

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

In re:)	Chapter 11
)	
PUMPKIN PATCH LLC, ¹)	Case No. 09-12200 (BLS)
)	
Debtor.)	
)	
)	

**~~FIRST~~SECOND AMENDED PLAN OF
REORGANIZATION OF PUMPKIN PATCH LLC**

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Dated: Wilmington, Delaware
_____, 2010

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INTRODUCTION

Pumpkin Patch LLC (the “Debtor”) hereby proposes the following plan of reorganization (the “Plan”) for the resolution of the outstanding creditor claims against and equity interests in the Debtor. Reference is made to the Disclosure Statement (as that term is defined herein), distributed contemporaneously herewith, for a discussion of the Debtor’s history, business, properties, results of operations, risk factors, a summary and analysis of the Plan and certain related matters.

All holders of Claims and Interests (as such terms are defined herein) are encouraged to read the Plan and the accompanying solicitation materials in their entirety before voting to accept or reject the Plan. No materials other than the accompanying solicitation materials and any exhibits and schedules attached thereto or referenced therein have been authorized by the Debtor for use in soliciting acceptances or rejections of the Plan. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code (as that term is defined herein).

Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in Article IX of this Plan, the Debtor reserves the right to alter, amend, modify, revoke or withdraw this Plan prior to its substantial consummation.

ARTICLE I.

DEFINITIONS, RULES OF INTERPRETATION, AND COMPUTATION OF TIME

A. Scope Of Definitions; Rules Of Construction

For purposes of this Plan, except as expressly provided or unless the context otherwise requires, all capitalized terms not otherwise defined shall have the meanings ascribed to them in Article I of this Plan. Any term used in this Plan that is not defined herein, but is defined in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules. Whenever the context requires, such terms shall include the plural as well as the singular number. The masculine gender shall include the feminine, and the feminine gender shall include the masculine.

B. Definitions

1.1 “Administrative Claim” means a Claim for payment of an administrative expense of a kind specified in section 503(b) of the Bankruptcy Code and entitled to priority pursuant to section 507(a)(2) of the Bankruptcy Code and incurred prior to the Confirmation Date, including, but not limited to (a) Professional Fee Claims, and (b) all fees and charges assessed against the Estate under chapter 123 of title 28, United States Code.

1.2 “Allowed” means when used in reference to a Claim or Interest within a particular Class, an Allowed Claim or Allowed Interest of the type described in such Class.

1.3 “Allowed Class . . . Claim” means a Claim or any portion thereof in the particular Class described (a) as to which no objection to allowance or request for estimation has been interposed before the expiration of the applicable period of limitation fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court or is listed on the Schedules as liquidated, non-contingent and undisputed, (b) as to which any objection to its allowance has been settled, waived through payment, withdrawn, or denied by a Final Order, (c) that has been allowed by a Final Order, (d) as to which the liability of the Debtor, and the amount thereof are determined by final order of a court of competent jurisdiction other than the Bankruptcy Court, or (e) that is expressly allowed in a liquidated amount in the Plan; *provided, however*, that with respect to an Administrative Claim, “Allowed Claim” means an Administrative Claim as to which a timely request for payment has been made in accordance with Article XI.A.1 of this Plan (if such written request is required) or other Administrative Claim, in each case as to which the Debtor (1) has not interposed a timely objection or (2) have interposed a timely objection and such objection has been settled, waived through payment or withdrawn, or has been denied by a Final Order.

1.4 “Allowed Class . . . Interest” means an Interest in the particular Class described (a) that has been allowed by a Final Order, (b) for which (i) no objection to its allowance has been filed within the periods of limitation fixed by the Plan, the Bankruptcy Code or by any Final Order of the Bankruptcy Court or (ii) any objection to its allowance has been settled or withdrawn, or (c) that is expressly allowed in the Plan.

1.5 “Bankruptcy Code” means the Bankruptcy Reform Act of 1978, as codified in title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as now in effect or hereafter amended.

1.6 “Bankruptcy Court” means the United States Bankruptcy Court for the District of Delaware or such other court as may have jurisdiction over the Chapter 11 Cases.

1.7 “Bankruptcy Rules” means, collectively, the Federal Rules of Bankruptcy Procedure and the Official Bankruptcy Forms, as now in effect or hereafter amended, the Federal Rules of Civil Procedure, as amended, as applicable to the Chapter 11 Cases or proceedings therein, and the Local Rules of the Bankruptcy Court, as applicable to the Chapter 11 Cases or proceedings therein, as the case may be.

1.8 “Bar Date(s)” means the applicable bar date by which a proof of Claim, Interest or request for payment of Administrative Claim must be or must have been filed, as established by an order of the Bankruptcy Court, including the Bar Date Order and the Confirmation Order.

1.9 “Bar Date Order” means that certain Order Pursuant to Sections 501, 502, and 1111(a) of the Bankruptcy Code, Bankruptcy Rules 2002 and 3003(c)(3), and Local Rule 2002-1(e) Establishing Bar Dates for Filing Proofs of Claim and Approving the Form and Manner Thereof [D.I. 126], entered by the Bankruptcy Court on August 14, 2009, establishing the Bar Date for filing in the Chapter 11 Case proofs of Claim, as the same may be amended, modified or supplemented.

1.10 “Business Day” means any day, excluding Saturdays, Sundays or “legal holidays” (as defined in Bankruptcy Rule 9006(a)), on which commercial banks are open for business in New York, New York.

1.11 “Cash” means legal tender of the United States or equivalents thereof.

1.12 “Chapter 11 Case” means the bankruptcy case of the Debtor commenced under chapter 11 of the Bankruptcy Code captioned “Pumpkin Patch LLC” (Case No. 09-12200 (BLS)).

1.13 “Claim” means a claim against the Debtor, whether or not asserted, as defined in section 101(5) of the Bankruptcy Code.

1.14 “Class” means a category of holders of Claims or Interests, as described in Article II below.

1.15 “Causes of Action” means claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action and liabilities, arising on, prior to or after the Petition Date, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, whether existing on the Petition Date or thereafter arising in law, equity or otherwise, that are based in whole or in part on any act, omission, transaction or other occurrence in any way relating to the Debtor or the Plan, including Recovery Actions.

1.16 “Confirmation” means entry by the Bankruptcy Court of the Confirmation Order.

1.17 “Confirmation Date” means the date on which the Confirmation Order is entered on the docket of the Chapter 11 Cases by the clerk of the Bankruptcy Court within the meaning of Bankruptcy Rules 5003 and 9021.

1.18 “Confirmation Hearing” means the hearing held by the Bankruptcy Court to consider Confirmation of the Plan pursuant to section 1129 of the Bankruptcy Code.

1.19 “Confirmation Order” means the order entered by the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

1.20 “Consummation” means the occurrence of the Effective Date.

1.21 “Creditor” means any Person who holds a Claim against the Debtor.

1.22 “Debtor” means Pumpkin Patch LLC, including in its capacity as debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

1.23 “Disclosure Statement” means the written disclosure statement that relates to the Plan, dated January __, 2010, as amended, supplemented, or modified from time to time, and that is prepared and distributed in accordance with sections 1125 and 1126(b) of the Bankruptcy Code and Bankruptcy Rule 3018.

1.24 “Disputed Claim” or “Disputed Interest” means any Claim or Interest not otherwise Allowed or paid pursuant to the Plan or an order of the Bankruptcy Court (a) which has been listed on the Schedules as unliquidated, contingent, or disputed, and which has not been resolved by written agreement of the parties or an order of the Bankruptcy Court, (b) proof of which was required to be filed by order of the Bankruptcy Court but as to which a proof of Claim or Interest was not timely or properly filed, (c) proof of which was timely and properly filed and which has been listed on the Schedules as unliquidated, disputed or contingent, (d) that is disputed in accordance with the provisions of this Plan, or (e) as to which the Debtor has interposed a timely objection or request for estimation in accordance with the Plan, the Bankruptcy Code, the Bankruptcy Rules, and any orders of the Bankruptcy Court, which objection, request for estimation, or dispute has not been withdrawn or determined by a Final Order; *provided, however*, that for purposes of determining whether a particular Claim or Interest is a Disputed Claim or Disputed Interest prior to the expiration of any period of limitation fixed for the interposition by the Debtor of objections to the allowance of Claims or Interests, any Claim or Allowed Interest that is not an Allowed Claim or Allowed Interest shall be treated as a Disputed Claim.

1.25 “Distribution Date” means the date, occurring on or as soon as practicable after the Effective Date, upon which distributions are made by the Debtor to Holders of Allowed Administrative, Priority Tax, and Class 1 General Unsecured Claims.

1.26 “Distribution Reserve” means the reserve established and maintained by the Debtor into which the Debtor shall deposit the amount of Cash that would have been distributed on the Distribution Date to holders of (a) Disputed Claims or, (b) contingent liquidated Claims, if such Claims had been undisputed or noncontingent Claims on the Distribution Date, pending (i) the allowance of such Claims, (ii) the estimation of such Claims for purposes of allowance or (iii) the realization of the contingencies, and (c) unliquidated Claims, if such Claims had been liquidated on the Distribution Date, such amount to be estimated by the Bankruptcy Court or agreed upon by the Debtor and the Holders thereof as sufficient to satisfy such unliquidated Claim upon such Claim’s (x) allowance, (y) estimation for purposes of allowance, or (z) liquidation, pending the occurrence of such estimation or liquidation. For the avoidance of doubt, the Distribution Reserve shall include all funds necessary to pay in full all obligations incurred by the Debtor during the Case but unpaid as of the Effective Date.

1.27 “Effective Date” means the Business Day on which all of the conditions set forth in Article VIII.B hereof have been satisfied or waived as provided in Article VIII.D hereof and which has been designated by the Debtor as the effective date of the Plan.

1.28 “Estate” means the estate created for the Debtor in its Chapter 11 Case pursuant to section 541 of the Bankruptcy Code.

1.29 “Face Amount” means (a) when used in reference to a Disputed Claim, the full stated amount claimed by the Holder of such Claim in any proof of Claim timely filed with the Bankruptcy Court or otherwise deemed timely filed by any Final Order of the Bankruptcy Court or other applicable bankruptcy law, and (b) when used in reference to an Allowed Claim, the allowed amount of such Claim.

1.30 “Federal Judgment Rate” means the federal judgment rate that was in effect as of the Petition Date.

1.31 “Final Order” means an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction, as entered on the docket of such court, the operation or effect of which has not been stayed, reversed, or amended and as to which order or judgment (or any revision, modification, or amendment thereof) the time to appeal or seek review or rehearing has expired and as to which no appeal or petition for review or rehearing was filed or, if filed, remains pending.

1.32 “General Unsecured Claims” means the Unsecured Claims against the Debtor’s estate.

1.33 “Holder” means the beneficial holder of any Claim or Interest.

1.34 “Impaired” means, when used with reference to a Claim or Interest, a Claim or Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

1.35 “Interest” means (a) the legal, equitable, contractual and other rights of any Person with respect to common stock, or any other Equity Interest of the Debtor and (b) the legal, equitable, contractual or other rights of any Person to acquire or receive any of the foregoing.

1.36 “Lien” means a charge against or interest in property to secure payment of a debt or performance of an obligation.

1.37 “Patch Kids” shall mean Patch Kids Ltd., a corporation formed under the laws of New Zealand that is the wholly-owned subsidiary of the Debtor’s ultimate parent company, Pumpkin Patch NZ.

1.38 “Person” means an individual, partnership, limited liability company, trust, incorporated or unincorporated association, joint venture, joint stock company, government (or an agreed or political subdivision thereof) or other entity of any kind.

1.39 “Petition Date” means June 29, 2009, the date on which the Debtor filed its voluntary petition for reorganization relief under chapter 11 of the Bankruptcy Code.

1.40 “Plan” means this chapter 11 plan of reorganization of the Debtor and all exhibits annexed hereto or referenced herein, as the same may be amended, modified or supplemented from time to time.

1.41 “Plan Distribution Fund” means the fund established pursuant to Article IV solely by a contribution of Cash by Pumpkin Patch NZ which funds shall be the sole source of distribution on account of Allowed Claims pursuant to Article III

1.42 “Plan Supplement” means the compilation of documents and forms of documents specified in the Plan that will be filed with the Bankruptcy Court not later than fifteen (15) days

prior to the Confirmation Hearing or such later date as may be approved by the Bankruptcy Court.

1.43 “Priority Claim” means a Claim that is entitled to priority pursuant to section 507 of the Bankruptcy Code.

1.44 “Professional” means any professional (a) employed in the Chapter 11 Case pursuant to sections 327, 328 or 1103 of the Bankruptcy Code and to be compensated for services rendered pursuant to sections 327, 328, 329, 330, and 331 of the Bankruptcy Code or (b) seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to section 503(b)(4) of the Bankruptcy Code.

1.45 “Professional Fee Claim” means a Claim of a Professional for compensation or reimbursement of costs and expenses relating to services after the Petition Date and prior to and including the Effective Date.

1.46 “Pro Rata” means, at any time, the proportion that the Face Amount of a Claim or Interest, as applicable, in a particular Class bears to the aggregate Face Amount of all Claims or all Interests (including Disputed Claims and Interests) in such Class, unless the Plan provides otherwise.

1.47 “Pumpkin Patch NZ” shall mean Pumpkin Patch Limited, a corporation formed under the laws of New Zealand that is the ultimate parent company of the Debtor by virtue of its whole ownership of Patch Kids.

1.48 “Pumpkin Patch NZ Equity Interest” means the equity interest of Pumpkin Patch NZ in the Debtor as the ultimate parent company of the Debtor by virtue of its whole ownership of Patch Kid.

1.49 “Pumpkin Patch Stock” means, the shares of the common stock, par value \$0.001 per share, of the Reorganized Debtor issued and outstanding as of the Effective Date.

1.50 “Recovery Actions” means, collectively and individually, preference actions, fraudulent conveyance actions, rights of setoff and other claims or causes of action under sections 510, 544, 547, 548, 549, 550 and 553 of the Bankruptcy Code.

1.51 “Reorganized Debtor” means the reorganized Debtor or its successor, on or after the Effective Date.

1.52 “Reorganized Pumpkin Patch” means the Reorganized Debtor or its successor, on and after the Effective Date.

1.53 “Schedules” means the schedules of assets and liabilities and the statements of financial affairs filed with the Bankruptcy Court pursuant to section 521 of the Bankruptcy Code and Bankruptcy Rule 1007(b) by the Debtor as such schedules or statements may be amended or supplemented from time to time in accordance with Bankruptcy Rule 1009 or orders of the Bankruptcy Court.

1.54 “Secured Claim” means a Claim that is secured by a security interest in or lien upon property, or the proceeds of the sale of such property, in which the Debtor has an interest, to the extent of the value, as of the Effective Date or such later date as is established by the Bankruptcy Court, of such interest or lien as determined by a Final Order of the Bankruptcy Court pursuant to section 506 of the Bankruptcy Code or as otherwise agreed upon in writing by the Debtor and the holder of such Claim.

1.55 “Taxes” means (a) any income, alternative or add-on minimum, gross receipts, sales, use, ad valorem, value added, transfer, franchise, profits, license, property, environmental or other tax, assessment or charge of any kind whatsoever (together in each instance with any interest, penalty, addition to tax or additional amount) imposed by any federal, state or local taxing authority; or (b) any liability for payment of any amounts of the foregoing types as a result of being a member of an affiliated, consolidated, combined or unitary group, or being a party to any agreement or arrangement whereby liability for payment of any such amounts is determined by reference to the liability of any other Entity.

1.56 “Unimpaired Claim” means a Claim that is not an Impaired Claim.

1.57 “Unsecured Claim” means any Claim against any Debtor that is not an Administrative Claim, a Priority Claim or a Secured Claim.

C. Rules of Interpretation

1. General

For purposes of the Plan (a) any reference in the Plan to a contract, instrument, release, indenture, or other agreement or document’s being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions, (b) any reference in the Plan to an existing document or exhibit filed or to be filed means such document or exhibit as it may have been or may be amended, modified, or supplemented, (c) unless otherwise specified, all references in the Plan to Sections, Articles, Schedules, and Exhibits are references to Sections, Articles, Schedules, and Exhibits of or to the Plan, (d) the words “herein” and “hereto” refer to the Plan in its entirety rather than to a particular portion of the Plan, (e) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan, and (f) the rules of construction set forth in section 102 of the Bankruptcy Code and in the Bankruptcy Rules shall apply.

D. 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 II.

CLASSIFICATION OF CLAIMS AND INTERESTS

A. Introduction

All Claims and Interests, except for Administrative Claims and other Priority Claims, are placed in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, all Claims entitled to priority over General Unsecured Claims, including Administrative Claims and other Priority Claims, have not been classified.

A Claim or Interest is placed in a particular Class only to the extent that a Claim or Interest falls within the description of that Class, and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes. A Claim is also placed in a particular Class for the purpose of receiving distributions pursuant to the Plan only to the extent that such Claim is an Allowed Claim in that Class and such Claim has not been paid, released, or otherwise settled prior to the Effective Date.

B. Unclassified Claims (not entitled to vote on the Plan)

1. *Administrative Claims*
2. *Other Priority Claims including Priority Tax Claims*

C. Impaired Classes Of Claims And Interests

1. *Class 1: General Unsecured Claims*
 - a. Class 1 is entitled to vote on the Plan.

D. Unimpaired Classes of Claims and Interests

1. *Class 2: Pumpkin Patch NZ Equity Interest*
 - a. Class 2 is not impaired and thus is not entitled to vote on the Plan.

E. Classified Claims And Interests

1. *Class 1: General Unsecured Claims*

Consists of all Allowed General Unsecured Claims.
2. *Class 2: Pumpkin Patch NZ Equity Interest*

Consists of the Pumpkin Patch NZ Equity Interest.

ARTICLE III.

TREATMENT OF CLAIMS AND INTERESTS

A. Unclassified Claims

1. *Administrative Claims*

Except as otherwise provided for herein, and subject to the requirements of Article XI.A.1 hereof, on, or as soon as reasonably practicable after, the later of (i) the Distribution Date, (ii) the date such Administrative Claim becomes an Allowed Administrative Claim, or (iii) the date such Administrative Claim becomes payable pursuant to any agreement between the Debtor and the Holder of such Administrative Claim, each holder of an Allowed Administrative Claim shall receive in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Administrative Claim (a) Cash equal to the unpaid portion of such Allowed Administrative Claim or (b) such other treatment as to which the Debtor and such Holder shall have agreed upon in writing.

2. *Priority Claims*

On, or as soon as reasonably practicable after, the later of (i) the Distribution Date or (ii) the date such Priority Claim becomes an Allowed Priority Claim, each Holder of an Allowed Priority Claim shall receive in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Priority Claim (a) Cash equal to the unpaid portion of such Allowed Priority Claim or (b) such other treatment as to which the Debtor and such Holder shall have agreed upon in writing; *provided* that no holder of an Allowed Priority Claim shall be entitled to any payments on account of any pre-Effective Date interest accrued on or penalty arising after the Petition Date with respect to or in connection with such Allowed Priority Claim.

B. Impaired Classes of Claims

1. *Class 1: General Unsecured Claims*

Each holder of a Class 1 Allowed Unsecured Claim against the Debtor will receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Claim, its Pro Rata share of the Plan Distribution Fund. The Plan Distribution Fund will be distributed to the holders of Class 1 Allowed Unsecured Claims pursuant to the terms of the Plan.

C. Unimpaired Classes of Claims

1. *Class 2: Pumpkin Patch NZ Equity Interest*

All Pumpkin Patch NZ Equity Interests of any kind, including, without limitation, the Old Pumpkin Patch Stock, or any stock options, warrants or other agreements to acquire the same (whether or not arising under or in connection with any agreement), shall be retained as of the Effective Date by the Holder(s) of such Interests subject to the funding conditions described below.

Pumpkin Patch NZ has agreed, as a condition to its treatment under the Plan, to pay all allowed administrative expenses and to provide a fund of \$575,000 to a Plan Distribution Fund in order to provide for a recovery to Class 1 claimants. In the absence of such funding it is believed that Class 1 would receive no recovery.

ARTICLE IV.

MEANS FOR IMPLEMENTATION OF THE PLAN

A. Establishment of the Plan Distribution Fund.

On or before the Effective Date, Pumpkin Patch NZ shall cause to be paid into the Plan Distribution Fund \$575,000.00 in Cash, such funds to be used as the sole means of making Pro Rata distributions on Allowed Claims in this Case. On the Effective Date, the Debtor will pay in full all Allowed Administrative Claims and Allowed Priority Claims and will reserve sufficient funds for payment in full of all Administrative Claims and other Priority Claims that have not been allowed as of the Effective Date.

By virtue of their contribution to the Plan Distribution Fund, Pumpkin Patch NZ, as the Holders of the Equity Securities Interests, shall receive 100 percent of the issued, outstanding stock in the Reorganized Debtor but shall otherwise receive no distribution on or on account of such Interests.

1. Recourse Solely to Plan Distribution Fund

All Claims against the Debtor are deemed fully satisfied, waived and released in exchange for the treatment of such Claims under the Plan, and holders of Allowed Claims against the Debtor will have recourse solely to the Plan Distribution Fund for the payment of their Allowed Claims in accordance with the terms of the Plan.

2. Plan Distribution Fund

a. Plan Distribution Fund Generally

On or prior to the Effective Date, the Plan Distribution Fund shall be established pursuant to the Plan for the purpose of making all distributions to holders of Allowed Claims in accordance with the terms of the Plan and otherwise implementing the Plan.

b. Funding of the Plan Distribution Fund

On or prior to the Effective Date, the Debtor shall establish the Plan Distribution Fund pursuant to this Plan. The Plan Distribution Fund will be funded by payment into such fund by Pumpkin Patch NZ of \$ 575,000.00 in Cash.

B. Corporate Action

1. Certificates of Incorporation and Bylaws

As of the Effective Date, the Debtor will continue to exist, and all existing certificates of incorporation and by-laws will remain in full force and effect.

The Reorganized Debtor shall remain on and after the Effective Date as a separate legal entity, in accordance with the applicable laws in the jurisdiction in which it is incorporated and pursuant to its certificates or articles of incorporation, memorandum of association, articles of association, and by-laws, as applicable, in effect prior to the Effective Date, except to the extent such certificates or articles of incorporation, memorandum of association, articles of association, and by-laws are amended pursuant to the Plan.

2. Corporate Action

The following corporate actions and transactions will occur and be effective as of the Effective Date, if no such other date is specified in such other documents, and will be authorized and approved in all respects and for all purposes without any requirement of further action by the Debtor or any other person or Entity: (a) the establishment of the Plan Distribution Fund; (b) the distribution of Cash pursuant to the Plan; (c) the adoption, execution, delivery and implementation of all contracts, instruments, releases and other agreements or documents related to any of the foregoing; and (d) the other matters provided for under the Plan involving the corporate structure of the Debtor or Reorganized Debtor or corporate action to be taken by or required of the Debtor or Reorganized Debt

On the Effective Date, except as otherwise provided for herein or prior orders of the Bankruptcy Court, (i) any note, bond, indenture, or other instrument or document evidencing or creating any indebtedness or obligation of the Debtor, shall be cancelled, and (ii) the obligations of the Debtor under any agreements, indentures or certificates of designations governing the Equity Interest and any other note, bond, indenture or other instrument or document evidencing or creating any indebtedness or obligation of the Debtor, shall be discharged.

C. Preservation Of Rights Of Action

Except as provided in the Plan or in any contract, instrument, release or other agreement entered into or delivered in connection with the Plan in accordance with section 1123(b) of the Bankruptcy Code, the Debtor will retain and may enforce any claims, demands, rights and Causes of Action that the Estate may hold against any person or Entity to the extent not released under Article XI. H or otherwise. Any recovery of Cash by the Debtor on account of such actions will be deposited in the Plan Distribution Fund and distributed pursuant to the terms of the Plan.

D. Exclusivity Period

The Debtor shall retain the exclusive right to amend or modify the Plan, and to solicit acceptances of any amendments to or modifications of the Plan, through and until the Effective Date.

E. Effectuating Documents; Further Transactions

Any appropriate officer of the Debtor shall be authorized to execute, deliver, file, or record such contracts, instruments, releases, indentures, 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. The secretary or assistant secretary of the Debtor shall be authorized to certify or attest to any of the foregoing actions.

F. Exemption From Certain Transfer Taxes

Pursuant to section 1146(a) of the Bankruptcy Code, the issuance, transfer, or exchange of a security, or the making of delivery of an instrument of transfer from the Debtor to any Person or entity pursuant to the Plan may not be taxed under any law imposing a stamp tax or similar tax, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forego the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

ARTICLE V.

ACCEPTANCE OR REJECTION OF THE PLAN

A. Classes Entitled To Vote

Each Impaired Class of Claims or Interests that will (or may) receive or retain property or any interest in property under the Plan, shall be entitled to vote to accept or reject the Plan. By operation of law, each Unimpaired Class of Claims is deemed to have accepted the Plan and, therefore, is not entitled to vote to accept or reject the Plan.

B. Acceptance By Impaired Classes

An Impaired Class of Claims shall have accepted the Plan if (i) the Holders (other than any Holder designated under section 1126(e) of the Bankruptcy Code) of at least two-thirds in amount of the Allowed Claims actually voting in such Class have voted to accept the Plan and (ii) the Holders (other than any Holder designated under section 1126(e) of the Bankruptcy Code) of more than one-half in number of the Allowed Claims actually voting in such Class have voted to accept the Plan. An Impaired Class of Interests shall have accepted the Plan if (i) the Holders (other than any Holder designated under section 1126(e) of the Bankruptcy Code) of at least two-thirds in amount of the Allowed Interests actually voting in such Class have voted to accept the Plan.

ARTICLE VI.

PROVISIONS GOVERNING DISTRIBUTIONS

A. Distributions For Claims Allowed As Of The Effective Date

Except as otherwise provided herein or as ordered by the Bankruptcy Court, distributions to be made on account of Administrative Claims and Priority Claims that are Allowed Administrative Claims or Allowed Priority Claims as of the Effective Date shall be made as of the Effective Date and will be deemed made on the Effective Date if made no later than 60 days after the Effective Date, or as soon thereafter as practicable.

Without limiting the above, in the event the Debtor fails to timely make payment in satisfaction of any allowed claim of the Texas Comptroller of Public Accounts (the "Texas Comptroller") pursuant to the terms of the Plan or such further order of this Court, and such failure is not cured within thirty (30) days after service of written notice from the Texas Comptroller to the Debtor, then the Texas Comptroller may (i) seek to exercise all of its rights and remedies under applicable non-bankruptcy law and/or (ii) seek such relief as may be appropriate in this Court.

B. Interest On Claims

Unless otherwise specifically provided by this Plan or the Confirmation Order, or by applicable bankruptcy law, post-petition interest shall not accrue and not be paid on Allowed Claims when due under the contract, agreement, or other instrument governing the terms and conditions of the obligation comprising such Allowed Claim.

C. Distributions

Prior to, and after, the Effective Date, the Debtor shall make all distributions required under this Plan (subject to the provisions of Articles III and VII hereof).

D. Means Of Cash Payment

Cash payments made pursuant to this Plan shall be in U.S. funds, by the means agreed to by the payor and the payee, including by check or wire transfer, or, in the absence of an agreement, such commercially reasonable manner as the payor shall determine in its sole discretion.

E. Delivery Of Distributions

Distributions to Holders of Allowed Claims shall be made by the Debtor, (i) at the addresses set forth on the proofs of Claim filed by such Holders (or at the last known addresses of such Holders if no proof of Claim is filed or if the Debtor has been notified in writing of a change of address), (ii) at the addresses set forth in any written notices of address changes delivered to the Debtor after the date of any related proof of Claim, (iii) at the addresses reflected

in the Schedules if no proof of Claim has been filed and the Debtor has not received a written notice of a change of address, or (iv) in the case of the Holder of a Claim that is governed by an indenture or other agreement and is administered by an indenture trustee, agent, or servicer, at the addresses contained in the official records of such indenture trustee, agent, or servicer, or (v) at the addresses set forth in a properly completed letter of transmittal accompanying securities properly remitted to the Debtor. If any Holder's distribution is returned as undeliverable, no further distributions to such Holder shall be made unless and until the Debtor, its agent, or servicer is notified of such Holder's then current address, at which time all missed distributions shall be made to such Holder without interest. Amounts in respect of undeliverable distributions made through the Debtor, agent, or servicer, shall be returned to the Debtor until such distributions are claimed. All claims for undeliverable distributions must be made on or before the second (2nd) anniversary of the Effective Date, after which date all unclaimed property shall revert to the Debtor free of any restrictions thereon and the claim of any Holder or successor to such Holder with respect to such property shall be discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

F. Fractional Dollars; *De Minimis* Distributions

Any other provision of the Plan notwithstanding, payments of fractions of dollars shall not be made. Whenever any payment of a fraction of a dollar under the Plan would otherwise be called for, the actual payment made shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. The Debtor, or any indenture trustee, agent, or servicer, as the case may be, shall not make any payment of less than twenty-five dollars (\$25.00) with respect to any Claim unless a request therefore is made in writing to the Debtor, indenture trustee, agent, or servicer, as the case may be.

G. Withholding And Reporting Requirements

In connection with this Plan and all distributions hereunder, the Debtor shall, to the extent applicable, comply with all tax withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all distributions hereunder shall be subject to any such withholding and reporting requirements. The Debtor shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements including, without limitation, withholding distributions from any beneficiary who fails to provide a completed IRS Form W-9 or other requested tax information.

H. Setoffs

Except with respect to Claims of the Debtor released pursuant to the Plan or any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan or in the Chapter 11 Cases, pursuant to section 553 of the Bankruptcy Code or applicable non-bankruptcy law, the Debtor may setoff against any Allowed Claim and the distributions to be made pursuant to the Plan on account of such Claim (before any distribution is made on account of such Claim) the claims, rights and causes of action of any nature that the Debtor may hold against the holder of such Allowed Claim; *provided, however*, that neither the failure to effect a setoff nor the allowance of any Claim hereunder will constitute a waiver or

release by the Debtor of any claims, rights and causes of action that the Debtor may possess against such a Claim holder, which are expressly preserved under Article IV. C.

I. Rejection

On the Effective Date, and to the extent permitted by applicable law, all of the Debtor's executory contracts and unexpired leases that have not been previously rejected pursuant to an order of the Bankruptcy Court, will be rejected by the Debtor, unless such executory contract or unexpired lease:

(a) is identified as part of the Plan Supplement as a contract or lease that is being assumed pursuant to the Plan;

(b) is the subject of a motion to assume filed on or before the Confirmation Date;
or

(c) is the subject of an agreement, entered into on or before the Confirmation Date, between the Debtor and the counterparty to such executory contract to extend the time to assume or reject such executory contract to a date subsequent to the Confirmation Date.

1. Bar Date for Filing Claims for Rejection Damages

If the rejection of an executory contract or unexpired lease gives rise to a Claim, a proof of Claim must be served upon the Debtor and the Debtor's counsel within thirty (30) days after the earlier of (a) service of notice of entry of the Confirmation Order; or (b) service of such other notice that the executory contract or unexpired lease has been rejected; or (c) such other order of the Bankruptcy Court establishing an earlier date for the filing of such proof of claim. Any claim not served within such time period will be forever barred.

ARTICLE VII.

PROCEDURES FOR RESOLVING DISPUTED, CONTINGENT, AND UNLIQUIDATED CLAIMS

A. Objection Deadline; Prosecution Of Objections

As soon as practicable, but in no event after the later of (i) one hundred and eighty (180) days after the Effective Date (unless extended by an order of the Bankruptcy Court) and (ii) the date such Claim or Interest is filed and served upon the Debtor, the Debtor shall file objections to Claims and Interests with the Bankruptcy Court and serve such objections upon the holders of each of the Claims or Interests to which objections are made.

B. Estimation of Claims

The Debtor may at any time request that the Bankruptcy Court estimate any contingent or unliquidated Claim pursuant to section 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 objection, and the Bankruptcy Court will retain jurisdiction to estimate any Claim at any time

during litigation concerning any objection to any claim, including during the pendency of any appeal related to any such objection. In the event the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount will constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the Debtor may elect to pursue any supplemental proceedings to object to any ultimate payment on such Claim. All of the aforementioned objection, estimation and resolution procedures are cumulative and are not necessarily exclusive of one another. Claims may be estimated and thereafter resolved by any permitted mechanism.

C. No Distributions Pending Allowance

Notwithstanding any other provision of the Plan, no payments or distributions shall be made with respect to all or any portion of a Disputed Claim unless and until all objections to such Disputed Claim have been settled or withdrawn or have been determined by Final Order, and the Disputed Claim, or some portion thereof, has become an Allowed Claim.

D. Adjustment to Claims and Interests Without Objection

Any Claim or Interest that has been paid or satisfied, or any Claim or Interest that has been amended or superseded, may be adjusted or expunged on the Claims Register by the Debtor without a claims objection having to be filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

E. Disallowance of Claims or Interests

Any Claims or Interests held by an entity (i) from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, and/or (ii) that is a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, and such Claim or Interest may be subject to disallowance under section 502(d) of the Bankruptcy Code, then such Claim or Interest shall be treated as a Disputed Claim according to this Plan, and Holders of such Claims and Interests may not receive any distributions on account of such Claims and Interests until such time as such Causes of Action against that entity have been settled or a Bankruptcy Court order with respect thereto has been entered and all sums due, if any, to the Debtor by that entity have been turned over or paid to the Debtor.

F. Amendments To Claims

On or after the Effective Date, except as provided in herein or otherwise agreed, a Claim may not be filed or amended without the prior authorization of the Bankruptcy Court, ~~or~~ or the Debtor, and any such new or amended Claim filed shall be deemed disallowed in full and expunged without any further action or order of the Bankruptcy Court. Notwithstanding the above, nothing in this section shall be deemed to limit, alter or impair the rights of the Texas Comptroller of Public Accounts (the "Texas Comptroller") to amend its proof of claim without first obtaining the prior authorization of the Bankruptcy Court or the Debtor.

G. Distributions After Allowance

The Debtor shall make payments and distributions from the Distribution Reserve to each holder of a Disputed Claim that has become an Allowed Claim in accordance with the provisions of the Plan governing the class of Claims to which such holder belongs within ninety (90) days of such Disputed Claim being deemed an Allowed Claim.

H. General Unsecured Claims

Notwithstanding the contents of the Schedules, Claims listed therein as undisputed, liquidated and not contingent shall be reduced by the amount, if any, that was paid by the Debtor prior to the Effective Date, including pursuant to orders of the Bankruptcy Court. To the extent such payments are not reflected in the Schedules, such Schedules will be deemed amended and reduced to reflect that such payments were made.

I. Compliance with Tax Requirements/Allocations

In connection with the Plan, to the extent applicable, the Debtor shall comply with all tax withholding and reporting requirements imposed on it by any governmental unit, and all distributions pursuant hereto shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Debtor shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms they believe are reasonable and appropriate. The Debtor reserves the right to allocate all distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support, and other spousal awards, liens and encumbrances.

J. No Release of Liens

No Liens against the property of the Estate will be released and discharged, and all of the right, title and interest of any holder of such Liens, including any rights to any collateral thereunder, shall attach to and be enforceable against the Plan Distribution Fund in accordance with and subject to the terms of the applicable Financing Agreement. All such Liens shall be fully released and discharged upon the holder of such Lien receiving its full distribution under the Plan or upon the Effective Date if the holder of the Lien is not entitled to any distribution under the Plan.

ARTICLE VIII.

**CONDITIONS PRECEDENT TO CONFIRMATION AND
CONSUMMATION OF THE PLAN**

A. Conditions To Confirmation

The Bankruptcy Court shall not enter the Confirmation Order unless and until (i) the Confirmation Order shall be reasonably acceptable in form and substance to the Debtor and (ii)

the Confirmation Order includes a finding of fact that the Debtor and its present and former members, officers, directors, employees, advisors, attorneys, and agents acted in good faith within the meaning of and with respect to all of the actions described in section 1125(e) of the Bankruptcy Code and are therefore not liable for the violation of any applicable law, rule, or regulation governing such actions.

B. Conditions To Consummation

The following are conditions precedent to the occurrence of the Effective Date, each of which must be (i) satisfied or (ii) waived in accordance with Article VIII.D. below:

1. The Confirmation Order, in form and substance reasonably acceptable to the Debtor, confirming the Plan, as the same may have been modified, must have become a Final Order and must, among other things, provide that:

(a) the Debtor is authorized and directed to take all actions necessary or appropriate to enter into, implement and consummate the contracts, instruments, releases, indentures and other agreements or documents created in connection with the Plan; and

(b) the provisions of the Confirmation Order are non-severable and mutually dependent.

2. All authorizations, consents, and regulatory approvals required, if any, in connection with the Effective Date shall have been obtained.

3. There shall not be in effect on the Effective Date any (i) order entered by a U.S. court or (ii) any order, opinion, ruling or other decision entered by any other court or governmental entity or (iii) United States or other applicable law, staying, restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by the Plan.

4. No request for revocation of the Confirmation Order under section 1144 of the Bankruptcy Code shall remain pending.

C. Substantial Consummation

On the Distribution Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127(b) of the Bankruptcy Code.

D. Waiver Of Conditions

Each of the conditions set forth in Article VIII, except for Article VIII.B.4 (related to the requirement of Confirmation and entry of the Confirmation Order), may be waived in whole or in part by the Debtor without any notice to parties in interest except the Bankruptcy Court and without a hearing. The failure to satisfy or waive any condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights shall not be

deemed a waiver of any other rights, and each such right shall be deemed an ongoing right that may be asserted at any time.

ARTICLE IX.

MODIFICATIONS AND AMENDMENTS

The Debtor may amend, alter or modify the Plan or any exhibits thereto under section 1127(a) of the Bankruptcy Code at any time prior to the Confirmation Date. After the Confirmation Date and prior to substantial consummation of the Plan, as defined in section 1101(2) of the Bankruptcy Code, the Debtor may, under section 1127(b) of the Bankruptcy Code, institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, and such matters as may be necessary to carry out the purposes and effects of the Plan so long as such proceedings do not materially adversely affect the treatment of Holders of Claims or Interests under the Plan; *provided, however*, that prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or order of the Bankruptcy Court.

ARTICLE X.

RETENTION OF JURISDICTION

Under sections 105(a) and 1142 of the Bankruptcy Code, and notwithstanding entry of the Confirmation Order and occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, and related to, the Chapter 11 Case and the Plan to the fullest extent permitted by law, including, among other things, jurisdiction to:

A. Allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any objections to the allowance or priority of Claims or Interests;

B. Hear and determine all applications for compensation and reimbursement of expenses of Professionals under sections 327, 328, 330, 331, 503(b), 1103 or 1129(a)(4) of the Bankruptcy Code;

C. Hear and determine all matters with respect to the assumption or rejection of any executory contract or unexpired lease to which the Debtor is a party or with respect to which the Debtor may be liable, including, if necessary, the nature or amount of any required cure or the liquidation of any claims arising therefrom;

D. Hear and determine any and all adversary proceedings, motions, applications, and contested or litigated matters arising out of, under, or related to, the Chapter 11 Case;

E. Enter and enforce such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, and other agreements or documents created in connection with the Plan, the Disclosure Statement or the Confirmation Order;

F. Hear and determine disputes arising in connection with the interpretation, implementation, consummation, or enforcement of the Plan, including disputes arising under agreements, documents or instruments executed in connection with the Plan;

G. Consider any modifications of the Plan, cure any defect or omission, or reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;

H. Issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any entity with implementation, consummation, or enforcement of the Plan or the Confirmation Order;

I. Enter and implement such orders as may be necessary or appropriate if the Confirmation Order is for any reason reversed, stayed, revoked, modified, or vacated;

J. Hear and determine any matters arising in connection with or relating to the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, or other agreement or document created in connection with the Plan, the Disclosure Statement, or the Confirmation Order;

K. Enforce all orders, judgments, injunctions, releases, exculpations, indemnifications and rulings entered in connection with the Chapter 11 Case;

L. Recover all assets of the Debtor and property of the Estate, wherever located;

M. Hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

N. Hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under, or not inconsistent with, provisions of the Bankruptcy Code; and

O. Enter a final decree closing the Chapter 11 Case.

ARTICLE XI.

MISCELLANEOUS PROVISIONS

A. Bar Dates For Certain Claims

1. Administrative Claims

The Confirmation Order will establish an Administrative Claims Bar Date for filing of all Administrative Claims, other than (i) any fees owing to the Office of the United States Trustee and (ii) any and all claims for fees payable pursuant to section 1930 of title 28 of the United States Code, which date will be forty-five (45) days after the Effective Date. Holders of asserted Administrative Claims must submit proofs of Administrative Claim on or before such Administrative Claims Bar Date or forever be barred from doing so. A notice prepared by the Debtor will set forth such date and constitute notice of this Administrative Claims Bar Date.

2. Administrative Ordinary Course Liabilities

Except as the Court may order otherwise in connection with any request by the Debtor for the setting of a supplemental Administrative Claims Bar Date, holders of Administrative Claims that are based on liabilities incurred in the ordinary course of the Debtor's business shall not be required to file any request for payment of such Claims. Such Administrative Claims, unless objected to by the Debtor, shall be paid by the Debtor in Cash, pursuant to the terms and conditions of the particular transaction giving rise to such Administrative Claim. For the avoidance of doubt, Holders of Administrative Claims pursuant to section 503(b)(9) of the Bankruptcy Code **shall be required** to file a proof of Administrative Claim on or before the Administrative Claims Bar Date.

B. Payment Of Statutory Fees

All fees payable pursuant to section 1930 of title 28 of the United States Code, as determined by the Bankruptcy Court at the Confirmation shall be paid on or before the Effective Date.

C. Severability Of Plan Provisions

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court, at the request of the Debtor, shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

D. Successors And Assigns

The rights, benefits and obligations of any entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of such entity.

E. Permanent Injunction

Except as otherwise expressly provided in the Plan or the Confirmation Order, all entities who have held, hold or may hold Claims against, or Interests in, the Debtor are permanently enjoined, on and after the Effective Date, from (i) commencing or continuing in any manner any action or other proceeding of any kind with respect to any such Claim or Interest against the property or interests in property of the Debtor on account of any such Claim or Interest, (ii) the enforcement, attachment, collection, or recovery by any manner or means of judgment, award, decree or order against the property or interests in property of the Debtor; (iii) creating, perfecting, or enforcing any encumbrance of any

kind against any property or interests in property of the Debtor; and (iv) asserting any right of setoff of any kind against any obligation due from the Debtor or against the property or interests in property of the Debtor on account of any such Claim or Interest. Notwithstanding the above, neither the Texas Comptroller nor the Debtor shall be barred from setting off claims of any nature against either party consistent with applicable bankruptcy and non-bankruptcy law in connection with the any allowed claim(s) of the Texas Comptroller.

F. Debtor's Releases

As of the Effective Date, the Debtor, any successors and each of their directors, officers, members, managers, employees, agents, financial advisors, representatives, affiliates, attorneys and professionals (solely in their capacities as such) shall be deemed, to the maximum extent permitted by applicable law, to forever release, waive and discharge all claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action and liabilities whatsoever in connection with or related to the Debtor, the Chapter 11 Case or the Plan (other than the rights of the Debtor and any successors to enforce the Plan and the contracts, instruments, releases, indentures, and other agreements or documents assumed, passed through or delivered in connection with such Plan) and whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or part on any act, omission, transaction, event or other occurrence taking place on or prior to the Effective Date and in any way relating to the Debtor or any successors or their property, the Chapter 11 Case, the Plan and each of its directors, officers, members, managers, employees, agents, financial advisors, representatives, affiliates, attorneys and professionals (solely in their capacities as such) as of the Effective Date; *provided, however*, that such releases shall not operate as a waiver or release of any causes of action arising out of (x) any express contractual obligation owing by any such director, officer, or employee, agent, financial advisor, representative, affiliate, attorney or professional, or (y) the willful misconduct, gross negligence, intentional fraud or criminal conduct of such director, officer, or employee, agent, financial advisor, representative, affiliate or professional.

G. Releases by Holders of Claims and Interests

As of the Effective Date, for good and valuable consideration, the adequacy of which is hereby acknowledged and confirmed, each Holder of a Claim or Interest, shall be deemed to unconditionally and forever release, waive and discharge all Claims, Interests, suits, judgments, damages, demands, debts, rights, causes of action and liabilities whatsoever such Holder may have against the Debtor in connection with, or in any way related to, any reorganization, recapitalization, restructuring and/or liquidation efforts undertaken by or on behalf of the Debtor (other than the right to enforce the Plan and the contracts, instruments, releases, indentures, and other agreements or documents assumed, passed through or delivered in connection with such Plan or any order previously entered in this chapter 11 case) whether such Claims, Interests, suits, judgments, damages, demands, debts, rights, causes of action and liabilities are liquidated or unliquidated, fixed

or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, are then existing or hereafter arising, and whether in law, equity or otherwise that are based in whole or in part on any act, omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtor and any successors, the Chapter 11 Case, or the Plan, except for their gross negligence or willful misconduct.

H. Binding Effect

The Plan shall be binding upon and inure to the benefit of the Debtor, all present and former Holders of Claims against and Interests in the Debtor, their respective successors and assigns and all other parties-in-interest in these Chapter 11 Cases.

I. Revocation, Withdrawal, Or Non-Consummation

The Debtor reserves the right to revoke or withdraw the Plan at any time prior to the Confirmation Date, and to file subsequent plans of reorganization or liquidation. If the Debtor revokes or withdraws the Plan, or if Confirmation or Consummation does not occur, then (i) the Plan shall be null and void in all respects, (ii) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain any Claim or Class of Claims), and any document or agreement executed pursuant to the Plan shall be deemed null and void, and (iii) nothing contained in the Plan, and no acts taken in preparation for Consummation, shall (a) constitute or be deemed to constitute a waiver or release of any Claims by or against, or any Interests in, the Debtor or any other Person, (b) prejudice in any manner the rights of the Debtor or any Person in any further proceedings involving the Debtor, or (iii) constitute an admission of any sort by the Debtor or any other Person.

J. Plan Supplement

Any and all exhibits, lists, or schedules not filed with the Plan shall be contained in the Plan Supplement and filed with the Clerk of the Bankruptcy Court not later than the fifteenth (15th) day prior to the Confirmation Hearing. Upon filing with the Bankruptcy Court, the Plan Supplement may be inspected in the office of the Clerk of the Bankruptcy Court during normal court hours. Holders of Claims or Interests may obtain a copy of the Plan Supplement upon written request to the Debtor in accordance with Article XI. J. of the Plan.

K. Notices

Any notice, request, or demand required or permitted to be made or provided to or upon the Debtor under the Plan shall be (i) in writing, (ii) served by (a) certified mail, return receipt requested, (b) hand delivery, (c) overnight delivery service, (d) first class mail, or (e) facsimile transmission, and (iii) deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

Pumpkin Patch LLC
1112 Montana Ave, #455
Santa Monica, CA 90403, USA

with a copy to:

Dennis J. Drebsky
Lee Harrington
NIXON PEABODY LLP
437 Madison Avenue
New York, New York 10022
Telephone: (212) 940-3000
Facsimile: (212) 940-3111

and

Thomas M. Horan
WOMBLE CARLYLE SANDRIDGE & RICE, PLLC
222 Delaware Avenue, Suite 1501
Wilmington, DE 19801
Telephone: (302) 252-4339
Facsimile: (302) 661-7707

L. Indemnification Obligations

Any indemnification provisions currently in place for directors, officers and the Debtor's advisors (whether in the Debtor's bylaws, contracts or otherwise) shall survive confirmation of the Plan.

M. Prepayment

Except as otherwise provided in this Plan or the Confirmation Order, the Debtor shall have the right to prepay, without penalty, all or any portion of an Allowed Claim at any time; *provided, however*, that any such prepayment shall not violate, or otherwise prejudice, the relative priorities among the Classes of Claims.

N. Term Of Injunctions Or Stay

Unless otherwise provided herein or in the Confirmation Order, all injunctions or stays provided for in the Chapter 11 Case under sections 105 or 362 of the Bankruptcy Code or otherwise, and extant on the Confirmation Date (excluding any injunctions or stays contained in this Plan or the Confirmation Order), shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan or Confirmation Order shall remain in full force and effect in accordance with their terms.

O. 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, the value of such distribution shall be allocated to the principal amount of the Claim first and then, to the extent consideration exceeds the principal amount of the Claim, to accrued but unpaid interest.

P. No Admissions

Notwithstanding anything herein to the contrary, nothing contained in the Plan shall be deemed as an admission by the Debtor with respect to any matter set forth herein including, without limitation, liability on any Claim.

Q. Governing Law

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules), the laws of (i) the State of Delaware shall govern the construction and implementation of the Plan and any agreements, documents, and instruments executed in connection with the Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control) and (ii) the laws of the state of incorporation of the Debtor shall govern corporate governance matters with respect to the Debtor, in either case without giving effect to the principles of conflicts of law thereof.

ARTICLE XII.

CONFIRMATION REQUEST

The Debtor requests Confirmation of the Plan under section 1129 of the Bankruptcy Code. If any Impaired Class does not accept the Plan pursuant to section 1126 of the Bankruptcy Code, the Debtor request Confirmation pursuant to section 1129(b) of the Bankruptcy Code. In that event, the Debtor reserves the right to modify the Plan to the extent (if any) that Confirmation of the Plan under section 1129(b) of the Bankruptcy Code requires modification.

Dated: Wilmington, Delaware
[_____], 2010

PUMPKIN PATCH LLC

By: _____
Name:
Title:

NIXON PEABODY LLP
Dennis J. Drebsky
Lee Harrington (DE No. 4046)
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Counsel for the Debtor and Debtor in Possession

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Input:	
Document 1 ID	PowerDocs://FIRM_DM/12837836/7
Description	FIRM_DM-#12837836-v7-Pumpkin_Patch_Plan_of_Reorganization
Document 2 ID	PowerDocs://FIRM_DM/12837836/8
Description	FIRM_DM-#12837836-v8-Pumpkin_Patch_Plan_of_Reorganization
Rendering set	standard

Legend:	
Insertion	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved-deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	5
Deletions	2
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	7