

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

<b>In re:</b>	)	
	)	
<b>SOFA EXPRESS, INC.</b>	)	<b>Case No. 07-9024</b>
	)	<b>Chapter 11</b>
<b>Debtor.</b>	)	<b>Judge Paine</b>

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**DISCLOSURE STATEMENT TO ACCOMPANY  
CHAPTER 11 PLAN OF LIQUIDATION**

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The Official Committee of Unsecured Creditors (the “Creditors’ Committee”) of Sofa Express, Inc. (the “Debtor” or “Sofa”) submits this Disclosure Statement for use in soliciting acceptances of its Chapter 11 Plan of Liquidation dated November 1, 2010 (the “Plan”).

The Creditors’ Committee respectfully urges holders of Claims, as defined in the Plan, to accept the Plan and to evidence such acceptance by returning their ballots on or before \_\_\_\_\_, 2011 according to the procedures described herein and in the Plan. The Creditors’ Committee believes that confirmation and implementation of the Plan is preferable to conversion of this case to one under Chapter 7 of the Code.

**The Debtor also supports the Plan, and recommends that Holders of Claims vote in favor of it.**

**\*\*\*\*\*NOTICE\*\*\*\*\***

**THIS DISCLOSURE STATEMENT CONTAINS INFORMATION SUPPLEMENTARY TO THE PLAN AND IS NOT INTENDED TO TAKE THE PLACE OF THE PLAN. CREDITORS ARE ADVISED TO STUDY THE PLAN CAREFULLY TO DETERMINE THE PLAN'S IMPACT ON THEIR CLAIMS OR INTERESTS. THE INFORMATION CONTAINED HEREIN HAS NOT BEEN SUBJECT TO A CERTIFIED AUDIT. THE CREDITORS’ COMMITTEE AND ITS PROFESSIONAL PERSONS ARE UNABLE TO WARRANT OR REPRESENT THAT THE INFORMATION CONTAINED HEREIN IS WITHOUT ANY INACCURACIES, ALTHOUGH THEY HAVE MADE GREAT EFFORT TO PRESENT ACCURATE INFORMATION. IN PARTICULAR, THE ESTIMATES OF ANTICIPATED CLAIM AMOUNTS, ASSET RECOVERIES AND EXPENSES CANNOT BE GUARANTEED AND ACTUAL RESULTS MAY DIFFER MATERIALLY FROM THE ESTIMATES AND PROJECTED AMOUNTS SET FORTH HEREIN.**

**NOTHING CONTAINED IN THE PLAN SHALL BE DEEMED AN ADMISSION THAT CAN BE USED AGAINST THE CREDITORS' COMMITTEE, THE DEBTOR OR PLAN ADMINISTRATOR IN ANY PENDING OR FUTURE LITIGATION.**

**THIS DISCLOSURE STATEMENT AND THE PLAN ARE THE ONLY INFORMATION AUTHORIZED BY THE CREDITORS' COMMITTEE TO BE DISTRIBUTED TO CREDITORS. CREDITORS SHOULD NOT RELY ON REPRESENTATIONS OTHER THAN THOSE SET FORTH IN THE DISCLOSURE STATEMENT OR THE PLAN IN CONSIDERING WHETHER TO ACCEPT THE PLAN.**

## **I. INTRODUCTION**

### **A. Background**

On December 3, 2007 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Pursuant to Sections 1107 and 1108 of the Bankruptcy Code, the Debtor retained possession of its assets as debtor in possession, and the Debtor remains in possession. No trustee or examiner has been appointed in the Debtor's case. An Official Committee of Unsecured Creditors (the "Creditors' Committee") was appointed.

Simultaneously with the filing of this Disclosure Statement, the Debtor is filing a Chapter 11 Plan of Liquidation (the "Plan"), which will be discussed and described in this Disclosure Statement. Terms defined in the Plan and not otherwise specifically defined in this Disclosure Statement will have the same meanings set forth in the Plan when used in this Disclosure Statement.

During the course of the Debtor's Chapter 11 Case, the Debtor sold substantially all of its business-related assets. The Plan discussed in this Disclosure Statement proposes the liquidation of all assets that have not already been liquidated in the course of this Chapter 11 Case and for the distribution of the Debtor's net cash in accordance with the requirements of the Bankruptcy Code.

### **B. Purpose**

The purpose of a Disclosure Statement is to provide the Holders of Claims against, and Interests in, Debtor with adequate information about Debtor and its assets and debts sufficient to enable such Holders to make an informed judgment about the merits of approving the Plan.

After notice to all creditors and parties in interest, the Court, by Final Order dated \_\_\_\_\_, 2010, approved this Disclosure Statement as containing "adequate information" (as defined in § 1125(a) of the Code) of a kind, and in sufficient detail, to enable a hypothetical reasonable investor typical of the Holders of Claims against, and Interests in, Debtor to make an informed judgment in voting to accept or reject the Plan. Approval of this Disclosure Statement by the Court does not constitute a recommendation to accept or reject the Plan.

### **C. Brief Explanation of Chapter 11**

Chapter 11 is the principal business reorganization chapter of the Code. Pursuant to Chapter 11, a debtor may be reorganized or liquidated for its benefit and that of the holders of claims against and interests in the debtor. Attempts to collect upon Pre-Petition claims from the debtor or attempts to foreclose upon the debtor's assets by any secured creditor are stayed during the pendency of the case. In this Chapter 11 Case, the Debtor continued in possession of its property and operated its businesses as a debtor-in-possession pursuant to the provisions of § 1107 and § 1108 of the Code. The Plan is the sole vehicle for satisfying the rights of Holders of Claims against and Interests in the Debtor.

### **D. Disclaimers**

THE CREDITORS' COMMITTEE PROVIDES THIS DISCLOSURE STATEMENT TO ALL KNOWN HOLDERS OF CLAIMS AGAINST AND INTERESTS IN THE DEBTOR TO DISCLOSE INFORMATION ADEQUATE TO ALLOW SUCH HOLDERS OF CLAIMS AND INTERESTS TO ARRIVE AT AN INFORMED JUDGEMENT IN EXERCISING THEIR RIGHT TO VOTE FOR ACCEPTANCE OR REJECTION OF THE PLAN OF LIQUIDATION.

THIS DISCLOSURE STATEMENT MAY NOT BE RELIED UPON FOR ANY PURPOSES OTHER THAN TO DETERMINE HOW TO VOTE ON THE PLAN, AND NOTHING CONTAINED HEREIN SHALL CONSTITUTE AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY OR BE ADMISSIBLE IN ANY PROCEEDING INVOLVING THE DEBTOR, THE PLAN ADMINISTRATOR OR ANY OTHER PARTY OR BE DEEMED CONCLUSIVE ADVICE ON THE LEGAL EFFECTS OF THE LIQUIDATION OF THE DEBTOR UPON THE HOLDERS OF CLAIMS OR INTERESTS.

NO REPRESENTATIONS BY ANY PERSON CONCERNING THE DEBTOR (PARTICULARLY AS TO ITS BUSINESS OPERATIONS, OR THE VALUE OF ITS PROPERTY) ARE AUTHORIZED BY THE CREDITORS' COMMITTEE OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT. ANY REPRESENTATIONS OR INDUCEMENTS MADE TO SECURE YOUR VOTE ON THE PLAN OTHER THAN CONTAINED IN THIS DISCLOSURE STATEMENT SHOULD NOT BE RELIED ON BY YOU IN ARRIVING AT YOUR DECISION. SUCH ADDITIONAL REPRESENTATIONS AND INDUCEMENTS SHOULD BE REPORTED TO CREDITORS' COMMITTEE'S COUNSEL, WHO IN TURN SHALL DELIVER SUCH INFORMATION TO THE COURT FOR SUCH ACTION AS THE COURT DEEMS APPROPRIATE.

THE DEBTOR'S FINANCIAL AFFAIRS AND THE FINANCIAL INFORMATION PROVIDED IN THIS DISCLOSURE STATEMENT ARE SOMEWHAT COMPLEX. YOU ARE URGED TO CONSULT WITH YOUR FINANCIAL ADVISOR, YOUR TAX ADVISOR, YOUR ATTORNEY AND WITH OTHER HOLDERS OF CLAIMS OR INTERESTS TO FULLY UNDERSTAND THE DISCLOSURE STATEMENT AND THE PLAN.

THE ESTIMATES OF ANTICIPATED CLAIM AMOUNTS, ASSET RECOVERIES AND EXPENSES CANNOT BE GUARANTEED AND ACTUAL RESULTS MAY DIFFER

MATERIALLY FROM THE ESTIMATES AND PROJECTED AMOUNTS SET FORTH HEREIN.

THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE HEREOF UNLESS ANOTHER TIME IS SPECIFIED HEREIN, AND NEITHER DELIVERY OF THIS DISCLOSURE STATEMENT NOR ANY EXCHANGE OF RIGHTS MADE IN CONNECTION WITH THIS DISCLOSURE STATEMENT SHALL, UNDER ANY CIRCUMSTANCES, CREATE AN IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE FACTS SET FORTH HEREIN SINCE THE DATE THE DISCLOSURE STATEMENT WAS COMPILED.

THERE HAS BEEN NO INDEPENDENT AUDIT OF THE FINANCIAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT. THE CREDITORS' COMMITTEE AND ITS COUNSEL DO NOT WARRANT OR REPRESENT THAT THE INFORMATION CONTAINED HEREIN IS WITHOUT ANY INACCURACY, ALTHOUGH ALL SUCH INFORMATION IS ACCURATE TO THEIR BEST KNOWLEDGE, INFORMATION AND BELIEF.

## **II. CONFIRMATION PROCEDURES AND EFFECT**

The Plan cannot be consummated unless it is confirmed by the Court. Confirmation of the Plan requires that, among other things, either (i) each Class of Claims or Interests that is impaired by the Plan has voted to accept the Plan by the requisite majority, or (ii) the Plan is determined by the Court to be fair and equitable, as defined by the Code, with respect to Classes of Claims or Interests that have rejected the Plan. The Code also requires that the confirmation of the Plan be in the "best interests" of all Holders of Claims and Interests.

The Creditors' Committee believes that the Plan meets the classification requirements of the Code, which require that all Claims or Interests in a Class be "substantially similar." Disputes regarding the proper classification of Claims or Interests not specifically classified in the Plan shall be resolved pursuant to the procedures established by the Code, the Rules and other applicable law.

### **A. Creditors Eligible to Vote**

Only the votes of Classes whose Claims or Interests are impaired by the Plan will be counted in connection with the confirmation of the Plan. Generally, and subject to the specific provisions of § 1124 of the Code, a Class is "impaired" if its legal, equitable or contractual rights attaching to the Claims or Interests of that Class are modified, other than by curing defaults in stated maturities or by Payment in Full, in Cash, on the Effective Date. Classes 1, 2, 3, and 4 are impaired under the Plan and, accordingly, entitled to vote to accept or reject the Plan. Though impaired, Class 4 receives no distribution under the Plan, and, therefore, is deemed to have rejected the Plan. Any class receiving no distribution under the Plan is deemed to have rejected the Plan pursuant to 11 U.S.C. § 1126(g). In determining acceptance of the Plan, votes will be counted only if submitted by a Holder of an Allowed Claim. Claims may be allowed by the Court for voting purposes only.

## **B. Acceptances Necessary to Confirm the Plan**

For the Plan to be accepted and thereafter confirmed, it must be accepted by at least one Class of Claims that is impaired by the Plan. Under § 1126 of the Code, an impaired Class is deemed to have accepted the Plan if: (i) with respect to a Class of Claims, votes representing at least two-thirds (2/3) in amount and more than one-half (1/2) in number of Allowed Claims that have voted in that Class have accepted the Plan; and (ii) with respect to a Class of Interests, votes representing at least two-thirds (2/3) in amount of those Allowed Interests that have voted have accepted the Plan; provided that the vote of any Holder of an Allowed Claim or Allowed Interest whose acceptance or rejection of the Plan was not made in good faith, as determined by the Court, will not be counted.

Unless every Class of Claims that is impaired unanimously accepts the Plan, the Court, in order to confirm the Plan, must independently determine that the Plan provides to each Holder of a Claim of such Class a recovery which has a value, as of the Effective Date, at least equal to the value, as of the Effective Date, of the distribution which such Holder would receive or retain if the Debtor was liquidated under Chapter 7 of the Code on the Effective Date. The Creditors' Committee believes that the Disclosure Statement and Plan will enable the Court to make this determination.

## **C. Manner of Voting**

Enclosed is a ballot for voting on the Plan. In voting for or against the Plan, please use only the ballot sent to you with this Disclosure Statement or a photocopy of the ballot. If a Person has an Allowed Claim in more than one (1) Class, such Person may vote multiple ballots.

Holders of Allowed Claims entitled to vote to accept or reject the Plan may vote by completing, dating, signing and delivering the enclosed ballot to:

Tammie S. Wills  
Harwell Howard Hyne Gabbert & Manner, P.C.  
315 Deaderick St., Suite 1800  
Nashville, TN 37238  
Telephone: 615-256-0500  
Facsimile: 615-251-1059  
Email: tsw@h3gm.com

In order for a ballot to be counted, the ballot must be received at the above address on or before \_\_\_\_\_ **2011**. A ballot, once submitted, cannot be withdrawn or modified except as provided under the Code.

#### **D. Confirmation Without Acceptance**

Section 1129(b) of the Code provides that the Plan may be confirmed by the Court despite not being accepted by every impaired Class if: (i) at least one impaired Class of Claims has accepted the Plan; and (ii) the Court finds that the Plan does not discriminate unfairly and is fair and equitable to the rejecting Classes. Among other things, such a finding would require a determination by the Court that the Plan provides that no Holder of an Allowed Claim or Allowed Interest junior to the rejecting Class will receive or retain any property or payment under the Plan, until or unless such rejecting Class is Paid in Full.

The Debtor reserves the right pursuant to § 1129(b) of the Code to request the Court to confirm the Plan if all of the applicable requirements of § 1129(a) of the Code have been met. In addition, the Debtor reserves the right pursuant to § 1126(e) of the Code to request the court to strike any ballot rejecting the Plan cast by any Holder of a Claim or Interest which was not cast in good faith.

#### **E. Hearing on Confirmation of the Plan**

The Court has set \_\_\_\_\_ 2011, at \_\_\_\_\_ a.m., prevailing local time, in Nashville, Tennessee for the hearing to determine whether the Plan has been accepted by the requisite number of Holders of Claims and Interests and whether the other standards for confirmation of the Plan have been satisfied. The hearing may be adjourned from time to time without further written notice other than an announcement in open court. Each Holder of a Claim or Interest will receive with this Disclosure Statement the Notice of Hearing on Confirmation of the Plan.

#### **F. Discharge Upon Confirmation**

The Confirmation Order shall provide for the discharge of the Debtor from all Claims to the extent allowed pursuant to § 1141 of the Code and shall constitute an injunction against the pursuit of any Claim or Interest or Administrative Expense except as otherwise provided in the Plan. Parties asserting entitlement to payment of Administrative Claims incurred Prior to the Confirmation Date and Holders of Claims and Interests shall be permanently enjoined from asserting any Claim or Interest against the Debtor, the Plan Administrator, the Debtor's Assets based upon any act or omission, transaction or other activity that occurred prior to the Confirmation Date, except as otherwise provided in the Plan, whether or not a proof of claim or interest was filed and whether or not such claim or interest is allowed under § 502 of the Bankruptcy Code. The rights afforded under the Plan and the treatment of Administrative Claims, Claims and Interests under the Plan shall be in exchange for and in complete satisfaction, discharge, and release of all Claims and termination of all Interests, unless otherwise set forth in the Plan.

#### **G. Binding Effect of Plan**

The provisions of the Plan shall be binding upon and inure to the benefit of all persons, entities, and governmental authorities described herein and/or claiming an interest in any and all property in which Debtor has an interest and such persons', entities', and governmental authorities' successors, heirs and assigns whether or not such persons, entities, and governmental

authorities vote to accept the Plan. Failure to file a timely objection to the Plan will be deemed to be an agreement to the terms of the Plan for purposes of § 1129(a)(9).

### **III. GENERAL INFORMATION ABOUT DEBTOR AND THIS CASE**

The information set forth in this Section is true and correct to the best of the Creditors' Committee's knowledge, information and belief.

#### **A. History of Debtor**

Sofa Express was founded in 1959 in Columbus, Ohio. In 1999, the company was acquired by an affiliate of Klaussner Home Furnishings ("Klaussner"). After the acquisition, the Debtor grew to almost 70 stores across the country. Prior to 2005, the Debtor's stores focused primarily on sofas and related living room furniture. Beginning in 2005, however, the Debtor reinvented itself expanding its product line by adding bedroom and dining room furniture to its industry leading assortment of living room furniture.

As of the Petition Date, the Debtor had reduced its overall store portfolio to 41 stores and two distribution facilities.

In 2006, the Debtor experienced revenues of approximately \$211 million versus expenses of approximately \$262 million. For the year 2007, the Debtor's revenues were only \$144 million with expenses of approximately \$160 million. Given the losses in prior years combined with the uncertainty facing the U.S. economy at the time, the Debtor did not believe it could continue as a going concern and in order to maximize a return to creditors decided to file the Chapter 11 Case.

Prior to the Filing Date, the Debtor was party to certain Credit Agreements with Wells Fargo Retail Finance, LLC as agent for itself and certain other lenders, (collectively "Wells Fargo") wherein pursuant to various revolving credit and loan agreements, Wells Fargo provided a working capital credit facility and loan. The obligations due Wells Fargo were secured by a lien and first priority security interest in substantially all of the assets of the Debtor. As of the Petition Date the debt due Wells Fargo from the Debtor was approximately \$11,000,000 plus accrued interest costs and fees. The Debtor was also party to a certain Amended and Restated Loan Agreement and Security Agreement (the "KFI Agreements") with Klaussner Furniture Industries, Inc. acting for itself and as agent for various affiliated KFI entities (collectively "KFI"). Pursuant to the KFI Agreements, KFI asserted a subordinated secured claim against the Debtor in the approximate amount of \$36,127,781 plus interest, costs and fees as may be applicable. All claims of and against KFI have been resolved and settled during the Chapter 11 Case pursuant to Order of the Bankruptcy Court dated September 30, 2009.

#### **B. General Overview of Post-Filing Activity**

After the Petition Date, and based upon the significant cash needed to continue to operate the Debtor's stores post petition, the Debtor began to actively engage in the process of selling substantially all of its assets. By December 21, 2007, the Debtor liquidated through a spirited and intense auction process substantially all of the personal property and equipment that had been used in its business. Thereafter throughout the year of 2008, the Debtor also worked to liquidate

its remaining assets and to collect amounts due. During this period, the Debtor also rejected all of its remaining leases that were not assumed as part of the sale transaction.

### **C. Proceedings in this Case**

#### **1. Administrative and Financing Matters**

##### **(a) Trustee and Creditors' Committee Appointments**

Pursuant to Sections 1107 and 1108 of the Bankruptcy Code, the Debtor continues to manage its property as a debtor-in-possession. No trustee was appointed. The Creditors' Committee was appointed by the United States Trustee on December 13, 2007, and the Creditors' Committee and its professionals have been active throughout the course of this Case.

##### **(b) § 341(a) First Meeting of Creditors**

On January 11, 2008, the United States Trustee's Office conducted the first meeting of creditors, pursuant to § 341(a) of the Bankruptcy Code, in Nashville, Tennessee.

##### **(c) Debtor's Counsel and Other Professionals**

With the approval of the Court, the Debtor employed the law firms of Alston & Bird LLP and Bradley Arant Boult Cummings LLP as its counsel and local counsel, respectively, to represent it as debtor-in-possession on the terms stated in the related employment applications and the Orders of the Court approving such employment.

The Debtor also received Court approval to retain Clear Thinking Group, LLC as its financial advisors.

##### **(d) Creditors' Committee's Professionals**

With the approval of the Court, the Creditors' Committee employed the law firms of Platzer, Swergold, Karlin, Levine, Goldberg, & Jaslow, LLP and of Harwell Howard Hyne Gabbert & Manner, P.C as its counsel and local counsel, respectively. The Creditors' Committee also received Court approval to retain CBIZ Mahoney Cohen as its financial advisors.

##### **(e) Post-Petition Financing**

At the commencement of this Chapter 11 Case, Wells Fargo asserted a security interest in substantially all of the Debtor's assets, and the Debtor owed Wells Fargo approximately \$11,000,000. The Debtor believed that it was essential that it have post-petition financing in order to pay its employees, obtain inventory and operate its business pending the sale of its assets. Thus, on the Petition Date, the Debtor filed a motion to obtain post-petition secured financing from Wells Fargo, grant security interests and liens, accord Wells Fargo super-priority status and modify the automatic stay. This motion was approved by the Court.

Through the course of the Chapter 11 Case and Debtor's liquidation of its assets, Wells Fargo has been paid in full.



**(f) Bar Date – Unsecured Claims**

The Debtor filed a motion asking the Court to set a General Claims Bar Date. By Order the Court set **April 15, 2008** as the General Claims Bar Date – the deadline by which all proofs of claim for unscheduled debts or for debts scheduled as disputed, contingent, or unliquidated had to be filed with the Clerk of the Bankruptcy Court. Should the Debtor amend its schedules in the future to change the amount of any claim or change a claim to disputed, contingent, or unliquidated, the Plan provides that the holder of such claim shall have 30 days from service of notice of the change to file a proof of claim.

**(g) Asset Sales and Causes of Action**

The Debtor has liquidated substantially all of its tangible assets throughout the course of the Chapter 11 Case, pursuant to a Court-approved sale. On December 21, 2010, the Debtor sold substantially all of its assets to a joint venture group consisting of Planned Furniture Promotions, Inc., Hilco Merchant Resources, LLC, HRE Holdings, LLC, Tiger Capital Group, LLC, SB Capital Group, LLC, and Kimco Realty Services, Inc. (the “Purchaser”). These assets were encumbered and the proceeds were used to pay down in full Debtor’s secured debt due Wells Fargo.

In the course of the Chapter 11 Case, the Creditors’ Committee was granted authority by the Court to liquidate the Debtor’s Causes of Action on behalf of the estate. The Creditors’ Committee is now in the process of liquidating these Cause of Action assets, specifically preference litigation, and reviewing and analyzing Claims.

**2. Leases**

Through the Court-approved sale process, all executory contracts and leases were either assumed by the Purchaser or rejected. The Creditors’ Committee is not aware of any unexpired leases or executory contracts that have not been either assumed or rejected. To the extent there are any, they will be deemed rejected pursuant to the Plan.

**IV. FINANCIAL STATEMENTS AND INFORMATION**

Pursuant to the Bankruptcy Rules and the requirements of the United States Trustee's Office, the Debtor filed complete Schedules of Assets and Liabilities and Statements of Affairs as of the Petition Date on January 8, 2008, as well as Monthly Operating Reports for each month since the Petition Date. In addition to the information provided herein, the Schedules, Statements and Monthly Operating Reports may be consulted and inspected by all interested Persons. Copies of these and any other filings in this Chapter 11 Case may be obtained electronically by those authorized to participate in the PACER program by accessing the Court’s website, [www.tnmb.uscourts.gov](http://www.tnmb.uscourts.gov), or by writing to 1870 Laeke Drive East, Chanhassen, MN 55317. A fee will be charged for copies.

## **A. Debtor's Assets**

### **1. Personal Property**

Substantially all of the Debtor's personal property was sold pursuant to a Court approved auction held on December 19, 2007. As of October 29, 2010, the Debtor has the following personal property:

The Debtor holds in an operating account and a money market account a total of approximately \$862,300 as of October 29, 2010. The Creditors' Committee is currently holding the sum of \$86,300 in escrow as proceeds of Avoidance Actions, subject to settlement approval by the Court. The Debtor also has \$152,000 reflected on its books in the form of pre-paid deposits.

### **2. Causes of Action**

#### **(a) Reservation of Causes of Action/Authority to Pursue & Settle**

**The Plan retains and reserves all Causes of Action, including Avoidance Actions, for pursuit or abandonment by the Plan Administrator after Confirmation, within the Plan Administrator's sole discretion. All Causes of Action, including Avoidance Actions, are discussed and described below.**

The Creditors' Committee during the course of the Chapter 11 Case has commenced certain Avoidance Actions, which remain before the Court as pending adversary proceedings. The Plan provides for the Plan Administrator to continue to pursue these adversary proceedings on behalf of the Liquidation Trust. The Plan also provides for the Plan Administrator to pursue all Avoidance Actions arising under Chapter 5 of the Bankruptcy Code not already subject to an adversary proceeding. Possible Avoidance Actions include additional preference claims pursuant to section 547, claims for turnover of funds payable to the estate pursuant to section 542, claims for avoidance of fraudulent transfers pursuant to section 548, and claims for avoidance of unauthorized post-petition transfers pursuant to section 549 of the Bankruptcy Code. The Plan also provides for the Plan Administrator to pursue other Causes of Action, such as those to collect sums due to the estate for product or services provided by Debtor and to collect pre-paid deposits and other amounts owed to the Debtor. Pre-paid deposits subject to collection by the Plan Administrator include without limitation those identified on Debtor's Schedule B, Personal Property, filed with the Court at Docket No. 242.

The terms of the Plan give the Plan Administrator the widest possible latitude in deciding whether or not to pursue or continue to pursue any possible Cause of Action, including without limitation any preference or other Avoidance Action. The Plan also gives the Plan Administrator sole discretion to settle or abandon any Cause of Action.

The Creditors' Committee on behalf of the Debtor's estate has already filed several Causes of Action to collect sums due to it as well as several Avoidance Actions. The Plan retains and reserves all Causes of Action and Avoidance Actions for pursuit, settlement or abandonment by the Plan Administrator after Confirmation, within the Plan Administrator's discretion.

**(b) Estimate of Avoidance Action Recoveries**

As of October 31, 2010, the Creditors' Committee has entered into settlements of Avoidance Actions that have generated \$86,300 for the benefit of the estate, in addition to the value of waived and released Claims in connection with such settlements. Settlements currently pending, but not yet paid, are in excess of \$40,000. Although it is difficult to estimate precisely additional amounts that will be obtained from the pursuit of Avoidance Actions discussed above, the Creditors' Committee believes that there will be additional recoveries from the pending Avoidance Actions. Creditors' Claims

ALL STATEMENTS REGARDING PROJECTED AMOUNTS OF CLAIMS ARE ESTIMATES BASED ON INFORMATION CURRENTLY AVAILABLE TO THE CREDITORS' COMMITTEE AND ARE NOT REPRESENTATIONS THAT SUCH AMOUNTS WILL ULTIMATELY PROVE CORRECT.

**3. Secured Claims**

Wells Fargo has been paid in full. The Creditors' Committee believes that all Secured Claims have been paid in full.

**4. Administrative Expense Claims**

The following liabilities are the estimated Administrative Expense Claims in various categories in accordance with sections 503 and 507 of the Code, of which the Creditors' Committee is currently aware:

**(a) Administrative Claims** During the course of this Case, the Debtor has generally remained current with its post-petition operating expenses. The Creditors' Committee does not believe that there are any significant unpaid Administrative Claims except for Professional Fee Claims

**(b) Administrative Claims pursuant to Section 503(b)(9).** Pursuant to § 503(b)(9) of the Bankruptcy Code, the value of any goods received by the debtor within 20 days before the Petition Date in the ordinary course of business for which the creditor was not paid are an Administrative Claim ("503(b)(9) Claims"). Based on the fact that KFI supplied a vast majority of the Debtor's goods, which meant that the Debtor got little if any credit immediately prior to the Petition Date, and the fact that a substantial amount of time has expired since the Petition Date with no 503(b)(9) Claim being asserted, the Creditors' Committee believes that there is a very low likelihood of outstanding 503(b)(9) Claims.

**(c) Professional Fees and Expenses.** The fees and expenses of the Debtor's and the Creditors' Committee's legal counsel, financial advisors, accountants and other professional persons employed during the case with Court approval are treated as Administrative Claims.

As of July 2009, Altson & Bird, LLP, as legal counsel to the Debtor, has been awarded interim compensation and reimbursement of expenses totaling \$960,560.72. As of October 29, 2010, Bradley Arant Boult Cummings LLP, as local counsel for the Debtor, has been awarded

interim compensation and reimbursement of expenses totaling \$119,705.38. As of July 2009, Platzer, Swergold, Karlin, Levine, Goldberg & Jaslow, LLP, as counsel for the Creditors' Committee, has been awarded interim compensation and reimbursement of expenses totaling \$521,494.92. As of July 2009, Harwell Howard Hyne Gabbert & Manner, P.C., as local counsel for the Creditors' Committee, has been awarded interim compensation and reimbursement of expenses totaling \$112,305.02. As of July 2009, Clear Thinking Group LLC as financial advisors for the Debtor, has been awarded interim compensation and reimbursement of expenses totaling \$119,705.38. As of July 2009, CBIZ Mahoney Cohen, as financial advisors to the Creditors' Committee, has been awarded interim compensation and reimbursement of expenses totaling \$499,535.82.

The Creditors' Committee estimates that total unpaid administrative professional expenses from the period of July 2009 through to the Confirmation Date are \$175,000.

## **5. Priority Claims**

The following liabilities are the estimated Priority Claims in various Classes in accordance with sections 503 and 507 of the Code, of which the Committee is currently aware:

(a) **§ 507(a)(4) and (5) Employee Claims.** The Debtor's Schedules reflect Employee Priority Claims in the aggregate amount of \$1,151,033.52. However, the Creditors' Committee believes that the payroll and employee expense reimbursement claims included in Debtor's schedules were paid pursuant to Court order at or near the commencement of this Case; also the Committee believes that substantially all of these claims were satisfied through the Debtor's sale process. Accordingly, the Creditors' Committee is not aware of any significant claims entitled to priority under 11 U.S.C. § 507(a)(4) or (5).

(b) **§ 507(a)(8) Tax Claims** The Debtor's Schedules filed in the Chapter 11 Case indicate that total tax claims are \$383,273.52. At or near the commencement of this Chapter 11 Case, the Court granted the Debtor permission to pay pre-petition sales, use and other trust fund taxes, and Debtor paid same in the ordinary course of its business up to \$112,288. The Creditors' Committee is reviewing and will continue to review filed sales and use tax claims.

(c) **Other Priority Claims.** The Debtor's Schedules filed in the Chapter 11 Case indicate that total Section 507(a)(7) consumer deposit claims are \$1,456,711.61. However, the Creditors' Committee believes that the consumer deposit claims included in Debtor's Schedules were paid pursuant to Court order at or near the commencement of this Case; also the Committee believes that substantially all of these claims were satisfied through the Debtor's sale process. Accordingly, the Creditors' Committee is not aware of any significant claims entitled to priority under 11 U.S.C. § 507(a)(7).

## **6. Unsecured Claims Without Priority**

Based upon the Creditors' Committee's review of the Debtor's Schedules, the Debtor has identified in its schedules non-priority, unsecured claims in the total amount of \$7,382,349.32, this total does not reflect the significant amount of real property lease rejection claims which arose subsequent to the Debtor's sale of assets. However, filed general unsecured claims reflected on a schedule prepared by the Debtor's claims agent reflect filed unsecured claims in

the amount of \$56,598,556.59. While this amount does reflect real property rejection damage claims, upon initial review the Creditors' Committee believes this amount to be significantly overstated and include claims of KFI which were settled and resolved pursuant to Order of this Court.

## **V. SUMMARY OF THE PLAN**

The Plan contemplates the distribution of the remaining cash on hand in accordance with the priorities established by the Plan.

THE FOLLOWING DESCRIPTIONS OF TREATMENT OF CLAIMS AND OTHER PROVISIONS OF THE PLAN ARE INFORMATIONAL ONLY. CREDITORS AND INTEREST HOLDERS SHOULD REFER TO THE PLAN FOR SPECIFIC TERMS. TO THE EXTENT OF ANY INCONSISTENCY BETWEEN THE INFORMATION BELOW AND THE TERMS OF THE PLAN, THE PLAN CONTROLS AND, ONCE CONFIRMED, IS BINDING.

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

The Plan designates the following Classes of Claims and Interests:

Class 1 Claims: Class 1 consists of Allowed Secured Claims. Neither the Debtor nor the Creditors' Committee believes any claims exist in this class. This Class is impaired.

Class 2 Claims: Class 2 consists of Allowed Priority Claims arising under sections 507(a)(4), 507(a)(5), or 507(a)(7) of the Bankruptcy Code. This Class is impaired under the Plan.

Class 3 Claims: Class 3 consists of Allowed Unsecured Claims. This Class is impaired under the Plan.

Class 4 Claims: Class 4 consists of all Allowed Interests in the Debtor. This Class is impaired under the Plan.

### **B. Administrative Claims**

#### **1. Post-Petition Expenses Incurred in the Ordinary Course of Business.**

The Plan gives the Plan Administrator the right to pay Administrative Claims incurred in the ordinary course of business prior to and for a period of up to 30 days after the Effective Date, or thereafter as administratively practicable. Any person or entity asserting that Debtor owes it an Administrative Claim or a 503(b)(9) Claim that arose prior to the Confirmation Date must file and serve a motion or application for allowance of such expense in accordance with L.B.R. 9013-1 no later than the Administrative Expense Bar Date, which is 45 days after the Confirmation Date, or that Administrative Claim shall be deemed disallowed. Any request for payment of an Administrative Claim or 503(b)(9) Claim made by proof of claim rather than by motion or application shall be deemed disallowed, unless the Plan Administrator in her sole discretion voluntarily decides to honor the request by proof of claim. Payment of any such expense shall be made promptly after obtaining a Final Order resolving the motion and

determining the appropriate amount of the Administrative Claim. Final applications for compensation and reimbursement of professionals must be filed by the Administrative Expense Bar Date.

## **2. Professionals**

The Plan provides that fees and expenses of professionals employed pursuant to section 327 of the Bankruptcy Code incurred prior to the Effective Date shall be paid upon allowance by Final Order. Final fee applications must be filed by no later than the Administrative Expense Bar Date.

### **C. Treatment of Claims Not Impaired Under the Plan**

Class 1 – Secured Claims. Allowed Secured Claims shall receive either (i) the collateral securing the claim in full satisfaction of the claim or (ii) upon liquidation of their collateral, the lesser of the liquidation value of their collateral or the total amount of the claim from the Plan Administrator in full settlement, release and discharge of all their liens, claims, encumbrances and their Allowed Secured Claims. The distributions provided in this Section shall be in full settlement, release and discharge of the Secured Claims against the Debtor and leave unaltered the legal, equitable and contractual rights to which such Claim entitles the holder of such Claim. To the extent that there is a deficiency after liquidation of the secured creditors' collateral, such deficiency claim, subject to objection by the Plan Administrator, shall be treated as a Class 3 Unsecured Claim. The Creditors' Committee, through consultation with the Debtor, believes that all secured claims have been previously satisfied by prior Orders of the Bankruptcy Court

### **D. Treatment of Claims and Interests Impaired Under the Plan**

The Creditors' Committee believes that all impaired classes are provided by the Plan treatment similar to or better than claimants in said classes would receive in the event of Chapter 7 liquidation.

**1. Class 2 – Priority Claims.** All Allowed Priority Claims in Class 2 shall be Paid in Full on or before the initial Distribution Date, unless the Plan Administrator lacks sufficient Cash to pay these Allowed Priority Claims in full on that date, in which event the Holders of Allowed Priority Claims shall receive their Pro Rata share of funds available for distribution until the Allowed Priority Claims are Paid in Full. Notwithstanding anything herein or in the Plan to the contrary, and the extent not otherwise agreed between the Class 2 Creditor and the Plan Administrator, the term Paid in Full shall include interest from the Effective Date at the Federal Post Judgment Rate with respect to Allowed Priority Claims not paid on the Effective Date or upon entry of a Final Order allowing such claims.

**2. Class 3 – Unsecured Claims.** Each Holder of an Allowed Unsecured Claim in Class 3 will periodically receive its Pro Rata share of the Cash and Net Proceeds available for distribution to this Class after reserving sufficient funds to Pay in Full Administrative Claims, and Holders of Class 2 Priority Claims. Holders of Class 3 Claims shall be entitled to receive such periodic distributions until Allowed Unsecured Claims in Class 3 are Paid in Full.

**3. Class 4 – Claims for Allowed Interests in Debtor.** Holders of Allowed Interests in the Debtor shall not receive any distribution under the Plan, and their interests in the Debtor shall be cancelled as of the Effective Date.

**E. Voting on the Plan**

Classes 1, 2, and 3 are impaired and entitled to vote on the Plan. With respect to any Class of Claims which is impaired and entitled to vote, such Class of Claims shall have accepted the Plan if it is accepted by at least two thirds (2/3) in amount and more than one half (1/2) in number of the Allowed Claims of such Class (excluding Insiders) that vote on the Plan. If any impaired Class of Claims shall fail to accept the Plan in accordance with Bankruptcy Code § 1129(a), the Debtor may request that the Court confirm the Plan in accordance with Bankruptcy Code § 1129(b).

Class 4 is deemed to have rejected the Plan, and it is not entitled to vote on the Plan.

**F. Counting Votes**

If any ballot fails to clearly designate the Class to which it relates, the Creditors' Committee shall have the right to make that determination, based on its knowledge of claim and Debtor's business. Any such decision made in good faith shall be final and binding. In order to confirm the Plan, in addition to meeting the other requirements of section 1129 of the Code, at least one impaired Class of creditors must vote in favor of the Plan.

**G. Summary of Other Provisions of the Plan**

**1. Executory Contracts and Unexpired Leases**

All executory contracts and unexpired leases entered into prior to the Petition Date which are not expressly assumed by the Debtor pursuant to a Motion filed on or before the Confirmation Date, shall be deemed to have been rejected under § 365(a) as of the earlier of (i) the effective date of rejection provided by an order of the Court approving the rejection of the contract or lease, or (ii) the Confirmation Date.

Any damages resulting from a rejection shall be treated as a Class 3 Unsecured Claim. Any Holder of a Claim arising from the rejection of executory contracts or unexpired leases deemed rejected as a result of this provision in the Plan must file a proof of claim within 30 days from the entry of the Confirmation Order. If a proof of claim is not filed by this date, such claim shall be forever barred and shall not be an Allowed Claim.

**2. Modification of Plan**

The Creditors' Committee may withdraw the Plan or propose written modifications to the Plan any time prior to the Effective Date upon such notice as the Court may require. If the circumstances warrant, after the Effective Date and before substantial consummation of the Plan, the Creditors' Committee or Plan Administrator may modify the Plan provided that (a) the Plan, as modified, meets the requirements of the Code; (b) the Court, after notice and a hearing, confirms the Plan as modified under Bankruptcy Code § 1129; (c) the circumstances warrant

such modification; and (d) such modification does not materially and adversely affect holders of Claims or Interests. Unless within the time fixed by the Court a creditor changes its previous acceptance or rejection of the Plan, such previous election shall be deemed applicable to the amended or modified Plan.

### **3. Post-Confirmation Jurisdiction**

The Court shall retain exclusive jurisdiction over this Chapter 11 Case for the purpose of determining any matters pertaining to the Plan or the Confirmation Order, as well as determining all disputes, suits or controversies arising out of the Plan and its interpretation, enforcement or consummation. Persons reading this Disclosure Statement should refer to the Plan for a more-detailed discussion of the Court's continuing jurisdiction over Debtor and this Case.

### **4. Effective Date**

The Plan provides that the "Effective Date" shall mean the date that is 30 days after the Confirmation Order is entered, unless the Confirmation Order is not a Final Order by that date, in which case the Effective Date will be the date on which the Confirmation Order becomes a Final Order or, if an appeal of the Confirmation Order is filed but no stay of the Confirmation Order has been entered, the Creditors' Committee may waive the requirement that the Confirmation Order be a Final Order and may, in its sole discretion, file with the Court a notice declaring that this requirement has been waived and establishing the Effective Date as of the date so designated in the notice, or (ii) the Debtor, after consultation with the Creditors' Committee, concludes that the Debtor does not have sufficient Cash on hand to pay Allowed Administrative Claims, Allowed 503(b)(9) Claims and to pay Disputed Administrative Claims, and Disputed 503(b)(9) Claims and Post-Effective Date Expenses as those amounts are expected to become Allowed, in which case the Effective Date will then be the date on which the Debtor, after consultation with the Creditors' Committee, determines that it does have sufficient Cash to pay Allowed Administrative Claims, Allowed 503(b)(9) Claims and to pay Disputed Administrative Claims and Disputed 503(b)(9) Claims and Post-Effective Date Expenses as those amounts are expected to become Allowed. The Plan Administrator will file notice of the Effective Date with the Court, but the Plan does not require the Plan Administrator to serve notice of this date.

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

### **1. Cash on Hand as of the Effective Date and Continuing Liquidation of Assets**

The Creditors' Committee estimates that there will be Cash available for distribution on the Effective Date totaling approximately \$962,000 and that this amount will be more than sufficient to pay all amounts due as of that date for Administrative Claims. After the Effective Date, the Debtor will also continue to obtain additional funds from the collection of Avoidance Actions. Cash on hand and additional collections are expected to be sufficient to pay final applications of professionals, as well as Allowed Priority Claims and ultimately distributions to the holders of Allowed Class 3 Unsecured Claims.



## **2. Post Effective Date Expenses**

The Plan Administrator has the right to pay post-Effective Date expenses in the ordinary course of business. In the event that the Plan Administrator notifies a Person demanding payment of a post-Effective Date expense that the demand is disputed, then the Person seeking payment must file and serve a motion or application for allowance of such expense in accordance with L.B.R. 9013-1 within thirty (30) days after the date on which written notice of the dispute is provided by the Plan Administrator, or that post-Effective Date expense shall be deemed disallowed. Payment of any such expense shall be made promptly after a Final Order resolving the motion and determining the appropriate amount of the post-Effective Date expense.

## **3. Plan Administrator**

The Plan Administrator will serve as the sole director and officer of the Debtor after the Effective Date. The Plan Administrator shall be responsible for implementing the Plan for the benefit of all Holders of Allowed Claims and Allowed Interests as provided by the Plan, subject to the continued jurisdiction of the Court. The Plan Administrator is responsible for taking any action needed in connection with liquidating Debtor's Assets, including Causes of Action and Avoidance Actions. The Plan Administrator is also responsible for making Distributions and for winding down the Debtor's affairs, including, without limitation, filing final tax returns and terminating any benefit plans remaining in existence as of the Effective Date. Any compensation to the Plan Administrator (or his counsel, employees or agents) shall be from Cash held by the Plan Administrator.

The Plan provides that the initial Plan Administrator will be Clear Thinking Group LLC in the person of Dorene Robotti. Clear Thinking Group currently serves as the financial advisor to the Debtor, and Clear Thinking Group will serve as financial advisors to the Plan Administrator. The Plan allows the Plan Administrator to resign and appoint her successor.

The Plan Administrator shall serve during the duration of his or her appointment without a surety bond. Neither the Plan Administrator nor any of his or her respective employees or agents shall be personally liable for payments to be made to the Holders of Claims under this Plan. Neither the Plan Administrator nor his employees shall have any liability to the Debtor, or any Holder any type of claim against the Debtor whether it be an Administrative Expense, Post-Effective Date Expense, Claim or Interest, except due to his or her own gross negligence or willful misconduct, and the Plan Administrator shall not be liable for any act or omission of any of his or her respective employees or agents unless the Plan Administrator acted with gross negligence or willful misconduct in the selection or retention of such employee or agent. The Plan Administrator shall be entitled to indemnification from the Cash held by him, and shall be entitled to a full release as part of the Final Decree in this Case.

The Plan authorizes the Plan Administrator to hire employees as may be necessary. The Plan Administrator may retain counsel and other professionals upon such terms not inconsistent with the Plan as may be agreed by such counsel or other professionals and the Plan Administrator. Initially, the Plan Administrator intends to retain Clear Thinking Group as its financial advisors and Platzer, Swergold, Karlin, Levine, Goldberg, & Jaslow, LLP and of Harwell Howard Hyne Gabbert & Manner, P.C as its counsel and local counsel, respectively.

#### **4. Reservation of Causes of Action**

The Plan provides retains and reserves all Causes of Action, including Avoidance Actions, for pursuit by the Plan Administrator post-confirmation. After the Effective Date, the Plan Administrator has broad discretion to pursue, settle or abandon Causes of Action and Avoidance Actions. See also section IV.A.2.(a) above.

#### **5. Liquidation of Remaining Assets and Causes of Action After Effective Date**

To the extent there are any post-Effective Date assets of the estate, other than Avoidance Actions, the sale of these assets shall not require Court approval and shall be sold on terms and conditions acceptable to the Plan Administrator. The net proceeds from the shall be distributed in accordance with the terms of the Plan. The Plan Administrator has full authority and discretion under the Plan to investigate, pursue, settle and collect Causes of Action and Avoidance Actions, without notice or Court approval and notwithstanding Rule 9019. The Plan Administrator, in his sole discretion, has authority to abandon any assets that has no market value or that he believes is burdensome to the Debtor's estate.

### **I. Miscellaneous and General Provisions of the Plan**

The Plan also includes the following miscellaneous and general provisions:

#### **1. Claim Objections and Disallowance**

The Plan Administrator or any other party in interest may file with the Court, within 120 days after the Effective Date, which date may be extended by Court order, a written objection to the allowance or classification of any Claim or Interest in any Class, which objection shall be served upon the Claimant and other parties in interest. The failure to object to or to examine any Claim or Interest for the purposes of voting on this Plan shall not be deemed a waiver of such party's right to object to, or re-examine the Claim or Interest in whole or in part within the above-described time period.

#### **2. Additional Documents**

Upon entry of the Confirmation Order, the Debtor, the Plan Administrator, or such other Person as the Court may appoint, shall be authorized to execute all documents reasonably required by the Plan to effectuate the Plan, including, but not limited to, all contracts or other agreements reasonably necessary to effectuate the Plan.

#### **3. Quarterly Fees**

All fees payable under 28 U.S.C. § 1930 for quarters ending prior to the entry of the Final Decree shall be paid in full from Cash.

**4. Dissolution of Unsecured Creditors Committee/ Post-Effective Date Input by Former Creditors' Committee Members**

On the Effective Date, the Unsecured Creditors Committee shall be dissolved and its members shall be deemed relieved of all of their prior duties and responsibilities and shall be without any further duties, responsibilities and authority in connection with the Chapter 11 Case or the Plan and its implementation. The professionals retained by the Unsecured Creditors Committee and the members thereof will not be entitled to compensation or reimbursement of expenses for any services rendered after the Effective Date.

**5. Final Accounting and Case Closing**

The Debtor, through the Plan Administrator, shall be responsible for preparing and filing any required motion and the final accounting necessary to close the Case. The Plan Administrator will make every effort to file a final accounting and motion for a final decree within 90 days of making the Final Distribution. This Chapter 11 Case may be closed notwithstanding the pendency of any claims objections, other contested motions, Causes of Action or Avoidance Actions, over which the Court shall retain jurisdiction.

**6. Destruction of Records**

After the Effective Date, the Plan Administrator shall have the right to destroy or cause to be destroyed records of the Debtor that are determined to no longer be needed; provided, that the Plan Administrator shall give fifteen (15) days notice of such destruction to any persons designated to act by the Creditors' Committee and provided that the Plan Administrator shall not knowingly destroy any records relevant to a possible or pending Cause of Action, Avoidance Action or Disputed Claim. Any objection to the destruction of such records must be raised as an objection to confirmation of the Plan or shall be deemed to be waived.

**7. Exculpation**

Except as otherwise provided in the Plan or Confirmation Order, the Debtor, its officers and directors, its professionals, the Plan Administrator, the Creditors' Committee and its members (acting in such capacity) and professionals shall neither have nor incur any liability to any Person for any act taken or omitted to be taken (exclusive of an act constituting fraud, gross negligence or intentional misconduct) in connection with or related to the this Chapter 11 Case, including without limitation actions related to the formulation, preparation, dissemination, implementation, administration, Confirmation or consummation of the Plan, the Disclosure Statement or any contract, instrument, release or other agreement or document created or entered into in connection with the Plan.

Exculpation of each of the above parties is appropriate because each would be entitled to indemnification as an administrative expense from the Debtor for all actions taken in good faith in a manner reasonably believed to be in the best interests of the Debtor during the course of this Chapter 11 Case.

## **8. Injunction**

Except as otherwise provided in the Plan or Confirmation Order, from and after the Effective Date, the Plan permanently enjoins all Persons from commencing or continuing in any manner, any suit, action or other proceeding, on account of or respecting any Claim, demand, liability, obligation, debt, right, Cause of Action, interest, or remedy for which any party received exculpation pursuant to the Plan.

## **VI. TAX CONSEQUENCES**

The following discussion summarizes certain anticipated federal income tax consequences of implementation of the Plan to Holders of Claims and Interests and to the Debtor. It does not address all federal income tax consequences of the Plan nor does it address the state or local income tax or other state or local tax consequences of implementation of the Plan to Holders of Claims and Interests or to the Debtor.

The description of the federal income tax consequences of implementing the Plan is based on the Internal Revenue Code of 1986 (the "Tax Code"), the existing Treasury Regulations and Proposed Regulations thereunder, judicial decisions and current published administrative rulings generally available prior to the date of the filing of the Plan, all of which are subject to change at any time. Any such change may have a retroactive effect. THE CREDITORS' COMMITTEE NOR THE DEBTOR HAS NOT RECEIVED, NOR WILL IT REQUEST, A RULING FROM THE IRS AS TO ANY OF THE TAX CONSEQUENCES OF THE PROPOSED PLAN WITH RESPECT TO HOLDERS OF CLAIMS OR INTERESTS. NO ASSURANCE IS OR CAN BE GIVEN THAT THE IRS WILL CONCUR WITH, NOR IS THE IRS BOUND BY, THIS DISCUSSION. The Debtor has not obtained an opinion of counsel with respect to any of these matters. The discussion below is general in nature and is not directed to the specific tax situation of any particular interested taxpayer. FOR THESE REASONS, ALL HOLDERS OF CLAIMS AND INTERESTS SHOULD CONSULT WITH THEIR OWN ADVISORS AS TO THE TAX CONSEQUENCES OF IMPLEMENTATION OF THE PLAN TO THEM UNDER APPLICABLE FEDERAL, STATE AND LOCAL TAX LAWS.

### **A. Tax Consequences to Claimants**

Generally, bad debts arising from a taxpayer's trade or business may be deducted from gross income to the extent of their worthlessness when such debts become partially or totally worthless. A cash basis taxpayer can deduct a bad debt only if an actual cash loss has been sustained or if the amount deducted was included in income. All accrual-basis taxpayers must use the specific charge-off method to deduct business bad debts.

Holders of Claims may be required to report income or entitled to a deduction as a result of implementation of the Plan. The exact tax treatment depends on, among other things, each Claim Holder's method of accounting, the nature of each Claim Holder's Claim, and whether and to what extent such Claim Holder has taken a bad debt deduction in prior taxable years with respect to the particular debt owed to it by the Debtor. EACH HOLDER OF A CLAIM IS URGED TO CONSULT WITH HIS OR ITS OWN TAX ADVISOR REGARDING THE

PARTICULAR TAX CONSEQUENCES OF THE TREATMENT OF HIS OR ITS CLAIM UNDER THE PLAN.

PERSONS READING THIS DISCLOSURE STATEMENT SHOULD BE AWARE THAT NEITHER THE DEBTOR NOR ITS COUNSEL HAS INTENDED TO ANSWER THE ABOVE TAX-RELATED ISSUES BUT RATHER ARE ONLY ATTEMPTING TO IDENTIFY SOME, BUT NOT ALL, OF THE TAX-RELATED ISSUES WHICH SHOULD BE CONSIDERED BY CREDITORS IN VOTING ON THE PLAN. FURTHERMORE, CREDITORS SHOULD CONSULT WITH THEIR OWN INDEPENDENT TAX ADVISOR WITH RESPECT TO ANY TAX IMPACT THAT MAY RESULT THROUGH THE IMPLEMENTATION OF THE PLAN.

## **VII. LIQUIDATION ANALYSIS**

This Plan is a plan of liquidation. To obtain confirmation of the Plan, the Debtor must show that each Holder of an impaired Claim or Interest has accepted the Plan, or that each Holder will receive or retain under the Plan on account of the Holder's Claim or Interest property of a value, as of the Effective Date of the Plan, that is not less than the amount such Holder would receive or retain if the Debtor were liquidated under chapter 7 of the Code on said date.

The same actions would need to be taken by a chapter 7 trustee under chapter 7 of the Code as those required by the Plan. However, the Creditors' Committee asserts that there will be less cost to the estate and more recovery to creditors under the proposed Plan than there would be under chapter 7 of the Code. Under the Plan, the Plan Administrator will be Clear Thinking Group, in the person of Dorene Robotti. Ms. Robotti and Clear Thinking Group have served as the financial advisors to the Debtor throughout this Chapter 11 Case. Ms. Robotti and others at Clear Thinking Group are familiar with the history of this case, the Debtor's accounting system, and Debtor's assets and liabilities. They have already begun a review of Claims with the Debtor's assistance. In addition, under the Plan, the Plan Administrator will retain current Creditors' Committee counsel as its counsel. The main unliquidated assets of this case are the pending adversary proceedings in which the Creditors' Committee is pursuing Avoidance Actions. The Avoidance Actions are reserved for continued pursuit by the Plan Administrator. Creditor's Committee counsel are well familiar with these Avoidance Actions, and they have been exchanging information with defense counsel and in some cases, have already begun settlement discussions. If the case were converted to a chapter 7, a chapter 7 trustee and its counsel would expend time, effort and expense in gaining for themselves the knowledge already obtained by the Plan Administrator and its intended counsel. They would do so at the expense of estate.

The knowledge gained by the Plan Administrator and its counsel throughout the course of this Chapter 11 Case will continue to be essential to the work remaining to be done in this Chapter 11 Case after the Effective Date, namely the liquidation of remaining assets, analysis of Claims, and payment of Allowed Claims. The Plan Administrator's current knowledge will maximize the return on assets, and thus generate a greater return to creditors than could be obtained by a Chapter 7 trustee. Further, the Plan Administrator will not charge commissions to the Debtor's estate as a Chapter 7 trustee might. The Plan Administrator will only seek reimbursement of her expenses. Clear Thinking Group will be compensated to the extent

accounting services, claims reconciliation and distribution services are required by the Plan Administrator.

## **VIII. CONFIRMATION STANDARDS**

The Court shall confirm the Plan at the confirmation hearing only if the requirements of § 1129 of the Code are met. Those requirements include:

### **A. Best Interest Test and Liquidation Analysis**

Section 1129(a)(7) of the Code requires that, with respect to each impaired Class, each member of such Class either (a) has accepted the Plan, or (b) will receive or retain under the Plan on account of its Claim, property of a value, as of the Effective Date, that is at least equal to the amount which such member of the Class would receive or retain if the Debtor was liquidated under Chapter 7 of the Code. The Court, in considering whether the Plan is in the "best interests" of creditors, is not required to consider any alternative to the Plan other than the dividend projected in a liquidation of all of the Debtor's Assets under Chapter 7 of the Code.

### **B. Feasibility Test**

Because the Plan proposes a liquidation of the Debtor, the Court is not required to determine that confirmation of the Plan is not likely to be followed by the liquidation or further financial reorganization of the Debtor. However, in order to confirm a Plan, the Court must find that the Plan was proposed in good faith and that the Plan and its components comply with all applicable provisions of the Code.

### **C. Acceptance**

Each impaired Class must accept the Plan by the percentages described in Article II above, or the Court must find that the Plan complies with the "Fair and Equitable" test described below with respect to any such non-accepting Class.

### **D. Fair and Equitable Test**

If less than all the impaired Classes accept the Plan, the Plan may nevertheless be confirmed by the Court under § 1129(b) of the Code, as long as one impaired Class of Claims has affirmatively voted to accept the Plan. In order to obtain Confirmation, pursuant to § 1129(b) of the Code, the Debtor must demonstrate to the Court that as to each non-accepting Class, the Plan "does not discriminate unfairly" and is "fair and equitable with respect to that Class." A Plan does not discriminate unfairly if no Class receives more than it is entitled to for its Claim or Interest. The Code establishes different "fair and equitable" tests for Holders of Allowed Secured Claims, Allowed Unsecured Claims and Allowed Interests as follows:

#### **1. Secured Creditors**

An impaired secured creditor whose Claim is impaired must retain the liens securing its Claim and receive under the Plan Cash payments that have a present value at least equal to such

Holder's Allowed Secured Claim, or otherwise receive the "indubitable equivalent" of the value of the interest in the Debtor's Asset upon which it holds a lien.

## **2. Unsecured Creditors**

An impaired unsecured creditor whose Claim is impaired must receive or retain under the Plan (a) property of a value at least equal to the amount of its Allowed Unsecured Claim; or (b) the Holders of the Claims or Interests junior to the Claims of the dissenting Class of unsecured creditors will not receive any property under the Plan.

## **3. Interests**

With respect to a Class of Interests, (i) the Plan must provide that each Holder of an Interest of such Class receive or retain an account of such Interest property of a value, as of the Effective Date of the Plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such Holder is entitled, any fixed redemption price to which such Holder is entitled, or the value of such Interest; or (ii) the Holder of any Interest that is junior to the interest of such Class will not receive or retain under the Plan on account of such junior Interest any property.

The Creditors' Committee believes that the Plan will meet the "fair and equitable" test.

## **IX. RECOMMENDATION**

The Creditors' Committee believes that confirmation and implementation of the Plan is preferable to conversion of this case to one under Chapter 7 of the Code. The Creditors' Committee respectfully urges Holders of Claims against the Debtor to accept the Plan and to evidence such acceptance by returning their ballots on or before \_\_\_\_\_ according to the procedures described in Article II above.

Dated: November 1, 2010

Respectfully submitted,

THE OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS

By: /s/ Jeff Frisina  
Jeff Frisina –BB&T Commercial Finance  
Chairman of the Committee

and

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