

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

In Re:)	
)	
SOUTHEAST WAFFLES, LLC)	CASE NO. 3:08-bk-07552
d/b/a WAFFLE HOUSE,)	Chapter 11 Proceedings
Debtor.)	Judge Keith M. Lundin
)	

**DEBTOR’S PLAN OF REORGANIZATION DATED
JULY 21, 2009**

Debtor SouthEast Waffles, LLC proposes the following Plan of Reorganization pursuant to Chapter 11 of Title 11, United States Code:

ARTICLE I

DEFINITIONS AND RULES OF CONSTRUCTION

Unless the context otherwise requires, the following terms shall have the following meanings when used in initially capitalized form in this Plan. Such meanings shall be equally applicable to both the singular and plural forms of such terms. Any term used in initially capitalized form in this Plan that is not defined herein, but that is defined in the Bankruptcy Code, shall have the meaning assigned to such term in the Bankruptcy Code.

1.1 **"Adequate Protection Payments"** means payments made by Debtor or any other party to creditors holding claims secured by property of Debtor, from the Petition Date to the Effective Date, whether or not such payments were made directly to the creditor or deposited into an account, and whether or not such payments were made pursuant to an order of the Court.

1.2 **"Administrative Claim"** means any claim including, but not limited to, claims for compensation of professionals made pursuant to Bankruptcy Code Sections 330 and 331 and

claims entitled to administrative priority pursuant to Bankruptcy Code Sections 507(a)(2) and 503(b). Administrative Claim shall exclude Post-Petition Trade Debt.

1.3 **"Allowed"** means (a) an undisputed, liquidated and non-contingent Claim the amount of which was properly listed in Debtor's Schedules and to which no subsequent objection is filed prior to the Claims Objection Deadline, or as to which Claim an objection has resulted in the allowance of a Claim, in whole or in part, by a Final Order of the Court, or (b) any Claim that has been or is timely filed with the Clerk of the Court by the holder of the Claim and to which Claim no written objection to the allowance thereof has been filed prior to the Claims Objection Deadline or as to which Claim an objection has resulted in the allowance of a Claim, in whole or in part, by a Final Order of the Court. "Allowed" may be used in connection with all types of Claims, including Tax Claims, Administrative Claims, Post-Petition Trade Debt Claims, Priority Claims, Unsecured Claims, Convenience Claims, and Secured Claims. Anytime "Allowed" is used to describe a secured claim, it shall refer to a Secured Claim not greater than the value of the collateral that secures such Claim less the total amount of Adequate Protection Payments (if any) paid on account of such secured claim.

1.4 **"Avoidance Actions"** means causes of action that Debtor may bring pursuant to Bankruptcy Code Section 547 to 549, including objections to claims that seek affirmative relief, such as equitable subordination.

1.5 **"Ballot"** means the ballot that a creditor actually casts in this Case to accept or reject the Plan.

1.6 **"Bankruptcy Code"** means Title 11 of the United States Code, as amended.

1.7 **"Bar Date"** means, except as otherwise ordered by the Court with respect to rejection damages claims, April 10, 2009, the date by which all Claims other than employee

related Claims were to be filed, and May 1, 2009, the date by which all employee-related Claims were to be filed.

1.8 “**CRO**” means Gary Murphey, appointed Debtor’s Chief Restructuring Officer pursuant to Court Order dated September 22, 2008, as amended by Court Order dated November 3, 2008, and further amended by Court Order dated November 20, 2008.

1.9 “**Case**” means the above entitled and numbered case commenced by Debtor pursuant to the provisions of Chapter 11 of the Code.

1.10 “**Claim**” means: (i) right of payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or (ii) a right to an equitable remedy for breach of performance if such breach gives rise to a right of payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

1.11 “**Claimant**” means the holder of a Claim against or an Interest in Debtor.

1.12 “**Claims Objection Deadline**” means 150 days after the Effective Date of the Plan, except that this deadline may be extended by the Court one or more times pursuant to a motion filed prior to the existing deadline. This deadline shall not apply to Requests for Payment of Administrative Claims and Post Petition Trade Debt Claims.

1.13 “**Collateral Value**” means the value of the secured creditor’s interest in Debtor’s interest in properly securing a Secured Claim, as established by the Court or by agreement between the parties.

1.14 “**Committee**” means the Committee of Unsecured Creditors of Debtor appointed by the U.S. Trustee to serve in this Case. The Committee consists of SunTrust, Ezell, LLC, Coca-Cola Company, and US Foodservice, Inc.

1.15 “**Confirmation**” means the entry by the Court of the Confirmation Order.

1.16 “**Confirmation Date**” means the date upon which the Confirmation Order is entered, unless the order is stayed pending appeal, in which case the Confirmation Date shall mean the date on which any such stay is vacated or terminated.

1.17 “**Confirmation Order**” means the Order entered by the Court confirming the Plan.

1.18 “**Convenience Class**” means all Allowed Unsecured Claims \$750.00 or less (or that the holder of which elects to reduce to \$750.00 on the Ballot).

1.19 “**Court**” means the United States Bankruptcy Court for the Middle District of Tennessee, Nashville Division.

1.20 “**Cure Claim**” means any Claim arising from the assumption or assignment by Debtor of any Executory Contract, that arose prior to the Effective Date, due and owing by the Debtor pursuant to § 365(b) of the Bankruptcy Code and any claim for a default, monetary or non-monetary under any assumed Executory Contract.

1.21 “**Debtor**” means Southeast Waffles, LLC as Debtor-in-Possession and with the status and rights conferred by Bankruptcy Code Section 1107.

1.22 “**Debtor's Remaining Assets**” means all of Debtor's assets and interests not being sold to GS Acquisitions under the Plan. It shall include without limitation Avoidance Actions, Recovery Causes of Action, all cash other than register cash maintained at the Restaurants, credit card receivables, professional retainers, prepaid insurance, prepaid fees, prepaid sales taxes,

deposits with vendors (but not utility deposits or deposits maintained in connection with workers compensation obligations being assumed by GS Acquisitions), prepaid officer's life insurance, any cash surrender value, advance to employees, and accrued (pre-Effective Date) vendor rebates (which will be accounted for in the closing true up), all unimproved real property owned by Debtor, all of Debtor's interest in any partnership or limited liability company other than those related to property at which Debtor does not currently operate a Restaurant and all pre Petition Date and post Petition Date causes of action other than those against FirstBank or WHI (which claims are released under the Plan).

1.23 "**Debtor's Professionals**" means attorneys, accountants, appraisers, auctioneers or other professional persons, including the CRO, hired by Debtor and whose employment is approved by the Court pursuant to Bankruptcy Code Section 327 or whose services are utilized by Debtor in the ordinary course of the Debtor's business.

1.24 "**Disclosure Statement**" means the Disclosure Statement for this Plan, together with any supplements, amendments, or modifications thereto.

1.25 "**Disputed Claim**" means a Claim to which a written objection to the allowance or classification thereof, in whole or in part, is timely filed by any party-in-interest and as to which no Final Order or Final Judgment sustaining such objection or allowing or disallowing such Claim, in whole or in part, has been entered by the Court.

1.26 "**Effective Date**" means the date after entry of the Confirmation Order on which GS Acquisitions closes on its purchase of substantially all of the assets of the Debtor.

1.27 "**Executory Contract**" means any executory contract or unexpired lease subject to Bankruptcy Code Section 365, between Debtor or any other person or persons. Executory Contract shall include the Franchise Agreements.

1.28 **"Final Order"** or **"Final Judgment"** means an order or judgment of the Court (a) as to which the time to appeal, petition for certiorari, or seek reargument or rehearing has expired and as to which no appeal, reargument, certiorari petition, or rehearing is pending, or (b) if an appeal, reargument, certiorari or rehearing thereof has been sought, the order of the Court has been affirmed by the highest court to which the order was appealed or from which the reargument or rehearing was sought, or certiorari has been denied, or the appeal is dismissed or rendered moot, and the time to take any further appeal or to seek certiorari or further reargument or rehearing has expired.

1.29 **"FirstBank"** means FirstBank, the holder of a Claim secured by substantially all of Debtor's assets.

1.30 **"FirstBank Note Principal"** shall have the meaning assigned to it in paragraph 3.2.

1.31 **"Franchise Agreement"** means each of the individual executory Franchise Agreements between Debtor and WHI for the operation of a Waffle House Restaurant and the December 29, 1988, Franchise Policy Agreement.

1.32 **"GS Acquisitions"** means GS Acquisitions, LLC, a new entity to be formed as a Tennessee Limited Liability Company that will take title to substantially all of Debtor's assets on the Effective Date pursuant to the Plan. The principals of GS Acquisitions, LLC will include Terry Perfanis, Phil Mickelson and Steve Loy. None of the owners or officers of GS Acquisitions, LLC will be insiders of Debtor.

1.33 **"Insider"** shall have the meaning assigned to it in Bankruptcy Code Section 101(31).

1.34 “**Interest**” means any evidence of ownership in Debtor, whether voting or non-voting, certificated or not. Interest includes the right to acquire an Interest, whether via warrant, option, pledge or otherwise.

1.35 “**Interest Holder**” means any person or entity holding legal or equitable ownership of any voting or non-voting Interest in Debtor.

1.36 “**Liquidation Agent**” shall mean that person selected by the Committee on or before the Confirmation Date to perform the tasks set forth in the Plan after the Effective Date, as agent for the post Effective Date Debtor.

1.37 “**Original Funding Amount**” means \$2.5 million, subject to adjustment on the Effective Date as additional information becomes known.

1.38 “**Penalty Claims**” means those Claims referenced in Bankruptcy Code Section 726(a)(4), including without limitation all penalties asserted by the Internal Revenue Service and state taxing authorities.

1.39 “**Petition Date**” means August 25, 2008, the date on which Debtor commenced the Case.

1.40 “**Plan**” means this Plan of Reorganization and all future amendments and modifications thereof, including modifications included in the Confirmation Order.

1.41 “**Pledgors**” means James L. Shaub, II (“Shaub”), Memorial Partners, and Thompson Lane Partners, each of whom pledged collateral to secure further Debtor’s prepetition obligations to FirstBank.

1.42 “**Post Petition Trade Debt**” means unsecured debt that Debtor incurred in the ordinary course of its business after the Petition Date but before the Effective Date, which debt remains unpaid as of the Effective Date.

1.43 “**Post Petition Trade Debt and Administrative Claim Bar Date**” means January 15, 2010.

1.44 “**Priority Claim**” means any Allowed Claim entitled to priority under Bankruptcy Code Section 507(a)(3) to (7).

1.45 “**Pro Rata**” means in the same proportion that the amount of an Allowed Claim or Allowed Interest in any Class of Claims or Class of Interests bears to the aggregate amount of all Claims or Interests in such Class, including in such aggregate amount both the Allowed Claims or Allowed Interests and any then unresolved Disputed Claims that may apply to that Class of Claims or Interests as of the date of any distribution payment made pursuant to this Plan.

1.46 “**Recovery Causes of Action**” means any cause of action, including without limitation all Avoidance Actions, belonging to Debtor or its estate, except for any claims released pursuant to this Plan.

1.47 “**Request for Payment**” means an application or motion for payment pursuant to Bankruptcy Code Section 503(a) filed with the Court by the holder of unpaid Post Petition Trade Debt or an unpaid Administrative Claim. Anything not filed in accordance with Code Section 503(a), including but not limited to a document filed with the Clerk of Court as a proof of claim, shall not constitute a Request for Payment.

1.48 “**Restaurant**” means a 24 hour per day, 365 days per year food service business that Debtor operates under the WHI trade name and business operations system, pursuant to a Franchise Agreement between Debtor and WHI.

1.49 “**Schedules**” means Debtor’s Schedules of Assets and Liabilities and Statement of Financial Affairs filed with the Court pursuant to Bankruptcy Code Section 1106(a)(2), as they may be amended from time to time.

1.50 “**Secured Claim**” means an Allowed Claim secured by a lien, security interest or other charge against or interest in property in which Debtor has an interest, or which is subject to setoff under Bankruptcy Code Section 553, to the extent of the value, determined in accordance with Bankruptcy Code Sections 506(a) and 506(b) of the interest of the holder of such Allowed Claim in Debtor's interest in such property.

1.51 “**Subrogation Claims**” means any Claim asserted against Debtor pursuant to Bankruptcy Code Section 509 or common law, whether secured or unsecured, and shall include without limitation any claim against Debtor asserted by any of the Pledgors.

1.52 “**Subrogation Release Escrow Fund**” shall have the meaning assigned to it in paragraph 3.8 of the Plan.

1.53 “**Substantial Consummation**” means the 12:01 a.m. on the first business day after the date on which GS Acquisitions closes on its purchase of substantially all of the assets of the Debtor.

1.54 “**Tax Claim**” means any Allowed Claim entitled to priority under Bankruptcy Code Section 507(a)(8).

1.55 “**Unsecured Claim**” means any Claim that is not (a) a Secured Claim (other than a Claim secured only by an unspecified right of setoff), (b) an Administrative Claim, (c) Post-Petition Trade Debt, (d) a Tax Claim, or (e) a Priority Claim. As used herein, Unsecured Claim includes, but is not limited to: (a) Claims under executory contracts and unexpired leases that have heretofore been rejected, that are rejected under this Plan or that may be rejected prior to

the Confirmation Date; (b) pre-Petition Date Claims of general trade creditors; (c) Claims for unpaid wages or benefits (including claims for vacation, sick and holiday pay) to the extent not entitled to be priority claims under Bankruptcy Code Section 507 as provided herein; and (d) any other Claim held against Debtor of every type and nature whatsoever incurred before the Petition Date.

1.56 “**WHI**” means Waffle House, Inc., Debtor’s franchisor for the Restaurants.

1.57 **Rules of Construction:**

(a) Undefined terms--where not consistent or in conflict with the provisions of the Plan--shall have the meaning ascribed thereto in the Bankruptcy Code and in the Rules of Bankruptcy Procedure.

(b) The words “herein,” hereof,” and “hereunder,” and other words of similar import refer to this Plan as a whole, not to any particular section, subsection, or clause, unless the context requires otherwise;

(c) Whenever it appears appropriate from the context, each term stated in singular or plural includes the singular and the plural, and each pronoun stated in the masculine, feminine, or neuter includes the masculine, feminine, and the neuter;

(d) Captions and headings to the Article and Sections of the Plan are inserted for convenience and reference only and are not intended to be a part or to affect the interpretation of the Plan; and

(e) The rules of construction set forth in Bankruptcy Code Section 102 shall apply, unless superseded herein or in the Confirmation Order.

ARTICLE II

CLASSIFICATION OF CLAIMS AND INTERESTS

2.1 The Claims of creditors and Interests of equity security holders under the Plan are divided into the following classes and subclasses:

Unclassified Claims. These claims consist of all timely filed and Allowed Administrative Claims and Post Petition Trade Debt.

Class 1 *FirstBank's Allowed Secured Claim*

Class 2 *Allowed Priority Claims*

Class 3 *Allowed Tax Claims*

Class 4 *Allowed Convenience Class Claims*

Class 5 *Allowed General Unsecured Claims*

Class 6 *Allowed Penalty Claims*

Class 7 *Allowed Subrogation Claims*

Class 8 *Interest Holders*

ARTICLE III

TREATMENT OF CLAIMS AND INTERESTS UNDER THE PLAN

The following is the treatment provided in the Plan for claims:

3.1 Unclassified Claims: Quarterly fees owed to the United States Trustee will be paid when due. Debtor shall continue to make post-confirmation quarterly fee payments to the United States Trustee, based upon disbursements by Debtor, until entry of a Final Decree pursuant to Bankruptcy Code Section 350. All Allowed Post Petition Trade Debt will be paid on (a) the date on which payment is due in the ordinary course of business consistent with existing terms and practice or (b) the date on which there exists a Final Order requiring payment. Except as set forth below, all Allowed Administrative Claims shall be paid on the later of (a) when due, (b) the Effective Date or (c) the date on which there exists a Final Order requiring payment.

Under the Plan, any creditor or party in interest asserting that it is still owed for either an Administrative Claim or a Post Petition Trade Debt must file a Request for Payment of the Administrative Claim or the Post Petition Trade Debt by no later than January 15, 2010. Any creditor or party in interest that fails to file a Request for Payment by this date shall be forever barred from asserting any such right to payment and any such right shall be waived and forever released.

3.2 FirstBank's Allowed Secured Class 1 Claim: Class 1 consists of the Allowed Secured Claim of FirstBank. The Class 1 Claim shall be Allowed and paid as follows: GS Acquisitions shall execute a promissory note payable to FirstBank in the amount of the FirstBank Note Principal and shall also comply with the following:

- a. FirstBank Note Principal: \$8,830,000.00, subject to adjustment on the Confirmation Date as additional information becomes known.
- b. Loan Repayment: GS Acquisitions shall make to FirstBank monthly payments of principal and interest in the amount of \$69,827.08 beginning on the 1st day of the second calendar month immediately after the Effective Date, calculated on a fifteen year straight line amortization. GS Acquisitions will make additional payments to FirstBank totaling \$1 million prior to the fourth anniversary of the Note. All amounts remaining due on the FirstBank Note Principal shall be due and payable in full at the end of the seventh (7th) year following the Effective Date.
- c. Loan Interest Rate: 5% per annum, based on a 360 day year. Interest shall be paid monthly, in arrears.
- d. Loan Covenant: There will be no financial covenants; however, GS Acquisitions will meet with FirstBank on an annual basis to review operating results and to discuss its plans for the current and succeeding fiscal year. Liquidation Agent shall be given not less than ten (10) calendar days notice of the date, time and place of GS Acquisitions's annual meeting with FirstBank, and may attend that meeting in his discretion.
- e. Financial Statements: GS Acquisitions will provide to FirstBank and concurrently to the Liquidation Agent:
 - i. audited financial statement of GS Acquisitions within 120 days after the close of each such fiscal year.

- ii. internally prepared financial statements (including a balance sheet and profit and loss statement) of GS Acquisitions for each quarter of each fiscal year, within 30 days after the close of each such period.
 - iii. within 30 days following FirstBank's written request for same, such additional information, reports and statements prepared by GS Acquisitions in the ordinary course of business, respecting the business operations and financial condition of GS Acquisitions, from time to time, as FirstBank may reasonably request.
- f. Loan Collateral: FirstBank's loan to GS Acquisitions will be secured by a first lien on all of Debtor's assets acquired by GS Acquisitions and any replacements or substitutions thereof. Further, FirstBank's liens from GS Acquisitions encompass all assets on which FirstBank had a perfected lien as of the Petition Date. GS Acquisitions may however sell certain of the assets after the Effective Date with FirstBank's consent, such consent not to be unreasonably withheld, if such sale(s) do not erode FirstBank's secured position.
- g. Approximately \$1.2 million in existing letters of credit issued by FirstBank in support of Debtor will be assumed by GS Acquisitions on the Effective Date. If GS Acquisitions replaces any such letters of credit prior to their next scheduled expiration date, FirstBank agrees to refund to GS Acquisitions a portion of the fees paid to FirstBank by Debtor in respect of the most recent issuance\renewal of such replaced letter of credit, pro rated on the basis of the number of days any such letter of credit was outstanding since its most recent issuance or renewal compared to 365. GS Acquisitions will indemnify FirstBank from and against any losses arising from any draws under either of the letters of credit after the Effective Date.

3.3 Class 2 Claims: While several unpaid or duplicate Priority Claims were filed prior to the Bar Date, Debtor plans to object to those claims and thus believes that it has no, or limited, unpaid Allowed Priority Claims. To the extent that any such claim becomes Allowed, it will be paid by Debtor on the Effective Date or entry of a Final Order directing payment..

3.4 Class 3 Claims: Class 3 consists of Allowed Tax Claims entitled to priority pursuant to Bankruptcy Code Section 507(a)(8). GS Acquisitions shall pay each Allowed Tax Claim in full with interest at the federal judgment rate as of the Confirmation Date. Payments shall be in 16 equal quarterly installments beginning on the first day of the fourth full calendar month after the Effective Date, and shall continue on the first day of each successive month until

the Allowed Tax Claims are paid in full. To the extent the aggregate principal amount of Allowed Tax Claims (excluding the Allowed Tax Claims of the Internal Revenue Service) ultimately reduces the total principal amount of Allowed Tax Claims (including the Allowed Tax Claims of the Internal Revenue Service) to a principal amount less than \$4,011,624.00, then GS Acquisitions shall pay to the Debtor for distribution pursuant to the terms of the Plan the amount of such reduction over the same quarterly period as the Allowed Tax Claims are paid. To the extent the aggregate principal amount of the Allowed Tax Claims of the Internal Revenue Service are reduced to an amount less \$1,984,000, then GS Acquisitions shall retain the net benefit resulting from the reduction of the Allowed Tax Claims asserted by the Internal Revenue Service.

3.5 Class 4 Claim: Class 4 is a Convenience Class, and consists of all Allowed Unsecured Claims of \$750.00 or less--or that the holders of Allowed Unsecured Claims in excess of \$750.00 elect to reduce to \$750.00. In complete satisfaction of each Allowed Class 4 Claim, each such Allowed Claim will be paid 50% of their Allowed Claim (up to \$375.00) within either (i) thirty (30) days after the Effective Date or (ii) the date on which a Final Order is entered requiring payment. All creditors shall be given the option to elect to become Convenience Class members on the ballot soliciting acceptance of the Plan. All Class 4 Allowed Convenience Class Claims shall be paid in full (without interest) prior to any distribution to Class 5 Claims.

3.6 Class 5 Claim: Class 5 consists of the Allowed Unsecured Claims, other than those in, or electing to be in, Class 4. Holders of Allowed Class 5 Claims shall be paid on a Pro Rata basis until paid in full (without interest). Holders of Allowed Class 5 Claims shall receive the net amount available for distribution under the Plan from the Liquidation Agent and Debtor after payment of the amounts due for Allowed Administrative Expenses, Allowed Post Petition

Trade Debt, Allowed Priority Claims, Allowed Class 4 Claims and after reserving amounts sufficient to pay anticipated post-Effective Date expenses of the Debtor and amounts required to be reserved under the Plan for Disputed Claims. The Debtor/Liquidation Agent will have sufficient cash funds on the Effective Date to enable it to make a substantial distribution to Allowed Class 5 Claims shortly after the Effective Date.

3.7 Class 6 Claims. Class 6 consists of all Penalty Claims. They shall be paid (without interest) if and when all Allowed Class 5 Claims have been paid in full (without interest).

3.8 Class 7 Claims. Class 7 consists of all Allowed Subrogation Claims asserted by the Pledgors. WHI, Debtor and the Committee dispute that the Pledgors have any valid Subrogation Claims. In order to provide for the payment of the disputed Class 7 Claims pending resolution of the disputes over the validity of the Subrogation Claims asserted by Pledgors, the Debtor shall maintain a Subrogation Release Escrow Fund in a segregated interest bearing account. GS Acquisitions shall make the following payments to the Subrogation Release Escrow Fund in order to provide for the satisfaction of any Allowed Class 7 Claims:

- a. Beginning on the first day of the second calendar month after the Effective Date and continuing for 48 months, GS Acquisitions will make monthly payments of not less than \$10,554.17. This amount is calculated to compensate for interest on the Original Funding Amount at 5% per annum.
- b. Beginning with the 49th month and continuing for the following 72 months, GS Acquisitions will make monthly payments of not less than \$35,394.00 plus an additional amount calculated to compensate for interest on the outstanding balance of the Original Funding Amount at 5% interest per annum. GS Acquisitions shall have the right to prepay at any time without penalty the outstanding balance due on the Original Funding Amount.
- c. If, prior to or after the Effective Date, a Final Order is entered awarding to any Pledgors all or any portion of the Subrogation Claims, then the amount of such prevailing Subrogation Claim shall be paid out of the

Subrogation Escrow Release Fund to the prevailing Pledgor(s) following the complete satisfaction of all of GS Acquisitions's obligations under this Plan to FirstBank.

- d. If, prior to or after the Effective Date, a Final Order is entered disallowing or reducing by settlement any of the Subrogation Claims asserted by the Pledgors, either in whole or in part, then the amount of such reduction in the Subrogation Claims shall be released to the Liquidation Agent for distribution pursuant to the terms of this Plan to the holders of Allowed Claims other than the Class 7 Claims.
- e. Nothing in the Plan shall preclude the Debtor, the Liquidation Agent, or any other party from asserting any right of set off or from taking any other appropriate collection action to recover for its own benefit any amounts determined to be owed to Pledgors from the Subrogation Release Escrow Fund.
- f. Unless the Court orders otherwise, upon the entry of a Final Order or Final Order resolving all the disputes regarding the Subrogation Claims, all interest accrued on the Subrogation Release Escrow Fund shall be released to the Liquidation Agent for distribution pursuant to the terms of this Plan to the holders of Allowed Claims other than the Class 7 Claims.

3.9 Class 8 Interests. Class 8 consists of all Debtor's Interest Holders. These Interests shall be cancelled on the Effective Date, with all control over Debtor's Remaining Assets vested in the Liquidation Agent.

ARTICLE IV

IMPAIRED AND UNIMPAIRED CLASSES OF CLAIMS AND INTERESTS

All Claims and Interests are impaired.

ARTICLE V

MEANS FOR EXECUTION OF THE PLAN

5.1 On the Effective Date, Debtor will convey to GS Acquisitions all of Debtor's assets used in the operation of its Restaurants other than Debtor's Remaining Assets, including but not limited to (i) all Post-Petition utility deposits, (ii) all cash in the Restaurants, (iii) all food, operating supplies and other inventory in the Restaurants, (iv) all furniture, fixtures, equipment,

signage and other fixed assets at the Restaurants and in Debtor's corporate office, (v) all copyrights, trademarks, trade secrets, and other intellectual property owned by the Debtor, (vi) all of Debtor's goodwill and (vii) all partnership or limited liability membership interests that have an interest in a location where the Debtor currently operates a Restaurant.

5.2 GS Acquisitions will pay to the Debtor on the Effective Date \$4,835,000 for distribution pursuant to the Plan, and GS Acquisitions will make directly the payments due under the Plan to holders of Allowed Class 1 and Allowed Class 3 Claims.

5.3 GS Acquisitions will also make the payments due under the Plan to the Subrogation Release Escrow Fund. GS Acquisitions's payments to the Subrogation Escrow Release Fund will be subordinated to payments due under the Plan from GS Acquisitions to FirstBank.

5.4 GS Acquisitions and Debtor will prepare and agree on a closing statement that cuts-off and trues-up the accounting for Debtor as of the Effective Date. The net amount due will either reduce or increase the cash amount paid by GS Acquisitions to Debtor on the Effective Date. The true up will include cut-off of sales, cash deposits, commissary and register shortages, Pro Rata allocation of invoices spanning the pre and post sale periods (i.e. utilities), prepaid rent, advertising/logos and accrued property taxes. If GS Acquisitions continues under Debtor's existing Major Medical Benefit Plan employee health plan, Debtor will be credited with the monthly pro rata benefit paid at the beginning of the month.

5.5 On or prior to the Confirmation Date, the Committee shall select a "**Liquidation Agent**" and file a notice with the Court identifying the Liquidation Agent to act as Debtor's agent to implement the post Effective Date obligations under the Plan. The Liquidation Agent shall pursue all Recovery Causes of Action, shall have responsibility to take any action related to

the payments due from GS Acquisitions to Debtor under the Plan, and shall make all distributions due under the Plan other than those to be made directly by GS Acquisitions. The Liquidation Agent shall also be, after Debtor completes its wind down, responsible for taking any and all actions remaining related to the administration of the Debtor's assets or this Case. Net recoveries by Liquidation Agent shall be distributed in accordance with the Plan.

5.6 As of the Effective Date, Debtor will assume (to the extent not already assumed), will cure in accordance with the terms set forth below any and all defaults under, and assign to GS Acquisitions, and GS Acquisitions will simultaneously assume from Debtor, (i) all of Debtor's rights and obligations under all leases and/or subleases with respect to Debtor's use and occupancy of the land and/or buildings upon or within which a Restaurant is located; and (ii) all of Debtor's rights and obligations under the Franchise Agreements. The Confirmation Order or the Final Order assuming and assigning the Franchise Agreements shall grant GS Acquisitions a period of at least twenty four months from the Effective Date in which to complete all remodel/rehab obligations existing as of the Effective Date with respect to Restaurants for which a franchise agreement is being assumed and assigned to GS Acquisitions.

5.7 Notwithstanding anything else in the Plan to the contrary, all existing cash deposits made to, or for the benefit of, insurers providing worker's compensation insurance to Debtor during any period prior to the Effective Date shall be held for the benefit of GS Acquisitions, unless Debtor has obtained a resolution of Lumberman's issues prior to Effective Date, in which event any cash deposit made to or for the benefit of Lumberman's shall be returned to Debtor. After the Effective Date, GS Acquisitions shall be responsible for administering, defending and all costs associated with both pending and future worker's compensation claims asserted by individuals who were employees of Debtor.

5.9 GS Acquisitions will work with Debtor and the Liquidation Agent regarding allowing Debtor continued access to Debtor's current IT and accounting system. GS Acquisitions will not shut down or materially limit access to the data stored by Debtor as of the Effective Date without the prior written consent of the Liquidation Agent. Debtor will prepare an electronic file sufficient for WHI or GS Acquisitions to print W-2s for 2009 for all Debtor's employees, and WHI or GS Acquisitions will mail timely such W-2s in 2010. Debtor will pay WHI for \$.45 per W-2 at the time the file is transferred. WHI and GS Acquisitions will not remove any IT equipment from the Debtor's MetroPlex location necessary for the Debtor to conduct its wind-down. GS Acquisitions will cooperate with the Liquidation Trustee to insure continued access to IT equipment and dated needed to prosecute the Recovery Causes of Action.

ARTICLE VI

LIQUIDATION AGENT

6.1 Debtor's Officer and Representative. Pursuant to § 1129(a)(5) of the Code, it is hereby disclosed that the Liquidation Agent shall serve as the sole director and officer of the Debtors after the Effective Date. Pursuant to § 1123(b)(3)(B) of the Code, the Liquidation Agent is appointed as the official representative to retain, enforce, pursue, settle and compromise each and every right, Claim and Cause of Action on behalf of the Debtor's estate. The initial Liquidation Agent shall be chosen by the Committee on or before the Effective Date.

6.2 Appointment of Successor. The Liquidation Agent may resign at any time and may appoint a successor Liquidation Agent. A notice identifying the successor Liquidation Agent shall be filed with the Court and served on the Office of the United States Trustee and counsel for the Committee. Any creditor or party in interest may object to the successor Liquidation Agent for cause.

6.3 Responsibilities and Authority. The Liquidation Agent shall have the responsibilities and authority provided in the Plan. Generally and without limitation, the Liquidation Agent shall be responsible for implementing this Plan for the benefit of all holders of Allowed Claims as provided by this Plan, subject to the continued jurisdiction of the Court. The Liquidation Agent is also responsible for making distributions and for winding down the Debtor's affairs, including, without limitation, filing final tax returns and terminating any benefit plans remaining in existence as of the Effective Date. The Liquidation Agent shall have full authority and discretion to settle, with notice or Court approval, any objection to filed Claims other than the Allowed Class 1 Claim or the Class 7 Claims asserted by the Pledgors, to investigate, pursue, settle and collect any Recovery Causes of Action and security deposits, without notice or Court approval; provided however that any settlement of a Recovery Cause of Action that is not an Avoidance Action shall require prior Court approval.

6.4 Additional Agents. The Liquidation Agent is authorized to hire employees and agents, upon terms acceptable to the Liquidation Agent, to assist with performance of duties under the Plan. In enforcing and pursuing rights, Claims and Recovery Causes of Action, the Liquidation Agent shall retain counsel or other professionals upon such terms not inconsistent with this Plan as may be agreed upon by such counsel or other professionals and the Liquidation Agent. The Liquidation Agent is authorized to pay post-Effective Date expenses, including the fees of any attorneys, accountants, independent contractors, employees, or agents, as such expenses come due without approval of the Court.

6.5 Indemnification. The Liquidation Agent shall serve during the duration of his or her appointment without a surety bond. Neither the Liquidation Agent nor any of his or her respective employees or agents shall be personally liable for payments to be made to the holders

of Claims under this Plan. The Liquidation Agent shall have no liability to the Debtor, or any Claimant, except for his or her own gross negligence or willful misconduct, and shall not be liable for any act or omission of any of his or her respective employees or agents unless the Liquidation Agent acted with gross negligence or willful misconduct in the selection or retention of such employee or agent. The Liquidation Agent shall be entitled to indemnification from the Debtor for any claims or actions asserted against him in his role as Liquidation Agent, unless he or she is found by Final Order to have been guilty of gross negligence or willful misconduct. The Liquidation Agent shall be entitled to a full release as a part of the Final Decree in this Case.

6.6 Covenants of the Liquidation Agent. The Liquidation Agent shall not pledge, encumber, or hypothecate any of the Debtor's Remaining Assets or post-Effective Date cash without the prior approval of the Court.

6.7 Section 1123 Compliance. On the Effective Date, the operating agreement of the Debtor shall automatically be deemed amended to be insert a provision prohibiting Debtor from issuing any non-voting equity securities or membership interests in compliance with § 1123(a)(6) of the Bankruptcy Code.

ARTICLE VII

IMPLEMENTATION OF THE PLAN, INCLUDING PURSUIT OF CAUSES OF ACTION

7.1 Liquidation Agent. The Liquidation Agent, as described in Article VI, shall be responsible for implementing this Plan for the benefit of all Claimants as provided by this Plan, subject to the continued jurisdiction of the Court. The Liquidation Agent is responsible for taking any action needed in connection with liquidating the Debtor's Remaining Assets, including the Recovery Causes of Action. The Liquidation Agent is also responsible for making distributions and for winding down the Debtor's affairs, including, without limitation, filing final

tax returns and terminating any benefit plans remaining in existence as of the Effective Date. Any compensation to the Liquidation Agent (or his counsel, employees or agents) shall be from the Debtor's cash.

7.2 Recovery Causes of Action. The Debtor retains and reserves all Recovery Causes of Action for pursuit by the Debtor post-confirmation. The Debtor has broad discretion to pursue or abandon the Recovery Causes of Action. However, the Debtor shall be required to pursue the Recovery Causes of Action that it determines in good faith, after consultation with counsel, are unlikely to result in a material net recovery to the Debtor's estate after deducting the estimated costs of prosecuting and collecting any potential recoveries.

After the Effective Date, the Debtor shall have the exclusive right, authority, and discretion to institute, prosecute, abandon, settle, or compromise any and all Recovery Causes of Action without the consent or approval of any third party and without any further order of Court; provided however that any settlement of a Recovery Cause of Action that is not an Avoidance Action shall require prior Court approval. Under the Plan, the Debtor shall retain all rights to commence and pursue, as appropriate, any and all Recovery Causes of Action in any court or other tribunal including, without limitation, in an adversary proceeding filed in the Chapter 11 Case. While the Debtor has attempted to identify certain Recovery Causes of Action which may be pursued in the Plan, the failure to list any potential or existing Recovery Cause of Action is not intended to limit the Debtor's rights to pursue any Recovery Cause of Action not listed or identified.

Unless a Recovery Cause of Action is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order, the Debtor expressly reserves such Recovery Cause of Action for later adjudication (including, without limitation, Recovery Causes

of Action not specifically identified or which the Debtor may presently be unaware or which may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances which may change or be different from those which the Debtor now believe to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches shall apply to such Recovery Causes of Action upon or after the Confirmation or consummation of the Plan based on the Disclosure Statement, the Plan or the Confirmation Order, except where such Recovery Causes of Action have been released in the Plan or other Final Order. In addition, the Debtor expressly reserve the right pursuant to the Bankruptcy Code to assert or adopt as a defense any claims in any lawsuit in which the Debtor is a defendant or an interested party, irrespective of whether a Recovery Cause of Action has been commenced based upon such claim.

7.3 Debtor's Remaining Assets. The Debtor shall expeditiously liquidate the Debtor's Remaining Assets after the Effective Date. Post-Effective Date sales of the Debtor's Remaining Assets shall not require Court approval and shall be sold on terms and conditions acceptable to the Liquidation Agent, acting on behalf of the Debtor. The net proceeds from the liquidation of the Debtor's Remaining Assets shall be distributed in accordance with this Plan. The Debtor, in its sole discretion, has authority to abandon any of the Debtor's Remaining Assets that has no market value or that it believes is burdensome to the Debtor's estate.

7.4 Timing of Distributions. The Debtor shall make distributions as often as is consistent with the Plan and deemed practical in the Liquidation Agent's sole discretion.

7.5 Nominal Distributions. With respect to any distribution prior to the final distribution, if the holder of an Allowed Claim would receive less than \$50.00, the Debtor may

choose not to distribute such lesser amount to such holder, but may instead defer the distribution thereof until the cumulative amount to be distributed to such holder at any subsequent distribution is \$50.00 or more. No interest on any such deferred amount shall be paid to such holder. If the final distribution to the holder of an Allowed Claim would be less than \$10.00, the Debtor is not required to make such distribution, and such distribution is deemed waived.

7.6 Distribution Address. Subject to Rule 9010 of the Federal Bankruptcy Rules, all distributions, notices and requests to holders of Allowed Claims shall be sent to them at the address of each such holder as set forth on the proof of claim filed by such holder or at their last-known address if no proof of claim is filed. The Debtor or any holder of an Allowed Claim may designate in writing any other address for purposes of this section, which designation shall be effective upon receipt or upon publication of such notice as it is approved by the Court.

7.7 Final Distribution The Debtor shall make the final distribution in accordance with the Plan within 60 days after all of the Debtor's Remaining Assets have been liquidated and all net proceeds deposited, no Disputed Claims exist, and all post-Effective Date expenses have been paid in full. Within 90 days of the final distribution, or as soon as possible thereafter, the Liquidation Agent shall file a report accounting that the bankruptcy estate has been fully administered with the Court.

ARTICLE VIII

OBJECTIONS TO CLAIMS

8.1 Time for Filing. Debtor or any party in interest, including the Liquidation Agent, may file an objection to any Claim in any class on or before the Claims Objection Deadline. Objections not filed within such time will be deemed waived. If any Claim or portion thereof is challenged by an objection or otherwise, distribution may, in the Liquidation Agent's sole

discretion, be made on any portion of such disputed Claim which is undisputed pending resolution of the Claim allowance as a whole.

8.2 Automatically Disallowed Claims. With respect to any Claim for which the Debtor has insurance coverage (excluding self-insurance), the Claim will be treated as an Allowed Claim only to the extent that the Claimant establishes that such Claim is not recoverable under the Debtors' insurance. Unless the Claimant obtains a Final Order establishing that the Claim is not recoverable under the Debtor's insurance, such Claim is automatically disallowed and will be entitled to no distribution.

8.3 Claims Objection Process. The Debtor or any other party in interest may file with the Court, on or before the Claims Objection Deadline, a written objection to the allowance or classification of any Claim, which objection shall be served upon the Claimant and other parties in interest. The failure to object to or to examine any Claim for the purposes of voting on this Plan shall not be deemed a waiver of a party's right to object to, or re-examine the Claim in whole or in part within the above-described time period.

8.4 Resolution of Disputed Claim. Upon a Disputed Claim becoming an Allowed Claim, the Debtor has the sole discretion to (i) pay the Claimant its Pro Rata share of any missed distributions upon the Disputed Claim becoming an Allowed Claim or (ii) retain its Pro Rata share of any missed distributions until the next scheduled distribution date, at which time the Debtor shall pay the Pro Rata share of any missed distributions and the Pro Rata share of that particular distribution.

8.5 Claims Reserve. Until all of Debtor's Remaining Assets, including all Recovery Causes of Action, have been liquidated or abandoned, the Liquidation Agent shall not make any Pro Rata distribution, excluding the final distribution, without retaining an amount sufficient to

pay all timely post-Effective Date expenses, as such may reasonably be anticipated to be required prior to the closing of this Case, and an equal Pro Rata portion to pay Disputed Claims. In determining the amount to be reserved for Disputed Claims, the appropriate Pro Rata calculations required by the Plan will be made as if all Disputed Claims were Allowed in the full amount claimed by the holders thereof, or in the amount estimated by the Bankruptcy Court under § 502(c) of the Code or Rule 3018(a) of the Bankruptcy Rules, whichever is less. Notwithstanding anything to the contrary herein, the Liquidation Agent shall not be required to retain any reserve for the \$1,000,000,000 proof of claim filed by a former employee.

ARTICLE VII

EXECUTORY CONTRACTS AND UNEXPIRED LEASES

7.1 By the Confirmation Date, GS Acquisitions will designate to Debtor which leases and executory contracts will be assigned or assumed and assigned to GS Acquisitions, some of which may be assumed as modified. GS Acquisitions will have no liability for the payment or satisfaction of any other claim arising prior to the Effective Date under any lease or executory contract. Debtor will assume and assign to GS Acquisitions all of its Franchise Agreements. Debtor shall file a motion to assign or assume and assign to GS Acquisitions all designated executory contracts and unexpired leases not already assumed, which motion shall set forth Debtor's cure obligations.

7.2 Any executory contract or unexpired lease not expressly assumed herein or by separate order of the Bankruptcy Court shall be deemed rejected upon entry of the Confirmation Order. Any claim arising as a result of rejection of an executory contract by virtue of the Confirmation Order shall be filed on or before thirty (30) days from the date the Confirmation Order is entered on the Court's docket. Any rejection damages claim not timely filed shall be deemed waived without further action by the Liquidation Agent, the Committee or Debtor.

ARTICLE VIII

PRESERVATION OF CAUSES OF ACTION

All causes of action, including without limitation, Avoidance Actions and Recovery Causes of Action, actions for avoidance and recovery pursuant to Section 550 of the Bankruptcy Code of transfers avoidable by reason of Sections 544, 545, 547, 548, 549, or 553(b), whether or not such actions have been commenced prior to the Effective Date of the Plan, shall be retained by the estate to be prosecuted by the Debtor.

NOTICE TO POTENTIAL DEFENDANTS: In the Statement of Financial Affairs on file with the Court, Debtor listed all payments made within ninety (90) days prior to the Petition Date, and payments made within one (1) year prior to the Petition Date to insiders of the Debtor. Each and every person listed as having received any such payment, as well as any other unlisted party that did, in fact, receive any such transfer, or believes it may have received such a transfer, is on notice that the rights of the estate to recover such payments are preserved for possible prosecution by the Debtor. Recovery shall not be limited to the amounts set forth in the Statement of Financial Affairs. To the extent Debtor may have inadvertently omitted any such payment or transfer, all rights of Debtor to avoidance and recovery as are provided by the Bankruptcy Code are also preserved.

Except as otherwise provided in the Plan or Confirmation Order, any Person to whom the Debtor has incurred an obligation (whether on account of services, purchase or sale of goods or otherwise), or who has received services from the Debtor or a transfer of money or property of the Debtor, or who has transacted business with the Debtor, or leased equipment or property from the Debtor should assume that such obligation, transfer, or transaction may be reviewed by the Debtor and may, if appropriate, be the subject of a Recovery Cause of Action, whether or not

(i) such Person has filed a proof of claim in this Chapter 11 Case; (ii) such Person's proof of claim has been objected to by the Debtor; (iii) such Person's Claim was included in the Debtor's Schedules; (iv) such Person's scheduled Claim has been objected to by the Debtor or has been identified by the Debtor as disputed, contingent, or unliquidated; or (v) such action falls within the express description of possible actions set forth herein. *Except as expressly provided in the Plan, the Confirmation Order shall not bar the Debtor by res judicata, collateral estoppel or otherwise from collecting, prosecuting or defending any matter, or Recovery Cause of Action.*

Without limiting the foregoing, the Debtor believes that potential Avoidance Actions to recover preferences pursuant to Section 547 of the Bankruptcy Code exist against every Person who received a payment from the Debtor within ninety (90) days prior to the Petition Date. A list of such entities is set forth on Exhibit A hereto, as well as, to the best of the Debtor's knowledge, the payments known to have been made to those entities during the 90-day period. Other payments may be identified in the future. The Debtor has not yet attempted to determine which of the payments identified qualify as preferences under Section 547 of the Bankruptcy Code, but the Debtor may initiate an Avoidance Action against any recipient or subsequent transferee of any of these payments.

The Liquidation Agent, acting on behalf of Debtor's estate, may pursue Recovery Causes of Action against Lattimore, Black, Morgan and Cain, PC, and/or any of its current or former partners or shareholders in connection with auditing and other services provided to the Debtor, as well as professional and other obligations to the Debtor. The Liquidation Agent, acting on behalf of Debtor's estate, may also pursue Recovery Causes of Action related to payments to the Debtor's Chief Manager, Shaub, as well as the actions and management of the Debtor by Shaub and the Debtor's former Chief Financial Officer, Rebecca Sullivan, including without limitation

any actions and omissions which had the effect of the Debtor, creditors, or other parties-in-interest suffering damages. The Liquidation Agent, acting on behalf of Debtor's estate, may also pursue a Recovery Cause of Action against the Pledgors including without limitation to determine subrogation rights, for equitable subordination, or for damages suffered by the Debtor, creditors, or other parties-in-interest.

ARTICLE IX

MISCELLANEOUS PROVISIONS

9.1 GS Acquisitions: The principals of GS Acquisitions are Phil Mickelson, Steve Loy and Terry Pefanis. Mr. Pefanis will be the chief executive officer of GS Acquisitions. GS Acquisitions, after engaging in good faith consultation with WHI and FirstBank, will designate post-confirmation an employee/officer who will have responsibility for the day-to-day management of the operation of the Restaurants. GS Acquisitions has already identified a person who was formerly employed by WHI as a potential person to fulfill this role. GS Acquisitions is also open to other suggestions from WHI regarding potential operating officers with suitable experience. Further, if requested by WHI or if required to obtain Court approval of the assignment of the Franchise Agreements, GS Acquisitions will also obtain the personal guaranty of the operating officer of GS Acquisitions' obligations under the Franchise Agreements, in addition to the principal's guarantees thereof, and will also grant this individual an equity interest in GS Acquisitions.

9.2 Employees. On the Effective Date, Debtor shall terminate the employment of all of its employees. Other than those specifically designated by GS Acquisitions prior to the Effective Date, the terminated employees will be offered provisional employment with GS

Acquisitions, with continued employment dependent on each employee's compliance with GS Acquisitions's hiring practices.

9.3 Employment and Compensation of Officers and Employees. As discussed above, GS Acquisitions will offer to rehire provisionally substantially all of Debtor's employees except those designated prior to the Effective Date. To the extent that any employee of Debtor is not immediately hired by GS Acquisitions, GS Acquisitions will be responsible to provide COBRA coverage to those employees to the extent required by Department of Labor regulations.

9.4 Corporate Action. All matters provided for under the Plan involving the corporate structure of Debtor, or any corporate action to be taken by or required of Debtor, excluding its dissolution, will be deemed to have occurred and be effective as provided in the Plan, and will be authorized and approved in all respects without any requirement for further action by the shareholders or directors of Debtor.

9.5 Legally Binding Effect. Confirmation of the Plan will bind Debtor and all creditors and Interest Holders, whether or not they accept the Plan. The distributions of consideration provided for in the Plan will be in exchange for and in complete settlement, satisfaction and discharge of all Claims and Interests, including any Claim for interest after the Petition Date. All creditors shall be precluded from asserting any Claim against Debtor or its property based upon any transaction or other activity of any kind that occurred prior to the Effective Date.

9.6 Transfer of Assets Free and Clear. Debtor's transfer of its assets to GS Acquisitions shall be free and clear of all liens and encumbrances, except those expressly provided by the Plan and the Confirmation Order. GS Acquisitions shall not assume or be responsible for any liability of Debtor which protection from liability or responsibility shall extend to the maximum extent

allowed by law and permitted under the Bankruptcy Code, including under Bankruptcy Code Sections 363(m), 365, and 1141.

EXCEPT AS OTHERWISE SET FORTH IN THE PLAN WITH RESPECT TO GS ACQUISITIONS'S EXPRESS ASSUMPTION OF DEBTOR'S OBLIGATIONS, GS ACQUISITIONS WILL NOT ASSUME ANY OBLIGATION, DEBT OR LIABILITY OF DEBTOR THAT AROSE PRIOR TO THE EFFECTIVE DATE AND THE SAME SHALL EITHER BE DISCHARGED BY THE COURT OR RESOLVED OR SATISFIED BY THE DEBTOR.

9.7 Dissolution of Unsecured Creditors Committee. On the Effective Date, the Unsecured Creditors Committee shall be dissolved and its members shall be deemed relieved of all of their prior duties and responsibilities and shall be without any further duties, responsibilities and authority in connection with the Chapter 11 case or the Plan and its implementation. The Debtor, acting through the Liquidation Agent, will continue to make financial information and wind-down plans reasonably available to the former members of the Committee. The Debtor will consult with the former members of the Committee when reasonably requested with regard to winding down the Debtor's operations, liquidating assets, pursuing Recovery Causes of Action and distributing assets.

9.8 Release of FirstBank, GS Acquisitions, WHI and Committee. On the Effective Date, Debtor and its estate release FirstBank, GS Acquisitions, WHI and the members of the Committee (acting in their capacity as Committee Members and not as creditors) from any and all claims or causes of action that they have or may have against them arising on or before the Effective Date.

9.9 Discharge of Claims. Except as otherwise expressly provided in the Plan or in the Confirmation Order, the Confirmation Order will operate as a discharge, pursuant to Bankruptcy Code Section 1141(d), to the fullest extent permitted by applicable law, as of the Effective Date, of any and all Debts of, and Claims of any nature whatsoever against Debtor and GS Acquisitions that arose at any time prior to the Effective Date, including any and all Claims for principal and interest, whether accrued before, on or after the Petition Date. Without limiting the generality of the foregoing, on the Effective Date, Debtor and GS Acquisitions will be discharged from any Claim or debt that arose prior to the Confirmation Date and from any and all debts of the kind specified in Bankruptcy Code Sections 502(g), 502(h), or 502(i), regardless of whether (a) a proof of claim based on such debt was filed pursuant to Bankruptcy Code Section 501, (b) a Claim based on such debt is an Allowed Claim pursuant to Bankruptcy Code Section 502, or (c) the holder of a Claim based on such debt has voted to accept the Plan. As of the Effective Date, except as otherwise expressly provided in the Plan or in the Confirmation Order, all persons and entities, including all holders of a Claim, will be forever precluded and permanently enjoined to the fullest extent permitted by applicable law from asserting directly or indirectly against Debtor, GS Acquisitions or any of its respective successors and assigns, or the assets or properties of any of them, any other or further Claims, debts, rights, causes of action, remedies, liabilities, or anything based upon any act, omission, document, instrument, transaction, or other activity of any kind or nature that occurred prior to the Effective Date or that occurs in connection with implementation of the Plan and the Confirmation Order will contain appropriate injunctive language to that effect. In accordance with the foregoing, except as specifically provided in the Plan or in the Confirmation Order, the Confirmation Order will be a judicial determination of the discharge of all such Claims and other debts and liabilities against the Debtor, pursuant to Bankruptcy Code Sections 524 and

1141, and such discharge will void any judgment obtained against Debtor, at any time, to the extent that such judgment relates to a discharged Claim, liability or debt holders of Administrative Claims or Post Petition Trade Debt Claim that do not file an application or other Bankruptcy Court-approved pleading by appropriate bar date will be forever barred from asserting such Claim against Debtor, GS Acquisitions or any of their respective properties.

9.10 General Injunction. Pursuant to Bankruptcy Code Sections 105, 1123, 1129 and 1141, in order to preserve and implement the various transactions contemplated by and provided for in the Plan, as of the Confirmation Date, except as otherwise provided in the Plan or in the Confirmation Order, all persons or entities that have held, currently hold or may hold a Claim or other debt, liability, or Equity Interest that is discharged pursuant to the terms of the Plan are and will be permanently enjoined and forever barred to the fullest extent permitted by law from taking any of the following actions on account of any such discharged Claims, debts, liabilities, or Equity Interests, other than actions brought to enforce any rights or obligations under the Plan or the Plan documents:

- (a) commencing or continuing in any manner any action or other proceeding against Debtor, GS Acquisitions, the Liquidation Agent or their respective properties;
- (b) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order against Debtor, GS Acquisitions, the Liquidation Agent or their respective properties;
- (c) creating, perfecting or enforcing any lien or encumbrance against Debtor, GS Acquisitions, the Liquidation Agent or their respective properties;
- (d) asserting a set-off, right of subrogation, or recoupment of any kind against any debt, liability or obligation due to Debtor, GS Acquisitions, or the Liquidation Agent; or

(e) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of the Plan or the Confirmation Order.

Debtor, GS Acquisitions, and the Liquidation Agent will have the right to independently seek enforcement of this general injunction provision. This general injunction provision is an integral part of the Plan and is essential to its implementation.

9.11 Exculpation from Liability. Debtor, WHI, GS Acquisitions, the Committee and the Liquidation Agent and their respective directors, officers, employees, agents, representatives, accountants, attorneys, and professionals (acting in such capacity), and their respective heirs, executors, administrators, successors, and assigns, will neither have nor incur any liability whatsoever to any person or other entity for any act taken or omitted to be taken in good faith in connection with or related to the formulation, preparation, dissemination, implementation, confirmation, or consummation of the Plan, the Disclosure Statement, any Plan document, or any contract, instrument, release, or other agreement or document created or entered into, or any other act taken or omitted to be taken, in connection with the Plan or Debtor's bankruptcy case. The rights granted here under are cumulative with, and not restrictive of, any and all rights, remedies, and benefits that Debtor and its agents have or obtain pursuant to any provision of the Bankruptcy Code. This exculpation from liability provision is an integral part of the Plan and is essential to its implementation. Notwithstanding the foregoing, nothing in the Plan shall release any claims against Debtor, its respective current or former managers, directors, officers, employees, agents, owners, representatives, accountants, attorneys, or professionals (acting in such capacity) for any pre Petition Date acts.

9.12 Cram Down. If any party in interest objects to Confirmation of the Plan, or if it becomes necessary for the Debtor to seek Confirmation of the Plan pursuant to Bankruptcy Code

Section 1129(b), it shall be implied for all terms proposed herein that the Court shall impose different or additional terms as requested by Debtor at the Confirmation Hearing if the Court determines that the Plan as proposed is not feasible, or that it either: (a) unfairly discriminates against a non-accepting Class, or (b) is not fair and equitable with respect to a non-accepting Class.

9.13 Governing Law. Except to the extent that the Bankruptcy Code, Bankruptcy Rules, or other federal laws apply, the rights and obligations arising under the Plan shall be governed by the laws of the State of Tennessee, without giving effect to any principles of conflicts of law contained therein.

9.14 Effectuating Documents and Further Transactions. Debtor (through the CRO or Liquidation Agent) shall be authorized and directed to execute, deliver, file, or record such documents, contracts, instruments, releases, and other agreements and take such other action as may be necessary to effectuate and further evidence the terms and conditions of the Plan.

9.15 Security Deposits. To the extent Debtor has posted security deposits (with landlords, utilities or otherwise) pre-Petition Date, those amounts may be setoff against Allowed Claims only upon the written consent of the Liquidation Agent or upon entry of a Final Order authorizing such offset. To the extent Debtor has posted security deposits (with landlords, utilities or otherwise) post-Petition Date, the deposit shall be remitted to GS Acquisitions promptly after the Effective Date unless the holder complies with the requirements of the first sentence of this paragraph.

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

9.17 Confirmation Order and Plan Control. To the extent the Confirmation Order and/or the Plan is inconsistent with the Disclosure Statement, any other agreement entered into between or among the Debtor and any third party, the Plan controls the Disclosure Statement and any such agreements and the Confirmation Order (and any other Orders of the Court) shall be construed together and consistent with the terms of the Plan.

9.18 NOTICES. Any notice hereunder shall be in writing, and addressed as follows:

If to Debtor:

Southeast Waffles, LLC
446 Metroplex Drive, Suite 210
Nashville, TN 37211
Attn: Gary Murphey

With a copy to:

Glenn B. Rose
Harwell Howard Hyne Gabbert et al
315 Deaderick Street, Suite 1800
Nashville, TN 37237

If to FirstBank:

FirstBank
Doug Remke
200 Fourth Avenue North
Suite 100
Nashville, TN 37219

With a copy to:

James R. Kelley
Neal & Harwell, PLC
150 Fourth Avenue N., Suite 2000
Nashville, TN 37219

If to Committee:

[Member]

With a copy to:

Robert J. Mendes
MGLAW PLLC
2525 West End Avenue, Suite 1475
Nashville, TN 37203

If to GS Acquisitions

Terry Pefanis

With a copy to:

William Norton
Bradley Arant Boult Cummings LLP
1600 Division Street, Suite 700
Nashville, TN 37203

If to the Liquidation Agent:

(To be included in Confirmation Order)

9.19 Transfer of Claim. In the event that the holder of any Claim shall transfer such Claim, it shall immediately advise the Debtor in writing of such transfer. The Debtor shall be entitled to assume that no transfer of any Claim has been made by any holder unless and until the Debtor has received written notice to the contrary. Each transferee of any Claim shall take such Claim subject to the provisions of the Plan and to any request made, waiver or consent given or other action taken hereunder and, except as otherwise expressly provided in such notice, the Debtor shall be entitled to assume conclusively that the transferee named in such notice shall thereafter be vested with all rights and powers of the transferor under the Plan.

9.20 Unclaimed Distributions. If the holder of an Allowed Claim fails to negotiate a check issued to such holder within ninety (90) days of the date such check was issued, then the Liquidation Agent will provide written notice to such holder stating that unless such holder negotiates

such check within thirty (30) days of the notice, the amount of cash attributable to such check will be deemed to be unclaimed, such holder's Claim will no longer be deemed to be Allowed, and such holder will be deemed to have no further Claim in respect of such check and will not participate in any further distributions under the Plan. If a distribution is returned to the Liquidation Agent pursuant to an incomplete or incorrect address, as to such distribution, within 120 days of the return of such distribution, then the amount of cash attributable to the distribution will be deemed unclaimed and such holder will be deemed to have no further claim and will not participate any further distributions under the Plan, with all such funds to be distributed to the other holders of Allowed Claims.

9.21 Estimated Claims. To the extent that any Claim is estimated for any purposes other than for voting, then in no event will such Claim be Allowed in an amount greater than the estimated amount.

9.22 Consent to Jurisdiction Upon any default under the Plan, GS Acquisitions consents to the jurisdiction of the Bankruptcy Court, or any successor thereto, and agrees that it will be the preferred forum for all proceedings relating to any such default.

By accepting any distribution or payment under or in connection with the Plan, by filing any proof of claim, by filing any Cure Claim or objection to the assumption or assignment of any assumed contract, by voting on the Plan, or by entering an appearance in the reorganization case, all Creditors and other parties in interest have consented, and will be deemed to have expressly consented to the jurisdiction of the Bankruptcy Court for all purposes with respect to any and all matters relating to, arising under or in connection with the Plan or the reorganization case, including the matters and purposes set forth in the Plan. The Bankruptcy Court will maintain jurisdiction to the fullest extent allowed under applicable law over all matters set forth in the Plan.

9.23 Set-Offs. Subject to the limitations provided in Bankruptcy Code Section 553, the Liquidation Agent may, but will not be required to, set-off against any Claim and the payments or other distributions to be made pursuant to the Plan in respect of such Claim, claims of any nature whatsoever the Debtor may have against the holder of such Claim, but neither the failure to do so, nor the allowance of any Claim hereunder will constitute a waiver or release by the Debtor of any such claim that Debtor may have against such holder.

9.24 No Interest. Except as expressly stated in the Plan or otherwise Allowed by Final Order of the Bankruptcy Court, no holder of an Allowed Claim will be entitled to the accrual of post-Petition Date interest or the payment of post Petition Date interest penalties, or late charges on account of such Claim for any purpose.

9.25 Modification of Payment Terms. The Liquidation Agent shall have the right to modify the treatment of any Allowed Claim, as provided in Bankruptcy Code Section 1123(a)(4), at any time after the Effective Date, upon the consent of the holder of such Allowed Claim.

9.26 Entire Agreement. The Plan sets forth the entire agreement and undertakings relating to the subject matter thereof and supersedes all prior discussions and documents. No person or other entity will be bound by any terms, conditions, definitions, warranties, understandings, or representations with respect to the subject matter hereof, other than as expressly provided for' herein or as may hereafter be agreed to by the parties in writing.

9.27 Severability of Plan Provisions. If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court, at the request of the Debtor, will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision will

then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of the Plan, as it may have been altered or' interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

9.28 Computation of Time. In computing any period of time prescribed or allowed by the Plan, the provisions of F.R.B.P 9006(a) will apply.

9.29 Limitation of Allowance. No attorneys' fees, punitive damages, penalties, special damages, lost profits, treble damages, exemplary damages, or interest will be paid with respect to any Claim or Equity Interest except as specified herein or as Allowed by Final Order of the Bankruptcy Court.

9.30 Final Accounting and Case Closing. The Debtor shall be responsible for preparing and filing any required motion and the final accounting necessary to close the case. This Case may be closed notwithstanding the pendency of any Claim objections, other contested motions, or Recovery Causes of Action, over which the Court shall retain jurisdiction.

ARTICLE X

CONDITIONS PRECEDENT

A. TO CONFIRMATION

10.1 The Plan may not be confirmed unless:

a. Debtor shall have sufficient cash on hand as of the Effective Date: (i) to cure, and it must simultaneously cure, any and all monetary defaults under the leases, subleases, Franchise Agreements and other executory contracts to be assumed and assigned to GS Acquisitions (other than the remodel obligations under the Franchise

Agreements to be cured by GS Acquisitions after the Effective Date), (ii) to make immediate payment of all other unpaid Administrative Expenses reasonably expected to be Allowed, (iii) to pay all Allowed Post Petition Trade Debt and (iv) to pay all post Effective Date obligations of the Debtor.

b. No default in payments or other terms of the cash collateral order relating to FirstBank shall have occurred.

c. Gary Murphey will remain in place as the Debtor's CRO through the Effective Date.

d. The Plan is confirmed by October 30, 2009.

e. The total amount of Tax Claims that have been Allowed, scheduled, or filed or determined to have been Allowed or filed shall, not exceed \$4,011,624 (excluding interest).

f. The federal judgment rate as of the Confirmation Date must not be greater than 4.0% per annum.

B. TO EFFECTIVE DATE

10.2 The Effective Date shall not occur unless:

a. The Confirmation Order shall have been entered.

b. Should an appeal of the Confirmation Order be filed prior to the Effective Date, GS Acquisitions may (but is not required to) elect to proceed with the provisions of the Plan provided that the Plan has not been stayed by either the Bankruptcy Court or by an appellate court.

c. None of the letters of credit issued by the Bank and outstanding shall have been drawn.

d. FirstBank and GS Acquisitions shall have agreed on definitive loan documents reasonably necessary as determined in their good faith discretion.

e. No material adverse change shall have occurred with respect to Debtor's business or GS Acquisitions; and

f. A Final Order(s) shall have been entered providing for the assumption and assignment to GS Acquisitions LLL of the Franchise Agreements and leases for the Restaurants, which order must grant GS Acquisitions a period of at least 24 months in which to cure Debtor's Restaurant remodel obligations pending as of the Effective Date.

C. WAIVER OF CONDITIONS TO CONFIRMATION OR CONSUMMATION

10.3 The conditions above can be waived as follows:

<u>Paragraph</u>	<u>Waiver By</u>
10.1(a)(i)	GS Acquisitions
10.1(b)	FirstBank
10.1(e)	GS Acquisitions
10.1(f)	GS Acquisitions
10.2(c)	FirstBank
10.2(d)	GS Acquisitions and FirstBank
10.2(f)	GS Acquisitions
All Others	Committee, GS Acquisitions and FirstBank

ARTICLE XI

CLOSING OF THE CASE

At such time as this case has been fully administered, that is, when all administrative matters or issues requiring action or resolution by the Court have been completed or resolved, the Confirmation Order has become a Final Order, and the due date for the first payments under the Plan has occurred, this case may be closed. To close the case, Liquidation Agent shall file a Motion for Final Decree as soon as practicable following Substantial Consummation. **The**

Liquidation Agent shall continue to pay U.S. Trustee quarterly fees until the Final Decree is entered.

After the Effective Date but before closing of the case, the Debtor may continue to avail itself of the services of professional persons whose employment was approved on behalf of Debtor or the Committee prior to the Confirmation Date in completing administration of the case and in the consummation and performance of the Plan and, if necessary, may employ additional professional persons to render services in and in connection with the case. With respect to services rendered and expenses incurred in or in connection with the case by any professional person during such period, the professional person may render periodic billing thereafter to the Debtor, as appropriate, who shall promptly pay the same, but each such payment shall be subject to review and approval by the Court as to the reasonableness thereof, as set forth herein below. In its Motion for Final Decree, the Debtor shall detail all amounts paid during such period to professional persons as compensation for services rendered or reimbursement of expenses incurred, and with respect to which no prior application for allowance thereof has been made to the Court. At any hearing upon the Debtor's Motion for Final Decree, the Court shall consider and determine whether or not such payments shall be approved as reasonable.

ARTICLE XII

CONTINUING JURISDICTION OF THE COURT

Notwithstanding the Confirmation of the Plan or occurrence of the Effective Date, the Court shall retain jurisdiction over the reorganization case and the estate through and after the Effective Date as to all matters, including but not limited to those matters specifically set forth in this Article. The Court, through the Confirmation Order shall reserve exclusive jurisdiction over the Plan, property dealt with under the Plan, and debts to creditors under the Plan, the Debtor and the Liquidation Agent

until such time as all Plan indebtedness has been paid in full or otherwise satisfied. The Court shall retain jurisdiction:

a. over all claims or rights in, liens on, or title to, property to be administered by the Liquidation Agent, including, but not limited to, any equitable relief in connection therewith;

b. to determine the allowability of claims upon objection to such claims by the Debtor or any Creditor;

c. to determine any tax liability pursuant to Bankruptcy Code Section 505;

d. to determine requests for payment of administrative expenses;

e. to adjudicate all claims objections and adversary proceedings brought by the Debtor against third parties;

f. to adjudicate the Recovery Cases of Action, irrespective of who prosecutes them;

g. to implement the provisions of the Plan and enter orders in aid of Confirmation and consummation of the Plan, including, without limitation, appropriate orders to enforce the right, title and powers of Debtor, GS Acquisitions or the Liquidation Agent from actions by holders of Claims against Debtor;

h. to determine classification, voting, treatment, allowance, estimation, withdrawal, disallowance, or reconsideration of claims and any objections relating thereto;

i. to fix, liquidate, or estimate claims;

j. to modify the Plan pursuant to Bankruptcy Code Section 1127;

k. to correct any defect, to cure any mistake or omission or reconcile any inconsistency in the Plan or the Confirmation Order as may be necessary or appropriate to carry out the purposes and intent of the Plan;

l. to adjudicate any Causes of Action that arose prior to the Confirmation Date or in connection with the implementation of the Plan, including Avoidance Actions;

m. to resolve any disputes concerning whether a Person or entity had sufficient notice of the reorganization case, the applicable claims Bar Date, the hearing on the approval of the Disclosure Statement as containing adequate information, the hearing on the Confirmation of the Plan for the purpose of determining whether a Claim is discharged hereunder or for any other purpose;

n. to enter a Final Order closing the reorganization case; and

o. to hear and determine any other such matter as may be provided for under Title 28 or any other title of the United States Code and any reference to the Bankruptcy Court, the Bankruptcy Code, the Bankruptcy Rules, other applicable law, the Plan or the Confirmation Order.

DATED: July 21, 2009.

Respectfully submitted,

/s/ Gary M. Murphey
Southeast Waffles, LLC.
By: Gary M. Murphey
Its: Chief Restructuring Officer

/s/ Glenn B. Rose
Glenn B. Rose
Harwell Howard Hyne Gabbert & Manner, P.C.
315 Deaderick Street, Suite 1800
Nashville, TN 37238

ATTORNEYS FOR DEBTOR