

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

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	:	
In re	:	Chapter 11
	:	
AFA INVESTMENT INC., <i>et al.</i> , ¹	:	Case No. 12-11127 (MFW)
	:	
Debtors.	:	Jointly Administered
	:	
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**FIRST AMENDED JOINT CHAPTER 11
PLAN OF LIQUIDATION OF DEBTORS AND DEBTORS IN POSSESSION**

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Dated: January 17, 2014

¹ The Debtors are the following nine entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): AFA Investment Inc. (0331); American Foodservice Corporation (1780); American Fresh Foods, Inc. (7389); American Fresh Foods, L.P. (7302); AFA Foods, Inc. (0429); American Fresh Foods, LLC (7301); Fairbank Reconstruction Corporation (2405); American Foodservice Investment Company, LLC (9525); and United Food Group LLC (7584). Each of the Debtors was formerly located at 860 First Avenue, Suite 9A, King of Prussia, Pennsylvania 19406.



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The Debtors in the above-captioned cases hereby respectfully propose the following first amended joint plan of liquidation under chapter 11 of the Bankruptcy Code. The Debtors are the proponents of the Plan within the meaning of section 1129 of the Bankruptcy Code. Reference is made to the Debtors' Disclosure Statement, distributed contemporaneously with the Plan, for a discussion of the Debtors' history, properties, financial information and chapter 11 cases and for a summary and analysis of the Plan. Other agreements and documents supplement the Plan and have been or will be Filed with the Bankruptcy Court. These supplemental agreements and documents are referenced in the Plan and the Disclosure Statement and will be available for review. All capitalized terms used herein have the meanings given to such terms in Article I. As provided further herein, among other things, the Plan implements in part, or otherwise facilitates the continued implementation of, the Global Settlement by and among the Debtors, the Creditors' Committee, the Second Lien Agent, the Second Lien Lenders and the WARN Class Representative, which settlement previously was approved by the Bankruptcy Court. Nothing in the Plan is intended to modify or alter the terms and conditions of the Global Settlement and related Global Settlement Approval Order.

All Holders of Claims entitled to vote on the Plan should read the Disclosure Statement and the Plan carefully — and consult with their counsel and other applicable professionals — before voting to accept or reject the Plan.

ARTICLE I.

DEFINED TERMS AND RULES OF INTERPRETATION

A. *Defined Terms*

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein and in the Disclosure Statement:

1. "**ACAS**" means American Capital, Ltd. or its successors and assigns.
2. "**Adequate Protection Claim**" has the meaning given to that term in the Cash Collateral Order and the Global Settlement.
3. "**Administrative Bar Dates**" means, collectively, the Initial Administrative Bar Date and the Final Administrative Bar Date and any additional bar dates for Administrative Claims established herein or in the Confirmation Order.
4. "**Administrative Claim**" means a Claim that has been timely Filed by the applicable Administrative Bar Date, for costs and expenses of administration under sections 503(b), 507(b) or 1114(e)(2) of the Bankruptcy Code, including, without limitation: (a) the actual and necessary costs and expenses incurred after the Petition Date of preserving the Estates and operating the businesses of the Debtors (such as wages, salaries or commissions for services and payments for goods and other services and leased premises); (b) compensation for legal, financial advisory, accounting and other services and reimbursement of expenses awarded or allowed under sections 330(a), 331 or other provisions of the Bankruptcy Code, including Professional Fee Claims; and (c) all fees and charges assessed against the Estates under chapter 123 of title 28 United States Code, 28 U.S.C. §§ 1911-1930; *provided, however*, that

Twenty-Day Claims, WARN Claims and Reclamation Claims are defined and treated separately from Administrative Claims under the Plan.

5. "**Administrative/Priority Claims Bar Date Order**" means the Order, Pursuant to Sections 105, 501 and 503 of the Bankruptcy Code, Bankruptcy Rules 2002 and 3003(c) and Local Rule 2002-1, (I) Establishing Bar Date for Filing Certain Priority and Administrative Claims and (II) Approving Form and Manner of Notice Thereof [Docket No. 596].

6. "**Administrative Claims Objection Deadline**" means the later of (a) first Business Day that is at least 90 days after the Final Administrative Bar Date and (b) first Business Day that is at least 30 days after the filing of an Administrative Claim, and which date, unless extended, shall be the deadline to object to any request for payment of an Administrative Claim.

7. "**Affiliate**" has the meaning set forth at section 101(2) of the Bankruptcy Code.

8. "**Allowed**" means, with respect to any Claim: (a) a Claim that has been scheduled by the Debtors in their Schedules as other than disputed, contingent or unliquidated and is not otherwise a Disputed Claim; (b) a Claim as to which a proof of Claim has been timely Filed by the applicable Bar Date and is not otherwise a Disputed Claim; (c) a Claim that has been allowed or otherwise specifically provided for in the Global Settlement and the Global Settlement Approval Order; (d) a Claim that has been allowed by any other Final Order; (e) a Claim that is allowed in any Stipulation of Amount/Nature of Claim executed by the Claim holder and, as applicable, the Debtors or the Plan Administrator and, if prior to the Effective Date, approved by the Bankruptcy Court, or if after the Effective Date, approved by the Creditor Advisory Board to the extent required in Section VI.B of this Plan; or (f) a Claim that is allowed pursuant to the terms hereof or in or pursuant to any contract, instrument or other agreement entered into or assumed in connection herewith.

9. "**Avoidance Action Committee**" has the meaning given to that term in the Global Settlement. Without limiting the generality of the foregoing, the Avoidance Action Committee is a three-member committee established under the Global Settlement to manage the prosecution of Avoidance Actions. The rights, powers, obligations and terms of governance and operation of the Avoidance Action Committee are as set forth in the Global Settlement, and nothing in the Plan is intended to limit, modify or otherwise affect such rights, powers, obligations and other terms.

10. "**Avoidance Actions**" means any and all avoidance, recovery, subordination or other actions or remedies that may be brought on behalf of the Debtors or the Estates under the Bankruptcy Code or applicable non-bankruptcy law, including, without limitation, actions or remedies under sections 542, 543, 544, 545, 547, 548, 550, 551 and 553 of the Bankruptcy Code.

11. "**Ballot**" means the form or forms distributed to each holder of an impaired Claim entitled to vote on the Plan on which the holder indicates either acceptance or rejection of the Plan and (when applicable) any election under the Plan.

12. "**Bankruptcy Code**" means title 11 of the United States Code, as now in effect or hereafter amended, as applicable to the Chapter 11 Cases.

13. "**Bankruptcy Court**" means the United States District Court for the District of Delaware, having jurisdiction over the Chapter 11 Cases and, to the extent of any reference made pursuant to 28 U.S.C. § 157 and/or the General Order of the District Court pursuant to 28 U.S.C. §151, the United States Bankruptcy Court for the District of Delaware.

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

15. "**Bar Date**" means any applicable bar date by which a proof of Claim or request for payment must be, or must have been, Filed, as established by a Final Order of the Bankruptcy Court, including the Administrative/Priority Claims Bar Date Order, the Twenty-Day Claim Bar Date Order and the Confirmation Order.

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

17. "**BPI**" means Beef Products, Inc. or its successors and assigns.

18. "**Cargill**" means, collectively, Cargill, Inc. and its affiliates.

19. "**Cargill Litigation**" means the lawsuit captioned *United Food Group LLC v. Cargill, Inc., et al.*, Civil Action No. CV11-7752 MWF (AJWx), pending in the United States District Court for the Central District of California.

20. "**Cash**" means legal tender of the United States of America or the equivalents thereof.

21. "**Cash Collateral Order**" means, collectively: (a) the Interim Order (I) Authorizing the Debtors to Use Cash Collateral of the Second Lien Secured Parties and (II) Providing Adequate Protection to the Second Lien Secured Parties [Docket No. 662]; (b) all extensions of the Termination Date (as defined in the foregoing interim order) as described in multiple notices of extension Filed with the Bankruptcy Court including, without limitation, Docket Nos. 734, 752, 766, 772, 781, 810, 825, 842, 854, 869, 903, 922, 949, 983, 1004, 1016, 1025, 1032, 1044, 1053, 1060, 1066, 1086, 1115, 1203, 1212, 1260, 1318, 1342 and 1385; and (c) any Final Order with respect to the foregoing.

22. "**Causes of Action**" means, unless otherwise expressly qualified in the Plan, all claims, actions, causes of action, choses in action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, remedies, rights of set-off, third-party claims, subrogation claims, contribution claims, reimbursement claims, indemnity claims, counterclaims and cross-claims (including, without limitation, such claims asserted in the Cargill Litigation and the GOPAC Litigation, and further including, without limitation, all claims and any avoidance, recovery, subordination or other actions against insiders and/or any other Entities under the Bankruptcy Code, including Avoidance Actions) of any of the Debtors and/or the Estates, which are or may be pending on the Effective Date or prosecuted thereafter against any Entity, based in law or equity, including, without limitation, under the Bankruptcy Code, whether direct, indirect, derivative or otherwise and whether asserted or unasserted as of the Confirmation Date.

23. "**Chapter 11 Cases**" means, collectively, the chapter 11 cases commenced by the Debtors under chapter 11 of the Bankruptcy Code, which are jointly administered under case number 12-11127 (MFW).

24. "**Claim**" means a "claim" (as that term is defined in section 101(5) of the Bankruptcy Code) against a Debtor.

25. "**Claims Objection Deadline**" has the meaning given to that term in Section VI.C of this Plan.

26. "**Class**" means a category of holders of Claims or Equity Interests as set forth in Article III, pursuant to section 1122(a) of the Bankruptcy Code.

27. "**Confirmation Date**" means the date on which the Confirmation Order is entered by the Bankruptcy Court.

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

29. "**Creditor Advisory Board**" means an advisory board of creditors selected by the Creditors' Committee, which will have certain oversight roles as set forth in this Plan.

30. "**Creditor Avoidance Action Recovery**" has the meaning given to that term in the Global Settlement.

31. "**Creditor Litigation Claim Recovery**" has the meaning given to that term in the Global Settlement.

32. "**Creditor Recovery Pool**" means the fund of Cash to be established under the terms and conditions of the Global Settlement and the Global Settlement Approval Order, to be distributed pursuant to the terms of this Plan to the Debtors' creditors who are holders of certain Allowed Claims and are not Global Settlement Parties (except members of the Creditor's Committee in their individual capacities). Pursuant to the Global Settlement, the Creditor Recovery Pool constitutes a "gift" from the Second Lien Lenders out of their collateral recoveries and has been or will be funded by the following sources as described in the Global Settlement: (a) the First Creditor General Asset Recovery, (b) the Second Creditor General Asset Recovery, (c) the Creditor Litigation Claim Recovery and (d) the Creditor Avoidance Action Recovery.

33. "**Creditors' Committee**" means the official committee of unsecured creditors in the Chapter 11 Cases, appointed by the United States Trustee for the District of Delaware, pursuant to section 1102 of the Bankruptcy Code, on April 12, 2012 [Docket No. 100], as such appointment or membership may be modified from time to time.

34. "**Debtors**" or "**Debtors-in-Possession**" means, collectively, AFA Investment Inc.; American Foodservice Corporation; American Fresh Foods, Inc.; American Fresh Foods, L.P.; AFA Foods, Inc.; American Fresh Foods, LLC; Fairbank Reconstruction Corporation; American Foodservice Investment Company, LLC; and United Food Group LLC.

35. **"Disclosure Statement"** means the Disclosure Statement with Respect to First Amended Joint Chapter 11 Plan of Liquidation of Debtors and Debtors in Possession, dated January 17, 2014, prepared and distributed by the Debtors, as plan proponents, in accordance with the Bankruptcy Code, Bankruptcy Rules and any other applicable law, in the form approved (whether on a preliminary basis or final basis) by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code, including all exhibits and schedules thereto.

36. **"Disputed Claim"** means (a) any Claim or portion of a Claim as to which an objection to the allowance thereof has been interposed as of the deadline fixed under the Plan or by order of the Bankruptcy Court, which objection has not been withdrawn, adjudicated, settled or otherwise resolved; (b) any Claim for which a proof of Claim is required to be Filed and no such proof of Claim is Filed or, if Filed, is Filed after any applicable bar date for such Claim; (c) any Claim or portion of a Claim identified as contingent or unliquidated on a proof of Claim Filed in the Chapter 11 Cases; (d) any Claims scheduled by the Debtors as contingent, unliquidated or disputed; and (e) any Claim or portion thereof that is not otherwise an Allowed Claim. To the extent an objection relates to the allowance of only a part of a Claim, such Claim shall be a Disputed Claim only to the extent of the objection and shall be deemed Allowed as to the portion for which no objection is made.

37. **"Distributions"** means the distributions of Cash from the Plan Administrator, on behalf of the Liquidating Debtors, to be made in accordance with the Plan.

38. **"Effective Date"** means the date selected by the Debtors, after reasonable consultation with the Creditors' Committee, the Second Lien Agent, NBPCo and ACAS, that is a Business Day after the entry of the Confirmation Order on which all conditions specified in Section VIII.B of this Plan have been satisfied or waived.

39. **"Entity"** means an "entity," as that term is defined in section 101(15) of the Bankruptcy Code.

40. **"Equity Interest"** means, when used with respect to any Debtor, the common stock, preferred stock, membership interests, partnership interests or other capital stock issued by such Debtor and outstanding immediately prior to the Petition Date, and any warrants, options or legal, contractual or equitable rights to purchase or acquire such interests at any time.

41. **"Estate"** means the estate of each Debtor created on the Petition Date by section 541 of the Bankruptcy Code.

42. **"Exculpated Parties"** means, collectively, the Debtors, the Plan Administrator (including any person serving as the Plan Administrator), the Creditors' Committee and its members, the Second Lien Agent, the Second Lien Lenders, the other Global Settlement Parties and the respective Representatives of each of the foregoing on or after the Petition Date (each of the foregoing in its individual capacity as such).

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

44. **"Final Administrative Bar Date"** means the date that is 30 days after the Effective Date, as further described in Section II.A.2 of this Plan, and which shall be the deadline

to assert Administrative Claims that arose or are deemed to have arisen during the period after September 4, 2012 through the Effective Date.

45. "**Final Order**" means an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction with respect to the subject matter, which has not been reversed, stayed, modified or amended, and as to which the time to appeal, petition for certiorari or move for reargument or rehearing has expired and no appeal or petition for certiorari has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been or may be filed has been resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought or has otherwise been dismissed with prejudice.

46. "**Final WARN Settlement Order**" means, collectively, the (a) Order Approving Settlement Agreement Resolving WARN Act Claims on a Final Basis and Approving Class Counsel's Request for Attorneys' Fees [Adv. Docket No. 44] and (b) Judgment [Adv. Docket No. 46] entered in adversary number 12-50710 (MFW) in the Chapter 11 Cases.

47. "**First Creditor General Asset Recovery**" has the meaning given to that term in the Global Settlement.

48. "**General Assets**" has the meaning given to that term in the Global Settlement.

49. "**General Unsecured Claim**" means a Claim against any Debtor that is not a Secured Claim (including a Second Lien Lender Secured Claim), Administrative Claim, Priority Claim, Twenty-Day Claim, WARN Claim, Reclamation Claim or Equity Interest.

50. "**Global Settlement**" means the settlement reflected in that certain Settlement Term Sheet attached as Annex A to the Global Settlement Approval Order, subject to the terms of the Global Settlement Approval Order, by and among the Debtors, the Creditors' Committee, the Second Lien Agent, the SPV, BPI, NBPCo, ACAS and the WARN Class Representative.

51. "**Global Settlement Approval Order**" means the *Order Approving Revised Global Settlement* [Docket No. 1114] entered by the Bankruptcy Court on July 2, 2013, approving the Global Settlement, subject to the terms of such order. A copy of the Global Settlement Approval Order (with the annexed Settlement Term Sheet) is attached hereto as **Exhibit A** and incorporated herein by reference.

52. "**Global Settlement Parties**" means, collectively, the Debtors, the Creditors' Committee, the Second Lien Agent, the SPV, BPI, NBPCo, ACAS and the WARN Class Representative (*i.e.*, the parties to the Global Settlement).

53. "**GOPAC**" means, collectively, Greater Omaha Packing Company, Inc. and its insurers and Affiliates.

54. "**GOPAC Litigation**" means the lawsuit captioned *Fairbank Reconstruction Corp., d/b/a Fairbank Farms v. Greater Omaha Packing Co., Inc.*, Case No. 1:13-cv-00907 (W.D. N.Y.) and referred to in the Disclosure Statement as the "GOPAC Commercial Claims Litigation."

55. **"Impaired"** means, with respect to a Claim, Equity Interest or Class of Claims or Equity Interests, "impaired" within the meaning of sections 1123(a)(4) and 1124 of the Bankruptcy Code.

56. **"Initial Administrative Bar Date"** means the October 9, 2012 deadline established in the Administrative/Priority Claims Bar Date Order for Filing proofs of Claims on account of: (a) certain Administrative Claims incurred from the Petition Date through and including September 4, 2012; and (b) Priority Claims.

57. **"Intercompany Claim"** means any Claim held by a Debtor against another Debtor.

58. **"Lender Release Party"** and **"Lender Release Parties"** have the meanings given to those terms in Section IX.A.3 of this Plan.

59. **"Liquidating Debtors"** means any Debtors remaining on and after the Effective Date.

60. **"Litigation Claims"** has the meaning given to that term in the Global Settlement. For the avoidance of doubt, the Litigation Claims include the claims and Causes of Action brought by or on behalf of the Estates in the Cargill Litigation and the GOPAC Litigation, but specifically exclude the Avoidance Actions.

61. **"Loan Documents"** has the meaning given to that term in the Second Lien Credit Facility.

62. **"NBPCo"** means NBPCo Holdings, LLC or its successors and assigns.

63. **"Non-Tax Priority Claim"** means any Claim against the Debtors that is entitled to priority in payment under section 507(a) of the Bankruptcy Code, other than an Administrative Claim, Twenty-Day Claim or Priority Tax Claim.

64. **"Ordinary Course Professionals"** means those professionals retained by the Debtors pursuant to the Order Authorizing the Retention and Payment of Professionals Utilized By the Debtors in the Ordinary Course of Business, Nunc Pro Tunc to the Petition Date, entered on April 20, 2012 [Docket No. 163].

65. **"Other Secured Claims"** means Secured Claims other than Second Lien Lender Secured Claims.

66. **"Petition Date"** means April 2, 2012, the date on which the Debtors Filed their petitions for relief commencing the Chapter 11 Cases.

67. **"Plan"** means this first amended joint plan of liquidation under chapter 11 of the Bankruptcy Code, either in its present form or as it may be altered, amended, modified or supplemented from time to time in accordance with the Bankruptcy Code, the Bankruptcy Rules or herewith, as the case may be, including all exhibits to the Plan and the Plan Supplement and any amendments or modifications thereof.

68. **"Plan Administrator"** means David J. Beckman of FTI Consulting, Inc. or any successor to him as approved by the Bankruptcy Court as the representative of the Liquidating Debtors and the Estates for purposes of administering the Plan in accordance with the terms of the Plan. A notice setting forth the qualifications and proposed compensation and other disclosures regarding the Plan Administrator shall be Filed with the Bankruptcy Court as part of the Plan Supplement.

69. **"Plan Expenses"** means all actual, necessary and reasonable costs and expenses to be incurred after the Effective Date in connection with the administration of the Plan at the direction of the Plan Administrator, including the reasonable fees and expenses of the Plan Administrator and any professionals and agents retained by the Plan Administrator to represent the Liquidating Debtors.

70. **"Plan Reserve"** shall mean the "Reserve" as defined in the Global Settlement and as may be supplemented to address any Plan Expenses (a) as agreed to by the Second Lien Agent, the Creditors' Committee and the Debtors prior to the Effective Date or (b) as agreed to by the Plan Administrator, the Second Lien Agent, and the Creditor Advisory Board after the Effective Date. For the avoidance of doubt, the intent of the Plan is that the Plan Reserve be sufficient to pay the costs of implementing the Plan (including the Litigation Recovery Fund) and pay Allowed Priority Claims and Allowed Administrative Claims (but not Twenty-Day Claims) to the extent unpaid as of the Effective Date.

71. **"Plan Reserve Deficiency"** has the meaning given to that term in Section IV.C of this Plan.

72. **"Plan Supplement"** means any Plan-related documents, schedules and exhibits to be Filed with the Bankruptcy Court at least ten days prior to the Voting Deadline or such later date as may be approved by the Bankruptcy Court without further notice, which may consist of one or multiple filings.

73. **"Post-Effective Date Service List"** means a service list comprised of the Plan Administrator, counsel to the Liquidating Debtors, the Office of the United States Trustee, counsel to the Second Lien Agent, counsel to the other Global Settlement Parties (excluding the Creditors' Committee), counsel to the Creditor Advisory Board and any other party in interest in the Chapter 11 Cases that specifically requests in writing that the Plan Administrator add such party's name to the list.

74. **"Priority Claim"** means a Claim that is either a Non-Tax Priority Claim or a Priority Tax Claim.

75. **"Priority Tax Claim"** means a Claim for taxes against the Debtors, including, without limitation, any interest and penalties due thereon, that is entitled to priority in payment pursuant to section 507(a)(8) of the Bankruptcy Code.

76. **"Pro Rata"** means the ratio of the amount of an Allowed Claim in a particular Class to the aggregate amount of all Allowed Claims in such Class.

77. "**Professional**" means any person or Entity employed pursuant to a Final Order in accordance with sections 327, 328, 363 or 1103 of the Bankruptcy Code, excluding any Ordinary Course Professionals.

78. "**Professional Fee Claim**" means a Claim under sections 328, 330(a), 331, 503 or 1103 of the Bankruptcy Code by a Professional for services rendered and expenses incurred in the Chapter 11 Cases in the amount awarded to such Professional by Final Order of the Bankruptcy Court.

79. "**Reclamation Claim**" means any Claim for reclamation pursuant to section 546(c)(1) of the Bankruptcy Code and/or section 2-702 of the Uniform Commercial Code (as adopted in applicable state law).

80. "**Record Date**" means the date that the Confirmation Order is entered, which shall be the record date for determining the entitlement of holders of Allowed Claims to receive Distributions under the Plan on account of such Allowed Claims.

81. "**Rejection Damages Claim**" has the meaning given to that term in Section VII.B of this Plan.

82. "**Released Parties**" has the meaning given to that term in Section IX.A.2 of this Plan.

83. "**Releasing Parties**" has the meaning given to that term in Section IX.A.2 of this Plan.

84. "**Representatives**" means, with regard to any Entity, the officers, directors, managers, partners, employees, members, advisors, attorneys, accountants, investment bankers, financial advisors, consultants, agents and other Professionals of such Entity, in each case in such capacity.

85. "**Schedules**" mean the schedules of assets and liabilities, schedules of executory contracts and statements of financial affairs filed by the Debtors pursuant to section 521 of the Bankruptcy Code, as they may be amended, supplemented or modified from time to time.

86. "**Secured Claim**" means a Claim against the Debtors that is secured by a lien on property in which the Estates have an interest, which lien is valid, perfected and enforceable under applicable law or by reason of an order of the Bankruptcy Court or a Final Order of another court of competent jurisdiction; or that is subject to setoff under section 553 of the Bankruptcy Code, to the extent of the value of the Claim holder's interest in the Estates' interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code.

87. "**Second Creditor General Asset Recovery**" has the meaning given to that term in the Global Settlement.

88. "**Second Lien Agent**" means Yucaipa Corporate Initiatives Fund II, LLC, as Administrative Agent under the Second Lien Credit Facility, or its successors and assigns.

89. **"Second Lien Credit Facility"** means the Second Lien Credit Agreement, dated as of February 9, 2010, as amended, between the Second Lien Agent and each of the Debtors (either as borrowers or guarantors).

90. **"Second Lien Lender Secured Claim"** means a Secured Claim of a Second Lien Lender arising under or in connection with the Second Lien Credit Agreement, including, without limitation, Secured Claims of ACAS.

91. **"Second Lien Lenders"** means, collectively, the lenders party to the Second Lien Credit Facility or their successors and assigns.

92. **"Second Lien Obligations"** has the meaning given to that term in the Final Order (I) Authorizing the Debtors to (a) Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 363(c), 363(e), 364(c), 364(d)(1) and 364(e) and (b) Utilize Cash Collateral of Prepetition Secured Entities, (II) Granting Adequate Protection to Prepetition Secured Entities, and (III) Granting Related Relief [Docket No. 199].

93. **"SPV"** means YCIF II Second Lien Holdings LLC or its successors and assigns.

94. **"Stipulation of Amount/Nature of Claim"** means a stipulation or other agreement between a holder of a Claim and, as applicable, the Debtors or the Liquidating Debtors, establishing the amount and nature of a Claim. For the avoidance of doubt, any such stipulation or other agreement between the Plan Administrator, on behalf of the Liquidating Debtors, and a holder of a Claim executed after the Effective Date is not subject to further notice or approval of the Bankruptcy Court.

95. **"Third Amendment"** means the Third Amendment to the Second Lien Credit Facility, as further defined in the Global Settlement.

96. **"Twenty-Day Claim Bar Date"** means June 11, 2012, the bar date for filing Twenty-Day Claims as established by the Twenty-Day Claim Bar Date Order.

97. **"Twenty-Day Claim Bar Date Order"** means the Order Establishing Procedures to Assert Claims Arising Under Section 503(b)(9) of the Bankruptcy Code, entered on May 8, 2012 [Docket No. 236].

98. **"Twenty-Day Claims"** means Claims against the Debtors entitled to priority pursuant to section 503(b)(9) of the Bankruptcy Code.

99. **"Unimpaired"** means, with respect to a Claim, Equity Interest or Class of Claims or Equity Interests, not "impaired" within the meaning of sections 1123(a)(4) and 1124 of the Bankruptcy Code.

100. **"U.S. Trustee"** means the United States Trustee appointed under 28 U.S.C. § 591 to serve in the District of Delaware.

101. **"WARN Action"** means the former adversary proceeding in the Bankruptcy Court, captioned Nadia Sanchez, on behalf of herself and all others similarly situated v. AFA Foods, Inc., AFA Investment, Inc. and Yucaipa Corporate Initiatives Fund II, LLC, Adv. Pro. No. 12-50710, which was resolved by the Final WARN Settlement Order.

102. "***WARN Action Counsel***" means Outten & Golden LLP as counsel for the plaintiffs in the WARN Action.

103. "***WARN Claims***" means any and all Claims and Administrative Claims against the Debtors and the Estates that were settled and resolved by the Final WARN Settlement Order.

104. "***WARN Class Representative***" means Nadia Sanchez, by and through her attorneys, as class representative for the plaintiffs in the WARN Action.

105. "***Yucaipa***" means, collectively, Yucaipa Corporate Initiatives Fund II, L.P. and Yucaipa Corporate Initiatives (Parallel) Fund II, L.P., together with their general partner Yucaipa Corporate Initiatives Fund II, LLC.

B. *Rules of Interpretation*

1. For purposes herein: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neutral gender shall include the masculine, feminine and the neutral gender; (b) any reference herein to a contract, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented; (d) unless otherwise specified, all references herein to "Articles" or "Sections" are references to Articles or Section hereof; (e) the words "herein," "hereof" and "hereto" refer to the Plan in its entirety rather than to a particular portion of the Plan; (f) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; and (h) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be.

2. Nothing in the Plan is intended to modify or alter the definitions of terms utilized in the Global Settlement and Global Settlement Approval Order. In the event of any inconsistency between the definitions set forth in the Plan and those utilized in the Global Settlement, the former shall control for purposes of interpretation or implementation of the Plan and the latter shall control for purposes of interpretation or implementation of the Global Settlement.

3. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed hereby.

4. All references herein to monetary figures shall refer to currency of the United States of America.

C. *Exhibits / Plan Supplement*

All exhibits and the Plan Supplement are incorporated into, and are a part of, the Plan as if set forth in full herein. The Plan Supplement shall be Filed with the Bankruptcy Court at least ten days prior to the Voting Deadline or such later date as may be approved by the Bankruptcy Court without further notice, which may consist of one or multiple filings. After a Plan Supplement is Filed, it can be obtained free of charge on the website of the Debtors' claims and noticing agent, Kurtzman Carson Consultants LLC, at <http://www.kccllc.net/afa> or upon written request to counsel to the Debtors at the addresses and telephone numbers set forth on the cover sheet to this Plan.

ARTICLE II.

UNCLASSIFIED CLAIMS

Administrative Claims and Priority Tax Claims are not classified in this Plan. The treatment of and consideration to be received by holders of Allowed Administrative Claims and Allowed Priority Tax Claims pursuant to this Article II shall be in full and complete satisfaction, settlement and release of such Claims.

A. *Administrative Claims*

1. Administrative Claims Generally

Unless otherwise agreed by the holder of an Allowed Administrative Claim and the Debtors or the Liquidating Debtors, or unless a Final Order of the Bankruptcy Court provides otherwise, each holder of an Allowed Administrative Claim will receive, in full satisfaction of its Allowed Administrative Claim, Cash equal to the full unpaid amount of such Allowed Administrative Claim, from the Plan Reserve either: (a) on the Effective Date or as soon as practicable thereafter (or, if not then due, when such Allowed Administrative Claim is due or as soon as practicable thereafter); (b) if such Claim is Allowed after the Effective Date, on the date such Claim is Allowed or as soon as practicable thereafter (or, if not then due, when such Allowed Administrative Claim is due); (c) at such time and upon such terms as may be agreed upon by the Debtors or the Liquidating Debtors and the holder of an Allowed Administrative Claim; or (d) at such time and upon such terms as set forth in a Final Order of the Bankruptcy Court. For the avoidance of doubt, Administrative Claims subject to this Section II.A.1 do not include Twenty-Day Claims, WARN Claims and Reclamation Claims.

2. Final Administrative Bar Date

Except as otherwise provided herein or in a Bar Date Order or other order of the Bankruptcy Court, unless previously Filed or Allowed, each holder of an Administrative Claim that arose or is deemed to have arisen during the period ***after September 4, 2012*** (the record date for the Initial Administrative Bar Date) through the Effective Date must File a request for payment of such Administrative Claim pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order, no later than the first Business Day that is at least 30 days after the Effective Date (the "***Final Administrative Bar Date***"). Holders of Administrative Claims that are required to File and serve a request for payment of such Administrative Claim and that do not File and serve such a request by the applicable Bar Date

shall be forever barred from asserting such Administrative Claims against the Debtors, the Liquidating Debtors, the Estates or their respective property, and such Administrative Claims shall be deemed waived and released as of the Effective Date. For the avoidance of doubt, nothing herein modifies any requirement to File any Administrative Claims as set forth in the Administrative/Priority Claims Bar Date Order, and any holder of such an Administrative Claim that failed to comply with the requirements of the Administrative/Priority Claims Bar Date Order shall be forever barred from asserting such Administrative Claims against the Debtors, the Liquidating Debtors, the Estates or their respective property, and such Administrative Claims shall be deemed waived and released.

3. Administrative Tax Claims

Notwithstanding anything in Section II.A.2 or any other provision of the Plan, a governmental unit shall not be required to file and serve a request for payment of an Administrative Claim with respect to any administrative expense of the type described in section 503(b)(1)(B) or section 503(b)(1)(C) of the Bankruptcy Code as a condition to such amounts being an allowed administrative expense.

4. Objection Deadline

The Liquidating Debtors shall have until the Administrative Claims Objection Deadline to assert objections to any request for payment of an Administrative Claim, *provided that* the Liquidating Debtors may seek extension(s) thereof subject to Bankruptcy Court approval and with notice only to parties on the Post-Effective Date Service List.

5. Professional Fee Claims

Each Professional shall File an application for allowance of final compensation and reimbursement of expenses in the Chapter 11 Cases, for the period through the Effective Date, no later than the first Business Day that is at least 45 days after the Effective Date. Objections to such applications may be Filed in accordance with the local rules of the Bankruptcy Court. If the Bankruptcy Court grants such applications, each such applicable Professional will be paid in full in Cash from the Plan Reserve in such amounts as are allowed by the Bankruptcy Court (less amounts already paid and any approved application of professional retainers) upon such allowance or as soon thereafter as practicable.

Ordinary Course Professionals shall be subject to the requirements of this Section II.A.5 if, and only if, they are required to file a fee application by the terms of the Ordinary Course Professionals Order.

B. *Priority Tax Claims*

Each Holder of an Allowed Priority Tax Claim will be paid in respect of such Allowed Priority Tax Claim, from the Plan Reserve either: (a) the full amount thereof, without postpetition interest or penalty, in Cash, as soon as practicable after the later of (i) the Effective Date or (ii) ten Business Days after the date on which such Claim becomes an Allowed Priority Tax Claim; or (b) such lesser amount as to which the holder of an Allowed Priority Tax Claim and the Debtors or Liquidating Debtors might otherwise agree.

C. *Adequate Protection Claim*

For the avoidance of doubt, the Adequate Protection Claim held by the Second Lien Agent, on behalf of itself and the benefit of the Second Lien Lenders, will be satisfied pursuant to the terms of the Global Settlement and Global Settlement Approval Order.

D. *WARN Claims*

For the avoidance of doubt, the WARN Claims will be satisfied pursuant to the terms of the Final WARN Settlement Order, solely from Avoidance Action Recoveries (as such term is defined in the Global Settlement).

E. *Reclamation Claims*

All asserted Reclamation Claims, to the extent asserted to be of priority or secured status, are Disputed Claims because the Debtors submit that no valid Reclamation Claims entitled to priority or secured status can or do exist pursuant to, among other things, applicable law.

Accordingly, pursuant to the Confirmation Order, all Reclamation Claims shall be disallowed without further action by the Debtors or the Liquidating Debtors; *provided, however*, that any holder of an alleged Reclamation Claim may reassert such Claim as a General Unsecured Claim, subject to any applicable Bar Date(s), with such Claim, if Allowed as such, to receive the treatment provided for an Allowed General Unsecured Claim under Section III.B.5.

ARTICLE III.

CLASSIFICATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS

A. *Summary*

1. Except for Administrative Claims and Priority Tax Claims, all Claims against and Equity Interests in a particular Debtor are classified into Classes. The following table classifies Claims against and Equity Interests in the Debtors for all purposes, including voting, confirmation and Distribution pursuant hereto and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and shall be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid or otherwise settled prior to the Effective Date.

2. Summary of Classification and Treatment of Classified Claims and Equity Interests.

<u>Class</u>	<u>Claim</u>	<u>Status</u>	<u>Voting Rights</u>
1	Non-Tax Priority Claims	Unimpaired	Deemed to Accept
2	Second Lien Lender Secured Claims	Impaired	Entitled to Vote
3	Other Secured Claims ²	Unimpaired	Deemed to Accept
4	Twenty-Day Claims	Impaired	Entitled to Vote
5	General Unsecured Claims	Impaired	Deemed to Reject
6	Equity Interests	Impaired	Deemed to Reject

B. *Classification and Treatment of Claims and Equity Interests*

1. Non-Tax Priority Claims (Class 1)

(a) Classification: *Class 1 consists of all Non-Tax Priority Claims.*

(b) Treatment: *Unless otherwise agreed to by a holder of an Allowed Non-Tax Priority Claim and, as applicable, the Debtors or the Liquidating Debtors, as soon as practicable after the later of (i) the Effective Date and (ii) the date on which the subject Non-Tax Priority Claim becomes Allowed, each holder of an Allowed Claim in Class 1 will receive, in full and final satisfaction of its Allowed Non-Tax Priority Claim, Cash equal to the full unpaid amount of such Allowed Class 1 Claim, from the Plan Reserve after the payment of or reserve for, in full, all Administrative Claims and Priority Tax Claims.*

(c) Voting: *Class 1 is Unimpaired, and holders of Non-Tax Priority Claims are conclusively deemed to have accepted the Plan.*

2. Second Lien Lender Secured Claims (Class 2)

(a) Classification: *Class 2 consists of all Second Lien Lender Secured Claims.*

(b) Treatment: *Each holder of Allowed Claims in Class 2 will receive, in full and final satisfaction of its Allowed Second Lien Lender Secured Claim, the applicable amount(s) provided for such holder under the Global Settlement and Global Settlement Approval Order, pursuant to the terms thereof, to the extent not previously paid. The Liquidating Debtors shall pay amounts owed under this Section III.B.2 solely to the party specified under the Global Settlement (i.e., ACAS or the SPV, as applicable), on behalf of the holder of the Allowed Claim. Such payments shall be made as soon as practicable after the Effective Date, or as otherwise provided in the Global Settlement.*

(c) Voting: *Class 2 is Impaired, and holders of Second Lien Lender Secured Claims are entitled to vote on the Plan.*

² Each Holder of a Class 3 Claim constitutes a separate subclass under the Plan.

3. Other Secured Claims (Class 3)

(a) Classification: *Class 3 consists of all Secured Claims other than Second Lien Lender Secured Claims.*

(b) Treatment: *Unless otherwise agreed to by a holder of an Allowed Other Secured Claim and, as applicable, the Debtors or Liquidating Debtors, as soon as practicable after the later of (i) the Effective Date and (ii) the date on which the subject Other Secured Claim becomes Allowed, each holder of an Allowed Claim in Class 3 will receive a Cash payment, from the Plan Reserve equal to the amount of its Allowed Other Secured Claim, in full and final satisfaction of such Allowed Claim.*

(c) Voting: *Class 3 is Unimpaired, and holders of Other Secured Claims are conclusively deemed to have accepted the Plan.*

4. Twenty-Day Claims (Class 4)

(a) Classification: *Class 4 consists of the Twenty-Day Claims.*

(b) Treatment: *As soon as practicable after the Effective Date, subject to the funding of the Creditor Recovery Pool consistent with the Global Settlement, the Liquidating Debtors shall pay each holder of an Allowed Twenty-Day Claim, in full and final satisfaction of such Allowed Twenty-Day Claim, its Pro Rata share of the Creditor Recovery Pool up to the full amount of such Allowed Claim. The Creditor Recovery Pool will be funded as set forth in the Global Settlement Term Sheet from a portion of (i) the General Assets (or proceeds thereof); (ii) Litigation Claim Recoveries, if any; and (iii) Avoidance Action Recoveries, if any. As provided further in Section IV.H, to the extent required, the Plan shall constitute a compromise and settlement of Allowed Twenty-Day Claims, with each such claimant who does not timely object in writing to the treatment proposed for it with respect to its Allowed Class 4 Claim under the Plan.*

(c) Voting: *Class 4 is Impaired, and the holders of Allowed Twenty-Day Claims are entitled to vote on the Plan.*

5. General Unsecured Claims (Class 5)

(a) Classification: *Class 5 consists of General Unsecured Claims.*

(b) Treatment: *As soon as practicable after the payment in full of, or reserve for, all other Allowed Claims payable from, and expenses funded by, the Creditor Recovery Pool, the Liquidating Debtors shall pay each holder of an Allowed General Unsecured Claim, in full and final satisfaction of such Allowed General Unsecured Claim, its Pro Rata share of any remaining amounts in the Creditor Recovery Pool, subject to the terms and conditions set forth in the Global Settlement and Global Settlement Approval Order.*

As provided further in Section VI.C, in the Plan Administrator's discretion, after consulting with the Creditor Advisory Board, the Plan Administrator may request the Bankruptcy Court to enter an order establishing a Bar Date for the filing of General

Unsecured Claims, before making Distributions to holders of Allowed General Unsecured Claims.

(c) *Voting: Class 5 is Impaired. To preserve Estate resources and because no Distribution to holders of Class 5 Claims is projected, Class 5 is deemed to reject the Plan, and no votes will be solicited from holders of Claims in Class 5. Notwithstanding the deemed rejection of Class 5, the Debtors intend to seek Confirmation of the Plan pursuant to Section III.C.*

6. Equity Interests (Class 6)

(a) *Classification: Class 6 consists of all Equity Interests.*

(b) *Treatment: Holders of Equity Interests shall neither receive nor retain any property under the Plan on account of such equity interests. On the Effective Date or on such later date as determined by the Plan Administrator, all Class 6 Equity Interests shall be deemed canceled, null and void and of no force and effect.*

(c) *Voting: Class 6 is Impaired, and holders of Equity Interests are deemed to reject the Plan.*

C. *Non-Consensual Confirmation*

The Debtors request Confirmation under section 1129(b) of the Bankruptcy Code with respect to any impaired Class that has not accepted or is deemed not to have accepted the Plan pursuant to the terms of the Plan or section 1126 of the Bankruptcy Code. The Debtors reserve the right to modify this Plan to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires any such modification.

ARTICLE IV.

MEANS FOR IMPLEMENTATION OF THE PLAN

A. *Corporate Action; Winding Up of Affairs; Closing of the Cases*

1. On the Effective Date and automatically and without further action, (a) each existing member of the boards of directors and officers of the Debtors will be deemed to have resigned as of such date without any further corporate action, (b) the Plan Administrator shall be deemed the sole director, officer and representative of the Liquidating Debtors to exercise the rights, power and authority of the Liquidating Debtors under applicable provisions of this Plan and bankruptcy and non-bankruptcy law, and (c) all matters provided under this Plan shall be deemed to be authorized and approved without further approval from the Bankruptcy Court. The Confirmation Order shall act as an order modifying the Debtors' by-laws or other applicable governance documents such that the provisions of this Plan can be effectuated. The Plan shall be administered by the Plan Administrator, subject to consultation with the Creditor Advisory Board, the Second Lien Agent, NBPCo and/or other applicable party where provided for in the Plan, and all actions taken thereunder in the name of the Liquidating Debtors shall be taken through the Plan Administrator. All corporate governance activities of the Liquidating Debtors

shall be exercised by the Plan Administrator in his or her discretion, subject to the terms of this Plan.

2. Following the Confirmation Date, the Debtors shall not engage in any business activities or take any actions, except those necessary to (a) effectuate the Plan and the Global Settlement and (b) wind up the affairs of the Debtors. On and after the Effective Date, the Plan Administrator may, in the name of the Liquidating Debtors, subject to consultation with the Creditor Advisory Board, the Second Lien Agent, NBPCo and/or other applicable party where provided for in the Plan, take such actions as the Plan Administrator determines are necessary or appropriate for the foregoing purposes, in each case without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules, other than any restrictions expressly imposed by the Plan, the Confirmation Order, the Global Settlement or the Global Settlement Approval Order. Without limiting the foregoing, the Plan Administrator may pay the charges that the Plan Administrator incurs after the Effective Date (for himself or on behalf of the Liquidating Debtors) for professional fees and expenses that, but for the occurrence of the Effective Date, would constitute Allowed Administrative Claims. Payments pursuant the prior sentence may be made without application to or approval of the Bankruptcy Court, but subject to the Global Settlement, from the Plan Reserve.

3. From and after the Effective Date, (a) the Debtors, for all purposes, shall be deemed to have withdrawn their business operations from any state in which they were previously conducting or are registered or licensed to conduct their business operations, and the Debtors shall not be required to file any document, pay any sum or take any other action, in order to effectuate such withdrawal; and (b) the Debtors shall not be liable in any manner to any taxing authority for franchise, business, license or similar taxes accruing on or after the Effective Date.

4. The Plan Administrator, in his or her discretion, without the need of any further approval, at such time as he or she deems appropriate (including, without limitation, on or promptly following the Effective Date), may execute and file documents and take all other actions as he or she deems appropriate to effectuate the cancelation of the Equity Interests in and the dissolution of one or more of the Liquidating Debtor(s) — *provided, however*, that at least one Liquidating Debtor shall remain in existence until the Plan, the Global Settlement and the Global Settlement Approval Order have been fully implemented — and all applicable regulatory or governmental agencies shall take all steps necessary to allow and effect the prompt dissolution of such Liquidating Debtor(s) as provided herein, without the payment of any fee, tax or charge and without need for the filing of reports or certificates.

5. The Plan Administrator, in his or her discretion, at such time as he or she deems appropriate (including, without limitation, on or promptly following the Effective Date), may seek authority from the Bankruptcy Court to close one or more of the Chapter 11 Cases in accordance with the Bankruptcy Code, the Bankruptcy Rules and the local rules of the Bankruptcy Court; *provided, however*, that at least one Chapter 11 Case shall remain open until the Plan, the Global Settlement and the Global Settlement Approval Order have been fully implemented.

6. Notwithstanding any other provision herein, with the consent of the Debtors, the Creditors' Committee, the Second Lien Agent and ACAS, a liquidating trust may be established as of the Effective Date, with the Plan Administrator to serve as the liquidating trustee. In such

event, (a) the form of liquidating trust agreement shall be Filed with the Bankruptcy Court prior to the Confirmation Hearing; (b) all references in this Plan to the Plan Administrator shall refer and apply to the liquidating trustee, which shall have the identical rights, powers and duties as set forth in this Plan for the Plan Administrator; and (c) such liquidating trust shall be the successor in interest to the Debtors and shall have the identical rights, powers and duties as set forth in this Plan for the Liquidating Debtors. Any such liquidating trust will be organized and established as a trust for the benefit of creditors entitled to distributions under the Plan, and will be qualified as a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d). Such liquidating trust shall have no objective to continue or engage in the conduct of a trade or business and shall not be deemed a successor-in-interest of the Debtors or the Estates for any purpose other than as specifically set forth in the liquidating trust agreement.

B. Revesting of Assets Free and Clear

Except as otherwise provided herein or in the Global Settlement and Global Settlement Approval Order, as of the Effective Date, all property of the Estates and the Debtors, including, without limitation, the General Assets, all rights and interests in Causes of Action (including, without limitation, the Avoidance Actions, the Cargill Litigation and the GOPAC Litigation), and any executory contracts that may be assumed by the Debtors as provided in Section VII.A, shall be the property of, and vest in, the Liquidating Debtors not dissolved by the Plan Administrator pursuant to Section IV.A.4 above (or any liquidating trust that may be established pursuant to Section IV.A.6), free and clear of all Claims, liens, charges, other encumbrances and interests, and shall be under the exclusive dominion and control of the Liquidating Debtors (or, if applicable, the liquidating trust), acting through the Plan Administrator (or, if applicable, the liquidating trustee), to administer for the benefit of the creditors of the Estates, without the need of notice or further order of the Bankruptcy Court, subject to the terms hereof (including the oversight roles of the Creditor Advisory Board and the Second Lien Agent), the Global Settlement and Global Settlement Approval Order.

C. Source of Funds for Plan Distributions

Generally, the Debtors' Cash as of the Effective Date and the Cash generated from the liquidation or monetization of assets thereafter, all as a "gift" from the Second Lien Lenders out of their collateral recoveries, shall fund the Plan (including the Plan Reserve and the Creditor Recovery Pool), subject to the terms of the Global Settlement and Global Settlement Approval Order. Notwithstanding any other provision herein, in the event that there are any excess funds remaining in the Plan Reserve (after the payment of or reserve for all Plan Expenses and other expenditures from this fund as permitted under the Plan, the Global Settlement and the Global Settlement Approval Order), such excess funds shall be considered General Assets and paid, consistent with the Global Settlement, to the SPV and the Creditor Recovery Pool, to be distributed immediately according to the terms of the Global Settlement. Any such distribution made by the SPV to the Creditor Recovery Pool under such circumstances shall be available for distribution to creditors in accordance with the Plan.

If the Plan Reserve is not sufficient to pay the costs of implementing the Plan and pay Allowed Administrative Claims, Allowed Other Secured Claims and Allowed Priority Claims that are unpaid as of the Effective Date (a "Plan Reserve Deficiency"), the Creditor Recovery Pool may contribute funds to remedy a Plan Reserve Deficiency, but only with the written

consent of the Creditor Advisory Board in its sole and absolute discretion. It is anticipated that the Creditor Advisory Board will provide such consent only if it is asked to contribute 20 percent of such Plan Reserve Deficiency and the Second Lien Lenders other than ACAS contribute 80 percent of such Plan Reserve Deficiency. Notwithstanding any provision in the Plan to the contrary, if a Plan Reserve Deficiency occurs, it may be remedied only by the contribution of funds that were distributed to the Creditor Recovery Pool, NBPCo, BPI or Yucaipa on account of the General Assets.

D. Plan Administrator

On the Effective Date, the Plan Administrator shall begin acting for the Liquidating Debtors in the same fiduciary capacity as applicable to a board of directors, subject to the provisions hereof, although the fiduciary duties shall be to all creditors of the Debtors rather than to equity owners. The Plan Administrator shall serve in such capacity through the earlier of the date that all of the Liquidating Debtors are deemed dissolved in accordance with the Plan and the date such Plan Administrator resigns, is terminated or otherwise unable to serve.

The qualifications and proposed compensation of and other disclosures regarding the Plan Administrator shall be set forth in a notice to be Filed with the Bankruptcy Court as part of the Plan Supplement. Such compensation, as well as reimbursement of the Plan Administrator's actual, reasonable and necessary expenses incurred in connection with the performance of the Plan Administrator's duties, shall be paid from the Plan Reserve without further order of the Bankruptcy Court. The compensation of the Plan Administrator shall be reasonably acceptable to the Second Lien Agent, NBPCo and the Creditors' Committee (or, after the Effective Date, the Creditor Advisory Board), and any disputes about reasonableness may be presented to the Bankruptcy Court for determination.

Except as otherwise provided in the Plan, the Global Settlement and Global Settlement Approval Order, all distributions to be made to creditors under the Plan shall be made by the Plan Administrator (or his or her designated agent). The Plan Administrator shall deposit and hold all Cash in trust for the benefit of creditors (including Professionals) receiving distributions under the Plan. Subject to the Global Settlement and Global Settlement Approval Order, the duties and powers of the Plan Administrator shall include, without limitation, the following (without need of further notice or Bankruptcy Court or other approval, except as may be expressly provided herein or in the Global Settlement and Global Settlement Approval Order):

(1) To exercise all power and authority that may be exercised, to commence all proceedings (including the power to continue any actions and proceedings that may have been commenced by or against the Debtors prior to the Effective Date) that may be commenced and to take all actions that may be taken by any officer or director of the Liquidating Debtors with like effect as if authorized, exercised and taken by unanimous action of such officers and directors, including consummating the Plan and all transfers thereunder on behalf of the Liquidating Debtors;

(2) To wind up the affairs of the Liquidating Debtors as expeditiously as reasonably possible;

(3) To maintain all accounts, make distributions and take other actions required under or consistent with the Plan and the Global Settlement, including the maintenance of appropriate reserves (including the Plan Reserve) and, after consultation with the Creditor Advisory Board, NBPCo and the Second Lien Agent, the funding of the Litigation Recovery Fund, in the name of the Liquidating Debtors, subject to the limitations expressed in Section V.A below;

(4) To use, manage, sell, abandon, convert to Cash and/or otherwise dispose of the property of the Estates, for the purpose of liquidating all remaining property of the Estates, making distributions and fully consummating the Plan and the Global Settlement *provided, however*, that the sale or other disposition of the Debtors' share in Churchill Casualty Ltd. must be either (i) approved by the Second Lien Agent, NBPCo and the Creditor Advisory Board or (ii) only in the event that the proposed sale is to a party that is not an insider or former insider of the Debtors, approved by the Bankruptcy Court after notice to the Second Lien Agent, NBPCo and the Creditor Advisory Board;

(5) To take all steps necessary to terminate the corporate existence of the Debtors;

(6) To prosecute objections to and compromise or settle Claims;

(7) To commence, prosecute, abandon, compromise or settle any litigation and Causes of Action on behalf of the Liquidating Debtors in any court or other tribunal; *provided, however*, notwithstanding any other provision herein, (i) in respect to any Avoidance Actions, the Plan Administrator shall be subject to the oversight of the Avoidance Action Committee, which, pursuant to the Global Settlement shall manage the prosecution of Avoidance Actions; and (ii) with regard to the Litigation Claims, settlement, abandonment, or other dispositive decisions and decisions concerning the funding of the Litigation Recovery Fund must be approved by the Second Lien Agent, NBPCo and the Creditor Advisory Board.

(8) To prepare and file tax returns and to pay taxes to the extent required by law;

(9) To employ and compensate any and all such professionals and agents as the Plan Administrator, in the Plan Administrator's reasonable discretion, deems reasonably necessary to assist in the performance of the Plan Administrator's duties under the Plan without further order of the Bankruptcy Court;

(10) To pay solely from the Creditor Recovery Pool the expenses of the Creditor Advisory Board, including professionals hired by the Creditor Advisory Board; and

(11) To take all other actions not inconsistent with the provisions of the Plan and the Global Settlement that the Plan Administrator deems reasonably necessary or desirable in connection with the administration of the Plan and the implementation of the Global Settlement, including, without limitation, filing all motions, pleadings, reports,

and other documents in connection with the administration and closing of the Chapter 11 Cases.

E. *Resignation, Death or Removal of Plan Administrator*

In the event of the resignation, removal, death or incapacity of the Plan Administrator, the Second Lien Agent and Creditor Advisory Board shall jointly nominate and the Bankruptcy Court shall appoint another person to become Plan Administrator, with notice thereof provided to the Post-Effective Date Service List.

F. *Continued Implementation of the Global Settlement*

Nothing herein is intended to or will modify the Global Settlement and the Global Settlement Approval Order.

G. *Substantive Consolidation*

1. The Plan shall serve as a motion by the Debtors seeking entry of a Bankruptcy Court order substantively consolidating all of the Estates into a single consolidated Estate for all purposes associated with Confirmation and Consummation. Pursuant to the Confirmation Order: (a) all assets and liabilities of the Debtors shall be deemed merged; (b) all Claims of one Debtor against another Debtor shall be deemed eliminated; (c) all guarantees by one Debtor of the obligations of any other Debtor shall be deemed eliminated so that any Claim against any Debtor and any guarantee thereof executed by any other Debtor and any joint or several liability of any of the Debtors shall be deemed to be one obligation of all of the Debtors; and (d) each and every Claim Filed or to be Filed in the Chapter 11 Case of any of the Debtors shall be deemed Filed against the Debtors and shall be deemed one Claim against and a single obligation of all of the Debtors. Such consolidation (other than for the purpose of implementing the Plan) shall not affect the legal and corporate structures of the Debtors.

2. Notwithstanding the substantive consolidation provided for herein, nothing shall affect the obligation of each and every Debtor to pay quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 until such time as a particular case is closed, dismissed or converted.

H. *Compromise and Settlement of Twenty-Day Claims*

As set forth in Section III.B above, the holders of Allowed Twenty-Day Claims are anticipated to receive less than full payment under the Plan. To the extent required, the Plan shall constitute a compromise and settlement of Allowed Twenty-Day Claims, with each holder of such a Claim that does not timely object in writing to the treatment proposed for it with respect to its Allowed Claim under the Plan. All holders of Twenty-Day Claims who do not timely object to the proposed treatment shall be deemed to have consented to such treatment. The Confirmation Order will constitute an order under Bankruptcy Rule 9019 compromising and settling Allowed Twenty-Day Claims in such manner.

I. *Records*

The Liquidating Debtors and the Plan Administrator shall maintain good and sufficient books and records of accounting relating to the assets of the Estates, the management thereof, all transactions undertaken by such parties, all expenses incurred by or on behalf of the Liquidating Debtors, the Estates and the Plan Administrator, and all distributions contemplated or effectuated under the Plan. Upon the entry of a final decree closing the Chapter 11 Cases, unless otherwise ordered by the Bankruptcy Court, the Liquidating Debtors and the Plan Administrator may destroy or otherwise dispose of all records maintained by the Liquidating Debtors and/or the Plan Administrator. Notwithstanding anything to the contrary, the Plan Administrator may, upon notice to the Post-Effective Date Service List and without Bankruptcy Court approval, destroy any documents that the Plan Administrator believes are no longer required to effectuate the terms and conditions of the Plan or the Global Settlement.

J. *Term of Injunctions or Stays*

Unless otherwise provided, all injunctions or stays provided for in the Chapter 11 Cases pursuant to 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 Chapter 11 Cases are closed. The Confirmation Order shall include an appropriate injunction replacing or continuing such stays to the extent necessary or appropriate.

K. *Dissolution of the Creditors' Committee*

Upon the Effective Date, the Creditors' Committee shall dissolve automatically, whereupon its members, Professionals and agents shall be released from any further duties and responsibilities in the Chapter 11 Cases and under the Bankruptcy Code, except with respect to: (1) obligations arising under confidentiality agreements, joint interest agreements and protective orders entered during the Chapter 11 Cases, which shall remain in full force and effect according to their terms; (2) applications for Professional Fee Claims; and (3) any pending motions, or any motions or other actions seeking enforcement or implementation of the provisions of the Plan or the Confirmation Order. The Creditors' Committee members and the Professionals retained by the Creditors' Committee shall not be entitled to compensation and reimbursement of expenses for services rendered after the Effective Date, except for services rendered in connection with applications for allowance of compensation and reimbursement of expenses pending on the Effective Date or filed after the Effective Date and only to the extent allowed by an order of the Bankruptcy Court.

L. *Creditor Advisory Board*

Upon the Effective Date, the Creditor Advisory Board will be formed. The Creditor Advisory Board shall consist of at least three and no more than five members, who shall be holders of Twenty-Day Claims and/or General Unsecured Claims. The Creditors' Committee shall select the initial members of the Creditor Advisory Board, and any vacancies on the Creditor Advisory Board after the Effective Date shall be filled by election by other members of the Creditor Advisory Board. The Creditor Advisory Board shall be a party in interest in the Chapter 11 Cases and shall have the oversight rights and powers delineated in this Plan, including the Plan Supplement. In all such instances, any disputes that cannot be resolved

informally with the Creditor Advisory Board may be submitted to the Bankruptcy Court for resolution on notice. The Creditor Advisory Board may employ any and all such professionals and agents as it, in its reasonable discretion, deems reasonably necessary to perform its functions. The fees and costs of such professionals shall be paid by the Plan Administrator solely from the Creditor Recovery Pool. The Creditor Advisory Board shall be deemed a successor to the Creditors' Committee under the Global Settlement and the Global Settlement Approval Order.

ARTICLE V.

PROVISIONS GOVERNING DISTRIBUTIONS

A. *Reserves*

In addition to any reserve(s) that the Debtors may be required or deem appropriate to establish before the Effective Date pursuant to the Global Settlement and the Global Settlement Approval Order, the Plan Administrator may, from time to time, in consultation with the Creditor Advisory Board, NBPCo and the Second Lien Agent, set aside and reserve from the Plan Reserve or the Creditor Recovery Pool, as applicable, amount(s) that he or she reasonably determines to be necessary to provide for contingencies in implementation of the Plan, including, without limitation, to provide contingent Plan Expenses and may set aside and reserve from the Plan Reserve or Creditor Recovery Pool amounts that he or she reasonably determines to be necessary to provide for the possible allowance of Disputed Claims in Classes that would be paid from such fund, *provided, however*, that the Plan Administrator may not establish any reserves that would delay, hinder or prevent any payments that have been specifically provided for, allocated and required to be remitted to certain parties pursuant to, or otherwise used in strict compliance with, the Global Settlement and the Global Settlement Approval Order. By way of example, and without limiting the foregoing provisions of this Section V.A, if the Plan Administrator determines to make a Pro Rata distribution to Allowed Claims in a Class while one or more Claims in the same Class are Disputed Claims, the Plan Administrator may, in consultation with the Creditor Advisory Board, NBPCo and the Second Lien Agent, set aside and reserve for any such Disputed Claims as if they may become Allowed Claims for their full asserted amounts.

B. *Record Date for Distributions*

Except as otherwise provided in a Final Order of the Bankruptcy Court, the transferees of Claims that are transferred pursuant to Bankruptcy Rule 3001 on or prior to the Record Date will be treated as the holders of those Claims for all purposes, notwithstanding that any period provided by Bankruptcy Rule 3001 for objecting to the transfer may not have expired by the Record Date. The Debtors, Liquidating Debtors and the Plan Administrator shall have no obligation to recognize any transfer of any Claim occurring after the Record Date. In making any Distribution with respect to any such Claim, the Debtors, Liquidating Debtors and the Plan Administrator shall be entitled instead to recognize and deal with, for all purposes hereunder, only the Entity that is listed on the proof of Claim Filed with respect thereto or on the Schedules as the holder thereof as of the close of business on the Record Date and upon such other evidence or record of transfer or assignment that are known to the Debtors, the Liquidating Debtors and the Plan Administrator as of the Record Date.

C. *Delivery of Distributions*

1. General Provisions

Subject to Bankruptcy Rule 9010 and except as otherwise provided herein or in the Global Settlement, Distributions to the holders of Allowed Claims shall be made by the Plan Administrator (or any agent designated thereby) at: (a) the address of each holder as set forth in the Schedules, unless superseded by the address set forth on proofs of Claim Filed by such holder or (b) the last known address of such holder if no proof of Claim is Filed or if the Debtors have been notified in writing of a change of address.

The Plan Administrator shall have the discretion to determine how to make Distributions in the most efficient and cost-effective manner possible; *provided, however*, that the Plan Administrator's discretion may not be exercised in a manner inconsistent with any express requirements of the Plan or the Global Settlement.

Notwithstanding any other provision in the Plan, the Plan Administrator may decide to make a charitable donation with undistributed funds from the Creditor Recovery Pool if, in the reasonable judgment of the Plan Administrator, after consultation with the Creditor Advisory Board, the cost of calculating and making the final distribution of the remaining distributable funds is excessive in relation to the benefits to creditors who would otherwise be entitled to such funds, and the Claims of any such holders shall not be entitled to any further distribution without further order of the Bankruptcy Court.

2. Minimum Distributions

If a cash payment otherwise provided for by this Plan with respect to an Allowed Claim would be less than \$50.00 (whether in the aggregate or on any payment date provided in this Plan), notwithstanding any contrary provision of this Plan, the Plan Administrator shall not be required to make such payment. In that event, these *de minimis* undistributed funds shall be distributed to other holders of Allowed Claims in accordance with Articles II and III hereof or handled as provided in Section V.C.1 above.

3. Unclaimed Property

If any Distribution is returned as undeliverable, the Plan Administrator may make such efforts to determine the current address of the holder of the Claim with respect to which the Distribution was made as the Plan Administrator deems appropriate, but no re-Distribution to any such holder shall be made unless and until the Plan Administrator has determined the then-current address of such holder, at which time the re-Distribution to such holder shall be made without interest. Amounts in respect of any undeliverable Distributions shall be held by the Plan Administrator until the Distributions are claimed or are deemed to be unclaimed property under section 347(b) of the Bankruptcy Code as set forth below in Section V.E.3. As part of the Plan Administrator's quarterly post-Effective Date status reports filed pursuant to Section XI.B, the Plan Administrator shall include a report of undeliverable Distributions. If any Distribution remains unclaimed for a period of 60 days after it has been delivered (or attempted to be delivered) in accordance with the Plan to the holder entitled thereto, or if such Distribution is returned to the Plan Administrator by the United States Postal Service marked as undeliverable and no forwarding address is provided, such unclaimed property shall be forfeited by such holder

absent further order of the Bankruptcy Court. Further, all right, title and interest in and to the unclaimed property shall be held in reserve by the Plan Administrator to be distributed to other holders of Allowed Claims in accordance with Articles II and III hereof or handled as provided in Section V.C.1 above.

D. *Manner of Cash Payments Under the Plan*

Cash payments made pursuant to the Plan shall be in United States currency by checks drawn on a domestic bank selected by the Plan Administrator or by wire transfer from a domestic bank, at the option of the Plan Administrator. Notwithstanding the foregoing, Cash payments made to any foreign creditors may be made in such funds and by such means as are necessary or customary in a particular foreign jurisdiction, in the discretion of the Plan Administrator.

E. *Tax Requirements*

In connection with the Plan, the Plan Administrator, in the Plan Administrator's discretion, may deduct any federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, and shall be authorized to take any additional actions to comply with any applicable requirements, of law, including tax reporting and withholding requirements. Notwithstanding any other provision of the Plan to the contrary, the Plan Administrator shall be authorized to take any actions that may be necessary or appropriate to comply with such requirements, including, without limitation, utilizing a portion of a Distribution to be made under the Plan to pay applicable withholding taxes or establishing any other mechanisms that the Plan Administrator believes are reasonable and appropriate, including requiring Claim holders to submit appropriate tax and withholding certifications. To the extent that any Claim holder fails to submit appropriate tax and withholding certifications as required by the Plan Administrator, such Claim holder's Distribution may, in the Plan Administrator's reasonable discretion, be deemed undeliverable and subject to Section V.C.3. Notwithstanding any other provision of the Plan, each holder of an Allowed Claim that has received (or is deemed to receive) a distribution pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction or payment of any tax obligation imposed by any governmental unit, including income, withholding and other tax obligation, on account of such distribution. The Debtors, the Liquidating Debtors and the Plan Administrator reserve the right to allocate and distribute all Distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support and other spousal awards, Liens and similar encumbrances.

F. *No Payments of Fractional Dollars*

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

G. *Interest on Claims*

Interest shall not accrue on any Claims, and no holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim. No prepetition Claim shall be Allowed to the extent that it is for postpetition interest or other similar charges, except to the

extent permitted for holders of Secured Claims to the extent permitted by section 506(b) of the Bankruptcy Code.

H. *No Distribution in Excess of Allowed Amount of Claim*

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

I. *Setoff and Recoupment*

The Plan Administrator may, but shall not be required to, setoff against, or recoup from, any Claim and the Distributions to be made pursuant to the Plan in respect thereof, any claims or defenses of any nature whatsoever that any of the Debtors, the Estates or the Liquidating Debtors may have against the holder of such Claim, but neither the failure to do so nor the allowance of any Claim under the Plan shall constitute a waiver or release by the Debtors, the Estates or the Liquidating Debtors of any right of setoff or recoupment that any of them may have against the holder of any Claim.

J. *Application of Distributions*

To the extent applicable, all Distributions to a holder of an Allowed Claim shall apply first to the principal amount of such Claim until such principal amount is paid in full and then to any interest accrued on such Claim prior to the Petition Date.

ARTICLE VI.

DISPUTED CLAIMS

A. *No Distribution Pending Allowance*

Notwithstanding any other provision of the Plan, the Plan Administrator shall not Distribute any Cash or other property on account of any Disputed Claim unless and until such Claim becomes Allowed.

B. *Resolution of Disputed Claims.*

Unless otherwise ordered by the Bankruptcy Court after notice and a hearing, subject to section 502(a) of the Bankruptcy Code, the Plan Administrator on behalf of the Liquidating Debtors shall have the right, to the exclusion of all to make, File, prosecute, settle, compromise, withdraw or resolve, in any manner approved by the Bankruptcy Court, objections to Claims; *provided, however*, that the Plan Administrator may settle, resolve, release or compromise any Claims and objections to Claims (including Twenty-Day Claims) on behalf of the Liquidating Debtors without need for notice or order of the Bankruptcy Court and *provided further* that (1) nothing herein shall limit the rights of parties in interest to object to the Professionals' applications for allowances of compensation and reimbursement of expenses under sections 330 and 503 of the Bankruptcy Code; (2) where the prosecution or settlement of a Disputed Claim involves the resolution of an Avoidance Action against the holder of such Disputed Claim, the Plan Administrator shall act in consultation with and with the consent of the Avoidance Action

Committee; and (3) the settlement or resolution of any Claims held by insiders or former insiders of the Debtors or any Administrative Claims, Priority Claims or Twenty-Day Claims with a face value of more than \$100,000 require consent of the Creditor Advisory Board or an order of the Bankruptcy Court.

C. Objection Deadline

All objections to Disputed Claims shall be Filed and served upon the holders of each such Claim by the later of (1) the first Business Day that is at least 120 days after the Effective Date and (2) the first Business Day that is at least 90 days after the filing of a proof of Claim (as may be extended pursuant to this Section VI.C, the "***Claims Objection Deadline***"), *provided that* the Plan Administrator may seek extension(s) thereof subject to Bankruptcy Court approval and with notice only to parties on the Post-Effective Date Service List. In the Plan Administrator's discretion, the Plan Administrator may request the Bankruptcy Court to enter an order establishing a Bar Date for the filing of General Unsecured Claims, in which case, notwithstanding the foregoing provision, the Claims Objection Deadline in respect of any proofs of Claim Filed pursuant to any such order shall be the later of (1) the first Business Day that is at least 180 days after the applicable Bar Date and (2) the first Business Day that is at least 90 days after the filing of a proof of Claim.

D. Estimation of Claims

At any time: (1) prior to the Effective Date, the Debtors; and (2) subsequent to the Effective Date, the Plan Administrator on behalf of the Liquidating Debtors, may request that the Bankruptcy Court estimate any contingent or unliquidated Claim to the extent permitted by section 502(c) of the Bankruptcy Code regardless of whether the Debtors or the Liquidating Debtors previously have objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall have jurisdiction to estimate any Claim at any time during litigation concerning any objection to such Claim, including during the pendency of any appeal relating to any such objection. If the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount shall constitute either the Allowed amount of such Claim or a maximum limitation on the Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on the Claim, the Plan Administrator may elect to pursue supplemental proceedings to object to the ultimate allowance of the Claim. All of the aforementioned procedures for Claims objections, estimation and resolution are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court, or by the Plan Administrator without need for notice or order of the Bankruptcy Court as provided in Section VI.B with respect to Disputed Claims.

ARTICLE VII.

TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Rejection/Assumption of Executory Contracts and Unexpired Leases

On the Effective Date, except for any executory contract or unexpired lease that (1) was previously assumed or rejected by an order of the Bankruptcy Court pursuant to section 365 of

the Bankruptcy Code or (2) is identified as to be assumed in the Plan Supplement, each executory contract and unexpired lease that has not previously expired or terminated pursuant to its own terms shall be deemed rejected pursuant to sections 365 and 1123 of the Bankruptcy Code, effective as of the Effective Date. Notwithstanding the foregoing, unless otherwise provided in the Plan Supplement, nothing in this Section VII.A shall cause the rejection (if such contract is an executory contract for purposes of section 365), breach or termination of any contract of insurance benefiting the Debtors, their current or former directors and officers, the Estates and/or the Liquidating Debtors or the Plan Administrator.

This Plan shall be deemed a motion to, as applicable, reject and/or assume the subject executory contracts and unexpired leases. The Confirmation Order shall constitute an order of the Bankruptcy Court approving, as applicable, the rejection and/or assumption of executory contracts and unexpired leases pursuant to sections 365 and 1123 of the Bankruptcy Code as of the Effective Date. Nothing in this Article VII shall be construed as an acknowledgement that a particular contract or agreement is executory or is properly characterized as a lease for purposes of section 365 of the Bankruptcy Code.

B. Claims Based on Rejection of Executory Contracts or Unexpired Leases

Any Claim arising from the rejection of an executory contract or unexpired lease (a "**Rejection Damages Claim**") shall be treated as a Claim in Class 5 (General Unsecured Claims), consistent with sections 365(g) and 502(g) of the Bankruptcy Code.

C. Cure Claims

If applicable, proposed cure amounts for the assumption of executory contracts and unexpired leases shall be set forth in the Plan Supplement, and any objection thereto of the subject nondebtor counterparty must be Filed and served on Debtors' counsel by the deadline set for Filing objections to the confirmation of the Plan or by any alternative deadline established in the Plan Supplement.

ARTICLE VIII.

CONDITIONS PRECEDENT TO AND OCCURRENCE OF CONFIRMATION AND THE EFFECTIVE DATE

A. Conditions Precedent to Confirmation

The following are conditions precedent to Confirmation that must be satisfied or waived:

1. The Confirmation Order shall be reasonably acceptable in form and substance to the Debtors and the other Global Settlement Parties.
2. The Plan will not have been materially amended, altered or modified from the Plan as Filed on January 18, 2014 except as permitted by Section XI.C.
3. All Plan Exhibits and other materials in the Plan Supplement are in form and substance reasonably satisfactory to the Debtors and the other Global Settlement Parties.

B. *Conditions Precedent to the Effective Date*

The following are conditions precedent to the Effective Date that must be satisfied or waived:

1. The Confirmation Order shall have been entered by the Bankruptcy Court.
2. The Confirmation Order has not been reversed, stayed, modified or amended, and has become a Final Order.
3. The Confirmation Date shall have occurred and no request for revocation of the Confirmation Order under section 1144 of the Bankruptcy Code shall have been made, or, if made, shall remain pending.
4. The appointment of the Plan Administrator shall have been confirmed by the Confirmation Order or other order of the Bankruptcy Court.
5. The Global Settlement Approval Order shall not have been vacated, reversed or modified on appeal or remand.
6. The conditions to the effectiveness of the Global Settlement shall have been satisfied or duly waived by the Global Settlement Parties.

Notwithstanding the foregoing, conditions 2, 3, 4, 5 and 6 may be waived by the Debtors, with the consent of the Creditors' Committee, the Second Lien Agent, NBPCo and ACAS, and any such waiver shall not require further order of the Bankruptcy Court or notice to any party (except counsel to the Creditors' Committee, the Second Lien Agent, NBPCo and ACAS).

C. *Establishing the Effective Date*

The calendar date to serve as the Effective Date shall be a Business Day of, on or promptly following the satisfaction or waiver of all conditions the Effective Date, which date will be selected by the Debtors, after reasonable consultation with the Creditors' Committee, the Second Lien Agent, NBPCo and ACAS.

ARTICLE IX.

RELEASES, INJUNCTIONS AND RELATED PROVISIONS

A. *Releases*

1. Released Implemented by the Global Settlement Approval Order Unaffected

For the avoidance of doubt, nothing herein or in the Confirmation Order is intended to limit or otherwise modify or affect the releases, waivers of liability and/or any other similar covenants and agreements set forth in and implemented by the Global Settlement and the Global Settlement Approval Order, including, without limitation, the release set forth on pp. 8-9 of the Settlement Term Sheet annexed to the Global Settlement Approval Order.

2. Releases by the Debtors, their Estates, the Creditors' Committee and Creditors

On the Effective Date, the Debtors, each of their respective Estates and the Creditors' Committee, on behalf of themselves and their Affiliates, and, in their capacity as such, each of their respective directors, managing directors, officers, trusts, trustees, members, attorneys, consultants, other professionals, partners, associates, principals, divisions, employers, employees, insurers, agents, representatives, consultants, guarantors, indemnitors, indemnitees, sureties, heirs, assigns, successors and any person claiming, or who could claim, by, through or on behalf of any of them (collectively, the "**Releasing Parties**") will, and as of the Effective Date, irrevocably and unconditionally waive, release and discharge with prejudice Yucaipa, ACAS, all ACAS Lenders (as defined in the Second Lien Credit Facility), BPI, NBPCo, the SPV, the First Lien Agent, the Second Lien Agent and the Second Lien Lenders and their Affiliates, and each of their respective directors, managing directors, officers, trusts, trustees, members, attorneys, consultants, other professionals, partners, associates, principals, divisions, employers, employees, insurers, agents, representatives, consultants, guarantors, indemnitors, indemnitees, sureties, heirs, assigns and successors (collectively, the "**Released Parties**") from any and all claims, liens, causes of action or suits at law or in equity (including, but not limited to, any and all causes of action arising under sections 502(d), 542, 543, 544, 545, 547, 548, 549, 550, 551, 552 and 553 of the Bankruptcy Code), damages, liabilities, demands, grievances, rights of setoff or recoupment, indemnification obligations, losses and costs (including costs of suit and attorneys' fees and expenses), existing or contingent, known or unknown, and whether arising by contract, statute, common law or otherwise, of whatsoever kind or nature, that the Releasing Parties have or might have from the beginning of time to the Effective Date, in any way arising out of or related to the Debtors or the Chapter 11 Cases; *provided, however*, that the obligations under this Plan, the Global Settlement, the Global Settlement Approval Order, the Third Amendment and the Cash Collateral Order and claims for the enforcement thereof are not released hereby. Any creditor that accepts a distribution from the Creditor Recovery Pool shall be deemed a Releasing Party. The Global Settlement Parties intend to effectuate a mutual release, and on the Effective Date the Released Parties will irrevocably and unconditionally waive, release and discharge with prejudice the Releasing Parties to the same extent that the Releasing Parties released the Released Parties; *provided, however*, that the obligations under this Plan, the Global Settlement, the Global Settlement Approval Order, the Third Amendment and the Cash Collateral Order and claims for the enforcement thereof are not released hereby.

3. Release and Waiver Among BPI, NBPCo, ACAS and Yucaipa

On the Effective Date, each of ACAS, all ACAS Lenders (as defined in the Second Lien Credit Facility), BPI, NBPCo, the SPV, the members of the SPV and the Agent, for and on behalf of itself and each of their respective Affiliates (other than, for the avoidance of doubt, any Debtor), and each of their respective directors, managing directors, officers, trusts, trustees, members, attorneys, consultants, other professionals, partners, associates, principals, divisions, employers, employees, insurers, agents, representatives, consultants, guarantors, indemnitors, indemnitees, sureties, heirs, assigns and successors (collectively, the "**Lender Release Parties**," and each, a "**Lender Release Party**"), does hereby irrevocably remise, release and forever discharge each other Lender Release Party, and each of their respective heirs, executors, administrators, trustees and personal representatives, of and from all, and all manner of, actions and causes of action, proceedings, orders, obligations, suits, debts, dues, accounts, bonds, covenants, contracts, agreements, judgments, claims, demands and liabilities (whether liquidated, contingent or otherwise) whatsoever, whether known or unknown, suspected or unsuspected,

both at law or in equity that any Lender Release Party now has, has ever had or may hereafter have against any other Lender Release Party, in each case in any way arising out of or related to the Second Lien Credit Facility, the Second Lien Obligations, the Loan Documents, the Debtors or the Chapter 11 Cases. Nothing in this section shall release (a) any Lender Release Party of its obligations under this Plan, the Global Settlement, the Third Amendment or the Global Settlement Approval Order, or (b) any Debtor of any of its obligations under this Plan, the Global Settlement, the Third Amendment, the Loan Documents, the Global Settlement Approval Order, the Chapter 11 Cases or otherwise.

B. *Exculpation*

Notwithstanding anything contained in the Plan to the contrary, the Exculpated Parties shall neither have nor incur any liability to any Entity for any and all claims and causes of action arising on or after the Petition Date and relating to acts taken or committed to be taken on or after the Petition Date, including any act taken or omitted to be taken in connection with, or related to, formulating, negotiating, preparing, disseminating, implementing, administering, confirming or consummating the Plan, the Disclosure Statement, the Global Settlement or any other contract, instrument, release or other agreement or document created or entered into in connection with or related to the Plan, the Global Settlement or the Chapter 11 Cases; *provided, however*, that the foregoing provisions of this Section IV.B shall have no effect on the liability of any Entity that results from any such act or omission that is determined in a Final Order to have constituted fraud, gross negligence or willful misconduct; *provided, further*, that each Exculpated Party shall be entitled to rely upon the advice of counsel concerning its duties pursuant to, or in connection with, the above referenced documents; *provided, further*, that the foregoing provisions of this Section IV.B shall not apply to any acts, omissions, Claims, Causes of Action or other obligations expressly set forth in and preserved by the Plan or any defenses thereto.

C. *Vesting and Preservation of Causes of Action*

1. Unless a Cause of Action against any Entity is expressly waived, relinquished, released, compromised or settled in the Plan, the Global Settlement, the Global Settlement Approval Order and/or any Final Order (including the Confirmation Order), the Debtors, the Liquidating Debtors and the Plan Administrator on their behalf expressly reserve all Causes of Action (including, without limitation, all Avoidance Actions, all Causes of Action associated with the Cargill Litigation and the GOPAC Litigation and all Causes of Action in all other litigation presently pending in other forums between any Debtors and the defendant in the GOPAC Litigation) for later adjudication, as applicable, by the Debtors or the Liquidating Debtors. Such reserved claims and causes of action include, without limitation, Causes of Action not specifically identified or described in the Disclosure Statement, of which the Debtors, the Plan Administrator and the Avoidance Action Committee may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtors, the Plan Administrator and the Avoidance Action Committee at this time or facts or circumstances which may change or be different from those that the Debtors, the Plan Administrator and the Avoidance Action Committee now believe to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or *laches* shall apply to such

Causes of Action upon or after the entry of the Confirmation Order or the Effective Date based on the Disclosure Statement, the Plan or the Confirmation Order, except where such Causes of Action have been released in the Plan, the Global Settlement, the Global Settlement Approval Order or any other Final Order of the Bankruptcy Court (including the Confirmation Order). In addition, the Debtors and the Liquidating Debtors and the Plan Administrator on their behalf expressly reserve the right to pursue or adopt any claims alleged in any lawsuit in which the Debtors are a defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits.

2. Subject to the immediately preceding Section XI.C.1, any Entity to whom the Debtors have incurred an obligation (whether on account of services, purchase or sale of goods or otherwise), or who has received goods or services from the Debtors or a transfer of money or property of the Debtors, or who has transacted business with the Debtors, should assume that any such obligation, transfer or transaction may be reviewed by the Avoidance Action Committee and the Liquidating Debtors subsequent to the Effective Date and may be the subject of an action after the Effective Date, regardless of whether: (a) such Entity has filed a proof of Claim against the Debtors in the Chapter 11 Cases; (b) the Debtors or the Liquidating Debtors have objected to any such Entity's proof of claim; (c) any such Entity's Claim was included in the Schedules; (d) the Debtors or the Liquidating Debtors have objected to any such Entity's scheduled Claim; or (e) any such Entity's scheduled Claim has been identified by the Debtors or the Liquidating Debtors as disputed, contingent or unliquidated.

D. *Injunction*

1. The rights afforded in the Plan and the treatment of all Claims and Equity Interests in the Plan shall be in exchange for and in complete satisfaction of Claims and Equity Interests of any nature whatsoever, including any interest accrued on Claims from and after the Petition Date, against the Debtors or any of their assets or properties. On the Effective Date, all such Claims against, and Equity Interests in, the Debtors shall be satisfied and released in full.

2. Except as otherwise expressly provided for in the Plan, all Parties and Entities are permanently enjoined, on and after the Effective Date, on account of any Claim or Equity Interest addressed under this Plan, from:

(a) *commencing or continuing in any manner any action or other proceeding of any kind against any of the Debtors, the Liquidating Debtors, the Estates, the Plan Administrator and their respective successors and assigns, and such entities' assets and properties; provided, however, that this injunction does not apply to the continuation of any action or other proceeding (i) in which a Debtor is the plaintiff or (ii) with respect to which the Bankruptcy Court has entered an order lifting or otherwise modifying the automatic stay under the Bankruptcy Code;*

(b) *enforcing, attaching, collecting or recovering by any manner or means any judgment, award, decree or order against any of the Debtors, the Estates, the Liquidating Debtors, the Plan Administrator and their respective successors and assigns, and such entities' assets and properties;*

(c) *creating, perfecting or enforcing any encumbrance of any kind against any of the Debtors, the Liquidating Debtors, the Estates, the Plan Administrator and such entities' assets and properties;*

(d) *asserting any right of setoff, subrogation or recoupment of any kind against any obligation due from any of the Debtors or against the property or Estate of any of the Debtors, except to the extent a right to setoff, recoupment or subrogation is asserted with respect to a timely filed proof of Claim; or*

(e) *except as provided above, commencing or continuing in any manner any action or other proceeding of any kind in respect of any Claim or Equity Interest or cause of action released or settled hereunder or under the Global Settlement and the Global Settlement Approval Order.*

E. *Releases of Liens*

Except as otherwise expressly provided in the Plan, in any contract, instrument, release or other agreement or document created pursuant to the Plan, or in the Global Settlement and the Global Settlement Approval Order, on the Effective Date, all mortgages, deeds of trust, liens, pledges or other security interests against property of the Debtors and the Estates shall be fully released and discharged, and all of the right, title and interest of any holder of such mortgages, deeds of trust, liens, pledges or other security interest shall revert to the Liquidating Debtors and their successors and assigns.

ARTICLE X.

RETENTION OF JURISDICTION

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain such jurisdiction over the Chapter 11 Cases and all Entities with respect to all matters related to the Chapter 11 Cases, the Debtors, the Liquidating Debtors, the Estates and the Plan as is legally permissible from and after the Effective Date, including, without limitation, jurisdiction to:

1. allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Equity Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the allowance or priority of Claims or Equity Interests; *provided, however*, that the Plan Administrator may settle, resolve, release or compromise any Claims and objections to Claims on behalf of the Liquidating Debtors without need for notice or order of the Bankruptcy Court;

2. grant or deny any applications for allowance of compensation or reimbursement of expenses of Professionals authorized pursuant to the Bankruptcy Code or the Plan, for periods ending on or before the Effective Date;

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

4. ensure that Distributions to holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;

5. decide or resolve any disputes between the Plan Administrator and the Creditor Advisory Board;

6. decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters pending in the Bankruptcy Court and grant or deny any applications involving a Debtor that may be pending on the Effective Date or instituted by the Plan Administrator after the Effective Date, *provided, however*, that the Liquidating Debtors shall reserve the right to commence actions in all appropriate jurisdictions;

7. enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all other contracts, instruments, releases, indentures and other agreements or documents adopted in connection with the Plan, the Plan Supplement, the Global Settlement or the Disclosure Statement;

8. approve, enter orders or take other actions with respect to requests to (a) modify the Plan before or after the Effective Date pursuant to section 1127 of the Bankruptcy Code, (b) modify the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, the Disclosure Statement or the Confirmation Order or (c) remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court order, the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document entered into, delivered or created in connection with the Plan, the Disclosure Statement or the Confirmation Order, in such manner as may be necessary or appropriate to consummate the Plan;

9. resolve any cases, controversies, suits or disputes that may arise in connection with the Effective Date, interpretation or enforcement of the Plan or the Global Settlement or any Entity's obligations incurred in connection with the Plan or the Global Settlement;

10. issue injunctions, enforce them (including, without limitation, the Plan injunction provided for in Section IX.D), enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with the Effective Date or enforcement of the Plan, except as otherwise provided in the Plan;

11. enter and implement such orders as necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;

12. resolve any other matters that may arise in connection with or related to the Plan, the Disclosure Statement, the Confirmation Order, the Global Settlement or any contract, instrument, release, indenture or other agreement or document adopted in connection with the Plan, the Disclosure Statement, the Confirmation Order or the Global Settlement;

13. adjudicate any matters directed, raised or implicated by any remand to the Bankruptcy Court from an appellate court;

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

15. approve, enter orders or take other actions relating to requests to recover assets of the Debtors and the Estates, wherever located;

16. enter an order and/or the final decree contemplated in Bankruptcy Rule 3022 concluding the Chapter 11 Cases; and

17. hear any other matter not inconsistent with the Bankruptcy Code.

ARTICLE XI.

MISCELLANEOUS PROVISIONS

A. *Payment of Statutory Fees*

All outstanding amounts due under 28 U.S.C. § 1930 that have not been paid shall be paid by the Debtors on or before the Effective Date. Thereafter, the Plan Administrator shall pay any statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) and such fees shall be paid until entry of a final decree or an order converting or dismissing the Chapter 11 Cases.

B. *Post-Effective Date Reports*

After the Effective Date, the Plan Administrator shall file post-Effective Date status reports on a quarterly basis up to the entry of a final decree closing the Chapter 11 Cases or as otherwise ordered by the Bankruptcy Court.

C. *Modification of Plan*

Subject to the limitations contained in the Plan: (1) the Debtors reserve the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, and to the extent consistent with the terms of the Global Settlement, to amend or modify the Plan prior to the entry of the Confirmation Order, including amendments or modifications to satisfy section 1129(b) of the Bankruptcy Code; and (2) after the entry of the Confirmation Order, the Debtors or the Liquidating Debtors, as applicable, may, upon order of the Bankruptcy Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan; *provided that* any modification to the Plan must be approved by the Creditors' Committee and Second Lien Agent and any modification impacting any aspect of the Global Settlement must be approved by all of the Global Settlement Parties.

D. *Revocation of Plan*

The Debtors reserve the right to revoke or withdraw the Plan prior to the entry of the Confirmation Order and to File subsequent chapter 11 plans. If the Debtors revoke or withdraw the Plan or if entry of the Confirmation Order or the Effective Date does not occur, then: (1) the Plan shall be null and void in all respects; (2) any settlement or compromise embodied in the Plan, assumption or rejection of executory contracts or unexpired leases effected by the Plan, and any document or agreement executed pursuant hereto shall be deemed null and void; and (3) nothing contained in the Plan shall: (a) constitute a waiver or release of any claims by or against, or any Equity Interests in, the Debtors or any other Entity; (b) prejudice in any manner

the rights of the Debtors or any other Entity; or (c) constitute an admission of any sort by the Debtors or any other Entity. Notwithstanding the foregoing, any revocation of the Plan shall not impact the Global Settlement or the Global Settlement Approval Order in any manner.

E. *Successors and Assigns*

The rights, benefits and obligations of any Entity named or referred to herein shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of such Entity.

F. *Binding Effect*

Except as otherwise expressly provided in the Plan, and without limitation on the Global Settlement, on and after the Effective Date, the Plan and all exhibits thereto shall bind the Debtors, the Liquidating Debtors, the Plan Administrator and all holders of Claims and Equity Interests.

G. *Governing Law*

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

H. *Reservation of Rights*

Except as expressly set forth herein, the Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order. Neither the filing of the Plan, any statement or provision contained herein, nor the taking of any action by a Debtor or any Entity with respect to the Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) any Debtor with respect to the holders of Claims or Equity Interests or other parties-in-interest; or (2) any holder of a Claim or other party-in-interest prior to the Effective Date.

I. *Section 1146 Exemption*

Pursuant to section 1146(a) of the Bankruptcy Code, the following shall not be subject to any stamp tax or other similar tax, real estate transfer tax, mortgage recording tax, filing fee or similar tax: (1) any dissolution or liquidation transaction; (2) the sale, liquidation, transfer, foreclosure, abandonment or other disposition of the Debtors' assets; or (3) the transfers of property, the making or delivery of any deed or other instrument of transfer, under, in furtherance of or in connection with the Plan, including any agreements of liquidation or dissolution, bills of sale or assignments, applications, certificates or statements executed or filed in connection with any of the foregoing or pursuant to the Plan. The Confirmation Order shall direct the appropriate state or local governmental officials or agents to forego the collection of any such tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such tax or governmental assessment.

J. *Section 1125(e) Good Faith Compliance*

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

K. *Saturday, Sunday or Legal Holiday*

If any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day but shall be deemed to have been completed as of the required date.

L. *Severability*

If any term or provision of the Plan is held by the Bankruptcy Court prior to or at the hearing on confirmation of the Plan to be invalid, void or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as so altered or interpreted. In the event of any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan may, at the Debtors' option remain in full force and effect and not be deemed affected. However, the Debtors reserve the right not to proceed to confirmation or consummation of the Plan if any such ruling occurs. 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.

M. *Headings*

The headings used in this Plan are inserted for convenience only and neither constitute a portion of the Plan nor in any manner affect the provisions of the Plan.

N. *Further Assurances*

The Debtors, the Liquidating Debtors, the Plan Administrator, the Global Settlement Parties, the Creditor Advisory Board, the Avoidance Action Committee, all holders of Claims receiving Distributions hereunder and all other parties in interest shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan or the Confirmation Order.

O. *Service of Documents*

Any pleading, notice or other document required by the Plan to be served or delivered shall be sent by hand delivery, overnight mail or first class U.S. mail, postage prepaid, in each case with a copy by email, as follows:

To the Debtors or the Liquidating Debtors:

JONES DAY
1480 Peachtree Street, N.E.
Suite 800
Atlanta, Georgia 30309
Telephone: (404) 581-3939
Facsimile: (404) 581-8330
Attn: Jeffrey B. Ellman, Esq.
Brett J. Berlin, Esq.
Daniel J. Merrett, Esq.
jbellman@jonesday.com
bjberlin@jonesday.com
dmerrett@jonesday.com

PACHULSKI STANG ZIEHL & JONES LLP
919 North Market Street, 17th Floor
P.O. Box 8705
Wilmington, Delaware 19899-8705
(Courier 19801)
Telephone: (302) 652-4100
Facsimile: (302) 652-4400
Attn: Laura Davis Jones, Esq.
Timothy P. Cairns, Esq.
Peter J. Keane, Esq.
ljones@pszjlaw.com
tcairns@pszjlaw.com
pkeane@pszjlaw.com

To the Plan Administrator:

David J. Beckman
c/o FTI Consulting, Inc.
1001 17th Street
Suite 1100
Denver, 80202
Telephone: (303) 689-8800
Facsimile: (303) 689-8803

dave.beckman@fticonsulting.com

To the Creditors' Committee:

POTTER ANDERSON & CORROON LLP
1313 North Market St., 6th Floor
Wilmington, Delaware 19801

Telephone: (302) 984-6000
Facsimile: (302) 658-1192
Attn: Jeremy W. Ryan, Esq.
jryan@potteranderson.com

MCDONALD HOPKINS LLC
600 Superior Ave., East, Suite 2100
Cleveland, Ohio 44114
Telephone: (216) 348-5436
Facsimile: (216) 348-5474
Attn: Sean D. Malloy, Esq.
Scott N. Opincar, Esq.
smalloy@mcdonalddhopkins.com
sopincar@mcdonalddhopkins.com

To the Second Lien Agent:

MORRIS, NICHOLS, ARSHT & TUNNELL LLP
1201 N. Market St.
P.O. Box 1347
Wilmington, Delaware 19899-1347
Telephone: (302) 658-9200
Facsimile: (302) 658-3989
Attn: Robert J. Dehney, Esq.
Andrew R. Remming, Esq.
rdehney@mnat.com
aremming@mnat.com

MUNGER, TOLLES & OLSON LLP
355 South Grand Ave.
35th Floor
Los Angeles, California 90071
Telephone: (213) 683-9100
Facsimile: (213) 683-5193
Attn: Thomas Walper, Esq.
thomas.walper@mto.com

To the WARN Action Counsel:

OUTTEN & GOLDEN LLP
3 Park Avenue, 29th Floor
New York, New York 10016
Telephone: (212) 245-1000
Facsimile: (212) 646-509-2060
Attn: Jack A. Raisner
René S. Roupinian
jar@outtengolden.com
rsr@outtengolden.com

To Beef Products, Inc. and NBPCo:

KOLEY JESSEN P.C., L.L.O.
1125 S. 103rd St., Suite 800
Omaha, Nebraska 68124
Telephone: (402) 343-3883
Facsimile: (402) 390-9005
Attn: Brian J. Koenig
brian.koenig@koleyjessen.com

To American Capital, Ltd.:

YOUNG CONAWAY STARGATT & TAYLOR, LLP
One Rodney Square
1000 West Street, 17th Floor
Wilmington, Delaware 19801
Telephone: (302) 571-6600
Facsimile: (302) 571-1253
Attn: Joseph M. Barry
jbarry@ycst.com

ARNOLD & PORTER LLP
555 Twelfth Street, N.W.
Washington, D.C. 20004-1206
Telephone: (202) 942-5000
Facsimile: (202) 942-5999
Attn: Michael L. Bernstein
Dana B. Yankowitz
michael.bernstein@aporter.com
dyankowitz@aporter.com

P. *Filing of Additional Documents*

On or before the Effective Date, the Debtors may file with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

Q. *No Stay of Confirmation Order*

The Confirmation Order shall contain a waiver of any stay of enforcement otherwise applicable, including pursuant to Bankruptcy Rules 3020(e) and 7062.

ARTICLE XII.

CONFIRMATION REQUEST

The Debtors hereby request confirmation of the Plan pursuant to section 1129 of the Bankruptcy Code.

Wilmington, Delaware

Dated: January 17, 2014

AFA INVESTMENT INC., ET AL.

By 

Its: Chief Restructuring Officer

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

-----X
In re : Chapter 11
AFA INVESTMENT INC., *et al.*,¹ : Case No. 12-11127 (MFW)
Debtors. : Jointly Administered
: Re: Docket No. 1070
-----X

ORDER APPROVING REVISED GLOBAL SETTLEMENT

This matter coming before the Court on the Amended Joint Motion of:

(A) Debtors; (B) Official Committee of Unsecured Creditors; (C) Term B Loan Lenders;
(D) Second Lien Agent; (E) Beef Products Inc.; (F) American Capital Limited; (G) the Other
Prepetition Second Lien Lenders; and (H) Nadia Sanchez, on Behalf of Herself and Others
Similarly Situated, Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy
Rule 9019 for an Order Authorizing Global Settlement (Docket No. 1070) (the "Amended
Motion")² filed by the Settlement Parties; the following responses (together, the "Responses") to
the relief requested in the Amended Motion having been filed:

- (a) the Response (Docket No. 1092) of the Office of the United States
Trustee; and

¹ The Debtors are the following nine entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): AFA Investment Inc. (0331); American Foodservice Corporation (1780); American Fresh Foods, Inc. (7389); American Fresh Foods, L.P. (7302); AFA Foods, Inc. (0429); American Fresh Foods, LLC (7301); Fairbank Reconstruction Corporation (2405); American Foodservice Investment Company, LLC (9525); and United Food Group LLC (7584). The address of each of the Debtors is 860 First Avenue, Suite 9A, King of Prussia, Pennsylvania 19406.

² Capitalized terms not otherwise defined herein have the meanings given to them in the Amended Motion.



- (b) the Objection (Docket No. 1094) of Greater Omaha Packing Co., Inc. and its insurers, Continental Casualty Company and its North American insurance affiliates.

The Court being advised that the Settlement Parties have agreed on certain modifications to the Revised Term Sheet (in such modified form, the "Settlement Term Sheet"), a copy of which is attached hereto as Annex A; the Court having reviewed the Amended Motion and the Settlement Term Sheet and the Responses and having considered the statements of counsel and the evidence adduced with respect to the Amended Motion and Settlement Term Sheet at a hearing before the Court (the "Hearing"); the Court having found that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (c) notice of the Amended Motion and the Hearing was sufficient under the circumstances and in full compliance with Bankruptcy Rule 2002 and the Local Rules of this Court, (d) the Revised Settlement (including the WARN Settlement),³ (i) is the product of good faith, arms' length negotiations among the Settlement Parties, without collusion, (ii) is fair, reasonable, appropriate and in the best interests of the Debtors' estates and (iii) represents a sound exercise of the Debtors' business judgment and (e) each of the Settlement Parties provides sufficient consideration for the transactions contemplated by the Revised Settlement (including the WARN Settlement), as set forth in the Settlement Term Sheet; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein;

³ For the avoidance of doubt, references herein to the "Revised Settlement" refer to the settlement as set forth in the Settlement Term Sheet and the WARN Settlement and any related document.

IT IS HEREBY ORDERED THAT:

1. The Amended Motion is GRANTED as set forth herein and on the record of the Hearing. The Responses are OVERRULED to the extent not resolved by the terms of this Order or on the record of the Hearing.

2. The terms of the Revised Settlement as set forth in the Settlement Term Sheet are APPROVED in their entirety, pursuant to Bankruptcy Rule 9019. All of the terms set forth in the Settlement Term Sheet are approved whether or not restated below in this Order. The Settlement Term Sheet and the Third Amendment are binding upon and enforceable against each of the parties thereto according to their terms. In the event of a conflict between the terms of the Settlement Term Sheet and this Order, the terms of this Order shall govern.

3. The Term B Loan Claim and the Second Lien Claim are deemed allowed secured claims against the Debtors' estates in an amount no less than \$1,400,000 and \$71,595,210, respectively, pursuant to section 502 of the Bankruptcy Code, and shall not be subject to reduction, disallowance, objection, set-off, recoupment, or reconsideration pursuant to section 502(j) of the Bankruptcy Code or otherwise. The Second Lien Claim shall be paid on the terms set forth in the Settlement Term Sheet and the Third Amendment.⁴

4. The ACAS Claims are deemed an allowed secured Second Lien Claim against the Debtors' estates in the amount of \$3,100,000 — which claim is part of the \$71,595,210 in Second Lien Obligations — pursuant to section 502 of the Bankruptcy Code, and shall not be subject to reduction, disallowance, objection, set-off, recoupment or reconsideration pursuant to section 502(j) of the Bankruptcy Code or otherwise. The ACAS Claims shall be paid on the terms set forth in the Settlement Term Sheet and the Third Amendment.

⁴ Yucaipa previously received payment on the Term B Loan Claim.

5. The Second Lien Agent is awarded a superpriority adequate protection claim in the amount of \$2,250,000 as adequate protection for the diminution in value of its security interest consistent with paragraph 6(ii) of the Interim Cash Collateral Order, provided, however, that (a) the Adequate Protection Claim shall be paid solely from the proceeds of Avoidance Actions and (b) the Second Lien Agent agrees to gift the first \$1,650,000 of any recovery on the Adequate Protection Claim to the WARN Claimants on the terms and conditions set forth in the Settlement Term Sheet.

6. As of the Settlement Effective Date, the Releases contained in the Revised Settlement shall become binding and enforceable.

7. This Court's approval of the Revised Settlement pursuant to Bankruptcy Rule 9019 authorizes the Debtors to enter into the WARN Settlement as part of the Revised Settlement, subject only to approval of the WARN Settlement in the WARN Action pursuant to Civil Rule 23(e), as made applicable in the WARN Action by Bankruptcy Rule 7023.

8. Without further order of the Court, the Debtors are authorized to enter into: (a) the Third Amendment and (b) a Settlement Document — on terms consistent with those of the Amended Motion and the Settlement Term Sheet — provided that any such Settlement Document is filed with the Court and served on the Bankruptcy Rule 2002 service list at least three business days prior to its execution by the Debtors. If no objections to the Settlement Document are filed with the Court during this three business day notice period, the Debtors shall be authorized to enter into the Settlement Document. If no Settlement Document is entered into, the Settlement Term Sheet and the Third Amendment shall nevertheless be binding upon and enforceable against the parties.

9. The Debtors and the Second Lien Agent will work in good faith to reach agreement on a modification to FTI's engagement, and its compensation, to address the additional responsibilities relating to Avoidance Actions called for under the Revised Settlement. The revised terms of engagement for FTI, and related compensation, must be acceptable to FTI and the Avoidance Action Committee and approved on motion to and order of this Court. In the absence of an order approving a modification of FTI's engagement, FTI's role with respect to the Avoidance Actions shall be limited to facilitating the Avoidance Action Counsel's access to the Debtors' books and records, including any analysis of Preference Claims previously performed by FTI.

10. The Debtors are hereby authorized to take such additional actions or execute such additional documents as are necessary or appropriate to implement the terms of the Revised Settlement.

11. The provisions of this Order and the Settlement Term Sheet (a) shall be binding on all successors and assigns of any of the Settlement Parties, all creditors and interest holders and other entities, including, without limitation, any chapter 11 or chapter 7 trustee, responsible officer, examiner, estate administrator or representative, plan administrator, or similar person to any of the foregoing, whether existing in this chapter 11 case or any chapter 7 case or otherwise, and pursuant to a chapter 11 plan or otherwise; and (b) shall survive entry of any order that may be entered: (i) confirming any plan of reorganization or liquidation in the Debtors' cases; (ii) converting any of the Debtors' cases to a case under chapter 7 of the Bankruptcy Code; (iii) dismissing any of the Debtors' cases; (iv) discharging any Debtor; or (v) pursuant to which the Bankruptcy Court abstains from hearing any of the Debtors' cases.

12. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, enforcement or interpretation of this Order.

Dated: July 2, 2013
Wilmington, Delaware

Mary H. Walcott
UNITED STATES BANKRUPTCY JUDGE

ANNEX A

AFA INVESTMENT, INC., ET AL.

TERMS AND CONDITIONS OF THE GLOBAL SETTLEMENT AMONG THE DEBTORS, THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, YUCAIPA CORPORATE INITIATIVES FUND II, L.P., YUCAIPA CORPORATE INITIATIVES (PARALLEL) FUND II, L.P., YCIF II SECOND LIEN HOLDINGS LLC, YUCAIPA CORPORATE INITIATIVES FUND II, LLC, AS ADMINISTRATIVE AGENT, BEEF PRODUCTS, INC., NBPCO HOLDINGS, LLC, AMERICAN CAPITAL, LTD. AND THE WARN CLASS REPRESENTATIVE

Parties:	The Debtors, the Committee, Yucaipa, the Second Lien Agent, the SPV, BPI, NBPCo, ACAS and the WARN Class Representative (all as defined below) (collectively, the " <u>Parties</u> ").
Effective Date:	The global settlement described in this term sheet (the " <u>Global Settlement</u> ") will be effective upon the last to occur of entry of: (a) a final, non-appealable order by the Bankruptcy Court (the " <u>Global Settlement Order</u> ") approving (i) this term sheet (the " <u>Term Sheet</u> ") under Federal Bankruptcy Rule 9019 and (ii) the Third Amendment (as defined below); and (b) a final, non-appealable order approving the Stipulation Re: Settlement of Class Action ¹ on a final basis (the " <u>Effective Date</u> "). The Parties agree to use their best efforts to seek entry of such orders by filing motions for such approvals within five business days of the parties' mutual execution hereof.
The First Liens:	While the Parties seek approval of this Global Settlement, the deadline to bring a Challenge (as defined in the Final DIP Order) ² shall be deemed to be extended until the earliest of: (a) the Effective Date; (b) two business days after the entry of any order denying approval of the Global Settlement; or (c) two business days after entry of any order denying with prejudice approval of the Stipulation Re: Settlement of Class Action on a preliminary basis (such earliest date, the " <u>Extended Challenge Deadline</u> "). Unless and until an order is entered denying the approval of the Global Settlement, the withdrawal of a motion to seek approval of the Global Settlement, or an order is entered

¹ The Stipulation Re: Settlement of Class Action will be submitted in, and to resolve, the claims asserted or that could have been asserted in the adversary proceeding captioned *Nadia Sanchez, on behalf of herself and all others similarly situated v. AFA Foods, Inc., AFA Investment, Inc. and Yucaipa Corporate Initiatives Fund II, LLC*, Adv. Pro. No. 12-50710 (MFW) (Bankr. D. Del. 2012) (the "WARN Action"). The parties to the Stipulation Re: Settlement of Class Action are Debtors AFA Investment, Inc. and AFA Foods, Inc.; Yucaipa Corporate Initiatives Fund II, LLC; and Nadia Sanchez, by and through her attorneys, as class representative for the plaintiffs in the WARN Action (the "WARN Class Representative").

² The Final DIP Order is the *Final Order (i) Authorizing the Debtors to (a) Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 363(c), 363(e), 364(c), 364(d)(1) and 364(e) and (b) Utilize Cash Collateral of Prepetition Secured Entities, (ii) Granting Adequate Protection to Prepetition Secured Entities, and (iii) Granting Related Relief* [D.I. 199].

	<p>denying with prejudice approval on a preliminary basis of the Stipulation Re: Settlement of Class Action, no such Challenge shall be brought, and the right to make a Challenge shall expire on the Extended Challenge Deadline.</p> <p>On the Effective Date, AFA Investment, Inc., and its affiliated debtors and debtors in possession (collectively, the “<u>Debtors</u>”) and the Official Committee of Unsecured Creditors (the “<u>Committee</u>”) stipulate and agree for all purposes that: (i) Yucaipa Corporate Initiatives Fund II, L.P. and Yucaipa Corporate Initiatives (Parallel) Fund II, L.P., as the sole remaining first lien lenders and as assignees of General Electric Capital Corporation, in its former capacity as administrative agent for the first lien lenders, pursuant to the terms of the first lien credit agreement (including any successor thereto or appointee thereof as administrative agent for the first lien lenders, collectively, the “<u>First Lien Agent</u>”) hold prepetition and/or postpetition first liens and claims that are valid, perfected, enforceable and unavoidable with respect to and in all the Debtors’ assets of any kind, including, but not limited to, the Debtors’ cash (including, but not limited to, all cash received from the sale of the Debtors’ assets), the Litigation Claims (as defined below), the Miscellaneous Assets (as defined below) and the proceeds from all such assets other than the Avoidance Actions and Avoidance Action proceeds (each as defined in the Final DIP Order) (collectively, the “<u>Assets</u>”)³; and (ii) the Debtors were indebted to Yucaipa Corporate Initiatives Fund II, L.P. and Yucaipa Corporate Initiatives (Parallel) Fund II, L.P. (together with their general partner, Yucaipa Corporate Initiatives Fund II, LLC, “<u>Yucaipa</u>”) without defense, counterclaim, offset or challenge of any kind in the aggregate principal amount of \$1,400,000, plus accrued interest, on account of the Term B Loans (the “<u>Term B Loan Claim</u>”). The Term B Loan Claim is deemed allowed for all purposes in an amount no less than \$1,400,000, plus accrued interest through the date it was paid. Yucaipa has received payment on the Term B Loan Claim.</p>
Liens and Claims of the Second Lien Agent:	<p>The deadline to bring a Second Lien Challenge (as defined in the Final DIP Order) shall be deemed to be extended until the Extended Challenge Deadline while the Parties seek approval of this Global Settlement. Unless and until an order is entered denying the approval of the Global Settlement, the withdrawal of a motion to seek approval of the Global Settlement, or an order is entered denying with prejudice approval on a</p>

3

Pursuant to the Final DIP Order, the First Lien Agent was also granted a Prepetition Superpriority Claim (as defined in the Final DIP Order) in, among other things, the Avoidance Action Proceeds, but not a lien on Avoidance Action Proceeds. When addressing liens under this “The First Liens” section of the Term Sheet, the term “Assets” does not include the Avoidance Actions or the Avoidance Action Proceeds.

	<p>preliminary basis of the Stipulation Re: Settlement of Class Action, no such Challenge shall be brought, and the right to make a Second Lien Challenge shall expire on the Extended Challenge Deadline.</p> <p>On the Effective Date, the Debtors and the Committee stipulate and agree for all purposes that: (i) Yucaipa Corporate Initiatives Fund II, LLC, as administrative agent (the "<u>Second Lien Agent</u>") holds prepetition and/or postpetition second liens that are valid, perfected, enforceable and unavoidable with respect to and in all the Assets; (ii) the Debtors are indebted to the Second Lien Agent, without defense, counterclaim, offset or challenge of any kind in the aggregate principal amount of not less than \$71,595,210 on account of the Second Lien Obligations (as defined in the Final DIP Order); (iii) the liens and claims of the Second Lien Agent, granted under the Second Lien Documents, the Final DIP Order, the Cash Collateral Order (as defined below), or otherwise, (collectively, the "<u>Second Lien Claim</u>"), have a value in excess of the value of the Assets, and therefore apply and attach to all Assets; and (iv) the Adequate Protection Liens (as defined in the Cash Collateral Order (defined below)) and the Adequate Protection Claims (as defined in the Cash Collateral Order) are liquidated and allowed in the amount of \$2,250,000 (the "<u>Allowed Adequate Protection Claim</u>"). The Allowed Adequate Protection Claim shall be satisfied solely from the first \$2,250,000 in net recoveries on account of the Avoidance Actions (defined below), as described below. The Second Lien Claim is deemed allowed for all purposes in an amount no less than \$71,595,210. Notwithstanding the foregoing sentence, the Second Lien Note held by American Capital, Ltd. ("<u>ACAS</u>"), dated February 9, 2010 (the "<u>ACAS Second Lien Note</u>"), is deemed an allowed secured claim for all purposes in the amount of \$3,100,000, which claim is part of the \$71,595,210 in Second Lien Obligations.</p>
<p>Miscellaneous Assets:</p>	<p>The term "Miscellaneous Assets" means, collectively: (i) money in the possession of any Debtor as of the Petition Date; (ii) cash retainers held as of the Petition Date by any professional retained by any of the Debtors' in these chapter 11 cases to the extent not applied to pay fees and expenses as approved by an order of the Bankruptcy Court; (iii) any and all shares of stock of Churchill Casualty Ltd., an offshore insurance company located in the Cayman Islands, owned by American Foodservice Corporation or any other Debtor; (iv) any and all automobiles, trucks, trailers, lifts or other vehicles owned by any of the Debtors; and (v) any sale proceeds in excess of \$2.3 million generated from the sale of American Foodservice Corporation's real property located in Montgomery County, Pennsylvania.</p>

Recovery on the General Assets:

The following applies to all Assets, including, but not limited to, the Miscellaneous Assets, but shall not apply to the Litigation Claims or the Avoidance Actions (collectively, the "General Assets"): The Debtors will make the payments authorized by the Cash Collateral Order and the Budget (defined below), including the payment of reasonable fees and expenses of the Second Lien Agent. The Debtors, the Committee, and the Second Lien Agent will agree on a reasonable reserve for amounts in the Budget for the period after the Effective Date (the "Reserve"), which will be set aside from the General Assets, and which in no event shall be of an amount that could impair the ability of the Debtors' estates to pay all amounts payable to ACAS as and when provided for herein and on the terms set forth in the Third Amendment (as defined below). The Litigation Recovery Fund (as defined below) is included as part of the Reserve. The Second Lien Agent, Yucaipa, and the SPV shall not have any obligation to fund any amounts beyond the Second Lien Agent's portion of the Reserve. The Creditor Recovery Pool shall not have any obligation to fund any amounts beyond the Creditor Recovery Pool's portion of the Reserve. Notwithstanding the foregoing, in no event shall the payments authorized by the Cash Collateral Order, the Budget, and the Reserve, be of an amount that, individually or in the aggregate, could impair the ability of the Debtors' estates to pay all amounts payable to ACAS as and when provided for herein and on the terms set forth in the Third Amendment. Recoveries of \$3,100,000 received from the General Assets will be applied to payment of the ACAS Second Lien Note, on the terms set forth in that certain Third Amendment to Credit Agreement to be executed and delivered simultaneously with the Global Settlement and this Term Sheet (the "Third Amendment"), in full and final satisfaction of the ACAS Second Lien Note and all claims that ACAS or any ACAS Lender (as defined in Second Lien Credit Agreement) may have against the Debtors, including any claim based on the ACAS Offset Note dated February 9, 2010. For the avoidance of doubt, and notwithstanding anything to the contrary herein, such payment shall be paid, without offset or deduction of any sort, as follows:

(1) on the second business day following the Effective Date, the Debtors' estates shall pay to ACAS the amount of Two Million Four Hundred Thousand Dollars (\$2,400,000), by wire transfer of immediately available funds to the account of ACAS set forth below:

Bank:	The Bank of New York Mellon, Brooklyn, NY
ABA#:	21000018
SWIFT Code:	IRVTUS3N

Account Name:	American Capital Ltd.
Account #:	8900700815
Reference:	AFA

(2) on the first date on which the Debtors make a payment to the SPV (or any transferee, successor or assign of the SPV), pursuant to the terms of the Global Settlement Order (such date, the "Initial SPV Distribution Date"), the Debtors' estates shall pay to ACAS the amount of Three Hundred Fifty Thousand Dollars (\$350,000), by wire transfer of immediately available funds to the account of ACAS set forth above in clause (1); and

(3) on the Initial SPV Distribution Date, the Debtors' estates shall also pay directly to Yucaipa on behalf of ACAS, the amount of Three Hundred Fifty Thousand Dollars (\$350,000), by wire transfer of immediately available funds to the account of Yucaipa set forth below:

Yucaipa Corporate Initiatives Fund II, LP – 76.1667%

Bank:	Union Bank of California Corporate Deposit Services 445 South Figueroa St Los Angeles, CA 90071
ABA#	122000496
Account#	44800-06181
Account Name:	YUCAIPA CORPORATE INITIATIVES FUND II, LP

Yucaipa Corporate Initiatives (Parallel) Fund II, LP – 23.8333%

Bank:	Union Bank of California Corporate Deposit Services 445 South Figueroa St Los Angeles, CA 90071
ABA#	122000496
Account#	44800-06203
Account Name#	YUCAIPA CORPORATE INITIATIVES (PARALLEL) FUND II, LP

As of and following the payment to ACAS of the amounts contemplated in clauses (1) and (2) above, and the payment to Yucaipa of the amount contemplated in clause (3) above, (such amounts totaling \$3,100,000 in the aggregate), (A) the ACAS Lenders Claim shall be deemed fully and finally satisfied and extinguished, and (B) neither ACAS nor any ACAS Lender shall have any additional or further claims against the Debtors or their estates, or against any other party to the Third Amendment (including the Second Lien Agent), and, similarly,

no such party shall have any claim against ACAS or any ACAS Lender, related to assets of the Debtors or to the Credit Agreement, the Second Lien Obligations or the Loan Documents, nor shall ACAS or any ACAS Lender be, or be deemed to be, a Lender under or other party to the Credit Agreement or any other Loan Document, and all of the rights and obligations of ACAS and any other ACAS Lender under the Credit Agreement and the Loan Documents shall be deemed terminated and replaced in their entirety with the rights and obligations of ACAS set forth in the Term Sheet, the Global Settlement Order, and the Third Amendment. For the avoidance of doubt, as of the Effective Date, the rights of ACAS and any ACAS Lender to receive payments or any other amounts from the Debtors or their estates, or from any other Party to the Third Amendment (including the Second Lien Agent), or from any affiliate, transferee, successor or assign thereof, from or related to assets of the Debtors, shall be limited to the rights to the payments to ACAS set forth in clauses (1) and (2) above. Nothing in this paragraph shall limit any rights of ACAS to enforce the provisions of and obligations under the Third Amendment, the Global Settlement Order, or the Term Sheet, including without limitation ACAS's right to receive payments specified in clauses (1) and (2) above.

The remainder of all recoveries received from the General Assets will be paid to the SPV (defined below) and distributed immediately according to the following waterfall.

The first \$14,000,000 of recoveries received from the General Assets by YCIF II Second Lien Holdings LLC (the "SPV") will be divided as follows: (i) 80% to be paid over to NBPCo Holdings, LLC ("NBPCo") (such 80% amount, the "NBPCo General Asset Recovery"); and (ii) 20% to be gifted from the SPV to the Creditor Recovery Pool (defined below) (such 20% amount, the "First Creditor General Asset Recovery").

Second, any and all recoveries received from the General Assets by the SPV above \$14,000,000 will be divided as follows: (i) 90% to be paid over to Yucaipa; and (ii) 10% to be gifted from the SPV to the Creditor Recovery Pool (such 10% amount the "Second Creditor General Asset Recovery").

NBPCo agrees that its recovery from the General Assets on account of the NBPCo General Asset Recovery, the Second Lien Claim or otherwise is capped at \$11,200,000. NBPCo is also entitled to the NBPCo Litigation Claim Recovery, the Additional NBPCo Litigation Claim Recovery and, as set out below, certain recoveries from the Avoidance Actions, which are not subject to the \$11,200,000 cap.

<p>Recovery on the Litigation Claims:</p>	<p>Except with respect to the return of funds contributed to the Litigation Recovery Fund (defined below), the following applies to any and all recoveries the Debtors may become entitled to on account of the litigation claims involving Cargill and GOPAC (collectively, the "<u>Litigation Claims</u>"). For the avoidance of doubt, the Litigation Claims do not include the Avoidance Actions.</p> <p>Any and all recoveries received from the Litigation Claims by the Debtors will be paid over to the SPV and divided immediately as follows: (i) 50% to be paid over to Yucaipa; <u>provided, however</u>, (A) any recovery received by Yucaipa between \$2,000,000 and \$4,000,000 will be divided 50%-50% between Yucaipa and NBPCo until NBPCo receives \$1,000,000 (the "<u>Additional NBPCo Litigation Claim Recovery</u>"); and (B) any recovery received by Yucaipa above \$4,000,000 will be divided 96%-4% between Yucaipa and NBPCo, with Yucaipa receiving 96% and NBPCo receiving 4%, until NBPCo receives \$1,357,933.42; and (ii) 50% to be gifted from the SPV to the Creditor Recovery Pool (the "<u>Creditor Litigation Claim Recovery</u>"), <u>provided, however</u>, the first \$2,000,000 in Creditor Litigation Claim Recovery will be divided 50%-50% between NBPCo and the Creditor Recovery Pool until NBPCo receives \$1,000,000 (the "<u>NBPCo Litigation Claim Recovery</u>").</p> <p>The funds necessary to monetize the Litigation Claims shall be funded as follows: (i) an initial fund of \$250,000 (the "<u>Litigation Recovery Fund</u>") shall be established from recoveries received from the General Assets by the SPV and the Creditor Recovery Pool, with the SPV contributing 80% and the Creditor Recovery Pool contributing 20%; and (ii) if the SPV and the entity responsible for administering the Creditor Recovery Pool determine that additional funds must be contributed to the Litigation Recovery Fund in order to monetize the Litigation Claims, the SPV will contribute 80% of such funds and the Creditor Recovery Pool will contribute 20%. The first dollars of any recovery received from the Litigation Claims shall be used to return the funds contributed to the Litigation Recovery Fund, with the SPV receiving 80% of such returned funds and the Creditor Recovery Pool receiving 20%.</p>
<p>Creditor Recovery Pool:</p>	<p>The First Creditor General Asset Recovery, the Second Creditor General Asset Recovery, and the Creditor Litigation Claim Recovery represent a gift from the SPV and/or Yucaipa in consideration of the Committee's agreement to be bound to the provisions of the Term Sheet and will be combined along with the Creditor Avoidance Action Recovery (as defined below) into a fund (the "<u>Creditor Recovery Pool</u>") and distributed to the Debtors' creditors that are not Parties to this Term Sheet, (collectively, the "<u>Creditors</u>") consistent with the Bankruptcy</p>

	<p>Code and any further orders of the Bankruptcy Court. For the avoidance of doubt, the members of the Creditors Committee in their individual capacities as creditors of the Debtors are Creditors.</p> <p>No Creditor will receive a distribution from the Assets in excess of its appropriate share of the Creditor Recovery Pool.</p> <p>For the avoidance of doubt, Yucaipa, the Second Lien Agent, the SPV, BPI, NBPCo, ACAS, the WARN Class Representative, and any party asserting a claim against the Debtors under or related to the Federal Worker Adjustment and Retraining Notification Act or similar claims under state laws, including members of the WARN class, will not receive any distribution from the Creditor Recovery Pool, except as provided for regarding the NBPCo Litigation Claim Recovery, and nothing in this "<u>Creditor Recovery Pool</u>" section of this Term Sheet shall impair or otherwise affect the recovery Yucaipa, the Second Lien Agent, the SPV, BPI, NBPCo, ACAS and the WARN Class Representative are entitled to receive pursuant to other provisions of this Term Sheet and the Third Amendment.</p> <p>The Creditor Recovery Pool will be structured and managed in a manner chosen by the Committee, subject to approval by the Debtors, which approval shall not be unreasonably withheld.</p>
Cash Collateral:	<p>The Second Lien Agent will consent to use of its cash collateral in accordance with (i) a budget approved by the Second Lien Agent in its sole discretion (the "<u>Budget</u>") and (ii) a final cash collateral order approved by the Bankruptcy Court, the form of which is acceptable to the Second Lien Agent in its sole discretion (the "<u>Cash Collateral Order</u>"). The term Cash Collateral Order includes the <i>Interim Order (i) Authorizing the Debtors to Use Cash Collateral of the Second Lien Secured Parties and (ii) Providing Adequate Protection to the Second Lien Secured Parties</i> [D.I. 662].</p>
Release and Waiver:	<p>On the Effective Date, the Debtors, each of their respective bankruptcy estates and the Committee, on behalf of themselves, their parents, subsidiaries and affiliates, and, in their capacity as such, each of their respective directors, managing directors, officers, trusts, trustees, members, attorneys, consultants, other professionals, partners, associates, principals, divisions, employers, employees, insurers, agents, representatives, consultants, guarantors, indemnitors, indemnitees, sureties, heirs, assigns, successors, and any person claiming, or who could claim, by, through, or on behalf of any of them (collectively, the "<u>Releasing Parties</u>") will, and as of the Effective Date, hereby do irrevocably and unconditionally</p>

	<p>waive, release and discharge with prejudice Yucaipa, ACAS, all ACAS Lenders, Beef Products, Inc. ("<u>BPI</u>"), NBPCo, the SPV, the First Lien Agent, the Second Lien Agent and the Second Lien Lenders and their parents, subsidiaries and affiliates, and each of their respective directors, managing directors, officers, trusts, trustees, members, attorneys, consultants, other professionals, partners, associates, principals, divisions, employers, employees, insurers, agents, representatives, consultants, guarantors, indemnitors, indemnitees, sureties, heirs, assigns, and successors (collectively, the "<u>Released Parties</u>") from any and all claims, liens, causes of action or suits at law or in equity (including, but not limited to, any and all causes of action arising under sections 502(d), 542, 543, 544, 545, 547, 548, 549, 550, 551, 552 and 553 of the Bankruptcy Code), damages, liabilities, demands, grievances, rights of setoff or recoupment, indemnification obligations, losses and costs (including costs of suit and attorneys' fees and expenses), existing or contingent, known or unknown, and whether arising by contract, statute, common law or otherwise, of whatsoever kind or nature, that the Releasing Parties have or might have from the beginning of time to the Effective Date, in any way arising out of or related to the Debtors or the Debtors' chapter 11 cases; <i>provided, however</i>, that the obligations under this Term Sheet, the Global Settlement Order, the Third Amendment and the Cash Collateral Order and claims for the enforcement thereof are not released hereby. Any Creditor that accepts a distribution from the Creditor Recovery Pool shall be deemed a Releasing Party. The Parties intend that this Term Sheet effectuate a mutual release, and on the Effective Date the Released Parties will irrevocably and unconditionally waive, release, and discharge with prejudice the Releasing Parties to the same extent that the Releasing Parties released the Released Parties; <i>provided, however</i>, that the obligations under this Term Sheet, the Global Settlement Order, the Third Amendment and the Cash Collateral Order and claims for the enforcement thereof are not released hereby.</p>
<p>Release and Waiver Among BPI, NBPCo, ACAS and Yucaipa:</p>	<p>On the Effective Date, each of ACAS, all ACAS Lenders, BPI, NBPCo, the SPV, the SPV Members and the Agent, for and on behalf of itself and each of their respective parents, subsidiaries and affiliates (other than, for the avoidance of doubt, any Debtor), and each of their respective directors, managing directors, officers, trusts, trustees, members, attorneys, consultants, other professionals, partners, associates, principals, divisions, employers, employees, insurers, agents, representatives, consultants, guarantors, indemnitors, indemnitees, sureties, heirs, assigns, and successors (collectively, the "<u>Release Parties</u>", and each, a "<u>Release Party</u>"), does hereby irrevocably remise, release, and forever discharge each other Release Party, and each of their respective heirs, executors, administrators, trustees and personal</p>

	<p>representatives, of and from all, and all manner of, actions and causes of action, proceedings, orders, obligations, suits, debts, dues, accounts, bonds, covenants, contracts, agreements, judgments, claims, demands, and liabilities (whether liquidated, contingent, or otherwise) whatsoever, whether known or unknown, suspected or unsuspected, both at law or in equity (individually and collectively, a “<u>Claim</u>” or “<u>Claims</u>”), that any Release Party now has, has ever had or may hereafter have against any other Release Party, in each case in any way arising out of or related to the Credit Agreement, the Second Lien Obligations, the Loan Documents, the Debtors or the Debtors’ chapter 11 cases. Nothing in this section shall release (i) any Release Party of its obligations under this Term Sheet, the Third Amendment or the Global Settlement Order, or (ii) any Debtor of any of its obligations under this Term Sheet, the Third Amendment, the Loan Documents, the Global Settlement Order, the Debtors’ chapter 11 cases or otherwise. Unless defined in this Term Sheet or in this “Release and Waiver Among BPI, NBPCo, ACAS and Yucaipa” section of this Term Sheet, capitalized terms used in this section shall have the meanings ascribed to them in the Third Amendment.</p>
<p>Prosecution of the Avoidance Actions:</p>	<p>On the Effective Date, a committee of three members (the “<u>Avoidance Action Committee</u>”) shall be appointed to manage the prosecution of the Debtors’ causes of action under sections 542, 543, 544, 545, 547, 548, 550, 551 and 553 of the Bankruptcy Code (collectively, the “<u>Avoidance Actions</u>”). Yucaipa, the WARN Class Representative and the Committee shall each appoint one member of the Avoidance Action Committee; <i>provided, however</i>, the member appointed by the Committee shall not have received a preferential transfer. All decisions of the Avoidance Action Committee shall be subject to a majority vote (unless specifically provided otherwise herein), with each member of the Avoidance Action Committee having equal voting power. The Court shall retain jurisdiction to resolve any dispute among the members of the Avoidance Action Committee.</p> <p>The Avoidance Actions shall be prosecuted on behalf of the Debtors’ estates by ASK LLP on a contingency fee basis; <i>provided, however</i>, that ASK LLP’s bid must be market as determined by the Avoidance Action Committee. ASK LLP will select its own Delaware counsel (ASK LLP and its Delaware counsel, the “<u>Avoidance Action Counsel</u>”), which selection shall be subject to (i) majority approval by the Avoidance Action Committee and (ii) confirmation that the proposed Delaware counsel is free from conflict; <i>provided</i>, further, that Delaware counsel’s fees shall not exceed \$250/hour for counsel and \$150/hour for paraprofessionals.</p>

	<p>Upon selection of the Avoidance Action Counsel, the Avoidance Action Counsel (if not previously retained) shall file a retention application(s) with the Bankruptcy Court to serve as special counsel to the Debtors for the purposes of evaluating, prosecuting and/or settling the Avoidance Actions.</p> <p>The Avoidance Action Committee shall at all times act as the fiduciary to the Debtors' estates with respect to the Avoidance Actions and seek to maximize the return to creditors from such actions.</p> <p>The Debtors' financial advisor, FTI, will cooperate fully in the prosecution and settlement of the Avoidance Actions.</p> <p>The Avoidance Action Counsel initially shall only make demands and/or file complaints for the avoidance of transfers under section 547 of the Bankruptcy Code (and related section 550 claims); <i>provided, however</i>, any complaints filed by the Avoidance Action Counsel shall be without prejudice to subsequent amendments in order to include other Avoidance Actions prior to the section 546 statutory deadline.</p> <p>Avoidance Actions other than those under section 547 of the Bankruptcy Code (and related section 550 claims) will not be brought without majority approval of the Avoidance Action Committee and will not be brought prior to February 10, 2014, without unanimous approval of the Avoidance Action Committee.</p> <p>Each member of the Avoidance Action Committee will have standing in the Bankruptcy Court to object to any decision by the Avoidance Action Committee not to prosecute an Avoidance Action.</p> <p>Each member of the Avoidance Action Committee may independently request any information from Avoidance Action Counsel and/or FTI with a copy of such request and response being provided to other members of the Avoidance Action Committee.</p> <p>No section 547 demands or complaints will be settled unless and until the defendant and/or FTI shares information related to all transfers received by the defendant in the 2 years prior to the Petition Date.</p> <p>All settlements of Avoidance Actions are subject to (i) the majority approval of the Avoidance Action Committee and (ii) Court approval, and each member of the Avoidance Action Committee will have standing in the Bankruptcy Court to object to any proposed settlement of an Avoidance Action.</p>
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<p>Recovery on Avoidance Actions:</p>	<p>Avoidance Action Counsel shall solely be compensated on a contingency basis and paid from the gross proceeds of the Avoidance Actions. After payment of fees and expenses of the Avoidance Action Counsel, the first \$1,650,000 of net recoveries received from the Avoidance Actions shall be paid to fund the maximum settlement amount in the WARN Action. This shall be the only source of funding for the settlement in the WARN Action, and neither the Debtors nor any other Party, including, but not limited to the Sanchez Released Parties (as defined in the Stipulation Re: Settlement of Class Action), shall have any obligation to separately fund the settlement.</p> <p>Once this payment is completed, or it is determined that only a partial payment will be possible and thus the maximum settlement amount will be lowered, the member of the Avoidance Action Committee appointed by WARN Class Representative shall resign from the Avoidance Action Committee.</p> <p>Any and all net recoveries received from the Avoidance Actions between \$1,650,001 and \$2,250,000 will be divided 55%-45% between Yucaipa and NBPCo, with NBPCo receiving 55% and Yucaipa receiving 45%. Such funds shall be paid to the Second Lien Agent for distribution to Yucaipa and NBPCo.</p> <p>Any and all net recoveries received from the Avoidance Actions above \$2,250,000 will be paid to the Creditor Recovery Pool; <i>provided, however</i>, following the payment of all claims asserted against the Debtors arising under section 503(b)(9) of the Bankruptcy Code and any other priority claim, any and all net recoveries received from the Avoidance Actions above \$2,250,000 will be divided 50%-50% between Yucaipa and the Creditor Recovery Pool (the "<u>Creditor Avoidance Action Recovery</u>").</p> <p>In the event of any conflict between the Term Sheet and the Stipulation Re: Settlement of Class Action, the Term Sheet shall control in all respects.</p>
<p>Binding Effect:</p>	<p>The provisions of this Term Sheet, any order approving it, and any actions taken pursuant to the Term Sheet or any order approving the Term Sheet shall survive entry of any order that may be entered: (a) confirming any plan of reorganization or liquidation in the Debtors' cases; (b) converting any of the Debtors' cases to a case under chapter 7 of the Bankruptcy Code; (c) dismissing any of the Debtors' cases; (d) discharging any Debtor; or (e) pursuant to which the Bankruptcy Court abstains from hearing any of the Debtors' cases.</p>

Dated: _____, 2013

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