section of the Agreement unless otherwise indicated. All references to the singular in the Agreement shall also include the plural and all plural forms shall include the singular; any use of pronouns shall be deemed to include the neuter, masculine, or feminine as appropriate.

20. **Successors, Predecessors, and Assigns.** The Agreement binds and inures to the benefit of the Parties and their respective successors, predecessors, and assigns, including any Plan trustee appointed under a Plan confirmed by a bankruptcy court.

21. **Wiring Instructions.** Any funds to be paid hereunder shall be sent by wire transfer pursuant to the following instructions:


If to the FDIC-R, then:

BANK: Federal Home Loan Bank of New York  
ROUTING #: 026-009-739  
FOR CREDIT TO: FDIC National Receivership Account  
ACCOUNT #: 1076010  
"OBI" Line of All Wires Should Include Receivership Number (5 Digits)  
Advance Notification Requested for All Wires Exceeding \$\$ 5 Million.  
Please Notify Cashier by Email = DallasCashiersdl@fdic.gov

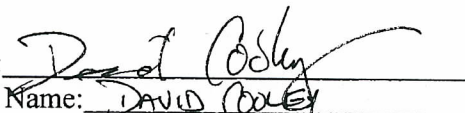
**[Remainder of Page Intentionally Left Blank]**

IN WITNESS WHEREOF, the Parties have caused the Agreement to be executed as of the date set forth above.

**THE SHOREBANK CORPORATION,**  
for itself and on behalf of its affiliates

By:   
Name: George P. Surgeon  
Title: President and CEO, The  
ShoreBank Corporation

**THE FEDERAL DEPOSIT  
INSURANCE CORPORATION,** in its  
capacity as Receiver for ShoreBank

By:   
Name: DAVID COOLEY  
Title: ASSOCIATE DIRECTOR - BUS

**EXHIBIT B**

**Form of Liquidation Trust Agreement**

### **The ShoreBank Corporation et al. Liquidation Trust Agreement**

This Liquidation Trust Agreement (the "Liquidation Trust Agreement"), dated as of [•], 2012, by and among The ShoreBank Corporation ("SBK") and 11 of its affiliates and subsidiaries (the "Affiliate Debtors"), the debtors and debtors-in-possession (collectively, the "Debtors"), as settlor, and [•], not individually, but solely as the Liquidation Trust Administrator, is executed to facilitate the implementation of the Joint Plan of Liquidation of The ShoreBank Corporation and its Affiliated Debtors and Debtors in Possession (the "Plan"), dated [January 31, 2012], which provides for (a) the establishment of the Liquidation Trust (defined below) created by the Liquidation Trust Agreement and the retention and preservation of the Liquidation Trust Assets (as defined in the Plan) by the Liquidation Trust Administrator in accordance with section 1123(b)(3) of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532, as amended (the "Bankruptcy Code"), all for the benefit of the Holders of Allowed Class 4 Claims, Allowed Class 5 Claims, and Allowed Class 6 Claims (as set forth in the Plan) (collectively, the "Liquidation Trust Beneficiaries"), (b) the transfer of the Liquidation Trust Assets into the Liquidation Trust, (c) the liquidation of the Liquidation Trust Assets, (d) the resolution of certain Disputed Claims, (e) making distributions to the Liquidation Trust Beneficiaries, and (f) otherwise implementing the Plan and administering the Debtors' estates, all as more specifically set forth in the Liquidation Trust Agreement and in accordance with the Plan.

The primary purpose of the Liquidation Trust is to liquidate the Liquidation Trust Assets, resolve the Litigation Trust Claims, if any, and distribute the proceeds from the liquidation of the Liquidation Trust Assets (including the Liquidation Trust Claims) and any other proceeds to the Liquidation Trust Beneficiaries. The Liquidation Trust Administrator's activities, powers, and duties are those determined to be reasonably necessary to, and consistent with, the accomplishment of this purpose.

**WHEREAS**, on January 9, 2012, each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division (the "Bankruptcy Court" or the "Court");

**WHEREAS**, on [•], 2012, the Bankruptcy Court entered an order confirming the Plan (the "Confirmation Order"); and

**WHEREAS**, under the terms of the Plan and the Confirmation Order, effective as of the Effective Date (as defined in the Plan), the Liquidation Trust Assets (including the Liquidation Trust Claims) shall be deemed to have been granted, transferred, conveyed, and delivered to the Liquidation Trust, on behalf of, and for the benefit of, the Liquidation Trust Beneficiaries;

**WHEREAS**, the Liquidation Trust is established pursuant to the Plan for the primary purpose of liquidating the Liquidation Trust Assets and resolving the

Liquidation Trust Claims in an expeditious but orderly manner for the benefit of the Liquidation Trust Beneficiaries, with no objective to continue or engage in the conduct of a trade or business except, to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidation Trust under this Liquidation Trust Agreement;

**WHEREAS**, the Liquidation Trust Administrator shall have all necessary authority and power to take whatever actions are necessary to implement the provisions of this Liquidation Trust Agreement consistent with the relative provisions of the Plan and the Confirmation Order; and

**WHEREAS**, the Liquidation Trust is intended to qualify as a "grantor trust" for U.S. federal income tax purposes, pursuant to Sections 671-677 of the Internal Revenue Code of 1986, as amended (the "IRC"), and the regulations promulgated thereunder, with the Liquidation Trust Beneficiaries treated as the grantors and owners of the Liquidation Trust.

**NOW, THEREFORE**, in consideration of the premises and agreements contained herein, the parties hereto agree as follows:

## **ARTICLE I**

### **Establishment of Liquidation Trust**

**Section 1.1 Creation and Name.** There is hereby created a trust which shall be known as the "The ShoreBank Corporation Liquidation Trust," which is the trust created by the Plan (the "Liquidation Trust").

**Section 1.2 Declaration of Trust.** To declare the terms and conditions hereof, and subject to the Plan's provisions, including, but not limited to Article XIII therein, the Debtors and the Liquidation Trust Administrator have executed the Liquidation Trust Agreement, and effective on the Effective Date of the Plan, the Debtors hereby irrevocably transfer to the Liquidation Trust Administrator, and to its successors and assigns, all of the rights, title, and interests of the Debtors in and to the Liquidation Trust Assets (which include the Liquidation Trust Claims) and any and all proceeds of the foregoing and interest or income accruing with respect thereto, forever, under, and subject to the terms and conditions set forth in this Liquidation Trust Agreement and in the Plan for the benefit of the Liquidation Trust Beneficiaries and their successors and assigns as provided for in this Liquidation Trust Agreement and in the Plan. The Liquidation Trust Assets shall be liquidated, as applicable, and the net proceeds distributed, in accordance with the Liquidation Trust Agreement and the Plan.

**Section 1.3 Purpose of Liquidation Trust; Nature of Beneficial Interests.** The Liquidation Trust is organized for the primary purpose of liquidating the Liquidation Trust Assets and resolving the Liquidation Trust Claims, as applicable, and distributing the proceeds to the Liquidation Trust Beneficiaries with no objective to engage in the conduct of a trade or business. In furtherance of this purpose, the Liquidation Trust Administrator, as representative of all Liquidation Trust Beneficiaries, shall be responsible for pursuing, litigating, settling, or waiving any and all Liquidation Trust Claims and performing all obligations specified for the Liquidation Trust Administrator under the Liquidation Trust Agreement and the Plan. In the event of any inconsistency between the recitation of the duties and powers of the Liquidation Trust Administrator as set forth in the Liquidation Trust Agreement and the Plan, the provisions of the Plan shall govern.

**Section 1.4 Liquidation Trust Administrator's Acceptance.** The Liquidation Trust Administrator accepts the trust imposed upon it by the Liquidation Trust Agreement and agrees to observe and perform that trust, on and subject to the terms and conditions set forth in the Liquidation Trust Agreement and the Plan. In connection with and in furtherance of the purposes of the Liquidation Trust, the Liquidation Trust Administrator hereby acknowledges it has expressly accepted the transfer of the Liquidation Trust Assets, subject to the provisions of the Confirmation Order and the Plan, and the Liquidation Trust Administrator hereby further expressly assumes, undertakes, and shall control the liquidation and distribution of the Liquidation Trust Assets.

## **ARTICLE II**

### **Definitions**

The capitalized terms used but not defined in this Liquidation Trust Agreement shall have the meanings given to them in the Plan.

## **ARTICLE III**

### **Funding of the Liquidation Trust**

Expenses of the Liquidation Trust shall be paid out of the Operating Reserve and the Liquidation Trust, to the extent there are insufficient funds in the Operating Reserve. The Debtors hereby grant, release, assign, transfer, and deliver, on behalf of the Liquidation Trust Beneficiaries, the Liquidation Trust Assets to the Liquidation Trust Administrator as of the Effective Date, free and clear of all liens, claims, encumbrances and interests, in trust for the benefit of the Liquidation Trust Beneficiaries to be applied as specified in this Liquidation Trust Agreement and the Plan. In no event shall any part of the Liquidation Trust Assets revert to or be distributed to the Debtors.

## ARTICLE IV

### Liquidation Trust Claims

#### Section 4.1 Liquidation of the Liquidation Trust Claims.

(a) Subject to Section 4.1(b) of the Liquidation Trust Agreement, the Liquidation Trust Administrator shall take such steps as it deems necessary (having first obtained such approvals from the Liquidation Trust Advisory Board as may be necessary, if any) to investigate, pursue, litigate, settle, abandon, or compromise the Liquidation Trust Claims, to reduce the Liquidation Trust Claims to Cash and to make distributions of the Cash proceeds to the Liquidation Trust Beneficiaries as required under this Liquidation Trust Agreement and the Plan; provided, however, that the Liquidation Trust Administrator's actions with respect to disposition of the Liquidation Trust Claims shall be taken in a manner so as reasonably to maximize the present value of the Liquidation Trust Claims.

(b) As more fully described in Article VIII herein, the Liquidation Trust Administrator may transfer, sell, dispose of, settle, otherwise compromise, or abandon the Liquidation Trust Claims on the authorization of the Liquidation Trust Advisory Board, by majority vote, or as otherwise provided in the Liquidation Trust Agreement or the Plan.

**Section 4.2 Intervention; Substitution.** On the Effective Date, and without having to obtain any further order of the Bankruptcy Court, the Liquidation Trust Administrator shall be deemed to have intervened as plaintiff, movant, or additional party, or substituted as the real party in interest, as appropriate, in any Causes of Action (as defined in the Plan), including adversary proceedings, contested matters, avoidance actions, or motions which were Filed prior to the Effective Date, if any, where the subject matter of such action is a Liquidation Trust Claim and which have not been released or dismissed pursuant to the Plan.

## ARTICLE V

### Distributions of Liquidation Trust Recoveries

#### Section 5.1 Distributions of Liquidation Trust Recoveries.

Liquidation Trust Recoveries shall be distributed in accordance with the Liquidation Trust Agreement.

**Section 5.2 Application of Liquidation Trust Assets and Other Property.** The Liquidation Trust Administrator shall apply Liquidation Trust Assets in the order and reflecting the priorities set forth below:

- (a) FIRST, to pay the Liquidation Trust Expenses;
- (b) SECOND, to repay amounts, if any, borrowed by the

Liquidation Trust Administrator in accordance with this Liquidation Trust Agreement;

(c) THIRD, to make distributions to the Liquidation Trust Beneficiaries, in accordance with the Plan.

**Section 5.3 Time of Distributions.** The Liquidation Trust Administrator shall make distributions to the Liquidation Trust Beneficiaries at least semi-annually beginning with a calendar quarter that is not later than the end of the second calendar quarter after the Effective Date; provided, however, that, the Liquidation Trust Administrator shall not be required to make any such semi-annual distribution in the event that the aggregate amount available for distribution to such Claimholders is not sufficient, in the Liquidation Trust Administrator's discretion (after consultation with the Liquidation Trust Advisory Board, if necessary) to distribute monies to the Liquidation Trust Beneficiaries. From time to time, but no less frequently than quarterly, the Liquidation Trust Administrator, in consultation with the Liquidation Trust Advisory Board, shall estimate the amount required to pay then outstanding and reasonably anticipated Liquidation Trust Expenses. The Cash portion of Liquidation Trust Recoveries in excess of such actual and estimated Liquidation Trust Expenses shall be made available for distribution to the Liquidation Trust Beneficiaries in the amounts, on the dates, and subject to the other terms and conditions provided in this Plan. The Liquidation Trust Administrator will make continuing efforts to dispose of the Liquidation Trust Assets, make timely distributions, and not unduly prolong the duration of the Liquidation Trust.

**Section 5.4 Method of Delivery of Distributions.** All distributions to Liquidation Trust Beneficiaries shall be made by the Liquidation Trust Administrator (a) at the addresses set forth on the proofs of claim Filed by such Liquidation Trust Beneficiary (or the last known addresses of such Liquidation Trust Beneficiary if no proof of claim is Filed or if the Liquidation Trust Administrator has not been notified in writing of a change of address), (b) at the addresses set forth in any written notices of address changes delivered to the Liquidation Trust Administrator after the date of any related proof of claim, or (c) at the addresses reflected in the Schedules if no proof of claim has been Filed and the Liquidation Trust Administrator has not received a written notice of a change in address.

**Section 5.5 De Minimis Distributions.** No cash payment of less than \$50.00 shall be required to be made on account of any Allowed General Unsecured Claim of any Liquidation Trust Beneficiary until the date of the final distribution to Liquidation Trust Beneficiaries pursuant to this Liquidation Trust Agreement.

**Section 5.6 Delivery of Distributions and Tax Reporting.** Distributions to the Liquidation Trust Beneficiaries and tax reporting with respect thereto (which tax reporting shall be performed annually by or on behalf of the Liquidation Trust and at the sole expense and liability of the Liquidation Trust) shall be made by the Liquidation Trust Administrator, at the sole expense and liability of the Liquidation Trust; provided, however, that distributions to the Liquidation Trust Beneficiaries and tax reporting with respect thereto (which tax reporting shall be performed by or on behalf of

the Liquidation Trust and at the sole expense and liability of the Liquidation Trust) shall be made by the Liquidation Trust Administrator to the applicable servicer (a "Servicer"), to the extent that such a Servicer has been engaged to make distributions to such Liquidation Trust Beneficiaries and such engagement has not been terminated.

**Section 5.7 Undeliverable Distributions.** If any distribution to a Liquidation Trust Beneficiary is returned as undeliverable, no further distributions to such Liquidation Trust Beneficiary shall be made unless and until the Liquidation Trust Administrator is notified of such Liquidation Trust Beneficiary's then current address, at which time all missed distributions shall be made to such Liquidation Trust Beneficiary without interest. Amounts in respect of undeliverable distributions shall be returned to the Liquidation Trust until such distributions are claimed. All claims for undeliverable distributions shall be made on the later of the first (1st) anniversary of the Effective Date or 90 days from the date the Claim becomes an Allowed Claim. After such date, all unclaimed property on account of Allowed Claims shall revert to the Liquidation Trust and shall be distributed to Liquidation Trust Beneficiaries holding such Allowed Claims pursuant to the Plan. Upon such reversion, the claim of any Liquidation Trust Beneficiary, or its successors, with respect to such property shall be discharged and forever barred notwithstanding any federal or state escheat laws to the contrary.

## ARTICLE VI

### Claims

**Section 6.1 Administration of Claims and Disputed Claims.** The Liquidation Trust Administrator will have sole discretion (subject to the powers granted to the Liquidation Trust Advisory Board in the Plan and the Liquidation Trust Agreement) in all matters relating to the administration of Claims. For the purposes of the Liquidation Trust Agreement, a "Disputed Claim" shall mean for distribution purposes, a Claim, or any portion thereof, that is neither an Allowed Claim nor a Disallowed Claim.

**Section 6.2 No Distributions Pending Allowance.** No payments or distributions shall be made with respect to all or any portion of a Disputed Claim unless and until all objections to such Disputed Claim have been settled or withdrawn or have been determined by Final Order, and the Disputed Claim, or some portion thereof, has become an Allowed Claim and the remainder has become a Disallowed Claim. All objections to Claims must be Filed on or before the Claims Objection Deadline.

**Section 6.3 Disputed Claims Reserve.** The Liquidation Trust shall establish a reserve for Disputed Claims (the "Disputed Claims Reserve"). The Liquidation Trust Administrator shall withhold the Disputed Claims Reserve from the Cash to be distributed to particular classes under the Plan. The Disputed Claims Reserve shall be equal to 100% of distributions to which Holders of Disputed Claims in Class 4, Class 5, and Class 6 would be entitled under the Plan as of such date if such Disputed Claims in Class 4, Class 5, and Class 6 were Allowed Claims in their (a) Face Amount or (b) estimated amount of such Disputed Claim in Class 4, Class 5, and Class 6 as approved in

an Order by the Bankruptcy Court. The Debtors or the Liquidation Trust Administrator, as the case may be, may request estimation for any Disputed Claim including, without limitation, any Disputed Claim that is contingent or unliquidated. If practicable and as set forth herein, the Debtors or the Liquidation Trust Administrator, as the case may be, will invest any Cash that is withheld as the applicable Disputed Claims Reserve in an appropriate manner to insure the safety of the investment; provided that, if the Liquidation Trust Administrator determines in its discretion (after consultation with the Liquidation Trust Advisory Board, if necessary) that the administrative costs associated with any such investment are reasonably expected to exceed the return on such investment, the Liquidation Trust Administrator may determine not to invest such Cash. Nothing in the Liquidation Trust Agreement or the Plan shall be deemed to entitle the holder of a Disputed Claim to postpetition interest on such Claim. Notwithstanding anything to the contrary herein, the Liquidation Trust Administrator shall not be required to segregate the Disputed Claim Reserve from other monies held by the Liquidation Trust Administrator pursuant to the Liquidation Trust Agreement.

#### **Section 6.4 Maintenance of the Disputed Claim Reserve.**

Distributions of Liquidation Trust Recoveries with respect to Disputed Claims shall be held in the Disputed Claims Reserve as set forth in the Liquidation Trust Agreement. The Liquidation Trust Administrator shall also place in the Disputed Claims Reserve any dividends, payments, or other distributions made on account of, as well as any obligations arising from, the property withheld in the Disputed Claims Reserve, to the extent that such property continues to be withheld in the Disputed Claims Reserve at the time such distributions are made or such obligations arise. If practicable, the Liquidation Trust Administrator shall invest any Cash that is withheld in the Disputed Claims Reserve in a manner that shall yield a reasonable net return, taking into account the safety of the investment provided that, if the Liquidation Trust Administrator determines in its discretion (after consultation with the Liquidation Trust Advisory Board, if necessary) that the administrative costs associated with any such investment are reasonably expected to exceed the return on such investment, the Liquidation Trust Administrator may determine not to invest such Cash. Nothing in the Liquidation Trust Agreement shall be deemed to entitle the holder of a Disputed Claim to postpetition interest on such Claim or earnings from the investment on withheld cash.

#### **Section 6.5 Distributions After Allowance.**

(a) Payments and distributions to each respective Liquidation Trust Beneficiary on account of a Disputed Claim, to the extent that it ultimately becomes an Allowed Claim, shall be made by the Liquidation Trust Administrator and in the same manner provided in Articles IX and X of the Plan.

(b) Payments and distributions from the Disputed Claims Reserve shall be made as appropriate to the Holder of any Disputed Claim that has become an Allowed Claim, as soon thereafter as is reasonably practicable after the date such Disputed Claim becomes an Allowed Claim. Such distributions shall be based upon the cumulative distributions that would have been made to the Holder of such Claim under the

Plan if the Disputed Claim had been Allowed on the Effective Date (excluding any present value calculations) and shall not be limited by the Disputed Claim amounts previously reserved with respect to such Disputed Claim to the extent that additional amounts are available therefore, but only to the extent that such additional amounts have not yet been distributed to Holders of Allowed Claims. Upon such distribution, the reserve shall be reduced by an amount equal to the amount reserved with respect to such Disputed Claim. To the extent the amount reserved for such Disputed Claim exceeds the Allowed Amount, if any, of such Claim, the remainder shall be deposited in the Supplemental Distribution Account and distributed to Holders of Allowed Claims in accordance with the provisions of Articles V and IX of the Plan.

**Section 6.6 No Partial Distributions.** The Liquidation Trust Administrator shall not make any partial distributions to any holder of any Disputed Claims pending resolution of such Disputed Claims, provided that, the foregoing shall not limit, impair, or otherwise affect the right of such holder to receive, in accordance with the Plan and this Liquidation Trust Agreement, distributions in respect of any other Claims of such holder that are Allowed Claims.

**Section 6.7 Other Claims Pending.** Notwithstanding any other provision of the Plan or the Liquidation Trust Agreement, absent the consent of the Liquidation Trust Advisory Board, the Liquidation Trust Administrator may not pay any distribution to entities who may be liable to the Liquidation Trust with respect to a Liquidation Trust Claim or other Cause of Action, which Disputed Claim may be paid, if at all, only after the holder of such Claim has discharged its liability to the Liquidation Trust on account of the Liquidation Trust Claim or other Cause of Action, by settlement or otherwise.

**Section 6.8 Federal Income Tax Treatment and Reporting Duties.**

(a) Federal Income Tax. The "taxable year" of the Liquidation Trust shall be the "calendar year" (or such other period as required by Federal income tax law) as those terms are defined in Section 441 of the Internal Revenue Code. The Liquidation Trust Administrator shall file returns for the Liquidation Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a). To the extent required under Federal income tax law, the Liquidation Trust Administrator shall annually (within seventy-five (75) days after the end of each calendar year) send to each Liquidation Trust Beneficiary a separate statement setting forth the Liquidation Trust Beneficiary's share of items of income, gain, loss, deduction, or credit and will instruct all such Liquidation Trust Beneficiaries to report such items on their federal income tax returns. Such a statement shall also be sent within sixty (60) days of the dissolution of the Liquidation Trust, and the Liquidation Trust's taxable income, gain, loss, deduction, or credit will be allocated to the Liquidation Trust Beneficiaries in accordance with their relative beneficial interests in the Liquidation Trust.

(b) Tax Withholdings. The Liquidation Trust Administrator may withhold and pay to the appropriate taxing authority all amounts required to be withheld

pursuant to the Internal Revenue Code, as amended, or any provision of any foreign, state, or local tax law with respect to any allocation, payment, or distribution to the Liquidation Trust Beneficiaries. All such amounts withheld, and paid to the appropriate taxing authority, shall be treated as amounts distributed to such Liquidation Trust Beneficiaries for all purposes of this Liquidation Trust Agreement. The Liquidation Trust Administrator shall be authorized to collect such tax information from the Liquidation Trust Beneficiaries (including, without limitation, social security numbers or other tax identification numbers) as it in its sole discretion deems necessary to effectuate the Plan, the Confirmation Order, and this Liquidation Trust Agreement. Notwithstanding any other provision of the Plan or this Liquidation Trust Agreement: (a) each Liquidation Trust Beneficiary that is to receive a distribution pursuant to the Plan and this Liquidation Trust Agreement shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding, and other tax obligations, on account of such distribution, and (b) no distribution shall be made to or on behalf of such Liquidation Trust Beneficiary unless and until such Liquidation Trust Beneficiary has made arrangements satisfactory to the Liquidation Trust Administrator, or the Subordinated Indenture Trustee, as the case may be, for the payment and satisfaction of such tax obligations.

(c) Other. The Liquidation Trust Administrator shall also file any other statements, returns, or disclosures relating to the Liquidation Trust that are required by any governmental authority.

## ARTICLE VII

### **General Powers, Rights, and Obligations of the Liquidation Trust Administrator; Compensation of Liquidation Trust Administrator and Liquidation Trust Advisory Board Members**

**Section 7.1 Appointment of Liquidation Trust Administrator.** The Person designated as Liquidation Trust Administrator pursuant to the procedures described in the Plan shall become the Liquidation Trust Administrator upon the Effective Date.

**Section 7.2 Legal Title.** The Liquidation Trust Administrator shall hold legal title to all Liquidation Trust Assets except that the Liquidation Trust Administrator may, upon approval by the Liquidation Trust Advisory Board, cause legal title or evidence of title to any of the Liquidation Trust Assets to be held by any nominee or person, on such terms, in such manner and with such power as the Liquidation Trust Administrator may determine advisable.

**Section 7.3 Estate Property; Discharge of Obligations.** To the extent any property or other assets are not transferred to the Liquidation Trust, but rather, remain in the Debtors' Estate, the Liquidation Trust Administrator shall have all necessary authority to take whatever actions are necessary to sell, transfer, abandon, or otherwise dispose of such property and any necessary actions related thereto; provided, however, that, the Liquidation Trust Administrator, upon the Effective Date, shall forever be discharged

from, and shall not be responsible for, any and all duties and obligations in connection with maintaining or preserving any such property or assets that remain in the Debtors' Estates.

#### **Section 7.4 General Powers.**

(a) Except as otherwise provided in the Liquidation Trust Agreement or the Plan, and subject to the retained jurisdiction of the Bankruptcy Court as provided for in the Plan, but without prior or further authorization, the Liquidation Trust Administrator, in consultation with the Liquidation Trust Advisory Board (if necessary), may control and exercise authority over the Liquidation Trust Assets, over the acquisition, management, and disposition thereof, and over the management and conduct of the activities of the Liquidation Trust to the same extent as if the Liquidation Trust Administrator were the sole owner of the Liquidation Trust Assets in its own right. No person dealing with the Liquidation Trust shall be obligated to inquire into the Liquidation Trust Administrator's authority in connection with the acquisition, management, or disposition of Liquidation Trust Assets.

(b) In connection with the management of the Liquidation Trust Assets, the Liquidation Trust Administrator, except as otherwise expressly limited in the Liquidation Trust Agreement, the Plan, and the Confirmation Order, shall have, in addition to any powers conferred on it by any other provision of the Liquidation Trust Agreement, the power to take any and all actions as are necessary or advisable to effectuate the purposes of the Liquidation Trust in consultation with the Liquidation Trust Advisory Board (if necessary), including, without limitation, the power and authority:

(i) to accept the assets transferred and provided to the Liquidation Trust under the Liquidation Trust Agreement and the Plan;

(ii) to distribute the proceeds from the liquidation of the Liquidation Trust Assets in accordance with the terms of the Liquidation Trust Agreement and the Plan;

(iii) to sell, convey, transfer, assign, liquidate, collect, or abandon Liquidation Trust Assets, or any part thereof or any interest therein, on such terms and for such consideration as the Liquidation Trust Administrator deems desirable or appropriate. For the avoidance of doubt, to the extent the Liquidation Trust Administrator believes any asset may cost more to remove or sell than such asset is worth, the Liquidation Trust Administrator, in its sole discretion, may abandon such property, including but not limited to the furniture, fixtures, and equipment, without the need to file any other motion (or obtain further Bankruptcy Court approval);

(iv) to prosecute all suits as may be

necessary, appropriate, or incident to the purposes of the Liquidation Trust, including, the Liquidation Trust Claims;

(v) to endorse the payment of notes or other obligations of any person or to make contracts with respect thereto;

(vi) to engage in all acts that would constitute ordinary course of business in performing the obligations of a trustee under a liquidating trust of this type;

(vii) to remove all or any of the Liquidation Trust Assets or the situs of administration of the Liquidation Trust from one jurisdiction to another jurisdiction at any time or from time to time;

(viii) in connection with any property held under the Liquidation Trust Agreement that is distributable or payable to a minor, to transfer and pay over all or any portion of the property to the minor, or to a guardian of the minor's property, whenever appointed, without requiring ancillary guardianship, or to the minor's parent or the person with whom the minor resides, or to any custodian under any Uniform Gifts to Minors Act or Uniform Transfer to Minor Act with power to select any person or trust company (including any fiduciary hereunder) to be such custodian and with power to extend such custodianship to age twenty-one (21) years, without any obligation to see to the use or application of the property or to make inquiry with respect to any other property available for the use of the minor, the receipt by such minor, guardian, parent, person, or custodian to be a complete discharge as to such transfer or payment;

(ix) to establish and maintain funds, reserves, and accounts within the Liquidation Trust as deemed by the Liquidation Trust Administrator, in its discretion, to be useful in carrying out the purposes of the Liquidation Trust;

(x) to sue and be sued and participate, as a party or otherwise, in any judicial, administrative, arbitration, or other proceeding and to settle, compromise, dismiss, or abandon any such proceeding, except as otherwise provided in the Liquidation Trust Agreement or the Plan;

(xi) in accordance with the Liquidation Trust Agreement, and subject to the approval of the Liquidation Trust Advisory Board, to indemnify (and purchase insurance indemnifying) the Liquidation Trust Administrator, the Liquidation Trust Advisory Board, and the employees, agents, and representatives of the Liquidation Trust or the Liquidation Trust Administrator and the members of the Liquidation Trust Advisory Board, to the fullest extent permitted by applicable law;

(xii) to delegate any or all of the discretionary power and authority herein conferred at any time with respect to all or any portion of the Liquidation Trust to any one or more reputable individuals or recognized institutional advisors or investment managers without liability for any action taken or omission made because of such delegation, except for such liability as is provided herein;

(xiii) to consult with the Debtors' Professionals and the Voting Agent at such times and with respect to such issues relating to the conduct of the Liquidation Trust as the Liquidation Trust Administrator considers desirable;

(xiv) to make all tax withholdings, file tax information returns, make tax elections by and on behalf of the Liquidation Trust, and file tax returns for the Liquidation Trust;

(xv) to compel examination of witnesses and production of documents with respect to the Liquidation Trust Claims pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedures; and

(xvi) to perform such other acts and undertake such other conduct as the Liquidation Trust Administrator believes is necessary to carry out the purposes and intent of this Liquidation Trust.

The Liquidation Trust Administrator shall not at any time, on behalf of the Liquidation Trust or the Liquidation Trust Beneficiaries, enter into or engage in any trade or business, and the Liquidation Trust Administrator shall not use or dispose of any part of the Liquidation Trust Assets in furtherance of any trade or business.

Notwithstanding the foregoing, nothing herein shall be construed to permit the Liquidation Trust Administrator to directly contravene an express written direction of the Liquidation Trust Advisory Board.

**Section 7.5 Retention of Attorneys, Accountants, and Other Professionals.** The Liquidation Trust Administrator may retain such law firms, accounting firms, experts, advisors, consultants, investigators, appraisers, auctioneers, or other professionals as it may deem necessary (collectively, the "Liquidation Trust Professionals"), in its sole discretion, to aid in the performance of its responsibilities pursuant to the terms of this Plan including, without limitation, the liquidation and distribution of Liquidation Trust Assets and the pursuit and prosecution of Liquidation Trust Claims.

**Section 7.6 Compensation of Liquidation Trust Administrator, Liquidation Trust Advisory Board Members, and Liquidation Trust Professionals.**

(a) The Liquidation Trust Administrator shall receive, as compensation for his or her services rendered pursuant to the Plan and the Liquidation Trust Agreement, payment comparable to that which a chapter 7 trustee receives under section 326(a) of the Bankruptcy Code (plus reimbursement of reasonable costs and expenses incurred in furtherance of the Liquidation Trust Administrator's Duties under the Plan and the Liquidation Trust Agreement) from the Operating Reserve (the "Liquidation Trust Administrator's Compensation"). In addition to the foregoing, the Liquidation Trust Administrator shall receive an additional \$5,000 for each of the first three months and \$2,500 per month thereafter. The Liquidation Trust Advisory Board may negotiate with the Liquidation Trust Administrator a reasonable deduction of the Liquidation Trust Administrator's Compensation if the circumstances and level of work required with respect to the Liquidation Trust warrants such a reduction. The compensation and reimbursement of expenses of the Liquidation Trust Administrator shall be paid only out of the Operating Reserve.

(b) Members of the Liquidation Trust Advisory Board may agree to receive fair and reasonable compensation (and reimbursement of reasonable costs and expenses) in connection with their services provided pursuant to the Plan and the Liquidation Trust Agreement. Any such agreement for compensation shall be filed with the Bankruptcy Court and served on the notice parties pursuant to Section 9.2 herein. The notice parties shall have fourteen (14) days from the receipt of such notice to file an objection, if any, with the Bankruptcy Court to any such agreement.

(c) The Liquidation Trust Administrator Professionals shall continue to prepare monthly statements in the same manner and in the same detail as required pursuant to the Professional Fee Order, and the Liquidation Trust Administrator Professionals shall serve such statements on each member of the Liquidation Trust Advisory Board. In the event two or more members of the Liquidation Trust Advisory Board object to the reasonableness of such fees and expenses by serving such objection within 21 days from the date such statement is received, the matter shall be submitted to the Bankruptcy Court for approval of the reasonableness of such fees and expenses. All reasonable fees, costs, and expenses associated with the administration of the Liquidation Trust and distribution to Liquidation Trust Beneficiaries shall be in accordance with the Plan.

**Section 7.7 Standard of Care; Exculpation.** The Liquidation Trust Administrator shall perform the duties and obligations imposed on the Liquidation Trust Administrator by the Liquidation Trust Agreement with reasonable diligence and care under the circumstances. The Liquidation Trust Administrator shall not be personally liable to the Liquidation Trust or to any Liquidation Trust Beneficiary (or any successor of such entities) except for such of its own acts as shall constitute bad faith, willful misconduct, gross negligence, willful disregard of its duties, or material breach of the Liquidation Trust Agreement. Except as aforesaid, the Liquidation Trust Administrator

shall be defended, held harmless, and indemnified from time to time from the Liquidation Trust Assets (but not from or by the Liquidation Trust Beneficiaries or any of the parties released in the Plan), against any and all losses, claims, costs, expenses, and liabilities to which the Liquidation Trust Administrator may be subject by reason of the Liquidation Trust Administrator's execution in good faith of its duties under the Liquidation Trust Agreement. The Liquidation Trust Administrator's principals, officers, employees, and agents shall be likewise defended, held harmless, and indemnified. Notwithstanding any other provision of this Liquidation Trust Agreement, the Liquidation Trust Administrator and its principals, officers, employees, and agents shall not be liable and shall be defended, held harmless, and indemnified for any action or inaction taken at the direction of the Liquidation Trust Advisory Board.

**Section 7.8 Reliance by Liquidation Trust Administrator.** The Liquidation Trust Administrator may rely, and shall be fully protected personally in acting upon any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order, or other instrument or document that it has no reason to believe to be other than genuine and to have been signed or presented other than by the proper party or parties or, in the case of facsimile transmissions, to have been sent other than by the proper party or parties, in each case without obligation to satisfy itself that the same was given in good faith and without responsibility for errors in delivery, transmission, or receipt. In the absence of its bad faith, willful misconduct, gross negligence, willful disregard of its duties, or material breach of the Liquidation Trust Agreement, the Liquidation Trust Administrator may rely as to the truth of statements and correctness of the facts and opinions expressed therein and shall be fully protected personally in acting thereon. The Liquidation Trust Administrator may consult with legal counsel, accounting, tax, or other professionals within the performance of its duties, and shall be fully protected in respect of any action taken or suffered by it in accordance with such advice or opinion of legal counsel or other professionals. The Liquidation Trust Administrator may at any time seek instructions from the Bankruptcy Court concerning the acquisition, management, or disposition of the Liquidation Trust Assets or any other matter pertaining to the Liquidation Trust Agreement and the Plan.

**Section 7.9 Action Upon Instructions.** If in performing the Liquidation Trust Administrator's duties under the Liquidation Trust Agreement, the Liquidation Trust Administrator is required to decide between alternative courses of action, or the Liquidation Trust Administrator is unsure of the application of any provision of this Liquidation Trust Agreement or the Plan, then the Liquidation Trust Administrator may promptly deliver a notice to the Liquidation Trust Advisory Board requesting written instructions as to the course of action to be taken by the Liquidation Trust Administrator. If the Liquidation Trust Administrator does not receive such written instructions within 10 Business Days after it has delivered such notice, the Liquidation Trust Administrator may, but shall be under no duty to, take or refrain from taking such action not inconsistent with this Liquidation Trust Agreement as the Liquidation Trust Administrator shall deem advisable. If the Liquidation Trust Administrator does not receive direction from the Liquidation Trust Advisory Board within the requisite time period or the Liquidation Trust Administrator believes that a court order is necessary or advisable to protect the interests of

the Liquidation Trust Beneficiaries, the Liquidation Trust Administrator may apply to the Bankruptcy Court for a determination as to the course of action to be taken by the Liquidation Trust Administrator.

**Section 7.10 Investment Obligations.** Unless otherwise directed by the Liquidation Trust Advisory Board, the Liquidation Trust Administrator shall invest and re-invest the liquid Liquidation Trust Assets consistent with the obligations of a trustee under section 345 of the Bankruptcy Code; provided, that, the Liquidation Trust Administrator shall be limited to investing such liquid Liquidation Trust Assets in demand and time deposits, such as short-term certificates of deposit, in banks or other savings institutions or other temporary liquid investments such as Treasury bills; provided, further, that if the Liquidation Trust Administrator determines in its discretion (after consultation with the Liquidation Trust Advisory Board, if necessary) that the administrative costs associated with any such investment are reasonably expected to exceed the return on such investment, the Liquidation Trust Administrator may determine not to invest such liquid Liquidation Trust Assets. The Liquidation Trust Administrator shall not be liable in any way for any loss or other liability arising from any investment, or the sale or other disposition of any investment, made in accordance with this Section.

**Section 7.11 Attributes of Liquidating Trust Taxable Income.** Except to the extent otherwise provided herein, for Federal Income tax purposes, the attribution of taxable income or credits of the Liquidation Trust shall be determined by reference to the manner in which an amount of Cash equal to such taxable income would be distributed (without regard to any restriction on distributions described herein) if, immediately prior to such deemed distribution, the Liquidation Trust had distributed all of its other assets (valued for this purpose at their "tax book value") to Liquidation Trust Beneficiaries, taking into account all prior and concurrent distributions from the Liquidation Trust. Similarly, taxable losses or deductions of the Liquidation Trust shall be attributed by reference to the manner in which an economic loss would be borne immediately after a liquidating distribution of the remaining Liquidation Trust Assets. The tax book value of the Liquidation Trust Assets for this purpose shall equal their fair market value on the date hereof or, if later, the date such assets were acquired by the Liquidation Trust, adjusted in either case in accordance with tax accounting principles prescribed by the IRS, the Treasury Regulations, and other applicable administrative and judicial authorities and pronouncements.

**Section 7.12 Tax Filings and Notices.** The Liquidation Trust Administrator shall treat the Liquidation Trust as a grantor trust pursuant to Treas. Reg. § 1.671-1(a), and shall prepare and provide to, or file with, the appropriate parties such notices, tax returns, and other filings, including all tax returns for the Liquidation Trust, as may be required under the Plan, the Internal Revenue Code, or other applicable law including any notices required to report interest, dividends, or gross proceeds. The Liquidation Trust Administrator shall comply with all withholding and reporting requirements imposed by any taxing authority, and all distributions made hereunder shall be subject to any such withholding and reporting requirements. If the Liquidation Trust shall be required to withhold tax from a distribution to a Liquidation Trust Beneficiary, the

amount withheld shall be treated for all purposes of this Liquidation Trust Agreement as having been distributed to such Liquidation Trust Beneficiary. The Liquidation Trust Administrator, or the applicable Servicer (if any), shall, when specifically requested by a Liquidation Trust Beneficiary in writing, provide such Liquidation Trust Beneficiary with such tax information as is necessary for the preparation by such Liquidation Trust Beneficiary of its income tax return.

**Section 7.13 Other Reporting.** As soon as practicable after the end of each calendar year and six (6) months thereafter, and as soon as practicable upon termination of the Liquidation Trust, the Liquidation Trust Administrator shall submit to each Trust Beneficiary appearing on his or her records as of the end of such period or such date of termination a written report including: (i) financial statements of the Liquidation Trust for such period; and (ii) a description of any action taken by the Liquidation Trust Administrator in the performance of his or her duties which materially affects the Liquidation Trust and of which notice has not previously been given to Liquidation Trust Beneficiaries. The Liquidation Trust's taxable income will be allocated pro rata to the Liquidation Trust Beneficiaries in accordance with each such Liquidation Trust Beneficiary's relative beneficial interest, with appropriate adjustments for any change in a holder's percentage interest during the year.

**Section 7.14 Timely Performance.** The Liquidation Trust Administrator shall make continuing efforts to liquidate the Liquidation Trust Assets, prosecute or settle the Liquidation Trust Claims, make timely distributions, and not unduly prolong the duration of the Liquidation Trust.

**Section 7.15 Consultation with the Liquidation Trust Advisory Board.** The Liquidation Trust Administrator shall, when advisable, and as necessary, with the Liquidation Trust Advisory Board when carrying out the purposes of the Liquidation Trust and shall obtain approvals from the Liquidation Trust Advisory Board as required under the Liquidation Trust Agreement.

**Section 7.16 Removal.** In the event of gross negligence or willful misconduct, the Liquidation Trust Administrator may be removed by a two-thirds affirmative vote of the Liquidation Trust Advisory Board or, if the requisite Liquidation Trust Advisory approval is not obtained, upon order of the Bankruptcy Court upon good cause shown. Such removal shall become effective on the later to occur of: (i) the date action is taken by the Liquidation Trust Advisory Board, (ii) the entry of a Final Order of the Bankruptcy Court, or (iii) the appointment of a successor by the Liquidation Trust Advisory Board and the acceptance by such successor of such appointment.

**Section 7.17 Resignation.** The Liquidation Trust Administrator may resign by giving not less than ninety (90) days prior written notice thereof to the members of the Liquidation Trust Advisory Board. Such resignation shall become effective on the later to occur of: (i) the day specified in such notice; and (ii) the appointment of a successor by the Liquidation Trust Advisory Board and the acceptance by such successor of such appointment. If a successor Liquidation Trust Administrator is not appointed or

does not accept his or her appointment within ninety (90) days following delivery of notice of resignation, the Liquidation Trust Administrator may petition any court of competent jurisdiction for the appointment of a successor Liquidation Trust Administrator.

**Section 7.18 Appointment of Successor upon Removal, Resignation or Incapacity.** If the Liquidation Trust Administrator is removed, resigns, or otherwise is incapable of serving as Liquidation Trust Administrator (as determined by an order of the Bankruptcy Court), the Liquidation Trust Advisory Board shall appoint a successor Liquidation Trust Administrator by an affirmative majority vote of the Liquidation Trust Advisory Board. If a successor Liquidation Trust Administrator is not appointed or does not accept his or her appointment pursuant to the preceding sentence of this section with ninety (90) days following such action for removal, delivery of notice of resignation, or incapacity of the predecessor Liquidation Trust Administrator, as the case may be, any Trust Beneficiary may petition any court of competent jurisdiction for the appointment of a successor Liquidation Trust Administrator.

**Section 7.19 Acceptance of Appointment by Successor Liquidation Trust Administrator.** Any successor Liquidation Trust Administrator appointed hereunder shall execute an instrument accepting such appointment hereunder and shall file such acceptance with the Liquidation Trust records. Thereupon, such successor Liquidation Trust Administrator shall, without any further act, become vested with all the estates, properties, rights, powers, trusts, and duties of his or her predecessor in the Liquidation Trust with like effect as if originally named herein; provided, however, that a removed or resigning Liquidation Trust Administrator shall, nevertheless, when requested in writing by the successor Liquidation Trust Administrator, execute and deliver an instrument or instruments conveying and transferring to such successor Liquidation Trust Administrator under the Liquidation Trust all the estates, properties, rights, powers, and trusts of such predecessor Liquidation Trust Administrator.

**Section 7.20 Fees, Costs, and Expenses.** All reasonable fees, costs, and expenses associated with the administration of the Liquidation Trust and distribution to Liquidation Trust Beneficiaries shall be the responsibility of and be paid by the Liquidation Trust from the Operating Reserve.

## **ARTICLE VIII**

### **Termination**

The Liquidation Trust shall continue until the earlier of (i) the date that termination of the Liquidation Trust is approved by the Bankruptcy Court after distribution of all of the Net Available Cash and Liquidation Trust Recoveries, or (ii) the date that is five (5) years from the Effective Date unless extended as set forth in this paragraph. The Liquidation Trust Advisory Board may extend, for the purpose for the Liquidation Trust to liquidate Liquidation Trust Assets or otherwise fulfill the purposes of the Liquidation Trust, such five (5) year term for finite periods conditioned upon receiving Bankruptcy Court approval within six (6) months before the end of the term. The Liquidation Trust

Administrator shall at all times endeavor to liquidate the Liquidation Trust Assets expeditiously, and in no event shall the Liquidation Trust Administrator unduly prolong the duration of the Liquidation Trust. On termination of the Liquidation Trust, the Liquidation Trust Administrator shall advise the Bankruptcy Court in writing of its termination. Notwithstanding the foregoing, after the termination of the Liquidation Trust, the Liquidation Trust Administrator shall have the power to exercise all the powers, authorities, and discretions herein conferred solely for the purpose of liquidating and winding up the affairs of the Liquidation Trust. On distribution of all of the proceeds from the Liquidation Trust Assets, the Liquidation Trust Administrator shall retain the books, records, and files that shall have been delivered to or created by the Liquidation Trust Administrator. At the Liquidation Trust Administrator's discretion, all of such records and documents may be destroyed at any time after two years from the later of (a) distribution of all of the Liquidation Trust Recoveries, (b) a Final Order terminating the Liquidation Trust, or (c) such other time as provided for in a Final Order of the Bankruptcy Court.

## **ARTICLE IX**

### **Miscellaneous**

**Section 9.1 Limitation on Transferability.** It is understood and agreed that the beneficial interests in the Liquidation Trust shall be non-assignable except by death or by operation of law. An assignment by death or operation of law shall not be effective until appropriate notification and proof thereof is submitted to the Liquidation Trust Administrator by the executor or administrator of the estate of the Trust Beneficiary, in the case of the death of any individual Trust Beneficiary, or the successor to the Trust Beneficiary, in the case of any assignment by operation of law, and the Liquidation Trust Administrator may continue to pay all amounts to or for the benefit of the assigning Liquidation Trust Beneficiaries until receipt of proper notification and proof of such assignment. The Liquidation Trust Administrator may rely upon such proof without the requirement of any further investigation.

**Section 9.2 Notices.** All notices, requests, or other communications required or permitted to be made in accordance with this Liquidation Trust Agreement shall be in writing and shall be delivered personally or by facsimile transmission or mailed by first-class mail or by overnight delivery service:

If to the Liquidation Trust Administrator, at:

[•]

**with copies to:**

Liquidation Trust Advisory Board, at:

[•]

Attn: [•]

and

[•]

Attn: [•]

and

[•]

Attn: [•]

If to the Debtors, at:

The ShoreBank Corporation  
135 South LaSalle Street, Suite 2040  
Chicago, IL 60603  
Telephone: (312) 662-6088  
Facsimile: ([•])  
Attn: George P. Surgeon, President/CEO

**with copies to:**

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP  
155 N. Wacker Drive, Suite 2700  
Chicago, Illinois 60606-1720  
Telephone: (312) 407-0700  
Facsimile: (312) 407-0411

Attn: George N. Panagakis, Esq.

Notices sent out by facsimile transmission shall be deemed delivered when actually received, and notices sent by first-class mail shall be deemed delivered when received, and notices sent by overnight delivery service shall be deemed delivered the next business day after mailing.

**Section 9.3 Effectiveness.** The Liquidation Trust Agreement shall become effective on the Effective Date.

**Section 9.4 Intention of Parties to Establish Trust.** The Liquidation Trust Agreement is intended to create a trust, and the trust created hereunder shall be governed and construed in all respects as a trust.

**Section 9.5 Investment Company Act.** The Liquidation Trust is organized as a liquidating entity in the process of liquidation, and therefore should not be considered, and the Liquidation Trust does not and shall not hold itself out as, an "investment company" or an entity "controlled" by an "investment company" as such terms are defined in the Investment Company Act. The Liquidation Trust Administrator shall act as it reasonably deems necessary or advisable in its sole discretion to prevent the Liquidation Trust from being subject to the registration requirements of the Investment Company Act.

**Section 9.6 Counterparts.** The Liquidation Trust Agreement may be executed in one or more counterparts (via facsimile or otherwise), each of which shall be deemed an original but which together shall constitute but one and the same instrument.

**Section 9.7 Governing Law.** The Liquidation Trust Agreement shall be governed by, construed under, and interpreted in accordance with the laws of the State of Illinois.

**Section 9.8 Headings.** Sections, subheadings, and other headings used in the Liquidation Trust Agreement are for convenience only and shall not affect the construction of the Liquidation Trust Agreement.

**Section 9.9 Severability.** Any provision of the Liquidation Trust Agreement which is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions of the Liquidation Trust Agreement, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable any such provision in any other jurisdiction.

**Section 9.10 Amendments.** The Liquidation Trust Agreement may be amended from time to time by the Liquidation Trust Administrator with the consent of the Liquidation Trust Advisory Board to better give effect to the purposes of the Liquidation Trust Agreement. The Liquidation Trust Administrator may amend the Liquidation Trust Agreement without the consent or approval of the Liquidation Trust Advisory Board as provided herein including (i) to preserve the legal status of the Liquidation Trust as a trust under applicable state or federal laws and prevent the Debtors or the Liquidation Trust from being subject to the reporting or registration requirements of the Exchange Act or the Investment Company Act and (ii) to satisfy the requirements of the Internal Revenue Code and Treasury Regulations thereunder with respect to liquidating trusts and grantor trusts and of any federal or state securities laws or regulations if such amendment does not materially adversely affect the interests of the Liquidation Trust Beneficiaries. Notwithstanding this Section 9.10, any amendments to this Liquidation Trust Agreement shall not be inconsistent with the purpose and intention of the Liquidation Trust to distribute in an expeditious but orderly manner the Liquidation Trust Assets.

**Section 9.11 Successors.** The Liquidation Trust Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

**Section 9.12 No Suits by Liquidation Trust Beneficiaries.** No Trust Beneficiary shall have any right by virtue of any provision of the Liquidation Trust Agreement to institute any action or proceeding in law or in equity against any party other than the Liquidation Trust Administrator, including but not limited to any action or proceeding with respect to the Liquidation Trust Assets.

**Section 9.13 Irrevocability.** The Liquidation Trust is irrevocable, but is subject to amendment as provided for herein.

**Section 9.14 Trust Continuance.** The death, dissolution, resignation, incompetency, or removal of the Liquidation Trust Administrator shall not operate to terminate the Liquidation Trust created by this Liquidation Trust Agreement or to revoke any existing agency created under the terms of this Liquidation Trust Agreement or invalidate any action theretofore taken by the Liquidation Trust Administrator. In the event of the resignation or removal of the Liquidation Trust Administrator, the Liquidation Trust Administrator shall promptly (a) execute and deliver such documents, instruments, and other writings as may be requested by the Bankruptcy Court or reasonably requested by the Liquidation Trust Advisory Board or a successor trustee to effect the termination of the Liquidation Trust Administrator's capacity under this Liquidation Trust Agreement and the conveyance of the Liquidation Trust Assets then held by the Liquidation Trust Administrator to the successor, (b) deliver to the Bankruptcy Court or the successor trustee all documents, instruments, records, and other writings related to the Liquidation Trust as may be in the possession of the Liquidation Trust Administrator, and (c) otherwise assist and cooperate in effecting the assumption of its obligations and functions by a successor trustee.

**Section 9.15 Enforcement and Administration.** The Bankruptcy Court shall enforce and administer the provisions of the Liquidation Trust Agreement as set forth in the Plan.

**Section 9.16 Cash or Cash Equivalents.** The Liquidation Trust shall not retain cash or cash equivalents in excess of a reasonable amount to meet claims and contingent liabilities or to maintain the value of the Liquidation Trust Assets during liquidation or to fund litigation.

**Section 9.17 Preservation of Privileges and Defenses.** In connection with the rights, claims, Causes of Action, and Liquidation Trust Claims that constitute the Liquidation Trust Assets, any attorney-client privilege, work-product privilege, or other privilege or immunity attaching to any documents or communications (whether written or oral) (collectively, the "Privileges") transferred to the Liquidation Trust shall vest in the Liquidation Trust Administrator and the Liquidation Trust Advisory Board and their representatives, and the Debtors, the Liquidation Trust Administrator, and the Liquidation Trust Advisory Board are authorized to take all necessary actions to effectuate the transfer

of such Privileges. This transfer is self-executing, provided, however, that the Liquidation Trust Administrator, the Liquidation Trust Advisory Board, and the Debtors are authorized and directed to take any and all necessary actions to effectuate the transfer of such Privileges. After the Effective Date the Liquidation Trust Administrator shall have the exclusive power and authority to assert or waive any Privileges relating exclusively to the Liquidation Trust Assets.

**Section 9.18 Tax Identification Numbers.** The Liquidation Trust Administrator may require any Liquidation Trust Beneficiary to furnish to the Liquidation Trust Administrator (i) its, his, or her employer or taxpayer identification number ("TIN") as assigned by the Internal Revenue Service, or (ii) in the case of any Liquidation Trust Beneficiary that is not a United States person for U.S. federal income tax purposes, a certification of foreign status on the applicable IRS Form W-8. The Liquidation Trust Administrator may condition any Distribution to any Liquidation Trust Beneficiary upon receipt of such TIN or certification. If any Liquidation Trust Beneficiary fails to provide the Liquidation Trust Administrator with a requested TIN or certification of foreign status, as applicable, within ninety (90) days after the request, such failure shall be deemed a waiver of such Trust Beneficiary's interest in the Liquidation Trust and rights to distributions under the Liquidation Trust Agreement. Proceeds that would have been distributed to such Liquidation Trust Beneficiary shall be distributed pro rata to the other Liquidation Trust Beneficiaries.

**Section 9.19 Jurisdiction and Venue.** In the event that the Bankruptcy Court does not accept jurisdiction in any of the matters for which Bankruptcy Court jurisdiction is contemplated herein or in the Plan, each of the parties hereto irrevocably and unconditionally (i) agrees that if an adversary proceeding includes as a party thereto the Debtors, such matters shall be brought in any Federal Court of the United States of America sitting in Cook County; (ii) consents to the jurisdiction of such court in any such matter; (iii) waives any objection which it may have to the laying of venue of any such matter in any of such courts; and (iv) agrees that service of any court paper may be effected on such party by mail, as provided in this Liquidation Trust Agreement, or in such manner as may be provided under applicable laws or court rules in the State of Illinois; provided, however, that if a Federal Court of the United States of America sitting in Cook County does not accept jurisdiction with respect to any matter described in this paragraph, the parties have the right to bring such matter before any court in which jurisdiction is proper.

**Section 9.20 Payment of Statutory Fees.** In the event that the Chapter 11 Case remains open (or is closed but then reopened) solely because of disputes relating to the Liquidation Trust or this Liquidation Trust Agreement, the Liquidation Trust Administrator shall be responsible and shall pay or shall reimburse the Debtors for, solely from the Liquidation Trust Assets, all fees payable by the Debtors pursuant to section 1930 of title 28 of the United States Code (the "UST Fees") as required by that section.

**IN WITNESS WHEREOF**, the parties hereto have executed the Liquidation Trust Agreement or caused the Liquidation Trust Agreement to be duly executed by their respective officers thereunto duly authorized as of the date first above written.

THE SHOREBANK CORPORATION  
(for itself and on behalf of its Affiliate Debtors)

By: \_\_\_\_\_  
Name:  
Title:

[•], AS LIQUIDATION TRUST ADMINISTRATOR

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT C**

**Executory Contracts or Unexpired Leases to be Rejected  
on a Date Other Than the Effective Date**

**[TO BE FILED ON OR BEFORE EXHIBIT FILING DATE]**

**EXHIBIT D**

**Executory Contracts or Unexpired Leases to be Assumed**

**[TO BE FILED ON OR BEFORE EXHIBIT FILING DATE]**