

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

SCHOOL SPECIALTY, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 13-10125 (KJC)

Jointly Administered

Re: Docket Nos. 862, 864, 931, 1026, 1044, 1056, 1099
& 1143

**NOTICE OF FILING OF FIFTH AMENDED SUPPLEMENT TO
DEBTORS' AMENDED JOINT PLAN OF REORGANIZATION UNDER
CHAPTER 11 OF THE BANKRUPTCY CODE**

PLEASE TAKE NOTICE that, on April 23, 2013, the above-captioned debtors and debtors-in-possession (collectively, the "Debtors") filed the *Debtors' Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. 862] (the "Plan") and related *Disclosure Statement for Debtors' Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. 864] (the "Disclosure Statement").²

PLEASE TAKE FURTHER NOTICE that, on April 24, 2013, the Debtors filed the *Notice of Filing of Solicitation Version of Disclosure Statement for Debtors' Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. 931] (the "Revised Disclosure Statement").

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number and state of incorporation, are: School Specialty, Inc. (Wisc.; 1239), Bird-In-Hand Woodworks, Inc. (N.J.; 8811), Califone International, Inc. (Del.; 3578), Childcraft Education Corp. (N.Y.; 9818), ClassroomDirect.com, LLC (Del.; 2425), Delta Education, LLC (Del.; 8764), Frey Scientific, Inc. (Del.; 3771), Premier Agendas, Inc. (Wash.; 1380), Sax Arts & Crafts, Inc. (Del.; 6436), and Sportime, LLC (Del.; 6939). The address of the Debtors' corporate headquarters is W6316 Design Drive, Greenville, Wisconsin 54942.

² All terms not otherwise defined herein shall be given the meanings ascribed to them in the Plan.



PLEASE TAKE FURTHER NOTICE that, on May 9, 2013, the Debtors filed the *Notice of Filing of Supplement to Debtors' Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. 1026] (the "Plan Supplement").

PLEASE TAKE FURTHER NOTICE that, on May 15, 2013, the Debtors filed the *Notice of Filing of First Amended Supplement to Debtors' Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. 1044] (the "First Amended Plan Supplement").

PLEASE TAKE FURTHER NOTICE that, on May 15, 2013, the Debtors filed the *Notice of Filing of Second Amended Supplement to Debtors' Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. 1056] (the "Second Amended Plan Supplement").

PLEASE TAKE FURTHER NOTICE that, on May 17, 2013, the Debtors filed the *Notice of Filing of Third Amended Supplement to Debtors' Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. 1099] (the "Third Amended Plan Supplement").

PLEASE TAKE FURTHER NOTICE that, on May 22, 2013, the Debtors filed the *Notice of Filing of Fourth Amended Supplement to Debtors' Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. 1143] (the "Fourth Amended Plan Supplement").

PLEASE TAKE FURTHER NOTICE that the Plan Supplement is hereby amended (the "Fifth Amended Plan Supplement," and together with the Plan Supplement, the First Amended Plan Supplement, the Second Amended Plan Supplement, the Third Amended

Plan Supplement and the Fourth Amended Plan Supplement, the “Plan Supplements”) with respect to the following exhibits:³

Exhibit A: School Specialty, Inc. Ombudsman Plan Supplement

PLEASE TAKE FURTHER NOTICE that any holder of Claims or Equity Interests who would like to receive copies of any of the exhibits contained in this Fifth Amended Plan Supplement may receive a copy by contacting Troy Bollman at (302) 573-7796 or tbollman@ycst.com. In addition, copies may also be obtained (a) for a fee through the website of the United States Bankruptcy Court for the District of Delaware, <https://ecf.deb.uscourts.gov>, or (b) free of charge through the website established by the Claims Agent for the Debtors’ Chapter 11 Cases at www.kccllc.net/SchoolSpecialty.

Dated: June 5, 2013
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Maris J. Kandestin

Pauline K. Morgan (No. 3650)

Maris J. Kandestin (No. 5294)

Morgan L. Seward (No. 5388)

Rodney Square

1000 North King Street

Wilmington, Delaware 19801

Telephone: (302) 571-6600

Facsimile: (302) 571-1253

- and -

³ The Debtors expressly reserve the right, at any time prior to the Effective Date, to supplement, modify or amend the Plan Supplements. Defined terms not otherwise defined herein shall have the meaning ascribed to them in the Plan.

PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP

Alan W. Kornberg

Jeffrey D. Saferstein

Lauren Shumejda

Ann K. Young

1285 Avenue of the Americas

New York, New York 10019-6064

Telephone: (212) 373-3000

Facsimile: (212) 757-3990

*Counsel for the Debtors and
Debtors-in-Possession*

EXHIBIT A

School Specialty, Inc. Ombudsman Plan Supplement

SCHOOL SPECIALTY, INC. OMBUDSMAN PLAN SUPPLEMENT

This School Specialty, Inc. Ombudsman Plan Supplement (the “**Supplement**”) supplements that certain Debtors’ Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code dated April 24, 2013 (as the same may be amended, modified or supplemented from time to time in accordance with the terms and provisions thereof, the “**Plan**”). The Plan provides for the appointment of an Ombudsman. This Supplement further sets forth the rights, duties and powers of the Ombudsman.

ARTICLE I DEFINITIONS

Section 1.1 Defined Terms. Capitalized terms used herein and not otherwise defined shall have the respective meanings set forth in the Plan.

ARTICLE II APPOINTMENT

Section 2.1 Appointment of Ombudsman. The Ombudsman is appointed as of the Effective Date to perform the duties and obligations of the Ombudsman set forth in the Plan, the Confirmation Order, and this Supplement. The Ombudsman shall have the rights, powers, and duties set forth in the Plan, the Confirmation Order, and this Supplement. The Ombudsman is not an officer, director, or fiduciary of any of the Reorganized Debtors.

ARTICLE III POWERS, RIGHTS, AND DUTIES OF THE OMBUDSMAN AND THE REORGANIZED DEBTORS

Section 3.1 Duties of the Ombudsman. The Ombudsman shall have the following specific duties in addition to any duties conferred upon the Ombudsman by any other section or provision of this Supplement, the Plan or the Confirmation Order; *provided, however*, that the enumeration of the following duties shall not be considered in any way to limit or control the duties of the Ombudsman to act as specifically required by any other section or provision of the Plan, the Confirmation Order, this Supplement or by any other order of the Bankruptcy Court:

(a) monitor the Trade Election, including, without limitation, by: (i) informing holders of Allowed Trade Unsecured Claims that make the Trade Election (the “Trade Claimants”) of the Ombudsman’s role and duties with respect to the Trade Election; and (ii) interacting with such holders and the Reorganized Debtors to obtain such information as the Ombudsman is entitled to receive under this Supplement, the Confirmation Order, or the Plan;

(b) provide information on the Website (as described in Section 3.6 hereof to the extent created) as to: (i) the identity of, role of, and means of contacting the Ombudsman; (ii) this Supplement; (iii) the dates of any upcoming Distribution; and (iv) any payment default or default of any of the financial covenants in the Exit Facilities;

(c) monitor and pursue remedies or other protections to ensure that the provisions of Article V.I of the Plan and the treatment afforded to holders of Allowed General Unsecured Claims and Allowed Trade Unsecured Claims are adhered to, including by seeking relief from the Bankruptcy Court;

(d) to the extent the Reorganized Debtors have notified the Ombudsman of any Change of Control or any payment default or default of any of the financial covenants in the Exit Facilities (or any refinancings thereof) as set forth in Section 3.3, notify holders of Allowed General Unsecured Claims and holders of Allowed Trade Unsecured Claims of such Change of Control or default; and

(e) attempt to resolve any disputes between General Unsecured Creditors or Trade Unsecured Creditors, on one hand, and the Reorganized Debtors, on the other hand, regarding Distributions to be made to holders of Allowed General Unsecured Claims and Allowed Trade Unsecured Claims, including, without limitation, any dispute arising from any Trade Election by a holder of a Trade Unsecured Claim, including, without limitation, with respect to the provision of Customary Trade Terms and any purported breach thereof. In the event a consensual resolution cannot be reached, the General Unsecured Creditor or Trade Unsecured Creditor, as the case may be, party to the dispute may request that the Ombudsman seek judicial determination of the dispute, including the filing of motions on behalf of and representing such General Unsecured Creditor or Trade Unsecured Creditor, as the case may be, in Bankruptcy Court (or other court of competent jurisdiction in the State of New York in the event the Bankruptcy Court declines to exercise jurisdiction over such dispute). While the Ombudsman may recommend a resolution or settlement, any such recommendation is without administrative or judicial authority and is not binding upon any party.

Section 3.2 No Other Duties. Other than the duties and obligations of the Ombudsman specifically set forth in this Supplement, the Plan, or the Confirmation Order, the Ombudsman shall have no duties or obligations of any kind or nature with respect to its appointment as such.

Section 3.3 Duties of the Reorganized Debtors. The Reorganized Debtors shall have the following specific duties in addition to any duties conferred upon the Reorganized Debtors by any other section or provision of this Supplement, the Plan, or the Confirmation Order; *provided, however*, that the enumeration of the following duties shall not be considered in any way to limit or control the duties of the Reorganized Debtors to act as specifically required by any other section or provision of the Plan, the Confirmation Order, this Supplement, or by any other order of the Bankruptcy Court:

(a) provide to the Ombudsman (x) a matrix of the number of filed and scheduled Allowed General Unsecured Claims and Allowed Trade Unsecured Claims and the amount of each such Claim, and the ongoing efforts with respect to and results of the Trade Election process (including, but not limited to, (i) the identity of the Trade Claimants (including additions to the list), (ii) the date any Trade Election Form was sent to any such Trade Claimant, (iii) the date trade terms (including, but not limited to, Customary Trade Terms) were agreed upon between the Debtors or Reorganized Debtors (as the case may be) and any such Trade Claimant, (iv) any response to the Trade Election Form received from any such Trade Claimant,

(v) the date of all Trade Elections, (vi) a schedule of Trade Payment vesting dates and (vii) amounts remaining under the Distribution Cap (including notice as to if and when the Distribution Cap is exceeded)); and (y) upon reasonable request and only in connection with a dispute between a holder of a Trade Unsecured Claim and the Debtors and/or Reorganized Debtors, copies of the Customary Trade Terms the Debtors or Reorganized Debtors (as the case may be) have proposed to any Trade Claimant, and any response thereto from any such Trade Claimant;

(b) notify the Ombudsman of any retirement and/or satisfaction of any payment obligation to be made on account of Distributions to holders of Allowed General Unsecured Claims and Allowed Trade Unsecured Claims (including the Trade Payment);

(c) notify the Ombudsman of any: (i) sale of assets of any of the Reorganized Debtors or the stock of any of the Reorganized Debtors' subsidiaries no later than ten (10) days before the closing of such sale (or such shorter time period as may be reasonably practicable under the circumstances); (ii) actual Change of Control ten (10) days in advance of the closing of any transaction giving rise to such Change of Control (or such shorter time period as may be reasonably practicable under the circumstances); or (iii) a payment default or default of any of the financial covenants in the Exit Facilities (or any refinancings thereof) after the expiration of any applicable cure periods (regardless of whether such defaults are waived or a forbearance agreement is entered into with respect thereto); *provided, however*, that a failure to disclose any of the foregoing information set forth in (iii) above prior to the disclosure of such information in a public filing shall not be considered a breach of the duties hereunder;

(d) at the Ombudsman's reasonable request, notify all Trade Claimants of any payment default or default of any of the financial covenants in the Exit Facilities (or any refinancings thereof) after the expiration of any applicable cure periods (regardless of whether such defaults are waived or a forbearance agreement is entered into with respect thereto). Such notices shall be provided on the Website (to the extent created) with confidentiality protections reasonably acceptable to the Reorganized Debtors; *provided, however*, that the Ombudsman may provide such notice(s) directly to Trade Claimants in accordance with Sections 3.1 hereof; and *provided, further, however*, that a failure to disclose the foregoing information to Trade Claimants prior to the disclosure of such information in a public filing shall not be considered a breach of the duties hereunder;

(e) at the Ombudsman's reasonable request, notify all holders of Trade Unsecured Claims and General Unsecured Claims of any Change in Control; *provided, however*, that the Ombudsman may provide such notice(s) directly to Trade Claimants in accordance with Sections 3.1 hereof; and *provided, further, however*, that a failure to disclose the foregoing information to holders of Trade Unsecured Claims and General Unsecured Claims prior to the disclosure of such information in a public filing shall not be considered a breach of the duties hereunder;

(f) to the extent known, notify the Ombudsman of the transfer of any Trade Claimant's entitlement to the Trade Payment;

(g) maintain all documentation related to the Exit Facilities and make available to the Ombudsman copies of any notice of default or default letter in connection therewith and any amendments thereto or refinancings thereof; and

(h) take any and all other actions necessary or appropriate to implement or consummate the Plan, the Confirmation Order, and this Supplement.

Section 3.4 Notice to the Ombudsman. Unless required by Section 3.3 to be provided more or less frequently, the Reorganized Debtors shall provide the notices, matrix, lists, records, or other information required to be provided to the Ombudsman by Section 3.3 hereof on a bi-weekly basis for two (2) months following the Effective Date and on a monthly basis thereafter. The Reorganized Debtors shall also provide the Ombudsman with access to the notices, matrix, lists, records, or other information described in Section 3.3 hereof upon reasonable request.

Section 3.5 Financial Reporting. To the extent the Reorganized Debtors are no longer a public filer, the Reorganized Debtors shall provide the Ombudsman with copies of all material financial information of the Reorganized Debtors and any of the Reorganized Debtors' subsidiaries as and when provided to the lenders under the Exit Facilities, under any refinancings thereof, or under any other senior financing facility to which the Reorganized Debtors are party from time to time, promptly after delivery thereof, including annual and quarterly financial statements and projections; *provided, however*, that the Reorganized Debtors shall provide such projections to the Ombudsman regardless of whether the Reorganized Debtors are a public filer. To the extent the Reorganized Debtors are no longer a public filer and are not party to any financing facilities that require such financial reporting, the Reorganized Debtors shall provide the Ombudsman with:

(a) for each fiscal year of the Reorganized Debtors, no later than one hundred twenty (120) days following the end of such fiscal year, copies of the consolidated financial statements of the Reorganized Debtors and any of the Reorganized Debtors' subsidiaries as of the end of such fiscal year in the same form as may be provided to any of the shareholders of the Reorganized Debtors;

(b) for each fiscal quarter of the Reorganized Debtors, no later than thirty (30) days following the end of such fiscal quarter (except that any financial information with respect to the fourth fiscal quarter may be delivered no later than the financial information described in clause (a) hereof), copies of the consolidated financial statements of the Reorganized Debtors and any of the Reorganized Debtors' subsidiaries as of the end of such fiscal quarter in the same form as may be provided to any of the shareholders of the Reorganized Debtors; and

(c) annual projections as soon as completed.

Section 3.6 Supplemental Powers of the Ombudsman. The Ombudsman shall have the following specific powers and rights, but not obligations, in addition to any powers conferred upon the Ombudsman by any other section or provision of this Supplement, the Plan, or the Confirmation Order; *provided, however*, that the enumeration of the following powers and rights shall not be considered in any way to limit or control the power or obligation of the Ombudsman

to act as specifically authorized by any other section or provision of the Plan, the Confirmation Order, this Supplement, or by any other order of the Bankruptcy Court:

(a) establish a secure, password-protected website (the “Website”) pursuant to which the Ombudsman may provide notices and information to holders of Allowed General Unsecured Claims or Allowed Trade Unsecured Claims, including the notices required by this Article 3, the Plan, and the Confirmation Order. The Website shall have security and confidentiality protections reasonably acceptable to the Reorganized Debtors. The Website shall also have the functionality (to the extent practicable) to automatically provide, via electronic mail, any such notices or information to holders of Allowed General Unsecured Claims or Allowed Trade Unsecured Claims who elect to receive automatic notices or information. The reasonable expenses of establishing and maintaining the Website shall be borne by the Reorganized Debtors. The Ombudsman may retain a noticing agent, the identity of which shall be subject to the consent of the Reorganized Debtors, which consent shall not be unreasonably withheld, to disseminate any such notices or information. The reasonable expenses of retaining any such noticing agent shall be borne by the Reorganized Debtors;

(b) maintain a list of holders of Allowed General Unsecured Claims and Allowed Trade Unsecured Claims who have elected to receive automatic notices via the Website;

(c) maintain lists of holders of Allowed General Unsecured Claims, holders of Allowed Trade Unsecured Claims, and Trade Claimants;

(d) maintain schedules of the status of any disputes between the Debtor and Trade Claimants with respect to the Trade Election;

(e) employ, supervise, and compensate the reasonable fees and expenses of counsel that the Ombudsman may select to assist the Ombudsman with respect to its responsibilities hereunder. The Ombudsman shall only be permitted to select one law firm to handle disputes discussed herein. The law firm shall not be disqualified from serving the Ombudsman solely because of its prior employment in any capacity in the Debtors’ bankruptcy cases on behalf of the Debtors, their estates, the Creditors’ Committee, or any creditors. In the event the Ombudsman chooses to represent a Trade Claimant or holder of an Allowed General Unsecured Claim in court, the Ombudsman may retain such other professionals as are reasonably necessary to handle disputes discussed herein, including, but not limited to, local counsel. The Ombudsman shall be permitted to employ its own firm or any other firm it deems reasonably necessary to carry out its duties as Ombudsman;

(f) engage, supervise, and compensate such other employees and third parties as the Ombudsman may deem necessary or appropriate to assist the Ombudsman in carrying out its powers and duties under the Plan, the Confirmation Order, this Supplement or any other order of the Bankruptcy Court;

(g) indemnify employees, professionals, and other third parties in connection with the performance of services, as described in Section 6.2 hereof; and

(h) exercise in its sole discretion such other powers as may be vested in the Ombudsman pursuant to the Plan, the Confirmation Order, this Supplement, or any other order of the Bankruptcy Court.

Section 3.7 Confidentiality. The Ombudsman shall keep confidential the notices, matrix, and other information it receives from the Reorganized Debtors; *provided, however*, that this Section 3.7 shall in no way restrict, restrain, or otherwise prevent the Ombudsman from performing its duties to or exercising its powers to provide the notices and other information to holders of Allowed General Unsecured Claims, holders of Allowed Trade Unsecured Claims, and Trade Claimants required or permitted to be so provided by the terms of the Plan, the Confirmation Order, or this Supplement. In the event the Ombudsman receives any confidential information from the Reorganized Debtors in connection with handling a dispute to which a Trade Claimant is a party, the Ombudsman shall not use such information for the purposes of handling a separate dispute to which a separate Trade Claimant is party, and shall keep such information confidential. The Ombudsman shall return the notices, matrix, and other information it receives from the Reorganized Debtors in the event of its death, resignation, termination or incompetency.

ARTICLE IV APPOINTMENT AND COMPENSATION OF THE OMBUDSMAN

Section 4.1 Tenure of the Ombudsman. The individual listed on Exhibit A hereto has been appointed by the Creditors Committee as the Ombudsman. The Ombudsman will serve until death or resignation pursuant to Section 4.2, or termination pursuant to Section 5.1.

Section 4.2 Ombudsman's Compensation and Reimbursement. The Ombudsman shall be compensated for its time expended on Ombudsman matters at its standard hourly rates, as such rates may be adjusted from time to time. The Ombudsman shall receive compensation as follows:

(a) Compensation. All of the reasonable fees of the Ombudsman, and all of the reasonable fees of any third parties retained by the Ombudsman in connection with the performance of the Ombudsman's duties hereunder, shall be paid by the Reorganized Debtors.

(b) Expenses. The Reorganized Debtors will pay directly or reimburse, at the Ombudsman's election, all reasonable, out-of-pocket expenses incurred by the Ombudsman and any third parties in connection with the performance of the Ombudsman's duties or supplemental powers hereunder, including but not limited to any reasonable fees and expenses incurred in connection with the Ombudsman's indemnification of any person in accordance with Section 6.2 hereof.

Section 4.3 Payment. The reasonable fees and expenses payable to the Ombudsman shall be paid to the Ombudsman by the Reorganized Debtors without necessity for review or approval by the Bankruptcy Court or any other person. The Reorganized Debtors shall have twenty (20) days from receipt of an invoice or other bill from the Ombudsman to object to such invoice or bill. If the Reorganized Debtors do not so object within twenty (20) days of receipt, the reasonable fees and expenses reflected on the invoice or other bill shall be deemed

reasonable, shall no longer be subject to challenge, shall be immediately due and payable, and shall be actually paid within thirty (30) days from receipt of such invoice or other bill.

Section 4.4 Resignation. The Ombudsman may resign by giving not less than thirty (30) days' prior written notice thereof to the Reorganized Debtors. Such resignation shall become effective on the later to occur of: (a) the day specified in such notice, and (b) the appointment of a successor and the acceptance by such successor of such appointment. If a successor Ombudsman is not appointed or does not accept its appointment within thirty (30) days following delivery of notice of resignation, the Reorganized Debtors may petition the Bankruptcy Court for the appointment of a successor Ombudsman.

Section 4.5 Appointment of a Successor Ombudsman. In the event of the death, resignation, termination or incompetency of the Ombudsman, the resigning or terminated Ombudsman, or in the case of its death or incompetency, its firm or organization, shall designate a successor Ombudsman reasonably satisfactory to the Reorganized Debtors. If a successor Ombudsman is not appointed or does not accept its appointment within thirty (30) days following the Ombudsman's death, termination or incompetency, the Reorganized Debtors may petition the Bankruptcy Court for the appointment of a successor Ombudsman. Such appointment shall specify the date on which such appointment shall be effective. In the event of the resignation or termination of the Ombudsman, such resigning or terminated Ombudsman will promptly (a) execute and deliver such documents, instruments and other writings as may be reasonably requested by the successor Ombudsman to effect the termination of such Ombudsman's capacity, (b) deliver to the successor Ombudsman all documents, instruments, records and other writings related to the fulfillment of the Ombudsman's rights, powers, or duties as may be in the possession of the Ombudsman (provided that the predecessor Ombudsman may retain one copy of such documents for archival purposes), and (c) otherwise assist and cooperate in effecting the assumption of its obligations and functions by such successor Ombudsman. Every successor Ombudsman appointed hereunder shall execute, acknowledge, and deliver to the Reorganized Debtors an instrument accepting the appointment as Ombudsman, and thereupon the successor Ombudsman, without any further act, deed, or conveyance, shall become vested with all rights, powers, trusts, and duties of the retiring Ombudsman. The death, resignation, termination or incompetency of the Ombudsman shall not operate to terminate the appointment of the Ombudsman or to revoke any existing agency created pursuant to the terms of the Plan, the Confirmation Order, and this Supplement or invalidate any action theretofore taken by the Ombudsman or any prior Ombudsman.

ARTICLE V TERMINATION

Section 5.1 Termination. The appointment of the Ombudsman shall commence on the Effective Date. The appointment shall terminate upon the earlier of (a) the filing of a certificate of termination by the Ombudsman with the Bankruptcy Court, and (b) the satisfaction of all Allowed Trade Unsecured Claims and Allowed General Unsecured Claims in accordance with the terms of the Plan. In addition, the Reorganized Debtors shall have the right to terminate the Ombudsman if the Ombudsman enters a plea of guilty or *nolo contendere* to a felony or to a misdemeanor involving moral turpitude, or engages in fraud, gross negligence, or willful misconduct in connection with carrying out its powers and duties hereunder, as determined by a

court of competent jurisdiction. All reasonable fees and expenses of the Ombudsman through the date of termination shall be paid by the Reorganized Debtors.

Section 5.2 Survival. Sections 3.7, 6.1, 6.2, 6.3, and 6.4 shall survive the expiration of the appointment of the Ombudsman. Except as specifically provided herein, upon the termination of the appointment of the Ombudsman in accordance with Section 5.1, the Ombudsman shall have no further duties or obligations hereunder or as Ombudsman. Any other provision in the Supplement, which, by its terms, specifically survives termination of the Supplement, shall survive termination of the appointment of the Ombudsman.

ARTICLE VI MISCELLANEOUS PROVISIONS

Section 6.1 No Further Liability. The Ombudsman shall not be liable to any party, including, without limitation, the Reorganized Debtors, holders of Allowed General Unsecured Claims, or holders of Allowed Trade Unsecured Claims, for any action taken or omitted by him or her in good faith and reasonably believed by the Ombudsman to be authorized within the discretion or rights or powers conferred upon it in accordance with the Plan, the Confirmation Order, or this Supplement. In performing its, its duties, the Ombudsman shall have no liability for any action taken by him or her in good faith in accordance with the advice of counsel or other professionals retained by the Ombudsman. Without limiting the generality of the foregoing, the Ombudsman may rely without independent investigation on copies of orders of the Bankruptcy Court reasonably believed by the Ombudsman to be genuine, and shall have no liability for actions taken in reliance thereon. None of the provisions of this Supplement shall require the Ombudsman to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties hereunder or in the exercise of any of their rights and powers. The Ombudsman may rely without inquiry upon writings delivered to it that it believes to be genuine and to have been given by a proper Person. Specifically, the Ombudsman may rely without inquiry on the records and other notices provided to it by the Reorganized Debtors, including but not limited to the records and notices required to be provided by Section 3.3 hereof. Notwithstanding the foregoing, nothing in this Section 6.1 shall relieve the Ombudsman from any liability for any actions or omissions arising out of its fraud, criminal acts, gross negligence or willful misconduct in connection with carrying out its powers and duties hereunder. Any action taken or omitted to be taken in the case of the Ombudsman with the express approval of the Bankruptcy Court will conclusively be deemed not to constitute gross negligence or willful misconduct.

Section 6.2 Indemnification of the Ombudsman.

(a) To the fullest extent permitted by law, the Reorganized Debtors will indemnify and hold harmless the Ombudsman and each of its respective partners, officers, agents, professionals, or employees (collectively, the “**Indemnified Persons**”) from and against any and all loss, cost, damage, expense (including, without limitation, reasonable fees and expenses of attorneys and other advisors and any court costs incurred by any Indemnified Person), or liability by reason of anything any Indemnified Person did, does, or refrains from doing for the business or affairs of the Ombudsman, except to the extent that it is judicially determined by a court of competent jurisdiction that the loss, cost, damage, expense, or liability

resulted primarily from the Indemnified Person's fraud, criminal acts, gross negligence or willful misconduct. To the extent the Ombudsman is required to provide indemnification to any Indemnified Person, the Reorganized Debtors will pay the Ombudsman's obligations in connection with such indemnification, or reimburse the Ombudsman to the extent the Ombudsman has paid such obligation. The foregoing indemnity in respect of any Indemnified Person shall survive the termination of such Indemnified Person from the capacity for which they are indemnified.

(b) Notwithstanding any provision herein to the contrary, the Reorganized Debtors shall pay directly the reasonable expenses incurred by the Indemnified Persons in the course of defending themselves in any action brought against them as a result of the acts and omissions, actual or alleged, of an Indemnified Person in its capacity as such promptly upon receipt of an invoice or other bill for such reasonable expenses, but in any event within the same time period provided in Section 4.3 hereof; *provided, however*, that the Indemnified Persons shall repay the amounts so paid by the Reorganized Debtors promptly upon the entry of a final, non-appealable judgment or order finding that such Indemnified Persons were not entitled to any indemnity under the provisions of this Section 6.2. To the extent the Ombudsman is required to pay directly any such invoice or bill, the Reorganized Debtors shall reimburse the Ombudsman for such payment. The foregoing indemnity in respect of any Indemnified Person shall survive the termination of such Indemnified Person from the capacity for which they are indemnified.

(c) The rights to indemnification under this Section 6.2 are not exclusive of other rights which any Indemnified Person may otherwise have at law or in equity against parties other than the Reorganized Debtors, including without limitation common law rights to indemnification or contribution against parties other than the Reorganized Debtors. Nothing in this Section 6.2 will affect the rights or obligations of any Person (or the limitations on those rights or obligations) under any other agreement or instrument to which that Person is a party.

(d) In making a determination with respect to entitlement to exculpation or indemnification hereunder, the person, persons or entity making such determination shall presume that the Indemnified Person is entitled to exculpation and indemnification under this Supplement, and any person seeking to overcome such presumption shall have the burden of proof to overcome that presumption.

Section 6.3 Limitation of Liability. The Ombudsman and his representatives and professionals will not be liable for punitive, exemplary, consequential, special or other damages arising out of, or related to, its services as Ombudsman.

Section 6.4 Retention of Jurisdiction. The Bankruptcy Court shall retain jurisdiction to adjudicate any dispute between (a) the Ombudsman and the Reorganized Debtors or (b) the Reorganized Debtors and/or the Ombudsman and any holder of an Allowed General Unsecured Claim or Allowed Trade Unsecured Claim, regarding the rights, duties, powers and/or actions of the Ombudsman as set forth in the Plan, the Confirmation Order, and this Supplement, the obligations of the Reorganized Debtors, and any other dispute arising under this Supplement, including but not limited to any dispute arising regarding the reasonable fees, compensation, and expenses of the Ombudsman.

Section 6.5 Descriptive Headings. The headings contained in this Supplement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Supplement.

Section 6.6 Amendment and Waiver. The terms of this Supplement may not be amended except by an instrument in writing approved by the Reorganized Debtors and the Ombudsman.

Exhibit A
Ombudsman

Alan D. Halperin
Halperin Battaglia Raicht, LLP
40 Wall Street, 37th Floor
New York, New York 10005
(212) 765-9011
ahalperin@halperinlaw.net
dlieberman@halperinlaw.net