

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re : Chapter 11  
ALSET OWNERS, LLC, *et al.*,<sup>1</sup> : Case No. 09-11960 (BLS)  
: (Jointly Administered)  
Debtors. :  
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**DISCLOSURE STATEMENT IN SUPPORT OF JOINT PLAN OF  
LIQUIDATION OF THE DEBTORS AND DEBTORS IN POSSESSION**

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Counsel for Alset Owners, LLC, *et al.*,  
Debtors and Debtors in Possession

Dated: December 2, 2009

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<sup>1</sup> The Debtors and the last four digits of their respective tax identification numbers are: Alset Owners, LLC, a Delaware limited liability company (7520); Altes, LLC, a Delaware limited liability company (6927); Setla, LLC, a Delaware limited liability company (6752); and Checkers Michigan, LLC, a Delaware limited liability company (8016). The Debtors' service address is Altes, LLC/Setla, LLC, 1200 North Federal Highway, Boca Raton, FL 33432.

## INTRODUCTORY STATEMENT

**THIS DISCLOSURE STATEMENT UNDER SECTION 1125 OF THE BANKRUPTCY CODE (THE “DISCLOSURE STATEMENT”) WITH RESPECT TO THE JOINT PLAN OF LIQUIDATION OF THE DEBTORS AND DEBTORS IN POSSESSION (AS MAY BE AMENDED, THE “PLAN”) CONTAINS SUMMARIES OF CERTAIN PROVISIONS OF THE PLAN AND OTHER DOCUMENTS RELATING TO THE PLAN. WHILE THE DEBTORS BELIEVE THESE SUMMARIES PROVIDE ADEQUATE INFORMATION WITH RESPECT TO THE DOCUMENTS SUMMARIZED, SUCH SUMMARIES ARE QUALIFIED TO THE EXTENT THAT THEY DO NOT SET FORTH THE ENTIRE TEXT OF SUCH DOCUMENTS. IF ANY INCONSISTENCIES EXIST BETWEEN THE TERMS AND PROVISIONS OF THIS DISCLOSURE STATEMENT AND THE TERMS AND PROVISIONS OF THE PLAN OR OTHER DOCUMENTS DESCRIBED THEREIN, THE TERMS AND PROVISIONS OF THE PLAN AND OTHER DOCUMENTS ARE CONTROLLING. EACH HOLDER OF AN IMPAIRED CLAIM OR AN IMPAIRED EQUITY INTEREST SHOULD REVIEW THE ENTIRE PLAN AND ALL RELATED DOCUMENTS AND SEEK THE ADVICE OF ITS OWN COUNSEL BEFORE VOTING WHETHER TO ACCEPT OR REJECT THE PLAN.**

**THIS DISCLOSURE STATEMENT MAY NOT BE RELIED UPON BY ANY PERSON OR ENTITY FOR ANY PURPOSE OTHER THAN BY HOLDERS OF CLAIMS AND INTERESTS ENTITLED TO VOTE ON THE PLAN IN DETERMINING WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN. THE DEBTORS ASSERT THAT NOTHING CONTAINED HEREIN WILL CONSTITUTE AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY, OR BE ADMISSIBLE IN ANY PROCEEDING INVOLVING THE DEBTORS OR ANY OTHER PARTY. NOTHING CONTAINED HEREIN SHALL BE DEEMED CONCLUSIVE EVIDENCE OF THE TAX OR OTHER LEGAL EFFECTS OF THE LIQUIDATION OF ANY OF THE DEBTORS’ ASSETS OR ON HOLDERS OF CLAIMS OR EQUITY INTERESTS.**

**IRS CIRCULAR 230 NOTICE: TO ENSURE COMPLIANCE WITH REQUIREMENTS IMPOSED BY THE IRS, PLEASE BE ADVISED THAT ANY WRITTEN U.S. TAX ADVICE CONTAINED IN THIS DISCLOSURE STATEMENT (INCLUDING ANY ATTACHMENT) IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, FOR THE PURPOSE OF (1) AVOIDING PENALTIES UNDER THE INTERNAL REVENUE CODE OR (2) PROMOTING, MARKETING OR RECOMMENDING TO ANOTHER PARTY ANY TRANSACTION OR MATTER ADDRESSED HEREIN.**

**NO PARTY IS AUTHORIZED BY THE DEBTORS TO PROVIDE ANY INFORMATION WITH RESPECT TO THE DEBTORS, OR THE VALUE OF THE DEBTORS’ BUSINESS AND PROPERTIES OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT. GENERALLY, EXCEPT AS OTHERWISE PROVIDED, TO THE EXTENT INFORMATION IN THIS DISCLOSURE STATEMENT RELATES TO THE DEBTORS, THE DEBTORS HAVE PROVIDED THE INFORMATION IN THIS DISCLOSURE STATEMENT.**

**NOTHING CONTAINED IN THIS DISCLOSURE STATEMENT, EXPRESS OR IMPLIED, IS INTENDED TO GIVE RISE TO ANY COMMITMENT OR OBLIGATION OF THE DEBTORS OR WILL CONFER UPON ANY PERSON ANY RIGHTS, BENEFITS OR REMEDIES OF ANY NATURE WHATSOEVER.**

**EXCEPT AS OTHERWISE NOTED HEREIN, THE INFORMATION CONTAINED HEREIN IS GENERALLY INTENDED TO DESCRIBE FACTS AND CIRCUMSTANCES ONLY AS OF THE DATE OF THIS DISCLOSURE STATEMENT, AND NEITHER THE DELIVERY OF THIS DISCLOSURE STATEMENT NOR THE CONFIRMATION OF THE PLAN WILL CREATE ANY IMPLICATION, UNDER ANY CIRCUMSTANCES, THAT THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS CORRECT AT ANY TIME AFTER THE DATE OF THIS DISCLOSURE STATEMENT OR THAT THE DEBTOR WILL BE UNDER ANY OBLIGATION TO UPDATE SUCH INFORMATION IN THE FUTURE.**

## **I. INTRODUCTION**<sup>2</sup>

The Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101 - 1532 (as amended, the “**Bankruptcy Code**”) on June 5, 2009 (the “**Petition Date**”). No trustee or examiner has been appointed in the Debtors’ chapter 11 cases (the “**Chapter 11 Cases**”), and the Debtors act as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

The Debtors have filed this Disclosure Statement with the Bankruptcy Court for approval in connection with the solicitation of acceptances and rejections with respect to the Plan. By order dated January \_\_, 2010, the Bankruptcy Court approved this Disclosure Statement as containing adequate information to enable holders of Claims against the Debtors whose votes are being solicited to make an informed judgment whether to accept or reject the Plan.

## **II. NOTICE TO HOLDERS OF CLAIMS**

### **A. General**

The purpose of this Disclosure Statement is to enable the holders of Claims against the Debtors authorized to vote on the Plan to make informed decisions in voting whether to accept or reject the Plan. All holders of Claims should read this Disclosure Statement in its entirety. No solicitation of votes on the Plan may be made except pursuant to this Disclosure Statement and Section 1125 of the Bankruptcy Code. In considering how to vote, no holder of a Claim or any other party should rely on any information relating to the Debtors and their business and properties, other than that contained in this Disclosure Statement and the Plan, except as otherwise approved by the Bankruptcy Court.

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<sup>2</sup> Unless otherwise defined herein, capitalized terms used herein will have the same meanings ascribed to them in the Plan.

All persons receiving this Disclosure Statement and the Plan are urged to fully review the provisions of the Plan and all exhibits attached hereto, in addition to reviewing the text of this Disclosure Statement. This Disclosure Statement is not intended to replace careful review and analysis of the Plan. Rather, it is submitted as an aid in your review of the Plan and in an effort to explain the terms and implications of the Plan. Every effort has been made to explain fully the various aspects of the Plan as it affects all holders of Claims and Equity Interests. However, to the extent any questions arise, the Debtor urges you to seek independent legal advice.

In reviewing this Disclosure Statement, please keep in mind the following:

1. The approval by the Bankruptcy Court of this Disclosure Statement does not constitute an endorsement by the Bankruptcy Court of the Plan or a guarantee of the accuracy and completeness of the information contained herein.

2. There has been no independent audit of the financial information contained in this Disclosure Statement and the exhibits thereto and no fairness opinion has been obtained regarding the value of the assets and the amount of the liabilities. The factual information regarding the Debtors and their assets and liabilities has generally been derived from the Debtors' internal documents and available public records. While every effort has been made by the Debtors to provide accurate information herein, the Debtors and their legal advisors cannot and do not warrant or represent that the information contained in this Disclosure Statement is without any inaccuracy.

3. Certain of the statements contained in this Disclosure Statement or in exhibits attached hereto are based on certain estimates and assumptions. There can be no assurance that such statements will reflect actual outcomes. You should carefully review and consider Section XVI below, entitled "Certain Factors to Be Considered", before voting to accept or reject the Plan.

4. The Disclosure Statement has not been approved or disapproved by the Securities and Exchange Commission or any securities regulatory authority of any state, nor has the Securities and Exchange Commission or any securities regulatory authority of any state passed upon the accuracy or adequacy of the statements contained herein.

5. The description herein of the Plan is a summary only. Holders of Claims authorized to vote on the Plan are urged to review the entire Plan and any exhibits thereto before casting their votes. In the event that any inconsistency or conflict exists between this Disclosure Statement and the Plan, the terms of the Plan will control.

6. Except as set forth in this Disclosure Statement, the Plan and the exhibits, no representations concerning the Debtors, their assets and business operations, or the Plan are authorized, nor are any such representations to be relied upon in arriving at a decision with respect to the Plan. Any representations made to secure acceptance or rejection of the Plan other than as contained in this Disclosure Statement should be reported to counsel for the Debtors or the Committee.

B. **Voting**

Pursuant to the provisions of the Bankruptcy Code, generally only those classes of claims or interests that are (i) “impaired” by a chapter 11 plan and (ii) entitled to receive a distribution under such a plan are entitled to vote on a chapter 11 plan. In these Chapter 11 Cases, claims in Class 2 are impaired by the Plan and holders of such claims are therefore entitled to vote on the Plan.

C. **Voting Record Date**

The record date for determining the holders of Claims that may vote on the Plan is January 13, 2010 (the “**Voting Record Date**”).

D. **Ballots**

In certain instances, accompanying this Disclosure Statement is a ballot (“**Ballot**”) for casting your vote(s) on the Plan. A pre-addressed envelope for the return of the Ballot may also be enclosed. As noted above, Ballots for acceptance or rejection of the Plan are being provided only to holders of claims in Class 2. If you are the holder of a Class 2 Claim and did not receive a Ballot, received a damaged or illegible Ballot, or lost your Ballot, or if you have any questions regarding the voting procedures in respect of the Plan, please contact:

Alset Owners, LLC  
c/o BMC Group Inc.  
P.O. Box 3020  
Chanhassen, MN 55317-3010  
Attn: Ms. Anne Carter  
(888) 909-0100

After carefully reviewing this Disclosure Statement and the exhibits attached hereto, including the Plan, please indicate your vote with respect to the Plan on the enclosed Ballot and return it pursuant to the instructions provided on the Ballot.

E. **Voting Deadline**

In order to be counted, Ballots must be **received** by the Balloting Agent by **4:00 p.m. Eastern Time on February 15, 2010** (the “**Voting Deadline**”). Any executed Ballots that are received timely but do not indicate either an acceptance or rejection of the Plan will not be counted.

F. **Confirmation Hearing and Objection Deadline**

By order dated January \_\_, 2010, the Bankruptcy Court fixed **February 15, 2010, at 10:00 a.m.** Eastern Time, in the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 6th Floor, Wilmington, DE 19801, as the date, time and place of the hearing to consider confirmation of the Plan, and **February 22, 2010, at 4:00 p.m. Eastern Time**, as the deadline for filing objections to confirmation of the Plan. The hearing on confirmation of the Plan may be adjourned from time to time without further notice except for the announcement of

the adjourned date and time at the hearing on confirmation or any adjournment thereof. Any objections to confirmation of the Plan must be served upon:

Counsel for the Debtor:

Blank Rome LLP  
Michael Z. Brownstein  
Rocco A. Cavaliere  
The Chrysler Building  
405 Lexington Avenue  
New York, NY 10174  
Telephone: (212) 885-5000  
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Counsel for the Official Committee  
of Unsecured Creditors:

Klehr, Harrison, Harvey, Branzburg & Ellers LLP  
Joanne B. Wills  
Richard M. Beck  
919 Market Street, Suite 1000  
Wilmington, Delaware 19801  
Telephone: (302) 426-1189  
Facsimile: (302) 426-9193

Office of the United States Trustee:

Jane Leamy  
Office of the United States Trustee  
844 N. King Street, Suite 2207  
Lockbox #35  
Wilmington, DE 19801

### **III. UNCLASSIFIED CLAIMS AND CLASSIFICATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS**

THE SUMMARY OF THE PLAN SET FORTH HEREIN IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE FULL TEXT OF THE PLAN. IN THE EVENT OF ANY INCONSISTENCY BETWEEN THE PROVISIONS OF THE PLAN AND THE SUMMARY CONTAINED HEREIN, AND REGARDLESS OF WHETHER ANY SUCH INCONSISTENCY IS A STATEMENT OR OMISSION, THE TERMS OF THE PLAN WILL GOVERN. ALL CAPITALIZED TERMS USED HEREIN HAVE THE MEANINGS ASCRIBED TO THEM IN THE PLAN.

#### **A. Summary of Classification and Treatment of Claims and Interests**

The Plan proposes to satisfy creditor claims to the extent possible from the disposition of the Debtors' assets which include (i) proceeds of the sale of substantially all of the Debtors' assets to Buyer, (the "**Cash Consideration**"), (ii) other non-core assets not transferred to the Buyer, and (iii) the proceeds of Causes of Action prosecuted by a Liquidation Trustee appointed to prosecute such Causes of Action. The Sale closed on August 31, 2009. The proceeds from the liquidation of the Debtors' assets will be applied to satisfy, (i) Administrative Claims, (ii) Priority Unsecured Claims, (iii) secured claims in Class 1, and (iv) the general unsecured claims in Class 2. Equity Interests in Class 3 are not expected to receive a distribution under this Plan.

The Plan also contemplates the formation of a Liquidation Trust established for the primary purpose of liquidating its assets, in accordance with Treas. Reg. §301.7701-4(d). The Liquidation Trust will be assigned and take possession of the Liquidation Trust Assets defined to include the Cash Consideration, as well as the Causes of Action and all rights of setoff and recoupment and other defenses that the Debtors and the Estates may have with respect to Allowed Claims. The Liquidation Trust will have the responsibility (i) to investigate, defend or pursue the Causes of Action, (ii) object to the allowance of Claims and Equity Interests Filed with the Bankruptcy Court, and (iii) make the distributions to Beneficiaries required under the Plan in accordance with the Liquidation Trust Agreement.

The following table summarizes the classification and treatment of Claims and Equity Interests under the Plan. This summary is qualified in its entirety by reference to the provisions of the Plan, and the provisions of the Plan will control in the event of any inconsistency (whether by statement or omission) between the summary herein and the Plan.

<u>Class</u>	<u>Claim</u>	<u>Status</u>	<u>Voting Right</u>	<u>Estimated Recovery Percentage</u>
	Administrative Claims	Unimpaired	Deemed to Accept	100%
	Professional Fee Claims	Unimpaired	Deemed to Accept	100%
	United States Trustee Fees	Unimpaired	Deemed to Accept	100%
	Priority Claims	Unimpaired	Deemed to Accept	100%
1	Secured Claims	Unimpaired	Deemed to Accept	100%
2	General Unsecured Claims	Impaired	Entitled to Vote	__% to __%
3	Equity Interests	Impaired	Deemed to Reject	0%

**B. Unclassified Claims Against The Debtors**

**1. Administrative Claims**

**(i) Administrative Claims Bar Dates**

(a) Any request for allowance of an Administrative Claim that is subject to the Bar Date Order is required to be filed on or before December 15, 2009 as provided in the Bar

Date Order. Any Administrative Claims subject to the Bar Date Order that are filed after December 15, 2009 are invalid and shall not receive any distribution in this case. Any request for allowance of an Administrative Claim that is not subject to the Bar Date Order, including, without limitation, Professional Fee Claims, and Administrative Claims accruing between December 15, 2009 and the Effective Date, shall be Filed no later than thirty (30) days after the Effective Date (the “Administrative Claims Bar Date”). Any holder of an Administrative Claim who fails to file a timely request for the allowance of an Administrative Claim: (i) shall be forever barred, estopped and enjoined from asserting such Administrative Claim against the Debtors, the Liquidation Trust, or the Liquidation Trust Assets (or filing a request for the allowance thereof); and (ii) such holder shall not be permitted to participate in any distribution under the Plan on account of such Administrative Claim. The Liquidation Trustee, or any other person with standing, shall have thirty (30) days from the Administrative Claims Bar Date to object to any timely filed and served Administrative Claim, unless such date is further extended by the Court. Notwithstanding the foregoing, all fees and charges under 28 U.S.C. §1930 will be paid without the need for the filing of a request or claim.

(b) Except as otherwise set forth in this Plan and the Liquidation Trust Agreement, subject to the provisions of Sections 328, 330(a) and 331 of the Bankruptcy Code, each Holder of an Allowed Administrative Claim, who has not been paid prior to the Effective Date, or on such other day as agreed to by the Liquidation Trustee and such Creditor, shall be paid in Cash, as soon as is practicable after the Effective Date, from the proceeds of the Liquidation Trust Assets.

(ii) Final Fee Application Bar Date

Except as otherwise provided herein, in order to receive a distribution on account of a Professional Fee Claim, a holder of a Professional Fee Claim, at a minimum, must file and serve a final fee application requesting payment of such Professional Fee Claim by the Administrative Claim Bar Date. The Liquidation Trust, or any other person with standing, shall have thirty (30) days from the Administrative Claim Bar Date to object to any timely filed and served Professional Fee Claim, unless such date is further extended by the Court.

(iii) Professional Fee Claims

Subject to the additional provisions of this Plan, as soon as practicable after the later of (a) the date a Professional Fee Claim becomes an Allowed Professional Fee Claim or (b) the Professional Fee Claim becomes otherwise payable, an Allowed Professional Fee Claimholder shall receive, in full satisfaction, settlement, release and discharge of and in exchange for such Professional Fee Claim, (x) Cash equal to the unpaid portion of such Allowed Professional Fee Claim or (y) such other treatment as to which the Debtors and such Claimholder prior to the Effective Date, or the Liquidation Trustee and Claimholder subsequent to the Effective Date, shall have agreed upon in writing.

(iv) U.S. Trustee Fees



All fees payable to the Office of the United States Trustee in accordance with 28 U.S.C. §1930 shall be paid on the Effective Date, or as soon thereafter as may be practicable, and will continue to be paid through the date of entry of a Final Decree.

(v) Priority Claims

Except as otherwise set forth in the Plan and the Liquidation Trust Agreement, each Holder of an Allowed Priority Tax Claim and Other Priority Claim, who has not been paid prior to the Initial Distribution Date in the ordinary course of business or by order of the Bankruptcy Court, shall be paid, in full, in Cash, by the Liquidation Trust, on the later of (i) the Initial Distribution Date, (ii) the last Business Day of the month following the month in which such Claim becomes an Allowed Claim, or (iii) such other date as agreed to by the Liquidation Trustee and such Creditor, or otherwise ordered by the Bankruptcy Court.

C. **Summary of Classification and Treatment of Claims and Equity Interests**

The categories of Claims and Equity Interests listed below classify Claims against and Equity Interests in the Debtor for all purposes, including voting, confirmation and distribution pursuant hereto and pursuant to Sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or Equity Interest shall be deemed classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and shall be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that such Claim or Equity Interest is Allowed in that Class and has not been paid or otherwise satisfied prior to the Effective Date. The Classes of Claims and Equity Interests in the Debtors are as follows:

<b><u>Class</u></b>	<b><u>Claim</u></b>	<b><u>Status</u></b>	<b><u>Voting Right</u></b>
1	Secured Claims	Unimpaired	Deemed to Accept
2	General Unsecured Claims	Impaired	Entitled to Vote
3	Equity Interests	Impaired	Deemed to Reject

D. **Classification and Treatment of Classified Claims and Equity Interests:**

1. Class 1—Secured Claims

(a) *Classification:* Class 1 comprises the Secured Claims.

(b) *Treatment:* The Plan will not alter any of the legal, equitable and contractual rights of the Holders of Class 1 Claims. Unless otherwise agreed to by the Holder of an Allowed Class 1 Claim and the Liquidation Trustee, each Holder of an Allowed Class 1 Claim shall receive, in full and final satisfaction of such Allowed Class 1 Claim, one of the following treatments, as soon as practicable after the Effective Date in the sole discretion of the Liquidation Trustee:

(i) the return of such Holder’s collateral;

(ii) the payment in cash equal to the amount of such Allowed Secured Claim; or

(iii) treatment in any other manner so as to render the Allowed Class 1 Claim otherwise Unimpaired.

(c) *Voting:* Class 1 is Unimpaired and the Holders of Class 1 Claims are conclusively deemed to have accepted the Plan pursuant to Section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Claims in Class 1 are not entitled to vote to accept or reject the Plan.

## 2. Class 2—General Unsecured Claims

(a) *Classification:* Class 2 comprises the General Unsecured Non-Priority Claims against the Debtors.

(b) *Treatment:* Holders of Allowed Class 2 Claims shall receive, in full and final satisfaction of their Allowed Class 2 Claims, through one or more distributions, their respective Pro Rata share of funds on deposit in the Operating Account maintained by the Liquidation Trust, after (i) the payment of all Allowed Class 1 Claims (ii) the payment of all Allowed Administrative Claims (including, without limitation, all Professional Fee Claims incurred prior to and after the Effective Date); (iii) the payment of all Allowed Priority Tax Claims, (iv) the payment of Allowed Other Priority Claims; (v) creation and funding of the Claims Reserve as provided in Paragraph B of Article VIII of the Plan, and (vi) the payment of post-Confirmation expenses and fees incurred by the Liquidation Trust, or the Liquidation Trustee in the performance of his duties under the Liquidation Trust Agreement. Further, in accordance with the Pentland Settlement described in Section VIII hereof, Pentland, a holder of a Class 2 Claim, has agreed to receive a distribution of no more than \$50,000 on account of the Unsecured Pentland Loans and will defer any additional distributions until holders of other unsecured creditors in Class 2 have been paid in full. The total amount of Class 2 Claims is anticipated to be in the range of \$800,000 to \$1,800,000, without consideration of the Pentland Unsecured Claim that will be settled under the Plan.

(c) *Voting:* Class 2 is Impaired and the Holders of Class 2 Claims are entitled to vote to accept or reject the Plan.

## 3. Class 3—Equity Interests

(a) *Classification:* Class 3 comprises the Equity Interests in the Debtor.

(b) *Treatment:* On the Effective Date, Class 3 Equity Interests will be cancelled and, unless Holders of Allowed Claims in Classes a through 2 are paid in full with interest, where relevant, the Holders thereof will receive no distribution on account of their Equity Interests. If the Holders of Interests are entitled to receive distributions, any such distributions shall be made on a pro rata basis. Upon termination of the Liquidation Trust, the Class 3 Equity Interests will be cancelled.

(c) *Voting*: Class 3 is Impaired and the Holders of Class 3 Equity Interests are conclusively deemed to have rejected the Plan. Holders of Class 3 Equity Interests shall not be entitled to vote to accept or reject the Plan.

### **Acceptance Or Rejection Of The Plan**

#### **A. Voting Classes**

Holders of Claims in each Impaired Class of Claims are entitled to vote as a class to accept or reject the Plan. Therefore, each Holder of an Allowed Class 2 Claim shall be entitled to vote to accept or reject the Plan.

#### **B. Acceptance by Impaired Classes**

An Impaired Class of Claims shall be deemed to have accepted the Plan if (a) the Holders (other than any Holder designated under Section 1126(e) of the Bankruptcy Code) of at least two-thirds in amount of the Allowed Claims actually voting in such Class have voted to accept the Plan and (b) the Holders (other than any Holder designated under Section 1126(e) of the Bankruptcy Code) of more than one-half in number of the Allowed Claims actually voting in such Class have voted to accept the Plan.

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

Class 1 is Unimpaired under the Plan, and, therefore, is presumed to have accepted the Plan pursuant to Section 1126(f) of the Bankruptcy Code.

#### **D. Presumed Rejection of the Plan**

Class 3 is deemed to reject the Plan.

#### **E. Non-Consensual Confirmation**

To the extent that any Impaired Class rejects this Plan or is deemed to have rejected this Plan, the Proponents will request confirmation of this Plan as it may be modified from time to time, under Section 1129(b) of the Bankruptcy Code. The Proponents reserve the right to alter, amend, modify, revoke or withdraw this Plan, including to amend or modify it to satisfy the requirements of Section 1129(b) of the Bankruptcy Code, if necessary.

#### **F. Effective Date**

The Plan may not be consummated, and the Effective Date shall not occur, unless and until the Confirmation Order has been entered by the Bankruptcy Court, and all other actions and documents necessary to implement the Plan shall have been effected or executed, including the Liquidation Trust Agreement.

#### **G. Acceptance of the Plan**

An Impaired Class of Claims shall be deemed to have accepted the Plan if (a) the Holders (other than any Holder designated under Section 1126(e) of the Bankruptcy Code) of at least two-thirds in amount of the Allowed Claims actually voting in such Class have voted to accept the Plan and (b) the Holders (other than any Holder designated under Section 1126(e) of the Bankruptcy Code) of more than one-half in number of the Allowed Claims actually voting in such Class have voted to accept the Plan.

The votes of insiders are not counted in determining whether at least one class of impaired creditors has accepted the Plan for purposes of Section 1129(a)(10) of the Bankruptcy Code. The requirements for Confirmation of the Plan are discussed in Section XVII of this Disclosure Statement.

#### **IV. VOTING PROCEDURES AND REQUIREMENTS**

##### **A. Classes Entitled to Vote Under the Plan**

Only holders of Claims in Class 2 as of the Record Date are authorized to vote on the Plan.

##### **B. Voting Requirements**

**IT IS IMPORTANT THAT HOLDERS OF CLAIMS ENTITLED TO VOTE ON THE PLAN EXERCISE THEIR RIGHT TO VOTE TO ACCEPT OR REJECT THE PLAN.** All known holders of Claims entitled to vote on the Plan have been sent a Ballot together with this Disclosure Statement. Such holders should read the Ballot carefully and follow the instructions contained therein. Please use only the Ballot that accompanies this Disclosure Statement.

As set forth above, BMC will be acting as the Balloting Agent to assist in the transmission of voting materials and the tabulation of votes with respect to the Plan. **FOR YOUR VOTE TO COUNT, YOUR BALLOT MUST BE RECEIVED BY THE BALLOTING AGENT NO LATER THAN 4:00 P.M. EASTERN TIME, ON FEBRUARY 15, 2010.**

Any Ballot executed and received timely but which does not indicate an acceptance or rejection of the Plan will not be counted. If you have any questions concerning voting procedures, if your Ballot is damaged or lost, or if you need an additional copy of the Disclosure Statement, you may contact Alset Owners, LLC, c/o BMC Group Inc., P.O. Box 3020, Chanhassen, MI 55317-3020, Attn: Anne Carter, (888) 909-0100.

A vote may be disregarded if the Bankruptcy Court determines, after notice and a hearing, that such acceptance or rejection was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code.

#### **V. DESCRIPTION OF THE DEBTORS**

##### **A. The Debtors And Debtors In Possession**

Four separate Debtor entities filed for chapter 11 relief before this Court. Alset Owners, LLC (“**Alset**”) is a holding company for the operating Debtors, Altes, LLC (“**Altes**”) and Setla, LLC (“**Setla**”). Checkers Michigan LLC (“**Checkers Michigan**”) is a subsidiary of Altes.

As of the Petition Date, Altes, a franchisee of the Rally’s restaurant chain, operated several restaurants in various states, while Setla, also a franchisee of the Rally’s restaurant chain, operates several restaurants in Ohio. Checkers Michigan, a franchisee of the Checker’s restaurant chain, operated several restaurants in Michigan but ceased operations at its locations prior to the Petition Date. None of the Debtors are publicly traded companies, nor have they issued any public debt.

**B. Overview Of The Debtors' Business**

Prior to the sale of substantially all of their assets, the Debtors were the largest franchisee of Checkers Drive-In Restaurants, Inc. (the “**Franchisor**”), the national franchisor of the Rally’s and Checkers’ restaurant chains. Specifically, Debtors Altes and Setla operated Rally’s restaurants in Arkansas, Missouri, Illinois, and Ohio. Checkers Michigan operated Checkers restaurants in Michigan but ceased operations there as of the Petition Date. Each of the Debtors’ franchise locations was governed by the franchise agreements (the “**Franchise Agreements**”) entered into between the Debtors and the Franchisor requiring, among other things, the Debtors to pay monthly royalties to the Franchisor.

Altes began operating on June 28, 2000 by purchasing 52 Rally’s restaurant locations in Missouri, Illinois, Arkansas, and Virginia directly from the Franchisor. Six additional stores were opened by Altes from 2002 through 2006. Setla was formed approximately fifteen months later on October 15, 2001, when the owners of Altes decided to expand to the Ohio market. Setla acquired 64 Rally’s locations from Snapp’s Restaurants in October 2001. Three additional locations were opened by Setla from 2004 through 2006. Finally, in 2005, Checkers Michigan was formed to operate several stores in Michigan, a new market for the Debtor group. Initially, one Michigan restaurant with the Checkers brand was opened in December 2005, and later five additional Checkers restaurants were opened in 2006 and early 2007.

As a result of these various acquisitions and store openings, at their peak, in 2007, the Debtors collectively operated approximately 120 restaurants with the Rally’s or Checkers brand in six states, and had over 2,500 employees.

The food service industry is highly competitive, with competitors varying in size from very small companies with limited resources to very large companies with significant financial, marketing, and product development resources. The competitive atmosphere, as well as the rise in food and labor costs, among other things, led the Debtors to restructure their operations starting in late 2007. As of the Petition Date, the Debtors operated 77 restaurants, down from their peak of about 120 restaurants in 2007.

**C. Debt Structure**

As previously described, Altes began operating in June 2000 to operate approximately 52 Rally’s stores. The stores were purchased directly from the Franchisor for approximately \$17.2

million. In October 2001, Setla entered into a transaction to purchase 64 stores from Snapp's Restaurants for approximately \$5.6 million. The transactions were funded as follows:

In connection with the June 2000 transaction involving Altes, Altes borrowed funds from Textron Financial Corporation ("**Textron**") in the form of secured loans of \$15,200,000 (the "**Textron Loans**"). As security, Textron was granted a lien on certain of the Debtors' equipment at approximately fifty restaurants and certain leasehold interests (the "**Textron Collateral**"), and a mortgage on nine real estate properties owned by Altes. The mortgage on the nine real estate properties was satisfied when Altes subsequently entered into sale and leaseback transactions concerning the nine real estate properties. Approximately \$6 million from such transactions was paid to Textron in satisfaction of its mortgage. As of the Petition Date, approximately \$1.5 million in principal was due to Textron on account of the Textron Loans. During the Chapter 11 cases, as will be explained more fully below, the Debtors sold the Textron Collateral to the Buyer for \$500,000 pursuant to a stipulation approved by the Court. Textron waived its claims against the Debtors' estates in connection with the stipulation.

In connection with the June 2000 transaction involving Altes, Altes also received \$2,375,000 from Pentland USA, Inc. ("**Pentland**") in exchange for promissory notes in favor of Pentland (the "**Pentland-Altes Notes**"). In connection with the October 2001 transaction involving Setla, Setla received \$2,484,585 from Pentland in exchange for promissory notes in favor of Pentland (the "**Pentland-Setla Notes**").

After the transactions involving Altes and Setla were consummated, Pentland extended additional loans to Altes and Setla at various times in the total amount of approximately \$2 million (the "**Pentland Operating Loans**", together with the Pentland-Altes Notes, and the Pentland-Setla Notes, the "**Unsecured Pentland Loans**"). Pentland has filed an unsecured claim asserting that \$5,153,365.46, including interest (the "**Pentland Unsecured Claim**") remained outstanding on the Unsecured Pentland Loans on the Petition Date, which amounts are not secured by any assets of the Debtors, except for the pledge of the membership interests of Alset. See Section VIII for a description of the Debtors' settlement with Pentland.

#### D. Events Leading To Bankruptcy

The Debtors began exploring strategic alternatives for addressing their financial and operational challenges prior to the Petition Date as they were no longer able to operate at margins sufficient to cover expenses at many of their restaurants and struggled with liquidity and working capital demands. The Debtors embarked on a plan to evaluate the companies on a store by store basis and began to close down non-performing locations.

Commencing approximately four months prior to the Petition Date, the Debtors also explored several financing options with various lenders. However, in light of the Debtors' poor EBITDA numbers, none of the prospective lenders issued a commitment for financing.

In light of the continuing slowness in the economy together with increased costs, senior management realized that the Debtors could not sustain operations as a going concern without a substantial infusion of cash or a sale of the enterprise. Having exhausted efforts to raise money and obtain additional investors, the Debtors determined to enter into serious discussions with the

Franchisor and negotiated a sale of the assets as a going concern to preserve jobs, provide a source of recovery for creditors, and maintain the well-established reputation of the brands in the market place.

While sale discussions ensued, the parties entered into a Management Agreement dated March 5, 2009, which allowed the Franchisor to assist the Debtors in managing and stabilizing their operations. Ultimately, after several months of discussions and due diligence by the Franchisor, on June 5, 2009, the Debtors and an affiliate of the Franchisor executed an Asset Purchase Agreement pursuant to which the affiliate of the Franchisor was to purchase substantially all of the Debtors' remaining stores in exchange for cash consideration and the assumption of various liabilities, including under the Franchise Agreement and various leases.

**E. The Sale of the Debtor's Assets Pursuant to Section 363 of the Bankruptcy Code**

On June 19, 2009, the Debtors filed the Motion For Entry Of Orders Under 11 U.S.C. §§ 105(a), 363, And 365 And Federal Rules Of Bankruptcy Procedure 2002, 6004, 6006 And 9014 (I) (A) Approving Bidding And Auction Procedures, And Bidding Incentives For The Stalking Horse Bidder; (B) Approving Notice Procedures For The Solicitation Of Bids, An Auction, And The Assumption And Assignment Of Executory Contracts And Unexpired Leases; And (C) Scheduling An Auction And Sale Hearing For The Sale Of Substantially All Of Debtors' Assets; (II) Approving The Sale Of Substantially All Of The Debtors' Assets And Approving The Assumption And Assignment Of Executory Contracts And Unexpired Leases; And (III) Granting Related Relief (the "**Sale Motion**").

On July 7, 2009, the Court entered an order approving the Bidding Procedures Motion and scheduled an auction for August 24, 2009. The hearing to consider the Sale Motion was scheduled for August 26, 2009.

Praetorian Group, the Debtors sales advisor, marketed the Debtors' assets for sale to prospective purchasers. However, no qualified competing bids were received by the Debtors by the bid deadline and therefore no auction was held. The Committee filed an objection to the sale and after discussions between the Debtors, the Committee, and the Buyer, the Buyer agreed to provide additional consideration to the Debtors' estates. On August 31, 2009, the Court entered an order authorizing the sale of assets to Buyer pursuant to the terms of the Asset Purchase Agreement. The sale closed on August 31, 2009, under the following terms: (a) Buyer paid \$1.8 million of Cash Consideration to the Debtors, and (b) certain of the Debtors' real property leases and executory contracts were assigned to Buyer, with Buyer assuming all liabilities, including cure costs, with respect to assumed real property leases and executory contracts. Shortly prior to the closing, a dispute arose concerning whether the Buyer or the Debtors were liable for certain taxes aggregating approximately \$185,000 relating to real property leases that were assumed and assigned to the Buyer. Such monies are presently in an escrow account, pending a resolution or litigation.

The Debtors sold the Textron Collateral to the Buyer for \$500,000 in full and final satisfaction of the Textron Loans. In addition, Textron agreed to waive their claims against the Debtors' estates. The purchase of the Textron Collateral was accomplished by a Stipulation between the parties which was approved on August 27, 2009. Similarly, the Debtors sold certain

equipment of Leaf Funding to the Buyer pursuant to a letter agreement approved by the Sale Order.

On September 11, 2009, the Debtors filed a motion to reject those contracts and leases which were not assumed and assigned to Buyer pursuant to the Sale Motion. On September 29, 2009, the Court entered an order approving the Rejection Motion. By these motions to reject, all executory contracts and real property leases not assumed and assigned to Buyer pursuant to the sale were rejected.

## VI. THE CHAPTER 11 CASES

### A. Summary of First-Day Motions

The Debtors filed their voluntary petitions commencing the Chapter 11 Cases on June 5, 2009 (the “**Petition Date**”). Simultaneously with their petitions, the Debtors filed various “first day motions” seeking authority to, among other things: (i) consolidate the Debtors’ cases for joint administration purposes; (ii) pay certain pre-petition employee wages and benefits and honor other employee obligations in the ordinary course of the Debtors’ business; (iii) pay pre-petition sales and use tax obligations up to certain limits; (iv) continue the use of their existing cash management system; (v) establish procedures for determining adequate assurance requests from utility companies; and (vi) pay in their discretion, certain critical vendors. A brief description of each motion follows:

#### 1. **Employee Wages, Benefits and Other Obligations**

On the Petition Date, the Debtors filed a motion (the “**Employee Obligations Motion**”) seeking authority to pay: (a) certain prepetition claims of current employees, including, but not limited to, claims for wages, salaries, commissions, vacation, sick leave, and unpaid reimbursable expenses subject to the limits of the \$10,950 statutory cap set forth in 11 U.S.C. § 507(a)(4) for each employee and (b) prepetition federal and state withholding obligations. The Debtors also sought an order directing all banks to honor the Debtors’ prepetition checks or electronic transfers for payment of any of the foregoing, and prohibiting banks from placing any holds on, or attempting to reverse, any automatic transfers on account of the foregoing.

As of the Petition Date, the Debtors’ aggregate workforce consisted of 1,712 employees. Of these employees, approximately 112 were full time salaried employees and the remaining were full time and part time hourly employees. The Court entered an order approving the Employee Wage Motion on June 9, 2009 which allowed payment of all Employee Obligations covered by the Employee Obligations Motion.

#### 2. **Sales and Use Tax Obligations**

On the Petition Date, the Debtor filed a motion (the “**Tax Motion**”) seeking authority to pay prepetition sales and use, and other trust fund taxes in the ordinary course of business and authorizing banks and financial institutions to honor and process checks and transfers related to such payments. The Debtor estimated that the aggregate prepetition sales taxes unpaid as of the Petition Date was approximately \$275,000. The Court entered an order approving the Tax



Motion on June 9, 2009 thereby authorizing the payment of all tax obligations referred to in the Tax Motion.

### 3. Existing Cash Management System

On the Petition Date, the Debtor filed a motion (the “**Cash Management Motion**”) seeking authority to (a) continue using its (i) existing bank accounts, (ii) business forms and (iii) cash management system and (b) waiving investment guidelines under Section 345 of the Bankruptcy Code. Prior to the Petition Date, in the ordinary course of its business, each Debtor maintained several bank accounts for its respective operations. The Court entered an order approving the Cash Management Motion on June 9, 2009.

### 4. Adequate Assurance to Utility Providers

On the Petition Date, the Debtor filed a motion (the “**Utility Motion**”) seeking entry of an order (i) prohibiting their utility providers from altering, refusing or discontinuing services on account of prepetition amounts outstanding or on account of any perceived inadequacy of the Debtor’s proposed adequate assurance; (ii) deeming the utility providers adequately assured of future performance, and (iii) establishing procedures for resolving requests for additional adequate assurance of future payment to the utility providers. As adequate assurance, the Debtors proposed a deposit equal to two weeks usage.

In the ordinary course of business, the Debtors regularly incurred utility expenses for water, electricity, gas, telephone service and internet service. The Debtors’ aggregate average monthly cost for utility services was approximately \$210,000. On June 9, 2009, and July 7, 2009, the Court entered interim and final orders, respectively, approving the Utility Motion.

### 5. Critical Vendors

On the Petition Date, the Debtors filed a motion (the “**Critical Vendor Motion**”) seeking entry of an order (i) authorizing the Debtors to pay, in their discretion, certain prepetition claims of Critical Vendors (as defined in the Critical Vendor Motion), and (ii) authorizing banks and other financial institutions to receive, process, honor, and pay any and all checks and transfer requests evidencing amounts paid by the Debtors under the Motion. The Critical Vendor Motion authorized the payment in the amount of \$1.05 million to certain Critical Vendors who provided essential goods and services to the Debtors who were not easily replaceable. On June 9, 2009, the Court entered an order approving the Critical Vendor Motion.

### 6. Rejection of Real Property Leases

On the Petition Date, the Debtors filed a motion (the “**Lease Rejection Motion**”) seeking to reject certain non-residential real property leases for 27 store locations which had closed as of the Petition Date. On July 28, 2009, the Court entered an order approving the Lease Rejection Motion as it pertained to all non-objecting landlords, effective as of the Petition Date. On September 29, 2009, the Court entered a second order authorizing the rejection of leases of the landlords that had filed objections or who had submitted informal responses to the Lease Rejection Motion.

## 7. **Retention of the Debtors' Professionals**

Prior to the commencement of these Chapter 11 Cases, the Debtors retained the law firm Blank Rome LLP ("**Blank Rome**") as bankruptcy counsel for the purpose of advising the Debtors during these Chapter 11 Cases. The Debtors' application to approve the retention of Blank Rome was approved on July 7, 2009, *nunc pro tunc* to June 5, 2009. The Debtors have also retained BMC Group Inc. ("**BMC**") as the claims, balloting and noticing agent. The Court entered an order approving the retention of BMC on June 9, 2009, effective as of June 5, 2009. Also, by orders entered on July 22, 2009 and July 7, 2009 respectively, the Debtors retained CRG Partners Group LLC as their Financial Advisors and Franchise Resale Consultants, LLC d/b/a Praetorian Group as their Sales Advisors.

### B. **The Official Committee of Unsecured Creditors**

On June 24, 2009, the United States Trustee appointed an Official Committee of Unsecured Creditors (the "**Committee**") in these Chapter 11 Cases. The Committee consisted of three (3) members: Musky Checkers LLC, John J. Charleston Trust of 1998, and Marian Patricia Sellers Trust. The Committee retained Klehr Harrison Harvey Branzburg & Ellers, LLP ("**Klehr Harrison**") as counsel, and the Court entered an order approving the retention of Klehr Harrison on July 29, 2009. The Committee also retained Executive Sounding Board Associates Inc. ("**ESBA**") as its financial advisor and the Court entered an order approving the retention of ESBA on August 26, 2009.

### C. **The Bar Date Order**

On September 29, 2009, the Bankruptcy Court entered the Bar Date Order. Pursuant to the Bar Date Order, (i) all proofs of claim not otherwise excluded by the Bar Date Order are required to be filed on or before December 15, 2009; (ii) all proofs of claims filed by governmental units are required to be filed by December 15, 2009; and (iii) all requests for payment of administrative expenses based upon Bankruptcy Code section 503(b)(9) are required to be filed by December 15, 2009. Any request for allowance of an Administrative Claim that is not subject to the Bar Date Order, including, without limitation, Professional Fee Claims and Administrative Claims accruing between December 15, 2009 and the Effective Date, shall be filed no later than thirty (30) days after the Effective Date.

### D. **The Debtors' Exclusive Right to File a Plan of Reorganization**

Pursuant to Section 1121 of the Bankruptcy Code, the Debtors had an exclusive right to file a plan of reorganization for 120 days from the Petition Date, or until October 3, 2009. In light of the extensive efforts expended by the Debtors and their professionals in stabilizing the Debtors' operations and facilitating a sale of their operations and assets to the Franchisor, the Debtors requested additional time to formulate a plan. As such, on October 2, 2009, the Debtors filed a motion seeking an extension of the Debtors' exclusive rights to file and solicit acceptances of the plan. The exclusive period for filing a plan was further extended by Court order dated October 28, 2009 until December 2, 2009. In addition, the exclusive period for solicitation of a plan was extended through January 31, 2010.

## VII. **DESCRIPTION OF THE PLAN**

THE DESCRIPTION OF THE PLAN SET FORTH HEREIN IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE FULL TEXT OF THE PLAN. IN THE EVENT OF ANY INCONSISTENCY BETWEEN THE PROVISIONS OF THE PLAN AND THE DESCRIPTION CONTAINED HEREIN, AND REGARDLESS OF WHETHER ANY SUCH INCONSISTENCY IS A STATEMENT OR OMISSION, THE TERMS OF THE PLAN WILL GOVERN. ALL CAPITALIZED TERMS USED HEREIN HAVE THE MEANINGS ASCRIBED TO THEM IN THE PLAN.

### **Means For The Implementation Of The Plan**

#### **A. Liquidation of Debtors' Assets**

The Debtors previously determined, in the discharge of their statutory duties under the Bankruptcy Code, that it was in the best interests of the Debtors, Creditors and Equity Interests that the Debtors' business and substantially all of their assets be liquidated in an orderly fashion, with the net proceeds of such disposition being distributed in accordance with the Bankruptcy Code, prior Orders of the Court and the terms and provisions of this Plan. Accordingly, the Debtors, with Court approval documented by the Sale Order, sold substantially all of their assets, and assumed and assigned or rejected substantially all of their unexpired leases, licenses and other executory contracts pursuant to the terms of the Asset Purchase Agreement. As of the Effective Date, it is anticipated that only a few assets will remain that have not been converted to Cash, including (i) the Causes of Action, (ii) all rights of setoff and recoupment and other defenses that the Debtors and the Estate may have with respect to Allowed Claims, (iii) all of the Debtors' rights under contracts that were not assigned to Buyer pursuant to the Asset Purchase Agreement and the Sale Order or rejected by prior order of the Court, (iv) any and all assets of the Debtors not transferred to the Buyer including but not limited to the Excluded Assets (as defined in the Asset Purchase Agreement), (v) all rights to claims, refunds or adjustments, all other refunds or adjustments with respect to assets not sold to the Buyer pursuant to the Asset Purchase Agreement and Sale Order, (vi) all losses, loss carry forwards and rights to receive refunds, credit and loss carry forwards with respect to any and all taxes of the Debtors, including interest receivable with respect thereto, (vii) all rights of the Debtors arising under the Asset Purchase Agreement and under any other agreement between the Debtors and Buyer entered into in connection with the Asset Purchase Agreement, (viii) all rights of the Debtors under their insurance policies, including, without limitation, to insurance proceeds or other insurance recoveries to the extent they do not relate to damaged goods that have not been fully repaired or replaced, (ix) all of the Debtors' rights to utility deposits paid after the commencement of these Chapter 11 Cases, and (x) only to the extent subject to capitalized leases and similar instruments not constituting contracts assigned to the Buyer, the Debtors' owned equipment, security devices, furniture, fixtures, tools and other personal property and assets that were not transferred to the Buyer. As of the Effective Date, these assets, along with any other Liquidation Trust Assets, shall be transferred to the Liquidation Trust.

As soon as practicable after the Liquidation Trustee has liquidated all of the Liquidation Trust Assets and completed all distributions provided in the Plan, but no later than the 5<sup>th</sup> anniversary of the Effective Date, the Liquidation Trustee will effectuate the dissolution of the Liquidation Trust.

**B. Substantive Consolidation**

Solely in connection with voting and distributions to be made to the holders of Allowed Claims, the Plan is predicated upon, and it is a condition precedent to Confirmation of the Plan, that the Bankruptcy Court enter the Confirmation Order which shall provide for the substantive consolidation of the Chapter 11 Cases into a single case for purposes of this Plan and distributions hereunder. Pursuant to such Confirmation Order (i) all assets and liabilities of the Debtors will be deemed to be merged solely for purposes of this Plan and distributions to be made hereunder, (ii) the obligations of each Debtor will be deemed to be obligations of all Debtors solely for purposes of this Plan and distributions hereunder, (iii) any Claims Filed or to be Filed in connection with any such obligations will be deemed Claims against all Debtors, as substantively consolidated, (iv) all transfers, disbursements and distributions made by any Debtor will be deemed to be made by all of the Debtors, (v) any Debtor's guarantees of the obligations of another Debtor shall be deemed eliminated so that any Claim against a Debtor and any guarantee thereof executed by another Debtor shall be deemed to be one obligation of all Debtors; and (vi) intercompany claims between the Debtors will be eliminated. Holders of Allowed Claims in each Class shall be entitled to their share of assets available for distribution of such Class without regard to which Debtor was originally liable for such Claim. The Plan shall serve as, and shall be deemed to be, a motion for entry of an order substantively consolidating the Chapter 11 Cases. If any such objection(s) is timely Filed and served, a hearing with respect to the substantive consolidation of the Estates and the objections thereto shall be scheduled by the Bankruptcy Court, which hearing shall coincide with the Confirmation Hearing.

**C. Formation of Liquidation Trust**

On or before the Effective Date, the Debtors and the Liquidation Trustee shall execute the Liquidation Trust Agreement and shall take all other steps necessary to establish the Liquidation Trust in accordance with this Plan, thereby allowing the Liquidation Trust to stand in the shoes of the Debtors with respect to all of the Debtors' rights and interest. Notwithstanding any prohibition of assignability under applicable non-bankruptcy law, on the Effective Date and periodically thereafter if additional Liquidation Trust Assets become available, the Debtors shall be deemed to have automatically transferred to the Liquidation Trust all of their right, title, and interest in and to all of the Liquidation Trust Assets, and in accordance with Section 1141 of the Bankruptcy Code, all such assets shall automatically vest in the Liquidation Trust free and clear of all Claims and Liens, subject only to the Allowed Claims of the Beneficiaries and the Allowed Equity Interests of Holders as set forth in the Plan and the expenses of the Liquidation Trust as provided in the Liquidation Trust Agreement.

The Liquidation Trustee shall succeed to the rights of the Debtors under the Asset Purchase Agreement in all respects, including the retrieval of copies of all necessary books and records purchased by the Buyer under the Asset Purchase Agreement, to the extent necessary to administer the Chapter 11 Cases and implement the Plan.

Except as otherwise provided in the Plan or the Liquidation Trust Agreement, the Liquidation Trustee may compromise or settle any Claims, without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules and may pay the charges that it incurs on or after the Effective Date for professionals' fees,

disbursements, expenses or related support services (including fees relating to the preparation of Professional fee applications) without application to the Bankruptcy Court.

To effectively investigate, defend or pursue the Causes of Action, the Debtors and the Liquidation Trust, and all counsel thereto, must be able to exchange information with each other on a confidential basis and cooperate in common interest efforts without waiving any applicable privilege. Given the common interests of the parties and the Liquidation Trust's position as successor to the Causes of Action, sharing such information between the Debtors, and the Liquidation Trust or their counsel shall not waive or limit any applicable privilege or exemption from disclosure or discovery related to such information.

**D. Treatment of Liquidation Trust for Federal Income Tax Purposes; No Successor-in-Interest**

The Liquidation Trust shall be established for the primary purpose of liquidating its assets, in accordance with Treas. Reg. § 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidation Trust. Accordingly, the Liquidation Trustee shall, in an expeditious but orderly manner, liquidate and convert to Cash the Liquidation Trust Assets, make timely distributions to the Beneficiaries and not unduly prolong its duration. The Liquidation Trust shall not be deemed a successor-in-interest of the Debtors for any purpose other than as specifically set forth herein or in the Liquidation Trust Agreement.

The Liquidation Trust is intended to qualify as a "grantor trust" for federal income tax purposes with the Beneficiaries treated as grantors and owners of the Liquidation Trust. For all federal income tax purposes, all parties (including, without limitation, the Debtors, the Liquidation Trustee, and the Beneficiaries) shall treat the transfer of the Liquidation Trust Assets by the Debtors to the Liquidation Trust, as set forth in the Liquidation Trust Agreement, as a transfer of such assets by the Debtors to the Holders of Allowed Claims of Beneficiaries entitled to distributions from the Liquidation Trust Assets, followed by a transfer by such Holders to the Liquidation Trust. Thus, the Beneficiaries shall be treated as the grantors and owners of a grantor trust for federal income tax purposes.

The right and power of the Liquidation Trustee to invest the Liquidation Trust Assets transferred to the Liquidation Trust, the proceeds thereof, or any income earned by the Liquidation Trust, shall be limited to the right and power to (i) invest such Liquidation Trust Assets (pending distributions in accordance with the Plan) in (a) short-term direct obligations of, or obligations guaranteed by, the United States of America, (b) short-term obligations of any agency or corporation which is or may hereafter be created by or pursuant to an act of the Congress of the United States as an agency or instrumentality thereof or (c) such other investments as the Bankruptcy Court may approve from time to time, including under § 345 of the Bankruptcy Code; or (ii) deposit such assets in demand deposits or certificates of deposit at any bank or trust company, which has, at the time of the deposit, a capital stock and surplus aggregating at least \$1,000,000,000 (collectively, the "**Permissible Investments**"); *provided, however*, that the scope of any such Permissible Investments shall be limited to include only those investments that a liquidating trust, within the meaning of Treas. Reg. § 301.7701-4(d),

may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings, other IRS pronouncements or otherwise.

Subject to the provisions of this Plan, the Liquidation Trustee shall distribute to the Beneficiaries all net cash income plus all net cash proceeds from the liquidation of the Liquidation Trust Assets (including as Cash for this purpose, all cash equivalents) at such time intervals as decided by the Liquidation Trustee in its discretion, pursuant to the terms of the Plan. The Liquidation Trustee may, in its sole discretion, cause the Liquidation Trust to retain an amount of net cash proceeds or net cash income reasonably necessary to maintain the value of its assets or to meet Claims and contingent liabilities (including Disputed Claims).

The Liquidation Trustee shall require any Beneficiary or other distributee to furnish to the Liquidation Trustee in writing his or its Employer or Taxpayer Identification Number as assigned by the Internal Revenue Service and the Liquidation Trustee may condition any distribution to any Beneficiary or other distributee upon receipt of such identification number.

E. **Appointment of the Liquidation Trustee**

The Trustee for the Liquidation Trust shall be designated by the Committee. The Committee shall designate the Liquidation Trustee five days prior to the Confirmation Hearing.

On the Effective Date, the Liquidation Trustee shall serve as trustee of the Liquidation Trust, and shall have all powers, rights and duties of a trustee. Among other things, the Liquidation Trustee shall (i) hold and administer the Liquidation Trust Assets, (ii) have the power and authority to retain, as an expense of the Liquidation Trust, attorneys, advisors, other professionals and employees as may be appropriate to perform the duties required of the Liquidation Trustee hereunder or in the Liquidation Trust Agreement, (iii) make distributions to the Beneficiaries as provided in the Liquidation Trust Agreement, (iv) have the right to receive reasonable compensation for performing services as Liquidation Trustee and to pay the reasonable fees, costs and expenses of any counsel, professionals, advisors or employees as may be necessary to assist the Liquidation Trustee in performing the duties and responsibilities required under the Plan and the Liquidation Trust Agreement, and (v) provide periodic reports and updates to the Adversary Board regarding the status of the administration of the Liquidation Trust. In the event the Liquidation Trustee is no longer willing or able to serve as trustee, or is otherwise removed pursuant to the terms of the Liquidation Trust Agreement, then the successor shall be appointed by a majority vote of the members of the Creditors Committee as of the Effective Date, or as otherwise determined by the Bankruptcy Court or the Liquidation Trust Agreement, and notice of the appointment of such Liquidation Trustee shall be filed with the Bankruptcy Court.

F. **Appointment of the Advisory Board**

No later than the Effective Date, the Committee may select up to three persons to serve as an Advisory Board to the Trustee (the “**Advisory Board**”). The Advisory Board shall have general oversight powers over the Liquidation Trustee and the Liquidation Trust. Each member of the Advisory Board will serve until death, resignation, or removal pursuant to the Liquidation Trust or applicable law.

G. **Retention of Professionals and Other Persons**

The Liquidation Trustee shall be authorized to retain and pay professionals and such other Persons the Liquidation Trustee determines in his sole discretion to be necessary to carry out his duties and responsibilities, or otherwise to accomplish the purposes of the Plan, the Confirmation Order and the Liquidation Trust Agreement, provided however, that the retention of legal counsel to pursue Causes of Action shall be compensated in the discretion of the Liquidation Trustee. The Liquidation Trustee shall have the right to pay the professionals from the Liquidation Trust Assets without further order of the Bankruptcy Court.

H. **Liquidation Trustee Standard of Care; Exculpation**

*Neither the Liquidation Trustee, nor any director, officer, affiliate, employee, employer, professional, attorney, agent or representative of the Liquidation Trust shall be personally liable, in connection with affairs of the Liquidation Trust, to any claimholder or Beneficiary of the Liquidation Trust, or any other Person, except for such acts or omissions which shall constitute willful misconduct or gross negligence. The Liquidation Trustee is entitled to rely upon and shall have no liability in relying upon the advice of professionals retained by the Liquidation Trust. Any Person asserting a claim against the Liquidation Trust for the expenses of the Liquidation Trust, shall look only to the Liquidation Trust Assets to satisfy any such expense incurred by the Liquidation Trust, the Liquidation Trustee, or other Persons employed or retained by the Liquidation Trust to carry out the terms of the Plan, the Confirmation Order, and the Liquidation Trust Agreement.*

I. **Termination of the Liquidation Trust**

The Liquidation Trust will terminate as soon as practicable, but in no event later than the fifth (5<sup>th</sup>) anniversary of the Effective Date; *provided, however*, that, on or prior to the date of such termination, the Bankruptcy Court, upon motion by a party in interest, may extend the term of the Liquidation Trust for a finite period, if such an extension is necessary to liquidate the Liquidation Trust Assets or for other good cause. Notwithstanding the foregoing, multiple extensions may be obtained so long as Bankruptcy Court approval is requested prior to the expiration of each extended term; *provided, however*, that the Liquidation Trustee determines that any further extension would not adversely affect the status of the Liquidation Trust as a grantor trust for federal income tax purposes.

The Liquidation Trustee and the Liquidation Trust shall be discharged or dissolved, as the case may be, at such time as (a) all Disputed Claims have been resolved, (b) all Liquidation Trust Assets have been liquidated, and (c) all distributions required to be made and all claims and fees required to be paid by the Liquidation Trustee under the Plan have been made.

J. **Termination of Liquidation Trustee and Advisory Board**

The duties, responsibilities and powers of the Liquidation Trustee, and the Advisory Board shall terminate in accordance with the terms of the Liquidation Trust Agreement.

K. **Indemnification**

*With respect to the Liquidation Trustee, the Trust shall (i) reimburse the Liquidation Trustee for all reasonable expenses incurred by him in connection with the execution and performance of his rights and duties hereunder (including reasonable fees and expenses of counsel and other experts); (ii) indemnify, defend and hold harmless the Liquidation Trustee (in both his individual and trustee capacities) and the officers, directors, employees and agents of the Liquidation Trustee (collectively, including the Liquidation Trustee in its individual capacity, the “Indemnified Persons”) from and against any and all losses, damages, liabilities, claims, actions, suits, costs, expenses, disbursements (including the reasonable fees and expenses of counsel), taxes and penalties of any kind and nature whatsoever, to the extent that such expenses arise out of or are imposed upon or asserted at any time against one or more Indemnified Persons with respect to the performance of this Agreement, the creation, operation, administration or termination of the Liquidation Trust, or the transactions contemplated hereby (collectively, “Indemnified Expenses”); and (iii) advance to each Indemnified Person Indemnified Expenses (including reasonable legal fees) incurred by such Indemnified Person in defending any claim, demand, action, suit or proceeding, prior to the final disposition of such claim, demand, action, suit or proceeding, upon receipt by the Liquidation Trust of a written request therefor and of an undertaking by or on behalf of the Indemnified Person to repay such amount if it shall ultimately be determined that the Indemnified Person is not entitled to be indemnified therefor; provided however, that notwithstanding anything in the Liquidation Trust to the contrary, the Liquidation Trust shall not be required to reimburse the Liquidation Trustee for any expenses, indemnify an Indemnified Person for Indemnified Expenses, or advance any Indemnified Expenses to an Indemnified Person, to the extent any such obligation arose or was the result of the willful misconduct or gross negligence of such Indemnified Person.*

**L. Preservation of Records and Documents**

Pursuant to the Asset Purchase Agreement, Buyer is required to preserve and provide access to the business records of the Debtors covering the period prior to the closing of the Asset Purchase Agreement. Buyer shall preserve and provide access to the business records of the Liquidation Trustee or his agents as required under the Asset Purchase Agreement.

**M. Corporate Action**

Upon the entry of the Confirmation Order by the Bankruptcy Court, all matters provided under the Plan involving the corporate structure of the Debtors shall be deemed authorized and approved without any requirement of further action by the Debtors, the Debtors’ shareholders or the Debtors’ boards of directors. After the Effective Date, the Debtors shall dissolve or otherwise terminate their existence in accordance with applicable law.

**N. Cancellation of Notes, Instruments, Debentures and Equity Securities**

On the Effective Date, except to the extent provided otherwise in the Plan, all notes, instruments, certificates and other documents evidencing Claims and all Equity Interests in the Debtor shall be canceled and deemed terminated.

**O. Effect of Appeals**



Unless the Confirmation Order is stayed pending appeal, at the option of the Debtors, in consultation with the Committee, this Plan may be consummated notwithstanding the pendency of an appeal from the Confirmation Order or the timely service or filing of a motion under Bankruptcy Rule 7052, 8002, 8003, 8015, 9023, or 9024.

### **VIII. SETTLEMENT WITH PENTLAND**

Pentland is a member of Alset Owners and an unsecured creditor in the Debtors' estates. Pentland has filed the Pentland Unsecured Claim asserting unsecured claims against the Debtors in the amount of \$5,153,365.46, including interest. As more fully set forth in a stipulation between the Debtors, the Committee and Pentland, annexed to the Plan as Exhibit 2 thereto (the "**Pentland Settlement**"), in an effort to resolve any issues related to the Pentland Unsecured Claim, the Unsecured Pentland Notes, and Pentland's investment in the Debtors, Pentland will receive \$50,000 on account of the Pentland Unsecured Claim, provided however that Pentland shall receive additional distributions only in the event that holders of other Class 2 Claims are paid in full. The Pentland Settlement will allow other general unsecured creditors in Class 2 to receive a greater distribution in these Chapter 11 Cases.

Pursuant to Bankruptcy Rule 9019 and in consideration for the classification, distribution, releases and other benefits provided under the Plan, the provisions of this Plan shall constitute a good faith compromise and settlement of the Unsecured Pentland Loans and the Pentland Unsecured Claim and all Claims brought, or that could have been brought by Pentland, which shall be deemed settled pursuant to section 1123(b)(3)(A) of the Bankruptcy Code pursuant to the Pentland Settlement. The entry of the Confirmation Order shall constitute the Court's approval of the Pentland Settlement and the Court's findings shall constitute its determination that the Pentland Settlement is in the best interest of the Debtors, the Estates, the creditors and other parties in interest, and is fair, equitable and within the range of reasonableness. As set forth in the Pentland Settlement, upon the Court's entry of the Confirmation Order, subject to achievement of the Effective Date, the Debtors, the Liquidation Trust, the Committee, any holder of any Claim or Interest or any other party in interest shall be permanently enjoined from raising or asserting any claim brought, or that could have been brought against Pentland.

### **IX. EFFECT OF PLAN CONFIRMATION**

#### **A. Binding Effect**

The Plan shall be binding upon and inure to the benefit of the Debtors, all present and former holders of Claims and Interests, and their respective successors and assigns, including, but not limited to, the Liquidation Trust.

#### **B. Releases and Exculpation**

*On the Effective Date, the Debtors, the Committee and, solely in their respective capacities as members or representatives of the Committee, the Committee Members and (ii) each of the respective representatives, officers, directors, members, employees, advisors, accountants, investment bankers, consultants, attorneys and other representatives of the Debtors and Committee, solely in their respective capacities as such (collectively, the "Exculpated Parties"), and only with respect to their activities and conduct in connection with*

*the Chapter 11 Cases, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise, that are based in whole or in part on any act or omission, transaction, event or other occurrence up to the Effective Date, shall have or incur any liability to any Person, and each Exculpated Party is hereby released from, any claim, cause of action or liability to any Person or entity or to any Holder of a Claim or Equity Interest, for any act or omission in connection with or arising out of their participation in the Chapter 11 Cases, including without limitation in the formulation, confirmation, consummation, and/or administration of this Plan or the property to be distributed under this Plan, except if such act or omission is determined in a Final Order to have constituted gross negligence or willful misconduct, and in all respects, each of such Persons shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities and shall be fully protected in acting or in refraining from action in accordance with such advice.*

C. **Injunction Related to Releases/Exculpation**

*The Confirmation Order will permanently enjoin the commencement or prosecution by any entity, whether directly, derivatively or otherwise, of any claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities released pursuant to the Plan.*

D. **Discharge of Claims and Termination of Interests**

Pursuant to section 1141(d)(3) of the Bankruptcy Code, Confirmation will not discharge Claims against the Debtor; provided, however, that a holder of a Claim against the Debtor may not, on account of such Claim, seek or receive payment or other distribution from, or seek recourse against, the Debtor, the Liquidation Trust, or any of their affiliates, respective successors or their respective property, except as expressly provided herein.

E. **Injunction**

*Except as otherwise provided in the Plan, the Confirmation Order shall provide, among other things, that from and after the Confirmation Date, all Persons who have held, hold, or may hold Claims against or Interests in the Debtors are (i) Permanently enjoined from taking any of the following actions against the estate, the Debtor, the Committee (or any of its members), the Liquidation Trust, the Liquidation Trustee, and any of the respective representatives, officers, directors, members, employees, advisors, accountants, investment bankers, consultants, attorneys and other representatives of any of the foregoing Debtor, Committee, Committee Members, Liquidation Trust and Liquidation Trustee, or any of their property on account of any such Claims or Interests and (ii) preliminarily enjoined from taking any of the following actions against the Debtor, the Committee (or any of its members), the Liquidation Trust, the Liquidation Trustee, and any of the respective representatives, officers, directors, members, employees, advisors, accountants, investment bankers, consultants, attorneys and other representatives of the foregoing Debtor, Committee, Committee Members, Liquidation Trust, Liquidation Trustee, or their property on account of such Claims or Interests: (A) commencing or continuing, in any manner or in any place, any action or other proceeding; (B) enforcing, attaching, collecting or recovering in any manner*

*any judgment, award, decree or order; (C) creating, perfecting or enforcing any lien or encumbrance; and (D) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of the Plan; provided, however, that (w) nothing contained herein shall preclude such Persons from exercising their rights pursuant to and consistent with the terms of the Plan, and (x) the preliminary injunction of actions against the Debtor, the Liquidation Trust, the Liquidation Trustee and their property (if any) shall be dissolved and terminate one (1) day following the termination of the Liquidation Trust Agreement in accordance with the terms of such agreement. By voting in favor of the Plan, each holder of an Allowed Claim voting in favor of the Plan will be deemed to have specifically consented to the injunctions set forth in the Plan, to the extent that such consent is necessary. Notwithstanding the foregoing, nothing herein shall be construed to enjoin the Liquidation Trust, and its representatives including the Liquidation Trustee from, among other things, pursuing Causes of Action and provided further that individual creditors are not enjoined from pursuing claims against parties other than the Debtors that are independent of such creditors' Claims against the Debtors. .*

## **X. EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

### **A. Assumption of Executory Contracts and Unexpired Leases**

Pursuant to the Sale Order, certain leases of real property and other executory contracts were assumed and assigned to Buyer. A list of the leases that were assumed and assigned to Buyer is attached to the Sale Order as Exhibit B thereto.

### **B. Rejection of Executory Contracts and Unexpired Leases**

Any executory contracts or unexpired leases that have not expired by their own terms on or prior to the Effective Date, which the Debtors have not assumed and assigned or rejected with the approval of the Bankruptcy Court or that have not been assumed or rejected by Motion and Order prior to Effective Date, shall be deemed rejected by the Debtors on the Effective Date and the entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such rejections pursuant to Sections 365(a) and 1123 of the Bankruptcy Code.

### **C. Rejection Claims; Cure of Defaults**

Except to the extent contrary to the Bar Date Order, if the rejection of an executory contract or unexpired lease results in damages to the other party or parties to such contract or lease, any Claim for such damages, if not heretofore evidenced by a Proof of Claim that has been Filed, shall be forever barred and shall not be enforceable against the Debtors, the Liquidation Trust, or their properties, successors or assigns, unless a Proof of Claim is Filed and served upon (i) the Liquidation Trustee, and (ii) any counsel for the Liquidation Trustee, on or before thirty (30) days after the later to occur of (i) the Effective Date; and (ii) the date of entry of an order by the Bankruptcy Court authorizing rejection of the particular executory contract or unexpired lease.

## **XI. PROVISIONS REGARDING DISTRIBUTIONS**

### **A. Time and Method of Distributions**

Except as otherwise stated in the Plan, the Liquidation Trustee, on behalf of the Liquidation Trust, or such other Entity as may be designated in accordance with the Liquidation Trust Agreement, will make the distributions required under the Plan in accordance with Section 3.5 of the Liquidation Trust Agreement. Whenever any distribution to be made under the Plan or the Liquidation Trust Agreement is due on a day other than a Business Day, such distribution shall be made, without interest, on the immediately succeeding Business Day, but any such distribution will have been deemed to have been made on the date due.

**B. Reserve for Disputed Claims**

The Liquidation Trustee shall maintain a reserve for any distributable amounts required to be set aside on account of Disputed Claims and shall distribute such amounts (net of any expenses, including any taxes relating thereto), as provided herein and in the Liquidation Trust Agreement, as such Disputed Claims are resolved by Final Order, and such amounts shall be distributable in respect of such Disputed Claims as such amounts would have been distributable had the Disputed Claims been Allowed Claims as of the Effective Date.

**C. Manner of Payment under the Plan and Liquidation Trust**

Any payment in Cash to be issued hereunder shall, at the election of the issuer, be made by check drawn on a domestic bank or by wire transfer from a domestic bank.

**D. Delivery of Distributions**

Subject to the provisions of Bankruptcy Rule 2002(g), and except as otherwise provided herein, distributions and deliveries to Holders of record of Allowed Claims shall be made at the address of each such Holder set forth on the Debtor' books and records unless superseded by the address set forth on proofs of claim filed by any such Holders. By no later than the Effective Date, the Debtors and the Buyer shall provide the Liquidation Trustee with the addresses and other books and records relating to the Beneficiaries, including, without limitation, all taxpayer identification information.

**E. Undeliverable Distributions**

1. Holding of Undeliverable Distributions:

If any distribution hereunder to any Holder is returned as undeliverable, no further distributions shall be made to such Holder unless and until the issuer of the distribution is notified in writing of such Holder's then-current address. All Entities ultimately receiving undeliverable Cash shall not be entitled to any interest or other accruals of any kind. Nothing contained in the Plan or Liquidation Trust Agreement shall require the issuer of any distribution to attempt to locate any Holder of an Allowed Claim or an Allowed Interest.

2. Failure to Claim Undeliverable Distributions:

Any holder of an Allowed Claim that does not assert its rights pursuant to the Plan or Liquidation Trust Agreement to receive a distribution within ninety (90) days from and after the date such distribution is returned as undeliverable shall have such holder's Claim for such

undeliverable distribution discharged and shall be forever barred from asserting any such Claim against the Debtor, Liquidation Trust, the Liquidation Trustee and their respective professionals, or the Liquidation Trust Assets. In such case, any consideration held for distribution on account of such Claim or Interest shall belong to the Liquidation Trust for distribution by the Liquidation Trustee to the Beneficiaries in accordance with the terms of the Plan and Liquidation Trust Agreement.

F. **Compliance with Tax Requirements/Allocation**

The issuer of any distribution under the Plan or Liquidation Trust shall comply with all applicable tax withholding and reporting requirements imposed by any Governmental Unit, and all distributions pursuant to the Plan and Liquidation Trust shall be subject to any such applicable withholding and reporting requirements. For tax purposes, distributions received in respect of Allowed Claims will be allocated first to the principal amount of such Claims, with any excess allocated to unpaid accrued interest.

G. **Time Bar to Cash Payments**

Checks issued on account of Allowed Claims shall be null and void if not negotiated within ninety (90) days from and after the date of issuance thereof. Requests for reissuance of any check shall be made directly to the issuer of the check by the holder of the Allowed Claim with respect to which such check originally was issued. Any claim in respect of such a voided check shall be made within ninety (90) days from and after the date of issuance of such check. After such date, all Claims in respect of voided checks shall be discharged and forever barred and the Liquidation Trust shall be entitled to retain all monies related thereto for distribution to the Beneficiaries in accordance with the terms of the Plan and the Liquidation Trust Agreement.

H. **Distributions After Effective Date**

Distributions made after the Effective Date to Holders of Claims that are not Allowed Claims as of the Effective Date, but which later become Allowed Claims, shall be deemed to have been made on the Effective Date. Unless otherwise specifically provided in the Plan or the Liquidation Trust Agreement, no interest shall be payable on account of any Claim not paid on the Effective Date.

I. **Fractional Dollars; De Minimis Distributions**

Notwithstanding anything contained herein to the contrary, payments of fractions of dollars will not be made. Whenever any payment of a fraction of a dollar under the Plan or Liquidation Trust would otherwise be called for, the actual payment made will reflect a rounding of such fraction to the nearest dollar (up or down), with half dollars being rounded down. No payment shall be made on account of any distribution less than Fifty Dollars (\$50) with respect to any Allowed Claim unless a request therefor is made in writing to the issuer of such payment on or before ninety (90) days after the Effective Date.

J. **Setoffs**

The Liquidation Trustee may, pursuant to Sections 502(d) or 553 of the Bankruptcy Code or applicable nonbankruptcy law, set off against any Allowed Claim or Allowed Administrative Claim and the distributions to be made pursuant to the Liquidation Trust Agreement on account thereof (before any distribution is made on account of such Claim), the Claims, rights and Causes of Action of any nature that it may hold against the Holder of such Allowed Claim or Allowed Administrative Claim; provided, however, that neither the failure to effect such a set-off nor the allowance of any Claim hereunder shall constitute a waiver or release of any such claims, rights and Causes of Action that the Liquidation Trust may possess against such Holder.

**K. Preservation of Subordination Rights**

Except as otherwise provided herein or in the Stipulation, all subordination rights and claims relating to the subordination by the Debtors or the Liquidation Trustee of any Allowed Claim shall remain valid, enforceable and unimpaired in accordance with Section 510 of the Bankruptcy Code or otherwise.

**L. Settlement of Claims and Controversies**

Pursuant to Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided under the Plan, the provisions of this Plan shall constitute a good faith compromise and settlement of claims or controversies relating to the contractual, legal and subordination rights that a Holder of a Claim may have with respect to any Allowed Claim, or any distribution to be made on account of any such Allowed Claim.

**XII. PROCEDURES FOR RESOLUTION OF DISPUTED, CONTINGENT AND UNLIQUIDATED CLAIMS OR EQUITY INTERESTS**

**A. Objections to Claims; Prosecution of Disputed Claims**

1. The Debtors or the Committee, prior to the Effective Date, and thereafter the Liquidation Trustee in accordance with the Liquidation Trust Agreement, shall have the right to object to the allowance of Claims or Equity Interests Filed with the Bankruptcy Court with respect to which they dispute liability or allowance in whole or in part. The Liquidation Trustee (within any parameters as may be established by the Liquidation Trust Agreement) shall have the authority to file, settle, compromise or withdraw any objections to Claims, without approval of the Bankruptcy Court.

2. Notwithstanding the foregoing, the Liquidation Trustee, on behalf of the Liquidation Trust, shall have the right to object to the allowance of any Administrative Claims, Priority Claims, Class 1 and Class 2 Claims, and any other Claims asserted against the Liquidation Trust or the Liquidation Trust Assets, by no later than the Claims Objection Deadline.

**B. Estimation of Claims**

The Debtors or the Committee, prior to the Effective Date, and thereafter the Liquidation Trustee in accordance with the Liquidation Trust Agreement, may at any time request that the Bankruptcy Court estimate any contingent or unliquidated Claim pursuant to Section 502(c) of

the Bankruptcy Code regardless of whether the Debtors, the Committee or the Liquidation Trustee previously have objected to such Claim or whether the Bankruptcy Court has ruled on any such objection. The Bankruptcy Court will retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including, without limitation, during the pendency of any appeal relating to any such objection. Subject to the provisions of Section 502(j) of the Bankruptcy Code, in the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, the amount so estimated shall constitute the maximum allowed amount of such Claim. If the estimated amount constitutes a maximum limitation on the amount of such Claim, the Debtors, the Committee or the Liquidation Trustee may pursue supplementary proceedings to object to the allowance of such Claim. All of the aforementioned objection, estimation and resolution procedures are intended to be cumulative and not necessarily exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court.

C. **Payments and Distributions on Disputed Claims**

1. Notwithstanding any provision hereof to the contrary, any issuer of a distribution hereunder may, in its discretion, pay the undisputed portion of a Disputed Claim. Notwithstanding the foregoing, the issuer of a distribution hereunder will set aside for each Holder of a Disputed Claim such portion of Cash as may be necessary to provide required distributions if that Claim were an Allowed Claim, either based upon the amount of the Claim as filed with the Bankruptcy Court or the amount of the Claim as estimated by the Bankruptcy Court.

2. At such time as a Disputed Claim becomes, in whole or in part an Allowed Claim, the issuer of a distribution hereunder shall distribute to the Holder thereof the distributions, if any, to which such Holder is then entitled under the Plan or the Liquidation Trust. Such distribution, if any, will be made as soon as practicable after the date that the order or judgment of the Bankruptcy Court allowing such Disputed Claim becomes a Final Order. No interest will be paid on Disputed Claims that later become Allowed or with respect to any distribution in satisfaction thereof to a Holder.

D. **Tort Claims**

All Claims against the Debtors arising after the Petition Date asserting damages for personal injuries or property damage, are Disputed Claims unless and until Allowed by a Final Order. Any other claim asserting damages for personal injuries or property damage shall be determined and liquidated by a court of competent jurisdiction. Nothing contained in the Plan shall be deemed a waiver of any Cause of Action that the Debtors or the Liquidation Trust may hold against any entity, including, without limitation, in connection with or arising out of any tort claim.

**XIII. RETENTION AND PRESERVATION OF CAUSES OF ACTION NOT EXPRESSLY SETTLED OR RELEASED**

1. On the Effective Date, all Causes of Action shall vest in the Liquidation Trust, which shall hold and possess all rights on behalf of the Debtors, the Estates and the Liquidation

Trust and shall have the exclusive right, authority and discretion to commence, prosecute, abandon, settle or compromise any such Cause of Action not otherwise settled or released prior to the Effective Date.

2. The Debtors and the Committee, and, after the Effective Date, the Liquidation Trustee, on behalf of the Liquidation Trust, reserve all rights to pursue any and all Causes of Action. The Debtors hereby reserve the rights of the Liquidation Trust and the Liquidation Trustee, on behalf of the Liquidation Trust, to pursue, administer, settle, litigate, enforce and liquidate:

(a) Any and all actions arising under the Bankruptcy Code, including, without limitation, Sections 544, 545, 547, 548, 549, 550, 551, 553(b) and/or 724(a) of the Bankruptcy Code; and

(b) Any other Causes of Action that currently exist or may subsequently arise and which have not been otherwise set forth herein, because the facts upon which such Causes of Action are based are not currently or fully known by the Debtors (collectively, the “**Unknown Causes of Action**”). The failure to list or describe any such Unknown Cause of Action herein is not intended to limit the rights of the Liquidation Trustee, on behalf of the Liquidation Trust, to pursue any unknown Cause of Action.

3. Unless Causes of Action against a Person or Entity are expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order of the Bankruptcy Court, the Debtors (before the Effective Date) and the Liquidation Trustee, on behalf of the Liquidation Trust (post-Effective Date), expressly reserve all Causes of Action (including the Unknown Causes of Action) for later adjudication and therefore, no preclusion doctrine or other rule of law, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches, shall apply to such Causes of Action upon, after, or as a result of the confirmation or Effective Date of the Plan, or the Confirmation Order. In addition, the Debtors and the Liquidation Trustee, on behalf of the Liquidation Trust, and any successors-in-interest thereto, expressly reserve the right to pursue or adopt any Claims not so waived, relinquished, released, compromised or settled that are alleged in any lawsuit in which any of the Debtors is a defendant or an interested party, against any Person or Entity, including, without limitation, the plaintiffs and co-defendants in such lawsuits.

#### **XIV. CRAM DOWN**

If necessary, the Proponents intend to request the Bankruptcy Court to confirm the Plan in accordance with Section 1129(b) of the Bankruptcy Code.

#### **XV. MISCELLANEOUS PROVISIONS**

##### **A. Dissolution of Committee**

Upon the Effective Date, the Committee shall dissolve, except with respect to any appeal of an order or other pending matter in the Chapter 11 Cases, and any applications for



Professional Fee Claims, and the Committee Members and the Committee's Professionals shall be relieved and discharged of all duties related to the Chapter 11 Cases.

**B. Payment of Statutory Fees**

After the Effective Date, all fees payable pursuant to Section 1930(a) of title 28 of the United States Code, as determined by the Bankruptcy Court at the hearing pursuant to Section 1128 of the Bankruptcy Code, shall be paid for each quarter (including any fraction thereof) until the Chapter 11 Cases are converted, dismissed or closed, whichever occurs first.

**C. Modification of Plan**

Subject to the limitations contained in the Plan:

1. The Plan may be amended or modified in the manner provided for under Code § 1127(a) or (b). The Debtors or the Liquidation Trustee shall give notice of any proposed modification to the Office of the United States Trustee, the Committee, and any other parties designated by the Court. The Debtors and the Liquidation Trustee also reserve the right to make such modifications at any hearings on Confirmation as are necessary to permit this Plan to be confirmed under Code § 1129(b).

2. After the entry of the Confirmation Order, the Debtors or the Liquidation Trustee may, upon order of the Bankruptcy Court, amend or modify the Plan, in accordance with Section 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan.

**XVI. CERTAIN FACTORS TO BE CONSIDERED**

HOLDERS OF CLAIMS AGAINST THE DEBTORS SHOULD READ AND CONSIDER CAREFULLY THE FACTORS SET FORTH BELOW, AS WELL AS OTHER INFORMATION SET FORTH IN THIS DISCLOSURE STATEMENT AND THE DOCUMENTS DELIVERED TOGETHER HERewith AND/OR INCORPORATED BY REFERENCE HEREIN, PRIOR TO VOTING TO ACCEPT OR REJECT THE PLAN.

**A. Certain Bankruptcy Considerations**

Although the Debtors and the Committee believe that the Plan will satisfy all requirements necessary for confirmation by the Bankruptcy Court, there can be no assurance that the Bankruptcy Court will reach the same conclusion. Moreover, there can be no assurance that modifications of the Plan will not be required for confirmation or that such modifications would not necessitate the resolicitation of votes.

**B. Risks Relating to Plan**

Although the Plan provides for a liquidation of the Debtors and the remaining assets of their estates, there are risks associated with the Plan. Holders of Claims should consider that the timing and amount of distributions under the Plan can be affected by (among other things): (i)

the costs and expenses incurred by the Debtors and the Liquidation Trustee and their professionals, agents or employees with respect to implementation of the Plan, including, without limitation, the costs and expenses of making Distributions pursuant to the Plan, and the costs and expenses of complying with applicable tax laws and other reporting requirements; (ii) litigation costs and expenses incurred by or on behalf of the Debtors; and (iii) the success in objecting to Disputed Claims.

## **XVII. CONFIRMATION OF THE PLAN**

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

### **A. Classification**

The Debtors are required under Section 1122 of the Bankruptcy Code to classify the Claims and Equity Interests of the Debtors' Creditors and Interest holders into Classes that contain Claims and Interests that are substantially similar to the other Claims or Equity Interests in such Classes. The Plan can be confirmed so long as there is one consenting Class of Impaired Claims (not including the votes of insiders), and so long as the other requirements for Confirmation that do not involve voting are met.

### **B. Disclosure and Solicitation**

This Disclosure Statement is presented to the holders of Claims in Impaired Classes that receive or retain property pursuant to the Plan to satisfy the requirements of Bankruptcy Code Sections 1125 and 1126. Bankruptcy Code Section 1125 requires that full disclosure be made to all holders of Claims and Equity Interests in Impaired Classes that receive or retain property pursuant to a plan at the time, or before, solicitation of acceptances of such plan is commenced.

### **C. Confirmation Hearing**

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a hearing on confirmation of a plan. As set forth above, by order of the Bankruptcy Court, the Confirmation Hearing has been scheduled for **February 22, 2010, at 10:00 a.m. Eastern Time**, in the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 6th Floor, Wilmington, DE 19801. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement made at the Confirmation Hearing or any adjournment thereof.

Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to confirmation of a plan. Any objection to Confirmation of the Plan must be in writing, conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court, set forth the name of the objecting party, the nature and amount of Claim or interest held or asserted by the objecting party against the Debtors' estates or property, the basis for the objection and the specific grounds therefor, and be filed with the Bankruptcy Court, with a copy to chambers, together with proof of service thereof, and served upon counsel for the Debtors, the Committee and the Office of the U.S. Trustee at the addresses set forth in Section II.F. hereof, so as to be received no later than **4:00 p.m. (Eastern Time), on February 15, 2010**.

Objections to Confirmation of the Plan are governed by Federal Rule of Bankruptcy Procedure 9014. **UNLESS AN OBJECTION TO CONFIRMATION IS TIMELY SERVED AND FILED, IT MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT.**

**D. Requirements for Confirmation of the Plan**

At the Confirmation Hearing, the Bankruptcy Court will confirm the Plan only if all of the requirements of Section 1129 of the Bankruptcy Code are met. Among the requirements for confirmation are that the Plan (a) is accepted by all impaired Classes of Claims and Equity Interests or, if rejected by an impaired Class, that the Plan “does not discriminate unfairly” and is “fair and equitable” as to such Class, (b) is feasible and (c) is in the “best interests” of holders of Claims and Equity Interests impaired under the Plan.

1. Fair and Equitable Test

The Debtors may seek to confirm the Plan notwithstanding the non-acceptance of the Plan by any impaired Class of Claims or Equity Interests entitled to vote on the Plan. To obtain such confirmation, the Debtors must demonstrate to the Bankruptcy Court that the Plan “does not discriminate unfairly” and is “fair and equitable” with respect to each dissenting impaired Class. The Debtors believe that Claims in Class 2 are Impaired under the Plan. A plan does not discriminate unfairly if the legal rights of a dissenting impaired class are treated in a manner consistent with the treatment of other classes whose legal rights are substantially similar to those of the dissenting impaired class and if no class receives more than it is entitled to for its claims or equity interests. The Debtors believe that the Plan satisfies this requirement.

The Bankruptcy Code establishes different “fair and equitable” tests for secured claims, unsecured claims and equity interests, as follows:

(a) Secured Claims

Either (i) each holder of an impaired Secured Claim (a) retains the Liens securing such Claim to the extent of the Allowed amount of such Claim and (b) receives on account of such Claim deferred Cash payments totaling at least the Allowed amount of such Claim with a present value as of the effective date at least equal to the value of such holder’s interest in the estate’s interest in the property securing its Liens; (ii) property subject to the Lien of the impaired creditor is sold free and clear of that Lien, with the Lien attaching to the proceeds of the sale, and the Lien proceeds treated in accordance with clauses (i) or (iii) hereof, or (iii) the impaired secured creditor realizes the “indubitable equivalent” of its Claim under the Plan.

(b) Unsecured Claims

Either (i) each holder of an impaired Unsecured Claim receives or retains under the Plan property of a value equal to the amount of its Allowed Claim or (ii) the holders of Claims and Equity Interests that are junior to the Claims of the dissenting Class will not receive or retain any property under the Plan on account of such junior Claims or Equity Interests.

(c) Equity Interests

Either (i) each Interest holder will receive or retain under the Plan property of a value equal to the greater of (a) the fixed liquidation preference or redemption price, if any, of such Equity Interest or (b) the value of the Equity Interest, or (ii) the holders of Equity Interests that are junior to the dissenting class of Equity Interests will not receive or retain any property under the Plan on account of such junior Interest.

## 2. Feasibility and Best Interests Test

The Bankruptcy Code requires that in order to confirm the Plan, the Bankruptcy Court must find that confirmation of the Plan is not likely to be followed by liquidation or the need for further financial reorganization of the Debtors (the “**Feasibility Test**”), except as otherwise provided for under the Plan. In addition, the Bankruptcy Court must determine that the values of the distributions to be made under the Plan to each Class will equal or exceed the values which would be allocated to such Class in a liquidation under Chapter 7 of the Bankruptcy Code (the “**Best Interest Test**”). The Best Interest Test with respect to each impaired Class requires that each holder of a Claim or Equity Interest in such Class either (i) accept the Plan, or (ii) receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the value such holder would receive or retain if the Debtors were liquidated under Chapter 7 of the Bankruptcy Code.

The Debtors and the Committee believe that the Plan meets the requirements of the Feasibility Test and of the Best Interest Test by providing for the liquidation of all of its assets and the Cash proceeds being distributed in accordance with the priority scheme set forth in the Bankruptcy Code.

## **XVIII. ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN OF LIQUIDATION**

If the Plan is not confirmed and consummated, the alternatives include: (i) preparation and presentation of an alternative plan of liquidation; or (ii) liquidation of the Debtors under Chapter 7 of the Bankruptcy Code.

### **A. Alternative Plans of Liquidation**

The Debtors and the Committee believe that failure to confirm the Plan will inevitably result in additional administrative expenses being incurred which will reduce and delay the likelihood of distributions to holders of General Unsecured Claims. The Debtor and the Committee believe that the Plan, as described herein, fairly adjusts the rights of various Classes of Creditors consistent with the distribution scheme embodied in the Bankruptcy Code and enables Creditors to realize the most possible under the circumstances.

### **B. Liquidation Under Chapter 7**

The Debtors and the Committee believe that a liquidation under Chapter 7 would result in a reduced recovery of funds by the Debtors’ estates because of the additional administrative expenses involved in the appointment of a trustee for the Debtors and the employment of attorneys and other professionals to assist such trustee. Further, the Plan contemplates approval of the Pentland Settlement which will allow beneficiaries holding claims in Class 2 to receive a

greater distribution under the Plan than would otherwise be received under Chapter 7 of the Bankruptcy Code. Accordingly, the Debtors and the Committee believe that if holders of Claims could or would receive anything in a Chapter 7 liquidation, such holders of Claims may be expected to receive smaller distributions pursuant to a Chapter 7 liquidation than under the Plan. See Exhibit D for the Liquidation Analysis.

To determine what holders of Claims and Equity Interests in each impaired Class would receive if the Debtors were liquidated, the Bankruptcy Court must determine what funds could be generated from the liquidation of the Debtors' assets and property in the context of a Chapter 7 liquidation case, which would consist of the proceeds resulting from the disposition of the unencumbered assets of the Debtors, augmented by the Cash held by the Debtor at the time of the commencement of the liquidation case. Such Cash amounts would be reduced by post-petition Chapter 11 administrative costs, and costs incurred by the Chapter 7 trustee and any professional retained by the Chapter 7 trustee. To determine if the Plan is in the best interest of each impaired Class, the present value of the distributions from the proceeds of the liquidation of the Debtors' assets and property (after subtracting the amounts attributable to the aforesaid Claims) are then compared with the present value offered to such Classes of Claims under the Plan.

In applying the Best Interest Test, the Claims in the Chapter 7 case would be classified according to the same seniority of such Claims as provided in the Plan, in the absence of a contrary determination by the Bankruptcy Court, all pre-Chapter 11 general unsecured creditor Claims that have the same rights upon liquidation would be treated as one Class for the purposes of determining the potential distribution of the liquidation proceeds resulting from the Chapter 7 case of the Debtors. The distributions from the liquidation proceeds would be calculated ratably according to the amount of the aggregate Claims held by each Creditor. The Debtors believe that the most likely outcome of liquidation proceedings under Chapter 7 would be the application of the rule of absolute priority of distributions. Under that rule, no junior Creditor may receive any distribution until all senior Creditors are paid in full with interest.

The Debtors and the Committee believe that Confirmation of the Plan will provide each Creditor with a greater recovery than it would receive if the Debtors were liquidated under Chapter 7. This determination is based primarily upon the fact that (i) a Chapter 7 liquidation would increase the administrative costs that must be paid prior to the payment of distributions to Creditors, and (ii) Beneficiaries of allowed claims in Class 2 would receive reduced distributions absent the Pentland Settlement.

## **XIX. RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain such jurisdiction over any matter arising under the Bankruptcy Code, or arising in or related to the Chapter 11 Cases or the Plan after Confirmation and after the Effective Date, and any other matter or proceeding that is within the Bankruptcy Court's jurisdiction pursuant to 28 U.S.C. §1334 or 28 U.S.C. §157, including, without limitation, jurisdiction to:

1. Allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Equity Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the allowance or priority of Claims or Equity Interests;
2. Grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan, for periods ending on or before the Effective Date;
3. Resolve any matters related to the assumption, assumption and assignment or rejection of any executory contract and unexpired lease to which any of the Debtors is party or with respect to which any of the Debtors may be liable and to hear, determine and, if necessary, liquidate, any Claims arising therefrom;
4. Ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions hereof;
5. Decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters, including all Causes of Action and objections or estimations to Claims or Equity Interests, and grant or deny any applications involving the Debtors that may be pending on the Effective Date, or that, pursuant to the Plan, may be instituted by the Liquidation Trustee, or the Liquidation Trust or any other Person or Entity after the Effective Date; provided, however that the Liquidation Trustee and the Liquidation Trust shall reserve the right to prosecute the Causes of Action in all proper jurisdictions;
6. Enter such orders as may be necessary or appropriate to implement or consummate the provisions hereof and all contracts, instruments, releases and other agreements or documents created in connection with the Plan, the Disclosure Statement or the Liquidation Trust Agreement;
7. Resolve any case, controversies, suits or disputes that may arise in connection with the consummation, interpretation or enforcement of the Plan, the Liquidation Trust Agreement, the Confirmation Order, or any Person's or Entity's obligations incurred in connection with the Plan, the Liquidation Trust Agreement, or the Confirmation Order, including, relating to determining the scope and extent of the Liquidation Trust Assets;
8. Issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Person or Entity with consummation or enforcement of the Plan, except as otherwise provided herein;
9. Resolve any case, controversies, suits or disputes with respect to the provisions contained in Articles XII and XIII of the Plan and enter any orders that may be necessary or appropriate to implement such provisions;
10. Enter and implement any orders that are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked or vacated;

11. Determine any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Liquidation Trust Agreement or any contract, instrument, release, indenture or other agreement or document created in connection with the Plan or the Disclosure Statement or the Liquidation Trust Agreement; and

12. Enter an order and/or final decree concluding the Chapter 11 Cases.

## **XX. CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN OF LIQUIDATION**

### **A. Introduction**

The following discussion summarizes certain U.S. federal income tax consequences of the transactions that are described herein and in the Plan that affect holders of certain Claims. This summary is based upon the Internal Revenue Code of 1986, as amended (“**Tax Code**”), the Treasury Department regulations promulgated thereunder (“**Treasury Regulations**”), judicial authority and current administrative rulings and practice now in effect. These authorities are all subject to change at any time by legislative, judicial or administrative action, and such change may be applied retroactively in a manner that could adversely affect holders of Claims or Equity Interests and the Debtors. The federal income tax consequences to any particular holder of a Claim or Equity Interest may be affected by matters not discussed below. For example, neither the impact of the Plan on foreign holders of Claims or Equity Interests nor the impact under any state or local law is discussed herein. Further, this summary generally does not address the tax consequences to Creditors who may have acquired their Claims from the initial holders nor does it address the tax considerations applicable to Creditors or Interest holders that may be subject to special tax rules such as financial institutions, insurance companies, dealers in securities or currencies, tax-exempt organizations or taxpayers subject to the alternative minimum tax. To the extent that the summary of payments to Creditors in this Section conflicts with other parts of this Disclosure Statement or the Plan, the discussion in such other parts of the Disclosure Statement or the Plan shall govern.

NO RULING WILL BE SOUGHT FROM THE INTERNAL REVENUE SERVICE (“**IRS**”), AND NO OPINION OF COUNSEL HAS BEEN OR WILL BE SOUGHT, WITH RESPECT TO ANY OF THE TAX ASPECTS OF THE PLAN. THE DISCUSSION SET FORTH BELOW IS FOR GENERAL INFORMATION ONLY. THIS DESCRIPTION DOES NOT COVER ALL ASPECTS OF FEDERAL INCOME TAXATION THAT MAY BE RELEVANT. EACH CREDITOR AND INTEREST HOLDER IS URGED TO CONSULT WITH ITS OWN TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE PLAN.

**IRS CIRCULAR 230 NOTICE: TO ENSURE COMPLIANCE WITH REQUIREMENTS IMPOSED BY THE IRS, PLEASE BE ADVISED THAT ANY WRITTEN U.S. TAX ADVICE CONTAINED IN THIS DISCLOSURE STATEMENT (INCLUDING ANY ATTACHMENT) IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, FOR THE PURPOSE OF (1) AVOIDING PENALTIES UNDER THE INTERNAL REVENUE CODE OR (2) PROMOTING, MARKETING OR**

**RECOMMENDING TO ANOTHER PARTY ANY TRANSACTION OR MATTER ADDRESSED HEREIN.**

**B. Consequences to Holders of Allowed Unsecured Claims**

Pursuant to the Plan, holders of Allowed Unsecured Claims will receive one or more distributions in satisfaction of their Claims (depending upon, among other things, the resolution of Disputed Claims).

1. Gain or Loss

In general, each holder of an Allowed Unsecured Claim will recognize gain or loss in an amount equal to the difference between (i) the amount of Cash received by such Creditor in satisfaction of its Claim (other than any Claim representing accrued but unpaid interest, and any amount required to be treated as imputed interest in respect of Distributions made after the Effective Date) and (ii) such Creditor's adjusted tax basis in such Claim (other than any Claim representing accrued but unpaid interest). For a discussion of the treatment of any Claim for accrued but unpaid interest, see "Distributions in Discharge of Accrued but Unpaid Interest" below.

Except as otherwise provided in the Plan, holders of Allowed Unsecured Claims may receive additional Distributions as provided in the Plan, as Disputed Claims are resolved. As a consequence, Creditors' ability to recognize a loss in respect of an Allowed Unsecured Claim may be limited if a reasonable prospect exists of recovering additional amounts in further satisfaction of the Allowed Unsecured Claim. Any loss, and a portion of any gain, realized by holders of Allowed Unsecured Claims may be deferred until the Final Distribution is made in respect of such Allowed Unsecured Claims. Creditors who are planning to take a bad debt deduction with respect to their unpaid Claims should consult their tax advisor in light of the Debtor's belief that there is a reasonable prospect that holders of Allowed Unsecured Claims will receive a Distribution on said Allowed Claim. Where gain or loss is recognized by a Creditor in respect of its Allowed Claim, the character of such gain or loss (i.e., long-term or short-term capital, or ordinary) will be determined by a number of factors, including the tax status of the Creditor, whether the Claim in respect of which Cash was received constituted a capital asset in the hands of the Creditor and how long it has been held, whether such Claim was originally issued at a discount or acquired at a market discount, and whether and to what extent the Creditor had previously claimed a bad debt deduction in respect of such Claim. A Creditor that purchased its Claim from a prior holder at a market discount may be subject to the market discount rules of the Internal Revenue Code. Under those rules, assuming that the Creditor had not made an election to amortize the market discount into income on a current basis with respect to any market discount instrument, any gain recognized on the exchange of such Claim (subject to a *de minimis* rule) would generally be characterized as ordinary income to the extent of the accrued market discount on such Claim as of the date of the exchange.

2. Distributions in Discharge of Accrued but Unpaid Interest

Pursuant to the Plan, all Distributions in respect of an Allowed Claim will be allocated first to the original principal amount of such Claim as determined for federal income tax



purposes to the extent thereof and thereafter to the remaining portion of such Claim. However, there is no assurance that such allocation will be respected by the IRS for federal income tax purposes. In general, to the extent that any amount received by a Creditor is received in satisfaction of accrued interest during its holding period, such amount will be taxable to the Creditor as interest income (if not previously included in the holder's gross income). Conversely, a Creditor generally recognizes a deductible loss to the extent any accrued interest claimed was previously included in its gross income and is not paid in full. Each Creditor is urged to consult its tax advisor regarding the allocation of consideration and the deductibility of unpaid interest for tax purposes.

### 3. Information Reporting and Withholding

All payments to Creditors are subject to any applicable withholding (including employment tax withholding). Under the Internal Revenue Code, interest, dividends and other "reportable payments" may, under certain circumstances, be subject to "backup withholding" at up to a 28% rate. Backup withholding generally applies if the Creditor (a) fails to furnish its social security number or taxpayer identification number ("TIN"), (b) furnishes an incorrect TIN, (c) fails properly to report interest or dividends or (d) under certain circumstances, fails to provide a certified statement, signed under penalty of perjury, that the TIN provided is its correct number and that it is not subject to backup withholding. Backup withholding is not an additional tax but merely an advance payment, which may be refunded to the extent it results in an overpayment of tax. Certain Persons are exempt from backup withholding, including, in certain circumstances, corporations and financial institutions.

## **XXI. CONCLUSION AND RECOMMENDATION**

The Debtors and the Committee believe that the Plan is in the best interests of all Creditors and urges the holders of all Claims who receive Ballots to vote to accept the Plan and to evidence such acceptance by returning their Ballots so that they will be actually received on or before **4:00 p.m. Eastern Time, on February 15, 2010.**

Dated: December 2, 2009

### **BLANK ROME LLP**

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Counsel to Alset Owners, LLC, *et al.*,  
Debtors and Debtors in Possession

## **TABLE OF EXHIBITS**

- Exhibit A: The Plan
- Exhibit B: Bar Date Order
- Exhibit C: Chapter 7 Liquidation Analysis

**EXHIBIT A**

**PLAN**

**A COPY OF THE PLAN HAS BEEN FILED SEPARATELY WITH THE COURT**

**EXHIBIT B**  
**BAR DATE ORDER**

**EXHIBIT C**

**CHAPTER 7 LIQUIDATION ANALYSIS**

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

-----  
In re : Chapter 11  
: :  
ALSET OWNERS, LLC, *et al.*,<sup>1</sup> : Case No. 09-11960 (BLS)  
: :  
: (Jointly Administered)  
Debtors. :  
-----

**DISCLOSURE STATEMENT IN SUPPORT OF JOINT PLAN OF  
LIQUIDATION OF THE DEBTORS AND DEBTORS IN POSSESSION**

**BLANK ROME LLP**  
Michael Z. Brownstein  
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Counsel for Alset Owners, LLC, *et al.*,  
Debtors and Debtors in Possession

Dated: December 2, 2009

<sup>1</sup>

The Debtors and the last four digits of their respective tax identification numbers are: Alset Owners, LLC, a Delaware limited liability company (7520); Altes, LLC, a Delaware limited liability company (6927); Setla, LLC, a Delaware limited liability company (6752); and Checkers Michigan, LLC, a Delaware limited liability company (8016). The Debtors' service address is Altes, LLC/Setla, LLC, 1200 North Federal Highway, Boca Raton, FL 33432.



## INTRODUCTORY STATEMENT

**THIS DISCLOSURE STATEMENT UNDER SECTION 1125 OF THE BANKRUPTCY CODE (THE “DISCLOSURE STATEMENT”) WITH RESPECT TO THE JOINT PLAN OF LIQUIDATION OF THE DEBTORS AND DEBTORS IN POSSESSION (AS MAY BE AMENDED, THE “PLAN”) CONTAINS SUMMARIES OF CERTAIN PROVISIONS OF THE PLAN AND OTHER DOCUMENTS RELATING TO THE PLAN. WHILE THE DEBTORS BELIEVE THESE SUMMARIES PROVIDE ADEQUATE INFORMATION WITH RESPECT TO THE DOCUMENTS SUMMARIZED, SUCH SUMMARIES ARE QUALIFIED TO THE EXTENT THAT THEY DO NOT SET FORTH THE ENTIRE TEXT OF SUCH DOCUMENTS. IF ANY INCONSISTENCIES EXIST BETWEEN THE TERMS AND PROVISIONS OF THIS DISCLOSURE STATEMENT AND THE TERMS AND PROVISIONS OF THE PLAN OR OTHER DOCUMENTS DESCRIBED THEREIN, THE TERMS AND PROVISIONS OF THE PLAN AND OTHER DOCUMENTS ARE CONTROLLING. EACH HOLDER OF AN IMPAIRED CLAIM OR AN IMPAIRED EQUITY INTEREST SHOULD REVIEW THE ENTIRE PLAN AND ALL RELATED DOCUMENTS AND SEEK THE ADVICE OF ITS OWN COUNSEL BEFORE VOTING WHETHER TO ACCEPT OR REJECT THE PLAN.**

**THIS DISCLOSURE STATEMENT MAY NOT BE RELIED UPON BY ANY PERSON OR ENTITY FOR ANY PURPOSE OTHER THAN BY HOLDERS OF CLAIMS AND INTERESTS ENTITLED TO VOTE ON THE PLAN IN DETERMINING WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN. THE DEBTORS ASSERT THAT NOTHING CONTAINED HEREIN WILL CONSTITUTE AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY, OR BE ADMISSIBLE IN ANY PROCEEDING INVOLVING THE DEBTORS OR ANY OTHER PARTY. NOTHING CONTAINED HEREIN SHALL BE DEEMED CONCLUSIVE EVIDENCE OF THE TAX OR OTHER LEGAL EFFECTS OF THE LIQUIDATION OF ANY OF THE DEBTORS’ ASSETS OR ON HOLDERS OF CLAIMS OR EQUITY INTERESTS.**

**IRS CIRCULAR 230 NOTICE: TO ENSURE COMPLIANCE WITH REQUIREMENTS IMPOSED BY THE IRS, PLEASE BE ADVISED THAT ANY WRITTEN U.S. TAX ADVICE CONTAINED IN THIS DISCLOSURE STATEMENT (INCLUDING ANY ATTACHMENT) IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, FOR THE PURPOSE OF (1) AVOIDING PENALTIES UNDER THE INTERNAL REVENUE CODE OR (2) PROMOTING, MARKETING OR RECOMMENDING TO ANOTHER PARTY ANY TRANSACTION OR MATTER ADDRESSED HEREIN.**

**NO PARTY IS AUTHORIZED BY THE DEBTORS TO PROVIDE ANY INFORMATION WITH RESPECT TO THE DEBTORS, OR THE VALUE OF THE DEBTORS’ BUSINESS AND PROPERTIES OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT. GENERALLY, EXCEPT AS OTHERWISE PROVIDED, TO THE EXTENT INFORMATION IN THIS DISCLOSURE STATEMENT RELATES TO THE DEBTORS, THE DEBTORS HAVE PROVIDED THE INFORMATION IN THIS DISCLOSURE STATEMENT.**

**NOTHING CONTAINED IN THIS DISCLOSURE STATEMENT, EXPRESS OR IMPLIED, IS INTENDED TO GIVE RISE TO ANY COMMITMENT OR OBLIGATION OF THE DEBTORS OR WILL CONFER UPON ANY PERSON ANY RIGHTS, BENEFITS OR REMEDIES OF ANY NATURE WHATSOEVER.**

**EXCEPT AS OTHERWISE NOTED HEREIN, THE INFORMATION CONTAINED HEREIN IS GENERALLY INTENDED TO DESCRIBE FACTS AND CIRCUMSTANCES ONLY AS OF THE DATE OF THIS DISCLOSURE STATEMENT, AND NEITHER THE DELIVERY OF THIS DISCLOSURE STATEMENT NOR THE CONFIRMATION OF THE PLAN WILL CREATE ANY IMPLICATION, UNDER ANY CIRCUMSTANCES, THAT THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS CORRECT AT ANY TIME AFTER THE DATE OF THIS DISCLOSURE STATEMENT OR THAT THE DEBTOR WILL BE UNDER ANY OBLIGATION TO UPDATE SUCH INFORMATION IN THE FUTURE.**

## **I. INTRODUCTION**<sup>2</sup>

The Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101 - 1532 (as amended, the “**Bankruptcy Code**”) on June 5, 2009 (the “**Petition Date**”). No trustee or examiner has been appointed in the Debtors’ chapter 11 cases (the “**Chapter 11 Cases**”), and the Debtors act as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

The Debtors have filed this Disclosure Statement with the Bankruptcy Court for approval in connection with the solicitation of acceptances and rejections with respect to the Plan. By order dated January \_\_, 2010, the Bankruptcy Court approved this Disclosure Statement as containing adequate information to enable holders of Claims against the Debtors whose votes are being solicited to make an informed judgment whether to accept or reject the Plan.

## **II. NOTICE TO HOLDERS OF CLAIMS**

### **A. General**

The purpose of this Disclosure Statement is to enable the holders of Claims against the Debtors authorized to vote on the Plan to make informed decisions in voting whether to accept or reject the Plan. All holders of Claims should read this Disclosure Statement in its entirety. No solicitation of votes on the Plan may be made except pursuant to this Disclosure Statement and Section 1125 of the Bankruptcy Code. In considering how to vote, no holder of a Claim or any other party should rely on any information relating to the Debtors and their business and properties, other than that contained in this Disclosure Statement and the Plan, except as otherwise approved by the Bankruptcy Court.

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<sup>2</sup>

Unless otherwise defined herein, capitalized terms used herein will have the same meanings ascribed to them in the Plan.

All persons receiving this Disclosure Statement and the Plan are urged to fully review the provisions of the Plan and all exhibits attached hereto, in addition to reviewing the text of this Disclosure Statement. This Disclosure Statement is not intended to replace careful review and analysis of the Plan. Rather, it is submitted as an aid in your review of the Plan and in an effort to explain the terms and implications of the Plan. Every effort has been made to explain fully the various aspects of the Plan as it affects all holders of Claims and Equity Interests. However, to the extent any questions arise, the Debtor urges you to seek independent legal advice.

In reviewing this Disclosure Statement, please keep in mind the following:

1. The approval by the Bankruptcy Court of this Disclosure Statement does not constitute an endorsement by the Bankruptcy Court of the Plan or a guarantee of the accuracy and completeness of the information contained herein.

2. There has been no independent audit of the financial information contained in this Disclosure Statement and the exhibits thereto and no fairness opinion has been obtained regarding the value of the assets and the amount of the liabilities. The factual information regarding the Debtors and their assets and liabilities has generally been derived from the Debtors' internal documents and available public records. While every effort has been made by the Debtors to provide accurate information herein, the Debtors and their legal advisors cannot and do not warrant or represent that the information contained in this Disclosure Statement is without any inaccuracy.

3. Certain of the statements contained in this Disclosure Statement or in exhibits attached hereto are based on certain estimates and assumptions. There can be no assurance that such statements will reflect actual outcomes. You should carefully review and consider Section XVI below, entitled "Certain Factors to Be Considered", before voting to accept or reject the Plan.

4. The Disclosure Statement has not been approved or disapproved by the Securities and Exchange Commission or any securities regulatory authority of any state, nor has the Securities and Exchange Commission or any securities regulatory authority of any state passed upon the accuracy or adequacy of the statements contained herein.

5. The description herein of the Plan is a summary only. Holders of Claims authorized to vote on the Plan are urged to review the entire Plan and any exhibits thereto before casting their votes. In the event that any inconsistency or conflict exists between this Disclosure Statement and the Plan, the terms of the Plan will control.

6. Except as set forth in this Disclosure Statement, the Plan and the exhibits, no representations concerning the Debtors, their assets and business operations, or the Plan are authorized, nor are any such representations to be relied upon in arriving at a decision with respect to the Plan. Any representations made to secure acceptance or rejection of the Plan other than as contained in this Disclosure Statement should be reported to counsel for the Debtors or the Committee.

B. **Voting**

Pursuant to the provisions of the Bankruptcy Code, generally only those classes of claims or interests that are (i) “impaired” by a chapter 11 plan and (ii) entitled to receive a distribution under such a plan are entitled to vote on a chapter 11 plan. In these Chapter 11 Cases, claims in Class 2 are impaired by the Plan and holders of such claims are therefore entitled to vote on the Plan.

C. **Voting Record Date**

The record date for determining the holders of Claims that may vote on the Plan is January 13, 2010 (the “**Voting Record Date**”).

D. **Ballots**

In certain instances, accompanying this Disclosure Statement is a ballot (“**Ballot**”) for casting your vote(s) on the Plan. A pre-addressed envelope for the return of the Ballot may also be enclosed. As noted above, Ballots for acceptance or rejection of the Plan are being provided only to holders of claims in Class 2. If you are the holder of a Class 2 Claim and did not receive a Ballot, received a damaged or illegible Ballot, or lost your Ballot, or if you have any questions regarding the voting procedures in respect of the Plan, please contact:

Alset Owners, LLC  
c/o BMC Group Inc.  
P.O. Box 3020  
Chanhassen, MN 55317-3010  
Attn: Ms. Anne Carter  
(888) 909-0100

After carefully reviewing this Disclosure Statement and the exhibits attached hereto, including the Plan, please indicate your vote with respect to the Plan on the enclosed Ballot and return it pursuant to the instructions provided on the Ballot.

E. **Voting Deadline**

In order to be counted, Ballots must be **received** by the Balloting Agent by **4:00 p.m. Eastern Time on February 15, 2010** (the “**Voting Deadline**”). Any executed Ballots that are received timely but do not indicate either an acceptance or rejection of the Plan will not be counted.

F. **Confirmation Hearing and Objection Deadline**

By order dated January \_\_, 2010, the Bankruptcy Court fixed **February 15, 2010, at 10:00 a.m.** Eastern Time, in the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 6th Floor, Wilmington, DE 19801, as the date, time and place of the hearing to consider confirmation of the Plan, and **February 22, 2010, at 4:00 p.m. Eastern Time**, as the deadline for filing objections to confirmation of the Plan. The hearing on confirmation of the Plan may be adjourned from time to time without further notice except for the announcement of

the adjourned date and time at the hearing on confirmation or any adjournment thereof. Any objections to confirmation of the Plan must be served upon:

Counsel for the Debtor:

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Michael Z. Brownstein  
Rocco A. Cavaliere  
The Chrysler Building  
405 Lexington Avenue  
New York, NY 10174  
Telephone: (212) 885-5000  
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Counsel for the Official Committee  
of Unsecured Creditors:

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Office of the United States Trustee:

Jane Leamy  
Office of the United States Trustee  
844 N. King Street, Suite 2207  
Lockbox #35  
Wilmington, DE 19801

### **III. UNCLASSIFIED CLAIMS AND CLASSIFICATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS**

THE SUMMARY OF THE PLAN SET FORTH HEREIN IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE FULL TEXT OF THE PLAN. IN THE EVENT OF ANY INCONSISTENCY BETWEEN THE PROVISIONS OF THE PLAN AND THE SUMMARY CONTAINED HEREIN, AND REGARDLESS OF WHETHER ANY SUCH INCONSISTENCY IS A STATEMENT OR OMISSION, THE TERMS OF THE PLAN WILL GOVERN. ALL CAPITALIZED TERMS USED HEREIN HAVE THE MEANINGS ASCRIBED TO THEM IN THE PLAN.

#### **A. Summary of Classification and Treatment of Claims and Interests**

The Plan proposes to satisfy creditor claims to the extent possible from the disposition of the Debtors' assets which include (i) proceeds of the sale of substantially all of the Debtors' assets to Buyer, (the "**Cash Consideration**"), (ii) other non-core assets not transferred to the Buyer, and (iii) the proceeds of Causes of Action prosecuted by a Liquidation Trustee appointed to prosecute such Causes of Action. The Sale closed on August 31, 2009. The proceeds from the liquidation of the Debtors' assets will be applied to satisfy, (i) Administrative Claims, (ii) Priority Unsecured Claims, (iii) secured claims in Class 1, and (iv) the general unsecured claims in Class 2. Equity Interests in Class 3 are not expected to receive a distribution under this Plan.

The Plan also contemplates the formation of a Liquidation Trust established for the primary purpose of liquidating its assets, in accordance with Treas. Reg. §301.7701-4(d). The Liquidation Trust will be assigned and take possession of the Liquidation Trust Assets defined to include the Cash Consideration, as well as the Causes of Action and all rights of setoff and recoupment and other defenses that the Debtors and the Estates may have with respect to Allowed Claims. The Liquidation Trust will have the responsibility (i) to investigate, defend or pursue the Causes of Action, (ii) object to the allowance of Claims and Equity Interests Filed with the Bankruptcy Court, and (iii) make the distributions to Beneficiaries required under the Plan in accordance with the Liquidation Trust Agreement.

The following table summarizes the classification and treatment of Claims and Equity Interests under the Plan. This summary is qualified in its entirety by reference to the provisions of the Plan, and the provisions of the Plan will control in the event of any inconsistency (whether by statement or omission) between the summary herein and the Plan.

<u>Class</u>	<u>Claim</u>	<u>Status</u>	<u>Voting Right</u>	<u>Estimated Recovery Percentage</u>
	Administrative Claims	Unimpaired	Deemed to Accept	100%
	Professional Fee Claims	Unimpaired	Deemed to Accept	100%
	United States Trustee Fees	Unimpaired	Deemed to Accept	100%
	Priority Claims	Unimpaired	Deemed to Accept	100%
1	Secured Claims	Unimpaired	Deemed to Accept	100%
2	General Unsecured Claims	Impaired	Entitled to Vote	__% to __%
3	Equity Interests	Impaired	Deemed to Reject	0%

**B. Unclassified Claims Against The Debtors**

**1. Administrative Claims**

**(i) Administrative Claims Bar Dates**

(a) Any request for allowance of an Administrative Claim that is subject to the Bar Date Order is required to be filed on or before December 15, 2009 as provided in the Bar

Date Order. Any Administrative Claims subject to the Bar Date Order that are filed after December 15, 2009 are invalid and shall not receive any distribution in this case. Any request for allowance of an Administrative Claim that is not subject to the Bar Date Order, including, without limitation, Professional Fee Claims, and Administrative Claims accruing between December 15, 2009 and the Effective Date, shall be Filed no later than thirty (30) days after the Effective Date (the “Administrative Claims Bar Date”). Any holder of an Administrative Claim who fails to file a timely request for the allowance of an Administrative Claim: (i) shall be forever barred, estopped and enjoined from asserting such Administrative Claim against the Debtors, the Liquidation Trust, or the Liquidation Trust Assets (or filing a request for the allowance thereof); and (ii) such holder shall not be permitted to participate in any distribution under the Plan on account of such Administrative Claim. The Liquidation Trustee, or any other person with standing, shall have thirty (30) days from the Administrative Claims Bar Date to object to any timely filed and served Administrative Claim, unless such date is further extended by the Court. Notwithstanding the foregoing, all fees and charges under 28 U.S.C. §1930 will be paid without the need for the filing of a request or claim.

(b) Except as otherwise set forth in this Plan and the Liquidation Trust Agreement, subject to the provisions of Sections 328, 330(a) and 331 of the Bankruptcy Code, each Holder of an Allowed Administrative Claim, who has not been paid prior to the Effective Date, or on such other day as agreed to by the Liquidation Trustee and such Creditor, shall be paid in Cash, as soon as is practicable after the Effective Date, from the proceeds of the Liquidation Trust Assets.

(ii) Final Fee Application Bar Date

Except as otherwise provided herein, in order to receive a distribution on account of a Professional Fee Claim, a holder of a Professional Fee Claim, at a minimum, must file and serve a final fee application requesting payment of such Professional Fee Claim by the Administrative Claim Bar Date. The Liquidation Trust, or any other person with standing, shall have thirty (30) days from the Administrative Claim Bar Date to object to any timely filed and served Professional Fee Claim, unless such date is further extended by the Court.

(iii) Professional Fee Claims

Subject to the additional provisions of this Plan, as soon as practicable after the later of (a) the date a Professional Fee Claim becomes an Allowed Professional Fee Claim or (b) the Professional Fee Claim becomes otherwise payable, an Allowed Professional Fee Claimholder shall receive, in full satisfaction, settlement, release and discharge of and in exchange for such Professional Fee Claim, (x) Cash equal to the unpaid portion of such Allowed Professional Fee Claim or (y) such other treatment as to which the Debtors and such Claimholder prior to the Effective Date, or the Liquidation Trustee and Claimholder subsequent to the Effective Date, shall have agreed upon in writing.

(iv) U.S. Trustee Fees

All fees payable to the Office of the United States Trustee in accordance with 28 U.S.C. §1930 shall be paid on the Effective Date, or as soon thereafter as may be practicable, and will continue to be paid through the date of entry of a Final Decree.

(v) Priority Claims

Except as otherwise set forth in the Plan and the Liquidation Trust Agreement, each Holder of an Allowed Priority Tax Claim and Other Priority Claim, who has not been paid prior to the Initial Distribution Date in the ordinary course of business or by order of the Bankruptcy Court, shall be paid, in full, in Cash, by the Liquidation Trust, on the later of (i) the Initial Distribution Date, (ii) the last Business Day of the month following the month in which such Claim becomes an Allowed Claim, or (iii) such other date as agreed to by the Liquidation Trustee and such Creditor, or otherwise ordered by the Bankruptcy Court.

C. **Summary of Classification and Treatment of Claims and Equity Interests**

The categories of Claims and Equity Interests listed below classify Claims against and Equity Interests in the Debtor for all purposes, including voting, confirmation and distribution pursuant hereto and pursuant to Sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or Equity Interest shall be deemed classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and shall be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that such Claim or Equity Interest is Allowed in that Class and has not been paid or otherwise satisfied prior to the Effective Date. The Classes of Claims and Equity Interests in the Debtors are as follows:

<b><u>Class</u></b>	<b><u>Claim</u></b>	<b><u>Status</u></b>	<b><u>Voting Right</u></b>
1	Secured Claims	Unimpaired	Deemed to Accept
2	General Unsecured Claims	Impaired	Entitled to Vote
3	Equity Interests	Impaired	Deemed to Reject

D. **Classification and Treatment of Classified Claims and Equity Interests:**

1. Class 1—Secured Claims

(a) *Classification:* Class 1 comprises the Secured Claims.

(b) *Treatment:* The Plan will not alter any of the legal, equitable and contractual rights of the Holders of Class 1 Claims. Unless otherwise agreed to by the Holder of an Allowed Class 1 Claim and the Liquidation Trustee, each Holder of an Allowed Class 1 Claim shall receive, in full and final satisfaction of such Allowed Class 1 Claim, one of the following treatments, as soon as practicable after the Effective Date in the sole discretion of the Liquidation Trustee:

(i) the return of such Holder’s collateral;



(ii) the payment in cash equal to the amount of such Allowed Secured Claim; or

(iii) treatment in any other manner so as to render the Allowed Class 1 Claim otherwise Unimpaired.

(c) *Voting:* Class 1 is Unimpaired and the Holders of Class 1 Claims are conclusively deemed to have accepted the Plan pursuant to Section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Claims in Class 1 are not entitled to vote to accept or reject the Plan.

## 2. Class 2—General Unsecured Claims

(a) *Classification:* Class 2 comprises the General Unsecured Non-Priority Claims against the Debtors.

(b) *Treatment:* Holders of Allowed Class 2 Claims shall receive, in full and final satisfaction of their Allowed Class 2 Claims, through one or more distributions, their respective Pro Rata share of funds on deposit in the Operating Account maintained by the Liquidation Trust, after (i) the payment of all Allowed Class 1 Claims (ii) the payment of all Allowed Administrative Claims (including, without limitation, all Professional Fee Claims incurred prior to and after the Effective Date); (iii) the payment of all Allowed Priority Tax Claims, (iv) the payment of Allowed Other Priority Claims; (v) creation and funding of the Claims Reserve as provided in Paragraph B of Article VIII of the Plan, and (vi) the payment of post-Confirmation expenses and fees incurred by the Liquidation Trust, or the Liquidation Trustee in the performance of his duties under the Liquidation Trust Agreement. Further, in accordance with the Pentland Settlement described in Section VIII hereof, Pentland, a holder of a Class 2 Claim, has agreed to receive a distribution of no more than \$50,000 on account of the Unsecured Pentland Loans and will defer any additional distributions until holders of other unsecured creditors in Class 2 have been paid in full. The total amount of Class 2 Claims is anticipated to be in the range of \$800,000 to \$1,800,000, without consideration of the Pentland Unsecured Claim that will be settled under the Plan.

(c) *Voting:* Class 2 is Impaired and the Holders of Class 2 Claims are entitled to vote to accept or reject the Plan.

## 3. Class 3—Equity Interests

(a) *Classification:* Class 3 comprises the Equity Interests in the Debtor.

(b) *Treatment:* On the Effective Date, Class 3 Equity Interests will be cancelled and, unless Holders of Allowed Claims in Classes a through 2 are paid in full with interest, where relevant, the Holders thereof will receive no distribution on account of their Equity Interests. If the Holders of Interests are entitled to receive distributions, any such distributions shall be made on a pro rata basis. Upon termination of the Liquidation Trust, the Class 3 Equity Interests will be cancelled.

(c) *Voting*: Class 3 is Impaired and the Holders of Class 3 Equity Interests are conclusively deemed to have rejected the Plan. Holders of Class 3 Equity Interests shall not be entitled to vote to accept or reject the Plan.

### **Acceptance Or Rejection Of The Plan**

#### **A. Voting Classes**

Holders of Claims in each Impaired Class of Claims are entitled to vote as a class to accept or reject the Plan. Therefore, each Holder of an Allowed Class 2 Claim shall be entitled to vote to accept or reject the Plan.

#### **B. Acceptance by Impaired Classes**

An Impaired Class of Claims shall be deemed to have accepted the Plan if (a) the Holders (other than any Holder designated under Section 1126(e) of the Bankruptcy Code) of at least two-thirds in amount of the Allowed Claims actually voting in such Class have voted to accept the Plan and (b) the Holders (other than any Holder designated under Section 1126(e) of the Bankruptcy Code) of more than one-half in number of the Allowed Claims actually voting in such Class have voted to accept the Plan.

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

Class 1 is Unimpaired under the Plan, and, therefore, is presumed to have accepted the Plan pursuant to Section 1126(f) of the Bankruptcy Code.

#### **D. Presumed Rejection of the Plan**

Class 3 is deemed to reject the Plan.

#### **E. Non-Consensual Confirmation**

To the extent that any Impaired Class rejects this Plan or is deemed to have rejected this Plan, the Proponents will request confirmation of this Plan as it may be modified from time to time, under Section 1129(b) of the Bankruptcy Code. The Proponents reserve the right to alter, amend, modify, revoke or withdraw this Plan, including to amend or modify it to satisfy the requirements of Section 1129(b) of the Bankruptcy Code, if necessary.

#### **F. Effective Date**

The Plan may not be consummated, and the Effective Date shall not occur, unless and until the Confirmation Order has been entered by the Bankruptcy Court, and all other actions and documents necessary to implement the Plan shall have been effected or executed, including the Liquidation Trust Agreement.

#### **G. Acceptance of the Plan**

An Impaired Class of Claims shall be deemed to have accepted the Plan if (a) the Holders (other than any Holder designated under Section 1126(e) of the Bankruptcy Code) of at least two-thirds in amount of the Allowed Claims actually voting in such Class have voted to accept the Plan and (b) the Holders (other than any Holder designated under Section 1126(e) of the Bankruptcy Code) of more than one-half in number of the Allowed Claims actually voting in such Class have voted to accept the Plan.

The votes of insiders are not counted in determining whether at least one class of impaired creditors has accepted the Plan for purposes of Section 1129(a)(10) of the Bankruptcy Code. The requirements for Confirmation of the Plan are discussed in Section XVII of this Disclosure Statement.

#### **IV. VOTING PROCEDURES AND REQUIREMENTS**

##### **A. Classes Entitled to Vote Under the Plan**

Only holders of Claims in Class 2 as of the Record Date are authorized to vote on the Plan.

##### **B. Voting Requirements**

**IT IS IMPORTANT THAT HOLDERS OF CLAIMS ENTITLED TO VOTE ON THE PLAN EXERCISE THEIR RIGHT TO VOTE TO ACCEPT OR REJECT THE PLAN.** All known holders of Claims entitled to vote on the Plan have been sent a Ballot together with this Disclosure Statement. Such holders should read the Ballot carefully and follow the instructions contained therein. Please use only the Ballot that accompanies this Disclosure Statement.

As set forth above, BMC will be acting as the Balloting Agent to assist in the transmission of voting materials and the tabulation of votes with respect to the Plan. **FOR YOUR VOTE TO COUNT, YOUR BALLOT MUST BE RECEIVED BY THE BALLOTING AGENT NO LATER THAN 4:00 P.M. EASTERN TIME, ON FEBRUARY 15, 2010.**

Any Ballot executed and received timely but which does not indicate an acceptance or rejection of the Plan will not be counted. If you have any questions concerning voting procedures, if your Ballot is damaged or lost, or if you need an additional copy of the Disclosure Statement, you may contact Alset Owners, LLC, c/o BMC Group Inc., P.O. Box 3020, Chanhassen, MI 55317-3020, Attn: Anne Carter, (888) 909-0100.

A vote may be disregarded if the Bankruptcy Court determines, after notice and a hearing, that such acceptance or rejection was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code.

#### **V. DESCRIPTION OF THE DEBTORS**

##### **A. The Debtors And Debtors In Possession**

Four separate Debtor entities filed for chapter 11 relief before this Court. Alset Owners, LLC (“**Alset**”) is a holding company for the operating Debtors, Altes, LLC (“**Altes**”) and Setla, LLC (“**Setla**”). Checkers Michigan LLC (“**Checkers Michigan**”) is a subsidiary of Altes.

As of the Petition Date, Altes, a franchisee of the Rally’s restaurant chain, operated several restaurants in various states, while Setla, also a franchisee of the Rally’s restaurant chain, operates several restaurants in Ohio. Checkers Michigan, a franchisee of the Checker’s restaurant chain, operated several restaurants in Michigan but ceased operations at its locations prior to the Petition Date. None of the Debtors are publicly traded companies, nor have they issued any public debt.

## **B. Overview Of The Debtors' Business**

Prior to the sale of substantially all of their assets, the Debtors were the largest franchisee of Checkers Drive-In Restaurants, Inc. (the “**Franchisor**”), the national franchisor of the Rally’s and Checkers’ restaurant chains. Specifically, Debtors Altes and Setla operated Rally’s restaurants in Arkansas, Missouri, Illinois, and Ohio. Checkers Michigan operated Checkers restaurants in Michigan but ceased operations there as of the Petition Date. Each of the Debtors’ franchise locations was governed by the franchise agreements (the “**Franchise Agreements**”) entered into between the Debtors and the Franchisor requiring, among other things, the Debtors to pay monthly royalties to the Franchisor.

Altes began operating on June 28, 2000 by purchasing 52 Rally’s restaurant locations in Missouri, Illinois, Arkansas, and Virginia directly from the Franchisor. Six additional stores were opened by Altes from 2002 through 2006. Setla was formed approximately fifteen months later on October 15, 2001, when the owners of Altes decided to expand to the Ohio market. Setla acquired 64 Rally’s locations from Snapp’s Restaurants in October 2001. Three additional locations were opened by Setla from 2004 through 2006. Finally, in 2005, Checkers Michigan was formed to operate several stores in Michigan, a new market for the Debtor group. Initially, one Michigan restaurant with the Checkers brand was opened in December 2005, and later five additional Checkers restaurants were opened in 2006 and early 2007.

As a result of these various acquisitions and store openings, at their peak, in 2007, the Debtors collectively operated approximately 120 restaurants with the Rally’s or Checkers brand in six states, and had over 2,500 employees.

The food service industry is highly competitive, with competitors varying in size from very small companies with limited resources to very large companies with significant financial, marketing, and product development resources. The competitive atmosphere, as well as the rise in food and labor costs, among other things, led the Debtors to restructure their operations starting in late 2007. As of the Petition Date, the Debtors operated 77 restaurants, down from their peak of about 120 restaurants in 2007.

## **C. Debt Structure**

As previously described, Altes began operating in June 2000 to operate approximately 52 Rally’s stores. The stores were purchased directly from the Franchisor for approximately \$17.2

million. In October 2001, Setla entered into a transaction to purchase 64 stores from Snapp's Restaurants for approximately \$5.6 million. The transactions were funded as follows:

In connection with the June 2000 transaction involving Altes, Altes borrowed funds from Textron Financial Corporation ("**Textron**") in the form of secured loans of \$15,200,000 (the "**Textron Loans**"). As security, Textron was granted a lien on certain of the Debtors' equipment at approximately fifty restaurants and certain leasehold interests (the "**Textron Collateral**"), and a mortgage on nine real estate properties owned by Altes. The mortgage on the nine real estate properties was satisfied when Altes subsequently entered into sale and leaseback transactions concerning the nine real estate properties. Approximately \$6 million from such transactions was paid to Textron in satisfaction of its mortgage. As of the Petition Date, approximately \$1.5 million in principal was due to Textron on account of the Textron Loans. During the Chapter 11 cases, as will be explained more fully below, the Debtors sold the Textron Collateral to the Buyer for \$500,000 pursuant to a stipulation approved by the Court. Textron waived its claims against the Debtors' estates in connection with the stipulation.

In connection with the June 2000 transaction involving Altes, Altes also received \$2,375,000 from Pentland USA, Inc. ("**Pentland**") in exchange for promissory notes in favor of Pentland (the "**Pentland-Altes Notes**"). In connection with the October 2001 transaction involving Setla, Setla received \$2,484,585 from Pentland in exchange for promissory notes in favor of Pentland (the "**Pentland-Setla Notes**").

After the transactions involving Altes and Setla were consummated, Pentland extended additional loans to Altes and Setla at various times in the total amount of approximately \$2 million (the "**Pentland Operating Loans**", together with the Pentland-Altes Notes, and the Pentland-Setla Notes, the "**Unsecured Pentland Loans**"). Pentland has filed an unsecured claim asserting that \$5,153,365.46, including interest (the "**Pentland Unsecured Claim**") remained outstanding on the Unsecured Pentland Loans on the Petition Date, which amounts are not secured by any assets of the Debtors, except for the pledge of the membership interests of Alset. See Section VIII for a description of the Debtors' settlement with Pentland.

#### D. Events Leading To Bankruptcy

The Debtors began exploring strategic alternatives for addressing their financial and operational challenges prior to the Petition Date as they were no longer able to operate at margins sufficient to cover expenses at many of their restaurants and struggled with liquidity and working capital demands. The Debtors embarked on a plan to evaluate the companies on a store by store basis and began to close down non-performing locations.

Commencing approximately four months prior to the Petition Date, the Debtors also explored several financing options with various lenders. However, in light of the Debtors' poor EBITDA numbers, none of the prospective lenders issued a commitment for financing.

In light of the continuing slowness in the economy together with increased costs, senior management realized that the Debtors could not sustain operations as a going concern without a substantial infusion of cash or a sale of the enterprise. Having exhausted efforts to raise money and obtain additional investors, the Debtors determined to enter into serious discussions with the

Franchisor and negotiated a sale of the assets as a going concern to preserve jobs, provide a source of recovery for creditors, and maintain the well-established reputation of the brands in the market place.

While sale discussions ensued, the parties entered into a Management Agreement dated March 5, 2009, which allowed the Franchisor to assist the Debtors in managing and stabilizing their operations. Ultimately, after several months of discussions and due diligence by the Franchisor, on June 5, 2009, the Debtors and an affiliate of the Franchisor executed an Asset Purchase Agreement pursuant to which the affiliate of the Franchisor was to purchase substantially all of the Debtors' remaining stores in exchange for cash consideration and the assumption of various liabilities, including under the Franchise Agreement and various leases.

**E. The Sale of the Debtor's Assets Pursuant to Section 363 of the Bankruptcy Code**

On June 19, 2009, the Debtors filed the Motion For Entry Of Orders Under 11 U.S.C. §§ 105(a), 363, And 365 And Federal Rules Of Bankruptcy Procedure 2002, 6004, 6006 And 9014 (I) (A) Approving Bidding And Auction Procedures, And Bidding Incentives For The Stalking Horse Bidder; (B) Approving Notice Procedures For The Solicitation Of Bids, An Auction, And The Assumption And Assignment Of Executory Contracts And Unexpired Leases; And (C) Scheduling An Auction And Sale Hearing For The Sale Of Substantially All Of Debtors' Assets; (II) Approving The Sale Of Substantially All Of The Debtors' Assets And Approving The Assumption And Assignment Of Executory Contracts And Unexpired Leases; And (III) Granting Related Relief (the "**Sale Motion**").

On July 7, 2009, the Court entered an order approving the Bidding Procedures Motion and scheduled an auction for August 24, 2009. The hearing to consider the Sale Motion was scheduled for August 26, 2009.

Praetorian Group, the Debtors sales advisor, marketed the Debtors' assets for sale to prospective purchasers. However, no qualified competing bids were received by the Debtors by the bid deadline and therefore no auction was held. The Committee filed an objection to the sale and after discussions between the Debtors, the Committee, and the Buyer, the Buyer agreed to provide additional consideration to the Debtors' estates. On August 31, 2009, the Court entered an order authorizing the sale of assets to Buyer pursuant to the terms of the Asset Purchase Agreement. The sale closed on August 31, 2009, under the following terms: (a) Buyer paid \$1.8 million of Cash Consideration to the Debtors, and (b) certain of the Debtors' real property leases and executory contracts were assigned to Buyer, with Buyer assuming all liabilities, including cure costs, with respect to assumed real property leases and executory contracts. [Shortly prior to the closing, a dispute arose concerning whether the Buyer or the Debtors were liable for certain taxes aggregating approximately \\$185,000 relating to real property leases that were assumed and assigned to the Buyer. Such monies are presently in an escrow account, pending a resolution or litigation.](#)

The Debtors sold the Textron Collateral to the Buyer for \$500,000 in full and final satisfaction of the Textron Loans. In addition, Textron agreed to waive their claims against the Debtors' estates. The purchase of the Textron Collateral was accomplished by a Stipulation between the parties which was approved on August 27, 2009. Similarly, the Debtors sold certain

equipment of Leaf Funding to the Buyer pursuant to a letter agreement approved by the Sale Order.

On September 11, 2009, the Debtors filed a motion to reject those contracts and leases which were not assumed and assigned to Buyer pursuant to the Sale Motion. On September 29, 2009, the Court entered an order approving the Rejection Motion. By these motions to reject, all executory contracts and real property leases not assumed and assigned to Buyer pursuant to the sale were rejected.

## VI. THE CHAPTER 11 CASES

### A. Summary of First-Day Motions

The Debtors filed their voluntary petitions commencing the Chapter 11 Cases on June 5, 2009 (the “**Petition Date**”). Simultaneously with their petitions, the Debtors filed various “first day motions” seeking authority to, among other things: (i) consolidate the Debtors’ cases for joint administration purposes; (ii) pay certain pre-petition employee wages and benefits and honor other employee obligations in the ordinary course of the Debtors’ business; (iii) pay pre-petition sales and use tax obligations up to certain limits; (iv) continue the use of their existing cash management system; (v) establish procedures for determining adequate assurance requests from utility companies; and (vi) pay in their discretion, certain critical vendors. A brief description of each motion follows:

#### 1. **Employee Wages, Benefits and Other Obligations**

On the Petition Date, the Debtors filed a motion (the “**Employee Obligations Motion**”) seeking authority to pay: (a) certain prepetition claims of current employees, including, but not limited to, claims for wages, salaries, commissions, vacation, sick leave, and unpaid reimbursable expenses subject to the limits of the \$10,950 statutory cap set forth in 11 U.S.C. § 507(a)(4) for each employee and (b) prepetition federal and state withholding obligations. The Debtors also sought an order directing all banks to honor the Debtors’ prepetition checks or electronic transfers for payment of any of the foregoing, and prohibiting banks from placing any holds on, or attempting to reverse, any automatic transfers on account of the foregoing.

As of the Petition Date, the Debtors’ aggregate workforce consisted of 1,712 employees. Of these employees, approximately 112 were full time salaried employees and the remaining were full time and part time hourly employees. The Court entered an order approving the Employee Wage Motion on June 9, 2009 which allowed payment of all Employee Obligations covered by the Employee Obligations Motion.

#### 2. **Sales and Use Tax Obligations**

On the Petition Date, the Debtor filed a motion (the “**Tax Motion**”) seeking authority to pay prepetition sales and use, and other trust fund taxes in the ordinary course of business and authorizing banks and financial institutions to honor and process checks and transfers related to such payments. The Debtor estimated that the aggregate prepetition sales taxes unpaid as of the Petition Date was approximately \$275,000. The Court entered an order approving the Tax

Motion on June 9, 2009 thereby authorizing the payment of all tax obligations referred to in the Tax Motion.

### 3. Existing Cash Management System

On the Petition Date, the Debtor filed a motion (the “**Cash Management Motion**”) seeking authority to (a) continue using its (i) existing bank accounts, (ii) business forms and (iii) cash management system and (b) waiving investment guidelines under Section 345 of the Bankruptcy Code. Prior to the Petition Date, in the ordinary course of its business, each Debtor maintained several bank accounts for its respective operations. The Court entered an order approving the Cash Management Motion on June 9, 2009.

### 4. Adequate Assurance to Utility Providers

On the Petition Date, the Debtor filed a motion (the “**Utility Motion**”) seeking entry of an order (i) prohibiting their utility providers from altering, refusing or discontinuing services on account of prepetition amounts outstanding or on account of any perceived inadequacy of the Debtor’s proposed adequate assurance; (ii) deeming the utility providers adequately assured of future performance, and (iii) establishing procedures for resolving requests for additional adequate assurance of future payment to the utility providers. As adequate assurance, the Debtors proposed a deposit equal to two weeks usage.

In the ordinary course of business, the Debtors regularly incurred utility expenses for water, electricity, gas, telephone service and internet service. The Debtors’ aggregate average monthly cost for utility services was approximately \$210,000. On June 9, 2009, and July 7, 2009, the Court entered interim and final orders, respectively, approving the Utility Motion.

### 5. Critical Vendors

On the Petition Date, the Debtors filed a motion (the “**Critical Vendor Motion**”) seeking entry of an order (i) authorizing the Debtors to pay, in their discretion, certain prepetition claims of Critical Vendors (as defined in the Critical Vendor Motion), and (ii) authorizing banks and other financial institutions to receive, process, honor, and pay any and all checks and transfer requests evidencing amounts paid by the Debtors under the Motion. The Critical Vendor Motion authorized the payment in the amount of \$1.05 million to certain Critical Vendors who provided essential goods and services to the Debtors who were not easily replaceable. On June 9, 2009, the Court entered an order approving the Critical Vendor Motion.

### 6. Rejection of Real Property Leases

On the Petition Date, the Debtors filed a motion (the “**Lease Rejection Motion**”) seeking to reject certain non-residential real property leases for 27 store locations which had closed as of the Petition Date. On July 28, 2009, the Court entered an order approving the Lease Rejection Motion as it pertained to all non-objecting landlords, effective as of the Petition Date. On September 29, 2009, the Court entered a second order authorizing the rejection of leases of the landlords that had filed objections or who had submitted informal responses to the Lease Rejection Motion.



## 7. **Retention of the Debtors' Professionals**

Prior to the commencement of these Chapter 11 Cases, the Debtors retained the law firm Blank Rome LLP ("**Blank Rome**") as bankruptcy counsel for the purpose of advising the Debtors during these Chapter 11 Cases. The Debtors' application to approve the retention of Blank Rome was approved on July 7, 2009, *nunc pro tunc* to June 5, 2009. The Debtors have also retained BMC Group Inc. ("**BMC**") as the claims, balloting and noticing agent. The Court entered an order approving the retention of BMC on June 9, 2009, effective as of June 5, 2009. Also, by orders entered on July 22, 2009 and July 7, 2009 respectively, the Debtors retained CRG Partners Group LLC as their Financial Advisors and Franchise Resale Consultants, LLC d/b/a Praetorian Group as their Sales Advisors.

### B. **The Official Committee of Unsecured Creditors**

On June 24, 2009, the United States Trustee appointed an Official Committee of Unsecured Creditors (the "**Committee**") in these Chapter 11 Cases. The Committee consisted of three (3) members: Musky Checkers LLC, John J. Charleston Trust of 1998, and Marian Patricia Sellers Trust. The Committee retained Klehr Harrison Harvey Branzburg & Ellers, LLP ("**Klehr Harrison**") as counsel, and the Court entered an order approving the retention of Klehr Harrison on July 29, 2009. The Committee also retained Executive Sounding Board Associates Inc. ("**ESBA**") as its financial advisor and the Court entered an order approving the retention of ESBA on August 26, 2009.

### C. **The Bar Date Order**

On September 29, 2009, the Bankruptcy Court entered the Bar Date Order. Pursuant to the Bar Date Order, (i) all proofs of claim not otherwise excluded by the Bar Date Order are required to be filed on or before December 15, 2009; (ii) all proofs of claims filed by governmental units are required to be filed by December 15, 2009; and (iii) all requests for payment of administrative expenses based upon Bankruptcy Code section 503(b)(9) are required to be filed by December 15, 2009. Any request for allowance of an Administrative Claim that is not subject to the Bar Date Order, including, without limitation, Professional Fee Claims and Administrative Claims accruing between December 15, 2009 and the Effective Date, shall be filed no later than thirty (30) days after the Effective Date.

### D. **The Debtors' Exclusive Right to File a Plan of Reorganization**

Pursuant to Section 1121 of the Bankruptcy Code, the Debtors had an exclusive right to file a plan of reorganization for 120 days from the Petition Date, or until October 3, 2009. In light of the extensive efforts expended by the Debtors and their professionals in stabilizing the Debtors' operations and facilitating a sale of their operations and assets to the Franchisor, the Debtors requested additional time to formulate a plan. As such, on October 2, 2009, the Debtors filed a motion seeking an extension of the Debtors' exclusive rights to file and solicit acceptances of the plan. The exclusive period for filing a plan was further extended by Court order dated October 28, 2009 until December 2, 2009. In addition, the exclusive period for solicitation of a plan was extended through January 31, 2010.

## VII. **DESCRIPTION OF THE PLAN**

THE DESCRIPTION OF THE PLAN SET FORTH HEREIN IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE FULL TEXT OF THE PLAN. IN THE EVENT OF ANY INCONSISTENCY BETWEEN THE PROVISIONS OF THE PLAN AND THE DESCRIPTION CONTAINED HEREIN, AND REGARDLESS OF WHETHER ANY SUCH INCONSISTENCY IS A STATEMENT OR OMISSION, THE TERMS OF THE PLAN WILL GOVERN. ALL CAPITALIZED TERMS USED HEREIN HAVE THE MEANINGS ASCRIBED TO THEM IN THE PLAN.

### **Means For The Implementation Of The Plan**

#### **A. Liquidation of Debtors' Assets**

The Debtors previously determined, in the discharge of their statutory duties under the Bankruptcy Code, that it was in the best interests of the Debtors, Creditors and Equity Interests that the Debtors' business and substantially all of their assets be liquidated in an orderly fashion, with the net proceeds of such disposition being distributed in accordance with the Bankruptcy Code, prior Orders of the Court and the terms and provisions of this Plan. Accordingly, the Debtors, with Court approval documented by the Sale Order, sold substantially all of their assets, and assumed and assigned or rejected substantially all of their unexpired leases, licenses and other executory contracts pursuant to the terms of the Asset Purchase Agreement. As of the Effective Date, it is anticipated that only a few assets will remain that have not been converted to Cash, including (i) the Causes of Action, (ii) all rights of setoff and recoupment and other defenses that the Debtors and the Estate may have with respect to Allowed Claims, (iii) all of the Debtors' rights under contracts that were not assigned to Buyer pursuant to the Asset Purchase Agreement and the Sale Order or rejected by prior order of the Court, (iv) any and all assets of the Debtors not transferred to the Buyer including but not limited to the Excluded Assets (as defined in the Asset Purchase Agreement), (v) all rights to claims, refunds or adjustments, all other refunds or adjustments with respect to assets not sold to the Buyer pursuant to the Asset Purchase Agreement and Sale Order, (vi) all losses, loss carry forwards and rights to receive refunds, credit and loss carry forwards with respect to any and all taxes of the Debtors, including interest receivable with respect thereto, (vii) all rights of the Debtors arising under the Asset Purchase Agreement and under any other agreement between the Debtors and Buyer entered into in connection with the Asset Purchase Agreement, (viii) all rights of the Debtors under their insurance policies, including, without limitation, to insurance proceeds or other insurance recoveries to the extent they do not relate to damaged goods that have not been fully repaired or replaced, (ix) all of the Debtors' rights to utility deposits paid after the commencement of these Chapter 11 Cases, and (x) only to the extent subject to capitalized leases and similar instruments not constituting contracts assigned to the Buyer, the Debtors' owned equipment, security devices, furniture, fixtures, tools and other personal property and assets that were not transferred to the Buyer. As of the Effective Date, these assets, along with any other Liquidation Trust Assets, shall be transferred to the Liquidation Trust.

As soon as practicable after the Liquidation Trustee has liquidated all of the Liquidation Trust Assets and completed all distributions provided in the Plan, but no later than the 5<sup>th</sup> anniversary of the Effective Date, the Liquidation Trustee will effectuate the dissolution of the Liquidation Trust.

**B. Substantive Consolidation**

Solely in connection with voting and distributions to be made to the holders of Allowed Claims, the Plan is predicated upon, and it is a condition precedent to Confirmation of the Plan, that the Bankruptcy Court enter the Confirmation Order which shall provide for the substantive consolidation of the Chapter 11 Cases into a single case for purposes of this Plan and distributions hereunder. Pursuant to such Confirmation Order (i) all assets and liabilities of the Debtors will be deemed to be merged solely for purposes of this Plan and distributions to be made hereunder, (ii) the obligations of each Debtor will be deemed to be obligations of all Debtors solely for purposes of this Plan and distributions hereunder, (iii) any Claims Filed or to be Filed in connection with any such obligations will be deemed Claims against all Debtors, as substantively consolidated, (iv) all transfers, disbursements and distributions made by any Debtor will be deemed to be made by all of the Debtors, (v) any Debtor's guarantees of the obligations of another Debtor shall be deemed eliminated so that any Claim against a Debtor and any guarantee thereof executed by another Debtor shall be deemed to be one obligation of all Debtors; and (vi) intercompany claims between the Debtors will be eliminated. Holders of Allowed Claims in each Class shall be entitled to their share of assets available for distribution of such Class without regard to which Debtor was originally liable for such Claim. The Plan shall serve as, and shall be deemed to be, a motion for entry of an order substantively consolidating the Chapter 11 Cases. If any such objection(s) is timely Filed and served, a hearing with respect to the substantive consolidation of the Estates and the objections thereto shall be scheduled by the Bankruptcy Court, which hearing shall coincide with the Confirmation Hearing.

**C. Formation of Liquidation Trust**

On or before the Effective Date, the Debtors and the Liquidation Trustee shall execute the Liquidation Trust Agreement and shall take all other steps necessary to establish the Liquidation Trust in accordance with this Plan, thereby allowing the Liquidation Trust to stand in the shoes of the Debtors with respect to all of the Debtors' rights and interest. Notwithstanding any prohibition of assignability under applicable non-bankruptcy law, on the Effective Date and periodically thereafter if additional Liquidation Trust Assets become available, the Debtors shall be deemed to have automatically transferred to the Liquidation Trust all of their right, title, and interest in and to all of the Liquidation Trust Assets, and in accordance with Section 1141 of the Bankruptcy Code, all such assets shall automatically vest in the Liquidation Trust free and clear of all Claims and Liens, subject only to the Allowed Claims of the Beneficiaries and the Allowed Equity Interests of Holders as set forth in the Plan and the expenses of the Liquidation Trust as provided in the Liquidation Trust Agreement.

The Liquidation Trustee shall succeed to the rights of the Debtors under the Asset Purchase Agreement in all respects, including the retrieval of copies of all necessary books and records purchased by the Buyer under the Asset Purchase Agreement, to the extent necessary to administer the Chapter 11 Cases and implement the Plan.

Except as otherwise provided in the Plan or the Liquidation Trust Agreement, the Liquidation Trustee may compromise or settle any Claims, without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules and may pay the charges that it incurs on or after the Effective Date for professionals' fees,

disbursements, expenses or related support services (including fees relating to the preparation of Professional fee applications) without application to the Bankruptcy Court.

To effectively investigate, defend or pursue the Causes of Action, the Debtors and the Liquidation Trust, and all counsel thereto, must be able to exchange information with each other on a confidential basis and cooperate in common interest efforts without waiving any applicable privilege. Given the common interests of the parties and the Liquidation Trust's position as successor to the Causes of Action, sharing such information between the Debtors, and the Liquidation Trust or their counsel shall not waive or limit any applicable privilege or exemption from disclosure or discovery related to such information.

**D. Treatment of Liquidation Trust for Federal Income Tax Purposes; No Successor-in-Interest**

The Liquidation Trust shall be established for the primary purpose of liquidating its assets, in accordance with Treas. Reg. § 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidation Trust. Accordingly, the Liquidation Trustee shall, in an expeditious but orderly manner, liquidate and convert to Cash the Liquidation Trust Assets, make timely distributions to the Beneficiaries and not unduly prolong its duration. The Liquidation Trust shall not be deemed a successor-in-interest of the Debtors for any purpose other than as specifically set forth herein or in the Liquidation Trust Agreement.

The Liquidation Trust is intended to qualify as a "grantor trust" for federal income tax purposes with the Beneficiaries treated as grantors and owners of the Liquidation Trust. For all federal income tax purposes, all parties (including, without limitation, the Debtors, the Liquidation Trustee, and the Beneficiaries) shall treat the transfer of the Liquidation Trust Assets by the Debtors to the Liquidation Trust, as set forth in the Liquidation Trust Agreement, as a transfer of such assets by the Debtors to the Holders of Allowed Claims of Beneficiaries entitled to distributions from the Liquidation Trust Assets, followed by a transfer by such Holders to the Liquidation Trust. Thus, the Beneficiaries shall be treated as the grantors and owners of a grantor trust for federal income tax purposes.

The right and power of the Liquidation Trustee to invest the Liquidation Trust Assets transferred to the Liquidation Trust, the proceeds thereof, or any income earned by the Liquidation Trust, shall be limited to the right and power to (i) invest such Liquidation Trust Assets (pending distributions in accordance with the Plan) in (a) short-term direct obligations of, or obligations guaranteed by, the United States of America, (b) short-term obligations of any agency or corporation which is or may hereafter be created by or pursuant to an act of the Congress of the United States as an agency or instrumentality thereof or (c) such other investments as the Bankruptcy Court may approve from time to time, including under § 345 of the Bankruptcy Code; or (ii) deposit such assets in demand deposits or certificates of deposit at any bank or trust company, which has, at the time of the deposit, a capital stock and surplus aggregating at least \$1,000,000,000 (collectively, the "**Permissible Investments**"); *provided, however*, that the scope of any such Permissible Investments shall be limited to include only those investments that a liquidating trust, within the meaning of Treas. Reg. § 301.7701-4(d),

may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings, other IRS pronouncements or otherwise.

Subject to the provisions of this Plan, the Liquidation Trustee shall distribute to the Beneficiaries all net cash income plus all net cash proceeds from the liquidation of the Liquidation Trust Assets (including as Cash for this purpose, all cash equivalents) at such time intervals as decided by the Liquidation Trustee in its discretion, pursuant to the terms of the Plan. The Liquidation Trustee may, in its sole discretion, cause the Liquidation Trust to retain an amount of net cash proceeds or net cash income reasonably necessary to maintain the value of its assets or to meet Claims and contingent liabilities (including Disputed Claims).

The Liquidation Trustee shall require any Beneficiary or other distributee to furnish to the Liquidation Trustee in writing his or its Employer or Taxpayer Identification Number as assigned by the Internal Revenue Service and the Liquidation Trustee may condition any distribution to any Beneficiary or other distributee upon receipt of such identification number.

E. **Appointment of the Liquidation Trustee**

The Trustee for the Liquidation Trust shall be designated by the Committee. The Committee shall designate the Liquidation Trustee five days prior to the Confirmation Hearing.

On the Effective Date, the Liquidation Trustee shall serve as trustee of the Liquidation Trust, and shall have all powers, rights and duties of a trustee. Among other things, the Liquidation Trustee shall (i) hold and administer the Liquidation Trust Assets, (ii) have the power and authority to retain, as an expense of the Liquidation Trust, attorneys, advisors, other professionals and employees as may be appropriate to perform the duties required of the Liquidation Trustee hereunder or in the Liquidation Trust Agreement, (iii) make distributions to the Beneficiaries as provided in the Liquidation Trust Agreement, (iv) have the right to receive reasonable compensation for performing services as Liquidation Trustee and to pay the reasonable fees, costs and expenses of any counsel, professionals, advisors or employees as may be necessary to assist the Liquidation Trustee in performing the duties and responsibilities required under the Plan and the Liquidation Trust Agreement, and (v) provide periodic reports and updates to the Adversary Board regarding the status of the administration of the Liquidation Trust. In the event the Liquidation Trustee is no longer willing or able to serve as trustee, or is otherwise removed pursuant to the terms of the Liquidation Trust Agreement, then the successor shall be appointed by a majority vote of the members of the Creditors Committee as of the Effective Date, or as otherwise determined by the Bankruptcy Court or the Liquidation Trust Agreement, and notice of the appointment of such Liquidation Trustee shall be filed with the Bankruptcy Court.

F. **Appointment of the Advisory Board**

No later than the Effective Date, the Committee may select up to three persons to serve as an Advisory Board to the Trustee (the “**Advisory Board**”). The Advisory Board shall have general oversight powers over the Liquidation Trustee and the Liquidation Trust. Each member of the Advisory Board will serve until death, resignation, or removal pursuant to the Liquidation Trust or applicable law.

G. **Retention of Professionals and Other Persons**

The Liquidation Trustee shall be authorized to retain and pay professionals and such other Persons the Liquidation Trustee determines in his sole discretion to be necessary to carry out his duties and responsibilities, or otherwise to accomplish the purposes of the Plan, the Confirmation Order and the Liquidation Trust Agreement, provided however, that the retention of legal counsel to pursue Causes of Action shall be compensated in the discretion of the Liquidation Trustee. The Liquidation Trustee shall have the right to pay the professionals from the Liquidation Trust Assets without further order of the Bankruptcy Court.

H. **Liquidation Trustee Standard of Care; Exculpation**

*Neither the Liquidation Trustee, nor any director, officer, affiliate, employee, employer, professional, attorney, agent or representative of the Liquidation Trust shall be personally liable, in connection with affairs of the Liquidation Trust, to any claimholder or Beneficiary of the Liquidation Trust, or any other Person, except for such acts or omissions which shall constitute willful misconduct or gross negligence. The Liquidation Trustee is entitled to rely upon and shall have no liability in relying upon the advice of professionals retained by the Liquidation Trust. Any Person asserting a claim against the Liquidation Trust for the expenses of the Liquidation Trust, shall look only to the Liquidation Trust Assets to satisfy any such expense incurred by the Liquidation Trust, the Liquidation Trustee, or other Persons employed or retained by the Liquidation Trust to carry out the terms of the Plan, the Confirmation Order, and the Liquidation Trust Agreement.*

I. **Termination of the Liquidation Trust**

The Liquidation Trust will terminate as soon as practicable, but in no event later than the fifth (5<sup>th</sup>) anniversary of the Effective Date; *provided, however*, that, on or prior to the date of such termination, the Bankruptcy Court, upon motion by a party in interest, may extend the term of the Liquidation Trust for a finite period, if such an extension is necessary to liquidate the Liquidation Trust Assets or for other good cause. Notwithstanding the foregoing, multiple extensions may be obtained so long as Bankruptcy Court approval is requested prior to the expiration of each extended term; *provided, however*, that the Liquidation Trustee determines that any further extension would not adversely affect the status of the Liquidation Trust as a grantor trust for federal income tax purposes.

The Liquidation Trustee and the Liquidation Trust shall be discharged or dissolved, as the case may be, at such time as (a) all Disputed Claims have been resolved, (b) all Liquidation Trust Assets have been liquidated, and (c) all distributions required to be made and all claims and fees required to be paid by the Liquidation Trustee under the Plan have been made.

J. **Termination of Liquidation Trustee and Advisory Board**

The duties, responsibilities and powers of the Liquidation Trustee, and the Advisory Board shall terminate in accordance with the terms of the Liquidation Trust Agreement.

K. **Indemnification**

*With respect to the Liquidation Trustee, the Trust shall (i) reimburse the Liquidation Trustee for all reasonable expenses incurred by him in connection with the execution and performance of his rights and duties hereunder (including reasonable fees and expenses of counsel and other experts); (ii) indemnify, defend and hold harmless the Liquidation Trustee (in both his individual and trustee capacities) and the officers, directors, employees and agents of the Liquidation Trustee (collectively, including the Liquidation Trustee in its individual capacity, the “Indemnified Persons”) from and against any and all losses, damages, liabilities, claims, actions, suits, costs, expenses, disbursements (including the reasonable fees and expenses of counsel), taxes and penalties of any kind and nature whatsoever, to the extent that such expenses arise out of or are imposed upon or asserted at any time against one or more Indemnified Persons with respect to the performance of this Agreement, the creation, operation, administration or termination of the Liquidation Trust, or the transactions contemplated hereby (collectively, “Indemnified Expenses”); and (iii) advance to each Indemnified Person Indemnified Expenses (including reasonable legal fees) incurred by such Indemnified Person in defending any claim, demand, action, suit or proceeding, prior to the final disposition of such claim, demand, action, suit or proceeding, upon receipt by the Liquidation Trust of a written request therefor and of an undertaking by or on behalf of the Indemnified Person to repay such amount if it shall ultimately be determined that the Indemnified Person is not entitled to be indemnified therefor; provided however, that notwithstanding anything in the Liquidation Trust to the contrary, the Liquidation Trust shall not be required to reimburse the Liquidation Trustee for any expenses, indemnify an Indemnified Person for Indemnified Expenses, or advance any Indemnified Expenses to an Indemnified Person, to the extent any such obligation arose or was the result of the willful misconduct or gross negligence of such Indemnified Person.*

**L. Preservation of Records and Documents**

Pursuant to the Asset Purchase Agreement, Buyer is required to preserve and provide access to the business records of the Debtors covering the period prior to the closing of the Asset Purchase Agreement. Buyer shall preserve and provide access to the business records of the Liquidation Trustee or his agents as required under the Asset Purchase Agreement.

**M. Corporate Action**

Upon the entry of the Confirmation Order by the Bankruptcy Court, all matters provided under the Plan involving the corporate structure of the Debtors shall be deemed authorized and approved without any requirement of further action by the Debtors, the Debtors’ shareholders or the Debtors’ boards of directors. After the Effective Date, the Debtors shall dissolve or otherwise terminate their existence in accordance with applicable law.

**N. Cancellation of Notes, Instruments, Debentures and Equity Securities**

On the Effective Date, except to the extent provided otherwise in the Plan, all notes, instruments, certificates and other documents evidencing Claims and all Equity Interests in the Debtor shall be canceled and deemed terminated.

**O. Effect of Appeals**

Unless the Confirmation Order is stayed pending appeal, at the option of the Debtors, in consultation with the Committee, this Plan may be consummated notwithstanding the pendency of an appeal from the Confirmation Order or the timely service or filing of a motion under Bankruptcy Rule 7052, 8002, 8003, 8015, 9023, or 9024.

### **VIII. SETTLEMENT WITH PENTLAND**

Pentland is a member of Alset Owners and an unsecured creditor in the Debtors' estates. Pentland has filed the Pentland Unsecured Claim asserting unsecured claims against the Debtors in the amount of \$5,153,365.46, including interest. As more fully set forth in a stipulation between the Debtors, the Committee and Pentland, annexed to the Plan as Exhibit 2 thereto (the "**Pentland Settlement**"), in an effort to resolve any issues related to the Pentland Unsecured Claim, the Unsecured Pentland Notes, and Pentland's investment in the Debtors, Pentland will receive \$50,000 on account of the Pentland Unsecured Claim, provided however that Pentland shall receive additional distributions only in the event that holders of other Class 2 Claims are paid in full. The Pentland Settlement will allow other general unsecured creditors in Class 2 to receive a greater distribution in these Chapter 11 Cases.

Pursuant to Bankruptcy Rule 9019 and in consideration for the classification, distribution, releases and other benefits provided under the Plan, the provisions of this Plan shall constitute a good faith compromise and settlement of the Unsecured Pentland Loans and the Pentland Unsecured Claim and all Claims brought, or that could have been brought by Pentland, which shall be deemed settled pursuant to section 1123(b)(3)(A) of the Bankruptcy Code pursuant to the Pentland Settlement. The entry of the Confirmation Order shall constitute the Court's approval of the Pentland Settlement and the Court's findings shall constitute its determination that the Pentland Settlement is in the best interest of the Debtors, the Estates, the creditors and other parties in interest, and is fair, equitable and within the range of reasonableness. As set forth in the Pentland Settlement, upon the Court's entry of the Confirmation Order, subject to achievement of the Effective Date, the Debtors, the Liquidation Trust, the Committee, any holder of any Claim or Interest or any other party in interest shall be permanently enjoined from raising or asserting any claim brought, or that could have been brought against Pentland.

### **IX. EFFECT OF PLAN CONFIRMATION**

#### **A. Binding Effect**

The Plan shall be binding upon and inure to the benefit of the Debtors, all present and former holders of Claims and Interests, and their respective successors and assigns, including, but not limited to, the Liquidation Trust.

#### **B. Releases and Exculpation**

*On the Effective Date, the Debtors, the Committee and, solely in their respective capacities as members or representatives of the Committee, the Committee Members and (ii) each of the respective representatives, officers, directors, members, employees, advisors, accountants, investment bankers, consultants, attorneys and other representatives of the Debtors and Committee, solely in their respective capacities as such (collectively, the "Exculpated Parties"), and only with respect to their activities and conduct in connection with*



*the Chapter 11 Cases, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise, that are based in whole or in part on any act or omission, transaction, event or other occurrence up to the Effective Date, shall have or incur any liability to any Person, and each Exculpated Party is hereby released from, any claim, cause of action or liability to any Person or entity or to any Holder of a Claim or Equity Interest, for any act or omission in connection with or arising out of their participation in the Chapter 11 Cases, including without limitation in the formulation, confirmation, consummation, and/or administration of this Plan or the property to be distributed under this Plan, except if such act or omission is determined in a Final Order to have constituted gross negligence or willful misconduct, and in all respects, each of such Persons shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities and shall be fully protected in acting or in refraining from action in accordance with such advice.*

C. **Injunction Related to Releases/Exculpation**

*The Confirmation Order will permanently enjoin the commencement or prosecution by any entity, whether directly, derivatively or otherwise, of any claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities released pursuant to the Plan.*

D. **Discharge of Claims and Termination of Interests**

Pursuant to section 1141(d)(3) of the Bankruptcy Code, Confirmation will not discharge Claims against the Debtor; provided, however, that a holder of a Claim against the Debtor may not, on account of such Claim, seek or receive payment or other distribution from, or seek recourse against, the Debtor, the Liquidation Trust, or any of their affiliates, respective successors or their respective property, except as expressly provided herein.

E. **Injunction**

*Except as otherwise provided in the Plan, the Confirmation Order shall provide, among other things, that from and after the Confirmation Date, all Persons who have held, hold, or may hold Claims against or Interests in the Debtors are (i) Permanently enjoined from taking any of the following actions against the estate, the Debtor, the Committee (or any of its members), the Liquidation Trust, the Liquidation Trustee, and any of the respective representatives, officers, directors, members, employees, advisors, accountants, investment bankers, consultants, attorneys and other representatives of any of the foregoing Debtor, Committee, Committee Members, Liquidation Trust and Liquidation Trustee, or any of their property on account of any such Claims or Interests and (ii) preliminarily enjoined from taking any of the following actions against the Debtor, the Committee (or any of its members), the Liquidation Trust, the Liquidation Trustee, and any of the respective representatives, officers, directors, members, employees, advisors, accountants, investment bankers, consultants, attorneys and other representatives of the foregoing Debtor, Committee, Committee Members, Liquidation Trust, Liquidation Trustee, or their property on account of such Claims or Interests: (A) commencing or continuing, in any manner or in any place, any action or other proceeding; (B) enforcing, attaching, collecting or recovering in any manner*

*any judgment, award, decree or order; (C) creating, perfecting or enforcing any lien or encumbrance; and (D) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of the Plan; provided, however, that (w) nothing contained herein shall preclude such Persons from exercising their rights pursuant to and consistent with the terms of the Plan, and (x) the preliminary injunction of actions against the Debtor, the Liquidation Trust, the Liquidation Trustee and their property (if any) shall be dissolved and terminate one (1) day following the termination of the Liquidation Trust Agreement in accordance with the terms of such agreement. By voting in favor of the Plan, each holder of an Allowed Claim voting in favor of the Plan will be deemed to have specifically consented to the injunctions set forth in the Plan, to the extent that such consent is necessary. Notwithstanding the foregoing, nothing herein shall be construed to enjoin the Liquidation Trust, and its representatives including the Liquidation Trustee from, among other things, pursuing Causes of Action and provided further that individual creditors are not enjoined from pursuing claims against parties other than the Debtors that are independent of such creditors' Claims against the Debtors. .*

## **X. EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

### **A. Assumption of Executory Contracts and Unexpired Leases**

Pursuant to the Sale Order, certain leases of real property and other executory contracts were assumed and assigned to Buyer. A list of the leases that were assumed and assigned to Buyer is attached to the Sale Order as Exhibit B thereto.

### **B. Rejection of Executory Contracts and Unexpired Leases**

Any executory contracts or unexpired leases that have not expired by their own terms on or prior to the Effective Date, which the Debtors have not assumed and assigned or rejected with the approval of the Bankruptcy Court or that have not been assumed or rejected by Motion and Order prior to Effective Date, shall be deemed rejected by the Debtors on the Effective Date and the entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such rejections pursuant to Sections 365(a) and 1123 of the Bankruptcy Code.

### **C. Rejection Claims; Cure of Defaults**

Except to the extent contrary to the Bar Date Order, if the rejection of an executory contract or unexpired lease results in damages to the other party or parties to such contract or lease, any Claim for such damages, if not heretofore evidenced by a Proof of Claim that has been Filed, shall be forever barred and shall not be enforceable against the Debtors, the Liquidation Trust, or their properties, successors or assigns, unless a Proof of Claim is Filed and served upon (i) the Liquidation Trustee, and (ii) any counsel for the Liquidation Trustee, on or before thirty (30) days after the later to occur of (i) the Effective Date; and (ii) the date of entry of an order by the Bankruptcy Court authorizing rejection of the particular executory contract or unexpired lease.

## **XI. PROVISIONS REGARDING DISTRIBUTIONS**

### **A. Time and Method of Distributions**

Except as otherwise stated in the Plan, the Liquidation Trustee, on behalf of the Liquidation Trust, or such other Entity as may be designated in accordance with the Liquidation Trust Agreement, will make the distributions required under the Plan in accordance with Section 3.5 of the Liquidation Trust Agreement. Whenever any distribution to be made under the Plan or the Liquidation Trust Agreement is due on a day other than a Business Day, such distribution shall be made, without interest, on the immediately succeeding Business Day, but any such distribution will have been deemed to have been made on the date due.

**B. Reserve for Disputed Claims**

The Liquidation Trustee shall maintain a reserve for any distributable amounts required to be set aside on account of Disputed Claims and shall distribute such amounts (net of any expenses, including any taxes relating thereto), as provided herein and in the Liquidation Trust Agreement, as such Disputed Claims are resolved by Final Order, and such amounts shall be distributable in respect of such Disputed Claims as such amounts would have been distributable had the Disputed Claims been Allowed Claims as of the Effective Date.

**C. Manner of Payment under the Plan and Liquidation Trust**

Any payment in Cash to be issued hereunder shall, at the election of the issuer, be made by check drawn on a domestic bank or by wire transfer from a domestic bank.

**D. Delivery of Distributions**

Subject to the provisions of Bankruptcy Rule 2002(g), and except as otherwise provided herein, distributions and deliveries to Holders of record of Allowed Claims shall be made at the address of each such Holder set forth on the Debtor' books and records unless superseded by the address set forth on proofs of claim filed by any such Holders. By no later than the Effective Date, the Debtors and the Buyer shall provide the Liquidation Trustee with the addresses and other books and records relating to the Beneficiaries, including, without limitation, all taxpayer identification information.

**E. Undeliverable Distributions**

1. Holding of Undeliverable Distributions:

If any distribution hereunder to any Holder is returned as undeliverable, no further distributions shall be made to such Holder unless and until the issuer of the distribution is notified in writing of such Holder's then-current address. All Entities ultimately receiving undeliverable Cash shall not be entitled to any interest or other accruals of any kind. Nothing contained in the Plan or Liquidation Trust Agreement shall require the issuer of any distribution to attempt to locate any Holder of an Allowed Claim or an Allowed Interest.

2. Failure to Claim Undeliverable Distributions:

Any holder of an Allowed Claim that does not assert its rights pursuant to the Plan or Liquidation Trust Agreement to receive a distribution within ninety (90) days from and after the date such distribution is returned as undeliverable shall have such holder's Claim for such

undeliverable distribution discharged and shall be forever barred from asserting any such Claim against the Debtor, Liquidation Trust, the Liquidation Trustee and their respective professionals, or the Liquidation Trust Assets. In such case, any consideration held for distribution on account of such Claim or Interest shall belong to the Liquidation Trust for distribution by the Liquidation Trustee to the Beneficiaries in accordance with the terms of the Plan and Liquidation Trust Agreement.

F. **Compliance with Tax Requirements/Allocation**

The issuer of any distribution under the Plan or Liquidation Trust shall comply with all applicable tax withholding and reporting requirements imposed by any Governmental Unit, and all distributions pursuant to the Plan and Liquidation Trust shall be subject to any such applicable withholding and reporting requirements. For tax purposes, distributions received in respect of Allowed Claims will be allocated first to the principal amount of such Claims, with any excess allocated to unpaid accrued interest.

G. **Time Bar to Cash Payments**

Checks issued on account of Allowed Claims shall be null and void if not negotiated within ninety (90) days from and after the date of issuance thereof. Requests for reissuance of any check shall be made directly to the issuer of the check by the holder of the Allowed Claim with respect to which such check originally was issued. Any claim in respect of such a voided check shall be made within ninety (90) days from and after the date of issuance of such check. After such date, all Claims in respect of voided checks shall be discharged and forever barred and the Liquidation Trust shall be entitled to retain all monies related thereto for distribution to the Beneficiaries in accordance with the terms of the Plan and the Liquidation Trust Agreement.

H. **Distributions After Effective Date**

Distributions made after the Effective Date to Holders of Claims that are not Allowed Claims as of the Effective Date, but which later become Allowed Claims, shall be deemed to have been made on the Effective Date. Unless otherwise specifically provided in the Plan or the Liquidation Trust Agreement, no interest shall be payable on account of any Claim not paid on the Effective Date.

I. **Fractional Dollars; De Minimis Distributions**

Notwithstanding anything contained herein to the contrary, payments of fractions of dollars will not be made. Whenever any payment of a fraction of a dollar under the Plan or Liquidation Trust would otherwise be called for, the actual payment made will reflect a rounding of such fraction to the nearest dollar (up or down), with half dollars being rounded down. No payment shall be made on account of any distribution less than Fifty Dollars (\$50) with respect to any Allowed Claim unless a request therefor is made in writing to the issuer of such payment on or before ninety (90) days after the Effective Date.

J. **Setoffs**

The Liquidation Trustee may, pursuant to Sections 502(d) or 553 of the Bankruptcy Code or applicable nonbankruptcy law, set off against any Allowed Claim or Allowed Administrative Claim and the distributions to be made pursuant to the Liquidation Trust Agreement on account thereof (before any distribution is made on account of such Claim), the Claims, rights and Causes of Action of any nature that it may hold against the Holder of such Allowed Claim or Allowed Administrative Claim; provided, however, that neither the failure to effect such a set-off nor the allowance of any Claim hereunder shall constitute a waiver or release of any such claims, rights and Causes of Action that the Liquidation Trust may possess against such Holder.

**K. Preservation of Subordination Rights**

Except as otherwise provided herein or in the Stipulation, all subordination rights and claims relating to the subordination by the Debtors or the Liquidation Trustee of any Allowed Claim shall remain valid, enforceable and unimpaired in accordance with Section 510 of the Bankruptcy Code or otherwise.

**L. Settlement of Claims and Controversies**

Pursuant to Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided under the Plan, the provisions of this Plan shall constitute a good faith compromise and settlement of claims or controversies relating to the contractual, legal and subordination rights that a Holder of a Claim may have with respect to any Allowed Claim, or any distribution to be made on account of any such Allowed Claim.

**XII. PROCEDURES FOR RESOLUTION OF DISPUTED, CONTINGENT AND UNLIQUIDATED CLAIMS OR EQUITY INTERESTS**

**A. Objections to Claims; Prosecution of Disputed Claims**

1. The Debtors or the Committee, prior to the Effective Date, and thereafter the Liquidation Trustee in accordance with the Liquidation Trust Agreement, shall have the right to object to the allowance of Claims or Equity Interests Filed with the Bankruptcy Court with respect to which they dispute liability or allowance in whole or in part. The Liquidation Trustee (within any parameters as may be established by the Liquidation Trust Agreement) shall have the authority to file, settle, compromise or withdraw any objections to Claims, without approval of the Bankruptcy Court.

2. Notwithstanding the foregoing, the Liquidation Trustee, on behalf of the Liquidation Trust, shall have the right to object to the allowance of any Administrative Claims, Priority Claims, Class 1 and Class 2 Claims, and any other Claims asserted against the Liquidation Trust or the Liquidation Trust Assets, by no later than the Claims Objection Deadline.

**B. Estimation of Claims**

The Debtors or the Committee, prior to the Effective Date, and thereafter the Liquidation Trustee in accordance with the Liquidation Trust Agreement, may at any time request that the Bankruptcy Court estimate any contingent or unliquidated Claim pursuant to Section 502(c) of

the Bankruptcy Code regardless of whether the Debtors, the Committee or the Liquidation Trustee previously have objected to such Claim or whether the Bankruptcy Court has ruled on any such objection. The Bankruptcy Court will retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including, without limitation, during the pendency of any appeal relating to any such objection. Subject to the provisions of Section 502(j) of the Bankruptcy Code, in the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, the amount so estimated shall constitute the maximum allowed amount of such Claim. If the estimated amount constitutes a maximum limitation on the amount of such Claim, the Debtors, the Committee or the Liquidation Trustee may pursue supplementary proceedings to object to the allowance of such Claim. All of the aforementioned objection, estimation and resolution procedures are intended to be cumulative and not necessarily exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court.

C. **Payments and Distributions on Disputed Claims**

1. Notwithstanding any provision hereof to the contrary, any issuer of a distribution hereunder may, in its discretion, pay the undisputed portion of a Disputed Claim. Notwithstanding the foregoing, the issuer of a distribution hereunder will set aside for each Holder of a Disputed Claim such portion of Cash as may be necessary to provide required distributions if that Claim were an Allowed Claim, either based upon the amount of the Claim as filed with the Bankruptcy Court or the amount of the Claim as estimated by the Bankruptcy Court.

2. At such time as a Disputed Claim becomes, in whole or in part an Allowed Claim, the issuer of a distribution hereunder shall distribute to the Holder thereof the distributions, if any, to which such Holder is then entitled under the Plan or the Liquidation Trust. Such distribution, if any, will be made as soon as practicable after the date that the order or judgment of the Bankruptcy Court allowing such Disputed Claim becomes a Final Order. No interest will be paid on Disputed Claims that later become Allowed or with respect to any distribution in satisfaction thereof to a Holder.

D. **Tort Claims**

All Claims against the Debtors arising after the Petition Date asserting damages for personal injuries or property damage, are Disputed Claims unless and until Allowed by a Final Order. Any other claim asserting damages for personal injuries or property damage shall be determined and liquidated by a court of competent jurisdiction. Nothing contained in the Plan shall be deemed a waiver of any Cause of Action that the Debtors or the Liquidation Trust may hold against any entity, including, without limitation, in connection with or arising out of any tort claim.

**XIII. RETENTION AND PRESERVATION OF CAUSES OF ACTION NOT EXPRESSLY SETTLED OR RELEASED**

1. On the Effective Date, all Causes of Action shall vest in the Liquidation Trust, which shall hold and possess all rights on behalf of the Debtors, the Estates and the Liquidation

Trust and shall have the exclusive right, authority and discretion to commence, prosecute, abandon, settle or compromise any such Cause of Action not otherwise settled or released prior to the Effective Date.

2. The Debtors and the Committee, and, after the Effective Date, the Liquidation Trustee, on behalf of the Liquidation Trust, reserve all rights to pursue any and all Causes of Action. The Debtors hereby reserve the rights of the Liquidation Trust and the Liquidation Trustee, on behalf of the Liquidation Trust, to pursue, administer, settle, litigate, enforce and liquidate:

(a) Any and all actions arising under the Bankruptcy Code, including, without limitation, Sections 544, 545, 547, 548, 549, 550, 551, 553(b) and/or 724(a) of the Bankruptcy Code; and

(b) Any other Causes of Action that currently exist or may subsequently arise and which have not been otherwise set forth herein, because the facts upon which such Causes of Action are based are not currently or fully known by the Debtors (collectively, the “**Unknown Causes of Action**”). The failure to list or describe any such Unknown Cause of Action herein is not intended to limit the rights of the Liquidation Trustee, on behalf of the Liquidation Trust, to pursue any unknown Cause of Action.

3. Unless Causes of Action against a Person or Entity are expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order of the Bankruptcy Court, the Debtors (before the Effective Date) and the Liquidation Trustee, on behalf of the Liquidation Trust (post-Effective Date), expressly reserve all Causes of Action (including the Unknown Causes of Action) for later adjudication and therefore, no preclusion doctrine or other rule of law, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches, shall apply to such Causes of Action upon, after, or as a result of the confirmation or Effective Date of the Plan, or the Confirmation Order. In addition, the Debtors and the Liquidation Trustee, on behalf of the Liquidation Trust, and any successors-in-interest thereto, expressly reserve the right to pursue or adopt any Claims not so waived, relinquished, released, compromised or settled that are alleged in any lawsuit in which any of the Debtors is a defendant or an interested party, against any Person or Entity, including, without limitation, the plaintiffs and co-defendants in such lawsuits.

#### **XIV. CRAM DOWN**

If necessary, the Proponents intend to request the Bankruptcy Court to confirm the Plan in accordance with Section 1129(b) of the Bankruptcy Code.

#### **XV. MISCELLANEOUS PROVISIONS**

##### **A. Dissolution of Committee**

Upon the Effective Date, the Committee shall dissolve, except with respect to any appeal of an order or other pending matter in the Chapter 11 Cases, and any applications for

Professional Fee Claims, and the Committee Members and the Committee's Professionals shall be relieved and discharged of all duties related to the Chapter 11 Cases.

**B. Payment of Statutory Fees**

After the Effective Date, all fees payable pursuant to Section 1930(a) of title 28 of the United States Code, as determined by the Bankruptcy Court at the hearing pursuant to Section 1128 of the Bankruptcy Code, shall be paid for each quarter (including any fraction thereof) until the Chapter 11 Cases are converted, dismissed or closed, whichever occurs first.

**C. Modification of Plan**

Subject to the limitations contained in the Plan:

1. The Plan may be amended or modified in the manner provided for under Code § 1127(a) or (b). The Debtors or the Liquidation Trustee shall give notice of any proposed modification to the Office of the United States Trustee, the Committee, and any other parties designated by the Court. The Debtors and the Liquidation Trustee also reserve the right to make such modifications at any hearings on Confirmation as are necessary to permit this Plan to be confirmed under Code § 1129(b).

2. After the entry of the Confirmation Order, the Debtors or the Liquidation Trustee may, upon order of the Bankruptcy Court, amend or modify the Plan, in accordance with Section 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan.

**XVI. CERTAIN FACTORS TO BE CONSIDERED**

HOLDERS OF CLAIMS AGAINST THE DEBTORS SHOULD READ AND CONSIDER CAREFULLY THE FACTORS SET FORTH BELOW, AS WELL AS OTHER INFORMATION SET FORTH IN THIS DISCLOSURE STATEMENT AND THE DOCUMENTS DELIVERED TOGETHER HERewith AND/OR INCORPORATED BY REFERENCE HEREIN, PRIOR TO VOTING TO ACCEPT OR REJECT THE PLAN.

**A. Certain Bankruptcy Considerations**

Although the Debtors and the Committee believe that the Plan will satisfy all requirements necessary for confirmation by the Bankruptcy Court, there can be no assurance that the Bankruptcy Court will reach the same conclusion. Moreover, there can be no assurance that modifications of the Plan will not be required for confirmation or that such modifications would not necessitate the resolicitation of votes.

**B. Risks Relating to Plan**

Although the Plan provides for a liquidation of the Debtors and the remaining assets of their estates, there are risks associated with the Plan. Holders of Claims should consider that the timing and amount of distributions under the Plan can be affected by (among other things): (i)



the costs and expenses incurred by the Debtors and the Liquidation Trustee and their professionals, agents or employees with respect to implementation of the Plan, including, without limitation, the costs and expenses of making Distributions pursuant to the Plan, and the costs and expenses of complying with applicable tax laws and other reporting requirements; (ii) litigation costs and expenses incurred by or on behalf of the Debtors; and (iii) the success in objecting to Disputed Claims.

## **XVII. CONFIRMATION OF THE PLAN**

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

### **A. Classification**

The Debtors are required under Section 1122 of the Bankruptcy Code to classify the Claims and Equity Interests of the Debtors' Creditors and Interest holders into Classes that contain Claims and Interests that are substantially similar to the other Claims or Equity Interests in such Classes. The Plan can be confirmed so long as there is one consenting Class of Impaired Claims (not including the votes of insiders), and so long as the other requirements for Confirmation that do not involve voting are met.

### **B. Disclosure and Solicitation**

This Disclosure Statement is presented to the holders of Claims in Impaired Classes that receive or retain property pursuant to the Plan to satisfy the requirements of Bankruptcy Code Sections 1125 and 1126. Bankruptcy Code Section 1125 requires that full disclosure be made to all holders of Claims and Equity Interests in Impaired Classes that receive or retain property pursuant to a plan at the time, or before, solicitation of acceptances of such plan is commenced.

### **C. Confirmation Hearing**

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a hearing on confirmation of a plan. As set forth above, by order of the Bankruptcy Court, the Confirmation Hearing has been scheduled for **February 22, 2010, at 10:00 a.m. Eastern Time**, in the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 6th Floor, Wilmington, DE 19801. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement made at the Confirmation Hearing or any adjournment thereof.

Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to confirmation of a plan. Any objection to Confirmation of the Plan must be in writing, conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court, set forth the name of the objecting party, the nature and amount of Claim or interest held or asserted by the objecting party against the Debtors' estates or property, the basis for the objection and the specific grounds therefor, and be filed with the Bankruptcy Court, with a copy to chambers, together with proof of service thereof, and served upon counsel for the Debtors, the Committee and the Office of the U.S. Trustee at the addresses set forth in Section II.F. hereof, so as to be received no later than **4:00 p.m. (Eastern Time), on February 15, 2010**.

Objections to Confirmation of the Plan are governed by Federal Rule of Bankruptcy Procedure 9014. **UNLESS AN OBJECTION TO CONFIRMATION IS TIMELY SERVED AND FILED, IT MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT.**

**D. Requirements for Confirmation of the Plan**

At the Confirmation Hearing, the Bankruptcy Court will confirm the Plan only if all of the requirements of Section 1129 of the Bankruptcy Code are met. Among the requirements for confirmation are that the Plan (a) is accepted by all impaired Classes of Claims and Equity Interests or, if rejected by an impaired Class, that the Plan “does not discriminate unfairly” and is “fair and equitable” as to such Class, (b) is feasible and (c) is in the “best interests” of holders of Claims and Equity Interests impaired under the Plan.

1. Fair and Equitable Test

The Debtors may seek to confirm the Plan notwithstanding the non-acceptance of the Plan by any impaired Class of Claims or Equity Interests entitled to vote on the Plan. To obtain such confirmation, the Debtors must demonstrate to the Bankruptcy Court that the Plan “does not discriminate unfairly” and is “fair and equitable” with respect to each dissenting impaired Class. The Debtors believe that Claims in Class 2 are Impaired under the Plan. A plan does not discriminate unfairly if the legal rights of a dissenting impaired class are treated in a manner consistent with the treatment of other classes whose legal rights are substantially similar to those of the dissenting impaired class and if no class receives more than it is entitled to for its claims or equity interests. The Debtors believe that the Plan satisfies this requirement.

The Bankruptcy Code establishes different “fair and equitable” tests for secured claims, unsecured claims and equity interests, as follows:

(a) Secured Claims

Either (i) each holder of an impaired Secured Claim (a) retains the Liens securing such Claim to the extent of the Allowed amount of such Claim and (b) receives on account of such Claim deferred Cash payments totaling at least the Allowed amount of such Claim with a present value as of the effective date at least equal to the value of such holder’s interest in the estate’s interest in the property securing its Liens; (ii) property subject to the Lien of the impaired creditor is sold free and clear of that Lien, with the Lien attaching to the proceeds of the sale, and the Lien proceeds treated in accordance with clauses (i) or (iii) hereof, or (iii) the impaired secured creditor realizes the “indubitable equivalent” of its Claim under the Plan.

(b) Unsecured Claims

Either (i) each holder of an impaired Unsecured Claim receives or retains under the Plan property of a value equal to the amount of its Allowed Claim or (ii) the holders of Claims and Equity Interests that are junior to the Claims of the dissenting Class will not receive or retain any property under the Plan on account of such junior Claims or Equity Interests.

(c) Equity Interests

Either (i) each Interest holder will receive or retain under the Plan property of a value equal to the greater of (a) the fixed liquidation preference or redemption price, if any, of such Equity Interest or (b) the value of the Equity Interest, or (ii) the holders of Equity Interests that are junior to the dissenting class of Equity Interests will not receive or retain any property under the Plan on account of such junior Interest.

## 2. Feasibility and Best Interests Test

The Bankruptcy Code requires that in order to confirm the Plan, the Bankruptcy Court must find that confirmation of the Plan is not likely to be followed by liquidation or the need for further financial reorganization of the Debtors (the “**Feasibility Test**”), except as otherwise provided for under the Plan. In addition, the Bankruptcy Court must determine that the values of the distributions to be made under the Plan to each Class will equal or exceed the values which would be allocated to such Class in a liquidation under Chapter 7 of the Bankruptcy Code (the “**Best Interest Test**”). The Best Interest Test with respect to each impaired Class requires that each holder of a Claim or Equity Interest in such Class either (i) accept the Plan, or (ii) receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the value such holder would receive or retain if the Debtors were liquidated under Chapter 7 of the Bankruptcy Code.

The Debtors and the Committee believe that the Plan meets the requirements of the Feasibility Test and of the Best Interest Test by providing for the liquidation of all of its assets and the Cash proceeds being distributed in accordance with the priority scheme set forth in the Bankruptcy Code.

## **XVIII. ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN OF LIQUIDATION**

If the Plan is not confirmed and consummated, the alternatives include: (i) preparation and presentation of an alternative plan of liquidation; or (ii) liquidation of the Debtors under Chapter 7 of the Bankruptcy Code.

### A. **Alternative Plans of Liquidation**

The Debtors and the Committee believe that failure to confirm the Plan will inevitably result in additional administrative expenses being incurred which will reduce and delay the likelihood of distributions to holders of General Unsecured Claims. The Debtor and the Committee believe that the Plan, as described herein, fairly adjusts the rights of various Classes of Creditors consistent with the distribution scheme embodied in the Bankruptcy Code and enables Creditors to realize the most possible under the circumstances.

### B. **Liquidation Under Chapter 7**

The Debtors and the Committee believe that a liquidation under Chapter 7 would result in a reduced recovery of funds by the Debtors’ estates because of the additional administrative expenses involved in the appointment of a trustee for the Debtors and the employment of attorneys and other professionals to assist such trustee. Further, the Plan contemplates approval of the Pentland Settlement which will allow beneficiaries holding claims in Class 2 to receive a

greater distribution under the Plan than would otherwise be received under Chapter 7 of the Bankruptcy Code. Accordingly, the Debtors and the Committee believe that if holders of Claims could or would receive anything in a Chapter 7 liquidation, such holders of Claims may be expected to receive smaller distributions pursuant to a Chapter 7 liquidation than under the Plan. See Exhibit D for the Liquidation Analysis.

To determine what holders of Claims and Equity Interests in each impaired Class would receive if the Debtors were liquidated, the Bankruptcy Court must determine what funds could be generated from the liquidation of the Debtors' assets and property in the context of a Chapter 7 liquidation case, which would consist of the proceeds resulting from the disposition of the unencumbered assets of the Debtors, augmented by the Cash held by the Debtor at the time of the commencement of the liquidation case. Such Cash amounts would be reduced by post-petition Chapter 11 administrative costs, and costs incurred by the Chapter 7 trustee and any professional retained by the Chapter 7 trustee. To determine if the Plan is in the best interest of each impaired Class, the present value of the distributions from the proceeds of the liquidation of the Debtors' assets and property (after subtracting the amounts attributable to the aforesaid Claims) are then compared with the present value offered to such Classes of Claims under the Plan.

In applying the Best Interest Test, the Claims in the Chapter 7 case would be classified according to the same seniority of such Claims as provided in the Plan, in the absence of a contrary determination by the Bankruptcy Court, all pre-Chapter 11 general unsecured creditor Claims that have the same rights upon liquidation would be treated as one Class for the purposes of determining the potential distribution of the liquidation proceeds resulting from the Chapter 7 case of the Debtors. The distributions from the liquidation proceeds would be calculated ratably according to the amount of the aggregate Claims held by each Creditor. The Debtors believe that the most likely outcome of liquidation proceedings under Chapter 7 would be the application of the rule of absolute priority of distributions. Under that rule, no junior Creditor may receive any distribution until all senior Creditors are paid in full with interest.

The Debtors and the Committee believe that Confirmation of the Plan will provide each Creditor with a greater recovery than it would receive if the Debtors were liquidated under Chapter 7. This determination is based primarily upon the fact that (i) a Chapter 7 liquidation would increase the administrative costs that must be paid prior to the payment of distributions to Creditors, and (ii) Beneficiaries of allowed claims in Class 2 would receive reduced distributions absent the Pentland Settlement.

## **XIX. RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain such jurisdiction over any matter arising under the Bankruptcy Code, or arising in or related to the Chapter 11 Cases or the Plan after Confirmation and after the Effective Date, and any other matter or proceeding that is within the Bankruptcy Court's jurisdiction pursuant to 28 U.S.C. §1334 or 28 U.S.C. §157, including, without limitation, jurisdiction to:

1. Allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Equity Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the allowance or priority of Claims or Equity Interests;
2. Grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan, for periods ending on or before the Effective Date;
3. Resolve any matters related to the assumption, assumption and assignment or rejection of any executory contract and unexpired lease to which any of the Debtors is party or with respect to which any of the Debtors may be liable and to hear, determine and, if necessary, liquidate, any Claims arising therefrom;
4. Ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions hereof;
5. Decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters, including all Causes of Action and objections or estimations to Claims or Equity Interests, and grant or deny any applications involving the Debtors that may be pending on the Effective Date, or that, pursuant to the Plan, may be instituted by the Liquidation Trustee, or the Liquidation Trust or any other Person or Entity after the Effective Date; provided, however that the Liquidation Trustee and the Liquidation Trust shall reserve the right to prosecute the Causes of Action in all proper jurisdictions;
6. Enter such orders as may be necessary or appropriate to implement or consummate the provisions hereof and all contracts, instruments, releases and other agreements or documents created in connection with the Plan, the Disclosure Statement or the Liquidation Trust Agreement;
7. Resolve any case, controversies, suits or disputes that may arise in connection with the consummation, interpretation or enforcement of the Plan, the Liquidation Trust Agreement, the Confirmation Order, or any Person's or Entity's obligations incurred in connection with the Plan, the Liquidation Trust Agreement, or the Confirmation Order, including, relating to determining the scope and extent of the Liquidation Trust Assets;
8. Issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Person or Entity with consummation or enforcement of the Plan, except as otherwise provided herein;
9. Resolve any case, controversies, suits or disputes with respect to the provisions contained in Articles XII and XIII of the Plan and enter any orders that may be necessary or appropriate to implement such provisions;
10. Enter and implement any orders that are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked or vacated;

11. Determine any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Liquidation Trust Agreement or any contract, instrument, release, indenture or other agreement or document created in connection with the Plan or the Disclosure Statement or the Liquidation Trust Agreement; and

12. Enter an order and/or final decree concluding the Chapter 11 Cases.

## **XX. CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN OF LIQUIDATION**

### **A. Introduction**

The following discussion summarizes certain U.S. federal income tax consequences of the transactions that are described herein and in the Plan that affect holders of certain Claims. This summary is based upon the Internal Revenue Code of 1986, as amended (“**Tax Code**”), the Treasury Department regulations promulgated thereunder (“**Treasury Regulations**”), judicial authority and current administrative rulings and practice now in effect. These authorities are all subject to change at any time by legislative, judicial or administrative action, and such change may be applied retroactively in a manner that could adversely affect holders of Claims or Equity Interests and the Debtors. The federal income tax consequences to any particular holder of a Claim or Equity Interest may be affected by matters not discussed below. For example, neither the impact of the Plan on foreign holders of Claims or Equity Interests nor the impact under any state or local law is discussed herein. Further, this summary generally does not address the tax consequences to Creditors who may have acquired their Claims from the initial holders nor does it address the tax considerations applicable to Creditors or Interest holders that may be subject to special tax rules such as financial institutions, insurance companies, dealers in securities or currencies, tax-exempt organizations or taxpayers subject to the alternative minimum tax. To the extent that the summary of payments to Creditors in this Section conflicts with other parts of this Disclosure Statement or the Plan, the discussion in such other parts of the Disclosure Statement or the Plan shall govern.

**NO RULING WILL BE SOUGHT FROM THE INTERNAL REVENUE SERVICE (“IRS”), AND NO OPINION OF COUNSEL HAS BEEN OR WILL BE SOUGHT, WITH RESPECT TO ANY OF THE TAX ASPECTS OF THE PLAN. THE DISCUSSION SET FORTH BELOW IS FOR GENERAL INFORMATION ONLY. THIS DESCRIPTION DOES NOT COVER ALL ASPECTS OF FEDERAL INCOME TAXATION THAT MAY BE RELEVANT. EACH CREDITOR AND INTEREST HOLDER IS URGED TO CONSULT WITH ITS OWN TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE PLAN.**

**IRS CIRCULAR 230 NOTICE: TO ENSURE COMPLIANCE WITH REQUIREMENTS IMPOSED BY THE IRS, PLEASE BE ADVISED THAT ANY WRITTEN U.S. TAX ADVICE CONTAINED IN THIS DISCLOSURE STATEMENT (INCLUDING ANY ATTACHMENT) IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, FOR THE PURPOSE OF (1) AVOIDING PENALTIES UNDER THE INTERNAL REVENUE CODE OR (2) PROMOTING, MARKETING OR**

**RECOMMENDING TO ANOTHER PARTY ANY TRANSACTION OR MATTER ADDRESSED HEREIN.**

**B. Consequences to Holders of Allowed Unsecured Claims**

Pursuant to the Plan, holders of Allowed Unsecured Claims will receive one or more distributions in satisfaction of their Claims (depending upon, among other things, the resolution of Disputed Claims).

1. Gain or Loss

In general, each holder of an Allowed Unsecured Claim will recognize gain or loss in an amount equal to the difference between (i) the amount of Cash received by such Creditor in satisfaction of its Claim (other than any Claim representing accrued but unpaid interest, and any amount required to be treated as imputed interest in respect of Distributions made after the Effective Date) and (ii) such Creditor's adjusted tax basis in such Claim (other than any Claim representing accrued but unpaid interest). For a discussion of the treatment of any Claim for accrued but unpaid interest, see "Distributions in Discharge of Accrued but Unpaid Interest" below.

Except as otherwise provided in the Plan, holders of Allowed Unsecured Claims may receive additional Distributions as provided in the Plan, as Disputed Claims are resolved. As a consequence, Creditors' ability to recognize a loss in respect of an Allowed Unsecured Claim may be limited if a reasonable prospect exists of recovering additional amounts in further satisfaction of the Allowed Unsecured Claim. Any loss, and a portion of any gain, realized by holders of Allowed Unsecured Claims may be deferred until the Final Distribution is made in respect of such Allowed Unsecured Claims. Creditors who are planning to take a bad debt deduction with respect to their unpaid Claims should consult their tax advisor in light of the Debtor's belief that there is a reasonable prospect that holders of Allowed Unsecured Claims will receive a Distribution on said Allowed Claim. Where gain or loss is recognized by a Creditor in respect of its Allowed Claim, the character of such gain or loss (i.e., long-term or short-term capital, or ordinary) will be determined by a number of factors, including the tax status of the Creditor, whether the Claim in respect of which Cash was received constituted a capital asset in the hands of the Creditor and how long it has been held, whether such Claim was originally issued at a discount or acquired at a market discount, and whether and to what extent the Creditor had previously claimed a bad debt deduction in respect of such Claim. A Creditor that purchased its Claim from a prior holder at a market discount may be subject to the market discount rules of the Internal Revenue Code. Under those rules, assuming that the Creditor had not made an election to amortize the market discount into income on a current basis with respect to any market discount instrument, any gain recognized on the exchange of such Claim (subject to a *de minimis* rule) would generally be characterized as ordinary income to the extent of the accrued market discount on such Claim as of the date of the exchange.

2. Distributions in Discharge of Accrued but Unpaid Interest

Pursuant to the Plan, all Distributions in respect of an Allowed Claim will be allocated first to the original principal amount of such Claim as determined for federal income tax

purposes to the extent thereof and thereafter to the remaining portion of such Claim. However, there is no assurance that such allocation will be respected by the IRS for federal income tax purposes. In general, to the extent that any amount received by a Creditor is received in satisfaction of accrued interest during its holding period, such amount will be taxable to the Creditor as interest income (if not previously included in the holder's gross income). Conversely, a Creditor generally recognizes a deductible loss to the extent any accrued interest claimed was previously included in its gross income and is not paid in full. Each Creditor is urged to consult its tax advisor regarding the allocation of consideration and the deductibility of unpaid interest for tax purposes.

### 3. Information Reporting and Withholding

All payments to Creditors are subject to any applicable withholding (including employment tax withholding). Under the Internal Revenue Code, interest, dividends and other "reportable payments" may, under certain circumstances, be subject to "backup withholding" at up to a 28% rate. Backup withholding generally applies if the Creditor (a) fails to furnish its social security number or taxpayer identification number ("TIN"), (b) furnishes an incorrect TIN, (c) fails properly to report interest or dividends or (d) under certain circumstances, fails to provide a certified statement, signed under penalty of perjury, that the TIN provided is its correct number and that it is not subject to backup withholding. Backup withholding is not an additional tax but merely an advance payment, which may be refunded to the extent it results in an overpayment of tax. Certain Persons are exempt from backup withholding, including, in certain circumstances, corporations and financial institutions.



## **XXI. CONCLUSION AND RECOMMENDATION**

The Debtors and the Committee believe that the Plan is in the best interests of all Creditors and urges the holders of all Claims who receive Ballots to vote to accept the Plan and to evidence such acceptance by returning their Ballots so that they will be actually received on or before **4:00 p.m. Eastern Time, on February 15, 2010.**

Dated: December 2, 2009

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Counsel to Alset Owners, LLC, *et al.*,  
Debtors and Debtors in Possession

## **TABLE OF EXHIBITS**

- Exhibit A: The Plan
- Exhibit B: Bar Date Order
- Exhibit C: Chapter 7 Liquidation Analysis

**EXHIBIT A**

**PLAN**

**A COPY OF THE PLAN HAS BEEN FILED SEPARATELY WITH THE COURT**

**EXHIBIT B**  
**BAR DATE ORDER**

**EXHIBIT C**

**CHAPTER 7 LIQUIDATION ANALYSIS**

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