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15 **UNITED STATES BANKRUPTCY COURT**  
16 **NORTHERN DISTRICT OF CALIFORNIA**  
17 **SAN FRANCISCO DIVISION**

18 In re:  
19 **HELLER EHRMAN LLP,**  
20 Debtor.

Case No.: 08-32514  
Chapter 11  
**JOINT PLAN OF LIQUIDATION OF  
HELLER EHRMAN LLP (MARCH 31,  
2010)**

**Confirmation Hearing**

Date: TBA  
Time: TBA  
Place: United States Bankruptcy Court  
235 Pine Street, 22nd Floor  
San Francisco, CA  
Judge: Honorable Dennis Montali

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Exhibit B	Former Shareholders
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Exhibit D	Compromise and Settlement Agreement
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**PRELIMINARY STATEMENT**

1  
2 Heller Ehrman LLP, the above-referenced debtor and debtor in possession (the “Debtor”)  
3 and the Official Unsecured Creditors’ Committee appointed in the Debtor’s case (the  
4 “Committee”) and together with the Debtor (the “Proponents”), hereby propose the following *Joint*  
5 *Plan of Liquidation* (the “Plan”). All Creditors should review the Disclosure Statement, and its  
6 accompanying exhibits and other information, before voting to accept or reject the Plan.

7 The Plan sets forth a proposal for the resolution of all Claims and Interests against the  
8 Debtor. In sum, the Plan provides for the Debtor to continue its wind-down efforts after  
9 confirmation with its administration to be handled by a professional wind-down manager (the  
10 “Plan Administrator”) replacing the Dissolution Committee as the primarily responsible party.  
11 Confirmation of the Plan shall constitute and confirm the appointment of the Plan Administrator,  
12 including responsibility and authority to (a) exercise the rights, power, and authority of the  
13 Liquidating Debtor, under the applicable provisions of the Plan and bankruptcy and non-  
14 bankruptcy law, and (b) retain post-confirmation professionals to represent the Liquidating Debtor  
15 and assist the Plan Administrator in performing and implementing the Plan, including without  
16 limitation retaining professionals originally engaged by the Debtor and/or the Committee, and (c)  
17 otherwise implement the Plan, wind up the affairs of the Estate and close the Chapter 11 Case.

18 The Plan contemplates the liquidation of all Estate Assets for the benefit of the holders of  
19 Allowed Claims and Allowed Interests. The resulting funds, after payment of Plan Expenses, will  
20 be made available for distribution to holders of Allowed Claims and Allowed Interests in  
21 accordance with the terms of the Plan. The Plan Administrator’s operation of the Liquidating  
22 Debtor will be for the purpose of liquidating and monetizing Estate Assets, which consist primarily  
23 of the Retained Claims and Defenses.

24 From and after the Effective Date, the Liquidating Debtor, acting through the Plan  
25 Administrator, shall expeditiously seek to collect, liquidate, sell and/or reduce to Cash all Estate  
26 Assets, including, without limitation, through pursuit of the Retained Claims and Defenses, and  
27 use the proceeds thereof to fund the Plan.  
28



1 As set forth in the Disclosure Statement, the Proponents believe that the Plan will allow the  
2 holders of Unsecured Claims to receive a meaningful return on account of their Allowed Claims  
3 against the Debtor, depending on the outcome of litigation and the allowance of Claims.

4 With the Plan, Creditors will receive a Ballot for voting on the Plan, and a Disclosure  
5 Statement that provides information concerning the Debtor and the Plan. The Disclosure  
6 Statement includes a summary of the assets and liabilities of the Debtor, a summary of what  
7 Creditors and Interest Holders will receive under the Plan, a discussion of certain alternatives to  
8 the Plan, and a summary of the procedures and voting requirements necessary for confirmation of  
9 the Plan. You should thoroughly review both the Plan and Disclosure Statement before deciding  
10 whether you will accept or reject the Plan.

11 As more fully described in the Disclosure Statement, the Plan must be approved by the  
12 requisite number of Creditors and the Bankruptcy Court must find that it meets the applicable legal  
13 standards before the Plan can be confirmed. If the Plan is not confirmed, the Bankruptcy Court may  
14 order the case dismissed, or converted to a liquidating case under Chapter 7 of the Bankruptcy Code,  
15 or the Debtor or other parties in interest may propose a different plan.

16 The Debtor and the Committee believe that the Plan provides the best mechanism available  
17 for maximizing returns to Creditors and urge Creditors to vote in favor of the Plan.

## 18 **ARTICLE I**

### 19 **DEFINITIONS**

20 For purposes of this Plan, all capitalized terms used herein and not otherwise defined shall  
21 have the meanings set forth below. A term not defined in the Plan, but defined in the Bankruptcy  
22 Code or the Bankruptcy Rules, shall have the meaning ascribed to it in the Bankruptcy Code or the  
23 Bankruptcy Rules, unless the context clearly requires otherwise. The rules of construction used in  
24 section 102 of the Bankruptcy Code shall apply to construction of this Plan. The phrase “as soon  
25 as practicable” shall mean within ten (10) Business Days of the relevant date. Headings and  
26 captions are utilized in this Plan for convenient reference only, and shall not constitute a part of  
27 this Plan for any other purpose.  
28

1           1.1     **“Administrative Claim”** shall mean a Claim for an expense of administration of the  
2 Debtor arising during the period commencing on the Petition Date and ending on the Effective Date  
3 under sections 503(b), 1114(e)(2) or 546(c)(2) of the Bankruptcy Code and entitled to priority under  
4 section 507(a)(1) of the Bankruptcy Code, including, but not limited to, (i) any actual and necessary  
5 cost or expense of preserving the Estate of the Debtor or conducting the business of the Debtor, (ii)  
6 administrative expenses previously allowed by the Bankruptcy Court, (iii) administrative claims that  
7 are timely filed prior to the applicable Administrative Claims Bar Date, (iv) any Tax Claims incurred  
8 by the Debtor after the Petition Date or relating to a tax year or period which occurs after the Petition  
9 Date, (v) any claim by a seller of goods for reclamation; (vi) Professional Fees, and (vii) all fees and  
10 charges assessed against the Debtor pursuant to 28 U.S.C. § 1930. For purposes of this Plan,  
11 Administrative Claims shall also include Cure Obligations.

12           1.2     **“Administrative Claims Bar Date”** shall mean (a) March 19, 2010 for claims  
13 arising prior to December 31, 2009, and (b) the first Business Day that is thirty (30) days after the  
14 Effective Date pursuant to which Claimants must file a request for payment of any Administrative  
15 Claim that arose between January 1, 2010 and the Effective Date, for which notice shall be provided  
16 in the Proponents’ notice of the entry of the Confirmation Order.

17           1.3     **“Administrative Claims Bar Date Order”** shall mean, (a) for administrative claims  
18 arising prior to December 31, 2009 the Court’s *Order (1) Establishing New General Bar Date for*  
19 *Affected Creditors, (2) Establishing Interim Administrative Claims Bar Date, and (3) Designating*  
20 *Form and Manner Of Notice Thereof*; and (b) for claims arising between January 1, 2010 and the  
21 Effective Date, an order setting an Administrative Claims Bar Date, which order could be the  
22 Confirmation Order.

23           1.4     **“Allowed”** shall mean, with respect to any Claim (other than an Administrative  
24 Claim as set forth below):

25                   (i)     a Claim that appears in the Schedules, except a Claim that is listed as  
26 disputed, contingent or unliquidated, or for which a contrary proof of Claim has been filed;

1 (ii) a Claim for which a proof of Claim has been timely filed as of the Bar Date or  
2 Rejection Claim Bar Date, as applicable, and no objection thereto has been made on or before any  
3 applicable deadline; or

4 (iii) a Claim that has been allowed, but only to the extent allowed (i) by a Final  
5 Order, (ii) under this Plan, or (iii) under any agreements entered into in connection with this Plan  
6 (and approved by the Bankruptcy Court) establishing the amount and nature of any Claim; and

7 With respect to an Administrative Claim, a request for payment that has been filed  
8 prior to the Administrative Claims Bar Date, and in accordance with either section 503(b) of the  
9 Bankruptcy Code or the procedures for filing requests for payment of an expense of administration  
10 set forth in the Administrative Claims Bar Date Order, and as to which either no objection has been  
11 made on or before any applicable deadline, or if an objection has been made, a claim has been  
12 allowed by Final Order.

13 1.5 **“Allowed Secured Claim”** shall mean that portion of an Allowed Claim (i) secured  
14 by a valid, perfected and enforceable Lien that is not subject to avoidance under bankruptcy or non-  
15 bankruptcy law, in an amount equal to the value, as determined by the Bankruptcy Court pursuant to  
16 sections 506(a) and 1129(b) of the Bankruptcy Code and Bankruptcy Rule 3012, of the interest of  
17 the holder of such Allowed Claim in the property of the Debtor, the Liquidating Debtor, or the  
18 Estate, securing such Allowed Claim, or (ii) in an amount equal to the amount subject to setoff by  
19 the holder of such Claim under section 553 of the Bankruptcy Code.

20 1.6 **“Allowed Unsecured Claim”** shall mean any Allowed Claim (including any  
21 Rejection Claim) that is not an Allowed Administrative Claim, an Allowed Secured Claim, an  
22 Allowed Priority Employee Claim, an Allowed Priority Tax Claim, or an Assumed Obligation.

23 1.7 **“Amended Complaint”** means the amended complaint in the Biggers Adversary  
24 filed on or about April 23, 2009, which added as defendants the Biggers Defendant Shareholder  
25 Class and the Non-Debtor Defendants. The Amended Complaint alleges (1) violation of the Federal  
26 Worker Adjustment and Retraining Notification (“WARN”) Act, 29 U.S.C. §§ 2101 *et seq.*; (2)  
27 violation of the California WARN Act; (3) failure to pay vacation in violation of California law; (4)  
28 waiting time penalties; (5) failure to pay wages under Washington law; (6) breach of contract as to

1 the Washington and New York putative vacation class; (7) promissory estoppel as to the Washington  
2 and New York putative vacation class; (8) failure to pay wages under Washington, D.C. and New  
3 York law; and (9) unfair business practices under California law.

4 1.8 “**Assumed Contract**” or “**Assumed Contracts**” shall mean each Executory Contract  
5 assumed by the Debtor.

6 1.9 “**Assumption and Cure Order**” shall mean, with respect to any Assumed Contract,  
7 an order of the Bankruptcy Court approving the assumption of such Executory Contract, and  
8 determining any Cure Obligation with respect thereto. The Confirmation Order may constitute an  
9 Assumption and Cure Order.

10 1.10 “**Available Cash**” shall mean the aggregate amount of all Cash held by the  
11 Liquidating Debtor as of the Effective Date.

12 1.11 “**Avoidance Actions**” shall mean all claims or causes of action arising under sections  
13 547 and 548 of the Bankruptcy Code.

14 1.12 “**Ballot**” shall mean the form for acceptance or rejection of the Plan distributed to  
15 those Creditors entitled to vote on the Plan, as such form may be approved by the Bankruptcy Court  
16 and which shall otherwise comply with the requirements of Bankruptcy Rule 3018(c).

17 1.13 “**Bank of America**” shall mean Bank of America, N.A.

18 1.14 “**Bank of America Preference Action**” shall mean that certain adversary proceeding  
19 styled as *Official Committee of Unsecured Creditors v. Bank of America, et al.*, Adv. No. 09-03071.

20 1.15 “**Bankruptcy Code**” shall mean Title 11 of the United States Code, §§ 101 et seq., as  
21 in effect on the Petition Date, as the same thereafter has been and may be amended, provided such  
22 amendments are in effect.

23 1.16 “**Bankruptcy Court**” or “**Court**” shall mean the United States Bankruptcy Court for  
24 the Northern District of California (San Francisco Division), or such other court as may hereafter  
25 exercise jurisdiction over the Chapter 11 Case.

26 1.17 “**Bankruptcy Rules**” shall mean the Federal Rules of Bankruptcy Procedure, as in  
27 effect on the Filing Date, as the same thereafter has been and may be amended, and the Local Rules  
28 of the Bankruptcy Court to the extent applicable to the Chapter 11 Case.

1           1.18    “**Bar Date**” shall mean, as applicable, (i) April 27, 2009, which was the date set by  
2 the Bankruptcy Court as the last date for filing a proof of Claim for a Claim that arose before the  
3 Petition Date for non-Governmental Units, (ii) June 26, 2009 for Governmental Units; and (iii)  
4 March 19, 2010 for those creditors entitled to file a proof of claim under the Court’s *Order (1)*  
5 *Establishing New General Bar Date for Affected Creditors, (2) Establishing Interim Administrative*  
6 *Claims Bar Date, and (3) Designating Form and Manner Of Notice Thereof.*

7           1.19    “**Biggers Adversary**” shall mean that certain adversary proceeding now pending in  
8 the Bankruptcy Court styled as *Biggers, et al, v. Heller Ehrman, LLP*, Adv. No. 09-03058.

9           1.20    “**Biggers Approval Order**” shall mean a Final Order of the Bankruptcy Court  
10 approving the Biggers Settlement Agreement under Bankruptcy Rule 9019, after notice and hearing  
11 to creditors and parties in interest, in accordance with applicable law and local rules, which shall be  
12 deemed to have occurred when 15 days have elapsed from the entry of the Bankruptcy Court’s order  
13 approving the Biggers Settlement Agreement (i) which order has not been reversed, stayed, modified  
14 or amended, (ii) as to which the time to or the right to appeal or seek reconsideration, review,  
15 rehearing, or certiorari has expired or been waived, and (iii) as to which no appeal or petition for  
16 reconsideration, review, rehearing, or certiorari is pending.

17           1.21    “**Biggers Defendant Shareholder Class**” means individuals Matthew Larrabee,  
18 Robert Hubbell, Steven Koppel, Marie Fiala, Mark Weeks, Lynn Loacker, Barry Levin, Kenneth  
19 Chernof, Lawrence Keeshan, Robert Rosenfeld, Peter Benvenuti, and Jonathan Hayden, on behalf  
20 of themselves and on behalf of the individuals listed on Exhibit 2 to the Biggers Settlement  
21 Agreement. The Biggers Defendant Shareholder Class comprises all shareholders of Heller Ehrman  
22 PCs as of September 26, 2008.

23           1.22    “**Biggers Class**” shall mean each former employee of the Debtor who meets the  
24 description of the Plaintiff Class Members set forth in Recital D to the Biggers Settlement  
25 Agreement attached hereto as **Exhibit D**.

26           1.23    “**Biggers Priority Employee Claim**” shall mean that portion of an Allowed Claim  
27 held by a member of the Biggers Class who does not exercise the Biggers Opt Out that is unsecured  
28

1 and is entitled to priority under sections 507(a)(4) of the Bankruptcy Code. Such claims relate  
2 primarily to claims under the WARN Act.

3 1.24 **“Biggers Opt Out”** shall mean that certain right of a member of the Biggers Class to  
4 opt out of the Biggers Class as set forth in Section 17 of the Biggers Settlement Agreement attached  
5 hereto as **Exhibit D**.

6 1.25 **“Biggers Opt Out Deadline”** shall mean \_\_\_\_\_, 2010.

7 1.26 **“Biggers Settlement Agreement”** means that certain *Compromise and Settlement*  
8 *Agreement*, dated as of October 8, 2009, as amended, entered into by and between certain Plaintiff  
9 Class Representatives on behalf of the Plaintiff Class Members, on the one hand and the Debtor, the  
10 Non-Debtor Biggers Defendants, the Biggers Defendant Shareholder Class, and the Committee, on  
11 the other hand, and attached hereto as **Exhibit D**.

12 1.27 **“Biggers Subordinated Unsecured Claim”** shall mean an Allowed Claim for that  
13 portion of a Biggers Unsecured Claim held by a member of the Biggers Class who does not exercise  
14 the Biggers Opt Out in an amount that is set forth in an exhibit to be sent to each member of the  
15 Biggers Class in connection with the solicitation of the member’s vote on this Plan. Such claims  
16 relate primarily to waiting time penalties.

17 1.28 **“Biggers Unsecured Claim”** shall mean shall mean an Allowed Claim for that  
18 portion of a Claim held by a member of the Biggers Class who does not exercise the Biggers Opt  
19 Out that is unsecured and is not an Administrative Claim, a Priority Tax Claim, a Priority Employee  
20 Claim, a Biggers Priority Employee Claim, a Biggers Subordinated Unsecured Claim, a Secured  
21 Claim, or an Assumed Obligation. Such claims relate primarily to claims under the WARN Act.

22 1.29 **“Business Day”** shall mean any day that is not a Saturday, a Sunday or other day on  
23 which banks are required or authorized by any federal, state or local law to be closed in the City of  
24 San Francisco, California.

25 1.30 **“Cash”** shall mean cash and cash equivalents including, but not limited to, cash on  
26 deposit in the bank accounts of the Debtor or the Liquidating Debtor, as applicable, checks, wire  
27 transfers, money orders, certificates of deposit, money market or similar investments, and other  
28 similar readily marketable securities or instruments.

1           1.31    “**Chapter 11 Case**” shall mean the Chapter 11 Case commenced by the Debtor upon  
2 the filing with the Bankruptcy Court of a voluntary petition under chapter 11 of the Bankruptcy  
3 Code.

4           1.32    “**Citibank**” shall mean Citibank, N.A.

5           1.33    “**Claim**” shall mean a claim against the Debtor within the meaning of section 101(5)  
6 of the Bankruptcy Code.

7           1.34    “**Claimant**” shall mean the holder of a Claim.

8           1.35    “**Claims Reserve Account**” shall mean an interest bearing bank account or money  
9 market account to be established and held in trust for the benefit of holders of Allowed Unsecured  
10 Claims by the Liquidating Debtor on or after the Effective Date for the purpose of holding the funds  
11 to be distributed under the Plan to Unsecured Creditors and for Plan Expenses, and any interest,  
12 dividends or other income earned upon the investment of such Claims Reserve Account.

13           1.36    “**Class**” shall mean a category or group of Creditors or Interest Holders which are  
14 substantially similar to the Claims or Interests of the other Creditors or Interests Holders in such  
15 Class, as designated by this Plan pursuant to sections 1122 and 1123 of the Bankruptcy Code.

16           1.37    “**Class Counsel**” means Blum & Collins LLP.

17           1.38    “**Class Proof of Claim**” means the Class Proof of Claim filed on behalf of all  
18 purported Plaintiff Class Members in the Biggers Adversary on or about March 27, 2009 and the  
19 Amended Class Proof of Claim filed on April 3, 2009 and alleging substantially the same claims as  
20 alleged in the Biggers Adversary.

21           1.39    “**Committee**” shall mean the Official Committee of Unsecured Creditors appointed  
22 by the United States Trustee in the Debtor’s Chapter 11 Case.

23           1.40    “**Confirmation**” shall mean the approval of the Plan by and subject to the terms of  
24 the Confirmation Order.

25           1.41    “**Confirmation Date**” shall mean the date of Confirmation.

26           1.42    “**Confirmation Hearing**” shall mean the duly noticed hearing held by the  
27 Bankruptcy Court on confirmation of the Plan pursuant to section 1128 of the Bankruptcy Code.  
28

1 The Confirmation Hearing may be adjourned by the Bankruptcy Court from time to time without  
2 further notice other than the announcement of the adjourned date at the Confirmation Hearing.

3 1.43 **“Confirmation Order”** shall mean the order of the Bankruptcy Court, confirming  
4 this Plan and providing for the effectuation of the transactions contemplated by this Plan in  
5 accordance with the terms and provisions hereof and thereof.

6 1.44 **“Creditor”** shall mean any entity that holds a Claim.

7 1.45 **“Cure Obligation”** shall mean, individually, any monetary amount payable to the  
8 non-debtor party to an Assumed Contract pursuant to section 365(b)(1) of the Bankruptcy Code as a  
9 condition to the assumption of such contract or lease and, collectively, all monetary amounts payable  
10 to all non-debtor parties to all Assumed Contracts.

11 1.46 **“Debt”** shall mean liability on a Claim.

12 1.47 **“Debtor”** shall mean Heller Ehrman, LLP, as debtor and debtor in possession in its  
13 Chapter 11 Case.

14 1.48 **“DIP Lender”** shall mean the Heller Ehrman PCs collectively.

15 1.49 **“DIP Loan”** shall mean that certain secured debtor in possession loan under which  
16 the Debtor is the borrower and the DIP Lender is the lender made pursuant to an order of the Court  
17 entered on \_\_\_\_\_.

18 1.50 **“DIP Loan Collateral”** shall mean the liens and security interests granted in  
19 connection with the DIP Loan.

20 1.51 **“Disallowed Claim”** shall mean (i) a Claim or any portion thereof, that has been  
21 disallowed by a Final Order of the Bankruptcy Court; (ii) a Claim that has been listed in the  
22 Schedules at zero or as contingent, disputed, or unliquidated and as to which no proof of Claim has  
23 been timely filed or deemed timely filed with the Bankruptcy Court pursuant to the Bankruptcy  
24 Code, any Final Order of the Court, or other applicable law; or (iii) a Claim that has not been listed  
25 in the Schedules and as to which no proof of Claim has been timely filed or deemed timely filed with  
26 the Bankruptcy Court pursuant to the Bankruptcy Code, any Final Order of the Court, or other  
27 applicable law.  
28



1           1.52    “**Disclosure Statement**” shall mean the disclosure statement in support of the Plan,  
2 in the form approved by the Bankruptcy Court, disseminated by the Proponents to the holders of  
3 Claims against the Debtor in order to provide to such persons adequate information in accordance  
4 with section 1125 of the Bankruptcy Code, as such disclosure statement may be modified, amended  
5 or supplemented from time to time.

6           1.53    “**Dissolution Committee**” shall mean the Dissolution Committee formed under the  
7 Plan of Dissolution for the purpose of governing the affairs of the Debtor after September 26, 2008,  
8 currently comprised of Peter J. Benvenuti, Jonathan Hayden, Lynn Loacker, and Paul Sugarman.

9           1.54    “**Disputed Claim**” shall mean, with respect to a Secured Claim, an Administrative  
10 Claim, a Priority Tax Claim, a Priority Employee Claim or an Unsecured Claim, as applicable (i)  
11 any Claim or portion of a Claim as to which an objection to the allowance thereof has been  
12 interposed as of the Effective Date or any later deadline fixed under the Plan or by order of the  
13 Bankruptcy Court, which objection has not been withdrawn or determined by Final Order. To the  
14 extent an objection relates to the allowance of only a part of a Claim, such Claim shall be a Disputed  
15 Claim only to the extent of the objection.

16           1.55    “**Disputed Claims Amount**” shall mean the aggregate amount of Disputed Claims  
17 that are fixed, absolute – and neither contingent nor unliquidated. For purposes of calculating  
18 distributions of Cash under the Plan, the amount of each Disputed Claim shall be based upon the  
19 face amount of such Creditor’s Disputed Claim (or the disputed portion thereof) as set forth in the  
20 Creditor’s filed proof of Claim.

21           1.56    “**Effective Date**” shall mean the first Business Day on which each of the conditions  
22 specified in Article VII of the Plan has been satisfied or duly waived.

23           1.57    “**Employee Benefit Plans**” shall mean any and all vacation or other paid leave  
24 policies, health, dental, flexible medical payment, pension, welfare, severance, retention, deferred  
25 compensation, and retirement plans, and life and disability insurance policies, established by the  
26 Debtor for the benefit of its employees, that are in effect as of the Effective Date, including, without  
27 limitation, any severance and retention plans approved by the Bankruptcy Court pursuant to the  
28 Employee Retention Orders.

1           1.58    “**Employee Retention Orders**” shall mean that certain *Order (1) Authorizing Debtor*  
2 *And Debtor In Possession To (A) Pay And Honor Pre-Petition Employee Wages And Other*  
3 *Employee Obligations In The Ordinary Course Of Business, And (B) Continue Honoring Employee*  
4 *Obligations, Including Wages, Benefits On A Post-Petition Basis; And (2) Providing Related Relief*  
5 entered on or about December 30, 2008, and the *Order Approving Revised Non-Insider Employee*  
6 *Retention And Incentive Bonus Plan* entered on or about March 3, 2009.

7           1.59    “**Estate**” shall mean the bankruptcy estate of the Debtor pursuant to Bankruptcy  
8 Code section 541.

9           1.60    “**Estate Assets**” shall mean all property of the estate of the Debtor under section 541  
10 of the Bankruptcy Code including, all property, assets, equitable or legal rights or interests, contract  
11 rights, benefits, causes of action, claims, or any other thing tangible or intangible, of any kind  
12 whatsoever, owned or held by or on behalf of the Debtor in which the Debtor has any right, title or  
13 interest to the full extent provided under section 541 of the Bankruptcy Code including, without  
14 limitation, Available Cash, any Retained Claims and Defenses, the MPC Equity and MPC Equity  
15 Payments, and Avoidance Actions.

16           1.61    “**Exculpated Parties**” shall have the meaning assigned to it in Section 8.4 of this  
17 Plan.

18           1.62    “**Executory Contracts**” shall mean executory contracts and unexpired leases within  
19 the meaning of Bankruptcy Code section 365.

20           1.63    “**Final Order**” shall mean an order or judgment of the Bankruptcy Court or other  
21 court of competent jurisdiction (i) which has not been reversed, stayed, modified or amended, (ii) as  
22 to which the time to or the right to appeal or seek reconsideration, review, rehearing, or certiorari has  
23 expired or been waived (without regard to whether the time to seek relief from a judgment under  
24 Bankruptcy Rule 9024 has expired), and (iii) as to which no appeal or petition for reconsideration,  
25 review, rehearing, or certiorari is pending.

26           1.64    “**Former Shareholders**” shall mean each of the individuals that held an equity  
27 interest in one of the Heller Ehrman PCs, each of whom is named on **Exhibit B**, attached hereto.  
28

1           1.65    **“Former Shareholder Settlement Letter”** shall mean the individualized letters to be  
2 sent to each Former Shareholder who has not previously agreed to settlement terms with the  
3 Committee detailing the terms on which the Committee will settle the Estate’s known and unknown  
4 claims against such Former Shareholder.

5           1.66    **“Former Shareholder Settlement Mechanism”** shall mean the process described in  
6 Section 5.12 of this Plan.

7           1.67    **“Former Shareholder Settlement Payment”** shall mean a timely payment in good  
8 funds made by a Former Shareholder of an amount fixed by the Committee, on terms agreed upon by  
9 the Committee in the Model Former Shareholder Settlement Agreement, or other settlement  
10 agreement between the parties.

11           1.68    **“Heller Ehrman”** shall mean Heller Ehrman, LLP.

12           1.69    **“Heller Ehrman PCs”** shall mean each of the six partners holding an equity interest  
13 in the Debtor, including but not limited to: Heller Ehrman (California), a Professional Corporation,  
14 Heller Ehrman White & McAuliffe (Washington), P.S., a Washington professional service  
15 corporation, Heller Ehrman White & McAuliffe (Oregon), P.C., an Oregon professional corporation,  
16 Heller Ehrman (Alaska), P.C., a professional corporation, Heller Ehrman (New York), a Professional  
17 Corporation, and Heller Ehrman (China), P.C., a District of Columbia professional corporation.

18           1.70    **“Insured Malpractice Claim”** shall mean the Insured Portion of any Claim subject  
19 to a Malpractice Policy.

20           1.71    **“Insured Portion”** shall mean, with respect to any Malpractice Policy, the insurance  
21 coverage available for Insured Malpractice Claims thereunder.

22           1.72    **“Interest Holder”** shall mean, individually, each of the Heller Ehrman PCs, or their  
23 successors and assigns.

24           1.73    **“Interests”** shall mean any interests in the Debtor owned by the Heller Ehrman PCs,  
25 or their successors and assigns.

26           1.74    **“Jewel Claims”** shall mean the Estate’s claims arising under the California Court of  
27 Appeal decision in *Jewel v. Boxer*, 156 Cal.App.3d 171 (1984), or any related unfinished business  
28

1 doctrine claims, which have previously been assigned to the Committee for investigation and  
2 prosecution, and or any necessary Avoidance Action to recover the value of the foregoing.

3 1.75 “**Lien**” shall mean a charge against or interest in property to secure payment of a debt  
4 or performance of an obligation.

5 1.76 “**Liquidating Debtor**” shall mean the Debtor as reorganized and reconstituted on and  
6 after the Effective Date.

7 1.77 “**Malpractice Claim**” shall mean any unsecured non-priority claim against the  
8 Debtor or any Former Shareholder, or any former employee of the Debtor arising out of alleged acts,  
9 errors, or omissions in connection with the rendering or failing to render professional legal services  
10 by the Debtor or other potential or actual liability or costs arising in connection therewith, whether  
11 or not covered by a Malpractice Policy.

12 1.78 “**Malpractice Costs and Expenses**” shall mean, as to any Malpractice Policy, (i) the  
13 aggregate fees, costs and expenses (including attorneys’ fees) arising from or related to the  
14 investigation, adjustment, defense, appeal and resolution of the Malpractice Claims applicable to  
15 such policy; and (ii) such other costs and expense of the Liquidating Debtor or the Plan  
16 Administrator allocable to such Malpractice Claims.

17 1.79 “**Malpractice Policy**” or “**Policies**” shall mean the policies of professional liability  
18 insurance issued to the Debtor, as such policies have been amended, modified, renewed or  
19 supplemented, from time to time.

20 1.80 “**Master Agreement for Legal Services**” shall mean the agreement attached hereto  
21 as **Exhibit G**.

22 1.81 “**Model Former Shareholder Settlement Agreement**” shall mean the form  
23 agreement enclosed with the Former Shareholder Settlement Letter pursuant to which the Estate’s  
24 claims against Former Shareholders shall be settled under the Plan.

25 1.82 “**MPC**” shall mean MPC Insurance, Ltd.

26 1.83 “**MPC Equity**” shall mean the Debtor’s equity interest in MPC.

27 1.84 “**MPC Equity Payments**” shall mean those payments, if any, received from MPC  
28 after the Effective Date on account of the MPC Equity.

1           1.85    “**Net SIR**” shall mean the Self Insured Retention Amount less the Malpractice Costs  
2 and Expenses associated with such policy, provided however, that if Net SIR equals an amount less  
3 than zero, then Net SIR shall instead be deemed equal to zero.

4           1.86    “**New Plan Documents**” shall mean the First Amendment to Plan of Dissolution, and  
5 such other documents as are deemed necessary to confirmation, to be filed with the Bankruptcy  
6 Court and served upon each of party requesting special notice and the Office of the United States  
7 Trustee, no later than ten (10) days prior to the date the Bankruptcy Court sets for objections to  
8 Confirmation.

9           1.87    “**Non-Debtor Biggers Defendants**” means the Heller Ehrman PCs.

10          1.88    “**Petition Date**” shall mean December 28, 2008, which is the date when the Debtor  
11 filed its voluntary petition pursuant to chapter 11 of the Bankruptcy Code.

12          1.89    “**Plaintiff Class Members**” means the Class Representatives and the persons listed  
13 on Exhibit A to the Biggers Settlement Agreement.

14          1.90    “**Plaintiff Class Representatives**” means Debora K. Biggers, Carl Goodman, Anna  
15 Scarpa, and Marjorie Norris, on behalf of themselves and on behalf of the individuals named on  
16 Exhibit A to the Biggers Settlement Agreement.

17          1.91    “**Plan**” shall mean this joint chapter 11 plan of liquidation and any exhibits and  
18 schedules hereto and any documents incorporated herein by reference, as the same may from time to  
19 time be amended or modified as and to the extent permitted herein or by the Bankruptcy Code.

20          1.92    “**Plan Administrator**” shall mean Michael Burkart, who shall file a statement setting  
21 forth his qualifications and affiliations, including a disclosure of any potential conflicts of interest,  
22 pursuant to Bankruptcy Code section 1129(a)(5)(A)(i) not less than ten days prior than the last day to  
23 object to Confirmation.

24          1.93    “**Plan Expenses**” shall mean all actual and necessary costs and expenses incurred  
25 after the Effective Date in connection with the administration of the Plan, including, but not limited  
26 to, (i) costs, expenses and legal fees incurred related to filing and prosecuting objections to Claims,  
27 (ii) the costs, expenses and legal fees incurred to investigate, litigate, estimate and settle the Retained  
28 Claims and Defenses (which shall include the Avoidance Actions), including, but not limited to,

1 attorneys' fees, accounting fees, expert witness fees, consultants' fees, and all costs relating to  
2 obtaining and distributing such recoveries, incurred by the Liquidating Debtor, (iii) the costs and  
3 expenses of administration of the Liquidating Debtor, including without limitation the fees and costs  
4 of the Plan Administrator; (iv) amounts necessary to compensate members of the Dissolution  
5 Committee and the Debtor's Professionals after Confirmation for services rendered at the request of  
6 the Plan Administrator regarding, *inter alia*, the Debtor's dissolution or the Bankruptcy Case; and  
7 (v) all fees payable pursuant to section 1930 of Title 28 of the United States Code.

8 1.94 **"Plan of Dissolution"** shall mean that certain Plan of Dissolution of Heller Ehrman  
9 LLP, dated as of September 26, 2008.

10 1.95 **"Post-Confirmation Motion and Opportunity for Hearing"** shall mean the  
11 procedure to be utilized after the Effective Date by any party seeking approval from the Court  
12 respecting matters requiring approval under this Plan. A Post-Confirmation Motion and Opportunity  
13 for Hearing shall be served on the Post-Confirmation Service List and shall: (i) detail the requested  
14 relief; (ii) provide evidentiary support; and (iii) give any and all parties in interest fourteen (14)  
15 calendar days to file written opposition with the Court and to request a hearing. If no opposition is  
16 filed, the Court may act on the Post Confirmation Motion and Opportunity for Hearing without  
17 hearing.

18 1.96 **"Post-Confirmation Service List"** shall mean a service list comprised of names and  
19 email addresses for all members of the Committee as of the Effective Date, the Office of the United  
20 States Trustee, counsel for Citibank and Bank of America, counsel for the Heller Ehrman PCs, and  
21 any other creditor or party in interest that files a request for post confirmation notice after the  
22 Effective Date with the Court and serves it on the Post Confirmation Service List.

23 1.97 **"Priority Employee Claim"** shall mean that portion of an Allowed Claim that is  
24 unsecured and that is entitled to priority under section 507(a)(4) of the Bankruptcy Code that is not a  
25 Biggers Priority Employee Claim.

26 1.98 **"Priority Tax Claim"** shall mean that portion of a Tax Claim, if any, entitled to  
27 priority in payment under section 507(a)(8) of the Bankruptcy Code.  
28

1           1.99    **“Professional Fees”** shall mean all amounts allowed and awarded by the Bankruptcy  
2 Court for compensation for services rendered and reimbursement of expenses incurred by  
3 Professionals pursuant to sections 330(a) and 503(b) of the Bankruptcy Code.

4           1.100   **“Professionals”** shall mean those attorneys, accountants and other financial advisors  
5 employed by the Debtor (pursuant to section 327 of the Bankruptcy Code) or the Committee  
6 (pursuant to section 1103 of Bankruptcy Code) in the Chapter 11 Case and to be compensated for  
7 services rendered and reimbursed for expenses incurred pursuant to sections 330(a) and 503(b) of the  
8 Bankruptcy Code.

9           1.101   **“Pro Rata” or “Pro Rata Share”** shall mean, with respect to distributions on  
10 account of Allowed Claims, in the same ratio of an Allowed Claim in a particular Class to the  
11 aggregate of all Allowed Claims in that Class.

12          1.102   **“Rejected Contract(s)”** shall mean those Executory Contracts which are rejected by  
13 the Debtor pursuant to section 365 or 1123(b)(2) of the Bankruptcy Code.

14          1.103   **“Rejection Claim”** shall mean any Allowed Claim under Bankruptcy Code section  
15 502(g) that arises under Bankruptcy Code section 365(g)(1) in favor of the non-debtor party to any  
16 Executory Contract that is rejected by the Debtor pursuant to Bankruptcy Code sections 365(a) or  
17 1123(b)(2).

18          1.104   **“Rejection Claim Bar Date”** shall mean the last date established by the Bankruptcy  
19 Court by which entities asserting a Rejection Claim against the Debtor must have filed a proof of  
20 Claim with respect to such Rejection Claim or be forever barred from asserting such Claim and/or  
21 sharing in any distribution hereunder in respect of such Claim. For contracts or leases for which no  
22 rejection claim bar date was previously established, or for contracts and leases rejected pursuant to  
23 the Plan, the Rejection Claims Bar Date shall be thirty (30) days following the date upon which the  
24 Confirmation Order is entered.

25          1.105   **“Reserved Claims Pool”** shall mean the amounts which shall be funded on or after  
26 the Effective Date pursuant to Section 5.1 of this Plan for the purpose of holding as reserves the  
27 amounts of Administrative Claims (including amounts due for Professional Fees) which have not  
28 become Allowed Claims.

1           1.106 **“Reserved Claims Pool Account”** shall mean the bank account established by the  
2 Liquidating Debtor into which the Plan Administrator shall deposit the amounts which constitute the  
3 Reserved Claims Pool.

4           1.107 **“Retained Claims and Defenses”** shall mean all claims, rights, interests, causes of  
5 action, defenses, counterclaims, cross-claims, third-party claims, or rights of offset, recoupment,  
6 subrogation or subordination held by the Debtor or its Estate against any party whether or not  
7 pending on the Effective Date, not otherwise released or settled before the Effective Date, including  
8 but not limited to those specifically set forth in Section VII.D of the Disclosure Statement.

9           1.108 **“Schedules”** shall mean the schedules of assets and liabilities and the statement of  
10 financial affairs filed by the Debtor with the Bankruptcy Court pursuant to section 521 of the  
11 Bankruptcy Code and Bankruptcy Rule 1007, as amended from time to time.

12           1.109 **“Secured Claim”** shall mean a Claim secured by a Lien on property of the Debtor, or  
13 the Estate, or secured by an amount subject to setoff under section 553 of the Bankruptcy Code, to  
14 the extent of the value of such Lien or right of setoff as determined under sections 506(a) or 1129(b)  
15 of the Bankruptcy Code, as applicable.

16           1.110 **“Self Insured Retention Amount”** shall mean the amount necessary to satisfy the  
17 “self insured retention” provisions of any applicable Malpractice Policy.

18           1.111 **“Settling Former Shareholder”** shall mean any Former Shareholder who timely  
19 executes the Model Former Shareholder Agreement (or other form of settlement agreement approved  
20 by the Bankruptcy Court), and makes the Former Shareholder Settlement Payment, or other payment  
21 agreed upon by the Committee.

22           1.112 **“SIR Amount”** shall mean the unexpended portion of self-insured retention  
23 necessary to trigger a malpractice insurer’s obligation to fund a defense of a Claim or pay an amount  
24 agreed to or adjudged to be owing on account of an Insured Malpractice Claim.

25           1.113 **“Subordinated Former Shareholders”** shall mean both (a) the payees under those  
26 certain Promissory Notes made by the Debtor in connection with the departure of shareholders from  
27 one of the Debtor’s partners (which notes are described in **Exhibit C** to this Plan); and (b) all Former  
28 Shareholders who did not retire, depart or withdraw from their respective Heller Ehrman PC prior to



1 the adoption of the Plan of Dissolution on September 26, 2008 (whose names appear on **Exhibit E** to  
2 this Plan).

3 1.114 “**Substantial Contribution Payment**” shall mean those certain payments to Blum  
4 Collins LLP to be made as contemplated in the Biggers Settlement Agreement attached hereto as  
5 **Exhibit D** in the event the Biggers Approval Order becomes a Final Order.

6 1.115 “**Top Fifty Former Shareholders**” shall mean each of the individuals named on  
7 **Exhibit F**<sup>1</sup>, attached hereto.

8 1.116 “**Uninsured Malpractice Claim**” shall mean any timely filed Malpractice Claim to  
9 the extent of the Uninsured Portion of the applicable Malpractice Policy or Malpractice Policies.

10 1.117 “**Uninsured Portion**” shall mean, with respect to any given Malpractice Claim, the  
11 Debtor’s out-of-pocket liability on such Malpractice Claim, if any, as determined by the Net SIR of  
12 the applicable Malpractice Policy.

13 1.118 “**Unliquidated Claim**” shall mean any Claim for which a proof of Claim has been  
14 filed with the Bankruptcy Court but was not filed in a sum certain, and which Claim has not been  
15 estimated, fixed or liquidated by the Bankruptcy Court at a sum certain as of the Effective Date.

16 1.119 “**Unsecured Claim**” shall mean any Claim that is not an Administrative Claim, a  
17 Priority Tax Claim, a Priority Employee Claim, a Biggers Priority Employee Claim, a Secured  
18 Claim, a Biggers Unsecured Claim, or an Assumed Obligation.

19 1.120 “**WARN Act**” means Federal Worker Adjustment and Retraining Notification Act,  
20 29 U.S.C. §§ 2101 *et seq.* and California Labor Code section 1400 *et seq.*

## 21 **ARTICLE II**

### 22 **CLASSIFICATION OF CLAIMS AND INTERESTS**

23 2.1 **Criterion of Class.** The following is a designation of Classes of Claims under the  
24 Plan. Administrative Claims and Priority Tax Claims have not been classified and are excluded  
25 from the following Classes in accordance with section 1123(a)(1) of the Bankruptcy Code. A Claim  
26 is classified in a particular Class only to the extent that (i) the Claim qualifies within the description  
27 of that Class, and is classified in a different Class to the extent that the remainder of the Claim  
28

<sup>1</sup> **Exhibit F** will be filed with the Court at or before the Disclosure Statement hearing.



1 or as soon thereafter as practicable; and (d) such date as the holder of such Claim and the  
2 Liquidating Debtor may agree.

3           **3.2 Administrative Claim Bar Date.** All requests for payment of Administrative  
4 Claims, other than Claims for Professional Fees, must be filed by the applicable Administrative  
5 Claim Bar Date or the holders thereof shall be forever barred from asserting such Administrative  
6 Claims against the Debtor or the Liquidating Debtor or from sharing in any distribution under the  
7 Plan. Holders of Administrative Claims based on liabilities incurred in the ordinary course of the  
8 Debtor's business following the Petition Date shall not be required to comply with the  
9 Administrative Claim Bar Date, provided that, (i) such holders have otherwise submitted an invoice,  
10 billing statement or other evidence of indebtedness to the Debtor in the ordinary course of business,  
11 and (ii) such Claims are not past due according to their terms.

12           **3.3 Claims for Professional Fees.** Each party seeking an award by the Bankruptcy  
13 Court of Professional Fees: (a) must file its final application for allowance of compensation for  
14 services rendered and reimbursement of expenses incurred through the Effective Date on or before  
15 the Administrative Claims Bar Date; and (b) if the Bankruptcy Court grants such an award, each  
16 such party will be paid in full in Cash by the Liquidating Debtor in such amounts as are allowed by  
17 the Bankruptcy Court as soon thereafter as practicable. All final applications for allowance and  
18 disbursement of Professional Fees must be in compliance with all of the terms and provisions of any  
19 applicable order of the Bankruptcy Court, including the Confirmation Order, and the Bankruptcy  
20 Court's Guidelines for Compensation and Expense Reimbursement of Professionals and Trustees.

21           **3.4 Priority Tax Claims.** Each Allowed Priority Tax Claim, unless the holder of such  
22 Claim has agreed to a different treatment, shall receive at the option of the Liquidating Debtor the  
23 following: (i) payment in full by the Liquidating Debtor from Available Cash on the latest of: (a)  
24 the Effective Date, or as soon thereafter as practicable; (b) such date as may be fixed by the  
25 Bankruptcy Court, or as soon thereafter as practicable; (c) the tenth Business Day after such Claim is  
26 Allowed, or as soon thereafter as practicable; and (d) such date as the holder of such Claim and the  
27 Liquidating Debtor may agree, or (ii) deferred cash payments to the extent permitted by section  
28 1129(a)(9) of the Bankruptcy Code with interest on the unpaid portion of such Claim at the rate

1 established by applicable nonbankruptcy law as of the calendar month in which the Plan is  
2 confirmed, or at such other rate as may be agreed upon between the Liquidating Debtor and the  
3 appropriate governmental unit, provided that, in the event that the Liquidating Debtor elects payment  
4 option (ii), the Liquidating Debtor may prepay any or all such Claims at any time, without premium  
5 or penalty. In the event the Liquidating Debtor elects payment option (ii), each such holder shall  
6 receive, on account of such Claim, deferred Cash payments of a present value as of the Effective  
7 Date equal to the Allowed amount of such Claim.

## 8 **ARTICLE IV**

### 9 **TREATMENT OF CLASSIFIED CLAIMS AND INTERESTS**

10 4.1 **Class 1 (Priority Employee Claims).** Class 1 shall consist of Priority Employee  
11 Claims. Class 1 Claims are unimpaired. Each holder of an Allowed Priority Employee Claim who  
12 is not employed by the Debtor as of the Effective Date of the Plan shall receive full payment of the  
13 Allowed amount of such Claim from Available Cash on or as soon as practicable after the later of (i)  
14 the Effective Date, or (ii) the date upon which the Bankruptcy Court enters a Final Order  
15 determining or allowing such Claim.

16 The Liquidating Debtor shall either pay or honor in the ordinary course of business, any  
17 Allowed Class 1 Priority Employee Claim for any employee who is employed by the Liquidating  
18 Debtor on the Effective Date of the Plan. Holders of Class 1 Claims who are members of the  
19 Biggers Class shall receive their distribution hereunder even if they Opt-Out of the Biggers  
20 Settlement.

21 4.2 **Class 2 (Biggers Priority Employee Claims).** Class 2 shall consist of Biggers  
22 Priority Employee Claims. Class 2 Claims are unimpaired. Each holder of an Allowed Biggers  
23 Priority Employee Claim who is not employed with the Debtor as of the Effective Date of the Plan  
24 shall receive full payment of the Allowed amount of such Claim from Available Cash only after the  
25 Biggers Approval Order becomes a Final Order. Holders of Class 2 Claims who Opt-Out of the  
26 Biggers Settlement will not receive any payment on account of such claim.

27 4.3 **Class 3 (Secured Claims of Bank of America and Citibank).** Class 3 shall consist  
28 of the Secured Claims of Bank of America and Citibank. The Class 3 Claim is impaired and is also

1 a Disputed Claim. On the Effective Date, Bank of America and Citibank shall effect a payment of  
2 the principal and interest (but not attorneys fees and costs) then claimed to be owing to them on the  
3 Class 3 Claim by applying their cash collateral thereto, and then return to the Liquidating Debtor the  
4 balance of collateral currently held by Bank of America and/or Citibank. Bank of America and  
5 Citibank shall retain all of their liens and cash collateral rights until receipt of the payments required  
6 hereunder, and shall be entitled to file a motion seeking payment of any and all attorneys fees they  
7 believe are due and payable, with such motion to be filed on or before the Administrative Claims Bar  
8 Date. The Liquidating Debtor and the Class 3 creditors shall make such customary arrangements  
9 and execute such customary documents, as mutually agreed upon, to effectuate a release of their  
10 security interests or liens in the Liquidating Debtor's assets upon receipt of the payments required  
11 hereunder. The Court shall retain jurisdiction to resolve any disputes which may arise in connection  
12 with the foregoing matters. Notwithstanding the foregoing, nothing in this Plan shall affect or  
13 diminish the Debtor's Retained Claims and Defenses against Bank of America or Citibank, nor shall  
14 it affect or diminish the Debtor's rights in the Bank of America Preference Action.

15           4.4     **Class 4 Claims (Insured Malpractice Claims).** Class 4 shall consist of Insured  
16 Malpractice Claims. Such claims are impaired. With respect to the Insured Portion of any such  
17 claim, it shall be treated as a Class 4 Claim and paid solely from the proceeds of any applicable  
18 Malpractice Policy. Any Claim, or portion of a Claim, for the Uninsured Portion of any Malpractice  
19 Claim, including the Net SIR, shall be treated as a Class 5 Unsecured Claim. No holder of an  
20 Allowed Class 4 Claim shall receive any distribution from Available Cash on account of such Class  
21 4 Claim. As an example, if a Malpractice Claim is ultimately Allowed in a situation where Net SIR  
22 was zero, then the entire Claim would be a Class 4 Claim, with no portion in Class 5. However, if  
23 Net SIR for the same Allowed Claim had been only \$1 million, then before any of the Malpractice  
24 Claim could be placed in Class 4, the remaining Net SIR would have to be satisfied through  
25 distributions made upon it as a Class 5 Claim before the balance could be Allowed as a Class 4  
26 Claim.

27           4.5     **Class 5 (Unsecured Claims).** Class 5 shall consist of General Unsecured Claims,  
28 including but not limited to Biggers Unsecured Claims, Uninsured Malpractice Claims, and Claims

1 for any Uninsured Portion. Class 5 Claims are impaired. Each holder of an Allowed Unsecured  
2 Claim shall receive, a Pro Rata Share of Available Cash, net of amounts reserved for Disputed  
3 Claims or Plan Expenses. To the extent that all Allowed Class 5 Unsecured Claims have been paid  
4 in full, including post-petition interest at the annual rate of five per cent (5%) simple interest per  
5 annum, any remaining funds in the Claims Reserve Account shall be used by the Liquidating Debtor  
6 to fund the expense of claims in Class 6, as described below.

7 Holders of Class 5 Claims who are also members of the Biggers Class shall receive their  
8 distribution hereunder for the portion of such Claim that is not a Biggers Unsecured Claim even if  
9 they Opt-Out of the Biggers Settlement.

10 4.6 **Class 6 (Subordinated Biggers Unsecured Claims).** Class 6 shall consist of all  
11 Subordinated Biggers Unsecured Claims. Class 6 Claims are impaired. Once Allowed Class 5  
12 Claims are satisfied in full with interest, as described above, each holder of a Biggers Unsecured  
13 Claim shall receive, a Pro Rata Share of Available Cash, net of amounts reserved for Disputed  
14 Claims or Plan Expenses, including any post-petition simple interest at the annual rate of five per  
15 cent (5%) per annum. To the extent that all Class 6 Biggers Subordinated Unsecured Claims have  
16 been paid in full, including post-petition interest as set forth above, and funds remain in the Claims  
17 Reserve Account, such funds shall be used by the Liquidating Debtor to fund the expense of claims  
18 in Class 7, as described below.

19 4.7 **Class 7 (Subordinated Former Shareholder Claims).** Class 7 shall consist of all  
20 Subordinated Former Shareholder Claims. Class 7 Claims are impaired. Once Allowed Class 5 and  
21 6 Claims are satisfied in full with interest, as described above, each holder of a Subordinated Former  
22 Shareholder Claim shall receive, a Pro Rata Share of Available Cash, net of amounts reserved for  
23 Disputed Claims or Plan Expenses, including any post-petition interest at the annual rate of five per  
24 cent (5%) simple interest per annum. To the extent that all Class 7 Subordinated Shareholder Claims  
25 have been paid in full, including post-petition interest as set forth above, and funds remain in the  
26 Claims Reserve Account, such funds shall be distributed to the Holders of Class 8 Interests, as  
27 described below.  
28



1 (iv) The Liquidating Debtor shall reserve such funds as are necessary to fund all  
2 anticipated Plan Expenses, including without limitation any anticipated litigation costs, prior to  
3 making any distributions pursuant to this Plan;

4 (v) To the extent that Cash is available, the Liquidating Debtor shall assume the  
5 Assumed Contracts and, when required under the terms of this Plan, satisfy any Cure Obligations,  
6 subject to any contract, legal and other rights and defenses;

7 (vi) To the extent that Cash is available, the Liquidating Debtor will make the  
8 Substantial Contribution Payment, to the extent the same has previously been authorized by the  
9 Bankruptcy Court; and

10 (vii) Upon Confirmation, the Debtor shall execute the New Plan Documents, and  
11 the Plan Administrator shall assume his responsibilities under the Plan.

12 5.2 **Revesting of Estate Assets.** Upon the Effective Date, the Liquidating Debtor shall  
13 be vested with all right, title and interest in the Estate Assets free and clear of all Claims and Liens,  
14 other than any obligations under this Plan.

15 5.3 **Replacement of Dissolution Committee/Continued Existence.** Upon the Effective  
16 Date, the Plan of Dissolution shall be deemed amended to replace the Dissolution Committee with  
17 the Plan Administrator, and the Dissolution Committee shall be relieved of its responsibilities for the  
18 Debtor. Nothing contained herein shall affect the Dissolution Committee's responsibility to  
19 administer the affairs of the Heller Ehrman PCs or their successors and assigns, which shall maintain  
20 their separate existence for all purposes under this Plan. The Liquidating Debtor, as represented by  
21 the Plan Administrator, shall be authorized to execute such other documents as are necessary and  
22 appropriate to carry out the provisions of this Plan, without the necessity of filing such documents  
23 with the Bankruptcy Court. In the event the Liquidating Debtor seeks and obtains the assistance of  
24 any member of the Dissolution Committee or the Debtor's Professionals after Confirmation,  
25 regarding, *inter alia*, the Debtor's dissolution or the Bankruptcy Case, the Liquidating Debtor shall  
26 pay for such assistance at the regular hourly rates of the member of the Dissolution Committee or the  
27 Debtor's Professionals.  
28



1           **5.4 Management of Liquidating Debtor by Plan Administrator.** On and after the  
2 Effective Date, the Plan Administrator shall be responsible for implementation of the Plan, including  
3 with respect to the management, control and operation of the Liquidating Debtor. The Liquidating  
4 Debtor and its counsel will succeed to the Debtor's attorney-client privilege with the Debtor's former  
5 clients. The Plan Administrator shall post a bond in favor of the Liquidating Debtor in an amount  
6 equal to not less than 125% of the amount of Estate Assets which are held in Cash at any time, and  
7 the bond may be proportionately reduced or increased from time to time, as required by the  
8 circumstances. The cost of such bond shall be paid from Estate Assets. The Plan Administrator  
9 shall be compensated on an interim basis at the rate of \$250 per hour, plus reasonable out of pocket  
10 expenses, including reimbursement of the premium for a professional E&O policy, paid monthly  
11 from Estate Assets without further order of the Bankruptcy Court. The Plan Administrator may  
12 petition the Court to modify the hourly rate two years after the Effective Date. Upon completion of  
13 all duties and concurrent with a Post Confirmation Motion and Opportunity for Hearing seeking  
14 closure of the Chapter 11 Case, the Plan Administrator shall file a Post Confirmation Motion and  
15 Opportunity for Hearing seeking approval of all fees and expenses previously paid as compensation  
16 by the Liquidating Debtor after the Effective Date.

17           **5.5 Continued Business of Liquidating Debtor.** On and after the Effective Date, the  
18 Liquidating Debtor shall continue to engage in its wind-down operations and may use, acquire,  
19 dispose of and/or abandon Estate Assets (but shall not abandon the Debtor's client files) without  
20 supervision by the Bankruptcy Court and free of any restrictions under the Bankruptcy Code or the  
21 Bankruptcy Rules, except as set forth in this Plan. The Liquidating Debtor will not continue or  
22 engage in the conduct of any trade or business, except to the limited extent necessary to accomplish  
23 the liquidation and distribution of the Estate Assets.

24           **5.6 Continued Administrative Support for the Heller Ehrman PCs.** On and after the  
25 Effective Date, the Liquidating Debtor shall continue to provide administrative services to the Heller  
26 Ehrman PCs similar in kind and to the same extent as those provided prior to the Effective Date at  
27 no cost to the Heller Ehrman PCs.  
28

1           **5.7 Retained Claims and Defenses.** On and after the Effective Date, pursuant to section  
2 1123(b)(3) of the Bankruptcy Code, the Liquidating Debtor, acting through the Plan Administrator,  
3 shall retain and may enforce the Retained Claims and Defenses with all powers and authority of a  
4 debtor in possession or trustee under the Bankruptcy Code.

5           **5.7.1 Small Claims and Defenses.** With respect to any of the following having a net  
6 value equal to or less than \$100,000.00: (a) Retained Claims and Defenses, (b) any accounts  
7 receivable (whether or not contingent), or (c) any claims objections, the Plan Administrator may  
8 investigate such claims, objections or defenses and may assert, settle or enforce any such claims,  
9 objections or defenses without supervision by the Bankruptcy Court and free of any restrictions  
10 under the Bankruptcy Code or the Bankruptcy Rules.

11           **5.7.2 Large Claims and Defenses.** With respect to any of the following having a net  
12 value over \$100,000.000.00: (a) Retained Claims and Defenses, (b) any accounts receivable  
13 (whether or not contingent), or (c) any claims objections, the Plan Administrator shall file and serve  
14 a Post Confirmation Motion and Opportunity for seeking Court approval to settle or abandon any  
15 such claims or defenses, as a condition to taking such action.

16           **5.7.3 Bankruptcy Rule 2004.** In the course of any ongoing investigations, the Plan  
17 Administrator shall have the right post-confirmation to utilize Bankruptcy Rule 2004 examinations,  
18 to be enforced pursuant to Bankruptcy Rule 2005.

19           **5.7.4 Standing.** To the extent any Retained Claims and Defenses are already pending  
20 on the Effective Date, the Plan Administrator as successor to the Debtor may continue the  
21 prosecution of such Retained Claims and Defenses. Without limiting the foregoing, the Plan  
22 Administrator, acting on behalf of the Liquidating Debtor, shall accede to and become the holder of  
23 all rights in and to any confidentiality agreements, joint defense agreements, and privilege  
24 agreements, as well as rights pursuant to attorney-client privilege, attorney work product and any  
25 other or similar doctrine, of the Debtor and the Committee. Any proceeds received from or on  
26 account of the Retained Claims and Defenses shall constitute Estate Assets and shall vest entirely in  
27 the Liquidating Debtor.  
28

1           **5.8 Avoidance Actions.** On and after the Effective Date, the Liquidating Debtor, acting  
2 through the Plan Administrator, shall retain and may enforce the Avoidance Actions with all powers  
3 and authority of a debtor in possession or trustee under the Bankruptcy Code. The Plan  
4 Administrator may investigate Avoidance Actions and may assert, settle or enforce any such claims  
5 or defenses. To the extent any Avoidance Actions (including the Bank of America Preference  
6 Action) are already pending on the Effective Date, the Plan Administrator as successor to both the  
7 Debtor and the Committee, may continue the prosecution of such Avoidance Actions. Any  
8 proceeds received from or on account of the Avoidance Actions shall constitute Estate Assets and  
9 shall vest entirely in the Liquidating Debtor.

10           **5.9 Claims Reserve Account.** On or as soon as practical following the Effective Date,  
11 the Claims Reserve Account shall be opened by the Plan Administrator and held by the Liquidating  
12 Debtor and funded by all Cash not deposited in the Reserved Claims Pool Account, which funds  
13 (minus Plan Expenses) shall be held for the benefit of holders of Classes 2, 5, 6, 7, and 8. Unless  
14 otherwise provided in the Confirmation Order, the Claims Reserve Account shall be invested by the  
15 Plan Administrator in a manner consistent with the objectives of section 345(a) of the Bankruptcy  
16 Code. All duties and obligations associated with the maintenance of the Claims Reserve Account,  
17 including but not limited to, any fees, taxes, tax reporting or filings with any governmental authority,  
18 shall be the sole responsibility of the Plan Administrator.

19           **5.10 Liquidating Debtor Litigation.** Upon the Effective Date, the Plan Administrator  
20 shall fund the amounts required by counsel under the Master Agreement for Legal Services.  
21 Confirmation of the Plan shall constitute Bankruptcy Court approval of the Master Agreement for  
22 Legal Services. The Plan Administrator may or may not reserve additional funds after Confirmation,  
23 in his discretion, as contemplated by the Master Agreement for Legal Services.

24           **5.11 Liquidating Debtor Liquidation Budget.** Upon Confirmation, the Plan  
25 Administrator shall exercise his business judgment and reserve the estimated amount of two years'  
26 U.S. Trustee fees, and a sufficient amount for estimated costs to be incurred by the Liquidating  
27 Debtor through the close of the case. The Liquidating Debtor may reserve additional funds post  
28

1 confirmation based on information available at the time in the exercise of his or her business  
2 judgment.

3           **5.12 Former Shareholder Settlement Mechanism.** The Committee (and not the Debtor)  
4 has adopted the following procedure for the resolution of certain claims against Former Shareholders  
5 assigned to the Committee during the Chapter 11 case: As and when the Proponents solicit votes on  
6 the Plan, those Former Shareholders who have not previously agreed to terms with the Committee  
7 may receive, at the Committee's discretion, a Former Shareholder Settlement Letter outlining the  
8 terms (including the amount that must be paid to the Estate as a Former Shareholder Settlement  
9 Payment) under which the Committee is prepared to settle all of the estate's known and unknown  
10 claims against such Former Shareholder (except Jewel Claims, for which the Settling Former  
11 Shareholder shall receive a conditional covenant not to sue). Though most Former Shareholders  
12 who have not previously agreed to terms with the Committee will receive individualized Former  
13 Shareholder Settlement Letters, the Top Fifty Former Shareholders shall be subject to an overall  
14 participation requirement of \_\_\_\_<sup>2</sup> before any Top Fifty Former Shareholder settlement will be  
15 deemed accepted and approved under the Plan. Notwithstanding the foregoing, the Committee shall  
16 maintain the right to waive such participation requirement on a blanket basis (i.e. for all of the Top  
17 Fifty Former Shareholders who choose to settle with the Committee), or on a selective basis  
18 (accepting some but not all of the Top Fifty Former Shareholders who have elected to settle). This  
19 participation requirement will not affect those Former Shareholders who are not Top Fifty Former  
20 Shareholders.

21           Assuming the participation requirement is met, does not apply to a given Former  
22 Shareholder, or is waived by the Committee, in order to participate in the settlement process, a  
23 Settling Former Shareholder must:

- 24           1.       Execute the Model Former Shareholder Settlement Agreement, and
- 25           2.       Pay the Estate the Former Shareholder Settlement Payment.

26           **5.13 Limitation of Liability of Plan Administrator.** The Plan Administrator, and his  
27 attorneys, accountants, consultants, employees, agents and assignees, heirs, successors, and assigns,  
28

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<sup>2</sup> The amount of the participation requirement will be disclosed at or prior to the Disclosure Statement hearing.

1 shall have no liability for any error of judgment made in good faith other than as a result of gross  
2 negligence or willful misconduct. The Plan Administrator shall not be liable for any action taken or  
3 omitted in good faith and believed by him to be authorized within the discretion or rights or powers  
4 conferred upon them by this Plan or the New Plan Documents. In performing his duties hereunder,  
5 the Plan Administrator may consult with counsel selected by him, at the expense of the Liquidating  
6 Debtor. No provisions of this Plan shall require any employee, officer or director of the Plan  
7 Administrator to expend or risk his own funds or otherwise incur personal financial liability in the  
8 performance of any of duties under this Plan or in the exercise of any of the Plan Administrator's  
9 rights and powers. The Liquidating Debtor shall indemnify and hold the Plan Administrator  
10 harmless, from and against any damages, costs, claims and other liabilities incurred in connection  
11 with their respective duties and responsibilities hereunder, other than those damages, costs, claims  
12 and other liabilities that result from such party's gross negligence or willful misconduct.

13           **5.14 Dissolution of the Committee.** From and after the Effective Date, the Committee  
14 will be dissolved, except for the limited purpose of reviewing, analyzing, and if appropriate,  
15 objecting to Claims for Professional Fees incurred prior to the Effective Date. The members of the  
16 Committee shall have no further obligations or fiduciary duties of any kind after the Effective Date.

17           **5.15 Material Default Under the Plan.** Failure to make any payment required to be  
18 made under the Plan by the Liquidating Debtor shall be considered a default under the Plan. If any  
19 default is not cured within 30 days after service of written notice of such default to the Liquidating  
20 Debtor, the U.S. Trustee, any affected Creditor, or any affected party in interest asserting such  
21 default may seek to enforce its rights under the Plan.

22           **5.16 Cooperation.** Proponents of the Plan shall cooperate with one another in connection  
23 with any matter related to the consummation or implementation of this Plan.

24           **5.17 Payment of Plan Expenses.** All Plan Expenses may be paid by the Liquidating  
25 Debtor.

26           **5.18 Biggers Settlement Mechanism.** Pursuant to the Biggers Settlement Agreement,  
27 holders of Biggers Priority Claims and Biggers Unsecured Claims who do not Opt Out will have  
28 their Claims Allowed once the Biggers Settlement Order becomes a Final Order and a judgment is

1 entered and becomes final. The Proponents expect this will occur some time shortly after the  
2 Effective Date.

3 Even if a member of the Biggers Class elects to Opt Out of the Biggers Settlement by the  
4 Biggers Opt Out Deadline, such member shall still receive the treatment provided in the Plan for  
5 their Class 1 and Class 5 Claims that are not related to the WARN Act or waiting time penalties.

6 Once the Biggers Settlement Order becomes a Final Order, the Substantial Contribution  
7 Payment shall become owing, as set forth in the Biggers Settlement Agreement.

8 **5.19 Distribution Procedures.** Distributions to holders of Allowed Claims in Classes 5  
9 through 7 shall be made as soon as practicable as determined by the business judgment of the Plan  
10 Administrator based upon the amount of funds to be distributed relative to the administrative costs of  
11 making a distribution. To the extent not accomplished previously, the Plan Administrator shall  
12 promptly move to file objections to Claims with the goal being that all objections be filed and served  
13 not later than one hundred and eighty (180) days following the Effective Date, provided that such  
14 date shall not bar later objections. No payments or distributions shall be made by the Liquidating  
15 Debtor on account of Disputed Claims unless and to the extent such Claims become Allowed  
16 Claims. The funds allocated to Disputed Claims will not be distributed, but will be held in the  
17 Claims Reserve Account by the Liquidating Debtor in accordance with this Plan pending resolution  
18 of such Disputed Claims. Except as otherwise agreed by the holder of a particular Claim, or as  
19 provided in this Plan, all amounts to be paid by the Liquidating Debtor under the Plan shall be  
20 distributed in such amounts and at such times as is reasonably prudent, in the form of interim and/or  
21 final distributions, with sufficient reserves established to satisfy any Disputed Unsecured Claims,  
22 Professional Fees and anticipated Plan Expenses. Unless otherwise provided in this Plan, all  
23 distributions to Creditors shall be: (i) in U.S. dollars by check, draft or warrant, drawn on a domestic  
24 bank, or by wire transfer from a domestic bank, and (ii) by first-class mail (or by other equivalent or  
25 superior means as appropriate).

26 **5.20 Resolution of Disputed Claims** The Plan Administrator shall promptly move to file  
27 objections to Claims that have not been previously objected to with the goal being that all objections  
28 be filed and served not later than one hundred and eighty (180) days following the Effective Date,

1 provided that such date shall not bar later objections. Except as otherwise provided in the  
2 Confirmation Order, the Liquidating Debtor shall be authorized to settle, or withdraw any objections  
3 to, any Disputed Claim (including Malpractice Claims) following the Confirmation Date without  
4 further notice to Creditors or authorization of the Bankruptcy Court, in which event such Claim shall  
5 be deemed to be an Allowed Claim in the amount compromised for purposes of this Plan, provided  
6 however, that the Bankruptcy Court shall retain jurisdiction to hear and adjudicate the allowance or  
7 disallowance of Claims, as provided for in Article IX of this Plan. Under no circumstances will any  
8 distributions be made on account of Disallowed Claims.

9           **5.21 Reserve Provisions for Disputed Claims.** The Liquidating Debtor shall implement  
10 the following procedures with respect to the allocation and distribution of Cash held in reserve for  
11 the benefit of holders of Disputed Claims that may become Allowed Claims:

12           (i) Cash respecting Disputed Claims shall not be distributed, but, if necessary,  
13 shall be withheld by the Liquidating Debtor, in an amount equal to the amount of the distributions  
14 that would otherwise be made to the holders of such Claims if such Claims had been Allowed  
15 Claims;

16           (ii) All holders of Allowed Claims shall be entitled to receive, if available, interim  
17 distributions under the Plan. No distributions may be made to the holders of Allowed Claims unless  
18 adequate reserves are established for the payment of Disputed Claims, and sufficient funds are also  
19 reserved for expected Plan Expenses;

20           (iii) For the purposes of effectuating the provisions of this Section 5.23 the  
21 Bankruptcy Court may estimate the amount of any contingent or unliquidated Claim pursuant to  
22 section 502(c) of the Bankruptcy Code, in which event the amounts so fixed or liquidated shall be  
23 deemed to be Allowed Claims pursuant to section 502(c) of the Bankruptcy Code for purposes of  
24 distribution under this Plan. In lieu of estimating the amount of any contingent or unliquidated  
25 Claim, the Bankruptcy Court may determine the Disputed Claims Amount to be reserved for such  
26 Disputed Claim, or such amount may be fixed by agreement in writing with the holder thereof;

27           (iv) When a Disputed Claim becomes an Allowed Claim, there shall be distributed  
28 to the holder of such Allowed Claim, in accordance with the provisions of this Plan, Cash equal to a

1 Pro Rata Share of the Cash set aside for such Claim, but in no event shall such holder be paid more  
2 than the amount that would otherwise have been paid to such holder if the Disputed Claim (or the  
3 Allowed portion of the Disputed Claim) had not been a Disputed Claim;

4 (v) Interim distributions may be made from time to time to the holders of  
5 Allowed Claims prior to the resolution by Final Order or otherwise of all Disputed Claims, provided  
6 that, such distributions are otherwise consistent with the terms of this Plan and the aggregate amount  
7 of Cash to be distributed at such time is practicable in comparison to the anticipated costs of such  
8 interim distributions;

9 (vi) No holder of a Disputed Claim shall have any Claim against the Cash reserved  
10 with respect to such Claim until such Disputed Claim shall become an Allowed Claim. In no event  
11 shall any holder of any Disputed Claim be entitled to receive (under the Plan or otherwise) any  
12 payment (x) which is greater than the amount reserved for such Claim by the Bankruptcy Court  
13 pursuant to this Section 5.21 or (y) except as otherwise permitted under this Plan, of interest or other  
14 compensation for delays in distribution. In no event shall the Plan Administrator have any  
15 responsibility or liability for any loss to or of any amount reserved under these provisions of this  
16 Plan;

17 (vii) To the extent a Disputed Claim ultimately becomes an Allowed Claim in an  
18 amount less than the Disputed Claims Amount reserved for such Disputed Claim, then the resulting  
19 surplus of cash shall be distributed among the holders of Allowed Claims of like Class until such  
20 time as each holder of an Allowed Claim has been paid the Allowed amount of its Claim.

21 **5.22 Allocation of Distributions.** Distributions to any holder of an Allowed Claim shall  
22 be allocated first to the principal amount of any such Allowed Claim, as determined for federal  
23 income tax purposes, and then, to the extent the consideration exceeds such amount, to the remainder  
24 of such Claim comprising interest, if any (but solely to the extent that interest is an allowable portion  
25 of such Allowed Claim).

26 **5.23 DIP Loan and DIP Loan Collateral.** Upon the Effective Date, the DIP Loan shall  
27 become an obligation of the Liquidating Debtor, subject to the exact same terms and conditions as  
28 those imposed upon the Debtor and its property by the DIP Loan documents, without altering or



1 affecting the DIP Loan Collateral. Notwithstanding confirmation, no further steps need be taken by  
2 the DIP Lender to maintain the perfection or priority of its lien position with respect to the DIP Loan  
3 Collateral after the Effective Date.

4           5.24   **Rounding.** Whenever any payment of a fraction of a cent would otherwise be called  
5 for the actual distribution shall reflect a rounding of such fraction down to the nearest cent.

6           5.25   **De Minimis Distributions.** Notwithstanding any other provision of this Plan,  
7 distributions of less than \$50.00 need not be made by the Liquidating Debtor on account of any  
8 Allowed Claim, provided that, distributions that would otherwise be made but for this provision shall  
9 carry over until the next date of a distribution until the cumulative amount to which any holder of an  
10 Allowed Claim is entitled is more than \$50.00, at which time the cumulative amount of such  
11 distributions shall be paid to such holder. Distributions that will not be made as of the date of a final  
12 distribution shall be treated as unclaimed distributions as provided in Section 5.28 of this Plan.

13           Notwithstanding any other provision of this Plan, at the point when the remaining funds in  
14 the Claims Reserve Account consist of an amount impracticable to distribute, the Liquidating Debtor  
15 may donate (or authorize the Plan Administrator to donate) such Cash to a nonprofit organization or  
16 organizations in this judicial district that are exempt pursuant to section 501(c) of the Internal  
17 Revenue Code (Title 26 of the United States Code).

18           5.26   **Disputed Payments.** In the event of any dispute between and among Creditors as to  
19 the right of any entity to receive or retain any payment or distribution to be made to such entity  
20 under the Plan, the Liquidating Debtor may, in lieu of making such payment or distribution to such  
21 entity, instead hold such payment or distribution until the disposition thereof shall be determined by  
22 the Bankruptcy Court.

23           5.27   **Unclaimed Property.** Creditors have the obligation to file change of address forms  
24 with the Court and to serve such changes of address on the Plan Administrator and his counsel. If a  
25 Claimant fails for the second consecutive time to claim any Cash within 90 days from the date upon  
26 which a distribution is made, such Claimant shall be subject to having its claim excluded from future  
27 distributions. The Plan Administrator shall file an omnibus Post Confirmation Motion and  
28 Opportunity for Hearing seeking to exclude such Claimants from future distributions and shall serve

1 such Claimants at the address on Claimants proof of claim, if any, on the address scheduled by the  
2 Debtor for such Claimants, on any addresses supplied by Claimants in any and all change of address  
3 filings filed with the Court, and if available on any agents for service of process addresses that are  
4 available from the California Secretary of State and any other states in which the Debtor did business  
5 (but only to the extent that such agents for service of process are available from the Secretary of  
6 State's web sites without charge). Upon Court approval of the subject Claimants' forfeiture, such  
7 Cash (including interest thereon) shall be made available for re-distribution to other holders of  
8 Allowed Claims of like Class. Entities which fail to claim Cash shall forfeit their rights thereto and  
9 shall have no claim whatsoever against the Liquidating Debtor or the Plan Administrator, as  
10 applicable, or any holder of an Allowed Claim to whom distributions are made under this Plan,  
11 provided, however, that the Plan Administrator may but is not required to undertake reasonable  
12 efforts, in his business judgment, to locate creditors whose distributions are returned.

13           **5.28 Successor Plan Administrator.** In the event the Plan Administrator resigns, dies, or  
14 is otherwise unable or unwilling to perform his or her duties under this Plan, the successor Plan  
15 Administrator shall be Paul D. Menzies. In the event Mr. Menzies is unable or unwilling to serve  
16 the successor shall be selected by the Office of the United States Trustee, after consultation with  
17 parties in interest, including unsecured creditors and Interest Holders or their successors, as  
18 appropriate.

19           **5.29 Setoffs.** Nothing contained in this Plan shall constitute a waiver or release by the  
20 Debtor of any right of setoff or recoupment that the Debtor or the Liquidating Debtor may have  
21 against any Creditor or Interest Holder.

22           **5.30 No Distributions on Late-Filed Claims.** Except as otherwise provided in a Final  
23 Order of the Bankruptcy Court, any Claim as to which a proof of Claim was first filed after the Bar  
24 Date shall be a Disallowed Claim, and no distribution shall be made to a holder of such a Claim,  
25 provided that, to the extent such Claim was listed in the Schedules (other than as contingent,  
26 disputed, or unliquidated), such Claim shall be treated as an Allowed Claim in the amount in which  
27 it was so listed.  
28

1           5.31   **Withholding Taxes.** Pursuant to section 346(f) of the Bankruptcy Code, the  
2 Liquidating Debtor shall be entitled to deduct any federal, state or local withholding taxes from any  
3 Cash payments made with respect to Allowed Claims, as appropriate. The Liquidating Debtor shall  
4 comply with all reporting obligations imposed on it by any governmental unit.

5           5.32   **Post-Effective Date Reports.** Following the Effective Date, the Liquidating Debtor  
6 shall prepare and submit to the Bankruptcy Court and the Office of the United States Trustee, post-  
7 confirmation reports for a revested debtor in the form suggested by the Office of the United States  
8 Trustee for Region 17. The first post-confirmation report shall be due within thirty (30) days  
9 following the end of the first calendar quarter from the Effective Date and shall be filed on a  
10 quarterly basis thereafter, unless otherwise agreed by the Liquidating Debtor and the Office of the  
11 United States Trustee. Twice yearly, the Plan Administrator shall also provide oral reports to  
12 Claimants to be held at a convenient location in San Francisco (the “Plan Administrator Meetings  
13 with Claimants”), or by conference call. Claimants can participate in the Plan Administrator  
14 Meetings with Claimants by executing a disclosure of potential conflicts form, and a confidentiality  
15 and common interest agreement and returning it to the Plan Administrator or his Counsel at or prior  
16 to the commencement of any meeting. The Plan Administrator in the exercise of his business  
17 judgment may exclude any Claimant who presents a conflict that makes participation in such a  
18 meeting inappropriate. The Plan Administrator shall serve on all members of the Post Confirmation  
19 Service List a notice of each meeting at least thirty days prior to each Plan Administrator Meetings  
20 with Claimants. Claimants that elect to participate in these meetings, shall have no fiduciary duty to  
21 any other Claimant to act on or respond to any information provided by the Plan Administrator at the  
22 meetings, and shall have no liability to any Claimant or party for any opinions expressed by a  
23 Claimant at a Plan Administrator Meetings with Claimants.

24           5.33   **Post Effective Date Employment and Compensation of Professionals.** After the  
25 Effective Date, the Plan Administrator may retain any existing Professionals of the Committee or the  
26 Debtor without further employment agreements or orders. Additionally, after the Effective Date, the  
27 Plan Administrator may hire other professionals without the requirement that such professionals file  
28 employment applications for Bankruptcy Court approval of their employment, whether on an hourly,



1           6.1.2 **Rejection.** Nothing contained herein shall constitute a waiver by the Debtor or  
2 the Liquidating Debtor of the right to contend that some or all of a Rejected Contract is not  
3 executory, or that it was not terminated earlier by agreement or operation of law. Any Rejection  
4 Claim arising from the rejection of an Executory Contract pursuant to the Plan shall be filed within  
5 thirty (30) days of entry of the Confirmation Order, provided that such deadline is not applicable to  
6 any Executory Contract rejected prior to the Effective Date and for which a different Rejection  
7 Claim Bar Date was previously fixed by the Bankruptcy Court pursuant to Bankruptcy Rule  
8 3002(c)(4). The notice of entry of the Confirmation Order shall provide the Rejection Claim Bar  
9 Date for agreements rejected pursuant to the Plan. Any Rejection Claim not filed by the applicable  
10 Rejection Claims Bar Date shall be a Disallowed Claim and shall be forever barred as a Claim  
11 against the Debtor, the Liquidating Debtor, the Committee or any property of the Debtor and from  
12 sharing in any distribution under this Plan.

13           6.2 **Satisfaction of Cure Obligations.** The Liquidating Debtor shall satisfy any Cure  
14 Obligations for the Assumed Contracts by making a Cash payment equal to the lesser of the amount:  
15 (a) set forth in any other notice, motion or supplement to the Plan filed and served in connection  
16 with the Confirmation Hearing or as may be determined in an Assumption and Cure Order, or (b)  
17 agreed to in writing between the Liquidating Debtor and the non-debtor parties to such contracts or  
18 leases. The Debtor shall attach a schedule of proposed Cure Obligations to the Disclosure Statement  
19 approved by the Court pursuant to section 1125 of the Bankruptcy Code. Objections, if any, to the  
20 Cure Obligations must be filed fourteen (14) days prior to the Confirmation Hearing. The  
21 Liquidating Debtor shall satisfy the Cure Obligations within ten (10) days from the date from which  
22 an Assumed Contract is assumed pursuant to section 365(b) of the Bankruptcy Code.

23           6.3 **Post-Petition Executory Contracts and Unexpired Leases.** Except as may be  
24 provided otherwise by the Confirmation Order, all agreements and stipulations entered into by the  
25 Debtor on or after the Petition Date, and all Executory Contracts previously assumed by the Debtor  
26 on or after the Petition Date, shall remain in full force and effect following Confirmation to the  
27 extent and in the manner set forth in such agreements, stipulations and Assumed Contracts or leases,  
28





1 continuing in any manner, directly or indirectly, any action or other proceeding of any kind against  
2 the Liquidating Debtor with respect to any such Claim or Interest; (b) the enforcement, attachment,  
3 collection or recovery by any manner or means, directly or indirectly, of any judgment, award,  
4 decree, or order against the Liquidating Debtor or any assets or property of the Liquidating Debtor  
5 with respect to any such Claim or Interest; (c) creating, perfecting or enforcing, directly or indirectly,  
6 any Lien or encumbrance of any kind against the Liquidating Debtor or any property of the  
7 Liquidating Debtor with respect to any such Claim; (d) asserting, directly or indirectly any  
8 obligation against the Liquidating Debtor or any property of the Liquidating Debtor with respect to  
9 any such Claim or Interest; and (e) any act, in any manner, in any place whatsoever, that does not  
10 conform to or comply with the provisions of the Plan with respect to such Claim or Interest. Except  
11 as otherwise provided in the Plan, no claims of the Debtor or Liquidating Debtor against any person  
12 or entity shall be discharged, released, or compromised pursuant to the Plan or Confirmation Order.

13           **8.4 Limitation of Liability.** The Debtor, the Liquidating Debtor, the Dissolution  
14 Committee and each of its members, and the Committee and each of its past and present members,  
15 and their respective officers, directors, managers, employees, agents, and representatives  
16 (collectively, the “Exculpated Parties”), will neither have nor incur any liability to any entity for any  
17 action in good faith taken or omitted to be taken in connection with or related to the Chapter 11  
18 Case, the investigations of potential claims or the formulation, preparation, dissemination,  
19 implementation, Confirmation or consummation of the Plan, the Disclosure Statement, or any  
20 agreement created or entered into in connection with the Plan or incident to the Chapter 11 Case,  
21 provided that, this limitation will not affect or modify the rights of any holder of an Allowed Claim  
22 to enforce its rights under the Plan or the non-debtor party to an Assumed Contract to enforce its  
23 rights under the Assumed Contract, nor shall the foregoing exonerate any of the Exculpated Parties  
24 from any liability that results from an act or omission to the extent such act or omission is  
25 determined by Final Order to have constituted gross negligence or willful misconduct. In addition,  
26 notwithstanding any other provision of this Plan, no holder of a Claim or Interest, no other party in  
27 interest, none of their respective agents, employees, representatives, financial advisors, attorneys or  
28 affiliates, and no successors or assigns of the foregoing, shall have any right of action against any



1 Exculpated Party for any act or omission from and after the Petition Date in connection with,  
2 relating to or arising out of the Chapter 11 Case or the consideration, formulation, preparation,  
3 dissemination, implementation, Confirmation or consummation of the Plan, the Disclosure  
4 Statement, or any transaction or document created or entered into, or any other act taken or omitted  
5 to be taken, in connection therewith, except for: (a) the liability of any entity that would otherwise  
6 result from the failure to perform or pay any obligation or liability under the Plan or any contract,  
7 instrument, release or other agreement or document to be entered into or delivered in connection  
8 with the Plan, or (b) the liability of any entity that would otherwise result from any such act or  
9 omission to the extent that such act or omission is determined in a Final Order to have constituted  
10 gross negligence or willful misconduct. The Exculpated Parties do not include any Professionals.

## 11 **ARTICLE IX**

### 12 **RETENTION OF JURISDICTION**

13 From and after the Confirmation Date, the Bankruptcy Court shall retain such jurisdiction  
14 as is legally permissible, including, but not limited to, for the following purposes:

- 15 (i) To hear and determine any and all objections to the allowance of a Claim,  
16 actions to equitably subordinate a Claim, or any controversy as to the classification of a Claim in a  
17 particular Class under the Plan;
- 18 (ii) To administer or enforce the Plan;
- 19 (iii) To liquidate any Disputed Claims;
- 20 (iv) To hear and determine any and all adversary proceedings, contested matters or  
21 applications pending on the Effective Date;
- 22 (v) To hear and determine any and all motions for the rejection of Executory  
23 Contracts and to fix and allow any Claims arising therefrom;
- 24 (vi) To hear and determine any and all applications by Professionals for an award  
25 of pre-Effective Date Professional Fees, and to consider and rule upon the periodic and final fee  
26 applications of the Plan Administrator, Professionals, or other professionals retained Post  
27 Confirmation post-Confirmation as provided in this Plan, and/or to resolve any disputes concerning  
28 payment of such post-Effective Date fee requests.

1 (vii) To interpret and/or enforce the provisions of the Plan, and the injunction  
2 provided for in the Plan and to determine any and all disputes arising under or regarding  
3 interpretation of the Plan, or any other agreement, document or instrument contemplated by the Plan,  
4 including, without limitation, and claims asserted against the Plan Administrator or against any  
5 professionals engaged by him or claims asserted against the Committee, the Dissolution Committee  
6 and either of their members and/or professionals;

7 (viii) To enter and implement such orders as may be appropriate in the event  
8 Confirmation is for any reason stayed, reversed, revoked, modified or vacated;

9 (ix) To modify any provision of the Plan to the extent permitted by the Bankruptcy  
10 Code and to correct any defect, cure any omission, or reconcile any inconsistency in the Plan or in  
11 the Confirmation Order as may be necessary to carry out the purposes and intent of the Plan;

12 (x) To approve applications for Bankruptcy Rule 2004 Examinations and any  
13 enforcement orders necessary, including but not limited to pursuant to Bankruptcy Rule 2005;

14 (xi) To approve any compromise and settlements and/or abandonments of claims  
15 against third parties, and/or the abandonment of any Asset of the Estate, which either the Plan  
16 Administrator in his sole discretion believes should be noticed to creditors, or which is the subject of  
17 an objection by a former Committee member;

18 (xii) To approve any sales of assets or claims pursuant to section 363 of the  
19 Bankruptcy Code, which the Plan Administrator in his sole discretion believes should be noticed to  
20 creditors;

21 (xiii) To approve interim and/or final distributions to creditors, including the  
22 approval of any publication notices, which the Plan Administrator in his sole discretion believes  
23 should be noticed to creditors; and

24 (xiv) To close the Chapter 11 Case when administration of the case has been  
25 completed.

1 **ARTICLE X**

2 **MISCELLANEOUS**

3 10.1 **Severability of Plan Provisions.** In the event that, prior to the Confirmation Date,  
4 any term or provision of this Plan is held by the Bankruptcy Court to be invalid, void or  
5 unenforceable, the Bankruptcy Court shall, have the power to alter and interpret such term or  
6 provision to make it valid or enforceable to the maximum extent practicable, consistent with the  
7 original purpose of the term or provision held to be invalid, void or unenforceable, and such term or  
8 provision shall then be applicable as altered or interpreted. Notwithstanding any such holding,  
9 alteration or interpretation, the remainder of the terms and provisions hereof shall remain in full  
10 force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration  
11 or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide  
12 that each term and provision hereof, as it may have been altered or interpreted in accordance with the  
13 foregoing, is valid and enforceable pursuant to its terms.

14 10.2 **Governing Law.** Except to the extent that the Bankruptcy Code or other federal law  
15 is applicable, the rights, duties and obligations arising under this Plan shall be governed by, and  
16 construed and enforced in accordance with, the laws of the State of California.

17 10.3 **Headings.** The headings contained in this Plan are for convenience of reference only  
18 and shall not limit or otherwise affect in any way the meaning or interpretation of this Plan.

19 10.4 **Language Interpretation.** In the interpretation of this Plan, unless the context  
20 otherwise requires, references in this Plan to the singular shall be construed to include references to  
21 the plural and vice versa; words importing the singular shall be deemed to import the plural and vice  
22 versa; words denoting gender shall include all genders; references to sections, schedules, and  
23 exhibits shall mean sections, schedules, and exhibits of and to this Plan; references to part includes  
24 the whole, except where the context clearly requires otherwise “or” has the inclusive meaning  
25 represented by the phrase “and/or,” and the words “hereof,” “herein,” “hereunder,” and similar terms  
26 in this Plan refer to this Plan as a whole and not to any particular provision of this Plan.

27 10.5 **Exhibits.** All exhibits attached to this Plan or the Disclosure Statement are, by this  
28 reference, hereby incorporated into the Plan. The final version of all exhibits to the Plan and the

1 Disclosure Statement will be substantially in the forms attached hereto or thereto. The Proponents  
2 reserve the right to make non-substantive changes and corrections to such exhibits in advance of the  
3 Confirmation Hearing. If any exhibits are changed or corrected, the replacement exhibits will be  
4 filed with the Bankruptcy Court prior to the commencement of the Confirmation Hearing

5           **10.6 Exemption from Transfer Taxes:** Pursuant to the provisions of section 1146(c) of  
6 the Bankruptcy Code, the issuance, transfer or exchange of notes or equity securities under the Plan,  
7 the creation of any mortgage, deed of trust or other security interest, the making or assignment of  
8 any lease or sublease, the sale or other transfer of any assets by the Debtor or Liquidating Debtor to a  
9 third party, or the making or delivery of any deed or other instrument of transfer under, in  
10 furtherance of, or in connection with the Plan, including any deeds, bills of sale or assignments  
11 executed in connection with any of the transactions contemplated under the Plan, shall not be subject  
12 to any stamp, real estate transfer, mortgage recording, sales, or other similar tax.

13           **10.7 Notices.** All notices required or permitted to be made in accordance with the Plan  
14 shall be in writing and shall be delivered personally or by nationally recognized overnight or next-  
15 day courier service, first class mail or via facsimile with electronic confirmation of receipt as  
16 follows:

17                           If to the Debtor:  
18                           (By Mail or Facsimile)

19                           Shelley Salinero  
20                           Heller Ehrman LLP  
21                           333 Bush Street, 10<sup>th</sup> Floor  
22                           San Francisco, CA 94104  
23                           (415) 772-6463  
24                           (415) 772 6268 (Facsimile)

25                           With a copy to:

26                           John D. Fiero, Esq.  
27                           Teddy M. Kapur, Esq.  
28                           Pachulski Stang Ziehl & Jones LLP  
                              1509 California Street, Suite 1500  
                              San Francisco, CA 94111  
                              (415) 263-7000  
                              (415) 263-7010 (Facsimile)

1 If to the Committee:  
2 Theresa Hoyt  
3 BREF 333, LLC  
4 Three World Financial Center  
5 New York, New York 10281  
6 (212) 417 7286  
7 Email: thoyt@brookfield.com

8 With a copy to:

9 (By Mail or Facsimile)  
10 Steven H. Felderstein, Esq.  
11 Thomas A. Willoughby, Esq.  
12 Felderstein, Fitzgerald, Willoughby & Pascuzzi, LLP  
13 400 Capital Mall, Suite 1450  
14 Sacramento, CA 95814  
15 (916) 329-7400  
16 (916) 329-7435 (Facsimile)  
17 Email: twilloughby@ffwplaw.com

18 **10.8 Computation of Time Periods.** In computing any period of time prescribed or  
19 allowed by the Plan, the day of the act, event, or default from which the designated period of time  
20 begins to run shall not be included. The last day of the period so computed shall be included unless  
21 it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper in the  
22 Bankruptcy Court, a day on which weather or other conditions have made the clerk's office  
23 inaccessible, in which event the period runs until the end of the next day which is not one of the  
24 aforementioned days.

25 **10.9 Defects, Omissions and Amendments.** The Proponents, with the approval of the  
26 Bankruptcy Court and without notice to all holders of Claims or Interests, insofar as it does not  
27 materially and adversely affect holders of Claims, may correct any defect, omission or inconsistency  
28 in the Plan in such manner and to such extent as may be necessary or desirable to expedite the  
execution of the Plan. The Plan may be altered or amended before or after Confirmation as provided  
in section 1127 of the Bankruptcy Code.

**10.10 Filing of Additional Documents.** The Proponents shall file with the Bankruptcy  
Court such agreements or other documents as may be necessary or appropriate to effectuate and  
further evidence the terms and conditions of the Plan.



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Dated: March 31, 2010

THE OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS

BY: BREF 333, LLC

By /s/ Theresa A. Hoyt  
Theresa A. Hoyt, its Authorized Signatory,  
as the Chair of the Committee