

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re: :
 : Chapter 11
 :
DAIRY MART CONVENIENCE :
 :
STORES, INC., et al., : Case No. 01-42400 (AJG)
 :
 : Jointly Administered
 :
Debtors. :
-----X

**JOINT PLAN OF LIQUIDATION OF
DAIRY MART CONVENIENCE STORES, INC. AND ITS
SUBSIDIARIES UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

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**JOINT PLAN OF LIQUIDATION OF DAIRY MART CONVENIENCE STORES, INC.
AND ITS SUBSIDIARIES UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

Dairy Mart Convenience Stores, Inc. and the Debtor Subsidiaries, as Debtors and Debtors in Possession in the Reorganization Cases, propose this Joint Plan of Liquidation pursuant to the provisions of chapter 11 of the Bankruptcy Code.

**SECTION I
DEFINITIONS**

Unless the context otherwise requires, the following terms, when used in the Plan, shall have the meanings set forth below:

1.1 **"APA"** means the Asset Purchase Agreement, dated as of June 5, 2002, as amended, by and between the Debtors and Bigfoot.

1.2 **"Administrative Bar Date"** means the last date on which a request for payment of an Administrative Expense Claim may be filed, as set forth in Section 3.3 of the Plan.

1.3 **"Administrative Expense Claim"** means any right to payment constituting a cost or expense of administration of the Reorganization Cases under sections 503(b) and 507(a)(1) of the Bankruptcy Code, including (a) any actual and necessary costs and expenses incurred after the Petition Date of preserving the Estates and operating the Debtors' businesses; (b) Claims that have been determined by a Final Order to constitute an administrative expense of the Estates; (c) compensation Claims by Professionals; and (d) any fees or charges assessed against and payable by the Debtors under section 1930 of title 28 of the United States Code.

1.4 **"Administrative & Priority Fund"** means \$22,700,000 of the Liquidating Trust Fund segregated for the satisfaction of all Allowed (a) Administrative Expense Claims, (b) Priority Tax Claims, and (c) Class 1 Claims.

1.5 **"Allowed"** means with reference to any Claim: any Claim (a) a proof of which was Filed within the applicable period of limitation fixed by the Court in accordance with Bankruptcy Rule 3003(c)(3) and as to which the Debtors or other party in interest have not Filed an objection on or before the expiration of the time period set forth for the objection to such claim in the Plan, the Bankruptcy Code, the Bankruptcy Rules, or a Final Order, or as to which, and to the extent, any objection has been determined by a Final Order in favor of the relevant Claim holder; (b) listed on the Schedules as other than disputed, contingent or unliquidated; (c) that has been allowed by a Final Order of the Court (*provided, however*, that Claims allowed solely for the purpose of voting to accept or reject the Plan shall not be considered Allowed Claims hereunder); and (d) expressly allowed under or pursuant to the terms of the Plan.

1.6 **"Bankruptcy Code"** means title 11 of the United States Code, as amended and in effect on the Petition Date.

1.7 **"Bankruptcy Rules"** means (a) the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code and (b) the local rules of the Court, in each case, as in effect on the Petition Date.

1.8 **"Beneficiaries"** means holders of Claims in Classes 1, 2, 3, 4, and 5 entitled to receive Distributions under the Plan, whether or not such Claims were Allowed Claims on the Effective Date.

1.9 **"Bigfoot"** means Mac's Convenience Stores LLC d/b/a Bigfoot Food Stores, the purchaser under the APA.

1.10 **"Business Day"** means any day other than (a) a Saturday; (b) a Sunday; (c) any other day on which banking institutions in New York, New York are required or authorized to close by law or executive order; and (d) the Friday after Thanksgiving.

1.11 **"Cash"** means legal tender of the United States of America.

1.12 **"Cash Investment Yield"** means the net yield earned by the Dairy Mart Liquidating Trust from the investment of Cash held pending Distribution in accordance with the provisions of the Plan and the Dairy Mart Trust Agreement.

1.13 **"Causes of Action"** means any and all actions, causes of action, liabilities, obligations, rights, suits, debts, sums of money, damages, judgments, claims, and demands whatsoever, whether known or unknown, existing or hereafter arising, in law, equity, or otherwise, based in whole or in part upon any act or omission or other event occurring prior to the Petition Date or during the course of the Reorganization Cases, including through the Effective Date.

1.14 **"Claim"** means any claim against any Debtor, whether or not asserted, as the term "claim" is defined in section 101(5) of the Bankruptcy Code, including all Administrative Expense Claims.

1.15 **"Class"** means each of the groups of holders of Claims or Equity Interests described in section V.

1.16 **"Collateral"** means any property or interest in property of the Consolidated Estate subject to a Lien to secure the payment or performance of a Claim, which Lien is not subject to avoidance or otherwise invalid under the Bankruptcy Code or other applicable law.

1.17 **"Confirmation Date"** means the date on which the Confirmation Order is entered on the docket of the Court.

1.18 **"Confirmation Hearing"** means the hearing held by the Court to consider the confirmation of the Plan, as it may be adjourned or continued from time to time.

1.19 **"Confirmation Order"** means the order of the Court confirming the Plan under section 1129 of the Bankruptcy Code.

1.20 **"CONNA"** means, collectively, CONNA Corporation and its direct and indirect Debtor Subsidiaries, Remote Services, Inc., Convenient Gasoline, Inc., Convenient Industries of America, Inc., Oscar Ewing, Inc., Food Merchandisers Incorporated, and CIA Food Marts, Inc.

1.21 **"CONNA Claims"** means all Allowed general unsecured Claims against CONNA.

1.22 **"CONNA Payment Amount"** means 28.5% of the Unsecured Fund.

1.23 **"Consolidated Estate"** means the single bankruptcy estate resulting from the substantive consolidation of the Estates pursuant to the Plan and the Confirmation Order.

1.24 **"Court"** means the United States Bankruptcy Court for the Southern District of New York or any other court having jurisdiction over the Reorganization Cases.

1.25 **"Creditors' Committee"** means the official committee of unsecured creditors appointed by the United States Trustee in the Reorganization Cases on October 3, 2001 to represent unsecured creditors of the Debtors, as that committee may be constituted from time to time.

1.26 **"Dairy Mart Liquidating Trust"** means the Entity described in Section 7.1 that will succeed to all of the assets and liabilities of the Debtors and the Consolidated Estate as of the Effective Date.

1.27 **"Dairy Mart Note Claims"** means Claims based on the ownership of the Dairy Mart Notes.

1.28 **"Dairy Mart Notes"** means, collectively, (a) the 10¼% senior subordinated notes, issued by DMCSI (and guaranteed by all other Debtors) in the original principal amount of \$75,000,000 and (b) the 10¼% senior subordinated notes (Series B) issued by DMCSI (and guaranteed by all other Debtors) in the original principal amount of \$13,500,000, in each case, pursuant to the Indenture.

1.29 **"Debtor Subsidiaries"** means, collectively, CIA Food Marts, Inc., CONNA Corporation, Convenient Gasoline, Inc., Convenient Industries of America, Inc., Dairy Mart, Inc., Dairy Mart East, Inc., Dairy Mart Farms, Inc., D.M. Insurance Limited, DM Risk Management Company, Inc., Food Merchandisers, Inc., Golden Stores, Inc., LMC, Inc., Lakeside Wholesale, Inc., Open Pantry Properties, Inc., Oscar Ewing, Inc., Quik Shops, Inc., Remote Services, Inc., SNG of Southern Minnesota, Inc., The Lawson Company, and The Lawson Milk Company, each of which is a direct or indirect subsidiary of DMCSI and is a Debtor and Debtor in Possession in the Reorganization Cases.

1.30 **"Debtors"** means, collectively, DMCSI and the Debtor Subsidiaries.

1.31 **"Debtors in Possession"** means the Debtors in their capacity as debtors in possession in the Reorganization Cases under sections 1107(a) and 1108 of the Bankruptcy Code.

1.32 **"DIP Agent"** means Foothill Capital Corporation in its capacity as agent under the DIP Facility and any successor thereto.

1.33 **"DIP Facility"** means (a) the Loan and Security Agreement, dated as of September 26, 2001, by and among the Debtors, the DIP Agent, and the lenders identified therein; (b) all ancillary documents contemplated thereby; and (c) all amendments and supplements to, or modifications of, any of the foregoing, all as approved by the Court pursuant to the DIP Financing Order.

1.34 **"DIP Financing Order"** means the Final Order (I) Approving Debtors' Motion For Order Authorizing Debtors To Incur Post-Petition Indebtedness, (II) Granting Security Interests And Superpriority Claims Pursuant To Sections 105(a) And 364(c) Of The Bankruptcy Code, And (III) Approving Payment of Certain Pre-Petition Secured Indebtedness, entered by the Court on or about October 17, 2001.

1.35 **"Disclosure Statement"** means the Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code with Respect to Joint Plan of Liquidation of Dairy Mart Under Chapter 11 of the Bankruptcy Code, including the exhibits, appendices, and schedules thereto, as the same may be amended, modified, or supplemented from time to time and as approved by the Court pursuant to the Disclosure Statement Approval Order.

1.36 **"Disclosure Statement Approval Order"** means the order of the Court, dated _____, 2002, approving the Disclosure Statement.

1.37 **"Disputed Claim"** means a Claim or any portion thereof, (a) listed on the Schedules as unliquidated, disputed or contingent; (b) as to which the Debtors, the Dairy Mart Liquidating Trust, or any other party in interest has Filed a timely objection or a request for estimation in accordance with the Bankruptcy Code and the Bankruptcy Rules, which objection or request for estimation has not been withdrawn or determined by a Final Order; or (c) is otherwise disputed by the Debtors or any other party in interest in accordance with applicable law, which dispute has not been withdrawn or determined by a Final Order.

1.38 **"Disputed Reserve"** means a reserve of Cash for the relevant Class, established for, among other things, the payment or other satisfaction of Disputed Claims that are Allowed after the Effective Date, which shall be held in trust by the Dairy Mart Liquidating Trust.

1.39 **"Distributions"** means the distributions of Cash and beneficial interests in the Dairy Mart Liquidating Trust to be made in accordance with the Plan and/or the Liquidating Trust Agreement.

1.40 **"DMCSI"** means Dairy Mart Convenience Stores, Inc.

1.41 **"DMCSI Claims"** means all Allowed general unsecured Claims against DMCSI and certain of its direct and indirect Debtor Subsidiaries, D.M. Insurance Ltd., DM Risk Management Company, Inc., Dairy Mart Farms, Inc., and Dairy Mart East, Inc.

1.42 **"DMCSI Payment Amount"** means 24.4% of the Unsecured Fund.

1.43 **"DMI"** means Dairy Mart, Inc.

1.44 **"DMI Claims"** means all Allowed general unsecured Claims against DMI.

1.45 **"Effective Date"** means a date, as determined by the Debtors and the Creditors' Committee, that is a Business Day on which (a) all conditions precedent set forth in Section 12.2 have been satisfied or waived as provided in Section 12.3 and (b) no stay of the Confirmation Order is in effect.

1.46 **"Entity"** means an entity as defined in section 101(15) of the Bankruptcy Code.

1.47 **"Equity Interests and Claims"** means (a) any capital stock or other ownership interest in any Debtor; (b) any option, warrant, or right to purchase, sell, or subscribe for an ownership interest in, or other equity security of, any Debtor; (c) any and all redemption, conversion, exchange, voting, participation, or dividend rights or liquidation preferences relating to any of the foregoing; and (d) all Claims arising in connection therewith, including, without limitation, Claims arising from the rescission of a purchase or sale of an equity security of the Debtors, for damages arising from the purchase or sale of such security, or for reimbursement or contribution under section 502 of the Bankruptcy Code on account of such Claim and attorneys' fees associated therewith.

1.48 **"Estate"** means, as to each Debtor, the estate of such Debtor in its Reorganization Case created by section 541 of the Bankruptcy Code upon the commencement of its Reorganization Case.

1.49 **"File" or "Filed"** means, with respect to any pleading, entered on the docket of the Reorganization Cases and properly served in accordance with the Bankruptcy Rules.

1.50 **"Final Order"** means an order or judgment of the Court as to which the time to appeal, petition for certiorari, seek mandamus, or move for reargument or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument or rehearing is pending; or, if an appeal, writ of certiorari, or petition for mandamus, reargument, or rehearing has been Filed or sought with respect to any order or judgments of the Court, that order or judgment has been affirmed by the highest court to which it was appealed, or certiorari has been denied or mandamus, reargument, or rehearing has been denied or resulted in no modification thereof, and the time to take any further appeal, petition for certiorari, or move for mandamus, reargument, or rehearing shall have expired; *provided, however*, that the possibility that a motion under rule 60 of the Federal Rules of Civil Procedure (or any analogous motion under the Bankruptcy Rules) may be Filed with respect to an order or judgment shall not cause such order or judgment not to be a Final Order.

1.51 **"Impaired"** means, with respect to any Claim or Equity Interest, a Claim or Equity Interest with respect to which the Plan alters the legal, equitable, or contractual rights to which such Claim or Equity Interest entitles its holder.

1.52 **"Indenture"** means the trust indenture, dated as of December 1, 1995, with respect to the Dairy Mart Notes, as the same may have been amended, modified, or supplemented from time to time.

1.53 **"Indenture Trustee"** means the US Bank National Trust Association, as the trustee under the Indenture or any successor indenture trustee.

1.54 **"Initial Distribution Date"** means the date on which the Dairy Mart Liquidating Trust shall make its initial Distribution, which shall be a date selected by the Liquidating Trustee.

1.55 **"Lawson"** means, collectively, The Lawson Company and its direct and indirect Debtor Subsidiaries, LMC, Inc., The Lawson Milk Company, S.N.G. of Southern Minnesota, Inc., Quik Shops, Inc., Golden Stores, Inc., and Open Pantry Properties, Inc.

1.56 **"Lawson Claims"** means all Allowed general unsecured Claims against Lawson.

1.57 **"Lawson Payment Amount"** means 47.1% of the Unsecured Fund.

1.58 **"Lien"** has the meaning ascribed to that term in section 101(37) of the Bankruptcy Code, except that a lien that has been or may be avoided pursuant to a Recovery Action shall not constitute a Lien for the purposes of the Plan.

1.59 **"Liquidating Trust Agreement"** means that certain agreement establishing and delineating the terms and conditions of the Dairy Mart Liquidating Trust, substantially in the form to be filed as part of the Plan Supplement.

1.60 **"Liquidating Trust Assumed Contracts"** means each of the APA, the Management Agreement, and the Sublease.

1.61 **"Liquidating Trust Committee"** means those individuals appointed in accordance with the Liquidating Trust Agreement with the powers and responsibilities set forth therein.

1.62 **"Liquidating Trust Fund"** means the aggregate of all of the assets of the Debtors as of the Effective Date, including, without limitation, the Net Purchase Price, the Non-Acquired Assets, the Debtors' rights under the APA and under the Management Agreement, and all Causes of Action, including Recovery Actions.

1.63 **"Liquidating Trustee"** means the person appointed in accordance with the Liquidating Trust Agreement to administer the Dairy Mart Liquidating Trust.

1.64 **"Management Agreement"** means the management agreement, dated as of August 20, 2002, between DMCSI and Bigfoot entered into pursuant to the APA.

1.65 **"Management Agreement Contracts"** means all executory contracts and unexpired leases of any of the Debtors relating to any assets that are being managed by Bigfoot pursuant to the Management Agreement, including, without limitations, the leases of the Non-Acquired Stores (as such term is defined in the APA).

1.66 **"Net Purchase Price"** means the Cash component of the purchase price received by the Debtors under the APA, after the payment of the Allowed Claims under the DIP Facility

and certain other Claims pursuant to the Sale Order, net of the costs and expenses associated with the closing of the APA and related transactions.

1.67 **"Non-Acquired Assets"** means the property identified as such in the APA.

1.68 **"Petition Date"** means September 24, 2001, the date on which the Debtors Filed their chapter 11 petitions and commenced the Reorganization Cases.

1.69 **"Plan"** means this Joint Plan of Liquidation of Dairy Mart Convenience Stores, Inc. And Its Subsidiaries Under Chapter 11 of the Bankruptcy Code (including the Plan Supplement and all schedules and exhibits hereto or thereto), as the same may be amended, modified, or supplemented from time to time in accordance with its terms.

1.70 **"Plan Supplement"** means the form of documents specified in Section 15.6, which are incorporated herein by reference and constitute part of the Plan. The Plan Supplement shall be Filed with the Court no later than seven days prior to the Confirmation Hearing.

1.71 **"Priority Non-Tax Claim"** means any Claim of a kind specified in section 507(a)(3), (4), (5), (6), (7), or (9) of the Bankruptcy Code.

1.72 **"Priority Tax Claim"** means any Claim of a governmental unit of the kind specified in sections 502(i) or 507(a)(8) of the Bankruptcy Code.

1.73 **"Professional"** means any person or Entity employed pursuant to a Final Order in accordance with sections 327, 328, or 1103 of the Bankruptcy Code, and to be compensated for services rendered prior to and including the Confirmation Date pursuant to sections 327, 328, 329, 330, or 331 of the Bankruptcy Code.

1.74 **"Quarterly Distribution Date"** means the first Business Day after the end of each quarterly calendar period (*i.e.*, December 31, March 31, June 30, and September 30 of each calendar year).

1.75 **"Ratable Proportion"** means, with reference to any Distribution on account of any Allowed Claim in any Class, the ratio (expressed as a percentage) that the amount of the Allowed Claim bears to the aggregate amount of all Allowed and Disputed Claims in that Class.

1.76 **"Record Date"** means the record date for determining the entitlement to receive Distributions under the Plan on account of Allowed Claims, which shall be the date the Disclosure Statement Approval Order is entered.

1.77 **"Recovery Actions"** means, collectively and individually, without limitation, (a) preference Claims or Causes of Action, fraudulent conveyance Claims or Causes of Action, rights of setoff and other Claims and Causes of Action under sections 510, 544, 545, 547, 548, 549, 550, and 553 of the Bankruptcy Code and other applicable bankruptcy and nonbankruptcy law; (b) Claims and Causes of Action arising out of illegal dividends or similar theories of liability; (c) Claims or Causes of Action based on the piercing the corporate veil, alter ego liability or similar legal or equitable theories of recovery arising out of the ownership or operation of the Debtors; (d) Claims and Causes of Action based on unjust enrichment; (e)

Claims or Causes of Action for breach of fiduciary duty, breach of duty of loyalty, negligence, waste, mismanagement, malfeasance, and similar Causes of Action, or, to the extent it is a Claim or Cause of Action of any of the Debtors, fraud; (f) Claims or Causes of Action relating to retiree medical benefits and the provision of officer and director liability insurance or indemnification; and (g) Claims or Causes of Action arising out of any contracts or other agreements between and among any of the Debtors.

1.78 **"Released Parties" or "Released Party"** has the meaning ascribed thereto in Section XIII.

1.79 **"Reorganization Cases"** means the cases commenced by the Debtors under chapter 11 of the Bankruptcy Code before the Court, as referenced by case numbers 01-42399 (AJG) through 01-42419 (AJG), all of which are procedurally consolidated under case number 01-42400 (AJG).

1.80 **"Sale Order"** means the order of the Bankruptcy Court, entered in the Reorganization Cases on August 7, 2002, approving the APA and the transactions contemplated thereby.

1.81 **"Schedules"** means the consolidated schedules of assets and liabilities and the statements of financial affairs Filed by the Debtors on December 3, 2001 pursuant to section 521 of the Bankruptcy Code, as such schedules and statements have been or may be supplemented or amended from time to time.

1.82 **"Secured Claim"** means a Claim that is secured by a Lien on the property in which any of the Estates has an interest, which Lien is valid, perfected and enforceable under applicable law or by reason of a Final Order, or that is subject to a setoff under section 553 of the Bankruptcy Code, to the extent of the value of the Collateral, as determined in accordance with section 506(a) of the Bankruptcy Code, or to the extent of the amount subject to the setoff.

1.83 **"Secured Fund"** means \$280,000 of the Liquidating Trust Fund segregated for the satisfaction of all Allowed Secured Claims.

1.84 **"Sublease"** means that certain sublease of the Debtors' headquarters space entered into pursuant to the APA.

1.85 **"Subordinated Claims"** means all Claims (a) arising from the rescission of a purchase or sale of any security of the Debtors (other than equity securities), from damages arising from the purchase or sale of such a security, or for reimbursement, contribution, or indemnification allowed under section 502 of the Bankruptcy Code on account of such Claim and (b) all Claims for fines, penalties, and punitive damages.

1.86 **"Subsidiary Equity Interests"** means (a) the common and preferred stock of any of the Debtor Subsidiaries; (b) any options, warrants, or other rights to purchase, sell, or subscribe for an ownership interest in such stock; and (c) any and all redemption, conversion, exchange, voting, participation, dividend rights, or liquidation preferences relating to any of the foregoing.

1.87 **"Unimpaired"** means a Claim or an Equity Interest that is not "Impaired" within the meaning of section 1124 of the Bankruptcy Code.

1.88 **"United States Trustee"** means the United States Trustee appointed under section 591 of title 28 of the United States Code to serve in the Southern District of New York.

1.89 **"Unsecured Fund"** means, at any point in time, all Cash and other property remaining in the Liquidating Trust Fund after (a) satisfaction of, funding Disputed Reserves for, all Allowed Administrative Expense Claims, Allowed Priority Tax Claims, Allowed Priority Non-Tax Claims, and Allowed Secured Claims and (b) the payment of the expenses of the Dairy Mart Liquidating Trust.

SECTION II INTERPRETATION: APPLICATION OF DEFINITIONS, RULES OF CONSTRUCTION, AND COMPUTATION OF TIME

Wherever from the context it appears appropriate, each term stated in either the singular or the plural shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and neuter. For purposes of the Plan: (a) any reference in the Plan to a contract, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the document shall be substantially in that form or substantially on those terms and conditions; (b) any reference in the Plan to an existing document or exhibit Filed or to be Filed means the document or exhibit as it may have been or may be amended, modified, or supplemented; and (c) unless otherwise specified, all references in the Plan to Sections, Schedules, and Exhibits are references to sections, schedules, and exhibits of or to the Plan. Unless otherwise specified, the words "herein," "hereof," "hereto," "hereunder," and other words of similar meaning refer to the Plan as a whole and not to any particular section, subsection, or clause contained in the Plan. A capitalized term used but not defined herein shall have the meaning given to that term in the Bankruptcy Code. The rules of construction contained in section 102 of the Bankruptcy Code shall apply to the construction of the Plan.

The headings in the Plan are for convenience of reference only and shall not expand, limit, or otherwise affect the provisions of the Plan. Unless otherwise indicated herein, all references to dollars are to United States dollars.

Unless otherwise expressly provided herein, in computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply. If any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

**SECTION III
ADMINISTRATIVE EXPENSE CLAIMS AND
PRIORITY TAX CLAIMS**

3.1 Administrative Expense Claims

Each Allowed Administrative Expense Claim (other than the Administrative Expense Claims of Professionals, which are dealt with in Section 3.2) shall be paid by the Dairy Mart Liquidating Trust in Cash, in full, on the later of the Initial Distribution Date and the date such Claim becomes an Allowed Claim, or in such amounts and on such other terms as may be agreed on between the holder of such Claim and the Liquidating Trustee or is ordered by the Court.

3.2 Professional Compensation

Professionals or other Entities asserting Administrative Expense Claims based on professional services rendered before the Confirmation Date must File and serve the Debtors, the Liquidating Trustee, counsel to the Creditors' Committee, and such other Entities as are designated by the Bankruptcy Code, the Bankruptcy Rules, the Confirmation Order, or any other order of the Court, an application for final allowance of such Claim no later than 45 days after the Confirmation Date. Objections to any application for final allowance of compensation by Professionals must be Filed and served on the Debtors, the Liquidating Trustee, counsel to the Creditors' Committee, and the requesting Entity by the later of (a) 30 days after the Effective Date and (b) 30 days after the Filing of the relevant application.

3.3 Administrative Bar Date

Any request for the payment of an Administrative Expense Claim (other than the Administrative Expense Claims of Professionals, which are dealt with in Section 3.2) shall be discharged and barred forever and shall not be enforceable against the Debtors, the Consolidated Estate or the Dairy Mart Liquidating Trust, or any of the property of any of the foregoing, unless such request for the payment of an Administrative Expense Claim is Filed and served upon the Liquidating Trustee within thirty (30) days after the Confirmation Date.

3.4 Priority Tax Claims

Each holder of a Priority Tax Claim which is Allowed on the Effective Date shall receive from the Dairy Mart Liquidating Trust on the Initial Distribution Date, in full satisfaction, settlement, release, and discharge of and in exchange for its Claim: (a) Cash in an aggregate amount equal to the Allowed amount of the Claim, without premium or penalty; or (b) such other Distribution as the Dairy Mart Liquidating Trust and the holder of such Claim shall have agreed upon. Each holder of a Priority Tax Claim which is Disputed on the Effective Date, but is thereafter Allowed in whole or part as a Priority Tax Claim, shall receive from the Dairy Mart Liquidating Trust on the next Quarterly Distribution Date occurring after such Disputed Priority Tax Claim becomes an Allowed Claim, in full satisfaction, settlement, release, and discharge of and in exchange for its Claim: (a) Cash payments in an aggregate amount equal to the Allowed amount of the Claim, without premium or penalty; or (b) such other Distribution as the Dairy Mart Liquidating Trust and the holder of such Claim shall have agreed upon.

**SECTION IV
CLASSIFICATION OF CLAIMS AND
EQUITY INTERESTS**

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes, including voting, confirmation, and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim shall be deemed to be classified in a particular Class only to the extent that such Claim qualifies within the description of that Class, and shall be deemed classified in a different Class to the extent that the remainder of such Claim qualifies within the description of such different Class. A Claim is in a particular Class only to the extent that such Claim is Allowed in that Class and has not been otherwise settled prior to the Effective Date.

THE DEBTORS INTEND TO SEEK PARTIAL SUBSTANTIVE CONSOLIDATION OF THEIR ESTATES THROUGH THE PLAN. IF SUCH PARTIAL SUBSTANTIVE CONSOLIDATION IS AUTHORIZED AND ORDERED BY THE COURT, CERTAIN ALLOWED CLAIMS OF THE DEBTORS OR THEIR ESTATES SHALL BE SATISFIED FROM THE COMBINED CASH AND OTHER PROPERTY OF THE DEBTORS AND THE COMBINED ESTATE. ALL INTERCOMPANY CLAIMS WILL BE ELIMINATED AS THE RESULT OF THE PARTIAL SUBSTANTIVE CONSOLIDATION.

The classification of Claims and Equity Interests of the Debtors pursuant to the Plan are as follows:

Class	Class Name	Status
Class 1	Priority Non-Tax Claims	Unimpaired—deemed to have accepted the Plan and not entitled to vote
Class 2	Secured Claims	Impaired—entitled to vote
Class 3	CONNA Claims	Impaired—entitled to vote
Class 4	DMCSI Claims	Impaired—entitled to vote
Class 5	Lawson Claims	Impaired—entitled to vote
Class 6	DMI Claims	Impaired—deemed to have rejected the Plan and not entitled to vote
Class 7	Subordinated Claims	Impaired—deemed to have rejected the Plan and not entitled to vote
Class 8	Equity Interests and Claims	Impaired—deemed to have rejected the Plan and not entitled to vote

The treatment of Claims against, and Equity Interests in, the Debtors is more fully set forth in Section V.

**SECTION V
TREATMENT OF CLAIMS AND EQUITY
INTERESTS UNDER THE PLAN**

The following treatment set forth in this Section V shall be accorded to Claims against, and Equity Interests in, the Debtors.

5.1 Class 1: Priority Non-Tax Claims

Class 1 consists of all Priority Non-Tax Claims. Unless the Debtors or the Dairy Mart Liquidating Trust and the holder of such Claim agree to a different treatment, each holder of an Allowed Priority Non-Tax Claim shall be paid in full, in Cash by the Dairy Mart Liquidating Trust on the later of (a) the Initial Distribution Date and (b) the Quarterly Distribution Date next following the date on which such Claim is Allowed.

Class 1 is Unimpaired, and the holders of Class 1 Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the holders of Class 1 Claims are not entitled to vote to accept or reject the Plan.

5.2 Class 2: Secured Claims

Class 2 consists of all Secured Claims. Unless the Debtors or the Dairy Mart Liquidating Trust and the holder of such Claim agree to a different treatment, each holder of an Allowed Secured Claim shall receive one of the following alternative treatments, at the election of the Dairy Mart Liquidating Trust: (a) the Debtors or the Liquidating Trustee shall surrender all Collateral securing such Claim to the holder thereof, without representation or warranty by or recourse against the Consolidated Estate or the Dairy Mart Liquidating Trust, or (b) if the Collateral securing such Claim is sold by the Debtors or the Liquidating Trustee free and clear of the Secured Claim holder's Liens, such holder shall receive, as promptly as practicable upon the closing of such sale, Cash (net of reasonable costs and expenses of sale) in the amount of the value of such holder's interest in such Collateral. To the extent that such holder's Claim is not satisfied in full by the treatment described in the preceding sentence, such holder shall be entitled to a Claim in Class 3 for the amount of such deficiency.

Class 2 is Impaired, and the holders of Class 2 Claims are entitled to vote to accept or reject the Plan.

5.3 Class 3: CONNA Claims

Class 3 consists of all CONNA Claims. Unless the Debtors or the Dairy Mart Liquidating Trust and the holder of such Claim agree to a different treatment, each holder of an Allowed CONNA Claim shall receive, on the Initial Distribution Date and on each subsequent Quarterly Distribution Date, out of the Unsecured Fund, its Ratable Proportion of the CONNA Payment Amount.

Class 3 is Impaired, and the holders of Class 3 Claims are entitled to vote to accept or reject the Plan.

5.4 Class 4: DMCSI Claims

Class 4 consists of all DMCSI Claims. Unless the Debtors or the Dairy Mart Liquidating Trust and the holder of such Claim agree to a different treatment, each holder of an Allowed DMCSI Claim shall receive, on the Initial Distribution Date and on each subsequent Quarterly Distribution Date, out of the Unsecured Fund, its Ratable Proportion of the DMCSI Payment Amount.

Class 4 is Impaired, and the holders of Class 4 Claims are entitled to vote to accept or reject the Plan.

5.5 Class 5: Lawson Claims

Class 5 consists of all Lawson Claims. Unless the Debtors or the Dairy Mart Liquidating Trust and the holder of such Claim agree to a different treatment, each holder of an Allowed Lawson Claim shall receive, on the Initial Distribution Date and on each subsequent Quarterly Distribution Date, out of the Unsecured Fund, its Ratable Proportion of the Lawson Payment Amount.

Class 5 is Impaired, and the holders of Class 5 Claims are entitled to vote to accept or reject the Plan.

5.6 Class 6: DMI Claims

Class 6 consists of all DMI Claims. The holders of the DMI Claims shall neither receive any distributions nor retain any property under the Plan.

Class 6 is Impaired, but because no distributions will be made to the holders of Class 6 Claims nor will such holders retain any property, such holders are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code, and are not entitled to vote to accept or reject the Plan.

5.7 Class 7: Subordinated Claims

Class 7 consists of all Subordinated Claims. The holders of the Subordinated Claims shall neither receive any distributions nor retain any property under the Plan.

Class 7 is Impaired, but because no distributions will be made to the holders of Class 7 Subordinated Claims nor will such holders retain any property, such holders are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code, and are not entitled to vote to accept or reject the Plan.

5.8 Class 8: Equity Interests and Claims

Class 8 consists of all Equity Interests and Claims. The holders of the Equity Interests and Claims shall neither receive any distributions nor retain any property under the Plan. As of the Effective Date, all certificates, documents and other instruments underlying Equity Interests shall be canceled.

Class 8 is Impaired, but because no distributions will be made to the holders of Class 8 Equity Interests and Claims nor will such holders retain any property, such holders are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code and are not entitled to vote to accept or reject the Plan.

SECTION VI ACCEPTANCE OR REJECTION OF THE PLAN

6.1 Holders of Claims Entitled to Vote

Classes 2, 3, 4, and 5 are Impaired under the Plan. Each holder of an Allowed Claim (and each holder of a Claim that has been temporarily allowed for voting purposes only under Bankruptcy Rule 3018(a)) in Classes 2, 3, 4 and 5 shall be entitled to vote to accept or reject the Plan.

6.2 Acceptance by Impaired Classes

Any Class of Impaired Claims shall be deemed to have accepted the Plan if (a) the holders (other than any holder designated under section 1126(e) of the Bankruptcy Code) of at least two-thirds in amount of the Allowed Claims actually voting in such Class have voted to accept the Plan and (b) the holders (other than any holder designated under section 1126(e) of the Bankruptcy Code) of more than one-half in number of the Allowed Claims actually voting in such Class have voted to accept the Plan.

6.3 Presumed Acceptance of the Plan

Class 1 is Unimpaired under the Plan, and, therefore, the holders of Class 1 Claims are presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code.

6.4 Presumed Rejection of the Plan

Classes 6, 7, and 8 are Impaired under the Plan, and the holders of Class 6 DMI Claims, Class 7 Subordinated Claims, and Class 8 Equity Interests and Claims shall receive no Distributions nor retain any property under the Plan, and, therefore, the holders of Class 6 DMI Claims, Class 7 Subordinated Claims, and Class 8 Equity Interests and Claims are presumed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code.

6.5 Nonconsensual Confirmation

In view of the deemed rejection of the Plan by Classes 6, 7, and 8, the Debtors will request that the Court confirm the Plan in accordance with section 1129(b) of the Bankruptcy Code. If any of the other Impaired Classes fail to accept the Plan in accordance with section 1129(a)(8) of the Bankruptcy Code, the Debtors reserve the right to request that the Court confirm the Plan in accordance with section 1129(b) of the Bankruptcy Code with respect to such rejecting Class(es).

**SECTION VII
MEANS OF IMPLEMENTATION OF THE PLAN**

7.1 The Dairy Mart Liquidating Trust

7.1.1 Formation of the Dairy Mart Liquidating Trust

On the Effective Date, the Dairy Mart Liquidating Trust shall be established pursuant to the Liquidating Trust Agreement for the purpose of (a) administering the Liquidating Trust Fund, (b) resolving all Disputed Claims, and (c) making all Distributions to the Beneficiaries provided for under the Plan. The Dairy Mart Liquidating Trust is intended to qualify as a liquidating trust pursuant to United States Treasury Regulation section 301.7701-4(d).

7.1.2 Funding of the Dairy Mart Liquidating Trust

(a) On the Effective Date, the Liquidating Trust Fund shall automatically vest in the Dairy Mart Liquidating Trust.

(b) The transfer of the Liquidating Trust Fund to the Dairy Mart Liquidating Trust shall be made for the benefit and on behalf of the Beneficiaries. The assets comprising the Liquidating Trust Fund will be treated for tax purposes as being transferred by the Debtors to the Beneficiaries pursuant to the Plan in exchange for their Allowed Claims and then by the Beneficiaries to the Dairy Mart Liquidating Trust in exchange for the beneficial interests in the Dairy Mart Liquidating Trust. The Beneficiaries shall be treated as the grantors and owners of the Dairy Mart Liquidating Trust. Upon the transfer of the Liquidating Trust Fund, the Dairy Mart Liquidating Trust shall succeed to all of the Debtors' rights, title, and interest in the Liquidating Trust Fund, and the Debtors will have no further interest in or with respect to the Liquidating Trust Fund.

(c) As soon as possible after the Effective Date, but in no event later than sixty (60) days thereafter, (i) the Liquidating Trust Committee shall inform the Dairy Mart Liquidating Trust in writing of the fair market value of the Liquidating Trust Fund as of the Effective Date, based on its good faith determination, and (ii) the Liquidating Trustee shall establish appropriate means to apprise the Beneficiaries of such valuation. The valuation shall be used consistently by all parties (including, without limitation, the Debtors, the Dairy Mart Liquidating Trust, the Beneficiaries, and the Liquidating Trust Committee) for all federal income tax purposes.

7.1.3 Rights and Powers of the Dairy Mart Liquidating Trust

The Dairy Mart Liquidating Trust shall have all the rights and powers set forth in the Liquidating Trust Agreement, including, without limitation, the right to (i) effect all actions and execute all agreements, instruments, and other documents necessary to implement the provisions of the Plan and the Liquidating Trust Agreement; (ii) liquidate the Non-Acquired Assets, whether by assuming the Debtors' rights under the Management Agreement or otherwise; (iii) prosecute or settle any Recovery Actions; (iv) make Distributions contemplated hereby, (v) establish and administer any necessary Disputed Reserves and any other reserves as may be required; (vi) object to the Disputed Claims and prosecute or settle such objections; and

(vii) employ and compensate professionals and other agents, *provided, however*, that any such compensation shall be made only out of the Liquidating Trust Fund.

7.1.4 *Obligations Under the Plan*

From and after the Effective Date, the Dairy Mart Liquidating Trust will perform all obligations of the Debtors and the Consolidated Estate under the Plan.

7.1.5 *Fees and Expenses of the Dairy Mart Liquidating Trust*

Except as otherwise ordered by the Court, the amount of any fees and expenses incurred by the Dairy Mart Liquidating Trust on or after the Effective Date shall be paid in accordance with the Dairy Mart Liquidating Trust Agreement.

7.1.6 *Reports to Be Filed by the Dairy Mart Liquidating Trust*

The Dairy Mart Liquidating Trust shall File quarterly reports regarding the liquidation or other administration of property comprising the Liquidating Trust Fund, the Distributions made by it, and other matters required to be included in such report in accordance with the Dairy Mart Liquidating Trust Agreement.

In addition, the Dairy Mart Liquidating Trust will file tax returns as a grantor trust pursuant to United States Treasury Regulation section 1.671-4(a).

7.2 **Substantive Consolidation**

The filing of the Plan shall constitute a motion for an order of the Court approving, and the Confirmation Order shall constitute the Court's approval of, the substantive consolidation of the Estates. On the Effective Date, pursuant to section 105(a) of the Bankruptcy Code, the Estates shall be substantively consolidated for all purposes related to the Plan (including voting and Distributions) to form the Consolidated Estate. The substantive consolidation of the Estates shall have the following effects:

- (a) All assets of the Debtors' Estates shall be treated as though they were assets of the single Consolidated Estate;
- (b) Except as set forth in section 7.3, each and every Claim scheduled, Filed, to be Filed, or deemed to have been Filed in the Reorganization Cases against any Debtor shall be deemed scheduled or Filed against the Consolidated Estate, and shall be deemed to be one Claim against, and the Liability of, the Consolidated Estate;
- (c) No Distributions shall be made under the Plan on account of intercompany Claims among the Debtors, and any and all liability on account of such intercompany Claims shall be deemed satisfied and discharged;
- (d) All guaranties by any of the Debtors of the obligations of any other Debtor and any Liability (whether primary or secondary, or joint and several) of any Debtor

with respect to the obligations of any other Debtor shall be deemed satisfied and discharged; and

- (e) All Subsidiary Equity Interests shall be canceled, and no Distributions shall be made under the Plan on account thereof.

7.3 Settlement of the Substantive Consolidation Dispute

Dairy Mart and the Creditors' Committee reviewed the appropriateness of the substantive consolidation of the Estates and recognized that significant arguments could be made both for and against it. Particularly, the parties have acknowledged that, absent substantive consolidation, creditors of certain of the Debtors may be entitled to a higher recovery than the creditors of certain other of the Debtors. To avoid the potentially prolonged and costly litigation over the issue of the appropriateness of the proposed substantive consolidation, the Debtors and the Creditors' Committee have agreed to a compromise that is reflected in the creation of Classes 3, 4, 5, and 6 and the Distributions to the holders of Allowed Claims in such Classes provided hereunder.

Entry of the Confirmation Order shall constitute the Court's approval of this settlement pursuant to Bankruptcy Rule 9019 and its findings that this is a good faith settlement pursuant to applicable laws.

7.4 Liquidation of the Debtors

- (a) All of the Debtors shall be deemed to have been liquidated as of the Effective Date, and all Equity Interests in any Debtor shall automatically be canceled and extinguished as of the Effective Date without the need for any further action by the Court or any Entity.
- (b) Notwithstanding the foregoing, as soon as practicable after the Effective Date, each of the Debtors shall: (i) file its certificate of dissolution, together with all other necessary corporate documents, to effect its dissolution under the applicable laws of its state of incorporation, and (ii) complete and file its final federal, state, and local tax returns, and pursuant to section 505(b) of the Bankruptcy Code, request an expedited determination of any unpaid tax liability of such Debtor or its estate for any tax incurred during the administration of such Debtor's Reorganization Case, as determined under applicable tax laws. The filing by each Debtor of its certificate of dissolution shall be authorized and approved in all respects without further action under applicable law, regulation, order, or rule, including, without limitation, any action by the stockholders or the board of directors of each such Debtor.
- (c) On the Effective Date, each Debtor shall assign, transfer, and distribute to the Dairy Mart Liquidating Trust (i) any of its remaining assets, properties, or interests; and (ii) all of its books and records relating to the foregoing. For purposes of this section, books, and records include computer generated or computer maintained books and records and computer data, as well as

electronically generated or maintained books and records or data, along with books and records of any Debtor maintained by or in the possession of third parties, wherever located.

7.5 Operations of the Debtors Between the Confirmation Date and the Effective Date

The Debtors shall continue to operate as Debtors in Possession during the period from the Confirmation Date through and until the Effective Date.

7.6 Exclusivity Period

Subject to further order of the Court, the Debtors shall, upon consent of the Creditors' Committee, pursuant to section 1121 of the Bankruptcy Code, retain the exclusive right to amend the Plan and solicit acceptances thereof until the Effective Date.

7.7 Cancellation of Notes, Instruments, Common Stock, Preferred Stock and Stock Options

On the Effective Date, all notes, instruments, certificates, and other documents evidencing the Debtors' obligations, including, without limitation, the Debtors' liability under (a) the Dairy Mart Notes and (b) all Equity Interests shall be canceled, and the obligations of the Debtors thereunder shall be discharged. On the Effective Date, except to the extent provided otherwise in the Plan, any indenture relating to the foregoing, including, without limitation, the Indenture, shall be deemed canceled, and the obligations of the Debtors thereunder shall be discharged, *provided, however*, that the Indenture shall continue solely for the purposes of (a) allowing the Dairy Mart Note Claims and (b) permitting the Indenture Trustee, its agents or servicers to maintain any rights they may have under such indentures or other agreements. The Indenture Trustee shall have an Allowed Administrative Expense Claim in an amount equal to the reasonable and necessary fees and expenses incurred by the Indenture Trustee and its legal counsel. If a dispute arises as to such fees and expenses, such dispute shall be resolved by the Court.

7.8 Creditors' Committee

As of the Effective Date, the Creditors' Committee shall dissolve, and its members shall be released and discharged from all further authority, duties, responsibilities, and obligations relating to and arising from the Reorganization Cases. The retention and employment of the Professionals retained by the Creditors' Committee shall terminate as of the Effective Date, provided, however, that the Creditors' Committee shall exist, and its Professionals shall be retained, after such date with respect to (a) applications Filed pursuant to sections 330 and 331 of the Bankruptcy Code, (b) motions seeking the enforcement of the provisions of the Plan or the Confirmation Order, and (c) any matter pending as of the Effective Date until such matter is resolved by a Final Order. Any fees incurred by the Creditors' Committee's Professionals after the Effective Date shall be paid by the Liquidation Trustee without the need to File any fee applications or obtain the Court's approval.

**SECTION VIII
DISTRIBUTIONS UNDER THE PLAN**

8.1 Initial Distribution Date

On the Initial Distribution Date or as soon thereafter as is reasonably practicable, the Dairy Mart Liquidating Trust shall make, or shall make adequate reserves for, the Distributions required to be made under the Plan.

8.2 Disputed Reserves

8.2.1 Establishment of Disputed Reserves

On the Initial Distribution Date, and after making all Distributions required to be made on such date under the Plan, the Liquidating Trustee shall establish a separate Disputed Reserve for each of the Classes containing Disputed Claims, each of which Disputed Reserves shall be administered by the Liquidating Trustee. The Liquidating Trustee shall reserve in Cash or other property, for Distribution on account of each Disputed Claim, (a) the full asserted amount (or such lesser amount as may be estimated by the Court in accordance with Section 9.2 hereof) with respect to each Disputed Administrative Expense Claim, Disputed Priority Tax Claim and Disputed Priority Non-Tax Claim, (b) the full asserted amount with respect to each Disputed Secured Claim, and (c) the remainder of all Cash or other property for the Disputed Claims in Classes 3, 4 and 5 as follows: 28.5% in the Disputed Reserve for Claims in Class 3; 24.4% in the Disputed Reserve for Claims in Class 4; and 47.1% in the Disputed Reserve for Claims in Class 5, or as may otherwise be determined by order of the Court.

8.2.2 Maintenance of Disputed Reserves

To the extent that the property placed in a Disputed Reserve consists of Cash, that Cash shall be deposited in an interest-bearing account.

All property held in the Disputed Reserves shall be held by the Dairy Mart Liquidating Trust in trust for the benefit of the holders of Disputed Claims ultimately determined to be entitled to receive Distributions from a particular Disputed Reserve. Each Disputed Reserve shall be closed and extinguished by the Dairy Mart Liquidating Trust when all Distributions and other dispositions of Cash or other property required to be made hereunder will have been made in accordance with the terms of the Plan. Upon closure of a Disputed Reserve, all Cash (including any Cash Investment Yield) or other property held in that Disputed Reserve shall revert in and become the property of the Dairy Mart Liquidating Trust. All funds or other property that vest or revert in the Dairy Mart Liquidating Trust pursuant to this Section shall be (a) used to pay the fees and expenses of the Dairy Mart Liquidating Trust as and to the extent set forth in the Dairy Mart Liquidating Trust Agreement, and (b) thereafter deposited into the other Disputed Reserve(s) in the same proportion as set forth in Section 8.2.1.

8.3 Quarterly Distributions

Any Distribution that is not made on the Initial Distribution Date or on any other date specified herein because the Claim that would have been entitled to receive that Distribution is

not an Allowed Claim on such date, shall be held by the Dairy Mart Liquidating Trust in a Disputed Reserve pursuant to Section 8.2 and Distributed (in full, in case of the Administrative Expense Claims, Priority Tax Claims, or Priority Non-Tax Claims; and up to its Ratable Proportion with respect to the Claims in Classes 3, 4, 5, and 6) on the first Quarterly Distribution Date after such Claim is Allowed. No interest shall accrue or be paid on the unpaid amount of any Distribution paid on a Quarterly Distribution Date in accordance with this section.

8.4 Record Date for Distributions

Except as otherwise provided in a Final Order of the Court, the transferees of Claims that are transferred pursuant to Bankruptcy Rule 3001 on or prior to the Record Date will be treated as the holders of those Claims for all purposes, notwithstanding that any period provided by Bankruptcy Rule 3001 for objecting to the transfer may not have expired by the Record Date. The Dairy Mart Liquidating Trust shall have no obligation to recognize any transfer of any Claim occurring after the Record Date. In making any Distribution with respect to any Claim, the Dairy Mart Liquidating Trust shall be entitled instead to recognize and deal with, for all purposes hereunder, only the Entity that is listed on the proof of Claim Filed with respect thereto or on the Schedules as the holder thereof as of the close of business on the Record Date and upon such other evidence or record of transfer or assignment that are known to the Dairy Mart Liquidating Trust as of the Record Date.

8.5 Delivery of Distributions

8.5.1 General Provisions; Undeliverable Distributions

Subject to Bankruptcy Rule 9010 and except as otherwise provided herein, Distributions to the holders of Allowed Claims shall be made by the Dairy Mart Liquidating Trust at (a) the address of each holder as set forth in the Schedules, unless superseded by the address set forth on proofs of Claim Filed by such holder or (b) the last known address of such holder if no proof of Claim is Filed or if the Debtors have been notified in writing of a change of address. If any Distribution is returned as undeliverable, the Dairy Mart Liquidating Trust may, in its discretion, make such efforts to determine the current address of the holder of the Claim with respect to which the Distribution was made as the Dairy Mart Liquidating Trust deems appropriate, but no Distribution to any holder shall be made unless and until the Dairy Mart Liquidating Trust has determined the then-current address of the holder, at which time the Distribution to such holder shall be made to the holder without interest. Amounts in respect of any undeliverable Distributions made by the Dairy Mart Liquidating Trust shall be returned to, and held in trust by, the Dairy Mart Liquidating Trust until the Distributions are claimed or are deemed to be unclaimed property under section 347(b) of the Bankruptcy Code as set forth below in this Section. The Dairy Mart Liquidating Trust shall have the discretion to determine how to make Distributions in the most efficient and cost-effective manner possible; *provided, however*, that its discretion may not be exercised in a manner inconsistent with any express requirements of the Plan or the Liquidating Trust Agreement.

8.5.2 *Minimum Distributions*

Notwithstanding anything herein to the contrary, if a Distribution to be made to a holder of an Allowed Claim on the Initial Distribution Date or any subsequent date for Distributions (other than the final Distribution Date) would be \$25 or less in the aggregate, no such Distribution will be made to that holder unless a request therefor is made in writing to the Liquidating Trustee no later than twenty (20) days after the Effective Date.

8.5.3 *Unclaimed Property*

Except with respect to property not Distributed because it is being held in a Disputed Reserve, Distributions that are not claimed by the expiration of one year from the Effective Date shall be deemed to be unclaimed property under section 347(b) of the Bankruptcy Code and shall vest or revert in the Dairy Mart Liquidating Trust, and the Claims with respect to which those Distributions are made shall be automatically canceled. After the expiration of that one-year period, the claim of any Entity to those Distributions shall be discharged and forever barred. Nothing contained in the Plan shall require the Dairy Mart Liquidating Trust to attempt to locate any holder of an Allowed Claim. All funds or other property that vests or reverts in the Dairy Mart Liquidating Trust pursuant to this Section shall be Distributed by the Debtors or Liquidating Trustee to the other holders of Allowed Claims in the Class of which the creditor to whom the Distribution was originally made is a member in accordance with the provisions of the Plan or the Liquidating Trust Agreement

8.6 **Surrender of Canceled Instruments and Securities**

8.6.1 *Generally*

Except as set forth in Section 8.6 hereof, as a condition precedent to receiving any Distribution hereunder on account of an Allowed Claim evidenced by instruments, securities or other documentation canceled pursuant to Section 7.7 hereof, the holder of such Claim shall tender such instrument, security or other documentation evidencing such Claim to the Dairy Mart Liquidating Trust (except as set forth in Section 8.5.2 hereof). Any distributions pursuant to the Plan on account of any Claim evidenced by such instruments, securities or other documentation shall, pending such surrender, be treated as an undeliverable Distribution in accordance with Section 8.5.1 hereof.

8.6.2 *Dairy Mart Notes*

Each holder of a Dairy Mart Note Claim shall surrender the Dairy Mart Note(s) underlying such Claim to the Indenture Trustee in accordance with the instructions to be provided by the Liquidating Trustee as promptly as practicable following the Effective Date. Such instructions shall specify that delivery of the Dairy Mart Note(s) will be effected, and the risk of loss and title thereto shall pass, only upon the proper delivery of such Dairy Mart Note(s) with a letter of transmittal in accordance with such instructions. All such surrendered Dairy Mart Notes shall be marked as canceled.

8.6.3 *Failure to Surrender Canceled Instruments*

If any holder of an Allowed Claim evidenced by instruments, securities, or other documentation canceled pursuant to Section 7.7 hereof, fails to surrender such instrument, security or other documentation or comply with the provisions of Section 8.6 hereof within one year after the Effective Date, its Claim for a distribution under the Plan on account of such instrument, security, or other documentation shall be discharged, and such holder shall be forever barred from asserting such Claim against the Dairy Mart Liquidating Trust or its property. In such case, any property held on account of such Claim shall be disposed of pursuant to the provisions set forth in Section 8.5.1 hereof.

8.7 **Lost, Stolen, Mutilated or Destroyed Instrument or Security**

Any holder of an Allowed Claim evidenced by instruments, securities or other documentation canceled pursuant to Section 7.7 hereof that has been lost, stolen, mutilated, or destroyed, shall, in lieu of surrendering such instrument, security or documentation: (a) deliver to the Dairy Mart Liquidating Trust (or, in the case of the Dairy Mart Notes, the Indenture Trustee) (i) an affidavit of loss reasonably satisfactory to the Dairy Mart Liquidating Trust (or, in the case of the Dairy Mart Notes, the Indenture Trustee) setting forth the unavailability of such instrument, security, or other documentation and (ii) such additional security or indemnity as may reasonably be requested by the Dairy Mart Liquidating Trust (or, in the case of the Dairy Mart Notes, the Indenture Trustee) to hold the Dairy Mart Liquidating Trust (or, in the case of the Dairy Mart Notes, the Indenture Trustee) harmless from any damages, liabilities, or costs incurred in treating such Entity as a holder of an Allowed Claim and (b) satisfy any other requirement under the Indenture or any other relevant document. Upon compliance with this Section 8.7 by a holder of an Allowed Claim evidenced by such instrument, security, or other documentation, such holder shall, for all purposes under the Plan, be deemed to have surrendered such instrument, security, or other documentation.

8.8 **Manner of Cash Payments Under the Plan or the Liquidating Trust Agreement**

Cash payments made pursuant to the Plan or the Liquidating Trust Agreement shall be in United States dollars by checks drawn on a domestic bank selected by the Dairy Mart Liquidating Trust or by wire transfer from a domestic bank, at the option of the Dairy Mart Liquidating Trust.

8.9 **Time Bar to Cash Payments by Check**

Checks issued by the Dairy Mart Liquidating Trust on account of Allowed Claims shall be null and void if not negotiated within 90 days after the date of issuance thereof. Requests for the reissuance of any check that becomes null and void pursuant to this Section 8.9 shall be made directly to the Liquidating Trustee by the holder of the Allowed Claim to whom the check was originally issued. Any Claim in respect of such voided check shall be made in writing on or before the later of the first anniversary of the Effective Date or the first anniversary of the date on which the Claim at issue became an Allowed Claim. After that date, all Claims in respect of void checks shall be discharged and forever barred and the proceeds of those checks shall revert

in and become the property of the Dairy Mart Liquidating Trust as unclaimed property in accordance with section 347(b) of the Bankruptcy Code.

8.10 Limitations on Funding of Disputed Reserves

Except as expressly set forth in the Plan, neither the Debtors nor the Dairy Mart Liquidating Trust shall have any duty to fund the Disputed Reserves.

8.11 Compliance with Tax Requirements

In connection with making Distributions under this Plan, to the extent applicable, the Liquidating Trustee shall comply with all tax withholding and reporting requirements imposed on it by any governmental unit, and all Distributions pursuant to this Plan shall be subject to such withholding and reporting requirements. The Liquidating Trustee may withhold the entire Distribution due to any holder of an Allowed Claim until such time as such holder provides the necessary information to comply with any withholding requirements of any governmental unit. Any property so withheld will then be paid by the Liquidating Trustee to the appropriate authority. If the holder of an Allowed Claim fails to provide the information necessary to comply with any withholding requirements of any governmental unit within six months from the date of first notification to the holder of the need for such information or for the Cash necessary to comply with any applicable withholding requirements, then such holder's Distribution shall be treated as an undeliverable distribution in accordance with Section 8.5.1.

8.12 No Payments of Fractional Dollars

Notwithstanding any other provision of the Plan to the contrary, no payment of fractional dollars shall be made pursuant to the Plan. Whenever any payment of a fraction of a dollar under the Plan would otherwise be required, the actual Distribution made shall reflect a rounding down of such fraction to the nearest whole dollar.

8.13 Interest on Claims

Except as specifically provided for in the Plan or the Confirmation Order, interest shall not accrue on Claims and no holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim. Interest shall not accrue or be paid on any Disputed Claim in respect of the period from the Petition Date to the date a final Distribution is made thereon if and after that Disputed Claim becomes an Allowed Claim. Except as expressly provided herein or in a Final Order of the Court, no prepetition Claim shall be Allowed to the extent that it is for postpetition interest or other similar charges.

8.14 No Distribution in Excess of Allowed Amount of Claim

Notwithstanding anything to the contrary contained in the Plan, no holder of an Allowed Claim shall receive in respect of that Claim any Distribution in excess of the Allowed amount of that Claim.

8.15 Setoff and Recoupment

The Dairy Mart Liquidating Trust may, but shall not be required to, setoff against, or recoup from, any Claim and the Distributions to be made pursuant to the Plan in respect thereof, any claims or defenses of any nature whatsoever that any of the Debtors, the Consolidated Estate, or the Dairy Mart Liquidating Trust may have against the holder of such Claim, but neither the failure to do so nor the allowance of any Claim under the Plan shall constitute a waiver or release by the Debtors, the Consolidated Estate, or the Dairy Mart Liquidating Trust of any right of setoff or recoupment that any of them may have against the holder of any Claim.

SECTION IX DISPUTED CLAIMS

9.1 Objection Deadline

All objections to Disputed Claims shall be Filed and served upon the holders of each such Claim not later than 120 days after the Effective Date, unless otherwise ordered by the Court after notice and a hearing.

9.2 Estimation of Claims

At any time, (a) prior to the Effective Date, the Debtors, and (b) subsequent to the Effective Date, the Liquidating Trustee may request that the Court estimate any contingent or unliquidated Claim to the extent permitted by section 502(c) of the Bankruptcy Code regardless of whether the Debtors or the Dairy Mart Liquidating Trust have previously objected to such Claim or whether the Court has ruled on any such objection, and the Court shall have jurisdiction to estimate any Claim at any time during litigation concerning any objection to such Claim, including during the pendency of any appeal relating to any such objection. If the Court estimates any contingent or unliquidated Claim, that estimated amount shall constitute either the Allowed amount of such Claim or a maximum limitation on the Claim, as determined by the Court. If the estimated amount constitutes a maximum limitation on the Claim, the Debtors or the Dairy Mart Liquidating Trust, as applicable, may elect to pursue supplemental proceedings to object to the ultimate allowance of the Claim. All of the aforementioned Claims objection, estimation, and resolution procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Court.

9.3 Prosecution of Objections and Requests for Estimation

Prior to the Effective Date, the Filing, litigation, settlement, or withdrawal of all objections to Disputed Claims or requests for estimation with respect thereof shall be the responsibility of the Debtors, and the costs of such litigation, settlement, or withdrawal shall be borne by the Consolidated Estate. On and after the Effective Date, except as to applications for allowances of compensation of Professionals or as otherwise ordered by the Court, responsibility for the Filing, litigation, settlement, or withdrawal of all objections to Disputed Claims or requests for estimation thereof, including objections and estimation requests pending on the

Effective Date, shall be the responsibility of the Dairy Mart Liquidating Trust, and the costs of such litigation, settlement, or withdrawal shall be borne by the Dairy Mart Liquidating Trust.

The Debtors or the Liquidating Trustee, as applicable, shall serve a copy of each objection upon the holder of the Disputed Claim to which the objection is being made as soon as practicable, but in no event later than 120 days after the Confirmation Date unless such date is extended by order of the Court. From and after the Confirmation Date, all objections shall be litigated to a Final Order, except to the extent, subject to the approval of the Liquidating Trust Committee, the Liquidating Trustee elects to withdraw any such objection or the Liquidating Trustee and the claimant elect to compromise, settle or otherwise resolve any such objection, in which event they may settle, compromise or otherwise resolve any Disputed Claim without approval of the Court.

9.4 No Distributions Pending Allowance

Notwithstanding any other provision hereof, unless ordered otherwise by a Final Order, if any portion of a Claim is a Disputed Claim, no payment or Distribution provided hereunder shall be made on account of the Allowed portion of the Claim unless and until the Disputed portion of the Claim is Allowed.

SECTION X EXECUTORY CONTRACTS AND UNEXPIRED LEASES

10.1 Assumption and Assignment

Effective as of the Effective Date, each of the Liquidating Trust Assumed Contracts shall be deemed to be assumed and assigned to the Dairy Mart Liquidating Trust, and the Confirmation Order shall constitute the Bankruptcy Court's approval of such assumption and assignment pursuant to section 365(a) of the Bankruptcy Code.

10.2 Rejection Under the Plan

All executory contracts and unexpired leases that exist between any of the Debtors and any persons or Entities, whether or not previously listed by the Debtors on their Schedule G, shall be deemed rejected as of the Confirmation Date, except for (i) the Liquidating Trust Assumed Contracts, (ii) the Management Agreement Contracts, and (iii) any executory contract or unexpired lease (a) that has been assumed or rejected pursuant to an order of the Bankruptcy Code entered prior to the Confirmation Date or (b) as to which a motion for approval of its assumption has been filed prior to the Confirmation Date.

10.3 Approval of Rejection

Entry of the Confirmation Order shall constitute the approval, pursuant to section 365(a) of the Bankruptcy Code, of the rejection of the executory contracts and unexpired leases rejected pursuant to the Plan.

10.4 Assumption or Rejection by the Liquidating Trustee

The Liquidating Trustee shall have until August 20, 2003 to assume, assume and assign, or reject any Management Agreement Contract. Any such assumption, assumption and assignment or rejection shall be (a) effected by a separate order of the Court entered on proper notice to the relevant counterparties and (b) deemed to have been made under the Plan.

The Confirmation Order shall constitute the Court's approval of the extension, pursuant to section 365(d)(4) of the Bankruptcy Code, of the Debtors' time to assume or reject unexpired leases of nonresidential real property through August 20, 2003.

Any Management Agreement Contract that has neither been assumed or rejected on or before August 20, 2003 shall be deemed rejected as of such date.

10.5 Rejection Claims

If the rejection of an executory contract or unexpired lease pursuant to the Plan (including those rejected under Section 10.4) and the Confirmation Order results in damages to the non-debtor party to such contract or lease, any claim for such damages, if not heretofore evidenced by a timely Filed proof of claim, shall be forever barred and shall not be enforceable against the Debtors, the Consolidated Estate, the Dairy Mart Liquidating Trust, or their properties, successors, and assigns, unless a proof of claim is Filed and served upon counsel for the Dairy Mart Liquidating Trust on or before thirty (30) days after the later to occur of (a) the entry of the Confirmation Order or (b) the date of the entry by the Court of an order authorizing rejection of the particular contract or lease.

SECTION XI ABANDONMENT OF PROPERTY

11.1 Abandonment of Property Under the Plan

Each of the assets, listed on Exhibit [] attached hereto, shall be deemed abandoned by the Debtors as of the Effective Date, and the Confirmation Order shall constitute the Court's approval of such abandonment pursuant to section 554(a) of the Bankruptcy Code.

11.2 Abandonment by Liquidating Trustee

The Liquidating Trustee shall have until August 20, 2003 to abandon in any commercially reasonable manner (including abandonment or donation to a charitable organization of the Liquidating Trustee's choice) any other property that the Liquidating Trustee reasonably concludes, upon five (5) business days' notice to the Liquidating Trust Committee, is of no benefit to the Beneficiaries or that it reasonably determines, at the conclusion of Distributions or dissolution of the Dairy Mart Liquidating Trust, to be too impractical to Distribute. Such abandonment shall be (a) effected by a separate order of the Court on proper notice to the relevant parties and (b) be deemed to have been made under the Plan.

11.3 Abandonment Claims

If the abandonment of any asset pursuant to the Plan (including those abandoned pursuant to Section 11.2) and the Confirmation Order results in damages to a non-debtor party, any Claim for such damages shall be forever barred and shall not be enforceable against the Debtors, the Consolidated Estate, the Dairy Mart Liquidating Trust, or their properties, successors, and assigns, unless a proof of claim is Filed and served upon counsel for the Dairy Mart Liquidating Trust on or before thirty (30) days after the later to occur of (a) the entry of the Confirmation Order or (b) the date of the entry by the Court of an order authorizing abandonment of such asset.

SECTION XII CONDITIONS PRECEDENT TO CONFIRMATION OF THE PLAN AND THE EFFECTIVE DATE

12.1 Conditions Precedent to the Confirmation of the Plan

It shall be a condition precedent to the confirmation of the Plan, that the Confirmation Order, in form and substance acceptable to the Debtors and the Creditors' Committee, shall have been entered by the Court.

12.2 Conditions Precedent to the Effective Date of the Plan

The Plan shall not become effective and the Effective Date shall not occur unless and until the following conditions shall have been satisfied or waived in accordance with Section 12.3:

- (a) *Confirmation Order.* The Confirmation Order shall be a Final Order.
- (b) *Plan.* After the entry of the Confirmation Order, no modifications shall have been made to the Plan except in accordance with its provisions with respect to its modification.
- (c) *Completion and Execution of Documents.* All actions, documents, and agreements necessary to implement the provisions of the Plan to be effectuated on or prior to the Effective Date shall be reasonably satisfactory to the Debtors and the Creditors' Committee, and such actions, documents, and agreements shall have been effected or executed and delivered. All documents to be contained in the Plan Supplement shall be completed and in final form and, as applicable, executed by the parties thereto and all conditions precedent contained in any of the foregoing shall have been satisfied or waived.

12.3 Waiver of Conditions Precedent

Each of the conditions precedent in Section 12.2 may be waived or modified, in whole or in part, by the Debtors upon the consent of the Creditors' Committee. Any such waiver or modification of a condition precedent in Section 12.2 may be effected at any time, without notice

(other than to the Creditors' Committee), without leave or order of the Court, and without any other formal action.

SECTION XIII RELEASES, INJUNCTION, AND WAIVER OF CLAIMS

13.1 Exculpation and Limited Release With Respect to Postpetition Actions

Except as otherwise specifically provided for by the Plan, on the Effective Date, all Entities shall be conclusively presumed to have released the following parties (but solely to the extent set forth below): (a) the Creditors' Committee and the present and former members thereof, (b) the DIP Agent and the lenders under the DIP Facility, and (c) all present and former directors, officers, agents, attorneys, affiliates, employees, accountants, advisors, financial advisors of any of the foregoing and of each Debtor (with the exception of Robert B. Stein, Jr., and Frank Colaccino) (each of the foregoing, a "*Released Party*" and together, the "*Released Parties*"), from any Claim or Cause of Action based on, arising from, or in any way connected with, (A) the Reorganization Cases (including, without limitation, any actions taken and/or not taken with respect to the administration of any Estate or the operation of the business of any Debtor); (B) the Plan or the Distributions received thereunder; and (C) the negotiation, formulation, and preparation of the Plan, except to the extent any such claim or Cause of Action against any Released Party arises solely as a direct result of that Released Party's fraud or willful misconduct. In all respects, each of the Released Parties shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

Notwithstanding anything to the contrary contained in the Plan, none of the releases provided herein shall prejudice or otherwise affect the right of any party in interest to object to (i) any applications for compensation filed by Professionals or (ii) any request seeking compensation under section 503 of the Bankruptcy Code.

13.2 Release of Released Parties by the Debtors

Without limiting any other applicable provisions of Section 13.2, as of the Effective Date, each Debtor, on behalf of itself, their respective estates, and their respective successors, assigns, and any and all Entities who may purport to claim by, through, for, or because of, them, will release and be permanently enjoined from any prosecution or attempted prosecution of any and all Causes of Action that they have, may have, or claim to have, that are property of, assertable on behalf of, or derivative of the Debtors or their Estates, against the Released Parties (but solely in their capacity as Released Parties).

13.3 Release of Released Parties by Holders of Claims

On and after the Effective Date, each holder of a Claim against any of the Debtors shall be deemed to have released unconditionally all the Released Parties from any and all Claims, obligations, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that such Person or Entity would have been legally entitled to assert (whether

individually or collectively), based in whole or in part upon any act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date, except to the extent necessary to enforce the provisions of the Plan.

13.4 Limitations on Releases

Notwithstanding the foregoing or anything else contained in the Plan, the releases provided for in Sections 13.2 and 13.3 shall not apply to (i) individual Released Parties who were officers or directors of any of the Debtors before the Effective Date (in which capacity they shall be subject to the provisions of Section 13.5 below), (ii) any Claim for contribution, indemnification, or any other theory of joint liability or right over, by an individual Released Party against any other Released Party and (iii) any Claim by an individual Released Party for reimbursement (to give effect to the covenant not to execute) against the entity asserting a Claim under clause (i) hereof, if the issuer of a D&O insurance policy seeks to recover any amount from the individual Released Party.

Nothing in the Plan shall limit the right, if any, of any party to bring an action against or name as a defendant, a person or entity who is not a Released Party or enforce a claim or judgment against an Entity that is not a Released Party (or the property of that Entity). Nothing in the Plan nor the provision of the covenant not to execute in favor of an individual Released Party shall preclude, limit, or otherwise restrict an individual from defending against or opposing any Claim brought against that individual under this section.

13.5 Covenant not to Execute

Subject to the next sentence, each Debtor, its Estate and its successors, assigns, and any and all Entities that may purport to claim by, through, under, for, or because of, them, and each holder of a Claim against any Debtor, shall not execute (i.e., seek to collect) against any Released Party that is or was an officer or director of any Debtor and no judgment shall be enforced against (although may be entered against), nor shall any amount be collected from, any such Released Party (or any property of such Released Party). Instead, such execution, enforcement, or collection shall be undertaken only against the proceeds of any applicable D&O insurance policy (if any) and the Released Parties (and their assets and property) shall be liable for any Claim only to the extent of the D&O insurance policy proceeds. Nothing herein, however, shall preclude the pursuit of a Cause of Action, or the entry of a judgment, against any Released Party.

13.6 Costs of Asserting Claims Against Released Parties

None of the Debtors, the Dairy Mart Liquidating Trust, and none of their successors or assigns, shall fund or be obligated to fund (whether directly or indirectly) the costs of pursuing against any of the Released Parties a Claim or Cause of Action that is released by the Plan.

13.7 Injunction

Except as otherwise provided in the Plan, the Confirmation Order or a separate order of the Court, as of the Effective Date, all entities that have held, currently hold, or may hold, directly,

derivatively or otherwise, a Claim or Equity Interest or other right that is terminated or canceled pursuant to the terms of the Plan, are permanently enjoined from taking any of the following actions on account of any such Claim or Equity Interest: (a) commencing or continuing in any manner any action or other proceeding against the Dairy Mart Liquidating Trust or its properties and interests in properties; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against the Dairy Mart Liquidating Trust, or its properties and interests in properties; (c) creating, perfecting, or enforcing any Lien or other encumbrance against the Dairy Mart Liquidating Trust, or its properties and interests in properties; (d) asserting a setoff, right of subrogation, or recoupment of any kind against the Dairy Mart Liquidating Trust, or its properties and interests in properties; and (e) commencing or continuing any action, in any manner or in any place, against any of the Released Parties or that otherwise does not comply with or is inconsistent with the provisions of the Plan or the Confirmation Order.

13.8 Term of Injunctions or Stays

Unless otherwise provided herein, in the Confirmation Order, or in any order providing for a stay or injunction, all injunctions or stays provided for in the Reorganization Cases pursuant to sections 105 or 362 of the Bankruptcy Code or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date.

SECTION XIV RETENTION OF JURISDICTION

14.1 Retention of Jurisdiction

Notwithstanding entry of the Confirmation Order and the occurrence of the Effective Date, the Court shall retain exclusive jurisdiction of all matters arising out of or relating to the Reorganization Cases, the Plan, the Confirmation Order, and the Dairy Mart Liquidating Trust pursuant to, and for the purposes of, sections 105(a) and 1142 of the Bankruptcy Code and for, among other things, the following purposes:

- (a) To resolve any matters relating to the assumption and assignment or rejection of executory contracts or unexpired leases, and to hear, determine and, if necessary, liquidate any Claims resulting therefrom;
- (b) To decide and resolve any and all motions, adversary proceedings, including Recovery Actions, applications, contested matters and any other matters, whether pending as of the Effective Date or brought thereafter in accordance with the terms hereof;
- (c) To consider and rule on the compromise and settlement of any Claim against, or Cause of Action on behalf of, the Debtors or the Consolidated Estate;
- (d) To ensure that Distributions to holders of Allowed Claims are accomplished as provided herein, and resolve any disputes concerning any such Distributions;

- (e) To Allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim (including any Administrative Expense Claim), and to resolve any and all objections to the Disputed Claims;
- (f) To hear and determine any and all applications for the allowance of compensation of Professional for professional services rendered and expenses incurred prior to the Confirmation Date;
- (g) To enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all contracts, instruments, releases and other agreements or documents created in connection with the Plan and the Liquidating Trust Agreement;
- (h) To consider any modifications of the Plan, to cure any defect or omission, or reconcile any inconsistency, in the Plan or in any order of the Court as may be necessary to carry out the purposes and intent of the Plan and to implement and effectuate the Plan;
- (i) To resolve any cases, controversies, suits or disputes arising in connection with the interpretation, implementation, or enforcement of the Plan or any person's or Entity's obligations incurred in connection with the Plan;
- (j) To hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;
- (k) To enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, revoked, reversed or vacated;
- (l) To enforce remedies upon any default under the Plan;
- (m) To enforce, interpret, and determine any disputes arising in connection with any orders, stipulations, judgments, and rulings entered in connection with the Reorganization Cases (whether or not the Reorganization Cases have been closed);
- (n) To resolve any cases, controversies, suits, or disputes that may arise in connection with the consummation, interpretation, or enforcement of the Plan, or any Entity's obligations incurred in connection herewith;
- (o) To determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order, the Dairy Mart Liquidating Trust, the Liquidating Trust Agreement, or any contract, instrument, release, indenture, or other agreement or document created in connection with the Plan;

- (p) To issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any person or Entity with the consummation of the Plan, or the enforcement of any rights, remedies, or obligations created under the Plan;
- (q) To determine such other matters as may be provided for in the Confirmation Order or other orders of the Court or as may be authorized under the provisions of the Bankruptcy Code or any other applicable law;
- (r) To hear any other matter if the Court's exercise of jurisdiction thereover is not inconsistent with the Bankruptcy Code or title 28 of the United States Code;
- (s) To hear and determine issues relating to discharge, injunctions, covenants not to sue, and other waivers and protections provided under or relating to the Plan;
- (t) To recover all assets of the Debtors and the Consolidating Estate wherever located; and
- (u) To enter a final decree closing the Reorganization Cases.

14.2 **Modification of the Plan**

14.2.1 *Modification Before the Effective Date*

The Debtors may alter, amend, or modify the Plan or any provision or portion thereof under section 1127(a) of the Bankruptcy Code at any time prior to the Effective Date; *provided, however,* that the Debtors shall make no material modification to the Plan without the consent of the Creditors' Committee. The Debtors shall provide parties in interest with notice of such amendments or modifications as may be required by the Bankruptcy Rules or any order of the Court and shall, in any event, provide such notice to counsel for the Creditors' Committee. A holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan as altered, amended, modified, or clarified, unless the proposed alteration, amendment, modification, or clarification adversely changes the treatment of the Claim of such holder.

14.2.2 *Modification Before Substantial Consummation*

After the Effective Date but prior to the "substantial consummation" (as that term is defined in section 1101(2) of the Bankruptcy Code) of the Plan, the Dairy Mart Liquidating Trust, may, pursuant to section 1127(b) of the Bankruptcy Code, institute proceedings in the Court to remedy any defect or omission or to reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, and otherwise provide for such matters as may be necessary to carry out the purpose and effect of the Plan, as long as the proceedings do not adversely affect the treatment of holders of Claims under the Plan; *provided, however,* that, to the extent required by the Bankruptcy Rules or an order of the Court, prior notice of any such proceedings shall be served in accordance therewith. A holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended, modified, or clarified, if the proposed alteration, amendment, modification, or clarification does not adversely change the treatment of the Claim of such holder.

**SECTION XV
MISCELLANEOUS PROVISIONS**

15.1 Payment of Statutory Fees

All fees payable pursuant to section 1930 of title 28 of the United States Code shall be paid on the Effective Date or as soon as practicable thereafter.

15.2 Exemption from Certain Transfer Taxes

Pursuant to section 1146 of the Bankruptcy Code, (a) the issuance, transfer or exchange of any securities, instruments, or documents; (b) the creation of any Lien, mortgage, deed of trust, or other security interest; (c) the making or assignment of any lease or sublease or the making or delivery of any deed or other instrument of transfer under, pursuant to, in furtherance of, or in connection with, the Plan, including, without limitation, any deeds, bills of sale or assignments executed in connection with any of the transactions contemplated under the Plan or reinvesting, transfer or sale of any real or personal property of the Debtors pursuant to, in implementation of, or as contemplated in, the Plan; and (d) the issuance, renewal, modification or securing of indebtedness by such means, and the making, delivery or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee or other similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, or governmental assessment. Consistent with the foregoing, each recorder of deeds or similar official for any county, city, or governmental unit in which any instrument is to be recorded hereunder shall, pursuant to the Confirmation Order, be ordered and directed to accept such instrument without requiring the payment of any filing fees, documentary stamp tax, deed stamps, stamp tax, transfer tax, intangible tax, mortgage recording tax, sales, use, or similar tax.

15.3 Governing Law

Except to the extent that the Bankruptcy Code or other federal law is applicable, or to the extent a schedule or exhibit hereto or instrument, agreement, or other document executed in connection with the Plan provides otherwise, the rights, duties, and obligations arising under the Plan, and the instruments, agreements, and other documents executed in connection with the Plan, shall be governed by, and construed and enforced in accordance with, the internal laws of the State of New York, without giving effect to any choice of law provisions that would require the application of the law of any other jurisdiction.

15.4 Notices

To be effective, all notices, requests, and demands under the Plan must be in writing (including by facsimile transmission) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

To the Debtors:

Dairy Mart Convenience Stores, Inc.
Attn: Gregory G. Landry
One Dairy Mart Way
Hudson, Ohio 44236

Telephone: 330-342-6600
Facsimile: 330-342-6752

with a copy to

Milbank, Tweed, Hadley & McCloy LLP
Attn: Dennis F. Dunne, Esq.
1 Chase Manhattan Plaza
New York, NY 10005-1413

Telephone: 212-530-5000
Facsimile: 212-530-5770

To the Creditors' Committee:

Akin Gump Strauss Hauer & Feld LLP
Attn: Ira S. Dizengoff, Esq.
590 Madison Avenue
New York, NY 10022

Telephone: 212-872-1000
Facsimile: 212-872-1002

15.5 Further Documents and Actions

The Debtors and the Dairy Mart Liquidating Trust shall execute, and are authorized to file with the Court and deliver, such agreements and other documents or information, and to take or cause to be taken such actions, as may be necessary or appropriate to effect and further evidence the terms and conditions of the Plan and to consummate the transactions and transfers contemplated by the Plan. The Debtors and the Dairy Mart Liquidating Trust and all other necessary or appropriate parties shall execute any and all documents and instruments that must be executed under or in connection with the Plan in order to implement the terms of the Plan or to effectuate the Distributions under the Plan, provided that such documents and instruments are reasonably acceptable to such party or parties.

15.6 Plan Supplement

Except as otherwise provided in the Plan, forms of the following documents shall be contained in the Plan Supplement and filed with the clerk of the Court at least seven (7) days prior to the Confirmation Hearing: the Liquidating Trust Agreement and _____. Upon its

filing with the Court, the Plan Supplement may be inspected in the office of the Clerk of the Court during normal Court hours. Holders of Claims may obtain a copy of the Plan Supplement, at their own expense unless otherwise required by the Bankruptcy Code or the Bankruptcy Rules or ordered by the Court, by making a written request by either (i) regular mail to Milbank, Tweed, Hadley & McCloy LLP, Attn: Alessandra Bulow, Legal Assistant, 1 Chase Manhattan Plaza, New York, New York 10005 or (ii) electronic mail to dmrequests@milbank.com.

15.7 Relationship Among the Plan and Certain Other Documents

To the extent that the Plan is inconsistent with the Disclosure Statement, the provisions of the Plan shall be controlling. To the extent that the Plan is inconsistent with the Dairy Mart Liquidating Trust Agreement, the provisions of the Dairy Mart Liquidating Trust Agreement shall be controlling.

15.8 Reservation of Rights

If the Plan is not confirmed by a Final Order, or if the Plan is confirmed and does not become effective, the rights of all parties in interest in the Reorganization Cases, including the Debtors, are and will be reserved in full. Any concessions or settlements reflected herein (if any), are made for purposes of the Plan only, and if the Plan does not become effective, no party in interest shall be bound or deemed prejudiced by any such concession or settlement.

15.9 Post-Confirmation Date Fees and Expenses

After the Confirmation Date, the Debtors or the Liquidating Trustee, as applicable, shall, in the ordinary course of business and without the necessity for any approval by the Court, pay the reasonable fees and expenses of the Professionals employed by the Debtors, the Creditors' Committee, or the Liquidating Trustee in connection with the implementation and consummation of the Plan, the claims reconciliation process and any other matters as to which such Professionals may be engaged. The fees and expenses of such Professionals shall be paid within ten (10) Business Days after submission of a detailed invoice therefor to the Debtors, the Creditors' Committee, or the Liquidating Trustee, as applicable. If the Debtors, the Creditors' Committee, or the Liquidating Trustee dispute the reasonableness of any such invoice, they shall timely pay the undisputed portion of such invoice, and submit the dispute regarding the balance of such invoice to the Court for a determination of its reasonableness.

15.10 Binding Effect

The rights, benefits, and obligations of any Entity named or referred to in the Plan, or whose actions may be required to effectuate the terms of the Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Entity (including, but not limited to, any trustee appointed for the Debtors under chapter 7 or 11 of the Bankruptcy Code). The Confirmation Order shall provide that the terms and provisions of the Plan and the Confirmation Order shall survive and remain effective after entry of any order which may be entered converting any of the Reorganization Cases to a case under chapter 7 of the Bankruptcy Code, and the terms and provisions of the Plan shall continue to be effective in this or any superseding case under the Bankruptcy Code.

15.11 Exhibits

All Exhibits and Schedules to this Plan are incorporated into and are part of this Plan as if set in full herein.

[END OF TEXT]

IN WITNESS WHEREOF, each of the undersigned has duly executed the Plan as of the date first above written.

**DAIRY MART CONVENIENCE STORES,
INC.**

By: /s/ Gregg R. Budoï
Name: Gregg R. Budoï
Title: Vice President – Finance, Treasurer,
and Chief Financial Officer

CIA FOOD MARTS, INC.

By: /s/ Gregg R. Budoï
Name: Gregg R. Budoï
Title: Vice President – Finance, Treasurer,
and Chief Financial Officer

CONNA CORPORATION

By: /s/ Gregg R. Budoï
Name: Gregg R. Budoï
Title: Vice President – Finance, Treasurer,
and Chief Financial Officer

CONVENIENT GASOLINE, INC.

By: /s/ Gregg R. Budoï
Name: Gregg R. Budoï
Title: Vice President – Finance, Treasurer,
and Chief Financial Officer

**CONVENIENT INDUSTRIES OF AMERICA,
INC.**

By: /s/ Gregg R. Budoï
Name: Gregg R. Budoï
Title: Vice President – Finance, Treasurer,
and Chief Financial Officer

DAIRY MART, INC.

By: /s/ Gregg R. Budo
Name: Gregg R. Budo
Title: Vice President – Finance, Treasurer,
and Chief Financial Officer

DAIRY MART EAST, INC.

By: /s/ Gregg R. Budo
Name: Gregg R. Budo
Title: Vice President – Finance, Treasurer,
and Chief Financial Officer

DAIRY MART FARMS, INC.

By: /s/ Gregg R. Budo
Name: Gregg R. Budo
Title: Vice President – Finance, Treasurer,
and Chief Financial Officer

D.M. INSURANCE LIMITED

By: /s/ Gregg R. Budo
Name: Gregg R. Budo
Title: Vice President – Finance, Treasurer,
and Chief Financial Officer

DM RISK MANAGEMENT COMPANY, INC.

By: /s/ Gregg R. Budo
Name: Gregg R. Budo
Title: Vice President – Finance, Treasurer,
and Chief Financial Officer

FOOD MERCHANDISERS, INC.

By: /s/ Gregg R. Budo
Name: Gregg R. Budo
Title: Vice President – Finance, Treasurer,
and Chief Financial Officer

GOLDEN STORES, INC.

By: /s/ Gregg R. Budo
Name: Gregg R. Budo
Title: Vice President – Finance, Treasurer,
and Chief Financial Officer

LMC, INC.

By: /s/ Gregg R. Budo
Name: Gregg R. Budo
Title: Vice President – Finance, Treasurer,
and Chief Financial Officer

LAKESIDE WHOLESALE, INC.

By: /s/ Gregg R. Budo
Name: Gregg R. Budo
Title: Vice President – Finance, Treasurer,
and Chief Financial Officer

OPEN PANTRY PROPERTIES, INC.

By: /s/ Gregg R. Budo
Name: Gregg R. Budo
Title: Vice President – Finance, Treasurer,
and Chief Financial Officer

OSCAR EWING, INC.

By: /s/ Gregg R. Budo
Name: Gregg R. Budo
Title: Vice President – Finance, Treasurer,
and Chief Financial Officer

QUIK SHOPS, INC.

By: /s/ Gregg R. Budo
Name: Gregg R. Budo
Title: Vice President – Finance, Treasurer,
and Chief Financial Officer

REMOTE SERVICES, INC.

By: /s/ Gregg R. Budo
Name: Gregg R. Budo
Title: Vice President – Finance, Treasurer,
and Chief Financial Officer

SNG OF SOUTHERN MINNESOTA, INC.

By: /s/ Gregg R. Budo
Name: Gregg R. Budo
Title: Vice President – Finance, Treasurer,
and Chief Financial Officer

THE LAWSON COMPANY

By: /s/ Gregg R. Budo
Name: Gregg R. Budo
Title: Vice President – Finance, Treasurer,
and Chief Financial Officer

THE LAWSON MILK COMPANY

By: /s/ Gregg R. Budo
Name: Gregg R. Budo
Title: Vice President – Finance, Treasurer,
and Chief Financial Officer