

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

In re:) Chapter 11
)
) Case No. 08-10601 (CSS)
DIAMOND GLASS, INC., *et al.*,¹)
) Jointly Administered
Debtors.)
)

DEBTORS' CHAPTER 11 PLAN OF LIQUIDATION

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Dated: August 15, 2008

¹ The Debtors in these proceedings are: Diamond Glass, Inc. (Tax ID No. XX-XXX8853); and DT Subsidiary Corp., a wholly owned subsidiary of Diamond Glass (Tax ID No. XX-XXX3494), each with a mailing address of 220 Division Street, Kingston, PA 18704. Diamond Glass, Inc. is formerly known as Diamond Glass Companies, Inc. and Diamond Triumph Auto Glass, Inc.

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INTRODUCTION

DG Liquidation Corp. f/k/a Diamond Glass, Inc. and DT Subsidiary Corp., the above-captioned debtors and debtors-in-possession (the “Debtors”), hereby propose the Debtors’ Chapter 11 Plan of Liquidation pursuant to § 1121 of the Bankruptcy Code. Reference is made to the Disclosure Statement² for risk factors and a summary and analysis of the Plan and certain related matters. The Debtors are the proponents of the Plan within the meaning of § 1129 of the Bankruptcy Code.

The Plan constitutes a liquidating chapter 11 plan for the Debtors. The Plan provides for the Debtors’ assets to be liquidated over time and for the proceeds of the asset sales to be distributed to holders of Allowed Claims in accordance with the terms of the Plan and the priority of claims provisions of the Bankruptcy Code. Except as otherwise provided by order of the Bankruptcy Court, distributions will occur on the Effective Date or as soon thereafter as is practicable and at various intervals thereafter. The Post-Confirmation Debtors will be dissolved as soon as practicable after the final distributions under the Plan.

Subject to the restrictions on modifications set forth in § 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in Articles XI and XII of the Plan, the Debtors expressly reserve the right to alter, amend or modify the Plan, one or more times, before its substantial consummation.

² All capitalized terms not defined in this introduction shall have the meanings set forth in Article I of the Plan.

**ARTICLE I.
DEFINITIONS**

1.1 **Scope of Definitions.** As used in the Plan, the following terms shall have the respective meanings specified below. Whenever the context requires, such terms shall include the plural as well as the singular number, the masculine gender shall include the feminine and the feminine gender shall include the masculine.

1.2 **“Administrative Claim”** shall mean a Claim under §§ 503(b) and 1114(e)(2) of the Bankruptcy Code that is entitled to priority under § 507(a)(2) of the Bankruptcy Code, for costs or expenses of administration of the Chapter 11 Case including, without limitation, any actual and necessary expenses of operating the business of the Debtors or preserving the estate incurred after the Petition Date, but not including fees and expenses of Professionals Filed under §§ 330, 331 or 503 of the Bankruptcy Code.

1.3 **“Administrative Claim Bar Date”** shall have the meaning set forth in § 2.3 of the Plan.

1.4 **“Administrative Claims Reserve”** shall have the meaning set forth in § 9.1 of the Plan.

1.5 **“Administrative Compensation Order”** shall mean the Order Authorizing Procedures For Interim Compensation And Reimbursement Of Expenses Of Professionals, dated as of April 23, 2008, which appears at Docket No. 164 in the Chapter 11 Case.

1.6 **“Allowed Claim”** or **“Allowed [] Claim”** shall mean: (a) any Claim, proof of which is filed with this Court or the Debtors’ court-appointed claims agent on or before the date designated by the Court as the last date(s) for filing proofs of claim with respect to such Claim, or which has been or hereafter is scheduled by the Debtors as liquidated in amount and not disputed or contingent and which, in either case, is a Claim as to which no objection to the allowance thereof has been filed within the applicable period of limitation (if any) for objection to Claims fixed by the Court, or as to which any objection has been determined by Final Order of the Court (allowing such Claim in whole or in part), or (b) a Claim that is allowed (i) in any contract, instrument, or other agreement entered into in connection with the Plan, (ii) in a Final Order or (iii) pursuant to the terms of the Plan. In accordance with § 502(d) of the Bankruptcy Code, a Claim held by any party that is subject to an Avoidance Action shall not be an Allowed Claim until such time as the avoidable transfer is returned, a final determination is made by the Bankruptcy Court that no avoidable transfer exists, or an agreement or settlement is reached between the Plan Administrator and any party that is subject to and Avoidance Action.

1.7 **“APA”** shall mean the Asset Purchase Agreement, dated as of June 20, 2008, by and between the Debtors and Purchaser, as approved by Order Pursuant To 11 U.S.C.

§§ 105(A), 363, And 365 And Federal Bankruptcy Rules 2002, 6004, 6006, And 9014, (A) Approving Asset Purchase Agreement And Authorizing The Sale Of Assets Of Debtors Outside The Ordinary Course Of Business; (B) Authorizing The Sale Of Assets Free And Clear Of All Liens, Claims, Interests And Encumbrances; (C) Authorizing The Assumption And Sale And Assignment Of Certain Executory Contracts And Procedures For The Assumption And Assignment Of Unexpired Leases; And (D) Granting Related Relief, which appears at Docket No. 345 in the Chapter 11 Case.

1.8 **“Avoidance Actions”** shall mean any and all claims and causes of action of the Debtors as of the Effective Date, arising under the Bankruptcy Code, including, without limitation, §§ 544 through 550 and 553 thereof, but not including any claim or cause of action against the Professionals or released under the Plan and/or Confirmation Order.

1.9 **“Avoidance Action Recoveries”** shall mean the recoveries from the litigation or settlement of Avoidance Actions.

1.10 **“Ballot”** shall mean the form or forms that will be distributed along with the Disclosure Statement to holders of Allowed Claims in classes that are Impaired under the Plan and entitled to vote, which the holders of Impaired Claims may use to vote to accept or reject the Plan.

1.11 **“Bankruptcy Cases”** shall refer collectively to the Chapter 11 case initiated by Diamond Glass, Inc. in the Bankruptcy Court, which case was assigned Case No. 08-10601 (CSS), and the Chapter 11 case initiated by DT Subsidiary Corp. in the Bankruptcy Court, which case was assigned Case No. 08-10602 (CSS).

1.12 **“Bankruptcy Code”** shall mean the Bankruptcy Reform Act of 1978, 11 U.S.C. §§ 101 et. seq., as now in effect or hereafter amended.

1.13 **“Bankruptcy Court”** shall mean the United States Bankruptcy Court for the District of Delaware.

1.14 **“Bankruptcy Rules”** shall mean the Federal Rules of Bankruptcy Procedure effective August 1, 1996 in accordance with the provisions of 28 U.S.C. § 2075, and the local rules of the United States Bankruptcy Court for the District of Delaware, as now in effect or hereafter amended.

1.15 **“Bar Dates”** shall mean the Claims Bar Date and the Government Bar Date, collectively.

1.16 **“Business Day”** shall mean any day other than a Saturday, Sunday or legal holiday as such term is defined in Bankruptcy Rule 9006.

1.17 **“Cash”** shall mean cash and cash equivalents, including, but not limited to, wire transfers, checks and other readily marketable direct obligations of the United States of America and certificates of deposit issued by banks.

1.18 **“Chapter 11 Case”** shall mean the jointly administered Bankruptcy Cases.

1.19 **“Claim”** shall mean a claim against the Debtors, whether or not asserted, as defined in § 101(5) of the Bankruptcy Code, or any portion thereof.

1.20 **“Claims Bar Date”** shall mean September 8, 2008.

1.21 **“Class”** shall mean a category of holders of Claims or Interests, which are substantially similar in nature to each other, as classified pursuant to Article III of the Plan.

1.22 **“Committee”** shall mean the Official Committee of Unsecured Creditors appointed by the Office of the United States Trustee on April 10, 2008, as reconstituted from time to time and existing as of the Confirmation Date.

1.23 **“Confirmation”** shall mean the entry of the Confirmation Order on the docket in the Chapter 11 Case.

1.24 **“Confirmation Date”** shall mean the date of entry of the Confirmation Order.

1.25 **“Confirmation Hearing”** shall mean the hearing to confirm the Plan.

1.26 **“Confirmation Order”** shall mean the order of the Bankruptcy Court confirming the Plan pursuant to § 1129 of the Bankruptcy Code.

1.27 **“Creditor”** shall mean any person or entity having a Claim against the Debtors, including without limitation a Claim that arose on or before the Petition Date or a Claim against the Debtors’ estate of any kind specified in §§ 502(g), 502(h) or 502(i) of the Bankruptcy Code.

1.28 **“Debtors”** shall mean DG Liquidation Corp. f/k/a Diamond Glass, Inc. f/k/a Diamond Glass Companies, Inc. f/k/a Diamond Triumph Auto Glass, Inc. and DT Subsidiary Corp.

1.29 **“Debtors-in-Possession”** shall mean the Debtors in the capacity, and with the status and rights, conferred by §§ 1107 and 1108 of the Bankruptcy Code.

1.30 **“DIP Credit Agreement”** shall mean that credit arrangement by and between the Debtors and Guggenheim, as provided in the Final Order Pursuant To 11 U.S.C. §§ 105, 361, 362, 363 And 364 And Rules 2002, 4001 And 9014 Of The Federal Rules Of Bankruptcy Procedure (1) Authorizing Incurrence By The Debtors Of Post-Petition Secured Indebtedness With Priority Over All Other Secured Indebtedness And With Administrative Superpriority, (2) Granting Liens, (3) Authorizing Use Of Cash Collateral By The Debtors Pursuant To 11 U.S.C. Section 363 And Providing For Adequate Protection, And (4) Modifying The Automatic Stay, dated as of April 24, 2008, which appears at Docket No. 186.

1.31 **“DIP Claim”** shall mean the Claims of Guggenheim, as the DIP Lender, arising under the DIP Credit Agreement.

1.32 **“DIP Lender”** shall mean Guggenheim.

1.33 **“Disclosure Statement”** shall mean the disclosure statement with respect to the Plan, as approved by the Bankruptcy Court as containing adequate information in accordance with § 1125 of the Bankruptcy Code, including all exhibits and annexes thereto and any amendments or modifications thereof.

1.34 **“Disputed Claim”** or **“Disputed [] Claim”** shall mean any Claim (i) 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 which has not been allowed pursuant to a Final Order or (ii) which has been scheduled in the Schedules as disputed and which has not otherwise been allowed.

1.35 **“Effective Date”** shall mean the date on which each of the conditions set forth in § 11.1 of the Plan have been satisfied or waived (if waivable).

1.36 **“Entity”** shall have the meaning set forth in § 101(15) of the Bankruptcy Code.

1.37 **“Excluded Assets”** shall have the meaning ascribed to said term in § 2.2 of the APA.

1.38 **“Fee Claim”** means a claim under §§ 328, 330(a), 503 or 1103 of the Bankruptcy Code for the compensation of a Professional for services rendered or expenses incurred in the Chapter 11 Case on or prior to the Effective Date (including expenses of the members of the Committee).

1.39 **“Fee Claim Bar Date”** shall have the meaning set forth in § 2.4 of the Plan.

1.40 **“File,” “Filed” or “Filing”** shall mean file, filed or filing with the Bankruptcy Court.

1.41 **“Final Order”** shall mean an order entered by the Bankruptcy Court or any other court exercising jurisdiction over the subject matter and the parties, as to which (i) no appeal, certiorari proceeding or other review or rehearing has been requested or is still pending, and (ii) the time for filing a notice of appeal or petition for certiorari or further review or rehearing has expired.

1.42 **“General Unsecured Claim”** shall mean any Claim against the Debtors, other than an Administrative Claim, Fee Claim, DIP Claim, Priority Tax Claim, Other Priority Claim or Miscellaneous Secured Claim.

1.43 **“Government Bar Date”** shall mean September 29, 2008.

1.44 **“Guggenheim”** shall mean Guggenheim Corporate Funding, LLC.

1.45 **“Impaired”** shall have the meaning set forth in § 1124 of the Bankruptcy Code.

1.46 **“Interest”** shall mean, with respect to the Debtors, any legal or equitable interest in the Debtors, including any ownership interest or right to acquire any ownership interest in the Debtors.

1.47 **“Liens”** shall mean valid and enforceable liens, mortgages, security interests, pledges, charges, encumbrances, or other legally cognizable security devices of any kind.

1.48 **“Miscellaneous Secured Claims”** shall mean all Secured Claims against the Debtors, including, without limitation, any secured real estate tax claims that may be asserted by governmental taxing authorities, but excluding the DIP Claim.

1.49 **“Other Priority Claim”** shall mean any Claim against the Debtors, other than an Administrative Claim or Priority Tax Claim, entitled to priority in payment under § 507(a) of the Bankruptcy Code.

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

1.51 **“Petition Date”** shall mean April 1, 2008, the date upon which the Debtors filed their petitions under Chapter 11 of the Bankruptcy Code.

1.52 **“Plan”** shall mean the Debtors’ Chapter 11 Plan of Liquidation, all exhibits hereto, and any amendments or modifications hereof.

1.53 **“Plan Administration Agreement”** shall mean the agreement governing, among other things, the retention and duties of the Plan Administrator, as described in § 7.2 of the Plan, which shall be in form and substance reasonably satisfactory to the Debtors and the Plan Administrator and substantially in the form contained in the Plan Supplement.

1.54 **“Plan Administrator”** shall mean the Person or Entity designated pursuant to the Plan Administration Agreement to oversee the windup of the affairs of the Debtors and Post-Confirmation Debtors following the Effective Date, administer the Plan, and act in accordance with the terms and authority granted in the Plan Administration Agreement, or any Court-approved successor.

1.55 **“Plan Administrator Expenses”** shall mean all actual and necessary costs and expenses incurred after the Effective Date in connection with winding-up the affairs of the Debtors and Post-Confirmation Debtors and the administration of the Plan, including, but not limited to, the Debtors’ and the Plan Administrator’s costs, expenses, legal fees, accounting fees, expert witness fees, and financial adviser fees incurred related to (i) filing and prosecuting objections to Claims; (ii) investigating, litigating, settling, negotiating, pursuing or taking any other action relating to the causes of action included within the Excluded Assets; (iii) performing the duties set forth in § 6.2 of the Plan and the Plan Administration Agreement; and (iv) all fees payable pursuant to § 1930 of Title 28 of the United States Code.

1.56 **“Plan Administrator Expense Reserve”** shall have the meaning ascribed to that term in § 11.2(e) of the Plan.

1.57 **“Plan Assets”** shall mean all rights, title and interest in, including the Proceeds from: (i) the Wind Down Fund; (ii) the Excluded Assets; and (iii) the Real Property Interests.

1.58 **“Plan Supplement”** shall mean the supplemental appendix to the Plan filed with the Bankruptcy Court on or before five (5) days prior to the Voting Deadline that will contain, among other things, the Plan Administration Agreement.

1.59 **“Post-Confirmation Debtors”** shall mean the Debtors after entry of the Confirmation Order.

1.60 **“Post-Effective Date Limited Notice List”** shall mean the notice described and created pursuant to § 13.15 of the Plan.

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

1.62 **“Proceeds”** shall mean the cash received from the sale, transfer, or collection of any Excluded Assets or the conversion of any Excluded Assets to cash in some other manner as contemplated in the Plan, whether received before or after the Effective Date.

1.63 **“Professionals”** shall mean those Persons (i) employed pursuant to an order of the Bankruptcy Court in accordance with §§ 327 and 1103 of the Bankruptcy Code and to be compensated for services rendered prior to the Effective Date, pursuant to §§ 327, 328, 329, 330 and 331 of the Bankruptcy Code, or (ii) for which compensation and reimbursement has been allowed by the Bankruptcy Court pursuant to § 503(b)(4) of the Bankruptcy Code.

1.64 **“Property”** means all property of the Debtors’ estates of any nature whatsoever, real or personal, tangible or intangible, previously or now owned by the Debtors, or acquired by the Debtors’ estate, as defined in § 541 of the Bankruptcy Code.

1.65 **“Pro Rata”** means, as of any distribution date, with respect to any Allowed Claim in any Class, the proportion that such Allowed Claim bears to the aggregate amount of all Claims, including Disputed Claims, in such Class.

1.66 **“Purchaser”** shall have the meaning ascribed to that term in the APA.

1.67 **“Purchased Assets”** shall have the meaning ascribed to that term in § 2.1 of the APA.

1.68 **“Real Property Interests”** shall mean any and all of the Debtors’ ownership, leasehold or possessory interests in real property, if any.

1.69 **“Remaining Actions”** shall mean any and all claims or causes of action of the Debtors which are not included within the Purchased Assets, other than Avoidance Actions.

1.70 **“Schedules”** shall mean the Debtors’ Schedules of Assets and Liabilities Filed pursuant to Bankruptcy Rule 1007, as they may be amended from time to time.

1.71 **“Secured Claim”** shall mean all or a portion of a debt existing on the Petition Date, secured by a properly perfected Lien on Property.

1.72 **“Substantive Consolidation Order”** shall mean that order entered by the Bankruptcy Court providing for the substantive consolidation of the Bankruptcy Cases, provided that the Confirmation Order may constitute the Substantive Consolidation Order.

1.73 “**Substantively Consolidated Debtors**” shall mean the Debtors after the Bankruptcy Cases have been substantively consolidated pursuant to the Substantive Consolidation Order.

1.74 “**Third Party Deposits**” shall mean the deposits identified in the Plan Supplement that remain uncollected by the Debtors as of the Effective Date.

1.75 “**Unimpaired**” shall mean any Claim that is not Impaired within the meaning of § 1124 of the Bankruptcy Code.

1.76 “**Voting Deadline**” shall mean the deadline established by Order of the Bankruptcy Court for receipt of Ballots voting to accept or reject the Plan.

1.77 “**Wind Down Fund**” shall mean those funds paid to the Debtors pursuant to §§ 2.3(b)(iii)(B) and (iv) of the APA for the purposes identified in said sections of the APA.

All terms not expressly defined herein shall have the respective meanings given to such terms in § 101 of the Bankruptcy Code or as otherwise defined in applicable provisions of the Bankruptcy Code.

Unless otherwise specified herein, any reference to an Entity as a holder of a Claim or Interest includes that Entity’s successors, assigns and affiliates.

The rules of construction set forth in § 102 of the Bankruptcy Code shall apply.

In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

ARTICLE II. METHOD OF CLASSIFICATION OF CLAIMS AND INTERESTS AND GENERAL PROVISIONS

2.1 General Rules of Classification. Generally, a Claim is classified in a particular Class for voting and distribution purposes only to the extent the Claim qualifies within the description of that Class, and is classified in another Class or Classes to the extent any remainder of the Claim qualifies within the description of such other Class or Classes. Unless otherwise provided, to the extent a Claim qualifies for inclusion in a more specifically defined Class and a more generally defined Class, it shall be included in the more specifically defined Class.

2.2 Administrative Claims, Priority Tax Claims, Fee Claims, and DIP Claim. Administrative Claims, Priority Tax Claims, Fee Claims, and the DIP Claim are not classified in the Plan. The treatment of and consideration to be received by holders of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Fee Claims, and Allowed DIP Claim pursuant to Article V of the Plan shall be in full and complete satisfaction, settlement,

release and discharge of such Claims. The Debtors' obligations in respect of such Allowed Administrative Claims, Priority Tax Claims, Fee Claims and DIP Claim shall be satisfied in accordance with the terms of the Plan.

2.3 Bar Date for Administrative Claims. Unless otherwise ordered by the Bankruptcy Court, requests for payment of Administrative Claims (except for Fee Claims), for the period from April 1, 2008 through and including the Effective Date, must be Filed and served on the Plan Administrator and counsel to the Plan Administrator no later than thirty (30) days after the Effective Date (the "Administrative Claim Bar Date"). Any Person that is required to file and serve a request for payment of an Administrative Claim and fails to timely file and serve such request, shall be forever barred, estopped and enjoined from asserting such Claim or participating in distributions under the Plan on account thereof. Objections to requests for payment of Administrative Claims (except for Fee Claims) must be Filed and served on the Plan Administrator, counsel to the Plan Administrator and the requesting party within ninety (90) days after the Effective Date, unless extended by the Bankruptcy Court.

2.4 Bar Date for Fee Claims. Unless otherwise ordered by the Bankruptcy Court, requests for payment of Fee Claims incurred for the period following April 1, 2008 through and including the Effective Date must be Filed and served on the Plan Administrator, counsel to the Plan Administrator and the United States Trustee, no later than forty-five (45) days after the Effective Date (the "Fee Claim Bar Date"). Any Person that is required to file and serve a request for payment of a Fee Claim and fails to timely file and serve such request, shall be forever barred, estopped and enjoined from asserting such Fee Claim or participating in distributions under the Plan on account thereof. Objections to Fee Claims must be Filed and served on the Plan Administrator, counsel to the Plan Administrator, the United States Trustee and the requesting party by within twenty (20) days after the request for payment of such Fee Claim has been filed, unless extended by the Bankruptcy Court.

ARTICLE III. CLASSIFICATION OF CLAIMS AND INTERESTS

3.1 Classes of Claims and Interests. The following is the designation of the Classes of Claims and Interests under the Plan:

- (a) Class 1 Claims shall consist of all Other Priority Claims.
- (b) Class 2 Claims shall consist of all Miscellaneous Secured Claims.
- (c) Class 3 Claims shall consist of all General Unsecured Claims.
- (d) Class 4 Interests shall consist of all Interests in the Debtors.

**ARTICLE IV.
SUBSTANTIVE CONSOLIDATION OF THE DEBTORS**

4.1 Substantive Consolidation. Solely in connection with distributions to be made to the holders of Allowed Claims, the Plan is predicated upon, and it is a condition precedent to confirmation of the Plan, that the Bankruptcy Court enter the Substantive Consolidation Order which shall provide for the substantive consolidation of the Bankruptcy Cases into a single case for purposes of this Plan and the distributions hereunder. Pursuant to such Substantive Consolidation Order (i) all assets and liabilities of the Substantively Consolidated Debtors will be deemed to be merged solely for purposes of this Plan and distributions to be made hereunder, (ii) the obligations of each Debtor will be deemed to be the obligation of the Substantively Consolidated Debtors solely for purposes of this Plan and distributions hereunder, (iii) any Claims filed or to be filed in connection with any such obligations will be deemed Claims against the Substantively Consolidated Debtors, (iv) all transfers, disbursements and distributions made by either Debtor will be deemed to be made by the Substantively Consolidated Debtors, and (v) all guarantees of the Debtors of the obligations of the other Debtor shall be deemed eliminated so that any Claim against either Debtor and any guarantee thereof executed by either Debtor shall be deemed to be one obligation of the Substantively Consolidated Debtors. Holders of Allowed Claims in each Class shall be entitled to their share of assets available for distribution to such Class without regard to which Debtor was originally liable for such Claim. The substantive consolidation proposed herein shall not affect each Debtors' obligation to file the necessary operating reports and pay any required fees pursuant to 28 U.S.C. § 1930(a)(6). Such obligations shall continue until a Final Order is entered closing, dismissing or converting the Chapter 11 Case. Unless the Bankruptcy Court has approved the substantive consolidation of the Bankruptcy Cases by a prior order, the Plan shall serve as, and shall be deemed to be, a motion for entry of an order substantively consolidating the Bankruptcy Cases. If no objection to substantive consolidation is timely filed and served, then the Substantive Consolidation Order may be entered the Court. If any such objection(s) is timely filed and served, a hearing with respect to the substantive consolidation of the estates and the objections thereto shall be scheduled by the Bankruptcy Court, which hearing may coincide with the Confirmation Hearing.

**ARTICLE V.
TREATMENT OF UNIMPAIRED CLAIMS**

5.1 Administrative Claims. Administrative Claims are not classified under the Plan. Except to the extent the holder of an Allowed Administrative Claim agrees otherwise, each holder of an Allowed Administrative Claim shall be paid in respect of such Allowed Claim (i) the full amount thereof in Cash, as soon as practicable after the later of (a) the Effective Date and (b) the date on which such Claim becomes an Allowed Claim, or upon other agreed terms, or (ii) such lesser amount as the holder of an Allowed Administrative Claim and the Post-Confirmation Debtors or the Plan Administrator might otherwise agree.

5.2 Priority Tax Claims. Priority Tax Claims are not classified under the Plan. Except to the extent the holder of an Allowed Priority Tax Claim agrees otherwise, each holder of an Allowed Priority Tax Claim shall be paid in respect of such Allowed Claim either (i) the

full amount thereof, without post-petition interest or penalty, in Cash, as soon as practicable after the later of (a) the Effective Date and (b) the date on which such Claim becomes an Allowed Claim or upon other agreed terms, or (ii) such lesser amount as the holder of an Allowed Priority Tax Claim and the Post-Confirmation Debtors or the Plan Administrator might otherwise agree.

5.3 Fee Claims. Fee Claims are not classified under the Plan. Except to the extent the holder of an Allowed Fee Claim agrees otherwise, each holder of an Allowed Fee Claim shall receive payment in full in Cash of such Fee Claim, as approved by the Bankruptcy Court on the later of the Effective Date and the first Business Day after the date that is five (5) Business Days after the date on which such Fee Claim is approved by the Bankruptcy Court.

5.4 DIP Claim. The DIP Claim is not classified under the Plan. The DIP Claim has been paid in full, in complete satisfaction of such Claim, through the Purchaser's acquisition of the Purchased Assets under the APA.

5.5 Class 1 Other Priority Claims. Class 1 Other Priority Claims are Unimpaired. Each holder of an Allowed Other Priority Claim shall be paid in respect of such Allowed Other Priority Claim (i) the full amount thereof in Cash, as soon as practicable after the later of (a) the Effective Date and (b) the date on which such Claim becomes an Allowed Claim or upon other agreed terms, or (ii) such lesser amount as the holder of an Allowed Other Priority Claim and the Post-Confirmation Debtors or the Plan Administrator might otherwise agree.

ARTICLE VI. TREATMENT OF IMPAIRED CLAIMS AND INTERESTS

6.1 Class 2 Miscellaneous Secured Claims. Class 2 Miscellaneous Secured Claims are Impaired. At the option of the Debtors, holders of Class 2 Claims shall receive either (i) the return of the collateral securing such Claim, (ii) the net proceeds from the disposition of the collateral securing such Claim without representation or warranty by or recourse against the Debtors, or (iii) such other treatment as shall be agreed to between the holder of a Class 2 Miscellaneous Secured Claim and the Plan Administrator. To the extent that a holder of an Allowed Class 2 Miscellaneous Secured Claim is undersecured, the unsecured portion of the Class 2 Miscellaneous Secured Claim will be treated as a Class 3 General Unsecured Claim. The holders of Claims in this Class, if any, are entitled to vote.

6.2 Class 3 General Unsecured Claims. Class 3 General Unsecured Claims are Impaired. The holders of Allowed Class 3 General Unsecured Claims against the Debtors shall receive their Pro Rata share of the Plan Assets after payment of the Allowed Administrative Claims, Priority Tax Claims, Fee Claims, the DIP Claim, Class 1 Other Priority Claims and Class 2 Miscellaneous Secured Claims.

6.3 Class 4 Interests. Class 4 Interests are Impaired. The holders of Class 4 Interests shall receive no distribution. On the Effective Date, all Class 4 Interests shall be

deemed canceled, null and void and of no force and effect. Accordingly, the holders of Class 4 Interests are deemed to reject the Plan and are not entitled to vote.

**ARTICLE VII.
MEANS FOR IMPLEMENTATION OF THE PLAN**

7.1 Corporate Action. On the Effective Date and automatically and without further action, (i) each existing member of the Board of Directors of the Debtors and all officers of the Debtors shall be deemed to have resigned or have been terminated by the Plan Administrator, and (ii) the Plan Administrator shall be deemed the sole officer, director and shareholder of the Post-Confirmation Debtors. The Plan will be administered by the Plan Administrator and all actions taken thereunder in the name of the Post-Confirmation Debtors shall be taken through the Plan Administrator.

7.2 Plan Administrator.

(a) Transfer of Powers.

- (i) On the Effective Date, the authority, power and incumbency of the Persons then acting as officers or directors of the Debtors shall be terminated and such officers and directors shall be deemed to have resigned.
- (ii) On the Effective Date, the Plan Administrator shall be deemed appointed and shall succeed to such powers as would have been applicable to the Debtors' officers and directors, and the Plan Administrator shall be deemed the sole shareholder of the Debtors. All property of the Post-Confirmation Debtors not distributed to holders of Allowed Claims on the Effective Date, including the Plan Assets, the Plan Administrator Expense Reserve and any moneys held in escrow or separate segregated accounts during the pendency of the Chapter 11 Case, shall be managed by the Plan Administrator and shall be held in the name of the Post-Confirmation Debtors free and clear of all Claims and Interests in the Debtors. To the extent necessary, the Plan Administrator shall be deemed to be a judicial substitute for the Debtors as the party-in-interest in the Chapter 11 Case, under the Plan or in any judicial proceeding or appeal to which the Debtors are a party, consistent with § 1123(b)(3)(B) of the Bankruptcy Code.
- (iii) The Plan Administrator shall not be liable for any action he takes or omits to take that he believes in good faith to be authorized or within his rights or powers unless it is ultimately and finally determined by a court of competent

jurisdiction that such action or inaction was the result of gross negligence or willful misconduct.

- (b) Compensation and Duties. The terms of the Plan Administrator's employment, including the Plan Administrator's duties and compensation, to the extent not set forth in the Plan, shall be set forth in the Plan Administration Agreement. The Plan Administrator shall act for the Post-Confirmation Debtors in a fiduciary capacity, as applicable to a board of directors, subject to the provisions hereof and the Plan Administration Agreement. The duties and powers of the Plan Administrator shall include the following, in all cases without further approval of the Bankruptcy Court, and otherwise consistent with and subject to the terms and conditions of the Plan and the Plan Administration Agreement:
- (i) To exercise all power and authority that may be exercised, commence all proceedings that may be commenced and take all actions that may be taken by any officer or director of the Post-Confirmation Debtors with like effect as if authorized, exercised and taken by unanimous action of such officers and directors, including consummating the Plan and all transfers thereunder on behalf of the Post-Confirmation Debtors;
 - (ii) To sell, dispose, litigate, settle or otherwise transfer, resolve for value or abandon, as appropriate, the Plan Assets;
 - (iii) To maintain accounts, make distributions and take other actions consistent with the Plan and the implementation hereof, including the establishment, evaluation, adjustment and maintenance of reserves for Disputed Claims, and reasonable reserves for the payment of unpaid Administrative Claims, Fee Claims, Priority Tax Claims, Other Priority Claims, Miscellaneous Secured Claims, any other unpaid liabilities or obligations of the Post-Confirmation Debtors and the expenses of administering and liquidating the Post-Confirmation Debtors and otherwise performing the obligations of the Plan Administrator under the Plan and the Plan Administration Agreement, in the name of the Post-Confirmation Debtors or the Plan Administrator;
 - (iv) To maintain all accounts, make distributions and take other actions consistent with the Plan, including the maintenance of appropriate reserves, in the name of the Debtors or Post-Confirmation Debtors;

- (v) To take all steps necessary to terminate or dissolve the corporate existence of the Debtors;
- (vi) To take all steps to prepare and file tax returns;
- (vii) To prosecute objections to Claims and compromise or settle any Claims (Disputed or otherwise);
- (viii) To make decisions regarding the retention or engagement of Professionals or other Persons by the Post-Confirmation Debtors and to pay, without court order, all reasonable fees and expenses accruing after the Effective Date;
- (ix) To perform any act authorized, permitted or required under any agreement, instrument or other document included in the assets of the Post-Confirmation Debtors, whether in the nature of an approval, consent, demand or notice thereunder or otherwise;
- (x) To purchase or create and carry all insurance policies, pay all insurance premiums and costs and recover all insurance proceeds as the Plan Administrator deems necessary or advisable;
- (xi) To investigate, prosecute, defend, commence or continue litigation or arbitration, compromise or settle any and all Avoidance Actions and Remaining Actions and to assert any claims, defenses, offsets or privileges related thereto;
- (xii) To pay all quarterly fees required under 28 U.S.C. § 1930; and
- (xiii) To implement and/or enforce all provisions of the Plan and to take all other actions not inconsistent with the provisions of the Plan which the Plan Administrator deems reasonably necessary or desirable with respect to administering the Plan, including executing any documents, instruments, contracts and agreements necessary and appropriate to carry out the powers and duties of the Plan Administrator.

7.3 Investments. All Cash held by the Plan Administrator in any accounts or otherwise shall be invested in accordance with § 345 of the Bankruptcy Code or as otherwise permitted by a Final Order of the Bankruptcy Court.

7.4 Resignation, Death or Removal. The Plan Administrator may be removed by the Bankruptcy Court upon application for good cause shown. In the event of a resignation or removal, death or incapacity of the Plan Administrator, the Bankruptcy Court shall designate

another Person to become Plan Administrator and thereupon the successor Plan Administrator, without any further act, shall become fully vested with all of the rights, powers, duties and obligations of his predecessor.

7.5 Winding Up Affairs. Following the Confirmation Date, the Post-Confirmation Debtors shall not engage in any business activities or take any actions, except those necessary to effectuate the Plan and wind up the affairs of the Debtors. On and after the Effective Date, the Plan Administrator may, in the name of the Debtors or Post-Confirmation Debtors, take such actions without supervision or approval by the Court and free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules, other than any restrictions expressly imposed by the Plan, Plan Administration Agreement or the Confirmation Order. Without limiting the foregoing, the Plan Administrator may, without application to or approval of the Bankruptcy Court, pay the reasonable charges that it incurs after the Effective Date for Professionals' fees and expenses that, but for the occurrence of the Effective Date, would constitute Allowed Fee Claims.

7.6 Release of Liens. Except as otherwise provided in the Plan or in any contract, instrument or other agreement or document created in connection with the Plan, on the Effective Date, all mortgages, deeds of trust, Liens or other security interests against the Property shall be released, and all the right, title and interest of any holder of such mortgages, deeds of trust, Liens or other security interests shall revert to the Post-Confirmation Debtors.

ARTICLE VIII. SALE AND DISPOSITION OF REMAINING ASSETS

8.1 On or after the Confirmation Date, the Debtors intend to consummate any necessary transactions regarding the sale or other disposition of the Plan Assets. With respect to any sale or disposition of the Real Property Interests on or subsequent to the date of the entry of the Confirmation Order, the Confirmation Order shall serve as an order granting a waiver of all stamp and/or transfer taxes pursuant to § 1146(c) of the Bankruptcy Code, if applicable.

8.2 The Cash on hand on the Effective Date and the Proceeds from the sale or other disposition of the Plan Assets shall be distributed to the holders of Allowed Claims in accordance with the terms of the Plan and the priorities of the Bankruptcy Code.

ARTICLE IX. DISTRIBUTIONS UNDER THE PLAN

9.1 Distributions for Claims Allowed as of the Effective Date. Except as otherwise provided herein or as ordered by the Bankruptcy Court, distributions to be made on account of Claims that are Allowed Claims as of the Effective Date shall be made on the Effective Date or as soon thereafter as is practicable. Any distribution to be made on the Effective Date pursuant to the Plan shall be deemed as having been made on the Effective Date if such distribution is made on the Effective Date or soon as thereafter is practicable. Any payment

or distribution required to be made under the Plan on a day other than a Business Day shall be made on the next preceding Business Day.

9.2 Reserve Accounts.

- (a) Reserve for Administrative Claims. On or as soon as practicable after the Effective Date, the Plan Administrator, shall establish and maintain a reserve (the “Administrative Claims Reserve”) from the Cash on hand on the Effective Date for Administrative Claims that may be asserted prior to or on the Administrative Claims Bar Date. As soon as practicable after the Administrative Claims Bar Date, the Plan Administrator shall release and distribute to holders of Allowed Claims the portion of the Administrative Claims Reserve not required to either (i) pay such Allowed Administrative Claims or (ii) be set aside as part of the Reserve for Disputed Administrative Claims under § 8.2(d) of the Plan.
- (b) Reserve for Fee Claims. On the Effective Date, the Plan Administrator shall establish and maintain reserves for payment of estimated unpaid Fee Claims. For purposes of establishing a reserve for Fee Claims, Cash will be set aside from the Cash on hand on the Effective Date in an amount equal to the amount that the Debtors and Committee anticipate will be incurred for fees and expenses by Professionals retained in the Chapter 11 Case up to and including the Effective Date. If, when, and to the extent any such Fee Claims become Allowed Claims by Final Order, the relevant portion of the Cash held in reserve therefor shall be distributed by the Plan Administrator to the Professional in a manner consistent with distributions to similarly situated Allowed Claims or as set forth in such Final Order approving the Fee Claim. The balance of such Cash, if any remaining after all Fee Claims have been resolved and paid, shall be distributed to the holders of Allowed Claims pursuant to the terms of the Plan. No payments or distributions shall be made with respect to a Fee Claim until such Fee Claim is Allowed by Final Order.
- (c) Reserves for Disputed Class 3 General Unsecured Claims and Certain Costs. Prior to any distributions to the holders of Allowed Class 3 General Unsecured Claims, the Plan Administrator shall establish and maintain reserves for all Disputed Class 3 General Unsecured Claims. With respect to such Disputed Class 3 General Unsecured Claims, if, when, and to the extent any such Disputed Class 3 Claims become an Allowed Class 3 General Unsecured Claim by Final Order, the relevant portion of the Cash held in reserve therefor shall be distributed by the Plan Administrator to the Claimant in a manner consistent with distributions to similarly situated Allowed Class 3 General Unsecured Claims. The balance

of such Cash, if any, remaining after all Disputed Class 3 General Unsecured Claims have been resolved and the costs of the Plan Administrator have been fully paid, shall be distributed Pro Rata to all holders of Allowed Class 3 General Unsecured Claims pursuant to the terms of the Plan. No payments or distributions shall be made with respect to a Claim that is a Disputed Claim pending the resolution of the dispute by Final Order. Notwithstanding anything else herein, the Plan Administrator shall not be required to make distributions to holders of Allowed Class 3 General Unsecured Claims until the objections to Disputed Class 3 General Unsecured Claims have been resolved and the Avoidance Actions and Remaining Actions have been fully litigated, settled, collected and/or abandoned.

- (d) Reserves for Disputed Administrative, Priority Tax and Other Priority Claims. On or as soon as practicable after the Effective Date, the Plan Administrator shall establish and maintain reserves for all Disputed Administrative, Priority Tax, and Other Priority Claims. With respect to such Disputed Administrative, Priority Tax, and Other Priority Claims, if, when, and to the extent any such Disputed Administrative, Priority Tax, and Other Priority Claims become an Allowed Administrative, Priority Tax, and Other Priority Claim by Final Order or by agreement of the parties, the relevant portion of the Cash held in reserve therefor shall be distributed by the Plan Administrator to the affected Claimant in a manner consistent with distributions to similarly situated Allowed Administrative, Priority Tax, and Other Priority Claims. The balance of such Cash, if any, remaining after all Disputed Administrative, Priority Tax, and Other Priority Claims have been resolved and the costs of the Plan Administrator have been fully paid, shall be distributed Pro Rata to all holders of Allowed Class 3 General Unsecured Claims pursuant to the terms of the Plan. No payments or distributions shall be made with respect to a Claim that is a Disputed Administrative, Priority Tax, and Other Priority Claim pending the resolution of the dispute, provided however, that the Plan Administrator may in his discretion pay any undisputed portion of a Disputed Administrative, Priority Tax, and Other Priority Claim.
- (e) Reserve for Plan Administrator Expenses. On the Effective Date or as soon as practicable after the Effective Date, the Plan Administrator shall establish and maintain a reserve in the amount of \$100,000 to be used to pay Plan Administrator Expenses (the "Plan Administrator Expense Reserve"). Upon the closing of the Chapter 11 Case, the Plan Administrator shall distribute any balance remaining in the Plan Administrator Expense Reserve to

the holders of the Allowed Class 3 General Unsecured Claims in accordance with the Plan.

9.3 Objections to Claims. Objections to Claims shall be filed with the Court and served upon each affected Creditor no later than one hundred and twenty (120) days after the Effective Date, provided, however, that this deadline may be extended by the Court upon motion of the Plan Administrator. Notwithstanding the foregoing, and except as otherwise provided in the Plan, unless an order of the Court specifically provides for a later date, any proof of claim filed after the Confirmation Date shall be automatically disallowed as a late filed claim, without any action by the Plan Administrator, unless and until the party filing such Claim obtains the written consent of the Plan Administrator to file such Claim late or obtains an order of the Court upon notice to the Plan Administrator that permits the late filing of the Claim. In the event any proof of claim is permitted to be filed after the Confirmation Date, the Plan Administrator shall have one hundred and twenty (120) days from the date of such written consent or order to object to such Claim, which deadline may be extended by the Court upon motion of the Plan Administrator, without notice to Creditors.

9.4 Settlement of Disputed Claims, Avoidance Actions and Third Party Deposits. Objections to Claims may be litigated to judgment or withdrawn, and may be settled with the approval of the Bankruptcy Court, except to the extent that such approval is not necessary as provided in this section. After the Effective Date, and subject to the terms of the Plan, the Plan Administrator may settle any Disputed Claim, Avoidance Action, Remaining Action or Third Party Deposit where the asserted amount of the Disputed Claim, Avoidance Action, Remaining Action or Third Party Deposit is \$75,000 or less without providing any notice or obtaining an order from the Bankruptcy Court. All proposed settlements of Disputed Claims, Avoidance Actions, Remaining Actions or Third Party Deposits where the asserted amount of the Disputed Claim, Avoidance Action, Remaining Action or Third Party Deposit exceeds \$75,000 shall be subject to the approval of the Bankruptcy Court in accordance with the following procedure: (1) the Plan Administrator shall give notice of the proposed settlement in accordance with § 12.15 and of the Plan; (2) the parties receiving notice shall have ten (10) days in which to File objections to the proposed settlement; (3) if no objections are timely Filed, the Plan Administrator may consummate such settlement without further order of the Court or may, at the Plan Administrator's election, request entry of an Order approving the proposed settlement by filing such proposed order under certificate of counsel with no further notice to any party; and (4) if objections are timely filed, the Plan Administrator shall notice the proposed settlement for hearing upon five (5) Business Days' notice.

9.5 Unclaimed Property. If any interim distribution remains unclaimed for a period of ninety (90) days after it has been delivered (or attempted to be delivered) in accordance with the Plan to the holder entitled thereto, such unclaimed property, along with any subsequent distribution to be made in accordance with the Plan, shall be forfeited by such holder whereupon all right, title and interest in and to the unclaimed property shall be held in reserve by the Plan Administrator to be distributed to other holders of Allowed Claims in accordance with the terms of the Plan and this paragraph. Distributions unclaimed for a period of ninety (90) days after they have been delivered (or attempted to have been delivered) in accordance with the Plan to the holders entitled thereto that: (i) are intended to be final distributions; and (ii) do not exceed

\$250,000 in the aggregate, shall, as soon thereafter as practicable, be donated to an organization officially recognized by the Internal Revenue Service as a charitable organization, a contribution to which would be deductible for federal income tax purposes, in the name of the unsecured creditors of the Debtors to an organization designated by the Plan Administrator; provided, however, that if the giving over of such unclaimed property under this section would result in a donation exceeding \$250,000 in the aggregate, then such unclaimed property shall not be eligible for donation under this section, and the unclaimed property shall be held in reserve by the Plan Administrator to be distributed to other holders of Allowed Class 3 General Unsecured Claims in accordance with the Plan. The Post-Confirmation Debtors shall be entitled to any tax or other benefits associated with any donation made under this section.

9.6 Withholding from Distributions. Any federal, state, or local withholding taxes or other amounts required to be withheld under applicable law shall be deducted from distributions hereunder. All Persons holding Claims shall be required to provide any information necessary to effect the withholding of such taxes. The Plan Administrator may withhold from amounts distributable to any Entity any and all amounts, determined in the Plan Administrator's reasonable, sole discretion, to be required by any law, regulation, rule, ruling, directive, or other governmental requirement.

9.7 Fractional Cents. Any other provision of the Plan to the contrary notwithstanding, no payment of fractions of cents will be made. Whenever any payment of a fraction of a cent would otherwise be called for, the actual payment shall reflect a rounding down of such fraction to the nearest whole cent.

9.8 Payments of Less than Twenty-Five Dollars. If a Cash payment otherwise provided for by the Plan with respect to an Allowed Claim would be less than twenty-five (\$25.00) dollars (whether in the aggregate or on any payment date provided in the Plan), notwithstanding any contrary provision of the Plan, the Plan Administrator shall not be required to make such payment and such funds shall be held in reserve by the Plan Administrator to be distributed to the holders of Allowed Class 3 General Unsecured Claims in accordance with the Plan.

9.9 Setoffs. Except as otherwise provided for herein, the Plan Administrator may, but shall not be required to, set off against any Claim and the payments to be made pursuant to the Plan in respect of such Claim, claims of any nature whatsoever the Debtors or their estates may have against the Creditor, but neither the failure to do so nor the allowance of a Claim hereunder shall constitute a waiver or release by the Debtors or their estates of any Claim they may have against the Creditor.

ARTICLE X. UNEXPIRED LEASES AND EXECUTORY CONTRACTS

10.1 Rejection of Pre-Petition Leases and Executory Contracts. Any and all pre-petition leases or executory contracts not previously rejected by the Debtors, unless expressly assumed pursuant to orders of the Bankruptcy Court prior to the Confirmation Date or

the subject of a motion to assume or assume and assign pending on the Confirmation Date, shall be deemed rejected by the Debtors effective as of the Confirmation Date, but subject to the occurrence of the Effective Date.

10.2 Proof of Claim for Rejection Damages. All proofs of claim with respect to claims arising from the rejection of executory contracts or leases shall, unless another order of the Bankruptcy Court provides for an earlier date, be Filed with the Bankruptcy Court within thirty (30) days after the mailing of notice of entry of the Confirmation Order. Unless otherwise permitted by Final Order, any proof of claim that is not Filed prior to the Confirmation Date (other than those claims arising from the rejection of executory contracts or leases which may be Filed within thirty (30) days after mailing of the notice of entry of Confirmation Order as set forth above) shall automatically be disallowed as a late filed claim, without any action by the Post-Confirmation Debtors or the Plan Administrator, and the holder of such Claim shall be forever barred from asserting such Claim against the Debtors, their estates or property or the Post-Confirmation Debtors.

ARTICLE XI. CONDITIONS PRECEDENT TO EFFECTIVENESS OF THE PLAN

11.1 Conditions to Effectiveness of the Plan. The Plan shall not become effective unless and until each of the following conditions has been satisfied or waived:

- (a) The Bankruptcy Court shall have entered the Confirmation Order;
and
- (b) The Confirmation Order shall have become a Final Order.

11.2 Waiver of Conditions. The Debtors may at any time, without notice or authorization of the Bankruptcy Court, waive the conditions set forth in § 11.1(b). The failure of the Debtors to satisfy or waive such condition may be asserted by the Debtors regardless of the circumstances giving rise to the failure of such condition to be satisfied (including any action or inaction by the Debtors). The Debtors reserve the right to assert that any appeal from the Confirmation Order shall be moot after consummation of the Plan.

11.3 Effect of Failure of Condition. In the event that the condition specified in § 11.1(b) of the Plan has not occurred or been waived on or before sixty (60) days after the Confirmation Date, the Confirmation Order may be vacated upon order of the Court after motion made by the Plan Administrator or any party in interest and an opportunity for parties in interest, including the Committee, to be heard.

ARTICLE XII. RETENTION OF JURISDICTION

12.1 Retention of Jurisdiction by the Court. Following the Confirmation Date and until such time as all payments and distributions required to be made and all other

obligations required to be performed under the Plan have been made and performed by the Plan Administrator and a final decree has been entered closing this Chapter 11 Case, the Bankruptcy Court shall retain jurisdiction as is legally permissible, including, without limitation, for the following purposes:

- (a) Claims. To determine the allowance, classification, or priority of Claims against the Debtors upon objection by the Plan Administrator or any other party in interest;
- (b) Injunction, etc. 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 Chapter 11 Case on or before the Effective Date with respect to any Entity;
- (c) Professional Fees. To determine any and all applications for allowance of compensation and expense reimbursement of Professionals for periods before the Effective Date, as provided for in the Plan;
- (d) Certain Priority Claims. To determine the allowance and classification of any Priority Tax Claims, Other Priority Claims, Administrative Claims or any request for payment of an Administrative Claim;
- (e) Dispute Resolution. To resolve any dispute arising under or related to the implementation, execution, consummation or interpretation of the Plan, Plan Administration Agreement and/or Confirmation Order and the making of distributions hereunder and thereunder, including, without limitation, any dispute concerning payment of professional fees and expenses of the Plan Administrator;
- (f) Executory Contracts and Unexpired Leases. To determine the allowance of any Claims resulting from the rejection of executory contracts and unexpired leases;
- (g) Actions. To determine all applications, motions, adversary proceedings, contested matters, actions, and any other litigated matters instituted in the Chapter 11 Case by or on behalf of the Debtors, Post-Confirmation Debtors or the Plan Administrator,

including, but not limited to, the Avoidance Actions, actions to collect the Third Party Deposits or the Remaining Actions commenced by the Debtors, Post-Confirmation Debtors or the Plan Administrator, and any remands;

- (h) General Matters. To determine such other matters, and for such other purposes, as may be provided in the Confirmation Order or as may be authorized under provisions of the Bankruptcy Code or as may be requested by the Plan Administrator;
- (i) Plan Modification. To modify the Plan, under § 1127 of the Bankruptcy Code, to 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;
- (j) Aid Consummation. 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 or Entity, to the full extent authorized by the Bankruptcy Code;
- (k) Protect Property. To protect the Property from adverse Claims or interference inconsistent with the Plan, including to hear actions to quiet or otherwise clear title to such Property based upon the terms and provisions of the Plan;
- (l) Abandonment of Property. To hear and determine matters pertaining to abandonment of Property;
- (m) Implementation of Confirmation Order. To enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified or vacated; and
- (n) Final Order. To enter a final decree closing the Chapter 11 Case.

ARTICLE XIII. MISCELLANEOUS PROVISIONS

13.1 Pre-Confirmation Modification. On notice to and opportunity to be heard by the United States Trustee and the Committee, the Plan may be altered, amended or modified by the Debtors before the Confirmation Date as provided in § 1127 of the Bankruptcy Code.

13.2 Post-Confirmation Immaterial Modification. After the Confirmation Date and prior to substantial consummation of the Plan, as defined in § 1101(2) of the Bankruptcy Code, the Plan Administrator may, under § 1127(b) of the Bankruptcy Code, institute proceedings in the Bankruptcy Court to remedy any defect of omission or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, and such

matters as may be necessary to carry out the purposes and effects of the Plan and such proceedings do not materially adversely affect the treatment of holders of the Claims under the Plan; provided, however, that prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or order of the Bankruptcy Court.

13.3 Withdrawal or Revocation of the Plan. The Debtors reserve the right to revoke or withdraw the Plan prior to the Confirmation Date. If the Debtors revoke or withdraw the Plan, then the Plan shall be deemed null and void.

13.4 Payment of Statutory Fees. All fees payable pursuant to § 1930 of Title 28 of the United States Code shall be paid on the Effective Date (if due) or by the Plan Administrator when otherwise due out of the reserve set aside on the Effective Date by the Plan Administrator to fund Plan Administrator Expenses.

13.5 Role of the Committee. Upon the Effective Date, the appointment and existence of the Committee shall terminate for all purposes.

13.6 Successors and Assigns. The rights, benefits and obligations of any Person or Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of the heirs, executors, administrators, successors and/or assigns of such Persons or Entities.

13.7 Termination of 401(k) Plan. Any § 401(k) savings plans maintained by the Debtors for their employees shall be terminated by the Debtors and the Plan Administrator in accordance with applicable law.

13.8 Releases. Notwithstanding any other provision of this Plan, no holder of a Claim or an Interest, or other party in interest, and no successors or assigns of the foregoing, shall have any Claim, cause of action, or other legal or equitable right against the Debtors, members of the Committee in their representative capacities, the Professionals retained in the Debtors' Chapter 11 Case, and/or any of such parties' respective current or former members, officers, directors, employees, advisors, attorneys, business consultants, representatives, financial advisors, investment bankers, fund managers or agents and any of such parties' successors and assigns (collectively, the "Released Parties"), for any act or omission from the Petition Date through the Effective Date in connection with, relating to, or arising out of the Debtors' Chapter 11 Case, the pursuit of confirmation of the Plan, the consummation of the Plan, the administration of the Plan or the property to be distributed under the Plan, except for their willful misconduct or gross negligence. Provided that they act in good faith, in all such instances, the above-referenced parties shall be and have been entitled to reasonably rely on the advice of counsel with respect to their duties and responsibilities in connection with the Debtors' Chapter 11 Case and under the Plan.

13.9 Exculpation. Except as otherwise provided by the Plan or the Confirmation Order, on the Effective Date, the Debtors, the Committee and its members, and

their respective present and former officers, directors, members, managers, employees, representatives, counsel and other agents, successors and assigns shall be deemed released by each of them against the other, and by all holders of Claims or Interests, of and from any claims, obligations, rights, causes of action and liabilities for any act or omission in connection with, or arising out of, the Chapter 11 Case, including, without limiting the generality of the foregoing, all sales of Property, assets, the Disclosure Statement, the pursuit of approval of the Disclosure Statement, the pursuit of confirmation of the Plan, the consummation of the Plan or the administration of the Plan or the property to be distributed under the Plan, except for acts or omissions which constitute willful misconduct or gross negligence, and all such Persons, in all respects, shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan and under the Bankruptcy Code.

13.10 Injunction. Except as otherwise provided in the Plan or an order of the Court, on and after the Confirmation Date, all Persons or Entities who have held, hold or may hold Claims against or Interests in the Debtors are, with respect to any such Claims or Interests, permanently enjoined from and after the Confirmation Date, from: (a) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Post-Confirmation Debtors, any of their property, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, any of the foregoing Persons or Entities, or any property of any such transferee or successor; (b) enforcing, levying, attaching (including, without limitation, any pre-judgment attachment), collecting or otherwise recovering by any manner or means, whether directly or indirectly, of any judgment, award, decree or order against the Post-Confirmation Debtors, Released Parties (as defined in § 13.8 above), any of their property, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, any of the foregoing Persons or Entities; (c) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Post-Confirmation Debtors, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, any of the foregoing Persons or Entities or against any property of the foregoing Persons or Entities; (d) asserting any right of setoff, subrogation, or recoupment of any kind, directly or indirectly, against any obligation due the Post-Confirmation Debtors, any of their property, or any direct or indirect transferee of any property of, or successor in interest to, any of the foregoing Persons or Entities; and (e) taking any actions in any place and in any manner whatsoever that do not conform to or comply with the provisions of the Plan.

13.11 Satisfaction of Claims. The treatment of and consideration to be received by holders of Allowed Claims pursuant to this Plan shall be in full satisfaction, settlement and release of such holders' respective Claims against the Debtors.

13.12 No Liability for Solicitation or Participation. Pursuant to section 1125(e) of the Bankruptcy Code, Persons that solicit acceptances or rejections of this Plan, in good faith and in compliance with the applicable provisions of the Bankruptcy Code, shall not be liable, on account of such solicitation or participation, for violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of this Plan.

13.13 Term of Injunctions and Stays. Unless otherwise provided herein or in another order of the Bankruptcy Court, all injunctions or stays provided for in the Chapter 11 Case pursuant to sections 105, 362 and 524 of the Bankruptcy Code, or otherwise, and in effect on the Confirmation Date shall remain in full force and effect until the Effective Date.

13.14 Cancellation of Instruments. Unless otherwise provided for herein, on the Effective Date, all promissory notes, instruments, indentures, agreements, or other documents evidencing, giving rise to, or governing any Claim against the Debtors shall represent only the right, if any, to participate in the distributions contemplated by this Plan. All shares, instruments or other evidences of any Interest in Class 4 that constitute Interests in the Debtors shall be cancelled as of the Effective Date, to be replaced by one new share issued to the Plan Administration Agent.

13.15 Preservation of Insurance. The Debtors' discharge and release from and payment of all Claims as provided in the Plan shall not diminish or impair the enforceability of any insurance policy that may cover Claims against the Debtors (including, without limitation, their officers or directors) or any other Person or Entity.

13.16 Cramdown. To the extent any Impaired Class of Claims or Interest holders entitled to vote on the Plan votes to reject the Plan, the Debtors reserve the right to request confirmation of the Plan under § 1129(b) of the Bankruptcy Code with respect to such Class(es).

13.17 Governing Law. Except to the extent that the Bankruptcy Code is applicable, the rights and obligations arising under the Plan shall be governed by and construed and enforced in accordance with the laws of the State of Delaware.

13.18 Notices. Any notice required or permitted to be provided under the Plan shall be in writing and served by either (a) certified mail, return receipt requested, postage prepaid, (b) hand delivery or (c) reputable overnight courier service, freight prepaid, to be addressed as follows:

If to the Debtors or the Post-Confirmation Debtors:

DG Liquidation Corp. and
DT Subsidiary Corp.
220 Division Street
Kingston, PA 18704
Attn: William Cogswell

with a copy to:

FOLEY & LARDNER LLP
90 Park Avenue
New York, NY 10005
Telephone: (212) 682-7474
Facsimile: (212) 687-2329
Attn: Michael P. Richman, Esq.
Mark A. Salzberg, Esq.
Erica L. Morabito, Esq.

-and-

YOUNG, CONAWAY STARGATT & TAYLOR, LLP
The Brandywine Building
1000 West Street, 17th Floor
P.O. Box 391
Wilmington, DE 19899-0391
Telephone: (302) 571-6600
Facsimile: (302) 571-1253
Attn: Michael R. Nestor, Esq.
Joseph M. Barry, Esq.

Prior to the Effective Date,
if to the Committee:

COZEN O'CONNOR
1201 N. Market Street
Suite 1400
Wilmington, DE 19808
Telephone: (302) 295-2028
Facsimile: (302) 295-2013
Attn: John T. Carroll, III, Esq.
Jeffrey R. Waxman, Esq.

13.19 Post-Confirmation Notice. As of the Effective Date, there shall be a Post-Effective Date Limited Notice List. Persons on such Post-Effective Date Limited Notice List will be given notices of, and a right to object to, certain matters under the Plan (as described herein). Any Person desiring to be included in the Post-Effective Date Limited Notice List must (1) File a request to be included on the Post-Effective Date Limited Notice List and include thereon its name, contact person, address, telephone number, email address and facsimile number, within thirty (30) days after the Effective Date, and (2) concurrently serve a copy of its request to be included on the Post-Effective Date Limited Notice List on the Plan Administrator. On or before sixty (60) days after the Effective Date, the Plan Administrator shall compile a list of all Persons on the Post-Effective Date Limited Notice List and File such list with the Bankruptcy Court and serve a copy of such list on the U.S. Trustee. The U.S. Trustee shall be

automatically included on the Post-Effective Date Limited Notice List and need not File a request to be included thereon.

13.20 Saturday, Sunday or Legal Holiday. If any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

13.21 Section 1146 Exemption. Pursuant to § 1146(c) of the Bankruptcy Code, the issuance, transfer or exchange of any security under the Plan or the making or delivery of any instrument of transfer pursuant to, in implementation of, or as contemplated by, the Plan or the revesting, transfer or sale of any real or personal property of the Debtors or Post-Confirmation Debtors pursuant to, in implementation of, or as contemplated by, the Plan shall not be taxed under any state or local law imposing a stamp tax or similar tax or fee.

13.22 Severability. If any term or provision of the Plan is held by the Bankruptcy Court prior to or at the time of Confirmation to be invalid, void or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as so altered or interpreted. In the event of any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan may, at the Debtors' option, remain in full force and effect and not be deemed affected. However, the Debtors reserve the right not to proceed to Confirmation or consummation of the Plan if any such ruling occurs. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

13.23 Headings. The headings used in the Plan are inserted for convenience only and neither constitutes a portion of the Plan nor in any manner affect the provisions of the Plan.

