

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

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

**JOINT PLAN OF LIQUIDATION OF THE
DEBTORS AND DEBTORS IN POSSESSION**

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Debtors and Debtors in Possession

Dated: December 2, 2009

¹ 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.

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Pursuant to Title 11 of the United States Code, 11 U.S.C. §§ 101 – 1532, as amended (the “Bankruptcy Code”), Alset Owners, LLC, Altes, LLC, Setla, LLC, and Checkers Michigan, LLC (the “Debtors” or the “Proponents”) respectfully propose the following Plan of Liquidation under chapter 11 of the Bankruptcy Code (the “Plan”).

ARTICLE I

DEFINED TERMS, RULES OF INTERPRETATION, COMPUTATION OF TIME AND GOVERNING LAW

A. Rules of Interpretation, Computation of Time and Governing Law

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

2. In computing any period of time prescribed or allowed hereby, the provisions of Rule 9006(a) of the Federal Rules of Bankruptcy Procedure shall apply.

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

B. Proponents of Plan

The Debtors are the proponents of the Plan. Article III contains the classification and treatment of Claims and Equity Interests against the Debtors.

C. Defined Terms

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein. The Bankruptcy Code also defines many terms

and those definitions are incorporated herein by reference. Additional terms used herein are defined in the Asset Purchase Agreement and have the meaning ascribed to them in the Asset Purchase Agreement.

1. “**Administrative Claim**” means a Claim that has been timely filed, pursuant to the Bar Date Order or the procedures set forth in the Confirmation Order, for costs and expenses of administration under Sections 503(b), or 507(a)(2) of the Bankruptcy Code, including, but not limited to: (i) the actual and necessary costs and expenses incurred after the Petition Date of preserving the Estate and operating the businesses of the Debtors; (ii) Allowed Professional Fee Claims and all other Claims for compensation for legal, financial advisory, accounting and other services and reimbursement of expenses awarded or allowed under Sections 328, 330(a), 331 or 363 of the Bankruptcy Code or otherwise for the period commencing on the Petition Date and ending on the Effective Date; and (iii) all fees and charges assessed against the Estate under 28 U.S.C. §1930. 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.

2. “**Administrative Claims Bar Date**” means that date by which all Administrative Claims that are not subject to the Bar Date Order shall be filed, which is the first Business Day that is thirty (30) days after the Effective Date. The last date to file all Administrative Claims that are subject to the Bar Date Order is December 15, 2009.

3. “**Affiliate**” means, with respect to the Debtors or any other Entity, an affiliate as defined in Section 101(2) of the Bankruptcy Code.

4. “**Allowed**” means, with respect to Claims or Equity Interests, (i) any Claim against or Equity Interest in the Debtors, proof of which is timely Filed, or by order of the Bankruptcy Court is not or will not be required to be Filed, (ii) any Claim or Equity Interest that has been or is hereafter listed in the Schedules as neither disputed, contingent or unliquidated, and for which no timely proof of Claim has been Filed, or (iii) any Claim Allowed pursuant to the Plan or by a Final Order of the Bankruptcy Court; provided, however, with respect to any Claim or Equity Interest described in clauses (i) or (ii) immediately above, such Claim or Equity Interest shall be Allowed only if (w) no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules or the Bankruptcy Court or (x) such an objection is so interposed and the Claim or Equity Interest shall have been Allowed by a Final Order (but only if such allowance was not solely for the purpose of voting to accept or reject the Plan); and further provided that (y) no Administrative Claim, Claim or Equity Interest that is an Assumed Liability shall be Allowed for purposes of voting or distribution under the Plan or Liquidation Trust, and (z) no Administrative Claim, Claim or Equity Interest shall be Allowed to the extent that the Holder thereof either possesses property recoverable by the Estate or the Liquidation Trust under section 542, 543, 550, or 553 of the Bankruptcy Code or is the transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code until such time as such Holder has paid the amount or turned over any such property for which the Holder is liable. Except as otherwise specified in the Plan or a Final Order of the Bankruptcy Court, the amount of an Allowed Claim shall not include interest on such Claim from and after the Petition Date. Nothing herein shall prejudice the ability of the Debtors, the Committee or the Liquidation Trustee to object to any claim.

5. **"Asset Purchase Agreement"** means that certain Asset Purchase Agreement, dated as of June 5, 2009 between the Debtors and Checkerco, Inc., as amended from time to time, and authorized and approved by the Sale Order (as hereinafter defined).

6. **"Assumed Liabilities"** means all Administrative Expenses and any other liabilities that the Buyer agreed to assume under the Asset Purchase Agreement.

7. **"Ballot"** or **"Ballots"** mean the ballots accompanying the Disclosure Statement upon which Holders of Impaired Claims entitled to vote shall indicate their acceptance or rejection of the Plan in accordance with the Plan and the Voting Instructions.

8. **"Balloting Agent"** means BMC Group Inc. whose offices are maintained at 18750 Lake Drive East, Chanhassen, MN 55317.

9. **"Bankruptcy Code"** means Title 11 of the United States Code, 11 U.S.C. §§ 101-1532, and applicable portions of Titles 18 and 28 of the United States Code.

10. **"Bankruptcy Court" or "Court"** means the United States Bankruptcy Court for the District of Delaware, or any other court having jurisdiction over the Chapter 11 Cases.

11. **"Bankruptcy Rules"** means the Federal Rules of Bankruptcy Procedure, as amended from time to time, as applicable to the Chapter 11 Case, promulgated under 28 U.S.C. § 2075 and the General, Local and Chambers Rules of the Bankruptcy Court, as amended from time to time.

12. **"Bar Date Order"** means that certain Order (A) Fixing The Procedures And Deadlines To Proofs Of Claim Pursuant To Fed.R.Bankr.P. 2002 and 3003 and Del.Bankr.L.R. 2002-1(e) And To Make Requests For Payment Of Administrative Expense Claims, and (B) Approving The Form And Manner Of Notice Of The Bar Date, which was entered by the Bankruptcy Court on September 29, 2009.

13. **"Beneficial Holder"** means the Person or Entity holding the beneficial interest in a Claim or Equity Interest.

14. **"Beneficiaries"** means the Holders of the Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Other Priority Claims, and Allowed General Unsecured Claims.

15. **"Business Day"** means any day, other than a Saturday, Sunday, or a "legal holiday" (as defined in Bankruptcy Rule 9006(a)) as applicable in the State of Delaware.

16. **"Buyer"** means, collectively, Checkerco, Inc. and Checkers Drive-In Restaurants, Inc.

17. **"Cash"** means legal tender of the United States of America or the equivalent thereof, including bank deposit and checks.

18. **"Cash Consideration"** means the Cash paid by the Buyer for substantially all of the assets of the Debtors, pursuant to that certain (a) "Asset Purchase Agreement, dated as of June 5, 2009 between Buyer and the Debtors, and (b) Sale Order.

19. **"Causes of Action"** means all Claims, actions, causes of action, chooses in action, suit, debts, dues, damages, judgments, third-party claims, counterclaims, and cross claims (including, but not limited to, all claims arising under state, federal or other non-bankruptcy law, and any avoidance, recovery, subordination or other actions against insiders and/or any other Persons or Entities under the Bankruptcy Code, including any and all claims and causes of action under Sections 506, 510, 542, 543, 544, 545, 547, 548, 549, 550, 551, and 553 of the Bankruptcy Code) and those actions described in Article XII hereof of the Debtors and the Estate that are or may be pending or existing on the Effective Date against any Person or Entity, based in law or equity, including, but not limited to, under the Bankruptcy Code, whether direct, indirect, known or unknown, derivative, or otherwise and whether asserted or unasserted as of the date of entry of the Confirmation Order, and including the Unknown Causes of Action, as defined in Paragraph B(2)(b) of Article XIII of this Plan.

20. **"Chapter 11 Cases"** means the chapter 11 cases styled In re Alset Owners, LLC, et al., Case Number 09-11960 (BLS), pending in the Bankruptcy Court.

21. **"Claim(s)"** means a claim(s) (as defined in Section 101(5) of the Bankruptcy Code) against the Debtors.

22. **"Claims Objection Deadline"** means one year after the Effective Date, or such later date as may be ordered by the Bankruptcy Court, provided however, that the Liquidation Trustee may seek additional extensions of this date from the Bankruptcy Court.

23. **"Claims Reserve"** means one or more segregated, interest-bearing accounts in which Cash shall be held in accordance with Paragraph B of Article IX of this Plan.

24. **"Class"** means a category of Holders of Claims or Equity Interests as set forth in Article III herein.

25. **"Committee"** means the Official Committee of Unsecured Creditors constituted in the Chapter 11 Cases.

26. **"Committee Members"** means the current and former members of the Committee, each in their capacity as a member of the Committee.

27. **"Confirmation"** means the date upon which the Confirmation Order is entered by the Bankruptcy Court, subject to all conditions specified in Article XI.A herein having been satisfied or waived pursuant to Article XI.C herein.

28. **"Confirmation Date"** means the date upon which the Confirmation Order is entered by the Bankruptcy Court on the Debtors' docket, within the meaning of Bankruptcy Rules 5003 and 9021.

29. **"Confirmation Hearing"** means the hearing at which the Bankruptcy Court considers entry of the Confirmation Order.

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

31. **"Creditor"** means any Holder of an Allowed Claim.

32. **"Debtors" or "Debtors-in-Possession"** means Alset Owners, LLC, Atles, LLC, Setla, LLC, and Checkers Michigan, LLC.

33. **"Disclosure Statement"** means the Disclosure Statement for the Plan dated December 2, 2009, as amended, supplemented, or modified from time to time, describing the Plan, that is prepared and distributed in accordance with Sections 1125, 1126(b) and/or 1145 of the Bankruptcy Code and Bankruptcy Rule 3018 and/or other applicable law.

34. **"Disputed"** means, with respect to any Claim or Equity Interest, a Claim or Equity Interest: (a) as to which the Debtors or any other party-in-interest has Filed a timely objection or request for estimation in accordance with the Bankruptcy Code and the Bankruptcy Rules, which objection or request for estimation has not been withdrawn or determined by a Final Order; or (b) that is held by a Holder that either possesses property recoverably by the Estate or the Liquidation Trust under sections 542, 543, 550, or 553 of the Bankruptcy Code or is the transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, of 724(a) of the Bankruptcy Code until such time as such Holder has paid the amount or turned over any such property for which the Holder is liable.

35. **"Effective Date"** means the date which is the first Business Day after the Confirmation Date on which: (a) no stay of the Confirmation Order is in effect, and (b) all conditions specified in Article XI.B herein have been (x) satisfied or (y) waived pursuant to Article XI.C herein.

36. **"Entity"** means an entity as defined in Section 101(15) of the Bankruptcy Code.

37. **"Equity Interest"** means all equity interests in the Debtors, including, but not limited to, all Membership Interests.

38. **"Estate"** means the Estate of each Debtor created by Section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case for the Debtors.

39. **"File" or "Filed"** means file or filed with the Bankruptcy Court in the Chapter 11 Cases.

40. **"Final Decree"** means the decree contemplated under Bankruptcy Rule 3022.

41. **"Final Order"** means an order or judgment of the Bankruptcy Court (i) as to which the time to appeal, petition for certiorari or move for reargument, reconsideration or rehearing has expired and as to which no appeal, petition for certiorari or other proceedings for reargument, reconsideration or rehearing is pending; or (ii) if an appeal, writ of certiorari,

reargument or rehearing thereof has been sought, such order has been affirmed by the highest court to which such order was appealed or from which certiorari was sought, reargument, reconsideration or rehearing has been denied or resulted in no modification of such order, and the time to take any further appeal, petition for certiorari or move for reargument, reconsideration or rehearing has expired; provided, however, that the possibility of a motion under Rule 59 or 60 of the Federal Rules of Civil Procedure or any analogous Bankruptcy Rule being Filed with respect to such order, shall not cause such order to be deemed a non-Final Order.

42. **"General Unsecured Claim"** means any Claim against the Debtors, but not including any Claim that is a/an (i) Administrative Claim, (ii) Priority Tax Claim, (iii) Secured Claim, and (iv) Other Priority Claim.

43. **"Governmental Unit"** has the meaning ascribed to it in Section 101(27) of the Bankruptcy Code.

44. **"Holder"** means the Beneficial Holder of an Equity Interest or Claim.

45. **"Impaired"** means with respect to any Class of Claims or Equity Interests, a Claim or Equity Interest that is impaired within the meaning of Section 1124 of the Bankruptcy Code.

46. **"Impaired Claim"** means a Claim classified in an Impaired Class.

47. **"Initial Distribution Date"** means a date selected by the Liquidation Trustee in his sole and absolute discretion, provided however, such date shall be no sooner than the 60th day after the Effective Date.

48. **"Lien"** means any charge, lien, or encumbrance against, or interest in, property to secure payment of a debt or performance of an obligation, including a right of set off to secure payment of a debt or performance of an obligation.

49. **"Liquidation Trust"** means the trust to be created on the Effective Date in accordance with the Plan and the Liquidation Trust Agreement for the benefit of the Beneficiaries and Holders.

50. **"Liquidation Trust Agreement"** means that trust agreement that, among other things, creates and establishes the Liquidation Trust, describes the powers, duties and responsibilities of the Liquidation Trustee, provides for the liquidation and distribution of proceeds of the Liquidation Trust Assets in form and substance consistent with the attached Exhibit I.

51. **"Liquidation Trust Assets"** means (i) Cash held by the Debtors as of the Confirmation Date, (ii) the Causes of Action, (iii) all rights of setoff and recoupment and other defenses that the Debtors and the Estates may have with respect to Allowed Claims (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 of the Debtors' rights under contracts that were not assigned to Buyer pursuant to the Asset Purchase Agreement and the Sale Order, (vi) 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, (vii) 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, (viii) 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, (ix) 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, (x) all of the Debtors' rights to utility deposits paid after the commencement of these Chapter 11 Cases, and (xi) 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.

52. **"Liquidation Trustee"** means _____, or such other Person appointed by the Committee within five days prior to the Confirmation Hearing.

53. **"Membership Interests"** means membership interests in each of the Debtors.

54. **"Other Priority Claims"** means any and all Claims accorded priority in right of payment under Section 507(a) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

55. **"Operating Account"** means a segregated, interest-bearing account established and maintained by the Liquidation Trustee pursuant to Article VII of the Plan.

56. **"Pentland"** means Pentland USA, Inc.

57. **"Pentland Settlement"** means the settlement described in Article VI of the Plan.

58. **"Pentland Unsecured Claim"** means an unsecured claim in the amount of \$5,153,365.46.

59. **"Pentland Unsecured Loans"** means the unsecured loans provided to the Debtors from time to time from June 2000 until prior to the Petition Date.

60. **"Person"** means a person as defined in Section 101(41) of the Bankruptcy Code.

61. **"Permissible Investments"** shall have the meaning ascribed to it in Section V.E.3 of the Plan.

62. **"Petition Date"** means June 5, 2009.

63. **"Plan"** means this Joint Plan of Liquidation of the Debtors, together with all exhibits hereto, either in their present form or as it may be altered, amended, modified or supplemented from time to time in accordance with the terms hereof, the Bankruptcy Code and the Bankruptcy Rules.

64. **"Priority Tax Claim"** means a Claim of a Governmental Unit of the kind specified in Section 507(a)(8) of the Bankruptcy Code.

65. **"Professional"** or collectively **"Professionals"** means a Person or Entity employed pursuant to a Final Order in accordance with Sections 327 and 1103 of the Bankruptcy Code and to be compensated for services rendered prior to the Confirmation Date, pursuant to Sections 327, 328, 329, 330 and 331 of the Bankruptcy Code, or for which compensation and reimbursement has been allowed by the Bankruptcy Court pursuant to Section 503(b)(4) of the Bankruptcy Code.

66. **"Professional Fee Claims"** means all fees and expenses for services rendered by Professionals in the Chapter 11 Cases, as allowed by the Bankruptcy Court in a Final Order.

67. **"Pro Rata"** means the proportion that an Allowed Claim in a particular Class bears to the aggregate amount of Allowed Claims in such Class.

68. **"Proof of Claim"** has the meaning ascribed to it in Bankruptcy Rule 3001.

69. **"Proponents"** means the Debtors.

70. **"Record Date"** means the date to be established under the order allowing the Disclosure Statement for the purpose of determining those Holders of Allowed Claims and Equity Interests that are entitled to vote to accept or reject this Plan.

71. **"Rejected Contracts"** means those executory contracts and unexpired leases the Debtors previously rejected under Section 365 of the Bankruptcy Code or in accordance with this Plan.

72. **"Sale Order"** means that certain Order (I) Approving Sale Of Substantially All Of The Debtors' Assets Free And Clear Of All Liens, Claims, Encumbrances And Other Interests Pursuant To Bankruptcy Code Sections 105 and 363(b); (II) Authorizing The Assumption And Assignment Of Certain Executory Contracts And Unexpired Leases Pursuant To Bankruptcy Code Sections 363 and 365; And (III) Granting Related Relief, dated August 31, 2009.

73. **"Schedules"** means the schedules of assets and liabilities, schedules of executory contracts, and the statement of financial affairs that the Debtors filed on July 31, 2009 pursuant to Section 521 of the Bankruptcy Code, the Official Bankruptcy Forms and the Bankruptcy Rules, as they may be amended and supplemented from time to time.

74. **"Secured Claim"** means (a) a Claim that is secured by a lien on property in which the Estate has an interest, which lien is valid, perfected and enforceable under applicable law or by reason of a Final Order, or that is subject to setoff under Section 553 of the Bankruptcy Code, to the extent of the value of the Creditor's interest in the Estate's interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to Section 506(a) of the Bankruptcy Code, or (b) a Claim Allowed under this Plan as a Secured Claim.

75. “*Unimpaired*” means, with respect to a Class of Claims or Equity Interests, a Claim or Equity Interest that is unimpaired within the meaning of Section 1124 of the Bankruptcy Code.

76. “*Unimpaired Class*” means Class 1, which is not an impaired Class within the meaning of Section 1124 of the Bankruptcy Code.

77. “*Voting Deadline*” means the deadline for submitting Ballots to accept or reject the Plan in accordance with Section 1126 of the Bankruptcy Code, which deadline is specified in the Disclosure Statement, the Ballots or related solicitation documents approved by the Bankruptcy Court.

78. “*Voting Instructions*” means the instructions for voting on the Plan contained in the Disclosure Statement and the Ballots approved by the Bankruptcy Court.

ARTICLE II

UNCLASSIFIED CLAIMS AGAINST THE DEBTORS

A. *Administrative Claims*

1. 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.

2. 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 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.

3. 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.

4. 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.

B. *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.

ARTICLE III

CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS AND EQUITY INTERESTS

A. *Summary*

The categories of Claims and Equity Interests listed below classify Claims against and Equity Interests in the Debtors for all purposes, including voting, confirmation and distribution pursuant hereto and pursuant to Sections 1122 and 1123(a)(1) of the Bankruptcy Code. 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.

Summary of Classification and Treatment of Claims and Equity Interests

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

B. *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 Debtors or the Liquidation Trustee, or as otherwise addressed in prior Court orders, 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 Other 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 this Plan, and (vi) the payment of post-Confirmation expenses and fees incurred by the Liquidation Trust, or the Liquidation Trustee in his performance of the duties under the Liquidation Trust Agreement. Further, in accordance with the Pentland Settlement described in Article VI of the Plan, Pentland, a holder of a Class 2 Claim, has agreed to receive a distribution of no more than \$50,000 on account of the Pentland Unsecured Loans and will defer any additional distributions until holders of other unsecured claims in Class 2 have been paid in full. The total amount of Class 2 Claims is anticipated to be in the range of \$1,800,000 to \$7,000,000, 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 Debtors.

(b) *Treatment:* On the Effective Date, unless Holders of Allowed Claims in Classes 1 through 2 are paid in full with interest, where relevant, the Holders of Class 3 Equity Interests thereof will receive no distribution on account of their Equity Interests. If the Holders of Equity 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:* Holders of Class 3 Equity Interests shall not be entitled to vote to accept or reject the Plan. Class 3 is Impaired and the Holders of Class 3 Equity Interests are conclusively deemed to have rejected the Plan.

ARTICLE IV

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 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, holders in Class 1 are 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.

ARTICLE V

MEANS FOR THE IMPLEMENTATION OF THE PLAN

A. *Liquidation of Debtors' Assets*

1. 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.

2. 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 5th 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. *Officers and Directors of the Debtors*

Immediately after the Effective Date, all officers and directors of the Debtors shall be deemed to have resigned.

D. *Formation of Liquidation Trust*

1. 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 interests. 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 the Holders as set forth in the Plan and the expenses of the Liquidation Trust as provided in the Liquidation Trust Agreement.

2. 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.

3. 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.

4. 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.

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

1. The Liquidation Trust shall be established for the primary purpose of liquidating their 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 their 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.

2. 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.

3. 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 Section 345 of the Bankruptcy Code; or (ii) deposit such assets in demand deposit 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.

4. 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 their discretion, pursuant to the terms of the Plan. The Liquidation Trustee may, in their 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 their assets or to meet Claims and contingent liabilities (including Disputed Claims).

5. The Liquidation Trustee shall require any Beneficiary or other distributee to furnish to the Liquidation Trustee in writing his or their 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.

F. *Appointment of the Liquidation Trustee*

The Trustee for the Liquidation Trust shall be designated by the Committee. The Committee will designate the Liquidation Trustee within 5 days of 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, (v) provide periodic reports and updates to the Advisory Board regarding the status of the administration of the Liquidation Trust. Some of these duties, including the retention of counsel to pursue preference actions under Section 547 of the Bankruptcy Code and the approval of settlements of these actions, shall be subject to certain approval as set forth herein. 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 the majority vote of the members of the Committee as of the Effective Date, or as otherwise determined by the Bankruptcy Court or the Liquidated Trust Agreement, and notice of the appointment of such Liquidation Trustee shall be filed with the Bankruptcy Court.

G. *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 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.

H. *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.

I. *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.

J. *Termination of the Liquidation Trust*

The Liquidation Trust will terminate as soon as practicable, but in no event later than the fifth (5th) 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 and paid.

K. *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.

L. *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 their individual capacity, the "Indemnified Persons") from and against any and all losses, damages, liabilities, claims, actions, suit, 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.

M. *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 on the Asset Purchase Agreement. Buyer shall preserve and provide access to the business records to the Liquidation Trustee or his agents as required under the Asset Purchase Agreement.

N. *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.

O. *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 Debtors shall be canceled and deemed terminated.

P. *Effect of Appeals*

Unless the Confirmation Order is stayed pending appeal, at the option of the Proponents, 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.

ARTICLE VI

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 hereto (the "**Pentland Settlement**"), in an effort to resolve any issues related to the Pentland Unsecured Claim, the Unsecured Pentland Notes, and Pentland's membership interest and 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.

ARTICLE VII

FUNDS ON DEPOSIT IN THE OPERATING ACCOUNTS

On the Effective Date, the Debtors shall transmit to the Liquidation Trustee all Cash in their accounts for deposit by the Liquidation Trustee into the Operating Account. Proceeds in the Operating Account and funds thereafter deposited into the Operating Account from the collection of any Causes of Action, shall be used by the Liquidation Trustee to make the distributions as specified in Section 3.5 of the Liquidation Trust Agreement. Payments to Beneficiaries of the Trust should be made in the following order of priority:

A. First, for the payment, in full, of all Allowed Administrative claims and the payment of costs and expenses incurred in connection with the Chapter 11 Case, Confirmation of the Plan, and effectuation of all of the transaction contemplated under the Plan, including, without limitation, payment of Professional Fee Claims, the preparation, copying, and mailing of the Disclosure Statement and Plan, the fees and expenses of the Liquidation Trustee and the Liquidation Trustee, and the United States Trustee's quarterly fees (until a Final Decree is entered by the Bankruptcy Court);

B. After payment of all Allowed Administrative Claims, then for the payment, in full, in Cash, of all Allowed Secured Claims.

C. After payment of all Allowed Administrative Claims and Allowed Secured Claims, then for the payment, in full, in Cash, of all Allowed Priority Claims;

D. If funds exist after payment of all Allowed Administrative Claims, all Allowed Secured Claims and all Allowed Priority Claims, then Pro Rata to the Holders of Allowed General Unsecured Claims; and

E. If funds exist after payment of all Allowed Administrative Claims, all Allowed Secured Claims, all Allowed Priority Claims and all Allowed General Unsecured Claims (including applicable interest) then Pro Rata to the holders of all Equity Interests.

ARTICLE VIII

EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. *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 previously rejected with the approval of the Bankruptcy Court, or that are not the subject of a motion to assume or reject the same pending as of the 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.

B. *Rejection Claims; Cure of Defaults*

If the rejection of an executory contract or unexpired lease under this Plan 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.

ARTICLE IX

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 Debtors' 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 Buyer, as may be required under the Asset Purchase Agreement, and the Debtors 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:

Except as set forth in Article IX.G, any holder of an Allowed Claim that does not assert their 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 Debtors, 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 Twenty Five Dollars (\$25) 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 benefit 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.

ARTICLE X

**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 their 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.

ARTICLE XI

**CONDITIONS PRECEDENT TO CONFIRMATION
AND EFFECTIVE DATE OF THE PLAN**

A. *Conditions Precedent to Confirmation*

The following are conditions precedent to confirmation of this Plan that must be (i) satisfied or (ii) waived in accordance with Article XI.C below.

1. The entry of the Confirmation Order in form and substance satisfactory to the Proponents.

2. The Liquidation Trust Agreement, Plan Supplement and all of the schedules, documents, and exhibits contained therein shall have been filed in form and substance reasonably acceptable to the Proponents.

B. *Conditions Precedent to Effective Date of the Plan*

The following are conditions precedent to the Effective Date of the Plan that must be (i) satisfied or (ii) waived in accordance with Article XI.C below:

1. The Confirmation Order has been entered by the Bankruptcy Court.
2. The Bankruptcy Court authorizes the transactions contemplated by the Plan.
3. All other actions and documents necessary to implement the Plan shall have been effected or executed, including the Liquidation Trust Agreement.

C. *Waiver of Conditions Precedent*

The Proponents and the Liquidation Trustee may waive the conditions listed in Article XI.A and XI.B of the Plan without notice to or order of the Bankruptcy Court, except that the condition in Article XI.B.3 may not be waived.

D. *Effect of Non-Occurrence of the Effective Date*

If the Confirmation Order is vacated, this Plan shall be null and void in all respects and nothing contained in this Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtors; (2) prejudice in any manner the rights of the Debtors or any other party; or (3) constitute an admission, acknowledgment, offer or undertaking by the Debtors in any respect.

ARTICLE XII

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, suit, 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 Debtors; provided, however, that a holder of a Claim against the Debtors may not, on account of such Claim, seek or receive payment or other distribution from, or seek recourse against, the Debtors or 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 Debtors, the Committee (or any of their 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 Debtors, 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 Debtors, the Committee (or any of their 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 Debtors, 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 Debtors, 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 the 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.

ARTICLE XIII

RETENTION AND PRESERVATION OF CAUSES OF ACTION

A. *Retention of Causes of Action*

Except as otherwise provided in the Plan, all Causes of Action that the Debtors and their Estates may hold against any Person or Entity shall automatically vest in the Liquidation Trust. The Liquidation Trust shall have the exclusive right, authority, and discretion to institute, prosecute, abandon, settle, or compromise any and all such Causes of Action without the consent or approval of any third party and without any further order of the Bankruptcy Court, except as otherwise provided herein or in the Liquidation Trust Agreement. On the Effective Date, the Liquidation Trustee, in accordance with Section 1123(b)(3) of the Bankruptcy Code and on behalf of the Liquidation Trust, shall serve as a representative of the estate and shall retain and possess the sole and exclusive right to commence and pursue, as appropriate, any and all Causes of Action, whether arising before or after the Petition Date, in any court or other tribunal.

B. *Preservation of All 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 are a defendant or an interested party, against any Person or Entity, including, without limitation, the plaintiffs and co-defendants in such lawsuit.

ARTICLE XIV

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:

A. Allow, disallow, determine, liquidate, classify, estimate or establish the priority, 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;

B. 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;

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

D. Ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions hereof;

E. 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 a Debtor 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;

F. 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;

G. Resolve any cases, controversies, suit 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;

H. 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;

I. Resolve any case, controversies, suits or disputes with respect to the provisions contained in Articles XII and XIII hereof and enter any orders that may be necessary or appropriate to implement such provisions;

J. Enter and implement any orders that are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked or vacated;

K. 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, the Disclosure Statement, or the Liquidation Trust Agreement; and

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

ARTICLE XV

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.

ARTICLE XVI

MISCELLANEOUS PROVISIONS

A. *Plan Modification*

1. This 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 and to 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.

B. *Effectuating Documents, Further Transactions and Corporate Action*

1. The Debtors are authorized to execute, deliver, file or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement and further evidence the terms and conditions hereof.

2. Prior to, on or after the Effective Date (as appropriate), all matters provided for hereunder that would otherwise require approval of the shareholders of the Debtors shall be deemed to have occurred and shall be in effect prior to, on or after the Effective Date (as appropriate) pursuant to the general laws of the applicable States without any requirement of further action by the shareholders of the Debtors.

C. *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.

D. *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.

E. *Revocation of Plan*

The Proponents reserve the right to revoke or withdraw the Plan prior to the Confirmation Date and to file subsequent plans of liquidation. If the Proponents revoke or withdraw the Plan, or if Confirmation or the Effective Date does not occur, then (a) the Plan shall be null and void in all respects, (b) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain any Claim or Equity Interest or Class of Claims or Equity Interests), assumption or rejection of executory contracts or leases affected by the Plan, and any document or agreement executed pursuant hereto, shall be deemed null and void, and (c) nothing contained in the Plan shall (i) constitute a waiver or release of any Claims by or against, or any Equity Interests in, such Debtors or any other Person, (ii) prejudice in any manner the rights of such Debtors or any other Person, or (iii) constitute an admission of any sort by such Debtors or any other Person.

F. *Successors and Assigns*

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

G. *Reservation of Rights*

Except as expressly set forth herein, this Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order. None of the filing of this Plan, any statement or provision contained herein, or the taking of any action by any of the Debtors with respect to this Plan, the Disclosure Statement or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of any of the Debtors with respect to the Holders of Claims or Equity Interests prior to the Effective Date.

H. *Section 1146 Exemption*

1. Pursuant to Section 1146(a) of the Bankruptcy Code, under this Plan, (i) the issuance, distribution, transfer or exchange of any debt, equity security or other interest in the Debtors; (ii) the creation, modification, consolidation or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (iii) the making, assignment or recording of any lease or sublease; or (iv) the making, delivery or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, this Plan, including any deeds, bills of sale, assignments or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to this Plan shall not be subject to any document recording tax, mortgage recording tax, stamp tax or similar government assessment, and the Confirmation Order shall direct the appropriate state or local government official or agent to forego the collection of any such tax or government assessment and to accept for filing and recording any of the foregoing instruments or other documents without the payment of any such tax or government assessment.

2. All subsequent issuances, transfers or exchanges of securities, or the making or delivery of any instrument of transfer by the Debtors in the Chapter 11 Cases, whether in

connection with a sale under Section 363 of the Bankruptcy Code or otherwise, shall be deemed to be or have been done in furtherance of this Plan.

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

The Debtors, Reorganized Debtors, Buyer, Committee, Liquidation Trustee, and each of their respective representatives, shall be deemed to have acted in "good faith" under Section 1125(e) of the Bankruptcy Code.

J. *Further Assurances*

The Holders of Claims or Equity Interests receiving distributions hereunder and all other parties in interest shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Liquidation Trust Agreement.

K. *Service of Documents*

Any pleading, notice or other document required by the Plan to be served on or delivered upon the Debtors and the Committee shall be sent by first class U.S. mail, postage prepaid, as follows:

To the Debtors:

Michael Z. Brownstein
Rocco A. Cavaliere
BLANK ROME LLP
The Chrysler Building
405 Lexington Avenue
New York, New York 10174

Bonnie Glantz Fatell
David W. Carickhoff
Victoria Guilfoyle
BLANK ROME LLP
1201 North Market Street, Suite 800
Wilmington, DE 19801

To the Committee:

Joanne B. Wills
Richard M. Beck
KLEHR, HARRISON, HARVEY,
BRANZBURG & ELLERS
919 Market St., Suite 1000
Wilmington, Delaware 19801

L. *Transactions on Business Days*

If the date on which a transaction may occur under this Plan shall occur on a day that is not a Business Day, then such transaction shall instead occur on the next succeeding Business Day.

M. *Filing of Additional Documents*

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

N. *Post-Effective Date Fees and Expenses*

From and after the Effective Date, the Liquidation Trustee, on behalf of the Liquidation Trust, shall, in the ordinary course of business and without the necessity for any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Liquidation Trust related to the consummation and to the implementation of this Plan, except as otherwise provided in the Liquidation Trust Agreement.

O. *Severability*

The provisions of this Plan shall not be severable unless such severance is agreed to by the Proponents or, if after the Effective Date, by the Liquidation Trustee, on behalf of the Liquidation Trust, and such severance would constitute a permissible modification of this Plan pursuant to Section 1127 of the Bankruptcy Code.

P. *Conflicts*

To the extent any provision of the Liquidation Trust Agreement, the Disclosure Statement, or any document executed in connection therewith or any documents executed in connection with the Confirmation Order (or any exhibit, schedules, appendices, supplements or amendments to any of the foregoing) conflicts with, or is in any way inconsistent with, the terms of this Plan, the terms and provisions of this Plan shall govern and control, provided however that nothing in this Plan shall be deemed to modify or supersede the Confirmation Order.

Q. *Term of Injunctions or Stays*

Unless otherwise provided herein or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases under Sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court, and still extant on the Confirmation Date (excluding any injunctions or stays contained in this Plan or the Confirmation Order), shall remain in full force and effect until the Effective Date. All injunctions or stays contained in this Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.

R. *Governing Law*

The laws of the State of Delaware, giving effect to the conflicts of laws' principles thereof, shall govern the construction of the Plan and any agreements, documents, and instruments executed in connection with the Plan; including, without limitation, any rule of law or procedure supplied by federal law as interpreted under the decisions in the State of Delaware (including the Bankruptcy Code and the Bankruptcy Rules), except as otherwise expressly provided in such instruments, agreements or documents.

S. *Entire Agreement*

This Plan and the Plan Supplement (as amended) supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings and representations on such subjects, all of which have become merged and integrated into this Plan.

T. *Closing of the Chapter 11 Cases*

The Liquidation Trustee shall promptly, upon the full administration of the Chapter 11 Cases, File with the Bankruptcy Court all documents required by the Bankruptcy Rules and any applicable order of the Bankruptcy Court to close the Chapter 11 Cases.

Dated: December 2, 2009

BLANK ROME LLP

Michael Z. Brownstein
Rocco A. Cavaliere
The Chrysler Building
405 Lexington Avenue
New York, NY 10174
Telephone: (212) 885-5000
Facsimile: (212) 885-5001

-and-

Bonnie Glantz Fatell (No. 3809)
David W. Carickhoff (No. 3715)
Victoria Guilfoyle (No. 5183)
1201 North Market Street, Suite 800
Wilmington, DE 19801
Telephone: (302) 425-6400
Facsimile: (302) 425-6464

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

EXHIBIT 1 TO PLAN

LIQUIDATION TRUST AGREEMENT

**LIQUIDATION TRUST AGREEMENT BY AND BETWEEN ALSET OWNERS, LLC,
ALTES, LLC, SETLA, LLC AND CHECKERS MICHIGAN, LLC**

THIS LIQUIDATION TRUST AGREEMENT (this "Agreement") by and between Alset Owners, LLC, Altes, LLC, Setla, LLC and Checkers Michigan, LLC (collectively, the "Debtors") (this "Agreement"), is made as of the ____ day of February, 2010 by and between the Debtors and _____ as trustee (the "Trustee") for the Beneficiaries (defined below) in connection with the Joint Plan of Liquidation of the Debtors and Debtors in Possession (the "Plan") (as defined below). Capitalized terms used herein and not otherwise defined in Article I or when first used shall have the meanings set forth in the Plan.

RECITALS:

A. On June 5, 2009 the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court").

B. On _____, 2010 the Bankruptcy Court entered an order confirming the Plan.

C. The Plan provides for the creation of a post confirmation liquidation trust (the "Trust") to hold and administer the Trust Assets, in accordance with the terms of this Agreement and the Plan. This Agreement is executed to establish the Trust and to facilitate the Plan.

D. The primary purpose of the Trust is to liquidate and administer the Trust Assets for the benefit of the Beneficiaries in accordance with Treasury Regulation Section 301.77014(d). The Trust will not be operated with the objective of continuing or engaging in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the purpose of the Trust.

E. The Trust is intended to qualify as a trust that is treated as a “grantor trust” for federal income tax purposes and the Trustee shall operate and maintain the Trust in compliance with Internal Revenue Service Revenue Procedure 94-45, 1994-2 C.B. 684, and Treasury Regulation Sections 1.671-4(a) and 301.7701-4(d) and all subsequent guidelines regarding grantor trusts issued by the Internal Revenue Service.

NOW, THEREFORE, in consideration of the premises and the mutual covenants agreements and undertakings contained herein:

ARTICLE I

Definitions

“Allowed Claims” shall have the meaning given to it in the Plan.

“Administrative Claim” shall have the meaning given to it in the Plan.

“Advisory Board” means up to three persons selected by the Committee which shall have general oversight powers over the Liquidation Trustee and the Liquidation Trust.

“Assets” means any and all real or personal property of any nature, including, without limitation, any real estate, buildings, structures, improvements, privileges, rights, easements, leases, subleases, licenses, goods, materials, supplies, furniture, fixtures, equipment, work in process, accounts, chattel paper, cash, deposit accounts, reserves, deposits, contractual rights, intellectual property rights, claims and Causes of Action.

“Bankruptcy Code” means United States Bankruptcy Code, 11 U.S.C. 101, et seq.

“Beneficiaries” means the holders of Allowed Claims.

“Cash” shall have the meaning given to it in the Plan.

“Causes of Action” shall have the meaning given to it in the Plan.

“Claim” shall have the meaning given to it in the Plan.

“Confirmation Order” means the order confirming the Plan, entered by the Bankruptcy Court on _____, 2010 and attached hereto as Schedule B.

“Disputed Claims” shall have the meaning given to it in the Plan.

“Distributions” shall have the meaning given to it in the Plan.

“Effective Date” means the effective date of the Plan.

“Estate” shall mean the bankruptcy estate of the Debtors created pursuant to Section 541 of the Bankruptcy Code.

“Liquidation Trust Assets” shall have the meaning given to it in the Plan.

“Plan” means the Joint Plan of Liquidation of the Debtors and Debtors in Possession which was confirmed on _____, 2010 and any amendments or modifications.

“Liquidation Trust Assets” shall have the meaning set forth in the Plan and in Section 3.1 of this Agreement.

For purposes of this Agreement, except as otherwise expressly provided herein or unless the context otherwise requires: (a) references to “Articles”, “Sections”, and other subdivisions, without reference to a particular document, are to be designated Articles, Sections, and other subdivisions of this Agreement; (b) the use of the term “including” means “including but not limited to”; and (c) the words “herein”, “hereunder”, and other words of similar import refer to this Agreement as a whole and not to any particular provision (unless otherwise specified). The enumeration and headings contained in this Agreement are for convenience of reference only and are not intended to have any substantive significance in interpreting this Agreement. The singular shall include the plural and the plural the singular, when the context so requires, and the feminine, the masculine, and the neuter genders shall be mutually inclusive.

ARTICLE II

Organization

2.1 *Trust Name.* The trust created hereby shall be known as the Liquidation Trust of Alset Owners, LLC, *et al.* in which name the Trustee may, among other things, conduct the business of the Trust, make and execute contracts on behalf of the Trust, sue and be sued on behalf of the Trust, and take such other actions as the Trustee is authorized hereunder to take.

2.2 *Declaration of Trust.* For good and valuable consideration, the receipt of which is hereby acknowledged by the undersigned, and pursuant to the terms of the Plan and the Confirmation Order, the Debtors and the Trustee have executed this Agreement and, subject to the provisions of Section 2.5, the Debtors irrevocably and absolutely transfers, assigns, conveys, sets over and delivers free and clear of all liens, claims, encumbrances and interests, of any kind and nature the Liquidation Trust Assets to the Trustee, and such transfer is in trust pursuant to the provisions hereof, with such conveyance transferring all of the Debtors' right, title and interest in, to and under the Liquidation Trust Assets.

(a) The Debtors shall, as needed and as reasonably requested by the Trustee, execute and deliver or cause to be executed and delivered to or upon the order of the Trustee all such further documents and instruments as may be reasonably necessary to carry out the purposes and intent of this Agreement; and the Debtors shall take or cause to be taken such other action as the Trustee may reasonably deem necessary or appropriate, in order to vest, perfect or confer title to and possession of all the Liquidation Trust Assets to the Trustee.

(b) The Trustee hereby accepts the trust created by this Agreement and agrees to hold the Liquidation Trust Assets in trust for the use and benefit of the Beneficiaries, subject to the conditions set forth in this Agreement, the Plan and the Confirmation Order. Effective as of the date hereof, the Trustee shall have all of the rights, powers and duties set forth herein, in the

Plan, in the Confirmation Order and in the Act with respect to accomplishing the purpose of the Trust.

2.3 *Tax Treatment of Grantor Trust.* For United States federal and applicable state income tax purposes, the transfer of the Liquidation Trust Assets to the Trust pursuant to and in accordance with the Plan and Confirmation Order shall be treated as a disposition of the Liquidation Trust Assets directly to and for the benefit of the Beneficiaries immediately followed by a contribution of the Liquidation Trust Assets by the Beneficiaries to the Trust for the benefit of the Beneficiaries. The Beneficiaries will be treated as the grantors and owners of the Trust. The Trust is intended to qualify as a liquidating trust that is treated as a “grantor trust” for federal income tax purposes, and the Trustee shall use his best efforts to operate and maintain the Trust in substantial compliance with Internal Revenue Service Revenue Procedure 94-45, 1994-2 C.B. 684, and Treasury Regulation Sections 1.671-4(a) and 301.770 1-4(d) and all subsequent guidelines regarding grantor trusts issued by the Internal Revenue Service. The Trust shall obtain a taxpayer ID number and file tax returns.

2.4 *Transfer to and Vesting of Liquidation Trust Assets in Trust.* On the Effective Date, all Liquidation Trust Assets shall be transferred to and vest in the Trust. The Liquidation Trust Assets shall be deposited with the Trust free and clear of all Claims, Liens and Equity Interests. The Liquidation Trust Assets shall be managed and used by the Trustee for the sole purpose of carrying out the Plan and effectuating the Distributions provided for in the Plan. The Trust shall be deemed the successor in interest to the Debtors solely for purposes of maintaining, preserving, collecting, liquidating and distributing the Liquidation Trust Assets vested in the Trust.

2.5 *Payment of Liabilities.* Payment of costs and expenses associated with the Trust shall be paid from the Liquidation Trust Assets.

2.6 *Office.* The principal office of the Trustee shall be located at _____, Attn: _____, or at such other address as the Trustee may designate by written notice to the parties hereto.

2.7 *Situs of the Trust.* The Trust shall be located in the State of Delaware.

2.8 *Appointment of Trustee.* _____ is hereby appointed Trustee, to have all of the rights, powers and duties set forth herein and in the Plan and Confirmation Order.

2.9 *Title to Trust Property.* From and after the Effective Date, legal title to all of the Trust property shall be vested at all times in the Trust as a separate legal entity except where applicable law in any jurisdiction in which the Trust property may be located requires title to any part of the Trust property to be vested in a trustee, in which case title shall be deemed vested in the Trustee. No Beneficiary shall have legal title to any part of the assets of the Trust.

2.10 *Incorporation of Plan.* The Plan is hereby incorporated into this Agreement and made a part hereof by this reference. To the extent of any conflict between the Plan and this Agreement, the Plan shall control.

2.11 *Purpose of the Trust.* The Trust is formed for the purpose of (i) holding and liquidating the Liquidation Trust Assets on behalf of the Beneficiaries, (ii) resolving any issues regarding the amount of the Claims of the Beneficiaries, (iii) prosecuting, abandoning, settling and/or defending any claims or Causes of Action (including, without limitation, avoidance actions and rights of action), (iv) enforcing the rights of the Beneficiaries, (v) collecting income on the Liquidation Trust Assets, (vi) providing for the orderly investment, conservation, and distribution of any and all of the Liquidation Trust Assets, (vii) making distributions to the

Beneficiaries pursuant to the Plan and this Agreement, (viii) filing final tax returns and dissolving the Debtors, and (ix) undertaking all actions required under this Agreement, the Plan and the Confirmation Order. The Trustee shall reduce to Cash or otherwise liquidate the Liquidation Trust Assets and distribute such liquidated Assets to the Beneficiaries in accordance with and subject to the terms and provisions of the Plan.

(a) As of the Effective Date, (A) the Trustee shall be responsible for (i) liquidating or otherwise reducing to Cash the Liquidation Trust Assets in accordance with this Agreement, (ii) filing, prosecuting, abandoning or settling the Causes of Action, (iii) making Distributions to holders of Allowed Claims, (iv) filing claim objections, settling, or otherwise resolving Disputed Claims, (v) complying with and carrying out the provisions of the Plan to the extent applicable to the Trust.

(b) In accordance with the Plan, the Trustee on behalf of the Trust and for the benefit of the Trust shall be authorized and empowered to pursue and prosecute, to settle, or to decline to pursue or abandon, the Causes of Action, including all pending adversary proceedings and contested matters involving assigned actions, whether or not such Causes of Action have been commenced prior to the Effective Date or after the Effective Date by the Trustee, and shall be substituted as the real party in interest in any such action, commenced by or against the Debtors, the Debtors' estate or the Creditors' Committee. The Trustee may settle, release, sell, assign, otherwise transfer or compromise such Causes of Action, in the Trustee's business judgment, subject to the provisions of the Plan, without Bankruptcy Court approval.

(c) Except as otherwise set forth In the Plan, the Trustee may, but shall not be required to, set-off against any Claim and the Distributions to be made pursuant to the Plan with respect to such Claim, any Causes of Action the Debtors' estate may have against the holder of

the Claim, but neither the failure to do so nor the allowance of any Claim under the Plan shall constitute a waiver or release by the Trustee of any such Causes of Action, set-off or recoupment which the Debtors may have against such holder.

2.12 *Status of Trustee.* The Trustee shall be a “representative of the estate” as that phrase is used in Section 1123(b)(3)(B) of the Bankruptcy Code with respect to the rights and powers granted in this Agreement, the Plan and the Confirmation Order. Except as otherwise set forth in the Plan, the Trustee shall be the successor-in-interest to the (i) Debtors with respect to the Liquidation Trust Assets, including any Causes of Action which were or could have been commenced by the Debtors prior to the Effective Date and shall be deemed substituted for the same as the party in such action, and (ii) the Creditors Committee with respect to any Causes of Action which were or could have been commenced by the Creditors Committee prior to the Effective Date and shall be deemed substituted for the same as the party in such action. All actions, claims, rights or interests constituting Liquidation Trust Assets are preserved and retained and may be enforced by the Trustee as the representative of the Debtors’ estate pursuant to 11 U.S.C. § 1123(b)(3)(B).

Beneficiaries

2.13 *Identification of Beneficiaries.* The Trust is created for the benefit of the Beneficiaries. The Beneficiaries shall each have an undivided beneficial interest in the assets of the Trust. The initial Beneficiaries are those parties holding Claims (other than Claims that have been disallowed, extinguished or expunged by Final Order) against the Debtors as of the Effective Date.

2.14 *Rights of Beneficiaries.* Each Beneficiary shall be entitled to participate in the rights due to a Beneficiary hereunder. Each Beneficiary shall take and hold its beneficial interest

in the Trust ("Beneficial Interest") subject to all of the terms and provisions of this Agreement, the Plan and the Confirmation Order, and any Beneficial Interest shall only include interests that are identified in an Allowed Claim. The Beneficial Interests shall not be certificated. The interest of a Beneficiary of the Trust is in all respects personal property, and upon the death, insolvency or incapacity of an individual Beneficiary, such Beneficiary's Beneficial Interest shall pass to the legal representative of such Beneficiary. A Beneficiary shall have no title to, or any right to possess, manage or control the Trust, the Liquidation Trust Assets or any portion thereof or interest therein, except as expressly provided herein or in the Plan. No surviving spouse, heir or devisee of any deceased Beneficiary shall have any right of dower, homestead or inheritance, or of partition, or any other right, statutory or otherwise, in the Trust, but the whole title to all the Liquidation Trust Assets shall be vested in the Trustee, and the sole interest of the Beneficiaries shall be the rights and benefits provided to such persons under this Agreement, the Plan and the Confirmation Order.

2.15 *Transfer of Interests of Beneficiaries.* The Beneficial Interest of a Beneficiary of the Trust may not be transferred or assigned in whole or in part except by applicable laws of descent and distribution (in the case of a deceased individual Beneficiary); by operation of law, in accordance with applicable Bankruptcy law; or as otherwise approved by the Bankruptcy Court. The Trust shall not be required to recognize any equitable or other claims to such interest by the transferee thereof, and the named Beneficiary shall remain as such for all purposes hereunder. No transfer of the right, title and interest of any Beneficiary in and to the Trust or hereunder, by operation of law or otherwise, shall operate to terminate this Trust or affect the validity of this Agreement or entitle any successor or transferee of such Beneficiary to an accounting or to the transfer to it of legal title to any part of the Trust.

2.16 *Standing of Beneficiary.* Except as expressly provided in this Agreement, the Plan or the Confirmation Order, a Beneficiary does not have standing to direct the Trustee to do or not to do any action or to institute any action or proceeding at law or in equity against any person (other than the Trustee) upon or with respect to the Trust Assets.

2.17 *Release of Liability Beneficiary.* A Beneficiary shall not relieve the Trustee from any duty, responsibility, restriction or liability as to such Beneficiary that would otherwise be imposed under this Agreement, Plan or Confirmation Order.

ARTICLE III

Distributions

3.1 *Establishment of Trust Account.* The Trustee, for the benefit of the Beneficiaries, shall establish or cause to be established and maintained any accounts needed in connection with the purposes of the Trust (the "Trust Account"). Such accounts shall be maintained only at FDIC insured financial institutions and shall bear a designation clearly indicating that the funds deposited therein are held for the benefit of the Trust.

3.2 *Investment of Cash.* Cash in the Trust Account and any other amounts contemplated by this Agreement shall be maintained in United States dollars or shall be invested by the Trustee in (i) direct obligations of, or obligations guaranteed by, the United States of America, (ii) obligations of any agency or corporation that is or may hereafter be created by or pursuant to an act of Congress of the United States of America as an agency or instrumentality thereof, or (iii) such other obligations or instruments as may from time to time be permitted under section 345 of the Bankruptcy Code; *provided* that the Trustee may, to the extent necessary to implement the provisions of the Plan and this Agreement, deposit moneys in demand deposits at any banking institution or trust company having combined capital stock and surplus in excess of \$100,000,000 based upon its most recently available audited financial

statements, regardless of whether such investments and deposits are insured. Such investments shall mature in such amounts and at such times as the Trustee, in his discretion, shall deem appropriate to provide funds when needed to transfer funds in accordance with the Plan, make payments to the Trust Account or make Distributions in accordance with this Agreement, the Plan and the Confirmation Order.

(a) Any investments made by the Trustee with Cash that is part of the Liquidation Trust Assets shall remain a part of the Liquidation Trust Assets. All interest and income received by the Trustee with respect to investments of the Liquidation Trust Assets shall constitute part of the Liquidation Trust Assets.

3.3 *Liquidation of Trust Property.* The Trustee shall liquidate the Trust property pursuant to the Plan and Confirmation Order.

3.4 *No Payment to the Debtors.* In no event shall the Trustee or the Trust distribute any Trust property to the Debtors.

3.5 *Distributions.*

(a) Trust Administration Expenses.

(1) The cost and expenses of the Trust, including, without limitation, the compensation to and reimbursement of expense to the Trustee and the fees, costs and expenses of all professionals retained by the Trustee in connection with the performance of the Trustee's duties in connection with this Agreement, shall be paid in full. Any funds remaining after completion of the Trustee's activities and full payment of all costs and expenses of the Trust including, without limitation, the fees, costs and expenses of the Trustee and the professionals retained by the Trustee, shall be paid to the Beneficiaries under the terms of the Plan and this Agreement.

(b) Payments /Order of Priority. The Trustee shall first pay any unpaid Allowed Administrative Claims and Allowed Priority Claims in accordance with the provisions of the Plan (provided that Allowed Professional Fees payable to professionals holding retainers shall first be satisfied from such retainers) before any distributions are made from the Trust to the Beneficiaries. A schedule of Trustee's fees is attached as Schedule B.

(c) Distributions to the Beneficiaries shall be made at the discretion of the Trustee from all net cash derived from the Liquidation Trust Assets, including all net cash income and all other cash received by the Trust in accordance with the terms of the Plan and Confirmation Order, after making due provision for the payment of the costs, expenses, contingent liabilities, amounts necessary to maintain the value of the Liquidation Trust Assets and claims of the Trust, and, if proceeds of the Trust are insufficient to pay a class of Beneficial Interests in full, then Distributions shall be pro rata based on the amount of the Beneficial Interest of a holder compared with the aggregate amount of Beneficial Interests outstanding, and shall be governed by the terms of the Plan and this Agreement.

(d) Disputed Claims. Any Distribution to a holder of a Disputed Unsecured Claim that has not been resolved by Final Order as of the Effective Date shall be made by the Trustee as soon as reasonably practicable when and if an order resolving such claim has been entered and has become a Final Order, and such Claim, if allowed, shall be treated as if it had been an Allowed Claim as of the Effective Date.

(e) Method of Payment. All amounts payable to a Beneficiary pursuant to this Agreement shall be paid by the Trustee to or for the benefit of such Beneficiary in the manner provided in the Plan.

3.6 *Undeliverable Distributions.*

Any Distribution of Cash under the Plan to the holder of an Allowed Claim which remains unclaimed for a period of ninety (90) days after it has been delivered (or attempted to be delivered) in accordance with the Plan shall be transferred to and become property of the Trust, notwithstanding state or other escheat or similar laws to the contrary, and any and all entitlement by the holder of such an Allowed Claim to such Distribution shall be extinguished and forever barred.

ARTICLE IV

The Trustee

4.1 *Standard of Care.* The Trustee shall exercise the rights and powers vested in it by this Agreement and use reasonable business judgment in such exercise. Subject to applicable law, the Trustee shall not be liable to the Trust or any Beneficiary for any act or omission by the Trustee while acting in good faith and in the exercise of his reasonable business judgment.

4.2 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. Persons dealing with the Liquidation Trustee, or seeking to assert claims against the Liquidation Trust, shall look only to the Liquidation Trust Assets to satisfy any liability 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. 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.

4.3 *Bond.* The Trustee shall not be required to provide any bond, surety or security for the performance of his duties hereunder.

4.4 *Duties of the Trustee.*

(a) The Trustee accepts the trust hereby created and agrees to perform his duties hereunder with respect to the same, but only upon the terms of this Agreement, the Plan and the Confirmation Order. No implied covenants or obligations shall be read into this Agreement. The Trustee shall not be personally liable under any circumstances, except (x) as provided in Article 4.2 or (y) for taxes, fees or other charges on, based on or measured by any fees, commission or compensation received by the Trustee in connection with the provision of his services hereunder. In particular, but not by way of limitation:

(i) The Trustee shall not be personally liable for any error of judgment that does not constitute gross negligence and that was made in good faith;

(ii) The Trustee shall not be required to take any action that (A) is inconsistent with the purpose of the Trust as set forth herein, or (B) would, to the actual knowledge of the Trustee result in the Trust becoming an association taxable as a corporation for federal income tax purposes;

(iii) No provision of this Agreement shall require the Trustee to expend or risk his personal funds, or otherwise incur any financial liability in the performance of his rights or powers hereunder, if the Trustee shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured or provided to him;

(iv) Under no circumstances shall the Trustee be personally liable for any indebtedness or obligation of the Trust; and

(v) The Trustee shall not be liable for the default or misconduct of any other party and shall not be liable for any act or omission taken at the direction of the Advisory Board.

(b) The Trustee shall be vested with the rights, power and benefits set forth herein, which shall include, without limitation, all rights, powers, and benefits afforded to a "trustee" under section 704 and 1106 of the Bankruptcy Code.

(c) The Trustee shall incur no liability to anyone in acting upon any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond or other document or paper believed by it to be genuine and believed by it to be signed by the proper party or parties. The Trustee may accept a certified copy of a resolution of the board of directors or other governing body of any corporate party as conclusive evidence that such resolution has been duly adopted by such body and that the same is in full force and effect.

(d) In the exercise or administration of the trust hereunder, the Trustee (i) may act directly or, at the expense of the Trust, through agents or attorneys pursuant to agreements entered into with any of them, and the Trustee shall not be liable for the default or misconduct of such agents or attorneys if such agents or attorneys shall have been selected by the Trustee with reasonable care and with the approval of the Advisory Board, as applicable; and (ii) may, at the expense of the Trust, consult with such counsel, accountants and other skilled persons selected with reasonable care and employed by it with the approval of the Advisory Board, as applicable, and he shall not be liable for anything done, suffered or omitted in good faith by him in accordance with the advice or opinion of any such counsel, accountants or other skilled persons.

(e) Except as expressly provided herein, in accepting the trust hereby created the Trustee acts solely as trustee hereunder and not in his individual capacity, and all persons having

any claim against the Trustee by reason of the transactions contemplated by this Agreement shall look only to the Trust property for payment or satisfaction thereof.

(f) The Trustee agrees that he will not manage, control, use, sell, dispose of or otherwise deal with the Trust property except as expressly permitted or required by the terms of this Agreement, the Plan or the Confirmation Order.

(g) The Trustee shall be permitted to hire any professional that has been previously retained in this case. The Trustee shall compensate such professionals as an expense of the Trust without requiring the professionals to file applications for compensation. The professionals shall only be removed for cause.

(h) The Trustee shall file all tax returns and other filings with governmental authorities on behalf of the Trust and the Trust Assets it held for time periods ending on or before termination of the Trust. Subject to definitive guidance from the Internal Revenue Service or a court of competent jurisdiction to the contrary (including the issuance of applicable Treasury Regulations, the receipt by the Trustee of a private letter ruling if the Trustee so requests one, or the receipt of an adverse determination by the Internal Revenue Service upon audit if not contested by the Trustee), the Trustee shall file a tax return for the Trust as a grantor trust pursuant to Treasury Regulations Section 1.671-4(a). The Trustee's filing shall also include requests for determination of tax under Section 505(b) of the Bankruptcy Code (to the extent applicable) and responses to any tax audits. The Trustee shall make available such information to the Beneficiaries as will enable them to properly file their separate tax returns and withhold and pay over any amounts required by tax law.

(i) The Trustee is authorized to act as agent for the Trust in withholding or paying over any amounts required by any law (including tax law), regulation, rule, ruling, directive or

other governmental requirement to be withheld or paid by the Trust in connection with the transfer and assignment of the Liquidation Trust Assets to the Trust pursuant to the Plan. The Trustee is further entitled to deduct any United States federal or applicable state withholding taxes from further payments or distributions made with respect to Allowed Claims, as appropriate, and shall otherwise comply with Section 346 of the Bankruptcy Code.

(j) All net income of the Trust and net proceeds from the disposition of the Liquidation Trust Assets shall be subject to United States federal and applicable state income taxation in the year such net income or net proceeds are realized and taxable to the Trust whether or not such amounts are immediately distributed to the Beneficiaries.

(k) The Trustee shall not have any duty or obligation to manage, control, use, sell, dispose of or otherwise deal with the Trust or Liquidation Trust Assets or to otherwise take or refrain from taking any action under this Agreement except as expressly required by the terms hereof or as expressly provided in written instructions as provided herein, and no implied duties or obligations shall be read into this Agreement against the Trustee. The Trustee shall not be required to take any action under this Agreement unless the Trustee shall have been indemnified, in manner and form reasonably satisfactory to such Trustee, against any liability, cost or expense (including counsel fees and disbursements) which may be incurred in connection therewith. The Trustee shall not be required to take any action under this Agreement if the Trustee shall reasonably determine or shall have been advised by counsel that such action is contrary to the terms of this Agreement or is otherwise contrary to law.

(l) The Trustee may fully rely upon and shall have no liability in connection with calculations or instructions forwarded to the Trustee by the Advisory Board.

(m) If the Trustee determines, in the exercise of the Trustee's discretion, that he has a material conflict of interest with respect to any matter, the Advisory Board shall at their option and in their discretion shall either (i) exercise the Trustee's rights and authorities with respect to such matter, or (ii) designate a person to act on behalf of the Trust solely with respect to such matter with such designee's authority to act on behalf of the Trust to terminate upon the matter's conclusion. If neither the Trustee nor the Advisory Board are able to act on behalf of the Trust (and the Advisory Board are unable to appoint a designee to act on behalf of the Trust) with respect to any matter, the Trustee, after notice to the U.S. Trustee and the Advisory Board, may request the Bankruptcy Court to approve the Trustee's choice of a designee to act on behalf of the Trust solely with respect to such matter, with such designee's authority to act on behalf of the Trust to terminate upon the matter's conclusion.

(n) The Trustee may purchase errors and omissions insurance for himself with regard to any liabilities, losses, damages, claims, costs and expenses he may incur, including, without limitation, attorney's fees, arising out of or due to his actions or omissions, or consequences of such actions or omissions, other than as a result of his gross negligence or willful misconduct, with respect to the implementation and administration of the Plan and this Agreement.

(o) The Trustee shall not have any responsibility or liability for or with respect to the genuineness, value, sufficiency or validity of the Trust Assets.

(p) In no event whatsoever shall the Trustee be liable for any representation, warranty, covenant, agreement, indebtedness or other obligation of the Trust.

(q) The Trustee shall incur no liability if, by reason of any provision of any present or future law or regulation thereunder, or by any force majeure event, including but not limited to natural disaster, war or other circumstances beyond his control, the Trustee shall be prevented or

forbidden from doing or performing any act or thing which the terms of this Agreement provide shall or may be done or performed.

(r) The attorney-client privilege, work product doctrine or other privileges or immunities inuring to the benefit of the Debtors or attaching to documents or communications of the Debtors shall be transferred to the Trust. The Trustee is authorized to assert or waive any such privilege or doctrine, as necessary or appropriate for the administration of the Trust, provided that, to the extent any such privilege or doctrine is waived in connection with information requested of any professional previously employed by the Debtors, the Trustee agrees that such information request shall be made solely for the purpose of carrying out the Trustee's duties hereunder, that the Trustee shall act in good faith and shall use his best efforts to tailor as narrowly as possible any request so as not to be unduly invasive or burdensome to the professional upon whom the request is made, and that the restrictions set forth in this Agreement shall apply to such request.

(s) As soon as practicable, the Trustee shall move for the entry of a "final decree" and to close the Debtors' chapter 11 case, provided the case is not required to remain open to pursue and maintain any claim, objection or cause of action. The Trustee shall be responsible for filing all post-confirmation quarterly reports required by the US Trustee Operating Guidelines for chapter 11 cases and will pay all quarterly fees due to the United States Trustee.

4.5 *Compensation and Indemnity.* The Trustee shall be entitled to receive from the Trust compensation for his services hereunder, based on his firm's standard hourly rates for actual time spent, plus out of pocket expenses, which compensation shall not be limited by any provision of law in regard to compensation of a trustee of an express trust.

(a) With respect to the Trustee, the Trust shall (i) reimburse the 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 Trustee (in both his individual and trustee capacities) and the officers, directors, employees and agents of the Trustee (collectively, including the 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 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 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 under this Article IV; provided however, that notwithstanding anything in this Agreement to the contrary, the Trust shall not be required to reimburse the 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 bad faith, willful misconduct or gross negligence of such Indemnified Person as determined by a competent court of law.

(b) The Trustee and all professionals retained by the Trustee pursuant to this Agreement will be paid for their services and reimbursed for their expenses from the Trust by submitting a monthly statement describing with reasonable particularity the time expended and the nature, extent and value of the services provided during the period covered by such request to the Trustee. The Trustee shall have until the tenth calendar day after the submission of the statement to review it. If the Trustee does not object, 100% of the fees and 100% of the disbursements identified in each statement shall be paid.

4.6 *Tenure, Resignation, Removal and Replacement of Trustee.*

The authority of the Trustee shall be effective as of the Effective Date and shall remain in full force and effect, with respect to the Trustee, until all distributions have been made to the Beneficiaries.

(a) The Trustee may resign and be discharged by the Trust created by this Agreement upon not less than 30 days' prior written notice to the Advisory Board. The Trustee shall only be removed from his position for cause or breach of fiduciary duty. Upon receiving notice of resignation, the Advisory Board, as the case may be, shall use their best efforts promptly to appoint a successor Trustee by written instrument or instruments delivered to such resigning Trustee and the successor Trustee. Any resignation or removal of a Trustee and appointment of a successor Trustee shall become effective only upon acceptance of the appointment by the successor Trustee. If no successor Trustee shall have been appointed within 30 days after notice of such resignation or removal has been delivered, the Trustee may apply to the Bankruptcy Court for the appointment of a successor Trustee, and the Bankruptcy Court may, after such notice (if any) as it may deem proper, appoint a successor Trustee.

(b) In the event of the death or incapacity of a Trustee, the Advisory Board shall appoint a successor Trustee by written instrument delivered to the successor Trustee.

(c) No successor Trustee shall be in any way responsible or liable for the acts or omissions of any predecessor Trustee.

ARTICLE V

Reports to Beneficiaries

5.1 *Reports to Beneficiaries.* Approximately 120 days following the Effective Date, the Trustee shall serve on the Advisory Board, a status report and a summary financial update explaining what progress has been made toward entry of the Final Decree. Until entry of the Final Decree, further status reports shall be filed annually and served on the Advisory Board. Each status report shall generally include a description of assets sold or otherwise realized upon during the relevant period, gross and net proceeds received, Distributions and payments made, expenses incurred and paid, and cash on hand, as well as a summary of claims objections and the status of all contested matters and litigation.

ARTICLE VI

Termination of Trust

6.1 *Termination of Trust.* This Agreement shall terminate and the Trust shall dissolve and terminate and be of no further force or effect upon the earlier to occur of (i) the final distribution of all monies and other Trust property in accordance with the terms of this Agreement, the Plan and the Confirmation Order, or (ii) five (5) years after the Effective Date unless the Bankruptcy Court approves an extension upon a finding that such an extension is necessary for the Trust to complete its claims resolution and liquidating purpose.

(a) The bankruptcy, liquidation, dissolution, death or incapacity of any Beneficiary shall not (i) operate to terminate this Agreement or the Trust, (ii) entitle such Beneficiary's legal

representatives or heirs to claim an accounting or to take any action or proceeding in any court for a partition or winding up of all or any part of the Trust or the Liquidation Trust Assets or (iii) otherwise affect the rights, obligations and liabilities of the parties hereto.

(b) No Beneficiary shall be entitled to revoke or terminate the Trust.

(c) After the termination of the Trust and for the purpose of liquidating and winding up the affairs of the Trust, the Trustee shall continue to act as such until his duties have been fully performed. Upon distribution of the Trust Assets, and unless ordered otherwise by the Bankruptcy Court, the Trustee shall retain for a period of two (2) years the books, records, Beneficiary lists and certificates and other documents and files which shall have been delivered to or created by the Trustee. All of such records and documents may, but need not, be destroyed at any time after one (1) year from the completion and winding up of the affairs of the Trust. Except as otherwise specifically provided herein, upon the discharge of all liabilities of the Trust and final distribution of the Trust Assets, the Trustee shall have no further duties or obligations hereunder. Upon motion by the Trustee, the Bankruptcy Court may enter an order relieving the Trustee, his agents and employees and the Advisory Board, its agents and employees of any further duties.

ARTICLE VII

Advisory Board

7.1 On the Effective Date, members of the Creditors Committee who elect to serve on the Advisory Board shall commence serving as the Trust's Advisory Board. The identity of each Committee member who has elected to serve on the Advisory Board is set forth on Schedule A attached hereto. The Advisory Board shall have general oversight powers for the activities of the Trustee as well as those specific rights and powers set forth in other provisions of this Agreement and under the Plan.

7.2 Meetings of the Advisory Board are to be held with such frequency and at such place as the Trustee and the members may determine in their reasonable discretion. Special meetings of the Advisory Board may be held whenever and wherever called for by the Trustee or any two members.

7.3 Unless otherwise specified herein, all other rules of decorum and procedure governing the Advisory Board shall be identical those rules of decorum and procedure governing the Committee as set forth in the By-laws of the Committee (which are incorporated herein by referenced as if fully set forth herein).

7.4 The authority of the Advisory Board will be effective as of the Effective Date and will remain and continue in full force and effect until the Trust is terminated in accordance with this Agreement or applicable law. The members will serve until death, resignation or removal pursuant to this Agreement or applicable law.

7.5 A member may resign by giving not less than thirty (30) days' prior written notice thereof to the Trustee and the other members. Such resignation shall become effective on the later to occur of: (i) the day specified in such notice; and (ii) the appointment of a successor in accordance with this Agreement.

7.6 A member may be removed by the unanimous vote of the other members, written resolution of which shall be delivered to the removed member; provided, however that such removal may only be made for Cause.

7.7 None of the members of the Advisory Board shall incur any liability for any act or omission in his capacity as a member of the Advisory Board answerable or accountable under any circumstances, except for the willful misconduct or gross negligence.

7.8 With respect to the Advisory Board, the Trust shall indemnify, defend and hold harmless the Advisory Board (in their capacities as individuals and as members of the Advisory Board) and the officers, directors, employees and agents of each of such Advisory Board (collectively, the "Indemnified Advisory Board Members") from and against any and all losses, damages, liabilities, claims, actions, suite, 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 Advisory Board Members with respect to the performance of this Agreement, the creation, operation, administration or termination of the Trust, or the transaction contemplated hereby (collectively, "Indemnified Member Expenses"); and (iii) advance to each Indemnified Advisory Board Members Indemnified Members Expenses (including reasonable legal fees) incurred by such Indemnified Advisory Board Members in defending any claim, demand, action, suit or proceeding, prior to the final disposition of such claim, demand, action, suite or proceeding, upon receipt by the Trust of a written request therefore and of an undertaking by or on behalf of the Indemnified Advisory Board Members to repay such amount if it shall ultimately be determined that the Indemnified Advisory Board Members are not entitled to be indemnified therefore under this Article; provided however, that notwithstanding anything in this Agreement to the contrary, the Trust shall not be required to reimburse any Advisory Board Members for any expenses, indemnify an Indemnified Advisory Board Members for Indemnified Member Expenses, or advance any Indemnified Member Expenses to an Indemnified Advisory Board Member, to the extent any such obligation arose or was the result of the bad faith, willful misconduct or gross negligence of such Indemnified Advisory Board Member.

7.9 It is expressly acknowledged that the Advisory Board and the Trustee share a joint interest in the successfully prosecution of the Causes of Action and entry into an arrangement to share information based upon such joint interest will be deemed sufficient to preserve and protect privilege.

ARTICLE VIII

Amendment

8.1 *Method of Amendment.* This Agreement may only be amended by written instrument executed by the Trustee and approved by the Bankruptcy Court if such amendment materially affects the Trust generally.

8.2 Promptly after the execution of any amendment to the Certificate of Trust, the Trustee shall cause the filing of such amendment with the Delaware Secretary of State in accordance with Section 3810 of the Act.

ARTICLE IX

Miscellaneous Provisions

9.1 *Intention of Parties to Establish Trust.* This Agreement is not intended to create, and shall not be interpreted as creating, an association, partnership or joint venture of any kind. It is intended as a trust to be governed and construed in all respects as a trust.

9.2 *Filing Documents.* A copy of this Agreement and all amendments thereof shall be filed in an office or residence of the Trustee and shall be available at all times for inspection by the Beneficiaries or their duly authorized representative.

9.3 *Governing Law.* THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, WITHOUT REFERENCE TO ITS CONFLICT OF LAW PROVISIONS, AND THE OBLIGATIONS,

RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

9.4 *Separability.* In the event any provision of this Agreement or the application thereof to any person or circumstances shall be finally determined by a court of proper jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

9.5 *Notices.* Unless otherwise expressly specified or permitted by the terms hereof, all notices shall be in writing and shall be deemed given upon receipt by the intended recipient or three Business Days after mailing if mailed by certified mail, postage prepaid, if to the Trustee, addressed to _____ with copies to Joanne B. Wills, at Klehr Harrison Harvey Branzburg LLP, 919 Market Street, Suite 1000, Wilmington, DE 19801-3062.

9.6 *Further Assurances.* Each party hereto (and his respective successors and assigns) shall, upon any Trustee's reasonable request, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such further instruments, and do or cause to be done, such further acts, as may be necessary to carry out the purposes of this Agreement and to vest in the Trustee the powers and duties contemplated hereunder.

9.7 *Exculpatory Provisions and Survival Thereof.* Whether or not expressly provided, any and all exculpatory provisions, immunities and indemnities, and any limitations and negations of liability contained in this Agreement, in each case inuring to the benefit of the Trustee, shall survive (i) the termination or revocation of this Agreement, and (ii) as to any person who has served as Trustee, the resignation or removal of such person as Trustee.

9.8 *Separate Counterparts.* This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

9.9 *Successors and Assigns.* All covenants and agreements contained herein shall, as applicable, be binding upon, and inure to the benefit of, each of the Beneficiaries and its permitted assignees, the Trustee and his successors and the Debtors and its successors, all as herein provided.

9.10 *Headings.* The headings of the various Articles and Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

9.11 *Books and Records.* On the date hereof, the Debtors shall transfer to the Trust all of the books and records of the Debtors in the Debtors' possession, and shall instruct any third parties or professionals possessing such books and records (including computer generated or computer maintained books, records and data, legal and accounting files maintained by any professional of the Debtors and other of the Debtors' books and records maintained by or in the possession of third parties), to turn over or permit access to (at the election of the party to whom the request is made) such books and records as may be reasonably requested by the Trustee, provided that the Trustee shall only request such books and records or access thereto to the extent reasonably necessary to the Trustee's performance of his duties hereunder, provided further that the out of pocket expenses of complying with any such request shall not be borne by the party upon whom the request is made, absent agreement to the contrary.

9.12 *Tax Identification Numbers.* The Trustee may require any Beneficiary to furnish (i) its employer or taxpayer identification number as assigned by the Internal Revenue Service, and (ii) such other information, records or documents necessary to satisfy the Trustee's tax

reporting obligations (including certificates of non-foreign status). The Trustee may condition the payment of any distribution to any Beneficiary upon receipt of such identification number and requested documents.

9.13 *Jurisdiction.* Notwithstanding the Effective Date and to the fullest extent permitted by the law, the Bankruptcy Court shall retain exclusive jurisdiction over the Trust after the Effective Date, including, without limitation, jurisdiction to resolve any and all controversies, suite and issues that may arise in connection therewith, including, without limitation, this Agreement, or any entity's obligations incurred in connection herewith, including without limitation, any action against the Trustee or any professional retained by the Trustee or the Trust, in each case in its capacity as such. Each party to this Trust Agreement hereby irrevocably consents to the exclusive jurisdiction of the Bankruptcy Court in any action to enforce, interpret or construe any provision of this Agreement or of any other agreement or document delivered in connection with this Agreement, and also hereby irrevocably waives any defense of improper venue, forum non conveniens or lack of personal jurisdiction to any such action brought in the Bankruptcy Court. Each party further irrevocably agrees that (i) any action to enforce, interpret or construe any provision of this Agreement will be brought only in the Bankruptcy Court and (ii) all determinations, decisions, rulings and holdings of the Bankruptcy Court shall be final and non-appealable and not subject to reargument or reconsideration. Each party hereby irrevocable consents to the service by certified or registered mail, return receipt requested, to be sent to its address set forth in this Agreement may designate from time to time by notice give in the manner provided above, of any process in any action to enforce, interpret or construe any provision of this Agreement.

IN WITNESS WHEREOF, the parties hereto have either executed and acknowledged this Agreement or caused it to be executed and acknowledged on their behalf by their duly authorized officers all as of the date first above written.

Dated: February ____, 2010

**ALSET OWNERS, LLC, ALTES, LLC, SETLA,
LLC AND CHECKERS MICHIGAN, LLC**

By: _____

Its: _____

_____, LIQUIDATION TRUSTEE

By: _____

Title: _____

SCHEDULE A
ADVISORY BOARD

SCHEDULE B
TRUSTEE'S FEES

EXHIBIT 2 TO PLAN

PENTLAND SETTLEMENT

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

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

**STIPULATION REGARDING RESOLUTION OF AND
TREATMENT OF CLAIMS OF PENTLAND USA, INC.**

This stipulation (the "Stipulation") is entered into by and among (i) the above captioned debtors and debtors-in-possession (collectively, the "Debtors"), (ii) the Official Committee of Unsecured Creditors (the "Committee"), and (iii) Pentland USA, Inc. ("Pentland," together with the Debtors and the Committee, the "Parties"), by and through their respective undersigned counsel.

WHEREAS:

A. On June 5, 2009 (the "Petition Date"), the Debtors commenced cases (the "Cases") for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Court"). The Debtors continue to manage and operate their business as debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these chapter 11 cases. On June 24, 2009, the United States Trustee appointed the Committee.

¹ 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.

B. Prior to the Petition Date, Pentland, from time to time, loaned the Debtors approximately \$6,850,000 for various transactions and working capital, which loans were not secured by any of the Debtors' assets, except for the pledge of membership interests in Alset Owners, LLC (the "Unsecured Pentland Loans"). Aside from being an unsecured lender to the Debtors, Pentland was also a member of Alset Owners, LLC with a 39% ownership interest as of the Petition Date.

C. As of the Petition Date, Pentland is owed \$5,153,365.46 on account of the Unsecured Pentland Loans (the "Pentland Unsecured Claim"). The Debtors' Schedules reflect a total claim in a slightly smaller amount of \$5,152,329. A proof of claim asserting the Pentland Unsecured Claim on account of the Unsecured Pentland Loans has been filed with the Debtors' claims agent.

D. On December 2, 2009, the Debtors filed the Debtors' Joint Plan of Liquidation (the "Plan"). The Plan provides that holders of general unsecured claims in Class 2 shall receive their Pro Rata share of distributions from the liquidation of the Debtors' assets. Pentland, as the holder of the Pentland Unsecured Claim, has a right to receive a distribution in Class 2 pro rata with other holders of Class 2 unsecured claims.

E. This Stipulation is reflected in the Plan as an integral compromise under the Plan. The Plan and accompanying disclosure statement describe the terms of this Stipulation.

F. The Committee raised certain issues concerning the Pentland Unsecured Claim. Pentland, on the other hand, maintains that the Pentland Unsecured Claim is a valid claim. In order to avoid the expense and uncertainty relating to the validity of the Pentland Unsecured Claim, the Parties entered into negotiations culminating in the execution

and delivery of this Stipulation, which is subject to Court approval in connection with the Plan.

NOW, THEREFORE, after good faith and arms-length negotiations, the Parties hereby stipulate and agree as follows:

1. The Pentland Unsecured Claim (Claim No. 141) shall be deemed an allowed general unsecured claim in the Debtors' estates.
2. Subject to confirmation of the Plan and the occurrence of the Effective Date (as defined in the Plan), Pentland shall receive \$50,000 on account of the Pentland Unsecured Claim (the "Pentland Distribution"), provided however that in the event that other unsecured creditors in Class 2 are paid in full on account of their allowed claims, then Pentland shall receive any remaining distributions ("Remaining Distributions") in the Debtors' cases up to the remaining balance of the Pentland Unsecured Claim.
3. Pentland shall receive the Pentland Distribution when the other holders of unsecured claims in Class 2 receive their initial distribution in the Debtors' cases.
4. This Stipulation will be effective upon entry of an order confirming the Plan (the "Confirmation Order") and the occurrence of the Effective Date under the Plan.
5. In the event that the Court denies confirmation of the Plan and the Effective Date does not occur, this Stipulation shall be void in its entirety and without any legal force or effect or evidentiary value and the rights of the Parties hereto shall be fully restored to the status quo ante, as if the Parties had not entered into this Stipulation and the Debtors had not filed same with the Court.
6. Upon the Effective Date of the Plan, Pentland shall release and forever discharge the Debtors, their successors and assigns, from any and all claims, including claims

defined in Bankruptcy Code § 101(5), demands, causes of action, obligations, damages, and liabilities of any nature whatsoever, whether known or unknown, that Pentland, or any of its successors or assigns ever had or now has, or may claim to have at the present time against the Debtors and their estates, provided however, Pentland may enforce the provisions of this Stipulation and shall receive the Pentland Distribution on account of the Pentland Unsecured Claim without prejudice to its right to receive Remaining Distributions.

7. Upon the Effective Date of the Plan, the Debtors, on behalf of themselves and their estates, and the Committee, hereby release and forever discharge Pentland, its affiliates, and successors and assigns (jointly referred to as "Releasees") from any and all claims, including claims defined in Bankruptcy Code § 101(5), demands, causes of action, obligations, damages, and liabilities of any nature whatsoever, known or unknown, that the Debtors, their estates and/or the Committee ever had or now has, or may claim to have at the present time against the Releasees, including but not limited to Causes of Action (as defined in the Plan).

8. Upon the Effective Date of the Plan, this Stipulation shall take effect and be binding on the Parties and any successor(s) to the Parties and the Debtors' estates, such as, without limitation, a liquidating trustee or chapter 7 trustee appointed with respect to the Debtors' cases.

9. Each person who executes this Stipulation on behalf of a party hereto represents that he or she is duly authorized to execute this Stipulation on behalf of such party.

10. This Stipulation can only be amended or otherwise modified by agreement in writing signed by all the Parties.

11. This Stipulation constitutes the entire agreement between the Parties with respect to the subject matter hereof and shall supersede any previous negotiations, commitments and writings with respect to such subject matter.

12. This Stipulation shall be governed by, and construed in accordance with the laws of the State of New York (without regard to the conflicts of laws provisions thereof), and to the extent applicable, the Bankruptcy Code and related laws of the United States.

13. Nothing contained or provided for herein shall be deemed to constitute a waiver or admission by any party with respect to any rights, claims, defenses or objections if the Effective Date does not occur and the Confirmation Order does not become final and non-appealable. No party may use or refer to this Stipulation or related motion papers filed with the Court if such order does not become final and non-appealable.

14. This Stipulation may be executed in one or more counterparts, all of which shall be considered one and the same document, and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other party, it being understood that all Parties need not sign the same counterpart.

15. The Court shall retain exclusive jurisdiction to resolve any disputes or controversies arising from or related to this Stipulation.

Dated: Wilmington, Delaware
February __, 2010

BLANK ROME LLP

KLEHR, HARRISON, HARVEY,
BRANZBURG & ELLERS LLP

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Counsel for the Official Committee
of Unsecured Creditors

- and -

PENTLAND USA, INC.

Counsel for Debtors and Debtors in
Possession

By: _____
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