

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

**In re**

**LYDIA CLADEK, INC.**

**Debtor.**

**Case No: 3:10-BK-02805-PMG**

**Chapter 11**

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**PLAN OF REORGANIZATION SUBMITTED BY  
OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

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Unsecured Creditors of Lydia Cladek, Inc.

The Official Committee of Unsecured Creditors (the "Committee") for Lydia Cladek (the "Debtor" or "Cladek") proposes this Plan of Reorganization (the "Plan") pursuant to the provisions of the Bankruptcy Code.

#### **ARTICLE I. - DEFINITIONS.**

The following terms shall have the following meanings when used in initially capitalized form in this Plan (as hereinafter defined). Such meanings shall be equally applicable to both the singular and plural forms of such terms. Any term used in capitalized form that is not defined in this Plan but that is defined in the Bankruptcy Code or Bankruptcy Rules shall have the meaning ascribed to such term in the Bankruptcy Code or Bankruptcy Rules. The rules of construction set forth in § 102 of the Bankruptcy Code shall apply in construction of this Plan.

**Actual Pecuniary Loss** shall mean the total amount of money which each Investor deposited, invested, or transferred to the Debtor on an aggregate basis, excluding any amounts deriving from interest accrual or interest rollover, minus all amounts returned or paid by the Debtor, including payments of interest, to or for the benefit of such Investor at any time.

**Administrative Carve-Out** shall mean \$50,000 to be placed in trust with Committee's counsel and \$50,000 to be transferred to the Cladek Creditor Trust to be used to pay professionals' fees and costs incurred in connection with post-confirmation administrative tasks as provided for in the Plan. The Administrative Carve-Out shall total \$100,000.00.

**Administrative Claim** shall mean a Claim for payment of an administrative expense of a kind specified in Section 503(b) of the Code and of a kind referred to in Section 507(a)(1) of the Code, including without limitation, the actual, necessary costs, and expenses incurred, after the commencement of the Bankruptcy Case, of preserving Debtor's estate and operating the business of the Debtor, including wages, salaries or commissions for services, compensation for legal and other services and reimbursement of expenses awarded under Sections 330(a) or 331 of the Code, and all fees and charges assessed against the Estate under Chapter 123 of Title 28, United States Code.

**Administrative Claims Bar Date** shall mean the date by which all Administrative Claims must be filed with the Bankruptcy Court to be allowed. The Administrative Claims Bar Date will be established by the Bankruptcy Court as a specific date prior to the Confirmation Date.

**Allowed Administrative Claim** shall mean all or that portion of any Administrative Claim, which has been or becomes allowed by Order of the Bankruptcy Court.

**Allowed Amount** shall mean the dollar amount in which a Claim is Allowed. No amount shall be Allowed for or on account of punitive damages, penalties or post-petition interest on account of any Claim except as otherwise expressly specified in this Plan or provided by Final Order of the Court.

**Allowed Claim** shall mean a right against the Debtor within the meaning of §101(5) in respect of which a proof of claim has been filed with the Court within the period of limitation

fixed by Rule 3003 or scheduled in the list of creditors prepared and filed with the Court pursuant to Rule 1007(b) and not listed as disputed, contingent or unliquidated as to amount, and in either case as to which no objection as to allowance or amount thereof has been raised within the applicable period of limitation fixed by Rule 3001 or an order of the Court or local rule, or as to which any such objection has been determined by an order or judgment which is no longer subject to appeal or certiorari proceeding and as to which no appeal or certiorari is pending. Unless otherwise specified in the Plan or in a Final Order of the Court allowing such Claim, "Allowed Claim" shall not include: (a) interest on the amount of such Claim accruing from and after the Petition Date; (b) punitive or exemplary damages; or (c) any Claim for Promised Profit or False Profit.

**Allowed Interest** shall mean a right against the Debtor or an equity security holder of the Debtor in respect of which a proof of interest has been filed with the Court within the applicable period of limitation fixed by Rule 3003 or scheduled in a list of equity security holders prepared or filed with the Court pursuant to Rule 1007(b) and in either case as to which no objection as to allowance or amount thereof has been raised within the applicable period of limitation fixed by Rule 3001 or an order of the Court or local rule, or as to which any such objection has been determined by an order or judgment which is no longer subject to appeal or certiorari proceeding and as to which no appeal or certiorari is pending.

**Allowed Priority Tax Claim** shall mean a Priority Claim, pursuant to Code Section 507(a)(8), to the extent such Priority Claim is or becomes an Allowed Claim.

**Allowed Secured Claim** shall mean an Allowed Claim against the Debtor for which a claimant asserts and is determined to hold a valid, perfected and enforceable lien, security interest or other interest of encumbrance in property in which the Debtor has an interest and which is not otherwise subject to avoidance or the equitable powers of the Bankruptcy Court under applicable bankruptcy law or non-bankruptcy law, but in any event only to the extent of the value, determined in accordance with §506(a) of the Bankruptcy Code, of the claimant's interest in the Debtor's interest in the property. Allowed Secured Claim shall not include post-petition attorney fees and costs unless such fees and costs have been approved and allowed by Final Order prior to the Confirmation Date.

**Allowed Unsecured Claim** shall mean an Allowed Claim for which a claimant has not asserted or is determined by a Final Order not to hold an Allowed Secured Claim or a Claim entitled to priority under the Bankruptcy Code.

**Bankruptcy Case** shall mean the bankruptcy case of Cladek which is pending before the United States Bankruptcy Court for the Middle District of Florida, Jacksonville Division, pursuant to Chapter 11 of the Code as case number 3:10-bk-02805-PMG.

**Bankruptcy Court or Court** shall mean the United States Bankruptcy Court for the Middle District of Florida, Jacksonville Division, in which Debtor's Bankruptcy Case is pending, and any Bankruptcy Court having jurisdiction to hear appeals or certiorari proceedings therefrom.

**Bankruptcy Estate** shall mean the estate, created pursuant to Section 541 of the Code, by the commencement of the Debtor's Bankruptcy case and shall include all property of the Estate as defined in such Section.

**Bankruptcy Code or Code** shall mean the United States Bankruptcy Code, 11 U.S.C. § 101, *et seq.*, and any amendments thereto.

**Ballot** shall mean the form or forms distributed to claimants in impaired classes on which such persons may indicate the acceptance or rejection of the Plan.

**Ballot Date** shall mean the date set by the Bankruptcy Court by which all votes for acceptance or rejection of the Plan must be received by the Bankruptcy Court or the balloting agent, as the case may be.

**Bar Date** shall mean the date fixed by Order of the Bankruptcy Court as the last date for the filing of Claims in this Bankruptcy Case.

**Business Day** shall mean a day other than a Saturday or a Sunday or any other day on which the majority of commercial banks located in Jacksonville, Florida are required or authorized to close.

**Cash** shall mean cash or cash equivalents, including but not limited to, checks, bank deposits, or other similar items.

**Causes of Action** shall mean all causes of action of any kind held at any time by the Debtor against any party or parties, including, without limitation, all causes of action held by the Debtor as of the Petition Date, including all actions for the disgorgement of False Profits, and all causes of action held by the Debtor arising after the Petition Date, and including any rights of the Debtor arising under §§ 362(b), 542, 544, 545, 547, 548, 549, 550 or 553 of the Bankruptcy Code. Causes of Action shall include adversary proceeding number 10-ap-00248-PMG and any and all unsatisfied judgments.

**Cladek Creditors Trust** shall mean the trust established for the benefit of the Holders of Class 8 Allowed Unsecured Claims, Class 9 Allowed Unsecured Claims and Newco, pursuant to and with the powers set forth in the Plan and in the Creditors Trust Agreement.

**Cladek Properties** shall mean the parcels of real property located at the following addresses:

189 Sea Colony Parkway, St. Augustine Florida;  
5494 Atlantic View, St. Augustine, Florida;  
349 Jellison Road, St. Augustine, Florida;  
108 Seagrove Main Street, St. Augustine, Florida;  
23 Old Mission Avenue, St. Augustine, Florida;  
25 Old Mission Avenue, St. Augustine, Florida;  
27 Old Mission Avenue, St. Augustine, Florida;  
16249 Captiva Drive, Captive, Florida;

16250 Captive Drive, Captiva, Florida;  
4443 Waters Edge Lane, Sanibel, Florida;  
1001 Lindgren Boulevard, Sanibel, Florida; and  
1061 SW Alaska Way, Greenville, Florida.

**Claim** shall mean a right against the Debtor within the meaning of §101(5) of the Bankruptcy Code, including any right to payment or right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, against the Debtor in existence on or as of the Petition Date, whether or not such right to payment or right to an equitable remedy is reduced to judgment, liquidated, unliquidated, fixed, contingent, mature, unmatured, disputed, undisputed, legal, secured or unsecured.

**Class** shall mean a category of Claims or Interests as classified in this Plan.

**Committee** shall mean the Official Committee of Unsecured Creditors of Lydia Cladek, Inc.

**Confirmation** shall mean the process leading to and including the entry of the Confirmation Order, pursuant to Section 1129 of the Code.

**Confirmation Date** shall mean the date upon which the Bankruptcy Court, pursuant to § 1129 of the Bankruptcy Code, enters an order confirming the Plan in accordance with the appropriate provisions of Chapter 11 of the Bankruptcy Code.

**Confirmation Order** shall mean the order entered by the Bankruptcy Court confirming the Plan.

**Creditor** shall have the same meaning as set forth in Section 101(1) of the Code.

**Creditor Agent** shall mean the party to be selected by the Committee who will manage the Cladek Creditors Trust in accordance with the Creditors Trust Agreement.

**Creditor Trust Agreement** shall mean the trust governing operation of the Cladek Creditors Trust. The agreement shall be substantially in the form attached hereto as **Exhibit "A"**.

**Debt** shall have the same meaning as set forth in Section 101(12) of the Code.

**Debtor or Cladek** shall mean Lydia Cladek, Inc. a Florida corporation. The terms "Debtor" and "Cladek" are used interchangeably throughout this Plan.

**Disclosure Statement** shall mean the Disclosure Statement filed with the Court, including exhibits and any supplements, amendments or modifications thereto, prepared pursuant to 11 U.S.C. §§ 1125(a) and 1126(b) and Rule 3018(b) for solicitation and acceptance of this Plan.

**Disputed Claim** shall mean a Claim that has not been allowed by a Final Order of the Court as to which: (a) a Proof of Claim has been filed with the Court, or is deemed filed under

applicable law or order of the Court; and (b) an objection to the allowance thereof has been or may be filed within the applicable period of limitation fixed by this Plan, the Bankruptcy Code, the Bankruptcy Rules or the Court and any such objection has not been: (1) withdrawn; (2) overruled or denied in whole or part by a Final Order of the Court; or (3) granted in whole or part by a Final Order of the Court. For purposes of this Plan, a Claim that has not been allowed by a Final Order of the Court shall also be considered a "Disputed Claim", whether or not an objection has been or may be filed within the applicable period of limitation fixed by this Plan, the Bankruptcy Code, the Bankruptcy Rules or the Court, if: (A) the amount of the Claim specified in the Proof of Claim exceeds the amount of any corresponding Claim scheduled in the Schedules; (B) the classification of the Claim specified in the Proof of Claim differs from the classification of any corresponding Claim scheduled in the Schedules; (C) any corresponding Claim has been scheduled in the Schedules as disputed, contingent or unliquidated; (D) no corresponding Claim has been scheduled in the Schedules; or (E) such Claim is reflected as unliquidated or contingent in the Proof of Claim filed in respect thereof.

**Disputed Unsecured Claim** shall mean any Unsecured Claim, which is not an Allowed Unsecured Claim.

**Distribution** shall mean the Distribution to the Holders of Allowed Claims.

**Effective Date** shall mean the first Business Day which is ten (10) days following the date upon which the Confirmation Order becomes a Final Order.

**Equity Interests** shall mean any and all issued or authorized common stock, stock options, and warrants in the Debtor.

**Estate Assets** shall mean all the assets, property, and cash of the Debtor, as defined in section 541 of the Code (excluding assets previously distributed, expended, or otherwise disposed of by the Debtor or Trustee prior to the Confirmation Date not otherwise subject to recovery) wherever located or of whatever type or nature, existing as of the Confirmation Date, including without limitation, the Causes of Action.

**False Profit** shall mean the amount by which: (a) the total amount of money paid by the Debtor to or for the benefit of each Investor, including payments of interest and repayments of principal, exceeds (b) the total amount of money such Investor deposited, invested, or transferred to the Debtor on an aggregate basis, excluding any amounts derived from interest accrual or interest rollover.

**Final Order** shall mean an order or judgment of the Court that has not been reversed, modified, amended or stayed, and the time for appeal from which to seek review or certiorari or rehearing of which has expired, and as to which no appeal, review or rehearing is pending, and has become conclusive of all matters adjudicated thereby and is in full force and effect; provided, however, that the order or judgment shall not fail to be deemed a Final Order solely because of the possibility that a motion, pursuant to Federal Rule of Civil Procedure 60, which is incorporated by Rule 9024, may be filed with respect thereto.

**Holder** shall mean the legal or beneficial Holder of a Claim or Interest and, when used in conjunction with a class or type of Claim or Interest, means a Holder of a Claim or Interest in such Class or of such type

**Impaired Class** shall mean a class of claims or interests which is not unimpaired under § 1124 of the Bankruptcy Code.

**Insider** shall have the same meaning as set forth in Section 101(31) of the Code.

**Interest** shall mean an issued or authorized outstanding share or shares of common stock, a warrant or warrants for the issuance of such share or shares, other stock, stock equivalents, limited partnership interest, or other equity instruments in the Debtor.

**Investor** shall mean any legally distinct person or entity (including but not limited to an individual, joint tenancy, tenancy by the entirety, corporation, partnership, or otherwise) who deposited, loaned, invested, or transferred money under a promissory note or other investment instrument to the Debtor.

**Lien** shall mean any mortgage, lien, charge, security interest, encumbrance, or other security device of any kind affecting any asset or property of Debtor but only to the extent that such interest is recognized as valid by a court of competent jurisdiction if the validity or scope of such interest is challenged by the Debtor, Trustee, Committee, Cladek Creditor's Trust, or any other party with standing to bring such a challenge

**Net Trust Proceeds** shall mean cash remaining after payment in full of all costs and expenses, including attorneys' fees and costs, associated with the liquidation of assets, litigation of the Causes of Action, and management of the Cladek Creditors Trust, excluding the reserve of \$50,000.

**Newco** shall mean a Florida corporation to be formed, pursuant to the terms of the Plan, which will receive assignment of substantially all of the Debtor's Property **excluding** the Causes of Action and the Cladek Properties and any property or cash to be surrendered to secured creditors according to the terms of the Plan.

**Non-Investor Claim** shall mean all Allowed Unsecured Claims which are not held by an Investor.

**Order** shall mean a determination, decree, adjudication, or judgment issued or entered by the Bankruptcy Court.

**Ordinary Course Administrative Claim** shall mean an Administrative Claim incurred in the ordinary course of business of the Debtor; *provided, however*, that any due and unpaid, post-petition payment with respect to rejected, or to be rejected, executory contracts or unexpired leases shall not be an Ordinary Course Administrative Claim.

**Payment** shall mean the Cash to be paid under the Plan to the Holders of Allowed Claims.

**Person** shall mean an individual, partnership, corporation, joint-stock company, unincorporated company or association, business trust, limited partnership or other business entity.

**Petition Date** shall mean the date on which several petitioning creditors filed an involuntary chapter 11 petition against Lydia Cladek, Inc.

**Plan** shall mean this Chapter 11 Plan of Reorganization in its present form or as it may be amended or supplemented.

**Plan Payments** shall mean payments made pursuant to the terms of the Plan.

**Prepetition** shall mean the period of time preceding the Petition Date and concluding on the Petition Date.

**Priority Claims** shall mean any pre-petition claim entitled to priority pursuant to § 507(a) of the Bankruptcy Code other than Administrative Expenses.

**Professional** shall mean: (i) any professional retained in the Bankruptcy Case pursuant to an order of the Bankruptcy Court in accordance with Section 327 or 1103 of the Bankruptcy Code; (ii) any attorney or accountant seeking compensation or reimbursement of expenses, pursuant to Section 503(b) of the Bankruptcy Code; and (iii) any entity whose fees and expenses are subject to approval by the Bankruptcy Court as reasonable, pursuant to Section 1129(a)(4) of the Bankruptcy Code.

**Promised Profit** shall mean the total amount of money owed or allegedly owed to each Investor as of the Petition Date, including any amounts attributable to interest accrual or interest rollover, minus the amount of Actual Pecuniary Loss of such Investor, and plus any amount such Investor is required to and shall have disgorged pursuant to the Plan.

**Proof of Claim** shall mean any proof of claim filed with the Court with respect to the Debtor pursuant to Rules 3001 or 3002.

**Proof of Interest** shall mean any proof of interest filed with the Court with respect to the Debtor pursuant to Rule 3002.

**Property** shall mean the real and personal property (both tangible and intangible) owned by the Debtor, including but not limited to all cash, the loan portfolio and automobile inventory, accounts receivable, furniture, fixtures and equipment, and **excluding** all Causes of Action and the Cladek Properties and excluding any property or cash to be surrendered to secured creditors according to the terms of the Plan.

**Pro Rata Share** means as to any Allowed Class 8 Claims as of the Effective Date or such later date on which such Claim becomes Allowed, a fraction of: (i) the numerator of which is the amount of such Allowed Claim; and (ii) the denominator of which is the sum of (x) all Allowed Class 8 Claims as of such date plus (y) all Disputed Class 8 Claims as of such date. As to any Allowed Class 9 Claims as of the Effective Date or such later date on which such Claim becomes Allowed, a fraction of: (i) the numerator of which is the amount of such Allowed Claim; and (ii) the denominator of which is the sum of (x) all Allowed Class 9 Claims as of such date plus (y) all Disputed Class 9 Claims as of such date.

**Rule or Rules** shall mean the Federal Rules of Bankruptcy Procedure, as supplemented by the Local Bankruptcy Rules as adopted by the Bankruptcy Court.

**Secured Claim** shall mean a Claim secured by a Lien which is perfected and enforceable under applicable law, and which is not subject to avoidance under the Code or other applicable non-bankruptcy laws. A Secured Claim which is challenged by the Trustee, Committee, and/or Cladek Creditor Trust shall only be an Allowed Secured Claim to the extent that such Claim is deemed to be an Allowed Secured Claim in the Plan or the underlying Security Interest is recognized as valid by the Bankruptcy Court and the difference in amount between such a Creditor's Allowed Claim and its Allowed Secured Claim shall be an Allowed Unsecured Claim.

**Secured Creditor** shall mean any creditor that is a holder of a Secured Claim.

**Trustee** shall mean Michael Phelan as Chapter 11 Trustee for Lydia Cladek, Inc.

**Security Interest** shall mean "security interest" as defined in 11 U.S.C. §101(51).

**Schedules** shall mean the schedules, as amended, of assets and liabilities, lists and statements of financial affairs and executory contracts filed with the Court under Rule 1007.

**Strike Price** shall mean the value of a unit of Newco as of the Effective Date, measured based upon the fair market value of the loan portfolio, together with Debtor's cash on hand and the fair market value of any other assets assigned to Newco under the Plan, less an amount equal to the cash necessary to pay the Allowed Administrative Claims, the Allowed Administrative Carve-Out and the Allowed Priority Claims, as such unit value shall be determined in the Confirmation Order.

**Trust Assets** shall mean the Causes of Action, the Cladek Properties and any proceeds therefrom and the \$50,000 to be transferred to the Cladek Creditor Trust from the Administrative Carve-Out.

**Unclaimed Property** shall mean any cash, or any other property unclaimed for a period of six (6) months after any Distribution.

**Unimpaired Class** shall mean any Class the members of which are the Holders of Claims or Interests, which are not impaired within the meaning of Section 1124 of the Code.

**Unsecured Claim** shall mean a Claim that arose or is deemed to have arisen prior to the Petition Date and is not a Secured Claim or an Administrative Claim.

**Unsecured Creditor** shall mean a creditor holding an Allowed Unsecured Claim.

**United States Trustee** shall have the same meaning ascribed to it in 28 U.S.C. § 581, *et seq.* and, as used in the Plan, refers to the office of the United States Trustee for Region 21 located in the Middle District of Florida, Jacksonville, Florida.

**Undefined Terms** shall mean any term used in the Plan and not defined herein but which is defined in the Bankruptcy Code or the Rules has the meaning given to that term in the Bankruptcy Code or the Rules.

## **ARTICLE II - CONSTRUCTION**

Unless otherwise specified, all section, article, and exhibit references in the Plan are to the respective section in, article of, or exhibit to the Plan, as the same may be amended, waived, or modified from time to time. The headings in the Plan are for convenience of reference only and shall not limit or otherwise affect the provisions hereof. Words denoting the singular number shall include the plural number and vice versa, and words denoting one gender shall include the other gender. As to contested matters, adversary proceedings, and other actions or threatened actions, this Plan and the Disclosure Statement shall not be construed as a stipulation or admission, but rather, as a statement made in settlement negotiations.

## **ARTICLE III- CLASSIFICATION OF CLAIMS AND INTERESTS**

The Claims of creditors of the Debtor and the Interests of the shareholders in the Debtor are divided into the ten classes described below. A Claim is included in a particular Class only to the extent that the Claim meets the description of that Class and may be included in a different class to the extent that the remainder of such Claim meets the description of such different class. A Claim will receive the treatment described herein only to the extent that the Claim has been Allowed. For purposes of Class 8 and Class 9, an Investor's monetary investments in the Debtor shall be aggregated for purposes of determining an Investor's Allowed Claim, provided that an individual's interests as an Investor shall not be aggregated with that individual's interests under an IRA or other qualified retirement plan for purposes of determining an Investor's Allowed Claim.

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|-----------------------|---|
| <b><u>Class 1</u></b> | Allowed Administrative Claims, including Claims for services rendered and costs advanced or incurred by professionals, allowable under the Bankruptcy Code and approved by the Court. |
| <b><u>Class 2</u></b> | Allowed Priority Claims.  |
| <b><u>Class 3</u></b> | Allowed Secured Claim of Anita Spring.  |
| <b><u>Class 4</u></b> | Allowed Secured Claim of Bernard Reller.  |

- Class 5** Allowed Secured Claims - Avoidable Claims
- Class 6** Allowed Secured Claim of Banc of America Leasing & Capital LLC
- Class 7** Allowed Secured Claim of CitiCapital Technology Finance, Inc.
- Class 8** Allowed Unsecured Claims - Convenience Class.
- Class 9** Allowed Unsecured Claims
- Class 10** Equity interests in the Debtor.

#### **ARTICLE IV- IMPAIRMENT OF CLASSES**

Classes 3-10 are impaired by virtue of Section 1124 of the Bankruptcy Code.

#### **ARTICLE V- TREATMENT OF UNIMPAIRED CLASSES**

**Class 1** **Administrative Claims** Allowed Administrative Claims, as defined under 11 U.S.C. § 507(a)(1) and as allowed under 11 U.S.C. § 503(b), will be paid by the Trustee in full on or before the Effective Date, or as otherwise agreed between the Committee, the Trustee and the Administrative Claim Holder. After the Effective Date, quarterly fees payable to the Office of the United States Trustee will be paid by the Cladek Creditors Trust when due in the ordinary course through the entry of the Final Decree. Administrative Claims may be subject to dispute or objection and shall receive no distribution until such objection or dispute is resolved by Final Order.

**Class 2** **Priority Claims** Allowed Priority Claims will be paid by the Trustee in full on or before the Effective Date, or as otherwise agreed between the Committee, the Trustee and the Priority Claim Holder. Priority Creditors whose Claims are subject to dispute or objection shall receive no distribution until such objection or dispute is resolved by Final Order.

**ARTICLE VI- TREATMENT OF IMPAIRED CLASSES**

**Class 3 Secured Claim of Anita Spring** Class 3 consists of the Allowed Secured Claim of Anita Spring. The Class 3 Claim is in the amount of \$374,874.44 and is allegedly secured by a lien on all of the Debtor's interest in certain automobile installment sales contracts. To the extent that Anita Spring has a valid and enforceable security interest and an Allowed Claim, Anita Spring shall receive, in full satisfaction of her claim, an assignment of the automobile installment sales contracts which are allegedly collateral for her Allowed Claim as the indubitable equivalent of her Allowed Secured Claim pursuant to 11 U.S.C. §1129(b)(2)(A)(iii) and/or to the extent that any of the automobile installment sales contracts which are allegedly collateral for her Allowed Secured Claim have been sold in the Bankruptcy Case, the allocated proceeds from that collateral. Any difference between the amount of the Allowed Secured Class 3 Claim and the Allowed Claim of Anita Spring shall be treated as a Class 9 Unsecured Claim and paid accordingly. The Claim of Anita Spring may be subject to dispute or objection and shall receive no distribution until such objection or dispute is resolved by Final Order.

**Class 4 Secured Claim of Bernard Reller** Class 4 consists of the Secured Claim of Bernard Reller. The Class 4 Claim is in the amount of \$210,748.00 and is allegedly secured by a lien on all of the Debtor's interest in certain automobile installment sales contracts. To the extent that Bernard Reller has a valid and enforceable security interest and an Allowed Claim, Bernard Reller shall receive, in full satisfaction of his claim, an assignment of the automobile installment sales contracts which are allegedly collateral for his Allowed Claim as the indubitable equivalent of his Allowed Secured Claim pursuant to 11 U.S.C. §1129(b)(2)(A)(iii) and/or to the extent that any of the automobile installment sales contracts which are allegedly collateral for his Allowed Secured Claim have been sold in the Bankruptcy Case, the allocated proceeds from that collateral. Any difference between the amount of the Allowed Secured Class 4 Claim and the Allowed Claim of Bernard Reller shall be treated as a Class 9 Unsecured Claim and paid accordingly. The Claim of Bernard Reller may be subject to dispute or objection and shall receive no distribution until such objection or dispute is resolved by Final Order.

**Class 5 Secured Claims - Avoidable Claims** Class 5 consists of the Allowed Secured Claims of Deborah Rey, Mary Katherin Murphy, John Dix Nock, IV, Alexandra Elizabeth Nock, Kathryn Tutton Nock, Axel Justice Nock, Deborah C. Muhs Trust a/k/a Deborah C. Radbill, Radbill Environmental Resources, Inc., a/k/a Donald N. Radbill, The Donald N. Radbill Living Trust, Rad Management Company, Linda R. Nelms, Mary Lou Preston, Linda R. Nelms, Patricia G. Sligh, Equity Trust Company, Robert A. Roth, Diane W. Bennett, Ruby Inez Weldon, Ralph E. Brown, and R&B Investment Trading Company which are allegedly secured by liens on certain automobile installment sales contracts. The State of Florida Uniform Commercial Code Financing Statements for these Secured Creditors were either: (i) filed within ninety (90) days of the Petition Date and are preferences, pursuant to 11 U.S.C. §547; (ii) filed on or after the Petition Date and violate the automatic stay of 11 U.S.C. §362 and are improper post-petition transfers pursuant to 11 U.S.C. §549; and/or (iii) are not properly perfected in accordance with the requirements of the Uniform Commercial Code. The Allowed Secured Class 5 Claims shall be deemed Unsecured Claims and shall be treated as a Class 9 Unsecured

Claim and paid accordingly. The Class 5 unsecured Claims may be subject to dispute or objection and shall receive no distribution under Class 9 until such objection or dispute is resolved by Final Order.

**Class 6 Secured Claim - Banc of America Leasing & Capital LLC** Class 6 consists of the Allowed Secured Claim of Banc of America Leasing & Capital LLC which is allegedly secured by a lien on certain personal property. To the extent that Banc of America Leasing & Capital LLC has an Allowed Secured Claim it shall receive, in full satisfaction of its claim, the personal property which serves as collateral for its Allowed Claim as the indubitable equivalent of its Allowed Secured Claim pursuant to 11 U.S.C. §1129(b)(2)(A)(iii). Any difference between the amount of the Allowed Secured Class 6 Claim and the Allowed Claim shall be treated as a Class 9 Unsecured Claim and paid accordingly. The Claim of Banc of America Leasing & Capital LLC may be subject to dispute or objection and shall receive no distribution until such objection or dispute is resolved by Final Order.

**Class 7 Secured Claim - CitiCapital Technology Finance, Inc.** Class 7 consists of the Allowed Secured Claim of CitiCapital Technology Finance, Inc. which is allegedly secured by a lien on certain personal property. To the extent that CitiCapital Technology Finance, Inc. has an Allowed Secured Claim it shall receive, in full satisfaction of its claim, the personal property which serves as collateral for its Allowed Claim as the indubitable equivalent of its Allowed Secured Claim pursuant to 11 U.S.C. §1129(b)(2)(A)(iii). Any difference between the amount of the Allowed Secured Class 7 Claim and the Allowed Claim shall be treated as a Class 9 Unsecured Claim and paid accordingly. The Claim of CitiCapital Technology Finance, Inc. may be subject to dispute or objection and shall receive no distribution until such objection or dispute is resolved by Final Order.

**Class 8 Unsecured Claims--Convenience Class** Class 8 Consists of all Allowed Unsecured Claims which total \$1,500 or less. Class 8 Allowed Unsecured Claims will receive a pro rata distribution of the Net Trust Proceeds pursuant to the terms set forth in Class 9 Section A. Class 8 Claims may be subject to dispute or objection and shall receive no distribution until such objection or dispute is resolved by Final Order.

**Class 9. Unsecured Claims.** Class 9 consists of all Allowed Unsecured Claims, other than Allowed Unsecured Claim which total \$1,500 or less which are treated in Class 8. Holders of Allowed Class 9 Unsecured Claims will receive, in full satisfaction of their Allowed Unsecured Claims, in accordance with the terms of the Plan: (i) a Pro Rata Share of fifty percent (50%) of the Net Trust Proceeds from the Trust Assets, as determined on an annual basis for up to 5 years including a final distribution of a Pro Rata Share of fifty percent (50%) of final distribution from the Net Trust Proceeds and the Trust Assets, in accordance with the terms of the Plan and the Creditor Trust Agreement; and (ii) distribution of shares in Newco on the basis of one share for each \$1,000.00 of each such Unsecured Creditor's Allowed Unsecured Class 9 Claim.

**A. Cash Distribution from Cladek Creditors Trust**

The assets of the Cladek Creditors Trust shall consist of the Causes of Action, the Cladek Properties and the \$50,000 to be transferred to the Cladek Creditors Trust from the

Administrative Carve-Out for payment of administrative fees and costs including attorneys' fees and costs. On the Effective Date, Newco and each Holder of an Allowed Class 9 Claim and an Allowed Class 8 Claim will become a beneficiary of the Cladek Creditors Trust, which is a creditors' trust to be formed on the Effective Date, which will be managed by a Creditor Agent selected by the Committee, pursuant to the terms of the Creditors Trust Agreement. On the Effective Date, the Causes of Action and the Cladek Properties shall be transferred to and vested in the Cladek Creditors Trust.

Under this plan the Cladek Creditors Trust may make 5 annual distributions with the first distribution to occur one year after the Effective Date (the "First Distribution Date") and each year thereafter for a total of 5 years. The Creditor Agent has discretion to decline to make a yearly distribution if such a distribution would result in a *de minimus* distribution and the Creditor Agent has discretion to make additional distributions.

The Cladek Creditor Trust may make an annual distribution, after establishing a reserve of \$50,000, as follows: (i) payment of the Net Trust Proceeds to the Holders of Allowed Class 8 Claims as set forth in Class 8 on a Pro Rata Basis until paid in full; and (ii) after payment, in full, of the Class 8 Claims and if there are sufficient Net Trust Proceeds to make a distribution which is not *de minimus*, the Cladek Creditor Trust will use the remaining Net Trust Proceeds to make a distribution to: (a) Newco of fifty percent (50%) of the remaining Net Trust Proceeds; and (b) Holders of Allowed Class 9 Unsecured Claims a Pro Rata Share of fifty percent (50%) of the remaining Net Trust Proceeds; *provided however that no Creditor will receive an amount greater than its Allowed Claim.*

In the event that there are insufficient funds to pay Allowed Class 8 Claims in full on the First Distribution Date, the Cladek Creditor Trust will make a pro rata distribution to Allowed Class 8 Claims in such case. Allowed Class 9 Claims and Newco will not receive distributions on the First Distribution Date.

Once the Class 8 Claims are paid in full, the Cladek Creditor Trust may make future annual distributions, while maintaining a reserve of \$50,000 and if there are sufficient Net Trust Proceeds to make a distribution which is not *de minimus*, and use the remaining Net Trust Proceeds to make a distribution to: (a) Newco of fifty percent (50%) of the remaining Net Trust Proceeds; and (b) to Holders of Allowed Class 9 Unsecured Claims a Pro Rata Share of fifty percent (50%) of the remaining Net Trust Proceeds; *provided; however, no Creditor will receive an amount greater than its Allowed Claim.*

The Cladek Creditors Trust will maintain a minimum of \$50,000 in cash at all times (which shall not be subject to yearly distributions) for payment of administrative and litigation expenses until the Cladek Creditors Trust makes a final distribution of Trust Assets to the Class 9 Creditors and Newco. On the final annual distribution, to occur no later than 5 years from the Effective Date, the Cladek Creditor Trust shall distribute the Net Trust Proceeds and Trust Assets, including the \$50,000 reserve. In the event that the Class 9 Claims are paid in full, the remainder of the Net Trust Proceeds and Trust Assets, including the \$50,000 reserve will be distributed to Newco.

Upon receipt of its distribution of its Pro Rata Share of the Cladek Creditors Trust, each Holder of an Allowed Unsecured Claim shall be deemed to have permanently relinquished its right to receive any further payment or distribution from the Debtor, the Estate, and Newco with respect to its Claim.

Distribution shall be made as set forth in the Creditors Trust Agreement. No distribution will be made to any Holder of a Disputed Claim. Any distributions to a Holder of a Disputed Claim shall be made if, when, and only to the extent such Disputed Claim is or becomes an Allowed Claim pursuant to a Final Order or by settlement or otherwise. To the extent Class 9 Claims or Class 8 Claims are Disputed Claims, the Creditor Agent shall establish an appropriate reserve for Disputed Claims. Any person who holds both an Allowed Claim and a Disputed Claim will receive the appropriate distribution on the Allowed Claim, although no distribution will be made on the Disputed Claim until such dispute is resolved by settlement or Final Order.

The Cladek Creditors Trust shall be responsible for all distributions from the Cladek Creditors Trust to Allowed Class 8 Claims and Allowed Class 9 Claims. The Creditors Trust shall be responsible for the following: (i) payment of all post-Effective Date U.S. Trustee's Fees for any disbursements out of the Cladek Creditors Trust; (ii) for prosecuting and settling all Causes of Action; (iii) management and sale of the Cladek Properties; and (iv) for prosecuting and settling all objections to Claims. Any distributions to Class 8 Creditors and Class 9 Creditors are speculative in nature and depend upon contingencies including success in litigation.

No distribution will be made to Investors under Class 9 or Class 8 for Promised Profit or False Profit and the Plan specifically reserves the right of the Cladek Creditors Trust to object to Claims and seek denial or reduction in Claims which are based on or include False Profit or Promised Profit. Only Class 8 or 9 Allowed Unsecured Claims by Investors for Actual Pecuniary Loss, which are not subject to dispute or objection, will receive a distribution under the Plan.

**B. Shares of Newco**

Class 9 Allowed Unsecured Claims will receive distribution of shares in Newco on the basis of one share for each \$1,000.00 of each such Unsecured Creditor's Allowed Unsecured Class 9 Claim. No fractional shares shall be distributed and the shares distributed on account of each Allowed Claim in Class 9 shall be rounded up or down to the nearest whole \$1,000.00 increment. THE COMMITTEE MAKES NO REPRESENTATIONS OR WARRANTIES CONCERNING THE RIGHT OF ANY PERSON TO TRADE IN NEWCO'S SECURITIES DISTRIBUTED PURSUANT TO THE PLAN. Class 9 Claims which are subject to dispute or objection shall receive no distribution of shares in Newco until such objection or dispute is resolved by Final Order. However, Newco shall reserve shares to make distributions to such creditors until all claims objections have been finally determined. The distribution of the shares of Newco shall occur one hundred and days (180) days after the Effective Date of the Plan or ten (10) days after an order becomes a Final Order approving the allowed amount of such Claim, whichever is later.

**Class 10. Equity Interests.** There shall be no distribution to holders of pre-petition equity interests in the Debtor and all such equity interests shall be deemed cancelled on

the Effective Date, as will all purchase options or prescriptive rights associated with the Debtor's pre-petition equity interests.

#### **ARTICLE VI -NO DISTRIBUTION IF HOLDER IS SUBJECT TO LITIGATION**

Pursuant to 11 U.S.C. § 502(d), no payments or distribution shall be made to any person or entity from which property is recoverable under §§ 542, 543, 550 or 553 of the Bankruptcy Code or to any person or entity that is a transferee of a transfer avoidable under §§ 522(t), 522(h), 544, 545, 547, 548, 549 or 724(a) of the Bankruptcy Code including the obligation of any Investor to disgorge False Profit, unless such person, entity or transferee has paid the amount, or turned over any such property from which such person, entity or transferee is liable under §§ 522(i), 542, 543, 550 or 553 of the Bankruptcy Code. The Claim of any recipient of a payment avoidable under §§ 542, 543, 550 or 553 of the Bankruptcy Code who fails to pay or turnover the amount of the payment to the Cladek Creditors Trust following the Effective Date, within sixty (60) days of a judgment or order avoiding the transfer or requiring such turnover shall be extinguished and forever barred.

#### **ARTICLE VII – CLADEK CREDITORS TRUST**

A. Purpose of the Creditors Trust. The Cladek Creditors Trust, through the Creditor Agent, will hold, prosecute, and liquidate the Trust Assets for the benefit of Holders of Allowed Class 8 Claims, Allowed Class 9 Claims, and Newco, and will make distributions in accordance with the provisions of this Plan. The Creditor Agent was not selected by the United States Trustee, will not be supervised by the United States Trustee, and is not bonded in favor of the United States in an amount set by the United States Trustee. The Cladek Creditors Trust shall be governed by the terms of a Creditors Trust Agreement. It is the Committee's intent that the Cladek Creditors Trust should be exempt from registration as an investment company under §7 of the Investment Company Act, as an entity engaged in transactions that are merely incidental to their dissolution. The Cladek Creditors Trust: (i) is to exist solely to liquidate Trust Assets and distribute the proceeds; (ii) will not hold itself out as an investment company, but rather as a trust in the process of liquidation; (iii) will not conduct an active trade or business, and will limit any investments to temporary investments (i.e., short-term government securities) pending the distribution of liquidation proceeds; (iv) will be under the continuing jurisdiction of the Bankruptcy Court; and (v) will terminate at some appointed future date, not to exceed five (5) years from the Effective Date of the Plan, unless extended by the Bankruptcy Court. The terms and conditions of the Cladek Creditors Trust shall be substantially as identified in the Creditors Trust Agreement.

B. Authority of the Cladek Creditors Trust. The Cladek Creditors Trust, through the Creditor Agent, shall have the power and authority to perform the following acts, in addition to any powers granted by law or conferred to it by any other provision of the Plan; *provided, however,* that enumeration of the following powers shall not be considered in any way to limit or control the power of the Cladek Creditors Trust to act as specifically authorized by any other provision of this Plan and to act in such manner as the Cladek Creditors Trust may deem necessary or appropriate to discharge all obligations assumed by the Cladek Creditors Trust or provided herein and to conserve and protect the Trust Assets or to confer on the Unsecured

Creditors in Class 8, Class 9 and Newco the benefits intended to be conferred upon them by this Plan: (a) perfect and secure the Cladek Creditors Trust's right, title and interest to all assets comprising the Trust Assets; (b) transfer all Trust Assets to the Cladek Creditors Trust's possession and hold same; (c) hire one or more individuals to assist in the Disbursement process; (d) hire one or more legal professionals to assist in the prosecution and liquidation of the Trust Assets; (e) deposit estate funds, proceeds and draw checks and make Disbursements thereof; (f) take such other action as the Cladek Creditor Trust may determine to be necessary or desirable to carry out the purpose of this Plan; (g) commence or prosecute objections to Claims, which are necessary to carry out the terms and conditions of the Plan. The Trustee shall assist the Creditor Agent in reconciliation of the Claims and shall cooperate with the Creditor Agent in the prosecution of any Objections to Claims, including if necessary providing documentation and/or testimony at a final hearing; (h) commence or prosecute, on behalf of the estate, any Causes of Action. The Trustee and Committee shall assist the Creditor Agent in identifying the Causes of Action and shall cooperate with the Creditor Agent in the prosecution of any Causes of Action, including, if necessary providing documentation and/or testimony at a final hearing; (i) the Creditors Agent shall have standing to settle, compromise or adjust pursuant to the standards of Bankruptcy Rule 9019 (which shall be deemed to apply to all Post-Confirmation settlements), any disputes or controversies in favor of, or against, the Cladek Creditors Trust, subject to review and approval by the Bankruptcy Court; and (j) the Cladek Creditor Trust may retain professionals on such terms as the Creditor Agent deemed reasonable, without Court approval, subject to the terms of the Creditor Trust Agreement, except that payments to the professionals for post-confirmation services and expenses shall be made in accordance with the Creditor Trust Agreement.

C. Operation of the Cladek Creditors Trust. In addition to the powers and privileges granted to the Creditor Agent under the Cladek Creditor Trust, the Creditor Agent shall have the following powers and privileges set forth below in this section: (a) the Creditor Agent shall have the full and complete authority to perform all acts, execute all documents and make all payments and disbursements of funds directed to be done, executed, performed, paid and disbursed by the provisions of the Plan on behalf of the Cladek Creditors Trust; (b) the Creditor Agent shall keep an accounting of receipts and disbursements, which shall be open to inspection and review by the Bankruptcy Court and creditors of the Debtor (upon reasonable notice, and without unduly interfering with the operations of the Creditor Agent). The Creditor Agent shall provide copies of the quarterly reports to creditors who request same in writing and shall be responsible for payment of all U.S. Trustee's fees; (c) no recourse shall ever be had, directly, or indirectly, against the Creditor Agent, his officers or directors, or any employee of the Creditor Agent, by legal or equitable proceedings or by virtue of any statute or otherwise, or any deed of trust, mortgage, pledge, note, nor upon any promise, contract, instrument, undertaking, obligation, covenant, or agreement whatsoever executed by the Creditor Agent under the Plan or by reason of the creation of any indebtedness by the Creditor Agent under this Plan for any purpose authorized by the Plan, it being expressly understood and agreed that all such liabilities, covenants, and agreements of the Creditor Agent, its officers, directors, and employees, whether in writing or otherwise, under this Plan shall be enforceable only against, and be satisfied only out of, the Trust Assets, or such part thereof as shall, under the terms of any such agreement, be liable therefore or shall be evidence only of a right of payment out of the income, proceeds and avails of the Trust Assets, as the case may be; every undertaking, contract, covenant, or

agreement entered into in writing by the Creditor Agent shall provide expressly against the personal liability of the Creditor Agent; (d) the Creditor Agent shall not be liable for any act he may do, or omit to do hereunder while acting in good faith and in the exercise of his best judgment, and the fact that such act or omission was advised, directed or approved by an attorney acting as attorney for the Creditor Agent, shall be conclusive evidence of such good faith and best judgment. However, this paragraph shall not apply to any gross negligence or willful misconduct by the Creditor Agent or his agent, officers, or employees.

D. Creditor Agent. Prior to the Confirmation Hearing, the Committee shall select an individual who shall serve as the Creditor Agent of the Cladek Creditors Trust for a period of time commencing on the Effective Date. The Creditor Agent shall be deemed an agent of the Class 8 Creditors, Class 9 Creditors and Newco who may be entitled to receive distributions from the Cladek Creditors Trust. The Creditor Agent shall perform the duties and have the rights and obligations proscribed in the Creditors Trust Agreement. The Creditor Agent shall be authorized and directed to execute, deliver, receive, and exchange on behalf of the Estate any and all documents necessary to effectuate the transfer of the Trust Assets to the Cladek Creditors Trust, and any Unclaimed Property thereafter. The Creditor Agent of the Cladek Creditors Trust shall be paid on a per hour basis plus actual out-of-pocket expenses, to be paid monthly from the assets of the Cladek Creditors Trust, pursuant to the Creditors Trust Agreement. The Creditor Agent may be removed for good cause, subject to Bankruptcy Court Approval, pursuant to the terms of the Cladek Creditors Trust Agreement.

#### **ARTICLE VIII – EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

All executory contracts and unexpired leases not assumed prior to the Confirmation Date will be rejected. Any party to a contract or lease that claims damages from the rejection of such lease or contract must file a Claim for such damages within thirty (30) days of: (i) the rejection of such contract or lease; or (ii) confirmation of the Plan, whichever is earlier, or be forever barred from asserting such Claim. Any timely Allowed Claim resulting from a rejected executory contract or unexpired lease shall be treated as a Class 8 Unsecured Claim.

#### **ARTICLE IX – MEANS OF IMPLEMENTATION**

A. **Means of Implementation**. Upon the Effective Date the required payments of administrative expenses, the Administrative Carve-Out and Priority Claims (if any) will be paid by the Trustee from the cash funds of the Debtor then on hand. Upon the making of such payments, and except as otherwise provided in the Plan, all of the Debtor's Property will be assigned and transferred to Newco, which shall be organized and constituted no later than the Effective Date. All of the Debtor's Causes of Action and the Cladek Properties will be transferred to the Cladek Creditor Trust no later than the Effective Date. All of the records concerning the administration of the Case (but not its business records relating to administration of the loan portfolio and automobile inventory), and the Debtor's right to assert all privileges of communication and disclosure, including the accountant-client, attorney-client, and work product privileges shall be transferred to the Cladek Creditors Trust. The Debtor's business records relating to the administration of the loan portfolio and automobile inventory shall be transferred to Newco. Classes 1-7 shall be handled by the Trustee. Distributions of shares to Class 9 shall

be handled by Newco. The Strike Price of the shares of Newco shall be established by the Confirmation Order. Distributions of proceeds from Trust Assets to Class 8, Class 9, and Newco shall be handled by the Cladek Creditors Trust in accordance with the Cladek Creditors Trust Agreement and the terms of the Plan.

B. **Vesting of Assets and Assessment of Avoidance Rights.** Except as otherwise provided in the Plan or the Confirmation Order, upon the Effective Date all Property of the Debtor, excluding all Causes of Action and Cladek Properties, shall be assigned and transferred to Newco and shall vest in Newco free and clear of all Claims and Liens, with the exception only of the liens specifically provided for in this Plan. All Causes of Action and the Cladek Properties shall be assigned and transferred to the Cladek Creditor Trust and shall vest in the Cladek Creditors Trust free and clear of all Claims and Liens, with the exception only of the liens specifically provided for in this Plan and any recorded mortgage liens and statutory liens encumbering any of the Cladek Properties, which recorded mortgage liens and statutory liens shall continue to encumber the respective Cladek Properties to which they may attach.

C. **Post-Confirmation Administration.** The Administrative Carve-Out shall be paid \$50,000 to the Cladek Creditor Trust and \$50,000 to Committee's counsel (and held in trust by Committee's counsel) and shall be utilized solely to pay reasonable professional and attorneys' fees and costs incurred after the Confirmation Date in the implementation of the Plan, communications with Investors and other parties in interest, obtaining the Final Decree, and all matters ancillary to the foregoing, including the transition to Newco of all Property and the formation, litigation, and transition to the Cladek Creditors Trust of all litigations, including all adversary proceedings and objections to Claims pending within the Case to which the Debtor is party as of the Effective Date, and any other litigation pending as of the Effective Date to which the Debtor is a party. Committee's counsel may deduct its fees and costs and the Trustee's fees and costs from the \$50,000 of the Administrative Carve-Out held in trust by Committee's counsel on a monthly basis and shall account to the Cladek Creditors Trust for all such expenditures. Any objections to the fees and costs being incurred or paid may, in the event of a dispute, be brought before the Court for resolution. Cladek Creditor Trust will receive \$50,000 of the Administrative Carve-Out for payment of fees and costs associated with maintaining the trust and conducting a claims analysis, litigating objections to claims and adversary proceedings. The payment of any additional fees or costs beyond the Administrative Carve-Out shall be at the sole discretion of the Cladek Creditors Trust. Any unused portion of the Administrative Carve-Out remaining after twelve (12) months from the Effective Date shall be paid over to the Cladek Creditors Trust.

D. **Newco's Articles of Incorporation and Bylaws.** The Articles of Incorporation and Bylaws of Newco attached hereto as **Exhibit "B"** shall, upon entry of the Confirmation Order, be deemed to have been adopted by all shareholders of Newco, being all of the holders of Allowed Unsecured Claims in Class 9. Within two hundred and forty (240) days of the Effective Date, a meeting of shareholders of Newco shall be held for purposes of electing a Board of Directors of Newco and transacting such additional business as is necessary and appropriate. Shareholders may appear in person or by proxy at such meeting. The individual members of the Committee shall serve as the initial Board of Directors of Newco until the initial meeting of shareholders is held. For purposes of the initial post-confirmation meeting of shareholders of Newco, a quorum shall be present if ten percent (10%) of all shareholders of Newco are present or represented by persons present and holding proxies at such meeting notwithstanding any

provisions in the Articles of Corporation or Bylaws of Newco to the contrary. NOTHING HEREIN HAS BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION AND THE COMMITTEE MAKES NO REPRESENTATIONS OR WARRANTIES CONCERNING THE RIGHT OF ANY PERSON TO TRADE IN NEWCO'S SECURITIES DISTRIBUTED PURSUANT TO THE PLAN.

E. **Dissolution of Creditors' Committee and Discharge of the Trustee.** The Committee shall be dissolved and the Trustee shall be discharged upon the Effective Date of the Plan. Upon the Effective Date the individual members of the Committee then serving shall be constituted as the Board of Directors of Newco. Newco and the Cladek Creditors Trust shall have standing to enforce the terms of the Plan until the Case is closed.

F. **Exoneration of Certain Parties.** Provided that the respective affiliates, officers, directors, representatives, attorneys, financial advisors, and agents of the Trustee, or the members, attorneys, financial advisors, and agents of the Committee are not found by a court of competent jurisdiction to have failed to act in good faith, they shall not be liable to any Person with respect to any action, forbearance from action, decision, or exercise of discretion taken during the period from the Petition Date through the Effective Date in connection with: (a) the operation of the Debtor; (b) the actions and affairs of the Committee; (c) the implementation of any of the transactions provided for, or contemplated in, the Plan; or (d) the administration of the Plan or the Property, other than for willful misconduct or gross negligence. The Trustee, the Committee, and their respective affiliates, officers, directors, representatives, attorneys, financial advisors, and agents may rely upon the opinions of counsel, certified public accountants, and other experts or professional persons employed by the Trustee and the Committee and such reliance shall presumptively establish good faith.

G. **Records Retention and Access.** The Debtor's files and records, including records maintained in electronic form shall be transferred and delivered to Newco on the Effective Date coincident with the balance of the Property.

H. **Tax Reporting.** The Trustee shall ensure the Debtor's compliance with all of the Debtor's tax reporting requirements through confirmation and implementation of the Plan, including issuance of any Form 1099 required to be delivered to Investors. The Trustee shall be authorized to employ such professionals as it deems appropriate for the completion of such tasks.

I. **Timing.** Any payment or distribution pursuant to the Plan, to the extent delivered by the United States Mail, shall be deemed made when deposited into the United States Mail. Any payment or distribution required to be made hereunder on a day other than a Business Day shall be due and payable on the next succeeding Business Day.

J. **Retirement Benefits.** The Debtor does not provide Retirement Benefits to its employees.

## **ARTICLE X – PROCEDURES FOR CONTESTED AND CONTINGENT CLAIMS**

A. **Responsibility for Objecting to Claims.** The Cladek Creditor Trust shall have the standing and responsibility for objecting to the allowance of Claims following the Effective

Date, and to the extent any objection to a Claim shall be pending as of the Effective Date, the Cladek Creditor Trust shall thereupon be substituted as the objecting party. No other party may file objections to Claims after the Effective Date. The Cladek Creditor Trust is not bound by any representations or alleged admissions in the schedules filed by the Debtor and the amended schedules filed by the Trustee relating to a claim being contingent, unliquidated or disputed.

**B. Administration of Disputed Claims.**

(1) No Distribution Pending Allowance. Notwithstanding any other provision of the Plan, no payment or distribution shall be made with respect to any Disputed Claim unless and until such Disputed Claim becomes an Allowed Claim.

(2) Distribution After Allowance. As soon as practicable after a Disputed Claim becomes an Allowed Claim, the holder of such Allowed Claim shall receive a distribution in an amount equal to the aggregate of all the distributions that such holder would have received had such Disputed Claim been an Allowed Claim on the Effective Date. Distributions to each holder of a Disputed Claim, to the extent that such Claim becomes an Allowed Claim, shall be made in accordance with the provisions of the Plan governing the Class to which such Claim belongs. The Creditor Agent shall have the right to make or direct the making of all interim distributions to the holders of the Allowed Claims. No interest shall be paid on account of a Disputed Claim which later becomes an Allowed Claim.

**ARTICLE XI – MODIFICATION OF THE PLAN**

The Committee may propose amendments or modifications to the Plan at any time prior to confirmation, with leave of the Court and upon such notice as the Court may require. After confirmation, the Committee may, with approval of the Court, and so long as it does not materially or adversely affect the interests of creditors, remedy any defect or omission, or reconcile any inconsistencies in the Plan, or in the Confirmation Order, in such manner as may be necessary to carry out the purposes and intent of the Plan.

**ARTICLE XII – MAINTENANCE OF CAUSES OF ACTION**

Except as otherwise provided herein, all Causes of Action including but not limited to avoidance or recovery actions under §§ 542, 543, 544, 545, 547, 548, 549, 550, 551, and 553 of the Bankruptcy Code, and including all claims for disgorgement of False Profits, shall be assigned and transferred to the Cladek Creditor Trust for the benefit of the Class 8 Claimants, Class 9 Claimants and Newco, and the Cladek Creditor Trust may litigate any and all Causes of Action, rights to payments, or claims that may belong or have belonged to the Debtor. All avoidance or other damage claims asserted or assertable against persons involved in the Ponzi scheme and all adversary proceedings brought by the Trustee, and all claims therein, pending as of the Effective Date, shall, upon entry of the Confirmation Order and on the Effective Date, be deemed assigned and transferred to the Cladek Creditor Trust, which shall be substituted as the party in interest in the place and stead of the Trustee, and Cladek Creditor Trust shall continue to have authority to pursue such claims on behalf of Cladek Creditor Trust notwithstanding confirmation of this Plan. The proceeds from such avoidance and recovery efforts will be used to pay the attorney fees and costs incurred in pursuing such claims, with the balance being utilized

to pay Class 8 Allowed Claims and Newco (to fund the growth of Newco's loan portfolio and, in Newco's discretion, to make distributions to shareholders of Newco). Any Investor who received a False Profit shall disgorge to the Cladek Creditor Trust any and all False Profit, with such amounts due and owing as of the Confirmation Date.

**ARTICLE XIII – CONDITIONS PRECEDENT TO  
OCCURRENCE OF EFFECTIVE DATE**

The Effective Date shall not occur unless and until the following conditions have been satisfied or waived by the Trustee and the Committee: (a) the Confirmation Order shall have been entered, in form and substance acceptable to the Committee; and (b) the Confirmation Order shall have become a Final Order.

**ARTICLE XIV – DISCHARGE, RELEASE AND EFFECT OF CONFIRMATION**

Upon the Effective Date: (i) the Property shall be assigned from the Bankruptcy Estate to Newco free and clear of all Claims and Interests, with the exception of any lien specifically provided for in this Plan; and (ii) the Causes of Action and Cladek Property shall be assigned from the Bankruptcy Estate to the Cladek Creditors Trust free and clear of all Claims and Interests, with the exception of any lien specifically provided for in this Plan and any recorded mortgage liens and statutory liens encumbering any of the Cladek Properties, which recorded mortgage liens and statutory liens shall continue to encumber the respective Cladek Properties to which they may attach.

Payments of, distributions to, and other treatment of the Claims of all creditors and equity interests provided for in the Plan shall be deemed to be in complete satisfaction, discharge and release of such Claims. Except as otherwise provided herein, all creditors and equity interest holders shall be permanently enjoined and precluded from asserting against Debtor, Newco, the Cladek Creditors Trust, any of the Property as assigned to Newco, or against any and all Causes of Action assigned to the Cladek Creditor Trust, any other or further Claim against Newco or the Cladek Creditors Trust or any of Debtor's assets assigned to Newco or the Cladek Creditors Trust, based upon any act or omission, transaction or other activity of any kind or nature which occurred prior to the Confirmation Date, except that nothing herein shall enjoin, prohibit, restrict, or affect the rights of the Securities and Exchange Commission in the enforcement of their statutory duties. Without limitation of the foregoing, the Debtor, Newco or the Cladek Creditor Trust shall not be required to pay restitution to any Investor except as expressly set forth herein. Nothing herein shall be construed as a release of any rights or obligations under the Plan or as an injunction against any action to enforce any rights or obligations under the Plan.

**ARTICLE XV– CONSUMMATION OF THE PLAN**

A. **Retention of Jurisdiction.** Pursuant to 28 U.S.C. §§1334 and 157, the Court shall retain exclusive jurisdiction of all matters arising in, arising under, and related to the Chapter 11 Case and the Plan, for the purposes of §§105(a) and 1142 of the Bankruptcy Code, and for, among other things, the following purposes:

- (1) To hear and determine any and all objections to or applications concerning the allowance, classification, priority, compromise, estimation, or payment of any Claim or Equity Interest;
- (2) To hear and determine any all applications for payments of fees and expenses made by any professional pursuant to §§330 or 503 of the Bankruptcy Code, or for payment of any other fees or expenses authorized to be paid or reimbursed under the Bankruptcy Code, and any and all objections thereto;
- (3) To hear and determine pending applications for the rejection, the assumption, or the assumption and assignment of unexpired leases and executory contracts and the allowance of Claims resulting therefrom, and to determine the rights of any party In respect of the assumption or rejection of any executory contract or unexpired lease;
- (4) To hear and determine any and all adversary proceedings, applications, or contested matters, including any remands or appeals;
- (5) To hear and determine all controversies, disputes, and suits which may arise in connection with the execution, interpretation, implementation, consummation, or enforcement of the Plan or in connection with the enforcement of any remedies made available under the Plan;
- (6) To liquidate any disputed, contingent, or unliquidated Claims;
- (7) To ensure that distributions to holders of Allowed Claims are accomplished as provided in the Plan;
- (8) To enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, reversed, revoked, modified, or vacated;
- (9) To enter and implement such orders as may be necessary or appropriate in furtherance of confirmation, implementation, or consummation of the Plan;
- (10) To enable Newco and/or the Cladek Creditor Trust to prosecute any and all proceedings which may be brought to set aside liens or encumbrances and to recover any transfers, assets, properties or damages to which the Cladek Creditor Trust or Newco may be entitled under applicable provisions of the Bankruptcy Code or any other federal, state or local laws, including causes of action, controversies, disputes and conflicts between the Debtor, the Trustee, Newco and/or the Cladek Creditor Trust and any other party, including, but not limited to, any objections to Claims, suits for avoidance and recovery of preferences or fraudulent transfers, and suits for equitable subordination of Claims;
- (11) To consider any modification of the Plan pursuant to §1127 of the Bankruptcy Code, to cure any deficit or omission, or reconcile any

inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;

- (12) To enter and implement such orders as may be necessary or appropriate to execute, interpret, implement, consummate, or enforce the terms and conditions of the Plan and the transactions contemplated under the Plan;
- (13) To hear and determine any other matter not inconsistent with the Bankruptcy Code and Title 28 of the United States Code that may arise in connection with or related to the Plan; and
- (14) To enter a final decree closing the Case.

B. **Abstention and Other Courts.** If the Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising out of or relating to the Case. This Section shall have no effect upon and shall not control, prohibit, or limit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such matter.

C. **Nonmaterial Modifications.** The Committee may, with the approval of the Bankruptcy Court and without notice to holders of Claims and Interests, correct any nonmaterial defect, omission, or inconsistency in the Plan in such manner and to such extent as may be necessary or desirable. The Committee may undertake such nonmaterial modification pursuant to this section insofar as it does not adversely change the treatment of the Claim of any Creditor or the Interest of any Interest holder who has not accepted in writing the modification.

#### **ARTICLE XVI- MISCELLANEOUS**

A. **Disputed Claims.** Notwithstanding any other provision of this Plan, Disputed Claims shall be paid only upon their allowance and the determination of their priority by the Court.

B. **Objection Deadline.** As soon as practicable, but in no event later than sixty (60) calendar days after the Confirmation Date or thirty (30) days after a particular proof of Claim is filed, whichever is later, unless otherwise ordered by the Court, objections to Claims shall be filed by the Cladek Creditor Trust with the Court and served upon the holders thereof and the United States Trustee for the Middle District of Florida.

C. **Withholding of Taxes.** The Trustee shall withhold from any assets and property distributed under this Plan any assets or property which must be withheld for foreign, federal, state or local taxes payable with respect thereto or payable by the Person entitled to such assets to the extent required by applicable law.

D. **Unclaimed Property.** Any assets or other property to be distributed to claimants under the provisions of this Plan which remains unclaimed or otherwise not deliverable to the person or governmental unit entitled thereto, as of twelve (12) months after the date the property was distributed, shall be forfeited by the creditor to the Cladek Creditors Trust and/or Newco. If such unclaimed property shall be a unit of Newco, such unclaimed unit(s) shall revert to Newco,

and any such unclaimed unit(s) shall be cancelled. In such event, such person's or governmental unit's Claim or Interest shall no longer be deemed to be Allowed, and such person or governmental unit shall be deemed to have waived its rights to such payments or distributions under this Plan pursuant to § 1143 of the Bankruptcy Code and shall have no further Claim in respect of such distribution and shall not participate in any further distributions under this Plan with respect to such Claim or Interest.

E. **Non-Negotiated Check.** If a holder of an Allowed Claim or Allowed Interest fails to negotiate a check issued to such holder pursuant to this Plan within ninety (90) days of the date such check was issued, then the amount of cash attributable to such check shall be deemed to be unclaimed property in respect of such holder's Allowed Claim and shall be transferred and delivered to the Cladek Creditors Trust to be applied toward the funding of this Plan. In such event, such holder's Claim shall no longer be deemed to be Allowed and such holder shall be deemed to have waived its rights to such payments or distributions under this Plan pursuant to § 1143 of the Bankruptcy Code and shall have no further Claim in respect of such distribution and shall not participate in any further distributions under this Plan with respect to such Claim and such Claim shall be discharged and forever barred.

F. **Further Action.** The Trustee and Newco are authorized and directed to execute and deliver all documents and take and cause to be taken all action necessary and appropriate to execute and implement the provisions of this Plan.

G. **No Post-Petition Interest.** Except as expressly stated in the Plan or otherwise Allowed by Final Order of the Court, no interest, penalties, late charges, attorney fees or costs arising after the Petition Date are to be allowed on any Claim or Interest.

H. **Extinguishment of Guarantees.** On the Effective Date, and in accordance with the terms of this Plan, all guarantees of collection, payment or performance made by the Debtor shall be discharged, released, extinguished and of no further force or effect.

I. **No Attorneys' Fees.** No attorneys' fees shall be paid with respect to any Claim or Interest except as specified herein or as allowed by a Final Order of the Court obtained prior to the Confirmation Date.

J. **Further Assurance.** If the Committee shall consider or be advised that any further assurances are reasonably necessary or desirable to carry out the provisions hereof and the transactions contemplated herein, the creditors, the Trustee and the Debtor shall, upon reasonable request, execute and deliver any and all documents and assurances, and do all things necessary or appropriate to carry out fully the provisions of this Plan.

K. **Employment of Professionals.** After the Confirmation Date, Newco and the Cladek Creditors Trust is authorized to employ such professionals as it deems appropriate and to compensate them without the further approval of the Court.

L. **Section 1146 Exemption.** Pursuant to 11 U.S.C. § 1146(c), the making or delivery of any instrument of transfer pursuant to, in implementation of, or as contemplated by the Plan, or the vesting, transfer or sale of any real or personal property of the Debtor to Newco and/or the Cladek Creditors Trust pursuant to, in implementation of, or as contemplated by the

Plan, shall not be taxed under any state or local law imposing a stamp tax, transfer tax, or similar tax or fee. The exemption shall continue to apply following the Effective Date to the initial transfer and conveyance of any of the Cladek Properties by the Cladek Creditors Trust to any third party

M. **Withdrawal of Plan.** Upon the action of the Committee, this Plan may be withdrawn at any time prior to the entry of the Confirmation Order. If such option is timely and properly exercised, the withdrawn plan will be null and void and of no legal effect and the Case shall continue and be administered in accordance with the Bankruptcy Code.

N. **Discrepancies.** In the event of any discrepancy between the terms of this Plan and the Disclosure Statement, the terms of this Plan shall control.

O. **Default.** A default by the Cladek Creditors Trust or Newco occurs only when a breach of the terms of this Plan is not cured within thirty (30) days of the receipt by Cladek Creditors Trust or Newco of notice of such breach. The notice must be written and from the party affected by the breach. A breach which is not timely cured shall be a default under the Plan. Unless Cladek Creditors Trust or Newco has defaulted under the Plan, no Person may proceed with litigation against Cladek Creditors Trust, Newco, or their property.

P. **Automatic Stay.** The automatic stay imposed by 11 U.S.C. § 362 of the Code will remain effective until the Effective Date.

Q. **Continued Operations.** The Debtor, through the Trustee, will continue to operate and manage its business through the Confirmation Date and through the Effective Date. Upon the Effective Date the Property shall be assigned to and vest in Newco subject only to any valid lien, security interest, mortgage or other interest in property securing an Allowed Claim provided for in this Plan, an with the exception only of any recorded mortgage liens and statutory liens encumbering any of the Cladek Properties included within the Property, which recorded mortgage liens and statutory liens shall continue to encumber the respective Cladek Properties to which they may attach.

R. **Prosecution of Objection Avoidance Actions and Adversary Proceeding.** The Cladek Creditors Trust shall have authority to file objections to Claims and Interests within the time period required by the Local Rules of the Court unless provided otherwise in the Plan. Objections to late-filed Claims and Claims resulting from the rejection of executory contracts or unexpired leases shall be filed on the later of: (a) the Effective Date, or (b) the date sixty (60) days after Cladek Creditors Trust (if such Claim is filed after the Effective Date) is formed, and any other party in interest receives actual notice of the filing of such Claim. Prior to the Effective Date, the Trustee and, after the Effective Date, Cladek Creditors Trust, shall have the authority to file and prosecute any Causes of Action, including avoidance actions and adversary proceedings, and including all actions for the disgorgement of False Profits, until this Case is closed. The Cladek Creditors Trust shall likewise have the authority to prosecute all Causes of Action assigned to it. Any consensual resolution of the foregoing after the Effective Date will not be subject to approval of the Court and shall be made in the sole discretion of Cladek Creditors Trust. All such actions and proceedings commenced by Cladek Creditors Trust shall be brought in the Court in the Jacksonville Division of the Middle District of Florida.

S. **Notices.** Any notice hereunder shall be in writing, and if by telegram, telex or facsimile, shall be deemed to have been given when sent, and if mailed shall be deemed to have been given three days after the date when sent by registered or certified mail. postage prepaid, and addressed as follows:

To the Debtor:

Michael Phelan, as Trustee  
c/o Jacob A. Brown, Esq.  
Akerman Senterfitt  
50 North Laura Street, Suite 2500  
Jacksonville, Florida 32202

To the Committee or Newco:

Jon E. Kane, Esq.  
Burr & Forman LLP  
450 S. Orange Avenue Suite 200  
Orlando, Florida 32801

T. **Successors and Assigns.** The duties, rights and obligations of any Person named or referred to in this Plan shall be binding upon, and shall inure to the benefit of, the Successors and assigns of such Persons.

DATED this 28th day of October 2010.

**THE OFFICIAL COMMITTEE  
OF UNSECURED CREDITORS  
OF LYDIA CLADEK, INC.**

By *Noel Yell*  
Noel Yell, Chairman

- and

**COUNSEL FOR THE OFFICIAL  
COMMITTEE OF UNSECURED  
CREDITORS OF LYDIA CLADEK, INC.**

By */s/ Jon E. Kane*

Jon E. Kane, Esq.

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[jferris@burr.com](mailto:jferris@burr.com)

Attorneys for the Official Committee of  
Unsecured Creditors of Lydia Cladek, Inc.

**LYDIA CLADEK, INC. TRUST AGREEMENT**

**THIS LYDIA CLADEK, INC. TRUST AGREEMENT** (the "Agreement") is entered into this \_\_\_\_ day of January 2010, by and between Michael Phelan, as Chapter 11 Trustee (the "Trustee") of Lydia Cladek, Inc., (the "Debtor" or the "Settlor") in the Chapter 11 bankruptcy proceeding styled In re: Lydia Cladek, Inc., Case No. 3:10-BK-02805-PMG, pending in the United States Bankruptcy Court for the Middle District of Florida (the "Bankruptcy Court"), and \_\_\_\_\_ in its capacity as the trustee (the "Creditor Agent") appointed by the Official Committee of Unsecured Creditors (the "Creditors Committee") pursuant to the Plan of Reorganization submitted by the Creditors Committee, dated October \_\_, 2010 (the "Plan"), for those purposes set forth herein.

**WITNESSETH**

**WHEREAS**, the Plan provides for the creation of an irrevocable trust for the benefit of Holders of Allowed Class 8 Claims, Holders of Allowed Class 9 Claims, and a newly formed Florida corporation ("Newco") (collectively the "Trust Beneficiaries"); and

**WHEREAS**, the parties have executed this Agreement in order to establish a trust, to be known for all purposes as "The Cladek Creditors Trust" (the "Creditors Trust") in accordance with Treas. Reg. §301.7701-4(d), for the sole purpose of liquidating and distributing the proceeds from the Causes of Action and the Cladek Properties in accordance with the terms set forth in the Plan (any terms not defined herein shall have the meaning ascribed to them as set forth in the Plan); and

**WHEREAS**, pursuant to its authority under the Plan, the Creditors Committee has appointed \_\_\_\_\_ as the Creditor Agent, and \_\_\_\_\_ is willing to accept such appointment and to perform the duties of the Creditor Agent under and in accordance with the terms of this Agreement as set forth below; and

**WHEREAS**, the corpus of the Creditors Trust, and all income earned therefrom that remains after the payment of the U.S. Trustee's fees and administrative expenses related to the administration of the Creditors Trust, shall be used solely for the purpose of discharging the legal obligations of the Debtor's estate owed to the Trust Beneficiaries in accordance with the Plan; and

**WHEREAS**, the parties hereto desire that the Creditors Trust created pursuant to this Agreement qualify as a liquidating trust in accordance with Treas. Reg. §301.7701-4(d) and that as a result of such qualification, the Creditors Trust shall be taxed as a Grantor Trust under and in accordance with the relevant provisions of the Internal Revenue Code of 1986, as amended (the "Code") and the Treasury Regulations pertaining thereto.

**NOW, THEREFORE**, in consideration of the property transferred to the Creditors Trust and other valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, and subject to the terms and conditions of this Agreement and the Plan, the Settlor

and the Creditor Agent have executed this Agreement for the sole benefit of the Trust Beneficiaries and no other party, and do hereby agree as follows:

**ARTICLE I: DEFINITIONS**

For the purposes of this Agreement, the following terms will have the meanings set forth below:

A. **Allowed Claim** shall mean a right against the Debtor within the meaning of §101(5) in respect of which a proof of claim has been filed with the Court within the period of limitation fixed by Rule 3003 or scheduled in the list of creditors prepared and filed with the Court pursuant to Rule 1007(b) and not listed as disputed, contingent or unliquidated as to amount, and in either case as to which no objection as to allowance or amount thereof has been raised within the applicable period of limitation fixed by Rule 3001 or an order of the Court or local rule, or as to which any such objection has been determined by an order or judgment which is no longer subject to appeal or certiorari proceeding and as to which no appeal or certiorari is pending. Unless otherwise specified in the Plan or in a Final Order of the Court allowing such Claim, "Allowed Claim" shall not include: (a) interest on the amount of such Claim accruing from and after the Petition Date; (b) punitive or exemplary damages; or (c) any Claim for Promised Profit or False Profit.

B. **Beneficiary Committee** shall refer to the Beneficiary Committee that will be formed, as of the Effective Date, consisting of any member of the Creditors Committee who holds or represents an Allowed Class 8 Claim or Allowed Class 9 Claim and who notifies the Creditor Agent in writing of his or her or its intention to serve on the Beneficiary Committee.

C. **Causes of Action** shall mean all causes of action of any kind held at any time by the Debtor against any party or parties, including, without limitation, all causes of action held by the Debtor as of the Petition Date, including all actions for the disgorgement of False Profits, and all causes of action held by the Debtor arising after the Petition Date, and including any rights of the Debtor arising under §§ 362(b), 542, 544, 545, 547, 548, 549, 550 or 553 of the Bankruptcy Code. Causes of Action shall include adversary proceeding number 10-ap-00248-PMG and any and all unsatisfied judgments.

D. **Newco** shall mean a Florida corporation to be formed, pursuant to the terms of the Plan, which will receive assignment of substantially all of the Debtor's Property **excluding** the Causes of Action and the Cladek Properties and any property or cash to be surrendered to secured creditors according to the terms of the Plan.

E. **Trust Estate** shall consist of all the Trust Assets.

F. **Trust Assets** which shall mean the Causes of Action, the Cladek Properties and any proceeds therefrom and the \$50,000 to be transferred to the Cladek Creditor Trust from the Administrative Carve-Out.

**ARTICLE II: DECLARATION OF TRUST**

A. The Settlor, subject to the terms of this Agreement and the Plan, hereby irrevocably grants, assigns, transfers, conveys, delivers, delegates and sets over the Trust Estate unto the Creditor Agent, IN TRUST, for the benefit of the Trust Beneficiaries.

B. In addition, the Settlor hereby irrevocably grants, assigns, transfers, conveys, delivers, delegates and sets over unto the Creditor Agent all of the authority, rights, powers and duties previously vested in the Settlor under the Bankruptcy Code or applicable non-bankruptcy law with respect to the Trust Estate, including Settlor's right to pursue any and all Causes of Action transferred to this Creditors Trust, which shall include pending adversary proceedings, which may have been commenced prior to the creation of this Creditors Trust, or may be commenced hereafter, and Creditor Agent shall be substituted as the real party in interest in any such actions commenced by or against the Debtor or the Debtor's estate.

C. To the extent that any law, regulation or contractual provision prohibits the transfer of ownership of any of the Trust Assets from the Settlor to the Creditors Trust or the Creditor Agent, or if for any reason the Settlor shall retain or receive at any point any property which is included in, or intended under the Plan and this Agreement to be included in the definition of Trust Estate, then the Settlor shall and is hereby deemed to hold such property (and any proceeds or products thereof) in trust for the Trust Beneficiaries, and Settlor shall promptly notify the Creditor Agent of the existence of such property and shall promptly take such actions with respect to such property as the Creditor Agent shall direct in writing. It is intended that the Trust Assets transferred pursuant to this paragraph shall provide the Trust Beneficiaries with distributions on account of their Allowed Claims pursuant to and in accordance with the Plan.

**ARTICLE III: CREDITOR AGENT'S ACCEPTANCE**

\_\_\_\_\_, having been appointed by the Creditors Committee, willingly accepts such appointment and agrees to perform the duties of the Creditor Agent upon such terms and conditions as are hereinafter set forth.

**ARTICLE IV: NAME**

The Creditors Trust created pursuant to the terms hereof shall for all purposes be known as the Cladek Creditors Trust. The Creditor Agent shall use this name when filing all taxation and other compliance information with federal or state governmental authorities and in correspondence with the Trust Beneficiaries.

**ARTICLE V : TRUST PURPOSE**

The Cladek Creditors Trust is created hereto for the purpose of receiving the Trust Estate and liquidating and distributing the proceeds from the Trust Estate to the Trust Beneficiaries in

an orderly fashion and in accordance with the terms of the Plan. In accomplishing this purpose, the Creditor Agent shall:

(a) manage, conserve and protect the value of the Trust Estate for the benefit of the Trust Beneficiaries;

(b) collect and liquidate the Trust Estate, by prosecuting objections to Claims and the Causes of Actions vested in the Trust Estate; provided, however, Creditor Agent, in its sole discretion, need only pursue those Causes of Action it deems have a reasonable likelihood of recovery and Creditor Agent may abandon and not pursue any Causes of Action it deems do not have a reasonable likelihood of recovery subject to the Plan; and

(c) distribute to the Trust Beneficiaries all proceeds from the liquidation of the Trust Estate pursuant to the terms of the Plan.

Under no circumstances shall the Creditor Agent have any power to engage in or conduct any trade or business or any other activity except: (1) as specifically provided for in this Agreement or in the Plan; (2) in a manner consistent with Orders of the Bankruptcy Court; or (3) in a manner as is otherwise reasonably necessary and advisable for the orderly liquidation and distribution of the Trust Estate.

#### **ARTICLE VI: ADMINISTRATION OF TRUST ESTATE**

**A. Disposition of Trust Estate.** The Creditor Agent shall disburse the assets of the Trust Estate pursuant to the terms of the Plan. As set forth in the Plan, the Cladek Creditors Trust may make 5 annual distributions with the first distribution to occur one year after the Effective Date (the "First Distribution Date") and each year thereafter for a total of 5 years. The Creditor Agent has discretion to decline to make a yearly distribution if such a distribution would result in a *de minimus* distribution.

Each distribution shall be paid in the following order:

1. To the U.S. Trustee for fees payable under 28 U.S.C. § 1930;
2. For Full payment of costs and expenses related to the administration of the Trust Estate, including attorneys' fees and costs; and
3. To Holders of Allowed Class 8 Claims, on a pro rata basis, until paid in full; and
4. To: (a) Newco of fifty percent (50%) of the remaining Net Trust Proceeds; and (b) Holders of Allowed Class 9 Unsecured Claims a Pro Rata Share of fifty percent (50%) of the remaining Net Trust Proceeds; *provided however that no Creditor will receive an amount greater than its Allowed Claim.*

In the event that there are insufficient funds to pay Allowed Class 8 Claims in full on the First Distribution Date, the Cladek Creditor Trust will make a pro rata distribution to Allowed Class 8 Claims and Allowed Class 9 Claims and Newco will not receive distributions on the First Distribution Date. Once the Class 8 Claims are paid in full, the Cladek Creditor Trust may make future annual distributions, while maintaining a reserve of \$50,000 and if there are sufficient Net Trust Proceeds to make a distribution which is not *de minimus*, and use the remaining Net Trust Proceeds to make a distribution to: (a) Newco of fifty percent (50%) of the remaining Net Trust Proceeds; and (b) to Holders of Allowed Class 9 Unsecured Claims a Pro Rata Share of fifty percent (50%) of the remaining Net Trust Proceeds; *provided; however, no Creditor will receive an amount greater than its Allowed Claim*. On the final annual distribution, to occur no later than 5 years from the Effective Date, the Cladek Creditor Trust shall distribute the Net Trust Proceeds and Trust Assets, including the \$50,000 reserve. In the event that the Class 9 Claims are paid in full, the remainder of the Net Trust Proceeds and Trust Assets, including the \$50,000 reserve will be distributed to Newco.

**B. Distribution of Net Income.** The Creditor Agent is required to distribute at least annually to the Trust Beneficiaries all of the Trust Estate net income plus all net proceeds from the sale of assets, except that the Creditor Agent may retain an amount of net proceeds or net income reasonably necessary to maintain the value of its assets or to meet Allowed Claims and contingent liabilities (including disputed claims) and that the Creditor Agent has discretion to decline to make a yearly distribution if such a distribution would result in a *de minimus* distribution. The Creditor Agent shall make continuing efforts to dispose of the Trust Estate assets, make timely distributions, and not unduly prolong the duration of the Creditors Trust. The Creditor Agent will neither receive nor retain cash or cash equivalents in excess of a reasonable amount to meet Allowed Claims and contingent liabilities (including disputed claims) or to maintain the value of the assets during liquidation. The Cladek Creditors Trust will maintain a minimum of \$50,000 in cash at all times (which shall not be subject to yearly distributions) for payment of administrative and litigation expenses until the Cladek Creditors Trust makes a final distribution of Trust Assets to the Class 9 Creditors and Newco.

**C. Payment of Interest to Trust Beneficiaries.** The Creditor Agent shall hold the Trust Estate without provision for or the payment of interest to any Trust Beneficiary except to the extent prescribed under the Plan.

**D. Reports to Trust Beneficiaries.** Upon written request of a Trust Beneficiary, the Creditor Agent shall submit to the respective Trust Beneficiary a report on the Creditor Agent's activities, which report shall contain such requested information and shall be similar in form and substance to monthly reports filed by a debtor during the pendency of a Chapter 11 case, together with a liquidity and maturity schedule.

**E. Federal Income Tax Information.** After formation of the Creditors Trust, the Creditor Agent shall, as soon as practicable after the close of each calendar year, but in any event prior to March 15, mail to each Trust Beneficiary of record during such year, a statement showing information sufficient for each Trust Beneficiary to determine his, her or its share of

income, deductions and credits for federal income tax purposes in accordance with Section 1.671-4(a) and (b)(3) of the United States Treasury Regulations.

The Trust Beneficiaries will be responsible for reporting the activities of the Creditors Trust with respect to their proportionate interest in the Trust Estate in accordance with the information supplied by the Creditor Agent. Each Trust Beneficiary is required to pay his, her or its proportionate share of any tax with respect to the reported activities, whether or not reserves for the disputed claims are established and regardless of whether the Creditor Agent distributes sufficient cash to pay the taxes. The Creditor Agent will consistently value the assets transferred to the Creditors Trust and those valuations must be used by the Trust Beneficiaries for all federal income tax purposes.

F. **Required Filing.** The Creditor Agent shall prepare and file with appropriate state and federal agencies and authorities, all such documents, forms, reports and returns (including, but not limited to, state and federal income tax returns) as the Creditor Agent shall deem necessary, required or appropriate in connection with the creation, existence, operation or termination of the Creditors Trust, with the advice and assistance of professionals engaged by the Creditor Agent, including legal counsel and accountants.

#### **ARTICLE VII : DUTIES, RIGHTS AND POWERS OF CREDITOR AGENT**

A. **Specific Powers of Creditor Agent.** The Creditor Agent shall have the following specific powers in addition to any powers granted by law (including Florida Statutes Chapter 737.401, *et seq.*, except as may be considered inconsistent with the Plan, this Agreement or a trust created in accordance with Treas. Reg. §301.7701-4(d)), or conferred upon him by any other provision of this Agreement and the Plan; provided, however, that enumeration of the following powers shall not be considered in any way to limit or control the power of the Creditor Agent to act as specifically authorized by any other provisions of this Agreement or the Plan and to act in such manner as the Creditor Agent may deem necessary or appropriate to discharge all obligations of or assumed by the Creditors Trust or provided herein and to conserve and protect the Trust Estate or to confer on the Trust Beneficiaries the benefits intended to be conferred upon them by this Agreement and the Plan. Subject to the enunciated power and authority in the Plan, the Creditor Agent shall have the right and power:

1. To determine the terms on which assets comprising the Trust Estate should be sold, liquidated or otherwise disposed of; and
2. To collect and receive any and all money and other property of any kind or nature due to or owing or belonging to the Creditors Trust and to give full discharge acquittance therefor; and
3. Pending sale or other disposition or distribution, to retain all or any assets constituting part of the Trust Estate regardless of whether or not such assets are, or may become, unproductive or a wasting asset. The Creditor Agent shall not be under any duty to reinvest such

part of the Trust Estate as may be in cash, or as may be converted into cash; nor shall the Creditor Agent be chargeable with interest thereon except to the extent that interest may be paid to the Creditors Trust on such cash amounts; and

4. To retain and set aside such funds out of the Creditors Trust as the Creditor Agent shall deem necessary or expedient to pay, or provide for the amount of (i) unpaid claims, liabilities, debts or obligations of the Creditors Trust; (ii) contingencies; (iii) any reserve amounts; and (iv) the expenses of administering the Trust Estate; and

5. To do and perform any acts or things necessary or appropriate for the management, conservation and protection of the Trust Estate, including acts or things necessary or appropriate to maintain assets held by the Creditor Agent pending sale or other disposition thereof or distribution thereof to the Trust Beneficiaries, and in connection therewith to employ such agents, including professionals as provided for in the Plan and this Agreement, and to confer upon them such authority as the Creditor Agent may deem necessary, and to pay fees and expenses therefor; and

6. To prepare, file, assert, commence and prosecute, or continue to prosecute in the case of existing Causes of Action, any and all litigation as the Creditor Agent may determine to be of value and benefit to the Creditors Trust and the Trust Beneficiaries, including but not limited to, causes of action for subordination under Section 510 of the Bankruptcy Code and causes of action relating to turnover and avoidable transfers under Sections 542 through 550 of the Bankruptcy Code, subject to the Plan; and

7. To cancel, terminate, or amend any instruments, contracts or agreements relating to or forming a part of the Trust Estate to the full extent permitted by such instruments, contracts or agreements and to execute new instruments, contracts, or agreements; and

8. To perform any act authorized, permitted, or required under any instrument, contract, agreement, or cause of action relating to or forming a part of the Trust Estate whether in the nature of an approval, consent, demand, or notice thereunder or otherwise; and

9. To take all actions for and on behalf of the Trust Estate, including but not limited to, the preparation, execution and filing of documents, as the Creditor Agent shall deem necessary, desirable or appropriate in order to complete, conclude and finalize any filing, reporting or other obligations which the Creditors Trust may have to any state or federal governmental authority, including but not limited to, the Internal Revenue Service; and

10. To enter into such consulting or employment arrangements or otherwise retain such accountants, agents, attorneys, consultants or independent contractors as the Creditor Agent shall deem necessary, desirable and appropriate to enable the Creditors Trust to accomplish the purposes enumerated in this Agreement and under the Plan and as may be approved by the Beneficiary Committee; and

11. To make the distributions provided for in the Plan and the distributions set forth in Article VI hereof; and

12. Notwithstanding anything contained in the Plan, the Creditor Agent may elect to liquidate certain assets of the Trust Estate, as deemed appropriate and in the best interests of the Trust Beneficiaries and the Creditors Trust, and may further delay any distribution if deemed in the best interest of the Trust Beneficiaries; provided, however, that if the Creditors Trust has not been terminated on or before the fifth anniversary of the Effective Date, the Creditor Agent shall arrange to have a status conference with the Bankruptcy Court within sixty days after the fifth anniversary of the Effective Date. Such status conference shall be on notice to all Trust Beneficiaries and Newco; and

13. To institute on behalf of the Creditors Trust, any objections to any priority tax claims or the filing of causes of action that are part of the Trust Estate and which could be brought by a trustee, debtor, or debtor in possession under the Bankruptcy Code, including by not limited to, any actions under Sections 544 through 551 of the Bankruptcy Code; and

14. To, as of the Effective Date, act as the sole signatory for the Creditors Trust, and, as the signatory, shall have the sole power and authority on behalf of the Creditors Trust to (a) open and close accounts with any banking, financial or investment institution; (b) make deposits and withdrawals of cash and other property into or from any such account; (c) make or endorse checks with respect to any such account; (d) effectuate purchases and sales of securities and give security purchase and sale orders to brokers or any other third parties, and the exercise of such power and authority shall be deemed to be authorized by and to represent the decision of the Creditor Agent then entitled to make such decision; and

15. To invest in demand and time deposits, such as short-term certificates of deposit, only, in banks and other savings institutions, or other temporary, liquid investments such as Treasury Bills, to the extent reasonably necessary to maintain the value of the assets and to further the liquidating purpose of the Creditors Trust; and

16. To maintain a register of names, addresses and amounts of outstanding claims for Trust Beneficiaries, as may be revised from time to time.

**B. Commencement Period.** Pursuant to M.D. Fla. L.B.R. 3020-1(c), unless otherwise ordered by the Court, the Creditor Agent is required to file any and all Causes of Action or contested matters contemplated by the Plan and any objections to Claims no later than thirty days after the entry of the Confirmation Order. However, based upon authorization of the Court, the time period specified in M.D. Fla. L.B.R. 3020-1(c) shall be extended to sixty days after the entry of the Confirmation Order (the "Commencement Period"). The Court also authorized the Creditor Agent to seek, prior to the expiration of the Commencement Period and upon notice to all parties in interest, further extensions of the Commencement Period.

**ARTICLE VIII: LIMITATIONS ON CREDITOR AGENTS LIABILITIES**

**A. Liability of Creditor Agent.**

1. Liability; Indemnification. The Creditor Agent shall not in any way be liable for any acts or omissions to act except by reason of his gross negligence or willful misconduct in the performance of its duties under the Plan or this Agreement. The Debtor's estate and the Creditors Trust shall indemnify the Creditor Agent and hold it harmless from and against any and all liabilities, expenses, claims, damages and losses incurred by it as a direct result of actions taken or omissions to act by it in such capacity.

2. No Liability for Acts of Predecessor. No successor Creditor Agent shall be in any way responsible for the acts or omissions of any preceding Creditor Agent in office prior to the date on which such person becomes a Creditor Agent, nor shall he, she, or it be obligated to inquire into the validity or propriety of any such act or omission, unless such successor Creditor Agent expressly assumes such responsibility. Any successor Creditor Agent shall be entitled to accept as conclusive any final accounting and statement of the Trust Estate furnished to such successor Creditor Agent by such predecessor Creditor Agent and shall further be responsible only for those assets of the Trust Estate included in such statement.

3. No Implied Obligations. The Creditor Agent shall not be liable except for the performance of such duties and obligations as are specifically set forth herein, and in the Plan and/or the Confirmation Order, and no other or further covenants or obligations shall be implied into this Agreement. The Creditor Agent shall not be responsible in any manner whatsoever for the correctness of any recitals, statements, representations, or warranties herein or in any documents or instrument evidencing or otherwise constituting a part of the Trust Estate. The Creditor Agent makes no representations as to the value of the Trust Estate or any part thereof, nor as to the validity, execution, enforceability, legality, or sufficiency of this Agreement; and the Creditor Agent shall incur no liability with respect to any such matters.

4. Reliance by Creditor Agent on Documents or Advice of Counsel or Other Persons. Except as otherwise provided herein, the Creditor Agent may rely and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document reasonably believed to be genuine and to have been signed or presented by the proper authorized party or parties, and shall have no liability or responsibility with respect to the form, execution, or validity thereof. None of the provisions hereof shall require the Creditor Agent to expend or risk its own funds or otherwise incur financial liability or expense in the performance of any duties hereunder. The Creditor Agent may consult with legal counsel and shall not be liable for any action taken or suffered in reliance upon the advice of such counsel.

5. No Personal Obligation for Debtor Liabilities. Holders of Allowed Claims and other persons dealing with the Creditor Agent in its capacity as Creditor Agent within the scope of this Agreement, shall look solely to the Trust Estate to satisfy any liability incurred by

the Creditor Agent to such person in carrying out the terms of this Agreement, and the Creditor Agent shall have no personal or individual obligation to satisfy any such liability.

#### **ARTICLE IX: TAX MATTERS**

**A. Grantor Trust.** In the event the IRS determines that for tax purposes the Creditors Trust is not a liquidating trust, the Creditor Agent will apply on behalf of the Debtor for tax treatment as a partnership. If the Creditors Trust does not qualify for tax treatment as either a liquidating trust or a partnership, the Creditors Trust will be treated as a corporation, and the earnings of the Creditors Trust will be subject to double taxation, once when earned by the Creditors Trust, and subsequently when the Trust Beneficiaries receive the distributed earnings.

**B. Taxation of Trust Beneficiaries on Formation of Creditors Trust.**

1. On formation of the Creditors Trust in accordance with the terms of this Agreement and the Plan, the Creditor Agent will issue certificates of beneficial interests to the Trust Beneficiaries in exchange for their proportionate level of claims on the assets and liabilities transferred by the Debtor's estate to the Creditors Trust. The transaction will be considered a taxable transaction to each Trust Beneficiary.

2. The basis of each Trust Beneficiary in his, her or its respective trust certificate and in the underlying assets will be each Trust Beneficiary's proportionate share of the fair market value of the assets of the Trust Estate at the time of distribution of the certificates of beneficial interest to initial owners. The Committee believes that the total claimed will far exceed the fair market value of the assets of the Trust Estate. Each Trust Beneficiary will have income or loss equal to the difference between the Trust Beneficiary's proportionate share of the fair market value of the assets and such Trust Beneficiary's tax basis on its claim.

**C. Filing of Trust Income Tax Return.** The Creditor Agent will be required to file a Form 1041 for each year of the Creditors Trust, showing as an attachment to the Form the information regarding the receipts and expenditures of the Creditors Trust.

**D. Providing Taxpayer Identification Number.** All Trust Beneficiaries to receive payment from the Creditor Agent must provide the Creditor Agent with their taxpayer identification number. Payors of interest, dividends, and certain other reportable payments are generally required to withhold thirty-one percent (31%) of such payments if the payee fails to furnish to the payor, his, or her or its correct taxpayer identification number. The Creditors Trust may therefore be required to withhold a portion of any payments made to Trust Beneficiaries who do not provide their taxpayer identification number.

**E. Sale of Trust Beneficiary Claim.** If a Trust Beneficiary desires to sell his, her or its claim, he, she or it must obtain authority to do so from the Creditors Trust. In the event a Trust Beneficiary is permitted by the Creditors Trustee to sell or otherwise dispose of all or any part of his, her or its interest in the Creditors Trust, each subsequent purchaser of a beneficial

interest in the Creditors Trust will have its own separate cost basis in its certificate and in its share of the underlying assets.

#### **ARTICLE X: TRUST BENEFICIARIES**

**A. Rights of Trust Beneficiaries.** Each Trust Beneficiary shall be entitled to participate in the rights and benefits due to a Trust Beneficiary hereunder. The interest of each Trust Beneficiary in the Creditors Trust is hereby declared and shall be in all respects personal property of such Trust Beneficiary and upon the death of an individual Trust Beneficiary his, her or its interest shall pass to his, her or its legal representative and such death shall not terminate the Creditors Trust or otherwise affect the validity of this Agreement. Each Trust Beneficiary shall have the rights with respect to the Trust Estate as are provided by this Agreement and the Plan. No (i) corporation, partnership, limited liability company, limited liability partnership or other entity, including any assignee or successor in interest of such entity, or (ii) widower, widow, heir, or devisee of any person who may be a Trust Beneficiary shall have any right of dower, elective share, homestead, inheritance, or of partition, or any other right, statutory or otherwise, in any property whatever forming a part of the Trust Estate, but the whole title to all the Trust Estate shall be vested in the Creditor Agent and the sole interest of the Trust Beneficiaries shall be the rights and benefits given to such persons under this Agreement.

**B. Valuation; Termination.**

1. **Value of Trust Interest.** The value of the initial interest of any Trust Beneficiary in the Creditors Trust shall be the fair market value of the Trust Beneficiary's claim determined as of the contribution date. The fair market value of the claim shall be stated on the certificate issued to the Trust Beneficiary by the Creditor Agent. The initial value of the Trust Beneficiary's interest shall thereafter be adjusted annually by the Creditor Agent as of December 31. The Trust Beneficiary's interest shall be adjusted for receipts and distributions in accordance with the Creditors Trust's books of account. The value of the Trust Beneficiary's interest, as established and maintained by the Creditor Agent, shall be the value of the Trust Beneficiary's interest as of January 1 of the given year rounded to the nearest dollar.

2. **Termination of Creditors Trust.** Once the Trust Beneficiaries have received full distribution of the amounts in accordance with the Plan, including accrued but unpaid income applicable to the class, if any, the Creditor Agent will be considered to have redeemed the interest of the entire class and may cancel the interests of the Trust Beneficiaries of the Creditors Trust. Upon complete distribution of the funds available for all of the Trust Beneficiaries, the Creditor Agent may terminate the Trust interests.

The Creditor Agent shall notify the Trust Beneficiaries in writing that their interests in the Creditors Trust has terminated. Thereafter, the Creditor Agent shall have no further duty to the Trust Beneficiaries other than to report tax information related to the final year of the Trust Beneficiary's interest in the Creditors Trust. Notwithstanding the foregoing, the term of the Creditors Trust is to be five (5) years or less in accordance with Article XII hereinbelow.

C. **Transferability of Interests of Trust Beneficiaries in Creditors Trust is Limited.** The Trust Beneficiaries acknowledge their special relationship in the creation and administration of the Creditors Trust. Accordingly, no Trust Beneficiary may assign, transfer, encumber, or in any other manner alienate or dispose of all or any part of his, her or its interest in the Creditors Trust without the unanimous consent of the Creditor Agent and the members of the Beneficiary Committee, provided the member is not a party to the transaction. In the event a Trust Beneficiary desires to transfer his, her or its interest in the Creditors Trust he, she or it shall first notify the Creditor Agent and the Beneficiary Committee in writing of the circumstances surrounding the intended transfer. Provided consent is received from the Creditor Agent and the Beneficiary Committee who are not parties to the contemplated transaction, the Trust Beneficiary intending to sell his, her or its interest may transfer his, her or its interest in the Creditors Trust by providing to the Creditor Agent such written documentation and other information as may be required to transfer the interest. In the event of a transfer of any interest of any Trust Beneficiary, as permitted by this Agreement, the transferee shall take and hold such interest subject to the terms and provisions of this Agreement and shall give written notice of such transfer to the Creditor Agent. The Creditor Agent shall not be liable to any transferee of an interest of a Trust Beneficiary for any distributions provided for hereunder unless and until the Creditor Agent receives written notice of such transfer together with appropriate assignment and transfer documents signed by the Trust Beneficiary.

#### **ARTICLE XI: DURATION OF TRUST ESTATE**

A. **Duration.** This Creditors Trust is effective as of the Effective Date of this Agreement, and shall remain in existence and continue in full force and effect until all of the following shall have occurred: (a) the Trust Estate has been reduced to cash or the Creditor Agent has determined that it is impracticable or not in the best interest of the Trust Beneficiaries of the Creditors Trust to do so; (b) all costs, expenses and obligations incurred in administering the Creditors Trust have been paid and discharged; (c) the Trust Estate has been distributed to the Trust Beneficiaries in accordance with the Plan; and (d) a Final Report has been filed and a Final Order of the Bankruptcy Court closing the Chapter 11 Case has been entered; provided, however, that the Trust shall not remain in existence for more than five years from the effective date of this Agreement.

B. **Extension of Trust Term.** If warranted by the facts and circumstances provided for in the Plan, and subject to the approval of the Bankruptcy Court, upon a finding that the extension is necessary to the purpose of this Creditors Trust, the term of the Creditors Trust may be extended for a finite term based on the particular circumstances. Each extension must be approved by the Bankruptcy Court within six months of the beginning of the extended term.

#### **ARTICLE XII: AMENDMENTS**

A. **Amendments.** The Creditor Agent may propose any declarations amending this Agreement for the purpose of adding any provisions to or changing in any manner or eliminating

any of the provisions of this Agreement or amendments hereto; provided, however, that no such amendment shall permit the Creditor Agent to act in any manner which is inconsistent with the Plan, or engage in any activity prohibited by this Agreement. The Creditor Agent shall conduct a vote of the Beneficiary Committee and any amendment to this Agreement shall require Beneficiary Committee Consent. The amendment shall become effective upon receipt of the Beneficiary Committee Consent as set forth in Article X.

**B. Notice and Effect of Amendment.** Upon approval of any such declaration of amendment by the Creditor Agent, this Agreement shall be deemed to be modified and amended in accordance therewith and the respective rights, limitations of rights, obligations, duties and immunities of the Creditor Agent and the Trust Beneficiaries under this Agreement shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of this Agreement for any and all purposes.

### **ARTICLE XIII: EFFECT OF AGREEMENT ON THIRD PARTIES**

**A. Creditor Agent Not Personally Liable.** Third parties dealing with the Creditor Agent shall look only to the Trust Estate to satisfy any liability incurred by the Creditor Agent to such person in carrying out the terms of this Creditors Trust, and the Creditor Agent shall have no personal or individual obligations to satisfy any such liability.

**B. Authority of Creditor Agent.** Any third party dealing with the Creditor Agent shall be fully protected in relying upon the Creditor Agent's certificate signed by the Creditor Agent that such Creditor Agent has authority to take any action under this Agreement.

### **ARTICLE XIV: COMPENSATION OF CREDITOR AGENT AND PROFESSIONALS**

**A. Creditor Agent.** The Creditor Agent shall be compensated for its services as Creditor Agent hereunder. The Creditor Agent shall be paid hourly for its services, for the time worked in performing his duties hereunder, subject to the terms of this Agreement, and shall not be limited to a statutory percentage of monies disbursed hereunder. In addition, the Creditor Agent shall be reimbursed for the ordinary and necessary out-of-pocket expenses it incurs in fulfilling its duties with respect to the Creditors Trust. Such compensation shall be paid monthly from assets of the Trust Estate.

**B. Payment of Professionals.** The Creditor Agent may retain and compensate professionals on such terms as the Creditor Agent deems reasonable, subject to the terms of this Agreement, without Bankruptcy Court approval. All costs and expenses and obligations incurred by the Creditor Agent in administering the Creditors Trust or in any manner connected, incidental or related thereto shall be a charge against the Creditors Trust, including but not limited to, payments to the Creditor Agent and any attorney, accountants, brokers or other professionals employed by the Creditor Agent (collectively, the "Trust Professionals"). The Trust Professionals will submit copies of the complete invoices, with time records, each month. Upon being satisfied as to the correctness and reasonableness of the cost, expenses and

obligations, the Creditor Agent will approve and direct payment to the Trust Professionals within thirty (30) days of receipt of the invoice.

**ARTICLE XV: CREDITOR AGENT AND SUCCESSOR CREDITOR AGENT**

**A. Resignation and Removal.** The Creditor Agent may:

1. resign and be discharged from the Creditors Trust hereby created only by filing an appropriate motion in and obtaining an Order of the Bankruptcy Court setting forth the reason therefor; or
2. be removed for good cause (as defined under the common law of Florida) by Beneficiary Committee Consent upon a vote of Beneficiary Committee members as provided in Section X F. of this Agreement.

Such resignation or removal shall become effective upon the appointment of the Creditor Agent's successor by a Final Order of the Bankruptcy Court and such successor's acceptance of such appointment.

In the event that the Beneficiary Committee elects to remove the Creditor Agent, the Beneficiary Committee may employ counsel to assist it, and such counsel shall be paid from the Trust Estate, subject to Bankruptcy Court approval.

**B. Appointment of Successor Creditor Agent.** Should the Creditor Agent resign, be removed by the Beneficiary Committee, die, or become incapacitated, a vacancy shall be deemed to exist. The Beneficiary Committee shall have the right to elect the successor trustee by Beneficiary Committee Consent, but in all events subject to the final approval of the Bankruptcy Court. The Bankruptcy Court may appoint a successor at the request of the Creditor Agent or the Trust Beneficiaries only in the event the Beneficiary Committee is unable to, or chooses not to, elect their own successor, and only upon the filing of a motion that properly sets forth the reason successor trustee must be appointed and the results of any vote taken relating thereto. In any event, notice and hearing shall be required and the moving party must obtain Bankruptcy Court approval. The Creditor Agent shall be required to continue to perform its duties until a successor is approved by Final Order of the Bankruptcy Court, unless the Creditor Agent is incapable of action. The compensation, if any, of the successor Creditor Agent shall be as stated in the instrument evidencing such successor Creditor Agent's appointment.

**C. Acceptance of Appointment by Successor Creditor Agent.** Each successor Creditor Agent appointed hereunder shall execute an instrument accepting such appointment. Thereupon such successor Creditor Agent shall, without any further act, become vested with all the estates, properties, rights, powers, trust, and duties of his, her or its predecessor in the Creditors Trust hereunder with like effect as if originally named therein; but the retiring Creditor Agent shall nevertheless, when requested in writing by the successor Creditor Agent, execute and deliver any instrument or instruments conveying and transferring to such successor Creditor Agent upon the Creditors Trust herein expressed, all the estates, properties, rights, powers, and

trusts of such retiring Creditor Agent, and shall duly assign, transfer, and deliver to such successor Creditor Agent all property and money held by him hereunder. Notwithstanding the appointment of a successor Creditor Agent, the retiring Creditor Agent shall, without limitation, continue to be entitled to the protection provided in Article VIII hereof.

#### **ARTICLE XVI: ACTIONS AGAINST THE TRUST ESTATE**

A. **Limitation on Suits by Trust Beneficiaries.** No Trust Beneficiaries shall have any right by virtue of any provision of this Agreement to institute any action or proceeding at law or in equity against any party upon or under or with respect to the Trust Estate.

B. **Requirement of Undertaking.** The Creditor Agent may request any court to require, and any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Agreement, or in any suit against the Creditor Agent for any action taken or omitted by the Creditor Agent, that the filing party litigant in such suit of an undertaking pay the costs of such suit, and such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant.

#### **ARTICLE XVII: MISCELLANEOUS**

A. **Further Assurances.** The Settlor and the Creditor Agent shall promptly execute and deliver such further instruments and do such further acts as may be necessary or proper to more effectively transfer to the Creditor Agent any portion of the Trust Estate intended to be conveyed pursuant to the Plan and this Agreement to otherwise carry out the intentions of this Agreement and the Plan.

B. **Retention of Jurisdiction.** The Bankruptcy Court shall retain jurisdiction over this Agreement and the Creditors Trust established hereby as set forth in the Confirmation Order. In the event the Bankruptcy Court does not have or accept jurisdiction over any issue relating to this Agreement, then the requirement for Bankruptcy Court approval provided in various sections of this Agreement shall be satisfied by approval from any court of competent jurisdiction.

C. **Severability.** If any one or more of the provisions herein, or the application thereof in any circumstances, is held invalid, illegal or unenforceable in any respect or for any reason, the validity, legality and enforceability of any such provision in every other respect, and of the remaining provisions, shall not in any way be impaired or affected. In such event, there shall be added as part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable. The effective date of the added provision shall be the date upon which the prior provision was held to be invalid, illegal or unenforceable.

**D. Filing Documents.** This Agreement shall be filed or recorded in such office or offices as the Creditor Agent may determine to be necessary or desirable. A copy of this Agreement and all amendments thereof shall be filed in the office of the Creditor Agent and shall be available during regular business hours for inspection by any Trust Beneficiary or his, her or its duly authorized representative. The Creditor Agent shall file or record any amendment of this Agreement in the same places where the original Agreement is filed or recorded. The Creditor Agent shall file or record any instrument which relates to any change in the office of the Creditor Agent in the same places where the original Agreement is filed or recorded.

**E. Laws as to Construction.** This Agreement shall be governed and construed in accordance with the laws of the State of Florida, without giving effect to the principles of conflicts of law.

**F. No Assignment.** Except as otherwise provided herein, the obligations, duties or rights of the Creditor Agent under this Agreement shall not be assignable, voluntarily, involuntarily or by operation of law, and any such attempted assignment shall be void.

**G. Trust Year.** The Trust will utilize the 12 month period selected by the Creditor Agent as its year for tax and financial accounting purposes. This may be the Calendar Year.

**H. Effectiveness.** This Agreement shall become effective upon final execution of this Agreement.

**I. Notices.** Any notice or other communication hereunder shall be deemed to have been sufficiently given, for all purposes, if given by telefax or by being deposited, postage prepaid, in a post office or letter box addressed to the Beneficiary at his address or telefax number, as appropriate, as shown on the records of the Creditor Agent and addressed to the Creditor Agent at:

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except that notice of change of address and/or telefax number shall be effective only upon receipt thereof. Any notice given by mail in accordance with this paragraph shall be deemed to be effective three (3) days following its deposit in the mail, and any notice given by telefax in accordance with this paragraph shall be deemed to be effective upon receipt, as evidenced by a telefax confirmation.

**J. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

**K. Entire Agreement.** This Agreement (including the recitals and the schedules hereto), the Plan and the Confirmation Order constitute the entire agreement of the parties and there are no representations, warranties, covenants, or obligations except as set forth herein or

therein. This Agreement, the Plan, and the Confirmation Order supersede all prior and contemporaneous agreements, understandings, negotiations, and discussions, written or oral, of the parties hereto, relating to any transaction contemplated hereunder. In the event of any inconsistency between this Agreement, the Plan, and the Confirmation Order, the Confirmation Order shall govern. Except as otherwise specifically provided herein, nothing in this Agreement is intended or shall be construed to confer upon or to give any person other than the parties hereto and their respective heirs, administrators, executors, successors, and assigns any rights or remedies under or by reason of this Agreement.

**IN WITNESS WHEREOF**, the undersigned have caused this instrument to be executed as of this \_\_\_ day of \_\_\_\_\_ 2010 to evidence their consent and agreement with the terms and provisions of this Agreement.

**SETTLOR**

LYDIA CLADEK, INC.

By: \_\_\_\_\_  
Michael Phelan, as Chapter 11 Trustee  
of Lydia Cladek, Inc.,

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

Personally appeared before me, an officer duly-authorized to administer oaths and accept acknowledgments within the State of Florida, \_\_\_\_\_, who, having produced a current Florida driver's license as adequate photographic identification, did execute the foregoing Creditors Trust Agreement before me, did acknowledge such execution as his free act and deed before me and did not take an oath.

Witness my hand and seal this \_\_\_ day of \_\_\_\_\_, 2004, at \_\_\_\_\_,  
\_\_\_\_\_ County, Florida.

My commission expires:

Notary Public

**CREDITOR AGENT**

By: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

Personally appeared before me, an officer duly-authorized to administer oaths and accept acknowledgments within the State of Florida, \_\_\_\_\_, who, having produced a current Florida driver's license as adequate photographic identification, did execute the foregoing Creditors Trust Agreement before me, did acknowledge such execution as his free act and deed before me and did not take an oath.

Witness my hand and seal this \_\_\_ day of \_\_\_\_\_, 2010, at \_\_\_\_\_,  
\_\_\_\_\_ County, Florida.

My commission expires:

Notary Public

**ARTICLES OF INCORPORATION**

of

**NEWCO, INC.**

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The undersigned, acting as Incorporator, desiring to form a corporation for profit pursuant to the Florida Business Corporation Act, adopts the following Articles of Incorporation for the corporation (the "Corporation").

**ARTICLE I**  
**NAME**

The name of this Corporation is NEWCO, INC.

**ARTICLE II**  
**ADDRESS OF PRINCIPAL OFFICE**

The principal office and street address of this Corporation is [CORPORATION ADDRESS].

**ARTICLE III**  
**EXISTENCE; DURATION**

The date of corporate existence shall be the date of execution of these Articles provided the Articles are filed with the Department of State within five (5) days of the date of execution, exclusive of legal holidays, and if not so filed, then the date of corporate existence shall be the date of the filing. This Corporation shall exist perpetually unless dissolved by operation of law.

**ARTICLE IV**  
**GENERAL PURPOSE**

The general nature of the business to be transacted by this Corporation and its power shall be:

- A. To engage in any lawful business as provided for under the laws of the State of Florida.
- B. To lease, sell, exchange, mortgage, buy, transfer, hold, own, work, develop, improve, divide, sub-divide, pledge or in any manner whatsoever acquire and dispose of, on its own, account or on commission, property of all kinds, real, personal and mixed and including rights, easements, and incorporeal hereditaments appurtenant thereto, and including patent and patent rights and processions; and while the owner of any property to exercise all the rights, powers and privileges of ownership to the same extent as natural persons might do, including the right to vote the stock of other corporations owned by it, with power to designate some person for that purpose from time to time to the same extent as natural persons might or could do.

**COMPOSITE**  
**EXHIBIT B**

C. To purchase or otherwise acquire, and to own, mortgage, pledge, sell, assign, transfer, or otherwise dispose of, and to invest in, trade in, deal in and with goods, wares, merchandise, real and personal property, and services, of every class, kind and description.

D. To conduct business in, have one or more offices in, and buy, hold, mortgage, sell, convey, lease, or otherwise dispose of real or personal property, including franchises, patents, copyrights, trademarks, and licenses, in the State of Florida, and in all other states and countries.

E. To contract debts and borrow money, issue and sell or pledges bonds, debentures, notes and other evidences of indebtedness, and to execute such mortgages, transfers of corporate property, or other instruments to secure the payment of corporate indebtedness as required.

F. To guarantee, endorse, purchase, hold, sell, transfer, mortgage, pledge, or otherwise acquire or dispose of the shares of capital stock thereof, or any bonds, securities, or other evidences of indebtedness created by any other corporation of the State of Florida or any other state or government, and while owner of such investments to exercise all the rights, powers and privileges of ownership, including the right to vote such investments.

G. To own, maintain, use and operate, trucks, automobiles and other vehicles, for itself and for hire, and in connection therewith to transport from point to point freight or any articles whatsoever in consideration of the charges to be made therefore, or for itself.

H. To own, maintain, use and operate any tools, plant equipment, appliances, supplies, fixtures, equipment, or other articles or things whatsoever, and to lease, let, hire, buy, sell, trade, exchange, and deal with any of the foregoing in any manner whatsoever, for itself, for others, or for hire.

I. To conduct a general brokerage agency and commission business for others in the purchase and sale of personal property, stocks, bonds and notes, and to negotiate loans thereon for others; to act as trustee in deeds of trust or mortgages on real or personal property, or any evidences of value to secure them and to act as agents for letting houses, lands, or personal property, and the collection of rents and the payments of taxes.

J. To maintain and keep storage warehouses for the storage and deposit of goods and merchandise of all kinds and descriptions, and conduct all business appertaining thereto, including the making of advances on goods stored and deposited with it, and to have and receive all the rights and emoluments thereto belonging.

K. To buy, loan money upon, sell, transfer, assign, discount, borrow money upon and pledge as collateral, and otherwise deal as principal, agent, or broker in bills of lading), warehouse receipts, evidence of deposit and storage of personal property, bonds, stocks, promissory notes, conditional bills of sale, retain title contracts, commercial paper, accounts invoices, choses in action, interest in estate, contracts, mortgages on real and personal property, pledges of personal property and other evidence of indebtedness of persons, firms or corporations and to own, hold and convey such real estate and share of stock in other corporations, domestic and foreign) as may be necessary or expedient in the operation of its business, and to do all things incidental thereto; to buy, sell and deal in all kinds of listed and unlisted bonds and stocks on commission; to act as agent or factor for any person, firm or corporation; but not, however, for the purpose of carrying on the business of banking or any business for the transaction of which a corporation is required under the laws of the State of Florida to qualify as a banking corporation.

L. The corporation may use and apply its surplus earnings or accumulated profits authorized by law to be reserved, to the purchase or acquisition of property, and to the purchase or acquisition of its

own capital stock from time to time, and to such extent and in such manner, and upon such terms as its Board of Directors shall determine, and to hold the same in its treasury to be thereafter sold, issued, or disposed of when and in such manner as the Board of Directors may deem expedient; and neither such property nor the capital stock taken in payment or satisfaction of any debt due to the corporation shall be regarded as profits for the purpose of declaration or payment of dividends, unless otherwise determined by a majority of the Board of Directors, or by a majority of the stockholders.

M. To acquire by purchase, subscription or otherwise and to hold or dispose of stocks, bonds, coupons, mortgages, deeds of trust, debentures, securities, obligations, notes and other evidences of indebtedness of any corporation, stock company, or association now or hereafter existing, and whether created by or under the laws of the State of Florida, or otherwise; and to pay for any of the same in cash, in property of any kind, in services, in the stock of this corporation, in bonds, in notes, or otherwise, or by undertaking the whole or any part of the liabilities of the transferor; to acquire and use, and to sell, assign, transfer, mortgage, pledge, exchange, distribute or otherwise dispose of the whole or any part of the same; and to aid in any manner any corporation, stock company, or association whose stock, bonds or other obligations are held or are in any manner guaranteed by the company, and to do any other acts or things for the preservation, protection or improvement or enhancement of the value of any such stocks, bonds or other obligations, to exercise all the lights, powers, privileges of ownership thereof, and to exercise all voting power thereon, with power to designate some person for that purpose from time to time to the same extent as a natural person or persons might or could do.

N. To enter into, make and perform contracts of every kind for any lawful purpose with any person, firm, association, corporation, municipality, body politic, country, state, government, or colony dependency thereof.

O. To acquire the good will, rights and property, and the whole or any part of the assets, tangible or intangible, and to undertake or in any way assume the liabilities of any person, firm or corporation or association; to pay for the said good will, rights, property and assets in cash, in property of any kind, in the stock of this corporation, in bonds, or otherwise, or by undertaking the whole or any part of the property so purchased; to conduct in any lawful manner the whole or any part of any business so acquired; and to exercise all powers necessary or convenient in or about the conduct and management of such business.

P. For itself or as agent, broker, or correspondent for others, to negotiate and make loans, unsecured or secured by mortgages, bills of sale, or otherwise, upon personal or real property; and to do all things necessary in the transaction of business as loan correspondent or mortgage company. In the purchase or acquisition of property, business rights, or franchises, or for additional working capital, or for any other object in or about its business affairs, and without limit as to amount, to incur debts, and to raise, borrow and secure the payment of money in any lawful manner, including the issue and sale or other disposition of bonds, warrants, debentures, obligations, negotiable and transferable instruments and evidences of indebtedness of all kinds, whether secured by mortgage, pledge, deed of trust, or otherwise.

Q. To conduct its business or any part or parts thereof in the United States of America, and in foreign countries or jurisdiction without restriction as to place; and to have one or more offices or agencies and keep such books of the company outside of the State of Florida as are not required by law to be kept within this State.

R. To do all and every thing necessary and proper for the accomplishment of the objects enumerated in these Articles of Incorporation or any amendments thereto, or necessary or incidental to the protection and benefit of this Corporation and in general to carry on any lawful business necessary or

incident- also the attainment of the objects of this corporation, whether or not such business is similar to the nature of the objects set forth to the same extent as a natural person might or could do.

None of the objects and powers hereinabove specified and clauses and paragraphs contained in this Article IV, shall in anywise be limited or restricted by reference to or inference from the terms of any other objects, powers, clauses or paragraphs of this Article IV or any other Article herein, but the objects and powers specified in each paragraph and clause in this Article IV shall be regarded as independent objects and powers. The foregoing clauses shall be construed both as objects and powers, and it is expressly provided that the foregoing enumeration of specific powers shall not be held to restrict or limit in any manner the powers of this corporation as may be provided by law or otherwise.

**ARTICLE V**  
**CAPITAL STOCK**

This Corporation is authorized to issue [NUMBER AUTHORIZED SHARES (#####)] shares of capital stock, which shall be designated Common Shares with a par value of One and No/100 Dollars (\$1.00). The Corporation shall issue common shares of the Corporation to the holders ("Claim Holders") of Class 9 Unsecured Claims in accordance with the terms and conditions of the Plan of Reorganization ("Plan") confirmed and approved in that cause of action styled In re: Lydia Cladek, Inc., debtor, Case No.: 3:10-BK-02805-PMG, Chapter 11, in and for the United States Bankruptcy Court, Middle District of Florida, Jacksonville Division.

The Corporation, in furtherance of the Plan, may at any time and from time to time issue and dispose of any authorized and unissued shares of stock of the Corporation and may create optional rights to purchase or subscribe for shares of stock in the Corporation by granting the Claim Holders the right to subscribe for additional common shares of the Corporation to be purchased from proceeds received from distributions of the Cladek Creditors Trust (as credited under the Plan). Such stock may be issued and disposed of at the strike price as determined in accordance with the Plan. The Directors may establish such other procedures for the issuance and disposal of stock as in accordance with the Plan.

**ARTICLE VI**  
**NO PRE-EMPTIVE RIGHTS**

No shareholders shall have any pre-emptive or similar rights.

**ARTICLE VII**  
**BOARD OF DIRECTORS**

The business of the corporation shall be conducted and managed by a Board of Directors, consisting of not less than one (1) member, as fixed from time to time by the By-Laws of the corporation. The corporation shall have seven (7) Director(s) initially. The Board of Directors shall be elected or appointed by the Stockholders, but it shall not be necessary that such Directors be stockholders of the corporation.

The name and street address of the first Board of Directors of this corporation who shall hold office until his/her successors are elected and qualified shall be:

NAME ADDRESS

Gary L. Alligood, 115 Sunset Harbor Way #202 St. Augustine FL 32080;

Rudolph J. Danowski, 127 Hogsback Road, Oxford, CT, 06478;

David J. Rees, 4219 Bunker Dr., Quincy, IL 62305;

Robert F. Helfferich, 21409- 60th Street, Bristol, WI 53104-9732;

Noel Yell, 9075 June Lane, St. Augustine, FL 32080;

Michael Egelman, 127 Bonita Road, St. Augustine, FL 32086; and

Donald R. Radbill, 221 N. Forest Dune Dr. St. Augustine, FL 32080.

**ARTICLE VIII  
OFFICERS**

The initial officers of the Corporation shall be as stated below. Thereafter, the officers of the corporation shall be elected by the Board of Directors of the corporation at a meeting to be held immediately following the annual meeting of the stockholders and new offices may be created, and appointment may be made therefore, and any office that may become vacant may be filled by the Board of Directors of the corporation at any regular meeting or at any special meeting called for that purpose. The duties of the officers of the corporation shall be prescribed by the By-Laws.

PRESIDENT \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

VICE PRESIDENT \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SECRETARY \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

TREASURER \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ARTICLE IX  
ADDITIONAL POWERS**

In furtherance and not in limitation of the powers conferred by statute the corporation shall have and may exercise the following powers:

1. The corporation shall have the power, if the Bylaws so provide, to hold meetings, both of stockholders and Directors, either within or without the State of Florida, at such places as may from time to time be designated by the Board of Directors.

2. Meetings of the Directors or stockholders may be held upon such notice thereof as may be set forth in the By-Laws of the corporation subject to any statutory restrictions relative thereto, but any requirement as to notice of such meetings that may be set forth in the By-Laws of the corporation shall not prevent, and nothing herein shall be construed as preventing any stockholder or Director from waiving notice of any meeting in such manner as may be provided or permitted by the statutes of the State of Florida, and by the By-Laws of this corporation consistent therewith.

3. The number of Directors of this corporation shall be fixed from time to time by the Bylaws, subject to any limitation imposed by these Articles of Incorporation or any amendment thereto. Any vacancy in the Board of Directors, caused by an increase in the number of Directors, or by death, resignation, or other cause, may be filled by the Directors in office, by the affirmative vote of a majority thereof, and the person so chosen to fill any such vacancy shall hold office until the next annual meeting of the stockholders, and until his successor shall have been elected and shall have qualified.

4. The corporation in its Bylaws may confer upon the Directors powers additional to the foregoing and to the powers and authorities expressly conferred upon them by statute.

5. It shall not be necessary for any officer to be a stockholder of the corporation.

6. The annual meeting of the stockholders shall be held on such day as may be fixed by the Bylaws of the corporation, and the date of such meeting may be changed from time to time as the Bylaws may provide; and the manner of calling meetings of stockholders and Directors shall be fixed by the Bylaws.

7. The corporation reserves the right to amend, alter, change or repeal any provision contained in these Articles of Incorporation, in the manner now or hereafter prescribed by statute and all rights conferred on stockholders herein are granted subject to this reservation, except that any amendment to Article III shall require a majority approval of all issued shares of common stock, voting and non-voting, and the holders of such voting and non-voting shares of common stock shall be deemed a shareholder of record entitled to vote.

#### **ARTICLE X** **INDEMNIFICATION**

Each Director and officer in consideration of his services, shall be indemnified, whether then in office or not, for the reasonable costs and expenses incurred by him in connection with the defense of, or for advice concerning, any claim asserted or proceeding brought against him by reason of his being or having been an officer of the corporation or Director of the corporation, whether or not wholly owned or by reason of any act or omission to act as such Director or officer, provided that he shall not have been derelict in the performance of his duty as to the matters or matter in respect of which claim is asserted or proceeding brought. The foregoing right of indemnification shall not be exclusive of any other rights to which any Director or officer may be entitled as a matter of law.

#### **ARTICLE XI** **CONFLICTS OF INTEREST**

No contract or other transaction between the corporation and any other firm or corporation shall be affected or invalidated by reason of the fact that any one or more of the Directors or officers of this corporation is or are interested in, or is a member, stockholder, director or officer, or are members, stockholders, directors, or officers of such other firm or corporation: and any director or officer or officers, individually or jointly, may be a party or parties to, or may be interested in, any contract or



(SEAL)

Print name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**ACCEPTANCE BY REGISTERED AGENT**

Having been named as registered agent for NEWCO, INC. at the place designated in the Articles of Incorporation, I am familiar with and hereby agree to comply with the provisions of all statutes relative to the proper and complete performance of my duties.

REGISTERED AGENT:

\_\_\_\_\_  
[REGISTERED AGENT]

**CERTIFICATE DESIGNATING PLACE OF BUSINESS OR DOMICILE  
FOR THE SERVICE OF PROCESS WITHIN THIS STATE,  
NAMING AGENT UPON WHOM PROCESS MAY BE SERVED**

In compliance with the laws of Florida, the following is submitted:

That desiring to organize under the laws of the State of Florida with its principal office as indicated in the foregoing Articles of Incorporation at [CORPORATION ADDRESS], the corporation named in said articles has named [REGISTERED AGENT WITH ADDRESS], as its statutory registered agent.

Having been named the statutory agent of said corporation at the place designated in this certificate, I hereby accept the same and agree to act in this capacity, and agree to comply with the provisions of Florida law relative to keeping the registered office open.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, [YEAR].

\_\_\_\_\_  
[PRINTED NAME]  
Registered Agent

**BYLAWS**  
**OF**  
**NEWCO, INC.**

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**ARTICLE I - MEETINGS OF SHAREHOLDERS**

**Section 1. Annual Meeting.** The annual meeting of the shareholders of this corporation shall be held at the time and place designated by the Board of Directors of the corporation. The annual meeting of shareholders for any year shall be held no later than thirteen (13) months after the last preceding annual meeting of shareholders. Business transacted at the annual meeting shall include the election of directors of the corporation.

**Section 2. Special Meeting.** Special meetings of the shareholders shall be held when directed by the President or the Board of Directors, or when requested in a writing dated and delivered to the Secretary by the holders of no less than ten percent (10%) of all the shares entitled to vote on any issue proposed to be considered at the special meeting; the writing shall describe the purpose or purposes of the meeting. A meeting requested by shareholders shall be called for a date not less than ten (10) nor more than sixty (60) days after the request is made, unless the shareholders requesting the meeting designate a later date. The call for the meeting shall be issued by the Secretary, unless the President, Board of Directors or shareholders requesting the meeting shall designate another person to do so.

**Section 3. Place.** Meetings of shareholders may be held within or without the State of Florida.

**Section 4. Notice.** Written notice stating the place, day and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) nor more than sixty (60) days before the meeting, either personally or by first class mail, by or at the direction of the President, the Secretary or the shareholders calling the meeting to each shareholder of record entitled to vote at the meeting. If mailed, the notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder at his address as it appears on the stock transfer books of the corporation, with postage thereon prepaid.

**Section 5. Notice of Adjourned Meeting.** When a meeting is adjourned to another time or place it shall not be necessary to give any notice of the adjourned meeting if the new date, time or place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken, and at the adjourned meeting any business may be transacted that might have been transacted on the original date of the meeting. If, however, after the adjournment, the Board of Directors fixes a new record date for the adjourned meeting, a notice of the adjourned meeting shall be given as provided in this section to each shareholder of record on the new record date entitled to vote at the meeting.

**Section 6. Closing of Transfer Books and Fixing Record Date.** For the purpose of determining shareholders entitled to notice of, or to vote at any meeting of shareholders or any adjournment thereof, or entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other purpose, the Board of Directors may provide that the stock transfer books shall be closed for a stated period but not to exceed in any case seventy (70) days.

In lieu of closing the stock transfer books, the Board of Directors may fix in advance a date as the record date for any determination of shareholders, the date in any case to be not more than seventy (70) days prior to the date on which the particular action requiring the determination of shareholders is taken.

If the stock transfer books are not closed and no record date is fixed for the determination of shareholders entitled to receive payment of a dividend, the date on which the resolution of the Board of Directors declaring the dividend is adopted shall be the record date for the determination of shareholders.

When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, the determination shall apply to any adjournment thereof unless the Board of Directors fixes a new record date for the adjourned meeting.

**Section 7. Voting Record.** At least ten (10) days before each meeting of shareholders the Secretary of the corporation shall make a complete alphabetized list of the shareholders entitled to vote at the meeting or any adjournment thereof, with the address of each and the number, class and series, if any, of shares held by each. For a period of ten (10) days prior to the meeting the list shall be kept on file at a place identified in meeting notice, at the principal place of business of the corporation or at the office of the transfer agent or registrar of the corporation, and any shareholder, his agent or attorney shall be entitled to inspect the list at any time during regular business hours at the shareholder's expense. The list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder at any time during the meeting.

If the requirements of this section have not been substantially complied with, the meeting, on demand of any shareholder in person or by proxy who failed to get access to the list, shall be adjourned until the requirements are complied with. If no such demand is made, failure to comply with the requirements of this section shall not affect the validity of any action taken at the meeting.

**Section 8. Shareholder Quorum and Voting.** A majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders.

If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the shareholders unless otherwise provided by law.

After a quorum has been established at a shareholders' meeting, the subsequent withdrawal of shareholders, so as to reduce the number of shareholders entitled to vote at the meeting below the number required for a quorum, shall not affect the validity of any action taken at the meeting or any adjournment thereof unless a new record date is or must be set for the adjourned meeting.

**Section 9. Voting of Shares.** Each outstanding share, regardless of class, shall be entitled to one (1) vote on each matter submitted to a vote at a meeting of shareholders.

Treasury shares, shares of stock of this corporation owned by another corporation, the majority of the voting stock of which is owned or controlled by this corporation, and shares of stock of this corporation held by it in a fiduciary capacity shall not be voted, directly or indirectly, at any meeting and shall not be counted in determining the total number of outstanding shares at any given time.

A shareholder may vote either in person or by proxy executed in writing by the shareholder or his duly authorized attorney-in-fact.

At each election for directors, every shareholder entitled to vote at the election shall have the right to vote, in person or by proxy, the number of votes attributable to the shares owned by him for as many persons as there are directors to be elected at that time and for whose election he has a right to vote.

Shares standing in the name of another corporation, domestic or foreign, may be voted by the officer, agent or proxy designated by the bylaws of the corporate shareholder; or, in the absence of any applicable bylaw, by the person as the board of directors of the corporate shareholder may designate. Proof of this designation may be made by presentation of a certified copy of the bylaws or other instrument of the corporate shareholder. In the absence of any such designation, or in case of conflicting designation by the corporate shareholder, the chairman of the board, president, any vice president, secretary and treasurer of the corporate shareholder shall be presumed to possess, in that order, authority to vote the shares.

If a proxy expressly provides, any proxy holder may appoint in writing a substitute to act in his place.

**Section 10. Action by Shareholders Without a Meeting.** Any action required by law, these Bylaws or the Articles of Incorporation of this corporation to be taken at any annual or special meeting of shareholders of the corporation or any action which may be taken at any annual or special meeting of the shareholders may be taken without a meeting, without prior notice and without a vote, if a written consent setting forth the action so taken shall be dated and signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. If any class of shares is entitled to vote thereon as a class, the written consent shall be required of the holders of a majority of the shares of each class of shares entitled to vote as a class thereon and of the total shares entitled to vote thereon.

## ARTICLE II - DIRECTORS

**Section 1. Function.** All corporate powers shall be exercised by or under the authority of, and the business and affairs of a corporation shall be managed under the direction of, the Board of Directors.

**Section 2. Qualification.** Directors must be eighteen years old but need not be residents of this state or shareholders of this corporation.

**Section 3. Compensation.** The Board of Directors shall have authority to fix the compensation of directors.

**Section 4. Duties of Directors.** A director shall perform his duties as a member of any committee of the board upon which he may serve, in good faith, in a manner he reasonably believes to be in the best interests of the corporation, and with the care as an ordinarily prudent person in a like position would use under similar circumstances.

In performing his duties, a director shall be entitled to rely in good faith on information, opinions, reports or statements including financial statements and other financial data, in each case prepared or presented by:

(a) one (1) or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(b) legal counsel, public accountants or other persons as to matters which the director reasonably believes to be within the person's professional or expert competence; or

(c) a committee of the board upon which he does not serve, duly designated in accordance with a provision of the Articles of Incorporation or the Bylaws, as to matters within its designated authority, which committee the director reasonably believes to merit confidence.

A person who performs his duties in compliance with this section shall have no liability by reason of being or having been a director of the corporation.

**Section 5. Presumption of Assent.** A director of the corporation who is present at a meeting of its Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless he objects at the beginning of the meeting (or promptly upon his arrival) to holding it or transacting specified business at the meeting, or he votes against the action or abstains from voting in respect thereto.

**Section 6. Number.** This corporation initially shall have that number of directors as is set forth in the Articles of Incorporation. The number of directors may be increased or decreased from time to time by resolution of the Board of Directors, but shall not be less than the minimum number set forth in the Articles of Incorporation of the corporation. No decrease shall have the effect of shortening the terms of any incumbent director.

**Section 7. Election and Term.** Each person named in the Articles of Incorporation as a member of the initial Board of Directors shall hold office until the first annual meeting of shareholders and until his successor shall have been elected and qualified or until his earlier resignation, removal from office or death.

At the first annual meeting of shareholders and at each annual meeting thereafter the shareholders shall elect directors to hold office until the next succeeding annual meeting. Each director shall hold office for the term for which he is elected and until his successor shall have been elected and qualified or until his earlier resignation, removal from office or death.

**Section 8. Vacancies.** Any vacancy occurring in the Board of Directors, including any vacancy created by reason of an increase in the number of directors, may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the Board of Directors or by the shareholders. A director elected to fill a vacancy shall hold office only until the next election of directors by the shareholders and until his successor is elected and qualified.

**Section 9. Removal of Directors.** At a meeting of shareholders called expressly for that purpose, but not to the exclusion of any other purpose, any director or the entire Board of Directors may be removed, with or without cause, by a vote of the holders of a majority of the shares then entitled to vote at an election of directors.

**Section 10. Quorum and Voting.** A majority of the number of directors fixed by these Bylaws shall constitute a quorum for the transaction of business. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

**Section 11. Director Conflicts of Interest.** No contract or other transaction between this corporation and one (1) or more of its directors or any other corporation, firm, association or entity in which one (1) or more of the directors are directors or officers or are financially interested, shall be either void or voidable because of the relationship or interest or because the director or directors are present at the meeting of the Board of Directors or a committee thereof which authorizes, approves or ratifies the contract or transaction or because his or their votes are counted for such purpose, if:

(a) the fact of the relationship or interest is disclosed or known to the Board of Directors or committee which authorizes, approves or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consents of the interested directors; or

(b) the fact of the relationship or interest is disclosed or known to the shareholders entitled to vote and they authorize, approve or ratify the contract or transaction by vote or written consent; or

(c) the contract or transaction is fair and reasonable as to the corporation at the time it is authorized by the board, a committee or the shareholders.

Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or a committee thereof which authorizes, approves or ratifies the contract or transaction.

**Section 12. Executive and Other Committees.** The Board of Directors, by resolution adopted by a majority of the full Board of Directors, may designate from among its members an executive committee and one (1) or more other committees, each of which shall have at least two members and, to the extent provided in the resolution, shall have and may exercise all the authority of the Board of Directors, except that no committee shall have the authority to:

(a) approve or recommend to shareholders actions or proposals required by law to be approved by shareholders;

(b) designate candidates for the office of director, for purposes of proxy solicitation or otherwise;

(c) fill vacancies on the Board of Directors or any committee thereof;

(d) adopt, amend or repeal the Bylaws;

(e) authorize or approve the reacquisition of shares unless pursuant to a general formula or method specified by the Board of Directors; or

(f) authorize or approve the issuance or sale of, or any contract to issue or sell, shares or determine the designation and relative rights, preferences and limitations of a voting group, except that the Board of Directors, having acted regarding general authorization for the issuance or sale of shares, or any contract therefore and, in the case of a series, the designation thereof, may, pursuant to a

general formula or method specified by the Board of Directors, by resolution or by adoption of a stock option or other plan, authorize a committee to fix the terms of any contract for the sale of the shares and to fix the terms upon which shares may be issued or sold, including, without limitation, the price, the rate or manner of payment of dividends, provisions for redemption, sinking fund, conversion, voting or preferential rights and provisions for other features of a class of shares or a series of a class of shares, with full power in the committee to adopt any final resolution setting forth all the terms thereof and to authorize the statement of the terms of a series for filing with the Department of State.

The Board of Directors, by resolution adopted in accordance with this section, may designate one (1) or more directors as alternate members of any such committee who may act in the place and stead of any absent member or members at any meeting of the committee.

**Section 13. Place of Meeting.** Regular and special meetings by the Board of Directors may be held within or without the State of Florida.

**Section 14. Time, Notice and Call of Meetings.** Regular meeting dates of the Board of Directors shall be designated by resolution of the Board of Directors and shall be held without notice. Written notice of the time and place of special meetings of the Board of Directors shall be given to each director by either personal delivery, telegram, cablegram or telecopy or facsimile transmission at least two (2) days before the meeting or by notice mailed to the director at least five (5) days before the meeting.

Notice of a meeting of the Board of Directors need not be given to any director who signs a waiver of notice either before or after the meeting. Attendance of a director at a meeting shall constitute a waiver of notice of the meeting and waiver of any and all obligations to the place of the meeting, the time of the meeting or the manner in which it has been called or convened, except when a director states at the beginning of the meeting or promptly upon arrival any objection to the transaction of business because the meeting is not lawfully called or convened.

Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of the meeting.

A majority of the directors present, whether or not a quorum exists, may adjourn any meeting of the Board of Directors to another time and place. Notice of any such adjourned meeting shall be given to the directors who were not present at the time of the adjournment and, unless the time and place of the adjourned meeting are announced at the time of the adjournment, to the other directors.

Meetings of the Board of Directors may be called by the Chairman of the Board, by the President of the corporation or by any two (2) directors.

Members of the Board of Directors may participate in a meeting of the Board by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

**Section 15. Action Without a Meeting.** Any action required or permitted to be taken at a meeting of the directors of a corporation, or any action which may be taken at a meeting of the directors or a committee thereof, may be taken without a meeting if a consent in writing, setting forth the action so to be taken, signed by all of the directors or all the members of the committee, as the case may be, is filed

in the minutes of the proceedings of the board of the committee. Such consent shall have the same effect as a unanimous vote.

### ARTICLE III - OFFICERS

**Section 1. Officers.** The officers of this corporation shall consist of a president, a secretary and a treasurer, each of whom shall be elected by the Board of Directors. Such other officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the Board of Directors from time to time. Any two (2) or more offices may be held by the same person. The failure to elect a president, secretary or treasurer shall not affect the existence of this corporation.

**Section 2. Duties.** The officers of this corporation shall have the following duties:

The President shall (1) be the chief executive officer of the corporation, (2) have general and active management of the business and affairs of the corporation subject to the directions of the Board of Directors and (3) preside at all meetings of the shareholders and Board of Directors.

The Secretary shall (1) have and maintain custody of all of the corporate records except the financial records, (2) record the minutes of all meetings of the shareholders and Board of Directors, (3) send all notices of meeting out, (4) have responsibility for authenticating records of the corporation and (5) perform such other duties as may be prescribed by the Board of Directors or the President.

The Treasurer shall (1) have custody of all corporate funds and financial records, (2) keep full and accurate accounts of receipts and disbursements and render accounts thereof at the annual meetings of shareholders and whenever else required by the Board of Directors or the President and (3) perform such other duties as may be prescribed by the Board of Directors or the President.

**Section 3. Removal of Officers.** Any officer or agent elected or appointed by the Board of Directors may be removed by the Board of Directors with or without cause whenever, in its judgment, the best interests of the corporation will be served thereby.

Removal of any officer shall be without prejudice to the contract rights, if any, of the person so removed; however, election or appointment of an officer or agent shall not itself create contract rights.

### ARTICLE IV - STOCK CERTIFICATES

**Section 1. Issuance.** Every holder of shares of this corporation shall be entitled to have a certificate representing all shares to which he is entitled. No certificate shall be issued for any share until the share is fully paid.

**Section 2. Form.** Certificates representing shares in this corporation shall be signed by the President or Vice President and the Secretary or an Assistant Secretary and may be sealed with the seal of this corporation or a facsimile thereof.

Every certificate representing shares which are restricted as to the sale, disposition or other transfer of the shares shall note conspicuously on the front or back thereof the existence of the restrictions.

**Section 3. Transfer of Stock.** The corporation shall register a stock certificate presented to it for transfer if the certificate is properly endorsed by the holder of record or by his duly authorized attorney. As a condition of the transfer the corporation may require that the signature of the person be guaranteed by a commercial bank or trust company or by a member of the New York or American Stock Exchange.

**Section 4. Lost, Stolen or Destroyed Certificates.** The corporation shall issue a new stock certificate in the place of any certificate previously issued if the holder of record of the certificate (a) makes proof in affidavit form that it has been lost, apparently destroyed or wrongfully taken; (b) requests the issue of a new certificate before the corporation has notice that the certificate has been acquired by a purchaser for value in good faith and without notice of any adverse claim; (c) gives bond in the form as the corporation, at its option, may direct to indemnify the corporation, the transfer agent and registrar against any claim that may be made on account of the alleged loss, destruction or theft of a certificate; and (d) satisfies any other reasonable requirements imposed by the corporation.

## **ARTICLE V - BOOKS, RECORDS AND FINANCIAL STATEMENTS**

### **Section 1. Books and Records.**

(a) The corporation shall keep as permanent records minutes of all meetings of its shareholders and Board of Directors (1) a record of all actions taken by the shareholders or Board of Directors without a meeting and (2) a record of all actions taken by a committee of the Board of Directors in place of the Board of Directors on behalf of the corporation.

(b) The corporation shall maintain accurate accounting records.

(c) The corporation or its agent shall maintain a record of its shareholders in a form that permits preparation of a list of the names and addresses of all shareholders in alphabetical order by class of shares showing the number and series of shares held by each.

(d) The corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(e) The corporation shall keep a copy of the following records:

(i) its Articles of Incorporation and all amendments to them currently in effect;

(ii) its Bylaws and all amendments to them currently in effect;

(iii) resolutions adopted by its Board of Directors creating one or more classes or series of shares and fixing their relative rights, preferences and limitations, if shares issued pursuant to those resolutions are outstanding;

(iv) the minutes of all shareholders' meetings and records of all action taken by shareholders without a meeting for the past three years;

(v) written communications to all shareholders generally or all shareholders of a class or series within the past three years, including the financial statements furnished for the past three years under Section 2 below;

(vi) a list of the names and business street addresses of its current directors and officers; and

(vii) its most recent annual report delivered to the Department of State.

**Section 2. Financial Information.** Not later than one hundred twenty (120) days after the close of each fiscal year, this corporation shall prepare financial statements including a balance sheet showing in reasonable detail the financial condition of the corporation as of the close of its fiscal year and a profit and loss statement showing the results of the operations of the corporation during its fiscal year and a statement of cash flows for that year.

The corporation shall make available the annual financial statements to each shareholder within one hundred twenty (120) days after the close of each fiscal year.

## ARTICLE VI - DISTRIBUTIONS

**Section 1. Distributions.** The Board of Directors may authorize and the corporation may make distributions to the shareholders subject to restrictions under the laws of the State of Florida, the Articles of Incorporation and the limitations in Section 3.

**Section 2. Record Date for Distributions.** If the Board of Directors does not fix the record date for determining shareholders entitled to a distribution (other than one involving a purchase, redemption or other acquisition of the corporation's shares), the record date shall be the date the Board of Directors authorizes the distribution.

**Section 3. Prohibited Distributions.** No distribution may be made if

(a) the corporation would not be able to pay its debts as they become due in the usual course of business; or

(b) the corporation's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

**Section 4. Method for Determining Validity of Distributions.** The Board of Directors may base a determination that a distribution is not prohibited under Section 3 either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances. In the case of any distribution based upon such a valuation, each such distribution shall be identified as a distribution based upon a current valuation of assets, and the amount per share paid on the basis of such valuation shall be disclosed to the shareholders concurrent with their receipt of the distribution.

#### **ARTICLE VII - CORPORATE SEAL**

The Board of Directors shall provide a corporate seal for the corporation.

#### **ARTICLE VIII - AMENDMENT**

These Bylaws may be repealed or amended and new Bylaws may be adopted by either the Board of Directors or the shareholders, but the Board of Directors may not amend or repeal any Bylaw adopted by shareholders if the shareholders specifically provide such Bylaw is not subject to amendment or repeal by the directors. The Bylaws may not be amended by the Board of Directors if the provisions of the Florida Business Corporation Act reserves generally or specifically the power to do so exclusively to the shareholders.

#### **ARTICLE IX - INDEMNIFICATION**

Every director and every officer of the corporation (and the directors and/or officers as a group) shall be indemnified by the corporation against all expenses and liabilities, including counsel fees (at all trial and appellate levels) reasonably incurred by, asserted against, or imposed upon him or them in connection with any proceeding, litigation, or settlement in which he may become involved by reason of his being or having been a director or officer of the corporation, or arising in connection with the performance of his or their duties as officers or directors, as the case may be. The foregoing provisions for indemnification shall apply whether or not he is a director or officer at the time the expenses are incurred. Notwithstanding the above, in instances where a director or officer admits or is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties, or of any acts involving criminal liability, the indemnification provisions of these Bylaws shall not apply. Otherwise, the foregoing rights to indemnification shall be in addition to and not exclusive of any and all rights of indemnification to which a director or officer may be entitled whether by statute or common law.

#### **ARTICLE X - FISCAL YEAR**

The fiscal year of the corporation shall be determined by the Board of Directors.

#### **ARTICLE XI - EMERGENCY BYLAWS**

The Emergency Bylaws provided in this Article XI shall be operative during any emergency in the conduct of the business of the corporation resulting from an attack on the United States or any nuclear or atomic disaster, notwithstanding any different provision in the preceding Articles of the Bylaws or in the Articles of Incorporation of the corporation or in the Florida Business Corporation Act. To the extent not inconsistent with the provisions of this Article, the Bylaws provided in the preceding Articles shall remain in effect during such emergency and upon its termination the emergency Bylaws shall cease to be operative.

During any such emergency:

(a) A meeting of the Board of Directors may be called by any officer or director of the corporation. Notice of the time and place of the meeting shall be given by the person calling the meeting to such of the directors as it may be feasible to reach by any available means of communication. Such notice shall be given at such time in advance of the meeting as circumstances permit in the judgment of the person calling the meeting.

(b) At any such meeting of the Board of Directors, a quorum shall consist of fifty percent (50%) or more of the directors of the corporation.

(c) The Board of Directors, either before or during any such emergency, may provide, and from time to time modify, lines of succession in the event that during such an emergency any or all officers or agents of the corporation shall for any reason be rendered incapable of discharging their duties.

(d) The Board of Directors, either before or during any such emergency, may change the head officer or designate several alternative head officers or regional officers.

No officer, director or employee acting in accordance with these Emergency Bylaws shall be liable except for willful misconduct.

These emergency Bylaws shall be subject to repeal or change by further action of the Board of Directors or by action of the shareholders, but no such repeal or change shall modify the provisions of the next preceding paragraph with regard to action taken prior to the time of such repeal or change. Any amendment of these emergency Bylaws may make any further or different provision that may be practical and necessary for the circumstances of the emergency.

Date Adopted: \_\_\_\_\_

\_\_\_\_\_  
[PRINTED NAME]  
[TITLE]