

**IN THE UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

IN RE:	)	
	)	
	)	<b>Chapter 11</b>
SMALL LOANS, INC., <i>et al.</i> , <sup>1</sup>	)	
	)	<b>Case No.: 11-12254 (WRS)</b>
Debtors.	)	
	)	<b>Jointly Administered</b>

**AMENDED DISCLOSURE STATEMENT FOR JOINT CHAPTER 11 PLAN OF  
LIQUIDATION FILED BY THE OMNIBUS OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS AND S. GREGORY HAYS, CHAPTER 11 TRUSTEE**

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<sup>1</sup> The related Debtors along with the last four digits of each Debtors' federal tax identification number and respective case numbers are Small Loans, Inc. (3224) Case No. 11-12254, The Money Tree Inc. (1386) Case No. 11-12255, The Money Tree of Georgia Inc. (9228) Case No. 11-12258, The Money Tree of Florida Inc. (5315) Case No. 11-12257, and The Money Tree of Louisiana, Inc. (2592) Case No. 11-12256.

## TABLE OF CONTENTS

	Page
ARTICLE I. INTRODUCTION .....	1
ARTICLE II. NATURE OF REPRESENTATIONS.....	1
ARTICLE III. BACKGROUND .....	3
A. Debtors' Background .....	3
B. Summary of Events that Occurred During the Course of the Bankruptcy .....	5
1. Filing of the Cases .....	5
2. Appointment of the Committee .....	6
3. Appointment of the Chapter 11 Trustee.....	6
4. Asset Sales .....	6
C. Description of Debtor's Liabilities .....	6
D. Description of Debtor's Unencumbered Assets.....	6
ARTICLE IV. SUMMARY OF THE PLAN .....	7
A. Overview of Plan .....	7
B. Classification of Claims and Interests .....	8
UNCLASSIFIED CLAIMS.....	8
1. Administrative Claims. ....	8
2. Priority Tax Claims. ....	8
THE PLAN CLASSES.....	8
1. Priority Non-Tax Claims.....	8
2. Class 1 - Secured Claims.. ....	8
3. Class 2 - Convenience Class of Unsecured Claims. ....	8
4. Class 3 - General Unsecured Claims of the Debtors.....	8
5. Class 4 – Subordinated Claims.. ....	8
6. Class 5 - Interests.. ....	8
TREATMENT OF CLASSES OF CLAIMS AND INTERESTS .....	8
UNCLASSIFIED CLAIMS.....	9
1. Administrative Claims. ....	9
2. Priority Tax Claims.....	9
TREATMENT OF UNIMPAIRED CLASSES.....	10
1. Priority Non-Tax Claims.....	10

2.	Class 1 — Allowed Secured Claims.....	10
	TREATMENT OF IMPAIRED CLASSES.....	10
3.	Class 4 – Subordinated Claims..	12
4.	Class 5 - Equity Interests of TMT.....	12
C.	MEANS FOR IMPLEMENTATION .....	12
3.	Powers and Duties of Liquidating Trustee. ....	13
D.	CLAIMS RESOLUTION AND DISTRIBUTION.....	12
E.	ACCEPTANCE OR REJECTION OF THE PLAN.....	24
1.	Voting Rights of Holders of Disputed Claims and Disputed Interests. ....	24
2.	Acceptance by Impaired Classes. ....	24
3.	Cramdown.....	25
F.	CONFIRMATION AND CONSUMMATION OF THE PLAN.....	25
1.	Conditions Precedent – Confirmation Date. ....	25
2.	Conditions Precedent – Effective Date. ....	25
3.	Waiver of Conditions.....	25
4.	Consequences of Non-Occurrence of Effective Date. ....	26
G.	TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES .....	26
1.	Rejection of Leases and Executory Contracts. ....	26
H.	MEANS FOR EXECUTION AND IMPLEMENTATION OF THE PLAN .....	26
1.	Effective Date. ....	26
2.	Objections To Claims/Interests/Administrative Claims. ....	27
3.	Disputed Claims.....	27
4.	Discharge of Debtors and Injunction .....	27
5.	Retention of Jurisdiction.....	30
6.	Successors and Assigns.....	31
7.	Amendment, Modification, and Severability.....	31
8.	Term of Injunctions or Stays.....	32
9.	Termination of Committee.....	32
I.	MISCELLANEOUS PROVISIONS .....	32
1.	Substantial Consummation. ....	32
2.	Insurance Preservation. ....	32
3.	Tax Injunction.....	32

4.	Effectuating Documents; Further Transaction; Exemption From Transfer Taxes. ....	33
5.	Nonconsensual Confirmation.....	33
6.	Modification Of Plan. ....	33
7.	Notice.....	33
8.	Severability; Successors and Assigns. ....	35
9.	Conflict of Terms.....	35
10.	Successors and Assigns.....	35
11.	Payment of Bankruptcy Administrator Fees.....	35
12.	Tax Reporting and Compliance. ....	35
ARTICLE V. PLAN CONFIRMATION PROCESS .....		35
A.	Acceptance Of Plan By Voting.....	36
1.	Approval of Disclosure Statement.....	36
2.	Voting on the Plan .....	36
3.	Deadline for Voting .....	36
B.	Confirmation .....	37
1.	Unfair Discrimination .....	38
2.	Fair And Equitable Test.....	38
C.	Best Interest Test.....	38
D.	Acceptance.....	39
E.	Consummation .....	39
ARTICLE VI. ALTERNATIVES TO CONFIRMATION OF THE PLAN .....		40
A.	Liquidation Under Chapter 7 .....	40
B.	Alternative Plan of Reorganization.....	40
ARTICLE VII. RECOMMENDATION.....		40

## **INTRODUCTION**

On December 16, 2011, Debtors Small Loans, Inc., The Money Tree Inc., The Money Tree of Georgia Inc., The Money Tree of Florida Inc., and The Money Tree of Louisiana, Inc. (collectively, the “Debtors”) filed their voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On February 28, 2012, the Court appointed the consolidated Omnibus Official Committee of Unsecured Creditors in these cases. On May 1, 2012, the Court appointed S. Gregory Hays as Chapter 11 Trustee for the Debtors.

The Chapter 11 Trustee and the Official Committee of Unsecured Creditors (the “Committee” and collectively with the Chapter 11 Trustee, the “Proponents”) submit this Disclosure Statement pursuant to Bankruptcy Code § 1125, to disclose information to enable creditors and other parties in interest entitled to vote (the “Claimants”) to make an informed decision in exercising their rights to accept or reject the Proponents’ *Amended Joint Plan of Liquidation* (the “Plan”).

The Proponents submit this Disclosure Statement pursuant to Bankruptcy Code § 1125 to holders of Claims against, and Interests in, the Debtors in connection with (i) the solicitation of votes to accept the Plan, and (ii) the Confirmation Hearing scheduled for **April 23, 2013 at 11:00 a.m.**, prevailing Central Time, to be held by the Bankruptcy Court to consider confirmation of the Plan pursuant to Bankruptcy Code §§ 1128 and 1129 and Bankruptcy Rule 3017, as such hearing may be adjourned or continued from time to time. The Bankruptcy Court has directed that objections, if any, to confirmation of the Plan be served and Filed so that they are received on or before April 16, 2013. The Confirmation Hearing may be adjourned or continued from time to time by the Bankruptcy Court without further notice except for the announcement of the adjournment or continuance date made at the Confirmation Hearing or at any subsequent adjourned or continued Confirmation Hearing.

Annexed as Exhibits to this Disclosure Statement are copies of the following documents:

- The Proponents’ Plan (Exhibit A);
- Chart of Debtor’s Liabilities (Exhibit B); and
- Chart of Debtor’s Unencumbered Assets (Exhibit C).

All capitalized terms employed in this Disclosure Statement and not otherwise defined herein shall have the meanings given such terms in the Plan attached hereto as Exhibit A.

## **NATURE OF REPRESENTATIONS**

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED BY THE PROPONENTS SOLELY FOR THE BENEFIT OF CREDITORS AND HOLDERS OF INTERESTS IN THE DEBTORS. THIS DISCLOSURE STATEMENT AND THE RELATED DOCUMENTS ARE THE ONLY DOCUMENTS AUTHORIZED BY THE BANKRUPTCY COURT TO BE USED

IN CONNECTION WITH THE SOLICITATION OF VOTES ACCEPTING OR REJECTING THE PLAN.

THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS INCLUDED TO SOLICIT ACCEPTANCES OF THE PLAN. THE INFORMATION IN THIS DISCLOSURE STATEMENT SHOULD NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN TO DETERMINE HOW TO VOTE ON THE PLAN. NO PERSON MAY GIVE ANY INFORMATION OR MAKE ANY REPRESENTATIONS, OTHER THAN THE INFORMATION AND REPRESENTATIONS CONTAINED IN THIS DISCLOSURE STATEMENT REGARDING THE PLAN OR THE SOLICITATION OF ACCEPTANCES OF THE PLAN.

ANY PARTY WHO DOES NOT OBJECT TO THIS DISCLOSURE STATEMENT IS NOT DEEMED TO WAIVE ANY RIGHTS TO OBJECT TO THE CONFIRMATION OF THE PLAN ON ANY BASIS OTHER THAN LACK OF ADEQUATE DISCLOSURE UNDER BANKRUPTCY CODE SECTION 1125.

ALL CREDITORS SHOULD READ THIS DISCLOSURE STATEMENT AND THE PLAN BEFORE VOTING TO ACCEPT OR REJECT THE PLAN. STATEMENTS MADE IN THIS DISCLOSURE STATEMENT ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE PLAN.

THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE BY THE PROPONENTS AS OF THE DATE HEREOF UNLESS OTHERWISE SPECIFIED. THE DELIVERY OF THIS DISCLOSURE STATEMENT DOES NOT IMPLY THAT THERE HAS BEEN NO CHANGE IN THE INFORMATION SET FORTH HEREIN SINCE SUCH DATE. THE PROPONENTS PREPARED THIS DISCLOSURE STATEMENT, BUT DO NOT WARRANT OR REPRESENT THAT THIS DISCLOSURE STATEMENT IS WITHOUT ERROR. HOLDERS OF CLAIMS ENTITLED TO VOTE ON THE PLAN SHOULD READ THIS DISCLOSURE STATEMENT AND PLAN AND CONSULT WITH COUNSEL OR OTHER ADVISORS PRIOR TO VOTING ON THE PLAN.

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH BANKRUPTCY CODE SECTION 1125 AND BANKRUPTCY RULE 3016 AND NOT NECESSARILY IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER NON-BANKRUPTCY LAW.

NOTHING IN THIS DISCLOSURE STATEMENT IS AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY, NOR DOES THIS DISCLOSURE STATEMENT PROVIDE ADVICE ON THE TAX OR OTHER LEGAL EFFECTS OF THE PLAN AS TO HOLDERS OF CLAIMS. YOU SHOULD CONSULT YOUR TAX ADVISOR ON ANY QUESTIONS OR CONCERNS RESPECTING TAX, SECURITIES OR OTHER LEGAL CONSEQUENCES OF THE PLAN.

IF ANY INCONSISTENCY EXISTS BETWEEN THE TERMS AND PROVISIONS OF THE PLAN AND THIS DISCLOSURE STATEMENT, THE TERMS AND PROVISIONS OF THE PLAN CONTROL. CERTAIN OF THE STATEMENTS CONTAINED IN THIS

DISCLOSURE STATEMENT ARE FORWARD LOOKING FORECASTS AND ARE BASED UPON CERTAIN ESTIMATES AND ASSUMPTIONS. THERE CAN BE NO ASSURANCE THAT SUCH STATEMENTS WILL BE REFLECTIVE OF ACTUAL OUTCOMES.

### **IRS CIRCULAR 230 NOTICE**

TO ENSURE COMPLIANCE WITH IRS CIRCULAR 230, HOLDERS OF CLAIMS ARE HEREBY NOTIFIED THAT: (A) ANY DISCUSSION OF FEDERAL TAX ISSUES CONTAINED OR REFERRED TO IN THIS DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY HOLDERS OF CLAIMS FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON THEM UNDER THE INTERNAL REVENUE CODE; (B) SUCH DISCUSSION IS WRITTEN IN CONNECTION WITH THE SOLICITATION OF VOTES ON THE PLAN AND OTHER MATTERS ADDRESSED HEREIN; AND (C) CLAIMANTS SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION, NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THE INFORMATION SET FORTH IN THIS DISCLOSURE STATEMENT OR THE PLAN OF REORGANIZATION.

### **BACKGROUND<sup>2</sup>**

#### **Debtors' Background**

The Money Tree corporate group (the "Group") is believed to have commenced operations in 1987 in Bainbridge, Georgia. Initially, the Group focused on consumer finance operations, providing small loans to consumers for financing consumer purchases. The Group expanded its overall operations and structure to include personal financial loans, consumer finance loans, automobile loans, and other personal consumer financial products. From 1995 through 1998, the Group expanded operations into Alabama, Florida, and Louisiana, growing to more than 40 locations outside of Georgia. As of September, 2010, the Group operated consumer finance offices in 90 locations throughout Georgia, Alabama, Florida, and Louisiana, conducted sales of merchandise, principally consumer products, and operated two used car dealerships and related financing for vehicles. The Group's loan portfolio consisted of consumer sales finance contracts receivables, auto sales finance contracts, and direct consumer loan receivables. Direct consumer loan receivables are loans originated directly to customers for general use, which were collateralized by automobiles or consumer goods, or were unsecured.

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<sup>2</sup> A substantial amount of the information contained in this background section has been gleaned from the Debtors. The Proponents have not independently verified this information, and reserve all rights regarding its accuracy.

Prior to their bankruptcy filing, the Debtors financed their operations through the sale of debt instruments to individual investors. Despite issuing debt instruments to the public, and their general lack of profits over the last decade, the Debtors paid high salaries to its executives and excessive amounts to companies owned or controlled by present or former Insiders. In addition to poor management and deteriorating credit quality, this conduct substantially contributed to the Debtors' bankruptcy filing.

From 2005 through 2007, despite poor financial results, the Group began an expansion of its operations. The expansion in Louisiana involved the purchase of the Louisiana offices of Stewart Finance Company, a company that was itself unprofitable, had filed its own chapter 11 case, and had been accused of running a Ponzi scheme by state and federal regulators.

The Debtors made material misstatements in certain of their securities filings with the U.S. Securities and Exchange Commission (the "SEC"). These filings were required for the sale of debt to the public, and certain of the information contained therein was relied on by Investors in making decisions on whether to buy the Debtors' securities. After receipt of comment letters from the SEC's staff, the Debtors amended their securities filings on several occasions. In the process of selling substantially all of the Debtors' assets during this bankruptcy case, the Proponents believe they have discovered additional material misstatements in the Debtors' filings with the SEC. The Chapter 11 Trustee and the Committee believe that these misstatements, among other issues, may form the basis for Causes of Action. These Causes of Action, among others, are expressly preserved pursuant to the Plan and this Disclosure Statement.

From 2007 through 2011, the Debtors experienced significant liquidity issues. Rather than addressing the underlying performance issues, the Debtors instead maintained their operations by raising money from investors. Ultimately, the Debtors' business failed due to a combination of factors, including, among other things, poor management, excessive debt, and excessive payments to present or former Insiders or companies owned or controlled by present or former Insiders. As a result, the Debtors filed these Cases on December 16, 2011.

## **1. Corporate Structure**

Additional information regarding the corporate structure of the Debtors follows:

### **(a) The Money Tree Inc.**

i. The Money Tree Inc. is a corporation organized under the laws of the State of Georgia having its principle place of business in Bainbridge, Georgia. The Money Tree Inc. was established in 1995. Corporate offices were formerly located at 114 South Broad Street, Bainbridge, Georgia 39817.

ii. The Money Tree Inc. is the parent company of five subsidiary companies: Small Loans, Inc., The Money Tree of Georgia Inc., The Money Tree of Louisiana, Inc., The Money Tree of Florida Inc., and Home Furniture Mart Inc. Home Furniture Mart Inc. has not filed for relief under Chapter 11.



(b) Small Loans, Inc.

Small Loans, Inc. is a corporation organized under the laws of the State of Georgia which formerly operated in the State of Alabama. Small Loans was established in 1995.

(c) The Money Tree of Georgia Inc.

i. The Money Tree of Georgia Inc. is a corporation organized under the laws of the State of Georgia formerly operating in the State of Georgia. The Money Tree of Georgia Inc. was established in 1987.

iii. The Money Tree of Georgia Inc. has five subsidiary companies: Money To Lend, Inc., Buyer's Choice Motor Company, Buyer's Choice Finance Company, Best Buy Autos of Bainbridge Inc. and The Money Tree/Vanmart, Inc. These subsidiary companies have not filed for relief under Chapter 11.

(d) The Money Tree of Louisiana, Inc.

The Money Tree of Louisiana, Inc. is incorporated under the laws of the State of Louisiana formerly operating in the State of Louisiana. The Money Tree of Louisiana, Inc. was established in 1995.

(e) The Money Tree of Florida Inc.

The Money Tree of Florida Inc. is a corporation organized under the laws of the State of Georgia formerly operating in the State of Florida. The Money Tree of Florida was established in 1998.

**2. Assets**

(a) **Real Property**

At the Petition Date and currently, the Debtors' Estates had/have no real property.

(b) **Personal Property**

The Remaining Assets of the Debtors' Estates presently consist primarily of Cash and Causes of Action.

The liquidation value of the Assets may be found on Exhibit B hereto, which is incorporated by reference as though fully set forth herein.

**Summary of Events that Occurred During the Course of the Bankruptcy**

**Filing of the Cases**

The Debtors filed their chapter 11 cases on December 16, 2011. The Cases are presently being jointly administered.

### **Appointment of the Committee**

On January 9, 2012, the Court appointed separate Official Committees of Unsecured Creditors for The Money Tree, Inc. and The Money Tree of Georgia, Inc. On January 27, 2012, the committees held their organizational meeting. The committees held such meeting jointly, and selected Greenberg Traurig, LLP as their counsel. Subsequently, these committees consolidated into the omnibus Committee.

### **Appointment of the Chapter 11 Trustee**

On February 27, 2012, the Committee filed its Emergency Motion to Appoint Chapter 11 Trustee. After discovery and a trial, the Court appointed S. Gregory Hays as Chapter 11 Trustee on April 1, 2012. The Chapter 11 Trustee subsequently retained Christian & Small LLP as his counsel, and retained Hays Financial Consulting, LLC as his financial advisor.

### **Asset Sales**

Following his appointment, the Chapter 11 Trustee commenced efforts to market the Debtors' assets as a going concern.

During the course of his appointment, the Trustee sold substantially all of the Debtors' assets, including the following:

- (a) the Debtors' 1975 Beechcraft B58 Baron;
- (b) the assets of Best Buy Autos, a subsidiary of the Debtors;
- (c) certain charged-off accounts of the Debtors and their affiliates;
- (d) all of the Debtors' finance company accounts receivables, branch office equipment, and related assets;
- (e) various items of consumer product inventory; and
- (f) office furniture and equipment.

### **Description of Debtor's Liabilities**

A summary of the various liabilities of the Debtors is set forth on Exhibit B, attached hereto.

### **Description of Debtor's Unencumbered Assets**

A summary of the various unencumbered assets of the Debtors is set forth on Exhibit C, attached hereto.

## **SUMMARY OF THE PLAN**

The Proponents believe that the Debtors' creditors will obtain a more rapid and potentially greater recovery from the Estates of the Debtors through the Proponents' Plan, than the recovery that would be available if the assets of the Debtors were liquidated under Chapter 7 of the Bankruptcy Code. The Proponents believe that the appointment of a Chapter 7 Trustee would lead to increased administrative costs and a delay in a Distribution to Holders of Allowed Claims, and would therefore result in lower returns to Holders of Allowed Claims. Accordingly, the Plan will maximize the value of the Debtors' assets. The Proponents believe, therefore, that the Plan is in the best interests of creditors.

***The following summary is offered for convenience only; it is not a complete description of the terms of the Plan. Holders of Claims must review the Plan itself for a complete understanding of the Plan and disclosure of its terms. In the event of a discrepancy between the terms of the Plan and anything contained in this Disclosure Statement, the terms of the Plan shall control.***

### **Overview of Plan**

The Plan is a liquidating Plan. Substantially all of the Estates' Assets have been sold, excluding, without limitation, Cash and Causes of Action. The Plan provides for the liquidation and conversion to Cash of the Debtors' Remaining Assets and the Distribution of the net proceeds realized therefrom by a Liquidating Trustee to the Holders of Allowed Claims against the Debtors in accordance with the provisions established by the Bankruptcy Code. A Post-Confirmation Committee will also have an active role in pursuing litigation and managing the Estates' affairs post-petition. The Plan further provides for the substantive consolidation of the Debtors' estates, with a distribution to Holders of Allowed Claims from a single fund. In other words, the assets and liabilities of the various Debtor entities will be pooled together, and all similar claims will be paid the same amount, regardless of which Debtor entity the claim was filed against.

Post-confirmation, the Liquidating Trustee shall liquidate the Remaining Assets of the Estates in accordance with the Plan and shall distribute the Net Proceeds thereof as follows: (a) first to pay the reasonable costs and expenses of the Liquidating Trustee, the Post-Confirmation Committee, and their professionals incurred in administering, maintaining, and preserving the Available Funds and making the Distributions, and the liquidation of the Assets of the Estate (to the extent not otherwise paid pursuant to the Plan) and (b) second Pro Rata to the holders of Allowed Claims on the terms and conditions, and in the priority, set forth in the Plan.

The Plan anticipates extensive post-confirmation litigation. It is believed that the Estates possess valuable claims against numerous third parties which may exceed the value of the sales proceeds of the Debtors' assets. As in any litigation, however, the results are not certain.

## **B. Classification of Claims and Interests**

The following is a designation of the classes of claims and interests under the Plan. Administrative Claims and Priority Tax Claims have not been classified and are excluded from the following classes in accordance with section 1123(a)(1) of the Bankruptcy Code. A Claim or Interest is classified in a particular class only to the extent that the Claim or Interest qualifies within the description of that class and is classified in a different class to the extent that any remainder of the claim or interest qualifies within the description of such different class.

### **UNCLASSIFIED CLAIMS.**

1. Administrative Claims.
2. Priority Tax Claims. Priority Tax Claims consists of any Claims of a Governmental Unit against the Debtors that are entitled to priority under section 507(a)(8) of the Bankruptcy Code, other than Administrative Claims.

### **THE PLAN CLASSES.**

1. Priority Non-Tax Claims. Priority Non-Tax Claims shall collectively consist of any Claims against the Debtors that are entitled to priority under section 507(a) of the Bankruptcy Code, other than Administrative Claims or Priority Tax Claims.
2. Class 1 - Secured Claims. Class 1 consists of all Allowed Secured Claims.
3. Class 2 - Convenience Class of Unsecured Claims Against the Debtors. Class 2 shall consist of all Allowed Unsecured Claims against the Debtors (other than Class 3 Claims or Class 4 Claims) that are: (i) in an amount of \$250.00 or less; or (ii) in an amount greater than \$250.00 and that the Holder has voted to accept the Plan and elects to be treated as having a Claim in an amount of \$250.00 on the Ballot.
4. Class 3 - General Unsecured Claims of the Debtors. Class 3 consists of all Unsecured Claims (other than Class 2 Claims or Class 4 Claims) against the Debtors including, without limitation, the Allowed TMT Note Claim, the TMG Notes Claims, and the TMT Notes Trustee Fee Claim.
5. Class 4 – Subordinated Claims. Class 4 shall consist of all Allowed Subordinated Claims, including Allowed Punitive Damages Claims and Allowed Insider Claims against the Debtors.
6. Class 5 - Interests. Class 5 consists of all Interests in The Money Tree.

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

No Claim or Interest shall entitle the Holder to a Distribution of Cash or to other consideration pursuant to the Plan unless, and only to the extent that, such Claim or Interest is an Allowed Claim or an Allowed Interest. Except as otherwise provided in the Plan or an order of

the Bankruptcy Court, all Distributions of Cash on account of Allowed Claims and Allowed Interests shall be made on a Distribution Date.

**UNCLASSIFIED CLAIMS.**

1. Administrative Claims.

(a) Generally.

Subject to the bar date provisions herein, the Liquidating Trustee shall pay each Holder of an Allowed Administrative Claim against one of the Debtors on account of and in full satisfaction of such Allowed Administrative Claim, Cash equal to the amount of the Allowed Administrative Claim, on the later of: (a) the Effective Date, or (b) the date such Administrative Claim becomes an Allowed Administrative Claim, or, in either case, as soon thereafter as is practicable, except to the extent that the Holder of an Allowed Administrative Claim has agreed to a different treatment.

(b) Payment of Statutory Fees.

On or before the Effective Date, all fees payable to the Bankruptcy Administrator under 28 U.S.C. § 1930, as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid in Cash in full.

(c) Bar Date For Administrative Claims.

(i) General Provisions.

Except as provided below for professionals, requests for payment of Administrative Claims must be Filed no later than thirty (30) days after the Effective Date. Holders of Administrative Claims that are required to File a request for payment of such claims and that do not File such requests by such bar date shall be forever barred from asserting such claims against the Estates, the Chapter 11 Trustee, or the Debtors, or any of their respective property.

Holders of Allowed Administrative Claims shall not be entitled to interest on their Administrative Claims.

(ii) Professionals.

All professionals or other entities requesting compensation or reimbursement of expenses under sections 326, 327, 328, 330, 331, 503(b), 506 and 1103 of the Bankruptcy Code for services rendered before the Effective Date (including, without limitation, any compensation requested by any professional for any other entity for making a substantial contribution in the Case) shall File and serve on counsel for the Chapter 11 Trustee and the Committee an application for final allowance of compensation and reimbursement of expenses no later than sixty (60) days after the Effective Date.

2. Priority Tax Claims. Unless such Holder agrees to other treatment (in which event, such other agreement shall govern), each Holder of an Allowed Priority Tax Claim shall be paid in full in Cash from the Available Funds, to the extent funds are available, within the

later of (a) thirty (30) days after all Allowed Administrative Claims, and Allowed Priority Non-Tax Claims that exist against the Debtors have been paid in full; or (b) if an objection is pending at such time, no later than the fifteenth (15th) Business Day after such Claim becomes Allowed, in Cash from the Available Funds.

#### **TREATMENT OF UNIMPAIRED CLASSES.**

1. Priority Non-Tax Claims. Unless such Holder agrees to other treatment (in which event, such other agreement shall govern), each Holder of an Allowed Priority Claim shall, to the extent not already paid, be paid in full in Cash from the Available Funds, to the extent funds are available, within the later of (a) thirty (30) days after all Allowed Administrative Claims that exist against the Debtors have been paid in full; or (b) if an objection is pending at such time, no later than the fifteenth (15th) Business Day after such Claim becomes Allowed, in Cash from the Available Funds.

2. Class 1 — Allowed Secured Claims. Unless such Holder agrees to other treatment (in which event, such other agreement shall govern), each Holder of an Allowed Class 1 Claim shall receive the Collateral securing their Liens on, or as soon as reasonably practicable after, the Effective Date.

#### **TREATMENT OF IMPAIRED CLASSES.**

1. Class 2 — Convenience Class of Unsecured Claims Against Debtors.

(a) Unless such Holder agrees to other treatment (in which event, such other agreement shall govern), each Holder of a Class 2 Claim shall receive fifteen percent (15%) of its Allowed Claim amount from the Available Funds, to the extent funds are available, within thirty (30) days after all Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Priority Non-Tax Claims and Allowed Class 1 Claims that exist against the Debtors have been paid in full.

(b) Claims in Class 2 are impaired under the Plan. Therefore, pursuant to section 1126(a) of the Bankruptcy Code, the Holders of the Class 2 Claims are entitled to vote to accept or reject the Plan.

2. Class 3 – Allowed General Unsecured Claims.

(a) Unless such Holder agrees to other treatment (in which event, such other agreement shall govern), each Holder of an Allowed Class 3 Claim shall be paid pro rata from the Available Funds, to the extent funds are available and until such Claims are paid in full, after the later of (a) thirty (30) days after the payment of all Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Priority Non-Tax Claims, Allowed Class 1 Claims, and Allowed Class 2 Claims that exist against the Debtors have been paid in full; or (b) if an objection is pending at such time, no later than the fifteenth (15) Business Day after such Claim becomes Allowed. The total amount of the Initial Distribution shall be 90% of the Available Funds (following the payment of all Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Priority Non-Tax Claims, Allowed Class 1 Claims, and Allowed Class 2 Claims). The Liquidating Trustee shall make the Initial Distribution on the Initial Distribution Date, or as soon

as reasonably practical after taking into account the status of objections to Claims and the amount of Disputed Claims, the amount of Available Funds, and the cost of making the Distribution.

Provided that sufficient Available Funds exist for a secondary Distribution, which determination shall be made by the Liquidating Trustee and the Post-Confirmation Committee, the Liquidating Trustee shall make a secondary Distribution to the Holders of Allowed Class 3 Claims not later than fourteen months following the Initial Distribution. To the extent that sufficient Available Funds exist, which determination shall be made by the Liquidating Trustee and the Post-Confirmation Committee, the Liquidating Trustee shall make additional Distributions subsequent to the secondary Distribution but prior to the Final Distribution.

(b) Claims in Class 3 are impaired under the Plan. Therefore, pursuant to section 1126(a) of the Bankruptcy Code, the Holders of the Class 3 Claims are entitled to vote to accept or reject the Plan, provided that in accordance with applicable law, the individual owners of TMT Notes, and not the TMT Notes Trustee, shall be entitled to vote with respect to the Plan.

(c) Amounts payable on account of the Allowed TMT Notes Claim shall be paid to the TMT Notes Trustee for subsequent distribution in accordance with the Plan and the TMT Indentures as provided in Section IV.H of the Plan. As provided in more detail in Section IV.H. of the Plan, the TMT Notes Trustee shall immediately remit the amounts payable on account of the Allowed TMT Notes Claim to the Liquidating Trustee who shall act as paying agent to the various individual holders of TMT Notes.

Within Class 3, the amount of each individual TMG or TMT Investor Claim shall be the amount Scheduled and the Liquidating Trustee shall be entitled to rely upon such Scheduled amounts for the purpose of making Distributions.

3. Class 4 – Subordinated Claims. Class 4 shall consist of all Allowed Subordinated Claims, including Allowed Punitive Damages Claims and Allowed Insider Claims against the Debtors.

(a) All Allowed Subordinated Claims shall be subordinated to the payment, in full, of all other Allowed Claims under the Plan.

(b) Claims in Class 4 are impaired under the Plan. Therefore, pursuant to section 1126(a) of the Bankruptcy Code, the Holders of the Class 4 Claims are entitled to vote to accept or reject the Plan.

4. Class 5 - Equity Interests of TMT.

(a) The Interests of all shareholders of TMT, and any certificates, instruments and other documents evidencing such Interests, shall be cancelled as of the Effective Date. The Holders of Interests in Class 5 shall not receive or retain any Distribution or other property on account of such Interests. Notwithstanding the foregoing, the cancellation of the Interests shall not affect any Cause of Action that the Estates may possess against any person or entity.

(b) Pursuant to section 1126(g) of the Bankruptcy Code, the Holders of Interests in Class 5 are deemed to have rejected the Plan and are not entitled to vote to accept or reject the Plan.

**C. Means for Implementation**

**1. Substantive Consolidation of the Debtors and Continued Corporate Existence.** The entry of the Confirmation Order shall constitute the approval by the Bankruptcy Court, pursuant to Sections 105(a) and 1123(a)(5)(C) of the Bankruptcy Code, effective as of the Effective Date, of the substantive consolidation of the Debtors and their respective Estates, for all purposes relating to the Plan, including for purposes of voting, confirmation, and distributions to Holders of Allowed Claims. On and after the Effective Date, subject to the provisions of the following paragraph, (a) all Assets and liabilities of such Debtors shall be treated as though they were pooled; (b) no distributions shall be made under the Plan on account of any Claim held by any one of such Debtors against any other of such Debtors; (c) no Distributions shall be made under the Plan on account of any Interest held by any one of such Debtors in any other of such Debtors; (d) all guarantees of any one of such Debtors of the obligations of any other of such Debtors shall be eliminated so that any Claim against any one of such Debtors and any guarantee thereof executed by any other of such Debtors shall be one obligation of the Consolidated Estate; and (e) every Claim filed or to be filed in the Case of any one of such Debtors shall be deemed filed against the Consolidated Estate and shall be one Claim against and obligation of the Consolidated Estate.

The substantive consolidation of the Debtors shall effectuate a settlement of claims between the Holders of Allowed TMG Note Claims and the Holders of Allowed TMT Note Claims and entry of the Confirmation Order shall constitute approval thereof by the Bankruptcy Court pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure. Due to various ambiguities in, and issues relating to, the documentation and issuance of Intercompany Debts,



TMG Notes, and TMT Notes, a substantial issue and true controversy exists as to whether the Allowed TMG Note Claims are subordinated to the Allowed TMT Note Claims, or vice versa. A substantial issue and true controversy also exists with respect to whether the creditors of the Debtors dealt with the Debtors as a single economic unit without relying on the Debtors' separateness in extending credit. Further, a substantial issue and true controversy exists as to whether the affairs of the Debtors are so entangled that substantive consolidation will benefit all creditors of the Debtors.

To avoid the cost and risk of litigation relating to various inter-estate claims, and the various claims between creditors of the Debtors relating to claim subordination and/or priority issues, the Committee and the Chapter 11 Trustee believe that the substantive consolidation of the Debtors and their respective Estates results in a favorable resolution of this matter to all creditors of the Debtors. As a result, all Distributions made on account of the Allowed TMT Note Claims shall be treated equally in all respects to the Distributions to be made on account of the Allowed TMG Note Claims, by including all such Claims within Class 3 General Unsecured Claims and according pro rata payment to all such Claims.

The substantive consolidation of the Debtors shall not (other than for purposes relating to Distributions, as set forth above) affect (i) the legal and organizational structure of such Debtors; (ii) any claim or Cause of Action held by any such Debtor against, or equity interest held by any such Debtor in, any person or entity, including any non-Debtor subsidiary or affiliate of the Debtors; (iii) any Claim or cause of action held by any Estate and any defense to any Claim or cause of action or any requirement that a creditor establish mutuality to assert a right of setoff; or (iv) any distribution out of any insurance policy or proceeds of such policy.

Notwithstanding the substantive consolidation outlined herein, the Debtors will continue to exist after the Effective Date as separate corporate entities, with all the powers of corporations under applicable law in the jurisdiction in which they are incorporated or otherwise formed, pursuant to their respective certificates of incorporation (provided, however, that they shall be owned and controlled by the Liquidating Trustee), pending the subsequent dissolution of the Debtors after the Final Distribution Date.

**2. Appointment of Liquidating Trustee.** The Liquidating Trustee shall be appointed as of the Effective Date. In the event of the death, resignation, incapacity, disqualification, or misconduct of the Liquidating Trustee, the Post-Confirmation Committee shall select a successor and seek Bankruptcy Court approval of the successor's appointment.

**3. Powers and Duties of Liquidating Trustee.** On the Effective Date, the Liquidating Trustee and the Post-Confirmation Committee shall each have standing to pursue any and all Causes Of Action, including, without limitation, any Causes of Action arising under Chapter 5 of the Bankruptcy Code. The Causes of Action will be preserved for the benefit of the Holders of Allowed Claims against the Estates.

The Liquidating Trustee shall serve under the Plan and shall discharge all of the rights, powers and duties set forth in the Plan except where the Post-Confirmation Committee shall have

rights and as otherwise noted herein. Without limiting the generality of the foregoing, the Liquidating Trustee, his successors and assigns, shall have the following rights, powers and duties:

(a) all of the rights, powers, and duties of a trustee in bankruptcy, including but not limited to, those under sections 704(a)(1), (2), (4), (5) and (7) and 1106(a)(6) and (7) of the Bankruptcy Code;

(b) to administer and make Distributions of the Remaining Assets and Available Funds, pursuant to the terms of the Plan;

(c) with the approval of the Post-Confirmation Committee, to use, acquire, sell, devise, or dispose of the Remaining Assets free of any restrictions imposed under the Bankruptcy Code and without further notice or order of the Bankruptcy Court, except as otherwise provided in the Plan;

(d) with the approval of the Post-Confirmation Committee, to employ, retain, and replace such persons, including actuaries, attorneys, accountants, auctioneers, brokers, managers, consultants, other professionals, agents, investigators, expert witnesses, consultants and advisors as necessary to discharge the duties of the Liquidating Trustee under the Plan and to pay the reasonable fees and costs of such employment, as well as any such persons retained by the Post-Confirmation Committee, without the need to seek approval from the Bankruptcy Court or review by any other party in interest.

(e) with the approval of the Post-Confirmation Committee, to object to the Allowance of Claims or seek equitable subordination of Claims, pursuant to the terms of the Plan, and to settle any such objection to Claims without further Order of the Bankruptcy Court or notice to creditors, provided that he obtain the consent of the Post-Confirmation Committee;

(f) to establish reserves and open, maintain and administer bank accounts as necessary to discharge his duties under the Plan;

(g) with the approval of the Post-Confirmation Committee, to investigate, analyze, commence, prosecute, litigate, collect and otherwise administer the Causes of Action in the Bankruptcy Court or other court of competent jurisdiction and settle same without further order of the Bankruptcy Court;

(h) with the approval of the Post-Confirmation Committee, to voluntarily engage in arbitration or mediation with respect to any Causes of Action;

(j) to represent the Estates before the Bankruptcy Court and other courts of competent jurisdiction with respect to any matters within his powers under the Plan;

(k) to seek the examination of any Person under the provisions of Bankruptcy Rule 2004;

(l) to pay any fees due and owing under 28 U.S.C. § 1930;

(m) to comply with applicable orders of the Bankruptcy Court and any other court of competent jurisdiction over the matters set forth herein;

(n) to comply with all applicable laws and regulations concerning the matters set forth herein;

(o) to invest the Available Funds in (i) direct obligations of the United States of America or obligations of any agency or instrumentality thereof which are guaranteed by the full faith and credit of the United States of America, (ii) in money market deposit accounts, checking accounts, savings accounts or certificates of deposit, or other time deposit accounts that are issued by a commercial bank or savings institution organized under the laws of the United States of America or any state thereof, or (iii) or any other investments that may be permissible under section 345 of the Bankruptcy Code or order of the Bankruptcy Court;

(p) to exercise such other powers as may be vested in the Liquidating Trustee pursuant to the Plan, the Confirmation Order or other Final Orders of the Bankruptcy Court;

(q) with the oversight of the Post-Confirmation Committee, to execute any documents, instruments, contracts and agreements necessary and appropriate to carry out the powers and duties of the Liquidating Trustee provided, however, that (i) in order to incur any ongoing obligation of the Estates in excess of \$5,000.00, the Liquidating Trustee must obtain the approval of the Post-Confirmation Committee and (ii) the Liquidating Trustee may make payments up to \$1,000.00 without the approval of the Post-Confirmation Committee;

(r) to close all but the main bankruptcy case (Case No. 11-12254) after the Effective Date, provided that such closures shall not prejudice any Claims or Causes of Action of the Estates against any Person;

(s) all of the rights, powers, and duties of a receiver under O.C.G.A. § 9-8-1, *et seq.*, and

(t) to provide periodic reports to the Post-Confirmation Committee at a frequency to be agreed upon by the Liquidating Trustee and the Post-Confirmation Committee.

Except as otherwise noted in the Plan, the Liquidating Trustee shall be the representative of the Estates and the Post-Confirmation Debtors as contemplated by Section 1123(b)(3)(B) of the Bankruptcy Code. Except as otherwise specifically provided in the Plan, the Liquidating Trustee shall have full and exclusive power and authority to act on behalf of the Post-Confirmation Debtors and shall be responsible for performing the duties of the Post-Confirmation Debtors under the Plan. Notwithstanding any other provision of the Plan, the members of the Post-Confirmation Committee shall retain the right to seek a receiver under O.C.G.A. § 9-8-1, *et seq.* over any Causes of Action of the Debtors.

No recourse shall ever be had, directly or indirectly, against the Liquidating Trustee personally, by legal or equitable proceedings or by virtue of any statute or otherwise, nor upon any promise, contract, instrument, undertaking, obligation, covenant or agreement whatsoever executed by the Liquidating Trustee under the Plan, or by reason of the creation of any indebtedness by the Liquidating Trustee under the Plan for any purpose authorized by the Plan, save and except in cases of defalcation, misappropriation, fraud or gross negligence by the Liquidating Trustee, it being expressly understood and agreed that such liabilities, promises, contracts, instruments, undertakings, obligations, covenants and agreements shall be enforceable only against and be satisfied only out of the Remaining Assets of the Debtors or shall be evidence only of a right of payment from the Remaining Assets. The Liquidating Trustee shall be indemnified and held harmless by the Estates from and against any expenses (including the reasonable fees and expenses of counsel), damages or losses incurred or suffered by the Liquidating Trustee in connection with any claim or demand which in any way arises out of or relates to the Plan or the services of the Liquidating Trustee under the Plan; provided, however,

if the Liquidating Trustee is guilty of defalcation, misappropriation, fraud or gross negligence, then the Liquidating Trustee shall bear all losses, damages and expenses arising as a result of such defalcation, misappropriation, fraud or gross negligence.

After making the final Distribution under the Plan and upon dissolution of the Post-Confirmation Debtors, the Liquidating Trustee shall be discharged from his duties under the Plan.

**4. Compensation of Liquidating Trustee.** The Liquidating Trustee shall be reimbursed for any reasonable out-of-pocket expenses incurred in connection with the discharge of his duties under the Plan and shall be entitled to receive monthly compensation, in arrears and pro-rated for partial months, for his services calculated as follows:

i) for months 1 through 6 after the Effective Date - \$6,500 per month,

ii) for months 7 through 12 after the Effective Date - \$4,500 per month,

iii) for months 13 through 24 after the Effective Date - \$2,500 per month, and

iv) for months 25 through the conclusion of these Cases, an amount not to exceed \$2,500 per month, but which will be determined after further consultation between the Post-Confirmation Committee and the Liquidating Trustee after considering the level of activity, if any, in these Cases after month 24 of the Effective Date. The aforementioned fee structure shall collectively be referred to as the "LT Monthly Fee Amounts".

As additional compensation, the Liquidating Trustee shall be entitled to 4% of any proceeds of Causes of Action prosecuted by the Liquidating Trustee and/or the Post-Confirmation Committee (the "LT Contingency Amount") provided, however, that the Liquidating Trustee shall credit any LT Contingency Amounts against all LT Monthly Fee Amounts following month 4 after the Effective Date, regardless of when such LT Contingency Amounts become available.

Following the Final Distribution, the Liquidating Trustee is directed to take such actions as to cause the Post-Confirmation Debtors to be dissolved. The Liquidating Trustee shall be entitled to retain up to \$25,000 from the Final Distribution to complete and pay the costs and expenses associated with the dissolution process.

**5. Liquidating Fund.** All property of the Debtors and their Estates, including Cash, shall vest automatically in the Liquidating Fund on the Effective Date, free and clear of all Liens, Claims and Interests and without the need for the execution or delivery of any instruments of assignment, for the express purpose of, among other things, allowing the Liquidating Trustee to make Distributions to Holders of Allowed Claims pursuant to the terms and conditions of the Plan. Without limiting the foregoing, the Post-Confirmation Debtors shall be vested with all of the Debtors' previously unsold Remaining Assets (including their Causes of Action), which shall be administered, liquidated, prosecuted, settled, and enforced under the direction and control of the Liquidating Trustee.

**6. Maintenance of Bank Accounts and Distribution of Liquidation Proceeds.** The Liquidating Trustee shall disburse the Remaining Assets of the Consolidated Estate to the Holders of Allowed Claims and otherwise in accordance with the terms of the Plan. All Remaining Assets shall be held for the benefit of Holders of Allowed Claims in one or more separate bank or other depository accounts (provided that any bank account opened by the Liquidating Trustee shall be at a financial institution approved by the Bankruptcy Administrator's office). The Liquidating Trustee may, from time to time, invest Available Funds in certificates of deposit, treasury bills, money market accounts or other short term investments. All interest earned shall be retained for Distribution to the Holders of Allowed Claims pursuant to the Plan. The Liquidating Trustee shall prepare and maintain an adequate set of financial books, records or data bases as to allow the Liquidating Trustee to accurately track the amount of Claims asserted against the Estates and the amounts paid to each Holder of Allowed Claims pursuant to the terms of the Plan; provided that the Liquidating Trustee also shall be entitled to use and rely upon the Debtors' books and records (including the books and records maintained by the Claims Agent that are in existence on the Effective Date and the amounts of individual TMT and TMG Investor Claims as set forth in the Debtors' Schedules). On the Initial Distribution Date and each subsequent Distribution Date (or as soon thereafter as is reasonably practicable), the Liquidating Trustee shall make Distributions to the Holders of Allowed Claims in accordance with the terms of the Plan. The Liquidating Trustee will continue to make Distributions until the Remaining Assets in the Estate, including the Liquidation Proceeds, have been fully distributed to Holders of Allowed Claims and in accordance with the terms of the Plan.

**7. Cancellation of Interests.** On the Effective Date, (i) the Interests in the Debtors will be deemed to be fully and finally cancelled, and (ii) the Interests in the Debtors under, relating, or pertaining to any by-laws, or certificate or articles of incorporation or similar documents governing the Existing Securities and any other Certificate evidencing or creating any indebtedness or obligation of the Debtors, will be released and discharged. Notwithstanding the foregoing, on and as of the Effective Date the Liquidating Trustee will hold a single, nominal share of common stock in the Debtors for the sole and limited purpose of maintaining the corporate existence of the Debtors following the Effective Date and pending dissolution of the Debtors.

Notwithstanding anything else herein, the TMT Subordinated Demand Notes, the TMT Subordinated Debentures, the TMG Subordinated Debentures, the TMG Subordinated Demand Notes, and all other debt instruments, and agreements such as the TMT Indentures, forming the basis for any Allowed TMT Note Claim shall only be cancelled as described in Section IV.H. of the Plan.

**8. Role of TMT Notes Trustee; Cancellation of TMT Notes; Termination of TMT Indentures.** Each Distribution on account of the TMT Notes shall be made from the Liquidating Trustee to the TMT Notes Trustee for subsequent distribution in accordance with the respective TMT Indentures and the Plan. In order to minimize the cost and expense of distributions to holders of TMT Notes, the TMT Notes Trustee is authorized to use the Liquidating Trustee as a paying agent for the ratable distribution of amounts due to the individual holders of TMT Notes based upon the records of the Liquidating Trustee as of the Distribution Record Date. Without limiting the Liquidating Trustee's general rights and

privileges, the Liquidating Trustee shall make such distributions promptly and without a specific charge to the TMT Notes Trustee or the individual holders of TMT Notes. The TMT Notes Trustee shall have no duty to oversee any subsequent Distributions made by the Liquidating Trustee pursuant to the Plan.

As of the Effective Date, the Debtors and TMT Notes Trustee shall have no further obligations under the TMT Indentures, which shall be deemed settled, extinguished and discharged in all respects for the benefit of the Debtors and the TMT Notes Trustee, except that: (i) the TMT Notes Trustee shall retain all rights and privileges under the respective TMT Indentures as against the holders of the TMT Notes and amounts received by it pursuant to the Plan, including its rights to assert a lien to secure payment of the TMT Notes Trustee Fee Claim to the extent provided for in the respective TMT Indentures, without regard to whether such claim is allowed or paid by the Debtors in the Plan; (ii) the TMT Notes Trustee shall deliver funds to the Liquidating Trustee subject to the terms of the respective TMT Indentures for distribution to the individual owners of TMT Notes as contemplated by the Plan; and (iii) the TMT Notes Trustee shall reserve all rights, claims and defenses available to it under the terms of the Plan and the TMT Indentures; provided, however, that the Liquidating Trustee or the Post-Confirmation Committee may seek relief from the Court to the extent that either disagrees with the TMT Notes Trustee's exercise of the rights and privileges referenced in this paragraph. The individual owners of TMT Notes shall retain all rights against the TMT Notes Trustee with respect to the payment of the TMT Notes Trustee Fee Claim to the extent set forth in the respective TMT Indenture.

As of the Effective Date of the Plan all TMT Notes and TMG Notes shall be canceled and the holders thereof shall have the rights and remedies with respect thereto retained as expressly set forth in the Plan. Except to the extent otherwise expressly set forth in the Plan, the TMT Notes Trustee shall have no duty to object to claims or to take any further actions after the Effective Date of the Plan to protect or defend the interests of the holders of the TMT Notes.

ALL DISBURSEMENTS MADE BY THE LIQUIDATING TRUSTEE AS PAYING AGENT FOR THE TMT NOTES TRUSTEE TO INDIVIDUAL OWNERS OF THE TMT NOTES SHALL BE MADE TO SUCH OWNERS AS OF THE DISTRIBUTION RECORD DATE. ACCORDINGLY, THE TMT NOTES TRUSTEE AND THE LIQUIDATING TRUSTEE SHALL HAVE NO DUTY TO RECOGNIZE ANY TRADE OF THE NOTES MADE ON OR AFTER THE DISTRIBUTION RECORD DATE.

**9. Post-Confirmation Committee.** The Post-Confirmation Committee will become effective on the Effective Date. It will establish bylaws for its operation and meet at such times as it deems necessary. It will consult with the Liquidating Trustee and its approval will be necessary as provided for in the Plan. It may retain professionals, including counsel, and the bills for those professionals will be submitted to the Liquidating Trustee who will pay the reasonable and necessary fees and expenses of those professionals from the Available Funds. The Post-Confirmation Committee and Liquidating Trustee may jointly retain counsel. If there is a dispute with respect to payment of any fees or expenses, the Post-Confirmation Committee may file an application with the Bankruptcy Court to determine the matter. In the event of the death,

resignation, incapacity, disqualification, or misconduct of any member of the Post-Confirmation Committee, the remaining members of the Post-Confirmation Committee shall select a successor. Each member of the Post-Confirmation Committee shall be entitled to compensation of \$200 per month for that member's services, plus any reasonable and necessary expenses incurred in the course of the member's service.

No recourse shall ever be had, directly or indirectly, against any member of the Post-Confirmation Committee personally, by legal or equitable proceedings, or by virtue of any statute or otherwise, nor upon any promise, contract, instrument, undertaking, obligation, covenant or agreement whatsoever executed under the Plan, save and except in cases of defalcation, misappropriation, fraud or gross negligence by any member. Each member of the Post-Confirmation Committee shall be indemnified and held harmless by the Estates from and against any expenses (including the reasonable fees and expenses of counsel), damages or losses incurred or suffered by such member in connection with any claim or demand which in any way arises out of or relates to the Plan or the services of the Post-Confirmation Committee under the Plan; provided, however, if the member is guilty of defalcation, misappropriation, fraud or gross negligence, then the member shall bear all losses, damages and expenses arising as a result of such defalcation, misappropriation, fraud or gross negligence.

The Post-Confirmation Committee shall have standing to raise any matter at issue in these cases and shall have the ability to conduct discovery including, without limitation, to conduct seek depositions or document productions pursuant to Bankruptcy Rule 2004. The Liquidating Trustee shall be required to share all records of the Debtors with the Post-Confirmation Committee.

The Post-Confirmation Committee and the Liquidating Trustee, or either of them, shall have exclusive standing to file, prosecute, or pursue any a) Causes of Action and b) objections to any and all Claims.

**10. Preservation of Causes of Action.** In accordance with section 1123(b)(3) of the Bankruptcy Code, the Liquidating Trustee and Post-Confirmation Committee, as representatives of the Estates, will retain and may enforce all Causes of Action of the Debtors, their Affiliates and subsidiaries, and the Estates including, without limitation, any and all Causes of Action against the following:

a) any individual or entity who received a transfer of property from any Debtor or their subsidiaries prior to the Petition Date, including without limitation any transfer of property that may be avoided and recovered via an Avoidance Action,

b) any professional retained by the Debtors prior to the Petition Date, including any lawyer, law firm, accountant, accounting firm, consultant or consulting firm, or investment banker or investment banking firm for services performed prior to the Petition Date including, without limitation, any Cause of Action for negligence, malpractice, or any other tort against any of the aforementioned individuals or entities,

c) any present or former Insider of any Debtor,

d) any individual or entity who was indebted to any Debtor,

e) any former or current officer, director, member, shareholder, manager or agent of the Debtors or any Insider or Affiliate of the Debtors for claims arising under applicable non-bankruptcy law under either federal or state law, including but not limited to breaches of fiduciary duty; and

f) all other Causes of Action and related recoveries of any nature or type whatsoever, at law or in equity, against any Person or entity.

The following is a non-exhaustive list of the Debtors' former and current Insiders, officers, directors, members, managers, agents, Affiliates, attorneys, law firms, accountants, and accounting firms, as well as other individuals and entities against whom the Estates are reserving and retaining any and all Causes of Action, which Causes of Action shall be enforceable by the Liquidating Trustee or the Post-Confirmation Committee for the benefit of the Estates:

Martin Investments, Inc., Martin Family Group, LLLP, Martin Sublease, L.L.C., Vance R. Martin Holdings, L.L.L.P., Carr, Riggs & Ingram, LLC, Interstate Motor Club, Inc., Martin Mini Storage Inc., H & B Enterprises, Inc., Vanmart Life Group, Inc., Cash Check Inc. of Ga., Buyer's Choice Finance Company, Buyer's Choice Motor Company, Home Furniture Mart Inc., Money To Lend, Inc., Best Buy Autos Of Bainbridge Inc., Best Deal Autos Inc., Martin Mini Storage Inc., Westgate Association, Inc., Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Dowdy & Whittaker, CPAs, Windham Brannon, PC, Warren, Averett LLC, Warren, Averett, Kimbrough & Marino, Youmans & Gardner, LLC, Holland & Knight, LLP, Powell Goldstein Frazer & Murphy LLP, Bryan Cave LLP (both individually and as successor to Powell Goldstein Frazer & Murphy LLP), Schiff Hardin LLP, Innovate Loan Servicing Corporation, Life of the South Company, Credex, Staples Advantage, Equifax, AT&T, Aflac Incorporated, Southern Company, Bradley D. Bellville, Steven P. Morrison, W. Derek Martin, the Estate of Vance R. Martin, Jefferey V. Martin, Jennifer L. Ard, Vance R. Martin GST Exempt Family Trust, Vance Rudolph Martin Defective Grantor Trust, Karen V. Harrell, D. Michael Wallace, Dehila (Cissie) Franklin, Clayton Penhallegon, Natasha J. Wood, Claud Haynes, David Hill, Michael K. Rafter, Mitesh J. Patel, Thomas Cox, Jr., James Walker, William H. Carr, Hilton Galloway, Danncey Wood, Leslie Rahn Robinson, Elton Sims, Alicea Gorman, Randy Eure, Jon Heath, B. Thomas Conger, Michael W. Hoffman, and Hoffman & Associates, Attorneys-At-Law, LLC, and all Insiders and Affiliates of the foregoing, as those terms are defined in the Bankruptcy Code. Regardless of whether a Person or entity is listed among the foregoing, the Liquidating Trustee and the Post-Confirmation Committee are retaining for enforcement for the benefit of the Estates or the Consolidated Estates any and all Causes of Action of the Debtors.

The failure of the Debtors to specifically list any claim, right of action, suit, proceeding or other Cause of Action in their Schedules does not, and will not be deemed to, constitute a waiver or release by the Estates, the Liquidating Trustee, the Post-Confirmation Committee, the Post-Confirmation Debtors, Investors, or the Debtors of such claim, right of action, suit, proceeding or other Cause of Action, and the Liquidating Trustee and the Post-Confirmation Committee (on behalf of the Post-Confirmation Debtors) will retain the right to pursue such



claims, rights of action, suits, proceedings and other Causes of Action in its sole discretion and, therefore, no preclusion doctrine, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches will apply to such claim, right of action, suit, proceeding or other Cause of Action upon or after the confirmation or consummation of the Plan.

Nothing in the Plan shall (or is intended to) prevent, estop or be deemed to preclude the Liquidating Trustee, the Post-Confirmation Committee, or any Investor from utilizing, pursuing, prosecuting or otherwise acting upon all or any of their Causes of Action and, therefore, no preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches shall apply to such Causes of Action upon or after Confirmation, the Effective Date or the consummation of the Plan. By example only, and without limiting the foregoing, the utilization or assertion of a Cause of Action, or the initiation of any proceeding with respect thereto against a Person, by the Liquidating Trustee shall not be barred (whether by estoppel, collateral estoppel, *res judicata* or otherwise) as a result of (a) the solicitation of a vote on the Plan from such Person or such Person's predecessor in interest; (b) the Claim, Interest or Administrative Claim of such Person or such Person's predecessor in interest having been listed in a Debtor's Schedules, list of Holders of Interests, or in the Plan, Disclosure Statement or any exhibit thereto; (c) prior objection to or allowance of a Claim or, Interest of the Person or such Person's predecessor in interest; or (d) Confirmation of the Plan.

Notwithstanding any allowance of a Claim, the Post-Confirmation Committee and the Liquidating Trustee reserve the right to seek, among other things, to have such Claim disallowed if the Post-Confirmation Committee or the Liquidating Trustee, as the case may be, at the appropriate time, determines that the Estates have a defense under section 502(d) of the Bankruptcy Code, e.g., the Debtor or the Liquidating Trustee holds an Avoidance Action against the Holder of such Claim and such Holder after demand refuses to pay the amount due in respect thereto.

#### **D. Claims Resolutions And Distributions**

##### **1. Procedure for Determination of Claims.**

a. **Objections to Claims.** After the Effective Date, the Liquidating Trustee and the Post-Confirmation Committee, or either of them, shall have exclusive authority and responsibility to prosecute objections to the Allowance of any and all Claims.

b. **Disputed Claims.** Payments or Distributions under the Plan on Account of Disputed Claims shall be held in reserve pending the Allowance or disallowance of the Claim. To the extent any property is distributed to an entity on account of a Claim that is not an Allowed Claim, such property shall promptly be returned to the Liquidating Trustee. To the extent that a Disputed Claim ultimately becomes an Allowed Claim, Distributions on account of such Allowed Claim shall be made in accordance with the provisions of the Plan. On the Distribution Date next following the date that the order or judgment of the Bankruptcy Court allowing such

Claim becomes a Final Order, any Cash held in reserve pursuant to the Plan that would have been distributed prior to the date on which a Disputed Claim becomes an Allowed Claim shall be distributed to the Holder of such Allowed Claim, together with any other Distributions that would be due on account of such Claim being an Allowed Claim. The Liquidating Trustee shall reserve from any Distribution on account of Allowed Claims any amount otherwise allocable to a Claim that is a Disputed Claim pursuant to Section V.B.8 of the Plan.

## **2. Distributions.**

a. **Distributions on Allowed Claims.** Except as otherwise provided herein, Distributions to Holders of Allowed Claims shall be made to the party named and: (a) at the addresses set forth on the respective proofs of Claim Filed by such Holders; (b) at the addresses set forth in any written notice of address change delivered to the Debtors or the Liquidating Trustee, as applicable, after the date of the Filing of any related proof of claim; or (c) at the address reflected in the Schedules or the Debtors' books and records if no proof of claim has been Filed and if the Debtors or the Liquidating Trustee, as applicable, has not received written notice of a change of address, as set forth herein. The distributions to Holders of Allowed Claims shall be on the Initial Distribution Date and the subsequent Distribution Dates on the terms and conditions of the Plan. Notwithstanding any other provision of the paragraph, all Distributions to Holders of Claims shall be subject to the provisions of the Plan concerning reserves for Disputed Claims.

b. **Undeliverable Distributions.** If a Distribution is returned as undeliverable, the Liquidating Trustee shall hold such Distribution and shall use good faith efforts to locate an accurate address of the Holder of the Claim relating to the Distribution. The Liquidating Trustee shall not be required to take additional action with respect to the delivery of the Distribution unless and until the earlier of (a) the date on which the Liquidating Trustee, as applicable, is notified in writing of the then current address of the Holder entitled to receive the Distribution and (b) six (6) months after said Distribution, except as the Bankruptcy Court may otherwise order. If the Liquidating Trustee is notified in writing of the then current address of the Holder before six (6) months after said Distribution, the Liquidating Trustee shall make the Distribution required by the Plan to the Holder at such address. If the Liquidating Trustee is not so notified by six (6) months after said Distribution, and the Holder of the Claim does not assert a right to the undeliverable Distribution within six (6) months after the Distribution, the Holder shall be forever barred from asserting a Claim to such undeliverable Distribution and future Distributions, and the undeliverable Distribution shall become available for Distribution to Holders of other Allowed Claims as provided in the Plan.

c. **Manner of Payment.** Distributions under the Plan may be made, at the option of the Liquidating Trustee, in Cash, by wire transfer or by check drawn on such accounts established by the Liquidating Trustee as necessary to effectuate the Plan.

d. **Interest.** Unless otherwise required by Final Order of the Bankruptcy Court, interest shall not accrue or be paid after the Petition Date on any Claims, and no Holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim.

e. ***De Minimis Distributions.*** Whenever any payment of a fraction of a cent would otherwise be called for, the actual payment shall reflect a rounding of such fraction to the nearest whole cent.

i. Except with respect to Class 2 - Convenience Class of Unsecured Creditors, no interim Distribution will be made on account of any Allowed Claim if the amount of such Distribution is less than \$25.00.

ii. On the Final Distribution Date, the Liquidating Trustee shall (i) aggregate the amount of all Distributions that would have been made on account of an Allowed Claim in Class Three but for this *de minimis* provision and (ii) make a Distribution on account of such Allowed Claim in accordance with the Plan.

f. **Distributions on Claims Allowed Pursuant to Section 502(h) of the Bankruptcy Code.** Except as otherwise provided in the Plan, no Distributions shall be made on account of a Claim arising as a result of a Final Order entered in an Avoidance Action until such Claim becomes an Allowed Claim. Any Claim that is Allowed pursuant to section 502(h) of the Bankruptcy Code prior to the Initial Distribution Date as a result of the entry of a Final Order in any Avoidance Action will be treated in accordance with the provisions of the Plan. All Holders of such Claims that become Allowed Claims after the Initial Distribution Date will receive an initial distribution on the Distribution Date next following the date on which their Claim becomes an Allowed Claim and shall receive subsequent Distributions, if any, in accordance with the provisions of the Plan. Distributions under the Plan on account of anticipated Claims that may arise or become allowable as a result of the entry of a Final Order in any Avoidance Action that are not Allowed Claims as of the Initial Distribution Date may be held in reserve, at the discretion of the Liquidating Trustee, pending the allowance or disallowance of such Claims.

g. **Compliance with Tax Requirements.** In compliance with section 346 of the Bankruptcy Code, to the extent applicable, the Liquidating Trustee shall comply with all withholding and reporting requirements imposed by federal, state or local taxing authorities in connection with making Distributions pursuant to the Plan and shall be authorized to take any and all action necessary and appropriate to comply with such requirements. As a condition to making any Distribution under the Plan, the Liquidating Trustee may require the Holder of an Allowed Claim to provide such Holder's taxpayer identification number, and such other information, certification or forms as necessary to comply with applicable tax reporting and withholding laws. Notwithstanding any other provision of the Plan, each entity receiving a Distribution of Cash pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of tax obligations imposed by any governmental unit, including income, withholding and other tax obligations, on account of such Distribution. The Liquidating Trustee shall also file such federal, state, and local tax returns necessary to winddown the Debtors' affairs, but only to the extent required by law.

h. **Reserve for Disputed Claims.** Except as otherwise provided in the Plan, no Distributions shall be made on account of a Disputed Claim until such Claim becomes an Allowed Claim. In making any Distribution on Allowed Class 2, Class 3 or Class 4 Claims, the Liquidating Trustee shall calculate the amount of such Distribution (for purposes of making a

Pro Rata calculation) as if each Disputed Claim were an Allowed Claim, unless the Bankruptcy Court enters an order specifying that the Disputed Claim should be treated as being a different amount for purposes of such calculation. The Liquidating Trustee shall reserve from Distributions a sufficient amount to make a Distribution on a Disputed Claim in the event it becomes an Allowed Claim (unless the Bankruptcy Court orders otherwise); and to the extent a Disputed Claim is disallowed pursuant to a Final Order, any reserves attributable to the disallowed portion of the Disputed Claim shall be distributed on account of Allowed Claims pursuant to the terms of the Plan.

i. **Setoffs.** Subject to section 553 of the Bankruptcy Code, in the event the Debtors, or any of them, have a Claim or Cause of Action of any nature whatsoever against a Holder of a Claim, the Liquidating Trustee may, but is not required to, set off or recoup the Debtors' Claim against such Claim (and any Distributions or other rights to receive property arising out of such Claim under the Plan) unless any such Claim or Cause of Action of the Debtors is or will be released under the Plan. Neither the failure to set off nor the allowance of any Claim or Cause of Action under the Plan shall constitute a waiver or release of any Claim or Cause of Action of the Debtors.

j. **Reliance on Claims Register.** In making Distributions under the Plan, the Liquidating Trustee shall be entitled to rely upon the accuracy of the Debtors' Schedules and the claims register maintained by the Bankruptcy Court, as modified by any Final Order of the Bankruptcy Court disallowing Claims in whole or in part.

## **E. Acceptance or Rejection of the Plan**

### **1. Voting Rights of Holders of Disputed Claims and Disputed Interests.**

Pursuant to Bankruptcy Rule 3018(a), a Claim or Interest that is Disallowed or which is disputed or objected to will not be counted for purposes of voting on the Plan to the extent it is disputed, unless the Bankruptcy Court enters an order temporarily allowing the Claim or Interest for voting purposes under Bankruptcy Rule 3018(a). Such disallowance for voting purposes is without prejudice to the claimant's or Interest Holder's right to seek to have its Claim or Interest, as the case may be, allowed for purposes of distribution under the Plan.

### **2. Acceptance by Impaired Classes.**

An impaired class of Claims shall have accepted the Plan if (a) the Holders (other than any Holder designated under section 1126(e) of the Bankruptcy Code) of at least two-thirds in dollar amount of the Claims actually voting in such class have voted to accept the Plan, and (b) more than one-half in number of the Holders (other than any Holder designated under section 1126(e) of the Bankruptcy Code) of such Claims actually voting in such class have voted to accept the Plan.

### **3. Cramdown.**

In the event that any Class of Claims or Interests fails to accept the Plan in accordance with section 1129(a)(8) of the Bankruptcy Code, the Proponents reserve the right to (a) request that the Bankruptcy Court confirm the Plan in accordance with section 1129(b) of the Bankruptcy Code, and/or (b) modify the Plan in accordance with section 1127(a) of the Bankruptcy Code.

## **F. Confirmation And Consummation Of The Plan**

### **1. Conditions Precedent – Confirmation Date.**

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

- a. The entry of a Final Order finding that the Disclosure Statement contains adequate information pursuant to section 1125 of the Bankruptcy Code which order shall be in form and substance reasonably satisfactory to the Chapter 11 Trustee and the Committee;
- b. The proposed Confirmation Order shall be, in form and substance, reasonably acceptable to the Chapter 11 Trustee and the Committee; and
- c. All provisions, terms and conditions of the Plan are approved in the Confirmation Order.

### **2. Conditions Precedent – Effective Date.**

The following are conditions precedent to the occurrence of the Effective Date, each of which must be satisfied or waived in writing:

- a. The Confirmation Order shall have been entered and become a Final Order and shall provide that the Liquidating Trustee is authorized and directed to take all actions necessary or appropriate to enter into, implement and consummate the Plan or effectuate, advance or further the purposes thereof;
- b. All Exhibits to the Plan and Disclosure Statement shall be, in form and substance, reasonably acceptable to the Chapter 11 Trustee and the Committee, and if applicable, shall have been executed and delivered by all parties' signatory thereto;
- c. All other actions, documents, and agreements necessary to implement the Plan shall have been effected or executed; and
- d. Available Funds shall be sufficient to make all required payments on the Effective Date and fund a reserve for such payments if not Allowed as of the Effective Date.

### **3. Waiver of Conditions.**

Each of the conditions set forth in Section VII of the Plan may be waived in whole or in part by the Chapter 11 Trustee and the Committee. The failure of a party to exercise any of the

foregoing rights shall not be deemed a waiver of any other rights, and each such right shall be deemed an ongoing right that may be asserted at any time.

#### **4. Consequences of Non-Occurrence of Effective Date.**

In the event that the Effective Date does not timely occur, the Chapter 11 Trustee and the Committee reserve all rights to seek an order from the Bankruptcy Court directing that the Confirmation Order be vacated, that the Plan be null and void in all respects, and/or that any settlement provided for in the Plan be null and void. In the event that the Bankruptcy Court shall enter an order vacating the Confirmation Order, the time within which the Chapter 11 Trustee may assume and assign, or reject all executory contracts and unexpired leases not previously assumed, assumed and assigned, or rejected, shall be extended for a period of thirty (30) days after the date the Confirmation Order is vacated, without prejudice to further extensions.

### **G. Treatment Of Executory Contracts And Unexpired Leases**

#### **1. Rejection of Leases and Executory Contracts.**

Each executory contract or unexpired lease of the Debtors that has not expired by its own terms before the date that is ninety days after the Effective Date or previously been rejected pursuant to an order of the Bankruptcy Court, shall be deemed rejected by the Debtors as of the Effective Date pursuant to sections 365 and 1123 of the Bankruptcy Code. Nothing in this paragraph or any other provision of the Plan shall preclude the Liquidating Trustee or the Post-Confirmation Committee from seeking the return of any deposits, commissions, or other outstanding amounts from any party to an executory contract.

#### **2. Filing of Claims.**

Each entity who is a party to an executory contract or unexpired lease rejected pursuant to the Plan shall be entitled to file with the Bankruptcy Court, no later than the date set by the Bankruptcy Court or, if no date is set, thirty (30) days following the date it is deemed rejected, a proof of claim for damages, if any, alleged to arise from the rejection of such executory contract or unexpired lease unless such executory contract or unexpired lease was rejected pursuant to a prior Order of the Bankruptcy Court. A copy of the proof of claim must also be served upon the Liquidating Trustee and his counsel. The failure of such entity to file a proof of claim within the period prescribed shall forever bar such entity from asserting any Claim for damages arising from the rejection of such executory contract or unexpired lease. The filing of any such proof of claim shall be without prejudice to any and all rights the Liquidating Trustee or the Post-Confirmation Committee may have to object to the allowance thereof.

### **H. Means for Execution and Implementation of the Plan**

#### **1. Effective Date.**

The Effective Date of the Plan shall be ten (10) days after the Confirmation Date.

## **2. Objections To Claims/Interests/Administrative Claims.**

After the Effective Date, only the Liquidating Trustee or the Post-Confirmation Committee shall be entitled to object to Claims and Interests. Any objections to Claims and Interests shall be served and filed on or before the later of: (i) ninety (90) days after the Effective Date; (ii) sixty (60) days after a request for payment or proof of Claim or Interest is timely Filed and properly served; or (iii) such other date as may be fixed by the Bankruptcy Court, whether before or after the dates specified in subsections (i) and (ii) herein, upon motion of the Disbursing Agent on an *ex-parte* basis without notice to creditors or otherwise. Notwithstanding any authority to the contrary, an objection to a Claim or Interest shall be deemed properly served on the Creditor if service is effected in any one of the following manners: (a) in accordance with Federal Rule of Civil Procedure 4, as modified and made applicable by Bankruptcy Rule 7004; (b) by first class mail, postage prepaid, on any counsel that has appeared on the Holder of a Claim's or Interest's behalf in the Cases; or (c) by first class mail, postage prepaid, on the signatory on the proof of Claim or Interest or other representative identified in the proof of Claim or Interest or any attachment thereto.

The Liquidating Trustee or the Post-Confirmation Committee may object to or settle, without Bankruptcy Court approval, any Administrative Claim. The Liquidating Trustee or the Post-Confirmation Committee shall be authorized to settle any objection to any other Claim.

## **3. Disputed Claims.**

Pending resolution of a Disputed Claim, all Cash to be distributed to the Holder of the Disputed Claim shall be segregated by the Liquidating Trustee at a federally insured financial institution until distribution to the Holder of such Claim under the Plan. Distribution shall be made only from the Disputed Claims reserve and only at such time as a particular Claim is determined to be an Allowed Claim. The Holder of a Disputed Claim that is ultimately Allowed shall have no recourse against the Reorganized Debtors or their property for the payment of its Allowed Claim. No interest shall accrue or will be paid with respect to any Disputed Claim for the period from the Effective Date to the date a distribution, if any, is made with respect to said Disputed Claim upon becoming an Allowed Claim. To the extent that a Disputed Claim ultimately is disallowed or Allowed in an amount less than the amount of the reserves for such Disputed Claim, any resulting surplus in the reserve shall be transferred from the reserve to the general funds held by the Liquidating Trustee for the benefit of the Holders of Allowed Claims.

## **4. Discharge of Debtors and Injunction**

The Debtors shall receive a discharge pursuant to 11 U.S.C. § 1141.

a. **Full and Final Satisfaction.** The treatment of Claims and Interests provided in the Plan shall be in full and final satisfaction and settlement of all liabilities of Claims against the Estate, or Interests in the Debtors. Except as provided in the Plan or the Confirmation Order, the rights afforded under the Plan will be in exchange for and in complete satisfaction, discharge and release of all Claims and liabilities against the Estates and termination of all Interests arising on or before the Effective Date, including any interest accrued after the Filing Date.

b. **INJUNCTION.** EXCEPT AS OTHERWISE PROVIDED IN THE PLAN, THE CONFIRMATION ORDER SHALL PROVIDE, AMONG OTHER THINGS, THAT FROM AND AFTER THE EFFECTIVE DATE ALL PERSONS WHO HAVE HELD, HOLD OR MAY HOLD CLAIMS AGAINST OR INTERESTS IN THE DEBTORS ARE PERMANENTLY ENJOINED FROM TAKING ANY OF THE FOLLOWING ACTIONS AGAINST THE DEBTORS OR THEIR ESTATES, OR ANY OF THEIR PROPERTY ON ACCOUNT OF ANY SUCH CLAIMS OR INTERESTS: (A) COMMENCING OR CONTINUING, IN ANY MANNER OR IN ANY PLACE, ANY ACTION OR OTHER PROCEEDING AGAINST THE DEBTORS; (B) ENFORCING, ATTACHING, COLLECTING OR RECOVERING IN ANY MANNER ANY JUDGMENT, AWARD, DECREE OR ORDER; (C) CREATING, PERFECTING OR ENFORCING ANY LIEN OR ENCUMBRANCE; (D) ASSERTING A SETOFF, RIGHT OF SUBROGATION OR RECOUPMENT OF ANY KIND AGAINST ANY DEBT, LIABILITY OR OBLIGATION DUE TO THE DEBTOR; AND (E) COMMENCING OR CONTINUING, IN ANY MANNER OR IN ANY PLACE, ANY ACTION THAT DOES NOT COMPLY WITH OR IS INCONSISTENT WITH THE PROVISIONS OF THE PLAN, PROVIDED HOWEVER, THAT (A) NOTHING CONTAINED IN THE PLAN SHALL PRECLUDE SUCH PERSONS FROM EXERCISING THEIR RIGHTS PURSUANT TO AND CONSISTENT WITH THE TERMS OF THE PLAN OR THE CONFIRMATION ORDER AND (B) THE MEMBERS OF THE POST-CONFIRMATION COMMITTEE SHALL HAVE STANDING TO SEEK THE APPOINTMENT OF A RECEIVER FOR CERTAIN ASSETS AND/OR CAUSES OF ACTION OF THE DEBTORS, AND SHALL NOT BE PRECLUDED FROM DOING SO UNDER THE PROVISIONS OF THE PLAN.

c. **Term of Injunctions or Stays.** All injunctions or stays provided for in the Cases under sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date. Upon the Effective Date, the injunction provided in this section shall apply.

d. **Released Claims; Exculpation; Mutual Releases.** Any Person or entity, including the Liquidating Trustee and the Post-Confirmation Committee, retains the right to pursue any and all Causes of Action against, without limitation, any Persons who served as directors, officers, accountants, attorneys, or management employees of the Debtors on or after the Petition Date and each of their respective agents, employees, representatives, and professionals, and their employees. Notwithstanding the foregoing, all Causes of Action under section 547 of the Bankruptcy Code against Investors, excepting any Causes of Action against Insiders or other persons or entities indentified in Section IV.J. of the Plan, shall be released pursuant to the Plan.

Without limiting the rights of the TMT Notes Trustee preserved in Section IV.H of the Plan, the TMT Indentures, including without limitation the “no action” clause contained in section 6.6 of the TMT Indentures, shall not be construed to limit any right of the Liquidating Trustee, the Post-Confirmation Committee, and any individual holder of a Claim to bring any Cause of Action against any Person other than the Debtors.



The Exculpated Parties shall not have or incur any liability to any Person for any act taken or omission made in connection with or in any way related to negotiating, formulating, implementing, confirming, consummating or administering the Plan, the Disclosure Statement, or any contract, instrument, release, or other agreement or document created in connection with or related to the Plan or the Debtors' bankruptcy cases, or any other act taken or omission made in connection with the Debtors' bankruptcy cases (collectively, the "Released Actions"); provided that the foregoing provisions of this section shall have no effect on the liability of any Person that results from any act or omission that is determined in a Final Order to have constituted fraud, gross negligence or willful misconduct.

With respect to the Liquidating Trustee, the Post-Confirmation Committee, its members, and the professionals retained by the Liquidating Trustee or the Post-Confirmation Committee, they shall not have any liability to any Person arising out of the discharge of their duties under the Plan after the Effective Date, except for gross negligence or intentional misconduct.

e. **Releases by Holders of Claims and Equity Interests.** As of the Effective Date, for good and valuable consideration, to the fullest extent permissible under applicable law, the Holders of Claims or Interests, and each of their respective agents, employees, professionals, and representatives, will be deemed to completely and forever release, waive, void, extinguish, and discharge the Exculpated Parties from all Released Actions (other than the rights to enforce obligations created under the Plan, and any right or obligation of such Holder under the Plan, and the securities, contracts, instruments, releases, indentures, and other agreements or documents delivered thereunder or contemplated thereby, including, without limitation, the Plan and the Disclosure Statement).

f. **Injunction Related to Releases.** Except to the limited extent set forth in Section IX.D.4 of the Plan, all claimants and parties in interest, including the Committee, the Holders of any Claim or Interest, and each of their respective agents, employees, professionals, and representatives, are permanently, forever, and completely stayed, restrained, prohibited, and enjoined from directly or indirectly, derivatively or otherwise, commencing or continuing any Released Action against any Exculpated Party, including as a defense or counterclaim; provided, however, that any party in interest may enforce the terms of the Plan. Nothing in the Plan shall prejudice any right, remedy, defense, claim, cross-claim, counterclaim, or third-party claim that any Person may have against any Person other than with respect to the Released Actions against the Released Parties.

g. **No Waiver.** The release set forth in the Plan does not limit, abridge, or otherwise affect the rights of the Liquidating Trustee or the Post-Confirmation Committee to enforce, sue on, settle, or compromise the Reserved Actions or any other rights, claims and other matters retained by the Liquidating Trustee and the Post-Confirmation Committee on behalf of the Estates pursuant to the Plan.

h. **Reservation of Police and Regulatory Powers of Governmental Units.** Notwithstanding any other provision in this Plan or in the Confirmation Order, any discharge, release, exculpation or injunction provided in this Plan or in the Confirmation Order shall not

preclude any action or proceeding by a Governmental Unit in any forum, against any person or entity, including the Debtor, to enforce such Governmental Unit's police or regulatory power.

## **5. Retention of Jurisdiction.**

Under sections 105(a) and 1142 of the Bankruptcy Code, and notwithstanding entry of the Confirmation Order, substantial consummation of the Plan and occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, and related to, the Cases and the Plan to the fullest extent permitted by law, including, among other things, jurisdiction to:

a. Allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim, the resolution of any objections to the Allowance or priority of Claims or Interests and the determination of requests for the payment of claims entitled to priority under section 507(a)(2) of the Bankruptcy Code, including compensation of any reimbursement of expenses of parties entitled thereto;

b. Hear and determine all applications for compensation and reimbursement of expenses of professionals under the Plan or under sections 330, 331, 503(b), 1103, and 1129(a)(4) of the Bankruptcy Code;

c. Hear and determine all matters with respect to the assumption or rejection of any executory contract or unexpired lease to which any Debtor is a party or with respect to which such Debtor may be liable, and to hear, determine and, if necessary, liquidate any Claims arising therefrom;

d. Effectuate performance of and payments under the provisions of the Plan;

e. Hear and determine any and all adversary proceedings, motions, applications and contested or litigated matters arising out of, under or related to the Cases or the Plan;

f. Enter such orders as may be necessary or appropriate to execute, implement or consummate the provisions of the Plan and all contracts, instruments, releases and other agreements or documents created in connection with the Plan, the Disclosure Statement or the Confirmation Order;

g. Hear and determine disputes arising in connection with the interpretation, implementation, consummation or enforcement of the Plan, including disputes arising under agreements, documents or instruments executed in connection with the Plan;

h. Consider any modifications of the Plan and any implementing documents, cure any defect or omission or reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;

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

j. Enter and implement such orders as may be necessary or appropriate if the Confirmation Order is for any reason reversed, stayed, revoked, modified or vacated;

k. Hear and determine any matters arising in connection with or relating to the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order;

l. Enforce all orders, judgments, injunctions, releases, exculpations, indemnifications and rulings entered in connection with the Cases;

- m. Except as otherwise limited by the Plan, recover all Assets of the Debtors and property of the Estates, wherever located;
- n. Hear and determine matters concerning state, local and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code;
- o. Hear and determine all matters related to the property of the Estates from and after the Confirmation Date;
- p. Hear and determine the Causes of Action, unless the Liquidating Trustee or the Post-Confirmation Committee determine, in their sole discretion, to commence an action or proceeding in another court of competent jurisdiction;
- q. Hear and determine all disputes involving the existence, nature or scope of the injunctions indemnification, exculpation and releases granted pursuant to the Plan.
- r. Hear and determine all disputes or other matters arising in connection with the interpretation, implementation or enforcement of the Asset Sales;
- s. Hear and determine all matters related to (i) the property of the Estates from and after the Confirmation Date, (ii) the winding up of the Estates and (iii) the activities of the Liquidating Trustee or the Post-Confirmation Committee, including (A) challenges to or approvals of their activities, where required under the Plan (B) resignation, incapacity or removal of the Liquidating Trustee, (C) reporting by, termination of and accounting by Liquidating Trustee and (D) release of the Liquidating Trustee from his duties;
- t. Hear and determine disputes with respect to compensation of professionals;
- u. Hear and determine all disputes involving the existence, nature and/or scope of the injunctions and releases provided by the Plan including any dispute relating to any liability arising out of any termination of employment or the termination of any employee or retiree benefit provision, regardless of whether such termination occurred prior to or after the Effective Date;
- v. Hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under, or not inconsistent with, provision of the Bankruptcy Code;
- w. Enforce all orders previously entered by the Bankruptcy Court; and
- x. Enter a final decree closing the Case.

## **6. Successors and Assigns.**

The rights, benefits, and obligations of any entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of, the heirs, executors, administrators, successors, or assigns of such entity.

## **7. Amendment, Modification, and Severability.**

a. The Plan may be amended or modified before the Effective Date by the Debtors to the extent provided by section 1127 of the Bankruptcy Code.

b. The Debtors reserve the right to modify or amend the Plan upon a determination by the Bankruptcy Court that the Plan, as it is currently drafted, is not confirmable pursuant to section 1129 of the Bankruptcy Code to the extent such a modification or amendment is permissible under section 1127 of the Bankruptcy Code without the need to resolicit consents,

and the Debtors reserve the right to sever any provisions that the Bankruptcy Court finds objectionable.

#### **8. Term of Injunctions or Stays.**

Unless otherwise provided, all injunctions or stays arising before the Confirmation Date in accordance with sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date, or such later date as provided under applicable law.

#### **9. Termination of Committee.**

As of the Effective Date, the Committee appointed in these Cases shall terminate and shall have no rights, responsibilities, powers, duties or authority thereafter, except to the extent necessary to seek compensation and reimbursement, to the extent appropriate, for services rendered or expense incurred by its members or professionals prior to the Effective Date. For the avoidance of doubt, this paragraph shall not affect the formation, rights, responsibilities, powers, duties or authority of the Post-Confirmation Committee.

### **I. Miscellaneous Provisions**

#### **1. Substantial Consummation.**

The Plan shall be deemed to be substantially consummated when the Liquidating Trustee makes the Final Distribution.

#### **2. Insurance Preservation.**

Any policies of insurance or indemnification escrows that may cover or apply to any Claims or Causes of Action against any other officer, director, employee, attorney, accountant, agent or other representative of the Debtors (collectively, the “Insured Parties”), including, without limitation, any directors or officers liability insurance policy, shall be preserved and shall remain in full force and effect following entry of the Confirmation Order.

#### **3. Tax Injunction.**

In accordance with § 346 of the Bankruptcy Code for purposes of any state or local law imposing a tax, income will not be realized by the Debtors or by reason of forgiveness or discharge or indebtedness resulting from the Cases. As a result, each state or local taxing authority is permanently enjoined and restrained, after the Confirmation Date, from commencing, continuing or taking any act to impose, collect or recover in any manner any tax against the Debtors arising by reason of the forgiveness or discharge of any such Person under the Plan. Notwithstanding any other provision of the Plan, each Person or entity receiving a Distribution pursuant to the Plan shall have sole and exclusive responsibility for the payment and satisfaction of tax Claims or obligations imposed by any Governmental Unit on account of, arising out of or related to any such Distribution, including, without limitation, income and withholding taxes.

**4. Effectuating Documents; Further Transaction; Exemption From Transfer Taxes.**

a. Pursuant to section 1146(a) of the Bankruptcy Code, the creation or transfer of any mortgage, deed of trust or other security interest, the making or assignment of any lease or sublease, or the making or delivery of any deed or other instrument of transfer under, in furtherance of or in connection with the Plan, and executed in connection with the liquidation of assets shall not be subject to any stamp tax, real estate tax or similar tax and the Confirmation Order shall direct the appropriate state, commonwealth and local government officials or agents to forego the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

b. On the Effective Date, all provisions of the Plan, including all releases, injunctions, agreements, instruments and other documents filed in accordance with the Plan, shall be binding and have *res judicata*, collateral estoppel, claim preclusion and issue preclusion effect upon the Debtors, all Holders of Claims and Interests and all other entities that are affected in any manner by the Plan. All agreements, instruments and other documents filed in connection with the Plan shall have full force and effect, and shall bind all parties thereto as of the Effective Date, whether or not such documents actually shall be executed by parties other than the Debtors or shall be issued, delivered or recorded on the Effective Date or thereafter.

**5. Nonconsensual Confirmation.**

If all impaired classes do not vote in favor of the Plan, the Proponents shall seek confirmation of the Plan in accordance with section 1129(b) of the Bankruptcy Code, either under the terms provided herein or upon such terms as may exist if the Plan is modified in accordance with section 1127(a) of the Bankruptcy Code.

**6. Modification Of Plan.**

The Proponents may alter, amend or modify the Plan pursuant to section 1127(a) of the Bankruptcy Code at any time prior to the Confirmation Date. After the Confirmation Date and prior to the substantial consummation of the Plan, as defined in section 1101(2) of the Bankruptcy Code, the Proponents may, pursuant to section 1127(b) of the Bankruptcy Code, institute proceedings in Bankruptcy Court to remedy any defect or omission or to reconcile any inconsistencies in the Plan, the Disclosure Statement or the Confirmation Order and any other matters as may be necessary to carry out the purposes and effects of the Plan; so long as such proceedings do not adversely affect the treatment of Holders of Allowed Claims or provided, however, that prior notice of such proceedings shall be served in accordance with Bankruptcy Rule 2002 or order of the Bankruptcy Court.

**7. Notice.**

Except as specifically provided otherwise in the order approving the Disclosure Statement, any notice, pleading, objection or other document required by the Plan or the Confirmation Order, shall be sent by overnight delivery service, facsimile transmission or hand delivery and deemed to have been duly given or made when actually delivered or, in the case of

notice by facsimile transmission, when received and telephonically confirmed and addressed as follows:

a. If to the Chapter 11 Trustee:

Daniel D. Sparks  
Bradley R. Hightower  
CHRISTIAN & SMALL LLP  
505 North 20th Street, Suite 1800  
Birmingham, Alabama 35203  
Phone: (205) 795-6588  
Fax: (205) 328-7234

- and -

S. Gregory Hays  
3343 Peachtree Road Northeast  
Suite 200  
Atlanta, GA 30326  
Phone: (404) 926-0060

b. If to the Liquidating Trustee:

S. Gregory Hays  
3343 Peachtree Road Northeast  
Suite 200  
Atlanta, GA 30326  
Phone: (404) 926-0060

c. If to the Bankruptcy Administrator:

Teresa Jacobs  
Britt Griggs  
Bankruptcy Administrator  
Frank M. Johnson, Jr. Federal Courthouse  
One Church Street  
Montgomery, AL 36104  
(334) 954-3900

d. If to the Committee:

John D. Elrod  
Greenberg Traurig LLP  
Terminus 200  
3333 Piedmont Road, NE, Suite 2500  
Atlanta, GA 30305  
Phone: (678) 553-2259

**8. Severability; Successors and Assigns.**

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, then the Bankruptcy Court, at the request of the Proponents, shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

**9. Conflict of Terms.**

To the extent the Disclosure Statement and the Plan are inconsistent, the terms of the Plan shall control.

**10. Successors and Assigns.**

The rights, benefits and obligations of any Person named or referred to in the Plan shall be binding upon, and shall inure to the benefit of, the heir, executor, administrator, successor or assignee of such Person.

**11. Payment of Bankruptcy Administrator Fees.**

All fees payable through the Effective Date due the Bankruptcy Administrator shall be paid on the Effective Date by the Liquidating Trustee on behalf of the Debtors. The Liquidating Trustee shall pay quarterly fees to the Bankruptcy Administrator until the Cases are closed or converted and/or the entry of final decrees. The Bankruptcy Administrator shall not be required to file a request or proof of claim for payment of its quarterly fees, which shall be paid by the Liquidating Trustee on behalf of Debtors.

**12. Tax Reporting and Compliance.**

The Liquidating Trustee shall be authorized to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtors for all taxable periods ending after the Petition Date through and including the Effective Date.

**PLAN CONFIRMATION PROCESS**

Under the Bankruptcy Code, the following steps must be taken to confirm the Plan:

## **Acceptance Of Plan By Voting**

### **Approval of Disclosure Statement**

After notice and a hearing held on February 28, 2013 by order dated March \_\_, 2013 pursuant to Bankruptcy Code § 1125, the Bankruptcy Court approved this Disclosure Statement as containing information of a kind, and in sufficient detail, that would enable a hypothetical reasonable investor typical of holders of Claims to make an informed judgment whether to accept or reject the Plan. At the hearing on April 23, 2013, the Bankruptcy Court will consider the confirmation of the Plan. The Bankruptcy Court's approval of this Disclosure Statement, however, does not constitute a determination by the Bankruptcy Court as to the fairness or merits of the Plan.

Each holder of a Claim in Classes 2 (Convenience Class), 3 (General Unsecured Claims), and 4 (Subordinated Claims) is entitled to vote on the Plan and should carefully read this Disclosure Statement and the Plan in their entirety before voting on the Plan.

### **Voting on the Plan**

#### **Who May Vote**

Pursuant to Bankruptcy Code § 1126, holders of Allowed Claims may vote to accept or reject the Plan, provided, however, that (i) the holders of Claims in classes that are not impaired under the Plan conclusively are presumed to have accepted the Plan and solicitation of acceptances with respect to such classes is not required, and (ii) a class is deemed not to have accepted the Plan if the Plan provides that the Claims or Interests in such class do not entitle the holders of such Claims or Interests to receive or retain any property under the Plan on account of such Claims or Interests. Accordingly, the Proponents are soliciting acceptance of the Plan only from holders of Claims in Classes 3 and 5 which are "impaired" under the Plan and are entitled to accept or reject the Plan.

Pursuant to section 1126(g) of the Bankruptcy Code, the Holders of Interests in Class 5 are deemed to have rejected the Plan and are not entitled to vote to accept or reject the Plan.

### **Deadline for Voting**

After reviewing the Plan and the Exhibits hereto, please indicate your vote on the enclosed Ballot and return it either by overnight courier or regular mail to the Voting Agent at the address specified in the Ballot and below. Holders of Claims in Classes entitled to vote should read the Ballot carefully and follow the instructions contained therein. **BALLOTS SUBMITTED TO THE VOTING AGENT BY FAX OR OTHER ELECTRONIC TRANSMISSION WILL NOT BE ACCEPTED AND WILL BE VOID.**

**Holders of Claims in Classes 2, 3, and 4 should complete and sign the enclosed Ballot and deliver copies to the following address:**

Money Tree Voting Agent  
Greenberg Traurig, LLP



3333 Piedmont Road, NE, Suite 2500  
Atlanta, Georgia 30305  
(678) 553-2100 phone

(the “Voting Agent”)

**FOR YOUR VOTE TO COUNT, YOUR BALLOT MUST BE RECEIVED BY THE VOTING AGENT DESIGNATED ABOVE AT THE SPECIFIED ADDRESS NO LATER THAN 5:00 P.M. EASTERN TIME ON APRIL 12, 2013 (THE “VOTING DEADLINE”).**

**IF YOU MUST RETURN YOUR BALLOT TO A TRUSTEE, BANK, BROKER, AGENT OR SIMILAR ENTITY, YOU MUST RETURN YOUR BALLOT TO IT IN SUFFICIENT TIME FOR IT TO PROCESS THE BALLOT AND RETURN IT TO THE VOTING AGENT BY THE VOTING DEADLINE.**

To obtain additional Ballots, you may contact the Chapter 11 Trustee or the Committee’s counsel at the addresses specified above. You may also obtain copies of the Plan, Disclosure Statement and other related documents by contacting the Chapter 11 Trustee or the Committee’s counsel.

The Proponents have concluded that confirmation of the Plan is in the best interest of the Debtors, all Holders of Claims and Interests, and the Debtors’ Estates.

### **Confirmation**

At the Confirmation Hearing, the Bankruptcy Court shall confirm the Plan if the Plan satisfies all requirements of Bankruptcy Code § 1129(a). The requirements for confirmation of the Plan under Bankruptcy Code § 1129(a) include the following: (1) the Plan must be accepted by all impaired classes, (2) the Plan must be feasible, and (3) with respect to each holder of a Claim or Interest that does not vote to accept the Plan (even if such holder is a member of a Class that as a whole votes to accept the Plan), the Plan must be in the “best interest” of such holder in that the Plan provides for a Distribution to the holder that is not less than the amount such holder would receive in a hypothetical Chapter 7 liquidation of the Debtors.

With respect to the requirement that each impaired class votes to accept the Plan, Bankruptcy Code § 1129(b) provides that if all other requirements of Bankruptcy Code § 1129(a) are satisfied, the Plan still may be confirmed if the Plan, with respect to each impaired class that does not accept the Plan, “does not discriminate unfairly” and is “fair and equitable” with respect to such Class. The acceptance, feasibility, unfair discrimination and fair and equitable concepts are discussed in more detail below.

For the Plan to be accepted by an impaired class of Claims or Interest, it must be accepted by holders of Claims or Interest in such Class that hold at least two-thirds in dollar amount and one-half in number of the Claims or Interest in such Class held by creditors that actually vote. A Class or Interest is impaired if the legal, equitable, or contractual rights of the members of such Class or Interest are modified or altered by the Plan (with an exception, not applicable to the Plan, for curing defaults, reinstating maturity and compensating certain damages). Classes 2, 3, 4 and 5 are impaired. Unimpaired Classes are conclusively presumed to have accepted the Plan

and are not part of the vote solicitation process. Class 1 is unimpaired under the Plan and is not entitled to vote.

If all Classes of Claims are unimpaired but a Class of Interests is impaired and does not accept the Plan, the Proponents may seek confirmation of the Plan under the “cramdown” provisions of Bankruptcy Code § 1129(b). To obtain confirmation despite non-acceptance by one or more impaired classes, the Proponents must show to the Bankruptcy Court that the Plan does not discriminate unfairly and is fair and equitable with respect to each such Class. Each of these requirements is discussed further, as follows:

### **Unfair Discrimination**

A Plan does not discriminate unfairly with respect to a non-accepting Class if it protects the rights of such Class in a manner consistent with the treatment of other Classes with similar rights. The unfair discrimination test does not require that similarly situated Classes be treated in exactly the same way. The test requires that such Classes be treated substantially similarly or, if not treated substantially similarly, that differences in treatment be fair.

### **Fair And Equitable Test**

In the event any impaired class of Claimants does not accept the Plan, the Chapter 11 Trustee and the Committee must demonstrate to the Bankruptcy Court, as to each non-accepting Class that the Plan “does not discriminate unfairly” and is “fair and equitable” with respect to that Class. A Plan does not discriminate unfairly if no Class receives more than it is entitled to for its Claims. The Bankruptcy Code establishes “fair and equitable” tests for unsecured creditors as follows:

Unsecured Creditors: Either (i) each impaired unsecured creditor receives or retains under the Plan property of a value equal to the amount of its Allowed Claim, or (ii) the holders of Claims that are junior to the Claims of the dissenting Class will not receive any property under the Plan.

### **Best Interest Test**

Before the Bankruptcy Court will confirm the Plan, the Plan must meet the best interest test. The best interest test requires that with respect to each impaired class of creditors under the Plan, each Claimant either (a) has accepted the Plan; or (b) will receive or retain under the Plan on account of its Claim property of a value, as of the Effective Date of the Plan, that is not less than the amount such Claimant would receive or retain if the Debtors were liquidated under Chapter 7 of the Bankruptcy Code. In other words, if one or more Claimants that are members of an impaired class vote to reject the Plan, the Court will confirm the Plan only if the Distribution to such Claimants under the Plan is not less than the Distribution that the Claimants would receive under a Chapter 7 liquidation of the Debtors.

Based upon several factors present in this Bankruptcy Case, the Proponents believe that the Plan meets the best interest test. Considering the liquidation value of the Debtors’ assets, the Liens and security interests of secured creditors, the cost of liquidation under Chapter 7, and the

adverse impact that a liquidation under Chapter 7 would have on the Debtors' assets, the Proponents believe that the Plan provides for a larger Distribution to individual unsecured creditors than under a Chapter 7 liquidation of the Debtors.

To determine if the Plan is in the best interest of each impaired class, the Bankruptcy Court will compare the present value of the Distributions from the proceeds of the liquidation of the Debtors' assets and properties (after subtracting the amounts attributable to the Secured Claims discussed above) with the present value offered to each of the Classes of Unsecured Claims under the Plan. The Distributions from the liquidation proceeds would be calculated Pro Rata according to the amount of the Claim held by each creditor.

After considering the effects that a Chapter 7 liquidation would have on the ultimate proceeds available for Distribution to creditors in the present case, including the costs and expenses of liquidation under Chapter 7, the uncertainties inherent in a Chapter 7, and the adverse affect that a Chapter 7 would have on the value of certain of the Debtors' assets, the Proponents have determined that a Chapter 7 liquidation has a smaller chance of paying creditors in full. The Proponents believe the value of any Distribution from the liquidation proceeds in a Chapter 7 would be less than the value of the Distribution under the Plan due to efficiencies provided by having a Liquidating Trustee.

Based on the foregoing analysis and given the elimination of uncertainties inherent under Chapter 7, the Proponents believe the confirmation of the Plan will provide each Claimant with greater recovery than such Claimant would receive pursuant to a liquidation of the Debtors under Chapter 7 of the Bankruptcy Code. Accordingly, the Proponents submit that the Plan meets the best interest test.

### **Acceptance**

Each impaired class of Claimants must accept the Plan or the "Fair and Equitable Test" described above must be met with respect to each impaired class that does not accept the Plan by the requisite vote.

### **Consummation**

The Plan provides that the Plan shall be deemed to be substantially consummated when the Liquidating Trustee makes the Final Distribution.

The Plan is to be implemented pursuant to the provisions of the Bankruptcy Code. Implementation requires an order of the Bankruptcy Court confirming the Plan.

## **ALTERNATIVES TO CONFIRMATION OF THE PLAN**

If the Plan is not confirmed and consummated, the theoretical alternatives include: (a) liquidation of the Debtors under Chapter 7 of the Bankruptcy Code; or (b) an alternative chapter 11 plan.

### **Liquidation Under Chapter 7**

If the Bankruptcy Court does not confirm a plan of reorganization, the Court may convert the Debtors' cases to cases under Chapter 7 of the Bankruptcy Code. Under Chapter 7, a trustee would be elected or appointed to liquidate the assets of the Debtors for distribution to creditors in accordance with the priorities established by the Bankruptcy Code. The Chapter 7 trustee and his professionals would have a delay in learning about the complexities of this case. Moreover, the Chapter 7 trustee and his would incur additional, unnecessary professional fees associated with this process. A conversion would also result in a lengthy delay in the distribution process, likely ranging from 6 months to years, and would result in a lower distribution to holders of Allowed Claims.

By contrast, the Proponents are already familiar with the Debtors and their affairs and the Plan provides for a prompt distribution to creditors. The Proponents believe that liquidation of the Debtors' assets under Chapter 7 would result in a lesser distribution to unsecured creditors. Having a Liquidating Trustee and Post-Confirmation Committee to oversee the liquidating of the Debtors' assets, litigation against various parties, and the distribution of proceeds through the structure provided by the Plan will provide efficiency to the process.

### **Alternative Plan of Reorganization**

If the Plan is not confirmed, creditors may elect to vote for other plans which may be proposed later.

## **RECOMMENDATION**

The Proponents believe that the confirmation of the Plan is preferable to the alternative described above because the Plan will provide greater and more rapid recoveries to all claimants than those available in a Chapter 7 liquidation. In addition, any alternative plan would probably not be feasible and would involve significant delay, uncertainty, and substantial additional administration and expense. Accordingly, the Proponents recommend that all parties entitled to vote on the Plan accept the Plan and that the Court confirm the Plan.

Dated: March 4, 2013

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