

**GREENBERG TRAUIG, LLP**

2375 East Camelback Road, Suite 700

Phoenix, Arizona 85016

Ph: (602) 445-8000

Fax: (602) 445-8100

John R. Clemency (email: clemencyj@gtlaw.com) – SBN 009646

Todd A. Burgess (email: burgesst@gtlaw.com) -- SBN 019013

**GREENBERG TRAUIG, P.A.**

1221 Brickell Avenue

Miami, Florida 33131

Ph: (305) 579-0500

Fax: (305) 579-0717

James P.S. Leshaw (email: leshawj@gtlaw.com) – FL Bar No. 917745

Daniel Gold (email: goldd@gtlaw.com) – FL Bar No. 0761281

Attorneys for First Magnus Financial Corporation

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

In re

FIRST MAGNUS FINANCIAL  
CORPORATION,

Debtor.

In Proceedings Under Chapter 11

NO. 4-07-bk-01578-JMM

**SECOND AMENDED PLAN OF  
LIQUIDATION FILED BY FIRST MAGNUS  
FINANCIAL CORPORATION DATED  
JANUARY 4, 2007**

**TABLE OF CONTENTS**

1 **ARTICLE I DEFINITIONS** ..... 4

2 **ARTICLE II CLASSIFICATION OF CLAIMS AND INTERESTS** ..... 13

3 **ARTICLE III IDENTIFICATION OF CLASSES OF CLAIMANTS IMPAIRED OR**

4 **UNIMPAIRED UNDER THE PLAN**..... 14

5 **ARTICLE IV PROVISIONS FOR TREATMENT OF CLAIMS NOT IMPAIRED**

6 **UNDER THE PLAN** ..... 15

7 4.1. Administrative Expense Claims..... 15

8 4.2. Priority Tax Claims..... 16

9 4.3. Allowed Priority Non-Tax Claims (Class 1)..... 16

10 **ARTICLE V PROVISIONS FOR TREATMENT OF CLAIMS IMPAIRED UNDER**

11 **THE PLAN** ..... 17

12 5.1. Class of Secured Claims (Class 2) ..... 17

13 5.2. Claims of Allowed General Unsecured Creditors (Class 3). ..... 17

14 5.3. Claims of Allowed Rejection Damage Claims (Class 4)..... 17

15 5.4. Claims of WaMu under the WaMu EPA Agreement and the WaMu Commercial

16 Paper Agreement (Class 5)..... 18

17 5.5. Allowed Claims of Repo Participants Under Agreements (Class 6) ..... 18

18 5.6. Claims of Subordinated Creditors (Class 7) ..... 18

19 5.7. Claims of Credit Borrowers (Class 8)..... 18

20 5.8. Class of Equity Security Interest Holders (Class 9)..... 19

21 **ARTICLE VI ACCEPTANCE OR REJECTION OF PLAN; EFFECT OF**

22 **REJECTION BY ONE OR MORE CLASSES OF CLAIMS** ..... 19

23 6.1. Impaired Classes to Vote ..... 19

24 6.2. Acceptance by a Class of Creditors ..... 19

25 6.3. Cram-down..... 19

26 6.4. Blank Ballots..... 19

**ARTICLE VII MEANS OF EFFECTUATING THE PLAN** ..... 19

7.14. Liquidating Trustee and Litigation Trustee..... 24

7.15. Advisory Board ..... 25

7.16. Expenses Incurred on or After the Effective Date ..... 26

7.17. Non-Transferability of Beneficial Interests in the Trusts ..... 26

7.18. The Hold Account..... 27

7.19. No Liability Of the Advisory Committee and its Members..... 27

7.20. Indemnification. .... 27

**ARTICLE VIII EXECUTORY CONTRACTS AND UNEXPIRED LEASES** ..... 27

**ARTICLE IX RETENTION OF JURISDICTION** ..... 28

**ARTICLE X PROCEDURES FOR RESOLVING DISPUTED CLAIMS** ..... 30

10.1. Objections to Claims..... 30

10.2. Payments and Distributions with Respect to Disputed Claims..... 30

1 10.3. Distributions After Allowance.....30  
 10.4. No Recourse.....30  
 2 **ARTICLE XI PROVISIONS CONCERNING DISTRIBUTION** .....31  
 3 11.1. Time of Distributions Under the Plan.....31  
 11.2. Payment Dates .....31  
 4 11.3. Manner of Payments Under the Plan .....31  
 11.4. Fractional Cents .....31  
 5 11.5. Non-Negotiated Checks .....31  
 11.6. Unclaimed Distributions .....31  
 6 11.7. No Cash Payments of \$20.00 or Less on Account of Allowed Claims .....32  
 11.8. Disputed Payments or Distributions .....32  
 7 **ARTICLE XII EFFECT OF CONFIRMATION OF PLAN**.....32  
 8 12.1. Discharge .....32  
 12.2. Modification of Plan .....32  
 9 12.3. Post-Confirmation Quarterly Fees .....32  
 10 12.4. Investment of Dividend Fund .....33  
 12.5. Retention of Claims and Causes of Action .....33  
 11 12.6. No Waiver of Claims .....34  
 12 **ARTICLE XIII GENERAL PROVISIONS** .....34  
 13 13.1. Notices Under the Plan .....34  
 13.2. Withholding Taxes/Setoffs .....35  
 13.3. Committee.....35  
 14 13.4. Headings .....35  
 13.5. Unenforceability .....35  
 15 13.6. Certain Terminations .....35  
 16 13.7. Rights if Plan Not Confirmed .....35  
 13.8. Governing Law .....36  
 17 13.9. Liquidated and/or Disputed Claims .....36  
 13.10. Revocation of Plan.....36  
 18 13.11. Reservation of Rights.....36  
 13.12. Exemption from Certain Transfer Taxes .....36  
 19 13.13. Injunction .....36  
 20 13.14. Ratification of Action Taken During Pendency of the Chapter 11 Case.....37  
 13.15. Term of Injunctions or Stays .....37  
 21 13.16. Injunction Against Interference With Plan .....37  
 13.17. Exculpation .....38  
 22 13.18. Retention of Causes of Action/Reservation of Rights .....38  
 13.19. Successors and Assigns .....38  
 23 13.20. Plan Documents .....38  
 24  
 25  
 26

1 First Magnus Financial Corporation is the debtor and debtor-in-possession (the "Debtor")  
2 in this Chapter 11 bankruptcy case pending before the United States Bankruptcy Court for the  
3 District of Arizona. This document is the Chapter 11 plan (the "Plan") proposed by the Debtor.  
4 Sent to you in the same envelope as this document is the Disclosure Statement which has been  
5 approved by the Bankruptcy Court and is provided to help you understand the Plan.

6 This is a liquidating plan. In other words, the Debtor seeks to accomplish payments under  
7 the Plan by liquidating its remaining assets and placing the proceeds from the sale of the Debtor's  
8 assets, or from the prosecution of the Debtor's causes of action, in a fund, from which certain  
9 creditors will be paid some or all of the amounts owed by the Debtor to each such creditor. The  
10 Effective Date of the proposed Plan is as defined herein.

11 **ARTICLE I**  
12 **Definitions**

13 Except as otherwise provided in this Plan, all terms used herein shall have the meanings  
14 attributable to such terms under Title 11 of the United States Code, as amended (the "Bankruptcy  
15 Code"), the applicable Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules  
16 for the District of Arizona (the "Local Bankruptcy Rules"). For purposes of this Plan, except as  
17 expressly otherwise provided or unless the context otherwise requires, all capitalized terms not  
18 otherwise defined shall have the meanings assigned to them in this Section of the Plan. In all  
19 references herein to any parties, persons, entities, or corporations, the use of any particular gender  
20 or the plural or singular number is intended to include the appropriate gender or number as the  
21 text may require.

22 1.1. Administrative Expense shall mean any cost or expense of administration of the Chapter  
23 11 Case allowable under Section 503(b) and Section 507(a) of the Bankruptcy Code,  
24 including, without limitation, any actual and necessary expenses of preserving the estate  
25 of the Debtor, any actual and necessary expense of operating the business of the Debtor,  
26 and indebtedness or obligation incurred or assumed by the Debtor in connection with the  
conduct of its business or for the acquisition or lease of property or the rendition of  
services to the Debtor, all allowances of compensation and reimbursement of expenses of  
Professional Persons, any fees or charges assessed against the estate of the Debtor under  
Chapter 123 of Title 28 of the United States Code.

1.2. Advisory Board means the Advisory Board created for the Liquidating Trust and the  
Litigation Trust pursuant to Section 7.15 below.

1.3. Affiliates shall have the meaning and shall be defined as set forth in Section 101(2) of the  
Bankruptcy Code.

1.4. Allowed when used as an adjective preceding the words "Claims" or "Equity Security  
Interest" shall mean any Claim against or Equity Security Interests in the Debtor, proof of  
which was filed on or before the Bar Date, or, if no proof of Claim or Equity Security  
Interest is filed, which has been or hereafter is listed by the Debtor as liquidated in amount  
and not disputed or contingent and, in either case, a Claim as to which no objection to the

1 allowance thereof has been interposed with the applicable period of limitations fixed by  
2 the Plan, the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, Local Rules,  
3 or as to which any objection has been interposed timely and such Claim has been allowed  
4 in whole or in part by a Final Order. Subject to rights of Secured Creditors under  
5 Bankruptcy Code § 506(b), if any, unless otherwise specified in the Plan, "Allowed  
6 Claim" and "Allowed Equity Security Interest" shall not, for purposes of computation of  
7 distributions under the Plan, include interest on the amount of such Claim or Equity  
8 Security Interest from and after the Debtor's Petition Date.

- 6 1.5. Allowed Administrative Expense Claim shall mean any Administrative Expense allowed  
7 under Section 503(b) of the Bankruptcy Code and Section 507(a)(1) of the Bankruptcy  
8 Code.
- 8 1.6. Allowed Priority Non-Tax Claim shall mean all or that portion of an Allowed Claim  
9 entitled to priority under Section 507(a)(3), (4), (5), (6), or (7) of the Bankruptcy Code.
- 10 1.7. Allowed Priority Tax Claim shall mean all or that portion of an Allowed Claim entitled to  
11 priority under Section 507(a)(8) of the Bankruptcy Code.
- 12 1.8. Allowed Unsecured Claim shall mean an Unsecured Claim that is or has become an  
13 Allowed Claim.
- 14 1.9. Assets shall mean the aggregate assets, of any kind, of the Debtor and its Estate.
- 15 1.10. Ballot shall mean the form(s) distributed to creditors holding claims in an impaired Class,  
16 or holders of interests in an impaired Class, on which is to be indicated the acceptance or  
17 rejection of the Plan.
- 18 1.11. Bankruptcy Code or Code shall mean the Bankruptcy Reform Act of 1978 (11 U.S.C.  
19 Sections 101, *et seq.*), as amended, and as codified in Title 11 of the United States Code.
- 20 1.12. Bankruptcy Court shall mean the United States Bankruptcy Court for the District of  
21 Arizona having jurisdiction over the Debtor's Chapter 11 Case and, to the extent of any  
22 reference made pursuant to 28 U.S.C. Section 158, the unit of such District Court  
23 constituted pursuant to 28 U.S.C. Section 151.
- 24 1.13. Bankruptcy Rules shall mean the rules and forms of practice and procedure in bankruptcy,  
25 promulgated under 11 U.S.C. Section 2075 and also referred to as the Federal Rules of  
26 Bankruptcy Procedure.
- 1.14. Bar Date shall mean December 3, 2007 and any other applicable bar date by which a proof  
of claim must be filed with the Bankruptcy Court, as established by an order of the  
Bankruptcy Court.
- 1.15. Business Day shall mean and refer to any day except Saturday, Sunday, and any other day  
on which commercial banks in Arizona are authorized by law to close.

- 1 1.16. Cash shall mean legal tender of the United States of America or equivalents thereof, as  
2 well as any and all foreign currencies.
- 3 1.17. Case shall mean the Debtor's case under Chapter 11 of the Bankruptcy Code, Case No.  
4 4:07-bk-01578.
- 5 1.18. Chase shall mean JP Morgan Chase Bank, N.A. and Chase Equipment Leasing, Inc.
- 6 1.19. Claim shall mean a claim against the Debtor as defined in Section 101(5) of the  
7 Bankruptcy Code; including any right to payment from the Debtor whether or not such  
8 right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured,  
9 unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or any right to an  
10 equitable remedy for breach of performance if such breach gives rise to a right of payment  
11 from the Debtor whether or not such right to an equitable remedy is reduced to judgment,  
12 fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.
- 13 1.20. Claimant shall mean the holder of a Claim.
- 14 1.21. Class shall mean a class of holders of Allowed Claims or interests described in Article II  
15 of the Plan.
- 16 1.22. Confirmation shall mean the entry of an Order by the Bankruptcy Court approving and  
17 confirming the Plan in accordance with the provisions of the Bankruptcy Code.
- 18 1.23. Confirmation Date shall mean the date upon which the clerk of the Bankruptcy Court  
19 enters the Confirmation Order on the docket of the Bankruptcy Court.
- 20 1.24. Confirmation Hearing shall mean a hearing conducted before the Bankruptcy Court for  
21 the purpose of considering confirmation of the Plan, as such hearing may be adjourned or  
22 continued from time to time.
- 23 1.25. Confirmation Order shall mean an Order of the Bankruptcy Court confirming the Plan in  
24 accordance with the provisions of Chapter 11 of the Bankruptcy Code.
- 25 1.26. Countrywide shall mean Countrywide Warehouse Lending, one of the Debtor's  
26 Warehouse Lenders, and its affiliates, including Countrywide Home Loans, Inc.
- 1.27. Credit Borrowers shall mean those Persons, listed on Exhibit 9 to the Disclosure  
Statement, who are borrowers under the corresponding mortgage loans, listed on Exhibit 9  
to the Disclosure Statement.
- 1.28. Creditor shall mean any person that has a Claim against the Debtor that arose on or before  
the Petition Date or a Claim against the Estate of any kind specified in Section 502(g),  
502(h) or 502(i) of the Bankruptcy Code.

- 1 1.29. Committee shall mean the Official Committee of Unsecured Creditors that was appointed  
2 in this case pursuant to Bankruptcy Code § 1102.
- 3 1.30. Debt shall mean, refer to and shall have the same meaning ascribed to it in Section  
4 101(12) of the Bankruptcy Code.
- 5 1.31. Debtor shall mean First Magnus Financial Corporation.
- 6 1.32. Disallowed Claim shall mean a Claim or portion thereof that: (i) has been disallowed by a  
7 Final Order; (ii) is identified in the Debtor's Schedules in an amount of zero dollars or as  
8 contingent, unliquidated, or disputed and as to which a proof of claim was not filed by the  
9 Bar Date; or (iii) is not identified in the Debtor's schedules and as to which no proof of  
10 claim has been filed or deemed filed by the Bar Date.
- 11 1.33. Disclosure Statement shall mean and refer to the Disclosure Statement filed by the Debtor  
12 as required pursuant to Section 1125 of the Bankruptcy Code.
- 13 1.34. Disputed Claim shall mean any Claim that is not an Allowed Claim or a Disallowed Claim  
14 and that has not been barred or otherwise disallowed or paid or otherwise satisfied. In the  
15 event that any part of a Claim is a Disputed Claim, such Claim in its entirety shall be  
16 deemed to constitute a Disputed Claim for purposes of distribution under the Plan unless  
17 the Liquidating Trustee and the holder thereof agree otherwise; provided, however,  
18 nothing in this definition is intended to or does impair the rights of any holder of a  
19 Disputed Claim to pursue its rights under Section 502(c) of the Bankruptcy Code.  
20 Without limiting any of the foregoing, but subject to the provisions of the Plan, a Claim,  
21 including a Claim scheduled by the Debtor, that is the subject of a pending application,  
22 motion, complaint, objection or any other legal proceeding commenced or filed by the  
23 Debtor or the Liquidating Trustee seeking to disallow, limit, subordinate or estimate such  
24 Claim shall be deemed to constitute a Disputed Claim.
- 25 1.35. Dividend Fund shall mean such sums held by the Liquidating Trust for distribution to  
26 holders of Allowed Claims pursuant to the Plan on or after the Effective Date of the Plan.  
The costs and expenses of the Liquidating Trust, the Advisory Board and the Litigation  
Trust (to the extent the Litigation Trust has insufficient cash to pay its costs and expenses)  
shall be paid out of the Dividend Fund.
- 1.36. Effective Date shall mean the date designated in writing by the Debtor, in the reasonable  
discretion of the Debtor, after consultation with the Committee and three Business Days'  
notice to the Committee (which notice may be waived by the Committee), which is after  
the date upon which the Debtor has sufficient funds on hand to make all contemplated  
distributions in accordance with this Plan to holders of all Allowed Administrative  
Expense Claims (in such amounts and in accordance with and subject to the terms of the  
Plan), and the Confirmation Order shall have become a Final Order, provided, that to the  
extent Class 1 does not vote to accept the Plan, then the Effective Date shall mean the date  
designated in writing by the Debtor which is not later than thirty (30) days (unless such  
thirty day period is extended by the Debtor with the consent of the Committee) after the

1 date upon which the Debtor has sufficient funds on hand to make all contemplated  
2 distributions in accordance with this Plan to holders of all Allowed Administrative  
3 Expense Claims and Allowed Priority Non-Tax Claims in Class 1 (in such amounts and in  
4 accordance with and subject to the terms of the Plan), and the Confirmation Order shall  
5 have become a Final Order; provided however, that if the Confirmation Order is not a  
6 Final Order, the Debtor, after consultation with the Committee, may waive the  
7 requirement that the Confirmation Order shall have become a Final Order.

8 1.37. Equity Security Interests shall have the meaning set forth in Section 101(16) of the  
9 Bankruptcy Code and "Holders of Equity Security Interests" shall have the meaning set  
10 forth in Section 101(17) of the Bankruptcy Code.

11 1.38. Estate shall mean the estate of the Debtor created in accordance with Section 541 of the  
12 Bankruptcy Code.

13 1.39. Estate Claims shall mean any and all claims, causes of action, demands, defenses, suits,  
14 choses in action and all other rights and remedies of the Debtor and the Estate, for or on  
15 behalf of Creditors and/or the Debtor and/or the Estate, including but not limited to any  
16 and all claims and/or causes of action by the Estate and/or the Debtor, against any and all  
17 Creditors, Governmental Units, or other Persons, of every kind or nature, whether known  
18 or unknown, suspected or unsuspected, whether arising before, on or after the Petition  
19 Date, in contract or in tort, at law or in equity, and whether or not brought as of the  
20 Effective Date, including but not limited to those for (i) damages, (ii) the recovery of  
21 monies, (iii) lien avoidance, subordination, surcharge, recharacterization, setoff,  
22 counterclaim, contribution or recoupment, (iv) tax refunds, (v) fraud in connection with  
23 mortgage loans made by the Debtor, (vi) claims and defenses such as fraud, mistake,  
24 duress and usury, and (vii) injunctive, equitable or other relief, and all avoidance actions  
25 of the Estate under Sections 543, 544, 545, 546, 547, 548, 549, 550, *et seq.* of the  
26 Bankruptcy Code ("Avoidance Actions"), but expressly excluding Estate Tort and Other  
Claims. Estate Claims shall also include to the extent, necessary, any claims and causes of  
action transferred to the Liquidating Trust by the Litigation Trust after the Effective Date  
pursuant to Section 7.13 of the Plan.

1.40. Estate Tort and Other Claims shall mean any claims, causes of action, demands, defenses,  
suits, choses in action and all other rights and remedies of the Debtor and the Estate, for or  
on behalf of Creditors and/or the Debtor and/or the Estate, against (i) any and all  
Creditors, Governmental Units or other Persons, of every kind or nature, whether known  
or unknown, suspected or unsuspected, whether arising before, on or after the Petition  
Date, at law or in equity, and whether or not brought as of the Effective Date, relating to a  
breach of duty and/or in the nature of a tort, and (ii) against past and present directors,  
officers, Insiders and Affiliates, the Warehouse Lenders, and Repo Participants, of every  
kind and nature, whether known or unknown, suspected or unsuspected, whether arising  
before, on or after the Petition Date, in contract or in tort, at law or in equity, and whether  
or not brought as of the Effective Date, including without limitation claims and causes of  
action for damages, the recovery of monies, lender liability, lien avoidance, subordination,

1 surcharge and/or recharacterization, setoff, counterclaim, contribution or recoupment,  
2 breach of a duty imposed by law or otherwise, claims and defenses such as fraud, mistake,  
3 duress and usury, and injunctive, equitable or other relief. Estate Tort and Other Claims  
4 shall also include to the extent, necessary, any claim objections and Avoidance Actions  
5 against such Person, Governmental Unit or Creditor and the parties listed in clause (ii)  
6 above, and any claims and causes of action transferred to the Litigation Trust by the  
7 Liquidating Trust after the Effective Date pursuant to Section 7.13 of the Plan.

8 1.41. Executory Contract and Unexpired Lease or Executory Contract or Unexpired Lease shall  
9 mean a contract or lease to which the Debtor is a party that is subject to assumption or  
10 rejection under Section 365 of the Bankruptcy Code.

11 1.42. Final Order shall mean an order or judgment of the Bankruptcy Court as entered on the  
12 docket that (a) is not stayed, (b) has not been reversed, modified or amended, and (c) as to  
13 which the time to appeal, petition for certiorari, or seek reargument, review,  
14 reconsideration, rehearing or leave to appeal (excluding the time to move for relief from a  
15 final order or judgment under Rule 60(b) of the Federal Rules of Civil Procedure and the  
16 time to request revocation of an order of confirmation under Section 1144 of the  
17 Bankruptcy Code) has expired and as to which no appeal, petition for certiorari or other  
18 proceeding for reargument, review, reconsideration, rehearing or leave to appeal  
19 (including a motion for relief from a final order or judgment under said Rule 60(b) or a  
20 request for revocation of an order of confirmation under said Section 1144) or as to which  
21 any right to appeal, petition for certiorari or seek reargument, review, reconsideration,  
22 rehearing or leave to appeal has been waived in writing, or, if any appeal, petition for  
23 certiorari, or other proceeding for reargument, review, reconsideration, rehearing or leave  
24 to appeal has been sought, the order or judgment of the Bankruptcy Court has been  
25 affirmed by the highest court to which the order or judgment was appealed or from which  
26 the reargument or rehearing was sought, or certiorari has been denied, and the time to take  
any further appeal, petition for certiorari or seek further reargument, review  
reconsideration, rehearing or leave to appeal (excluding the time to move for relief from a  
final order or judgment under said Rule 60(b) and the time to request revocation of an  
order of confirmation under said Section 1144) has expired.

1.43. Hold Account shall mean the account established by the Debtor to sequester and hold  
certain Cash in which Secured Creditors, Repo Participants, or others claim an interest,  
which shall be transferred to the Liquidating Trust on the Effective Date and held separate  
and apart from the other Remaining Assets.

1.44. Impaired when used as an adjective preceding the words "Class of Claims" or "Class of  
Equity Security Interest", shall mean that the Plan alters the legal, equitable, or contractual  
rights of the member of that class.

1.45. IRS shall mean the Internal Revenue Service, Department of the Treasury of the United  
States of America.

- 1 1.46. Lien shall mean any lien or charge against or interest, including any security interest, in  
2 property to secure payment of a debt or performance of an obligation but only to the  
3 extent such lien, charge, or interest is valid, binding, enforceable and perfected and not  
4 subject to avoidance, defense, recharacterization or subordination.
- 5 1.47. Liquidating Trust shall mean the Liquidating Trust established on the Effective Date  
6 pursuant to Section 7.3 hereof and the Liquidating Trust Agreement.
- 7 1.48. Liquidating Trustee shall mean Morris C. Aaron.
- 8 1.49. Liquidating Trust Agreement shall mean the agreement to be entered into by the  
9 Liquidating Trustee and the Debtor before the Confirmation Date setting forth the terms of  
10 the Liquidating Trust which will govern the operations of the Liquidating Trust, a copy of  
11 which is attached as Exhibit "4" to the Disclosure Statement. The Liquidating Trust  
12 Agreement can be amended at any time up to three (3) Business Days before the  
13 Confirmation Hearing. The final version of the Liquidating Trust Agreement will  
14 submitted in accordance with Section 13.21 hereof.
- 15 1.50. Litigation Trust shall mean the Litigation Trust established on the Effective Date pursuant  
16 to Section 7.9 hereof and the Litigation Trust Agreement.
- 17 1.51. Litigation Trustee shall mean Larry Lattig, the Person selected by the Committee to serve  
18 as the trustee of the Litigation Trust.
- 19 1.52. Litigation Trust Agreement shall mean the agreement to be entered into by the Litigation  
20 Trustee and the Debtor before the Confirmation Date setting forth the terms of the  
21 Litigation Trust which will govern the operations of the Litigation Trust, a copy of which  
22 is attached as Exhibit "7" to the Disclosure Statement. The Litigation Trust Agreement  
23 can be amended at any time up to three (3) Business Days before the Confirmation  
24 Hearing. The final version of the Litigation Trust Agreement will submitted in  
25 accordance with Section 13.20 hereof.
- 26 1.53. Litigation Trust Start-Up Cash shall mean \$250,000.
- 1.54. Merrill Lynch shall mean Merrill Lynch Bank, USA, one of the Debtor's Warehouse  
Lenders.
- 1.55. Mortgage Loan shall mean loans and the proceeds thereof as well as all collateral granted  
to or for the benefit of a Repo Participant pursuant to a Repurchase Agreement.
- 1.56. Net Proceeds shall mean an amount equal to the "gross proceeds" of sale and/or collection  
and receipt of property (real or personal) of the Debtor, as actually received by the  
Liquidating Trustee, less the amount of all Allowed Secured Claims against such real and  
personal property, and less the costs and fees associated with such sale, including, but not  
limited to appraisal fees, auctioneer's fees, brokers fees and/or real property tax liability of  
any kind arising out of or in connection with such sale.

- 1 1.57. Petition Date shall mean August 21, 2007.
- 2 1.58. Plan shall mean this Second Amended Plan of Liquidation, including, without limitation,  
3 the exhibits and schedules hereto, as the same may be amended, supplemented or  
4 modified from time to time in accordance with the provisions of the Bankruptcy Code and  
5 the terms hereof.
- 6 1.59. Preference Actions shall mean causes of action against Persons relating to any payment,  
7 conveyance or other transfer of property of the Debtor to any Person that may be  
8 avoidable pursuant to Section 547 of the Bankruptcy Code and/or recoverable pursuant to  
9 Section 550 of the Bankruptcy Code.
- 10 1.60. Priority Claims shall mean "Priority Tax Claims" and "Priority Non-Tax Claims" in the  
11 aggregate, and shall mean any claim to the extent entitled to priority in payment under  
12 Section 507 (3), (4), (5), (6), (7) or (8) of the Bankruptcy Code.
- 13 1.61. Priority Non-Tax Claims shall mean Priority Claims other than Priority Claims entitled to  
14 priority treatment as a tax under Section 507(a)(8) of the Bankruptcy Code.
- 15 1.62. Priority Tax Creditor shall mean a Creditor holding a Priority Tax Claim.
- 16 1.63. Priority Tax Claim shall mean any Claim entitled to priority in payment under Section  
17 507(a)(8) of the Bankruptcy Code, but only to the extent it is entitled to priority under  
18 such subsection.
- 19 1.64. Proceedings shall mean each and every proceeding in the Chapter 11 Case of the Debtor.
- 20 1.65. Proceeds shall mean an amount equal to the "gross proceeds" of sale and/or collection and  
21 receipt of property (real or personal) of the Debtor, as actually received by the Liquidating  
22 Trust, less the costs and fees associated with such sale, including but not limited to  
23 appraisal fees, auctioneers' fees, bankers fees and/or real property tax liability (if any) of  
24 any kind arising out of or in connection with such sale.
- 25 1.66. Professional Persons shall mean and refer to any professional employed in the Chapter 11  
26 Case pursuant to Section 327 or Section 1103 of the Bankruptcy Code, or any professional  
or other entity seeking compensation or reimbursement of expenses in connection with the  
Case pursuant to Sections 503(b)(3)(F) and (b)(4) of the Bankruptcy Code.
- 1.67. Professional Fee Claim shall mean and refer to a claim by any and all Professional  
Persons as provided for in Sections 327, 328, 330, 503(b) and 1103 of the Bankruptcy  
Code.
- 1.68. Pro Rata shall mean, with respect to an amount of Cash to be paid or distributed to a  
Creditor with respect to an Allowed Claim on a particular date, in accordance with the  
ratio, as of such date, of the dollar amount of the Allowed Claims of such to the aggregate  
dollar amount of all Claims in Classes 3 and 4 under the Plan (including, in each such

1 calculation, the full amount of Disputed Claims in Classes 3 and 4 which have been  
2 asserted or are otherwise pending and which have not yet been Allowed or otherwise  
disposed of).

3 1.69. Remaining Assets shall mean all of the Debtor's Assets, including Cash, as of the  
4 Effective Date other than the Estate Tort and Other Claims, the Litigation Trust Start-Up  
Cash, and any Cash in the Hold Account.

5 1.70. Reserve shall mean the Pro Rata portion of any Cash or other property retained on account  
6 of a Disputed Claim, pending allowance of such Claim.

7 1.71. Secured Claim shall mean and refer to a Claim which is secured by a valid, perfected and  
8 unav avoidable Lien against the Debtor's Assets as of the Petition Date, or which expressly  
9 attached to the Net Proceeds of Sold Assets pursuant to an Order of the Court but only to  
10 the extent of the value of the Debtor's interest in such property, as determined by  
11 agreement by the Debtor, the Committee and the holder of such claim or by the  
12 Bankruptcy Court by a Final Order pursuant to section 506(a) of the Bankruptcy Code. In  
13 accordance with the Section 506(a) of the Bankruptcy Code, Secured Claim specifically  
14 excludes that portion of a Claim of a holder of a Lien against the property of the Debtor to  
15 the extent such holder's interest in the property is less than the amount of such Claim. To  
16 the extent of any deficiency in the value of the interest of the holder of such Secured  
17 Claim in such property, such deficiency is a General Unsecured Claim (a "Deficiency  
18 Claim"), unless otherwise provided for by order of the Bankruptcy Court.

19 1.72. Sold Assets shall mean the Debtor's Assets sold after the Petition Date either in the  
20 ordinary course of business or pursuant to an Order of the Bankruptcy Court.

21 1.73. Subordinated Claim shall mean all claims described in Section 510 of the Bankruptcy  
22 Code or claims which are otherwise subordinated pursuant to an Order of the Bankruptcy  
23 Court.

24 1.74. Tax Claim shall mean a Claim of the kind of specified in Section 507(a)(7) of the  
25 Bankruptcy Code.

26 1.75. Trusts shall mean the Liquidating Trust and the Litigation Trust.

1.76. Trust Agreements shall mean the Liquidating Trust Agreement and the Litigation Trust  
Agreement.

1.77. UBS shall mean, UBS Real Estate Securities, Inc., one of the Debtor's Warehouse  
Lenders.

1.78. Unsecured Claim shall mean any Claim against the Debtor which arose or which is  
deemed by the Bankruptcy Code to have arisen before the Petition Date for the Debtor,  
and which is not (i) a secured claim pursuant to Section 506 of the Bankruptcy Code, as  
modified by Section 1111(b) of the Bankruptcy Code, or (ii) a Claim entitled to priority

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

under Sections 503 or 507 of the Bankruptcy Code. "Unsecured Claim" shall include all Claims against the Debtor that are not expressly otherwise dealt with in the Plan.

- 1.79. Voting Class shall mean a Class of Claims under the Plan which is impaired and entitled to vote to accept or reject the Plan.
- 1.80. WaMu shall mean Washington Mutual Savings Bank, one of the Debtor's Warehouse Lenders.
- 1.81. WaMu Commercial Paper Agreement shall mean the Mortgage Loan Purchase and Sale Agreement dated January 30, 2007 between the Debtor and Concord Minutemen Capital Company, LLC, whose rights in the WaMu Commercial Paper Agreement were assigned to WaMu.
- 1.82. WaMu EPA Agreement shall mean the Mortgage Loan Purchase and Sale Agreement dated October 11, 2004 between the Debtor and WaMu.
- 1.83. Warehouse Lenders shall mean Creditors that provided warehouse loan facilities or the equivalent to the Debtor, including Countrywide, Merrill Lynch, UBS, and WaMu.
- 1.84. Other Definitions The words "herein," "hereof," "hereto," "hereunder," and others of similar import refer to the Plan as a whole and not to any particular section, subsection, or clause contained in the Plan. Except for the rule contained in Section 102(5) of the Bankruptcy Code, the rules of construction contained in Section 102 of the Bankruptcy Code shall apply to the Plan. The headings of the Plan are for convenience of reference only and shall not limit or otherwise affect the provisions hereof. To the extent there is an inconsistency between any of the provisions of the Plan and any of the provisions contained in the Disclosure Statement or other related document, the Plan shall control.

**ARTICLE II**  
**CLASSIFICATION OF CLAIMS AND INTERESTS**

- 2.1. As required by the Bankruptcy Code, the Plan classifies Claims and Equity Security Interests in various Classes according to their right to priority of payments as provided in the Bankruptcy Code. The Plan states whether each Class of Claims or Equity Security Interests is impaired or unimpaired. The Plan provides the treatment each Class will receive under the Plan. In accordance with the requirements of the Bankruptcy Code, Allowed Administrative Expense Claims and Allowed Priority Tax Claims are not set forth in Classes. The Allowed Claims against the Debtor's Estate are divided into the following classes:
  - 2.1.1. Class 1 shall consist of:  
All Allowed Non-Tax Priority Claims against the Debtor's Estate.
  - 2.1.2. Class 2 shall consist of:

1 All Allowed Secured Claims against the Debtor's Estate (including Secured Claims that  
2 may be asserted by Chase and Countrywide).

3 2.1.3. Class 3 shall consist of:

4 All Allowed General Unsecured Claims against the Debtor's Estate, except Class 4  
5 Claims, Class 7 Claims, and Class 8 Claims.

6 2.1.4. Class 4 shall consist of

7 The Allowed Unsecured Claims against the Debtor's Estate of Creditors asserting Claims  
8 arising out of the rejection of Executory Contracts or Unexpired Leases, except Class 3  
9 Claims and Class 8 Claims.

10 2.1.5. Class 5 shall consist of:

11 The Allowed Claims of WaMu arising under or in connection with the WaMu EPA  
12 Agreement and the WaMu Commercial Paper Agreement.

13 2.1.6. Class 6 shall consist of:

14 The Allowed Claims of Repo Participants under Repurchase Agreements (including any  
15 Claims under Repurchase Agreements asserted by UBS, Merrill Lynch, and WaMu, to the  
16 extent they are Repo Participants.

17 2.1.7. Class 7 shall consist of:

18 The Allowed Claims of Creditors whose claims are subordinated under Section 510 of the  
19 Bankruptcy Code or otherwise pursuant to an Order of the Bankruptcy Court.

20 2.1.8. Class 8 shall consist of:

21 The Allowed Claims of Credit Borrowers to the extent of amounts overpaid by or on  
22 behalf of Credit Borrowers, or "joint checked" from insurance companies to the Debtor  
23 and Credit Borrowers, and not paid to the Credit Borrowers.

24 2.1.9. Class 9 shall consist of:

25 The Equity Security Interests in the Debtor.

### 26 **ARTICLE III**

#### **IDENTIFICATION OF CLASSES OF CLAIMANTS IMPAIRED OR UNIMPAIRED UNDER THE PLAN**

3.1. Allowed Administrative Expense Claims and Allowed Priority Tax Claims, are not  
classified under the Plan and are not entitled to vote on the Plan.

3.2. Allowed Priority Non-Tax Claims (Class 1) are impaired under the Plan to the extent the  
holders of Allowed Priority Non-Tax Claims are not paid in full on the Effective Date of  
the Plan and are therefore entitled to vote to accept or reject the Plan. Allowed Secured  
Claims (Class 2), Allowed General Unsecured Claims (Class 3), Allowed rejection  
damage Claims (Class 4), the Claims of WaMu under the WaMu EPA Agreement and the

1 WaMu Commercial Paper Agreement (Class 5), the Allowed Claims of Repo Participants  
2 under Repurchase Agreements (Class 6), and Allowed Claims of Creditor Borrowers  
3 (Class 8) are impaired by the Plan and are entitled to vote to accept or reject the Plan.  
4 Allowed Subordinated Claims (Class 7) and Allowed Equity Security Interests (Class 9)  
5 are receiving no distribution on account of such Subordinated Claims or Equity Security  
6 Interests and are, therefore, deemed to have rejected the Plan.

7 3.3. In the event of a controversy as to whether any Claimant or Class of Claimants is impaired  
8 under the Plan, the Bankruptcy Court shall, after notice and a hearing, resolve such  
9 controversy.

10 3.4. The Debtor shall provide all Claimants entitled to vote with a form of Ballot approved by  
11 the Court to be used in casting a vote on the Plan.

12 **ARTICLE IV**  
13 **PROVISIONS FOR TREATMENT OF**  
14 **CLAIMS NOT IMPAIRED UNDER THE PLAN**

15 4.1. Administrative Expense Claims.

16 4.1.1. Generally. Administrative Expenses include claims for costs or expenses of administering  
17 the Debtor's Case which are allowed under Section 503(b) of the Bankruptcy Code and  
18 fees payable to the Clerk of the Bankruptcy Court and the Office of the United States  
19 Trustee which were incurred during the Case. The Code requires that Allowed  
20 Administrative Expense Claims be paid on the Effective Date, unless a particular creditor  
21 agrees to a different treatment. All fees payable pursuant to section 1930 of Title 28 of  
22 the United States Code, as determined by the Bankruptcy Court at the Confirmation  
23 Hearing, shall be paid on the Effective Date. All Allowed Administrative Expense Claims  
24 shall be paid in full on or before the Effective Date of the Plan, or as otherwise provided  
25 herein.

26 4.1.2. Administrative Bar Date. Requests for payment of Administrative Expenses must be filed  
and served pursuant to the procedures set forth in the Confirmation Order or notice of  
entry of the Confirmation Order, no later than thirty (30) days after the Confirmation  
Date.

4.1.3. Professional Fee Claims. The Bankruptcy Court must approve all requests for the payment  
of professional compensation and expenses to the extent incurred on or before the  
Confirmation Date. Each Professional Person requesting compensation or reimbursement  
of expenses in the Proceedings pursuant to Sections 327, 328, 330, 331, 503(b) or 1103 of  
the Bankruptcy Code shall file an application for allowance of final compensation and  
reimbursement of expenses not later than twenty (20) days after the Confirmation Date.  
Nothing herein shall prohibit each Professional Person from requesting interim  
compensation during the course of these cases pending Confirmation of this Plan. No  
motion or application is required to fix fees payable to the Clerk's Office or the Office of  
the United States Trustee, as those fees are determined by statute. All fees, costs and

1 disbursements of Professional Persons not heretofore paid through the Effective Date of  
2 the Plan, shall be paid out of the Dividend Fund following entry of an order of the  
3 Bankruptcy Court authorizing and allowing same pursuant to Sections 327, 330 and 331  
4 of the Bankruptcy Code. Fees, costs and disbursements of Professional Persons shall be  
5 the subject matter of applications to the Court for allowance or award in the manner  
6 prescribed by the Code. Notwithstanding the foregoing, any Professional Person may  
7 apply to the Bankruptcy Court in the manner prescribed by the Code for interim allowance  
8 of fees, costs and disbursements at any time and from time to time before payment in full  
9 of such fees, costs and disbursements. If the Effective Date occurs within thirty (30) days  
10 after the Confirmation Date, the Liquidating Trustee may pay all fees and costs of  
11 Professional Persons not previously considered by the Bankruptcy Court, without  
12 approval of the Bankruptcy Court.

8 4.2. Priority Tax Claims.

9 4.2.1. Priority Tax Claims are certain pre-Petition Date unsecured income, employment and  
10 other taxes described by Section 507(a)(8) of the Bankruptcy Code. The Bankruptcy  
11 Code requires, and thus this Plan provides, that each holder of a Section 507(a)(8) Priority  
12 Tax Claim receives regular installment payments in cash of a total value, as of the  
13 Effective Date, equal to the allowed amount of such claim over a period ending not later  
14 than five (5) years after the Petition Date, in a manner not less favorable than non-priority,  
15 unsecured claims.

16 4.2.2. To the extent Priority Tax Claims exist on the Confirmation Date, those holders of Priority  
17 Tax Claims will be (a) paid out of the Dividend Fund created by the sale of the Debtor's  
18 Assets by the Liquidating Trust on the Effective Date, or (b) over a period not exceeding  
19 five (5) years after the Petition Date, in the sole and absolute discretion of the Liquidating  
20 Trustee. Except as expressly set forth in this Plan, neither the Debtor, the Liquidating  
21 Trust, the Litigation Trust, the Advisory Board, the Litigation Trustee nor the Liquidating  
22 Trustee, nor their designee(s), officers, directors, members, employees, attorneys or agents  
23 shall be individually liable or responsible for the payment of Priority Tax Claims such that  
24 the holders of Allowed Priority Tax Claims shall have recourse only against the Dividend  
25 Fund and their claims shall be paid solely out of the Dividend Fund.

26 4.3. Allowed Priority Non-Tax Claims (Class 1). Certain Priority non-tax claims that are  
referred to in Sections 507(a)(3), (4), (5), (6) and (7) of the Bankruptcy Code are entitled  
to priority treatment. Class 1 is impaired under the Plan and is entitled to vote on the  
Plan. Allowed Priority Non-Tax Claims will be paid by the Liquidating Trust in full on  
the Effective Date of the Plan out of the Dividend Fund in the event there are sufficient  
funds in the Dividend Fund to pay such Allowed Priority Non-Tax Claims in full in the  
sole and absolute discretion of the Debtor after consultation with the Committee. To the  
extent there are not sufficient funds in the Dividend Fund to pay Priority Non-Tax Claims  
in full on the Effective Date, the Liquidating Trust shall pay such claims with interest at  
the rate of 5% per annum from the Effective Date to such date or dates as it is determined  
by the Liquidating Trustee that sufficient cash is available to make such payments and

1 such payments are made; provided that the Liquidating Trustee, in its discretion, may  
2 make partial payments after the Effective Date to the holders of Priority Non-Tax Claims.  
3 Neither the Debtor, the Liquidating Trust, the Litigation Trust, the Advisory Board, the  
4 Litigation Trustee nor the Liquidating Trustee, nor their respective designee(s), officers,  
5 directors, members, employees, attorneys or agents shall be individually liable or  
6 responsible for the payment of such Priority Non-Tax Claims such that the holders of  
7 Allowed Priority Non-Tax Claims shall have recourse against the Debtor and Reorganized  
8 Debtor only from the Dividend Fund, and their claims against the Debtor and Reorganized  
9 Debtor shall be paid solely out of the Dividend Fund.

6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**ARTICLE V**  
**PROVISIONS FOR TREATMENT OF**  
**CLAIMS IMPAIRED UNDER THE PLAN**

- 5.1. Class of Secured Claims (Class 2). Class 2 (consisting of Allowed Secured Claims) is impaired under the Plan. Each Creditor holding a Secured Claim shall be placed in a separate subclass of Class 2. The holders of Allowed Class 2 Claims will be satisfied through: (a) abandonment or transfer of all right, title and interest of the Debtor and its Estate in the Assets in which a secured creditor has a Lien (as of the Petition Date and/or thereafter) to the secured creditor, or (b) before or after the Effective Date, the sale and/or other disposition of the Asset in which the secured creditor has a Lien (as of the Petition Date and/or thereafter). Any Lien on a Sold Asset will attach to the proceeds of sale, which shall be transferred to and paid to the holder of the Allowed Secured Claim. The transfer of the proceeds of a Sold Asset will occur on the later of the Effective Date of the Plan or within five (5) Business Days of the sale of the Asset, in full or partial satisfaction of the Creditor's Allowed Secured Claim. Except as otherwise agreed, holders of Allowed Class 2 Claims will have the right to assert a deficiency Claim which, as and when it becomes an Allowed Claim, shall be treated as a Class 3 Unsecured Claim.
- 5.2. Claims of Allowed General Unsecured Creditors (Class 3). After payment in full to the holders of Allowed Administrative Expense Claims, Allowed Priority Claims, and Allowed Class 8 Claims pursuant to this Plan and upon the Liquidating Trustee's determination that sufficient cash is available to make such payments, each holder of an Allowed Unsecured Claim in Class 3 shall receive its Pro Rata share of the Dividend Fund. Neither the Debtor, the Liquidating Trust, the Litigation Trust, the Advisory Board, the Litigation Trustee, nor the Liquidating Trustee, nor their respective designee(s), officers, directors, members, employees, attorneys or agents shall be individually liable or responsible for the payment of such Allowed Unsecured Claims such that the holders of Allowed Unsecured Claims in Class 3 shall have recourse against the Debtor and Reorganized Debtor only from the Dividend Fund, and their claims against the Debtor and Reorganized Debtor shall be paid solely out of the Dividend Fund.
- 5.3. Claims of Allowed Rejection Damage Claims (Class 4). After payment in full to the holders of Allowed Administrative Expense Claims, Allowed Priority Claims and Allowed Class 8 Claims pursuant to this Plan and upon the Liquidating Trustee's

1 determination that sufficient cash is available to make such payments, each holder of an  
2 Allowed Claim arising from rejection of an executory contract or unexpired lease in Class  
3 4 shall receive its Pro Rata share of the Dividend Fund. Neither the Debtor, the  
4 Liquidating Trust, the Litigation Trust, the Advisory Board, the Litigation Trustee nor the  
5 Liquidating Trustee, nor their respective designee(s), officers, directors, members,  
6 employees, attorneys or agents shall be individually liable or responsible for the payment  
of such Allowed Unsecured Claims such that the holders of Allowed Unsecured Claims in  
Class 4 shall have recourse against the Debtor and Reorganized Debtor only from the  
Dividend Fund, and their claims against the Debtor and Reorganized Debtor shall be paid  
solely out of the Dividend Fund.

- 7 5.4. Claims of WaMu under the WaMu EPA Agreement and the WaMu Commercial Paper  
8 Agreement (Class 5). Class 5 (the Claims of WaMu under the WaMu EPA Agreement  
9 and the WaMu Commercial Paper Agreement) are impaired under the Plan. In full  
10 satisfaction of its Class 5 Claim, WaMu will keep for its own account all of the loans  
11 purchased by WaMu pursuant to the WaMu EPA Agreement and the WaMu Commercial  
12 Paper Agreement which were owned by WaMu on the Effective Date, WaMu will return  
to the Debtor approximately \$3,150,000 in loans identified in the letter dated September  
12, 2007 from WaMu to the Debtor, and WaMu will not assert any Claims in the  
Bankruptcy Case with respect to the WaMu EPA Agreement and the WaMu Commercial  
Paper Agreement.
- 13 5.5. Allowed Claims of Repo Participants Under Agreements (Class 6). Class 6 (consisting of  
14 Allowed Claims of Repo Participants under Repo Agreements) shall have the right to  
15 liquidate the Mortgage Loans that they purchased from the Debtor under Repurchase  
16 Agreements and shall deliver any excess of the market prices received on liquidation of  
17 such Mortgage Loans over the sum of the repurchase price provided for in the applicable  
18 Repurchase Agreement and all reasonable expenses incurred in connection with the  
19 liquidation of Mortgage Loans. The Repo Participants will provide the Debtor or the  
20 Liquidating Trustee with such information reasonably required to determine the interest of  
the Estate or the Liquidating Trust in Mortgage Loans liquidated pursuant to Class 6 of the  
Plan. Repo Participants may assert Class 3 general unsecured claims against the Estate to  
the extent the amount received on liquidation of Mortgage Loans is less than the sum of  
the repurchase price provided for in the applicable Repurchase Agreement subject to the  
right of the Liquidating Trustee or the Litigation Trustee to object to such claim.
- 21 5.6. Claims of Subordinated Creditors (Class 7). Class 7 (consisting of Creditors whose  
22 claims are subordinated pursuant to Section 510 of the Bankruptcy Code or otherwise by  
23 Order of the Bankruptcy Court) is impaired under the Plan. No distribution will be made  
24 in respect of Subordinated Claims. This class will be deemed to have voted against  
confirmation of this Plan.
- 25 5.7. Claims of Credit Borrowers (Class 8). Class 8 (consisting of certain claims of Credit  
26 Borrowers) is impaired under the Plan. In the event Class 8 votes to accept the Plan, each  
holder of an Allowed Class 8 Claim shall receive the lesser of (i) its Pro Rata share of

1 \$50,000 after payment in full to the holders of Allowed Administrative Expense Claims  
2 and Allowed Priority Claims pursuant to this Plan and (ii) the amount of its Allowed Class  
3 8 Claim. In the event Class 8 does not vote to accept this Plan, each Allowed Class 8  
4 Claim shall be treated as an Allowed Class 3 Claim.

- 5 5.8. Class of Equity Security Interest Holders (Class 9). Equity Security Interest Holders shall  
6 not retain an interest in the Debtor. No distribution will be made in respect of Equity  
7 Security Interests. All outstanding capital stock of the Debtor and membership interests in  
8 the Debtor will be deemed redeemed and cancelled. This Class will be deemed to have  
9 voted against confirmation of this Plan.

10 **ARTICLE VI**  
11 **ACCEPTANCE OR REJECTION OF PLAN; EFFECT OF**  
12 **REJECTION BY ONE OR MORE CLASSES OF CLAIMS**

- 13 6.1. Impaired Classes to Vote. Each impaired class of Creditors with Claims against the Estate  
14 shall be forwarded a ballot and shall be entitled to vote to accept or reject the Plan.
- 15 6.2. Acceptance by a Class of Creditors. A Class of Creditors shall have accepted the Plan if  
16 the Plan is accepted by at least two-thirds (2/3) in the aggregate dollar amount and more  
17 than one-half (1/2) in number of Holders of the Allowed Claims of such class that have  
18 voted to accept or reject the Plan.
- 19 6.3. Cram-down. In the event that any impaired Class of Creditors with Claims against the  
20 Debtor's Estate shall fail to accept the Plan in accordance with Section 1129(a) of the  
21 Bankruptcy Code, the Debtor reserves the right to request that the Bankruptcy Court  
22 confirm the Plan, notwithstanding such rejection, in accordance with Section 1129(b)(1)  
23 of the Bankruptcy Code.
- 24 6.4. Blank Ballots. Any Ballot which is executed by the Holder of an Allowed Claim or  
25 interest but which does not indicate an acceptance or rejection of the Plan shall be deemed  
26 an acceptance of the Plan.

**ARTICLE VII**  
**MEANS OF EFFECTUATING THE PLAN**

- 7.1. The Plan is to be implemented in a manner consistent with Section 1123 of the  
Bankruptcy Code.
- 7.2. The Plan will be consummated and distributions will be made by the Liquidating Trust out  
of the Dividend Fund in accordance with the terms of this Plan and the Liquidating Trust  
Agreement; provided however that if the Liquidating Trust has liquidated all of its  
Remaining Assets, and the Litigation Trust is still in existence, the Liquidating Trust can,  
with the consent of the Advisory Committee, transfer the Dividend Fund to the Litigation  
Trust and the Litigation Trust will responsible for distributions to creditors.

- 1 7.3. Pursuant to Bankruptcy Code sections 1123(a)(5)(B), 1123(b)(3)(B) and 1141 of the  
2 Bankruptcy Code, the Confirmation Order shall approve the Liquidating Trust Agreement,  
3 the establishment of the Liquidating Trust and appointment of the Liquidating Trustee and  
4 authorize and direct the Debtor to take all actions necessary to consummate the terms of  
5 the Liquidating Trust Agreement and to establish the Liquidating Trust, including the  
6 transfer of the Remaining Assets to the Liquidating Trust. The Liquidating Trust shall be  
7 deemed established, and the Liquidating Trustee shall be deemed appointed, as of the  
8 Effective Date. The Liquidating Trust shall be created and administered solely to  
9 implement the Plan. The powers, responsibilities and compensation for the Liquidating  
10 Trustee shall be set forth herein and in the Liquidating Trust Agreement. From the  
11 Effective Date, the Liquidating Trustee shall be a representative of the Estate, pursuant to  
12 Bankruptcy Code section 1123, appointed for the purposes of, among other things,  
13 pursuing the Estate Claims on behalf of the Debtor's Estate. In furtherance of that  
14 objective, the Liquidating Trustee shall have the rights of a trustee appointed under  
15 Bankruptcy Code section 1106 as it relates to the Remaining Assets. The Liquidating  
16 Trust shall have the full power and authority, either in its name or the Debtor's name, to  
17 commence, if not already commenced, prosecute, settle and abandon any action related to  
18 the Estate Claims and or object to Claims as specified below. The Liquidating Trust shall  
19 be authorized to retain professionals (which may include Professional Persons) with the  
20 reasonable professional fees, expenses and costs to be paid out of the assets of the  
21 Liquidating Trust.
- 22 7.4. The transfer of Remaining Assets to the Liquidating Trust shall be treated for federal  
23 income tax purposes and any applicable state or local income franchise or gross receipts  
24 tax purposes, and for all purposes of the Internal Revenue Code of 1986, as amended (the  
25 "Tax Code") (e.g., sections 61(a)(12), 483, 1001, 1012 and 1274) as a transfer to creditors  
26 to the extent creditors are beneficiaries of the Liquidating Trust, followed by a deemed  
transfer from the creditors to the Liquidating Trust. The beneficiaries of the Liquidating  
Trust shall be treated as the grantors and deemed owners of the Liquidating Trust for  
federal income tax purposes and any applicable state or local income, franchise or gross  
receipt tax purposes, and it is intended that the Liquidating Trust be classified as a  
liquidating trust under Section 301-7701-4 of the Treasury Regulations, as more  
particularly described in Revenue Procedure 94-45, 1994-2 C.B. 684. The Liquidating  
Trustee and the Beneficiaries of the Liquidating Trust shall value the assets of the  
Liquidating Trust on a consistent basis and use such valuation for all federal and state tax  
purposes.
- 7.5. The Net Proceeds of any and all sales (private or public) of the Assets collected by the  
Liquidating Trust (or its designee or agent), the recoveries from the Estate Claims and the  
recoveries generated by the Litigation Trust shall be placed by the Liquidating Trustee (or  
by the Litigation Trustee, as the case may be) in the Dividend Fund to the extent necessary  
to pay the Allowed Administrative Expense Claims, Allowed Priority Tax Claims, and  
Allowed Class 1 Claims, Allowed Class 3 Claims and Allowed Class 4 Claims as is  
provided by this Plan.

- 1 7.6. On and after the Effective Date, the Liquidating Trust, by and through the Liquidating  
2 Trustee, shall be fully empowered and authorized (without further order of the Bankruptcy  
3 Court), to market for sale and/or to sell and/or dispose of the Remaining Assets, and shall  
4 have the power and authority (without the need for a further hearing or order of the  
5 Bankruptcy Court) to execute all contracts of sale and other documents necessary to  
6 effectuate the sale or disposition of the Remaining Assets.
- 7 7.7. Immediately upon the Effective Date, the Liquidating Trust shall receive an assignment of  
8 all the Debtor's rights, title and interest in the Remaining Assets, free and clear of all  
9 Claims, Liens, encumbrances and other interests, except as otherwise specifically  
10 provided in the Plan. The Liquidating Trust shall be granted and shall have exclusive  
11 control and possession of the Remaining Assets, and the Debtor (and its directors,  
12 officers, employees, shareholders and agents) shall, on the Effective Date, or immediately  
13 thereafter as is practical, (without further hearing or Order of the Bankruptcy Court)  
14 peaceably turnover exclusive possession of the Remaining Assets to the Liquidating Trust,  
15 including all books and records related to the Remaining Assets and claims. The  
16 Liquidating Trust shall obtain such possession on the Effective Date for the sole purpose  
17 of effectuating and/or consummating this Plan. The Liquidating Trust shall be established  
18 for the sole purpose of liquidating the Remaining Assets, including prosecuting, settling or  
19 abandoning the Estate Claims, and making disbursements from the Dividend Fund for  
20 payment of Allowed Claims in accordance with the terms of the Plan. Neither the  
21 Liquidating Trust nor the Liquidating Trustee shall have an obligation of any kind to  
22 continue operating the business of the Debtor.
- 23 7.8. The Liquidating Trust shall not have a term greater than five years from its date of  
24 creation, unless extended from time to time pursuant to the terms of the Liquidating Trust  
25 Agreement, with the approval of the Bankruptcy Court, solely to implement the Plan;  
26 provided, however, that the Liquidating Trust shall not terminate if the Litigation Trust  
has not terminated and the Liquidating Trustee believes that additional assets will be  
distributed from the Litigation Trust to the Liquidating Trust Estate. At least twice a year,  
but only if permitted by the other terms of the Plan and the Liquidating Trust Agreement,  
the Liquidating Trustee shall distribute the net income of the Liquidating Trust plus all net  
proceeds and recoveries from the Remaining Assets to the Creditors holding Allowed  
Claims in accordance with the terms of the Plan, provided that the Liquidating Trustee  
shall not be required to make a distribution if the administrative time, costs and expenses  
in doing so is greater than the benefit to the beneficiaries of such distribution as  
determined by the Liquidating Trustee and the Liquidating Trustee may retain a sufficient  
amount of net income and net proceeds in the Liquidating Trust that the Liquidating  
Trustee reasonably believes are necessary to maintain the value of the assets, to pay the  
costs and expenses of the Liquidating Trust (and the costs and expenses of the Litigation  
Trust, to the extent necessary), including the compensation of the Liquidating Trustee and  
the reasonable fees, expenses and costs of professionals retained by the Liquidating Trust,  
or to meet claims and contingent liabilities (including Disputed Claims). The Liquidating  
Trustee shall make continuing, reasonable efforts to dispose of the assets of the

1 Liquidating Trust, make timely distributions and not unduly prolong the duration of the  
2 Liquidating Trust.

3 7.9. Pursuant to Bankruptcy Code sections 1123(a)(5)(B), 1123(b)(3)(B) and 1141 of the  
4 Bankruptcy Code, the Confirmation Order shall approve the Litigation Trust Agreement,  
5 the establishment of the Litigation Trust and the appointment of the Litigation Trustee and  
6 authorize and direct the Debtor to take all actions necessary to consummate the terms of  
7 the Litigation Trust Agreement and to establish the Litigation Trust, including the transfer  
8 of the Estate Tort and Other Claims to the Litigation Trust. The Litigation Trust shall be  
9 deemed established, and the Litigation Trustee shall be deemed appointed as of the  
10 Effective Date. The Litigation Trust shall be created and administered solely to  
11 implement the Plan. The powers, responsibilities and compensation for the Litigation  
12 Trustee shall be set forth herein and in the Litigation Trust Agreement. From the  
13 Effective Date, the Litigation Trust and the Litigation Trustee shall be a representative of  
14 the Estate, pursuant to Bankruptcy Code section 1123, appointed for the purposes of,  
15 among other things, pursuing the Estate Tort and Other Claims on behalf of the Estate. In  
16 furtherance of that objective, the Litigation Trustee shall have the rights of a trustee  
17 appointed under Bankruptcy Code section 1106 as it relates to the Estate Tort and Other  
18 Claims. The Litigation Trust shall have the full power and authority, either in its name or  
19 the Debtor's name, to commence, if not already commenced, prosecute, settle and abandon  
20 any action related to the Estate Tort and Other Claims. The Litigation Trust shall be  
21 authorized to retain professionals (which may include Professional Persons) with the  
22 reasonable professional fees, expenses and costs to be paid out of the assets of the  
23 Litigation Trust, or out of the Liquidating Trust to the extent funds are not available in the  
24 Litigation Trust.

25 7.10. The transfer of Estate Tort and Other Claims to the Litigation Trust, and the distributions  
26 from the Litigation Trust to the Liquidating Trust, shall be treated for federal income tax  
purposes and any applicable state or local income, franchise or gross receipt tax purposes,  
and for all purposes of the Internal Revenue Code of 1986, as amended (the "Tax Code")  
(e.g., sections 61(a)(12), 483, 1001, 1012 and 1274) as a transfer to creditors to the extent  
creditors are beneficiaries of the Litigation Trust followed by a deemed transfer from the  
creditors to the Litigation Trust. The beneficiaries of the Litigation Trust, shall be treated  
as the grantors and deemed owners of the Litigation Trust for federal income tax purposes,  
and for all applicable state or local income, franchise or gross receipt tax purposes, and it  
is intended that the Litigation Trust be classified as a liquidating trust under Section  
301.7701-4 of the Treasury Regulations, as more particularly described in Revenue  
Procedure 94-45, 1994-2 C.B. 684. The Litigation Trustee and the Beneficiaries of the  
Litigation Trust shall value the assets of the Litigation Trust on a consistent basis and use  
such valuation for all federal and state tax purposes.

7.11. The Litigation Trust shall not have a term greater than five years from its date of creation,  
unless extended from time to time pursuant to the terms of the Litigation Trust Agreement  
with the approval of the Bankruptcy Court, solely to implement the Plan. At least twice a  
year, but only if permitted by the other terms of the Plan and the Litigation Trust

1 Agreement, the Litigation Trustee shall distribute the net income of the Litigation Trust  
2 plus all net proceeds and recoveries from the Estate Tort and Other Claims to the  
3 Liquidating Trust for deposit into the Dividend Fund, provided that the Litigation Trustee  
4 may retain a sufficient amount of net income and net proceeds in the Litigation Trust that  
5 the Litigation Trustee reasonably believes are necessary to maintain the value of the  
6 assets, to pay the costs and expenses of the Litigation Trust, including the compensation  
7 of the Litigation Trustee and the reasonable fees, expenses and costs of professionals  
8 retained by the Litigation Trust (as described above). The Litigation Trustee shall make  
9 continuing, reasonable efforts to dispose of the assets if the Litigation Trust, make timely  
10 distributions and not unduly prolong the duration of the Litigation Trust.

7 7.12. Immediately upon the Effective Date, Litigation Trust shall receive an assignment of all  
8 the Debtor's rights, title and interest in the Estate Tort and Other Claims and the Litigation  
9 Trust Start-Up Cash, free and clear of all Claims, Liens, encumbrances and other interests,  
10 except as otherwise specifically provided in the Plan. The Litigation Trust shall be  
11 granted and shall have exclusive control and possession of the Estate Tort and Other  
12 Claims and the Litigation Trust Start-Up Cash, and the Debtor (and its directors, officers,  
13 employees, shareholders and agents) shall, on the Effective Date, or immediately  
14 thereafter as is practical, (without further hearing or Order of the Bankruptcy Court)  
15 peaceably turnover exclusive possession of the Estate Tort and Other Claims and the  
16 Litigation Trust Start-Up Cash to the Litigation Trust. The Litigation Trust shall obtain  
17 such possession on the Effective Date for the sole purpose of effectuating and/or  
18 consummating this Plan. The Litigation Trust shall be established for the sole purpose of  
19 liquidating the Estate Tort and Other Claims the Proceeds of which will be deposited as  
20 provided in the Litigation Trust Agreement into and ultimately disbursed out of the  
21 Dividend Fund for payment of Allowed Claims in accordance with the terms of the Plan.  
22 Neither the Litigation Trust nor the Litigation Trustee shall have an obligation of any kind  
23 to continue operating the business of the Debtor.

17 7.13. Transfer of Estate Claims/Estate Tort and Other Claims.

18 (a) After the Effective Date, the Liquidating Trust is authorized to transfer to the  
19 Litigation Trust any claims or cause of action constituting an Estate Claim for any reason  
20 whatsoever in the discretion of the Liquidating Trustee, after consultation with the  
21 Advisory Board, for prosecution by the Litigation Trust. After the effectiveness of such  
22 transfer, which shall be in writing, the Litigation Trust shall have the full power and  
23 authority, either in its name, the Liquidating Trust's name or the Debtor's name, to  
24 commence, if not already commenced, prosecute, settle and abandon such claim or cause  
25 of action as representative of the Estate.

24 (b) After the Effective Date, the Litigation Trust is authorized to transfer to the  
25 Liquidating Trust any claims or cause of action constituting an Estate Tort and Other  
26 Claim for any reason whatsoever in the discretion of the Litigation Trustee, after  
consultation with the Advisory Board, for prosecution by the Liquidating Trust. After the  
effectiveness of such transfer, which shall be in writing, the Liquidating Trust shall have

1 the full power and authority, either in its name, the Litigation Trust's name or the Debtor's  
2 name, to commence, if not already commenced, prosecute, settle and abandon such claim  
or cause of action as representative of the Estate.

3 7.14. Liquidating Trustee and Litigation Trustee.

4 7.14.1. Appointment of Liquidating Trustee. On the Effective Date, the Liquidating Trustee shall  
5 be immediately appointed and authorized to administer the Liquidating Trust and to  
6 liquidate any and all Remaining Assets on behalf of the Liquidating Trust for distribution  
in accordance with the Plan and the Liquidating Trust Agreement.

7 7.14.2. Powers of the Liquidating Trustee. All transfers of the Remaining Assets, including the  
8 execution of all contracts of sale, deeds, and other documents necessary to effectuate this  
Plan and to make payments under the Plan, shall be made by the Liquidating Trustee, on  
9 behalf of the Liquidating Trust and in accordance with the Liquidating Trust Agreement.  
The Liquidating Trustee shall have and is hereby granted the power and authority to list  
10 and/or market the Remaining Assets for sale (at such prices and for such amounts as  
determined by the Liquidating Trustee), and the Liquidating Trustee shall also have the  
11 power and authority to execute any and all documents (including contracts, deeds, and  
other documents) necessary to effectuate this Plan, sell or convey title to the Remaining  
12 Assets, without the need of further order of the Bankruptcy Court, prosecute, settle or  
abandon Estate Claims, and object to Claims. In the discharge of its duties, the  
13 Liquidating Trustee will also regularly consult with the Advisory Board and be subject to  
the approval rights set forth in Section 7.15 hereof.

14  
15 7.14.3. The Liquidating Trustee, on behalf of the Liquidating Trust, shall be further empowered  
to: (i) effect all actions and execute all agreements, instruments, and other documents  
16 necessary to perform its duties under the Plan including, without limitation, releases,  
settlement documents, notices of dismissal, stipulations of dismissal of any and all Estate  
17 Claims; (ii) subject to the provisions of this section of the Plan, make all distributions  
contemplated hereby; (iii) employ professionals to represent the Liquidating Trust in  
18 connection with the consummation of the terms of this Plan; and (iv) commence such  
actions and exercise such other powers as may be vested in the Liquidating Trustee and/or  
19 the Liquidating Trust by order of the Bankruptcy Court, pursuant to the Plan, or as  
deemed by the Liquidating Trustee to be necessary and proper to implement the  
20 provisions of the Plan.

21  
22 7.14.4. Appointment of Litigation Trustee. On the Effective Date, the Litigation Trustee shall be  
immediately appointed and authorized to administer the Litigation Trust and to liquidate  
23 any and all Estate Tort and Other Claims on behalf of the Litigation Trust for distribution  
in accordance with the Plan and the Litigation Trust Agreement.

24 7.14.5. Powers of the Litigation Trustee. The Litigation Trustee shall have and is hereby granted  
25 the power and authority to prosecute, settle or abandon Estate Tort and Other Claims (for  
such amounts as determined by the Litigation Trustee in his reasonable discretion), and  
26

1 the Litigation Trustee shall also have the power and authority to execute any and all  
2 documents (including contracts and other documents) necessary to effectuate this Plan  
3 and/or liquidate the Estate Tort and Other Claims, without the need of further order of the  
4 Bankruptcy Court. In the discharge of its duties, the Litigation Trustee will also regularly  
consult with the Advisory Board and be subject to the approval rights set forth in Section  
7.15 hereof.

5 7.14.6. The Litigation Trustee, on behalf of the Litigation Trust, shall be further empowered to:  
6 (i) effect all actions and execute all agreements, instruments, and other documents  
7 necessary to perform its duties under the Plan including, without limitation, releases,  
8 settlement documents, notices of dismissal, stipulations of dismissal of any and all Estate  
9 Tort and Other Claims; (ii) subject to the provisions of this section of the Plan, make all  
10 distributions contemplated hereby; (iii) employ professionals to represent the Litigation  
11 Trust in connection with the consummation of the terms of this Plan; and (iv) commence  
such actions and exercise such other powers as may be vested in the Litigation Trustee  
and/or the Litigation Trust by order of the Bankruptcy Court, pursuant to the Plan, or as  
deemed by the Litigation Trustee to be necessary and proper to implement the provisions  
of the Plan.

12 7.15. Advisory Board.

13 7.15.1. Composition/Duties. On the Effective Date, the Advisory Board will be established and  
14 will be comprised of the following three (3) existing members of the Committee selected  
15 by the Committee: (1) National Bank of Arizona (Kenneth Goldstein), (2) Hilton &  
16 Meyers Advertising, Inc. (Doug Meyers), and (3) Pyro Brand Development, LLC (John  
17 Beitter). In the event of any vacancy on the Advisory Board, the remaining members shall  
18 fill the vacancy with a Person who is a beneficiary under the Liquidating Trust. All  
19 discretionary actions to be taken by either the Liquidating Trustee or the Litigation  
20 Trustee with respect to the assets of the Liquidating Trust or the Litigation Trust,  
21 respectively, including distributions to creditors, the sale or abandonment of the  
22 Remaining Assets, the prosecution, compromise, settlement, or abandonment of any  
23 Estate Claim or Estate Tort and Other Claim, or the prosecution, compromise, settlement,  
24 or abandonment of any objection to Claim shall be done in consultation with the Advisory  
25 Board. In the event of any disagreement between either the Liquidating Trustee or the  
26 Litigation Trustee and the Advisory Board, the decision of the Advisory Board will  
control. Notwithstanding the foregoing sentence, if the disagreement between the either  
the Liquidating Trustee or the Litigation Trustee and the Advisory Board addresses (a) a  
sale transaction, or a series of sale transactions to the same Person, proposed to be  
undertaken by the Liquidating Trustee that involves consideration to or for the Liquidating  
Trust of a value of less than \$500,000, (b) the Liquidating Trustee's proposed  
abandonment or settlement of any dispute regarding any Estate Claim or the release of any  
claim or Estate Claim or settlement of any litigation regarding any claim or Estate Claim  
which the Liquidating Trustee in good faith believes has a value of less than \$250,000, (c)  
the Liquidating Trustee's proposal to not file or to settle any objection to a Claim that has  
a face amount that is less than \$100,000, (d) the Litigation Trustee's proposed

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

abandonment or settlement of any dispute regarding, or the release of, any Estate Tort and Other Claim or settlement of any litigation regarding any Estate Tort and Other Claim which the Litigation Trustee in good faith believes has a value of less than \$250,000 or (e) the Liquidating Trustee or the Litigation Trustee proposes to pay an expense in an amount less than \$50,000, then the Liquidating Trustee's or the Litigation Trustee's decision shall control.

7.15.2. Professionals. The Advisory Board may retain and compensate professionals (which may include Professional Persons) to assist the Advisory Board in performing its duties and obligations under the Plan and the Trust Agreements, on such terms as the Advisory Board deems appropriate, without Bankruptcy Court approval.

7.15.3. Compensation. Members of the Advisory Board shall be entitled to the reimbursement of reasonable expenses incurred in performing their duties under the Plan from the Liquidating Trust.

7.15.4. Standing. In connection with any and all matters, proceedings, actions and undertakings involving the Liquidating Trust or the Litigation Trust, including, but not limited to, the prosecution or settlement of any Estate Claim, Estate Tort and Other Claim, objection to Claim or claim, motion, proceeding or cause of action brought against the Debtor, whether in the Bankruptcy Court, or any Federal or State Court (collectively, for purposes of this section only, the "Estate Matters"), the Advisory Board shall be automatically deemed, without further order of the Bankruptcy Court or tribunal where such Estate Matter is pending, to be and is hereby granted the status of a party in interest with all rights to appear and be heard, to file pleadings and other papers, and to participate in any such Estate Matters, and may appeal any judgment, order, or decree entered in such Estate Matters. Notwithstanding the forgoing, the Advisory Board shall not be deemed a named party in any Estate Matter, solely by virtue of its status of a party in interest in such Estate Matter.

7.16. Expenses Incurred on or After the Effective Date. The amount of any reasonable fees and expenses incurred by the Liquidating Trust, the Litigation Trust, or the Advisory Board on or after the Effective Date (including, without limitation, reasonable attorney and other professional fees and expenses) shall be paid from funds held in the Liquidating Trust or the Litigation Trust. The Liquidating Trustee and the Litigation Trustee shall receive compensation as set forth in the Liquidating Trust Agreement and the Litigation Trust Agreement, respectively, for services rendered and expenses incurred on behalf of the Liquidating Trust or the Litigation Trust and in carrying out their duties pursuant to the Plan.

7.17. Non-Transferability of Beneficial Interests in the Trusts. No Person entitled to a distribution from either Trust under the terms of the Plan may sell, transfer or otherwise assign its right to receive a distribution from either Trust, respectively, except by will, by intestate succession or by operation of law. The right to receive distributions from the Trusts will not be represented by any certificate.

- 1 7.18. The Hold Account. Cash in the Hold Account shall be held by the Liquidating Trustee in  
2 a separate interest-bearing account until the interests of the parties with respect to the  
3 Cash held in the Hold Account are (a) agreed upon by the parties asserting interests in the  
4 Cash in the Hold Account and the Liquidating Trustee or (b) determined by the  
5 Bankruptcy Court. The Cash in the Hold Account shall be distributed in accordance with  
6 (a) any agreement among the parties (including the Liquidating Trustee) asserting interests  
7 in the Cash held in the Hold Account or (b) an order of the Bankruptcy Court.
- 8 7.19. No Liability Of the Advisory Committee and its Members. To the maximum extent  
9 permitted by law, the Advisory Committee and its members, representatives, or  
10 professionals employed or retained by the Advisory Committee (the "Advisory  
11 Committee's Agents") shall not have or incur liability to any Person or Governmental Unit  
12 for an act taken or omission made in good faith in connection with or related to any action  
13 taken or omitted by it pursuant to the discretion, power and authority conferred to it by the  
14 Plan, the Confirmation Order or the Trust Agreements. The Advisory Committee and the  
15 Advisory Committee's Agents shall in all respects be entitled to reasonably rely on the  
16 advice of counsel with respect to its duties and responsibilities under the Plan and the  
17 Trust Agreements. Entry of the Confirmation Order constitutes a judicial determination  
18 that the exculpation provision contained in this Section is necessary to, inter alia, facilitate  
19 Confirmation and feasibility and to minimize potential claims arising after the  
20 Confirmation Date for indemnity, reimbursement or contribution from the Trusts, or their  
21 respective property. The Confirmation Order's approval of the Plan also constitutes a res  
22 judicata determination of the matters included in this exculpation provision of the Plan.
- 23 7.20. Indemnification. The Liquidating Trustee, the Litigation Trustee, the Advisory Board and  
24 their respective agents and professionals shall be indemnified as provided in the Trust  
25 Agreements.

17 **ARTICLE VIII**  
18 **EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

- 18 8.1. The Plan contemplates and hereby provides for the rejection, pursuant to Section 365 of  
19 the Bankruptcy Code, of any and all Executory Contracts and Unexpired Leases of the  
20 Debtor which are in force on the Confirmation Date, except those Executory Contracts  
21 and Unexpired Leases which were specifically assumed pursuant to an order of the Court.  
22 Notwithstanding any other provision in this Plan or prior notice of any kind from the clerk  
23 of the Bankruptcy Court, any and all Creditors or persons with Claims against the  
24 Debtor's Estate arising out of or in connection with or due to the rejection of an Executory  
25 Contract or Unexpired Lease pursuant to the Plan shall have thirty (30) days from the  
26 Confirmation Date within which to file a proof of claim in the true amount of such  
Claims. If any such Creditors fail to file such proofs of claim within said thirty (30) day  
period, then such Creditors shall have no Claims as against the Debtor, its Estate, the  
Liquidating Trustee, or the Litigation Trustee (and with any of their representatives,  
agents and employees), which Claims arising out of or in connection with or due to such

1 rejection of such Executory Contract or Unexpired Lease, shall be dismissed, released and  
2 null and void.

3 8.2. Any Entity whose Claim arises from the rejection of an Executory Contract or Unexpired  
4 Lease shall, to the extent such Claim becomes an Allowed Claim, have the rights of a  
5 Class 3 Claimant with respect thereto.

6 8.3. Any claim filed in accordance with the provisions of Section 8.01 hereof shall be treated  
7 as a Disputed Claim until the period of time has elapsed within which the Debtors may  
8 file an objection to such Claim.

9 **ARTICLE IX**  
10 **RETENTION OF JURISDICTION**

11 9.1. Notwithstanding the entry of the Confirmation Order or the occurrence of Effective Date,  
12 the Bankruptcy Court shall retain jurisdiction over this Case and any proceedings related  
13 thereto to the fullest extent permitted by the Bankruptcy Code or applicable law, and to  
14 make such orders as are necessary or appropriate to carry out the provisions of this Plan.

15 9.2. In addition, the Bankruptcy Court shall retain jurisdiction to implement the provisions of  
16 the Plan in the manner as provided under Section 1142 of the Bankruptcy Code. If the  
17 Bankruptcy Court abstains from exercising, or declines to exercise jurisdiction, or is  
18 otherwise without jurisdiction over any matter set forth in this Section, or if the  
19 Liquidating Trustee or the Litigation Trustee elects to bring an action or proceeding in any  
20 other forum, then this Section shall have no effect upon and shall not control, prohibit or  
21 limit the exercise of jurisdiction by any other court public authority or commission having  
22 competent jurisdiction over such matters.

23 9.3. Without limiting the foregoing, the Bankruptcy Court shall retain jurisdiction of the Case  
24 for the following matters:

25 9.3.1. To enable the Liquidating Trustee, or the Litigation Trustee to consummate any and all  
26 proceedings which may have been brought before or after the entry of the Confirmation  
Order, to set aside Liens or encumbrances, to challenge or object to the allowance of  
Claims and to recover any preferences, transfers, assets or damages to which it may be  
entitled under the applicable provisions of the Code or other federal, state or local law;

9.3.2. To adjudicate all controversies concerning the classification or allowance of a Claim  
and/or Equity Security Interest;

9.3.3. To adjudicate all disputes regarding Repurchase Agreements, including the obligations of  
Repo Participants to deliver funds to the Liquidating Trustee and to provide information to  
the Liquidating Trustee;

9.3.4. To hear and determine all claims and/or motions arising from or seeking the rejection of  
any Executory Contracts or Unexpired Leases, and to consummate the rejection and

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

termination thereof or with respect to any Executory Contracts or Unexpired Leases to which an application or motion for rejection or termination is filed before entry of the Confirmation Order;

9.3.5. To liquidate damages in connection with any disputed, contingent or unliquidated Claims;

9.3.6. To adjudicate all claims to a security or ownership interest in any property of the Debtor or in any proceeds thereof, including the adjudication of all claims asserted by Secured Creditors, Repo Participants, and other parties in interest to Cash in the Hold Account;

9.3.7. To adjudicate all claims or controversies arising out of any purchases, sales, or contracts made or undertaken by the Debtor and/or the Liquidating Trustee and/or the Litigation Trustee during the pendency of the Proceedings;

9.3.8. To adjudicate, determine and resolve any and all adversary proceedings, applications, motions, and contested or litigated matters, including any related to the Estate Claims or the Estate Tort and Other 5 Claims, instituted before the closing of the Case;

9.3.9. To recover all Assets and properties of the Debtor, wherever located;

9.3.10. To adjudicate and determine any cause of action provided for under the Plan or pursuant to the Confirmation Order;

9.3.11. To make orders as are necessary or appropriate to carry out the provisions of the Plan or the Trust Agreements, or in aid of confirmation and consummation of the Plan;

9.3.12. To hear and determine any application to modify the Plan in accordance with Section 1127 of the Bankruptcy Code, to remedy any defect or omission, or reconcile any inconsistency in the Plan, the Disclosure Statement or any Order of the Bankruptcy Court, including the Confirmation Order, in such a manner as may be necessary to carry out the purposes and effects hereof; and

9.3.13. To hear and determine all matters concerning state, local and federal taxes in accordance with Sections 346, 505 and 1146 of the Bankruptcy Code.

9.3.14. To determine any and all applications, adversary proceedings, and contested or litigated matters properly before the Bankruptcy Court before or after the Confirmation Date.

9.3.15. To hear and determine all controversies, suits and disputes, if any, as may arise with regard to orders of the Bankruptcy Court in the Case entered on or before the Confirmation Date.

9.3.16. To extend the expiration date of the Liquidation Trust or the Litigation Trust pursuant to Section 7.8 and 7.11 of the Plan.

1 9.3.17 To issue any orders to amend the Liquidating Trust or the Litigation Trust that may be  
2 required in order to maintain the classification of such trusts as liquidating trusts under  
3 Section 301.7701-4 of the Treasury Regulations, as more particularly described in  
4 Revenue Procedure 94-45, 1994-2 684. C.B., or any subsequent guidance issued by the  
5 Internal Revenue Service setting out requirements for such classification.

6 9.4. To enter an Order closing the Case.

7 **ARTICLE X**  
8 **PROCEDURES FOR RESOLVING DISPUTED CLAIMS**

9 10.1. Objections to Claims. Only the Liquidating Trustee, and the Litigation Trustee in certain  
10 instances, shall be entitled to object to Claims. Any objections to Claims shall be served  
11 and filed on or before the later of: (i) one hundred and twenty (120) days after the  
12 Confirmation Date; (ii) thirty (30) days after a request for payment or proof of Claim is  
13 timely filed and properly served; or (iii) such other date as may be fixed by the  
14 Bankruptcy Court, whether before or after the dates specified in subsections (i) and (ii)  
15 herein. Notwithstanding any authority to the contrary, an objection to a Claim shall be  
16 deemed properly served on the Creditor if service is effected in any of the following  
17 manners: (a) in accordance with Federal Rule of Civil Procedure 4, as modified and made  
18 applicable by Bankruptcy Rule 7004; (b) by first class mail, postage prepaid, on any  
19 appropriate counsel that has appeared on the Creditor's behalf in the Cases; or (c) by first  
20 class mail, postage prepaid, on the signatory on the proof of Claim or other representative  
21 identified in the proof of Claim or any attachment thereto.

22 10.2. Payments and Distributions with Respect to Disputed Claims. Notwithstanding any other  
23 provision hereof, if only a portion of a Claim is a Disputed Claim, if appropriate, in the  
24 discretion of the Liquidating Trustee, the undisputed portion of the Disputed Claim may  
25 be treated as an Allowed Claim. The Liquidating Trustee will create appropriate reserves  
26 in the Dividend Fund to provide for payment of Disputed Claims if ever the Disputed  
Claims become Allowed Claims.

10.3. Distributions After Allowance. After such time as a Disputed Claim becomes, in whole or  
in part, an Allowed Claim, the Liquidating Trustee shall distribute to the holder thereof  
the distributions, if any, to which such holder is then entitled under the Plan in accordance  
with the provisions hereof. In respect of Disputed Claims such distributions shall be made  
within fifteen (15) days after such Disputed Claims become Allowed Claims by Final  
Order of the Bankruptcy Court.

10.4. 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 the 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 Liquidating Trustee, the Litigation Trustee, the Debtor, the

1 Advisory Board, or any of their respective professionals, consultants, attorneys, advisory,  
2 officers, directors or members or their successors or assigns, or any of their respective  
3 property; provided, however, that nothing in the Plan shall modify any rights of a holder  
4 of a Claim in accordance with Section 502(j) of the Bankruptcy Code.

5 **ARTICLE XI**  
6 **PROVISIONS CONCERNING DISTRIBUTION**

- 7 11.1. Time of Distributions Under the Plan. Payments and distributions to be made by the  
8 Liquidating Trust on or after the Effective Date pursuant to the Plan shall be made on such  
9 date, or as soon as practicable, except as otherwise provided for in the Plan, the  
10 Liquidating Trust Agreement or as may be ordered by the Court.
- 11 11.2. Payment Dates. Whenever any payment or distribution to be made under the Plan shall be  
12 due on a day other than a Business Day, such payment or distribution shall instead be  
13 made, without interest, on the next Business Day.
- 14 11.3. Manner of Payments Under the Plan. Cash payments made pursuant to the Plan shall be  
15 made in the currency of the United States, by check drawn on a domestic bank or by wire  
16 transfer from a domestic bank. Distributions to all holders of Allowed Claims shall be  
17 made (a) at the addresses set forth in the proof of claim filed by such holders (or at last  
18 known addresses of such holders if no proofs of claims were filed or the Debtor was  
19 notified of a change of address); or (b) at the addresses set forth in any written notices of  
20 address change delivered (i) before the Effective Date to the Debtor or the Bankruptcy  
21 Court after the date the proof of claim was filed or (ii) on or after the Effective Date, to  
22 the Liquidating Trustee; or (c) at the addresses reflected in the Debtor's schedules if no  
23 claim shall have been filed and no written notice of an address change has been received  
24 by the Debtor. No payments shall be made to a holder of a Disputed Claim unless and  
25 until such Claim becomes an Allowed Claim by a Final Order.
- 26 11.4. Fractional Cents. Any other provision of the Plan to the contrary notwithstanding, no  
payments 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 of such  
fraction to the nearest whole cent (rounding down in the case of .5).
- 11.5. Non-Negotiated Checks. Except as otherwise set forth in Section 11.6 hereof, if a Holder  
of an Allowed Claim, or and other claim or interest fails to negotiate a check issued to  
such Holder under the Plan within one hundred and eighty (180) days of the date such  
check was issued by the Liquidating Trust, then the amount of Cash or other property  
attributable to such check shall be deemed to be "Unclaimed Distributions," and the payee  
of such check shall be deemed to have no further Claim or future Claim against the  
Debtor, the Dividend Fund and/or the Liquidating Trust with respect of such check.
- 11.6. Unclaimed Distributions. In the event any payment to a holder of a Claim under the Plan  
remains unclaimed for a period of six (6) months after such distribution has been made (or  
after such delivery has been attempted), such Unclaimed Distribution and all future

1 distributions to be made to such holders shall be deemed forfeited by such holder and the  
2 Unclaimed Distribution shall be distributed Pro Rata to the other holders of Class 3  
Allowed Unsecured Claims and Allowed Class 4 Rejection Damage Claims.

3 11.7. No Cash Payments of \$20.00 or Less on Account of Allowed Claims. If a cash payment  
4 otherwise provided for by this Plan with respect to an Allowed Claim would be less than  
5 Twenty Dollars (\$20.00) (whether in the aggregate or on any payment date provided in  
6 this Plan), notwithstanding any contrary provision of this Plan, no such payment will be  
7 made and the Liquidating Trust shall retain such funds for its own purposes.

8 11.8. Disputed Payments or Distributions. In the event of any dispute between and among  
9 Claimants (including the Entity or Entities asserting the right to receive the disputed  
10 payment or distribution) as to the right of any Entity to receive or retain any payment or  
11 distribution to be made to such Entity under the Plan, the Liquidating Trust may, in lieu of  
12 making such payment or distribution to such Entity, make it instead into an escrow  
13 account or to a disbursing agent, for payment or distribution as ordered by a court of  
14 competent jurisdiction or as the interested parties to such dispute may otherwise agree  
15 among themselves.

## 12 **ARTICLE XII** **EFFECT OF CONFIRMATION OF PLAN**

13 12.1. Discharge. Any liability imposed by the Plan will not be discharged. If Confirmation of  
14 this Plan does not occur, the Plan shall be deemed null and void. In such event, nothing  
15 contained in this Plan shall be deemed to constitute a waiver or release of any claims  
16 against the Debtor or its Estate or any other Persons, or to prejudice in any manner the  
17 rights of the Debtor or its Estate or any Person in any further proceeding involving the  
18 Debtor or the Estate. The provisions of this Plan shall be binding upon the Debtor, all  
19 Creditors and all Equity Security Interest Holders, regardless of whether such Claims or  
20 Equity Security Interest Holders are impaired or whether such parties accept this Plan,  
21 upon Confirmation thereof.

22 12.2. Modification of Plan. The Debtor may modify the Plan at any time before Confirmation.  
23 However, the Bankruptcy Court may require a new Disclosure Statement or revoting on  
24 the Plan if the Debtor materially modifies the Plan before Confirmation. The Debtor or  
25 the Liquidating Trust may also seek to modify the Plan at any time after Confirmation so  
26 long as (a) the Plan has not been substantially consummated, and (b) the Bankruptcy  
Court authorizes the proposed modification after notice and a hearing. After  
Confirmation, the Debtor may, upon Order from the Bankruptcy Court, in accordance  
with Section 1127(b) of the Bankruptcy Code, remedy any defect or omission or reconcile  
any inconsistency in this Plan in such manner as may be necessary to carry out the  
purpose of this Plan.

12.3. Post-Confirmation Quarterly Fees. Quarterly fees pursuant to 28 U.S.C. Section  
1930(a)(6) continue to be payable to the Office of the United States Trustee by the

1 Liquidating Trustee from funds in the Dividend Fund post-confirmation until such time as  
2 the case is converted, dismissed, or closed pursuant to a final decree.

3 12.4. Investment of Dividend Fund. The Liquidating Trustee shall invest any monies held at  
4 any time as part of the trust assets, including without limitation, funds in the Dividend  
5 Fund, only in interest-bearing deposits or certificates of deposit issued by any federally  
6 insured banking institution or short-term investments and obligations of, or  
7 unconditionally guaranteed as to payment by, the United States of America and its  
8 agencies or instrumentalities.

9 12.5. Retention of Claims and Causes of Action. Except to the extent any rights, claims, causes  
10 of action, defenses, and counterclaims are expressly and specifically released in  
11 connection with this Plan or in any settlement agreement approved during the Case: (i)  
12 any and all Estate Claims or Estate Tort and Other Claims accruing to the Debtor or the  
13 Estate shall remain assets of and vest in the Liquidating Trust or the Litigation Trust (as  
14 the case may be), whether or not litigation relating thereto is pending on the Effective  
15 Date, and whether or not any such Estate Claims or Estate Tort and Other Claims have  
16 been listed or referred to in the Plan, the Disclosure Statement, or any other document  
17 filed with the Court, and (ii) neither the Debtor, the Estate, the Liquidating Trust, nor the  
18 Litigation Trust waive, release, relinquish, forfeit, or abandon (nor shall they be estopped  
19 or otherwise precluded or impaired from asserting) any Estate Claims or defenses or  
20 Estate Tort and Other Claims or defenses that constitute property of the Debtor or the  
21 Estate: (a) whether or not such Estate Claims or Estate Tort and Other Claims or defense  
22 has been listed or referred to in this Plan, the Disclosure Statement, or any other document  
23 filed with the Bankruptcy Court, (b) whether or not such Estate Claims or Estate Tort and  
24 Other Claims is currently known to the Debtor, and (c) whether or not a defendant in any  
25 litigation relating to such Estate Claims or Estate Tort and Other Claims filed a proof of  
26 claim in the Case, filed a notice of appearance or any other pleading or notice in the Case,  
voted for or against this Plan, or received or retained any consideration under this Plan.  
Without in any manner limiting the scope of the foregoing, notwithstanding any otherwise  
applicable principle of law or equity, including, without limitation, any principles of  
judicial estoppel, res judicata, collateral estoppel, issue preclusion, or any similar doctrine,  
the failure to list, disclose, describe, identify, analyze or refer to any Estate Claim, Estate  
Tort and Other Claim, or potential Estate Claim or Estate Tort and Other Claim, in the  
Plan, the Disclosure Statement, or any other document filed with the Court shall in no  
manner waive, eliminate, modify, release, or alter the Debtor's, the Liquidating Trust's, or  
the Litigation Trust's right to commence, prosecute, defend against, settle, recover on  
account of, and realize upon any Estate Claim or Estate Tort and Other Claim that the  
Debtor or its Estate have or may have as of the Effective Date.

The Debtor expressly reserves all Estate Claims, Estate Tort and Other Claims and  
defenses for later adjudication by the Liquidating Trust and the Litigation Trust, as the  
case may be, and, therefore, no preclusion doctrine, including the doctrines of res judicata,  
collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable  
or otherwise) or laches will apply to such Estate Claims, Estate Tort and Other Claims and

1 defenses upon or after the Confirmation or Consummation of the Plan based on the  
2 Disclosure Statement, the Plan or the Confirmation Order. In addition, the Liquidating  
3 Trust and the Litigation Trust expressly reserve the right to pursue or adopt Estate Claims  
4 and Estate Tort and Other Claims that are alleged in any lawsuits in which the Debtor is a  
5 defendant or an interested party, against any Person or Governmental Entity, including the  
6 plaintiffs or co-defendants in such lawsuits. Any Person or Governmental Entity to whom  
7 the Debtor has incurred an obligation (whether on account of services, purchase, sale of  
8 goods or otherwise), or who has received services from the Debtor, or who has received  
9 money or property from the Debtor, or who has transacted business with the Debtor, or  
10 who has leased equipment or property from or to the Debtor should assume that such  
11 obligation, receipt, transfer or transaction may be reviewed by the Liquidating Trust or the  
12 Litigation Trust subsequent to the Effective Date and maybe the subject of an action after  
13 the Effective Date, whether or not: (a) such Person or Governmental Unit has Filed a  
14 proof of Claim against the Debtor in the Case; (b) such Person's or Governmental Unit's  
15 proof of Claim has been objected to by the Debtor; (c) such Person's or Governmental  
16 Unit's Claim was included in the Debtor's Schedules; or (d) such Person's or  
17 Governmental Unit's scheduled Claim has been objected to by the Debtor or has been  
18 identified by the Debtor as contingent, unliquidated or disputed.

12.6. **No Waiver of Claims. Neither the failure to list a Claim in the Schedules filed by the Debtor, the failure of the Debtor or any other Person to object to any Claim for purposes of voting, the failure of the Debtor or any other Person to object to a Claim or Administrative Expense before Confirmation or the Effective Date, the failure of any Person to assert a claim or cause of action before Confirmation or the Effective Date, the absence of a proof of Claim having been filed with respect to a Claim, nor any action or inaction of the Debtor or any other Person with respect to a Claim, or Administrative Expense, other than a legally effective express waiver or release, shall be deemed a waiver or release of the right of the Debtor, the Liquidating Trust or the Litigation Trust, before or after solicitation of votes on the Plan or before or after Confirmation or the Effective Date to (a) object to or examine such Claim or Administrative Expense, in whole or in part or (b) retain and either assign or exclusively assert, pursue, prosecute, utilize, otherwise act or otherwise enforce any claim or cause of action against the holder of any such Claim.**

21 **ARTICLE XIII**  
22 **GENERAL PROVISIONS**

23 13.1. **Notices Under the Plan.** Notices, requests, or demands with respect to this Plan shall be in  
24 writing and shall be deemed to have been received within five (5) days of the date of  
25 mailing, provided they are sent by registered mail or certified mail, postage prepaid, return  
26 receipt requested, and if sent to the Proponents, addressed to:

1 Greenberg Traurig, P.A.  
2 1221 Brickell Avenue  
3 Miami, Florida 33131  
4 Attn: James P.S. Leshaw, Esq.

Warner Stevens, LLP  
301 Commerce Street, Suite 1700  
Fort Worth, Texas 76102  
Attn: Michael D. Warner, Esq.  
Attorneys for Committee

5 Greenberg Traurig, LLP  
6 2375 East Camelback Road  
7 Suite 700  
8 Phoenix, Arizona 85016  
9 Attn: John R. Clemency, Esq.  
10 Attorneys for the Debtor

- 11 13.2. Withholding Taxes/Setoffs. The Liquidating Trust shall be entitled to deduct any Federal  
12 or State withholding taxes from any payments with respect to Allowed Claims for wages  
13 of any kind. The Liquidating Trustee and Litigation Trustee may, but shall not be  
14 required to, set off or recoup against any Claim, and the payments to be made pursuant to  
15 the Plan in respect of such Claim, any claims of any nature whatsoever the Debtor or the  
16 Estate may have against the holder of such Claim, but neither the failure to do so nor the  
17 allowance of any Claim hereunder shall constitute a waiver or release by the Liquidating  
18 Trust or Litigation Trust of any such claim the Debtor may have against such holder.
- 19 13.3. Committee. On the Effective Date, the Committee shall automatically dissolve and the  
20 members thereof and the Professional Persons retained by the Committee in accordance  
21 with Section 1103 of the Bankruptcy Code shall be released and discharged from their  
22 respective duties and obligations.
- 23 13.4. Headings. The headings used in this Plan are inserted for convenience only and neither  
24 constitute a portion of this Plan nor in any manner affect the provisions of this Plan.
- 25 13.5. Unenforceability. Should any provision in this Plan be determined to be unenforceable,  
26 such determination shall in no way limit or affect the enforceability and operative effect of  
any and all other provisions of this Plan.
- 13.6. Certain Terminations. On the Effective Date, all instruments evidencing indebtedness of  
the Debtor discharged by the Plan shall be deemed canceled, unless this Plan provides for  
the retention of liens.
- 13.7. Rights if Plan Not Confirmed. If Confirmation of this Plan does not occur, the Plan shall  
be deemed null and void. In such event, nothing contained in this Plan shall be deemed to  
constitute a waiver or release of any Claims by or against the Debtor or its Estate or any  
other Person, or to prejudice in any manner, the rights of the Debtor of its Estate or any  
Person in any further proceedings involving the Debtor or its Estate.

- 1 13.8. Governing Law. Except to the extent that the Bankruptcy Code is applicable, the rights  
2 and obligations arising under this Plan shall be governed by, and construed and enforced  
3 in accordance with, the internal laws of the State of Arizona.
- 4 13.9. Liquidated and/or Disputed Claims. The Bankruptcy Court shall fix or liquidate the  
5 amount of any contingent and/or disputed Claim pursuant to Section 502 of the  
6 Bankruptcy Code. The amount so fixed shall be deemed the amount of such contingent  
7 Claim for purposes of this Plan. In lieu thereof, the Bankruptcy Court may determine the  
8 amount to be reserved for such contingent Claim, which amount shall be the maximum  
9 amount which the holder of such contingent Claim shall be entitled to receive under this  
10 Plan if such contingent Claim is Allowed in whole or in part.
- 11 13.10. Revocation of Plan. The Debtor reserves the right to revoke and withdraw this Plan at any  
12 time before Confirmation.
- 13 13.11. Reservation of Rights. Nothing contained herein shall prohibit the Debtor from  
14 prosecuting or defending any of its rights as may exist on its own behalf before the  
15 Confirmation Date. If Confirmation of the Plan does not occur, the Plan shall be deemed  
16 null and void. In such event, nothing contained in the Plan shall be deemed to constitute a  
17 waiver or release of any Claims by or against the Debtor, its Estate, the Committee or any  
18 other Person, or to prejudice in any manner, the rights and remedies of the creditors, the  
19 Debtor, its Estate, the Committee or any Person in any further proceedings involving the  
20 Debtor or its Estate. The filing of the Plan and or any modifications hereto, and the Plan  
21 itself shall not constitute a waiver by the Debtor of any and all rights, remedies,  
22 objections, causes of action, the Debtor may have or may wish to raise with respect to  
23 anything, including, without limitation, any other plan or plans filed or to be filed in this  
24 bankruptcy case, all of which rights and objections are hereby reserved.
- 25 13.12. Exemption from Certain Transfer Taxes. Pursuant to Section 1146(a) of the Bankruptcy  
26 Code, the issuance, transfer or exchange of a security, or the making or delivery of an  
instrument of transfer hereunder will not be subject to any stamp, tax, or similar tax,  
including but not limited to the transfer of any Remaining Assets by the Liquidating Trust  
and the recording or mortgages by the purchaser thereof.
- 13.13. Injunction. Except as otherwise provided in the Plan or the Confirmation Order, and  
except for any actions timely filed pursuant to Section 523 of the Bankruptcy Code and/or  
any Claims declared by the Court to be non-dischargeable pursuant to Section 523 of the  
Bankruptcy Code, as of the Confirmation Date, but subject to the occurrence of the  
Effective Date, all Persons who have held, hold or may hold Claims against the Debtor or  
its Estate are, with respect to any such Claims or Equity Security Interests, permanently  
enjoined from and after the Confirmation Date from: (i) 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) with respect to any such Claim against or affecting the  
Debtor, its Estate, the Liquidating Trust, the Liquidating Trustee, the Advisory Board and

1 its members, the Litigation Trust, and the Litigation Trustee or any of their respective  
2 property, or any direct or indirect transferee of any property of, or direct or indirect  
3 successor in interest to, any of the foregoing Persons, or any property of any such  
4 transferee or successor; (ii) enforcing, levying, attaching (including, without limitation,  
5 any pre-judgment attachment, collecting or otherwise recovering by any manner or means,  
6 whether directly or indirectly, with respect to any judgment, award, decree or order  
7 against the Debtor, its Estate, the Liquidating Trust, the Liquidating Trustee, the Advisory  
8 Board and its members, the Litigation Trust, and the Litigation Trustee or any of their  
9 respective property, or any direct or indirect transferee of any property of, or direct or  
10 indirect successor in interest to, any of the foregoing Persons, or any property of any such  
11 transferee or successor; (iii) creating, perfecting or otherwise enforcing in any manner,  
12 directly or indirectly, any encumbrance of any kind against the Debtor, its Estate, the  
13 Liquidating Trust, the Liquidating Trustee, the Advisory Board and its members, the  
14 Litigation Trust, and the Litigation Trustee or any of their respective property, or any  
15 direct or indirect transferee of any property of, or successor in interest to, any of the  
16 foregoing Persons; (iv) asserting initially after the Effective Date any right of setoff,  
17 subrogation, or recoupment of any kind, directly or indirectly, against any obligation due  
18 to the Debtor, its Estate, the Liquidating Trust, the Liquidating Trustee, the Advisory  
19 Board and its members, the Litigation Trust, and the Litigation Trustee or any of their  
20 respective property, or any direct or indirect transferee of any property of, or successor in  
21 interest to, any of the foregoing Persons; and (v) acting or proceeding in any manner, in  
22 any place whatsoever, that does not conform to or comply with the provisions of the Plan  
23 to the full extent permitted by applicable law. By accepting a distribution pursuant to the  
24 Plan, each holder of an Allowed Claim receiving distributions pursuant to the Plan will be  
25 deemed to have specifically consented to the injunctions set forth in this section, and,  
26 except as set forth in this Section, waives any and all claims, causes of action and/or  
remedies and objections of every kind against the Debtor, the Litigation Trustee, and the  
Liquidating Trustee.

13.14. Ratification of Action Taken During Pendency of the Chapter 11 Case. The Confirmation Order shall ratify all transactions effected by the Debtor and/or the Committee during the period commencing on the Debtor's Petition Date and ending on the Confirmation Date.

13.15. Term of Injunctions or Stays. Unless otherwise provided, all injunctions or stays arising before the Confirmation Date in accordance with Sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date, or such later date as provided under applicable law.

13.16. Injunction Against Interference With Plan. Upon the entry of the Confirmation Order, all holders of Claims and Equity Security Interests and other parties in interest, including the Debtor, along with its respective present or former employees, agents, officers, directors, or principals, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan.

- 1 13.17. Exculpation. Except with respect to obligations under the Plan, neither the Liquidating  
2 Trustee, the Liquidating Trust, the Litigation Trust, the Litigation Trustee, the Advisory  
3 Board, the Debtor, the Committee nor any of their respective members, officers, directors,  
4 employees, agents or professionals, solely in their capacity as such (each an “Exculpated  
5 Party”), shall have or incur any liability to the Debtor and/or any holder of any Claim or  
6 Equity Security Interest for any act or omission in connection with, or arising out of: (i)  
7 the Case; (ii) the confirmation of the Plan; (iii) the consummation of the Plan; or (iv) the  
8 administration of the Plan or property to be distributed pursuant to the Plan, except for  
9 fraud, willful misconduct, recklessness or gross negligence; and, in all respects, the  
10 Liquidating Trust, Liquidating Trustee, the Litigation Trust, the Litigation Trustee, the  
11 Committee, the Advisory Board, and the Debtor, and each of their respective members,  
12 officers, directors, employees, advisors and agents shall be entitled to rely upon the advice  
13 of counsel with respect to their duties and responsibilities under the Plan; provided,  
14 however, that the Litigation Trustee shall have a period of ninety (90) days from the  
15 Effective Date to investigate and commence a lawsuit against an Exculpated Party for any  
16 claims or causes of action arising from any act or omission in connection with, or arising  
17 out of, the Case, and after such lawsuit has been commenced, such claim or cause of  
18 action shall be preserved for the benefit of the Litigation Trust and not released or  
19 otherwise affected by the provisions of this Section 13.17 and the Exculpated Party shall  
20 not be relieved of any liability with respect thereto.
- 21 13.18. Retention of Causes of Action/Reservation of Rights. Except as specifically provided  
22 herein, nothing contained in the Plan or the Confirmation Order shall be deemed to be a  
23 waiver or the relinquishment of any rights, claims, or causes of action that the Debtor or  
24 its Estate may have or which the Debtor the Litigation Trust, or the Liquidating Trust may  
25 choose to assert on behalf of the Estate in accordance with any provision of the  
26 Bankruptcy Code or any applicable nonbankruptcy law, including, without limitation:  
(i) any and all claims against any Person to the extent such Person asserts a cross-claim,  
counterclaim, and/or Claim for setoff which seeks affirmative relief against the Debtor, its  
Estate, the Equity Security Interest Holders; (ii) the avoidance of any transfer by or  
obligation of the Debtor or its Estate or the recovery of the value of such transfer; or  
(iii) the turnover of any property of the Estate.
- 13.19. Successors and Assigns. The rights and obligations of any Entity named or referred to in  
the Plan shall be binding upon and shall inure to the benefit of, the predecessors,  
successors, assigns and agents of such Entity.
- 13.20. Plan Documents. Final versions of the Liquidating Trust Agreement, the Litigation Trust  
Agreement and such other documents needed in connection with confirmation of the Plan  
shall be filed with the Court no later than three (3) Business Days before the Confirmation  
Hearing.

LAW OFFICES  
**GREENBERG TRAURIG**  
2375 EAST CAMELBACK ROAD, SUITE 700  
PHOENIX, ARIZONA 85016  
(602) 445-8000

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Date: January 4, 2008.

**FIRST MAGNUS FINANCIAL CORPORATION**  
Debtor

By: /s/ Gurpreet S. Jaggi  
Gurpreet S. Jaggi  
President, Chief Executive Officer