

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	Case No. 06-00932
GLAZED INVESTMENTS, LLC,)	Chapter 11
Debtor.)	Hon. Pamela S. Hollis

**DEBTOR'S AMENDED LIQUIDATING PLAN OF REORGANIZATION
PURSUANT TO CHAPTER 11 OF THE UNITED STATES
BANKRUPTCY CODE DATED ~~APRIL 12~~ MAY 8, 2006**

Glazed Investments, LLC, a Delaware limited liability company, proposes this Amended Liquidating Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code.

INTRODUCTION

On February 3, 2006, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Prior to the Petition Date, the Debtor operated twenty Krispy Kreme franchise locations and supplied approximately 1,340 wholesale locations in Minnesota, Wisconsin and Colorado.

The Debtor commenced this chapter 11 case to facilitate the sale of substantially all of its Assets. On March 16, 2006, the Bankruptcy Court authorized the Debtor to consummate the sale of substantially all its Assets to Westward Dough for \$10 million. That sale closed on March 30, 2006. The Net Proceeds from the sale of the Assets, the proceeds from the collection or sale of any remaining estate Assets, any cash on hand and, if necessary, funds that Krispy Kreme may be required to contribute pursuant to the terms herein will be used to fund the Plan. The Debtor's

equity owners will not receive any distribution on account of their ownership Interests in the Debtor.

ARTICLE I

GENERAL PROVISIONS

1.1 Rules of Interpretation and Construction.

The rules of construction applicable to the Bankruptcy Code and the Bankruptcy Rules apply to this Plan.

1.2 Entire Agreement.

This Plan supersedes all prior discussions, understandings, agreements and documents pertaining or relating to any subject matter of the Plan other than the Plan Settlement Term Sheet, dated March 15, 2006, between the Debtor, the Creditors' Committee and Krispy Kreme.

1.3 Governing Law.

The Bankruptcy Code and the Bankruptcy Rules apply to the rights and obligations arising under this Plan. All non-bankruptcy issues shall be governed, construed and enforced in accordance with the laws of the State of Illinois, without giving effect to the principles of conflicts of law of the State of Illinois.

1.4 Severability.

Should any provision or section of this Plan be determined to be unenforceable, such determination shall not impair, limit or otherwise affect the enforceability of any other provision or section of this Plan.

1.5 Headings.

Headings of the articles, paragraphs and sections of the Plan are for convenience only and shall not affect the meaning of any Plan provision.

1.6 Notices.

Any notice to the Debtor shall be made in writing and deemed to have been given when received by counsel for the Debtor, Daniel A. Zazove, Perkins Coie LLP, 131 South Dearborn Street, Suite 1700, Chicago, Illinois 60603. Payments, distributions, notices and requests to holders of Claims shall be sent to (a) the address set forth on the proof(s) of claim filed by any claimant, or (b) if a claimant has not filed a proof of claim, the address of such claimant as set forth on the Debtor's schedules of liabilities filed with the Bankruptcy Court, or (c) if a claimant has not filed a proof of claim and is not listed on the Debtor's schedules of liabilities, the last known address of such holder. Any claimant may designate in writing another address which shall be effective upon receipt by Debtor's counsel.

1.7 Modification of the Plan.

The Debtor may amend or modify the Plan prior to Confirmation; provided however, that the Debtor may not make any modifications to any provisions of the Plan that affect holders of Class 4 General Unsecured Claims without the Creditors' Committee's written consent. After Confirmation, the Debtor may, upon order of the Bankruptcy Court, amend or modify the Plan to remedy any defect or omission or reconcile any inconsistency in the Plan as necessary to carry out the purpose and intent of the Plan. A holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan as modified if the proposed modification does not materially and adversely change the treatment of the Claim of such holder.

1.8 Revocation or Withdrawal.

The Plan may be revoked or withdrawn by the Debtor prior to the Confirmation Date. If the Plan is revoked or withdrawn, then the Plan shall be deemed null and void.

1.9 Time Periods.

In computing any time specified by the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

ARTICLE II

DESIGNATION OF CLAIMS AND INTERESTS

2.1 Classification in General.

A Claim or Interest is classified in a particular Class only to the extent that it qualifies within the description of that Class. The Bankruptcy Court shall have exclusive jurisdiction over disputes concerning the classification of Claims or Interests. Resolution of any such disputes shall not be a condition precedent to Confirmation or Consummation of the Plan.

2.2 Unclassified Claims.

Unclassified Claims shall consist of all Administrative Claims and Tax Claims.

2.3 Designation of Classes.

The Classes of Claims and Interests are designated as follows:

2.3.a Class 1. Allowed Claims of ANB, GE and US Bank, pursuant to the ANB Loans, the GE Notes and the US Bank Loan Documents, respectively:

- (i) *Class 1A.* The Allowed Claim of ANB.
- (ii) *Class 1B.* The Allowed Claim of GE.
- (iii) *Class 1C.* The Allowed Claim of US Bank.

2.3.b Class 2. All Allowed Secured Claims against the Debtor other than the Class 1A, 1B or 1C Claims.

2.3.c Class 3. All Allowed Other Priority Claims against the Debtor.

2.3.d Class 4. All Allowed General Unsecured Claims against the Debtor.

2.3.e Class 5. Equity Interests in the Debtor of whatever nature or description and however held.

ARTICLE III

TREATMENT OF UNIMPAIRED CLAIMS AND INTERESTS

3.1 Unclassified Claims.

3.1.a Administrative Claims. Subject to the applicable provisions of section 330(a) and 331 of the Bankruptcy Code and except as otherwise provided by the Plan, each holder of an Allowed Administrative Claim shall be paid in full in cash (a) on or as soon as reasonably practicable after the Effective Date, or (b) if such Claim is Allowed after the Effective Date, when such Claim is Allowed, or (c) upon such terms as may be agreed upon by the claimant and the Debtor. Contested Administrative Claims shall be paid only when Allowed by order of the Bankruptcy Court. Professional fees shall be paid promptly upon entry of an order of the Bankruptcy Court approving such professional's application for fees and expenses after notice and a hearing.

3.1.b Tax Claims. All Allowed Tax Claims will be paid in full in cash as soon as reasonably practicable after the later of (a) the Effective Date, and (b) when such Claim becomes an Allowed Claim.

3.2 Class 3 Claims.

Each holder of an Allowed Class 3 Claim shall receive the full amount of its Allowed Claim in cash on or as soon as reasonably practicable after the later of (a) the Effective Date, and (b) when such Claim becomes an Allowed Claim.

3.3 Class 5 Interests.

The holders of Class 5 Interests shall retain their Interests in the Debtor, but shall not receive any distributions on account of such Interests.

3.4 Debtor's Right to Object to Claims.

Nothing in the Plan shall affect the Debtor's rights to object to the Allowance of any Claim, including all rights in respect of legal and equitable defenses, setoffs and recoupments.

ARTICLE IV

TREATMENT OF IMPAIRED CLAIMS

4.1 Class 1 Claims.

In full satisfaction and release of all Allowed Secured Claims against the Debtor held by any holder of a Class 1 Claim, holders of Allowed Class 1 Claims shall receive the following:

4.1.a *Class 1A Claim:* In full satisfaction and release of all Allowed Claims against the Debtor held by any holder of a Class 1A Claim, and in full satisfaction and release of any Claims against Krispy Kreme under the Class 1 Claim Guarantees, (a) \$322,862.18 was paid to ANB on the closing date of the sale of substantially all of the Debtor's Assets to Westward Dough from the Net Proceeds of such sale, and (b) on the Effective Date, the balance of the Allowed Claim of ANB shall be paid in full in cash.

4.1.b *Class 1B Claim:* In full satisfaction and release of all Allowed Claims against the Debtor held by any holder of a Class 1B Claim, and in full satisfaction and

release of any Claims against Krispy Kreme under the Class 1 Claim Guarantees, (a) \$2,294,590.50 was paid to GE on the closing date of the sale of substantially all of the Debtor's Assets to Westward Dough from the Net Proceeds of such sale, and (b) on the Effective Date, the balance of the Allowed Claim of GE shall be paid in full in cash.

4.1.c Class 1C Claim: In full satisfaction and release of all Allowed Claims against the Debtor held by any holder of a Class 1C Claim, and in full satisfaction and release of any Claims against Krispy Kreme under the Class 1 Claim Guarantees, (a) \$2,713,426.34 was paid to US Bank on the closing date of the sale of substantially all of the Debtor's Assets to Westward Dough from the Net Proceeds of such sale, and (b) on the Effective Date, the balance of the Allowed Claim of US Bank shall be paid in full in cash.

4.2 Class 2 Claims.

In the sole discretion of the Debtor, each holder of an Allowed Class 2 Claim shall receive either (a) the full amount of its Allowed Claim in cash as soon as reasonably practicable after the later of (i) the Effective Date, and (ii) when such Claim becomes an Allowed Claim, or (b) the collateral securing such Claim without representation or warranty by, or further recourse against, the Debtor.

4.3 Class 4 Claims.

In full satisfaction and release of all Claims against the Debtor, each holder of an Allowed Class 4 Claim shall receive its pro-rata share of the Class 4 Distribution Pool, to be distributed pursuant to Section 10.2 of this Plan.

4.3.a Krispy Kreme Distribution.

On the Effective Date, Krispy Kreme shall waive its rights to receive any distribution from the Class 4 Distribution Pool; provided that, on account of its Class 4 Claims against the Debtor, Krispy Kreme shall receive all funds of the Debtor's estate remaining (if any) after payment in full of all Allowed Administrative Claims and Allowed Tax Claims and payment of Allowed Claims in Classes 1, 2, 3 and 4 as set forth in this Plan.

ARTICLE V

ACCEPTANCE OR REJECTION OF THE PLAN

5.1 Voting Classes.

Each holder of an Allowed Claim in Classes 1A, 1B, 1C, 2 and 4 shall be entitled to vote to accept or reject the Plan.

5.2 Acceptance by Impaired Classes.

An impaired Class of holders of Claims shall have accepted the Plan if the Plan is accepted by at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Allowed Claims of such Class that have voted to accept or reject the Plan. A Class of holders of Claims shall be deemed to accept the Plan in the event that no holder of a Claim within that Class submits a ballot by the deadline for doing so. All Claims shall be allowed for voting purposes only unless objected to prior to the hearing on Confirmation of the Plan.

5.3 Presumed Acceptance of the Plan.

Classes 3 and 5 are unimpaired under the Plan and, therefore, are presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code.

5.4 Non-Consensual Confirmation.

In the event that any impaired Class of Claims shall fail to accept the Plan in accordance with section 1129(a) of the Bankruptcy Code, the Debtor reserves the right to request that the Bankruptcy Court confirm the Plan in accordance with section 1129(b) of the Bankruptcy Code or amend the Plan.

ARTICLE VI

IMPLEMENTATION OF THE PLAN

6.1 Continued Limited Liability Company Existence; Vesting of Assets.

(a) Subject to the provisions of this Plan, the Debtor shall continue to exist after the Effective Date as a limited liability company in accordance with the laws of the state of Delaware and pursuant to its certificate of formation and limited liability operating agreement in effect prior to the Effective Date, provided however, that the purpose of the post-Effective Date Debtor shall be limited to taking such actions as are necessary to implement, and are consistent with implementing, this Plan. Any dispute as to the propriety of any action sought to be taken by the Debtor after the Effective Date shall be resolved by the Bankruptcy Court. As soon as reasonably practicable after the Debtor exhausts its assets by making the final distribution of cash under this Plan, the Debtor shall (i) effectuate its dissolution in accordance with the laws of the state Delaware, and (ii) cause the resignation of all of its officers and directors.

(b) Except as expressly provided elsewhere in this Plan, on the Effective Date, all property of the Debtor's estate shall revert in the Debtor.

6.2 Duties and Responsibilities of Post-Confirmation Debtor.

After the Confirmation Date, the post-Confirmation Debtor shall continue to be empowered to execute contracts and documents of transfer on behalf of its estate and the post-Confirmation entity and shall continue to be responsible for administering its estate and the post-Confirmation entity. In addition, the post-Confirmation Debtor shall have the power, authority, and the obligation to:

- (a) establish interest bearing, segregated accounts for the Class 4 Distribution Pool and the Remaining Net Proceeds;
- (b) distribute the proceeds of the Debtor's estate in accordance with the terms of this Plan;
- (c) object to the allowance of any Claim filed or scheduled in this chapter 11 case as it deems appropriate and settle, dismiss or otherwise dispose of any such Claim;
- (d) prosecute avoidance actions under 11 U.S.C. §§ 544, 547, 548, 549, 550 and 553;
- (e) retain and pay at normal and customary rates, on a monthly basis, professionals in connection with this case, including, but not limited to, professionals retained by the Debtor, the Creditors' Committee and the Post-Confirmation Creditors' Committee;
- (f) execute on behalf of the estate any contract or documents necessary or advisable to effectuate the terms of the Plan;
- (g) act as the disbursing agent of the estate in accordance with the terms of the Plan;
- (h) prepare and submit to taxing authorities all tax returns and other such information as may be required by the taxing authorities; and
- (i) undertake such further actions that may be necessary, desirable or incident to any of the foregoing or to effectuate this Plan.

ARTICLE VII

MEANS FOR IMPLEMENTATION OF THE PLAN

7.1 Sources of Funding.

On March 16, 2005, the Bankruptcy Court entered the Sale Order approving the sale of substantially all of the Debtor's Assets to Westward Dough for \$10 million. The sale closed on March 30, 2006. On the closing date, the following amounts were paid to the holders of the Class 1 Claims from the Net Proceeds of such sale: \$2,713,426.34 to US Bank, \$2,294,590.50 to GE and \$322,862.18 to ANB. The Remaining Net Proceeds of the sale of substantially all of the Debtor's Assets to Westward Dough, the proceeds from the collection or sale of any remaining estate Assets and any cash on hand shall fund the Plan and distributions to holders of Allowed Claims in accordance with this Plan. To the extent such estate assets are insufficient to make any payments to holders of Allowed Claims under this Plan, Krispy Kreme shall advance funds to the Debtor sufficient for such payments to be made, and any such advance shall be deemed to have been made on account of the Class 1 Claim Guarantees regardless of the obligation of the Debtor paid with funds advanced by Krispy Kreme.

7.2 No Transfer Taxes.

Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant to this Plan, including, but not limited to, the sale of substantially all of the Debtor's Assets to Westward Dough, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax or other similar tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forgo the

collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

ARTICLE VIII

TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

8.1 All Executory Contracts and Unexpired Leases Are Rejected.

All executory contracts and unexpired leases that (a) the Debtor entered into prior to the commencement of this chapter 11 case, (b) are executory or unexpired, as applicable, as of the Effective Date, and (c) have not been assumed or rejected pursuant to 11 U.S.C. § 365 prior to the Effective Date, shall be deemed rejected by the Debtor as of the Effective Date.

8.2 Bar Date for Claims Resulting from the Rejection of Contracts

Hereunder.

All claims arising from the rejection of executory contracts or unexpired leases under this Plan must be filed within twenty (20) days of the Effective Date.

ARTICLE IX

PROCEDURE FOR RESOLVING CONTESTED CLAIMS

9.1 Claims Objection Bar Date.

After the Effective Date, only the Debtor may file objections to the allowance of Claims. Unless the Bankruptcy Court orders otherwise, the Debtor shall file all objections to the allowance of any Claim on or before the Claims Objection Bar Date. If no such objection is filed on or before the Claim Objection Bar Date with respect to a particular Claim, such Claim shall be

deemed Allowed. The Debtor reserves the right to seek extensions of the Claims Objection Bar Date.

9.2 Objection to Claims; Prosecution of Contested Claims.

After the Effective Date, the Debtor, after consulting with the Post-Confirmation Creditors' Committee, shall have authority to file, settle, compromise or withdraw any objections to Claims without the consent or approval of any third party and without further order of the Bankruptcy Court.

9.3 Allowance of Claims.

Except as expressly provided herein or in any order entered in this chapter 11 case prior to the Effective Date (including the Confirmation Order), no Claim shall be deemed Allowed, unless and until (a) such Claim is deemed Allowed by the Bankruptcy Code, (b) the Bankruptcy Court enters a Final Order allowing such Claim, or (c) the Debtor, after consulting with the Post-Confirmation Creditors' Committee, agrees to allow such Claim. Except as expressly provided in the Plan or any order entered in this chapter 11 case prior to the Effective Date (including the Confirmation Order), the Debtor will have and retain any and all rights and defenses it had with respect to any Claim as of the Petition Date.

9.4 Disallowance of Claims of Entities from Whom Property is

Recoverable.

Pursuant to 11 U.S.C. § 502(d), the Bankruptcy Court shall disallow any Claim of any entity: (a) from which property is recoverable under sections 542, 543, 550 or 553 of the Bankruptcy Code, or (b) that is a transferee of a transfer avoidable under sections 522(1), 522(h), 544, 545, 547, 548, 549 or 724(a) of the Bankruptcy Code. Such Claims may be Allowed in the

event that the entity or transferee has turned over such property, or paid such amount, to the Debtor.

ARTICLE X

PROVISIONS REGARDING DISTRIBUTIONS

10.1 General.

All distributions under the Plan will be made by the Debtor's estate. Whenever any distribution to be made under the Plan is due on a day other than a business day, such distribution shall instead be made, without interest, on the immediately succeeding business day, but will be deemed to have been made on the date due.

10.2 Class 4 Distribution Pool.

On the Effective Date, the maximum amount of the Class 4 Distribution Pool (based upon the ~~potential maximum Allowed~~ dollar amount in the "Aggregate Dollars Payable to Trade Claims" column on Schedule 1, which corresponds to the total of all Allowed Claims and Contested Claims in Class 4 Claims as of such date as of the Effective Date, excluding the Claims of Krispy Kreme) shall be funded into a segregated account held for the benefit of holders of the Class 4 Claims (except Krispy Kreme). If the Debtor has insufficient funds to fully fund the maximum amount of the Class 4 Distribution Pool on the Effective Date, Krispy Kreme shall advance the Debtor sufficient monies to fully fund the Class 4 Distribution Pool on the Effective Date.

There shall be two (2) distributions from the Class 4 Distribution Pool to holders of Class 4 Claims: (a) an initial distribution thirty-five (35) days after the Effective Date to holders of Class 4 Claims that have been Allowed by the date that is thirty (30) days after the Effective Date

in an amount equal to the number that is obtained by dividing the amount of the individual Allowed Claim by the maximum amount of potential Allowed Class 4 Claims (except Krispy Kreme), and multiplying that fraction by \$520,000; and (b) a final distribution to holders of Allowed Class 4 Claims upon conclusion of the claims reconciliation process in an amount such that (taking into account any payments already made) each holder of an Allowed Class 4 Claim receives a pro-rata share of the Class 4 Distribution Pool. Any amounts initially funded into the Class 4 Distribution Pool on the Effective Date that are not to be distributed on account of Allowed Class 4 Claims consistent with Schedule 1, shall be paid to Krispy Kreme pursuant to Section 4.3.1 of this Plan.

For purposes of this Section 10.2, the “maximum amount of potential Allowed Class 4 Claims (except Krispy Kreme)” shall mean the total of all Allowed Claims and Contested Claims in Class 4 as of thirty (30) days after the Effective Date, excluding the claims of Krispy Kreme.

10.3 Class 1 Claims.

As a condition precedent to receiving and retaining the distributions set forth in Section 4.1 of this Plan, holders of Class 1 Claims shall be required to (a) execute a release, in form and substance reasonably satisfactory to Krispy Kreme, of any and all Claims under the Class 1 Claim Guarantees, and (b) return to Krispy Kreme any outstanding letters of credit or any other collateral securing any Claim of such holder against Krispy Kreme related to its Class 1 Claims or its Class 1 Claim Guarantees.

10.4 Delivery of Distributions.

Subject to the provisions of Bankruptcy Rule 2002(g), and except as otherwise provided herein, distributions and deliveries to holders of Allowed Claims shall be made in accordance with the notice provisions in Section 1.6.

10.5 Undeliverable and Unclaimed Distributions; Time Bar to Cash

Payments.

(a) If any final distribution is returned to the Debtor as undeliverable, no further distributions shall be made to such holder unless and until the Debtor is notified, in writing, of such holder's then current address. Checks issued by the Debtor on account of Allowed Claims that are not returned as undeliverable, but are not negotiated within sixty (60) days from and after the date of issuance thereof shall be null and void.

(b) Any holder of an Allowed Claim that does not assert its rights pursuant to the Plan to receive a final distribution within ninety (90) days from and after the date (a) such distribution is returned as undeliverable, or (b) of the issuance of a check that has not been returned as undeliverable, but is null and void because it was not timely negotiated, shall have such holder's Claim for such distribution discharged and shall be forever barred from asserting any such Claim against the estate, the Debtor or its assets.

(c) Any entities ultimately receiving undeliverable cash, voided checks or unclaimed distributions shall not be entitled to any interest or other accruals of any kind. Nothing contained in the Plan shall require the Debtor to attempt to locate any holder of an Allowed Claim or an Allowed Interest. Any undeliverable or unclaimed distributions shall be ratably redistributed to holders of Allowed Claims in accordance with this Plan until such Allowed Claims are paid in full, and thereafter shall be retained by Krispy Kreme.

10.6 Compliance with Tax Requirements/Allocation.

To the extent applicable, the Debtor shall comply with all tax withholding and reporting requirements imposed on it by any governmental unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements.

10.7 Setoffs.

The Debtor may, pursuant to section 553 of the Bankruptcy Code or applicable non-bankruptcy law, setoff against any Allowed Claim and the distributions to be made pursuant to the Plan on account thereof (before any distribution is made on account of such Claim) the claims, rights and causes of action of any nature that the Debtor may hold against the holder of such Allowed Claim; provided however, that neither the failure to effect such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor of any such claims, rights and causes of action that the Debtor may possess against such holder; provided further, that nothing contained in the Plan is intended to limit the rights of any creditor to effectuate a setoff prior to the Effective Date in accordance with the provisions of sections 362 and 553 of the Bankruptcy Code.

10.8 Distributions to Contested Claims.

Except as otherwise provided herein, no distribution will be made with respect to all or any portion of any Contested Claim pending the entire resolution thereof in the manner prescribed herein.

10.9 Distributions Under Five Dollars.

Other than the final distribution, no distribution of less than \$5.00 shall be made to the holders of any Allowed Claim.

10.10 Interest on Claims.

Unless otherwise specifically provided for in this Plan or the Confirmation Order, or required by applicable bankruptcy law, postpetition interest shall not accrue or be paid on any Claims, and no holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim. Unless such Claim is a Secured Claim entitled to postpetition interest pursuant to section 506 of the Bankruptcy Code, interest shall not accrue or be paid upon any Contested Claim with respect to the period from the Petition Date to the date a final distribution is made thereon, if and after such Contested Claim becomes an Allowed Claim.

ARTICLE XI

CONDITIONS PRECEDENT TO THE EFFECTIVE DATE

11.1 Conditions Precedent to Effective Date of the Plan.

The occurrence of the Effective Date and substantial consummation of the Plan shall be subject to the satisfaction of the following conditions precedent:

(a) (i) The Confirmation Order shall have been entered by the Bankruptcy Court in form and substance satisfactory to the Debtor, (ii) more than ten (10) days shall have elapsed since the Confirmation Date, and (iii) except as provided below, the Confirmation Order is in full force and effect and is not stayed; and

(b) All actions, documents and agreements necessary to implement the Plan shall have been effected or executed.

Notwithstanding the foregoing, the Effective Date may occur notwithstanding the pendency of an appeal of the Confirmation Order or any order related thereto so long as there is no stay in effect. The Effective Date may occur before the expiration of time to take an appeal or to seek reconsideration of the Confirmation Order without the giving of any notice to any

objecting party. The Debtor may seek the dismissal of any appeal as moot following the Effective Date.

11.2 Waiver of Conditions Precedent.

To the extent practicable or legally permissible, the Debtor may at any time waive, in whole or in part, in its sole discretion, each of the conditions precedent above without notice or order of the Bankruptcy Court and without any formal action other than proceeding as if such condition did not exist.

11.3 Effect of Non-Occurrence of Conditions to the Effective Date.

If the Effective Date of the Plan does not occur, the Plan shall be null and void in all respects and nothing contained in the Plan or the Disclosure Statement shall (a) constitute a waiver or release of any Claims by or against, or any Interests in, the Debtor, (b) prejudice in any manner the rights of the Debtor, or (c) constitute an admission, acknowledgment, offer or undertaking by the Debtor in any respect.

11.4 Limited Scope.

Nothing in this Plan is intended, nor should it be construed, to enlarge or diminish the liability of the officers or directors of the Debtor for any of the obligations of the Debtor. Any such liability shall be determined in accordance with applicable non-bankruptcy law.

ARTICLE XII

RETENTION OF CAUSES OF ACTION

12.1 Reservation.

As of the Confirmation Date, (a) the Debtor shall reserve all of its Claims and causes of action arising under either the Bankruptcy Code (including, but not limited to, sections 510, 542,

543, 544, 545, 547, 548, 549, 550, 551 and 553 of the Bankruptcy Code or otherwise) or under other applicable federal or state law, including, but not limited to, any third-party claims, counterclaims and cross-claims; and (b) the Debtor shall have the sole and exclusive authority, after consulting with the Post-Confirmation Creditors' Committee, to prosecute, abandon, settle or adjust its Claims or causes of action without the consent or approval of any third party and without further order of the Bankruptcy Court.

12.2 No Waiver.

Unless a Claim or cause of action against a creditor or other person or entity is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order, the Debtor expressly reserves such Claim or cause of action for later adjudication by the Debtor, including, but not limited to, Claims and causes of action not specifically identified or which the Debtor may presently be unaware or which may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances which may change or be different from those which the Debtor now believes to exist.

12.3 Preferences.

A number of holders of Class 4 Claims received payments prior to the Petition Date that the Debtor asserts constitute avoidable preferences under section 547 of the Bankruptcy Code. Holders of Class 4 Claims that (a) are entitled to vote on the Plan, and (b) the Debtor asserts have received avoidable preferences, may receive, in conjunction with their ballot for voting on the Plan, an option to elect to waive all Claims against the Debtor in exchange for a release by the Debtor of its Claims against such holder. If such election is not made by the holder of such Class 4 Claim by the deadline for voting on the Plan, then all rights and Claims of any kind by the Debtor against such holder, and by such holder against the Debtor, shall be reserved. Further, if

the Debtor intends to pursue a preference action against any holder of a Class 4 Claim who does not receive a ballot containing the aforementioned election option, then the Debtor shall not initiate any such preference action unless it first extends to such holder of a Class 4 Claim a formal written offer pursuant to which such creditor may elect to waive all of its Claims against the Debtor in exchange for a release by the Debtor of all of its Claims against such creditor.

ARTICLE XIII

DISCHARGE, RELEASE, INJUNCTIVE AND RELATED PROVISIONS

13.1 Discharge of the Debtors.

Pursuant to section 1141(d)(3) of the Bankruptcy Code, Confirmation will not discharge Claims against the Debtor; provided however, that no holder of a Claim against the Debtor may, on account of such Claim, seek or receive any payment or other distribution from, or seek recourse against, the Debtor, its successors, property of the estate or its property, except as expressly provided in this Plan.

13.2 Releases by the Debtor.

Except as otherwise specifically provided herein, for good and valuable consideration, including the service of the Releasees to facilitate the expeditious sale of the Assets, the funding of the Plan, including payment in full of Allowed Administrative Claims, Allowed Tax Claims, Allowed Other Priority Claims, Allowed Secured Claims and the Class 4 Distribution Pool, the Releasees, on the Effective Date, shall be deemed released by the Debtor and the Debtor's estate from any and all Claims, obligations, suits, damages, causes of action, remedies and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that the Debtor or its estate would have been legally entitled to assert in

its own right or on behalf of the holder of any Claim or Interest or other person or entity, based in whole or in part upon any act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date.

13.3 Injunction.

Except as otherwise provided herein, from and after the Effective Date, all holders of Claims or Interests shall be permanently enjoined from commencing or continuing in any manner, any suit, action or other proceeding, on account of or respecting any Claim, Interest, obligation, debt, right, cause of action, remedy or liability or any other claim or cause of action released or to be released pursuant hereto.

13.4 Exculpation and Limitation of Liability.

(a) Neither the Debtor nor the Creditors' Committee, nor any of their respective present or former members, officers, directors, employees, advisors or attorneys shall have or incur any liability to any holder of a Claim or an Interest, or any other party in interest, or any of their respective agents, employees, representatives, financial advisors, attorneys or affiliates, or any of their successors or assigns, for any act or omission in connection with, relating to or arising out of this chapter 11 case, formulating, negotiating or implementing the Plan, the solicitation of acceptances of the Plan, the pursuit of confirmation of the Plan, the confirmation of the Plan, the consummation of the Plan or the administration of the Plan or the property to be distributed under the Plan (including the distributions), except for their gross negligence or willful

misconduct, and in all respects shall be entitled to reasonably rely upon the advise of counsel with respect to their duties and responsibilities under the Plan.

(b) The foregoing exculpation and limitation on liability shall not, however, limit, abridge or otherwise affect the rights, if any, of the Debtor to enforce, sue on, settle or compromise the claims retained pursuant to Article 12 of this Plan.

ARTICLE XIV

RETENTION OF JURISDICTION

14.1 Until entry of the final decree closing the Debtor's bankruptcy case pursuant to Bankruptcy Rule 3022, the Bankruptcy Court shall retain subject matter jurisdiction of this case and all proceedings arising therein or related thereto. Without in any manner limiting the scope of the foregoing, the Bankruptcy Court shall retain jurisdiction for the following purposes:

(a) finally determine the classification, priority, allowance, disallowance, amount or objection to any Claim, including, without limitation, any Administrative Claim, or to estimate the Allowed amount of any Claim pursuant to section 502(c) of the Bankruptcy Code;

(b) determine all matters relating to the estate assets, including, but not limited to, the Net Proceeds, the Remaining Net Proceeds and the Class 4 Distribution Pool, and the distribution thereof;

(c) issue such orders as may be necessary for the implementation, execution, and consummation of this Plan, including orders to ensure the conformity with the terms and conditions of this Plan and other orders of the Bankruptcy Court, notwithstanding any otherwise applicable non-bankruptcy law;

(d) determine any and all applications for allowance of compensation and expense reimbursement for periods on or before the Consummation Date and to determine any other request for payment of Administrative Claims;

