

1 reserves all rights to rely, if necessary in its sole discretion, on other exemptions to the registration  
2 requirements of section 5 of the Securities Act.

3           2.           **Investment Company Act.** In addition, the Reorganized Debtor expects to rely  
4 on one or more of the exemptions contained in the Investment Company Act, which exemptions may  
5 include, without limitation, exemptions under Sections 3(c)1 and 3(c)7.  
6

7 **F.     Restructuring Transactions**

8           On the Effective Date or as soon as reasonably practicable thereafter, the Reorganized Debtor  
9 may take all actions as may be necessary or appropriate to effect any transaction described in,  
10 approved by, contemplated by or necessary to effectuate the Plan, including: (1) the execution and  
11 delivery of appropriate agreements or other documents of merger, consolidation or reorganization  
12 containing terms that are consistent with the terms of the Plan and that satisfy the requirements of  
13 applicable law; (2) the execution and delivery of appropriate instruments of transfer, assignment,  
14 assumption or delegation of any property, right, liability, duty or obligation on terms consistent with  
15 the terms of the Plan; (3) the filing of appropriate certificates of incorporation, charter, merger or  
16 consolidation with the appropriate governmental authorities pursuant to applicable law; and (4) all  
17 other actions that the Reorganized Debtor determines are necessary or appropriate.  
18

19 **G.     Corporate Action**

20           Each of the matters provided for by the Plan involving the corporate structure of the Debtor  
21 or corporate, financing or related actions to be taken by or required of the Reorganized Debtor shall,  
22 as of the Effective Date, be deemed to have occurred and be effective as provided in the Plan (except  
23 to the extent otherwise indicated), and shall be authorized, approved, and, to the extent taken prior to  
24 the Effective Date, ratified in all respects without any requirement of further action by Holders of  
25 Claims or Equity Interests, the directors of the Debtor or any other Entity. Without limiting the  
26 foregoing, such actions will include: the adoption and (as applicable) filing of amended and restated  
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1 certificate of incorporation, charter, bylaws and other governance documents; the appointment of  
2 officers and (as applicable) directors for the Reorganized Debtor; the issuance of the New Series A  
3 Common Stock and any security or instrument issued by the Reorganized Debtor on account of part  
4 of the Proceeds Distribution Election, and all related documents and instruments (as applicable).  
5 The Reorganized Debtor shall enter into such agreements and amend their corporate governance  
6 documents to the extent necessary to implement the terms and conditions of the Plan.  
7

#### 8 **H. Effectuating Documents; Further Transactions**

9 On and after the Effective Date, the Reorganized Debtor, and the officers and members of the  
10 New Board thereof, are authorized to and may issue, execute, deliver, file or record such contracts,  
11 securities, instruments, releases, and other agreements or documents and take such actions as may be  
12 necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of  
13 the Plan and the securities issued pursuant to the Plan in the name of and on behalf of the  
14 Reorganized Debtor, and the Debtor may make non-material modifications to the documents set  
15 forth in the Plan Supplement, without the need for any approvals, authorizations, or consents except  
16 for those expressly required pursuant to the Plan.  
17

#### 18 **I. Exemption from Certain Transfer Taxes and Recording Fees**

19 Pursuant to section 1146(a) of the Bankruptcy Code, any transfer from the Debtor to the  
20 Reorganized Debtor or to any Entity pursuant to, in contemplation of, or in connection with the Plan  
21 or pursuant to: (1) the issuance, distribution, transfer, or exchange of any debt, securities, or other  
22 interest in the Debtor or the Reorganized Debtor; (2) the creation, modification, consolidation, or  
23 recording of any mortgage, deed of trust or other security interest, or the securing of additional  
24 indebtedness by such or other means; (3) the making, assignment, or recording of any lease or  
25 sublease; or (4) the making, delivery, or recording of any deed or other instrument of transfer under,  
26 in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or  
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1 other instrument of transfer executed in connection with any transaction arising out of, contemplated  
2 by, or in any way related to the Plan, shall not be subject to any document recording tax, sales tax,  
3 stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage  
4 recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee,  
5 or other similar tax or governmental assessment, and the appropriate state or local governmental  
6 officials or agents shall forego the collection of any such tax or governmental assessment and to  
7 accept for filing and recordation any of the foregoing instruments or other documents without the  
8 payment of any such tax or governmental assessment.  
9

10 **J. Board Representation**

11 The New Board shall be disclosed by the Plan Proponents in the Plan Supplement to be filed  
12 10 days prior to the Voting Deadline in accordance with section 1129(a)(5) of the Bankruptcy Code.  
13 Holdco will select the members of the New Board after consultation with the Debtor. The initial  
14 members of the New Board shall serve staggered terms of one, two and three years, as designated.  
15 The New Board shall serve until the FDIC Priority Claim Determination, and thereafter, the  
16 members of the New Board shall be elected on a staggered three-year basis by the holders of New  
17 Series A Common Stock and (as applicable and as may be in accordance with the Reorganized  
18 Debtor's certificate of incorporation) holders of New Series B Common Stock. The New Board  
19 shall have all authority to make business decisions under applicable law with respect to all matters  
20 effecting the Reorganized Debtor, including with investment activity and the Causes of Action.  
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23 **K. Senior Management**

24 Senior management of the Reorganized Debtors shall be disclosed by the Proponents in the  
25 Plan Supplement to be filed 10 days prior to the Voting Deadline in accordance with section  
26 1129(a)(5) of the Bankruptcy Code. Holdco will select the members of the senior management after  
27 consultation with the Debtor, and thereafter the New Board will select members of the senior  
28

1 management as needed. The Reorganized Debtor may, but shall not be required, to enter into one or  
2 more contracts with one or more Entities to outsource or subcontract certain management functions,  
3 and the identity or identities of such Entities with whom the Reorganized Debtor may contract as of  
4 the Effective Date shall be disclosed in the Plan Supplement.

5  
6 **L. Committee, Vesting of Committee Standing in Reorganized Debtor and D&O Litigation Trustee**

7 As of the Effective Date, the Committee shall dissolve, and its members shall be released and  
8 discharged from all further authority, duties, responsibilities and obligations relating to and arising  
9 from the Case. The retention and employment of the Professionals retained by the Committee shall  
10 terminate as of the Effective Date. As of the Effective Date, the Committee's standing and authority  
11 to bring and prosecute any Causes of Action, other than the Former Officers and Directors Causes of  
12 Action and the Committee Adversary Complaint shall vest in the Reorganized Debtor. As of the  
13 Effective Date, the Committee's standing and authority to bring and prosecute the Former Officers  
14 and Directors Causes of Action and the Committee Adversary Complaint shall vest in the D&O  
15 Litigation Trustee. From and after the Effective Date, the Reorganized Debtor and the D&O  
16 Litigation Trustee, as applicable, shall have full standing and authority to bring and prosecute all  
17 such Causes of Action in place of the Committee and the Committee shall have no further standing  
18 or authority whatsoever to bring or prosecute any Causes of Action, including, without limitation,  
19 the Former Officers and Directors Causes of Action, except that the Committee shall be authorized  
20 to take any actions necessary to substitute the D&O Litigation Trustee as plaintiff with respect to the  
21 Committee Adversary Complaint.

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23  
24 **M. Vesting of Assets in the Reorganized Debtor**

25 Except as otherwise provided in this Plan or in any agreement, instrument or other document  
26 relating thereto, on or after the Effective Date pursuant to section 1141 of the Bankruptcy Code, all  
27 property of the Estate and any property acquired by the Debtor pursuant hereto shall vest in the  
28

1 Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances. Except as  
2 may be provided in this Plan or the Confirmation Order, including without limitation with respect to  
3 the D&O Litigation Trust and the Proceeds Distribution Election Trust, on and after the Effective  
4 Date, the Reorganized Debtor may use, acquire or dispose of its property and compromise or settle  
5 any Claims without supervision or approval by the Bankruptcy Court and free of any restrictions of  
6 the Bankruptcy Code or Bankruptcy Rules.  
7

8 **N. Prohibition Against Pledging Assets**

9 Notwithstanding anything to the contrary contained herein, the Reorganized Debtor shall be  
10 precluded from, and the Confirmation Order shall expressly prohibit the Reorganized Debtor from,  
11 pledging any interest in (a) the Disputed Reserve or the assets therein; (b) the D&O Litigation Trust  
12 or the assets thereon; (c) the Proceeds Distribution Election Trust or Proceeds Distribution Election  
13 Trust Assets; or (d) any assets, or the proceeds thereof, that are or could become part of the Proceeds  
14 Distribution Election Assets, including without limitation any Causes of Action or the proceeds  
15 thereof. The Confirmation Order shall also provide that any such pledge in violation of this section  
16 of the Plan is null and void.  
17

18 **O. Deregistration**

19 As soon after the Effective Date as is practicable, the Reorganized Debtor shall terminate its  
20 registration under the Securities and Exchange Act of 1934 by filing a Form 15 "Certification and  
21 Notice of Termination of Registration Under Section 12(g) of the Securities Exchange Act of 1934  
22 or Suspension of Duty to File Reports Under Sections 12 and 15(d) of the Securities and Exchange  
23 Act of 1934" with the United States Securities and Exchange Commission and shall otherwise  
24 comply with the statutory or regulatory requirements of a publicly traded company, including, but  
25 not limited to, seeking to deregister the Equity Interests.  
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1 **P. Allowance of TOPrS Unsecured Claims.**

2 The TOPrS Unsecured Claims will be deemed to be Allowed Claims in the amounts set forth  
3 in the proofs of claim filed by the TOPrS Indenture Trustees: (i) Claim No 26 in the amount of  
4 \$31,841,833.78, (ii) Claim Nos. 11, 12 and 13 in the aggregate amount of \$60,975,312.98.  
5

6 **Q. D&O Litigation Trust.**

7 **1. General.** On or before the Effective Date, the D&O Litigation Trust Agreement, in  
8 form and substance satisfactory to the Plan Proponents and substantially as set forth in the Plan  
9 Supplement, will be executed and all other necessary steps will be taken to establish the D&O  
10 Litigation Trust and the beneficial interests therein, which will be for the benefit of the holders of  
11 Allowed General Unsecured Claims, whether Allowed on or after the Effective Date. In the event of  
12 any conflict or inconsistency between the terms of this Plan and the terms of the D&O Litigation  
13 Trust Agreement, then the terms of the D&O Litigation Trust Agreement will govern. The D&O  
14 Litigation Trust Agreement may provide powers, duties, and authorities in addition to those  
15 explicitly stated herein, but only to the extent that such powers, duties, and authorities do not affect  
16 the status of the D&O Litigation Trust as a liquidating trust for United States federal income tax  
17 purposes, or otherwise have material adverse effect on the recovery of holders of Allowed General  
18 Unsecured Claims. This Section V.Q is qualified in its entirety by the terms of and is subject to the  
19 terms of the D&O Litigation Trust Agreement.  
20

21  
22 **2. Purpose of D&O Litigation Trust.** The D&O Litigation Trust will be established  
23 for the sole purpose of liquidating and distributing the D&O Litigation Trust Assets, in accordance  
24 with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the  
25 conduct of a trade or business, except to the extent reasonably necessary to achieve, and consistent  
26 with, the liquidating purpose of the D&O Litigation Trust.  
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1           **3. Costs and Expenses of D&O Litigation Trust.** The costs and expenses of the D&O  
2 Litigation Trust, including the fees and expenses of the D&O Litigation Trustee and its retained  
3 professionals, will be paid out of the D&O Litigation Trust Assets, and the Reorganized Debtor will  
4 not be responsible for any fees, expenses or costs of the D&O Litigation Trust, provided, however,  
5 the Reorganized Debtor may, in its sole discretion, advance or pay any costs or expenses of the  
6 D&O Litigation Trust.  
7

8           **4. D&O Litigation Trust Assets.** As of and as soon as practicable after the Effective  
9 Date, and subject to and in accordance with this Plan and the D&O Litigation Trust Agreement, the  
10 Debtor will assign and transfer to the D&O Litigation Trust all of its rights, title and interests in and  
11 to the D&O Litigation Trust Assets for the benefit of the holders of Allowed General Unsecured  
12 Claims, whether such Claims are Allowed on or after the Effective Date. Such transfers will be  
13 exempt from any stamp, real estate transfer, mortgage reporting, sales, use or other similar tax and,  
14 except as otherwise may be set forth specifically herein, will be free and clear of any liens, claims  
15 and encumbrances and no other entity (other than Creditors receiving rights under this Plan),  
16 including the Debtor or the Reorganized Debtor, will have any interest, legal, beneficial, or  
17 otherwise, in the D&O Litigation Trust or the D&O Litigation Trust Assets upon their assignment  
18 and transfer to the D&O Litigation Trust (other than as provided herein or in the D&O Litigation  
19 Trust Agreement). Upon delivery of the D&O Litigation Trust Assets to the D&O Litigation Trust,  
20 the Reorganized Debtor will be deemed released of all liability with respect to the delivery of  
21 Distributions to holders of Allowed General Unsecured Claims with respect to the D&O Litigation  
22 Trust Assets, and will have no further obligations to the D&O Litigation Trust or the D&O  
23 Litigation Trustee.  
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26           **5. Appointment of a D&O Litigation Trustee.** Prior to the Effective Date, Holdco  
27 will select, and in the Plan Supplement will identify, the D&O Litigation Trustee. The salient terms  
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1 of the D&O Litigation Trustee's employment, including the D&O Litigation Trustee's duties and  
2 compensation, will be set forth in the D&O Litigation Trust Agreement. The D&O Litigation Trust  
3 Agreement will specify the procedures for replacing the D&O Litigation Trustee.

4 **6. Transferability and Form of D&O Litigation Trust Interests.** The D&O  
5 Litigation Trust Interests shall not be transferable, unless otherwise provided for in the D&O  
6 Litigation Trust Agreement. To the extent such beneficial interests are deemed securities under  
7 applicable non-bankruptcy law, then such securities shall be exempt from the requirements of  
8 applicable non-bankruptcy law to the maximum extent permitted by 11 U.S.C. §1145. The D&O  
9 Litigation Trust Interests shall not be certificated.

10 **7. Federal Income Tax Treatment of D&O Litigation Trust.** For all federal income  
11 tax purposes, all parties (including, without limitation, the Debtor, Reorganized Debtor, the D&O  
12 Litigation Trustee, and the holders of Allowed General Unsecured Claims) will treat the transfer of  
13 the D&O Litigation Trust Assets to the D&O Litigation Trust, including any amounts or other assets  
14 subsequently transferred to the D&O Litigation Trust (but only at such time as actually transferred)  
15 for the benefit of the holders of Claims entitled to receive D&O Litigation Trust Interests, whether  
16 Allowed on or after the Effective Date, as (A) a transfer of the D&O Litigation Trust Assets directly  
17 to the holders of such Allowed Claims, followed by (B) the transfer by such Persons to the D&O  
18 Litigation Trust of such D&O Litigation Trust Assets in exchange for beneficial interests in the  
19 D&O Litigation Trust. Accordingly, the holders of such Allowed Claims will be treated for federal  
20 income tax purposes as the grantors and owners of their respective shares of the applicable D&O  
21 Litigation Trust Assets. The foregoing treatment shall also apply, to the extent permitted by  
22 applicable law, for state and local income tax purposes.

23 **8. D&O Litigation Trust a "Liquidating Trust."** Subject to definitive guidance from  
24 the IRS or a court of competent jurisdiction to the contrary (including the issuance of applicable  
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1 Treasury Regulations, the receipt by the D&O Litigation Trustee of a private letter ruling if the D&O  
2 Litigation Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit  
3 if not contested by the D&O Litigation Trustee), all parties will treat the D&O Litigation Trust as a  
4 “liquidating trust” in accordance with Treasury Regulation section 301.7701-4(d), of which the  
5 holders of Allowed Claims described above, whether Allowed on or after the Effective Date, are the  
6 grantors and beneficiaries. In the event an alternative treatment of the D&O Litigation Trust is  
7 required for federal income tax purposes, the D&O Litigation Trustee will promptly notify in writing  
8 (or by comparable means) all holders of beneficial interests in the D&O Litigation Trust, and (if  
9 applicable) anyone who subsequently becomes a holder, of such alternative treatment. The D&O  
10 Litigation Trustee will file returns for the D&O Litigation Trust as a grantor trust pursuant to  
11 Treasury Regulation section 1.671-4(a). The D&O Litigation Trustee will send annually to each  
12 record holder of a beneficial interest in the D&O Litigation Trust a separate statement setting forth  
13 such holder’s share of items of income, gain, loss, deduction, or credit and will instruct all such  
14 holders to report such items on their federal income tax returns or to forward the appropriate  
15 information to the beneficial holders with instructions to report such items on their federal income  
16 tax returns. The D&O Litigation Trustee will also file (or cause to be filed) any other statements,  
17 returns, or disclosures relating to the D&O Litigation Trust that are required by any governmental  
18 unit. Except as may otherwise be provided, the D&O Litigation Trust’s taxable income, gain, loss,  
19 deduction or credit will be allocated by reference to the manner in which an amount of Cash equal to  
20 such taxable income would be distributed (without regard to any restrictions on distribution  
21 described in the Plan) if, immediately prior to the deemed distribution, the D&O Litigation Trust had  
22 distributed all of its other assets (valued at their tax book value) in accordance with the provisions of  
23 the Plan and the D&O Litigation Trust Agreement, up to the tax book value of the D&O Litigation  
24 Trust Assets treated as contributed by the holders of Allowed Claims, whether Allowed on or after  
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1 the Effective Date, adjusted for prior taxable income and loss, and taking into account all prior and  
2 concurrent distributions from the D&O Litigation Trust. Similarly, taxable loss of the D&O  
3 Litigation Trust will be allocated by reference to the manner in which an economic loss would be  
4 borne immediately after a liquidating distribution of the remaining assets.

5  
6 **9. Tax Withholding by D&O Litigation Trustee.** The D&O Litigation Trustee may  
7 withhold and pay to the appropriate government authority all amounts required to be withheld  
8 pursuant to the Internal Revenue Code or any provision of any foreign, state or local tax law with  
9 respect to any payment or distribution to the holders of D&O Litigation Trust Interests. All such  
10 amounts withheld and paid to the appropriate government authority (or placed in escrow pending  
11 resolution of the need to withhold) shall be treated as amounts distributed to such holders of D&O  
12 Litigation Trust Interests for all purposes of the D&O Litigation Trust Agreement. The D&O  
13 Litigation Trustee shall be authorized to collect such tax information from the holders of D&O  
14 Litigation Trust Interests (including, without limitation, social security numbers or other tax  
15 identification numbers) as in its sole discretion the D&O Litigation Trustee deems necessary to  
16 effectuate the Plan, the Confirmation Order, and the D&O Litigation Trust Agreement. In order to  
17 receive distributions under the Plan, all holders of D&O Litigation Trust Interests shall be required  
18 to identify themselves to the D&O Litigation Trustee and provide tax information and the specifics  
19 of their holdings, to the extent the D&O Litigation Trustee deems appropriate in the manner and in  
20 accordance with the procedures from time to time established by the D&O Litigation Trustee for  
21 these purposes. The D&O Litigation Trustee may refuse to make a distribution to any holder of a  
22 D&O Litigation Trust Interest that fails to furnish such information in a timely fashion, and until  
23 such information is delivered; provided, however, that, if such information is not furnished to the  
24 D&O Litigation Trustee within six (6) months of the original request to furnish such information, no  
25 further distributions shall be made to the holder of such D&O Litigation Trust Interest; and,  
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1 provided, further, that, upon the delivery of such information by a holder of a D& O Litigation Trust  
2 Interest, the D&O Litigation Trustee shall make such distribution to which the holder of the D&O  
3 Litigation Trust Interest is entitled, without additional interest occasioned by such holder's delay in  
4 providing tax information; and, provided, further that, if the D&O Litigation Trustee fails to  
5 withhold in respect of amounts received or distributable with respect to any such holder and the  
6 D&O Litigation Trustee is later held liable for the amount of such withholding, such holder shall  
7 reimburse the D&O Litigation Trustee for such liability (to the extent such amounts were actually  
8 distributed to such holder).  
9

10 **R. Proceeds Distribution Election Trust.**

11 **1. General.** On or before the Effective Date, the Proceeds Distribution Election Trust  
12 Agreement, in form and substance satisfactory to the Plan Proponents and acceptable to the  
13 Committee and substantially as set forth in the Plan Supplement, will be executed and all other  
14 necessary steps will be taken to establish the Proceeds Distribution Election Trust and the beneficial  
15 interests therein, which will be for the benefit of the holders of Allowed General Unsecured Claims,  
16 whether Allowed on or after the Effective Date, that choose the Proceeds Distribution Election. In  
17 the event of any conflict or inconsistency between the terms of this Plan and the terms of the  
18 Proceeds Distribution Election Trust Agreement, then the terms of the Proceeds Distribution  
19 Election Trust Agreement will govern. The Proceeds Distribution Election Trust Agreement may  
20 provide powers, duties, and authorities in addition to those explicitly stated herein, but only to the  
21 extent that (i) such powers, duties, and authorities do not affect the status of the Proceeds  
22 Distribution Election Trust as liquidating trust for United States federal income tax purposes, or  
23 otherwise have material adverse effect on the recovery of holders of Allowed General Unsecured  
24 Claims, (ii) such powers, duties and authorities do not operate to confer standing upon the Proceeds  
25 Distribution Election Trustee to be a party to, or to participate in, the Reorganized Debtor's activities  
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1 including litigation and/or settlement of Causes of Action, including the FDIC Causes of Action, and  
2 (iii) such powers, duties, and authorities are limited to the administration of distributions on account  
3 of the Proceeds Distribution Election Trust Interests. This Section V.R is qualified in its entirety by  
4 the terms of and is subject to the terms of the Proceeds Distribution Election Trust Agreement.

5  
6 **2. Purpose of Proceeds Distribution Election Trust.** The Proceeds Distribution  
7 Election Trust will be established for the sole purpose of liquidating and distributing the Proceeds  
8 Distribution Election Trust Assets, in accordance with Treasury Regulation section 301.7701-4(d),  
9 with no objective to continue or engage in the conduct of a trade or business, except to the extent  
10 reasonably necessary to achieve, and consistent with, the liquidating purpose of the Proceeds  
11 Distribution Election Trust.

12  
13 **3. Costs and Expenses of Proceeds Distribution Election Trust.** The costs and  
14 expenses of the Proceeds Distribution Election Trust, including the fees and expenses of the  
15 Proceeds Distribution Election Trustee and its retained professionals (if any), will be paid out of the  
16 Proceeds Distribution Election Trust Assets, and the Reorganized Debtor will not be responsible for  
17 any fees, expenses or costs of the Proceeds Distribution Election Trust.

18  
19 **4. Proceeds Distribution Election Trust Assets.** Subject to and in accordance with  
20 this Plan and the Proceeds Distribution Election Trust Agreement, on the Effective Date or as soon  
21 as reasonably practical thereafter, the Debtor will assign and transfer to the Proceeds Distribution  
22 Election Trust all of its rights, title and interests in and to the portion of the following assets to  
23 which Holders making the Proceeds Distribution Election are entitled under this Plan: (x) the interest  
24 in the Trust Refund Escrow Account as provided in Section V.R.5 below, (y) Pro Rata Election  
25 Holders portion of Net Free Cash existing as of the Effective Date (which, for the avoidance of  
26 doubt, shall be net of any Net Free Cash Reserves) and (z) an undivided beneficial interest in and to  
27 the other Proceeds Distribution Election Trust Assets existing as of the Effective Date (including the  
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1 Net Free Cash Reserves which for clarification purposes may be fully overseen, spent, reduced and  
2 otherwise controlled, in the sole and absolute discretion of the Plan Committee, by the Reorganized  
3 Debtor as provided in the Plan). Notwithstanding the foregoing, the Proceeds Distribution Election  
4 Trustee shall not be entitled, to receive Cash, which, in the aggregate (when added to all Cash  
5 received previously), exceeds what it otherwise would have been entitled to receive in the aggregate  
6 had all aggregate Cash proceeds generated from Proceeds Distribution Election Trust Assets been  
7 received by the Debtor by such date and then subsequently conveyed to the Proceeds Distribution  
8 Election Trust pursuant to the "Turnover Obligation" as defined below ("Cash Limitation Provision).  
9 In the event that Reorganized Debtor receives on account or in respect of any Proceeds Distribution  
10 Election Trust Assets any distribution or payment of Net Free Cash (after taking into account Net  
11 Free Cash Reserves and full payment or satisfaction of all Allowed Secured Claims, Allowed  
12 Administrative Claims, Allowed FDIC Priority Claims, and Allowed Non-FDIC Priority Claims;  
13 and costs of administering and implementing the Plan; but not including any costs and expenses  
14 solely attributable to the business operations of the Reorganized Debtor) the Reorganized Debtor  
15 shall segregate and hold in trust (as property of the Proceeds Distribution Election Trustee on behalf  
16 of the beneficiaries of the trust) for the benefit of, and immediately upon receipt thereof, shall pay  
17 over or deliver to, the Proceeds Distribution Election Trustee such distribution or payment for  
18 application in accordance with the terms of this Plan (the "Turnover Obligation"). Such transfers  
19 will be exempt from any stamp, real estate transfer, mortgage reporting, sales, use or other similar  
20 tax and, except as otherwise may be set forth specifically herein, will be free and clear of any liens,  
21 claims and encumbrances and no other entity (other than the Proceeds Distribution Election Trustee  
22 and General Unsecured Creditors receiving rights under this Plan), including the Debtor or the  
23 Reorganized Debtor, will have any interest, legal, beneficial, or otherwise, in the Proceeds  
24 Distribution Election Trust or the Proceeds Distribution Election Trust Assets upon their assignment  
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1 and transfer to the Proceeds Distribution Election Trust (other than as provided herein or in the  
2 Proceeds Distribution Election Trust Agreement). Upon delivery of the Proceeds Distribution  
3 Election Trust Assets to the Proceeds Distribution Election Trust, the Reorganized Debtor will be  
4 deemed released of all liability with respect to the delivery of distributions to holders of Allowed  
5 General Unsecured Claims with respect to the Proceeds Distribution Election Trust Assets, and will  
6 have no further obligations to the Proceeds Distribution Election Trust or the Proceeds Distribution  
7 Election Trustee except the Turnover Obligation referred to above and the Net Free Cash Reserve  
8 Obligation referred to in Section V.R.5 below.

10           5.       **Current Conveyance of Interest in Tax Refund Escrow Account.** Subject to the  
11 Cash Limitation Provision defined above, on the Effective Date, the Reorganized Debtor will  
12 convey, transfer and assign, without recourse or warranty, to the Proceeds Distribution Election  
13 Trustee, for the benefit of the Holders making the Proceeds Distribution Election, all of Debtor's  
14 right, title and interest in and to a portion of the Tax Refund Escrow Account and the Cash in the  
15 Tax Refund Escrow Account ultimately determined to be distributable to the Reorganized Debtor  
16 ("Determined Tax Refund Assets"), equal to the Pro Rata Election Holders portion of Net Free Cash  
17 that all of the Holders who make the Proceeds Entitlement Election are entitled under the terms of  
18 this Plan solely on account of Determined Tax Refund Assets in accordance with the Proceeds  
19 Distribution Election Trust Agreement. In addition, the Proceeds Distribution Election Trustee, for  
20 the benefit of the Holders electing the Proceeds Distribution Election, shall be entitled to an  
21 additional amount payable out of Reorganized Debtor's interest in the Tax Refund Escrow Account  
22 (after the transfer referred to above) equal to the Pro Rata Election Holders portion of any Net Free  
23 Cash Reserves attributable to the FDIC Causes of Action (and such allocation determined in the  
24 discretion of the Plan Committee) ("Reserve Escrow Payment") remaining upon the conclusion of  
25 the FDIC Causes of Action (the "Net Free Cash Reserve Obligation") but such amount shall only be  
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1 payable solely to the extent that the Proceeds Distribution Election Trustee has not at such time  
2 received Cash from the Reorganized Debtor on account of its undivided beneficial interest in Net  
3 Free Cash Reserves attributable to the FDIC Causes of Action (“Unpaid Reserve Interest”); and  
4 further, to the extent that such Reserve Escrow Payment is made, it shall be deemed to be made on  
5 account of the Proceeds Distribution Election Trustee’s undivided beneficial interest in Net Free  
6 Cash Reserves attributable to the FDIC Causes of Action and the Reorganized Debtor shall no  
7 longer have Turnover Obligations with respect to such asset.  
8

9       **6. Appointment of a Proceeds Distribution Election Trustee.** Prior to the Effective  
10 Date, the Plan Proponents and the Committee will identify the Proceeds Distribution Election  
11 Trustee. The salient terms of the Proceeds Distribution Election Trustee’s employment, including  
12 the Proceeds Distribution Election Trustee’s duties and compensation, will be set forth in the  
13 Proceeds Distribution Election Trust Agreement. The Proceeds Distribution Election Trust  
14 Agreement will specify the procedures for replacing the Proceeds Distribution Election Trustee.  
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16       **7. Transferability and Form of Proceeds Distribution Election Trust Interests.** The  
17 Proceeds Distribution Election Trust Interests shall not be transferable, unless otherwise provided for  
18 in the Proceeds Distribution Election Trust Agreement. To the extent such beneficial interests are  
19 deemed securities under applicable non-bankruptcy law, then such securities shall be exempt from  
20 the requirements of applicable non-bankruptcy law to the maximum extent permitted by 11 U.S.C.  
21 §1145. The Proceeds Distribution Election Trust Interests shall not be certificated.  
22

23       **8. Federal Income Tax Treatment of Proceeds Distribution Election Trust.** For all  
24 federal income tax purposes, all parties (including, without limitation, the Debtor, Reorganized  
25 Debtor, the Proceeds Distribution Election Trustee, and the holders of Allowed General Unsecured  
26 Claims) will treat the transfer of the Proceeds Distribution Election Trust Assets to the Proceeds  
27 Distribution Election Trust, including any amounts or other assets subsequently transferred to the  
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1 Proceeds Distribution Election Trust (but only at such time as actually transferred) for the benefit of  
2 the holders of Claims entitled to receive Proceeds Distribution Election Trust Interests, whether  
3 Allowed on or after the Effective Date, as (A) a transfer of the Proceeds Distribution Election Trust  
4 Assets directly to the holders of such Allowed Claims, followed by (B) the transfer by such Persons  
5 to the Proceeds Distribution Election Trust of such Proceeds Distribution Election Trust Assets in  
6 exchange for beneficial interests in the Proceeds Distribution Election Trust. Accordingly, the  
7 holders of such Allowed Claims will be treated for federal income tax purposes as the grantors and  
8 owners of their respective shares of the applicable Proceeds Distribution Election Trust Assets. The  
9 foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local  
10 income tax purposes.  
11

12           **9. Proceeds Distribution Election Trust a “Liquidating Trust.”** Subject to definitive  
13 guidance from the IRS or a court of competent jurisdiction to the contrary (including the issuance of  
14 applicable Treasury Regulations, the receipt by the Proceeds Distribution Election Trustee of a  
15 private letter ruling if the Proceeds Distribution Election Trustee so requests one, or the receipt of an  
16 adverse determination by the IRS upon audit if not contested by the Proceeds Distribution Election  
17 Trustee), all parties will treat the Proceeds Distribution Election Trust as a “liquidating trust” in  
18 accordance with Treasury Regulation section 301.7701-4(d), of which the holders of Allowed  
19 Claims described above, whether Allowed on or after the Effective Date, are the grantors and  
20 beneficiaries. In the event an alternative treatment of the Proceeds Distribution Election Trust is  
21 required for federal income tax purposes, the Proceeds Distribution Election Trustee will promptly  
22 notify in writing (or by comparable means) all holders of beneficial interests in the Proceeds  
23 Distribution Election Trust, and (if applicable) anyone who subsequently becomes a holder, of such  
24 alternative treatment. The Proceeds Distribution Election Trustee will file returns for the Proceeds  
25 Distribution Election Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The  
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1 Proceeds Distribution Election Trustee also may send annually to each record holder of a beneficial  
2 interest in the Proceeds Distribution Election Trust a separate statement setting forth such holder's  
3 share of items of income, gain, loss, deduction, or credit and will instruct all such holders to report  
4 such items on their federal income tax returns or to forward the appropriate information to the  
5 beneficial holders with instructions to report such items on their federal income tax returns. The  
6 Proceeds Distribution Election Trustee will also file (or cause to be filed) any other statements,  
7 returns, or disclosures relating to the Proceeds Distribution Election Trust that are required by any  
8 governmental unit. Except as may otherwise be provided, the Proceeds Distribution Election Trust's  
9 taxable income, gain, loss, deduction or credit will be allocated by reference to the manner in which  
10 an amount of Cash equal to such taxable income would be distributed (without regard to any  
11 restrictions on distribution described in the Plan) if, immediately prior to the deemed distribution, the  
12 Proceeds Distribution Election Trust had distributed all of its other assets (valued at their tax book  
13 value) in accordance with the provisions of the Plan and the Proceeds Distribution Election Trust  
14 Agreement, up to the tax book value of the Proceeds Distribution Election Trust Assets treated as  
15 contributed by the holders of Allowed Claims, whether Allowed on or after the Effective Date,  
16 adjusted for prior taxable income and loss, and taking into account all prior and concurrent  
17 distributions from the Proceeds Distribution Election Trust. Similarly, taxable loss of the Proceeds  
18 Distribution Election Trust will be allocated by reference to the manner in which an economic loss  
19 would be borne immediately after a liquidating distribution of the remaining assets.  
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23 **10. Tax Withholding by Proceeds Distribution Election Trustee.** The Proceeds  
24 Election Distribution Election Trustee may withhold and pay to the appropriate government  
25 authority all amounts required to be withheld pursuant to the Internal Revenue Code or any  
26 provision of any foreign, state or local tax law with respect to any payment or distribution to the  
27 holders of Proceeds Distribution Election Trust Interests. All such amounts withheld and paid to the  
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1 appropriate government authority (or placed in escrow pending resolution of the need to withhold)  
2 shall be treated as amounts distributed to such holders of Proceeds Distribution Election Trust  
3 Interests for all purposes of the Proceeds Distribution Election Trust Agreement. The Proceeds  
4 Distribution Election Trustee shall be authorized to collect such tax information from the holders of  
5 Proceeds Distribution Election Trust Interests shall be required to identify themselves to the  
6 Proceeds Distribution Election Trustee and provide tax information and the specifics of their  
7 holdings, to the extent the Proceeds Distribution Election Trustee deems appropriate in the manner  
8 and in accordance with the procedures from time to time established by the Proceeds Distribution  
9 Election Trustee for these purposes. The Proceeds Distribution Election Trustee may refuse to make  
10 a distribution to any holder of a Proceeds Distribution Election Trust Interest that fails to furnish  
11 such information in a timely fashion, and until such information is delivered; provided, however,  
12 that, if such information is not furnished to the Proceeds Distribution Election Trustee within six (6)  
13 months of the original request to furnish such information, no further distributions shall be made to  
14 the holder of such Proceeds Distribution Election Trust Interest; and, provided, further, that, upon  
15 the delivery of such information by a holder of a Proceeds Distribution Election Trust Interest, the  
16 Proceeds Distribution Election Trustee shall make such Distribution to which the holder of the  
17 Proceeds Distribution Election Trust Interest is entitled, without additional interest occasioned by  
18 such holder's delay in providing tax information; and, provided, further that, if the Proceeds  
19 Distribution Election Trustee fails to withhold in respect of amounts received or distributable with  
20 respect to any such holder and the Proceeds Distribution Election Trustee is later held liable for the  
21 amount of such withholding, such holder shall reimburse the Proceeds Distribution Election Trustee  
22 for such liability (to the extent such amounts were actually distributed to such holder).  
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**ARTICLE VI.**

**PROVISIONS GOVERNING DISTRIBUTIONS**

**A. Initial Distribution Date**

On the Initial Distribution Date or as soon thereafter as is reasonably practicable, the Reorganized Debtor, the D&O Litigation Trustee or the Proceeds Distribution Election Trustee, as applicable, shall make the Distributions required to be made under the Plan.

**B. Disputed Reserve**

**1. Establishment of Disputed Reserve**

On the Initial Distribution Date, and after making all Distributions required to be made on such date under the Plan, the Reorganized Debtor shall establish a separate Disputed Reserve for Disputed Claims, which Disputed Reserve shall be administered by the Reorganized Debtor. The Reorganized Debtor shall reserve a number of shares of New Series A Common Stock, an amount of Cash, or any other security or equity interest issued under the Plan, depending on the election of the Holder of such Disputed Claims and whether the Debtor elects to issue a security on account of part of the Proceeds Distribution Election, sufficient to provide Holders of Disputed Claims the treatment such Holders would be entitled to receive under the Plan if all such Disputed Claims were to become Allowed Claims (or such lesser amount as may be estimated by the Bankruptcy Court).

**2. Maintenance of Disputed Reserve**

The Reorganized Debtor shall hold unissued New Series A Common Stock and Cash in the Disputed Reserve in trust, segregated from and not to be commingled with any other assets of the Reorganized Debtor, for the benefit of the Holders of Claims ultimately determined to be Allowed. The Reorganized Debtor shall, in its sole discretion, distribute such amounts (net of any expenses, including taxes, relating thereto), as provided herein, as such Disputed Claims are resolved

1 by a Final Order, and such New Series A Common Stock and Cash (or other security) will be  
2 distributable in respect of such Disputed Claims as such amounts would have been distributable had  
3 the Disputed Claims been Allowed Claims as of the Effective Date.

4 **C. Tax Refund Litigation Reserve.**

5 1. If (i) prior to the deadline established for filing objections to confirmation of this Plan  
6 the FDIC timely and properly requests that the Court hear and determine whether any Allowed FDIC  
7 Non-Priority Claim is contractually senior to the Allowed TOPrS Unsecured Claims pursuant to the  
8 TOPrS Indentures, and thereafter (ii) disputed tax refunds that are the subject of the FDIC Tax  
9 Refund Cause of Action are adjudicated to be property of the Debtor's Estate and the FDIC Non-  
10 Priority Claim becomes an Allowed Claim, then such refunds shall not be distributed pursuant to the  
11 Plan until a Final Order is also entered determining whether any Allowed FDIC Non-Priority Claim  
12 is contractually senior to the Allowed TOPrS Unsecured Claims pursuant to the TOPrS Indentures.  
13 If and to the extent such disputed tax refunds are adjudicated to be property of the Debtor's Estate  
14 and such a Final Order is entered determining that any Allowed FDIC Non-Priority Claim is  
15 contractually senior to the TOPrS Unsecured Claims pursuant to the TOPrS Indentures, then such  
16 disputed tax refunds shall be distributed first to the FDIC on account of such Allowed FDIC Non-  
17 Priority Claim until such Claim is paid in full (and before any Distributions are made on account of  
18 any other Allowed TOPrS Unsecured Claims pursuant to the Plan), with the remainder being  
19 distributed pursuant to the terms of the Plan.  
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23 2. The Debtor or Reorganized Debtor, as applicable, shall defend the priority of the  
24 TOPrS Unsecured Claim in any litigation regarding whether any Allowed FDIC Non-Priority Claim  
25 is contractually senior to the Allowed TOPrS Unsecured Claims. The Bankruptcy Court shall hear  
26 and determine whether any Allowed FDIC Non-Priority Claim is contractually senior to the Allowed  
27 TOPrS Unsecured Claims pursuant to the TOPrS Indentures. Notwithstanding any implication from  
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1 this section as to the timing or order of litigation with the FDIC, on or before ten (10) days after the  
2 Confirmation Date, the Debtor and or the Reorganized Debtor, as applicable, and the FDIC shall  
3 present a mutually agreeable briefing and discovery schedule (if any discovery is appropriate) to the  
4 Bankruptcy Court for approval, including a requested target date for a contested hearing to occur as  
5 soon as practicable not more than 120 days after the Confirmation Date.  
6

7 **D. Quarterly Distributions**

8 On each Quarterly Distribution Date or as soon thereafter as is reasonably practicable, the  
9 Reorganized Debtor, the D&O Litigation Trustee or the Proceeds Distribution Election Trustee, as  
10 applicable, shall make the Distributions required to be made under the Plan on such date. Any  
11 Distribution that is not made on the Initial Distribution Date or on any other date specified herein  
12 because the Claim that would have been entitled to receive that Distribution is not an Allowed  
13 Claim on such date, shall be held by the Reorganized Debtor as applicable, in the Disputed  
14 Reserve and distributed on the first Quarterly Distribution Date after such Claim is Allowed.  
15 No interest shall accrue or be paid on the unpaid amount of any Distribution paid on a  
16 Quarterly Distribution Date. Distributions from the Proceeds Distribution Election Trust shall be  
17 supervised by the Plan Committee.  
18

19 **E. Record Date for Distributions**

20 Except as otherwise provided in a Final Order of the Bankruptcy Court or as otherwise  
21 stipulated by the Debtor or Reorganized Debtor, as applicable, the transferees of Claims that are  
22 transferred pursuant to Bankruptcy Rule 3001 on or prior to the Distribution Record Date will be  
23 treated as the Holders of those Claims for all purposes, notwithstanding that any period  
24 provided by Bankruptcy Rule 3001 for objecting to the transfer may not have expired by the  
25 Distribution Record Date. The Reorganized Debtor shall have no obligation to recognize any  
26 transfer of any Claim occurring after the Distribution Record Date. In making any Distribution  
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1 with respect to any Claim, the Reorganized Debtor shall be entitled instead to recognize and  
2 deal with, for all purposes hereunder, only the Entity that is listed on the proof of Claim Filed  
3 with respect thereto or on the Schedules as the Holder thereof as of the close of business on  
4 the Distribution Record Date and upon such other evidence or record of transfer or assignment  
5 that are known to the Reorganized Debtor as applicable, as of the Distribution Record Date.  
6

7 **F. Delivery of Distributions**

8 **1. General Provisions; Undeliverable Distributions**

9 Subject to Bankruptcy Rule 9010 and except as otherwise provided herein,  
10 Distributions to the Holders of Allowed Claims shall be made by the Reorganized Debtor at (i) the  
11 address of each Holder as set forth in the Schedules, unless superseded by the address set forth on  
12 proofs of Claim Filed by such Holder or (ii) the last known address of such Holder if no proof of  
13 Claim is Filed or if the Debtor or Reorganized Debtor, as applicable, has been notified in writing of a  
14 change of address; *provided, however*, that Distributions paid by the Reorganized Debtor for the  
15 benefit of Holders of TOPrS Debentures and the TOPrS shall be made to the appropriate TOPrS  
16 Indenture Trustee under the respective TOPrS Indenture for such obligations. Each such TOPrS  
17 Indenture Trustee shall, in turn, administer the Distributions to the respective holders of TOPrS  
18 Unsecured Claims in accordance with the Plan and the applicable TOPrS Indentures. Distribution to  
19 a TOPrS Indenture Trustee shall be promptly remitted by such TOPrS Indenture Trustee to the  
20 Holders of the TOPrS Unsecured Claims entitled thereto (i.e., the Holder of the relevant TOPrS on  
21 the Distribution Record Date) in accordance with this Plan and the TOPrS Indentures, and each such  
22 Distribution by the Reorganized Debtor to a TOPrS Indenture Trustee shall be deemed to have  
23 discharged the obligation of the Debtor to make such Distribution to the Holders of TOPrS  
24 Unsecured Claims represented by such TOPrS Indenture Trustee. The TOPrS Indenture Trustees  
25 shall not be required to give any bond or surety or other security for the performance of their duties  
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1 unless otherwise ordered by the Bankruptcy Court. The TOPrS Indenture Trustees shall only be  
2 required to make Distributions in accordance with the terms of the Plan and the respective TOPrS  
3 Indenture and shall have no liability for actions taken in accordance with the Plan or in reliance upon  
4 information provided to the TOPrS Indenture Trustees in accordance with the Plan, except for  
5 liabilities resulting from their own gross negligence or willful misconduct. If any Distribution is  
6 returned as undeliverable, the Reorganized Debtor, the D&O Litigation Trustee or the Proceeds  
7 Distribution Election Trustee, as applicable, may, in its discretion, make such efforts to determine  
8 the current address of the Holder of the Claim with respect to which the Distribution was made as  
9 the Reorganized Debtor, the D&O Litigation Trustee or the Proceeds Distribution Election Trustee,  
10 as applicable, deems appropriate, but no Distribution to any Holder shall be made unless and until  
11 the Reorganized Debtor, the D&O Litigation Trustee or the Proceeds Distribution Election Trustee,  
12 as applicable, has determined the then-current address of the Holder, at which time the Distribution  
13 to such Holder shall be made to the Holder without interest. Amounts in respect of any  
14 undeliverable Distributions made by the Reorganized Debtor, the D&O Litigation Trustee or the  
15 Proceeds Distribution Election Trustee, as applicable, shall be returned to, and held in trust by, the  
16 Reorganized Debtor, the D&O Litigation Trustee or the Proceeds Distribution Election Trustee, as  
17 applicable, until the Distributions are claimed or are deemed to be unclaimed property under section  
18 347(b) of the Bankruptcy Code. The Reorganized Debtor, the D&O Litigation Trustee or the  
19 Proceeds Distribution Election Trustee, as applicable, shall have the discretion to determine how to  
20 make Distributions in the most efficient and cost-effective manner possible; *provided, however*, that  
21 its discretion may not be exercised in a manner inconsistent with any express requirements of the  
22 Plan, or the applicable trust agreement.  
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1           **2. Unclaimed Property**

2           Except with respect to property not distributed because it is being held in the  
3 Disputed Reserve, Distributions that are not claimed by the expiration of one year from the Initial  
4 Distribution Date or Quarterly Distribution Date applicable to such Distribution, shall be deemed to  
5 be unclaimed property under section 347(b) of the Bankruptcy Code and shall vest or revert in the  
6 Reorganized Debtor, the D&O Litigation Trustee or the Proceeds Distribution Election Trustee, as  
7 applicable, and the Claims with respect to which those Distributions are made shall be automatically  
8 canceled. After the expiration of such one-year period, the Claim of any Entity to those Distributions  
9 shall be discharged and forever barred. Nothing contained in the Plan shall require the Reorganized  
10 Debtor, the D&O Litigation Trustee or the Proceeds Distribution Election Trustee, as applicable, to  
11 attempt to locate any Holder of an Allowed Claim. Except as otherwise provided herein, all funds or  
12 other property that vests or reverts in the Reorganized Debtor, the D&O Litigation Trustee or the  
13 Proceeds Distribution Election Trustee, as applicable, pursuant to this Article shall be distributed by  
14 the Reorganized Debtor, the D&O Litigation Trustee or the Proceeds Distribution Election Trustee,  
15 as applicable, in accordance with the provisions of the Plan.

16           **G. Surrender of Canceled Instruments and Securities**

17           **1. Generally**

18           Except as set forth in this Plan, as a condition precedent to receiving any Distribution  
19 hereunder on account of an Allowed Claim evidenced by instruments, securities or other  
20 documentation canceled pursuant to this Plan, other than securities held in book entry form through  
21 the Depository Trust Company, the Holder of such Claim shall tender such instrument, security or  
22 other documentation evidencing such Claim to the Reorganized Debtor. In the event an Allowed  
23 Claim is evidenced by securities held in book entry form through the Depository Trust Company,  
24 such securities shall be cancelled in accordance with usual Depository Trust Company practices.  
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1 Any Distributions pursuant to the Plan on account of any Claim evidenced by such instruments,  
2 securities or other documentation, other than securities held in book entry form through the  
3 Depository Trust Company, shall, pending such surrender, be treated as an undeliverable  
4 Distribution; *provided, however*, that Holders of the TOPrS shall tender the TOPrS to the TOPrS  
5 Trust Indenture Trustee and Holders of the TOPrS Debentures shall tender the TOPrS Debentures to  
6 the TOPrS Debenture Indenture Trustee. All payments to Holders of TOPrS Unsecured Claims,  
7 other than TOPrS Unsecured Claims evidenced by securities held by the Depository Trust Company,  
8 shall only be made after such surrender, or in the event such certificate is lost, stolen, mutilated or  
9 destroyed, upon the Holder's compliance with the requirements set forth in this Plan. Upon  
10 surrender of such TOPrS, the TOPrS Trust Indenture Trustee shall cancel and destroy such TOPrS  
11 and upon surrender of such TOPrS Debentures, the TOPrS Debenture Indenture Trustee shall cancel  
12 and destroy such TOPrS Debentures. As soon as practicable after surrender of the TOPrS and the  
13 TOPrS Debentures, the TOPrS Indenture Trustee shall distribute to the Holder thereof, as the case  
14 may be, such Holder's Pro Rata share of the Distribution pursuant to the terms of the TOPrS  
15 Indenture, but subject to the rights of the TOPrS Indenture Trustee to assert (a) its charging lien to  
16 the extent the TOPrS Indenture Trustee Fees or any other fees owed to such TOPrS Indenture  
17 Trustee under the TOPrS Indenture, including without limitation, fees and expenses (including fees  
18 and expenses of its professionals), accrued prior to the Petition Date, are not paid pursuant to the  
19 Plan; or (b) any other rights or arguments to payment other than asserting its charging lien.  
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## 23 2. Failure to Surrender Canceled Instruments

24 If any Holder of an Allowed Claim evidenced by instruments, securities or other  
25 documentation canceled as set forth in this Plan, fails to surrender such instrument, security or other  
26 documentation or comply with the provisions of this Plan within one year after the Effective Date,  
27 its Claim for a Distribution under the Plan on account of such instrument, security, or other  
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1 documentation shall be discharged, and such Holder shall be forever barred from asserting such  
2 Claim against the Reorganized Debtor or its property. In such case, any property held on account of  
3 such Claim shall be disposed of pursuant to the provisions set forth in this Plan.

4 **H. Lost, Stolen, Mutilated or Destroyed Instrument or Security**

5 Any Holder of an Allowed Claim evidenced by instruments, securities or other  
6 documentation canceled pursuant to this Plan that has been lost, stolen, mutilated or destroyed,  
7 shall, in lieu of surrendering such instrument, security or documentation: (i) deliver to the  
8 Reorganized Debtor (or in the case of the TOPrS Debentures or TOPrS, the applicable TOPrS  
9 Indenture Trustee) (a) an affidavit of loss reasonably satisfactory to the Reorganized Debtor  
10 (or in the case of the TOPrS Debentures or TOPrS, the applicable TOPrS Indenture Trustee)  
11 setting forth the unavailability of such instrument, security, or other documentation and (b)  
12 such additional security or indemnity as may reasonably be requested by the Reorganized  
13 Debtor to hold the Reorganized Debtor (or, in the case of the TOPrS Debentures or TOPrS,  
14 required by the applicable TOPrS Indenture Trustee to hold the applicable TOPrS Indenture  
15 Trustee) harmless from any damages, liabilities, or costs incurred in treating such Entity as a  
16 Holder of an Allowed Claim; and (ii) satisfy any other requirement under the TOPrS Indenture  
17 or any other relevant document. Upon compliance with this paragraph by a Holder of an  
18 Allowed Claim evidenced by such instrument, security or other documentation, such Holder  
19 shall, for all purposes under the Plan, be deemed to have surrendered such instrument,  
20 security or other documentation.

21 **I. Manner of Cash Payments Under the Plan**

22 Cash payments made pursuant to the Plan shall be in United States dollars by checks drawn  
23 on a domestic bank selected by the Reorganized Debtor, or by wire transfer from a domestic bank, at  
24 the option of the Reorganized Debtor.  
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1 **J. Time Bar to Cash Payments by Check**

2 Checks issued by the Reorganized Debtor on account of Allowed Claims shall be null and  
3 void if not negotiated within 90 days after the date of issuance thereof. Requests for the reissuance of  
4 any check that becomes null and void pursuant to this paragraph shall be made directly to the  
5 Reorganized Debtor by the Holder of the Allowed Claim to whom the check was originally issued.  
6 Any claim in respect of such voided check shall be made in writing on or before the later of the first  
7 anniversary of the Initial Distribution Date or Quarterly Distribution Date on which such check was  
8 issued. After that date, all Claims in respect of void checks shall be discharged and forever barred  
9 and the proceeds of those checks shall revert in and become the property of the Reorganized Debtor  
10 as unclaimed property in accordance with section 347(b) of the Bankruptcy Code and be distributed  
11 as provided in this Plan.  
12

13 **K. Limitations on Funding of Disputed Reserve**

14 Except as expressly set forth in the Plan, neither the Debtor nor the Reorganized Debtor shall  
15 have any duty to fund the Disputed Reserve.  
16

17 **L. Compliance with Tax Requirements**

18 In connection with making Distributions under the Plan, to the extent applicable, the  
19 Reorganized Debtor shall comply with all tax withholding and reporting requirements imposed on it  
20 by any governmental unit, and all Distributions pursuant to the Plan shall be subject to such  
21 withholding and reporting requirements. Notwithstanding the above, each Holder that is to receive a  
22 Distribution under the Plan shall have the sole and exclusive responsibility for the satisfaction and  
23 payment of any taxes imposed on such Holder by an governmental unit, including income,  
24 withholding and other tax obligations, on account of such Distribution. *The Reorganized Debtor*  
25 *may withhold the entire Distribution due to any Holder of an Allowed Claim until such time as*  
26 *such Holder provides the necessary information to comply with any withholding requirements of*  
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1 *any governmental unit. Any property so withheld will then be paid by the Reorganized Debtor to*  
2 *the appropriate authority, including, without limitation, a signed and completed Internal Revenue*  
3 *Service Form W-8 or W-9, as applicable.* If the Holder of an Allowed Claim fails to provide the  
4 information necessary to comply with any withholding requirements of any governmental unit  
5 within 90 days from the Reorganized Debtor's request for such information, then such  
6 Holder's Distribution shall be treated as an undeliverable Distribution and such Holder's  
7 Claims shall not be Allowed.

9 **M. No Payments of Fractional Dollars**

10 Notwithstanding any other provision of the Plan to the contrary, no payment of fractional  
11 dollars shall be made pursuant to the Plan. Whenever any payment of a fraction of a dollar under the  
12 Plan would otherwise be required, the actual Distribution made shall reflect a rounding down of such  
13 fraction to the nearest whole dollar.

15 **N. Interest on Claims**

16 Except as specifically provided for in the Plan or the Confirmation Order, interest shall not  
17 accrue on Claims and no Holder of a Claim shall be entitled to interest accruing on or after the  
18 Petition Date on any Claim. Interest shall not accrue or be paid on any Disputed Claim in  
19 respect of the period from the Petition Date to the date a final Distribution is made thereon if  
20 and after that Disputed Claim becomes an Allowed Claim. Except as expressly provided herein  
21 or in a Final Order of the Bankruptcy Court, no prepetition Claim shall be Allowed to the extent  
22 that it is for postpetition interest or other similar charges.

24 **O. No Distribution in Excess of Allowed Amount of Claim**

25 Notwithstanding anything to the contrary contained in the Plan, no Holder of an Allowed  
26 Claim shall receive in respect of that Claim any Distribution in excess of the Allowed amount of  
27 that Claim.

1 **P. Setoff and Recoupment**

2 The Debtor and the Reorganized Debtor may, but shall not be required to, set off against, or  
3 recoup from, any Claim and the Distributions to be made pursuant to the Plan in respect thereof, any  
4 Claims or defenses of any nature whatsoever that the Debtor, the Estate or the Reorganized Debtor  
5 may have against the Holder of such Claim, but neither the failure to do so nor the allowance of any  
6 Claim under the Plan shall constitute a waiver or release by the Debtor, the Estate, or the  
7 Reorganized Debtor of any right of setoff or recoupment that any of them may have against the  
8 Holder of any Claim.  
9

10 **Q. No Distribution to General Unsecured Creditors**

11 No Distribution of Cash may be made to Holders of General Unsecured Claims until any  
12 Allowed FDIC Priority Claim is paid in full.  
13

14 **R. Cap and Limitation on Total Cash Payments to Creditors Who Make the Proceeds  
Distribution Election**

15 Notwithstanding anything in the Plan or in any documents executed or delivered pursuant to  
16 or to implement this Plan, Holders of Allowed Claims who make the Proceeds Distribution Election  
17 shall not receive an amount of Cash greater than the Pro Rata portion of Net Free Cash that such  
18 Holders would have received if all Net Free Cash was Distributed Pro Rata to all Holders of  
19 Allowed General Unsecured Claims, and all Cash received by such Holders, whether on account of  
20 D&O Litigation Trust Interests, Proceeds Distribution Election Trust Interests or New Series B  
21 Common Stock, shall be applied in reduction of such amount.  
22

23 **ARTICLE VII.**

24 **DISPUTED CLAIMS**

25 **A. No Distribution Pending Allowance**

26 **1. Distributions on Disputed Claims**  
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1 Except as otherwise provided in the Plan, a Final Order or as agreed to by the relevant parties  
2 and subject to the establishment of the Disputed Reserve, Distributions under the Plan on account of  
3 Disputed Claims that become Allowed after the Effective Date shall be made as soon as reasonably  
4 practicable after such Disputed Claims become Allowed Claims; *provided, however*, that (a)  
5 Disputed Administrative Claims with respect to liabilities incurred by the Debtor in the ordinary  
6 course of business during the Chapter 11 Case or assumed by the Debtor on or before the Effective  
7 Date that become Allowed after the Effective Date shall be paid or performed in the ordinary course  
8 of business in accordance with the terms and conditions of any controlling agreements, course of  
9 dealing, course of business, or industry practice and (b) Disputed Priority Tax Claims that become  
10 Allowed Priority Tax Claims after the Effective Date, unless otherwise agreed, shall be paid in  
11 accordance with the Plan.  
12

## 13 **2. No Partial Payments**

14 Notwithstanding any provision otherwise in the Plan and except as otherwise agreed by the  
15 Reorganized Debtor no partial payments and no partial Distributions shall be made with respect to a  
16 Disputed Claim until all such disputes in connection with such Disputed Claim have been resolved  
17 by settlement or Final Order. Any Entity that holds both an Allowed Claim and a Disputed Claim  
18 shall only receive a Distribution on the Allowed Claim unless and until all objections to the  
19 Disputed Claim have been resolved by settlement or Final Order.  
20

## 21 **B. Resolution of Disputed Claims**

22 Unless otherwise ordered by the Bankruptcy Court after notice and a hearing, the  
23 Reorganized Debtor shall have the right to the exclusion of all others (except as to the Professionals'  
24 applications for allowances of compensation and reimbursement of expenses under sections 330 and  
25 503 of the Bankruptcy Code and as to Holdco Fees), to make, File, prosecute, settle, compromise,  
26 withdraw or resolve in any manner approved by the Bankruptcy Court, objections to Claims, and to  
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1 administer and adjust the Claims Register to, among other things, reflect any such settlements,  
2 compromises and withdrawals.

3 **C. Objection Deadline**

4 All objections to Disputed Claims shall be Filed and served upon the Holders of each such  
5 Claim on or before the Claims Objection Bar Date or the Administrative Claim Objection Bar Date.  
6 If an objection has not been Filed to a proof of Claim or request for payment of an Administrative  
7 Claim by the respective bar dates, then such Claim or Administrative Claim shall be treated as an  
8 Allowed Claim for all purposes under the Plan, unless otherwise ordered by the Bankruptcy Court  
9 after notice and a hearing.  
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11 **D. Estimation of Claims** At any time, subsequent to the Effective Date, the  
12 Reorganized Debtor may request that the Bankruptcy Court estimate any contingent or unliquidated  
13 Claim to the extent permitted by section 502(c) of the Bankruptcy Code regardless of whether the  
14 Debtor or Reorganized Debtor has previously objected to such Claim or whether the Bankruptcy  
15 Court has ruled on any such objection, and the Bankruptcy Court shall have jurisdiction to estimate  
16 any Claim at any time during litigation concerning any objection to such Claim, including during the  
17 pendency of any appeal relating to any such objection.  
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19 **E. Disallowance of Claims** Except as otherwise agreed, any and all proofs of Claim  
20 Filed after the applicable bar date shall be deemed disallowed and expunged as of the Effective Date  
21 without any further notice or action, order or approval of the Bankruptcy Court, and Holders of such  
22 Claims may not receive any Distributions on account of such Claims, unless on or before the  
23 Confirmation Date the Bankruptcy Court has entered an order deeming such Claim to be timely  
24 filed.  
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1 (c) the Holder of such a Claim, debt, right, or Interest accepted this Plan. The Confirmation Order  
2 shall constitute a determination of the discharge of all of the Claims against and Interests in the  
3 Debtor, subject to the occurrence of the Effective Date.

4       **C. Compromise and Settlement.** Pursuant to section 363 of the Bankruptcy Code and  
5 Bankruptcy Rule 9019, and in consideration for the Distributions and other benefits provided  
6 pursuant to the Plan, the provisions of the Plan shall constitute a good faith compromise of all  
7 Claims and Equity Interests on the terms set forth in the Plan. The entry of the Confirmation Order  
8 shall constitute the Bankruptcy Court's approval of the compromise or settlement of all Claims and  
9 Equity Interests, as well as a finding by the Bankruptcy Court that such compromise or settlement is  
10 fair, equitable, reasonable and in the best interests of the Debtor, the Estate and Holders of Claims  
11 and Equity Interests. Entry of the Confirmation Order also shall constitute the Bankruptcy Court's  
12 approval of the releases set forth in the Plan pursuant to Bankruptcy Rule 9019 and its finding that  
13 the releases are: (i) in exchange for the good and valuable consideration provided by the Releasees, a  
14 good faith settlement and compromise of the Claims released by releases set forth in the Plan; (ii) in  
15 the best interests of the Debtor and all Holders of Claims; (iii) fair, equitable and reasonable; (iv)  
16 given and made after due notice and opportunity for hearing; and (v) a bar to any of the Debtor or  
17 the Reorganized Debtor, the Committee, or the Holders of Claims against the Debtor asserting any  
18 Claim released by the Releasing Parties set forth in the Plan against any of the Releasees.  
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21       **D. Releases**

22           1. ***Releases of Third Parties by the Debtor. Notwithstanding anything***  
23 ***contained in the Plan to the contrary, on the Effective Date and effective as of the Effective***  
24 ***Date, the Debtor on behalf of itself and the Estate, for the good and valuable consideration***  
25 ***provided by each of the Releasees, hereby provides a full release to the Releasees (and each***  
26 ***such Releasee so released shall be deemed released by the Debtor) and their respective***  
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1 properties from any and all Causes of Action and any other debts, obligations, rights, suits,  
2 damages, actions, derivative claims, remedies and liabilities whatsoever, whether known or  
3 unknown, foreseen or unforeseen, existing as of the Effective Date, in law, at equity, whether  
4 for tort, contract, violations of federal or state securities laws, or otherwise, based in whole or  
5 in part upon any act or omission, transaction, or other occurrence or circumstances existing or  
6 taking place prior to or on the Effective Date arising from or related in any way to the Debtor,  
7 including, without limitation, those that the Debtor or the Reorganized Debtor would have  
8 been legally entitled to assert or that any Holder of a Claim against or Equity Interest in the  
9 Debtor or other Entity would have been legally entitled to assert for or on behalf of the Debtor,  
10 the Reorganized Debtor or the Estate and further including those in any way related to the  
11 Case or the Plan; provided, however, that the foregoing provisions shall have no effect on the  
12 liability of any Releasee that results from any act or omission (a) that is determined in a Final  
13 Order to be solely due to such Releasee's own gross negligence or intentional or willful  
14 misconduct or fraud; (b) with respect to any of the FDIC Causes of Action, (c) with respect to  
15 any of the Former Officers and Directors Causes of Action, and (d) with respect to the  
16 Avoidance Actions.

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19 2. Releases of Third Parties by Others. Notwithstanding anything contained in  
20 the Plan to the contrary, on the Effective Date and effective as of the Effective Date, the  
21 Releasing Parties shall be deemed to provide a full release to the Releasees and their respective  
22 property from any and all Causes of Action, whether known or unknown, whether for tort,  
23 contract, violations of federal or state securities laws or otherwise, and all direct claims, based  
24 in whole or in part upon any act or omission, transaction, or other occurrence or  
25 circumstances existing or taking place prior to or on the Effective Date arising from or related  
26 in any way to the Debtor, including those in any way related to the Case or the Plan; provided,  
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1 however, that the foregoing provisions shall have no effect on the liability of any Releasee that  
2 results from any act or omission that is determined in a Final Order to be solely due to such  
3 Releasee's own gross negligence or intentional or willful misconduct or fraud; provided,  
4 further, however, that other than as set forth in the Plan, nothing in the Plan or the  
5 Confirmation Order shall affect, release, enjoin or impact in any way the prosecution of any  
6 claims by the FDIC against any non-Debtor, including the Releasees.

8 3. Injunction. Except as otherwise expressly provided in this Plan, the  
9 documents executed pursuant to this Plan, or the Confirmation Order, on and after the  
10 Effective Date, all Persons and Entities who have held, currently hold, or may hold a debt,  
11 Claim, or Interest discharged pursuant to the terms of this Plan (including but not limited to  
12 States and other governmental units, and any State official, employee, or other entity acting in  
13 an individual or official capacity on behalf of any State or other governmental units) shall be  
14 permanently enjoined from: (a) taking any of the following actions on account of any such  
15 discharged debt, Claim, or Interest: (1) commencing or continuing in any manner any action  
16 or other proceeding against the Debtor, the Reorganized Debtor, their successors, or their  
17 property; (2) enforcing, attaching, executing, collecting, or recovering in any manner any  
18 judgment, award, decree, or order against the Debtor, the Reorganized Debtor, their  
19 successors, or their property; (3) creating, perfecting, or enforcing any lien or encumbrance  
20 against the Debtor, the Reorganized Debtor, their successors, or their property; (4) asserting  
21 any set off, right of subrogation, or recoupment of any kind against any obligation due the  
22 Debtors, the Reorganized Debtors, their successors, or their property; and (5) commencing or  
23 continuing any action, in any manner, in any place that does not comply with or is inconsistent  
24 with the provisions of this Plan; and (b) taking any of the following actions on account of any  
25 Claims or Causes of Action that are revested in, or transferred to, the Reorganized Debtor as  
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1 **of the Effective Date or under this Plan commencing or continuing in any manner any action**  
2 **or other proceeding of any kind to recover on or otherwise with respect to such Claims or**  
3 **rights of action. Any person or entity injured by any willful violation of such injunction shall**  
4 **recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances,**  
5 **may recover punitive damages from the willful violator.**

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7 **E. Preservation of Causes of Action.**

8 1. **Vesting of Causes of Action.** Except as expressly released or otherwise  
9 expressly provided in the Plan, pursuant to section 1123(b) of the Code, the Debtor, the Reorganized  
10 Debtor and the D&O Litigation Trustee, as applicable, exclusively shall be vested with and shall  
11 retain and may enforce any and all Causes of Action (as applicable) that the Debtor or the Estate  
12 may hold or have against any Person or Entity (including, without limitation, the FDIC Causes of  
13 Action and the Former Officer and Director Causes of Action), all of which are hereby preserved,  
14 including all Causes of Action, and all rights of disallowance, offset, recharacterization and/or  
15 equitable subordination with respect to claims, and causes of action that have been or may be  
16 brought by or on behalf of the Debtor, the Estate, the Committee or the Reorganized Debtor. Except  
17 as otherwise provided in this Plan, such claims, rights and Causes of Action shall remain assets of  
18 and vest in the Reorganized Debtor, whether or not litigation relating thereto is pending on the  
19 Effective Date, and whether or not any such claims, rights and causes of action have been listed or  
20 referred to in the Plan, the Disclosure Statement, or any other document filed with the Bankruptcy  
21 Court. Neither the Debtor, the Estate nor the Reorganized Debtor waives, releases, relinquishes,  
22 forfeits, or abandons (nor shall they be estopped or otherwise precluded or impaired from asserting)  
23 any claims, rights and causes of action or defenses that constitute property of the Debtor or its  
24 Estate: (a) whether or not such claims, rights, causes of action, or defenses have been listed or  
25 referred to this Plan, the Disclosure Statement, or any other document filed with the Bankruptcy  
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1 Court, (b) whether or not such claims, rights and causes of action, or defenses are currently known to  
2 the Debtor, and (c) whether or not a defendant in any litigation relating to such claims, rights or  
3 causes of action filed a proof of Claim in the Case, filed a notice of appearance or any other pleading  
4 or notice in the Case, voted for or against this Plan, or received or retained any consideration under  
5 this Plan. Without in any manner limiting the scope of the foregoing, notwithstanding any otherwise  
6 applicable principle of law or equity, including any principles of judicial estoppel, res judicata,  
7 collateral estoppel, issue preclusion, or any similar doctrine, (x) the failure to list, disclose, describe,  
8 identify, analyze or refer to any claims, rights and causes of action, or defenses in the Plan, the  
9 Disclosure Statement, or any other document filed with the Bankruptcy Court shall in no manner  
10 waive, eliminate, modify, release, or alter the right of the Debtor or the Reorganized Debtor, to  
11 commence, prosecute, defend against, settle, recover on account of, and realize upon any such  
12 claims, rights and causes of action, that the Debtor, its Estate, or the Committee may have as of the  
13 Effective Date, and (y) from and after the Effective Date, the Reorganized Debtor and the D&O  
14 Litigation Trustee, as applicable, shall have exclusive standing and authority to prosecute any  
15 Causes of Action, including, without limitation, any FDIC Causes of Action or Former Officer and  
16 Director Causes of Action.

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19 **2. Reservation of Causes of Action.** The Debtor expressly reserves all its  
20 Causes of Action, including, without limitation, all claims, rights, Causes of Action, including the  
21 FDIC Causes of Action, and defenses for later adjudication by the Debtor or Reorganized Debtor, as  
22 applicable, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral  
23 estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or  
24 laches will apply to such claims, rights and causes of action, and defenses upon or after the  
25 confirmation or consummation of the Plan based on the Disclosure Statement, the Plan or the  
26 Confirmation Order. In addition, the Debtor and the Reorganized Debtor expressly reserve the right  
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1 to pursue or adopt claims, rights and causes of action that are alleged in any lawsuits in which the  
2 Debtor is a defendant or an interested party, against any entity, including the plaintiffs or co-  
3 defendants in such lawsuits. Any entity to whom the Debtor has incurred an obligation (whether on  
4 account of services, purchase, sale of goods or otherwise), or who has received services from the  
5 Debtor, or who has received money or property from the Debtor, or who has transacted business  
6 with the Debtor, or who has leased equipment or property from or to the Debtor should assume that  
7 such obligation, receipt, transfer or transaction may be reviewed by the Reorganized Debtor  
8 subsequent to the Effective Date and may be the subject of an action after the Effective Date,  
9 whether or not: (a) such entity has filed a proof of Claim against the Debtor in this Case; (b) such  
10 entity's proof of Claim has been objected to by the Debtor; (c) such entity's Claim was included in  
11 the Debtor's Schedules; or (d) such entity's scheduled Claim has been objected to by the Debtor or  
12 has been identified by the Debtor as contingent, unliquidated or disputed.  
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15           3.     **Reservation of Rights Regarding Claims.** Neither the failure to list a Claim  
16 in the Schedules filed by the Debtor, the failure of the Debtor or any other Person to object to any  
17 Claim for purpose of voting, the failure of the Debtor or any other Person to object to a Claim or  
18 Administrative Claim before confirmation or consummation of the Plan or the Effective Date, the  
19 failure of any Person to assert a Claim or cause of action before confirmation or consummation of  
20 the Plan or the Effective Date, the absence of a proof of Claim having been filed with respect to a  
21 Claim nor any action or inaction of the Debtor or any other Person with respect to a Claim or  
22 Administrative Claim, other than a legally effective express waiver or release, shall be deemed a  
23 waiver or release of the right of the Debtor or the Reorganized Debtor before or after solicitation of  
24 votes on the Plan or before or after the Confirmation Date or the Effective Date to (a) object to or  
25 examine such Claim or Administrative Claim in whole or in part or (b) retain and either assign or  
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1 exclusively assert, pursue, prosecute, utilize, otherwise act or otherwise enforce any claim or cause  
2 of action against the holder of any such Claim.

3 **F. Exculpation and Limitation of Liability.**

4 1. **Exculpation of Releasees.** The Releasees, including the Debtor, shall  
5 neither have nor incur any liability to any Person for any act taken or omission made in good  
6 faith in connection with or related to the administration of the Case, including, but not limited  
7 to, the formulation, implementation, confirmation, or consummation of the Plan, the  
8 Disclosure Statement, or any other contract, instrument, release, or other agreement or  
9 document created in connection with the Plan or regarding any Distribution made under the  
10 Plan, except to the extent that the action taken or omitted to be taken by each of the same is  
11 determined by a Final Order to be due to such Person's own respective gross negligence,  
12 intentional or willful misconduct or fraud.

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15 2. **Good faith Solicitation.** Upon entry of the Confirmation Order, pursuant to  
16 section 1125(e) of the Code, the Debtor, the Committee and Holdco, and their respective present and  
17 former members, officers, directors, employees, agents, advisors, representatives, successors or  
18 assigns, and any Professionals (acting in such capacity) employed by any of the foregoing Persons  
19 will be deemed to have solicited votes on the Plan in good faith and in compliance with the Code  
20 and any applicable non-bankruptcy law, and, therefore, shall have no liability for the violation of any  
21 applicable law, rule or regulation governing the solicitation of votes on the Plan.  
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1           **C. Effective Date Deferral Election.** At Holdco's election, which may be made by  
2 Holdco from time to time, the occurrence of the Effective Date may be deferred to a date selected by  
3 Holdco in its sole discretion, which date may be further extended by Holdco from time to time in  
4 Holdco's sole discretion, *provided, however*, the Effective Date cannot be deferred past, and must  
5 occur no later than, the date that is three business days after the date any order determining the FDIC  
6 Priority Claims Determination is a Final Order.  
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8           **D. Waiver of Conditions to Confirmation** The conditions set forth in Article IX,  
9 Sections A and B, *supra* (except for the condition appearing in Article IX.B. (iii)), may be waived, in  
10 whole or in part, by Holdco, after consultation with the Debtor and the Committee, and so long as  
11 the waived condition would not be or would not result in an effect that would be materially  
12 inconsistent with the material terms and conditions of this Plan or the Term Sheet, without any  
13 notice to any other parties in interest (other than the Debtor and the Committee) or the Bankruptcy  
14 Court and without a hearing. In the event there is a dispute between the Debtor and Holdco as to  
15 whether the proposed waiver would be materially inconsistent with the material terms and conditions  
16 of the this Plan or the Term Sheet, then the Bankruptcy Court will determine whether there is such a  
17 material conflict and the parties will accept and not appeal the Bankruptcy Court determination. In  
18 the event the Bankruptcy Court determines that the proposed waiver of condition would result in  
19 such a material conflict, Holdco shall not be permitted to waive such condition absent the Debtor's  
20 consent. The failure of the Plan Proponents to exercise any of the foregoing rights shall not be  
21 deemed a waiver of any other rights, and each such right shall be deemed an ongoing right, which  
22 may be asserted at any time.  
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25           **E. Effect of Failure of Conditions** If the Effective Date does not occur, the Plan shall  
26 be null and void in all respects and nothing contained in the Plan or the Disclosure Statement shall:  
27 (i) constitute a waiver or release of any claims by or Claims against the Debtor; (ii) prejudice in any  
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1 manner the rights of the Debtor, any holder of a Claim or Interest, or any other Person; or (iii)  
2 constitute an admission, acknowledgement, offer, or undertaking by the Debtor, any Creditors, or  
3 holders of Interests, or any other Person in any respect.

4 **ARTICLE X.**

5 **RETENTION AND SCOPE OF JURISDICTION OF THE BANKRUPTCY COURT**

6 **A. Retention and Scope of Jurisdiction of the Bankruptcy Court.**

7 Following the Effective Date, the Bankruptcy Court shall retain such jurisdiction to the  
8 maximum extent as is legally permissible, including, without limitation, for the following purposes:  
9

- 10 1. To determine the allowability, amount, classification, or priority of Claims  
11 upon objection by the Reorganized Debtor;
- 12 2. To construe and to take any action to execute and enforce this Plan, the  
13 Confirmation Order, or any other order of the Bankruptcy Court, to issue such orders as may be  
14 necessary for the implementation, execution, performance, and consummation of this Plan, and all  
15 matters referred to herein, and to determine all matters that may be pending before the Bankruptcy  
16 Court in the Case on or before the Effective Date;
- 17 3. To rule on any and all applications for allowance of compensation and expense  
18 reimbursement of Professionals for periods on or before the Effective Date;
- 19 4. To rule on any request for payment of any Administrative Claim or  
20 administrative expense;
- 21 5. To resolve any dispute regarding the implementation, execution, performance,  
22 consummation, or interpretation of this Plan;
- 23 6. To resolve all applications, adversary proceedings, contested matters, and other  
24 litigated matters instituted on or before the Effective Date;
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1           **B. Successors And Assigns.**

2           The rights, benefits and obligations of any Person named or referred to in this Plan are  
3 binding on, and will inure to the benefit of, any permitted heirs, executors, administrators, successors  
4 or assigns of such Person. Without limiting the generality of the immediately preceding sentence,  
5 the Reorganized Debtor and the D&O Litigation Trustee, as applicable, will succeed to all litigation  
6 privileges, rights and immunities (whether existing under the Federal Rules of Evidence or  
7 otherwise), held or enjoyed by the Debtor.  
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9           **C. Modification of the Plan.**

10           Holdco shall have the exclusive right to amend or modify the Plan so long as the Plan, as  
11 modified, is not inconsistent with the material terms and conditions of this Plan or the Term Sheet.  
12 In the event there is a dispute between the Debtor, Holdco and/or the Committee as to whether the  
13 proposed modifications to the Plan are in material conflict with the material terms and conditions of  
14 this Plan or the Term Sheet, then the Bankruptcy Court will determine whether there is such a  
15 material conflict and the parties will accept and not appeal the Bankruptcy Court determination. The  
16 Plan Proponents shall have the right to modify the Plan collectively at any time prior to the Effective  
17 Date, including, without limitation, (i) to remedy any defect or omission or reconcile any  
18 inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of  
19 the Plan so long as such modification is not inconsistent with the terms of this Plan or as otherwise  
20 agreed by the Committee, (ii) pursuant to section 1127 of the Code, and (iii) to the extent applicable  
21 law otherwise permits.  
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24           **D. Provisions Severable.**

25           Should any provision in this Plan be determined to be unenforceable, such determination  
26 shall in no way limit or affect the enforceability and operative effect of any or all other provisions of  
27 the Plan.  
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**B. Successors And Assigns.**

The rights, benefits and obligations of any Person named or referred to in this Plan are binding on, and will inure to the benefit of, any permitted heirs, executors, administrators, successors or assigns of such Person. Without limiting the generality of the immediately preceding sentence, the Reorganized Debtor and the D&O Litigation Trustee, as applicable, will succeed to all litigation privileges, rights and immunities (whether existing under the Federal Rules of Evidence or otherwise), held or enjoyed by the Debtor.

**C. Modification of the Plan.**

Holdco shall have the exclusive right to amend or modify the Plan so long as the Plan, as modified, is not inconsistent with the material terms and conditions of this Plan or the Term Sheet. In the event there is a dispute between the Debtor, Holdco and/or the Committee as to whether the proposed modifications to the Plan are in material conflict with the material terms and conditions of this Plan or the Term Sheet, then the Bankruptcy Court will determine whether there is such a material conflict and the parties will accept and not appeal the Bankruptcy Court determination. The Plan Proponents shall have the right to modify the Plan collectively at any time prior to the Effective Date, including, without limitation, (i) to remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan so long as such modification is not inconsistent with the terms of this Plan or as otherwise agreed by the Committee, (ii) pursuant to section 1127 of the Code, and (iii) to the extent applicable law otherwise permits.

**D. Provisions Severable.**

Should any provision in this Plan be determined to be unenforceable, such determination shall in no way limit or affect the enforceability and operative effect of any or all other provisions of the Plan.

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**E. Headings Do Not Control.**

In interpreting this Plan, the headings of individual Sections are provided for convenience only, and are not intended to control over the text of any Section. The headings used in the Plan are inserted for convenience only and neither constitute a portion of the Plan nor in any manner affect the provisions of the Plan.

**F. Inconsistency.**

In the event that provisions of the Disclosure Statement and provisions of the Plan conflict, the terms of the Plan shall govern and control.

**G. Post-Confirmation Notices or Requests.**

From and after the Effective Date, any Person who desires notice of any pleading or document filed in the Bankruptcy Court, or any hearing in the Bankruptcy Court, or other matter as to which the Code requires notice to be provided, shall file a request for post-confirmation notice and shall serve the request on the Reorganized Debtor.

**H. Successors/Representatives of the Debtor.**

As of the Effective Date, the Reorganized Debtor shall be the representatives of the Estate under section 1123(b)(3) of the Code and successors to the Debtor under section 1142 of the Code.

**ARTICLE XII.**

**CONFIRMATION REQUEST**

The Plan Proponents request confirmation of the Plan pursuant to section 1129 of the Code.

1 Dated: January 12, 2012

Respectfully submitted,

Holdco Advisors L.P.

3 By: /s/ Vik Ghei  
4 Vik Ghei  
5 Partner

Imperial Capital Bancorp, Inc.

6 Dated: January 12, 2012

7 By: /s/ Anthony Rusnak  
8 Anthony Rusnak  
9 Chief Operating Officer, Secretary,  
10 and General Counsel

11  
12  
13 Submitted by:

14  
15 /s/ Jeffrey D. Sternklar  
16 JEFFREY D. STERNKLAR  
17 JOHN P. COOLEY  
DUANE MORRIS LLP  
Counsel for Holdco Advisors, L.P.

18 /s/ Eve H. Karasik  
19 GARY E. KLAUSNER  
20 EVE H. KARASIK  
21 GREGORY K. JONES, Members of  
22 STUTMAN, TREISTER & GLATT  
PROFESSIONAL CORPORATION  
Reorganization Counsel for Debtor and Debtor in Possession  
Stutman, Treister & Glatt PC

Schedule A

The following list of documents are referenced by the enumerated definitions of Article II, Section A. of the Plan:

108. ***"TOPrS Debenture Indenture"*** shall include: (i) that certain Junior Subordinated Indenture between ITLA Corporation and The Bank of New York Mellon, as Trustee, dated as of October 30, 2002; (ii) that certain Junior Subordinated Indenture between ITLA Corporation and The Bank of New York Mellon, as Trustee, dated as of December 10, 2002; (iii) that certain Indenture between ITLA Corporation and U.S. Bank National Association (successor to State Street Bank and Trust Company of Connecticut, National Association), as Trustee, dated as of September 7, 2000; (iv) that certain Indenture between Indenture between ITLA Corporation and U.S. Bank National Association (successor to State Street Bank and Trust Company of Connecticut, National Association), as Trustee, dated as of February 22, 2001; and (v) that certain Indenture between ITLA Corporation and U.S. Bank National Association (successor to State Street Bank and Trust Company of Connecticut, National Association), as Trustee, dated as of December 19, 2002.
115. ***"TOPrS Trust Guarantee"*** shall include: (i) that certain Guarantee Agreement between ITLA Corporation, as Guarantor, and The Bank of New York Mellon, as Guarantee Trustee, dated as of October 30, 2002; (ii) that certain Guarantee Agreement between ITLA Corporation, as Guarantor, and The Bank of New York Mellon, as Guarantee Trustee, dated as of December 10, 2002; (iii) that certain Guarantee Agreement between ITLA Corporation, as Guarantor and U.S. Bank National Association (successor to State Street Bank and Trust Company of Connecticut, National Association), as Guarantee Trustee, dated as of September 7, 2000; (iv) that certain Guarantee Agreement between ITLA Corporation, as Guarantor and U.S. Bank National Association (successor to State Street Bank and Trust Company of Connecticut, National Association), as Guarantee Trustee, dated as of February 22, 2001; and (v) that certain Guarantee Agreement between ITLA Corporation, as Guarantor and U.S. Bank National Association (successor to State Street Bank and Trust Company of Connecticut, National Association), as Guarantee Trustee, dated as of December 19, 2002.
117. ***"TOPrS Trust Indenture"*** shall include: (i) that certain Amended and Restated Trust Agreement among ITLA Capital Corporation, as Depositor, The Bank of New York Mellon, as Property Trustee, The Bank of New York Mellon (Delaware), as Delaware Trustee, and The Administrative Trustees named therein, as Administrative Trustees, dated as of October 30, 2002; (ii) that certain Amended and Restated Trust Agreement among ITLA Capital Corporation, as Depositor, The Bank of New York Mellon, as Property Trustee, The Bank of New York Mellon (Delaware), as Delaware Trustee, and the Administrative Trustees named therein, as Administrative Trustees, dated as of December 10, 2002; (iii) that certain Amended and Restated Trust Agreement among ITLA Capital Corporation, as Sponsor, U.S. Bank National Association (successor to State Street Bank and Trust Company of Connecticut, National Association), as Institutional Trustee, and the Administrators named therein, dated as of September 7, 2000; (iv) that certain Amended and Restated Trust Agreement among ITLA Capital Corporation, as Sponsor, U.S. Bank National Association (successor to State Street Bank and Trust Company of Connecticut, National Association), as Institutional Trustee, and the Administrators named therein, dated as of February 22, 2001; and (v) that certain Amended and Restated Trust Agreement among ITLA Capital Corporation, as Sponsor, U.S. Bank National Association (successor to State Street Bank and Trust Company of Connecticut, National Association), as Institutional Trustee, and the Administrators named therein, dated as of December 19, 2002.