

Exhibit B

First Amended Chapter 11 Plan of Liquidation of Betsey Johnson LLC (blacklined)

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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	:	
In re:	:	Chapter 11
	:	
BETSEY JOHNSON LLC,	:	Case No. 12-11732 (RG)
	:	
Debtor.	:	
	:	
-----	X	

**FIRST AMENDED CHAPTER 11 PLAN OF LIQUIDATION
OF BETSEY JOHNSON LLC**

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Dated: ~~January 28,~~April 3, 2014
New York, New York

TABLE OF CONTENTS

Article I DEFINITIONS	1
1.1 “Administrative Budget”	1
1.2 “Administrative Claim”	1
1.3 “Administrative Expense Claim”	1
1.4 “Allowed”	1
1.5 “Assets”	1
1.6 “Avoidance Action(s)”	1
1.7 “Ballot”	2
1.8 “Balloting Agent”	2
1.9 “Bankruptcy Code”	2
1.10 “Bankruptcy Court”	2
1.11 “Bankruptcy Rules”	2
1.12 “Beneficiaries”	2
1.13 “Business Day”	2
1.14 “Cash”	2
1.15 “Chapter 11 Case”	2
1.16 “Claim”	2
1.17 “Claim Objection Deadline”	2
1.18 “Claims Agent”	2
1.19 “Claims Register”	2
1.20 “Class”	2
1.21 “Class []”	3
1.22 “Confirmation Date”	3
1.23 “Confirmation Hearing”	3
1.24 “Confirmation Order”	3
1.25 “Creditors’ Committee”	3
1.26 “Debtor”	3
1.27 “Debtor in Possession”	3
1.28 “Disallowed”	3
1.29 “Disclosure Statement”	3
1.30 “Disputed”	3
1.31 “Disputed Claims Reserve”	3
1.32 “Distributable Cash”	3
1.33 “Distribution”	4
1.34 “Distribution Date”	4
1.35 “Distribution Record Date”	4
1.36 “Effective Date”	4
1.37 “Estate”	4
1.38 “Equity Settlement Agreement”	4
1.39 “Fee Application”	4
1.40 “Final Administrative Claims Bar Date”	4
1.41 “Final Decree”	4
1.42 “Final Distribution Date”	4
1.43 “Final Order”	4
1.44 “General Bar Date”	5

1.45	“General Unsecured Claim”	5
1.46	“Holder”	5
1.47	“Holders of Class C Shares”	5
1.48	“Impaired”	5
1.49	“Initial Administrative Claims Bar Date”	5
1.50	Indemnified Parties”	5
1.51	“Insurance Policy”	5
1.52	“Interest”	5
1.53	“IRS”	5
1.54	“Lien”	5
1.55	“Liquidating Trust”	5
1.56	“Liquidating Trust Agreement”	5
1.57	“Liquidating Trust Assets”	5 <u>6</u>
1.58	“Liquidating Trust Oversight Committee”	6
1.59	“Liquidating Trustee”	6
1.60	“Liquidation Expense Reserve”	6
1.61	“Liquidation Expenses”	6
1.62	“Local Rules”	6
1.63	“Madden”	6
1.64	“Madden Secured Claim”	6
1.65	“Madden Settlement Agreement”	6
1.66	“Non-Compensatory Penalty Claim”	6
1.67	“Non-Debtor Released Parties”	6
1.68	“Official Bankruptcy Forms”	7
1.69	“Other Secured Claims”	7
1.70	“Paid in Full”	7
1.71	“Person”	7
1.72	“Petition Date”	7
1.73	“Plan”	7
1.74	“Plan Rate”	7
1.75	“Plan Supplement”	7
1.76	“Priority Claim”	7
1.77	“Priority Non-Tax Claim”	7
1.78	“Priority Tax Claim”	7
1.79	“Pro Rata”	7
1.80	“Professional”	7 <u>8</u>
1.81	“Professional Fee Claim”	8
1.82	“Proof of Claim or Proof of Interest”	8
1.83	“Released Parties”	8
1.84	“Rights of Action”	8
1.85	“Scheduled”	8
1.86	“Schedules”	8
1.87	“Secretary of State”	8
1.88	“Secured Claim”	8
1.89	“Subordinated Claim”	8
1.90	“Unclaimed Distribution Date”	8

1.91	“Unimpaired”	89
1.92	“United States Trustee”	89
1.93	“Voting Record Date”	9
Article II INTERPRETATION; APPLICATION OF DEFINITIONS AND RULES OF CONSTRUCTION		9
2.1	Rules of Interpretation	9
2.2	Computation of Time	9
Article III PAYMENT OF ADMINISTRATIVE EXPENSE CLAIMS AND PRIORITY TAX CLAIMS		9
3.1	Administrative Claims	9
3.2	Priority Tax Claims	9
Article IV CLASSIFICATION OF CLAIMS AND INTERESTS		10
Article V TREATMENT OF CLASSIFIED CLAIMS AND INTERESTS UNDER THE PLAN		10
5.1	Designation of Treatment	10
5.2	Classes of Claims or Interests	10
Article VI ACCEPTANCE OR REJECTION OF THE PLAN		12
6.1	Classes Entitled to Vote	12
6.2	Classes Not Entitled to Vote	12
6.3	Acceptance by a Class Entitled to Vote	12
6.4	Elimination of Classes	13
6.5	Cram Down	13
Article VII THE LIQUIDATING TRUST		13
7.1	Establishment of the Liquidating Trust	13
7.2	Transfer of Powers	13
7.3	Powers of the Liquidating Trustee	14
7.4	Liquidating Trust Oversight Committee	16
7.5	Limitation of Liability	17
7.6	Indemnification	18
7.7	No Security; Insurance	18
7.8	Liquidation Expense Reserve	18
7.9	Resignation, Death or Removal of the Liquidating Trustee	18
7.10	Termination of Liquidating Trust	19
7.11	<u>Continuation of Liquidating Trust for Winding Down; Discharge and Release of Liquidating Trustee</u>	19
7.12	<u>Governance Action</u>	19
7.12 7.13	<u>Effectuating Documents and Further Transactions</u>	19
7.13 7.14	<u>Preservation of Rights of Action</u>	19
7.14 7.15	<u>No Revesting of Assets</u>	19 20
7.15 7.16	<u>Tax Treatment of Transfers to Liquidating Trust</u>	20
7.16 7.17	<u>Exemption from Transfer Taxes</u>	20
7.17 7.18	<u>Compensation of the Liquidating Trustee and Professionals</u>	20
7.18 7.19	<u>Privilege</u>	20
Article VIII GENERAL RULES REGARDING DISTRIBUTIONS UNDER THE PLAN ...		20 21
8.1	Distribution Record Date	20 21
8.2	Funding of Distributions	21

8.3	No Distributions Pending Allowance	21
8.4	Claim Objection Deadline.....	21
8.5	Establishment of Disputed Claims Reserve.....	21
8.6	Distributions After Allowance.....	21 <u>22</u>
8.7	Delivery of Distributions	22
8.8	Unclaimed Distributions	22
8.9	Interest on Claims	22 <u>23</u>
8.10	Distributions on Insured Claims	22 <u>23</u>
8.11	<u>Priority of Expenses of the Liquidating Trust</u>	<u>23</u>
8.12	Manner of Payment Under the Plan.....	22 <u>23</u>
8.12 <u>8.13</u>	Waiver of Avoidance Actions.....	23
8.13 <u>8.14</u>	Subordination	23
8.14 <u>8.15</u>	Setoff and Recoupment.....	23
8.15 <u>8.16</u>	Withholding and Reporting Requirements	23 <u>24</u>
8.16 <u>8.17</u>	Allocation of Plan or Liquidating Trust Distributions Between Principal and Interest	23 <u>24</u>
8.17 <u>8.18</u>	Fractional Dollars.....	24
8.18 <u>8.19</u>	De Minimis Distributions	24
Article IX	EXECUTORY CONTRACTS AND UNEXPIRED LEASES	24 <u>25</u>
9.1	General Treatment of Executory Contracts and Unexpired Leases; Insurance Policies.....	24 <u>25</u>
9.2	Deadline for Asserting Claims Arising from Rejection of Executory Contracts and Unexpired Leases.....	25
Article X	CONDITIONS PRECEDENT TO THE EFFECTIVE DATE	25
10.1	Conditions to Confirmation of the Plan	25
10.2	Conditions to Effective Date of the Plan	25 <u>26</u>
10.3	Waiver of Conditions Precedent	25 <u>26</u>
Article XI	EFFECT OF CONFIRMATION	26
11.1	Discharge	26
11.2	Binding Effect.....	26
Article XII	RELEASES, EXCULPATION AND INJUNCTIONS	26 <u>27</u>
12.1	Releases by the Debtor	26 <u>27</u>
12.2	Releases by Holders of Claims	26 <u>27</u>
12.3	Exculpation	27 <u>28</u>
12.4	Injunction	27 <u>28</u>
12.5	Term of Bankruptcy Injunction or Stays	28 <u>29</u>
Article XIII	RETENTION OF JURISDICTION	28 <u>29</u>
Article XIV	MISCELLANEOUS PROVISIONS	29 <u>30</u>
14.1	Payment of Statutory Fees	29 <u>30</u>
14.2	Bar Date for Certain Postpetition Claims	30
14.3	Amendments to Claims; Filing of Claims after Effective Date.....	30 <u>31</u>
14.4	Retiree Benefits.....	30 <u>31</u>
14.5	Corporate or Limited Liability Company Action	30 <u>31</u>
14.6	Cancellation of Securities, Instruments and Agreements Evidencing Claims and Interests	30 <u>31</u>
14.7	United States Trustee Reports.....	31

14.8	Revocation of the Plan	31
14.9	Modification of the Plan	31 <u>32</u>
14.10	Severability of Plan Provisions.....	31 <u>32</u>
14.11	Governing Law	31 <u>32</u>
14.12	Notices	32
14.13	Controlling Documents.....	32 <u>33</u>
14.14	Reservation of Rights.....	33
14.15	Integration	33

The Debtor proposes the following First Amended Chapter 11 Plan of Liquidation, pursuant to the provisions of chapter 11 of the Bankruptcy Code:

ARTICLE I

DEFINITIONS

For purposes of the Plan, except as otherwise expressly provided or unless the context otherwise requires, all capitalized terms have the meanings ascribed to them in Article I of the Plan. Any term that is not otherwise defined herein, but that is used in the Bankruptcy Code or Bankruptcy Rules, will have the meaning given to that term in the Bankruptcy Code or Bankruptcy Rules, as applicable.

1.1 “Administrative Budget” means the initial budget and any subsequent budget, each for a six-month period commencing on the Effective Date, setting forth in reasonable detail the anticipated Post-Confirmation Expenses of the Liquidating Trust, together with any amendments or modifications thereto, as prepared by the Liquidating Trustee.

1.2 “Administrative Claim” means any Administrative Expense Claim or Professional Fee Claim.

1.3 “Administrative Expense Claim” means any right to payment constituting a cost or expense of administration of the Estate allowed under sections 503(b), 507(a)(2), 507(b) or 1114(e)(2) of the Bankruptcy Code; provided, however, Administrative Expense Claims do not include Professional Fee Claims.

1.4 “Allowed” means, with reference to any Claim or Interest, (a) any Claim or Interest against the Debtor in a liquidated amount, proof of which was filed within the applicable period of limitation fixed by the Bankruptcy Court in accordance with Rule 3003(c)(3) of the Bankruptcy Rules, (b) if no Proof of Claim or Proof of Interest was so filed, any Claim or Interest against the Debtor which has been listed by the Debtor in its Schedules, as such Schedules may be amended from time to time in accordance with Rule 1009 of the Bankruptcy Rules, as liquidated in amount and not disputed or contingent, (c) any Claim arising from the recovery of property under sections 550 or 553 of the Bankruptcy Code, filed within the applicable period of limitations fixed in accordance with Bankruptcy Rule 3002(c)(3) or as otherwise ordered by the Bankruptcy Court, and allowed in accordance with section 502(h) of the Bankruptcy Code or (d) any Claim deemed as Allowed by the Plan or a separate agreement with the Debtor or Liquidating Trustee approved by Final Order of the Bankruptcy Court; provided, however, that as to each of (a), (b) and (c) of the foregoing, either (i) no objection to the allowance thereof has been interposed within the applicable period of limitation fixed by the Bankruptcy Code, the Bankruptcy Rules or a Final Order, or (ii) an objection has been interposed, in which case such Claim or Interest is Allowed only to the extent it has been allowed (whether in whole or in part) by a Final Order.

1.5 “Assets” means all assets (and any proceeds thereof) of the Debtor, of any nature whatsoever, including, without limitation, all property of the Estate under and pursuant to section 541 of the Bankruptcy Code, Cash, Rights of Action, and the Debtor’s rights, interests and property, real and personal, tangible and intangible.

1.6 “Avoidance Action(s)” means all claims and causes of action arising under chapter 5 of the Bankruptcy Code or under applicable non-bankruptcy law to the extent made applicable under chapter 5 of the Bankruptcy Code.

1.7 “Ballot” means each of the ballot forms distributed to Holders of Class 2 or Class 4 Claims on which such Holders are to indicate acceptance or rejection of the Plan.

1.8 “Balloting Agent” means Donlin, Recano & Company, Inc., 419 Park Avenue South, Suite 1206, New York, New York 10016.

1.9 “Bankruptcy Code” means title 11 of the United States Code, 11 U.S.C. §§101 et seq., as now in effect or hereafter amended.

1.10 “Bankruptcy Court” means the United States District Court for the Southern District of New York with jurisdiction over this Chapter 11 Case and, to the extent of any reference made pursuant to section 157 of title 28 of the United States Code, the United States Bankruptcy Court for the Southern District of New York, or any court having competent jurisdiction to enter the Confirmation Order.

1.11 “Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, and the Local Rules of the Bankruptcy Court.

1.12 “Beneficiaries” means all Holders of Allowed General Unsecured Claims entitled to receive Distributions from the Liquidating Trust pursuant to the Plan and the Liquidating Trust Agreement.

1.13 “Business Day” means any day (i) other than Saturday, Sunday, a legal holiday or other day on which commercial banks in the State of New York are authorized or required by law to close, and (ii) as further defined in Bankruptcy Rule 9006(a).

1.14 “Cash” means legal tender of the United States of America.

1.15 “Chapter 11 Case” means the case filed in the Bankruptcy Court by the Debtor on the Petition Date under chapter 11 of the Bankruptcy Code, styled In re Betsey Johnson LLC, Case No. 12-11732 ([JMPRG](#)).

1.16 “Claim” has the meaning set forth in section 101(5) of the Bankruptcy Code, including any Secured Claim, Administrative Claim, Priority Claim, General Unsecured Claim and Subordinated Claim.

1.17 “Claim Objection Deadline” means the date that is 180 days after the later of (i) the Effective Date, or (ii) the date on which a Proof of Claim, Proof of Interest or request for payment is filed with the Bankruptcy Court. The Claim Objection Deadline may be extended for cause by an order of the Bankruptcy Court at the request of the Liquidating Trustee.

1.18 “Claims Agent” means Donlin, Recano & Company, Inc., 419 Park Avenue South, Suite 1206, New York, New York 10016.

1.19 “Claims Register” means the list maintained by the Claims Agent listing all Claims filed, or Scheduled in this Chapter 11 Case, as may be amended from time to time or superseded by a new claims register to be maintained by the Liquidating Trustee or its agent.

1.20 “Class” means a group of Claims or Interests classified by the Plan pursuant to section 1122(a)(1) of the Bankruptcy Code.

1.21 “Class []” means a Claim or Interest in the particular Class of Claims or Class of Interests identified and described in Article V of the Plan.

1.22 “Confirmation Date” means the date on which the Confirmation Order is entered on the docket of this Chapter 11 Case by the Bankruptcy Court.

1.23 “Confirmation Hearing” means the hearing held by the Bankruptcy Court to consider confirmation of this Plan pursuant to sections 1128 and 1129 of the Bankruptcy Code.

1.24 “Confirmation Order” means the order of the Bankruptcy Court confirming this Plan and approving the transactions contemplated therein, together with subsequent orders, if any, approving modifications to the Plan.

1.25 “Creditors’ Committee” means the statutory committee of unsecured creditors appointed in the Chapter 11 Case pursuant to section 1102 of the Bankruptcy Code.

1.26 “Debtor” means Betsey Johnson LLC.

1.27 “Debtor in Possession” means the Debtor in its capacity as debtor in possession under sections 1107(a) and 1108 of the Bankruptcy Code.

1.28 “Disallowed” means a Claim or Interest, or any portion thereof, that (i) has been disallowed by a Final Order; (ii) is (x) not Scheduled or is Scheduled as zero or as contingent, disputed or unliquidated, and (y) as to which no Proof of Claim or Proof of Interest has been timely filed or deemed timely filed by the Bankruptcy Court; (iii) has been withdrawn by agreement of the Debtor, the Creditors’ Committee or the Liquidating Trustee and the Holder thereof; (iv) has been withdrawn by the Holder thereof; ~~or~~ (v) any Claim or Interest that is duplicative of another Proof of Claim or Proof of Interest that was filed against the Debtor; (vi) has been amended and superseded by a subsequently filed Proof of Claim or Proof of Interest; or (vii) is not Allowed as of the Final Distribution Date.

1.29 “Disclosure Statement” means the disclosure statement relating to this Plan, including the exhibits and schedules thereto, as the same may be amended, modified or supplemented from time to time.

1.30 “Disputed” means a Claim or Interest that (a) is the subject of an objection or a motion to estimate or request to subordinate, (b) is subject to the review of the Liquidating Trustee, or (c) has been filed as unliquidated or contingent, in whole or in part.

1.31 “Disputed Claims Reserve” means the reserve established by the Liquidating Trustee, on the books and records of the Liquidating Trust, equal to the Distribution(s) that would have been made to each Holder of a Disputed Claim or, if applicable, a Disputed Interest, if such Disputed Claim or Disputed Interest were an Allowed Claim or Allowed Interest, respectively, in the amount asserted on the Proof of Claim or Proof of Interest or in any pleading requesting payment of an Administrative Claim, except as otherwise agreed by the Holder of a Disputed Claim or Disputed Interest, or as otherwise ordered by the Bankruptcy Court; however, the Disputed Claims Reserve may consist of book entries only and does not need to be a physically separate or segregated account.

1.32 “Distributable Cash” means all Liquidating Trust Assets in the form of Cash, as of any Distribution Date, that the Liquidating Trustee, in its sole discretion, determines is available for Distribution to Holders of Allowed Claims after (i) all Allowed Claims entitled to higher priority and

Liquidation Expenses have been Paid in Full, and (ii) accounting for the Liquidation Expense Reserve and the Disputed Claims Reserve.

1.33 “Distribution” means a payment and/or distribution of Cash or other consideration to be made to Holders of Allowed Claims in accordance with the terms and conditions of this Plan.

1.34 “Distribution Date” means any date on which a Distribution is made under the Plan to Holders of Allowed Claims by the Liquidating Trustee or its designee, which date(s) shall occur as determined to be appropriate by the Liquidating Trustee in its sole discretion.

1.35 “Distribution Record Date” means the date fixed by Final Order of the Bankruptcy Court for determining the Holders of Claims that are entitled to receive a Distribution under this Plan, or if the Bankruptcy Court does not fix such date, the Voting Record Date.

1.36 “Effective Date” means a Business Day as soon as practicable after the Confirmation Date, as specified by the Debtor, in consultation with the Creditors’ Committee, on which (i) no stay of the Confirmation Order is in effect, and (ii) the conditions to the effectiveness of the Plan specified in Article X hereof have been satisfied or waived.

1.37 “Estate” means the postpetition estate of the Debtor created by section 541 of the Bankruptcy Code.

1.38 “Equity Settlement Agreement” means that certain Settlement Agreement by and among the Debtor, the Creditors’ Committee, Betsey Johnson, Chantal Bacon, BJ Vines, Inc., Castanea Family Holdings LLC, Castanea Family Investments LLC and Castanea Partners Fund III, LP executed on November 20, 2013 compromising any potential claims or causes of action that might otherwise have been pursued by the Debtor or the Creditors’ Committee against Betsey Johnson, Chantal Bacon, BJ Vines, Inc., Castanea Family Holdings LLC, Castanea Family Investments LLC and Castanea Partners Fund III, LP.

1.39 “Fee Application” means an application of a Professional, pursuant to sections 328, 330, 331 and/or 503 of the Bankruptcy Code, for allowance of compensation and reimbursement of expenses in the Chapter 11 Case.

1.40 “Final Administrative Claims Bar Date” means the date that is forty-five days after the date on which notice of the Effective Date is served, and shall be the deadline for filing requests for allowance of Administrative Expense Claims arising after January 31, 2013 (other than for statutory fees of the United States Trustee), which shall be the date that is forty-five (45) days after the date on which notice of the Effective Date is served.

1.41 “Final Decree” means the decree contemplated under Bankruptcy Rule 3022 closing the Chapter 11 Case. “Final Distribution Date” means the date on which a final Distribution is made to Holders of Allowed Claims, as the case may be, which date shall be determined by the Liquidating Trustee after (i) the liquidation into Cash or abandonment of all Liquidating Trust Assets, and (ii) collection of other sums due or otherwise remitted or returned to the Liquidating Trust.

1.43 “Final Order” means an order, ruling or judgment of the Bankruptcy Court, or other court of competent jurisdiction, as entered on the docket of such court, (i) which has not been reversed, modified or amended; (ii) which is not stayed; (iii) the time to appeal from or to seek review of, rehearing, reconsideration or petition for certiorari has expired; and (iv) which is no longer subject to review, reversal, modification or amendment due to the expiration of time or mootness; provided,

however, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule, may be filed relating to such order, ruling or judgment shall not cause such order, ruling or judgment to not be a "Final Order."

1.44 "General Bar Date" means September 10, 2012, the deadline for filing non-governmental Proofs of Claim against the Debtor, including administrative expense requests pursuant to section 503(b)(9) of the Bankruptcy Code. "General Unsecured Claim" means any unsecured Claim against a Debtor that is not an Administrative Claim, a Priority Claim, a Secured Claim or a Non-Compensatory Penalty Claim.

1.46 "Holder" means the beneficial owner of any Claim or Interest.

1.47 "Holders of Class C Shares" means all present and former Holders of Class C Shares of Betsey Johnson LLC, other than Jonathan Friedman.

1.48 "Impaired" has the meaning ascribed thereto in section 1124 of the Bankruptcy Code.

1.49 "Initial Administrative Claims Bar Date" means April 1, 2013.

1.50 "Indemnified Parties" means the Liquidating Trust Oversight Committee and each of its members in their capacity as such, the Liquidating Trustee, and their respective heirs, beneficiaries, estates, agents, employees, officers, directors, principals, professionals and other representatives, each in his or her capacity as such; provided however, Betsey Johnson, Chantal Bacon, BJ Vines, Inc., Castanea Family Holdings LLC, Castanea Family Investments LLC and Castanea Partners Fund III, LP and all parents, subsidiaries, or affiliates of any such entities are not Indemnified Parties.

1.51 "Insurance Policy" means any policy of insurance and any agreements relating thereto covering the Debtor or its Assets, officers, members, managers, employees and fiduciaries, or that may be available to provide coverage for Claims against the Debtor or any of the foregoing, including, without limitation, any general liability, property, casualty, umbrella or excess liability policy(ies), errors and omissions, director and officer or similar executive, fiduciary and organization liability policy(ies) (A, B or C coverage), and any tail with respect thereto.

1.52 "Interest" means any "equity security," as such term is defined in section 101(16) of the Bankruptcy Code, in the Debtor, in addition to all shares, partnership, membership or other ownership rights or interests, units, unit appreciation rights, warrants, options, or any other rights to purchase, acquire or sell shares or partnership, membership or other ownership interests, each of the foregoing as to the Debtor.

1.53 "IRS" means the Internal Revenue Service.

1.54 "Lien" has the meaning assigned to such term in section 101(37) of the Bankruptcy Code (but a lien that has been avoided under chapter 5 of the Bankruptcy Code shall not constitute a Lien).

1.55 "Liquidating Trust" means the grantor trust established pursuant to the terms of this Plan and the Liquidating Trust Agreement, to which the Debtor's Assets will be transferred on the Effective Date.

1.56 "Liquidating Trust Agreement" means the trust agreement for the Liquidating Trust, to be included in the Plan Supplement.

1.57 “Liquidating Trust Assets” means the Debtor’s Assets after being transferred to the Liquidating Trust on the Effective Date, pursuant to the Plan and in accordance with the Liquidating Trust Agreement.

1.58 “Liquidating Trust Oversight Committee” means a committee comprised of not more than three (3) Holders of General Unsecured Claims, to be designated by the Creditors’ Committee in the Plan Supplement, to succeed to the interests of the Creditors’ Committee as of the Effective Date for the purposes of overseeing the expenditures by and conduct of the Liquidating Trustee in administering the Liquidating Trust and the Liquidating Trust Assets, as more fully set forth in the Liquidating Trust Agreement.

1.59 “Liquidating Trustee” means the trustee of the Liquidating Trust, appointed pursuant to the terms of the Liquidating Trust Agreement and Article VII of the Plan, and any successor trustee(s) that may be appointed. The initial Liquidating Trustee will be selected by the Creditors’ Committee and identified in the Plan Supplement.

1.60 “Liquidation Expense Reserve” means the reserve established by the Liquidating Trustee on the books of the Liquidating Trust for all reasonable costs, expenses and fees incurred, or estimated to be incurred, in connection with administering the Liquidating Trust and the Liquidating Trust Assets.

1.61 “Liquidation Expenses” means any fees, costs and expenses associated with the preservation, maintenance or disposition of the Liquidating Trust Assets (including without limitation, fees owed to the United States Trustee, Liquidating Trustee fees, indemnity reserves, attorneys’ fees, the fees of professionals and other Persons retained by the Liquidating Trustee, occupancy costs, personnel-related expenses, and any taxes imposed on the Liquidating Trust or in respect of the Liquidating Trust Assets), and any other expenses determined by the Liquidating Trustee, in its sole discretion, to be necessary to complete the liquidation and winding down of the Debtor, its Estate and the Liquidating Trust after the Effective Date.

1.62 “Local Rules” means the Local Bankruptcy Rules for the Southern District of New York.

1.63 “Madden” means, any of the following entities, both individually and collectively, as may be applicable: Steven Madden, Ltd. and two of its wholly-owned subsidiaries, BJ Acquisition, LLC and BJ Agent LLC.

1.64 “Madden Secured Claim” means the Secured Claim held by Madden as set forth in the Madden Settlement Agreement.

1.65 “Madden Settlement Agreement” means the Settlement Agreement by and among the Debtor, the Creditors’ Committee, Steven Madden, Ltd. and BJ Acquisition, LLC, dated June 28, 2012, which was approved by the Bankruptcy Court by order dated July 24, 2012.

1.66 “Non-Compensatory Penalty Claim” means a Claim, secured or unsecured, for any fine, penalty, or forfeiture, or for multiple, exemplary or punitive damages, to the extent that such fine, penalty, forfeiture, or damages are not compensation for actual pecuniary loss suffered by the Holder of such Claim.

1.67 “Non-Debtor Released Parties” means Jonathan Friedman, Susan Falk, Aron Arias, Juan Marcos Hill and Steven Berg, each of whom was an officer and/or manager of the Debtor at some point during the period from and after the Petition Date; provided however, Betsey Johnson, Chantal Bacon, BJ

Vines, Inc., Castanea Family Holdings LLC, Castanea Family Investments LLC and Castanea Partners Fund III, LP and all parents, subsidiaries, or affiliates of any such entities are not Non-Debtor Released Parties, provided further however that such parties are being released in connection with the Equity Settlement Agreement.

1.68 “Official Bankruptcy Forms” means the Official Bankruptcy Forms, prescribed by the Judicial Conference of the United States, the observance and use of which is required pursuant to Bankruptcy Rule 9009, as such forms may be amended, revised or supplemented from time to time.

1.69 “Other Secured Claims” means a Secured Claim held by a creditor other than Madden.

1.70 “Paid in Full” means the payment of the entire amount of (i) a Liquidation Expense, including the establishment of any Liquidation Expense Reserve, or (ii) an Allowed Claim or Allowed Interest, including the payment of post-petition interest at the Plan Rate to the extent entitled to interest under the Bankruptcy Code.

1.71 “Person” means an individual, corporation, general partnership, limited partnership, limited liability company, limited liability partnership, association, joint venture, trust, estate, unincorporated organization, or a governmental unit or any agency or political subdivision thereof.

1.72 “Petition Date” means April 26, 2012, the date on which the Debtor filed its petition under chapter 11 of the Bankruptcy Code, commencing this Chapter 11 Case.

1.73 “Plan” means this chapter 11 plan of liquidation, as the same may be amended, modified or supplemented from time to time in accordance with the terms hereof.

1.74 “Plan Rate” means the federal judgment rate of interest specified in 28 U.S.C. § 1961(a) in effect on the Effective Date.

1.75 “Plan Supplement” means the supplemental appendix to the Plan, to be filed with the Bankruptcy Court prior to the Confirmation Hearing, that will contain, among other things, the Liquidating Trust Agreement and any other material agreements as may be necessary or appropriate to implement or effectuate the Plan, which shall, in each case, be in form and substance reasonably satisfactory to the Creditors’ Committee.

1.76 “Priority Claim” means any Priority Non-Tax Claim or Priority Tax Claim.

1.77 “Priority Non-Tax Claim” means any Claim of a kind specified in sections 507(a)(4), (5), (6), (7) or (9) of the Bankruptcy Code.

1.78 “Priority Tax Claim” means any Claim of a governmental unit of the kind specified in section 507(a)(8) or 507(c) of the Bankruptcy Code. All such Allowed Priority Tax Claims shall exclude all claimed (i) penalties not for actual pecuniary loss, and (ii) interest accruing after the Petition Date.

1.79 “Pro Rata” means with respect to any Distribution to a Holder of an Allowed Claim entitled to Distribution from the Liquidating Trust, a proportionate share, so that the ratio of (a) the amount of property to be distributed on account of such Allowed Claim or Allowed Interest in the same Class to (b) the amount to be distributed on account of all Allowed Claims in the same Class is the same as the ratio of (A) the amount of such Allowed Claim to (B) the aggregate amount of all Allowed Claims in the same Class.

1.80 “Professional” means any professional or other Person employed in the Chapter 11 Case pursuant to section 327, 328 or 1103 of the Bankruptcy Code or otherwise, and seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 328, 330, 331 and 503(b) of the Bankruptcy Code or in accordance with the terms of this Plan.

1.81 “Professional Fee Claim” means a Claim for compensation and/or reimbursement of expenses under sections 327, 328, 330, 331, 503(b) or 1103 of the Bankruptcy Code for services rendered to the Debtor or the Creditors’ Committee prior to the Effective Date.

1.82 “Proof of Claim or Proof of Interest” means a proof of Claim or Interest filed in the Chapter 11 Case pursuant to section 501 of the Bankruptcy Code and/or any order of the Bankruptcy Court, together with supporting documents.

1.83 “Released Parties” means (a) the Debtor, (b) the Non-Debtor Released Parties, (c) Professionals, (d) the Estate, (e) the Creditors’ Committee, and (f) the members of the Creditors’ Committee serving in such capacity.

1.84 “Rights of Action” means any and all claims (as used in this definition, within the meaning of section 101(5) of the Bankruptcy Code), demands, rights, defenses, actions, causes of action, third-party claims, counterclaims, crossclaims, suits, contracts, agreements, obligations, accounts, defenses, offsets, powers and privileges of any kind or character whatsoever, known or unknown, suspected or unsuspected, whether arising prior to, on or after the Petition Date, in contract or in tort, at law or in equity, or under any other theory of law, held by the Debtor, Debtor in Possession or Estate against any Person, including, but not limited to: (i) rights of setoff, counterclaim or recoupment; (ii) claims on contracts for breaches of duties imposed by law; (iii) the right to object to Claims; (iv) such claims and defenses as fraud, mistake, duress and usury; (v) claims for quantum meruit or unjust enrichment; (vi) claims against any parties related to their sale or possession of fabric or other goods owned by the Debtor; and (vii) all Avoidance Actions.

1.85 “Scheduled” with respect to any Claim, means a Claim listed on the Schedules.

1.86 “Schedules” means the schedules of Assets, liabilities and executory contracts, and the statements of financial affairs filed on the Official Bankruptcy Forms by the Debtor pursuant to section 521 of the Bankruptcy Code and Bankruptcy Rule 1007, as such schedules and statements have been or may be supplemented or amended from time to time in accordance with Bankruptcy Rule 1009.

1.87 “Secretary of State” means the Office of the Secretary of State for the state of Delaware, the state in which the Debtor was formed.

1.88 “Secured Claim” means a Claim secured by an enforceable Lien on Assets of the Debtor to the extent of the value of such Assets, as determined in accordance with section 506(a) of the Bankruptcy Code.

1.89 “Subordinated Claim” means a Claim against the Debtor that is subordinated to all Allowed Claims, other than to a Class 5 Claim, which Claim is (a) subordinated pursuant to section 510(b) or (c) of the Bankruptcy Code, or (b) a Non-Compensatory Penalty Claim.

1.90 “Unclaimed Distribution Date” means 90 days after the actual date that a Distribution, or request for information under Section 8.15 of the Plan, is made.

1.91 “Unimpaired” means, when used in reference to a Claim, a Claim that is not “impaired” within the meaning of section 1124 of the Bankruptcy Code.

1.92 “United States Trustee” means the Office of the United States Trustee for the Southern District of New York (Region 2).

1.93 “Voting Record Date” means January 31, 2014.

ARTICLE II

INTERPRETATION; APPLICATION OF DEFINITIONS AND RULES OF CONSTRUCTION

2.1 Rules of Interpretation.

For purposes of the Plan, unless otherwise specified herein: (a) all Article or Section references in this Plan are to the respective Article or Section of this Plan; (b) the words “herein,” “hereof,” “hereto,” “hereunder,” and other words of similar meaning refer to this Plan as a whole and not to any particular Article, Section, Subsection or Clause contained in this Plan; (c) any reference to a Person as a Holder of a Claim or Interest includes that Person’s successors and assigns; (d) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; and (e) the rules of construction contained in section 102 of the Bankruptcy Code shall apply to the construction of this Plan.

2.2 Computation of Time.

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

ARTICLE III

PAYMENT OF ADMINISTRATIVE EXPENSE CLAIMS AND PRIORITY TAX CLAIMS

3.1 Administrative Claims.

Except to the extent that the Holder of an Allowed Administrative Claim agrees to less favorable treatment and only to the extent that such Claim has not already been satisfied, each Holder of an Allowed Administrative Claim shall be entitled to receive, in full satisfaction, settlement, release and discharge of and in exchange for its Allowed Administrative Claim, Cash in an amount equal to the amount of its Allowed Administrative Claim. Distributions to Holders of Allowed Administrative Claims shall be made as soon as practicable after the date ~~that~~on which a Holder’s Claim becomes an Allowed Administrative Claim; provided, however, that Allowed Administrative Claims representing obligations incurred in the ordinary course of business of the Debtor after the Petition Date shall be Paid in Full in accordance with the terms and conditions of the particular transactions and any applicable agreements. Holders of Administrative Claims are not entitled to vote to accept or reject the Plan.

3.2 Priority Tax Claims.

Except to the extent that the Holder of an Allowed Priority Tax Claim agrees to less favorable treatment, and only to the extent that such Claim has not already been satisfied, each Holder of an

Allowed Priority Tax Claim shall be entitled to receive, in full satisfaction, settlement, release and discharge of and in exchange for its Allowed Priority Tax Claim, Cash in an amount equal to the amount of its Allowed Priority Tax Claim. Distributions to Holders of Allowed Priority Tax Claims shall be made as soon as practicable after the date ~~that~~on which a Holder's Claim becomes an Allowed Priority Tax Claim. Holders of Priority Tax Claims are not entitled to vote to accept or reject the Plan.

ARTICLE IV

CLASSIFICATION OF CLAIMS AND INTERESTS

Pursuant to section 1122 of the Bankruptcy Code, all Claims and Interests, except Administrative Claims and Priority Tax Claims, are placed in the Classes set forth below.

- (a) Class 1 (Unimpaired): Priority Non-Tax Claims. Class 1 consists of all Priority Non-Tax Claims.
- (b) Class 2 (Impaired): Madden Secured Claim. Class 2 consists of the Madden Secured Claim.
- (c) Class 3 (Unimpaired): Other Secured Claims. Class 3 consists of all Other Secured Claims.
- (d) Class 4 (Impaired): General Unsecured Claims. Class 4 consists of all General Unsecured Claims.
- (e) Class 5 (Impaired): Subordinated Claims. Class 5 consists of all Subordinated Claims.
- (f) Class 6 (Impaired): Interests. Class 6 consists of all Interests

ARTICLE V

TREATMENT OF CLASSIFIED CLAIMS AND INTERESTS UNDER THE PLAN

5.1 Designation of Treatment.

The treatment set forth in this Article V shall be accorded to, in full final and complete satisfaction thereof, Claims against, and Interests in, the Debtor designated by Class. No Claim or Interest shall entitle the Holder thereof to any Distribution pursuant to this Plan unless, and only to the extent that, such Claim or Interest is Allowed, and has not already been paid, released or otherwise settled prior to the Effective Date. The treatment of Claims and Interests provided for in Article V shall be without prejudice to the subordination of any Claim or Interest under section 510 of the Bankruptcy Code, by agreement or under applicable non-bankruptcy law.

5.2 Classes of Claims or Interests.

- (a) Class 1: Priority Non-Tax Claims.

Except to the extent that the Holder of an Allowed Priority Non-Tax Claim agrees to less favorable treatment, and only to the extent that such Claim has not already been satisfied, each Holder of an Allowed Priority Non-Tax Claim shall receive, in full satisfaction, settlement and release of and in

exchange for such Claim, Cash in an amount equal to the amount of such Allowed Priority Non-Tax Claim on the first Distribution Date that is at least ten (10) Business Days after the date ~~that~~on which such Claim becomes an Allowed Priority Non-Tax Claim. Class 1 Claims are Unimpaired. Class 1 is deemed to have accepted the Plan and, therefore, Holders of Priority Non-Tax Claims are not entitled to vote to accept or reject the Plan.

(b) Class 2: Madden Secured Claim.

Class 2 consists of the Madden Secured Claim. The Madden Secured Claim will be treated and paid in accordance with the terms of the Madden Settlement Agreement in full satisfaction, settlement and release of the Madden Secured Claim. As is provided in the Madden Settlement Agreement, and for the avoidance of doubt, the "Net Proceeds" (as defined in the Madden Settlement Agreement) of the collateral securing the Madden Secured Claim, or proceeds deriving therefrom, shall be split between the Liquidating Trust and Madden at a ratio of 38:62 (in favor of Madden). Distributions on the Madden Secured Claim shall be made on the first Distribution Date to the extent not already distributed. The Class 2 Claim is Impaired. Madden is entitled to vote its Class 2 Claim to accept or reject the Plan.

(c) Class 3: Other Secured Claims.

Class 3 consists of all Other Secured Claims. At the sole option of the Liquidating Trustee, each Holder of an Allowed Other Secured Claim shall be entitled to receive, to the extent that such Claim is not already satisfied, in full satisfaction, settlement, release and discharge of and in exchange for its Allowed Other Secured Claim, either (a) the collateral securing such Holder's Allowed Other Secured Claim, (b) Cash in an amount equal to the amount of such Holder's Allowed Other Secured Claim, or (c) any other less favorable treatment as may be agreed upon by the Liquidating Trustee and such Holder. Distributions to Holders of Allowed Other Secured Claims shall be made on the first Distribution Date that is at least ten (10) Business Days after the date ~~that~~on which such Holder's Claim becomes an Allowed Other Secured Claim. Class 3 Claims are Unimpaired. Class 3 is deemed to have accepted the Plan and, therefore, Holders of Other Secured Claims are not entitled to vote to accept or reject the Plan.

(d) Class 4: General Unsecured Claims.

Class 4 consists of all General Unsecured Claims. Each Holder of an Allowed General Unsecured Claim of record as of the Distribution Record Date shall be entitled to receive, in full satisfaction, settlement and release of and in exchange for such Holder's Allowed General Unsecured Claim, (i) Cash in an amount equal to such Holder's Pro Rata share of Distributable Cash, or (ii) any less favorable treatment as the Holder of such Allowed General Unsecured Claim may agree. Distributions to Holders of Allowed General Unsecured Claims shall be made on the Distribution Dates applicable to Allowed General Unsecured Claims. Class 4 Claims are Impaired. Holders of Class 4 Claims are entitled to vote to accept or reject the Plan.

(e) Class 5: Subordinated Claims.

Class 5 consists of all Subordinated Claims. Holders of Subordinated Claims shall not receive or retain any property or interest in property on account of such Claims unless and until all Allowed Class 4 Claims and Liquidation Expenses have been Paid in Full. If all Allowed Class 4 Claims and Liquidation Expenses are Paid in Full, then any excess Cash in the Liquidating Trust shall be distributed Pro Rata to Holders of Allowed Subordinated Claims of record as of the Distribution Record Date, in full satisfaction, settlement and release of and in exchange for such Holders' Allowed

Subordinated Claims. Distributions to Holders of Allowed Subordinated Claims shall be made, if at all, as soon as practicable after the later of (i) the date that is thirty (30) days after the date that the Liquidating Trustee determines that all Allowed Class 4 Claims and Liquidation Expenses have been Paid in Full, and (ii) the first Distribution Date that is at least ten (10) Business Days after the date on which such a Holder's Subordinated Claim becomes an Allowed Claim. Class 5 Claims are Impaired. Class 5 is deemed to have rejected the Plan and, therefore, Holders of Subordinated Claims are not entitled to vote to accept or reject the Plan.

(f) Class 6: Interests.

Class 6 consists of all Interests. It is anticipated that the value of the Liquidating Trust Assets will be less than the total amount of Allowed Claims against the Estate. Accordingly, Holders of Interests shall not receive any Distributions on account of such Interests. Class 6 Interests are Impaired. Class 6 is deemed to have rejected the Plan and, therefore, Holders of Interests are not entitled to vote to accept or reject the Plan.

ARTICLE VI

ACCEPTANCE OR REJECTION OF THE PLAN

6.1 Classes Entitled to Vote.

Each Holder of a Class 2 or Class 4 Claim is entitled to vote to accept or reject the Plan as provided for in the order entered by the Bankruptcy Court establishing certain procedures with respect to the solicitation and tabulation of votes to accept or reject the Plan. For purposes of calculating the number of Class 4 Claims that have voted to accept or reject the Plan under section 1126(c) of the Bankruptcy Code, all Claims in Class 4 held by one Holder or any affiliate thereof (as defined in the Securities Act of 1933 and the rules and regulations promulgated thereunder) shall be aggregated and treated as one Class 4 Claim. There is only one Class 2 Claim, the Madden Secured Claim.

6.2 Classes Not Entitled to Vote.

(a) Presumed Acceptance of the Plan.

Holders of Class 1 or Class 3 Claims are conclusively presumed to accept the Plan and, therefore, are not entitled to vote to accept or reject the Plan on account of Claims held in such Classes. Holders of Class 1 and Class 3 Claims will not receive Ballots.

(b) Presumed Rejection of the Plan.

Holders of Class 5 Claims or Class 6 Interests are conclusively presumed to have rejected the Plan. Accordingly, Holders of Claims or Interests in Classes 5 or 6, respectively, are not entitled to vote to accept or reject the Plan on account of Claims or Interests held in such Classes and will not receive Ballots.

6.3 Acceptance by a Class Entitled to Vote.

In accordance with section 1126(c) of the Bankruptcy Code, and except as provided for in section 1126(e) of the Bankruptcy Code, a Class shall have accepted the Plan if the Plan has been accepted by Holders in such Class representing (i) at least two-thirds in dollar amount of the total dollar amount of asserted Claims in such Class, and (ii) more than one-half in number of the total number of Holders of

asserted Claims in such Class, in each case that have timely and properly voted to accept or reject the Plan.

6.4 Elimination of Classes.

Any Class of Claims that is not occupied by an Allowed Claim, or a Claim temporarily Allowed under Bankruptcy Rule 3018, as of the Distribution Record Date shall be deemed deleted from this Plan for purposes of voting on acceptance or rejection of this Plan, and for purposes of determining acceptance or rejection of this Plan by such Class under section 1129(a)(8) of the Bankruptcy Code.

6.5 Cram Down.

Because certain Impaired Classes will be deemed to have voted to reject the Plan by virtue of receiving no Distributions hereunder, the Debtor will seek a cram down of such Classes at the Confirmation Hearing.

ARTICLE VII

THE LIQUIDATING TRUST

7.1 Establishment of the Liquidating Trust.

On the Effective Date, the Liquidating Trust shall be created pursuant to the Liquidating Trust Agreement to provide Distributions to Holders of Allowed Claims. The Liquidating Trust shall be established as a “liquidating trust” within the meaning of Treasury Regulation § 301.7701-4(d) and as a “grantor trust” within the meaning of 26 U.S.C. §§ 671-679, for the sole purpose of liquidating the Estate and making Distributions to Holders of Allowed Claims in accordance with this Plan and Treasury Regulation § 301.7701-4(d), and with no objective to continue or engage in the conduct of a trade or business. The Liquidating Trust shall ~~consist of~~hold all Assets of the Debtor including, but not limited to, Rights of Action and Cash. As of the Effective Date, the Debtor shall have no further obligations to fund any amounts into the Liquidating Trust and shall bear no further financial obligation of any kind to the Liquidating Trustee. The Liquidating Trust Agreement shall be filed with the Bankruptcy Court prior to the Confirmation Hearing as part of the Plan Supplement.

7.2 Transfer of Powers.

(a) Managers and Officers.

On the Effective Date, the authority, power and incumbency of the persons then acting as officers and managers of the Debtor shall be terminated and such officers and managers shall be deemed to have resigned, without further action by the Debtor. The Plan will be administered and actions will be taken in the name of the Debtor through the Liquidating Trustee, subject to the Liquidating Trust Oversight Committee.

(b) Debtor’s Professionals.

Upon the Effective Date, the Debtor’s Professionals and agents shall be released from any further duties and responsibilities in the Chapter 11 Case and under the Bankruptcy Code, except with respect to any: (i) obligations arising under confidentiality agreements, joint interest agreements, and protective orders entered during the Chapter 11 Case, which shall remain in full force and effect according to their terms; (ii) applications for and/or objections to Professional Fee Claims; and (iii) motions or other actions

seeking enforcement or implementation of the provisions of this Plan or the Confirmation Order. The Professionals retained by the Debtor shall not be entitled to compensation and reimbursement of expenses for services rendered in that capacity after the Effective Date, except for services rendered in connection with Fee Applications pending on the Effective Date or filed after the Effective Date. The Liquidating Trustee, in its discretion, may retain and compensate former Professionals of the Debtor.

(c) Dissolution of the Creditors' Committee.

Upon the Effective Date, the Creditors' Committee shall automatically dissolve, whereupon its members, Professionals and agents shall be released from any further duties and responsibilities in the Chapter 11 Case and under the Bankruptcy Code, except with respect to any: (i) obligations arising under confidentiality agreements, joint interest agreements, and protective orders entered during the Chapter 11 Case, which shall remain in full force and effect according to their terms; (ii) applications for and/or objections to Professional Fee Claims; (iii) requests for compensation and reimbursement of expenses pursuant to section 503(b) of the Bankruptcy Code for making a substantial contribution to the Chapter 11 Case; and (iv) motions or other actions seeking enforcement or implementation of the provisions of this Plan or the Confirmation Order. The Professionals retained by the Creditors' Committee and the respective members thereof shall not be entitled to compensation and reimbursement of expenses for services rendered in that capacity after the Effective Date, except for services rendered in connection with Fee Applications pending on the Effective Date or filed after the Effective Date. The Liquidating Trustee, in its discretion, may retain and compensate former Professionals of the Creditors' Committee.

(d) Succession by Liquidating Trustee

The Creditors' Committee shall appoint the Liquidating Trustee and on the Effective Date, the Liquidating Trustee shall ~~succeed to be assigned~~ such powers ~~and responsibilities~~ as would have been applicable to the Debtor's officers, managers and Holders of Interests, solely with respect to winding down the affairs of the Debtor to the extent necessary, and the Debtor shall be authorized to be dissolved without further action by its Holders of Interests, managers, or officers. All property of the Debtor not previously distributed to the Holders of Allowed Claims on the Effective Date, including, without limitation, title to any moneys held in escrow or separate segregated accounts during the pendency of the Chapter 11 Case, shall be transferred to the Liquidating Trust and managed by the Liquidating Trustee. The Liquidating Trustee shall make the Distributions required under the Plan in accordance with the terms hereof. The Liquidating Trustee shall be deemed to be a judicial substitute for the Debtor and/or the Creditors' Committee as the party-in-interest in this Chapter 11 Case, under this Plan or in any judicial or administrative proceeding or appeal to which the Debtor or the Creditors' Committee is a party, consistent with section 1123(b)(3)(B) of the Bankruptcy Code and applicable non-bankruptcy law. In all outstanding adversary proceedings commenced by the Debtor or the Creditors' Committee and existing as of the Effective Date, the Liquidating Trustee shall be deemed to be automatically substituted as the Plaintiff.

7.3 Powers of the Liquidating Trustee.

The Liquidating Trustee shall have the rights and powers set forth in the Liquidating Trust Agreement, without supervision, application to, or approval of the Bankruptcy Court, which rights and powers include, but are not limited to, the following:

- (a) To exercise all power and authority that may be or could have been exercised, commence all proceedings that may be or could have been commenced and take all actions that may be or could have been taken by any officer or manager of or

Holder of Interests in the Debtor with like effect as if authorized, exercised and taken by unanimous action of such officers, managers and Holders of Interests;

- (b) To establish and maintain accounts, invest Cash, make Distributions and take other actions consistent with the Plan and the implementation hereof, including the establishment, re-evaluation, adjustment and maintenance of appropriate reserves, in the name of the Liquidating Trust or the Liquidating Trustee;
- (c) Subject to the applicable provisions of this Plan, to liquidate the Liquidating Trust Assets;

(d) To invoke section 542 of the Bankruptcy Code in order to seek turnover of Liquidating Trust Assets;

(e) ~~(d)~~ To object to any Claims and Interests (Disputed or otherwise) and to compromise or settle any Claims prior to and after objection, without further Bankruptcy Court approval and subject only to those restrictions expressly imposed by the Plan or the Confirmation Order;

(f) ~~(e)~~ To seek estimation of any Claim or Interest;

(g) ~~(f)~~ To seek to recharacterize and/or subordinate (under section 510 of the Bankruptcy Code) any Claim or Interest;

(h) ~~(g)~~ To make decisions regarding the retention or engagement of professionals, employees and consultants by the Liquidating Trustee and to pay the reasonable fees and charges incurred by the Liquidating Trustee on or after the Effective Date for reasonable fees of professionals, disbursements, expenses or related support services relating to the winding down of the Debtor and implementation of the Plan, all without Bankruptcy Court approval;

(i) ~~(h)~~ To pay Liquidation Expenses, including, without limitation, the costs of holding, maintaining, preserving and liquidating any non-Cash Liquidating Trust Assets, rent, wages and professionals' fees;

(j) ~~(i)~~ To seek a determination of tax liability under sections 346, 505 and 1146 of the Bankruptcy Code and to prepare, sign and file tax returns and pay taxes, if any;

(k) ~~(j)~~ To file with the Secretary of State a certificate of dissolution for the Debtor, and taking any and other action necessary to dissolve the Debtor;

(l) ~~(k)~~ To make Distributions to Holders of Allowed Claims provided for or contemplated by the Plan;

(m) ~~(l)~~ To enter into any agreement or execute any document required by or consistent with the Plan;

(n) ~~(m)~~ To abandon in any commercially reasonable manner, including abandonment or donation to a charitable organization of the Liquidating

Trustee's choice, any Liquidating Trust Assets if such assets are burdensome or of inconsequential value;

- (o) ~~(+)~~ To purchase or create and carry all insurance policies and pay all insurance premiums and costs it deems necessary or advisable;
- (p) ~~(+)~~ To pursue and/or settle the Rights of Action without further Bankruptcy Court approval;
- (q) ~~(+)~~ To implement and/or enforce all provisions of this Plan;
- (r) ~~(+)~~ To seek entry of a Final Decree closing the Chapter 11 Case;
- (s) ~~(+)~~ To take all other actions not inconsistent with the provisions of the Plan that the Liquidating Trustee deems reasonably necessary or desirable with respect to administering the Plan; and
- (t) ~~(+)~~ To maintain records of the Chapter 11 Case and the Liquidating Trust.

7.4 Liquidating Trust Oversight Committee.

The Creditors' Committee shall designate up to three Holders of General Unsecured Claims (to be identified in the Plan Supplement) as the members of the Liquidating Trust Oversight Committee, effective as of the Effective Date. The bylaws previously adopted by the Creditors' Committee shall continue to govern the actions of the Liquidating Trust Oversight Committee, and the fiduciary duties that applied to the Creditors' Committee prior to the Effective Date shall apply to the Liquidating Trust Oversight Committee. The Liquidating Trust Oversight Committee shall have the duties set forth herein in order to maximize Distributions to Holders of Allowed Claims. The bylaws may be amended from time to time by the Liquidating Trust Oversight Committee in its discretion; provided that the bylaws shall at all times provide that each member of the Liquidating Trust Oversight Committee shall disclose any actual and potential conflict with another member of the Liquidating Trust Oversight Committee and recuse itself from participation in meetings regarding, or from voting on, any such actual or potential conflict of interest.

The Liquidating Trust Oversight Committee shall have the duty to take actions in accordance with the provisions of the Plan and in furtherance of the execution of the Plan, if applicable. Additionally, the Liquidating Trust Oversight Committee shall have the following rights and duties:

- (a) To terminate the Liquidating Trustee for cause and upon such termination, or upon the resignation, death, incapacity or removal of the Liquidating Trustee, to appoint a successor Liquidating Trustee;
- (b) To approve any release or indemnity in favor of any third party granted or agreed to by the Liquidating Trustee, but only if the Liquidating Trustee requests such approval;
- (c) To authorize the Liquidating Trustee to commence or prosecute any Rights of Action;

- (d) To approve the settlement of any Rights of Action if the amount in dispute (as determined by the Liquidating Trustee in its sole discretion) in the complaint or other document initiating such Rights of Action exceeds \$200,000.00;
- (e) To approve the allowance of any Disputed Claims if the proposed final Allowed amount of (i) an Administrative or Priority Claim exceeds \$50,000, and (ii) a General Unsecured Claim exceeds \$500,000.00;
- (f) To approve an Administrative Budget prepared by the Liquidating Trustee with respect to each six-month period following the Effective Date and any amendments or modifications thereto;
- (g) To ratify or approve in advance the Liquidating Trustee's retention or termination of any professionals or a disbursing agent other than the Liquidating Trustee;
- (h) To approve the Liquidating Trustee's establishment, re-evaluation, adjustment and maintenance of the Disputed Claims Reserve (see also Section 8.5 of this Plan);
- (i) To review any financial information relating to the Chapter 11 Case or the Liquidating Trust, which shall be promptly provided by the Liquidating Trustee upon request by a member of the Liquidating Trust Oversight Committee;
- (j) To approve the making of any Distributions by the Liquidating Trustee;
- (k) To approve the investment of any of the Liquidating Trust Assets pending Distribution to Holders of Allowed Claims; and
- (l) To be compensated for any reasonable and necessary out of pocket expenses incurred as members of the Liquidating Trust Oversight Committee.

The Liquidating Trust Oversight Committee shall have the right to retain counsel of its choice in the event of a dispute or conflict with the Liquidating Trustee, and the reasonable fees and expenses of such counsel shall be paid by the Liquidating Trust in accordance with the following procedures or such other procedures set forth in the Liquidating Trust Agreement or as agreed by the Liquidating Trustee and the Liquidating Trust Oversight Committee: upon the submission of a fee statement to the Liquidating Trustee and its counsel, the Liquidating Trustee shall have ten (10) days from receipt of a fee statement to give notice of an objection to the fee statement to the professional seeking compensation or reimbursement. For an objection to be valid, it shall be in writing and set forth in detail the specific fees objected to and the basis for the objection. Any objection that remains unresolved fifteen (15) days after it is made shall be submitted to the Bankruptcy Court for resolution. The uncontested portion of each invoice shall be paid within thirty (30) days after its delivery to the Liquidating Trust Oversight Committee and the Liquidating Trustee.

7.5 Limitation of Liability.

None of the members of the Liquidating Trust Oversight Committee or the Liquidating Trustee, professionals engaged by or on behalf of such parties, or any duly designated agent or representative of the Liquidating Trust Oversight Committee or the Liquidating Trustee (each solely in his or her capacity as such) shall be liable for the act or omission of any other member, agent or representative of the

Liquidating Trust Oversight Committee or the Liquidating Trustee, nor shall members of the Liquidating Trust Oversight Committee or the Liquidating Trustee be liable for any action taken, suffered or omitted to be taken in their representative capacity or in reliance on any provision of the Plan or the Liquidating Trust Agreement, as applicable, other than acts or omissions resulting from willful misconduct or gross negligence (which gross negligence or willful misconduct must be determined by a Final Order of a court of competent jurisdiction) by the members of the Liquidating Trust Oversight Committee, the Liquidating Trustee, or their respective professionals, agents, or representatives (each solely in his or her capacity as such). In no event shall the Liquidating Trust Oversight Committee or the Liquidating Trustee be liable or responsible for special, punitive, indirect, consequential or incidental loss or damages of any kind whatsoever to any Person (including without limitation lost profits), even if the Liquidating Trust Oversight Committee or the Liquidating Trustee has been advised of the likelihood of such loss or damage. The Liquidating Trust Oversight Committee and the Liquidating Trustee each may consult with professionals, and the advice or opinion of such professional(s) will be full and complete authorization and protection to the Liquidating Trust Oversight Committee and/or the Liquidating Trustee, and the Liquidating Trust Oversight Committee or the Liquidating Trustee, as applicable, shall incur no liability. The Liquidating Trust shall fully indemnify any action taken, suffered or omitted by the Liquidating Trust Oversight Committee or the Liquidating Trustee in accordance with such advice or opinion as provided for under Section 7.6 of this Plan.

7.6 Indemnification.

The Liquidating Trust shall indemnify the Indemnified Parties for, and shall hold them harmless against, any loss, liability, damage, judgment, fine, penalty, claim, demand, settlement, cost or expense (including, without limitation, the reasonable fees and expenses of their respective professionals), incurred without gross negligence or willful misconduct on the part of the Indemnified Parties (which gross negligence or willful misconduct, if any, must be determined by a Final Order of a court of competent jurisdiction), for any action taken, suffered or omitted to be taken by the Indemnified Parties in connection with the acceptance, administration, exercise and performance of their duties under the Plan or Liquidating Trust Agreement, as applicable. The costs and expenses incurred in enforcing the right of indemnification in this Section shall be paid by the Liquidating Trust. The provisions of Sections 7.5 and 7.6 hereof shall survive the termination of the Liquidating Trust Agreement, and the resignation, replacement or removal of the Liquidating Trustee or the dissolution of the Liquidating Trust Oversight Committee.

7.7 No Security; Insurance.

~~The Liquidating Trustee shall be required to give a bond for the performance of his/her duties and all costs and expenses of procuring any such bond or surety shall be borne by the Liquidating Trust.~~

The Liquidating Trustee shall be authorized under the Plan to obtain all reasonably necessary insurance coverage for itself and its respective agents, and members of the Liquidating Trust Oversight Committee, including, but not limited to, coverage with respect to the liabilities, duties, obligations, errors and omissions of the Liquidating Trustee, which insurance coverage may, at the sole option of the Liquidating Trustee, be extended for a reasonable period after the closing of the Chapter 11 Case and termination of the Liquidating Trust Agreement, as applicable.

7.8 Liquidation Expense Reserve.

The Liquidating Trustee may, but shall not be obligated to, physically segregate and maintain separate accounts for the Liquidation Expense Reserve. The Liquidation Expense Reserve may be merely

bookkeeping entries or accounting methodologies, which may be revised from time to time, to enable the Liquidating Trustee to determine reserves and amounts to be paid to Holders of Allowed Claims.

7.9 Resignation, Death or Removal of the Liquidating Trustee.

The Liquidating Trustee may resign at any time upon not less than thirty (30) days' written notice to the Bankruptcy Court and the Liquidating Trust Oversight Committee. Any party in interest may apply to the Bankruptcy Court at any time to remove the Liquidating Trustee upon a showing of cause. In the event of the death, resignation, or removal of the Liquidating Trustee, the Liquidating Trust Oversight Committee shall appoint a successor Liquidating Trustee or, in the event the Liquidating Trust Oversight Committee has been dissolved or is not able to obtain approval of a successor Liquidating Trustee, any party in interest (including, in the case of resignation, the Liquidating Trustee) may file a motion in the Bankruptcy Court to appoint a successor Liquidating Trustee. Counsel to the Liquidating Trustee shall file a notice with the Bankruptcy Court identifying any successor Liquidating Trustee. Any successor Liquidating Trustee shall not have any liability or responsibility for the acts or omissions of any of its predecessors.

7.10 Termination of Liquidating Trust.

Notwithstanding anything to the contrary herein or in the Liquidating Trust Agreement, the Liquidating Trust will terminate on or before the fifth (5th) anniversary of the Effective Date; provided, however, that, at any time within six (6) months of such termination, the Bankruptcy Court, upon motion by the Liquidating Trustee or any Beneficiary, may extend the term of the Liquidating Trust if such extension is determined to be in the best interests of the Beneficiaries; provided, further, that such extension or extensions shall not exceed three (3) years after the initial termination date, unless the Liquidating Trustee receives a favorable ruling from the IRS, or an opinion of counsel, that such extension will not adversely affect the status of the trust as a liquidating trust.

7.11 Continuation of Liquidating Trust for Winding Down; Discharge and Release of Liquidating Trustee.

After the termination of the Liquidating Trust and solely for the purpose of liquidating and winding down the affairs of the Liquidating Trust, the Liquidating Trustee shall continue to act as such until its responsibilities have been fully performed. Except as otherwise specifically provided for in the Trust Agreement, upon the final Distribution of the Liquidating Trust Assets, including all excess reserves, the Liquidating Trustee shall be deemed discharged and shall have no further duties or obligations hereunder. Upon the motion of the Liquidating Trustee, the Bankruptcy Court may enter an order relieving the Liquidating Trustee, its employees, professionals, and agents of and from further duties, discharging and releasing the Liquidating Trustee from all liability related to the Liquidating Trust, and releasing the Liquidating Trustee's bond, if any.

7.12 ~~7.11~~ Governance Action.

Any action under this Plan to be taken by or required of the Liquidating Trustee, including, as may be appropriate, dissolution of the Debtor and the amendment of organizational documents of the Debtor, as applicable, shall be authorized and approved in all respects, without any requirement of further action by the managers of or Holders of Interests in the Debtor.

7.13 ~~7.12~~ Effectuating Documents and Further Transactions.

The Debtor and, subsequently, the Liquidating Trustee, with approval of the Liquidating Trust Oversight Committee, if required, shall be authorized to execute, deliver, file, or record such documents, contracts, instruments, releases and other agreements and take such other action as may be necessary to effectuate and further evidence the terms and conditions of the Plan and the Liquidating Trust Agreement.

7.14 ~~7.13~~ Preservation of Rights of Action.

Except as otherwise provided in this Plan, or in any document, instrument, release or other agreement entered into in connection with the Plan, the Confirmation Order or any other orders of this Bankruptcy Court, in accordance with section 1123(b) of the Bankruptcy Code, all Rights of Action are preserved notwithstanding the occurrence of the Effective Date of the Plan. The Liquidating Trustee may investigate, enforce, sue on, settle or compromise (or decline to do any of the foregoing) any or all Rights of Action. The Liquidating Trustee shall be vested with the rights, powers and benefits afforded to a "trustee" under sections 704 and 1106 of the Bankruptcy Code.

7.15 ~~7.14~~ No Revesting of Assets.

Except as otherwise provided in this Plan, on the Effective Date, all Assets comprising the Estate of the Debtor shall vest in the Liquidating Trust, free and clear of all Claims, Liens, charges, encumbrances and interests of Holders of Claims or interests (except to the extent that such Claims, Liens, charges, encumbrances and/or interests have been reinstated, or as otherwise expressly provided herein), which will become the Liquidating Trust Assets, to be held for the benefit of the Beneficiaries. Upon the transfer of the Assets to the Liquidating Trust, the Debtor shall have no further interest in or with respect to Claims, the Liquidating Trust Assets or the Liquidating Trust.

7.16 ~~7.15~~ Tax Treatment of Transfers to Liquidating Trust.

Unless the IRS requires otherwise, and except to the extent properly allocated to disputed claims, any transfer of Assets to the Liquidating Trust for the benefit of the Beneficiaries, including, but not limited to, any transfer under this Article VII, is required by the Liquidating Trust to be treated for all federal income tax purposes by all parties involved as a deemed transfer of such Assets to the Beneficiaries followed by a deemed transfer by such Beneficiaries of such Assets to the Liquidating Trust. The Liquidating Trust requires that the Assets so transferred be valued consistently by the Liquidating Trustee and the Beneficiaries, including all valuations used for federal income tax purposes, and such Beneficiaries shall be treated as the grantors and deemed owners of the Liquidating Trust in accordance with 26 U.S.C. §§ 671-679.

7.17 ~~7.16~~ Exemption from Transfer Taxes.

Pursuant to section 1146(a) of the Bankruptcy Code, the issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer under this Plan, including, without limitation, any transfer by the Debtor to the Liquidating Trust, transfer of Liquidating Trust Assets by the Liquidating Trustee to any entity, or any transfer pursuant to merger agreements, agreements of consolidation, restructuring, disposition, liquidation or dissolution, deeds, bills of sale or transfers of tangible property, will not be subject to any stamp tax, recording tax, personal property tax, real estate transfer tax, sales or use tax or other similar tax. Unless the Bankruptcy Court orders otherwise, all sales, transfers and assignments of owned and leased property by the Debtor, its Estate, or the Liquidating Trust on or after the Effective Date, shall be deemed to have been in furtherance of, or in connection with, the Plan.

7.18 ~~7.17~~ Compensation of the Liquidating Trustee and Professionals.

The fees and expenses of the Liquidating Trustee and its retained professionals shall be paid from the Liquidating Trust in accordance with the terms of the Liquidating Trust Agreement and payment of such fees and expenses shall not be subject to the approval of the Bankruptcy Court.

7.19 ~~7.18~~ Privilege.

On the Effective Date, any attorney-client privilege, work-product privilege or other privilege or immunity that the Debtor, the Estate or the Creditors' Committee are entitled to assert shall transfer to and vest in the Liquidating Trustee (and its attorneys and agents) and the Liquidating Trustee shall be entitled to assert or waive such privilege or immunity to the same extent that the Debtor and Creditors' Committee were entitled to do so prior to the Effective Date. Communications by counsel to the Liquidating Trustee with members of the Liquidating Trust Oversight Committee shall be entitled to the same privilege or immunity as if such communications were between counsel to the Liquidating Trustee and the Liquidating Trustee.

ARTICLE VIII

GENERAL RULES REGARDING DISTRIBUTIONS UNDER THE PLAN

8.1 Distribution Record Date.

As of the close of business on the Distribution Record Date, the Claims Register as maintained by the Claims Agent, the Debtor and/or the Liquidating Trustee shall be deemed closed. The Liquidating Trustee shall have no obligation to recognize any transfer of Claims or Interests occurring on or after the Distribution Record Date. The Liquidating Trustee shall be required to recognize and deal for all purposes hereunder only with those record Holders of timely filed Claims identified on the Claims Register as of the close of business on the Distribution Record Date, to the extent applicable.

8.2 Funding of Distributions.

Except as otherwise provided in the Liquidating Trust Agreement, all Distributions to Holders of Allowed Claims shall be made by the Liquidating Trustee and funded by Cash that the Liquidating Trustee, in its sole discretion, determines is available for Distributions to Holders of Allowed Claims in accordance with the Plan.

8.3 No Distributions Pending Allowance.

Except as expressly provided in this Plan, no Distributions provided under the Plan shall be made on account of any Claim or Interest unless and until such Claim or Interest becomes an Allowed Claim or Allowed Interest.

8.4 Claim Objection Deadline.

After the Effective Date, the Liquidating Trustee shall have the right to file objections to Claims and Interests, whether evidenced by a Proof of Claim or Proof of Interest, amend the Schedules, and to settle or withdraw any objections. The Liquidating Trustee shall also have the right to seek estimation of Claims and Interests. The Liquidating Trustee shall file and serve all objections to, or pleadings seeking estimation of, Claims and Interests upon the Holder of such Claims or Interests no later than the Claim

Objection Deadline. The Claim Objection Deadline shall not apply to requests to reduce Claims as a result of mitigation, or objections under section 502(d) of the Bankruptcy Code.

8.5 Establishment of Disputed Claims Reserve.

At the time of the first Distribution Date, the Liquidating Trustee shall establish the Disputed Claims Reserve. A Distribution on account of an Allowed Claim that is held back by the Liquidating Trustee by agreement or to determine the extent of any mitigation shall be reserved for and paid in the same manner as a Disputed Claim. After a Disputed Claim is resolved, the Liquidating Trustee shall no longer account for such Claim in the Disputed Claims Reserve and the amount attributable to the Disallowed portion of the Disputed Claim, if any, shall be deemed to be Cash available for Pro Rata Distribution to Holders of Allowed Claims, in accordance with the Plan. The Disputed Claims Reserve may be treated, for tax purposes only, as a disputed ownership fund, separate trust or sub-trust.

8.6 Distributions After Allowance.

Subject to the occurrence of the Effective Date, Distributions to each Holder of a Disputed Claim, to the extent that such Claim ultimately becomes an Allowed Claim, shall be made in accordance with the provisions of the Plan governing the Class of Claims in which such Claim is classified. On the next Distribution Date (or earlier, in the discretion of the Liquidating Trustee) that is not less than ten (10) Business Days after the date ~~that on which~~ the order of the Bankruptcy Court allowing any Disputed Claim or Interest or holding that such Claim or Interest is otherwise Allowed becomes a Final Order, the Liquidating Trustee shall distribute to the Holder of such Claim or Interest any Distribution(s) that would have otherwise been made to such Holder if the Claim or Interest had been Allowed on the Effective Date, without any interest thereon. The Liquidating Trustee shall have the discretion to make Distributions from the Liquidating Trust, including with respect to amount, timing, reserves and other holdbacks. ~~Pursuant to section 502(d) of the Bankruptcy Code, to the extent that a Holder of a Claim has received an avoidable transfer, such Holder shall not be entitled to receive any Distributions until such time as such Holder has returned the avoidable transfer (including in accordance with settlement arrangements or a Final Order)~~The Liquidating Trustee may retain amounts reasonably necessary to meet contingent liabilities, to maintain the value of the Liquidating Trust Assets during liquidation, and to satisfy other liabilities or expenses incurred by the Liquidating Trust in accordance with this Plan or the Liquidating Trust Agreement (including, without limitation, the fees and expenses of professionals retained by the Liquidating Trustee and the reasonable, documented out-of-pocket expenses of professionals retained by the Liquidating Trust Oversight Committee, as provided for in this Plan); provided, however, that the Liquidating Trustee shall not retain excess Cash or Cash equivalents in excess of a reasonable amount for such expenses.

8.7 Delivery of Distributions.

Subject to Rule 9010 of the Bankruptcy Rules, and except as otherwise provided herein, Distributions to Holders of Allowed Claims shall be sent to the address of each of such Holders as set forth in the Schedules filed with the Bankruptcy Court, unless superseded by the address set forth on such Holder's Proof of Claim or Proof of Interest, or in a written notice delivered to the Liquidating Trustee and its counsel and filed on the docket of the Chapter 11 Case, to the extent that such notice is provided at least ten (10) Business Days before the applicable Distribution Date, by such Holders (or at the last known address of such Holders if no Proof of Claim or Proof of Interest is filed and there is no address in the Schedules, and the Liquidating Trustee has not been notified in writing of the address). If any

Distribution to any Holder is returned as undeliverable, the Liquidating Trustee may, but shall not be required to, use reasonable efforts to determine the current address of such Holder, but no subsequent Distribution to any such Holder shall be made unless and until the Liquidating Trustee has determined the then current address of such Holder, at which time such Distribution shall be made to such Holder without interest. The Liquidating Trustee shall retain all amounts in respect of any undeliverable Distributions made by the Liquidating Trustee until such Distributions are claimed, subject to Section 8.8 herein.

8.8 Unclaimed Distributions.

If any Distribution is not claimed, or remains undeliverable under Section 8.7 of the Plan, by the Unclaimed Distribution Date applicable to such Distribution, such check shall be null and void, such Distribution shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code, the respective Claim shall be deemed expunged and such unclaimed Distribution(s) shall be available for Distribution to other Holders of Allowed Claims as part of the next Distribution, in accordance with the terms of this Plan. Requests for reissuance of any check shall be made in writing directly to the Liquidating Trustee by the Beneficiary that was originally issued such check. All such requests shall be made promptly and in time for the check to be reissued and cashed before the Unclaimed Distribution Date. The Beneficiary shall bear all the risk that, and shall indemnify and hold the Liquidating Trust and Liquidating Trustee harmless against any loss that may arise if, the Liquidating Trustee does not reissue a check promptly after receiving a request for its reissuance and the Unclaimed Distribution Date passes without the check being reissued or cashed. The Holder of any Claim or Interest for which a Distribution is deemed unclaimed property hereunder shall no longer be a Beneficiary of the Liquidating Trust, shall not be entitled to receive any future Distributions such unclaimed property and shall be deemed to have relinquished all rights to any future Distributions ~~and all such~~. The aggregate amount of such unclaimed property and any future Distributions shall be available for Distribution to other Holders of Allowed Claims under the Plan. Unclaimed property held by the Liquidating Trustee shall not be subject to the unclaimed property or escheat laws of the United States, any state, or any local government.

8.9 Interest on Claims.

Postpetition interest shall not accrue or be paid on any Claims, and no Holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim, other than to the extent payable under section 726(a)(5) of the Bankruptcy Code.

8.10 Distributions on Insured Claims.

No Distribution provided under the Plan shall be made on account of any Allowed Claim that is or will be Paid in Full from proceeds payable under any pertinent insurance policy or policies.

8.11 Priority of Expenses of the Liquidating Trust.

The Liquidating Trustee must pay or reserve for all of the expenses of the Liquidating Trust before making Distributions.

8.12 ~~8.11~~ Manner of Payment Under the Plan.

At the option of the Liquidating Trustee, any Distribution of Cash to be made pursuant to this Plan may be made by a check or wire transfer.

8.13 ~~8.12~~ Waiver of Avoidance Actions.

Except as otherwise set forth herein, all Avoidance Actions shall be waived and released as of the Effective Date.

8.14 ~~8.13~~ Subordination.

All rights of any Holder of a Claim or Interest, or of the Liquidating Trustee, to seek or obtain subordination of another Claim or Interest based on contractual or, only in the case of the Liquidating Trustee (or his designee), equitable subordination, or subordination under section 510(b) of the Bankruptcy Code, will be preserved under the Plan and may be asserted with respect to any Distribution to be made under the Plan on account of such other Claim or Interest.

8.15 ~~8.14~~ Setoff and Recoupment.

Except as otherwise provided herein or in the Confirmation Order, the Liquidating Trustee may, pursuant to applicable law, setoff or recoup against any Claim or Interest (including for purposes of determining the Allowed amount of such Claim or Interest), any and all of the Rights of Action of any nature that the Liquidating Trust may hold against the Holder of such Claim or Interest; provided, however, that neither the failure of the Liquidating Trustee to do so nor the allowance of any such Claim or Interest that may be subject to setoff or recoupment shall constitute a waiver or release by the Liquidating Trustee of any setoff or recoupment Right of Action that he or she may have against such Holder. Confirmation of this Plan shall bar any right of setoff claimed by a Creditor unless such Creditor filed, prior to the Confirmation Date, a motion for relief from the automatic stay seeking the authority to effectuate such a setoff right. All defenses of any of the Debtors or the Plan Administrator, as the successor to the Debtors or otherwise with respect to any such motion, are hereby preserved. This Section 8.14 shall not apply to the application of any security deposits held by any of the Debtor's former/existing landlords to secure the Debtor's obligations under a lease of non-residential real property between the Debtor and any such landlord.

8.16 ~~8.15~~ Withholding and Reporting Requirements.

In connection with the Distributions made under the Plan, the Liquidating Trustee shall comply with all withholding and reporting requirements imposed by any federal, state or local taxing authority. As a condition to the Holder of an Allowed Claim or Allowed Interest receiving any Distribution under this Plan, the Liquidating Trustee may require that the Holder provide such Holder's taxpayer identification number and such other information and certification as the Liquidating Trustee may deem necessary to comply with applicable tax reporting and withholding laws. The failure of a Holder of a Claim or Interest to provide the Liquidating Trustee with its tax withholding or reporting information within 90 days of the Liquidating Trustee's notice will result in the Holder being treated in the same manner as the Holder of a Claim or Interest for which a Distribution is undeliverable or unclaimed, as described in Sections 8.7 and 8.8 of this Plan.

8.17 ~~8.16~~ Allocation of Plan or Liquidating Trust Distributions Between Principal and Interest.

To the extent that any Allowed Claim entitled to a Distribution under the Plan is comprised of principal indebtedness and accrued but unpaid interest thereon, such Distribution shall, for federal income tax purposes, be allocated to the principal amount of the Claim first and then, to the extent the consideration exceeds the principal amount of the Claim, to the portion of such Claim representing accrued but unpaid interest.

8.18 ~~8.17~~ Fractional Dollars.

Notwithstanding any other provision of this Plan or the Liquidating Trust Agreement, the Liquidating Trustee shall not be required to make Distributions of fractions of dollars, and whenever any Distribution of a fraction of a dollar may be called for, the actual Distribution may be rounded to the nearest whole dollar (up or down), with half dollars being rounded

8.19 ~~8.18~~ De Minimis Distributions.

The Liquidating Trustee shall have no obligation to make a Distribution if the aggregate amount to be distributed to a Holder of an Allowed Claim or Allowed Interest would be less than \$50.00. To the extent the Liquidating Trustee makes multiple Distributions and the amount to be distributed on account of a particular Allowed Claim or Allowed Interest does not amount to \$50.00, the Liquidating Trustee shall establish a reserve on the books and records of the Liquidating Trustee, equal to the Distribution(s) that otherwise would have been distributed to such Holder until such Holder is entitled to receive an aggregate Distribution of \$50.00. To the extent the Holder is not ultimately entitled to receive an aggregate distribution of \$50.00, the Claim will be deemed expunged for Distribution purposes and the applicable reserved funds, as reflected on the books and records of the Liquidating Trustee, shall be distributed to Beneficiaries in accordance with the terms of this Plan.

ARTICLE IX

EXECUTORY CONTRACTS AND UNEXPIRED LEASES

9.1 General Treatment of Executory Contracts and Unexpired Leases; Insurance Policies.

As of the Effective Date, all executory contracts and unexpired leases to which the Debtor is a party, except for any executory contract or unexpired lease that (a) has been assumed, assigned or rejected by the Debtor prior to the Effective Date, or (b) is the subject of a separate motion filed under section 365 of the Bankruptcy Code and pending on the Effective Date, shall be deemed rejected within the meaning of section 365 of the Bankruptcy Code without further action of the Bankruptcy Court. Rejection of a contract or lease pursuant to this Section 9.1 shall not constitute an admission by the Debtor or the Liquidating Trustee that any such contract or lease is, in fact, an executory contract or unexpired lease or that the Debtor or Liquidating Trust has any liability thereunder.

Notwithstanding the foregoing, any agreements, documents or instruments relating thereto that are postpetition contracts shall continue to operate unaffected by the Plan, including, without limitation, the Liquidating Trust Agreement. Further, notwithstanding the foregoing, all Insurance Policies shall remain in full force and effect unless otherwise validly terminated, and issuers of such Insurance Policies shall remain responsible for Claims, in accordance with the terms and provisions of such Insurance Policies. The Debtor does not consider Insurance Policies that have expired as of the Effective Date (whether entered into prior or subsequent to the Petition Date) to be executory contracts subject to assumption or rejection. However, the issuers of Insurance Policies shall be responsible for continuing coverage obligations thereunder, regardless of the payment status of any retrospective or other insurance premiums.

Nothing in the Plan shall constitute or be deemed to be a waiver of any Right of Action that the Debtor may hold against any Persons, including, without limitation, any issuer under any Insurance Policy of the Debtor.

9.2 Deadline for Asserting Claims Arising from Rejection of Executory Contracts and Unexpired Leases.

If the rejection of any executory contract or unexpired lease under this Plan results in damages to the other party or parties to such contract or lease, a Proof of Claim for such damages must be filed with the Claims Agent on or before the date which is forty-five (45) days after the date on which notice of the Effective Date is served. Unless otherwise ordered by the Bankruptcy Court, any Holder of a Claim for rejection damages against the Debtor who fails to timely file proof of such Claim shall not be treated as a Holder with respect to such Claim for purposes of voting and Distributions, and tardily filed Claims shall be subject to disallowance under section 502(b)(9) of the Bankruptcy Code. Moreover, such Holder shall not receive further notices regarding such Claim.

ARTICLE X

CONDITIONS PRECEDENT TO THE EFFECTIVE DATE

10.1 Conditions to Confirmation of the Plan.

It shall be a condition to Confirmation hereof that all provisions, terms and conditions of the Plan and Disclosure Statement are approved in the Confirmation Order.

10.2 Conditions to Effective Date of the Plan.

The Effective Date for this Plan may not occur unless each of the conditions set forth below is satisfied:

- (a) The Confirmation Order, in form and substance satisfactory to the Debtor (with the consent of the Creditors' Committee, which consent shall not be unreasonably withheld) shall have been entered (if the Confirmation Order is appealed, such appeal shall be deemed moot as of the Effective Date);
- (b) The provisions of the Confirmation Order are nonseverable and mutually dependent;
- (c) The appointment of the Liquidating Trustee shall have been confirmed by the Confirmation Order or order of the Bankruptcy Court; and
- (d) All actions, documents and agreements necessary to implement the provisions of this Plan, including, without limitation, the Liquidating Trust Agreement, shall have been effected or executed and delivered.

10.3 Waiver of Conditions Precedent.

The Debtor (with the consent of the Creditors' Committee, which consent shall not be unreasonably withheld) may at any time, without leave or order of the Bankruptcy Court and without any other formal action, waive or modify Section 10.2(d) hereof.

ARTICLE XI

EFFECT OF CONFIRMATION

11.1 Discharge.

Pursuant to section 1141(d)(3) of the Bankruptcy Code, occurrence of the Effective Date will not discharge the Claims against the Debtor; provided, however, that no Holder of an Allowed Claim or Interest may, on account of such Claim or Interest, seek or receive any payment from, or seek recourse against, the Debtor, the Liquidating Trust, the Liquidating Trustee, the Released Parties, their respective property, successors and assigns, except as expressly provided in this Plan.

11.2 Binding Effect.

On and after the Effective Date, the provisions of this Plan shall bind all present and former Holders of Claims against, or Interests in, the Debtor and such Holders' successors and assigns, whether the Claim or Interest of such Holder is Impaired under the Plan and whether such Holder has filed a Proof of Claim or Proof of Interest or has accepted the Plan. The Confirmation Order shall provide that the terms and provisions of this Plan and the Confirmation Order shall survive and remain effective after entry of any order converting the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code, and the terms and provisions of this Plan shall continue to be effective in this or any superseding case under the Bankruptcy Code.

ARTICLE XII

RELEASES, EXCULPATION AND INJUNCTIONS

12.1 Releases by the Debtor.

As of the Effective Date, the Debtor, the Estate and their respective successors and assigns, including the Liquidating Trustee, shall be deemed to have conclusively, absolutely, unconditionally, irrevocably and forever released the Released Parties from any and all Rights of Action whatsoever, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, based in whole or in part upon any act or omission, transaction, agreement, event or occurrence, taking place on or prior to the Effective Date relating to the Debtor or the Chapter 11 Case, including, but not limited to the formulation, preparation, negotiation, dissemination, implementation, administration, confirmation or consummation of any version of the Plan, or the property to be distributed under the Plan, the Disclosure Statement concerning the Plan, any contract, employee pension, retirement or other benefit plan, instrument, release or other agreement or document created, modified, amended, terminated or entered into in connection with either the Plan or any agreement between the Debtor and any Released Party, or any other act taken or omitted to be taken in connection with the Debtor's Chapter 11 Case, except for Rights of Action against any Released Party resulting from the willful misconduct or gross negligence of such Released Party as determined by Final Order of a court of competent jurisdiction; provided, however, that Professionals remain subject to N.Y. Comp. Codes R. & Regs. tit. 22 § 1200.8, Rule 1.8(h)(1) (2009), if and to the extent that such rule applies.

12.2 Releases by Holders of Claims.

As of the Effective Date, to the fullest extent permitted by applicable law, each Holder of a Claim who does not opt out of the releases provided by this Section 12.2 shall be deemed to

conclusively, absolutely, unconditionally, irrevocably and forever release, waive, and discharge the Released Parties from any and all Claims, demands, rights, defenses, actions, causes of action, suits, contracts, agreements, obligations, accounts, defenses, offsets, powers and privileges of any kind or character whatsoever, suspected or unsuspected, whether arising on or prior to the Effective Date, in contract or in tort, at law or in equity, or under any other theory of law, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, based in whole or in part upon any act or omission, transaction, agreement, event or occurrence, taking place on or prior to the Effective Date relating to the Debtor or the Chapter 11 Case, including, but not limited to any contract, employee pension, retirement or other benefit plan, or any other act taken or omitted to be taken in connection with the Debtor's business operations, Assets, liabilities or employees, or the Chapter 11 Case, except for Claims and causes of action against any Released Party resulting from the willful misconduct or gross negligence of such Released Party, as determined by Final Order of a court of competent jurisdiction; provided, however, that the foregoing shall not be a waiver of the right of any Holder of an Allowed Claim to receive Distributions in accordance with this Plan; provided, further, that nothing in this Section 12.2 shall prejudice the standing of the Liquidating Trustee to commence any derivative Rights of Action that existed as of the Petition Date; and provided, further, that Professionals remain subject to N.Y. Comp. Codes R. & Regs. tit. 22 § 1200.8, Rule 1.8(h)(1) (2009), if and to the extent that such rule applies.

Holders of Class 4 Claims may opt out of releasing Released Parties under this Section 12.2, whether or not such Holders vote to reject the Plan, by checking the appropriate box on the Ballot. Each Holder of a Claim granting a release under this Section 12.2 shall be deemed to have accepted as its sole recourse on account of such released Claims and causes of action its right to receive Distributions on its Allowed Claim pursuant to the Plan.

12.3 Exculpation.

From and after the Effective Date, the Released Parties, the Indemnified Parties, the Liquidating Trust, and any property of such parties, or direct or indirect predecessor in interest to any of such parties, shall not have or incur any liability to any Person for any action taken, suffered or omitted to be taken in connection with or related to the Debtor, the Estate, the Liquidating Trust or the Chapter 11 Case, including, but not limited to formulating, preparing, disseminating, implementing, confirming, consummating or administering (a) the Plan (including soliciting acceptances or rejections thereof), (b) the Disclosure Statement or any contract, instrument, release or other agreement or document entered into or any action taken or omitted to be taken in connection with the Plan, and (c) any Distributions made pursuant to the Plan, except, in all cases, for acts or omissions constituting willful misconduct or gross negligence as determined by Final Order of a court of competent jurisdiction, and in all respects such parties shall be entitled to rely upon the advice of professionals with respect to their duties and responsibilities under the Plan, and such reliance shall form an absolute defense to any Claim, cause of action, or liability; provided, however, that Professionals remain subject to N.Y. Comp. Codes R. & Regs. tit. 22 § 1200.8, Rule 1.8(h)(1) (2009), if and to the extent that such rule applies. Without limiting the generality of the foregoing, each of the Released Parties, the Indemnified Parties, and the Liquidating Trust shall be entitled to and granted protections of section 1125(e) of the Bankruptcy Code.

12.4 Injunction.

The Confirmation Order shall provide, among other things, that all Persons who have held, hold or may hold Claims against or interests in any of the Released Parties are, with respect to any such Claims or interests, permanently enjoined from and after the Confirmation Date from taking

any of the following actions (other than actions to enforce any rights or obligations under the Plan): (a) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or any of its property; (b) enforcing, levying, attaching (including, without limitation, any pre-judgment attachment), collecting or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree or order against the Debtor or any of its property; (c) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtor or any of its property; (d) asserting any right of setoff, directly or indirectly, against any obligation due by the Debtor or any of its property, except as contemplated or allowed by the Plan; (e) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of this Plan; and (f) prosecuting or otherwise asserting any right, Claim or cause of action released pursuant to the Plan; provided, however, that nothing in this Section 12.4 shall be construed to enjoin any of the Debtor's Rights of Action, whether commenced by the Debtor, the Liquidating Trust or the Liquidating Trustee, that may exist in connection with any Insurance Policy of the Debtor; provided, further, that nothing in this Section 12.4 shall prejudice the standing of the Liquidating Trustee to commence any derivative Rights of Action that existed as of the Petition Date; and provided, further, that Professionals remain subject to N.Y. Comp. Codes R. & Regs. tit. 22 § 1200.8, Rule 1.8(h)(1) (2009), if and to the extent that such rule applies.

12.5 Term of Bankruptcy Injunction or Stays.

All injunctions or stays provided for in the Chapter 11 Case under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until all property of the Liquidating Trust has been distributed, the Liquidating Trust has been terminated and this Chapter 11 Case has been closed pursuant to section 350 of the Bankruptcy Code.

ARTICLE XIII

RETENTION OF JURISDICTION

This Plan shall not in any way limit the Bankruptcy Court's post-confirmation jurisdiction, as provided under the Bankruptcy Code. As of the Effective Date, the Bankruptcy Court shall retain jurisdiction, and if the Bankruptcy Court exercises its retained jurisdiction, shall have exclusive jurisdiction, of all matters arising out of, and relating to, the Chapter 11 Case and this Plan pursuant to, and for the purposes of, sections 105(a) and 1142 of the Bankruptcy Code and for, among other things, the following purposes:

- (a) To hear and determine pending applications for the assumption or rejection of executory contracts or unexpired leases, if any are pending, and the allowance of Claims resulting therefrom;
- (b) To determine any and all adversary proceedings, applications and contested matters;

- (c) To ensure that Distributions to Holders of Allowed Claims are accomplished as provided herein;
- (d) To hear and determine any timely objections to Claims or Interests, and to allow, disallow or estimate any Disputed Claim or Interest, in whole or in part;
- (e) To enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, reversed on appeal or vacated;
- (f) To issue such orders in aid of execution of this Plan, including in accordance with section 1142 of the Bankruptcy Code;
- (g) To consider any modifications of this Plan, if applicable; to cure any defect or omission; or reconcile any inconsistency in any order of the Bankruptcy Court, including the Confirmation Order;
- (h) To hear and determine all applications of Professionals for awards of compensation for services rendered and reimbursement of expenses relating to the postpetition, pre-Effective Date period;
- (i) To hear and determine disputes arising in connection with the interpretation, implementation or enforcement of this Plan, the Confirmation Order, and the Liquidating Trust Agreement;
- (j) To hear and determine matters concerning state, local and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code;
- (k) To compel the transfer of property and other performance contemplated under this Plan and documents executed in connection herewith;
- (l) To enforce remedies upon any default under the Plan;
- (m) To enforce all orders, judgments and rulings entered in connection with the Chapter 11 Case;
- (n) To hear and determine all Rights of Action;
- (o) To hear and determine all motions of the Liquidating Trustee to settle, compromise, sell, transfer, abandon or otherwise dispose of Liquidating Trust Assets to the extent the Liquidating Trustee requests such Bankruptcy Court approval;
- (p) To issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Person with the enforcement or administration of this Plan;
- (q) To determine all matters and disputes arising out of, or relating to, the conduct of the Liquidating Trustee and/or the administration and operation of the Liquidating Trust; and

(r) To enter the Final Decree closing the Chapter 11 Case.

ARTICLE XIV

MISCELLANEOUS PROVISIONS

14.1 Payment of Statutory Fees.

All fees payable pursuant to section 1930, title 28, United States Code, shall be paid by the Debtor on or before the Effective Date to the extent due prior to the Effective Date. Thereafter, the Liquidating Trustee shall pay all such fees. The Liquidating Trust shall remain responsible for the payment of quarterly fees to the United States Trustee, pursuant to 28 U.S.C. § 1930, until such time as the Debtor's case is closed.

14.2 Bar Date for Certain Postpetition Claims.

The Final Administrative Claims Bar Date, which is the deadline for filing requests for allowance of Administrative Expense Claims arising after January 31, 2013 (other than for statutory fees of the United States Trustee), shall be the date that is forty-five (45) days after the date on which notice of the Effective Date is served. The Final Administrative Claims Bar Date shall also be the deadline by which Professionals must file final Fee Applications or other requests for payment of Professional Fee Claims incurred through the Effective Date (to the extent not already Allowed). Administrative Expense Claims arising on or before January 31, 2013 were subject to the Initial Administrative Claims Bar Date of April 1, 2013. Administrative Claims arising under Section 503(b)(9) of the Bankruptcy Code were subject to the General Bar Date of September 10, 2012.

14.3 Amendments to Claims; Filing of Claims after Effective Date.

Except as expressly permitted by the Plan or order of the Bankruptcy Court, a Claim may not be filed or increased by amendment or supplement without the authorization of the Bankruptcy Court or consent of the Liquidating Trustee, and any such Claim or amendment shall, unless the Bankruptcy Court otherwise directs, be Disallowed in full and expunged without further order of the Bankruptcy Court; provided however, that a Claim may be decreased by amendment, supplement or withdrawal.

14.4 Retiree Benefits.

The Debtor has not funded or maintained any retiree benefit plans, funds or programs, as defined in section 1114 of the Bankruptcy Code, for the purpose of providing or reimbursing payments for retired employees and their spouses and dependents for medical, surgical, or hospital care benefits in the event of sickness, accident, disability, or death under any plan, fund, or program (through the purchase of insurance or otherwise). To the extent that any such retiree benefit plans, funds, or programs are found by the Bankruptcy Court to have existed, such plans, funds, or programs are hereby terminated and shall be deemed null and void effective immediately prior to the Petition Date. Accordingly, no such payments will be, or are required to be, made pursuant to section 1129(a)(13) of the Bankruptcy Code.

14.5 Corporate or Limited Liability Company Action.

Prior to, on or after the Effective Date, all matters provided for under the Plan that would otherwise require approval of the Holders of Interests in or the managers of the Debtor shall be deemed to have occurred and shall be in effect prior to, on or after the Effective Date without any further action by the Holders of Interests in or managers of the Debtor.

14.6 Cancellation of Securities, Instruments and Agreements Evidencing Claims and Interests.

Except as otherwise provided in the Plan and in any contract, instrument or other agreement or document created in connection with the Plan, on the Final Distribution Date, the promissory notes, share or membership interest certificates (including treasury stock), other instruments evidencing Claims or Interests, and all options, warrants, calls, rights, puts, awards, commitments or any other agreements of any character to acquire such Interests shall be deemed cancelled and of no further force and effect, without any further act or action under any applicable agreement, law, regulation, order or rule, and the obligations of the Debtor under such notes, share certificates and other agreements and instruments governing such Claims and Interests shall be discharged. From and after the Effective Date, the Holder of or parties to such Claims or Interests, cancelled notes, share certificates and other agreements and instruments shall have no rights arising from or relating to such Claims or Interests, notes, share certificates and other agreements and instruments or the cancellation thereof, except the rights provided pursuant to the Plan.

14.7 United States Trustee Reports.

From the Effective Date until the Final Decree is entered by the Bankruptcy Court, the Liquidating Trustee shall submit for each quarter a quarterly report for the Debtor to the United States Trustee, setting forth all receipts and disbursements of the Liquidating Trust, as required by its guidelines.

14.8 Revocation of the Plan.

The Debtor reserves the right to revoke and withdraw this Plan at any time prior to entry of the Confirmation Order. If this Plan is so revoked or withdrawn, then it shall be deemed null and void.

14.9 Modification of the Plan.

At any time prior to the Effective Date, the Plan may be modified by the Debtor (with the consent of the Creditors' Committee, which consent shall not be unreasonably withheld), subject only to Bankruptcy Court approval after notice to parties in interest; provided, however, nonmaterial modifications, including modifications that do not adversely change the treatment of Claims under the Plan, shall not require Bankruptcy Court approval, further notice to parties in interest or a re-solicitation of votes for or against the Plan (as modified). A Holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan as modified if the modification does not materially and adversely change the treatment of the Claim of such Holder.

14.10 Severability of Plan Provisions.

If any term or provision of this Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court, with the consent of the Debtor and the Creditors' Committee, shall have the power to interpret, modify or delete such term or provision (or portions thereof) to make it valid, enforceable or confirmable 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 interpreted, modified or deleted. Notwithstanding any such interpretation, modification or deletion, the remainder of the terms and provisions of this Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such interpretation, modification or deletion. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision, as it may have been interpreted, modified or deleted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

14.11 Governing Law.

Except to the extent that the Bankruptcy Code or other federal law is applicable, the rights, duties and obligations arising under this Plan, and the instruments, agreements and other documents executed in connection with the Plan, shall be governed by, and construed and enforced in accordance with, the internal laws of the State of New York.

14.12 Notices.

All notices, requests and demands to be effective shall be in writing (including by facsimile transmission or electronic mail) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made and deemed received on (i) in the case of mail delivery, the earlier of actual receipt and three Business Days after deposit in the mail when actually delivered; (ii) in the case of notice by facsimile transmission, when received and telephonically confirmed; or (iii) in the case of electronic mail, the date sent. Notices, requests and demands shall be addressed as follows:

Goulston & Storrs PC
Attention: Douglas B. Rosner, Esq.
Vanessa P. Moody, Esq.
400 Atlantic Avenue
Boston, Massachusetts 02110
Telephone: (617) 482-1776
Facsimile: (617) 574-4112
Email: drosner@goulstonstorrs.com
vmooddy@goulstonstorrs.com

If to the Liquidating Trustee:

META Advisors LLC
Attention: Robert L. LeHane, Esq.
Mark Page, Esq.
101 Park Avenue
New York, NY 10178
Telephone: (212) 808-7573
Facsimile: (212) 808-7897

With copies to:

Hahn & Hessen LLP
Attn: Mark S. Indelicato, Esq.
Lauren S. Schlussel, Esq.
488 Madison Avenue
New York, New York 10022
Phone: (212) 478-7200
Fax: (212) 478-7400
Email: mindelicato@hahnhausen.com
lschlussel@hahnhausen.com

14.13 Controlling Documents.

To the extent this Plan is inconsistent with the Disclosure Statement, the Plan shall control. To the extent that this Plan is inconsistent with the terms of the Liquidating Trust Agreement, the Plan shall control. To the extent that the Plan is inconsistent with the Confirmation Order, the Confirmation Order shall control.

14.14 Reservation of Rights.

If this Plan is not confirmed by the Bankruptcy Court or any other court of competent jurisdiction for any reason, or if confirmed and if the Effective Date does not occur, the rights and defenses of all parties in interest in the Chapter 11 Case are and will be reserved in full. Any concession, compromise or settlement reflected herein, if any, are made for purposes of this Plan only, and if the Plan is not confirmed or the Effective Date does not occur, no party in interest in the Chapter 11 Case shall be bound or deemed prejudiced by any such concession, compromise or settlement.

14.15 Integration.

The Plan Supplement and all documents included therein are incorporated and are a part of the Plan as if set forth in full herein.

Respectfully submitted,

BETSEY JOHNSON LLC

By: /s/ Aron Arias
Aron Arias
Chief Financial Officer

Document comparison by Workshare Compare on Thursday, April 03, 2014
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Document 2 ID	interwovenSite://BOS-DMS1/gsdocs/2291610/9
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