

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

In re:)	Chapter 11 Proceeding
)	
COMMERCIAL MORTGAGE & FINANCE CO.)	
)	Case No. 08-73242
)	
Debtor.)	Hon. Manuel Barbosa
)	

**PLAN OF LIQUIDATION
PROPOSED BY COMMERCIAL MORTGAGE & FINANCE CO. AND
THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

Dated: June 4, 2009

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Summary of Plan

Dr. James H. Larson, James L. McKnight, James Rebecca and Carl Kampmeier will administer the Plan including payments under the Plan. These individuals are creditors or their agents and currently serve as members of the Creditors' Committee. After the confirmation of the Plan, each will serve as a member of the Reorganized Debtor's Board of Directors and as Liquidating Trustees for the Liquidating Trust created as a part of this Plan.

The Plan provides that the Debtor's business operations will cease with the exception of activities necessarily related to the winding up of business affairs and the sale and disposition of assets. The Plan contemplates the establishment of a Liquidating Trust for the benefit of Persons holding Allowed General Unsecured Claims. Upon confirmation of the Plan, the Debtor will transfer all of the Estate's Assets, other than certain Causes of Action, to the Reorganized Debtor, which the Reorganized Debtor will administer for the benefit of holders of Allowed Claims.

The Reorganized Debtor's Board of Directors will oversee the management of the Estate's business operations, supervise the sale and disposition of Estate Assets and otherwise conduct all business that relates to the Debtor and its Estate other than the prosecution of certain Causes of Action. Therefore, after confirmation, James H. Larson, James L. McKnight, James Rebecca and Carl Kampmeier, as directors, will assume the role previously taken by the Debtor's directors. Dr. James H. Larson and James L. McKnight will also serve as officers of the Reorganized Debtor. The Reorganized Debtor will make Distributions to Creditors as assets are liquidated in accordance with the priorities set forth within the Bankruptcy Code. To the extent of available Cash, the Reorganized Debtor will make a Distribution at least annually.

The Plan contemplates the establishment of a Liquidating Trust for the benefit of Persons with Allowed General Unsecured Claims. The Causes of Action that the Debtor, its Estate, creditors or parties in interest could File on, before or after the Petition Date will be transferred to the Reorganized Debtor and the Liquidating Trust. The Liquidating Trustees, each of whom is currently a member of the Creditors' Committee, will operate and administer the Liquidating Trust. The Liquidating Trustees will direct the prosecution of all Causes of Action that the Debtor, its Estate, creditors or parties in interest could have brought on, before or after of the Petition Date against any or all of the Debtor's current and former officers, employees and professionals and any Person acting in concert with them with regard to such Causes of Action and the defense any counterclaims or cross claims relating to matters brought by the Liquidating Trust. The Reorganized Debtor will prosecute all objections to Claims and all other Causes of Action and will direct the defense of all other litigation, claims and causes of action that may be asserted against the Debtor or its Estate. As Causes of Action are resolved or sold, the Reorganized Debtor and the Liquidating Trustees will make Distributions. Both the Reorganized Debtor and the Liquidating Trust will have the right and ability to litigate, resolve, settle, sell or abandon any Cause of Action assigned to it. As Causes of Action are resolved or sold, the Liquidating Trustees will make Distributions. To the extent of available Cash, the Reorganized Debtor and the Liquidating Trust will make a Distribution at least annually.

The process of selling and disposing all Estate Assets will likely take several years to complete in order to maximize the amount of Distributions to be made to Creditors holding Allowed

Claims against the Debtor. The cost of the sale or disposition of one or more assets may outweigh the value of such asset or assets, and, in such event, the Reorganized Debtor or the Liquidating Trust, as applicable, may elect to abandon one or more of such assets. The cost of prosecuting one or more of the Causes of Action may outweigh the value to be obtained, and the Reorganized Debtor and Liquidating Trust, as applicable, may elect to abandon or not to pursue one or more of such Causes of Action.

The costs and expenses incurred by third parties and Professionals in administering and liquidating Estate Assets will be paid from current assets and/or the proceeds of the sale of assets.

The Reorganized Debtor will make periodic Distributions to Persons having Allowed Claims, as Cash is derived from the disposition of Estate Assets and from the disposition of Causes of Action. The Liquidating Trust will make periodic Distributions to holders of Allowed General Unsecured Claims, as Cash is derived from the disposition of Causes of Action. They anticipate that they will each make at least one payment each year to Persons having Allowed General Unsecured Claims.

INTRODUCTION

Commercial Mortgage & Finance Co. ("the "Debtor"), as debtor and debtor in possession in the Bankruptcy Case, and the Official Committee of Unsecured Creditors appointed in the Bankruptcy Case (the "Creditors' Committee"), as co-proponents, hereby propose the following plan of liquidation pursuant to §1121(a) of the Bankruptcy Code. The Plan Proponents refer Creditors and parties in interest to the Disclosure Statement for a discussion of the Debtor's history, businesses, properties, results of operations, projections for future recoveries, a summary and analysis of this Plan and other related matters. The Debtor and the Creditors' Committee are the co-proponents of this Plan within the meaning of §1129 of the Bankruptcy Code.

There are a number of defined terms contained in this Plan that appear as capitalized terms throughout the Plan. The Definitions appear at page 34. The Definitions are an important part of this Plan and you should examine the Definitions when reviewing the Plan.

THE DEBTOR AND THE CREDITORS' COMMITTEE URGE ALL CREDITORS TO ACCEPT THIS PLAN.

Under §1125(b) of the Bankruptcy Code, a vote to accept or reject this Plan cannot be solicited from a Person holding a Claim or Equity Interest until the Disclosure Statement has been approved by the Bankruptcy Court and distributed to Persons holding Claims and Equity Interests. ALL PERSONS HOLDING CLAIMS AGAINST THE DEBTOR ARE ENCOURAGED TO READ THIS PLAN AND THE RELATED DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR TO REJECT THIS PLAN. NO MATERIALS, OTHER THAN THE ACCOMPANYING SOLICITATION MATERIALS AND ANY EXHIBITS AND SCHEDULES ATTACHED THERETO OR REFERENCED THEREIN, HAVE BEEN APPROVED BY THE BANKRUPTCY COURT OR THE DEBTOR FOR USE IN SOLICITING ACCEPTANCES OR REJECTIONS OF THIS PLAN. SUBJECT TO CERTAIN RESTRICTIONS AND REQUIREMENTS SET FORTH IN THIS PLAN, THE PLAN PROPONENTS RESERVE THE RIGHT TO ALTER, AMEND, MODIFY, REVOKE OR WITHDRAW THIS PLAN PRIOR TO THE EFFECTIVE DATE OF THE PLAN.

This Plan is the Debtor and the Creditor's Committee's proposal for the payment of the Claims of Creditors as of the Petition Date.

The Debtor and the Creditors' Committee by this Plan solicit the acceptances of all Creditors whose Claims are Impaired. The Debtor and the Creditors' Committee each believe that acceptance of this Plan would be in the best interest of the Estate's Creditors.

I. CLASSIFICATION OF AMOUNTS OWING, CLAIMS AND EQUITY INTERESTS

A. **All Claims shall be fixed and determined as of the Petition Date.** A Claim or Equity Interest is classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class.

B. Classification. The Claims against the Debtor and the Equity Interests shall be classified in this Plan as follows:

1. Class 1 shall consist of the Allowed Priority Unsecured Claims.
2. Class 2 shall consist of the Allowed Claim of Momkus McCluskey LLC.
3. Class 3 shall consist of the Allowed Loan Participation Claims. Class 3 Allowed Loan Participation Claims shall be broken down into 37 separate subclasses.
4. Class 4 shall consist of the Allowed General Unsecured Claims against the Debtor, which are all Claims against the Debtor other than Administrative Claims, the Allowed Claims in Classes 1, 2 and 3 and all Equity Interests.
5. Class 5 shall consist of the Equity Interests in the Debtor.

C. General Rules of Classification under the Bankruptcy Code. In accordance with §1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims have not been classified and thus are excluded from the Classes as set forth below. All other Claims have been classified as set forth below.

D. Classification in More Than One Class. A Claim is classified in a particular Class only to the extent that the Claim falls within the description of that Class and is classified in another Class to the extent that any remainder of the Claim falls within the description of such other Class.

E. Classification of Allowed Claims Only. For the purpose of receiving Distributions pursuant to this Plan, a Claim is placed in a particular Class only to the extent that such Claim is an Allowed Claim in that Class and such Claim has not been paid, released, or otherwise settled prior to the Effective Date.

F. Elimination of Classes. Any Class of Claims that is not occupied as of the date of the commencement of the Confirmation Hearing by an Allowed Claim or a Claim temporarily Allowed under Rule 3018 of the Bankruptcy Rules shall be deemed deleted from the Plan for purpose of voting on acceptance or rejection of the Plan by such Class under §1129(a)(8) of the Bankruptcy Code.

II. TREATMENT OF UNIMPAIRED AND UNCLASSIFIED CLAIMS

A. Unimpaired Class. The following Class is unimpaired by the Plan in accordance with §1124 of the Bankruptcy Code or is not required to be classified in this Plan under the provisions of the Bankruptcy Code or allowed to vote: None.

B. General Treatment of Claims. Subject to the Bar Date and other provisions herein and except to the extent (1) the Debtor on the Effective Date or the Reorganized Debtor thereafter and (2) a Person holding an Allowed Administrative Claim agree to different and less favorable treatment, the Debtor on the Effective Date or the Reorganized Debtor thereafter shall pay, in full satisfaction and release of such Claim, to each Person holding an Allowed

Administrative Claim, Cash, in an amount equal to such Allowed Administrative Claim, on the later of (i) the Effective Date or (ii) the first Business Day after the date that is thirty (30) calendar days after the date on which such Administrative Claim becomes an Allowed Administrative Claim, or as soon thereafter as is practicable. Allowed Administrative Claims (other than Professional Fee Claims) shall be paid (i) first, from the Cash in the Administrative Claims Fund, and (ii) second, from Available Cash.

C. Estimation of Administrative Claims. The Reorganized Debtor reserves the right, for purposes of allowance and Distribution, to seek to estimate any unliquidated Administrative Claims, if the fixing or liquidation of such Administrative Claim would unduly delay the administration of and Distributions under this Plan.

D. Administrative Claims and Bar Date

1. **General Provisions.** Except as provided below for (1) Professionals requesting compensation or reimbursement for Professional Fee Claims, and (2) United States Trustee Fees, requests for payment of Administrative Claims, for which a Bar Date to File an Administrative Claim was not previously established, must be Filed no later than forty-five (45) days after service of notice of entry of the Confirmation Order or such later date as may be established by Order of the Bankruptcy Court. Persons holding Administrative Claims who are required to File a request for payment of such Claims and who do not File such requests by the applicable Bar Date, shall be forever barred from asserting such Claims against the Reorganized Debtor, the Liquidating Trust or their respective property, and such Persons shall be enjoined from commencing or continuing any action, employment of process or act to collect, offset or recover such Administrative Claim. Pursuant to §1123(a)(1), each Person holding Administrative Claims, owing under §507(a)(2) of the Bankruptcy Code, are not entitled to vote on the Plan

2. **Professionals.** All Professionals or other Persons requesting compensation or reimbursement of Professional Fee Claims for services rendered before the Effective Date (including compensation requested by any Professional or other entity for making a substantial contribution in the Bankruptcy Case) shall File an application for final allowance of compensation and reimbursement of expenses no later than forty-five (45) days after the Effective Date. Objections to applications of Professionals or other entities for compensation or reimbursement of expenses must be Filed no later than sixty (60) days after the Effective Date. The Debtor on the Effective Date or the Reorganized Debtor thereafter shall pay all compensation and reimbursement of expenses allowed by the Bankruptcy Court to the applicable Professional or other entities requesting compensation or reimbursement of Professional Fee Claims immediately after the Effective Date of any such order. Each Professional or other Person that intends to seek payment for compensation or reimbursement of expenses from the Estate (including compensation requested by any Professional or other Person for making a substantial contribution in the Bankruptcy Case) shall provide the Debtor with a statement, by no later than the Confirmation Date, of the amount of estimated unpaid fees and expenses accrued by such Professional up to the date of such statement, the amount of fees and expenses that each such Professional expects to incur from such date through the Effective Date and the amount of fees and expenses that each such Professional expects to incur from such date in connection with the preparation and prosecution of each such Professional's final fee application.

3. **United States Trustee Fees.** Pursuant to §1129(a)(12) of the Bankruptcy Code, the Debtor on the Effective Date or the Reorganized Debtor thereafter shall pay all United States Trustee Fees, in accordance with the terms of this Plan, until such time as the Bankruptcy Court enters a final decree closing the Bankruptcy Case.

4. **Class 1 - Allowed Priority Unsecured Tax Claims.** Except to the extent the Debtor on the Effective Date or the Reorganized Debtor thereafter and a Person holding an Allowed Priority Tax Claim, if any, agree to a different and less favorable treatment, the Debtor on the Effective Date or the Reorganized Debtor thereafter, at its sole option, shall pay, in full satisfaction and release of such Claim, to each Person holding a Priority Tax Claim, Cash, in an amount equal to such Allowed Priority Tax Claim, on the later of (i) the Effective Date or (ii) the first Business Day after the date that is thirty (30) calendar days after the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, or as soon thereafter as is practicable. Pursuant to §1123(a)(1), holders of Priority Tax Claims are owing under §507(a)(8)(b) of the Bankruptcy Code, and therefore not entitled to vote on the Plan. There are no Priority Claims other than Priority Tax Claims.

III. TREATMENT OF IMPAIRED CLAIMS AND EQUITY INTERESTS

The Claims in the Classes listed below are Impaired by the Plan:

A. **Class 2.** Allowed Secured Claim of Momkus McCluskey LLC.

1. **Class 2 Member.** Class 2 consists of one Creditor, which is Momkus McCluskey LLC. Momkus McCluskey LLC holds a Secured Claim arising from the Debtor's delivery prior to the Petition Date of a \$10,000 retainer to Momkus McCluskey LLC for legal services. All legal services provided that form the basis of the Class 2 Allowed Claim of Momkus McCluskey LLC were provided after its receipt of that retainer, but before the Petition Date.

2. **Class 2 Treatment.** Momkus McCluskey LLC, as a Person holding an Allowed Secured Claim shall receive payment by setoff against the above-referenced retainer without interest after receiving such authorization or the entry of such Court order once such Claim becomes an Allowed Secured Claim. The Debtor will authorize Momkus McCluskey LLC to perform a setoff on the Effective Date unless the Class 2 Claim is a Disputed Claim. If the Class 2 Claim is a Disputed Claim on the Effective Date, the Reorganized Debtor will authorize Momkus McCluskey LLC to perform a setoff on the tenth (10th) day following the date that the Class 2 Claim becomes an Allowed Secured Claim. The balance of the retainer, if any, remaining in the possession of Momkus McCluskey, LLC after the exercise of the setoff shall be returned to the Reorganized Debtor within ten (10) days of the exercise of such setoff.

3. **Class 2 Impairment.** The Person holding the Allowed Secured Claim in Class 2 is Impaired under this Plan. The Person holding the Allowed Secured Claim in Class 2 is entitled to vote to accept or reject this Plan in its capacity as a holder of such Allowed Secured Claim in Class 2.

B. Class 3. Allowed Secured Claims (Loan Participation Claims)

1. **Class 3 Members.** Class 3 consists of Persons holding Allowed Secured Claims arising from the Debtor's issuance of Certificates of Participation with respect to loans made by the Debtor to borrowers prior to the Petition Date which provided the creditors with a percentage interest in the loans made by the Debtor to the borrowers.

2. **Class 3 Treatment.**

(a) **Payments of Sums Withheld During Bankruptcy Case.** On the later of (i) the Effective Date, or (ii) the effective date of the order determining that a Class 3 Claim is an Allowed Class 3 Claim, the holder of an Allowed Class 3 Claim shall receive a Distribution from the Cash received by the Reorganized Debtor equal to the sum collected from the borrower on the underlying loan times the applicable percentage interest of the Person having the Allowed Class 3 Claim in the underlying loan but withheld from payment to such Person pending resolution of the Claim Dispute.

(b) **Payments of Sums Following Resolution of Claim Dispute to Persons holding Class 3 Claims.** Following the resolution of a Claim Dispute in favor of a Person holding a Class 3 Claim, the Reorganized Debtor shall pay to such holder the proportionate share of such Person's interest in and to the Cash paid by the borrower on the underlying loan from time to time in proportion to such Person's interest in the underlying loan. The Reorganized Debtor shall have no obligation to make any payment to a Person having a Class 3 Allowed Secured Claim unless and until payments are received by the Reorganized Debtor from the borrower of the underlying loan.

(c) **Payment of Principal to Persons holding Class 3 Claims.** To the extent a Class 3 Claim is allowed, the Person holding the Claim will receive a pro rata Distribution of Cash from the principal payment made by the underlying borrower at maturity of the underlying loan, but in no event in an amount greater than the Allowed amount of such Claim. The Reorganized Debtor shall have no obligation to make any payment to the holder of a Class 3 Allowed Secured Claim unless and until payments are received by the Reorganized Debtor from the borrower of the underlying loan.

(d) **Revised Certificate of Participation.** A holder of an Allowed Class 3 Claim shall receive a revised Certificate of Participation reflecting the Person's rights in the Collateral securing such Allowed Class 3 Claim reflecting the proportion of that Creditor's rights in the underlying loan.

(e) **Reorganized Debtor May Foreclosure or Settle the Underlying Debt.** To the extent the Reorganized Debtor is required to foreclose or agree to a settlement of amounts owing by the borrower under the underlying loan, a Person holding an effected Allowed Class 3 Claim shall receive Cash in an amount not to exceed the Allowed amount of such Claim, equal to the proceeds actually realized from the

sale of any Collateral securing such Claim, less the actual costs and expenses of disposing of such Collateral; or such other treatment as may be agreed upon by the Person holding an Allowed Class 3 Secured Claim and the Reorganized Debtor, provided, however, that the Person holding such Allowed Secured Claim will not receive more than that Creditor's proportional share of the payment or payments received by the Debtor or more than the value of the Collateral securing such Claim. In the event that the Reorganized Debtor elects to distribute to a Person holding an Allowed Secured Claim, the Collateral or a right in the Collateral securing such Allowed Secured Claim, the Person holding such Allowed Secured Claim may request that the Reorganized Debtor (A) attempt to sell the Collateral securing the Allowed Secured Claim, or (B) abandon such Collateral. In the event that the Reorganized Debtor honors such a request and attempts to sell such Collateral securing such Allowed Secured Claim or abandon such Collateral, all expenses relating thereto, including, but not limited to, storage expenses, shall be borne by the Person holding the Allowed Secured Claim. Notwithstanding the foregoing, the Reorganized Debtor retains the right to decline to honor a request by the Person holding an Allowed Secured Claim to attempt to sell or abandon such Collateral.

In any event, the Reorganized Debtor anticipates that it will attempt to sell each of the underlying loans to the extent a market exists for the same and pursuant to this Plan will have the right to sell all or any of the affected loans without being required to obtain the consent of any holder of an Allowed Class 3 Claim.

3. **Class 3 Impairment.** Each Person holding an Allowed Class 3 Secured Claims is Impaired under this Plan. Each Person holding an Allowed Class 3 Secured Claim is entitled to vote to accept or reject this Plan in his, her or its capacity as a holder of such Allowed Secured Claim in Class 3.

4. **Class 3 Deficiency Claims.** To the extent that the value of the Collateral securing any Allowed Secured Claim is less than the amount of such Allowed Secured Claim, or if the Claim of the Class 3 Creditor is determined by the Court to be unsecured, the undersecured portion of such Claim or unsecured claim shall be treated for all purposes under this Plan as a Class 4 General Unsecured Claim and shall be classified as such.

5. **Subclasses for Class 3 Claims.** For convenience of identification, this Plan describes the Allowed Class 3 Secured Claims as a single Class. Class 3 consists of separate subclasses, each based on the underlying property securing such Allowed Secured Claims, and each subclass is treated hereunder as a distinct Class for treatment and Distribution purposes and for all other purposes under the Bankruptcy Code.

6. **There are no other Secured Claims.** Any party asserting a security interest in any Estate Assets shall be subject to having that lien discharged pursuant to this Plan.

C. **Class 4.** Allowed General Unsecured Claims

1. **Class 4 Members.** Class 4 consists of all Creditors holding Allowed General Unsecured Claims along with all Class 3 Claims that are determined to be either Allowed General Unsecured Claims or the portion of each of the Class 3 Claims that are determined to be Allowed Undersecured Claim arising from the Debtor's issuance of Certificates of Participation prior to the Petition Date. Generally, Class 4 Claims are held primarily, but not exclusively, by people owed monies under unsecured promissory notes made by the Debtor, along with normal business debts owing by the Debtor on the Petition Date that are not Allowed Priority Tax Claims.

2. **Class 4 Treatment.** Each Person holding a Class 4 Allowed General Unsecured Claim shall share ratably in the Sale Proceeds of Estate Assets other than the Sale Proceeds of Estate Assets secured by a lien. As provided in Paragraph 4 below, any Person having a Class 4 Allowed General Unsecured Claim that received any payments from the Debtor after the Petition Date but before the Effective Date as a result holding a Certificate of Participation shall have deducted from any Distributions to be made to such Person having a Class 4 Allowed General Unsecured Claim the amount of any such payments until the entire amount of such payments have been satisfied.

3. **Class 4 Impairment.** Persons holding Class 4 Allowed General Unsecured Claims are Impaired under this Plan. Each Person holding an Allowed General Unsecured Claim in Class 4 is entitled to vote to accept or reject this Plan in his, her or its capacity as a holder of such Allowed General Unsecured Claim in Class 4.

4. **Crediting Post-Petition Distributions.** To the extent that Person holding a Class 3 Claim is determined to hold a Class 4 Claim, any distributions made by the Debtor to such Creditors subsequent to the Petition Date but prior to the Effective Date will be credited toward any Distributions that each such Creditor would otherwise receive as a Person holding an Allowed Claim. Regardless of any language in this Plan to the contrary, to the extent that the amount received by any such Creditor subsequent to the Petition Date but prior to the Effective Date exceeds the amount to which that Creditor is entitled to receive under this Plan, the Reorganized Debtor shall have the right to make demand for the return of any such overpayment and prosecute an action in its name to enforce the right to repayment of such overpayment.

5. **Interest Payments.** No Allowed General Unsecured Claim shall accrue interest after the Petition Date.

6. **Class 4 Priority of Payment.** Notwithstanding any other provision of this Plan, holders of Allowed General Unsecured Claims shall not be entitled to receive any payment of Cash on account of Allowed General Unsecured Claims until the holders of Allowed Administrative Claims and Allowed Priority Tax Claims have received payment in full on account of such Allowed Claims or such Allowed Claims have been reserved for in accordance with this Plan, and any Disputed Claims have been reserved for in accordance with this Plan.

D. **Equity Interests.** Anthony D'Agostino, Corrine D'Agostino, Michael D'Agostino and David Satek are each a Person holding an Equity Interest because of the Debtor's prepetition issuance of shares of stock. On the Effective Date, each of the then-issued and outstanding Equity Interests shall be deemed cancelled and retired. None of the holders of Equity Interests

shall be entitled to receive any Distribution or retain any property on account of their Equity Interests under this Plan or from the Reorganized Debtor or the Liquidating Trust. Persons holding Equity Interests are deemed to have rejected the Plan and are not entitled to vote on the Plan.

IV. LITIGATION

A. No Waiver. Unless a claim or any of the Causes of Action against a Person is expressly waived, relinquished, released, compromised or settled by the Reorganized Debtor or the Liquidating Trust, as applicable, the Estate, the Reorganized Debtor and the Liquidating Trustees on behalf of the Liquidating Trust expressly reserve such Claim or each of the Causes of Action for later adjudication, including, but not limited to, Claims and Causes of Action not specifically identified or which the Debtor may be presently 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 that may change or be different from those which the Debtor now believes to exist. With the exception of any claims or Causes of Action which are expressly released by the Plan or by an Order of the Bankruptcy Court, the Debtor's failure to identify a claim or Cause of Action herein shall not give rise to any defense of any preclusion doctrine, including, but not limited to, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise), or laches with respect to claims or Causes of Action which could be asserted against third parties.

B. Privileges. To the full extent permitted by law, the Debtor will be deemed to irrevocably transfer to the Reorganized Debtor and the Liquidating Trust all rights of the Debtor and the Estate (including the bankruptcy estate after the entry of the Confirmation Order) to exercise or waive any attorney client privilege, accountant client privilege, work product privilege or immunity attaching to any documents or communications (whether written or oral) (collectively the "Privileges"), and the Reorganized Debtor and Liquidating Trust are authorized to take all necessary actions to effectuate the transfer of the Privileges. All such Privileges shall also vest in the Reorganized Debtor and the Liquidating Trust and their representatives to the full extent permitted by law. This transfer is self executing, provided, however, that the Liquidating Trust and Reorganized Debtor are authorized and directed to take any and all necessary actions to effectuate the transfer of such Privileges. After the Effective Date, the Liquidating Trust and/or the Reorganized Debtor shall have the power and authority to assert or waive the Privileges.

C. Investigation. Upon confirmation of the Plan, the Reorganized Debtor and/or the Liquidating Trust shall have the power and authority to investigate the Debtor, its officers, directors, shareholders, employees, professionals, agents and representatives and their respective financial affairs as well as any and all claims or Causes of Action pursuant to the applicable provisions of the Bankruptcy Code, Bankruptcy Rules or any other legal or equitable procedure or process including, but not limited to, examinations pursuant to Bankruptcy Rule 2004.

V. DISTRIBUTIONS

A. Means of Distribution. The Reorganized Debtor shall be responsible for making all Distributions received through the sale or other disposition of Estate Assets, with the exception

of Distributions related to the Causes of Action transferred to the Liquidating Trust, in accordance with the terms of the Plan. The Liquidating Trustees shall be responsible for making all Distributions received through the prosecution of the Causes of Action transferred to the Liquidating Trust whether obtained by judgment or through settlement, in accordance with the terms of the Plan.

1. **Distributions on Account of Allowed Class 3 Claims.** Allowed Claims in Class 3 shall be paid solely from the proceeds received from the loan or loans on which the holder possesses a security interest.

2. **Distributions on Account of Allowed Class 4 Claims.** The Reorganized Debtor and the Liquidating Trust will make a Distribution to holders of Allowed Class 4 Claims no less than annually, provided sufficient Cash is available. On each Distribution Date, to the extent of Available Cash, the Reorganized Debtor shall make a Distribution to holders of Allowed General Unsecured Claims in accordance with this Plan. Any Distribution made to holders of Allowed General Unsecured Claims shall be made on a Ratable basis. Any proceeds received from the liquidation of the Assets shall be distributed in accordance with this Plan. Any Person having a Class 4 Allowed General Unsecured Claim that received any payments from the Debtor subsequent to the Petition Date but before the Effective Date as a result holding a Certificate of Participation shall have deducted from any Distributions to be made to such Person having a Class 4 Allowed General Unsecured Claim the amount of any such payments until the entire amount of such payments have been satisfied.

B. Miscellaneous Distribution Provisions.

1. **Estimation of Claims.** The Reorganized Debtor may, at any time, request that the Bankruptcy Court estimate any Claim not expressly Allowed by the terms of the Plan and otherwise subject to estimation under §502(c) of the Bankruptcy Code and for which the Reorganized Debtor may be liable under this Plan, including any Claim for taxes, to the extent permitted by §502(c) of the Bankruptcy Code, regardless of whether any party in interest previously objected to such Claim; and the Bankruptcy Court will retain jurisdiction to estimate any Claim pursuant to §502(c) of the Bankruptcy Code at any time prior to the time that such Claim becomes an Allowed Claim. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount will constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the Plan Agent may elect to pursue any supplemental proceedings to object to any ultimate allowance of such Claim. All of the aforementioned Claims objection, estimation and resolution procedures are cumulative and not necessarily exclusive of one another. Claims may be estimated by the Bankruptcy Court and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court.

2. **Method of Cash Distributions.** Except for proceeds derived from Causes of Action transferred to the Liquidating Trust, the Reorganized Debtor shall make all Distributions of Cash pursuant to the Plan or a duly appointed disbursing agent appointed by the Reorganized Debtor to the holders of Allowed Claims entitled to receive Cash under this Plan. As to the proceeds derived from Causes of Action transferred to the Liquidating Trust, the Liquidating Trustees

shall make all Distributions of Cash pursuant to the Plan to the holders of Allowed Claims entitled to receive Cash under this Plan. Cash payments made pursuant to this Plan shall be in United States Dollars by checks drawn on a domestic bank selected by the Reorganized Debtor or the Liquidating Trustees, as applicable, or by wire transfer from a domestic bank, at the option of the applicable party.

3. **Accrual of Post-Petition Interest.** Unless otherwise provided for in this Plan or the Bankruptcy Code, no holder of a prepetition Allowed Claim shall be entitled to the accrual of post-petition interest on account of such Claim.

4. **No Distribution in Excess of Allowed Amount of Claim.** Notwithstanding anything to the contrary herein, no holder of an Allowed Claim shall receive in respect of such Claim any Distribution in excess of the Allowed amount of such Claim.

C. **Distributions on Disputed Claims.** Distributions to each holder of a Disputed Claim that ultimately becomes an Allowed Claim shall be made in accordance with the provisions of this Plan with respect to the Class of Creditors to which the respective holder of an Allowed Claim belongs. Such Distributions shall be made as soon as practicable after the date that the order or judgment allowing such Claim is a Final Order.

D. **De Minimis Distributions.** Notwithstanding anything to the contrary contained herein, if the amount of Cash to be distributed to a Person holding an Allowed Claim is less than \$25, the Reorganized Debtor or the Liquidating Trustees, as applicable, may hold the Cash Distributions to be made to such holder until the aggregate amount of Cash to be distributed to such holder is in an amount equal to or greater than \$25, if the Reorganized Debtor or the Liquidating Trustees, as applicable, determines that the cost to distribute such Cash is unreasonable in relation to the amount of Cash to be distributed. Notwithstanding the preceding sentence, if the amount of Cash Distribution to such holder never aggregates to more than \$25, then on the final Distribution Date, the Reorganized Debtor or the Liquidating Trustees, as applicable, shall distribute such Cash to the holder entitled thereto.

E. **Allocation of Payments.** Amounts paid to holders of Allowed Claims in satisfaction thereof shall be allocated first to the principal amounts of such Claims with any excess allocated to interest that has accrued on such Claims but remains unpaid.

F. **Setoffs.** The Reorganized Debtor or the Liquidating Trustees, as applicable, is authorized, pursuant to and to the extent permitted by §553 of the Bankruptcy Code, to set off against any Allowed Claim and the Distributions to be made on account of such Allowed Claim, the Claims, rights and Causes of Action of any nature that the Estate or the Liquidating Trust may hold against any Person holding such Allowed Claim, provided that the Reorganized Debtor or the Liquidating Trustees, as applicable, gives the Person holding such Allowed Claim notice of the proposed setoff and the Person holding such Allowed Claim does not object to the proposed setoff within thirty (30) days; provided that if an objection is timely raised to a proposed setoff, the Reorganized Debtor or the Liquidating Trustees, as applicable, may seek relief from the Bankruptcy Court to effectuate the setoff; provided, further, that neither the failure to effect such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Reorganized Debtor or the Liquidating Trustees of any such Claims, rights and

Causes of Action that the Estate may possess or may have held prior to transfer to the Liquidating Trust against such holder.

G. Unclaimed Property and Distributions.

1. **Returned Checks.** Subject to Bankruptcy Rule 9010, all Distributions to any holder of an Allowed Claim shall be made at the Distribution Address unless the Reorganized Debtor and/or the Liquidating Trust, as the case may be, have been notified in writing of a change of address. In the event that any Distribution to any holder of an Allowed Claim is returned as undeliverable, no further Distributions to such holder shall be made unless and until the Reorganized Debtor and the Liquidating Trustees are notified of such Person's then current address, at which time all eligible missed Distributions shall be made to such holder, without interest. All demands for undeliverable Distributions shall be made on or before one hundred and twenty (120) days after the date such undeliverable Distribution was initially made. Thereafter, the amount represented by such undeliverable Distribution shall irrevocably revert to the Reorganized Debtor and be treated as Available Cash. Any Claim in respect of such undeliverable Distribution shall be discharged and forever barred from assertion against the Reorganized Debtor and its property or the Liquidating Trust and its property shall not receive any further Distributions pursuant to the Plan.

2. **Stale Checks.** Checks issued by the Reorganized Debtor or the Liquidating Trustees, as applicable, in respect of Allowed Claims shall be null and void if not negotiated within sixty (60) days after the date of issuance thereof. Requests for reissuance of any check shall be in writing and be made to the Reorganized Debtor or the Liquidating Trustees, as applicable, by the Person holding the Allowed Claim to whom such check originally was issued and such request must be accompanied by delivery of the original check. The Reorganized Debtor or the Liquidating Trustees, as applicable, on or before one hundred and eighty (180) days following the date of issuance of such check, must receive any written demand in respect of such a voided check. Thereafter, the amount represented by such voided check shall irrevocably revert to the Reorganized Debtor and be treated as Available Cash. Any Claim in respect of such voided check shall be discharged and forever barred from assertion against the Reorganized Debtor, and its property or the Liquidating Trust. In the event that a check is not negotiated within sixty (60) days and a request for reissuance of the check is not made and received by the Reorganized Debtor or the Liquidating Trustees within one hundred eighty (180) days of the issuance of the check, the Holders of the Claim represented by the check shall not receive any further distributions pursuant to the Plan.

H. **Cancellation of Stock.** As of the Effective Date, by virtue of this Plan and in all events without any action on the part of the holders thereof, to the extent not previously cancelled, all Equity Interests issued and outstanding shall be cancelled and retired and no consideration will be paid or delivered with respect thereto.

I. Cancellation of Unsecured Notes and Agreements.

1. **Canceling Instruments.** On the Effective Date, except as otherwise provided for in this Plan, any Instruments will be deemed cancelled and of no further force or effect without any further action on the part of the Bankruptcy Court, or any Person including, but not limited to,

governmental agencies. The holders of such cancelled Instruments will have no claims against the Estate, the Reorganized Debtor or the Liquidating Trust for payment of such Instruments, except for the rights provided pursuant to this Plan.

2. **Surrender of Instruments.** Following the Effective Date, holders of any such Instrument will receive from the Reorganized Debtor, specific instructions regarding the time and manner in which such Instruments are to be surrendered, if requested by the Reorganized Debtor. Any Instrument that is lost, stolen, mutilated or destroyed, shall be deemed surrendered when the holder of a Claim based thereon delivers to the applicable agent or the Reorganized Debtor (i) evidence satisfactory to the agent or the Reorganized Debtor of the loss, theft, mutilation or destruction of such instrument or certificate, and (ii) such security or indemnity as may be required by the agent or the Reorganized Debtor to hold each of them harmless with respect thereto.

3. **Record Date for Distributions to Holders of Claims.** With the exception of death or disability, as of the close of business on the Confirmation Date, there shall be no further changes in the record holders of the Claims for purposes of the Distribution of Available Cash. The transferee of an Allowed Claim may provide notice of the transfer of a Claim by complying with the notice requirements provided under Rule 3001(e) of the Rules. Except in cases of death or disability as provided in this Paragraph, the Reorganized Debtor and the Liquidating Trust may, but shall have no obligation to, recognize any transfer of Claims occurring after the Confirmation Date for purposes of the Distribution of Available Cash. In the event of the death or disability of a Person having an Allowed Claim, the Reorganized Debtor and the Liquidating Trust shall be provided notice and sufficient evidence of the death or disability of such Person and the name and address to whom all future distributions pursuant to the Plan should be made. The notice of death or disability must be provided to the Reorganized Debtor and Liquidating Trust consistent with the provisions of Article X Paragraph I of the Plan.

4. **Disputed Payments.** If any dispute arises as to the identity of a holder of an Allowed Claim who is to receive any Distribution, the Reorganized Debtor or the Liquidating Trustees, as applicable, may, in lieu of making such Distribution to such Person, make such Distribution into an escrow account to be held in trust for the benefit of such Person and such Distribution shall not constitute property of the Reorganized Debtor or the Liquidating Trust. Such Distribution shall be held in escrow until the disposition thereof shall be determined by order of the Bankruptcy Court or other court of competent jurisdiction or by written agreement signed by all of the interested parties to such dispute.

5. **Withholding Taxes.** In connection with this Plan, to the extent applicable, the Reorganized Debtor or the Liquidating Trustees, as applicable, shall comply with all withholding and reporting requirements imposed on it by federal, state and local taxing authorities, and all Distributions shall be subject to such withholding and reporting requirements.

VI. EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. **Executory Contracts and Unexpired Leases Rejected Unless Specifically Assumed.** Except as otherwise provided herein or by the Confirmation Order, as of the Effective Date, all prepetition executory contracts and unexpired leases of the Debtor, the Estate

or any of the Debtor's subsidiaries shall be rejected by the Debtor pursuant to the provisions of §§365 and 1123 of the Bankruptcy Code, except: (i) any executory contracts and unexpired leases that are the subject of separate motions to assume Filed pursuant to §365 of the Bankruptcy Code by the Debtor before the entry of the Confirmation Order, (ii) contracts and leases listed in a schedule to be included in the Plan Supplement or (iii) all executory contracts or unexpired leases assumed under this Plan or by order of the Bankruptcy Court entered on or before the Confirmation Date. Any order entered after the Confirmation Date by the Bankruptcy Court, after notice and a hearing, authorizing the rejection of an executory contract or unexpired lease shall cause such rejection to be a prepetition breach under §§365(g) and 502(g) of the Bankruptcy Code, as if such relief was granted and such order was entered prior to the Confirmation Date.

B. No Admission. Listing a contract or lease in the Plan Supplement shall not constitute an admission by the Debtor that such contract, lease, including related agreements, is an executory contract or unexpired lease, or that the Debtor or the Estate has any liability thereunder.

C. Confirmation Order Shall Constitute Order Regarding Assumption and Rejection. Subject to Article VI Section E of this Plan, the Confirmation Order shall constitute an order of the Bankruptcy Court approving the assumption or rejection, as applicable, of executory contracts and unexpired leases, the assumption or rejection of which is provided for in Article VI Section A of this Plan, pursuant to §365 of the Bankruptcy Code and such assumption or rejection shall be deemed effective as of the Effective Date.

D. Bar Date for Rejection Damages. If the rejection of any executory contract or unexpired lease under this Plan (including executory contracts and unexpired leases included in the Plan Supplement) gives rise to a Claim by the non-Debtor party or parties to such contract or lease, such Claim, to the extent that it is timely Filed and is an Allowed Claim, shall be classified as a General Unsecured Claim in Class 4; provided, however, that the General Unsecured Claim arising from such rejection shall be forever barred and shall not be enforceable against the Estate, the Reorganized Debtor, the Liquidating Trust, their successors, trustees, directors, officers, agents or properties, unless a proof of such Claim is Filed with the Bankruptcy Court and served on the Reorganized Debtor's counsel for the Reorganized Debtor and the United States Trustee within thirty (30) days after the date of notice of the entry of the order of the Bankruptcy Court rejecting the executory contract or unexpired lease, which may include, if applicable, the Confirmation Order.

E. Cure. At the election of the Reorganized Debtor, any monetary defaults under each executory contract and unexpired lease to be assumed under this Plan shall be satisfied pursuant to §365(b)(1) of the Bankruptcy Code (a) by payment of the default amount in Cash by the Reorganized Debtor on or as soon as reasonably practicable after the later to occur of (i) thirty (30) days after the determination of the cure amount and (ii) the Effective Date or such other date as may be set by the Bankruptcy Court, or (b) on such other terms as agreed to by the Reorganized Debtor and the non-Debtor party to such executory contract or unexpired lease. In the event of a dispute regarding: (i) the amount of any cure payments, (ii) the ability of the Reorganized Debtor to provide adequate assurance of future performance under the contract or lease to be assumed, or (iii) any other matter pertaining to assumption, the cure payments

required by §365(b)(1) of the Bankruptcy Code shall be made only following the entry of a Final Order resolving the dispute and approving assumption. The Reorganized Debtor shall have the right at any time to move to reject any executory contract or unexpired lease based on the existence of such a dispute.

VII. INJUNCTION.

Except as otherwise provided herein, from and after the Effective Date, all holders of Claims shall be permanently enjoined from commencing or continuing in any manner, any suit, action or other proceeding, on account of any Claim, Equity Interest, obligation, debt, right, cause of action, remedy or liability released or to be released pursuant to the Plan or against any Estate Asset that is subject to administration to pay Claims and Equity Interests. Further, notwithstanding Confirmation of this Plan or the Confirmation Order, the injunction provided by §362(a) of the Bankruptcy Code shall remain in place for the Debtor, the Estate, the Reorganized Debtor, the Liquidating Trust and the Estate Assets. Additionally, no holder of a Claim against the Debtor may, on account of such Claim, seek or receive Distribution from, or seek recourse against, the Debtor, the Reorganized Debtor or the Liquidating Trust, their respective successors, assigns, trustees, attorneys, agents (including professionals), property of the estate or post-confirmation property, except as expressly provided in this Plan.

VIII. IMPLEMENTATION AND FUNDING OF THE CASE

A. Implementation. The Reorganized Debtor and the Liquidating Trustees on behalf of the Liquidating Trust will implement this Plan in a manner consistent with the terms and conditions set forth in this Plan and the Confirmation Order. As a part of such implementation, the Reorganized Debtor shall (1) establish an Administrative Claims Fund, (2) establish a reserve for winding down the Estate's affairs, (3) pay Allowed Administrative Claims, (4) pay Allowed Priority Tax Claims (if any), (5) liquidate Estate Assets, (6) deliver to the Liquidating Trust an amount agreed upon by the Liquidating Trustees and the Reorganized Debtor to be sufficient to pay the initial costs of administering the Liquidating Trust, including the costs of litigation and (7) transfer Causes of Action against any or all of the Debtor's current and former officers, employees and professionals and any Person acting in concert with them with regard to such Causes of Action to the Liquidating Trust. To the extent necessary, the Liquidating Trustees will be deemed the representatives of the Estate in accordance with §1123(b) of the Bankruptcy Code. To the extent Cash deposited in the Administrative Claims Fund is insufficient to pay all Allowed Administrative Claims, the Liquidating Trust shall reassign, re-transfer and re-convey to the Reorganized Debtor such amounts as are necessary and available to pay such Claims and otherwise satisfy the priorities set forth in the Bankruptcy Code. The Reorganized Debtor and the Liquidating Trust reserve the right to allocate and transfer any Estate Assets between them to take advantage of any tax benefit or other benefit from such allocation and transfer of Estate Assets.

B. Funding for the Plan. The Reorganized Debtor will fund this Plan, as set forth in Article VIII Section A. In addition, the Liquidating Trust will fund the prosecution of the Causes of Action transferred to the Liquidating Trust from the proceeds derived from the disposition of

the Causes of Action by the Liquidating Trust or proceeds derived from the sales of any of the Assets by the Reorganized Debtor.

C. Vesting of Assets in the Reorganized Debtor. Except as set forth below with regard to the transfer of Assets to the Liquidating Trust, as of the Effective Date as described in Article VIII Section A, pursuant to the provisions of §1141(b) and (c) of the Bankruptcy Code, all Assets, other than Causes of Action transferred to the Liquidating Trust, shall vest in the Reorganized Debtor free and clear of all Claims, liens, encumbrances, charges, Equity Interests and other interests, except as otherwise expressly provided in this Plan or the Confirmation Order, and subject to the terms and conditions of this Plan and the Confirmation Order.

D. Vesting of Causes of Action in the Liquidating Trust. As of the Effective Date as described in Article VIII Section A, pursuant to the provisions of §1141(b) and (c) of the Bankruptcy Code, any Causes of Action and rights assigned to the Liquidating Trust shall vest in the Liquidating Trust free and clear of all Claims, liens, encumbrances, charges, Equity Interests and other interests, except as otherwise expressly provided in this Plan or the Confirmation Order, and subject to the terms and conditions of this Plan and the Confirmation Order.

E. Dissolution of Remaining Subsidiaries. Any corporation solely owned by the Debtor on the Effective Date shall be dissolved and all assets including real estate shall be transferred to the Reorganized Debtor and shall not be subject to tax under any law imposing a stamp tax or similar tax as provided under §1146 of the Bankruptcy Code. As a part of the process of dissolution, the Debtor's subsidiaries will pay their creditors, subject to the approval of the Creditors' Committee, who are ordinary course creditors, and each will take such steps as are necessary to transfer their respective assets to the Reorganized Debtor. All property of each of the Debtor's subsidiaries will be property of the Reorganized Debtor. Each of the contracts, which involve leases of real estate, and the debts of the Debtor's subsidiaries, which are in the nature of ordinary course transactions, will be the Reorganized Debtor's obligations. All intercompany Claims and any Administrative Expense Claims by and among the Debtor and its subsidiaries will be eliminated and cancelled.

F. Continuing Existence. From and after the Effective Date, the Reorganized Debtor shall continue in existence for the purposes of winding up its affairs as expeditiously as reasonably possible.

G. Reorganized Debtor's Efforts to Liquidate Assets. Other than the transfer of Causes of Actions and rights contemplated under Article VIII Sections A and I, from and after the Effective Date, the Reorganized Debtor shall be responsible for (i) liquidating, by conversion to Cash, or other methods, of any remaining Assets, as expeditiously as reasonably possible, (ii) resolving Disputed Claims, (iii) administering the Plan, (iv) filing appropriate tax returns and (v) performing all such other acts and conditions required by and consistent with consummation of the terms of this Plan.

H. Exemption from Transfer Taxes. Pursuant to §1146(a) of the Bankruptcy Code, the assignment or surrender of any lease or sublease, or the delivery, making, filing, or recording of any deed or other instrument of transfer, or the issuance, transfer or exchange of any security under this Plan, including any deeds, bills of sale or assignments executed in connection with

any disposition of assets contemplated by this Plan, shall not be subject to any stamp, real estate transfer, mortgage, recording or other similar tax.

I. Transfer to the Liquidating Trust. As contemplated under Article VIII Section A, from and after the Effective Date, certain Causes of Action and rights shall assigned, transferred and conveyed to the Liquidating Trust including any rights with regard to the enforcement of judgments or settlement agreements relating to any or all of such Causes of Action. The Liquidating Trustees shall be responsible for (i) liquidating the Causes of Action transferred to it by conversion to Cash, or other method, as expeditiously as reasonably possible, (ii) filing appropriate tax returns and (iii) performing all such other acts and conditions required by and consistent with consummation of the terms of this Plan.

J. Corporate Action. The Reorganized Debtor and the Liquidating Trust will administer this Plan and all actions taken under this Plan in the name of the Reorganized Debtor shall be taken through the Reorganized Debtor's Board of Directors, the Plan Agent (if one is appointed) and the officers and employees appointed or engaged by them or through their efforts. Upon the satisfaction of all conditions precedent set forth in Article XV, which may be included in the application for the entry of the final decree, the Reorganized Debtor shall be deemed dissolved for all purposes without the necessity for any other or further actions to be taken by or on behalf of the Reorganized Debtor or payments to be made in connection therewith; provided, however, that the Reorganized Debtor may take appropriate action to dissolve under applicable law. From and after the Effective Date, the Reorganized Debtor shall not be required to file any document, or take any action to withdraw its business operations from any states where the Debtor or the Reorganized Debtor previously conducted business.

K. Winding Up Affairs. Following the Effective Date, the Reorganized Debtor and the Liquidating Trust shall not engage in any business or take any actions, except those necessary to consummate this Plan and wind up the affairs of the Reorganized Debtor. On and after the Effective Date, the Reorganized Debtor's Board of Directors and the Plan Agent (if one is appointed) and the officers and employees appointed or engaged by the Reorganized Debtor's Board of Directors or through their efforts may, in the name of the Reorganized Debtor, take such actions to implement the provisions of the Plan without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules, other than the restrictions imposed by this Plan or the Confirmation Order. provided, however, that the Reorganized Debtor or the Liquidating Trust may, in their sole and exclusive discretion, seek the approval of the Bankruptcy Court with respect to any action to be taken pursuant to this Plan including, but not limited to, the sale of any of the Assets, the prosecution or settlement of any Causes of Action with notice of any hearing before the Bankruptcy Court to be provided to the Persons having the twenty (20) largest Allowed Class 4 Unsecured Claims. The approval by the Bankruptcy Court of any such action by the Reorganized Debtor or the Liquidating Trust shall constitute and establish an irrebutable presumption that the action taken was proper, fair and in the best interest of the Creditors and consistent with the duties of the Reorganized Debtor and/or Liquidating Trust pursuant to the provisions of the Plan.

L. Powers and Duties of the Reorganized Debtor's Agents. The Reorganized Debtor will act through its Board of Directors and the officers appointed or engaged by them or through their efforts in a capacity as applicable to a Board of Directors or corporate officers, subject to

the provisions of this Plan. In addition to any powers and duties available to directors or officers by statute or at law, the powers and duties of such Persons shall include:

1. investing Cash in accordance with §345 of the Bankruptcy Code, and withdrawing and making Distributions of Cash to holders of Allowed Administrative Claims and Allowed Priority Tax Claims, if any, and paying taxes and other obligations owed by the Debtor or incurred by the Reorganized Debtor in connection with the wind-down of the Estate in accordance with this Plan;

2. objecting to, compromising and settling Claims;

3. engaging attorneys, consultants, agents, employees and all Professional Persons, to assist the Reorganized Debtor with respect to the Reorganized Debtor's responsibilities;

4. executing and delivering all documents, and taking all actions, necessary to consummate the Plan and wind down the Reorganized Debtor's business;

5. coordinating the disposition of assets, subject to rejected executory contracts or abandonment or liquidation of any retained assets;

6. coordinating the collection of outstanding accounts receivable;

7. coordinating the storage and maintenance of the Debtor's books and records;

8. disposing of, and delivering title to others of, or otherwise realizing the value of all the Assets delivered to it on terms deemed reasonable in the Reorganized Debtor's sole discretion. The Reorganized Debtor may, but shall not be required to, seek the Bankruptcy Court's approval of any such disposition by filing a motion pursuant to §363 of the Bankruptcy Code and Rule 9019 of the Rules;

9. lending monies to the Liquidating Trust on reasonable terms to allow the Liquidating Trust to prosecute and otherwise dispose of the Causes of Action transferred to it;

10. overseeing compliance with the Estate's accounting, finance and reporting obligations;

11. preparing monthly operating reports and financial statements and United States Trustee quarterly reports;

12. overseeing the filing of final tax returns, audits and other corporate dissolution documents if required;

13. performing any additional corporate actions as necessary to carry out the wind down and liquidation of the Estate;

14. paying the fees and expenses of the attorneys, consultants, agents, employees and Professional Persons engaged by the Debtor and the Reorganized Debtor and to pay all other expenses for winding down the Estate's affairs in accordance with a wind-down budget, or as

otherwise determined by the Reorganized Debtor's Board of Directors. In the event of a dispute that cannot be resolved, the Reorganized Debtor's Board of Directors shall seek to resolve such dispute in the Bankruptcy Court;

15. implementing and/or enforcing all provisions of the Plan, except those specifically reserved to the Liquidating Trust; and

16. such other powers as may be vested in or assumed by the Reorganized Debtor pursuant to this Plan or Bankruptcy Court Order or as may be needed or appropriate to carry out the provisions of this Plan.

M. Powers and Duties of the Liquidating Trustees. The Liquidating Trustees will act for the Liquidating Trust in a fiduciary capacity, subject to the provisions of this Plan. In addition to the powers and duties specified within the Trust Agreement creating the Liquidating Trust, the powers and duties of the Liquidating Trustees shall include:

1. investing Cash in accordance with §345 of the Bankruptcy Code, and withdrawing and making Distributions of Cash to holders of Allowed Claims, other than holders of Allowed Administrative Claims and Allowed Priority Tax Claims, and paying taxes and other obligations owed or incurred by the Liquidating Trust in accordance with this Plan;

2. engaging attorneys, consultants, agents, employees and any other professional or other Persons, to assist the Liquidating Trustees with respect to the Liquidating Trust's responsibilities;

3. executing and delivering all documents, and taking all actions, necessary to prosecute Causes of Action transferred to it and collect the proceeds from the same;

4. settling Causes of Action transferred to it on terms deemed reasonable in the Liquidating Trustees' sole discretion. The Liquidating Trustees may, but shall not be required to, seek the Bankruptcy Court's approval of a settlement of one or more Causes of Action by filing a motion pursuant to §363 of the Bankruptcy Code and Rule 9019 of the Rules.

5. disposing of, and delivering title to others of, or otherwise realizing the value of all the Assets delivered to it on terms deemed reasonable in the Liquidating Trustees' sole discretion. The Liquidating Trustees may, but shall not be required to, seek the Bankruptcy Court's approval of any such disposition by filing a motion pursuant to §363 of the Bankruptcy Code and Rule 9019 of the Rules;

6. overseeing the filing of tax returns, overseeing the preparation and conduct of reviews or audits (as the Liquidating Trustees shall determined is necessary) and the preparation of such other documents as the Liquidating Trustees determine or are advised may be required;

7. paying the fees and expenses of the attorneys, consultants, agents, employees and Professional Persons engaged by the Liquidating Trust and to pay all other expenses for the operation and disposition of the assets of the Liquidating Trust without the prior approval of the Bankruptcy Court;

8. otherwise implementing and/or enforcing all provisions of the Plan reserved to the Liquidating Trust; and

9. such other powers as may be vested in or assumed by the Liquidating Trustees pursuant to this Plan or Bankruptcy Court Order or as may be needed or appropriate to carry out the provisions of this Plan.

N. Appointment of the Reorganized Debtor's Board of Directors. Pursuant to §1129(a)(5) of the Bankruptcy Code, the Confirmation Order shall provide for the appointment of James H. Larson, James L. McKnight, James Rebecca and Carl Kampmeier, each of whom currently serve as members of the Creditors' Committee, to serve as the initial members of the Reorganized Debtor's Board of Directors. The members of the Reorganized Debtor's Board of Directors shall serve without compensation. Such Persons shall (in conjunction with the Liquidating Trustees) be deemed the Estate's representative in accordance with §1123 of the Bankruptcy Code and shall have all powers, authority and responsibilities specified in this Plan, including, without limitation, the powers of a trustee under §§704 and 1106 of the Bankruptcy Code.

O. Appointment of the Reorganized Debtor's Officers. Pursuant to §1129(a)(5) of the Bankruptcy Code, the Confirmation Order shall provide for the appointment of James H. Larson, as President of the Reorganized Debtor, and James L. McKnight, as its Secretary. Such officers shall serve without compensation.

P. Appointment of the Liquidating Trustees. Pursuant to §1129(a)(5) of the Bankruptcy Code, the Confirmation Order shall provide for the appointment of James H. Larson, James L. McKnight, James Rebecca and Carl Kampmeier, each of whom currently serve as members of the Creditors' Committee, to serve jointly as the initial Liquidating Trustees for and on behalf of the Liquidating Trust. The Liquidating Trustees shall serve without compensation.

Q. Appointment of the Plan Agent. The Confirmation Order shall provide the Reorganized Debtor with the right, but not the obligation, to appoint one or more Persons to serve jointly as the Plan Agent. In the absence of such appointment, the Reorganized Debtor shall perform the duties set forth in this Plan to be performed by the Plan Agent. If an independent Person, other than one or more members of the Reorganized Debtor's Board of Directors, is appointed to serve as the Plan Agent, the Reorganized Debtor's Board of Directors shall establish the duties of the Plan Agent and the compensation to be paid to the Plan Agent including the frequency of payment. If a member of the Reorganized Debtor's Board of Directors shall serve as Plan Agent, such Person or Persons shall serve without compensation. The Plan Agent (in conjunction with the Reorganized Debtor's Board of Directors) shall be deemed the Estate's representative in accordance with §1123 of the Bankruptcy Code and shall have all powers, authority and responsibilities specified in this Plan, including, without limitation, the powers of a trustee under §§704 and 1106 of the Bankruptcy Code. In addition to the obligations and duties required of the Plan Agent under this Plan, the Reorganized Debtor may establish additional or other duties to be performed by the Plan Agent.

R. Retention of Insider. Pursuant to §1129(a)(5)(B) of the Bankruptcy Code, the Reorganized Debtor shall retain the services of Michael D'Agostino at a gross salary of

\$4,500.00 per month payable in equal semi monthly installments on the 15th and the last day of each month that Michael D'Agostino is employed full time by the Reorganized Debtor.

S. Resignation of Directors and Officers. Upon the Effective Date of this Plan, the Debtor's directors and officers shall be deemed to have resigned as the directors and officers of the Debtor.

T. Resignation, Death or Removal of the Reorganized Debtor's Officers and Directors, the Plan Agent or Trustees of the Liquidating Trust. Any of the parties serving as an officer or director of the Reorganized Debtor, a trustee on behalf of the Liquidating Trust or the Plan Agent, if any, may resign at any time upon not less than thirty (30) days' written notice to the Reorganized Debtor or the Liquidating Trustees, as applicable. Any of the aforementioned Persons may be removed at any time for cause upon application to the Bankruptcy Court on ten(10) days' written notice to the United States Trustee and the remaining parties serving as members of the Reorganized Debtor's Board of Directors or as Liquidating Trustees, as applicable, and its or their counsel. In the event of the resignation, removal, death or incapacity of any of the aforementioned Persons, the then current members of the Reorganized Debtors' Board of Directors and trustees of the Liquidating Trust, as applicable, shall designate another Person to serve as one of the four Persons making up such body and thereupon, as a group, the designated successor, without further act, shall become fully vested with all of the rights, powers, duties and obligations of the predecessor group. No successor director or trustee hereunder shall in any event have any liability or responsibility for the acts or omissions of any predecessors. Neither the Liquidating Trust nor the Reorganized Debtor or any of their respective trustees, officers, directors, agents, attorneys or representatives shall be liable or responsible for any act or omission of the Debtor or any of its agents, officers, directors, shareholders, attorneys or representatives unless expressly assured pursuant to this Plan.

U. No Agency Relationship. Neither the Liquidating Trust nor the Reorganized Debtor or any of their respective trustees, officers, directors, shareholders, agents, attorneys or representatives shall be liable or responsible for any act or omission of the Debtor or any of its agents, officers, directors, shareholders, attorneys or representatives unless expressly assumed pursuant to this Plan. Neither the Reorganized Debtor nor the Liquidating Trustees shall be deemed the agent of any of the holders of Claims in connection with the Cash held or distributed pursuant to this Plan. Neither the Reorganized Debtor nor the Liquidating Trustees shall be liable for any mistake of fact or law or error of judgment or any act or omission of any kind unless it constitutes gross negligence or willful misconduct on the part of the Reorganized Debtor and/or the Liquidating Trustees. The Reorganized Debtor and the Liquidating Trustees (and any trustee, director, officer, agent appointed, engaged or employed by either of them) shall be indemnified and held harmless, including the cost of defending such claims and attorneys' fees in seeking indemnification, by the Liquidating Trust and the Estate, as applicable, against any and all claims arising out of its, his, her or their duties under this Plan, except to the extent actions constitute gross negligence or willful misconduct. Such parties may conclusively rely, and shall be fully protected personally in acting upon any statement, instrument, opinion, report, notice, request, consent, order, or other instrument or document which it, he, she or they believe to be genuine and to have been signed or presented by the proper party or parties. Any trustee, director, officer, agent appointed, engaged or employed by the Reorganized Debtor and/or the Liquidating Trust may rely upon information previously generated by such party and such

additional information provided by current and/or former employees of the Debtor. Any act taken by or omission of the Reorganized Debtor or Liquidating Trust or any trustee, agent, attorney, officer, director, shareholder, employee or representative of the Reorganized Debtor or Liquidating Trust pursuant to an order of the Bankruptcy Court, after notice and hearing, as provided in Article VIII, Paragraph K of the Plan shall be conclusively established to be proper, fair, in the best interest of Creditors and consistent with the duties of the Reorganized Debtor and/or Liquidating Trust pursuant to the provisions of the Plan.

V. **No Bond Required.** The Reorganized Debtor's Board of Directors, the Liquidating Trustees and the Plan Agent, if any, shall serve without the necessity of obtaining or maintaining a bond. Sale of Real Property

W. **Sale of Real Property.** If not already sold by the Effective Date, the Reorganized Debtor shall continue the marketing of the Estate's real estate and the other Estate Assets and will collect all proceeds from the disposition of the Estate Assets. The Reorganized Debtor, acting through its officers, shall have the right to execute agreements, deeds and related documents required or necessary to sell such properties and transfer title thereto.

The officers of the Reorganized Debtor shall have the authority to execute all documents and instruments that are necessary for the closing of the sale of any of the Estate's assets, including, without limitation, deeds and bills of sale, and transfer tax returns and questionnaires, and such other and further documents and instruments as are necessary to effectuate the sales contemplated under the Plan. In so acting, such officers may execute documents without the necessity of seeking or obtaining an order of the Court provided, however, the Plan provides that the Reorganized Debtor may seek the approval of the Bankruptcy Court for any sale or disposition of any Assets. All sales will be made free and clear of all liens and interests, which shall attach to the proceeds.

X. **Auction Sale.** In the event that any of the Estate Assets is to be sold at a public auction, the auction may be conducted in accordance with the provisions set forth below.

Any auction or Estate Assets conducted by the Reorganized Debtor will be conducted, subject to applicable state law, in the following manner:

1. For at least three successive weeks prior to the auction, the Reorganized Debtor shall cause a notice of auction to be published in a newspaper of daily circulation in the city or town where the property to be sold is located.

2. The successful bidder at the auction shall be required at the closing to pay all outstanding state and local taxes constituting a lien on the Estate Assets (including, without limitation, county and local real estate taxes, school taxes and any special district taxes or charges), unpaid water and sewer charges and any other charges owed to any governmental entity or unit which are a lien or charge on the parcel(s), (such taxes and water and sewer and other charges shall hereafter be referred to as the "Charges"). Bids submitted at the auction will not include amounts due for the Charges. The charges due on the parcels to be paid by the successful bidder are in addition to the amount of its successful bid.

3. Immediately following the auction, the highest bidder will execute a sales contract in a form acceptable to the Reorganized Debtor, which will provide, among other things, that: (i) the closing of the sale will occur no later than Thirty (30) days after the date of the auction; (ii) the closing will not be conditioned upon financing by the purchaser; and (iii) time is of the essence with respect to the closing.

4. Any transfers occurring shall be free and clear of all liens, claims, encumbrances, equities and interests, of any nature or kind, and shall: (i) be exempt under any law imposing a stamp or similar tax, pursuant to §1146 of the Bankruptcy Code; and (ii) constitute a sale under §§105, 363(b), 363(f), 1123(b) (4) and 1129 of the Bankruptcy Code. All liens and encumbrances upon the properties will remain in effect until the closing of the sale. At closing, such liens and encumbrances shall be transferred to and attached to the proceeds of the sale in the same priority that existed immediately before the closing.

5. The sales contract shall provide for a Ten Percent (10%) down payment to be held by the Reorganized Debtor or by one of the Reorganized Debtor's attorneys in trust. The down payment will be made in Cash or official bank, certified or cashier's check drawn on and payable by a federally insured commercial bank (collectively, "Acceptable Funds"), and will be delivered to the Reorganized Debtor upon execution of the sales contract. If the highest bidder defaults under the sales contract, the Reorganized Debtor will be entitled to keep the down payment as liquidated damages and will deposit such funds into the Reorganized Debtor's account, which will thereafter be distributed in priority under the terms of this Plan.

6. If the highest bidder is unable to close within Thirty (30) days of the auction, the Reorganized Debtor will contact the party with the next highest bid and enter into a sales contract for the amount of such bid, provided however, that the sales contract with the second highest bidder(s) shall comply with the same requirements as the highest bidder including the requirements of paragraph X(3) above.

IX. RESOLUTION OF CLAIM DISPUTES

A. Reorganized Debtor Right to Object to Claims. The Reorganized Debtor shall have the right to object to Claims and resolve any such objections under the following terms.

1. **Procedures for Resolution of Disputes.** Disputes regarding the proper classification of Claims shall be resolved pursuant to the procedures established in the Bankruptcy Code, the Rules, other applicable laws and this Plan. The Bankruptcy Court shall have exclusive jurisdiction over disputes concerning the classification of Claims. Resolution of any such disputes shall not be a condition precedent to Confirmation or Consummation of the Plan.

2. **Resolution of Disputed Claims.** No Distribution or payment shall be made on account of a Disputed Claim until such Disputed Claim becomes an Allowed Claim. No Distribution or payment shall be made to any holder of an Allowed Claim who is also a potential defendant in an avoidance action under chapter 5 of the Bankruptcy Code until a decision is made by the Liquidating Trust or the Reorganized Debtor not to commence the potential avoidance action, or, in the event the potential avoidance action is commenced by the Liquidating Trust, until the resolution of such avoidance action. Notwithstanding this Section,

the making of a Distribution to such potential defendant or the lack of any objection Filed to such Allowed Claim on the basis of such potential avoidance action shall not constitute a waiver of any rights of the Liquidating Trust or the Reorganized Debtor to pursue such avoidance actions. For purposes of this Plan, such Distribution or payment on account of such Allowed Claim shall be held in the Disputed Claims Reserve Account as if it were a Disputed Claim. From and after the Effective Date, the Liquidating Trust or the Reorganized Debtor may settle or compromise any avoidance action under chapter 5 of the Bankruptcy Code pursuant to the terms of this Plan, subject to the approval of the Bankruptcy Court.

3. Objections to Claims. Unless otherwise ordered by the Bankruptcy Court, on and after the Effective Date, the Reorganized Debtor shall have the exclusive right to make, File and prosecute objections to and settle, compromise or otherwise resolve Disputed Claims, except that as to applications for allowances of Professional Fee Claims, objections may be made in accordance with the applicable Bankruptcy Rules by parties in interest. Subject to further extension by the Bankruptcy Court, the Reorganized Debtor shall File and serve a copy of each objection upon the holder of the Claim to which an objection is made on or before the latest to occur of: (i) one hundred-twenty (120) days after the Effective Date, (ii) sixty (60) days after a request for payment or proof of claim is timely Filed and properly served upon the Reorganized Debtor, or (iii) such other date as may be fixed by the Bankruptcy Court either before or after the expiration of such time periods. Notwithstanding any authority to the contrary, an objection to a Claim shall be deemed properly served on the claimant if the Reorganized Debtor effects service in any of the following manners (A) in accordance with Rule 4 of the Federal Rules of Civil Procedure, as modified and made applicable by Bankruptcy Rule 7004; (B) by first Class mail, postage prepaid, on the signatory of the proof of claim or other representative identified in the proof of claim or any attachment thereto at the address of the Creditor set forth therein; or (C) by first Class mail, postage prepaid, on any counsel that has appeared on the claimant's behalf in the Bankruptcy Case. From and after the Effective Date, the Reorganized Debtor may settle or compromise any Disputed Claim pursuant to the terms of this Plan, subject to the approval of the Bankruptcy Court.

4. Settlement of Disputed Claims. The Reorganized Debtor may settle or compromise any Disputed Claim without Bankruptcy Court approval provided such claim is fixed at an amount not greater than \$50,000.

5. Distributions when a Disputed Claim Becomes an Allowed Claim; or when an Objection to a Claim is Subsequently Disallowed. On the next Distribution Date following the time upon which a Disputed Claim is ultimately Allowed, holders of such Claims shall receive from the applicable Disputed Claims Reserve Account any amounts held in such Disputed Claims Reserve Account attributable to the Allowed amount of such Claim, as set forth in this Plan. Any Cash Distributions held in the applicable Disputed Claims Reserve Account for the benefit of a holder of a Disputed Claim, which is objection is subsequently resolved in favor of the holder of the Claim, in whole or in part, shall be distributed on the next Distribution Date, on a Ratable basis to holders of Allowed General Unsecured Claims and to any applicable Disputed Claims Reserve Account on account of any Disputed Claims as if such amounts had been distributed on the Effective Date.

B. No Recourse. Notwithstanding that the allowed amount of any particular Disputed Claim is reconsidered under the applicable provisions of the Bankruptcy Code and Bankruptcy Rules or is Allowed in an amount for which after application of the payment priorities established by this Plan there is insufficient value to provide a recovery equal to that received by other holders of Allowed Claims in the respective Class, no Claim holder shall have recourse against the Debtor, the Creditors' Committee, the Reorganized Debtor, the Estate, the Plan Agent, the Liquidating Trust or any of their respective professionals, consultants, officers, directors or trustees or their successors or assigns, or any of their respective property. However, except as specifically stated otherwise in this Plan, nothing in this Plan shall modify any right of a holder of a Claim under §502(j) of the Bankruptcy Code. **THE ESTIMATION OF CLAIMS AND ESTABLISHMENT OF RESERVES UNDER THIS PLAN MAY LIMIT THE DISTRIBUTION TO BE MADE ON INDIVIDUAL DISPUTED CLAIMS, REGARDLESS OF THE AMOUNT FINALLY ALLOWED ON ACCOUNT OF SUCH DISPUTED CLAIMS.**

C. Disputed Claims Reserve Account.

1. Establishment of Disputed Claims Reserve Account. No later than one hundred-twenty (120) days after the Effective Date and in conjunction with making all Distributions required to be made on and after the Effective Date, the Reorganized Debtor shall establish and fund the Disputed Claims Reserve Accounts, which shall be administered by the Reorganized Debtor.

2. Duties in Connection with Disputed Claims. The Reorganized Debtor shall (i) hold in reserve, for the benefit of Disputed Claims, Cash in an amount required by Order of the Bankruptcy Court (including any Order estimating Disputed Claims) or, in the absence of such Order, Cash equal to the Distributions that would have been made to a Person holding such Disputed Claim, if it were an Allowed Claim in a liquidated amount, if any, on the Effective Date, (ii) object to, settle or otherwise resolve Disputed Claims, (iii) make Distributions to holders of Disputed Claims that subsequently become Allowed Claims in accordance with this Plan, and (iv) distribute any remaining assets of the Disputed Claims Reserve Accounts, after resolving all Disputed Claims, to holders of Allowed Claims in accordance with this Plan.

3. Transfer of Distributions to Disputed Claim Reserve Accounts. On and after the Effective Date, any Distributions that would otherwise be made to the holders of Disputed Claims shall be transferred to the applicable Disputed Claims Reserve Account. Payments shall be made from the applicable Disputed Claims Reserve Account to a Person holding an Allowed Claim, which was previously a Disputed Claim, upon the first Distribution Date immediately following the date upon which such Claim became an Allowed Claim.

4. Duties of Claims Agent. The appointment of the Garden City Group, Inc. as claims agent ("Claims Agent") by an order of the Bankruptcy Court in the Bankruptcy Case shall terminate no later than the Effective Date and the Claims Agent shall perform no services for the Debtor, the Reorganized Debtor, the Creditors' Committee or the Liquidating Trust thereafter unless requested to do so in writing by the Reorganized Debtor or the Liquidating Trust. The Claims Agent shall deliver to the Debtor no later than the Confirmation Date a copy of the Claims Register and all Claims filed in the Bankruptcy Case.

X. GENERAL PROVISIONS

A. Transfer of Claims. In the event that a Person holding any Claim shall transfer such Claim, it shall immediately advise the Reorganized Debtor and the Liquidating Trust in writing of such transfer in the manner consistent with the provisions of this Plan. . The Reorganized Debtor and the Liquidating Trust shall be entitled to assume that each Creditor has not transferred its Claim unless and until the Reorganized Debtor or the Liquidating Trust, as the case may be, has received written notice to the contrary. Each transferee of a Claim shall take such Claim subject to the provisions of this Plan and to any request made, waiver or consent given or other action taken hereunder and, except as otherwise expressly provided in such notice, the Reorganized Debtor and the Liquidating Trust shall be entitled to assume conclusively that the transferee named in such notice shall thereafter be vested with all rights and powers under this Plan of the transferor.

B. Captions. Captions used in this Plan are for convenience only and shall not affect the interpretation of this Plan.

C. Severability. Should any provision in this Plan be determined to be unenforceable, such determination shall in no way limit or affect the enforceability and operative effect of any other provision of this Plan.

D. Successors and Assigns. The rights, benefits and obligations of any Person named or referred to in this Plan shall be binding upon, and shall inure to the benefit of, the successors or assigns of such Person.

E. Right to Take Action. After the Effective Date, the Liquidating Trustees (on behalf of the Liquidating Trust and for the benefit of the holders of Allowed General Unsecured Claims as trust beneficiaries) shall have the right to take any and all actions they deem necessary or appropriate to litigate, compromise or settle any Claim or Cause of Action, subject to Court Approval.

F. Distributions to Contested Claims. No Distribution shall be required to be made with respect to any portion of a Contested Claim pending the resolution thereof in the manner prescribed herein.

G. Termination of Committee. On the date by which (a) the Effective Date has occurred and (b) the Confirmation Order has become a Final Order, the Creditors' Committee shall cease to exist, and its members, employees and agents (including, without limitation, attorneys, financial advisors, accountants and other professionals) shall be deemed released and discharged from any further authority, duties, responsibilities and obligations relating to, arising from, or in connection with their service on the Creditors' Committee. Following the date that the Creditors' Committee ceases to exist, as provided in this Section, the Creditors' Committee will continue to exist (and the Creditors' Committee will continue to employ its counsel) after such date solely with respect to applications Filed pursuant to §§330 and 331 of the Bankruptcy Code seeking payment of fees and expenses incurred by any Professional. Following the date that the Creditors' Committee ceases to exist, as provided in this Section, the Liquidating Trustees shall be deemed the successor of the Creditors' Committee in respect of any proposed

amendment, modification or withdrawal of the Plan or any dispute relating to the implementation, execution, consummation or interpretation of the Plan and making Distributions hereunder.

H. Delivery of Notices, Correspondence and Payments by the Reorganized Debtor and the Liquidating Trust. The Reorganized Debtor and the Liquidating Trust reserve the right and ability to retain The Garden City Group, Inc., personnel presently employed by the Debtor and/or other personnel to deliver notices, correspondence and payments arising under or as a result of the Confirmation of this Plan.

I. Notices to the Debtor, Creditors' Committee, the Reorganized Debtor, the Liquidating Trust and Counsel. Until further notice is given by parties to the terms hereof, all notices or requests in connection with the Plan shall be in writing and will be deemed to have been given when received by overnight delivery service, facsimile transmission or email to the Debtor's counsel, the Creditors' Committee's counsel, the Reorganized Debtor, the Liquidating Trust, the Reorganized Debtor's Counsel or the Liquidating Trust's Counsel at the following addresses:

Debtor:

Michael A. D'Agostino
Commercial Mortgage & Finance Co.
115 Seventh Street
Rockford IL 61104-1275

Debtor's Counsel:

Gregory J. Jordan
Apostol, Kowal & Jordan, Ltd.
200 South Wacker Drive, 32nd Floor
Chicago, IL 60606

Creditors' Committee Counsel:

Bradley T. Koch
Holmstrom & Kennedy, P.C.
800 N. Church St.
P.O. Box 589
Rockford, IL 61105

Reorganized Debtor:

James H. Larson, M.D., President
10245 Tybow Trail
Roscoe, IL 61073

Liquidating Trust:

James H. Larson, M.D., Chairman
10245 Tybow Trail
Roscoe, IL 61073

Reorganized Debtor's Counsel:

Bradley T. Koch
Holmstrom & Kennedy, P.C.
800 N. Church St.
P.O. Box 589
Rockford, IL 61105

Liquidating Trust's Counsel:

Bradley T. Koch
Holmstrom & Kennedy, P.C.
800 N. Church St.
P.O. Box 589
Rockford, IL 61105

XI. RETENTION AND ENFORCEMENT OF CLAIMS

Pursuant to §1123(b)(3) of the Bankruptcy Code and subject to the terms and conditions contained herein, the Reorganized Debtor shall retain for the benefit of the holders of Allowed Claims the right to settle or adjust any Claim held by the Debtor or the Estate other than those related to any of the Causes of Action transferred to the Liquidating Trust.

Pursuant to §1123(b)(3) of the Bankruptcy Code and subject to the terms and conditions contained herein, the Liquidating Trust shall retain for the benefit of the holders of Allowed General Unsecured Claims the right to settle or adjust any of the Debtor or the Estate's rights related to any of the Causes of Action transferred to it.

XII. MODIFICATION OF THIS PLAN

A. Pre-Confirmation Modification. Modifications of this Plan may be proposed in writing by the Debtor and the Creditors' Committee at any time before the Confirmation Date, provided that such Plan, as modified, meets the requirements of §§1122 and 1123 of the Bankruptcy Code, and the Debtor shall have complied with §1125 of the Bankruptcy Code. Should any Creditor make a proper election under §1111(b) of the Bankruptcy Code, the Debtor and the Creditors' Committee reserve the right to modify this Plan as necessary to implement the requirement of §§1129(a)(7)(B) and 1129(b)(2)(A)(i) of the Bankruptcy Code to conform the terms of this Plan to the particular value of such Claim.

B. Post-Confirmation Modification. This Plan may be modified at any time after the Confirmation Date and before its substantial consummation, provided that such Plan, as modified, meets the requirements of §§1122 and 1123 of the Bankruptcy Code, and the Bankruptcy Court, after notice and a hearing, confirms such Plan, as modified, under §1129 of the Bankruptcy Code. For the purpose of modification of this Plan, substantial consummation shall be deemed to occur on the later of the date (1) when the confirmation order becomes final or (2) the dates set forth in Article XV of this Plan entitled "Closing the Estate".

C. Voting on the Plan. As a member of an Impaired Class, each holder of an Allowed Claim in Class 2, Class 3 and Class 4 is entitled to vote to accept or reject the Plan. 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 before the hearing on Confirmation of the Plan.

D. Presumed Acceptance of the Plan. There are no Classes of Claims that are unimpaired under this Plan and, therefore, presumed to have accepted the Plan.

E. Presumed Rejection of the Plan. Each of the holders of Equity Interests is deemed to have rejected the Plan pursuant to §1126(g) of the Bankruptcy Code.

F. Voting on Modification. A holder of a Claim or Equity Interest that has accepted or rejected this Plan shall be deemed to have accepted or rejected, as the case may be, such Plan as

modified, unless, within the time specified by the Bankruptcy Court, such holder changes its previous acceptance or rejection.

XIII. INVALIDATION OF LIENS AND DISCHARGE

All liens securing Claims which are not allowed pursuant to the provisions of this Plan and §§502 and 506 of the Bankruptcy Code shall be invalidated and deemed null and void and of no further force and effect. The provisions of this Plan, as confirmed, shall bind all Creditors and parties in interest, whether or not they accept this Plan and shall satisfy all Claims that arose before the Confirmation Date. The Distributions provided under this Plan shall be in exchange for and in complete satisfaction and release of all Claims against any of Estate Assets or the Property, including rights arising after the Petition Date and before the Confirmation Date. Unless otherwise specifically provided to the contrary herein or in the Confirmation Order, on and after the Confirmation Date, all holders of Claims shall be enjoined from asserting any Claim against the Debtor or its assets.

XIV. ACCEPTANCE OR REJECTION OF PLAN; EFFECT OF REJECTION BY CLASSES OF IMPAIRED CLAIMS OR EQUITY INTERESTS

A. **Reservation of §1129(b) Rights.** In the event that one or more Impaired Classes shall have failed to accept the Plan by the requisite majorities in accordance with §1126(c) and (d) of the Bankruptcy Code, the Debtor and the Creditors' Committee reserve the right to request that the Bankruptcy Court confirm the Plan in accordance with §1129(b) of the Bankruptcy Code or amend the Plan.

B. **§1129(a)(12) Compliance.** All fees payable under 28 U.S.C. §1930, as determined by the Bankruptcy Court at the hearing on confirmation of the Plan, either will have been paid or will be paid on the Effective Date as an Administrative Expense Claim.

C. **§1129(a)(13) Compliance.** Prior to the commencement of the Case, the Debtor maintained a plan providing for retiree benefits, as that term is defined in §1114 of the Bankruptcy Code. The Reorganized Debtor shall terminate the retirement plan to the extent that it is not terminated on the Effective Date. The Reorganized Debtor will meet obligations, if any, after the Effective Date of payment of all retiree benefits at the level established pursuant to subsections (e)(1)(B) or (g) of §1114 of the Bankruptcy Code, at any time prior to confirmation of the plan, for the duration of the period the Debtor has obligated itself to provide such benefits.

XV. CLOSING THE ESTATE

For purposes of §1127(b) of the Bankruptcy Code and for the closing of the estate, the following shall be conditions precedent to the substantial consummation of the Plan:

A. The Confirmation Order shall have become a Final Order, or such requirement shall have been waived in writing by the Debtor and the Creditors' Committee;

B. The date on which the Reorganized Debtor shall File a notice with the Bankruptcy Court that it resolved all objections to Claims and made a final payment to Class 3 and Class 4 Claimants;

C. The date on which the Reorganized Debtor and the Liquidating Trust shall jointly File a notice with the Bankruptcy Court that between them they resolved or abandoned all Causes of Action and made a final payment to Persons holding Class 4 Allowed General Unsecured Claims;

D. The date on which the Allowance or disallowance of all Class 4 Claims has been determined;

E. All adversary proceedings Filed by the Liquidating Trust and the Reorganized Debtor have been resolved or terminated;

F. The Reorganized Debtor has Filed an application for the entry of the final decree including a notice that the Liquidating Trustees on behalf of the Liquidating Trust have determined that the Liquidating Trust will no longer File or prosecute any further adversary proceedings in this Bankruptcy Case; and

G. The Bankruptcy Court shall enter an order granting the application for the entry of the final decree, which order shall become a Final Order.

XVI. RETENTION OF JURISDICTION

A. Notwithstanding confirmation of this Plan, the Bankruptcy Court shall retain jurisdiction for the following purposes:

1. Implementation of the provisions of this Plan and entry of orders in aid of confirmation of this Plan, including, without limitation, appropriate orders to protect the Estate from Creditor action.

2. Approve the sale and terms of sale of any of the Assets held by the Reorganized Debtor or the Liquidating Trust.

3. Adjudication of any Causes of Action, including Avoidance Actions including hearings pursuant to §363 of the Bankruptcy Code and Rule 9019 of the Rules to settle or otherwise dispose of Causes of Action.

4. Determination of any issues raised by papers Filed with the Bankruptcy Court on or before the Confirmation Date.

5. To determine the allowance, classification or priority of Claims upon objection by the Reorganized Debtor or any other party in interest entitled hereunder to file an objection (including the resolution of disputes regarding any Disputed Claims and claims for disputed Distributions) and the validity, extent, priority and nonavoidability of consensual and nonconsensual liens and other encumbrances;

6. To issue injunctions or take such other actions or make such other orders as may be necessary or appropriate to restrain interference with the Plan or its execution or implementation by any Person, to construe and to take any other action to enforce and execute the Plan, the Confirmation Order or any other order of the Bankruptcy Court, to issue such orders as may be

necessary for the implementation, execution, performance and consummation of the Plan and all matters referred to herein, and to determine all matters that may be pending before the Bankruptcy Court in the Bankruptcy Case on or before the Effective Date with respect to any Person;

7. To protect the property of the Estate and the Reorganized Debtor and the Liquidating Trust from claims against, or interference with, such property, including actions to quiet or otherwise clear title to such property or to resolve any dispute concerning liens, security interests or encumbrances on any property of the Estate, the Reorganized Debtor and the Liquidating Trust and to approve the sale, transfer or abandonment of any property of the Estate;

8. To resolve any dispute arising under or related to the implementation, execution, consummation or interpretation of the Plan and related agreements and other documents and the making of Distributions hereunder;

9. To determine any and all motions related to the rejection, assumption or assignment of executory contracts or unexpired leases, to determine assumption or rejection of any executory contract or unexpired lease under the terms of this Plan or to resolve any disputes relating to the appropriate cure amount or other issues related to the assumption of executory contracts or unexpired leases in the Bankruptcy Case;

10. Hear and determine all applications for compensation and reimbursement of expenses of Professionals under §§330, 331, 503(b), 1103 and 1129(a)(4) of the Bankruptcy Code for services rendered and expenses incurred on or before the Effective Date;

11. To determine all applications, motions, adversary proceedings, contested matters, actions and any other litigated matters instituted in and prior to the closing of the Bankruptcy Case, including any remands;

12. To modify the Plan under §1127 of the Bankruptcy Code, remedy any defect, cure any omission or reconcile any inconsistency in the Plan or the Confirmation Order so as to carry out its intent and purposes;

13. To issue such orders in aid of consummation of the Plan and the Confirmation Order, notwithstanding any otherwise applicable non-bankruptcy law, with respect to any Person, to the full extent authorized by the Bankruptcy Code;

14. To enable the Liquidating Trustees or the Reorganized Debtor to prosecute any and all proceedings to set aside liens or encumbrances and to recover any transfers, assets, properties or damages to which the Estate may be entitled under applicable provisions of the Bankruptcy Code or any other federal, state, or local laws except as may be waived under the terms of this Plan;

15. To hear and determine matters concerning state, local and federal taxes in accordance with §§346, 505 and 1146 of the Bankruptcy Code;

16. To resolve any dispute or matter arising under or in connection with any order of the Bankruptcy Court entered in the Bankruptcy Case;

17. To hear and resolve any of the Causes of Action involving the Debtor, the Reorganized Debtor, the Liquidating Trust, the Estate, Creditors or parties in interest that arose prior to the Effective Date or in connection with the implementation of the Plan, including actions to avoid or recover Avoidance Actions and other Causes of Action;

18. To resolve any disputes concerning any release of a non-Debtor hereunder or the injunction against acts, employment of process or actions against such non-Debtor arising hereunder;

19. To approve any Distributions, or objections thereto, under the Plan;

20. To approve any Claims settlement entered into by the Reorganized Debtor and/or the Liquidating Trust or setoff exercised by the Reorganized Debtor and/or the Liquidating Trust; and

21. To hear and determine any motion for allowance of fees and costs payable by the Debtor or the Estate.

22. Entry of a final decree closing the Bankruptcy Case.

XVII. RULES OF CONSTRUCTION.

A. **Generally.** For purposes of this Plan, (i) any reference in this Plan to an existing document or Exhibit Filed or to be Filed means such document or Exhibit as it may have been or may be amended, modified or supplemented; (ii) unless otherwise specified, all references in this Plan to Sections, Articles and Exhibits are references to Sections, Articles and Exhibits of or to this Plan; and (iii) the rules of construction set forth in §102 of the Bankruptcy Code and the Bankruptcy Rules shall apply unless superseded herein or in the Confirmation Order.

B. **Exhibits.** All Exhibits are incorporated into and are a part of this Plan as if set forth in full herein. Copies of Exhibits, after being Filed, can be obtained upon written request to Apostol, Kowal & Jordan, Ltd., 200 South Wacker Drive, 32nd Floor, Chicago Illinois 60606 (Attn: Gregory J, Jordan, Esq.), counsel to the Debtor.

C. **Time Periods.** In computing any period of time prescribed or allowed by this Plan, unless otherwise set forth or determined by the Bankruptcy Court, the provisions of Bankruptcy Rule 9006(a) shall apply.

D. Miscellaneous Rules.

1. The words "herein," "hereof," "hereunder," and other words of similar import refer to this Plan as a whole, not to any particular Section, subsection, or clause, unless the context requires otherwise.

2. Whenever it appears appropriate from the context, each term stated in the singular or the plural includes the singular and the plural, and each pronoun stated in the masculine, feminine or neuter includes the masculine, feminine and the neuter.

3. The Plan Proponents have inserted captions and headings to Articles and Sections of this Plan for convenience of reference only, and such captions and headings are not intended to be a part or to affect the interpretation of this Plan.

XVIII. DEFINITIONS AND INTERPRETATIONS

The following terms shall have the meanings set forth in this Article XVIII. Unless otherwise indicated, the singular shall include the plural, and capitalized terms shall at all times refer to the terms as defined in this Article XVIII. If the Debtor and the Creditors' Committee have not defined a term in this Plan, but that term is used in the Bankruptcy Code, then it shall have the meaning assigned to it in the Bankruptcy Code or in the decisions relating to the Bankruptcy Code.

A. **Administrative Expense:** shall mean any cost, Claim or expense of administration entitled to priority in accordance with the provisions of §§330, 503(b) and 507(a)(1) of the Bankruptcy Code, including without limitation, any actual and necessary expenses of preserving the Estate, any fees or charges assessed against or due from the Estate under 28 U.S.C. §1930, and all fees and expenses of Professional Persons incurred after the Confirmation Date but prior to the Effective Date, and any amounts required to be paid to assume executory contracts or unexpired leases in accordance with Article VI of this Plan.

B. **Allowed:** shall mean, with respect to a Claim, the extent to which a Claim is not objected to within the period fixed by the Bankruptcy Code, the Bankruptcy Rules or orders of the Bankruptcy Court, or otherwise allowed by a Final Order, including, without limitation, the Confirmation Order and (a) scheduled by the Debtor pursuant to the Bankruptcy Code and the Bankruptcy Rules in a liquidated amount and not listed as contingent, unliquidated or disputed, (b) timely Filed with the Bankruptcy Court pursuant to the Bankruptcy Code, the Bankruptcy Rules or any applicable orders of the Bankruptcy Court (i) as to which no objection to allowance has been interposed prior to the deadline by which time such objections must be Filed in accordance with this Plan or such other applicable period of limitation fixed by the Bankruptcy Code, Bankruptcy Rules or the Bankruptcy Court and as to which such deadline has expired or (ii) as to which an objection has been Filed and not withdrawn or settled and such objection has been determined by a Final Order (but only to the extent such Claim has been Allowed), or (c) late-Filed and Allowed by Final Order after notice and a hearing. Unless otherwise specified herein, in §506(b) of the Bankruptcy Code or by Order of the Bankruptcy Court, "Allowed" Claim, shall not, for the purposes of Distributions under this Plan, include for Prepetition Claims, interest on such Claim or Claims accruing from or after the Petition Date. For purposes of voting on the Plan only, the deadline by which objections to a Claim must be Filed in accordance with this Plan is August 1, 2009.

C. **Allowed General Unsecured Claim:** shall mean an Unsecured Claim to the extent that it is (1) not a Priority Claim, (2) an Unsecured Claim and (3) an Allowed Claim.

D. **Allowed Priority Tax Claim:** shall mean a Priority Claim to the extent that, pursuant to §507(a)(8) of the Bankruptcy Code, such Claim is determined by a Final Order or provided in the Plan to be both a Priority Tax Claim, and an Allowed Claim.

E. **Allowed Secured Claim:** shall mean a Secured Claim to the extent that, pursuant to §506(a) of the Bankruptcy Code, such Claim is determined by a Final Order or provided in the Plan to be both a Secured Claim, and an Allowed Claim.

F. **Allowed Unsecured Claim:** shall mean an Unsecured Claim to the extent that it is an Allowed Claim.

G. **Assets:** shall mean all assets of the Debtor of any nature whatsoever, including, without limitation, all property of the Estate pursuant to §541 of the Bankruptcy Code, Cash (including proceeds from the Sale), Causes of Action, accounts receivable, tax refunds, claims of right, interests and property, real and personal, tangible and intangible, and proceeds of all of the foregoing.

H. **Available Cash:** shall mean, as of any given Distribution Date, all of the Debtor's Cash, less the Expense Reserve and the balance of the Administrative Claims Fund.

I. **Avoidance Action:** shall mean any actual or potential claim or Cause of Action arising Chapter 5 of the Bankruptcy Code, or any similar provision of state law or any other law, rule, regulation, decree, order, statute or otherwise.

J. **Ballot:** shall mean the form or forms that will be distributed along with the Disclosure Statement to holders of Claims in Classes that are Impaired under this Plan and entitled to vote, which the holders of Impaired Claims may use to vote to accept or reject the Plan.

K. **Ballot Date:** shall mean the date set by the Bankruptcy Court as the last date for timely submission of a ballot accepting or rejecting the Plan.

L. **Bankruptcy Case:** shall mean the case Filed by the Debtor on the Petition Date seeking relief under Chapter 11 of the Bankruptcy Code.

M. **Bankruptcy Code:** shall mean title 11 of the United States Code, as amended from time to time.

N. **Bankruptcy Court:** shall mean the United States Bankruptcy Court for the Northern District of Illinois including the Hon. Manuel Barbosa, the United States Bankruptcy Judge presiding in this case, or such other judge or Court that may have jurisdiction over this case. In the event of the Filing an appeal, as used herein, the term shall also mean the United States District Court for the Northern District of Illinois, as the context dictates.

O. **Bankruptcy Rule:** shall refer to one of the Rules promulgated as a part of the Federal Rules of Bankruptcy Procedure, as amended from time to time.

P. **Bar Date:** shall mean the date set by the Bankruptcy Court as the last date for timely submission of a proof of claim on account of all Claims against the Estate other than Administrative Claims.

Q. **Business Day:** shall mean any day other than a Saturday, Sunday or a legal holiday as defined in the Rules at Rule 9006(a).

R. **Cash:** shall mean cash and cash equivalents in U.S. dollars.

S. **Causes of Action:** shall mean any and all claims, rights and causes of action that could have been brought by or on behalf of the Debtor, as debtor in possession, the Estate or the Creditors' Committee arising before, on or after the Petition Date, known or unknown, direct or indirect, reduced or not reduced to judgment, disputed or undisputed, suspected or unsuspected, in contract or in tort, at law or in equity or under any theory of law, including, but not limited to (i) those referred to in the Disclosure Statement, (ii) any and all claims, rights and causes of action the Debtor or the Estate may have against any Person as an Avoidance Action, (iii) derivative claims and (iv) right of setoff or recoupment, and claims on contracts or breaches of any duty imposed by law or equity.

T. **Claim:** shall mean any right to payment from the Debtor that arose on or before the Confirmation Date, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or any right to an equitable remedy for breach of performance, if such breach gives rise to a right of payment from the Debtor, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

U. **Claims Objection Bar Date:** shall mean the deadline fixed by the Bankruptcy Court for the Debtor on the Effective Date or the Reorganized Debtor thereafter or any other entity to File an objection to the allowance of any Claim.

V. **Class:** shall mean a group of Claims as classified in Article I under this Plan pursuant to §1123(a)(1) of the Bankruptcy Code.

W. **Collateral:** shall mean property in which the Debtor has an interest that secures, in whole or in part, the payment of a Claim.

X. **Confirmation:** shall mean the entry of the Confirmation Order on the docket of the Bankruptcy Court.

Y. **Confirmation Date:** shall mean the date of entry of the Confirmation Order in accordance with the provisions of the Bankruptcy Code; provided, however, that if the Confirmation Order is stayed on motion pending appeal, then the Confirmation Date shall be the date of entry of the Final Order vacating such stay.

Z. **Confirmation Hearing:** shall mean the hearing or hearings conducted by the Bankruptcy Court to consider confirmation of this Plan as this Plan may be modified hereafter from time to time.

AA. **Confirmation Order:** shall mean the Order of the Bankruptcy Court (or District Court as the case may be) confirming this Plan pursuant to §1129 of the Bankruptcy Code and approving the transactions contemplated in this Plan.

BB. **Contested Claim:** shall mean any Claim against the Debtor (a) subject to a timely objection or request for estimation or (b) that is otherwise disputed by the Debtor on the Effective Date or the Reorganized Debtor thereafter in accordance with applicable law, which objection, request for estimation or dispute has not been withdrawn or determined by a Final Order, or (c) that is not an Allowed Claim.

CC. **Creditor:** shall mean any Person having a Claim against the Debtor, including without limitation a Claim that arose on or before the Petition Date or a Claim against the Estate of any kind specified in §§502(g), 502(h) or 502(i) of the Bankruptcy Code.

DD. **Creditors' Committee:** shall mean the Official Committee of Unsecured Creditors appointed by the United States Trustee in the Bankruptcy Case on November 6, 2008, as amended on February 27, 2009.

EE. **Debtor:** shall mean Commercial Mortgage & Finance Co., the debtor and debtor in possession in the Bankruptcy Case.

FF. **Disallowed:** shall mean, with reference to any Claim against the Debtor, the extent to which a Disputed Claim is not Allowed whether by Final Order of the Bankruptcy Court, by agreement of the parties or otherwise.

GG. **Disclosure Statement:** shall mean the written disclosure statement (and all exhibits and schedules annexed thereto or referred to therein) that relates to this Plan, as amended, supplemented or modified, and that is prepared and distributed in accordance with §§1125, 1126(b) and/or 1145 of the Bankruptcy Code and/or other applicable law.

HH. **Disclosure Statement Order:** shall mean the order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to §1125 of the Bankruptcy Code.

II. **Disputed:** shall mean, with reference to any Claim against the Debtor or the Estate, a Claim or any portion thereof, that is not an Allowed Claim including, but not limited to, Claims (1) (a) that the Debtor has not scheduled, or that the Debtor scheduled at zero or as contingent, unliquidated or disputed, (b) that are the subject of a proof of claim that differs in nature, amount or priority from the Debtor's schedules, or (c) as to which an objection has been interposed as of the deadline fixed by the Plan, as may be extended in accordance with the Plan and (2) the allowance or disallowance of which is not yet the subject of a Final Order.

JJ. **Disputed Claim:** shall mean any Claim that is not an Allowed Claim as of the relevant date.

KK. **Disputed Claims Reserve Account:** shall mean an account or accounts established and funded by the Debtor, in consultation with the Creditors' Committee, and administered by the Reorganized Debtor for the payment of Disputed Claims that may become Allowed Claims after the Effective Date, and which shall hold Cash and/or or other Assets as applicable, for the benefit of the holders of Disputed Claims.

LL. **Distribution:** shall mean the delivery of Cash or other value to holders of Claims in accordance with this Plan of any Assets or other consideration distributed under Article VIII of this Plan.

MM. **Distribution Address:** shall mean the address set forth in the relevant proof of claim, as such address may have been updated pursuant to Bankruptcy Rule 2002(g). If no proof of claim is Filed in respect of a particular Claim, such defined term means the address set forth in the Debtor's Schedules, as such address may have been updated pursuant to Bankruptcy Rule 2002(g).

NN. **Distribution Date:** shall mean any date on which the Reorganized Debtor and/or Liquidating Trustees determine that an interim Distribution, under or in accordance with this Plan, should be made to holders of Allowed Class [#] Claims in light of, inter alia, resolutions of Disputed Claims, liquidation of Assets (including aggregate recoveries on account of Causes of Action), and the administrative costs of such a Distribution.

OO. **District Court:** shall mean the United States District Court for the Northern District of Illinois, Western Division including any United States District Judge presiding in this case or such other Court having jurisdiction over this case.

PP. **§1111(b) Election:** shall mean a timely election, pursuant to §1111(b) of the Bankruptcy Code and Rule 3014 of the Rules, by the Person holding a Claim secured by Collateral to have its entire Claim treated as a Secured Claim under this Plan notwithstanding §506(a) of the Bankruptcy Code.

QQ. **Effective Date:** shall mean the date on which the Confirmation Order becomes a Final Order.

RR. **Equity Interests:** shall mean share or shares of stock in the Debtor.

SS. **Estate:** shall mean the estate of Commercial Mortgage & Finance Co. in the Bankruptcy Case created by §541 of the Bankruptcy Code upon the commencement of the Bankruptcy Case.

TT. **Exhibit:** shall mean an exhibit to either this Plan or the Disclosure Statement.

UU. **Expense Reserve:** shall mean a reserve to be established by the Debtor, in consultation with the Creditors' Committee, on the Effective Date to be utilized by the Reorganized Debtor to effectuate the liquidation of the remaining Assets hereunder, including, without limitation, to fund any necessary or appropriate litigation against third parties, in accordance with this Plan. The Reorganized Debtor may replenish the Expense Reserve from Available Cash from time to time.

VV. **Fee Application:** shall mean an application of a Professional Person under §§330 or 331 of the Bankruptcy Code.

WW. **File, Filed, or Filing:** shall mean file, filed or filing with the Clerk of the Bankruptcy Court.

XX. **Final Claims Resolution Date:** shall mean the date on which the last Disputed Claim has been resolved, either by consent, order of the Bankruptcy Court or otherwise.

YY. **Final Order:** shall mean an order or judgment of the Bankruptcy Court which (a) has not been reversed, stayed, vacated, modified or amended, and as to which the time to appeal or seek review or rehearing has expired and as to which any right to appeal, reargue, petition for certiorari or rehearing has been waived in a manner satisfactory to the Debtor on the Effective Date or the Reorganized Debtor thereafter or the Liquidating Trust, as applicable, as a result of which such order shall have become final in accordance with applicable law or (b) if an appeal, reargument, certiorari or rehearing has been sought, the order of the lower court has been affirmed by the higher court to which the order was appealed or from which the reargument or rehearing was sought or certiorari has been denied and time to take further appeal or to seek certiorari or further re-argument or rehearing has expired.

ZZ. **Fund:** shall mean the total sum of monies to be paid out by the Debtor, the Reorganized Debtor and the Liquidating Trust under this Plan.

AAA. **General Unsecured Claim:** shall mean an unsecured Claim that is not an Administrative Claim, a Professional Fee Claim, a Priority Tax Claim, a Secured Claim or a Priority Claim.

BBB. **Impaired:** shall mean any Class of Claims that is impaired within the meaning of §1124 of the Bankruptcy Code.

CCC. **Instruments:** shall mean any note, bond, indenture or other instrument or document evidencing or creating any indebtedness or obligation of the Debtor.

DDD. **Lien:** shall mean any charge against, security interest in, encumbrance upon or other interest in property to secure payment of a debt or performance of an obligation.

EEE. **Order:** shall mean an order or judgment of the Bankruptcy Court as entered on the docket in the Bankruptcy Case as maintained by the Clerk of the Bankruptcy Court.

FFF. **Person:** shall mean a natural person, or any legal entity or organization, including, without limitation, any corporation, partnership (general or limited), limited liability company, limited liability partnership, business trust, unincorporated organization or association, joint venture, trust, estate, association, governmental body (or any agency, instrumentality or political subdivision thereof), or any other form of legal entity.

GGG. **Petition Date:** shall mean the date on which the petition commencing this case under Chapter 11 was Filed, which was October 8, 2008.

HHH. **Plan:** shall mean the Plan of Liquidation proposed by the Debtor and the Creditors' Committee either in its present form or as it might be amended or modified from time to time.

III. **Plan Proponents:** shall mean the Debtor and the Creditors' Committee.

JJJ. **Prepetition Claim:** shall mean any Claim arising prior to the Petition Date of the Debtor.

KKK. **Priority Claim:** shall mean any Claim entitled to priority pursuant to §507(a) of the Bankruptcy Code, other than (a) an Administrative Claim, or (b) a Priority Tax Claim.

LLL. **Priority Tax Claim:** shall mean that a Claim asserting priority under §507(a)(8) of the Bankruptcy Code.

MMM. **Professional Fees:** shall mean fees requested or to be requested under §§328, 330(a), 503 and/or 1103 of the Bankruptcy Code for the compensation of a professional for services rendered or expenses incurred in this case on or prior to the Effective Date.

NNN. **Professional Fee Claim:** shall mean a Claim for compensation, indemnification or reimbursement of expenses pursuant to §§328, 330, 331 or 503(b) of the Bankruptcy Code in connection with the Bankruptcy Case incurred on or after the Petition Date and prior to the Effective Date.

OOO. **Professional Person:** shall mean each Person retained or to be compensated pursuant to §§326, 327, 328, 330, 503(b) and 1103 of the Bankruptcy Code.

PPP. **Property:** shall mean assets owned or property rights acquired by the Debtor that the Debtor acquired after the Petition Date.

QQQ. **Reorganized Debtor:** shall mean the Debtor on and after the Effective Date.

RRR. **Ratable or Ratable Share:** shall mean a number (expressed as a percentage) equal to the proportion that an Allowed Claim or Disputed Claim, as applicable, bears to the aggregate amount or number of Allowed Claims plus Disputed Claims (in their aggregate Face Amount) in such Class as of the date of determination.

SSS. **Rules:** shall mean the Federal Rules of Bankruptcy Procedure recommended by the Judicial Conference of the United States, as prescribed by the Supreme Court of the United States, effective on the Petition Date in accordance with the provisions of 11 U.S.C. §2075, as the same have been and shall in the future be amended from time to time.

TTT. **Sale Proceeds:** shall mean the monies received net of commissions, closing costs and other sums required to be paid at a closing of the sale of one or more of the assets owned by the Debtor, whether prior to or following the confirmation date.

UUU. **Schedules:** shall mean the schedules of assets and liabilities and the statement of financial affairs, as each may be amended or supplemented from time to time, Filed by the Debtor as required by §521 of the Bankruptcy Code and the Bankruptcy Rules.

VVV. **Secured Claim:** shall mean a Claim of a Creditor, arising on or before the Petition Date that is purportedly secured by a lien on Collateral or subject to set off under §553 of the Bankruptcy Code, to the extent of the value of such Person's purported interest in the Debtor's interest in the property, or to the extent of the purported amount of the set-off, as

applicable; provided, however, that if the Creditor is entitled to make and makes the §1111(b) Election, the Creditor's Claim shall be a Secured Claim in the full amount of the Creditor's Claim.

WWW. **Subordinated Claim:** shall mean (a) a Claim subordinated for purposes of Distribution to any Unsecured Claim in accordance with §§510(b) or 510(c) of the Bankruptcy Code or (b) a Penalty Claim.

XXX. **Tax Claim:** shall mean any Claim for taxes against the Debtor, including without limitation any interest and penalties due thereon, entitled to priority in payment pursuant to §507(a)(8) of the Bankruptcy Code.

YYY. **Undersecured Claim:** shall mean the portion of an otherwise Secured Claim that exceeds the value of the Collateral given for such Claim.

ZZZ. **Undetermined Claim:** shall mean a Claim that is not an Allowed Claim or a Disallowed Claim, and is (a) a Contested Claim, (b) a Claim arising from the rejection of an executory contract or unexpired lease pursuant to this Plan, (c) a Claim that is unliquidated or contingent, (d) a Claim as to which, on or before the Effective Date, the Debtor has not made a determination whether or not to object or (e) an Administrative Expense.

AAAA. **Unimpaired:** shall mean any Claim that is not Impaired within the meaning of §1124 of the Bankruptcy Code

BBBB. **United States Trustee:** shall mean the office of the United States Trustee for the Northern District of Illinois.

CCCC. **Unsecured Claim:** shall mean a Claim that is not a Secured Claim, a Priority Claim, a Tax Claim or a Subordinated Claim.

DDDD. **Unsecured Creditor:** shall mean any Creditor that is Person holding an Unsecured Claim.

EEEE. **United States Trustee Fees:** shall mean all fees and charges assessed against the Estate by the United States Trustee and due pursuant to §1930 of title 28 of the United States Code.

XIX. OTHER MATERIALS

The attention of holders of Claims is directed to the Disclosure Statement.

COMMERCIAL MORTGAGE & FINANCE CO.

By: _____
Michael A. D'Agostino, President

By: /s/ Gregory J. Jordan
One of Its Attorneys

**OFFICIAL COMMITTEE OF UNSECURED
CREDITORS FOR THE ESTATE OF
COMMERCIAL MORTGAGE & FINANCE CO.**

By: _____
James H. Larson, M.D., Chairman

By: /s/ Bradley T. Koch
One of Its Attorneys

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