

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF COLORADO**

In re

MERCURY COMPANIES, INC.

Debtor.

Bankruptcy Case No. 08-23125

Chapter 11

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**CHAPTER 11 PLAN OF MERCURY COMPANIES, INC.**

Dated: July 14, 2010

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## DEBTOR'S PLAN OF REORGANIZATION

### ARTICLE I INTRODUCTION

Pursuant to Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq., Mercury Companies, Inc. (the "Debtor"), proposes the following Plan of Reorganization (the "Plan").

This Plan is for the Debtor only, and does not address the independent liabilities of any other party. Arizona Title Agency, Inc., Financial Title Company, Lender's Choice Title Company, Lender's First Choice Agency, Inc., and Texas United Title Inc., d/b/a United Title of Texas (collectively, the "Debtor Subsidiaries") have not yet proposed resolution of their bankruptcy cases.

### ARTICLE II DEFINITIONS, RULES OF INTERPRETATION, COMPUTATION OF TIME

2.01 **Definitions.** As used herein, the following terms have the respective meanings specified below, unless the context otherwise requires:

**"Administrative Expense Claim"** means any right to payment constituting a cost or expense of administration of the Chapter 11 Case under §§ 503(b), 507(a)(2), or 1114(e)(2) of the Bankruptcy Code, including, without limitation, any actual and necessary costs and expenses of preserving the Estate, any actual and necessary costs and expenses of operating the business of the Debtor, any indebtedness or obligations incurred or assumed by the Debtor in connection with the conduct of its business or liquidation of its assets, any Professional fee claim, and any fees or charges assessed against the Estate under § 1930 of Title 28 of the United States Code.

**"Affiliate"** has the meaning set forth in § 101(2) of the Bankruptcy Code.

**"Allowed"** means, with respect to any Claim, the Claim or portion thereof that is not a Disputed Claim or Disallowed Claim: (a) for which a Proof of Claim was timely filed with the Bankruptcy Court or the Claims Agent, Objection shall have been interposed (b) for which no Proof of Claim thereof was filed, to the extent that such Claim has been listed by the Debtor in its Schedules as liquidated in amount and not disputed or contingent as to liability, and as to which no Objection (c) which arises from the recovery of property under §§ 550 or 553 of the Bankruptcy Code and is allowed in accordance with § 502(h) of the Bankruptcy Code; (d) which is allowed under the Plan; or (e) which is allowed by a Final Order.

**"Avoidance Claims"** means any and all rights, claims, causes of action or rights to avoid any transfer or incurrence of debt that may be asserted or recovered by the Debtor in its capacity as debtor-in-possession pursuant to Chapter 5 of the Bankruptcy Code.

**"Business Day"** means any day other than a Saturday, Sunday or any legal holiday under federal law or the State of Colorado.

**"Cash"** means legal tender of the United States of America and equivalents thereof.

**“Causes of Action”** means, without limitation, any and all actions, causes of action, liabilities, obligations, rights, suits, debts, sums of money, damages, judgments, claims and demands whatsoever, whether known or unknown, in law, equity or otherwise.

**“Chapter 11 Case”** or **“Case”** means the case under Chapter 11 of the Bankruptcy Code commenced by the Debtor, styled In re Mercury Companies, Inc., currently pending as case No. 08-23125 MER on the docket of the Bankruptcy Court.

**“Claim”** has the meaning set forth in § 101(5) of the Bankruptcy Code.

**“Claims Agent”** means Garden City Group, Inc., located at 105 Maxess Road, Melville, NY 11747.

**“Class 3 Dividend Fund”** is the separate fund created pursuant to Section 5.03 of this Plan, and administered for payment of Allowed Class 3 Claims.

**“Confirmation Date”** means the date on which the Clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Case.

**“Confirmation Order”** means the order of the Bankruptcy Court confirming this Plan pursuant to § 1129 of the Bankruptcy Code.

**“Creditor”** has the meaning ascribed to such term in § 101(10) of the Bankruptcy Code.

**“Creditors’ Committee”** means the Official Unsecured Creditors’ Committee appointed by the United States Trustee in this Chapter 11 Case pursuant to § 1102 of the Bankruptcy Code, as it may be constituted from time to time.

**“Debtor”** means Mercury Companies, Inc.

**“Disallowed”** means, when referring to a Claim, a Claim or any portion thereof, that (a) has been disallowed or expunged, in whole or part, by a Final Order; (b) has been withdrawn by agreement of the Debtor and the Holder thereof, in whole or in part; (c) has been withdrawn, in whole or in part, by the Holder thereof; (d) is listed in the Schedules as zero or as disputed, contingent or unliquidated and in respect of which a Proof of Claim has not been timely filed or deemed timely filed pursuant to the Plan, the Bankruptcy Code or any Final Order of the Bankruptcy Court; (e) has been reclassified, expunged, subordinated or estimated to the extent that such reclassification, expungement, subordination or estimation results in a reduction in the filed amount of any Proof of Claim; or (f) is evidenced by a Proof of Claim which has been filed, or which has been deemed to be filed under applicable law or order of the Bankruptcy Court or which is required to be filed by order of the Bankruptcy Court, but as to which such Proof of Claim was not timely or properly filed. In each case a Disallowed Claim is disallowed only to the extent of disallowance, withdrawal, reclassification, expungement, subordination or estimation.

**“Disputed Claim”** means any Claim as to which an Objection is pending or contemplated by the Debtor.

**“Distribution”** means any payment of Cash by the Debtor called for under the Plan.

**“Effective Date”** means the first date that is 28 days after the conditions to effectiveness of the Plan provided in Section 10.01 hereof have been satisfied.

**“Estate”** means the estate in this Chapter 11 Case.

**“Equity Interests”** means any ownership interests in and with respect to the Debtor.

**“Final Order”** means an order of the Bankruptcy Court as to which the time to appeal, petition for certiorari or move for reargument or rehearing has expired and as to which no appeal, petition for certiorari or other proceeding for reargument or rehearing will then be pending or as to which any right to appeal, petition for certiorari, reargument, or rehearing will have been waived in writing, in form and substance, satisfactory to the Debtor or, in the event that an appeal, writ of certiorari, or reargument or rehearing thereof has been sought, such order of the Bankruptcy Court will have been determined by the highest court to which such order was appealed, or certiorari reargument or rehearing will have been denied and the time to take any further appeal, petition for certiorari or move for reargument or rehearing will have expired; provided, however, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Federal Rules of Bankruptcy Procedure, may be filed with respect to such order will not cause such order not to be a Final Order.

**“General Unsecured Claim”** means any Claim other than a Priority Claim, a Secured Claim, an Intercompany Claim, an Equity Interest or an Administrative Expense Claim.

**“Holder”** means the holder of any Claim or Equity Interest.

**“Impaired”** means, when used in reference to a Claim or Equity Interest or a class thereof, a Claim or Equity Interest or class thereof that is impaired within the meaning of § 1124 of the Bankruptcy Code.

**“Intercompany Claim”** means any Claim held by a current Affiliate of the Debtor.

**“Objection”** means any objection, application, motion, complaint or any other legal proceeding seeking, in whole or in part, to disallow, determine, liquidate, classify, reclassify, establish the priority of, expunge, subordinate, or estimate any Claim (including the resolution of any request for payment of any Administrative Expense Claim), or Equity Interest, other than a Claim or an Equity Interest that is Allowed.

**“Petition Date”** means August 28, 2008.

**“Plan”** means this Chapter 11 plan, either in its present form or as the same may be altered, amended or modified from time to time.

**“Post Confirmation Committee”** has the meaning ascribed in Section 9.01 of this Plan.

“**Priority Claim**” means any Claim entitled to priority under § 507(a)(1), (4), (5), (6), or (7) of the Bankruptcy Code.

“**Professionals**” means the professionals retained by the Debtor or the Creditors’ Committee under §§ 327 or 1103 of the Bankruptcy Code and to be compensated pursuant to §§ 327, 328, 330, 331, or 503(b)(2), (4) or (5) of the Bankruptcy Code.

“**Proof of Claim**” means a proof of claim filed in this Chapter 11 Case.

“**Schedules**” mean the Schedules of Assets and Liabilities, the List of Holders of Interests, and the Statement of Financial Affairs filed by the Debtor in this Case.

“**Secured Claim**” means any Claim, to the extent reflected in the Schedules or a Proof of Claim as being secured and properly perfected, which is secured by a timely perfected Lien, as defined by § 101(37) of the Bankruptcy Code, on collateral, to the extent of the value of the Estate’s interest in such collateral, as determined as of the relevant determination date.

“**Tax Claim**” means any claim entitled to priority under § 507(a)(8) of the Bankruptcy Code.

“**Unimpaired**” means, when used in reference to a Claim or Equity Interest or a class thereof, a Claim or Equity Interest or a class thereof that is not impaired within the meaning of § 1124 of the Bankruptcy Code.

2.02 **Rules of Interpretation.** Wherever from the context it appears appropriate, each term stated in either the singular or the plural will include both the singular and the plural and pronouns stated in the masculine, feminine or neuter gender will include the masculine, feminine and neuter. Unless otherwise specified, all section, article, schedule or exhibit references in the Plan are to the respective Section in, Article of, Schedule to, or Exhibit to, the Plan. The words “herein,” “hereof,” “hereto,” “hereunder,” and other words of similar import refer to the Plan as a whole and not to any particular section, subsection or clause contained in the Plan. The rules of construction contained in § 102 of the Bankruptcy Code will apply to the construction of the Plan. A term used herein that is not defined herein, but that is used in the Bankruptcy Code, will have the meaning ascribed to that term in the Bankruptcy Code. The headings in the Plan are for convenience of reference only and will not limit or otherwise affect the provisions of the Plan.

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

### **ARTICLE III**

#### **TREATMENT OF UNCLASSIFIED CLAIMS**

3.01 **Administrative Expense Claims.** The deadline for filing an Administrative Expense Claim (other than post-petition operating expenses or professional fees) shall be twenty-eight (28) days after the Effective Date (the “Administrative Expense Claim Bar Date”). Except to the extent any entity entitled to payment of an Allowed Administrative Expense Claim has received payment on account of such Claim prior to the Effective Date, each Holder of an

Allowed Administrative Expense Claim shall be paid in full by the later of either the date that is twenty-eight (28) days after the Effective Date or the date that is twenty-eight (28) days after the Administrative Expense Claim is Allowed. The Allowed Administrative Expense Claims shall be paid from Cash on hand.

3.02 **Tax Claims**. Except to the extent any entity entitled to payment of any Allowed Tax Claim has received payment on account of such Claim prior to the Effective Date, each Holder of an Allowed Tax Claim shall be paid in full by the date that is twenty-eight (28) days after the Effective Date.

3.03 **Professional Fees**. All Professionals seeking payment of professional fees or reimbursement of expenses incurred through and including the Effective Date under § 503(b)(2), (3), (4) or (5) of the Bankruptcy Code (“Professional Fees”) shall file their respective final applications on or before the date that is fifty-six (56) days after the Effective Date. The Professional Fees shall be paid from Cash on hand.

3.04 **Statutory Fees**. On or before 28 days after the Effective Date, the Debtor shall make all payments required to be paid the U.S. Trustee pursuant to § 1930 of Title 28 of the United States Code. All fees payable pursuant to § 1930 of Title 28 of the United States Code after the Effective Date shall be paid by the Debtor on a quarterly basis until the Chapter 11 Case is closed, converted, or dismissed.

**ARTICLE IV  
DESIGNATION OF CLASSES**

4.01 **Classification**. Claims and Equity Interests are classified for all purposes, including voting, confirmation, and distribution pursuant to the Plan, as follows:

<b><u>Class</u></b>	<b><u>Status</u></b>	<b><u>Voting Rights</u></b>
Class 1 (Priority Claims)	<b>Unimpaired</b>	Not Entitled to Vote
Class 2 (Secured Claims)	<b>Impaired</b>	Entitled to Vote
Class 3 (General Unsecured Claims)	<b>Impaired</b>	Entitled to Vote
Class 4 (Equity Interests)	<b>Impaired</b>	Entitled to Vote

**ARTICLE V  
TREATMENT OF CLASSIFIED CLAIMS AND EQUITY INTERESTS**

5.01 **Class 1: Priority Claims**. The Allowed Class 1 Priority Claims shall be paid in full by the date that is twenty-eight (28) days after the Effective Date.

5.02 **Class 2: Secured Claims**. The Allowed Class 2 Secured Claims shall retain the collateral securing their Allowed Claims, which shall constitute full and final satisfaction of their Allowed Claims.



5.03 **Class 3: General Unsecured Claims.** The Class 3 Unsecured Claims shall receive cash distributions as follows:

a. Upon the Effective Date, the Debtor shall create and fund the Class 3 Dividend Fund in the aggregate amount of \$25 million from Cash held by the Debtor. The Debtor shall begin Distribution of the Class 3 Dividend Fund on or before 28 days after the Effective Date. Holders of Allowed Class 3 Claims shall receive their pro rata share of the Class 3 Dividend Fund based upon the total amount of all Allowed and Disputed Class 3 Claims pending at the time of such initial Distribution. No Distribution from the Class 3 Dividend Fund shall be made in respect of any Disputed Class 3 Claim. The pro rata portion of the Class 3 Dividend Fund applicable to each Disputed Class 3 Claim shall be withheld and remain in the fund until such Claim becomes an Allowed Claim or is Disallowed. The pro rata portion of the Class 3 Dividend Fund withheld in respect of any Disputed Class 3 Claim which is subsequently Disallowed shall be distributed on Allowed Class 3 Claims as provided in Section 5.03b of this Plan.

b. The Debtor shall make subsequent Distributions to Holders of Allowed Class 3 Claims from the initial Dividend Fund to the extent there are sufficient funds available which are not required to be withheld for Disputed Claims. Subsequent distributions will be made first to Holders of Disputed Class 3 Claims that have become Allowed Claims until they have received the same percentage on their claims as other Allowed Claims and then pro rata to all Holders of Allowed Class 3 Claims.

c. The Debtor shall from time to time deposit additional amounts into the Class 3 Dividend Fund. The determination of when to add additional amounts to the Class 3 Dividend Fund shall be made in the discretion of the Debtor after retaining sufficient funds for future operations and administration, including the funding of any post-Effective Date litigation. Additional amounts deposited into the Class 3 Dividend Fund shall be distributed or withheld in the same manner as described above for the initial deposit into the Class 3 Dividend Fund.

d. The Debtor shall continue to make contributions to and distributions from Class 3 Claims until all Allowed Class 3 Dividend Fund have been paid in full or until a final decree has entered in the Chapter 11 case. No distributions shall be made in respect of Class 4 Interests until all Allowed Class 3 Claims have been paid in full.

5.04 **Class 4: Equity Interests.** In the event Class 3 General Unsecured Claims are paid in full, the Allowed Class 4 Equity Interests shall receive in full and final satisfaction of their Interests their *pro rata* share of the Debtor's remaining Cash on hand after payment of Allowed Class 1 Claims, Allowed Class 2 Claims, and Allowed Class 3 Claims.

5.05 **Cramdown.** If any class of Claims fails to accept the Plan in accordance with § 1126(c) of the Bankruptcy Code, the Bankruptcy Court may confirm the Plan in accordance with § 1129(b) of the Bankruptcy Code on the basis that the Plan is fair and equitable and does not discriminate unfairly with respect to any nonaccepting, impaired Class.

**ARTICLE VI**  
**PROVISIONS REGARDING RESOLUTION OF CLAIMS**  
**AND DISTRIBUTIONS UNDER THE PLAN**

**6.01 Method of Distributions under the Plan.**

a. In General. Subject to Bankruptcy Rule 9010, all Distributions under the Plan shall be made by the Debtor to the Holders of each Allowed Claim at the address of such Holder as listed on the Schedules or Proof of Claim, as applicable. Distributions in respect of all claims asserted by or on behalf of Lisa English and Patricia Winegar as class representatives for a plaintiff class in the litigation in Superior Court of California, County of Fresno, Case No. 05 CE C6 01766 shall be made c/o Jeffrey Weinman Esq., at his business address.

b. Distributions of Cash. The Debtor shall maintain its post-Effective Date bank accounts in compliance with Bankruptcy Code § 345. Payments made by the Debtor pursuant to the Plan shall be made by check. All checks for distribution shall be negotiated within 90 days of the date of such check, after which such check shall be void. A Creditor who does not negotiate payment within the 90-day period shall have one year after the check becomes void to assert payment on account of its claim pursuant to this Plan, after which time its Claim shall be reduced to zero. At such time, the Debtor will no longer be obligated to reserve for such Claim or make any further distributions in respect of such Claims.

c. Timing of Distributions. Any payment or Distribution required to be made under the Plan on a day other than a Business Day shall be made on the next succeeding Business Day.

d. Tax Withholding. Distributions to Holders of Allowed Claims (including Allowed Class 3 Claims) shall be net of amounts required to be withheld pursuant to applicable State and Federal wage or backup withholding requirements, at the Federal 25% non-periodic withholding rate.

**6.02 Objections to Claims.**

a. After the Effective Date, Objections to Claims may be made, and Objections to Claims made previous thereto shall be pursued, only by the Debtor, in consultation with the Post Confirmation Committee.

b. After the Effective Date, the Debtor may settle any Disputed Claim where the proposed Allowed Claim is to be less than \$50,000 without notice and a hearing and without an order of the Bankruptcy Court. All other settlements shall be subject to notice and a hearing pursuant to § 102(1) of the Bankruptcy Code and a Final Order of the Bankruptcy Court approving the settlement.

**6.03 Reserves for Disputed Claims.** Subject to § 3.01 of the Plan, if any Claim is a Disputed Claim, no distribution provided hereunder shall be made on account of such Claim

unless and until said Disputed Claim becomes an Allowed Claim. In the event a Distribution is made while there is a Disputed Claim, the Distribution that would be paid on account of the Disputed Claim shall be withheld and remain in a Debtor bank account until the Claim is Allowed or Disallowed. If the Claim is Allowed, the Holder of the Allowed Claim will receive its withheld Distribution.

6.04 **Claims Estimation.** The Debtor may at any time request that the Bankruptcy Court estimate any contingent or unliquidated Claim pursuant to § 502(c) of the Bankruptcy Code regardless of whether the Debtor has previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any Claim at any time concerning any objection to any Claim, including during the pendency of any appeal relating to any such Objection. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the Debtor may elect to pursue any supplemental proceedings to object to any ultimate payment on such Claim. All of the aforementioned procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism pursuant to this Plan or approved by the Bankruptcy Court.

6.05 **Claims Allowance.** Except as expressly provided in the Plan or any order entered in the Chapter 11 Case prior to the Effective Date (including the Confirmation Order), the Debtor shall have and shall retain after the Effective Date any and all rights and defenses that the Debtor had with respect to any Claim as of the Petition Date. All Claims of any entity, subject to § 502(d) of the Bankruptcy Code, shall be deemed Disallowed as of the Effective Date unless and until such entity pays in full the amount that it owes the Debtor.

## **ARTICLE VII**

### **EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

7.01 **Assumption or Rejection of Executory Contracts and Unexpired Leases.** Pursuant to §§ 365(a) and 1123(b)(2) of the Bankruptcy Code, all executory contracts and unexpired leases that exist between the Debtor and any party that have not been previously assumed pursuant to an order of the Bankruptcy Court, shall be deemed rejected on the Effective Date.

7.02 **Claims Based on Rejection of Executory Contracts or Unexpired Leases.** With respect to Claims arising from the rejection of executory contracts or unexpired leases pursuant to Section 7.01 of this Plan, the bar date to file Proofs of Claim in this Case shall be reopened for a period of twenty-eight (28) days after the Effective Date and all such Proofs of Claim must be filed with the Claims Agent during that time. Any Claim arising from the rejection of an executory contract or unexpired lease pursuant to Section 7.01 of this Plan for which a Proof of Claim is not timely filed within that time period shall be forever barred from assertion against the Debtor officers, directors or agents of the Debtor, the Estate, its successors

and assigns, or its assets and properties, unless otherwise ordered by the Bankruptcy Court or as otherwise provided herein.

**ARTICLE VIII**  
**IMPLEMENTATION AND EFFECT OF CONFIRMATION OF PLAN**

8.01 **Term of Bankruptcy Injunction or Stays.** All injunctions or stays provided for in the Chapter 11 Case under §§ 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect.

8.02 **Revesting of Assets.**

a. Except as provided in this Plan, on the Effective Date the property of the Estate shall remain vested in the Estate until entry of the final decree in this case as provided in the Plan.

b. Tom H. Connolly, Esq. shall remain in his capacity as Chief Executive Officer of the Debtor until entry of a final decree closing the Chapter 11 Case.

c. As of the Effective Date, except as otherwise expressly provided in the Plan, all property of the Debtor shall be free and clear of all liens, claims and interests of Holders of Claims or Equity Interests.

d. In addition to any other powers described in this Plan, the powers and duties of the Debtor shall include, all of which may be undertaken without Court approval:

i. To take control of, preserve, and convert to Cash property of the Estate, subject to the terms of this Plan;

ii. To investigate and prosecute or abandon all Causes of Action belonging to or assertible by the Estate, including all Avoidance Claims;

iii. To review and object to Claims filed against the Debtor;

iv. To compromise all disputes, including all Causes of Action, Avoidance Claims and Objections to Claims;

v. To make distributions on account of all Allowed Claims consistent with the terms of this Plan;

vi. To retain persons and professionals to assist in carrying out the powers and duties enumerated pursuant to this Plan;

vii. To enter into contracts as necessary to assist in carrying out the powers and duties enumerated pursuant to this Plan;

viii. To hire employees and/or terminate current employees of the Debtor;

ix. To own, operate, control or dispose of any of its subsidiaries, including any subsidiaries recovered in any pending or future avoidance action;

x. To pay expenses incurred in carrying out the powers and duties enumerated pursuant to this Plan, including professional fees incurred after the Effective Date;

xi. To take all necessary actions to assure that the corporate existence of the Debtor remains in good standing until entry of a final decree closing the Chapter 11 Case;

xii. To open and maintain bank accounts and deposit funds and draw checks and make disbursements in accordance with the Plan;

xiii. In general, without in any manner limiting any of the foregoing, to deal with the assets of the Estate or any part or parts thereof in all other ways as would be lawful for any person owning the same to deal therewith; provided, however, that the investment powers of the Debtor, other than those reasonably necessary to maintain the value of the Debtor's assets and to further the liquidating purpose, are limited to the power to invest in demand and time deposits, such as short term certificates of deposit, in banks and other savings institutions, or other temporary, liquid investments, such as United States Treasury Bills;

xiv. To prosecute and/or settle the Adversary Proceeding brought by the Debtor against FNF Security Acquisition, Inc. (Adv. Proc. No. 10-01133 MER), including the authority to return the purchase price received in respect of the relevant entities if and to the extent FNF Security Acquisition, Inc. is determined to have been a good faith transferee of a fraudulent transfer; and

xv. At the appropriate time, to ask the Bankruptcy Court to enter the final decree.

8.03 **Causes of Action.** Except as otherwise provided in the Plan, as of the Effective Date, pursuant to § 1123(b)(3)(B) of the Bankruptcy Code, any and all Causes of Action accruing to the Debtor, or the Debtor in its capacity as debtor-in-possession, not released or compromised pursuant to this Plan, including, without limitation, actions under §§ 544, 545, 547, 548, 549, 550, 551, and 553 of the Bankruptcy Code, shall remain assets of the Estate, and the Debtor shall have the authority to prosecute such Causes of Action for the benefit of the Estate. On and after the Effective Date, the Debtor shall have the authority to compromise, settle, discontinue, abandon, dismiss, or otherwise resolve all such Causes of Action when the proposed settlement amount is to be less than \$50,000 without notice and a hearing and without an order of the Bankruptcy Court. All other settlements shall be subject to notice and a hearing pursuant to

§ 102(1) of the Bankruptcy Code and a Final Order of the Bankruptcy Court approving the settlement.

8.04 **Creditors' Committee.** The Creditors' Committee shall be dissolved as of the Effective Date. As of the Effective Date, all members of the Creditors' Committee shall have no further rights or duties arising from such membership.

8.05 **Corporate Existence of the Debtor.** As of the Effective Date, the Debtor shall maintain its good standing as a corporation under the laws of the state of its incorporation until and unless the Debtor files the appropriate documents dissolving the Debtor.

8.06 **Indemnification of Officers, Directors and Employees.** As of the Effective Date, all indemnification provisions currently in place (whether in the bylaws, certificates of incorporation, articles of limited partnership, operating agreements, board resolutions, contracts or otherwise) for the current directors, managers, and officers of the Debtor shall be deemed to have been assumed by the Debtor, and shall survive effectiveness of the Plan.

8.07 **Discharge.** Except as otherwise provided herein, and irrespective of any prior orders of the Bankruptcy Court or any other court of competent jurisdiction, on the Effective Date: (1) the rights afforded in the Plan and the treatment of all Claims and Equity Interests herein shall be in exchange for and in complete satisfaction, discharge and release of all Claims and Equity Interests of any nature whatsoever, including any interest accrued on such Claims from and after the Petition Date, or any of its assets, property or its Estate; (2) the Plan shall bind all Holders of Claims and Equity Interests, regardless of whether any such Holders failed to vote to accept or to reject the Plan or voted to reject the Plan; and (3) all Claims against and Equity Interests in the Debtor, and the Debtor in its capacity as debtor-in-possession, shall be satisfied, discharged and released in full, and the Debtor's liability with respect thereto shall be extinguished completely, including, without limitation, any liability of the kind specified under § 502(g) of the Bankruptcy Code; *provided, however*, that nothing in this Plan shall discharge any liabilities of the Debtor arising after the entry of the Confirmation Order or that is not otherwise a Claim within the meaning of § 101(5) of the Bankruptcy Code.

8.08 **Preservation of Setoff Rights.** On and after the Effective Date, rights of setoff pursuant to Bankruptcy Code § 553 shall be preserved. After the Effective Date, such setoff may be exercised pursuant to agreement of the Debtor and the affected Creditor. Any disputes regarding the right of setoff shall be determined upon motion before the Bankruptcy Court.

## **ARTICLE IX**

### **POST CONFIRMATION COMMITTEE**

9.01 **Formation of Post Confirmation Committee.** The Post Confirmation Committee shall be formed on or before the Effective Date and shall consist of no fewer than three members of the Creditors' Committee who wish to serve. The Post Confirmation Committee shall be composed of no fewer than three members who are Holders of Allowed Class 3 Claims who shall be designated in a pleading filed by the Creditors' Committee. Vacancies on the Post Confirmation Committee shall be filled by majority vote of the remaining

members of the Post Confirmation Committee within 30 days of such vacancy. The duties of the Post Confirmation Committee shall include monitoring the post-confirmation actions of the Debtor and making recommendations where appropriate. The Post Confirmation Committee shall have the authority to: (i) object to any settlement of a Claim or Cause of Action when the proposed settlement amount is above \$50,000; (ii) petition the Bankruptcy Court to enforce any term of the Plan; and (iii) review the retention and payment by the Debtor of professionals. The Debtor shall provide to the Post Confirmation Committee information regarding its activities and the Estate from time to time as agreed upon by the Debtor and the Post Confirmation Committee. The Post Confirmation Committee shall expire and terminate upon the earlier of payment in full of the Class 3 General Unsecured Claims, entry of a final decree closing the Chapter 11 Case, or failure of the Post Confirmation Committee to have at least three members upon expiration of the time provided herein to fill a vacancy.

9.02 **Exculpation for the Post Confirmation Committee.** Neither the Post Confirmation Committee nor any of its members, designees, retained professionals or any duly designated agent or representative shall be liable for anything other than such person's own acts as shall constitute willful misconduct or gross negligence in the performance (or nonperformance) of its duties, or acts contrary to the express terms of this Plan. The Post Confirmation Committee may, in connection with the performance of its functions, consult with counsel, accountants and its agents, and may reasonably rely upon advice or opinions received in the course of such consultation. If the Post Confirmation Committee determines not to consult with counsel, accountants or its agents, such determination shall not in itself be deemed to impose any liability on the Post Confirmation Committee, or its members and/or its designees.

## **ARTICLE X**

### **EFFECTIVENESS OF THE PLAN**

10.01 **Conditions Precedent to Effectiveness.** The Plan shall not become effective unless and until the following have been satisfied:

- a. The Confirmation Order, in form and substance reasonably satisfactory to the Debtor, shall have been entered by the Bankruptcy Court;
- b. There is no stay or injunction in effect with respect to the Confirmation Order; and
- c. 14 days shall have passed since the Confirmation Order has been entered by the Bankruptcy Court.

## **ARTICLE XI**

### **RETENTION OF JURISDICTION**

11.01 **Bankruptcy Court Jurisdiction.** The Bankruptcy Court shall have exclusive jurisdiction of all matters arising out of and related to the Chapter 11 Case and this Plan pursuant to, and for the purposes of, §§ 105(a) and 1142 of the Bankruptcy Code and for, among other things, the following purposes:

- a. To determine pending applications for the assumption or rejection of executory contracts or unexpired leases, if any are pending, and the allowance of Claims resulting therefrom;
- b. To determine any and all adversary proceedings, applications and contested matters;
- c. To determine any Objection to Administrative Expense Claims or Claims;
- d. To issue such orders in aid of execution and consummation of the Plan, to the extent authorized by § 1142 of the Bankruptcy Code;
- e. To consider any amendments to or modifications of the Plan, to cure any defect or omission, or reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;
- f. To determine all applications for compensation and reimbursement of expenses of professionals under §§ 330, 331 and 503(b) of the Bankruptcy Code;
- g. To determine disputes arising in connection with the interpretation, implementation or enforcement of the Plan;
- h. To determine disputes arising in connection with the recovery of all assets of the Debtor and property of the Estate, wherever located;
- i. To determine matters concerning taxes in accordance with §§ 346, 505 and 1146 of the Bankruptcy Code;
- j. To determine any other matter not inconsistent with the Bankruptcy Code;  
and
- k. To enter a final decree closing the Chapter 11 Case.

**ARTICLE XII**  
**MISCELLANEOUS PROVISIONS**

12.01 **Effectuating Documents and Further Transactions**. The Debtor is authorized to execute, deliver, file or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan and any notes or securities pursuant to the Plan.

12.02 **Aid in Implementation of Plan**. The Bankruptcy Court may direct the Debtor and any other necessary party to execute or deliver or to join the execution or delivery of any instrument required to effect the Plan, and to perform any other act necessary to consummate the Plan.



12.03 **Exculpation.** The Debtor and any of its shareholders, officers, directors, employees, advisors and agents shall neither have nor incur any liability to any Holder of a Claim, or any party acting or asserting a claim through a Holder of a Claim, for any act or omission in connection with, related to, or arising out of, the Chapter 11 Case, the pursuit of confirmation of the Plan, the consummation of the Plan or the administration of the Plan or the property to be distributed under the Plan, except for willful misconduct or gross negligence, and, in all respects, the Debtor and its shareholders, officers, directors, employees, advisors and agents, shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

12.04 **Post-Effective Date Fees and Expenses.** From and after the Effective Date, in the ordinary course of business and without the necessity for any approval by the Bankruptcy Court, the Debtor shall pay the reasonable fees and expenses of professional persons incurred after the Effective Date, including, without limitation, those fees and expenses incurred in connection with the implementation and consummation of the Plan.

12.05 **Post-Effective Date Statutory Fees.** All fees payable pursuant to § 1930 of Title 28 of the United States Code incurred after the Effective Date shall be paid in accordance with applicable law. The Debtor shall submit post-confirmation reports in compliance with applicable law.

12.06 **Amendment or Modification of the Plan.** Alterations, amendments or modifications of the Plan may be proposed in writing by the Debtor at any time before the Confirmation Date, provided that the Plan, as altered, amended or modified, satisfies the conditions of §§ 1122 and 1123 of the Bankruptcy Code, and the Debtor shall have complied with § 1125 of the Bankruptcy Code. The Plan may be altered, amended or modified at any time after the Confirmation Date and before substantial consummation, provided that the Plan as altered amended or modified satisfies the requirements of §§ 1122 and 1123 of the Bankruptcy Code, and the Bankruptcy Court, after notice and a hearing, confirms the Plan, as altered, amended or modified, under § 1129 of the Bankruptcy Code and the circumstances warrant such alterations, amendments or modifications. A Holder of a Claim or Equity Interest that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended or modified, if the proposed alteration, amendment or modification does not materially and adversely change the treatment of the Claim or Equity Interest of such Holder.

12.07 **Severability.** In the event that the Bankruptcy Court determines, before the Confirmation Date, that any provision in the Plan is invalid, void or unenforceable, such provision shall be invalid, void or unenforceable with respect to the Holder or Holders of such Claims or Equity Interests as to which the provision is determined to be invalid, void or unenforceable. The invalidity, voidness, or unenforceability of any such provision shall not limit or affect the enforceability and operative effect of any other provision of the Plan.

12.08 **Revocation or Withdrawal of the Plan.** The Debtor shall have the right to revoke or withdraw the Plan before the Confirmation Date. If the Debtor revokes or withdraws the Plan before the Confirmation Date, then the Plan shall be deemed null and void. In such event, nothing contained herein shall constitute or be deemed a waiver or release of any Claims

by or against the Debtor or any other person or to prejudice in any manner the rights of the Debtor or any person in any further proceedings involving the Debtor.

12.09 **Binding Effect.** The Plan shall be binding upon and inure to the benefit of the Debtor and the Holders of Claims and Equity Interests and their respective successors and assigns.

12.10 **Notices.** To be effective, all notices, requests and demands to or upon the Debtor shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission or electronic mail, when received, addressed as follows:

*If to the Debtor:*

Tom H. Connolly, Esq.  
Connolly Rosania & Lofstedt PC  
950 Spruce Street, Suite 1C  
Louisville, CO 80052  
Facsimile: 303-661-9555  
E-mail: tom@crlpc.com

*with a copy to:*

Michael J. Pankow, Esq.  
Daniel J. Garfield, Esq.  
Brownstein Hyatt Farber Schreck, LLP  
410 17<sup>th</sup> Street, Suite 2200  
Denver, CO 80202  
Facsimile: 303-223-1111  
E-mail: mpankow@bhfs.com  
E-mail: dgarfield@bhfs.com

12.11 **Governing Law.** Except to the extent the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure or other federal law is applicable, or to the extent the Plan provides otherwise, the rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with the laws of the State of Colorado without giving effect to the principles of conflicts of law of such jurisdiction.

12.12 **Allocation of Plan Distributions Between Principal and Interest.** To the extent that any Allowed Claim entitled to a Distribution under the Plan is comprised of indebtedness and accrued but unpaid interest thereon, such Distribution shall, for federal income tax purposes, be allocated to the principal amount of the Claim first and then, to the extent the consideration exceeds the principal amount of the Claim, to accrued but unpaid interest.

