

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION**  
www.flsb.uscourts.gov

In re:

Chapter 11

PALM BEACH FINANCE PARTNERS, L.P.,  
a Delaware limited partnership, *et al.*,<sup>1</sup>

Case No. 09-36379-BKC-PGH

Jointly Administered

Debtors.

**DISCLOSURE STATEMENT IN SUPPORT OF JOINT PLAN OF LIQUIDATION OF  
BARRY MUKAMAL, AS CHAPTER 11 TRUSTEE OF PALM BEACH FINANCE  
PARTNERS, L.P. AND PALM BEACH FINANCE II, L.P., AND GEOFFREY VARGA,  
AS JOINT OFFICIAL LIQUIDATOR OF PALM BEACH OFFSHORE, LTD. AND  
PALM BEACH OFFSHORE II LIMITED, LTD.**

July 26, 2010

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and Palm Beach Offshore II, Ltd.

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<sup>1</sup> The address and last four digits of the taxpayer identification number for each of the Debtors follows in parenthesis: (i) Palm Beach Finance Partners, L.P., 3601 PGA Blvd, Suite 301, Palm Beach Gardens, FL 33410 (TIN 9943); and (ii) Palm Beach Finance II, L.P., 3601 PGA Blvd, Suite 301, Palm Beach Gardens, FL 33410 (TIN 0680).

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**Exhibits To Disclosure Statement**

Exhibit A                      First Amended Joint Plan of Liquidation

**DISCLOSURE STATEMENT IN SUPPORT OF JOINT PLAN OF LIQUIDATION OF  
BARRY MUKAMAL, AS CHAPTER 11 TRUSTEE OF PALM BEACH FINANCE  
PARTNERS, L.P. AND PALM BEACH FINANCE II, L.P., AND GEOFFREY VARGA,  
AS JOINT OFFICIAL LIQUIDATOR OF PALM BEACH OFFSHORE LTD. AND  
PALM BEACH OFFSHORE II, LTD.**

**THE PLAN PROPONENTS RESERVE THE RIGHT TO AMEND OR SUPPLEMENT  
THIS PROPOSED DISCLOSURE STATEMENT AT OR BEFORE THE  
CONFIRMATION HEARING.**

**I.  
INTRODUCTION**

Barry Mukamal, as Chapter 11 Trustee (the "Trustee") of Palm Beach Finance Partners, L.P., a Delaware limited partnership, ("PBF") and Palm Beach Finance II, L.P., a Delaware limited partnership, ("PBF II" and together with PBF, the "Debtors"), and Geoffrey Varga, as Joint Official Liquidator of Palm Beach Offshore, Ltd. and Palm Beach Offshore II, Ltd. ("JOL" and together with the Trustee, the "Plan Proponents") provide this Disclosure Statement (the "Disclosure Statement") to certain of the Debtors' impaired creditors to permit such creditors to make an informed decision in voting to accept or reject the *Joint Plan of Liquidation of Barry Mukamal, as Chapter 11 Trustee of Palm Beach Finance Partners, L.P. and Palm Beach Finance II, L.P., and Geoffrey Varga, as Joint Official Liquidator of Palm Beach Offshore, Ltd. and Palm Beach Offshore II, Ltd.* (the "Plan") filed on July 23, 2010 with the United States Bankruptcy Court for the Southern District of Florida, West Palm Beach Division (the "Bankruptcy Court") in connection with the above-captioned cases filed pursuant to Chapter 11 of the Bankruptcy Code (the "Chapter 11 Cases").

A copy of the Plan is attached to this Disclosure Statement as Exhibit A. Capitalized terms used herein but not otherwise defined have the meanings assigned to such terms in the Plan. Whenever the words "include," "includes" or "including" are used in this Disclosure Statement, they are deemed to be followed by the words "without limitation."

This Disclosure Statement is presented to certain holders of Claims against, or Interests in, the Debtors in accordance with the requirements of section 1125 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330 (the "Bankruptcy Code"). Section 1125 of the Bankruptcy Code requires that a disclosure statement provide information sufficient to enable a hypothetical and reasonable investor, typical of the Debtors' creditors, to make an informed judgment whether to accept or reject the Plan. This Disclosure Statement may not be relied upon for any purpose other than that described above.

The Disclosure Statement is based on information in pleadings filed with the Bankruptcy Court, information provided by the Debtors' management, information provided by the Trustee and legal analysis by Meland Russin & Budwick, P.A., counsel for the Chapter 11 Trustee, and Reed Smith LLP ("Reed Smith"), counsel for the JOL.



**THIS DISCLOSURE STATEMENT AND THE PLAN ARE AN INTEGRAL PACKAGE, AND THEY MUST BE CONSIDERED TOGETHER FOR THE READER TO BE ADEQUATELY INFORMED. THIS INTRODUCTION IS QUALIFIED IN ITS ENTIRETY BY THE REMAINING PORTIONS OF THIS DISCLOSURE STATEMENT, AND THIS DISCLOSURE STATEMENT IN TURN IS QUALIFIED, IN ITS ENTIRETY, BY THE PLAN.**

**NO REPRESENTATIONS CONCERNING THE DEBTORS (PARTICULARLY AS TO THE VALUE OF THEIR PROPERTY) ARE AUTHORIZED BY THE PLAN PROPONENTS OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT AND ITS EXHIBITS. ANY REPRESENTATIONS OR INDUCEMENTS MADE TO SECURE YOUR ACCEPTANCE OF THE PLAN OTHER THAN AS CONTAINED IN THIS DISCLOSURE STATEMENT AND ITS EXHIBITS SHOULD NOT BE RELIED UPON BY YOU IN ARRIVING AT YOUR DECISION, AND SUCH ADDITIONAL REPRESENTATIONS AND INDUCEMENTS SHOULD BE REPORTED TO COUNSEL FOR EACH OF THE PLAN PROPONENTS, WHO WILL IN TURN DELIVER SUCH INFORMATION TO THE BANKRUPTCY COURT FOR SUCH ACTION AS MAY BE APPROPRIATE.**

**THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT, INCLUDING ANY EXHIBITS CONCERNING THE FINANCIAL CONDITION OF THE DEBTORS AND THE OTHER INFORMATION CONTAINED HEREIN, HAS NOT BEEN SUBJECT TO AN AUDIT OR INDEPENDENT REVIEW EXCEPT AS EXPRESSLY SET FORTH HEREIN. ACCORDINGLY, THE PLAN PROPONENTS ARE UNABLE TO WARRANT OR REPRESENT THAT THE INFORMATION CONCERNING THE DEBTORS OR THEIR FINANCIAL CONDITION IS ACCURATE OR COMPLETE. ANY PROJECTED INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS BEEN PRESENTED FOR ILLUSTRATIVE PURPOSES ONLY, AND, BECAUSE OF THE UNCERTAINTY AND RISK FACTORS INVOLVED, THE DEBTORS' ACTUAL RESULTS MAY NOT BE AS CONTEMPLATED HEREIN.**

**ALTHOUGH AN EFFORT HAS BEEN MADE TO BE ACCURATE AND THE PLAN PROPONENTS BELIEVE IN GOOD FAITH THAT THE INFORMATION HEREIN IS ACCURATE, THE PLAN PROPONENTS DO NOT WARRANT OR REPRESENT THAT THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT AND ITS EXHIBITS IS CORRECT. THIS DISCLOSURE STATEMENT CONTAINS ONLY A SUMMARY OF THE PLAN. EACH CREDITOR IS STRONGLY URGED TO REVIEW THE PLAN PRIOR TO VOTING ON IT.**

**THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE OF THIS DISCLOSURE STATEMENT UNLESS ANOTHER TIME IS SPECIFIED. THE DELIVERY OF THIS DISCLOSURE STATEMENT WILL NOT UNDER ANY CIRCUMSTANCES CREATE AN IMPLICATION THAT THERE HAS NOT BEEN ANY CHANGE IN THE FACTS SET FORTH SINCE THE DATE OF THIS DISCLOSURE STATEMENT.**

**A STATEMENT OF THE ASSETS AND LIABILITIES OF THE DEBTORS AS OF THE DATE OF THE COMMENCEMENT OF THEIR CHAPTER 11 CASES IS ON FILE WITH THE CLERK OF THE BANKRUPTCY COURT AND MAY BE INSPECTED BY INTERESTED PARTIES DURING REGULAR BUSINESS HOURS.**

**THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE AND NOT IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER APPLICABLE NON-BANKRUPTCY LAW. ENTITIES HOLDING OR TRADING IN OR OTHERWISE PURCHASING, SELLING OR TRANSFERRING CLAIMS AGAINST, INTERESTS IN OR SECURITIES OF, THE DEBTORS SHOULD EVALUATE THIS DISCLOSURE STATEMENT ONLY IN LIGHT OF THE PURPOSE FOR WHICH IT WAS PREPARED.**

**THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS SUCH COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED HEREIN.**

**THIS DISCLOSURE STATEMENT WILL NOT BE CONSTRUED TO BE ADVICE ON THE TAX, SECURITIES OR OTHER LEGAL EFFECTS OF THE PLAN. EACH CREDITOR SHOULD, THEREFORE, CONSULT WITH ITS OWN LEGAL, BUSINESS, FINANCIAL AND TAX ADVISERS AS TO ANY SUCH MATTERS CONCERNING THE SOLICITATION, THE PLAN OR THE TRANSACTIONS CONTEMPLATED THEREBY.**

Pursuant to the Bankruptcy Code, this Disclosure Statement and the Plan were filed on July 26, 2010. The Bankruptcy Court will hold a hearing on confirmation of the Plan beginning at [ ] (prevailing Eastern time) on [ ], 2010, in the United States Bankruptcy Court for the Southern District of Florida (West Palm Beach Division), Flagler Waterview Building, 1515 North Flagler Drive, 8<sup>th</sup> Floor, West Palm Beach, FL 33401 (the "Confirmation Hearing"). At that Confirmation Hearing, the Bankruptcy Court will consider whether the Plan satisfies the requirements of the Bankruptcy Code, including whether the Plan is in the best interests of the claimants, and will review a ballot report concerning votes cast for acceptance or rejection of the Plan.

#### **A. Overview of the Plan**

**THE FOLLOWING IS A BRIEF SUMMARY OF THE TREATMENT OF CLAIMS AND INTERESTS UNDER THE PLAN. THE DESCRIPTION OF THE PLAN SET FORTH BELOW CONSTITUTES A SUMMARY ONLY AND IS QUALIFIED, IN ITS ENTIRETY, BY THE PLAN, THE LIQUIDATING TRUST AGREEMENTS, AND THE OTHER PLAN DOCUMENTS. CREDITORS AND OTHER PARTIES IN INTEREST ARE URGED TO REVIEW THE MORE DETAILED DESCRIPTION OF THE PLAN CONTAINED IN ARTICLE IV OF THIS DISCLOSURE STATEMENT AND THE PLAN ITSELF. THE PLAN IS ATTACHED AS EXHIBIT A TO THIS**

**DISCLOSURE STATEMENT. IN THE EVENT OF ANY INCONSISTENCY BETWEEN THIS DISCLOSURE STATEMENT AND THE PLAN, THE PLAN CONTROLS.**

Chapter 11 is the chapter of the Bankruptcy Code primarily used for business reorganization. The fundamental purpose of a chapter 11 case is to formulate a plan to restructure a debtor's finances so as to maximize recoveries to its creditors. With this purpose in mind, businesses sometimes use chapter 11 as a means to conduct asset sales and other forms of liquidation. Whether the aim is reorganization or liquidation, a chapter 11 plan sets forth and governs the treatment and rights to be afforded to creditors and stockholders with respect to their claims against and equity interests in a debtor's bankruptcy estate.

The Plan is being presented to Creditors and other parties in interest for their consideration, and some of the classes of Creditors will be entitled to cast a ballot to either accept or reject the Plan. If the Plan is confirmed by the Bankruptcy Court, it will be binding upon all affected parties, including but not limited to Creditors of, and holders of Interests in, the Debtors, regardless of how they voted, even if they did not vote.

The Plan divides the Claims against, and Interests in, the Debtors into Classes. Certain Claims -- in particular, Administrative Claims, Statutory Fees, and Professional Claims -- remain unclassified in accordance with section 1123(a)(1) of the Bankruptcy Code.

The Plan assigns all other Claims and Interests as described below.

Class 1A consists of all General Unsecured Claims filed by limited partners of PBF asserting a claim against PBF. Holders of an Allowed PBF Limited Partner Unsecured Claim, shall receive, in full satisfaction, settlement, release and discharge of and in exchange for its Allowed PBF Limited Partner Unsecured Claim, periodic distributions from the PBF Liquidating Trust on account of its Allowed PBF Limited Partner Unsecured Claim, to be paid by the PBF Liquidating Trust on dates to be determined in the reasonable discretion of the PBF Liquidating Trustee. Class 1A is impaired and may vote to accept or reject the Plan.

Class 1B consists of all General Unsecured Claims filed by limited partners of PBF II asserting a claim against PBF II. Holders of an Allowed PBF II Limited Partner Unsecured Claim, shall receive, in full satisfaction, settlement, release and discharge of and in exchange for its Allowed PBF II Limited Partner Unsecured Claim, periodic distributions from the PBF II Liquidating Trust of its share on account of its Allowed PBF II Limited Partner Unsecured Claim to be paid by the PBF II Liquidating Trust on dates to be determined in the reasonable discretion of the PBF II Liquidating Trustee. Class 1B is impaired and may vote to accept or reject the Plan.

Class 2A consists of all General Unsecured Claims of PBF other than PBF Limited Partner Unsecured Claims. Holders of an Allowed Other PBF General Unsecured Claim shall receive, in full satisfaction, settlement, release and discharge of and in exchange for its Allowed Other PBF General Unsecured Claim, periodic distributions from the PBF Liquidating Trust of its share on account of its Allowed Other PBF General Unsecured Claim to be paid by the PBF Liquidating Trust on dates to be determined in the reasonable discretion of the PBF Liquidating Trustee. Class 2A is impaired and may vote to accept or reject the Plan.



Class 2B consists of all General Unsecured Claims of PBF II other than PBF II Limited Partner Unsecured Claims. Holders of an Allowed Other PBF II General Unsecured Claim shall receive, in full satisfaction, settlement, release and discharge of and in exchange for its Allowed Other PBF II General Unsecured Claim, periodic distributions from the PBF II Liquidating Trust of its share on account of its Allowed Other PBF II General Unsecured Claim to be paid by the PBF II Liquidating Trust on dates to be determined in the reasonable discretion of the PBF II Liquidating Trustee. Class 2B is impaired and may vote to accept or reject the Plan.

Notwithstanding anything in the Plan to the contrary, holders of Allowed Class 1A and Allowed Class 2A Claims shall receive on a *pari passu* basis distributions from the PBF Liquidating Trust on account of their Allowed Claim. Furthermore, notwithstanding anything in the Plan to the contrary, holders of Allowed Class 1B and Allowed Class 2B Claims shall receive on a *pari passu* basis distributions from the PBF II Liquidating Trust on account of their Allowed Claims.

Class 3A consists of all Interests of or in Palm Beach Finance Partners, L.P. Holders of an Allowed PBF Interest shall receive, in full satisfaction, settlement, release and discharge of and in exchange for its Allowed PBF Interest, periodic distributions from the PBF Liquidating Trust of its share on account of its Allowed PBF Interest to be paid by the PBF Liquidating Trust on dates to be determined in the reasonable discretion of the PBF Liquidating Trustee. Notwithstanding the foregoing, Allowed PBF Interests are subordinated to Allowed Class 1A (PBF Limited Partner Unsecured Claims) and Class 2A (Other PBF General Unsecured Claims). Accordingly, holders of Allowed PBF Interests shall not receive any distribution from the PBF Liquidating Trust on account of their Allowed PBF Interest unless and until holders of Allowed Class 1A and Class 2A Claims have been satisfied in full. Class 3A is impaired and may vote to accept or reject the Plan.

Class 3B consists of all Interests of or in Palm Beach Finance II, L.P. Holders of an Allowed PBF II Interest shall receive, in full satisfaction, settlement, release and discharge of and in exchange for its Allowed PBF II Interest, periodic distributions from the PBF II Liquidating Trust of its share on account of its Allowed PBF II Interest to be paid by the PBF II Liquidating Trust on dates to be determined in the reasonable discretion of the PBF II Liquidating Trustee. Notwithstanding the foregoing, Allowed PBF II Interests are subordinated to Allowed Class 1B (PBF II Limited Partner Unsecured Claims) and Class 2B (Other PBF II General Unsecured Claims). Accordingly, holders of Allowed PBF II Interests shall not receive any distribution from the PBF II Liquidating Trust on account of their Allowed PBF II Interest unless and until holders of Allowed Class 1B and Class 2B Claims have been satisfied in full. Class 3B is impaired and may vote to accept or reject the Plan.

Holders of claims or equity interests that are unimpaired under a proposed plan are conclusively presumed to have accepted that plan and are not entitled to vote on it. Holders of classes of claims or equity interests that will receive no distributions under a proposed plan are conclusively presumed to reject that plan and, therefore, are also not entitled to vote on it.

The Plan Proponents believe that the distributions under the Plan will provide Creditors of the Debtors at least the same recovery on account of Allowed Claims as would distributions by a chapter 7 trustee. However, distributions under the Plan to Creditors of the Debtors would

be made more quickly than distributions by a chapter 7 trustee and a chapter 7 trustee would charge a substantial fee, reducing the amount available for distribution on account of Allowed Claims.

**ACCORDINGLY, THE PLAN PROPONENTS URGE EACH CREDITOR ENTITLED TO VOTE ON THE PLAN TO VOTE TO ACCEPT THE PLAN.**

Following are detailed, Class-by-Class summaries of the Claims against, and Interests in, the Debtors and the estimated distribution to the Creditors of the Debtors on account of such Allowed Claims or Interests.

The Trustee calculated the asserted claims (other than Administrative Claims) based on filed and scheduled claims. To the extent a creditor filed a proof of claim that superseded a scheduled claim, the amount in the filed proof of claim was utilized. The Trustee then reviewed all of the proofs of claims asserting General Unsecured Claims.

<b>Class</b>	<b>Description</b>	<b>Approximate Amount Asserted</b>	<b>Estimated Recovery</b>	<b>Status</b>
1A	PBF Limited Partner Unsecured Claims	\$53,041,312.96	Undetermined	Impaired and entitled to vote
1B	PBF II Limited Partner Unsecured Claims	\$89,889,421.40	Undetermined	Impaired and entitled to vote
2A	Other PBF General Unsecured Claims	\$49,557,964.82	Undetermined	Impaired and entitled to vote
2B	Other PBF II General Unsecured Claims	\$730,309,329.95	Undetermined	Impaired and entitled to vote
3A	PBF Interests	\$	Undetermined	Impaired and entitled to vote
3B	PBF II Interests	\$	Undetermined	Impaired and entitled to vote

#### **B. Voting Instructions**

**THE PLAN PROPONENTS STRONGLY RECOMMEND EACH CREDITOR ENTITLED TO VOTE ON THE PLAN TO VOTE TO ACCEPT THE PLAN.**

The Bankruptcy Code entitles only holders of impaired claims or equity interests who receive some distribution under a proposed plan to vote to accept or reject that plan. Holders of claims or equity interests that are unimpaired under a proposed plan are conclusively presumed to have accepted that plan and are not entitled to vote on it. Holders of classes of claims or equity interests that will receive no distributions under a proposed plan are conclusively presumed to reject that plan and, therefore, are also not entitled to vote on it.

No Class of Claims or Interests is Unimpaired under the Plan.

The holders of Claims in Class 1A, Class 1B, Class 2A and Class 2B, and holders of Interests in Class 3A and Class 3B, are Impaired and thus may vote to accept or reject the Plan.

The Plan Proponents have enclosed Ballots with this Disclosure Statement to solicit the votes of all claimants in the foregoing Classes.

**A BALLOT FOR ACCEPTANCE OR REJECTION OF THE PLAN IS BEING PROVIDED ONLY TO HOLDERS OF CLAIMS IN CLASSES 1A, 1B, 2A, 2B, 3A AND 3B. BEFORE VOTING, SUCH HOLDERS SHOULD READ THIS DISCLOSURE STATEMENT AND ITS EXHIBITS, INCLUDING THE PLAN AND THE PLAN DOCUMENTS, IN THEIR ENTIRETY.**

You may vote on the Plan by completing the enclosed ballot (the "Ballot") and mailing it or sending via courier to the Clerk of the Court at the following address:

Clerk of Court, U.S. Bankruptcy Court  
1515 North Flagler Drive  
Suite 801  
West Palm Beach, FL 33401

**In order for your Ballot to be considered by the Bankruptcy Court, it must be received at the above address by 4:30 p.m. (prevailing Eastern time) on [\_\_\_\_], 2010 (the "Voting Deadline")** (no facsimiles or e-mails containing a PDF of your ballot will be accepted). Enclosed is a stamped, addressed envelope for mailing or otherwise delivering your originally signed ballot to the Clerk of the Bankruptcy Court.

If you are a claimant in Class 1A, Class 1B, Class 2A, Class 2B, Class 3A or Class 3B, and you did not receive a Ballot with this Disclosure Statement, please contact counsel for Chapter 11 Trustee Barry Mukamal:

Michael Budwick, Esq.  
Meland Russin & Budwick, P.A.  
3000 Wachovia Financial Center  
200 South Biscayne Blvd.  
Miami, FL 33131  
Telephone: 305.358.6363

Only holders of Allowed Claims or Interests in Impaired Classes of Claims or Interests are entitled to vote on the Plan. Any Ballot executed by the holder of an Allowed Claim or Interest, but which does not indicate acceptance or rejection of the Plan, will be considered a vote to accept the Plan. Any Ballot not executed by the holder of an Allowed Claim or Interest will not be counted as a vote to accept or reject the Plan.

**An Impaired class of Claims or Interests accepts the Plan if at least two-thirds (2/3) in amount and more than one-half (1/2) in number of the Allowed Claims or Interests in the Class that actually vote are cast in favor of the Plan.** Whether or not a holder of a Claim or Interest votes on the Plan, such Person will be bound by the terms and treatment set forth in the Plan if the Plan is accepted by the requisite majorities of the classes of creditors and is confirmed by the Bankruptcy Court. Pursuant to the provisions of section 1126(e) of the



Bankruptcy Code, the Bankruptcy Court may disallow any vote accepting or rejecting the Plan if such vote is not cast in good faith.

If the voting members of an Impaired Class do not vote unanimously for the Plan but, nonetheless, vote for the Plan by at least the requisite two-thirds (2/3) in amount and one-half (1/2) in number of Allowed Claims in that Class actually voted, the Plan, at a minimum, must provide that each member of such Class will receive property of a value, as of the Effective Date, that is not less than the amount such Class members would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code.

The Plan Proponents may dispute proofs of Claims or Interests that have been filed or that the Debtors listed as disputed in the schedules that the Debtors filed with the Bankruptcy Court. Persons whose Claims are disputed may vote on or otherwise participate in distributions under the Plan only to the extent that the Bankruptcy Court allows their Claims. The Bankruptcy Court may temporarily allow a Claim for voting purposes only. Allowance of a Claim or Interest for voting purposes or disallowance of a Claim or Interest for voting purposes does not necessarily mean that all or a portion of that Claim or Interest will be allowed or disallowed for distribution purposes. The Debtors' schedules listing Claims and whether such Claims are disputed can be inspected at the offices of Meland Russin & Budwick, P.A., 3000 Wachovia Financial Center, 200 South Biscayne Boulevard, Miami, Florida 33131.

### **C. Confirmation of the Plan by the Bankruptcy Court**

Once it is determined which Impaired classes have or have not accepted the Plan, the Bankruptcy Court will determine whether the Plan may be confirmed. However, the Bankruptcy Court may confirm the Plan even if all but one of the Impaired classes do not accept the Plan if the Bankruptcy Court finds that the remaining Impaired class of Claims or Interests (not including any acceptances by "insiders" as defined in section 101(31) of the Bankruptcy Code) has accepted the Plan and that certain additional conditions are met. The Plan Proponents will therefore request that the Bankruptcy Court confirm the Plan under section 1129(b) of the Bankruptcy Code with respect to any non-accepting Class of Claims or Interests.

Section 1129(b) of the Bankruptcy Code is generally referred to as the "cramdown" provision. Pursuant to the cramdown provision, the Bankruptcy Court may confirm the Plan over the objection of a non-accepting Class of General Unsecured Claims if the non-accepting claimants will receive the full value of their Claims, or, if the non-accepting claimants receive less than full value, if no Class of junior priority will receive anything on account of their pre-petition Claims or Interests.

The Plan provides for the liquidation of substantially all of the property of the Debtors' estates. Pursuant to section 1141(d)(3) of the Bankruptcy Code, confirmation of the Plan will not discharge the Debtors from any of their debts which arose prior to November 30, 2009; however, Confirmation will make the Plan binding upon the Debtors, their creditors, holders of Claims and Interests, and other parties in interest regardless of whether they have accepted the Plan.



## II. BACKGROUND OF THE DEBTORS

### A. Petters Case Factual Summary

These cases involve the Chapter 11 bankruptcy proceedings of two hedge funds, Debtors Palm Beach Finance Partners, L.P. and Palm Beach Finance II, L.P. The Debtors were formed as limited partnerships in the State of Delaware on October 25, 2002 and June 22, 2004, respectively. The Debtors solicited capital contributions from third-party Limited Partners, and proceeded to invest substantial amounts of this capital with the Petters Company, Inc. (the "Petters Company"), an entity that, along with its principals and certain affiliates, was later discovered to be engaged in a massive Ponzi scheme. Subsequent to discovery of the Ponzi scheme, both the Debtors and the Petters Company entered separate Chapter 11 bankruptcy proceedings.

### B. The Petters-Related Companies' Bankruptcies

The Ponzi scheme engaged in by Thomas J. Petters and others (the "Petters Fraud") was discovered on or about September 30, 2008. On or about October 2, 2008, the United States of America initiated civil and criminal proceedings in the United States District Court, District of Minnesota, against, among others, Thomas J. Petters ("Petters"), who owned and controlled the Petters Company, and other Petters-related entities. In connection with the civil proceedings, the Minnesota District Court appointed Douglas Kelley ("Mr. Kelley") as the receiver for Petters and all of his wholly-owned entities, including the Petters Company.

On or about October 11, 2008, in his capacity as receiver, Mr. Kelley filed voluntary Chapter 11 petitions in the U.S. Bankruptcy Court, District of Minnesota, for certain Petters-related entities<sup>2</sup> (collectively, the "Petters Bankruptcy Case"). Mr. Kelley currently serves as both the Chapter 11 Trustee in the Petters Bankruptcy Case and as the court-appointed receiver of Petters and Petters-related entities in the civil proceedings. In the criminal proceedings, Petters was convicted of orchestrating a \$3.65 billion fraud and sentenced to 50 years in prison.

## III. THE CHAPTER 11 CASES

### A. The Palm Beach Funds' Bankruptcy Proceedings

The Debtors ceased operating as hedge funds upon discovery of the Petters Fraud on or about September 30, 2008. On November 30, 2009 (the "Petition Date"), the Debtors, through their Chief Restructuring Officer, Kenneth A. Welt, each filed a voluntary petition for relief

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<sup>2</sup> The Petters Bankruptcy Case includes the following bankruptcy cases pending in the United States Bankruptcy Court for the District of Minnesota: Petters Company, Inc., Case No. 08-45257; Petters Group Worldwide, LLC, Case No. 08-45258; PC Funding, LLC, Case No. 08-45326; Thousand Lakes, LLC, Case No. 08-45327; SPF Funding, LLC, Case No. 08-45328; PL Ltd., Inc., Case No. 08-45329; Edge One, LLC, Case No. 08-45330; MGC Finance, Inc., Case No. 08-45331; PAC Funding, LLC, Case No. 08-45371; and Palm Beach Finance Holdings, Inc., Case No. 08-45392.

under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Florida, West Palm Beach Division. By order dated December 1, 2009, the Court approved the joint administration of these cases. From the commencement of their cases, the Debtors intended to liquidate through a Chapter 11 plan. No Creditors' Committee has been appointed in these Chapter 11 Cases.

The Debtors have little available cash because of the massive losses suffered in connection with the Petters Fraud. The Debtors' assets, as set forth in their Schedules and Statements of Financial Affairs, filed on or about December 15, 2009, are extremely limited, but include (i) \$316,000 in an operating account that is currently frozen pursuant to court orders obtained by Mr. Kelley in the Petters civil proceedings and (ii) numerous causes of action that can be pursued on behalf of one or both of the Debtors against various parties, including professionals, service providers, and other parties that caused or may have caused the Debtors to suffer damages.

The investors of PBF and PBF II are a diverse group, with limited entities having asserted creditor Claims. The largest creditors of PBF II are Palm Beach Offshore Ltd. and Palm Beach Offshore II, Ltd. (together, the "Offshore Funds"), both of which loaned money to PBF II, which issued demand promissory notes to the Offshore Funds with an aggregate amount of principal and interest due and owing in excess of \$700 million. Geoffrey Varga, who along with the Trustee, is a Plan Proponent herein, is the Joint Official Liquidator of the Offshore Funds. Neither Mr. Varga nor the Offshore Funds assert a Claim against PBF.

On December 10, 2009, the Office of the U.S. Trustee for the Southern District of Florida (the "U.S. Trustee") filed a motion seeking entry of an order converting the instant Chapter 11 cases to cases under Chapter 7 of the Bankruptcy Code or, in the alternative, appointment of a Chapter 11 trustee (the "Conversion Motion"). On December 16, 2009, the JOL filed a Joinder to the Conversion Motion fully supporting the relief sought therein [D.E. 54]. On December 14, 2009, the Debtors filed a response in opposition to the Conversion Motion. The Court conducted a Preliminary Hearing on the Motion to Convert on December 17, 2009.

On January 28, 2010, the Court entered an order denying the Conversion Motion as moot and granted the motion to appoint a Chapter 11 trustee and directed the U.S. Trustee to appoint a Chapter 11 Trustee. On or about January 29, 2010, the U.S. Trustee selected Barry Mukamal as the Chapter 11 trustee of PBF and PBF II. On February 1, 2010, the U.S. Trustee filed an *ex parte* application for approval of the selection of the appointment of Barry E. Mukamal as the Chapter 11 trustee. On February 2, 2010, the Court entered an Order approving the selection of Barry E. Mukamal as the Chapter 11 trustee of the Debtors. On February 12, 2010, the Court entered an order granting the Trustee's application to employ Meland Russin & Budwick, P.A., as counsel for the Trustee.

## **B. The Debtors' Proposed Professionals**

The Debtors' Chapter 11 petitions were accompanied by applications seeking approval for the retention of the following professionals: (i) Berger Singerman, P.A. ("Berger Singerman") as counsel for Debtors; (ii) Thomas, Alexander & Forrester, LLP ("TAF"), as proposed special litigation counsel to the Debtors; (iii) Trustee Services, Inc. ("TSI"), as interim

management for the Debtors; and (iv) Gonzalo R. Dorta, P.A., as special litigation counsel, (“Dorta”, and together with Berger Singerman, TAF and TSI, the “Debtors’ Proposed Professionals”)

Both the U.S. Trustee and the JOL filed objections to the retention of the Debtors’ Proposed Professionals, due to, inter alia, a multitude of perceived conflicts.

On December 11, 2009, the Court entered interim orders, effective *nunc pro tunc* to the Petition Date: (i) approving in part and denying in part the employment of Berger Singerman as counsel for the Debtors; (ii) approving the employment of TSI as interim management for the Debtors; (iii) approving in part the employment of TAF as special litigation counsel to the Debtors; and (iv) approving in part the employment of Dorta as special litigation counsel to the Debtors. On January 28, 2010, in connection with the Court’s order directing the appointment of a Chapter 11 trustee, the Court also entered agreed orders denying as moot the applications to employ the Debtors’ Proposed Professionals.

On June 9, 2010, the Bankruptcy Court granted the first and final fee applications for each of Berger Singerman and TSI [D.E. 170 and 171, respectively]. Berger Singerman was awarded \$68,926.29 in fees and expenses and TSI was awarded \$8,469.50. The balance of their prepetition retainers were turned over to the Trustee.

### **C. Litigations Commenced by Debtors**

#### **1. Kaufman Rossin Litigations**

##### **a) Kaufman Action I and Kaufman Action II**

On November 30, 2009, PBF and PBF II commenced an action (“Kaufman Action I”) against Kaufman, Rossin & Co. (“Kaufman”) by filing a complaint in the Circuit Court of the 11<sup>th</sup> Judicial Circuit in and for Miami-Dade County. On December 30, 2009, Kaufman filed a Notice of Removal in accordance with 28 U.S.C. § 1452(a), thereby removing Kaufman Action I to the United States Bankruptcy Court for the Southern District of Florida, West Palm Beach Division, where the Chapter 11 Cases are pending (Adv. Pro. No. 09-02553-PGH).

The Debtors’ complaint states a single cause of action for gross negligence against Kaufman, which had been the outside auditor of the Debtors since their inception. Specifically, the complaint alleged that Kaufman improperly opined that the Debtors’ financial statements were prepared consistent with Generally Accepted Accounting Principles. The complaint alleges that Kaufman failed to comply with its duties as auditor including verifying the collectability of the Debtors’ assets which were primarily the notes issued by companies operated or controlled by Petters.

On December 9, 2009, the JOL of the Offshore Funds commenced an action against Palm Beach Capital Management LLC (“PBCM”), Bruce F. Prévost, David W. Harrold and Kaufman by filing a complaint in the United States District Court for the Southern District of Florida (Case No. 09-cv-82398-FAM) (“Kaufman Action II”, and together with Kaufman Action I, the “Kaufman Rossin Litigations”). Prévost and Harrold are the controlling owners and executive



officers of PBCM (the Debtors' investment manager) and Kaufman, Rossin & Co. provided professional accounting services to PBCM, including, inter alia, providing audit opinion letters.

The complaint stated eight (8) causes of action for breach of contract, professional negligence/malpractice, breach of fiduciary duty, aiding and abetting breaches of fiduciary duty, gross negligence/recklessness, fraud/willful blindness and unjust enrichment. Specifically, the complaint alleged that the defendants in Kaufman Action II, individually and collectively, caused the Offshore Funds damages in excess of \$700 million. The complaint further alleged, among other things, that Kaufman breached its duties to the Offshore Funds by failing to detect Petters' scheme, thereby resulting in losses to the Offshore Funds.

b) The Kaufman Rossin Settlement Agreement

After protracted negotiations, on or about July 2, 2010, the Trustee, Kaufman Rossin & Co., Kaufman Rossin & Co. Cayman and the JOL, entered into a Stipulation of Settlement (the "Kaufman Rossin Settlement Agreement"), resolving for all purposes the claims asserted in the Kaufman Rossin Litigations. The Kaufman Rossin Settlement Agreement contemplates entry of a Bar Order precluding certain claims against Kaufman Rossin & Co. and Kaufman Rossin & Co. Cayman as more fully described in the Bar Order. A discussion of the Bar Order is found herein at Article IV(M)(2). The Kaufman Rossin Settlement Agreement is annexed to the Plan as Schedule 1.45 and should be consulted for its complete terms.

c) Distribution of Kaufman Rossin Settlement Payment

Pursuant to Section 7.2 of the Plan, the Kaufman Rossin Settlement Payment shall be distributed to the Liquidating Trusts and allocated pursuant to the Onshore/Offshore Allocation Formula. A portion of the Kaufman Rossin Settlement Payment is allocated directly to the Offshore Funds due to the fact that the Offshore Funds had a separate and direct contractual relationship with Kaufman which resulted in a separate independent audit.

The Onshore/Offshore Allocation Formula is derived from the Compiled Financial Statements, dated April 30, 2008, for each of the Debtors by Kaufman Rossin & Co. The data contained therein supports an 18%/82% allocation between PBF and PBF II, respectively, based upon the total assets of each entity as of the date of such compilations. In addition, the same compilations support a determination that the Offshore Funds' claims against PBF II, due to the existence of promissory notes issued to the Offshore Funds by PBF II as well as accrued interest, equals 75% of PBF II's total assets as of the date of such compilation.

Pursuant to the Onshore/Offshore Allocation Formula, in the event the Kaufman Rossin Settlement Payment is \$9,600,000, then:

(1) the PBF Liquidating Trust shall receive for its benefit \$1,728,000.00, which is 18% of the Kaufman Rossin Settlement Payment; and

(2) the remaining 82% of the Kaufman Rossin Settlement Payment, or \$7,872,000, is allocated between the PBF II



Liquidating Trust and the Offshore Funds at a 75%/25% ratio in favor of the Offshore Funds. Accordingly:

(a) PBF II Liquidating Trust shall receive for its benefit \$1,968,000.00, which is 20.5% of the Kaufman Rossin Settlement Payment (or, 25% of the \$7,872,000 remaining after the allocation from the Kaufman Rossin Settlement Payment to the PBF Liquidating Trust); and

(b) the Offshore Funds shall directly receive the remaining \$5,904,000.00, which is 61.5% of the Kaufman Rossin Settlement Payment (or, 75% of the \$7,872,000 remaining after the allocation from the Kaufman Rossin Settlement Payment to the PBF Liquidating Trust).

As part of the Bar Order, the Debtors and the Offshore Funds will be precluded from pursuing their claims against Kaufman. The allocation formula identified above shall not apply to any further settlements of Litigation Claims held by the Debtors.

When the Liquidating Trustee distributes from the Liquidating Trusts the Kaufman Rossin Settlement Payments, his fee shall be calculated as the limitation set forth pursuant to 11 U.S.C. § 326. However, the Liquidating Trustee's fee in connection with the payment to be made to the Offshore Funds shall be capped at and equal to .75% of such payment and paid from the funds paid to the Offshore Funds.

For the avoidance of any doubt, and notwithstanding anything in the Plan to the contrary, for Federal income tax purposes, and pursuant to Revenue Procedure 94-95, the Kaufman Rossin Settlement Payment shall be deemed to be transferred to the Beneficiaries and subsequently deemed to have been transferred from the Beneficiaries to the Liquidating Trusts pursuant to the Onshore/Offshore Allocation Formula.

## **2. U.S. Bank Litigation**

On December 21, 2009, PBF and PBF II commenced an adversary proceeding (the "Bank Litigation") by the filing of a complaint against defendants U.S. Bank, N.A. and M&I Marshall & Ilsley Bank (together, the "Bank Defendants") in the United States Bankruptcy Court for the Southern District of Florida, West Palm Beach Division (Adv. Pro. No. 09-02530-PGH).

In the complaint, the Debtors brought negligence and breach of contract claims against each of the Bank Defendants in connection with fraud perpetrated by Petters and his companies. The Debtors alleged that each of the Bank Defendants owed the Debtors a duty of care both as a result of their relationship with the Debtors and as a result of the Bank Defendants' communications with the Debtors regarding investments made with Petters. In addition to failing to exercise this duty of care, the Bank Defendants allegedly failed to properly carry out their role as depository banks and/or custodians. It was alleged that if they had properly exercised their duties, the Petters Fraud would have been detected earlier and the loss to the Debtors reduced.

Subsequent to the appointment of the Trustee, on February 25, 2010, the Trustee voluntarily dismissed the action against the Bank Defendants without prejudice. On March 12, 2010, the Bank Litigation proceeding was closed and the complaint was dismissed without prejudice. Since then the Trustee has obtained informal discovery from both Bank Defendants and commenced an investigation into the claims that may exist as against each of the Bank Defendants. At the conclusion of the Trustee's analysis, subject to further discovery, suits may be filed against either or both Bank Defendants.

### **3. General Partner Discussions**

The Debtors were formed as Delaware limited partnerships and managed by Mr. Prevost, Mr. Harrold and Palm Beach Capital Management, LLC. The general partner for both Debtors is Palm Beach Capital Management, LP, whose general partner is Palm Beach Capital Corp. The shareholders for Palm Beach Capital Corp. are Messrs. Prevost and Harrold.

Prior to the Petition Date, the Management Parties received either directly or indirectly, significant sums of monies from the Debtors and other affiliated hedge funds managed by the Management Parties. The Trustee is investigating Litigation Claims that the Debtors may have against all of the Management Parties under applicable law and, absent a consensual resolution, intends to commence legal action against the Management Parties and perhaps other affiliates.

### **4. Other Litigation Claims**

The Trustee continues to investigate Litigation Claims against a variety of third parties under a variety of theories. The Trustee is required to identify any parties against whom litigation could potentially be commenced by one or both of the Debtors due to a relationship such party had with one or both of the Debtors. Accordingly, annexed to the Plan as Schedule 1.52 is a list of parties that potentially could be the subject of Litigation Claims.

### **D. The Claims Process**

The Bankruptcy Code provides a procedure for each Person who believes he has a Claim against a debtor to assert such Claim, so that such claimant can receive distributions from the debtor's bankruptcy estate. The bankruptcy court establishes a "bar date" - a date by which creditors must file their Claims, or else such Claims will not participate in the bankruptcy case or any distribution. After the filing of all Claims, the debtor evaluates such Claims and can, along with other parties in interest, raise objections to them. These claims objections allow the debtor to minimize claims against it, and thereby maximize the recovery to creditors with Allowed Claims.

On December 1, 2009, a Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors & Deadlines was issued establishing April 6, 2010 as the deadline for filing proofs of Claims against the Debtors (the "Bar Date"). In addition, June 1, 2010 was set as the deadline for the filing of Claims by governmental units.

Pursuant to the Plan, all unpaid Administrative Claims must be filed on or before the Administrative Claims Bar Date. The Administrative Claims Bar Date is the first Business Day that is at least sixty (60) days following the Effective Date, as such terms are defined in the Plan.

The Trustee has been reviewing, analyzing and resolving Claims on an ongoing basis as part of the claims reconciliation process. To date approximately 56 proofs of claim have been asserted in the Chapter 11 Cases in a face amount of \$101,711,790.67 (27 Claims) against PBF, and in a face amount of \$819,306,954.61 (29 Claims) against PBF II. Over the last several months, the Trustee has begun to reconcile the amount and classification of outstanding claims and assert and prosecute objections to Claims. The Trustee has also identified Claims for possible future resolution, as well as other existing or potential Claims disputes. Nonetheless, a significant number of Claims have not yet been reviewed, and the actual ultimate aggregate amount of Allowed Claims may differ significantly from the amounts used for the purposes of the Plan Proponents' estimates. Additionally, the Trustee is in the process of reviewing the Debtors' Schedules and, upon the completion of such review, may amend such Schedules to account for certain Claims that have been satisfied or settled. Accordingly, the amount of the Pro Rata share that will ultimately be received by any particular holder of an Allowed Claim may be adversely affected by the outcome of the claims resolution process.

#### **E. Litigation Claims of the Estates**

Among other reasons, the Liquidating Trusts (discussed below) are being created to pursue the Litigation Claims of the Debtors, which include, among other things, the causes of action or potential causes of action, against the following parties:

1. U.S. Bank
2. M&I Marshall & Ilsley Bank
3. Management Parties
4. Atradius
5. General Casualty of Wisconsin
6. "Clawback" or Avoidance Actions under Chapter 5 of the Bankruptcy Code against parties identified on Schedule 1.52 of the Plan
7. Other types of Litigation Claims against parties identified on Schedule 1.52 of the Plan

#### **IV. CHAPTER 11 PLAN**

**THE FOLLOWING IS A BRIEF SUMMARY OF CERTAIN OF THE MORE SIGNIFICANT MATTERS CONTEMPLATED BY OR IN CONNECTION WITH THE CONFIRMATION OF THE PLAN. THUS, THE FOLLOWING SUMMARY IS QUALIFIED IN ITS ENTIRETY BY THE PLAN, WHICH IS ATTACHED TO THIS DISCLOSURE STATEMENT AS EXHIBIT A. THIS SUMMARY ONLY HIGHLIGHTS CERTAIN SUBSTANTIVE PROVISIONS OF THE PLAN. CONSIDERATION OF THIS SUMMARY WILL NOT, NOR IS IT INTENDED TO, YIELD A THOROUGH UNDERSTANDING OF THE PLAN. SUCH CONSIDERATION IS NOT A**



**SUBSTITUTE FOR A FULL AND COMPLETE READING OF THE PLAN. ALL HOLDERS OF CLAIMS AND INTERESTS ARE URGED TO REVIEW THE PLAN CAREFULLY. THE PLAN, IF CONFIRMED, WILL BE BINDING ON EACH OF THE DEBTORS AND ALL HOLDERS OF CLAIMS AND INTERESTS.**

**A. Plan Overview**

The only unclassified class of Claims contemplated by the Plan is Administrative Claims (including Professional Claims). In addition, the Plan classifies Claims and Interests as follows: Class 1A (PBF Limited Partner Unsecured Claims), Class 1B (PBF II Limited Partner Unsecured Claims), Class 2A (Other PBF General Unsecured Claims), Class 2B (Other PBF II General Unsecured Claims), Class 3A (PBF Interests) and Class 3B (PBF II Interests). Classes 1A, 1B, 2A, 2B, 3A and 3B are Impaired and may vote to accept or reject the Plan.

**B. Plan Summary**

The Plan does not contemplate substantive consolidation of the Debtors' estates. The Court will consider confirmation of the Plan separately in each of the cases and each Debtor must satisfy all of the requirements for confirmation

**1. Administrative Claims.**

Subject to the allowance procedures and deadlines provided in the Plan, on the Effective Date or as soon thereafter as is practicable, the holder of an Allowed Administrative Claim shall receive on account of the Allowed Administrative Claim and in full satisfaction, settlement, release and discharge of and in exchange for such Allowed Administrative Claim, (a) Cash equal to the unpaid portion of such Allowed Administrative Claim, or (b) such other treatment as to which the Trustee, the JOL and the holder of such Allowed Administrative Claim have agreed upon in writing, provided, however, that Professional Claims shall be paid in accordance with Section 2.3 of the Plan. Such Allowed Administrative Claims shall be paid pro rata, with any unpaid portion of such Claim transferred to the respective trust.

**2. Statutory Fees.**

On or before the Effective Date, all fees due and payable pursuant to 28 U.S.C. § 1930, as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid in full, in Cash.

**3. Professional Claims.**

Immediately prior to the Effective Date, the Debtors shall pay all amounts owing to the Professionals for all outstanding Professional Claims. On or prior to the Administrative Claims Bar Date, each Professional shall file with the Bankruptcy Court its final fee application seeking final approval of all fees and expenses from the Petition Date through the Effective Date. Rather than estimate Professional Claims due for periods that have not been billed as of the Effective Date, Professionals shall apply for such amounts after the Effective Date.



## **C. Treatment of Claims and Interests**

The treatment of and consideration to be received by holders of Allowed Claims and the treatment of Interests pursuant to Article 3 of the Plan will be in full satisfaction, settlement, release, extinguishment and discharge of their respective Allowed Claims against, or Interests in, the Debtors and the Debtors' Estates, except as otherwise expressly provided in the Plan or the Confirmation Order.

### **1. Class 1A: PBF Limited Partner Unsecured Claims.**

#### **a) Definition of Class 1A**

Class 1A consists of all General Unsecured Claims filed by limited partners of PBF asserting a Claim against PBF. For purposes of voting on the Plan, Class 1A Claims shall consist of those Claims set forth on Schedule 3.2.1 to the Plan.

#### **b) Treatment of Class 1A**

Each holder of an Allowed PBF Limited Partner Unsecured Claim, shall receive, in full satisfaction, settlement, release and discharge of and in exchange for its Allowed PBF Limited Partner Unsecured Claim, periodic distributions from the PBF Liquidating Trust on account of its Allowed PBF Limited Partner Unsecured Claim, to be paid by the PBF Liquidating Trust on dates to be determined in the reasonable discretion of the PBF Liquidating Trustee.

#### **c) Voting Status of Class 1A**

Class 1A is Impaired under the Plan and the holders of such Claims are entitled to vote on the Plan.

### **2. Class 1B: PBF II Limited Partner Unsecured Claims.**

#### **a) Definition of Class 1B**

Class 1B consists of all General Unsecured Claims filed by limited partners of PBF II asserting a Claim against PBF II. For purposes of voting on the Plan, Class 1B Claims shall consist of those Claims set forth on Schedule 3.2.2 to the Plan.

#### **b) Treatment of Class 1B**

Each holder of an Allowed PBF II Limited Partner Unsecured Claim, shall receive, in full satisfaction, settlement, release and discharge of and in exchange for its Allowed PBF II Limited Partner Unsecured Claim, periodic distributions from the PBF II Liquidating Trust of its share on account of its Allowed PBF II Limited Partner Unsecured Claim to be paid by the PBF II Liquidating Trust on dates to be determined in the reasonable discretion of the PBF II Liquidating Trustee.

#### **c) Voting Status of Class 1B**

Class 1B is Impaired under the Plan and the holders of such Claims are entitled to vote on the Plan.

**3. Class 2A – Other PBF General Unsecured Claims.**

d) Definition of Class 2A

Class 2A consists of all General Unsecured Claims of PBF other than PBF Limited Partner Unsecured Claims. For purposes of voting on the Plan, Class 2A Claims shall consist of those Claims set forth on Schedule 3.2.3 to the Plan.

e) Treatment of Class 2A

Each holder of an Allowed Other PBF General Unsecured Claim shall receive, in full satisfaction, settlement, release and discharge of and in exchange for its Allowed Other PBF General Unsecured Claim, periodic distributions from the PBF Liquidating Trust of its share on account of its Allowed Other PBF General Unsecured Claim to be paid by the PBF Liquidating Trust on dates to be determined in the reasonable discretion of the PBF Liquidating Trustee.

f) Voting Status of Class 2A

Class 2A is Impaired under the Plan and the holders of such Claims are entitled to vote on the Plan.

**4. Class 2B – Other PBF II General Unsecured Claims.**

g) Definition of Class 2B

Class 2B consists of all General Unsecured Claims of PBF II other than PBF II Limited Partner Unsecured Claims. For purposes of voting on the Plan, Class 2B Claims shall consist of those Claims set forth on Schedule 3.2.4 to the Plan.

h) Treatment of Class 2B

Each holder of an Allowed Other PBF II General Unsecured Claim shall receive, in full satisfaction, settlement, release and discharge of and in exchange for its Allowed Other PBF II General Unsecured Claim, periodic distributions from the PBF II Liquidating Trust of its share on account of its Allowed Other PBF II General Unsecured Claim to be paid by the PBF II Liquidating Trust on dates to be determined in the reasonable discretion of the PBF II Liquidating Trustee.

i) Voting Status of Class 2B

Class 2B is Impaired under the Plan and the holders of such Claims are entitled to vote on the Plan.

**5. Class 3A – PBF Interests.**

j) Definition of Class 3A

Class 3A consists of all Interests of or in PBF.

k) Treatment of Class 3A

Each holder of an Allowed PBF Interest shall receive, in full satisfaction, settlement, release and discharge of and in exchange for its Allowed PBF Interest, periodic distributions from the PBF Liquidating Trust of its share on account of its Allowed PBF Interest to be paid by the PBF Liquidating Trust on dates to be determined in the reasonable discretion of the PBF Liquidating Trustee. Notwithstanding the foregoing, Allowed PBF Interests are subordinated to Allowed Class 1A (PBF Limited Partner Unsecured Claims) and Class 2A (Other PBF General Unsecured Claims). Accordingly, holders of Allowed PBF Interests shall not receive any distribution from the PBF Liquidating Trust on account of their Allowed PBF Interest unless and until holders of Allowed Class 1A and Class 2A Claims have been satisfied in full.

l) Voting Status of Class 3A

Class 3A is Impaired under the Plan and the holders of such Interests are entitled to vote on the Plan.

**6. Class 3B – PBF II Interests.**

m) Definition of Class 3B

Class 3B consists of all Interests of or in PBF II.

n) Treatment of Class 3B

Each holder of an Allowed PBF II Interest shall receive, in full satisfaction, settlement, release and discharge of and in exchange for its Allowed PBF II Interest, periodic distributions from the PBF II Liquidating Trust of its share on account of its Allowed PBF II Interest to be paid by the PBF II Liquidating Trust on dates to be determined in the reasonable discretion of the PBF II Liquidating Trustee. Notwithstanding the foregoing, Allowed PBF II Interests are subordinated to Allowed Class 1B (PBF II Limited Partner Unsecured Claims) and Class 2B (Other PBF II General Unsecured Claims). Accordingly, holders of Allowed PBF II Interests shall not receive any distribution from the PBF II Liquidating Trust on account of their Allowed PBF II Interest unless and until holders of Allowed Class 1B and Class 2B Claims have been satisfied in full.

o) Voting Status of Class 3B

Class 3B is Impaired under the Plan and the holders of such Interests are entitled to vote on the Plan.

**D. Treatment of Executory Contracts**

Except for those executory contracts set forth on Schedule 6.1 that are assumed pursuant to the Plan, if any, all executory contracts and unexpired leases of the Debtors shall be rejected pursuant to section 365 of Bankruptcy Code; provided, however, that neither the inclusion of a

contract or lease on Schedule 6.1 of the Plan nor anything contained in Article 6 of the Plan shall constitute an admission by any Debtor that such contract or lease is an executory contract or that any Debtor or its successors and assigns, including, but not limited to, the Liquidating Trusts, has any liability thereunder. To the extent any loan agreement pursuant to which any Debtor is lender is deemed to be an executory contract within the meaning of 365 of the Bankruptcy Code, rejection of such loan agreement shall not, by itself, eliminate the borrower's obligations thereunder or cause any Debtor's Liens, security interests or ownership rights to be released or extinguished. Section 6.1 of the Plan shall apply to any and all contracts or engagements the Debtors may have with professionals, including, but not limited to, attorneys, auditors and accountants.

The Confirmation Order shall constitute an Order of the Bankruptcy Court approving the rejection of executory contracts under Section 6.1 of the Plan pursuant to Bankruptcy Code section 365 as of the Effective Date. Any Claim for damages arising from any such rejection must be Filed within thirty (30) days after the mailing of notice of the entry of the Confirmation Order, or such Claim shall be forever barred, shall not be enforceable against the Debtors, their Estates, the Liquidating Trusts, the Liquidating Trustee, or any of their respective properties and shall receive no distribution under the Plan or otherwise on account of such Claim.

#### **E. Liquidating Trust Agreement**

The following is a summary of the more salient provisions of the PBF Liquidating Trust Agreement and the PBF II Liquidating Trust Agreement (each a "Liquidating Trust Agreement," or together where context requires, the "Liquidating Trust Agreements"). Except where indicated, the following is equally applicable to each of the Liquidating Trusts; however, the below is merely a summary and the reader is advised to review the complete text of the Liquidating Trust Agreements which are annexed to the Plan as Schedules 1.60 and 1.65, respectively.

##### **1. Establishment of the Liquidating Trusts.**

On the Effective Date, the Trustee, on behalf of the Debtors and the Beneficiaries, shall execute the Liquidating Trust Agreements and take all steps necessary to establish the Liquidating Trusts.

##### **2. Purpose of Liquidating Trusts.**

The Liquidating Trusts are being established for the sole purpose of liquidating the respective Debtor's Assets and distributing the proceeds thereof to certain holders of Allowed Claims in each of the Debtors, as identified in and prescribed by the Plan. The Liquidating Trusts shall not continue or engage in any trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidating Trusts. Unless otherwise required by law, it is intended that all parties shall treat the Liquidating Trusts each as a liquidating trust for all federal income tax purposes.

In accordance with such express and limited purposes, as of the Effective Date, the Liquidating Trustee is authorized and directed: (i) to take any and all steps necessary to maintain the Liquidating Trusts as liquidating trusts for federal income tax purposes in accordance with



Treasury Regulation § 301.7701-4(d) and as “grantor trusts” subject to the provisions of Subchapter J, Subpart E of the IRC unless otherwise required; (ii) to take all reasonable and necessary actions to conserve and protect the Trust Estates; (iii) to administer, compromise, settle, and litigate the Litigation Claims and any other claims or causes of action belonging to the Liquidating Trusts except as set forth in Section 4.12 of the PBF II Liquidating Trust Agreement (and only in the case of the PBF II Liquidating Trust); (iv) to the extent necessary and appropriate, object to any Claims asserted against the Debtors’ Estates and the Liquidating Trusts; and (v) to maintain, operate or lease (for purposes of holding for sale), or sell or otherwise liquidate or dispose of the Trust Estates, in accordance with the terms of the Liquidating Trust Agreements, the Plan and the Confirmation Order, and to distribute the net proceeds of such disposition to the Beneficiaries, in as prompt, efficient and orderly a fashion as possible in accordance with the provisions of Section 5 of the Liquidating Trust Agreements.

### **3. Contribution of Assets to the Liquidating Trusts.**

On the Effective Date of the Plan, each of the Debtors shall transfer all of their respective Assets to the Beneficiaries of the Liquidating Trusts, who shall contribute such Assets to the Liquidating Trusts pursuant to the terms of the Liquidating Trust Agreements and the Pro Rata Allocation Formula. Thereafter, pursuant to the terms of the Onshore/Offshore Allocation Formula, proceeds from the Kaufman Rossin Settlement Agreement will be distributed to the Liquidating Trusts. Except as set forth below, all Assets shall be transferred and contributed free and clear of all Liens, Claims, interests and encumbrances. Title to all Assets contributed to the Liquidating Trusts shall vest in the respective Liquidating Trust on the Effective Date following the transfer. For the avoidance of any doubt, following the contribution of Assets to the Liquidating Trusts pursuant to Section 7.1.3 of the Plan and the Liquidating Trust Agreements, the Liquidating Trustee shall have standing to pursue Litigation Claims on behalf of the Liquidating Trusts subject only to any limitations set forth in Article 7 of the Plan or the Liquidating Trust Agreements.

### **4. Allocation of Kaufman Rossin Settlement Payment.**

The Kaufman Rossin Settlement Payment made in connection with the Kaufman Rossin Settlement Agreement shall be distributed to the Liquidating Trusts and the Offshore Funds pursuant to the Onshore/Offshore Allocation Formula such that the PBF Liquidating Trust shall receive for the benefit of its Beneficiaries \$1,728,000.00, which is 18% of the Kaufman Rossin Settlement Payment, the PBF II Liquidating Trust shall receive for the benefit of its Beneficiaries \$1,968,000.00, which is 20.5% of the Kaufman Rossin Settlement Payment, and the Offshore Funds shall directly receive the remaining \$5,904,000.00, which is 61.5% of the Kaufman Rossin Settlement Payment. The Liquidating Trustee’s fee in connection with that portion of the Kaufman Rossin Settlement Payments to be retained by the Debtors shall be calculated as the limitation set forth pursuant to 11 U.S.C. § 326. The Liquidating Trustee’s fee in connection with the payment to be made to the Offshore Funds shall be capped at and equal to .75% of such payment.

## **5. Title to Litigation Claims of the Debtors.**

Upon the transfer of the Litigation Claims and all other Assets of the respective Debtor to the Liquidating Trust, the Liquidating Trustee shall succeed to all of the Debtor's right, title and interest in the Litigation Claims and other Assets and the Debtor and Trustee will have no further interest in or with respect to the Assets or the Liquidating Trust.

## **6. PBF Liquidating Trust Management and Structure.**

Barry Mukamal shall be the PBF Liquidating Trustee with the power and authority set forth in the PBF Liquidating Trust Agreement. As more fully set forth in the PBF Liquidating Trust Agreement, the PBF Liquidating Trustee shall oversee and direct the PBF Liquidating Trust's operations and activities, including the retention of counsel, decisions to pursue or not pursue Litigation Claims belonging solely to the PBF Liquidating Trust and its Beneficiaries, and settlement of any such Litigation Claims belonging solely to the PBF Liquidating Trust and its Beneficiaries. In any event, any compromise or settlement of any PBF Litigation Claim shall be subject to the approval of the Bankruptcy Court pursuant to Bankruptcy Rule 9019.

## **7. PBF II Liquidating Trust Management and Structure and Authority of PBF II Liquidating Trust Monitor.**

Barry Mukamal shall be the PBF II Liquidating Trustee with the power and authority set forth in the PBF II Liquidating Trust Agreement and subject to the power and authority granted to the PBF II Liquidating Trust Monitor in the Plan and the PBF II Liquidating Trust Agreement.

As more fully set forth in the PBF II Liquidating Trust Agreement, and except as set forth in Section 7.1.8 of the Plan, the PBF II Liquidating Trustee shall oversee and direct the PBF II Liquidating Trust's operations and activities. The PBF II Liquidating Trustee and the PBF II Liquidating Trust Monitor shall coordinate the analysis of potential Litigation Claims of the PBF II Liquidating Trust. Notwithstanding the foregoing, or anything in the Plan to the contrary, with respect to any PBF II Litigation Claims, the PBF II Liquidating Trust Monitor shall, in his sole discretion: (1) determine which PBF II Litigation Claims should be pursued, (2) approve of the retention of professionals other than Meland Russin & Budwick, P.A., if any, to pursue such PBF II Litigation Claims, and (3) determine the terms on which any such PBF II Litigation Claims should be resolved by settlement or otherwise. In any event, any compromise or settlement of any PBF II Litigation Claims shall be subject to the approval of the Bankruptcy Court pursuant to Bankruptcy Rule 9019. Any communications between the PBF II Liquidating Trustee and the PBF II Liquidating Trust Monitor related to any third party litigation or the Petters Bankruptcy Cases shall be subject to a common interest privilege.

Pursuant to section 1123(b)(3) of the Bankruptcy Code, except as otherwise provided in the Plan or the Confirmation Order, after transfer of the Assets to the Liquidating Trusts pursuant to Section 7.1.3 of the Plan, the Liquidating Trustee will have the exclusive right to enforce any and all Litigation Claims against any Entity and rights of the Debtors that arose before or after the Petition Date, including, but not limited to, the rights and powers of a trustee and debtor-in-possession, against any Entity whatsoever. Notwithstanding the foregoing, in the event the PBF II Liquidating Trustee opts not to pursue a PBF II Litigation Claim, the PBF II Liquidating Trust

Monitor may make a written demand upon the PBF II Liquidating Trustee that the PBF II Liquidating Trustee pursue such PBF II Litigation Claim. In the event the PBF II Liquidating Trustee refuses to pursue such PBF II Litigation Claim, the PBF II Liquidating Trust Monitor shall be authorized to pursue such PBF II Litigation Claim on behalf of the PBF II Liquidating Trust with the same rights possessed by the PBF II Liquidating Trustee. The PBF II Liquidating Trustee shall be kept informed as to the progress of the action and any compromise shall be subject to Bankruptcy Court approval pursuant to Rule 9019

#### **8. Administrative Powers of the Liquidating Trustee.**

During the Liquidating Trustee's administration of the Liquidating Trust, and subject to: (i) all the other provisions of Liquidating Trust Agreement (including, but not limited to, Sections 4.3 and 4.4), (ii) the Plan and (iii) the Liquidating Trustee's delegation of certain rights and powers to the PBF II Liquidating Trust Monitor (in the case of the PBF II Liquidating Trust only), the Liquidating Trustee may exercise the power:

- a) To receive and hold all the assets of the Trust Estate and to have exclusive possession and control thereof as permissible under applicable law;
- b) To manage, sell and convert all or any portion of the assets in the Trust Estate to Cash and distribute the net distributable proceeds as specified in the Plan and the Liquidating Trust Agreement;
- c) To enter into, perform and exercise rights under contracts binding upon the Liquidating Trust (but not upon the Liquidating Trustee in his respective individual or corporate capacity) which are reasonably incident to the administration of the Liquidating Trust and which the Liquidating Trustee, in the exercise of his best business judgment, reasonably believes to be in the best interests of the Liquidating Trust;
- d) To delegate his authority under the Liquidating Trust to other persons, provided that such delegation must be made pursuant to a written agreement that either has been approved by the Bankruptcy Court in conjunction with the confirmation of the Plan or is approved by the PBF II Liquidating Trust Monitor;
- e) To establish and maintain accounts at banks and other financial institutions, in a clearly specified fiduciary capacity, into which Cash and property of the Liquidating Trust may be deposited, and draw checks or make withdrawals from such accounts, and to pay or distribute such amounts of the Trust Estate as permitted or required under the Plan and the Liquidating Trust Agreement;
- f) To employ attorneys, accountants, appraisers, expert witnesses, insurance adjusters or other persons whose services may be reasonably necessary or advisable in the sole judgment of the Liquidating Trustee to advise or assist him in the discharge of his duties as Liquidating Trustee,



or otherwise in the exercise of any powers vested in the Liquidating Trustee, and to pay reasonable compensation to such attorneys, accountants, appraisers, expert witnesses, insurance adjusters or other persons;

g) Pursuant to Section 1123(a)(5)(D) of the Bankruptcy Code, to sell or otherwise dispose of, and liquidate or convert to Cash, any assets of the Trust Estate, either subject to or free of any Lien, or distribute all or any part of the property of the Trust Estate among those having an interest in such property of the Trust Estate;

h) To pay any and all reasonable and necessary expenses attributable or relating to the management, maintenance, operation, preservation or liquidation of the Trust Estate;

i) To investigate, file, compromise, settle, withdraw or litigate in the Bankruptcy Court or on appeal (or pursuant to a withdrawal of the reference of jurisdiction) objections to Claims filed against the Debtor's Estate, the Trust Estate or the Liquidating Trust;

j) To investigate, analyze, compromise, adjust, arbitrate, sue on or defend, pursue, prosecute, abandon, or otherwise deal with and settle, in accordance with the terms set forth in the Liquidating Trust Agreement, all Litigation Claims and claims in favor of or against the Liquidating Trust as the Liquidating Trustee shall deem advisable;

k) To avoid and recover transfers of the Debtor's property as may be permitted by the Bankruptcy Code or applicable state law, including, without limitation, those transfers identified in the Disclosure Statement;

l) To take all appropriate action with respect to the Trust Estate, including, without limitation, the filing, prosecution, settlement or other resolution of claims and Litigation Claims;

m) To sue or be sued in connection with any matter arising from or related to the Plan or the Liquidating Trust Agreement that affects in any way the rights or obligations of the Liquidating Trust, the Liquidating Trustee or the Beneficiaries;

n) To represent the interests of the Beneficiaries with respect to any matters relating to the Plan, the Liquidating Trust Agreement, or the Liquidating Trust affecting the rights of such Beneficiaries;

o) If the Liquidating Trust shall become subject to federal or state income tax, the Liquidating Trustee shall have the power, exercisable at his reasonable discretion, to take any action reasonably necessary to minimize any adverse federal or state income tax consequences to the Beneficiaries

resulting from any distribution made by the Liquidating Trust to such Beneficiaries;

p) In general, without in any manner limiting any of the foregoing or the following, to deal with the Trust Assets or any part or parts thereof in all other ways as would be lawful for any person owning the same to deal therewith; provided, however, that the investment powers of the Liquidating Trustee, other than those reasonably necessary to maintain the value of the Trust Assets of the Liquidating Trust and to further the liquidating purpose of the Liquidating Trust, are limited by the terms herein;

q) To do any and all other things, not in violation of any other terms of the Plan, the Confirmation Order, and the Liquidating Trust Agreement, which, in the reasonable business judgment of the Liquidating Trustee, are necessary or appropriate for the proper liquidation, management, investment and distribution of the assets of the Trust Estate in accordance with the provisions of the Liquidating Trust Agreement and the Plan;

r) Seek complete or partial substantive consolidation of any non-Debtor Entity with or into either or both of the Liquidating Trust or the liquidating trust created pursuant to the Plan to liquidate the assets of debtor Palm Beach Finance Partners, L.P. (together, the "Liquidating Trusts") *nunc pro tunc* to November 30, 2009 or otherwise;

s) Seek the imposition of a bar order in favor of any entity entering into a compromise with the Liquidating Trustee with identical scope, breadth and reach as that provided in connection with the Kaufman Rossin Settlement Agreement;

t) To file final tax returns for the Debtor; and

u) At the appropriate time, to request that the Bankruptcy Court enter a final decree closing the Debtor's Chapter 11 Case.

#### **9. Retention of Professionals by Liquidating Trustee**

Except as otherwise set forth in the Plan and the Liquidating Trust Agreements, the Liquidating Trustee shall be authorized to retain professionals, including, but not limited to attorneys, accountants and auditors to assist the Liquidating Trustee in carrying out his duties and responsibilities under the Liquidating Trust Agreements.

The Trustee has retained Meland Russin & Budwick, P.A. to represent him as Trustee in these Bankruptcy Cases and aid in prosecution of a variety of litigation related matters including the Kaufman Action and the Bank Litigation. Meland Russin & Budwick, P.A. will be retained by the Liquidating Trustee after the Effective Date to pursue these and additional Litigation Claims that belong to the Liquidating Trusts and their Beneficiaries.

With respect to the PBF II Liquidating Trust, the retention by the PBF II Liquidating Trustee of any professionals other than Meland Russin & Budwick, P.A. to pursue Litigation Claims, as well as the compensation of such professionals, shall require the prior approval of the PBF II Liquidating Trust Monitor.

#### **10. Limitations on Liquidating Trustee.**

The Liquidating Trustee shall carry out the purposes of the Liquidating Trust and the directions contained herein and shall not at any time cause the Liquidating Trust to enter into or engage in any business (except as may be consistent with the limited purposes of the Liquidating Trust), including, without limitation, the purchase of any assets or property (other than such assets or property as are reasonably necessary to carry out the purposes of the Liquidating Trust Agreement, on behalf of the Liquidating Trust or the Beneficiaries). The Liquidating Trustee is directed to take all reasonable and necessary actions to dispose of the Trust Estate in as prompt, efficient and orderly a fashion as possible, to make timely distributions of the proceeds of the Trust Estate, and to otherwise not unduly prolong the duration of the Liquidating Trust.

The Liquidating Trustee shall invest any monies held at any time as part of this Trust Estate, and every other reserve or escrow fund established pursuant to the terms of the Liquidating Trust Agreement, only in interest-bearing deposits or certificates of deposit issued by any federally insured banking institution or short-term investments, including short-term obligations of, or unconditionally guaranteed as to payment by, the United States of America and its agencies or instrumentalities, pending the need for the disbursement thereof in payment of costs, expenses, and liabilities of the Liquidating Trust or in making distributions pursuant to Section 5 of the Liquidating Trust Agreement. The Liquidating Trustee shall be restricted to the collection and holding of such monies and any income earned on such monies and to the payment and distribution thereof (at least annually if such monies are not necessary to maintain the value of the Trust Estate or to satisfy Claims against the Trust Estate) for the purposes set forth in the Plan and the Liquidating Trust Agreement, and to the conservation and protection of the Trust Estate in accordance with the provisions hereof.

The Liquidating Trustee shall, prior to taking any action with respect to the compromise or settlement of a Litigation Claim or claim in which PBF II has an interest, consult with the PBF II Liquidating Trust Monitor whose approval of such compromise or settlement shall be required.

In all other events, unless otherwise set forth herein, the Liquidating Trustee is authorized to compromise or settle an action without any advanced notice or consent (other than any consent required to be received from the PBF II Liquidating Trust Monitor), if the Liquidating Trustee reasonably believes such settlement or compromise to be in the best interests of the Liquidating Trust, and shall be held harmless by the Beneficiaries in taking such action.

Any compromise or settlement of an action by the Liquidating Trustee pursuant to Section 4.4 of the Liquidating Trust Agreement shall be subject to approval of the Bankruptcy Court pursuant to Bankruptcy Rule 9019.

Notwithstanding anything herein to the contrary, after the Effective Date, and without providing notice to or obtaining the approval of any party, the Liquidating Trustee shall be



authorized pursuant to Section 7.6(e) of the Liquidating Trust Agreement to pay on a monthly basis: (i) the reasonable fees and expenses for services rendered the Liquidating Trustee by his professionals, and (ii) the reasonable fees and expenses incurred by the PBF II Liquidating Trust Monitor and his retained professionals; provided, however, if the fees and expenses incurred by such professionals after the Effective Date are attributable in any degree to the PBF II Liquidating Trust, the Liquidating Trustee shall obtain the approval of the PBF II Liquidating Trust Monitor prior to making such payments or else be required to seek leave of the Bankruptcy Court.

### **11. Reports.**

The Liquidating Trustee shall:

Prepare and file unaudited interim financial reports as may be required by regulatory authorities, applicable laws, rules or regulations or as the Liquidating Trustee deems advisable during the fiscal year;

Prepare, file and mail, within the time required by applicable law or regulation, necessary income tax information, tax returns or reports to the Beneficiaries and applicable taxing authorities, including, on an annual basis, the manner and calculation of the Liquidating Trust's taxable gain or loss which the Liquidating Trust would recognize if it were a separate taxable entity. In this connection, the Liquidating Trustee shall file returns for the Liquidating Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a); and

As soon as practicable after each calendar quarter, and in no event later than thirty (30) days after the end of each quarter, the Liquidating Trustee shall submit to the United States Trustee, and any Beneficiary who requests copies of such quarterly report after the Confirmation Date, an unaudited written report and account showing:

- the assets and liabilities of the Liquidating Trust;
- any distributions made and expenses paid pursuant to the Plan and the Liquidating Trust Agreement during that calendar quarter;
- any changes in the Trust Assets that have not been previously reported; and,
- any material action taken by the Liquidating Trustee in the performance of his or her duties under the Liquidating Trust Agreement that has not been previously reported.

### **12. Costs and Expenses of Liquidating Trustee.**

Except as set forth in the Liquidating Trust Agreement, the Liquidating Trustee shall pay out of the Trust Assets, on a monthly basis and without notice or application to the Bankruptcy Court, all reasonable costs, expenses and obligations incurred by the Liquidating Trustee in carrying out his duties under the Liquidating Trust Agreement or in any manner connected, incidental or related to the administration of the Liquidating Trust, including, without limitation:

- a) Any reasonable, documented fees and out-of-pocket expenses of attorneys, accountants, investment advisors, expert witnesses, insurance adjusters, professionals or other persons whom the Liquidating Trustee may reasonably deem advisable to employ in connection with the Liquidating Trust in accordance with the terms of the Liquidating Trust Agreement; and
- b) Any taxes, charges and assessments which may be owed by, or levied or assessed against, the Trust Estate or any property held in trust pursuant to the Liquidating Trust Agreement.

After the Effective Date, the PBF II Liquidating Trust Monitor and the Liquidating Trustee shall, no less frequently than once every four (4) months from the Effective Date, submit applications to the Bankruptcy Court for final approval of reimbursement of fees and expenses paid to their professionals. Any such payments shall be payable from the Trust Assets of the Liquidating Trusts.

### **13. Allocation of Costs and Expenses of the Liquidating Trusts.**

All costs and expenses distinctly incurred by one of the Liquidating Trusts shall be the obligation of the respective Liquidating Trust and shall be payable from the Trust Assets of such Liquidating Trust. Compensation of the Liquidating Trustee will be paid from the Trust Assets of the respective Liquidating Trust pursuant to the provisions of section 326 of the Bankruptcy Code. However, any professional fees, costs and expenses incurred on behalf of both of the Liquidating Trusts shall be the obligation of both Liquidating Trusts, payable by each according to the Pro Rata Allocation Formula set forth in the Plan.

After the Effective Date, and without providing notice to or obtaining the approval of any party, the Liquidating Trustee shall be authorized pursuant to Sections 4.4(c) and 7.6(e) of the PBF II Liquidating Trust Agreement to pay on a monthly basis the reasonable fees and expenses incurred by the PBF II Liquidating Trust Monitor. The PBF II Liquidating Trust Monitor shall submit an application to the Bankruptcy Court no later than every four (4) months starting from the Effective Date for final approval of the fees and expenses paid to the PBF II Liquidating Trust Monitor in connection with carrying out its duties consistent with the Plan and the Liquidating Trust Agreement. Any such payments shall be payable from the Trust Assets of the Liquidating Trusts.

### **14. Compensation of Professionals Retained by the Liquidating Trustee and the PBF II Liquidating Trust Monitor.**

Professionals retained by the PBF II Liquidating Trust Monitor and the Liquidating Trustees shall be entitled to monthly interim compensation for fees and expenses incurred in carrying out their duties consistent with the Plan and the Liquidating Trust Agreements; provided, however that the PBF II Liquidating Trust Monitor or the Liquidating Trustees shall provide to the other, and the United States Trustee, notice of such requested fees and expenses on a monthly basis. Following such notice, if no objections to the fees and expenses set forth in the monthly statement are received in writing within 10 business days, 100% of such professional's

fees and expenses shall be paid. Notice of and objections to such fees and expenses shall be made via e-mail and/or facsimile. If objections to the fees and expenses are made and cannot be resolved, such objections will be heard and resolved by the Bankruptcy Court. Any such fees and expenses shall be payable from the Trust Assets of the Liquidating Trusts, as set forth in such application. The PBF II Liquidating Trust Monitor and the Liquidating Trustee shall, no less frequently than once every four (4) months starting from the Effective Date, submit applications to the Bankruptcy Court for final approval of reimbursement of fees and expenses paid to their professionals.

The Liquidating Trustees' general and litigation counsel shall be Meland Russin & Budwick, P.A. The terms of compensation for Meland Russin & Budwick, P.A. shall be the same in all respects as those requested in the Trustee's Motion to Approve Hybrid Form of Compensation for Litigation Counsel, as may be amended with the consent of Meland Russin & Budwick, P.A. and as approved by the Bankruptcy Court.

The PBF II Liquidating Trust Monitor's general counsel shall be Reed Smith LLP and Levine Kellogg Lehman Schneider & Grossman LLP and the professionals at those firms shall be compensated at 75% as to Reed Smith and 100% as to Levine Kellogg of the firm's respective standard billing rates, respectively.

#### **15. Indemnification.**

Pursuant to the Liquidating Trust Agreements, the Liquidating Trust agrees indemnify to the full extent of the Trust Estate any person or entity who was or is a party, or is threatened to be made a party to any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative by reason of the fact that such person or entity is or was a Liquidating Trustee, the PBF II Liquidating Trust Monitor or an employee, attorney or agent of the Liquidating Trust, Liquidating Trustee or PBF II Liquidating Trust Monitor, from and against any and all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person or entity in connection with such action, suit or proceeding, including appeals thereof, if such person or entity acted without gross negligence and willful misconduct in the exercise and performance of any power or duties of such person or entity in accordance with the Liquidating Trust Agreement.

#### **16. Limitation on Liability.**

No provision of the Liquidating Trust Agreement shall be construed to impart any liability upon the Liquidating Trustee unless it shall be proven that the Liquidating Trustee's actions or omissions constituted gross negligence or willful misconduct in the exercise of or failure to exercise any right or power vested in the Liquidating Trustee under the Liquidating Trust Agreement.

No provision of the Liquidating Trust Agreement shall be construed to impart any liability upon the PBF II Liquidating Trust Monitor unless it shall be proven that the PBF II Liquidating Trust Monitor's actions or omissions constituted gross negligence or willful misconduct in the exercise of or failure to exercise any right or power vested in the PBF II Liquidating Trust Monitor under the Liquidating Trust Agreement.



### **17. Resignation and Removal of the Liquidating Trustee.**

The Liquidating Trustee may resign and be discharged from any future obligations and liabilities under the Liquidating Trust Agreement by giving written notice thereof to the Bankruptcy Court at least thirty (30) days prior to the effective date of such resignation. Such resignation shall become effective on the date specified in such notice.

The Liquidating Trustee may be removed at any time by order of the Bankruptcy Court upon motion by any party in interest pursuant to the standard under applicable law for removal of a Chapter 7 trustee. Upon any such removal, such removed Liquidating Trustee shall be entitled to any reimbursement and indemnification set forth in the Liquidating Trust Agreement which remain due and owing to such Liquidating Trustee at the time of such removal.

If, at any time, the Liquidating Trustee shall give notice of his intent to resign pursuant to Section 7.7 of the Liquidating Trust Agreement, or be removed or shall become incapable of acting, counsel to the Liquidating Trustee shall provide notice thereof to the Bankruptcy Court. The PBF II Liquidating Trust Monitor, with the approval of the Bankruptcy Court, shall designate a successor liquidating trustee for the PBF II Liquidating Trust and the Office of the United States Trustee, with the approval of the Bankruptcy Court, shall designate a successor liquidating trustee for the PBF Liquidating Trust.

### **18. Resignation and Removal of the PBF II Liquidating Trust Monitor.**

The PBF II Liquidating Trust Monitor may resign and be discharged from any future obligations and liabilities hereunder by giving written notice thereof to the Bankruptcy Court at least thirty (30) days prior to the effective date of such resignation. Such resignation shall become effective on the date specified in such notice. If, at any time, the PBF II Liquidating Trust Monitor shall give notice of his intent to resign or shall become incapable of acting, counsel to the PBF II Liquidating Trust Monitor shall provide notice thereof to the Bankruptcy Court. The PBF II Liquidating Trust Monitor, in his sole discretion, shall designate a successor liquidating trust monitor to act under the Liquidating Trust Agreement.

Any successor PBF II Liquidating Trust Monitor appointed hereunder shall execute an instrument accepting such appointment hereunder and shall deliver counterparts thereof to the Bankruptcy Court. Thereupon, such successor PBF II Liquidating Trust Monitor shall, without any further act, become vested with all of the estates, properties, rights, powers, trusts and duties of his predecessor in the PBF II Liquidating Trust, with like effect as if originally named herein. The PBF II Liquidating Trust Monitor may be removed at any time by order of the Bankruptcy Court upon motion by any party in interest pursuant to the standard under applicable law for removal of a Chapter 7 trustee.

### **19. Continuation of Automatic Stay.**

In furtherance of the implementation of the Plan, except as otherwise provided herein, all injunctions or stays provided for in the Chapter 11 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 and apply to all Creditors and Beneficiaries holding Claims against the Debtors,

the Estates, the Assets, the Liquidating Trustee, the Liquidating Trusts and the Trust Assets until the Final Distribution Date.

## **20. Termination Date.**

The Liquidating Trust shall terminate on such date that: (a) a final decree has been entered closing the Chapter 11 Cases and (b) all assets in the Trust Estate have been distributed and (c) all Litigation Claims have been pursued or abandoned pursuant to, and in accordance with, the Plan and the Liquidating Trust Agreement (the "Termination Date"). However, the term of the Liquidating Trust shall not exceed five (5) years from the Effective Date, provided that, upon a finding that an extension is necessary to the liquidating purpose of the Liquidating Trust and upon approval by the Bankruptcy Court, the term may be extended for a finite term based on the particular facts and circumstances. Each such extension must be approved by the Bankruptcy Court within six (6) months of the beginning of the extended term. The Liquidating Trustee and the PBF II Liquidating Trust Monitor shall be released of all liabilities and discharged from his or her obligations under the Plan or the Liquidating Trust Agreement once the Liquidating Trust has terminated.

## **F. Termination of the Debtors**

As soon as practicable after the Effective Date, each of the Debtors will be dissolved and cease to exist for all purposes without the necessity for any other or further actions to be taken by or on behalf of the Debtors or payments to be made in connection therewith; provided, however, that pursuant to section 1124(b) of the Bankruptcy Code, the Liquidating Trustee shall be authorized to file each Debtor's final tax returns, and shall be authorized to file and shall file with the official public office for keeping corporate records in each Debtor's state of incorporation a certificate of dissolution or equivalent document. Such a certificate of dissolution may be executed by the Liquidating Trustee without the need for any action or approval by any other party. From and after the Effective Date, the Debtors (i) for all purposes shall be deemed to have withdrawn their business operations from any state in which they were previously conducting, or are registered or licensed to conduct, their business operations, and shall not be required to file any document, pay any sum or take any other action, in order to effectuate such withdrawal, and (ii) shall not be liable in any manner to any taxing authority for franchise, business, license or similar taxes accruing on or after the Effective Date.

## **G. Closing of the Chapter 11 Cases**

Notwithstanding anything to the contrary in the Bankruptcy Rules providing for earlier closure of the Chapter 11 Cases, when all Assets contributed to the Liquidating Trusts have been liquidated and converted into Cash (other than those Assets abandoned by the Liquidating Trusts), and such Cash has been distributed in accordance with the Liquidating Trust Agreements and the Plan, and the Final Distribution made, the Liquidating Trustee shall seek authority from the Bankruptcy Court to close the Chapter 11 Cases in accordance with the Bankruptcy Code and the Bankruptcy Rules.

## **H. Objections to Claims**

Subject to applicable law, and except as otherwise set forth herein, from and after the Effective Date, the Liquidating Trustee, the PBF II Liquidating Trust Monitor and any Creditor shall have the authority to litigate to judgment objections to Claims or Interests pursuant to applicable procedures established by the Bankruptcy Code, the Bankruptcy Rules, the Liquidating Trust Agreements and the Plan. Any compromise of any Claim objection shall be subject to Bankruptcy Court approval. The deadline within which objections to Claims or Interests may be filed shall be one year from the Effective Date.

Objections to any Administrative Claim shall be Filed and served on the claimant no later than thirty (30) days after the Administrative Claims Bar Date. Except with respect to Administrative Claims, no deadlines by which objections to Claims must be Filed have been established in these Chapter 11 Cases.

The Trustee has received and reviewed the Palm Beach Offshore Claims, including all information supporting such Claims. Notwithstanding anything to the contrary in the Plan or in the PBF II Liquidating Trust Agreement, upon confirmation of the Plan, the Palm Beach Offshore Claims shall be deemed Allowed Class 2B Claims (Other PBF II General Unsecured Claims) upon entry of the Confirmation Order and shall not be subject to dispute, challenge or reduction in amount by any party-in-interest including without limitation the PBF II Liquidating Trustee, although the Claims shall be reduced by the amount of the Kaufman Rossin Settlement Payment received by the Offshore Funds. The Palm Beach Offshore Claims will be treated as set forth in Section 5.4 of the Plan.

## **I. Distributions Under the Plan**

### **1. Payment Address and Form of Payment.**

Distributions to holders of Allowed Claims or Interests shall be made: (a) at the addresses set forth in the proofs of Claim Filed by such holders; (b) at the addresses set forth in any written notices of address change Filed with the Bankruptcy Court or delivered to the Liquidating Trustee after the date on which any related proof of Claim was Filed; or (c) at the addresses reflected in the Schedules relating to the applicable Allowed Claim or Interest if no proof of Claim has been Filed and the Liquidating Trustee has not received a written notice of a change of address.

Except as otherwise provided in the Liquidating Trust Agreements or the Confirmation Order, Cash payments to be made pursuant to the Plan shall be made by checks drawn on a domestic bank or by wire transfer from a domestic bank, at the option of the Liquidating Trustee.

Other than in the Final Distribution, no payment of Cash in an amount of less than \$250.00 shall be required to be made on account of any Allowed Claim.

### **2. No Postpetition Interest.**

Postpetition interest shall not accrue or be paid 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 upon any Disputed Claim in respect of the period from the Petition Date to the date a Final Distribution is made thereon if and after such Disputed Claim becomes an Allowed Claim. To the extent that any Allowed Claim entitled to a distribution under the Plan is composed of indebtedness and accrued but unpaid interest thereon, such distribution shall, to the extent permitted by applicable law, be allocated for federal income tax purposes to the principal amount of the Allowed Claim first and then, to the extent the consideration exceeds the principal amount of the Allowed Claim, to the portion of such Allowed Claim representing accrued but unpaid interest.

### **3. Undeliverable Distributions.**

If the distribution check to any holder of an Allowed Claim or Interest is not cashed within 90 days after issuance by the Liquidating Trustee, a stop payment order shall be given with respect to the check and no further distributions shall be made to such holder on account of such Allowed Claim. Such Allowed Claim or Interest shall be discharged and the holder of such Allowed Claim or Interest shall be forever barred from asserting such Claim against, or Interest in, the Liquidating Trusts, the Liquidating Trustee, the Debtors, their Estates or their respective property. In such cases, any Cash held for distribution on account of such Claim shall remain property of the respective Liquidating Trust and be distributed to other Creditors in accordance with the terms of the Plan and the Liquidating Trust Agreements.

### **4. Interim Distributions.**

Unless otherwise provided in the Plan, the Liquidating Trustee in his discretion may make periodic distributions to the Beneficiaries entitled thereto in accordance with Section 5.1 of the Liquidating Trust Agreements.

### **5. Final Distribution.**

The Liquidating Trustee shall make a final distribution in accordance with Section 5.5 of the Liquidating Trust Agreements.

### **6. Allowed Interests Subordinated.**

Allowed Interests shall be subordinated to Allowed Claims for purpose of distributions pursuant to Sections 5.5 and 5.6 of the Plan. Accordingly, (i) holders of Allowed PBF Interests shall not receive any distribution from the PBF Liquidating Trust on account of their Allowed PBF Interest unless and until holders of Allowed Class 1A and Class 2A Claims have been satisfied in full, and (ii) holders of Allowed PBF II Interests shall not receive any distribution from the PBF II Liquidating Trust on account of their Allowed PBF II Interest unless and until holders of Allowed Class 1B and Class 2B Claims have been satisfied in full.

### **7. Disputed Claims Reserves.**

The Liquidating Trustee shall establish reserves for Disputed Claims in accordance with the terms of the Liquidating Trust Agreements.

## **8. Compliance with Tax Requirements.**

In connection with the Plan and the distributions made in accordance thereto, to the extent applicable, the Liquidating Trusts shall comply with all tax withholding and reporting requirements imposed by any governmental unit, if any, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. The Liquidating Trustee shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements.

### **J. Conditions to Confirmation**

As a condition to entry of the Confirmation Order:

- The Confirmation Order shall be in form and substance satisfactory to the Trustee and the JOL including providing for the approval of the Kaufman Rossin Settlement Agreement.

### **K. Conditions to the Effective Date**

The Plan shall not become effective and the Effective Date shall not occur unless and until:

- The Bankruptcy Court shall have entered the Confirmation Order in form and substance satisfactory to the Trustee and the JOL;
- No stay of the Confirmation Order shall be in effect at the time the other conditions set forth in Section 10.2 of the Plan are satisfied, or, if permitted, waived; and
- All documents, instruments and agreements, in form and substance satisfactory to the Trustee and the JOL, provided for under the Plan or necessary to implement the Plan, including, without limitation, the Liquidating Trust Agreements, shall have been executed and delivered by the parties thereto, unless such execution or delivery has been waived by the parties benefited thereby.

### **L. Modification of the Plan**

Subject to the restrictions on Plan modifications set forth in section 1127 of the Bankruptcy Code, and subject to the consent of the other, the Plan Proponents reserve the right to alter, amend or modify the Plan before its substantial consummation.

### **M. Effect of Confirmation**

#### **1. Binding Effect.**

Except as otherwise provided in section 1141(d) of the Bankruptcy Code, on and after the Confirmation Date, the provisions of the Plan shall bind any holder of a Claim against or Interest

in the Debtors and their respective successors and assigns, whether or not the Claim or Interest of such holder is Impaired under the Plan and whether or not such holder has accepted the Plan.

## **2. Claims Barred Against Kaufman Rossin & Co.**

Upon entry of the Confirmation Order, the Kaufman Rossin Settlement Agreement shall be deemed approved in all respects and the parties to the agreement shall be deemed authorized and directed to implement each of all of its terms. The entry of the Confirmation Order shall constitute the Bankruptcy Court's finding of each of the following as well as the approval of the Bar Order contemplated by the Kaufman Rossin Settlement Agreement:

a) The Bankruptcy Court has jurisdiction over the Kaufman Rossin Settlement Agreement pursuant to 28 U.S.C. § 1334, and authority to enter a Bar Order pursuant to 11 U.S.C. § 105(a).

b) The form and means of the notice of the Bar Order and the Plan are determined to have been the best notice practicable under the circumstances and to be good and sufficient notice to all persons whose interests would or could be affected by the Bar Order, including, but not limited to, (1) all creditors of either of the Debtors; (2) the JOL, on behalf the Offshore Funds; (3) all shareholders and creditors of the Offshore Funds; (4) all limited partners of either of the Debtors; (5) all general partner(s) of either of the Debtors; and (6) all entities that acted or are acting for or on behalf of the limited and general partners of the Debtors.

c) Entry of a Bar Order is appropriate in order to achieve the finality and repose that is contemplated as a term of the Kaufman Rossin Settlement Agreement and good cause therefore exists for the entry of a Bar Order, and the Bar Order is fair and equitable. *See In re U.S. Oil & Gas Litig.*, 967 F.2d 489, 495 96 (11th Cir. 1992); *see also In re Munford, Inc.*, 97 F.3d 449, 454 55 (11th Cir. 1996); *Eichenholtz v. Brennan*, 52 F.3d 478 (3d Cir. 1995); *In re Jiffy Lube Secs. Litig.*, 927 F.2d 155 (4th Cir. 1991). The Bar Order shall be interpreted as broadly as possible so as to effectuate the purposes stated herein.

d) *In consideration of the payments to be made by Kaufman Rossin pursuant to the Kaufman Rossin Settlement Agreement, which will enable the Trustee to confirm this Plan and make certain cash distributions as provided for herein, the Releasors are deemed to have released the Barred Claims. Specifically, Releasors, as defined in Section 1.77, are permanently barred and enjoined from commencing, prosecuting, or asserting either directly or in any other capacity, against Kaufman Rossin, any and all liabilities, judgments, rights, claims, cross claims, counterclaims, third party claims, demands, suits, matters, obligations, damages, debts, losses, costs, actions and causes of action, of every kind and description, arising under common law, rule, regulation or statute, whether arising under state or federal law, whether presently known or*



*unknown that any Releasor now has, ever had or may claim to have in the future that is a Barred Claim; provided that (a) the Bar Order does not release, or enjoin any of Releasors from commencing, prosecuting, or asserting any claims to interpret or enforce the terms of the Kaufman Rossin Settlement Agreement or the Bar Order, and (b) the Bar Order does not release or enjoin any of Releasors from commencing, prosecuting, or asserting any claims against any party other than Kaufman Rossin; and (c) the Bar Order does not release or enjoin any of Releasors from commencing, prosecuting, or asserting any claims against the Kaufman Rossin Affiliated Parties other than those based upon or directly to the professional services provided by Kaufman Rossin to the Debtors of the Offshore Funds.*

e) The Bankruptcy Court retains exclusive jurisdiction to enforce or interpret the Bar Order.

## **N. Exculpation, Injunction, and Limitation of Liability**

### **1. Exculpation.**

*Except as otherwise specifically provided in the Plan, none of the Debtors, the Trustee, the JOL or any of such parties' employees, representatives, advisors, attorneys, financial advisors, investment bankers or agents or any of such parties' successors and assigns, shall have or incur, and are hereby released from, any Claim, obligation, cause of action or liability to one another or to any holder of a Claim or an Interest, or any other party in interest, or any of their respective officers, directors, shareholders, members and/or enrollees, employees, representatives, advisors, attorneys, financial advisors, investment bankers, agents, or affiliates, or any of their successors or assigns, for any act or omission in connection with, relating to, or arising out of, the Chapter 11 Cases, the negotiation and pursuit of confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for their gross negligence or willful misconduct, and in all respects shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities (if any) under the Plan.*

*Notwithstanding any other provision of the Plan, neither any holder of a Claim or Interest, or other party in interest, nor any of their respective officers, directors, shareholders, members and/or enrollees, employees, representatives, advisors, attorneys, financial advisors, investment bankers, agents or affiliates, and no successors or assigns of the foregoing, shall have any right of action against any Debtor, the Trustee, the JOL or any of such parties' employees, representatives, advisors, attorneys, financial advisors, investment bankers or agents or such parties successors and assigns, for any act or omission in connection with, relating to, or arising out of, the Chapter 11 Cases, the negotiation and pursuit of confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for such Persons' gross negligence or willful misconduct..*

## **2. Injunctions.**

*Except as otherwise specifically provided in the Plan or the Confirmation Order, all Entities who have held, hold or may hold Claims, rights, causes of action, liabilities or any Interests based upon any act or omission, transaction or other activity of any kind or nature related to the Debtors or the Chapter 11 Cases that occurred prior to the Effective Date, other than as expressly provided in the Plan or the Confirmation Order, regardless of the filing, lack of filing, allowance or disallowance of such a Claim or Interest and regardless of whether such Entity has voted to accept the Plan, and any successors, assigns or representatives of such Entities shall be precluded and permanently enjoined on and after the Effective Date from (a) the commencement or continuation in any manner of any claim, action or other proceeding of any kind with respect to any Claim, Interest or any other right or claim against the Debtors, or any assets of the Debtors which they possessed or may possess prior to the Effective Date, (b) the enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree or order with respect to any Claim, Interest or any other right or claim against the Debtors, or any assets of the Debtors which such Entities possessed or may possess prior to the Effective Date, (c) the creation, perfection or enforcement of any encumbrance of any kind with respect to any Claim, Interest or any other right or claim against the Debtors or any assets of the Debtors which they possessed or may possess prior to the Effective Date, and (d) the assertion of any Claims that are released hereby.*

## **3. Limitation of Liability.**

*Except as expressly set forth in the Plan, following the Effective Date, none of the Debtors, the Trustee, the JOL or any of such parties' employees, advisors, attorneys, professionals or agents shall have or incur any liability to any holder of a Claim or Interest for any act or omission in connection with, related to, or arising out of, the Chapter 11 Cases, the negotiation and pursuit of confirmation of the Plan, the consummation of the Plan or any contract, instrument, release or other agreement or document created in connection with the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for gross negligence or willful misconduct.*

## **O. Retention of Jurisdiction**

Notwithstanding the entry of the Confirmation Order, the occurrence of the Effective Date and the transfer of the Assets to the Liquidating Trusts, the Bankruptcy Court shall retain jurisdiction over the Chapter 11 Cases after the Effective Date to the fullest extent legally permissible, including but not limited to jurisdiction to, among other things:

- a) Allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the allowance or priority of all Claims and Interests;
- b) Hear and determine any and all causes of action against any Person and rights of the Debtors that arose before or after the Petition Date, including but not limited to the rights and powers of a trustee and debtor-

in-possession, against any Person whatsoever, including but not limited to all avoidance powers granted to the Debtors under the Bankruptcy Code and all causes of action and remedies granted pursuant to sections 502, 506, 510, 541, 542, 543, 544, 545, 547 through 551 and 553 of the Bankruptcy Code;

c) Grant or deny any applications for allowance of compensation for Professionals authorized pursuant to the Bankruptcy Code or the Plan, for periods ending on or before the Effective Date;

d) Resolve any matters relating to the assumption, assumption and assignment or rejection of any executory contract to which either Debtor is a party or with respect to which either of the Debtors may be liable, including without limitation the determination of whether such contract is executory for the purposes of section 365 of the Bankruptcy Code, and hear, determine and, if necessary, liquidate any Claims arising therefrom;

e) Enter orders approving the Liquidating Trusts' post-Confirmation sale or other disposition of Trust Assets;

f) Ensure that distributions to holders of Allowed Claims are accomplished pursuant to the provisions of the Plan and the Liquidating Trust Agreements;

g) Decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters and grant or deny any applications involving any Debtor that may be pending in the Chapter 11 Cases on the Effective Date;

h) Hear and determine matters concerning state, local or federal taxes in accordance with sections 346, 505 or 1146 of the Bankruptcy Code;

i) Enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Liquidating Trust Agreements, the Plan and the Confirmation Order;

j) Hear and determine any applications by the Liquidating Trustee to retain one or more professionals to assist the Liquidating Trustee in carrying out his duties and obligations under the respective Liquidating Trust Agreements;

k) Resolve any disputes relating to monthly fee invoices for allowance of compensation submitted by the Liquidating Trustee, the PBF II Liquidating Trust Monitor or their professionals;

l) Grant or deny any semi-annual application for allowance of compensation submitted by the PBF II Liquidating Trustee, the PBF II Liquidating Trust Monitor or their professionals;



- m) Hear and determine any matters concerning the enforcement of the provisions of Article 11 of the Plan and any other exculpations, limitations of liability or injunctions contemplated by the Plan;
- n) Resolve any cases, controversies, suits or disputes that may arise in connection with the consummation, interpretation or enforcement of the Liquidating Trust Agreements, the Plan or the Confirmation Order;
- o) Permit the Trustee or the JOL, to the extent authorized pursuant to section 1127 of the Bankruptcy Code, to modify the Plan or any agreement or document created in connection with the Plan or remedy any defect or omission or reconcile any inconsistency in the Plan or any agreement or document created in connection with the Plan;
- p) Issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any entity with consummation, implementation or enforcement of the Liquidating Trust Agreements, the Plan or the Confirmation Order;
- q) Enforce any injunctions entered in connection with or relating to the Plan or the Confirmation Order;
- r) Enter and enforce such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked or vacated, or distributions pursuant to the Liquidating Trust Agreements or the Plan are enjoined or stayed;
- s) Determine any other matters that may arise in connection with or relating to the Plan or any agreement or the Confirmation Order;
- t) Order the complete or partial substantive consolidation of any non-Debtor Entity with or into either or both of the Liquidating Trusts *nunc pro tunc* to November 30, 2009 or otherwise;
- u) Order the imposition of a Bar Order in favor of any Entity entering into a compromise of a Litigation Claim(s) with the Liquidating Trustee with identical scope, breadth and reach as that provided in connection with the Kaufman Rossin Settlement Agreement;
- v) Enter any orders in aid of prior orders of the Bankruptcy Court; and
- w) Enter a final decree closing the Chapter 11 Cases.

#### **P. No Admissions**

If Confirmation or the Effective Date does not occur, nothing contained in the Plan or Disclosure Statement shall be deemed as an admission by the Debtors, the Plan Proponents or any other party with respect to any matter set forth therein or herein including, without

limitation, liability on any Claim or the propriety of any Claims classification. If the Effective Date does not occur within thirty (30) days following entry of the Confirmation Order, the Plan will be null and void and of no further effect.

#### **Q. Preservation of Rights of Setoffs**

The Debtors, may, but shall not be required to, set off against any Claim, and the payments or other distributions to be made pursuant to the Plan in respect of such Claim, claims of any nature whatsoever that the Debtors may have against the holder of such Claims; but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors of any such claim that the Debtors may have against such holder.

### **V.**

#### **CONFIRMATION OF THE PLAN**

##### **A. Confirmation Hearing**

The Bankruptcy Court has scheduled the hearing for confirmation of the Plan for [\_\_\_\_], 2010 at [\_\_\_\_](prevailing Eastern time) (the “Confirmation Hearing”) before the Honorable Paul G. Hyman, Chief Judge of the United States Bankruptcy Court for the Southern District of Florida (West Palm Beach Division), in the United States Bankruptcy Court for the Southern District of Florida (West Palm Beach Division), Flagler Waterview Building, 1515 North Flagler Drive, 8<sup>th</sup> Floor, West Palm Beach, FL 33401. The Confirmation Hearing may be adjourned from time to time without notice except as given at the Confirmation Hearing or any subsequent adjourned Confirmation Hearing. The Bankruptcy Court has directed that objections, if any, to the confirmation of the Plan be served on or before [\_\_\_\_], 2010 at [\_\_\_\_]. (prevailing Eastern time) in the manner described in the Notice accompanying this Disclosure Statement.

##### **B. Confirmation Standards**

For a plan to be confirmed, the Bankruptcy Code requires, among other things, that a plan be proposed in good faith and comply with the applicable provisions of Chapter 11 of the Bankruptcy Code. Section 1129 of the Bankruptcy Code also imposes requirements that at least one class of impaired claims accept a plan, that confirmation of a plan is not likely to be followed by the need for further financial reorganization, that a plan be in the best interest of creditors, and that a plan be fair and equitable with respect to each class of claims or interests which is impaired under the plan.

The Bankruptcy Court will confirm a plan only if it finds that all of the requirements enumerated in section 1129 of the Bankruptcy Code have been met. The Plan Proponents believe that the Plan satisfies all of the requirements for confirmation.

### **VI. FUNDING AND FEASIBILITY OF THE PLAN**

#### **A. Funding of the Plan**

Payment of Allowed Administrative Claims, fees incurred by the Liquidating Trust pursuant to 28 U.S.C. § 1830 (the “Statutory Fees”), and Allowed Class 1A, 1B, 2A and 2B

Claim, and Class 3A and 3B Interests, shall be funded from the Trust Assets of the respective Liquidating Trusts, including that portion of the Kaufman Rossin Settlement Payment allocable to the Liquidating Trusts, as the same may be augmented from time to time from, among other things, the liquidation of Trust Assets and the prosecution and enforcement of the Litigation Claims by the Liquidating Trust(s). The Plan Proponents expect that the Trust Assets as of the Effective Date will be sufficient to pay Allowed Administrative Claim (including Professional Claims), Statutory Fees and any Allowed Claim of the JOL for making a substantial contribution in these Chapter 11 Cases.

### **B. Best Interests Test**

Notwithstanding acceptance of the Plan by each Impaired Class, in order to confirm the Plan, the Bankruptcy Court must determine that the Plan is in the best interests of each holder of a Claim or Interest in any such Impaired Class who has not voted to accept the Plan. Accordingly, if an Impaired Class does not unanimously accept the Plan, the best interests test requires the Bankruptcy Court to find that the Plan provides to each member of such Impaired Class a recovery on account of the Class member's Claim or Interest that has a value, as of the Effective Date, at least equal to the value of the distribution that each such Class member would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code on such date.

To estimate what members of each Impaired Class of unsecured creditors and equity security holders would receive if the Debtors were liquidated under chapter 7, the Bankruptcy Court must first determine the aggregate dollar amount that would be generated from the Debtors' assets if the Chapter 11 Cases were converted to chapter 7 cases under the Bankruptcy Code and the assets were liquidated by a trustee in bankruptcy (the "Liquidation Value" of such assets). The Liquidation Value would consist of the net proceeds from the disposition of the Debtors' Assets and would be augmented by any Cash held by the Debtors.

The Liquidation Value of the Debtors' Assets available to General Unsecured Claims would be reduced by the costs and expenses of the liquidation, as well as other administrative expenses of the chapter 7 cases. The Debtors' costs of liquidation under chapter 7 would include the compensation of a trustee or trustees, as well as counsel and other professionals retained by the trustee(s), disposition expenses, all unpaid expenses incurred by the Debtors during their chapter 11 proceedings (such as compensation for attorneys and accountants) which are allowed in the chapter 7 proceedings, and litigation costs and claims against the Debtors arising from their business operations during the pendency of their Chapter 11 Cases and chapter 7 liquidation proceedings. These costs, expenses and claims would be paid in full out of the Debtors' liquidation proceeds before the balance would be made available to pay General Unsecured Claims.

The Plan Proponents believe that distributions under the Plan will provide at least the same recovery to holders of Allowed Claims and Interests against each of the Debtors on account of such Allowed Claims and Interests as would distributions by a chapter 7 trustee regardless of whether the Debtors were substantively consolidated in such chapter 7 case(s).

The Plan Proponents believe that holders of Allowed Claims will receive a greater distribution pursuant to the Plan than they would under Chapter 7 because of the imposition of



Bar Orders which will enhance the settlement value of Litigation Claims. As an example, the willingness of Kaufman Rossin and its malpractice carrier to tender the remaining portion of the existing Kaufman Rossin insurance policy is premised upon the Bar Order to be provided in favor of Kaufman Rossin.

### **C. Avoidance Action Analysis**

Given that the Debtors ceased operating more than a year prior to the Petition Date, the Plan Proponents do not believe that there will be any meaningful recovery pursuant to Section 547 of the Bankruptcy Code. However, except as otherwise provided in the releases, the Liquidating Trustee and the PBF II Liquidating Trust Monitor, in the case of transfers made by PBF II, reserve their right to conduct a further review of the transfers made within 90 days and one year of the Petition Date and to seek recovery of such transfers under the provisions of the Bankruptcy Code before or after the Confirmation Date.

The Plan Proponents believe there may be additional Litigation Claims pursuant to Sections 544 and 548 of the Bankruptcy Code and Florida Statute Chapter 726 against some of the parties identified on Schedule 1.52 of the Plan.

### **D. Feasibility**

Section 1129(a)(11) of the Bankruptcy Code requires that the Debtor be able to perform their obligations under the Plan. For purposes of determining whether the Plan meets this requirement, the Plan Proponents analyzed the Debtors' ability to meet their obligations under the Plan. The Plan Proponents believe that the Debtors have adequate funding to be able to meet their obligations under the Plan.

### **E. Risk Factors Associated with the Plan**

Holders of Claims against, and Interests in, the Debtors should read and consider carefully the information set forth below, as well as the other information set forth in this Disclosure Statement (and the documents delivered together herewith and/or incorporated by reference), prior to voting to accept or reject the Plan. This information, however, should not be regarded as the only risk involved in connection with the Plan and its implementation.

The Claims of holders of Class 1A, 1B, 2A and 2B Claims are subject to the risk of dilution if the total amount of Claims is higher than the Plan Proponents' estimate. A number of Disputed Claims are material and the total amount of all Claims, including Disputed Claims, is materially in excess of the total amount of Allowed Claims assumed in calculating the estimated distributions as set forth herein. Accordingly, the amount of distribution that will ultimately be received by any particular holder of a Class 1A, 1B, 2A or 2B Claim may be adversely affected by the aggregate amount of all Allowed Claims. Consequently, distributions to holders of Class 1A, 1B, 2A and 2B Claims will be made on an incremental basis until all Disputed Claims have been resolved.

A substantial amount of time may elapse between the Effective Date and the receipt of distributions, including, but not limited to, a Final Distribution, under the Plan for certain holders of Claims, because it may take a substantial amount of time to obtain a recovery, if any from the

pursuit of the Litigation Claims by the Liquidating Trusts. To the extent that distributions under the Plan are derived, in whole or in part, from recoveries on the Litigation Claims prosecuted by the Liquidating Trustee (or in the case of certain claims held by the PBF II Liquidating Trust, the PBF II Liquidating Trust Monitor), there can be no assurance that any such Litigation Claims will produce recoveries that will provide sufficient funds for such distributions to be made by the Liquidating Trusts. The determination of whether distributions will be made to Class 1A, 1B, 2A or 2B will depend almost entirely on the outcome of the Litigation Claims.

The Kaufman Rossin Settlement is contingent upon approval by the Bankruptcy Court, which further requires imposition of a Bar Order precluding claims against Kaufman Rossin. If the Bankruptcy Court fails to approve the Bar Order, the Trustee may seek funding for the activities of the Liquidating Trusts from other sources and/or seek to modify the mode of compensation for the Liquidating Trustee's professionals.

Even if all Classes entitled to vote accept the Plan, the Plan might not be confirmed by the Bankruptcy Court. Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation and requires, among other things, that the confirmation of a plan of reorganization is not likely to be followed by the liquidation or the need for further financial reorganization unless, as here, such liquidation or reorganization is proposed in the plan, and that the value of distributions to dissenting creditors and equity security holders not be less than the value of distributions such creditors and equity security holders would receive if the debtor was liquidated under chapter 7 of the Bankruptcy Code. Because the Plan contemplates the liquidation of the Debtors' Estates, the Plan Proponents believe that the foregoing concerns are not implicated and that the Plan satisfies all the requirements for confirmation of a plan of reorganization under the Bankruptcy Code. There can be no assurance, however, that the Bankruptcy Court will also conclude that the requirements for confirmation of the Plan have been satisfied.

Additionally, successful confirmation of the Plan is subject to satisfaction or waiver of the conditions to Plan effectiveness, which are discussed in detail above. **THUS, THERE CAN BE NO ASSURANCE THAT ALL OF THE VARIOUS CONDITIONS TO EFFECTIVENESS OF THE PLAN WILL BE TIMELY SATISFIED OR WAIVED.**

## VII. ALTERNATIVES TO THE PLAN

Although this Disclosure Statement is intended to provide information to assist a Claim or Interest holder in determining whether to vote for or against the Plan, a summary of the alternatives to confirmation of the Plan may be helpful.

If the Plan is not confirmed with respect to either of the Debtors, the following alternatives are available: (a) confirmation of another chapter 11 plan; (b) conversion of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code; or (c) dismissal of the Chapter 11 Cases leaving creditors and interest holders to pursue available non-bankruptcy remedies. These alternatives to the Plan are very limited and not likely to benefit creditors. As a Chapter 11 trustee has been appointed, the Debtors are not in a position to propose their own plan. Furthermore, no other party in interest has expressed any interest in proposing a plan. Accordingly, the most likely result if the Plan is not confirmed is that the Chapter 11 Cases will

be converted to cases under chapter 7 of the Bankruptcy Code. The Debtors believe that conversion of the Chapter 11 Cases to chapter 7 cases would result in (i) significant delay in distributions to all creditors who would have received a distribution under the Plan and (ii) diminished recoveries for holders of General Unsecured Claims. If the Chapter 11 Cases are dismissed, creditors would be free to pursue non-bankruptcy remedies in their attempts to satisfy claims against the Debtors. However, in that event, creditors would be faced with the costs and difficulties of attempting, each on its own, to collect claims from a non-operating entity.

## VIII.

### CERTAIN U.S. FEDERAL INCOME TAX CONSIDERATIONS

#### A. In General

The following discussion summarizes certain material U.S. federal income tax consequences expected to result from the consummation of the Plan. This discussion is based on current provisions of the Internal Revenue Code of 1986, as amended (the “IRC”), applicable Treasury Regulations, judicial authority and current administrative rulings and pronouncements of the Internal Revenue Service (the “Service”). There can be no assurance that the Service will not take a contrary view, no ruling from the Service has been or will be sought nor will any counsel provide a legal opinion as to any of the expected tax consequences set forth below.

Legislative, judicial or administrative changes or interpretations may be forthcoming that could alter or modify the statements and conclusions set forth herein. Any such changes or interpretations may or may not be retroactive and could affect the tax consequences to the beneficial owners of Claims or Interests (each a “Holder” and collectively, the “Holders”), the Liquidating Trust or the Debtors. It cannot be predicted at this time whether any tax legislation will be enacted or, if enacted, whether any tax law changes contained therein would affect the tax consequences described herein.

The following summary is for general information only. The tax treatment of a Holder may vary depending upon such Holder’s particular situation. This summary does not address all of the tax consequences that may be relevant to a Holder, including any alternative minimum tax consequences and does not address the tax consequences to a Holder that has made an agreement to resolve its Claim in a manner not explicitly provided for in the Plan. Except as may be contained in the general discussion at Section B of this Article VIII with respect to Debtors’ partners, this summary also does not address the U.S. federal income tax consequences to persons not entitled to vote on the Plan or Holders subject to special treatment under the U.S. federal income tax laws, such as the brokers or dealers in securities or currencies, certain securities traders, tax-exempt entities, financial institutions, insurance companies, foreign persons, Holders that hold Claims as a position in a “straddle” or as part of a “synthetic security,” “hedging,” “conversion” or other integrated instrument, Holders that have a “functional currency” other than the United States dollar and Holders that have acquired Claims in connection with the performance of services. The following summary assumes that the Claims are held by Holders as “capital assets” within the meaning of Section 1221 of the IRC and that all Claims denominated as indebtedness are properly treated as debt for U.S. federal income tax purposes.



**EACH HOLDER SHOULD CONSULT ITS TAX ADVISOR AS TO THE PARTICULAR TAX CONSEQUENCES OF THE PLAN, INCLUDING THE APPLICABILITY AND EFFECT OF ANY STATE, LOCAL OR FOREIGN TAX LAWS.**

**A. U.S. Federal Income Tax Consequences to the Debtors; Discharge of Indebtedness for Debtors and the Debtors' Partners.**

U.S. federal income taxes, like many other taxes, have priority pursuant to Bankruptcy Code section 507(a)(8). Accordingly, such Claims must be satisfied before most other Claims may be paid. Because the Debtors are organized as limited partnerships with tax obligations flowing through to the members of the partnership, the Plan Proponents do not believe that any U.S. federal income taxes have accrued with respect to taxable years ending after the Petition Date.

In general, the discharge of indebtedness is treated as taxable ordinary income to the debtor whose debt is cancelled. There are a number of exceptions and exclusions that apply to this general rule, including exclusions for taxpayers who are insolvent or in a bankruptcy proceeding at the time of the discharge. Taxpayers whose debt is discharged and who qualify for an exclusion are required to reduce certain tax attributes including their adjusted tax basis in property. Taxpayers who qualify for the exclusion and must, therefore, reduce their tax attributes may elect to reduce the basis of depreciable property before reducing other tax attributes.

The Debtors are organized as partnerships for U.S. federal income tax purposes. If a partnership's debt is canceled because of bankruptcy or insolvency, the rules for the exclusion of the canceled amount from gross income and for tax attribute reduction are applied at the individual partner level and not at the partnership level. Thus, each partner's share of debt cancellation income must be reported on the partner's return unless the partner (as opposed to the partnership) qualifies for the bankruptcy or insolvency exclusion. All elections with respect to the tax treatment of the debt cancellation, such as the choices to reduce the basis of depreciable property before reducing other tax attributes, to treat real property inventory as depreciable property, and to end the tax year on the day before filing the bankruptcy case, must be made by the partners, not the partnership.

1. Depreciable property. For purposes of reducing the basis of depreciable property in attribute reduction, a partner treats his or her partnership interest as depreciable property to the extent of the partner's proportionate interest in the partnership's depreciable property. This applies only if the partnership makes a corresponding reduction in the partnership's basis in its depreciable property with respect to the partner.
2. Partner's basis in partnership. The allocation of an amount of debt cancellation income to a partner results in that partner's basis in the partnership being increased by that amount. At the same time, the reduction in the partner's share of partnership liabilities caused by the debt cancellation results in a deemed distribution, in turn resulting in a reduction of the partner's basis in the

partnership. These basis adjustments are separate from any basis reduction under the attribute-reduction rules described earlier.

## **B. U.S. Federal Income Tax Treatment of the Liquidating Trust**

It is intended that the Liquidating Trusts will each be treated as a “grantor trust” for U.S. federal income tax purposes. In general, a grantor trust is not a separate taxable entity. The Service, in Revenue Procedure 94-45, 1994-2 C.B. 684, set forth the general criteria for obtaining a Service ruling as to the grantor trust status of a liquidating trust under a chapter 11 plan. The Liquidating Trusts have been structured with the intention of complying with such general criteria. Assuming the Liquidating Trusts are each classified as a grantor trust, for U.S. federal income tax purposes, (i) the Debtors and each Beneficiary will treat the transfer of the assets to the Liquidating Trusts as a transfer of such assets to the Beneficiaries and a transfer by the Beneficiaries of such assets to the Liquidating Trusts and (ii) each Beneficiary will be treated as the grantor and deemed owner and obligor of its allocable share of the assets and liabilities, respectively, of the Liquidating Trusts.

The Liquidating Trust Agreements generally provide that the Beneficiaries of the Liquidating Trust must value the assets of the Liquidating Trusts consistently with the values determined by the Liquidating Trustee for U.S. federal, state, local and foreign income tax purposes. As soon as possible after the Effective Date, but in no event later than ninety (90) days thereafter, the Liquidating Trustee, based upon their good faith determination after consultation with counsel, shall inform the Beneficiaries in writing solely as to the estimate of the value of the assets transferred to the Liquidating Trusts.

The foregoing discussion assumes that the Liquidating Trusts will be respected as grantor trusts for U.S. federal income tax purposes. If the Service were to challenge successfully such classification, the U.S. federal income tax consequences to the Liquidating Trusts and the Beneficiaries could vary from those discussed herein (including the potential for an entity level tax to be imposed on any income of the Liquidating Trusts).

The Liquidating Trust Agreements require each Beneficiary to report on its U.S. federal income tax return its allocable share of the Liquidating Trust’s income. Therefore, a Beneficiary may incur a U.S. federal income tax liability with respect to its allocable share of the income of the Liquidating Trust whether or not the Liquidating Trust has made any concurrent distribution to such Beneficiary. The character of items of income, deduction, and credit to any Beneficiary and the ability of such Holder to benefit from any deduction or losses will depend on the particular situation of such Holder.

In general, other than in respect of distributions attributable to a reduction in the Disputed Claims Reserve’s interest in the Liquidating Trusts a distribution of underlying assets from a Liquidating Trust to a Beneficiary will generally not be taxable to such Holder because such Holders are already regarded for U.S. federal income tax purposes as owning such assets. Beneficiaries are urged to consult their tax advisors regarding the appropriate U.S. federal income tax treatment of distributions from the Liquidating Trusts.

The Liquidating Trustee will file with the Service tax returns for the Liquidating Trusts as grantor trusts pursuant to Treasury Regulation section 1.671-4(a) and will also send to each Beneficiary a separate statement setting forth such Holder's share of items of income, gain, loss, deduction, or credit. Each such Holder will be required to report such items on its U.S. federal income tax return.

### **C. Disputed Claims Reserve**

Until such time as all of the beneficial interests in each Liquidating Trust (and the proceeds thereof) can be distributed to the Holders in accordance with the terms of the Plan, the Disputed Claims Reserve will be treated as owning a portion of the assets in the respective Liquidating Trust. Distributions from the Disputed Claims Reserve will be made to Holders of Disputed Claims when such Claims are subsequently Allowed and to other Beneficiaries when any Disputed Claims are subsequently disallowed. The Liquidating Trusts shall file all income tax returns with respect to any income attributable to the Disputed Claims Reserve and shall pay the federal, state and local income taxes attributable to the Disputed Claims Reserve, based on the items of income, deduction, credit or loss allocable thereto.

Beneficiaries should note the tax treatment of the Liquidating Trusts and the Disputed Claims Reserve is unclear and should consult their tax advisors.

### **D. U.S. Federal Income Tax Consequences to Holders of Claims**

In general, Holders of Claims will recognize gain or loss on their Claims as set forth below. The character of any gain or loss as capital gain or loss or ordinary income or loss and, in the case of capital gain or loss, as short-term or long-term, will depend on a number of factors, including: (i) the nature and origin of the Claim; (ii) the tax status of the Holder of the Claim; (iii) whether the Claim has been held for more than one year; (iv) the extent to which the Holder previously claimed a loss or bad debt deduction with respect to the Claim; and (v) whether the Claim was acquired at a market discount. A Holder of a Claim that purchased its Claim from a prior Holder at a market discount may be subject to the market discount rules of the IRC. Under those rules, assuming that such Holder has made no election to amortize the market discount into income on a current basis, any gain recognized on the exchange of such Claim (subject to a *de minimis* rule) generally would be characterized as ordinary income to the extent of the accrued market discount on such Claim as of the date of the exchange.

#### **1. Holders of Allowed Claims and Interests.**

Although the Beneficiaries will generally be treated for U.S. federal income tax purposes as receiving the assets of the Liquidating Trusts from the Debtors and then transferring them to the Liquidating Trusts, because the Plan provides that Holders of Administrative Claims will receive specified fixed amounts from the Liquidating Trusts, the Liquidating Trustee intend to treat the actual payments made to such Holders from the Liquidating Trust as being made in exchange for these Claims on the date of payment thereof.

Although not free from doubt, Holders of Allowed Claims and Interests as of the Effective Date should be treated as receiving from the Debtors their share of the assets of the Liquidating Trust remaining (other than any assets allocated to the Disputed Claims Reserve)



after distributions to Holders of Administrative Claims in satisfaction of their Allowed Claims, and simultaneously transferring such assets to the Liquidating Trust. Accordingly, a Holder of Allowed Claims and Interests as of the Effective Date should initially recognize gain or loss in an amount equal to: (i) its share of the amount of the fair market value of the assets of the Liquidating Trust deemed received on the Effective Date, less (ii) the adjusted tax basis of its Claim or Interest, except to the extent such Holder receives amounts representing accrued and unpaid interest, which amounts will be taxed as interest. Additionally, such Holder should recognize its allocable share of taxable income on the assets and deductions of the Liquidating Trust recognized by the Liquidating Trust on an annual basis.

Because a Holder's ultimate share of the assets of the Liquidating Trust based on its Allowed Claim or Interest will not be determinable on the Effective Date due to, among other things, the existence of Disputed Claims, the value of the Assets at the time of actual receipt not being ascertainable on the Effective Date and (in the case of Allowed Interests) the subordination of Allowed Interests to Allowed Claims, such Holder should recognize additional or offsetting gain or loss if, and to the extent that, the aggregate amount of cash and fair market value of the assets of the Liquidating Trust ultimately received by such Holder is greater than or less than the amount used in initially determining gain or loss in accordance with the procedures described in the preceding paragraph. It is unclear when a Holder of an Allowed Claim or Interest should recognize, as an additional amount received in the liquidation for purposes of computing gain or loss, an amount attributable to the disallowance of a Disputed Claim. It is possible that a Holder of an Allowed Claim and Interest may be required to recognize such amount when a Disputed Claim or Interest is Disallowed, or alternatively when the Holder of an Allowed Claim or Interest receives distributions resulting from such disallowance.

It is possible that the Service may assert that any loss should not be recognizable until the Liquidating Trustee makes its Final Distribution of the assets of the Liquidating Trust. Holders should consult their tax advisors regarding the possibility that the recognition of gain or loss may be deferred until the Final Distribution of the assets of the Liquidating Trust.

## **2. Holders of Disputed Claims.**

Although not free from doubt, Holders of Disputed Claims or Interests should not recognize any gain or loss on the date that the assets of the Debtors are transferred to the Liquidating Trust, but should recognize gain or loss in an amount equal to: (i) the amount of cash and the fair market value of any other property actually distributed to such Holder (other than any amounts attributable to accrued and unpaid interest, which will be taxable as such) less (ii) the adjusted tax basis of its Claim other than for accrued and unpaid interest. However, it is possible that such Holders may be required to recognize the fair market value of such Holder's allocable share of the Liquidating Trust's assets, as an amount received for purposes of computing gain or loss, either on the Effective Date or the date such Holder's Claim becomes an Allowed Claim or Interest.

### **E. Interest Income with respect to Allowed Claims**

Holders of Allowed Claims will be treated as receiving a payment of interest (includible in income in accordance with the Holder's method of accounting for tax purposes) to the extent

that any cash or other property received (or deemed received) pursuant to the Plan is attributable to accrued but unpaid interest, if any, on such Allowed Claims. The extent to which the receipt of cash or other property should be attributable to accrued but unpaid interest is unclear. The Debtors and the Liquidating Trusts intend to take the position that such cash or property distributed pursuant to the Plan will first be allocable to the principal amount of an Allowed Claim and then, to the extent necessary, to any accrued but unpaid interest thereon. Each Holder should consult its tax advisor regarding the determination of the amount of consideration received under the Plan that is attributable to interest (if any). A Holder generally will be entitled to recognize a loss to the extent any accrued interest was previously included in its gross income and is not paid in full.

#### **F. Backup Withholding and Information Reporting**

A Holder of an Allowed Claim may be subject to backup withholding currently at the rate of 28% with respect to any "reportable" payments received pursuant to the Plan unless (i) such Holder is a corporation or comes within certain other exempt categories and, when required, demonstrates this fact or (ii) provides a correct taxpayer identification number, certifies as to no loss of exemption from backup withholding and complies with applicable requirements of the backup withholding rules. A Holder who does not provide a correct taxpayer identification number may be subject to penalties imposed by the Service. Amounts withheld under the backup withholding rules may be credited against a Holder's tax liability, and a Holder may obtain a refund of any excess amounts withheld under the backup holding rules by timely filing the appropriate claim for refund with the Service.

The Liquidating Trustee will report annually to each Holder of an Allowed Claim or Interest and to the Service the Holder's share of any income, gains and losses of the Liquidating Trust during the calendar year to the extent required by law.

**THE FOREGOING DISCUSSION OF CERTAIN U.S. FEDERAL INCOME TAX CONSIDERATIONS IS FOR GENERAL INFORMATION PURPOSES ONLY AND IS NOT TAX ADVICE. ACCORDINGLY, EACH HOLDER SHOULD CONSULT ITS TAX ADVISOR WITH RESPECT TO THE TAX CONSEQUENCES OF THE PLAN DESCRIBED HEREIN AND THE APPLICATION OF FEDERAL, STATE, LOCAL AND FOREIGN TAX LAWS. NEITHER THE DEBTORS, THE COMMITTEE NOR EITHER OF THEIR PROFESSIONALS SHALL HAVE ANY LIABILITY TO ANY PERSON OR HOLDER ARISING FROM OR RELATED TO THE U.S. FEDERAL, STATE, LOCAL OR FOREIGN TAX CONSEQUENCES OF THE PLAN OR THE FOREGOING DISCUSSION.**

#### **IX.**

#### **CONCLUSION**

For all of the reasons set forth in this Disclosure Statement, the Plan Proponents believe that confirmation of the Plan is preferable to all other alternatives. Consequently, the Plan Proponents recommend all holders of Class 1A, 1B, 2A and 2B Claims, and Class 3A and 3B Interests, vote to **ACCEPT** the Plan, and to complete and return their Ballots so that they will be

**RECEIVED** by the Clerk of the Bankruptcy Court on or before [ ] p.m. (prevailing Eastern time) on [ ], 2010.

Dated: July 26, 2010

PALM BEACH FINANCE PARTNERS, L.P.

/s/ Barry Mukamal ~~FILED WITH CONSENT~~  
By: Barry Mukamal  
Title: Chapter 11 Trustee of  
Palm Beach Finance Partners, L.P.

PALM BEACH FINANCE II, L.P.

/s/ Barry Mukamal ~~FILED WITH CONSENT~~  
By: Barry Mukamal  
Title: Chapter 11 Trustee of  
Palm Beach Finance II, L.P.

PALM BEACH OFFSHORE, LTD.

/s/ Geoffrey Varga ~~FILED WITH CONSENT~~  
By: Geoffrey Varga  
Title: Joint Official Liquidator of  
Palm Beach Offshore, Ltd.

PALM BEACH OFFSHORE II, LTD.

/s/ Geoffrey Varga ~~FILED WITH CONSENT~~  
By: Geoffrey Varga  
Title: Joint Official Liquidator of  
Palm Beach Offshore II, Ltd.



**EXHIBIT A**

**FIRST AMENDED JOINT PLAN OF LIQUIDATION**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)

In re:

Chapter 11

PALM BEACH FINANCE PARTNERS, L.P.,  
a Delaware limited partnership, *et al.*,<sup>1</sup>

Case No. 09-36379-BKC-PGH

Jointly Administered

Debtors.

---

**JOINT PLAN OF LIQUIDATION OF BARRY MUKAMAL, AS CHAPTER 11  
TRUSTEE OF PALM BEACH FINANCE PARTNERS, L.P. AND PALM BEACH  
FINANCE II, L.P., AND GEOFFREY VARGA, AS JOINT OFFICIAL LIQUIDATOR  
FOR PALM BEACH OFFSHORE, LTD. AND PALM BEACH OFFSHORE II, LTD.**

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-and-

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201 South Biscayne Boulevard  
Miami Center – 34<sup>th</sup> Floor  
Miami, Florida 33131

Counsel for Geoffrey Varga, as Joint Official Liquidator of Palm Beach Offshore, Ltd.  
and Palm Beach Offshore II, Ltd.

---

<sup>1</sup> The address and last four digits of the taxpayer identification number for each of the Debtors follows in parenthesis: (i) Palm Beach Finance Partners, L.P., 3601 PGA Blvd, Suite 301, Palm Beach Gardens, FL 33410 (TIN 9943); and (ii) Palm Beach Finance II, L.P., 3601 PGA Blvd, Suite 301, Palm Beach Gardens, FL 33410 (TIN 0680).

**EXHIBIT A**

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## INTRODUCTION

Barry Mukamal, as Chapter 11 Trustee (the “Trustee”) of Palm Beach Finance Partners, L.P., a Delaware limited partnership, (“PBF”) and Palm Beach Finance II, L.P., a Delaware limited partnership, (“PBF II” and together with PBF, the “Debtors”), and Geoffrey Varga, as Joint Official Liquidator of Palm Beach Offshore, Ltd. and Palm Beach Offshore II, Ltd. (“JOL” and together with the Trustee, the “Plan Proponents”) propose this Joint Plan of Liquidation of PBF and PBF II (the “Plan”) for the resolution and satisfaction of all Claims against and Interests in the Debtors. The Plan Proponents are the proponents of this Plan within the meaning of section 1129 of the Bankruptcy Code. All capitalized terms not defined in this introduction have the meanings ascribed to them in Article 1 of this Plan. Reference is made to the Disclosure Statement, distributed contemporaneously herewith, for a discussion of the Debtors’ history, businesses, resolution of material disputes, significant asset sales, financial projections for the liquidation and distribution of the Debtors’ remaining assets and a summary and analysis of the Plan and certain related matters.

This is a liquidating Plan pursuant to which all of the Debtors’ assets are to be transferred to liquidating trusts which will liquidate the assets and prosecute any potential Litigation Claims held by the Debtors. All resulting funds will be distributed to certain holders of Allowed Claims and Interests as set forth herein, whose claims against the Debtors will be exchanged for a beneficial interest in the Liquidating Trusts.

Under section 1125(b) of the Bankruptcy Code, a vote to accept or reject the Plan cannot be solicited from holders of claims and/or interests until such time as the Disclosure Statement has been approved by the Bankruptcy Court. The Plan Proponents urge all holders of Claims and Interests entitled to vote on the Plan to read the Plan and the Disclosure Statement in their

entirety before voting to accept or reject the Plan. To the extent, if any, that the Disclosure Statement is inconsistent with the Plan, the Plan will govern. No solicitation materials other than the Disclosure Statement and any schedules and exhibits attached thereto or referenced therein, or otherwise enclosed with the Disclosure Statement served by the Plan Proponents on interested parties, or as otherwise ordered by the Bankruptcy Court, have been authorized by the Plan Proponents or the Bankruptcy Court for use in soliciting acceptances of the Plan. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code, Federal Bankruptcy Rule 3019 and Article 14 of this Plan, the Plan Proponents expressly reserve the right to alter, amend, modify, revoke, or withdraw this Plan prior to its substantial consummation.

## **ARTICLE 1**

### **DEFINITIONS, INTERPRETATION AND RULES OF CONSTRUCTION**

**A. Scope of Definitions.** For the purposes of this Plan, except as expressly provided or unless the context otherwise requires, all capitalized terms not otherwise defined shall have the meanings ascribed to them in Article 1 of this Plan. Any term used in this Plan that is not defined herein, but is defined in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules, respectively. Whenever the context requires, capitalized terms shall include the plural as well as the singular number, the masculine gender shall include the feminine, and the feminine gender shall include the masculine.

**B. Definitions.** In addition to such other terms as are defined in other Sections of the Plan, the following terms (which appear in the Plan as capitalized terms) shall have the meanings ascribed to them in this Article 1 of the Plan.



**1.1 Administrative Claim:** A Claim for any cost or expense of administration (including Professional Claims) of the Chapter 11 Cases asserted or arising under sections 503, 507(a)(1), or 507(b) of the Bankruptcy Code, including any (i) actual and necessary cost or expense of preserving the Debtors' Estates arising on or after the Petition Date, (ii) compensation or reimbursement of expenses of Professionals arising on or after the Petition Date, to the extent allowed by the Bankruptcy Court under section 330(a) or section 331 of the Bankruptcy Code, (iii) compensation or reimbursement for actual, necessary expenses in making a substantial contribution in the Chapter 11 Cases, and (iv) fees or charges assessed against the Debtors' Estates under section 1930 of title 28 of the United States Code.

**1.2 Administrative Claims Bar Date:** The first Business Day that is at least sixty (60) days following the Effective Date.

**1.3 Allowed ☐ Claim or Allowed ☐ Interest:** An Allowed Claim or Allowed Interest in the particular category or Class identified.

**1.4 Allowed Claim or Allowed Interest:** A Claim against or Interest in the Debtors or any portion thereof (a) that has been allowed by a Final Order, or (b) as to which, on or by the Effective Date, (i) no proof of Claim or Interest has been filed with the Bankruptcy Court and (ii) the liquidated and noncontingent amount of which is Scheduled, other than a Claim that is Scheduled at zero, in an unknown amount, or as disputed, or (c) for which a proof of Claim in a liquidated amount has been timely filed with the Bankruptcy Court pursuant to the Bankruptcy Code, any Final Order of the Bankruptcy Court, or other applicable bankruptcy law, and as to which either (i) no objection to its allowance has been filed within the applicable periods of limitation fixed by the Plan, the Bankruptcy Code, or by any order of the Bankruptcy Court sought pursuant to Section 8.2 of the Plan or otherwise entered by the Bankruptcy Court or

(ii) any objection to its allowance has been settled or withdrawn, or has been denied by a Final Order, or (d) that is expressly allowed in a liquidated amount in the Plan.

**1.5 Assets:** All legal or equitable pre-petition and post-petition interests of the Debtors in any and all real or personal property of any nature, including any real estate, buildings, structures, improvements, privileges, rights, easements, leases, subleases, licenses, goods, materials, supplies, furniture, fixtures, equipment, work in process, accounts, chattel paper, cash, deposit accounts, reserves, deposits, contractual rights, intellectual property rights, claims, causes of actions, and any other general intangibles, and the proceeds, product, offspring, rents or profits thereof.

**1.6 Available Cash:** All Cash available for distribution to Beneficiaries under the respective Liquidating Trust Agreement less the amount of Cash deposited in the Disputed Claims Reserve.

**1.7 Bankruptcy Code:** Title 11 of the United States Code, as in effect on the Petition Date and as thereafter amended, as applicable in the Chapter 11 Cases.

**1.8 Bankruptcy Court:** The United States Bankruptcy Court for the Southern District of Florida and, to the extent it may exercise jurisdiction in the Chapter 11 Cases, the United States District Court for the Southern District of Florida, or if either such court ceases to exercise jurisdiction over the Chapter 11 Cases, such court or adjunct thereof that properly exercises jurisdiction over the Chapter 11 Cases.

**1.9 Bankruptcy Rules:** The Federal Bankruptcy Rules, the Local Rules of the Bankruptcy Court for the Southern District of Florida and the guidelines and requirements of the Office of the United States Trustee, as in effect on the Petition Date and as thereafter amended, as applicable from time to time in the Chapter 11 Cases.

**1.10 Bar Date:** The deadline for filing and serving upon the Debtors all proofs of claims established by the Bankruptcy Court as April 6, 2010.

**1.11 Bar Order:** Shall mean the bar order contemplated by the Kaufman Rossin Settlement Agreement.

**1.12 Barred Claims:** Shall mean any and all direct, indirect and/or derivative claims, whether known or unknown, by any and all Releasors against Kaufman Rossin that: (i) were alleged in the Kaufman Rossin Litigations; (ii) were threatened by the Releasors; (iii) relate to or arise from the transactions and occurrences alleged in the Kaufman Rossin Litigations; (iv) relate to or arise from Kaufman Rossin's duties to any of the Releasors, if any; or (v) that could have been brought in the Kaufman Rossin Litigations.

**1.13 Beneficiary or Beneficiaries:** The holder(s) of an Allowed Claim or Allowed Interest as may be determined from time to time in accordance with the Plan and Liquidating Trust Agreements.

**1.14 Business Day:** Any day other than a Saturday, Sunday, a "legal holiday" (as such term is defined in Federal Bankruptcy Rule 9006(a)) or Rosh Hashanah (both days), Yom Kippur, Succoth (first two (2) days), Shmini Atzereth, Simchas Torah, Passover (first two (2) days and last two (2) days) and Shavuoth (both days).

**1.15 Cash:** Legal tender accepted in the United States of America for the payment of public and private debts, currently denominated in United States Dollars.

**1.16 Chapter 11 Cases:** The jointly administered Chapter 11 bankruptcy cases of the Debtors pending in the United States Bankruptcy Court for the Southern District of Florida (West Palm Beach Division).



**1.17 Claim:** A right of a Creditor against the Debtors, or any one of them, whether or not asserted or allowed, of the type described in Bankruptcy Code section 101(5), as construed by Bankruptcy Code section 102(2).

**1.18 Class:** A group of Claims or Interests as classified in a particular class under the Plan pursuant to Bankruptcy Code section 1122.

**1.19 Confirmation:** Entry of the Confirmation Order by the Bankruptcy Court.

**1.20 Confirmation Date:** The date on which the Bankruptcy Court enters the Confirmation Order on its docket, within the meaning of Federal Bankruptcy Rules 5003 and 9021.

**1.21 Confirmation Hearing:** The duly noticed hearing held by the Bankruptcy Court to consider Confirmation of the Plan pursuant to Bankruptcy Code section 1128, including any continuances thereof.

**1.22 Confirmation Order:** The order of the Bankruptcy Court confirming the Plan pursuant to Bankruptcy Code section 1129 in form and substance acceptable to the Trustee and the JOL.

**1.23 Creditor:** Any Entity who holds a Claim against either of the Debtors.

**1.24 Debtors:** Palm Beach Finance Partners, L.P. and Palm Beach Finance II, L.P.

**1.25 Disclosure Statement:** That certain written disclosure statement that relates to this Plan as filed in the Chapter 11 Cases by the Trustee and the JOL, including the schedules and exhibits attached thereto, as it may be amended, modified or supplemented from time to time.

**1.26 Disputed Claim or Disputed Interest:** A Claim or Interest, respectively, that the Debtors have Scheduled as “disputed,” “contingent” or “unliquidated,” or as to which a proof of Claim or Interest has been Filed or deemed Filed as contingent or as to which an objection has been or may be timely Filed by the Liquidating Trustee or any other party in interest entitled to do so, which objection, if timely Filed, has not been withdrawn or has not been overruled or denied by a Final Order.

**1.27 Disputed Claims Reserve:** Shall have the meaning set forth in Section 4.1 of the Liquidating Trust Agreements.

**1.28 Distribution Record Date:** The record date for the purposes of making distributions under the Plan on account of Allowed Claims or Interests, which date shall be designated in the Confirmation Order.

**1.29 Effective Date:** A date selected by the Trustee and the JOL, that is (a) at least eleven (11) days following occurrence of the Confirmation Date; and (b) no more than five (5) Business Days following the first date on which no stay of the Confirmation Order is in effect and all conditions to the Effective Date set forth in Article 10 of the Plan have been satisfied or, if waivable, waived pursuant to Section 10.4 hereof.

**1.30 Entity:** A Person, an estate, a trust, the United States Trustee, a “governmental unit” as that term is defined in Bankruptcy Code section 101(27), or any other entity as defined in section 101(15) of the Bankruptcy Code.

**1.31 Estates:** The estates created pursuant to section 541 of the Bankruptcy Code by the commencement of the Chapter 11 Cases.

**1.32 File or Filed:** To file, or to have been filed, with the Clerk of the Bankruptcy Court in the Chapter 11 Cases.

**1.33 Final Distribution:** Shall be the distributions described in Section 9.8 hereof.

**1.34 Final Distribution Date:** Shall be the date upon which the Final Distribution is made. The Final Distribution Date shall be a date determined by the Liquidating Trustee of each of the Liquidating Trusts, (a) which is after the liquidation into Cash of all assets of the respective Liquidating Trusts (other than those assets abandoned by the Liquidating Trust) and collection of other sums due or otherwise remitted or returned to the Estates, and (b) on or after which the Liquidating Trust makes a Final Distribution from the Disputed Claims Reserve.

**1.35 Final Order:** An order or judgment of the Bankruptcy Court or other court of competent jurisdiction, as entered on its docket, that has not been reversed, stayed, modified or amended, and as to which (a) the time to appeal, petition for certiorari or move for reargument, rehearing or a new trial has expired and no appeal, petition for certiorari or motion for reargument, rehearing or a new trial, respectively, has been timely filed (which time period shall mean, with respect to motions to correct such order under Rule 9024 of the Federal Bankruptcy Rules, Rule 60 of the Federal Rules of Civil Procedure or otherwise, 10 days after the entry of such order), or (b) any appeal, any petition for certiorari or any motion for reargument, rehearing or a new trial that has been or may be filed has been resolved by the highest court (or any other tribunal having appellate jurisdiction over the order or judgment) to which the order or judgment was appealed or from which certiorari or reargument, rehearing or a new trial was sought, and the time to take any further appeal, petition for certiorari or move for reargument, rehearing or a new trial shall have expired without such actions having been taken.



**1.36 Final Tax Day:** Shall mean the last day in the taxable year of the respective Liquidating Trust which includes the Termination Date (as defined in the Liquidating Trust Agreements).

**1.37 General Unsecured Claims:** All Unsecured Claims Scheduled by, or filed against, either of the Debtors.

**1.38 Impaired:** When used with reference to a Claim or an Interest, "Impaired" shall have the meaning ascribed to it in Bankruptcy Code section 1124.

**1.39 Interest:** Shall mean an interest of a general or limited partner in either of the Debtors.

**1.40 IRC:** Shall mean the Internal Revenue Code of 1986, as amended from time to time.

**1.41 Investment Manager:** Shall mean Palm Beach Capital Management, LLC.

**1.42 JOL:** Geoffrey Varga, as Joint Official Liquidator for Palm Beach Offshore, Ltd. and Palm Beach Offshore II, Ltd.

**1.43 Kaufman Rossin:** Shall mean, collectively, Kaufman Rossin & Co. and Kaufman Rossin & Co. Cayman.

**1.44 Kaufman Rossin Affiliated Parties:** Shall mean those persons set forth on Exhibit 1 to the Kaufman Rossin Settlement Agreement.

**1.45 Kaufman Rossin Settlement Agreement:** Shall mean that certain Stipulation of Settlement, fully executed as of July 2, 2010, by and among the Trustee, Kaufman Rossin and the JOL resolving for all purposes the claims asserted by the Trustee and the JOL in

the Kaufman Rossin Litigations. A copy of the fully executed Kaufman Rossin Settlement Agreement is attached as Schedule 1.45.

**1.46 Kaufman Rossin Litigations:** Shall mean, together, those actions captioned (i) *Palm Beach Finance Partners, L.P. and Palm Beach Finance II, L.P. v. Kaufman, Rossin & Co.*, Adv. Pro. No. 09-02553-PGH, pending in the United States Bankruptcy Court for the Southern District of Florida (West Palm Beach), and (ii) *Geoffrey Varga and Neil Morris, solely in their capacity as Joint Official Liquidators of Palm Beach Offshore II, Ltd. v. Palm Beach Capital Management LLC, et al.*, Case No. 09-cv-82398-FAM, pending in the United States District Court for the Southern District of Florida.

**1.47 Kaufman Rossin Settlement Payment:** Shall mean the sum to be paid (or caused to be paid) by Kaufman Rossin to the Liquidating Trustee pursuant to the Kaufman Rossin Settlement Agreement, which amount shall not be less than \$9,600,000.00.

**1.48 Lien:** A charge against, interest in or other encumbrance upon property to secure payment of a debt or performance of an obligation.

**1.49 Liquidating Trust Agreements:** Shall mean the PBF Liquidating Trust Agreement and the PBF II Liquidating Trust Agreement.

**1.50 Liquidating Trustee:** Barry Mukamal, as PBF Liquidating Trustee and the PBF II Liquidating Trustee, individually or collectively, as context requires.

**1.51 Liquidating Trusts:** The PBF Liquidating Trust and the PBF II Liquidating Trust.

**1.52 Litigation Claims:** Shall mean, except as provided otherwise in the Plan, the Confirmation Order or any document, instrument, release or other agreement entered into in connection with the Plan, all claims, actions, choses in action, causes of action, suits, debts, dues,

sums of money, accounts, rights to payment, reckonings, bonds, bills, specialties, controversies, variances, trespasses, damages, judgments, third-party claims, counterclaims and cross claims (including, but not limited to, any Chapter 5 avoidance or recovery actions under the Bankruptcy Code or avoidance or recovery claims recognized under any applicable state law) whether known or unknown, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured and whether assertable directly or derivatively in law, equity, or otherwise, that are or may be pending on the Effective Date or instituted after the Effective Date against any Entity identified on Schedule 1.52 based on law or equity. Litigation Claims include, without limitation, those which are: (i) property of the bankruptcy estate under and pursuant to section 541 of the Bankruptcy Code; (ii) for subrogation and contribution; (iii) for turnover; (iv) for avoidable transfers and preferences under and pursuant to sections 542 through 550 and 553 of the Bankruptcy Code or any applicable state law; (v) to determine the extent, validity and priority of liens and encumbrances; (vi) for surcharge under section 506(c) of the Bankruptcy Code; (vii) for subordination under section 510 of the Bankruptcy Code; (viii) related to federal or state securities laws; (ix) direct or derivative claims or causes of action of any type or kind; (x) against any and all current and/or former officers and directors of the Debtors or any affiliates of Thomas J. Petters; (xi) for breach of fiduciary duty or aiding and abetting breach of fiduciary duty; (xii) under and pursuant to any policies for insurance, including for bad faith, maintained by the Debtors, including, without limitation, any liability insurance policy; (xiii) for theft of corporate opportunity; (xiv) for collection on accounts, accounts receivables, loans, notes receivables or other rights to payment; (xv) for the right to seek a determination by the Bankruptcy Court of any tax, fine or penalty relating to a tax, or any addition to a tax, under section 505 of the Bankruptcy Code; (xvi) which arise under or as a result of any section of the



Bankruptcy Code; (xvii) for common law torts or aiding and abetting common law torts; (xviii) contract or quasi contract; (xix) derivative based; (xx) statutory claims; or (xxi) arise out of or are related in any way to actions or claims pending as of the Effective Date.

**1.53 Management Parties:** Shall mean Bruce Prevost, David W. Harrold, Palm Beach Capital Management, LLC, Palm Beach Capital Management, Ltd., Palm Beach Capital Management, LP and Palm Beach Capital Corp.

**1.54 Onshore/Offshore Allocation Formula:** Shall mean that allocation of the Kaufman Rossin Settlement Payment such that (i) the PBF Liquidating Trust shall receive 18% of the Kaufman Rossin Settlement Payment for its benefit, (ii) the PBF II Liquidating Trust shall receive 20.5% of the Kaufman Rossin Settlement Payment for its benefit, and (iii) the Offshore Funds shall receive 61.5% for their benefit. This allocation formula shall apply exclusively to the Kaufman Rossin Settlement Payment and to no other Litigation Claims.

**1.55 Offshore Funds:** Shall mean, together, Palm Beach Offshore, Ltd. and Palm Beach Offshore II, Ltd.

**1.56 Palm Beach Offshore Claims:** Shall mean, together, the Claims asserted against debtor Palm Beach Finance II, L.P. by (i) Geoffrey Varga, solely in his capacity as Joint Official Liquidator of Palm Beach Offshore II, Ltd., evidenced by a timely filed proof of claim designated as Claim #15 on Palm Beach Finance II, L.P.'s claims register in excess of \$140,507,868.06, and (ii) Geoffrey Varga, solely in his capacity as Joint Official Liquidator of Palm Beach Offshore, Ltd., evidenced by a timely filed proof of claim designated as Claim #16 on Palm Beach Finance II, L.P.'s claims register in excess of \$578,319,885.06.

**1.57 PBF:** Palm Beach Finance Partners, L.P.

**1.58 PBF Liquidating Trust:** The liquidating trust established pursuant to the PBF Liquidating Trust Agreement further described in Article 7 hereof.

**1.59 PBF Liquidating Trustee:** Barry Mukamal, as PBF Liquidating Trustee pursuant to the PBF Liquidating Trust Agreement.

**1.60 PBF Liquidating Trust Agreement:** The Liquidating Trust Agreement dated as of the Effective Date among the Trustee and the PBF Liquidating Trustee, a copy of which is attached hereto as Schedule 1.60 and incorporated herein by reference, and all supplements and amendments thereto.

**1.61 PBF Litigation Claims:** Shall mean any Litigation Claim held by PBF or the PBF Liquidating Trust.

**1.62 PBF II:** Palm Beach Finance II, L.P.

**1.63 PBF II Liquidating Trust:** The liquidating trust established pursuant to the PBF II Liquidating Trust Agreement further described in Article 7 hereof.

**1.64 PBF II Liquidating Trustee:** Barry Mukamal, as PBF II Liquidating Trustee pursuant to the PBF II Liquidating Trust Agreement.

**1.65 PBF II Liquidating Trust Agreement:** The Liquidating Trust Agreement dated as of the Effective Date among the Trustee and the PBF II Liquidating Trustee, a copy of which is attached hereto as Schedule 1.65 and incorporated herein by reference, and all supplements and amendments thereto.

**1.66 PBF II Liquidating Trust Monitor:** Geoffrey Varga, as Joint Official Liquidator for Palm Beach Offshore, Ltd. and Palm Beach Offshore II, Ltd., as set forth in Section 4.12 of the PBF II Liquidating Trust Agreement.

**1.67 PBF II Litigation Claims:** Shall mean any Litigation Claim held by PBF II or the PBF II Liquidating Trust.

**1.68 Person:** An individual, a corporation, a limited liability company, a partnership, an association, a joint stock company, a joint venture, an unincorporated organization, or a governmental unit as defined in Bankruptcy Code section 101(41).

**1.69 Petition Date:** November 30, 2009.

**1.70 Petters Bankruptcy Cases:** The bankruptcy cases pending in the United States Bankruptcy Court for the District of Minnesota for the following entities: Petters Company, Inc., Case No. 08-45257; Petters Group Worldwide, LLC, Case No. 08-45258; PC Funding, LLC, Case No. 08-45326; Thousand Lakes, LLC, Case No. 08-45327; SPF Funding, LLC, Case No. 08-45328; PL Ltd., Inc., Case No. 08-45329; Edge One, LLC, Case No. 08-45330; MGC Finance, Inc., Case No. 08-45331; PAC Funding, LLC, Case No. 08-45371; and Palm Beach Finance Holdings, Inc., Case No. 08-45392.

**1.71 Plan:** This joint plan of liquidation, and all schedules annexed hereto or referenced herein, as it may be amended, modified or supplemented from time to time in accordance with the provisions of the Plan or the Bankruptcy Code and Bankruptcy Rules.

**1.72 Plan Proponents:** Barry Mukamal, as Trustee, and Geoffrey Varga, as JOL.

**1.73 Professional:** A Person (a) employed in the Chapter 11 Cases pursuant to a Final Order in accordance with section 327 of the Bankruptcy Code and to be compensated for services rendered prior to the Effective Date pursuant to sections 327, 328, 329, 330, 331 and 363 of the Bankruptcy Code, or (b) for which compensation and reimbursement has been allowed by the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code.



**1.74 Professional Claim:** A Claim of (a) a Professional retained in the Chapter 11 Cases pursuant to a Final Order in accordance with section 327 of the Bankruptcy Code or otherwise, for compensation or reimbursement of actual and necessary costs and expenses relating to services incurred after the Petition Date and prior to and including the Effective Date or (b) a Professional which seeks compensation and reimbursement pursuant to section 503(b)(4) of the Bankruptcy Code.

**1.75 Pro Rata:** Proportionately so that the ratio of the amount of consideration distributed on account of a particular Allowed Claim or Interest to the amount of the Allowed Claim or Interest is the same as the ratio of the amount of consideration distributed on account of all Allowed Claims or Interests of the Class in which the particular Allowed Claim Interest is included to the amount of all Allowed Claims or Interests of that Class, but in any event the amount of consideration distributed on account of an Allowed Claim or Interest shall not exceed 100% of the amount of the Allowed Claim or Interest.

**1.76 Pro Rata Allocation Formula:** Shall mean that allocation of any Assets in which both PBF and PBF II have an interest, including any Litigation Proceeds from legal proceedings, settlements, or as otherwise acquired in which both PBF and PBF II have an interest, between the Liquidating Trusts whereby on the Effective Date 18% of such Assets shall be allocated to the PBF Liquidating Trust and 82% of such Assets shall be allocated to the PBF II Liquidating Trust. The Pro Rata Allocation Formula is derived from the Compiled Financial Statements, dated April 30, 2008, for each of the Debtors by Kaufman Rossin & Co. The data contained therein supports an 18%/82% allocation between PBF and PBF II, respectively, based upon the total assets of each entity as of the date of such compilations.

**1.77 Releasors:** Shall mean the Debtors, the Trustee, the JOL, the Offshore Funds, and creditor or shareholder of the Offshore Funds, any successor or assigns of the Debtors, any and all known and unknown creditors of the Debtors and their successors and assigns, any and all limited and general partners of the Debtors and their successors and assigns, and any affiliate of any of the Debtors and their successors and assigns.

**1.78 Scheduled:** Set forth on the Schedules.

**1.79 Schedules:** The Schedules of Assets and Liabilities Filed by the Debtors in accordance with Bankruptcy Code section 521 and Bankruptcy Rule 1007, as the same may be amended from time to time prior to the Effective Date in accordance with Bankruptcy Rule 1009.

**1.80 Trustee:** Barry E. Mukamal, as Chapter 11 Trustee of the Debtors.

**1.81 Trust Estate or Trust Assets:** Shall mean the Assets, including Litigation Claims, which shall be irrevocably assigned, transferred and conveyed to the Liquidating Trusts pursuant to the Pro Rata Allocation Formula as of the Effective Date of the Plan, plus any and all net income earned on the foregoing.

**1.82 Unimpaired:** When used with reference to a Claim or an Interest, "Unimpaired" shall have the meaning ascribed to it in Bankruptcy Code section 1124.

**1.83 United States Trustee:** The United States Trustee appointed under section 581(a)(3) of title 28 of the United States Code to serve in the Southern District of Florida.

**1.84 Unsecured Claim:** Any Claim against the Debtors, excluding Administrative Claims.

**C. Rules of Interpretation.**

1. In the event of an inconsistency, the provisions of the Plan shall control over the contents of the Disclosure Statement or the Liquidating Trust Agreements. The provisions of the Confirmation Order shall control over the contents of the Plan.

2. For the purposes of the Plan:

(a) any reference in the Plan to a contract, instrument, release or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions; provided, however, that any change to such form, terms or conditions that is material to a party to such document shall not be modified without such party's consent unless such document expressly provides otherwise;

(b) any reference in the Plan to an existing document, exhibit or schedule Filed or to be Filed means such document, exhibit or schedule, as it may have been or may be amended, modified or supplemented as of the Effective Date;

(c) unless otherwise specified, all references in the Plan to "Sections," "Articles," and "Schedules" are references to Sections, Articles, and Schedules of or to the Plan;

(d) the words "herein," "hereof," "hereto," "hereunder" and others of similar import refer to the Plan in its entirety rather than to only a particular portion of the Plan;

(e) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be part of or to affect interpretations of the Plan;

(f) the rules of construction set forth in Bankruptcy Code section 102 shall apply, except to the extent inconsistent with the provisions of this Article of the Plan; and

(g) the word “including” means “including without limitation.”

3. Whenever a distribution of property is required to be made on a particular date, the distribution shall be made on such date or as soon as reasonably practicable thereafter.

4. All Schedules to the Plan are incorporated into the Plan and shall be deemed to be included in the Plan, regardless of when they are Filed.

5. Subject to the provisions of any contract, certificate, bylaws, instrument, release or other agreement or document entered into in connection with the Plan, the rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, federal law, including the Bankruptcy Code and Bankruptcy Rules.

6. This Plan is the product of extensive discussions and negotiations between and among, inter alia, the Trustee and the JOL, and certain other creditors and constituencies. Each of the foregoing was represented by counsel who either (a) participated in the formulation and documentation of or (b) was afforded the opportunity to review and provide comments on, the Plan, the Disclosure Statement, and the documents ancillary thereto. Accordingly, unless explicitly indicated otherwise, the general rule of contract construction known as “*contra proferentum*” shall not apply to the construction or interpretation of any provision of this Plan,



the Disclosure Statement, any of the Plan Schedules, or any contract, instrument, release, indenture, or other agreement or document generated in connection herewith.

**D. Computation of Time.**

In computing any period of time prescribed or allowed by the Plan, unless otherwise expressly provided, the provisions of Bankruptcy Rule 9006(a) shall apply.

**ARTICLE 2**

**TREATMENT OF UNCLASSIFIED CLAIMS**

**2.1 Administrative Claims.** Subject to the allowance procedures and deadlines provided herein, on the Effective Date or as soon thereafter as is practicable, the holder of an Allowed Administrative Claim shall receive on account of the Allowed Administrative Claim and in full satisfaction, settlement, release and discharge of and in exchange for such Allowed Administrative Claim, (a) Cash equal to the unpaid portion of such Allowed Administrative Claim, or (b) such other treatment as to which the Trustee, the JOL and the holder of such Allowed Administrative Claim have agreed upon in writing; provided, however, that Professional Claims shall be paid in accordance with Section 2.3. Such Allowed Administrative Claims shall be paid pro rata, with any unpaid portion of such Claim transferred to the respective trust.

**2.2 Statutory Fees.** The Trustee shall pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930(a)(6) within ten (10) days of the entry of Confirmation Order for pre-confirmation periods and simultaneously provide to the United States Trustee an appropriate affidavit indicating the Cash disbursements for the relevant period. The Liquidating Trustee shall further pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930(a)(6) based upon all disbursements of the Liquidating Trust for

post-confirmation periods within the time period set forth in 28 U.S.C. § 1930(a)(6), until the earlier of the closing of the Bankruptcy Cases by the issuance of a Final Decree by the Bankruptcy Court, or upon the entry of an Order by the Bankruptcy Court dismissing these Bankruptcy Cases or converting these Bankruptcy Cases to another chapter under the Bankruptcy Code, and the party responsible for paying the post-confirmation United States Trustee fees shall provide to the United States Trustee upon the payment of each post-confirmation payment an appropriate affidavit indicating all the Cash disbursements for the relevant period.

**2.3 Professional Claims.** Immediately prior to the Effective Date, the Debtors shall pay all amounts owing to the Professionals for all outstanding Professional Claims, as approved by the Bankruptcy Court. On or prior to the Administrative Claims Bar Date, each Professional shall file with the Bankruptcy Court its final fee application seeking final approval of all fees and expenses from the Petition Date through the Effective Date. Rather than estimate Professional Claims due for periods that have not been billed as of the Effective Date, Professionals shall apply for such amounts after the Effective Date.

**2.4 Substantial Contribution Claim of JOL:** The JOL shall file an application pursuant to section 503(b)(3) of the Bankruptcy Court for reimbursement of the actual, necessary expenses, incurred by the JOL in making a substantial contribution in these Bankruptcy Cases by, inter alia, his involvement in the negotiation, analysis and drafting of the terms of this Plan and his role in obtaining approval of this Plan and related documents and agreements. Additionally, Professionals retained by the JOL shall file an application pursuant to section 503(b)(4) of the Bankruptcy Code for professional services rendered to the JOL in connection with these Bankruptcy Cases. The foregoing applications shall not be objected to by

the Liquidating Trustee, so long as the amounts set forth in such applications are deemed reasonable by the Liquidating Trustee, but all other parties-in-interest, including the United States Trustee, shall be entitled to file an objection to any such application. To the extent an application for a Claim made pursuant to this Section 2.4 is Allowed, such Allowed Claim shall be payable pursuant to the Pro Rata Allocation Formula from the Trust Assets of the PBF and PBF II Liquidating Trusts.

**2.5 Deadline for Filing Administrative Claims.** Other than with respect to Administrative Claims for which the Bankruptcy Court previously has established a Bar Date, any and all requests for payment or proofs of Administrative Claims, including Claims of all Professionals or other Entities requesting compensation or reimbursement of expenses pursuant to Bankruptcy Code sections 327, 328, 330, 331 or 503(b) for services rendered on or before the Effective Date (including any compensation requested by any Professional or any other Entity for making a substantial contribution in the Chapter 11 Cases) and any claims asserted in accordance with section 2.4 of this Plan, must be Filed and served on the Liquidating Trustee, the JOL, their respective counsel, and the U.S. Trustee no later than the Administrative Claims Bar Date. Objections to any such Administrative Claims must be Filed and served on the claimant no later than thirty (30) days after the Administrative Claims Bar Date. The Trustee and JOL shall use reasonable efforts to promptly and diligently pursue resolution of any and all disputed Administrative Claims. In the event the Liquidating Trustee and the JOL are unable to resolve any of the disputed Administrative Claims, such unresolved disputes will be heard and determined by the Bankruptcy Court.

Holders of Administrative Claims, including all Professionals or other Entities requesting compensation or reimbursement of expenses pursuant to Bankruptcy Code sections

327, 328, 330, 331 or 503(b) for services rendered on or before the Effective Date (including any compensation requested by any Professional or any other Entity for making a substantial contribution in the Chapter 11 Cases), that are required to File a request for payment or proof of such Claims and that do not File such requests or proofs of Claim on or before the Administrative Claims Bar Date shall be forever barred from asserting such Claims against the Debtors, their Estates, the Liquidating Trusts, the Liquidating Trustee, any other Person or Entity, or any of their respective property.

### **ARTICLE 3**

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

**3.1 General.** Pursuant to section 1122 of the Bankruptcy Code, set forth below is a designation of the Classes of Claims and Interests in the Debtors. A Claim or Interest is placed in a particular Class only to the extent that such Claim or Interest falls within the description of that Class. A Claim or Interest is also placed in a particular Class for purposes of receiving a distribution under the Plan, but only to the extent such Claim or Interest is an Allowed Claim or Interest and has not been paid, released, or otherwise settled prior to the Effective Date. Except as otherwise expressly set forth in this Plan, a Claim or Interest which is not an Allowed Claim shall not receive any payments, rights or distributions under this Plan. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims have not been classified and are treated as set forth in Article 2 above.

#### **3.2 Classification.**

**3.2.1 Class 1A: PBF Limited Partner Unsecured Claims.** Class 1A consists of all General Unsecured Claims filed by limited partners of PBF. For purposes of voting on this Plan, Class 1A Claims shall consist of those Claims set forth on Schedule 3.2.1.



**3.2.2 Class 1B: PBF II Limited Partner Unsecured Claims.** Class 1B consists of all General Unsecured Claims filed by limited partners of PBF II. For purposes of voting on this Plan, Class 1B Claims shall consist of those Claims set forth on Schedule 3.2.2.

**3.2.3 Class 2A: Other PBF General Unsecured Claims.** Class 2A consists of all General Unsecured Claims of PBF other than PBF Limited Partner Unsecured Claims. For purposes of voting on this Plan, Class 2A Claims shall consist of those Claims set forth on Schedule 3.2.3.

**3.2.4 Class 2B: Other PBF II General Unsecured Claims.** Class 2B consists of all General Unsecured Claims of PBF II other than PBF II Limited Partner Unsecured Claims. For purposes of voting on this Plan, Class 2B Claims shall consist of those Claims set forth on Schedule 3.2.4.

**3.2.5 Class 3A: PBF Interests.** Class 3A consists of all Interests of or in PBF.

**3.2.6 Class 3B: PBF II Interests.** Class 3B consists of all Interests of or in PBF II.

#### **ARTICLE 4**

#### **IDENTIFICATION OF CLASSES OF CLAIMS AND INTERESTS IMPAIRED AND NOT IMPAIRED BY THE PLAN**

**4.1 Unimpaired Classes of Claims and Interests.** No Class of Claims or Interests is Unimpaired under the Plan.

**4.2 Impaired Classes of Claims and Interests.** Classes 1A, 1B, 2A, 2B, 3A and 3B are Impaired. Votes from holders of Class 1A, Class 1B, Class 2A and Class 2B Claims, and holders of Class 3A and Class 3B Interests, will be solicited.

## ARTICLE 5

### **PROVISIONS FOR THE TREATMENT OF CLAIMS AND INTERESTS**

**5.1 Class 1A (PBF Limited Partner Unsecured Claims).** Each holder of an Allowed PBF Limited Partner Unsecured Claim, shall receive, in full satisfaction, settlement, release and discharge of and in exchange for its Allowed PBF Limited Partner Unsecured Claim, periodic distributions from the PBF Liquidating Trust on account of its Allowed PBF Limited Partner Unsecured Claim, to be paid by the PBF Liquidating Trust on dates to be determined in the reasonable discretion of the PBF Liquidating Trustee.

**5.2 Class 1B (PBF II Limited Partner Unsecured Claims).** Each holder of an Allowed PBF II Limited Partner Unsecured Claim, shall receive, in full satisfaction, settlement, release and discharge of and in exchange for its Allowed PBF II Limited Partner Unsecured Claim, periodic distributions from the PBF II Liquidating Trust of its share on account of its Allowed PBF II Limited Partner Unsecured Claim to be paid by the PBF II Liquidating Trust on dates to be determined in the reasonable discretion of the PBF II Liquidating Trustee.

**5.3 Class 2A (Other PBF General Unsecured Claims).** Each holder of an Allowed Other PBF General Unsecured Claim shall receive, in full satisfaction, settlement, release and discharge of and in exchange for its Allowed Other PBF General Unsecured Claim, periodic distributions from the PBF Liquidating Trust of its share on account of its Allowed Other PBF General Unsecured Claim to be paid by the PBF Liquidating Trust on dates to be determined in the reasonable discretion of the PBF Liquidating Trustee.

**5.4 Class 2B (Other PBF II General Unsecured Claims).** Each holder of an Allowed Other PBF II General Unsecured Claim shall receive, in full satisfaction, settlement,

release and discharge of and in exchange for its Allowed Other PBF II General Unsecured Claim, periodic distributions from the PBF II Liquidating Trust of its share on account of its Allowed Other PBF II General Unsecured Claim to be paid by the PBF II Liquidating Trust on dates to be determined in the reasonable discretion of the PBF II Liquidating Trustee.

Notwithstanding anything herein to the contrary, holders of Allowed Class 1A and Allowed Class 2A Claims shall receive on a *pari passu* basis distributions from the PBF Liquidating Trust on account of their Allowed Claim. Furthermore, notwithstanding anything herein to the contrary, holders of Allowed Class 1B and Allowed Class 2B Claims shall receive on a *pari passu* basis distributions from the PBF II Liquidating Trust on account of their Allowed Claims.

**5.5 Class 3A (PBF Interests).** Each holder of an Allowed PBF Interest shall receive, in full satisfaction, settlement, release and discharge of and in exchange for its Allowed PBF Interest, periodic distributions from the PBF Liquidating Trust of its share on account of its Allowed PBF Interest to be paid by the PBF Liquidating Trust on dates to be determined in the reasonable discretion of the PBF Liquidating Trustee. Notwithstanding the foregoing, Allowed PBF Interests are subordinated to Allowed Class 1A (PBF Limited Partner Unsecured Claims) and Class 2A (Other PBF General Unsecured Claims). Accordingly, holders of Allowed PBF Interests shall not receive any distribution from the PBF Liquidating Trust on account of their Allowed PBF Interest unless and until holders of Allowed Class 1A and Class 2A Claims have been satisfied in full.

**5.6 Class 3B (PBF II Interests).** Each holder of an Allowed PBF II Interest shall receive, in full satisfaction, settlement, release and discharge of and in exchange for its Allowed PBF II Interest, periodic distributions from the PBF II Liquidating Trust of its share on

account of its Allowed PBF II Interest to be paid by the PBF II Liquidating Trust on dates to be determined in the reasonable discretion of the PBF II Liquidating Trustee. Notwithstanding the foregoing, Allowed PBF II Interests are subordinated to Allowed Class 1B (PBF II Limited Partner Unsecured Claims) and Class 2B (Other PBF II General Unsecured Claims). Accordingly, holders of Allowed PBF II Interests shall not receive any distribution from the PBF II Liquidating Trust on account of their Allowed PBF II Interest unless and until holders of Allowed Class 1B and Class 2B Claims have been satisfied in full.

## ARTICLE 6

### **TREATMENT OF EXECUTORY CONTRACTS**

**6.1 Rejection.** Except for those executory contracts set forth on Schedule 6.1 that are assumed pursuant to this Plan, if any, all executory contracts and unexpired leases of the Debtors shall be rejected pursuant to section 365 of Bankruptcy Code; provided, however, that neither the inclusion of a contract or lease on Schedule 6.1 hereto nor anything contained in this Article 6 shall constitute an admission by any Debtor that such contract or lease is an executory contract or that any Debtor or its successors and assigns, including, but not limited to, the Liquidating Trusts, has any liability thereunder. To the extent any loan agreement pursuant to which any Debtor is lender is deemed to be an executory contract within the meaning of 365 of the Bankruptcy Code, rejection of such loan agreement shall not, by itself, eliminate the borrower's obligations thereunder or cause any Debtor's Liens, security interests or ownership rights to be released or extinguished. For the avoidance of any doubt, this Section 6.1 shall apply to any and all contracts or engagements the Debtors may have with professionals, including, but not limited to, attorneys, auditors and accountants.



**6.2 Approval of Rejection; Rejection Damages Claims Bar Date.** The Confirmation Order shall constitute an Order of the Bankruptcy Court approving the rejection of executory contracts under Section 6.1 above pursuant to Bankruptcy Code section 365 as of the Effective Date. Any Claim for damages arising from any such rejection must be Filed within thirty (30) days after the mailing of notice of the entry of the Confirmation Order, or such Claim shall be forever barred, shall not be enforceable against the Debtors, their Estates, the Liquidating Trusts, the Liquidating Trustee, or any of their respective properties and shall receive no distribution under the Plan or otherwise on account of such Claim.

## **ARTICLE 7**

### **MEANS FOR EXECUTION AND IMPLEMENTATION OF THE PLAN**

#### **7.1 The Liquidating Trusts.**

**7.1.1 Establishment of the Liquidating Trusts.** On the Effective Date, the Trustee, on behalf of the Debtors and the Beneficiaries, shall execute the Liquidating Trust Agreements and take all steps necessary to establish the Liquidating Trusts.

**7.1.2 Purpose of Liquidating Trusts.** The Liquidating Trusts are being established for the sole purpose of liquidating the respective Debtor's Assets and distributing the proceeds thereof to certain holders of Allowed Claims and Interests in each of the Debtors, as identified in and prescribed by this Plan. The Liquidating Trusts shall not continue or engage in any trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidating Trusts. Unless otherwise required by law, it is intended that all parties shall treat the Liquidating Trusts each as a liquidating trust for all federal income tax purposes.

**7.1.3** *Contribution of Assets to the Liquidating Trusts.* On the Effective Date of the Plan, each of the Debtors shall transfer all of their respective Assets to the Beneficiaries of the Liquidating Trusts, which shall contribute such Assets to the Liquidating Trusts pursuant to the terms of the Liquidating Trust Agreements and the Pro Rata Allocation Formula. Thereafter, pursuant to the terms of the Onshore/Offshore Allocation Formula, proceeds from the Kaufman Rossin Settlement Agreement will be distributed to the Liquidating Trusts. Except as set forth below, all Assets shall be transferred and contributed free and clear of all Liens, Claims, interests and encumbrances. Title to all Assets contributed to the Liquidating Trusts shall vest in the respective Liquidating Trust on the Effective Date following the transfer. For the avoidance of any doubt, following the contribution of Assets to the Liquidating Trusts pursuant to this Section 7.1.3 and the Liquidating Trust Agreements, the Liquidating Trustee shall have standing to pursue Litigation Claims on behalf of the Liquidating Trusts subject only to any limitations set forth in this Article 7 or the Liquidating Trust Agreements.

**7.1.4** *PBF Liquidating Trust Management.* Barry Mukamal shall be the PBF Liquidating Trustee with the power and authority set forth in the PBF Liquidating Trust Agreement.

**7.1.5** *PBF Liquidating Trust Structure.* As more fully set forth in the PBF Liquidating Trust Agreement, the PBF Liquidating Trustee shall oversee and direct the PBF Liquidating Trust's operations and activities, including the retention of counsel, decisions to pursue or not pursue Litigation Claims belonging solely to the PBF Liquidating Trust and its Beneficiaries, and settlement of any such Litigation Claims belonging solely to the PBF Liquidating Trust and its Beneficiaries. In any event, any compromise or settlement of any PBF

Litigation Claim shall be subject to the approval of the Bankruptcy Court pursuant to Bankruptcy Rule 9019.

**7.1.6** *PBF II Liquidating Trust Management.* Barry Mukamal shall be the PBF II Liquidating Trustee with the power and authority set forth in the PBF II Liquidating Trust Agreement and subject to the power and authority granted to the PBF II Liquidating Trust Monitor in this Plan and the PBF II Liquidating Trust Agreement.

**7.1.7** *PBF II Liquidating Trust Monitor.* Geoffrey Varga, as Joint Official Liquidator for Offshore Funds shall be the PBF II Liquidating Trust Monitor with the power and authority set forth in the PBF II Liquidating Trust Agreement.

**7.1.8** *PBF II Liquidating Trust Structure.* As more fully set forth in the PBF II Liquidating Trust Agreement, and except as set forth in this Section 7.1.8, the PBF II Liquidating Trustee shall oversee and direct the PBF II Liquidating Trust's operations and activities. The PBF II Liquidating Trustee and the PBF II Liquidating Trust Monitor shall coordinate the analysis of potential Litigation Claims of the PBF II Liquidating Trust. Notwithstanding the foregoing, or anything in the Plan to the contrary, with respect to any PBF II Litigation Claims, the PBF II Liquidating Trust Monitor shall, in his sole discretion: (1) determine which PBF II Litigation Claims should be pursued, (2) approve of the retention of professionals other than Meland Russin & Budwick, P.A., if any, to pursue such PBF II Litigation Claims, and (3) determine the terms on which any such PBF II Litigation Claims should be resolved by settlement or otherwise. In any event, any compromise or settlement of any PBF II Litigation Claims shall be subject to the approval of the Bankruptcy Court pursuant to Bankruptcy Rule 9019. Any communications between the PBF II Liquidating Trustee and the

PBF II Liquidating Trust Monitor related to any third party litigation or the Petters Bankruptcy Cases shall be subject to a common interest privilege.

**7.1.9 *Approval of Settlement.*** Subject to approval of the Bankruptcy Court, the PBF Liquidating Trustee shall have the authority in his sole discretion to settle or resolve any Litigation Claim to which the PBF Liquidating Trust alone has an interest. To the extent any settlement or resolution of a Litigation Claim requires the release or compromise of any Litigation Claim in which the PBF II Liquidating Trust has an interest, the consent of the PBF II Liquidating Trust Monitor shall be obtained in advance of such settlement or resolution. The settlement or release of any Litigation Claim of the PBF Liquidating Trust pursuant to this Section 7.1.9 shall be subject to the approval of the Bankruptcy Court pursuant to Bankruptcy Rule 9019.

**7.1.10 *Allocation of Costs and Expenses of the Liquidating Trusts.*** All costs and expenses distinctly incurred by one of the Liquidating Trusts shall be the obligation of the respective Liquidating Trust and shall be payable from the Trust Assets of such Liquidating Trust. Compensation of the Liquidating Trustee will be paid from the Trust Assets of the respective Liquidating Trust pursuant to the provisions of section 326 of the Bankruptcy Code. However, any professional fees, costs and expenses incurred on behalf of both of the Liquidating Trusts shall be the obligation of both Liquidating Trusts, payable by each according to the Pro Rata Allocation Formula set forth herein. Notwithstanding anything herein to the contrary, after the Effective Date, and without providing notice to or obtaining the approval of any party, the Liquidating Trustee shall be authorized pursuant to Sections 4.4(c) and 7.6(e) of the PBF II Liquidating Trust Agreement to pay on a monthly basis the reasonable fees and expenses incurred by the PBF II Liquidating Trust Monitor. The PBF II Liquidating Trust Monitor shall



submit an application to the Bankruptcy Court no later than every four (4) months starting from the Effective Date for final approval of the fees and expenses paid to the PBF II Liquidating Trust Monitor in connection with carrying out its duties consistent with the Plan and the Liquidating Trust Agreement. Any such payments shall be payable from the Trust Assets of the Liquidating Trusts.

*7.1.11 Compensation of Professionals Retained by the Liquidating Trustees and the PBF II Liquidating Trust Monitor.* Professionals retained by the PBF II Liquidating Trust Monitor and the Liquidating Trustee shall be entitled to monthly interim compensation for fees and expenses incurred in carrying out their duties consistent with this Plan and the Liquidating Trust Agreements; provided, however that the PBF II Liquidating Trust Monitor or the Liquidating Trustee shall provide to the other, and the United States Trustee, notice of such requested fees and expenses on a monthly basis. Following such notice, if no objections to the fees and expenses set forth in the monthly statement are received in writing within 10 business days, 100% of such professional's fees and expenses shall be paid. Notice of and objections to such fees and expenses shall be made via e-mail and/or facsimile. If objections to the fees and expenses are made and cannot be resolved, such objections will be heard and resolved by the Bankruptcy Court. Any such fees and expenses shall be payable from the Trust Assets of the Liquidating Trusts. The PBF II Liquidating Trust Monitor and the Liquidating Trustee shall, no less frequently than once every four (4) months, submit applications to the Bankruptcy Court for final approval of reimbursement of fees and expenses paid to their professionals.

The Liquidating Trustees' general and litigation counsel shall be Meland Russin & Budwick, P.A. The terms of compensation for Meland Russin & Budwick, P.A. shall be the

same in all respects as those requested in the Trustee's Motion to Approve Hybrid Form of Compensation for Litigation Counsel, as may be amended with the consent of Meland Russin & Budwick, P.A. and as approved by the Bankruptcy Court. The PBF II Liquidating Trust Monitor's general counsel shall be Reed Smith LLP and Levine Kellogg Lehman Schneider & Grossman LLP and the professionals at those firms shall be compensated at 75% as to Reed Smith and 100% as to Levine Kellogg of the firm's respective standard billing rates, respectively.

*7.1.12 Resignation and Removal of the Liquidating Trustee.* The Liquidating Trustee may resign and be discharged from any future obligations and liabilities under the Liquidating Trust Agreement by giving written notice thereof to the Bankruptcy Court at least thirty (30) days prior to the effective date of such resignation. Such resignation shall become effective on the date specified in such notice. The Liquidating Trustee may be removed at any time by order of the Bankruptcy Court upon motion by any party in interest pursuant to the standard under applicable law for removal of a Chapter 7 trustee. Upon any such removal, such removed Liquidating Trustee shall be entitled to any reimbursement and indemnification set forth in the Liquidating Trust Agreement which remain due and owing to such Liquidating Trustee at the time of such removal. If, at any time, the Liquidating Trustee shall give notice of his intent to resign pursuant to Section 7.7 of the Liquidating Trust Agreement, or be removed or shall become incapable of acting, counsel to the Liquidating Trustee shall provide notice thereof to the Bankruptcy Court. The PBF II Liquidating Trust Monitor, with the approval of the Bankruptcy Court, shall designate a successor liquidating trustee for the PBF II Liquidating Trust and the Office of the United States Trustee, with the approval of the Bankruptcy Court, shall designate a successor liquidating trustee for the PBF Liquidating Trust.

**7.1.13** *Resignation and Removal of the PBF II Liquidating Trust Monitor.*

The PBF II Liquidating Trust Monitor may resign and be discharged from any future obligations and liabilities hereunder by giving written notice thereof to the Bankruptcy Court at least thirty (30) days prior to the effective date of such resignation. Such resignation shall become effective on the date specified in such notice. If, at any time, the PBF II Liquidating Trust Monitor shall give notice of his intent to resign or shall become incapable of acting, counsel to the PBF II Liquidating Trust Monitor shall provide notice thereof to the Bankruptcy Court. The PBF II Liquidating Trust Monitor, in his sole discretion, shall designate a successor liquidating trust monitor to act under the Liquidating Trust Agreement. Any successor PBF II Liquidating Trust Monitor appointed hereunder shall execute an instrument accepting such appointment hereunder and shall deliver counterparts thereof to the Bankruptcy Court. Thereupon, such successor PBF II Liquidating Trust Monitor shall, without any further act, become vested with all of the estates, properties, rights, powers, trusts and duties of his predecessor in the PBF II Liquidating Trust, with like effect as if originally named herein. The PBF II Liquidating Trust Monitor may be removed at any time by order of the Bankruptcy Court upon motion by any party in interest pursuant to the standard under applicable law for removal of a Chapter 7 trustee.

**7.1.14** *Continuation of Automatic Stay.* In furtherance of the implementation of the Plan, except as otherwise provided herein, all injunctions or stays provided for in the Chapter 11 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 and apply to all Creditors and Beneficiaries holding Claims against the Debtors, the Estates, the Assets, the Liquidating Trustee, the Liquidating Trusts and the Trust Assets until the Final Distribution Date.

**7.2 Distribution of Kaufman Rossin Settlement Payment.** The Kaufman Rossin Settlement Payment shall be distributed to the Liquidating Trusts and then distributed pursuant to the Onshore/Offshore Allocation Formula, pursuant to which, in the event the Kaufman Rossin Settlement Payment is \$9,600,000, then the PBF Liquidating Trust shall receive for its benefit \$1,728,000.00, which is 18% of the Kaufman Rossin Settlement Payment; the PBF II Liquidating Trust shall receive for its benefit \$1,968,000.00, which is 20.5% of the Kaufman Rossin Settlement Payment; and the Offshore Funds shall directly receive the remaining \$5,904,000.00, which is 61.5% of the Kaufman Rossin Settlement Payment. When the Liquidating Trustee distributes from the Liquidating Trusts the Kaufman Rossin Settlement Payments, his fee shall be calculated pursuant to 11 U.S.C. § 326. However, the Liquidating Trustee's fee in connection with the payment to be made to the Offshore Funds shall be capped at and equal to .75% of such payment and paid from the funds paid to the Offshore Funds. For the avoidance of any doubt, and notwithstanding anything herein to the contrary, for Federal income tax purposes, and pursuant to Revenue Procedure 94-95, the Kaufman Rossin Settlement Payment shall be deemed to be transferred to the Beneficiaries and subsequently deemed to have been transferred from the Beneficiaries to the Liquidating Trusts pursuant to the Onshore/Offshore Allocation Formula.

**7.3 Termination of the Debtors.** As soon as practicable after the Effective Date, each of the Debtors will be dissolved and cease to exist for all purposes without the necessity for any other or further actions to be taken by or on behalf of the Debtors or payments to be made in connection therewith; provided, however, that pursuant to section 1124(b) of the Bankruptcy Code, the Liquidating Trustee shall be authorized to file each Debtor's final tax returns, and shall be authorized to file and shall file with the official public office for keeping



corporate records in each Debtor's state of incorporation a certificate of dissolution or equivalent document. Such a certificate of dissolution may be executed by the Liquidating Trustee without the need for any action or approval by any other party. From and after the Effective Date, the Debtors (i) for all purposes shall be deemed to have withdrawn their business operations from any state in which they were previously conducting, or are registered or licensed to conduct, their business operations, and shall not be required to file any document, pay any sum or take any other action, in order to effectuate such withdrawal, and (ii) shall not be liable in any manner to any taxing authority for franchise, business, license or similar taxes accruing on or after the Effective Date.

**7.4 Closing of the Chapter 11 Cases.** Notwithstanding anything to the contrary in the Bankruptcy Rules providing for earlier closure of the Chapter 11 Cases, when all Assets contributed to the Liquidating Trusts have been liquidated and converted into Cash (other than those Assets abandoned by the Liquidating Trusts), and such Cash has been distributed in accordance with the Liquidating Trust Agreements and this Plan, and the Final Distribution made, the Liquidating Trustee shall seek authority from the Bankruptcy Court to close the Chapter 11 Cases in accordance with the Bankruptcy Code and the Bankruptcy Rules.

## **ARTICLE 8**

### **POSTCONFIRMATION LITIGATION**

**8.1 Transfer and Enforcement of Causes of Action.** Pursuant to section 1123(b)(3) of the Bankruptcy Code, except as otherwise provided in this Plan or the Confirmation Order, after transfer of the Assets to the Liquidating Trusts pursuant to Section 7.1.3 hereof, the Liquidating Trustee will have the exclusive right to enforce any and all Litigation Claims against any Entity and rights of the Debtors that arose before or after the

Petition Date, including, but not limited to, the rights and powers of a trustee and debtor-in-possession, against any Entity whatsoever. Notwithstanding the foregoing, in the event the PBF II Liquidating Trustee opts not to pursue a PBF II Litigation Claim, the PBF II Liquidating Trust Monitor may make a written demand upon the PBF II Liquidating Trustee that the PBF II Liquidating Trustee pursue such PBF II Litigation Claim. In the event the PBF II Liquidating Trustee refuses to pursue such PBF II Litigation Claim, the PBF II Liquidating Trust Monitor shall be authorized to pursue such PBF II Litigation Claim on behalf of the PBF II Liquidating Trust with the same rights possessed by the PBF II Liquidating Trustee. The PBF II Liquidating Trustee shall be kept informed as to the progress of the action and any compromise shall be subject to Bankruptcy Court approval pursuant to Rule 9019.

**8.2 Objections to Claims.** Subject to applicable law, and except as otherwise set forth herein, from and after the Effective Date, the Liquidating Trustee, the PBF II Liquidating Trust Monitor and any Creditor shall have the authority to litigate to judgment objections to Claims or Interests pursuant to applicable procedures established by the Bankruptcy Code, the Bankruptcy Rules, the Liquidating Trust Agreements and this Plan. Any compromise of any Claim objection shall be subject to Bankruptcy Court approval. The deadline within which objections to Claims or Interests may be filed shall be one year from the Effective Date.

**8.3 Allowance of Palm Beach Offshore Claims.** The Trustee has received and reviewed the Palm Beach Offshore Claims, including all information supporting such Claims. Notwithstanding anything to the contrary in this Plan or in the PBF II Liquidating Trust Agreement, upon confirmation of the Plan, the Palm Beach Offshore Claims shall be deemed Allowed Class 2B Claims (Other PBF II General Unsecured Claims) upon entry of the Confirmation Order and shall not be subject to dispute, challenge or reduction in amount by any

party-in-interest including without limitation the PBF II Liquidating Trustee, although the Palm Beach Offshore Claims shall be reduced by the amount of the Kaufman Rossin Settlement Payment received by the Offshore Funds. The Palm Beach Offshore Claims will be treated as set forth in Section 5.4 of the Plan.

## **ARTICLE 9**

### **DISTRIBUTIONS**

**9.1 Delivery of Distributions in General.** Distributions to holders of Allowed Claims and Interests shall be made: (a) at the addresses set forth in the proofs of Claim Filed by such holders; (b) at the addresses set forth in any written notices of address change Filed with the Bankruptcy Court or delivered to the Liquidating Trustee after the date on which any related proof of Claim was Filed; or (c) at the addresses reflected in the Schedules relating to the applicable Allowed Claim or Interest if no proof of Claim has been Filed and the Liquidating Trustee has not received a written notice of a change of address.

**9.2 Cash Payments.** Except as otherwise provided in the Liquidating Trust Agreements or the Confirmation Order, Cash payments to be made pursuant to the Plan shall be made by checks drawn on a domestic bank or by wire transfer from a domestic bank, at the option of the Liquidating Trustee.

**9.3 Interest on Claims.** Postpetition interest shall not accrue or be paid 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 upon any Disputed Claim in respect of the period from the Petition Date to the date a Final Distribution is made thereon if and after such Disputed Claim becomes an Allowed Claim. To the extent that any Allowed Claim entitled to a distribution under the Plan is composed of indebtedness and accrued but unpaid interest thereon,

such distribution shall, to the extent permitted by applicable law, be allocated for federal income tax purposes to the principal amount of the Allowed Claim first and then, to the extent the consideration exceeds the principal amount of the Allowed Claim, to the portion of such Allowed Claim representing accrued but unpaid interest.

**9.4 No De Minimis Distributions.** Other than in the Final Distribution, no payment of Cash in an amount of less than \$250.00 shall be required to be made on account of any Allowed Claim.

**9.5 Face Amount.** Unless otherwise expressly set forth herein with respect to a specific Claim or Class of Claims, for the purpose of the provisions of this Article, the “Face Amount” of a Disputed Claim means the amount set forth on the proof of Claim, unless no proof of Claim has been timely Filed or deemed Filed, in which case the Face Amount shall be zero.

**9.6 Undeliverable Distributions.** If the distribution check to any holder of an Allowed Claim or Interest is not cashed within 90 days after issuance by the Liquidating Trustee, a stop payment order shall be given with respect to the check and no further distributions shall be made to such holder on account of such Allowed Claim or Interest. Such Allowed Claim or Interest shall be discharged and the holder of such Allowed Claim or Interest shall be forever barred from asserting such Claim against the Liquidating Trusts, the Liquidating Trustee, the Debtors, their Estates or their respective property. In such cases, any Cash held for distribution on account of such Claim shall remain property of the respective Liquidating Trust and be distributed to other Creditors in accordance with the terms of this Plan and the Liquidating Trust Agreements.



**9.7 Interim Distributions.** Unless otherwise provided in the Plan, the Liquidating Trustee in his discretion may make periodic distributions to the Beneficiaries entitled thereto in accordance with Section 5.1 of the Liquidating Trust Agreements.

**9.8 Final Distribution.** The Liquidating Trustee shall make a final distribution in accordance with Section 5.5 of the Liquidating Trust Agreements.

**9.9 Allowed Interests Subordinated.** Notwithstanding anything herein to the contrary, Allowed Interests shall be subordinated to Allowed Claims for purpose of distributions pursuant to Sections 5.5 and 5.6 of this Plan. Accordingly, (i) holders of Allowed PBF Interests shall not receive any distribution from the PBF Liquidating Trust on account of their Allowed PBF Interest unless and until holders of Allowed Class 1A and Class 2A Claims have been satisfied in full, and (ii) holders of Allowed PBF II Interests shall not receive any distribution from the PBF II Liquidating Trust on account of their Allowed PBF II Interest unless and until holders of Allowed Class 1B and Class 2B Claims have been satisfied in full.

**9.10 Disputed Claims Reserves.** The Liquidating Trustee shall establish reserves for Disputed Claims in accordance with the terms of the Liquidating Trust Agreements.

**9.11 Compliance with Tax Requirements.** In connection with the Plan and the distributions made in accordance thereto, to the extent applicable, the Liquidating Trusts shall comply with all tax withholding and reporting requirements imposed by any governmental unit, if any, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. The Liquidating Trustee shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements.

## **ARTICLE 10**

### **CONDITIONS PRECEDENT**

**10.1 Conditions to Confirmation.** As a condition to entry of the Confirmation Order:

**10.1.1** The Confirmation Order shall be in form and substance satisfactory to the Trustee and the JOL including providing for the approval of the Kaufman Rossin Settlement Agreement.

**10.1.2.** This section is reserved.

**10.2 Conditions to the Effective Date.** The Plan shall not become effective and the Effective Date shall not occur unless and until:

**10.2.1** The Bankruptcy Court shall have entered the Confirmation Order in form and substance satisfactory to the Trustee and the JOL;

**10.2.2** No stay of the Confirmation Order shall be in effect at the time the other conditions set forth in this Section 10.2 are satisfied, or, if permitted, waived; and

**10.2.3** All documents, instruments and agreements, in form and substance satisfactory to the Trustee and the JOL, provided for under this Plan or necessary to implement this Plan, including, without limitation, the Liquidating Trust Agreements, shall have been executed and delivered by the parties thereto, unless such execution or delivery has been waived by the parties benefited thereby.

**10.3 Termination of Plan for Failure To Become Effective.** If the Effective Date shall not have occurred on or prior to the date that is forty-five (45) days after the Confirmation Date, then this Plan shall terminate and be of no further force or effect unless the provisions of this Section are waived in writing by the Trustee and the JOL.

**10.4 Waiver of Conditions.** The Trustee, with the written consent of the JOL, may waive any or all of the conditions set forth in Sections 10.1 and/or 10.2 (other than the conditions set forth in Sections 10.2.1 and 10.2.3) of this Plan.

**10.5 Notice of Effective Date.** On the Effective Date, or as soon thereafter as is reasonably practicable, the Liquidating Trustee shall file with the Bankruptcy Court a “Notice of Effective Date” in a form reasonably acceptable to the Liquidating Trustee in his sole discretion, which notice shall constitute appropriate and adequate notice that this Plan has become effective, provided, however, that the Liquidating Trustee shall have no obligation to notify any Person other than counsel to the JOL of such fact. The Plan shall be deemed to be effective as of 12:01 a.m., prevailing Eastern time, on the Effective Date specified in such filing. A courtesy copy of the Notice of Effective Date may be sent by first class mail, postage prepaid (or at the Trustee’s option, by courier or facsimile) to those Persons who have filed with the Bankruptcy Court requests for notices pursuant to Bankruptcy Rule 2002.

## **ARTICLE 11**

### **EFFECT OF CONFIRMATION**

**11.1 Jurisdiction of Court.** Pursuant to sections 105(a) and 1142 of the Bankruptcy Code, and notwithstanding entry of the Confirmation Order and occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, and related to, the Chapter 11 Cases and the Plan to the fullest extent permitted by law, including among other things, jurisdiction over the subject matters set forth in Article 12 of this Plan.

**11.2 Binding Effect.** Except as otherwise provided in section 1141(d) of the Bankruptcy Code, on and after the Confirmation Date, the provisions of this Plan shall bind any

holder of a Claim against or Interest in the Debtors and their respective successors and assigns, whether or not the Claim or Interest of such holder is Impaired under this Plan and whether or not such holder has accepted the Plan.

**11.3 Kaufman Rossin Settlement Agreement.** Upon entry of the Confirmation Order, the Kaufman Rossin Settlement Agreement shall be deemed approved in all respects and the parties to the agreement shall be deemed authorized and directed to implement each of all of its terms. The entry of the Confirmation Order shall constitute the Bankruptcy Court's finding of each of the following as well as the approval of the Bar Order contemplated by the Kaufman Rossin Settlement Agreement:

**11.3.1** The Bankruptcy Court has jurisdiction over the Kaufman Rossin Settlement Agreement pursuant to 28 U.S.C. § 1334, and authority to enter a Bar Order pursuant to 11 U.S.C. § 105(a).

**11.3.2** The form and means of the notice of the Bar Order and this Plan are determined to have been the best notice practicable under the circumstances and to be good and sufficient notice to all persons whose interests would or could be affected by the Bar Order, including, but not limited to, (1) all creditors of either of the Debtors; (2) the JOL, on behalf the Offshore Funds; (3) all shareholders and creditors of the Offshore Funds; (4) all limited partners of either of the Debtors; (5) all general partner(s) of either of the Debtors; and (6) all entities that acted or are acting for or on behalf of the limited and general partners of the Debtors.

**11.3.3** Entry of a Bar Order is appropriate in order to achieve the finality and repose that is contemplated as a term of the Kaufman Rossin Settlement Agreement and good cause therefore exists for the entry of a Bar Order, and the Bar Order is fair and equitable. *See In re U.S. Oil & Gas Litig.*, 967 F.2d 489, 495 96 (11th Cir. 1992); *see also In re Munford*,



*Inc.*, 97 F.3d 449, 454 55 (11th Cir. 1996); *Eichenholtz v. Brennan*, 52 F.3d 478 (3d Cir. 1995); *In re Jiffy Lube Secs. Litig.*, 927 F.2d 155 (4th Cir. 1991). The Bar Order shall be interpreted as broadly as possible so as to effectuate the purposes stated herein.

**11.3.4** *In consideration of the payments to be made by Kaufman Rossin pursuant to the Kaufman Rossin Settlement Agreement, which will enable the Trustee to confirm this Plan and make certain cash distributions as provided for herein, the Releasors are deemed to have released the Barred Claims. Specifically, Releasors, as defined in Section 1.77, are permanently barred and enjoined from commencing, prosecuting, or asserting either directly or in any other capacity, against Kaufman Rossin, any and all liabilities, judgments, rights, claims, cross claims, counterclaims, third party claims, demands, suits, matters, obligations, damages, debts, losses, costs, actions and causes of action, of every kind and description, arising under common law, rule, regulation or statute, whether arising under state or federal law, whether presently known or unknown that any Releasor now has, ever had or may claim to have in the future that is a Barred Claim; provided that (a) the Bar Order does not release, or enjoin any of Releasors from commencing, prosecuting, or asserting any claims to interpret or enforce the terms of the Kaufman Rossin Settlement Agreement or the Bar Order, and (b) the Bar Order does not release or enjoin any of Releasors from commencing, prosecuting, or asserting any claims against any party other than Kaufman Rossin; and (c) the Bar Order does not release or enjoin any of Releasors from commencing, prosecuting, or asserting any claims against the Kaufman Rossin Affiliated Parties other than those based upon or directly to the professional services provided by Kaufman Rossin to the Debtors or the Offshore Funds.*

**11.3.5** The Bankruptcy Court retains exclusive jurisdiction to enforce or interpret the Bar Order.

**11.4 Exculpation.** *Except as otherwise specifically provided in this Plan, none of the Debtors, the Trustee, the JOL or any of such parties' employees, representatives, advisors, attorneys, financial advisors, investment bankers or agents or any of such parties' successors and assigns, shall have or incur, and are hereby released from, any Claim, obligation, cause of action or liability to one another or to any holder of a Claim or an Interest, or any other party in interest, or any of their respective officers, directors, shareholders, members and/or enrollees, employees, representatives, advisors, attorneys, financial advisors, investment bankers, agents, or affiliates, or any of their successors or assigns, for any act or omission in connection with, relating to, or arising out of, the Chapter 11 Cases, the negotiation and pursuit of confirmation of this Plan, the consummation of this Plan, or the administration of this Plan or the property to be distributed under this Plan, except for their gross negligence or willful misconduct, and in all respects shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities (if any) under this Plan.*

*Notwithstanding any other provision of this Plan, neither any holder of a Claim or Interest, or other party in interest, nor any of their respective officers, directors, shareholders, members and/or enrollees, employees, representatives, advisors, attorneys, financial advisors, investment bankers, agents or affiliates, and no successors or assigns of the foregoing, shall have any right of action against any Debtor, the Trustee, the JOL or any of such parties' employees, representatives, advisors, attorneys, financial advisors, investment bankers or agents or such parties successors and assigns, for any act or omission in connection with, relating to, or arising out of, the Chapter 11 Cases, the negotiation and pursuit of confirmation of this Plan, the consummation of this Plan, or the administration of this Plan or the property to be distributed under this Plan, except for such Persons' gross negligence or willful misconduct.*

**11.5 Injunctions.** *Except as otherwise specifically provided in the Plan or the Confirmation Order, all Entities who have held, hold or may hold Claims, rights, causes of action, liabilities or any Interests based upon any act or omission, transaction or other activity of any kind or nature related to the Debtors or the Chapter 11 Cases that occurred prior to the Effective Date, other than as expressly provided in this Plan or the Confirmation Order, regardless of the filing, lack of filing, allowance or disallowance of such a Claim or Interest and regardless of whether such Entity has voted to accept the Plan, and any successors, assigns or representatives of such Entities shall be precluded and permanently enjoined on and after the Effective Date from (a) the commencement or continuation in any manner of any claim, action or other proceeding of any kind with respect to any Claim, Interest or any other right or claim against the Debtors, or any assets of the Debtors which they possessed or may possess prior to the Effective Date, (b) the enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree or order with respect to any Claim, Interest or any other right or claim against the Debtors, or any assets of the Debtors which such Entities possessed or may possess prior to the Effective Date, (c) the creation, perfection or enforcement of any encumbrance of any kind with respect to any Claim, Interest or any other right or claim against the Debtors or any assets of the Debtors which they possessed or may possess prior to the Effective Date, and (d) the assertion of any Claims that are released hereby.*

**11.6 Limitation of Liability.** *Except as expressly set forth in the Plan, following the Effective Date, none of the Debtors, the Trustee, the JOL or any of such parties' employees, advisors, attorneys, professionals or agents shall have or incur any liability to any holder of a Claim or Interest for any act or omission in connection with, related to, or arising out of, the Chapter 11 Cases, the negotiation and pursuit of confirmation of the Plan, the*

*consummation of the Plan or any contract, instrument, release or other agreement or document created in connection with this Plan, or the administration of the Plan or the property to be distributed under the Plan, except for gross negligence or willful misconduct.*

## ARTICLE 12

### **RETENTION OF JURISDICTION**

**12.1 Ongoing Bankruptcy Court Jurisdiction.** Notwithstanding the entry of the Confirmation Order, the occurrence of the Effective Date and the transfer of the Assets to the Liquidating Trusts, the Bankruptcy Court shall retain jurisdiction over the Chapter 11 Cases after the Effective Date to the fullest extent legally permissible, including but not limited to jurisdiction to, among other things:

**12.1.1** Allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the allowance or priority of all Claims and Interests;

**12.1.2** Hear and determine any and all causes of action against any Person and rights of the Debtors that arose before or after the Petition Date, including but not limited to the rights and powers of a trustee and debtor-in-possession, against any Person whatsoever, including but not limited to all avoidance powers granted to the Debtors under the Bankruptcy Code and all causes of action and remedies granted pursuant to sections 502, 506, 510, 541, 542, 543, 544, 545, 547 through 551 and 553 of the Bankruptcy Code;

**12.1.3** Grant or deny any applications for allowance of compensation for Professionals authorized pursuant to the Bankruptcy Code or the Plan, for periods ending on or before the Effective Date;



**12.1.4** Resolve any matters relating to the assumption, assumption and assignment or rejection of any executory contract to which either Debtor is a party or with respect to which either of the Debtors may be liable, including without limitation the determination of whether such contract is executory for the purposes of section 365 of the Bankruptcy Code, and hear, determine and, if necessary, liquidate any Claims arising therefrom;

**12.1.5** Enter orders approving the Liquidating Trusts' post-Confirmation sale or other disposition of Trust Assets;

**12.1.6** Ensure that distributions to holders of Allowed Claims are accomplished pursuant to the provisions of the Plan and the Liquidating Trust Agreements;

**12.1.7** Decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters and grant or deny any applications involving any Debtor that may be pending in the Chapter 11 Cases on the Effective Date;

**12.1.8** Hear and determine matters concerning state, local or federal taxes in accordance with sections 346, 505 or 1146 of the Bankruptcy Code;

**12.1.9** Enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Liquidating Trust Agreements, the Plan and the Confirmation Order;

**12.1.10** Hear and determine any applications by the Liquidating Trustee to retain one or more professionals to assist the Liquidating Trustee in carrying out his duties and obligations under the respective Liquidating Trust Agreements;

**12.1.11** Resolve any disputes relating to monthly fee invoices for allowance of compensation submitted by the Liquidating Trustee, the PBF II Liquidating Trust Monitor or their professionals;

**12.1.12** Grant or deny any semi-annual application for allowance of compensation submitted by the PBF II Liquidating Trustee, the PBF II Liquidating Trust Monitor or their professionals;

**12.1.13** Hear and determine any matters concerning the enforcement of the provisions of Article 11 of the Plan and any other exculpations, limitations of liability or injunctions contemplated by the Plan;

**12.1.14** Resolve any cases, controversies, suits or disputes that may arise in connection with the consummation, interpretation or enforcement of the Liquidating Trust Agreements, the Plan or the Confirmation Order;

**12.1.15** Permit the Trustee or the JOL, to the extent authorized pursuant to section 1127 of the Bankruptcy Code, to modify the Plan or any agreement or document created in connection with the Plan or remedy any defect or omission or reconcile any inconsistency in the Plan or any agreement or document created in connection with the Plan;

**12.1.16** Issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any entity with consummation, implementation or enforcement of the Liquidating Trust Agreements, the Plan or the Confirmation Order;

**12.1.17** Enforce any injunctions entered in connection with or relating to the Plan or the Confirmation Order;

**12.1.18** Enter and enforce such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked or vacated, or distributions pursuant to the Liquidating Trust Agreements or the Plan are enjoined or stayed;

**12.1.19** Determine any other matters that may arise in connection with or relating to the Plan or any agreement or the Confirmation Order;

**12.1.20** Order the complete or partial substantive consolidation of any non-Debtor Entity with or into either or both of the Liquidating Trusts *nunc pro tunc* to November 30, 2009 or otherwise;

**12.1.21** Order the imposition of a Bar Order in favor of any Entity entering into a compromise of a Litigation Claim(s) with the Liquidating Trustee with identical scope, breadth and reach as that provided in connection with the Kaufman Rossin Settlement Agreement;

**12.1.22** Enter any orders in aid of prior orders of the Bankruptcy Court; and

**12.1.23** Enter a final decree closing the Chapter 11 Cases.

## **ARTICLE 13**

### **ACCEPTANCE OR REJECTION OF THE PLAN**

**13.1 Persons Entitled to Vote.** Classes 1A, 1B, 2A, 2B, 3A and 3B are Impaired. Votes from holders of Class 1A, Class 1B, Class 2A and Class 2B Claims, and holders of Class 3A and Class 3B Interests, will be solicited.

**13.2 Acceptance by Impaired Classes.** An Impaired Class of Claims shall have accepted the Plan if (i) 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 (ii) the holders (other than any holder designated under section 1126(e) of the Bankruptcy Code) of at least one-half in number of the Allowed Claims actually voting in such Class have voted to accept the Plan.

## **ARTICLE 14**

### **MISCELLANEOUS PROVISIONS**

**14.1 Modification of the Plan.** Subject to the restrictions on Plan modifications set forth in section 1127 of the Bankruptcy Code, and subject to the consent of the other, the Plan Proponents reserve the right to alter, amend or modify the Plan before its substantial consummation.

**14.2 Revocation of the Plan.** The Plan Proponents reserve the right to revoke or withdraw the Plan prior to the Confirmation Date. If the Plan Proponents revoke or withdraw the Plan, or if Confirmation does not occur or if the Plan does not become effective, then the Plan shall be null and void, and nothing contained in the Plan or Disclosure Statement shall: (a) constitute a waiver or release of any Claims by or against, or any Interests in, the Debtors; (b) constitute an admission of any fact or legal conclusion by the Debtors or any other Entity; or (c) prejudice in any manner the rights of the Debtors in any further proceedings involving the Debtors.

**14.3 Governing Law.** Unless a rule of law or procedure is supplied by (i) federal law (including the Bankruptcy Code and Bankruptcy Rules), or (ii) an express choice of law provision in any agreement, contract, instrument or document provided for, or executed in connection with, the Plan, the rights and obligations arising under the Plan and any agreements, contracts, documents and instruments executed in connection with the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida without giving effect to the principles of conflict of laws thereof.

**14.4 No Admissions.** If Confirmation or the Effective Date does not occur, nothing contained in the Plan or Disclosure Statement shall be deemed as an admission by the



Debtors, the Plan Proponents or any other party with respect to any matter set forth therein or herein including, without limitation, liability on any Claim or the propriety of any Claims classification. If the Effective Date does not occur within thirty (30) days following entry of the Confirmation Order, the Plan will be null and void and of no further effect.

**14.5 Severability of Plan Provisions.** If prior to Confirmation any term or provision of the Plan that does not govern the treatment of Claims or Interests is held by the Bankruptcy Court to be invalid, void or unenforceable, at the request of the Plan Proponents, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

**14.6 Successors and Assigns.** The rights, benefits and obligations of any Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of such Entity.

**14.7 Exemption from Certain Transfer Taxes.** Pursuant to section 1146(c) of Bankruptcy Code, the issuance, transfer or exchange of any Security or the making or delivery of any instrument of transfer under this Plan may not be taxed under any law imposing a stamp tax,

use tax, sales tax or similar tax. Any sale of any Asset occurring before, after or upon the Effective Date shall be deemed to be in furtherance of this Plan.

**14.8 Preservation of Rights of Setoffs.** The Debtors, may, but shall not be required to, set off against any Claim, and the payments or other distributions to be made pursuant to this Plan in respect of such Claim, claims of any nature whatsoever that the Debtors may have against the holder of such Claims; but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors of any such claim that the Debtors may have against such holder.

**14.9 No Injunctive Relief.** Except as otherwise provided in the Plan or Confirmation Order, no Claim or Interest shall under any circumstances be entitled to specific performance or other injunctive, equitable, or other prospective relief.

**14.10 Non Business Day.** 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.

**14.11 Entire Agreement.** This Plan (together with the Liquidating Trust Agreements) sets forth the entire agreement and undertaking relating to the subject matter hereof and supersedes all prior discussions and documents. The Debtors' Estates shall not be bound by any terms, conditions, definitions, warranties, understandings, or representations with respect to the subject matter hereof, other than as expressly provided for herein.

**14.12 Notices.** Any notice required or permitted to be provided under this Plan shall be in writing and served by either (a) certified mail, return receipt requested, postage

prepaid, (b) hand delivery, or (c) reputable overnight delivery service, freight prepaid, to be addressed as follows:

**Counsel for the Chapter 11 Trustee**

Michael S. Budwick, Esq.  
Meland Russin & Budwick, P.A.  
3000 Wachovia Financial Center  
200 South Biscayne Boulevard  
Miami, Florida 33131

**Counsel for the Joint Official Liquidator**

Edward J. Estrada, Esq.  
Reed Smith LLP  
599 Lexington Avenue, 22<sup>nd</sup> Floor  
New York, New York 10022

-and-

Robin J. Rubens, Esq.  
Levine Kellogg Lehman Schneider & Grossman LLP  
201 South Biscayne Boulevard  
Miami Center – 34<sup>th</sup> Floor  
Miami, Florida 33131

Dated: July 26, 2010

PALM BEACH FINANCE PARTNERS, L.P.

/s/ Barry Mukamal [FILED WITH CONSENT]  
By: Barry Mukamal  
Title: Chapter 11 Trustee of  
Palm Beach Finance Partners, L.P.

PALM BEACH FINANCE II, L.P.

/s/ Barry Mukamal [FILED WITH CONSENT]  
By: Barry Mukamal  
Title: Chapter 11 Trustee of  
Palm Beach Finance II, L.P.

PALM BEACH OFFSHORE, LTD.

/s/ Geoffrey Varga [FILED WITH CONSENT]  
By: Geoffrey Varga  
Title: Joint Official Liquidator of  
Palm Beach Offshore, Ltd.

PALM BEACH OFFSHORE II, LTD.

/s/ Geoffrey Varga [FILED WITH CONSENT]  
By: Geoffrey Varga  
Title: Joint Official Liquidator of  
Palm Beach Offshore II, Ltd.



**Schedule 1.45**

**Kaufman Rossin Settlement Agreement**

**STIPULATION OF SETTLEMENT**

This Stipulation of Settlement ("*Stipulation*") is entered into on this \_\_\_\_ day of June 2010 by and among (a) Barry E. Mukamal, as Chapter 11 trustee ("*Trustee*") for Palm Beach Finance Partners, L.P. ("*Palm Beach I*") and Palm Beach Finance II, L.P. ("*Palm Beach II*"; and together with Palm Beach I, the "*Debtors*"; (b) Kaufman Rossin & Co., A Professional Association, and Kaufman Rossin & Co. Cayman (collectively, "*KRC*"; and (c) Geoffrey Varga, as Joint Official Liquidator ("*Liquidator*") for Palm Beach Offshore, Ltd. (In Official Liquidation) ("*PBO*") and Palm Beach Offshore II, Ltd. (In Official Liquidation) ("*PBO II*"; and together with PBO, the "*Offshore Entities*"). The terms of this Stipulation are as follows:

**RECITALS**

- A. On November 30, 2009, the Debtors commenced suit against KRC ("*PBF Litigation*");
- B. The PBF Litigation asserts certain claims against KRC with respect to certain pre-petition accounting services provided by KRC to the Debtors;
- C. On November 30, 2009 ("*Petition Date*"), the Debtors commenced Chapter 11 bankruptcy cases by filing voluntary petitions for relief under Chapter 11 of Title 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Florida ("*Bankruptcy Court*"), Case Nos. 09-36379-PGH and 09-36396-PGH respectively ("*Bankruptcy Cases*");
- D. On December 9, 2009, the Offshore Entities commenced suit against KRC ("*Offshore Litigation*" collectively, with the PBF Litigation, the "*Litigation*");
- E. The Offshore Litigation asserts certain claims against KRC with respect to certain professional accounting services provided directly by KRC to the Offshore Entities;
- F. On December 30, 2009, KRC filed its notice of removal of the PBF Litigation, removing the PBF Litigation to the Bankruptcy Court;

G. On January 29, 2010, the Trustee was appointed Chapter 11 trustee of both Debtors;

H. Since the Trustee's appointment, the Trustee and his legal counsel and KRC and its legal counsel and other representatives have shared information and engaged in settlement negotiations and discussions in-person, by telephone and in writing. During the course of these communications, the Parties (as defined below) have analyzed the claims and potential defenses, to the Litigation.

I. To avoid the continued expense and risk of adverse outcome in the Litigation, among other reasons, KRC, the Trustee, and the Liquidator have agreed to resolve the Litigation subject to the terms and conditions of this Stipulation and Bankruptcy Court approval.

**NOW, WHEREFORE**, it is stipulated, consented to and agreed, by and among KRC the Trustee, and the Liquidator (each a "**Party**"; and collectively, the "**Parties**"), as follows:

1. The Parties acknowledge that this Stipulation is a compromise and settlement of a controversy. No Party admits, and each expressly denies, any liability on its part.

2. This Stipulation constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof and there are no other stipulations, agreements, representations, or warranties other than those specifically set forth herein. All prior agreements and understandings between the Parties concerning the subject matter hereof are superseded by the terms of this Stipulation.

3. In full and final settlement of the Litigation, KRC shall pay (or cause to be paid) the remaining limit of insurance under KRC's professional liability insurance policy applicable to the Litigation as of the Settlement Payment Date (as that term is defined below) ("**Settlement Payment**") on the Settlement Payment Date, via wire transfer pursuant to written instructions to

be provided to KRC, and as mutually directed by the Trustee and Liquidator. In any event, the Settlement Payment shall not be less than \$9,600,000.

4. The Trustee, with the cooperation of KRC and the Liquidator, shall obtain the entry of a final, non-appealable order ("**Bar Order**") by the Bankruptcy Court in the form of Exhibit 1, which bars and permanently enjoins the prosecution of any and all direct, indirect or derivative Claims (as defined below) against KRC, whether known or unknown, by any and all of the following entities: (1) the Debtors; (2) all creditors of either of the Debtors; (3) the Offshore Entities; (4) all shareholders and creditors of the Offshore Entities; (5) all limited partners of either of the Debtors; (6) all general partner(s) of either of the Debtors; and (7) all entities acting on behalf of the limited and general partners of the Debtors (collectively, the "**Enjoined Parties**"). It is the express intention of the Parties that the Bar Order shall and will be interpreted as broadly as possible so as to effectuate the purposes stated therein. This Stipulation is contingent upon the entry of the Bar Order and if for any reason the Bar Order is not entered, this Stipulation shall be null and void in its entirety. At the Trustee's discretion, the Bar Order may be provided pursuant to, or apart from, a confirmed Chapter 11 plan for the Debtors.

5. The Settlement Payment Date shall be the 20<sup>th</sup> calendar day from the later of the following three events: (1) the date of the entry by the Bankruptcy Court of a final order approving this Stipulation; (2) the date of the entry by the Bankruptcy Court of the Bar Order; and (3) the date of final resolution of all appeals and the expiration of time for any further appeals from or related to the Bankruptcy Court's orders approving this Stipulation and the Bar Order, unless such appeals have been determined by the Bankruptcy Court to have been rendered moot. In the event that Bankruptcy Court approves this Stipulation and enters the Bar Order as part of an order confirming a Chapter 11 plan for the Debtors, then the Settlement Payment Date shall be the the later of the following two events: (1) the 20<sup>th</sup> calendar day following the effective



date of the plan; or (2) the date of final resolution of all appeals and the expiration of the time for any further appeals from or related to the Bankruptcy Court's order approving the Bar Order if the Bar Order is contained in and/or part of the Confirmation Order.

6. For purposes of this Stipulation, the term "*Claims*" shall mean any obligations, claims, causes of action, demands of any type that a party may presently have, may have or have had in the past, upon or by reason of any matter, cause or thing whatsoever, including without limitation any and all obligations, claims, causes of actions and demands of any kind whatsoever, at law or in equity, indirect, derivative, or direct, known or unknown, discovered or undiscovered, including but not limited to the Litigation.

7. For purposes of this Stipulation, the term "*KRC Parties*" shall mean KRC and those persons set forth on the attached Exhibit 1 ("*KRC Affiliated Parties*"), consisting of its present and former officers, directors, members, partners, representatives, managers, agents, employees, attorneys, subsidiaries, affiliates and other related entities, indemnitors and insurers.

8. Upon approval of this Stipulation by final orders of the Bankruptcy Court in the Bankruptcy Cases, payment of the Settlement Payment and entry of a Bar Order, the Trustee on behalf of both Debtors and their estates waives, releases and holds harmless, now and forever, the KRC Parties from any and all Claims that the Trustee, the Debtors or the Debtors' estates may have against the KRC Parties; provided that nothing herein shall be deemed to release, waive or otherwise limit any rights or obligations arising out of this Stipulation. Moreover, the scope of this release shall not impact, impair or alter in any manner any Claims whatsoever that the Trustee, on behalf of the Debtors and their estates, and the Liquidator on behalf of the Offshore Entities may have against any third parties other than the KRC Parties, including but not limited to Claims against any alleged concurrent or consecutive tortfeasors, if any. Notwithstanding anything set forth in this Stipulation, the scope of the release by the Trustee and

the Debtors in favor of the KRC Affiliated Parties shall be expressly limited to claims based upon or directly related to the professional services provided by KRC to the Debtors or the Offshore Entities.

9. Upon approval of this Stipulation by final orders of the Bankruptcy Court in the Bankruptcy Cases, payment of the Settlement Payment and entry of a Bar Order, the KRC Parties waive, release and hold harmless, now and forever, the Trustee, the Debtors, the Liquidator and the Offshore Entities from any and all Claims that the KRC Parties may have against the Trustee, the Debtors, the Liquidator or the Offshore Entities; provided that this provision does not release, waive or otherwise limit any rights or obligations arising out of this Stipulation. The execution of this Stipulation below by a duly authorized representative of KRC shall reflect a warranty and representation that KRC's representative is authorized to bind not only KRC but each and every one of the KRC Parties.

10. Upon approval of this Stipulation by final orders of the Bankruptcy Court in the Bankruptcy Cases, payment of the Settlement Payment and entry of a Bar Order, the Liquidator waives, releases and holds harmless, now and forever, the KRC Parties from any and all Claims that the Liquidator or the Offshore Entities may have against the KRC Parties or that could be brought on behalf of the Liquidator or the Offshore Entities as against the KRC Parties; provided that this provision does not release, waive or otherwise limit any rights or obligations arising out of this Stipulation. Moreover, the scope of this release shall not impact, impair or alter in any manner any Claims whatsoever that the Liquidator on behalf of the Offshore Entities may have against any third parties other than the KRC Parties, including but not limited to Claims against any alleged concurrent or consecutive tortfeasors, if any.

11. The KRC Parties agree to cooperate with the Trustee and Liquidator in any investigation undertaken by the Trustee or the Liquidator arising from or relating in any way to

the business affairs or operations of the Debtors and the Offshore Entities, including, but not limited to: (a) being available to answer questions from the Trustee or his counsel and/or meeting with them on reasonable notice; (b) turning over to the Trustee or his counsel any documents or other materials possessed by the KRC Parties that may relate to the fraud involving Thomas Petters or any litigation claims to be pursued or investigated by the Trustee; or (c) appearing for depositions, hearings or trials. The KRC Parties' cooperation with the Trustee and Liquidator pursuant to this paragraph shall not constitute nor be deemed a waiver or breach of any applicable privileges or confidentiality obligation on the part of the KRC Parties.

12. Each of the Parties acknowledges that he, she or it has read all of the terms of this Stipulation, has had an opportunity to consult with counsel of his, her or its own choosing or voluntarily waived such right, and enters into those terms voluntarily and without duress.

13. The Trustee shall file and serve the necessary motion(s) in the Bankruptcy Cases seeking the entry of the Bar Order and an order approving this Stipulation. The Trustee shall serve by U.S. Mail notice of motion(s) upon all persons and entities whose rights would or could be affected by the Bar Order, including, without limitation, (1) all creditors of either of the Debtors; (2) the Liquidator, on behalf of himself and the Offshore Entities; (3) all shareholders and creditors of the Offshore Entities; (4) all limited partners of either of the Debtors; (5) all general partner(s) of either of the Debtors; and (6) all entities that acted or are acting for or on behalf of the limited and general partners of the Debtors. Service on the shareholders and creditors of the Offshore Entities shall be effectuated by the Liquidator by ordinary Mail or electronic mail and the Liquidator shall advise KRC in writing that such notice has been disseminated without disclosing any list of shareholders and creditors. Each Party shall bear its own attorneys' fees and costs in connection with the Litigation, the negotiation and drafting of this Stipulation and the submission of such Stipulation, motions and orders as may be necessary

to obtain the approval of the Bankruptcy Court; provided however, that in the event of any litigation between the Parties under this Stipulation or arising as a result of a default under this Stipulation, the prevailing Party(ies) shall be entitled to reasonable attorneys' fees and costs related thereto, including, but not limited to, those incurred at all trial and appellate levels.

14. This Stipulation and any of the specific items, covenants, and conditions contained herein, may not be waived, changed, altered or modified except by an instrument in writing signed by the Party(ies) against whom enforcement of such change is sought.

15. This Stipulation shall be effective upon execution by all of the Parties hereto, subject only to approval of this Stipulation by final orders of the Bankruptcy Court, payment of the Settlement Payment and entry of the Bar Order. Upon the happening of each of these conditions, the Trustee and Liquidator shall dismiss the Litigation with prejudice, respectively. Upon it becoming effective, this Stipulation shall be binding on all of the Trustees' successors or assigns.

16. If the Bankruptcy Court does not approve this Stipulation, then the Stipulation shall be of no further force or effect, and the Parties shall be restored to their rights as they existed prior to the execution of this Stipulation. Notwithstanding the foregoing, if the Bankruptcy Court does not approve this Stipulation because any of the Parties have failed to provide the Bankruptcy Court with adequate information to rule on the merits of the Stipulation, the Parties will use their best efforts to seek reconsideration of any order declining to approve the Stipulation, or to file an amended motion to approve the Stipulation. At the Trustee's discretion, the order approving this Stipulation may be sought pursuant to, or apart from, a confirmed plan of reorganization or liquidation for the Debtors.



17. This Stipulation shall in all respects be construed in accordance with the laws of the State of Florida applicable to contracts made and to be performed wholly within the State of Florida and by federal law to the extent the same has preempted the laws of the State of Florida.

18. This Stipulation may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Stipulation. Delivery of an executed counterpart of a signature page to this Stipulation by facsimile shall be effective as delivery of a manually executed counterpart of this Stipulation.

19. This Stipulation shall be deemed to have been jointly drafted by the Parties, and in construing and interpreting this Stipulation, no provision shall be construed and interpreted for or against any of the Parties because such provision or any other provision of the Stipulation as a whole is purportedly prepared or requested by such Party.

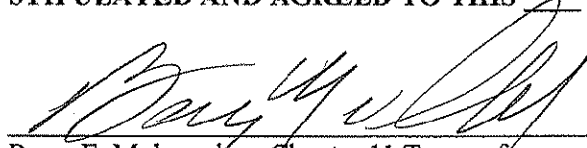
20. The Bankruptcy Court shall retain jurisdiction to enforce the terms of this Stipulation.

21. The individuals signing below represent and warrant that they have the authority to execute this Stipulation on behalf of their respective clients.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

A handwritten signature in black ink, appearing to be a stylized 'W' or 'M' followed by a vertical line and a diagonal stroke.

STIPULATED AND AGREED TO THIS        DAY OF JUNE, 2010, BY:



Barry E. Mukamal, as Chapter 11 Trustee for  
Palm Beach Finance Partners, L.P. and  
Palm Beach Finance II, L.P.

Geoffrey Varga, as Joint Official Liquidator for  
Palm Beach Offshore, Ltd. (in Official Liquidation) and  
Palm Beach Offshore II, Ltd. (in Official Liquidation)




Kaufman Rossin & Co., A Professional Association,  
by James R. Kaufman, as Managing Principal  
and duly authorized agent

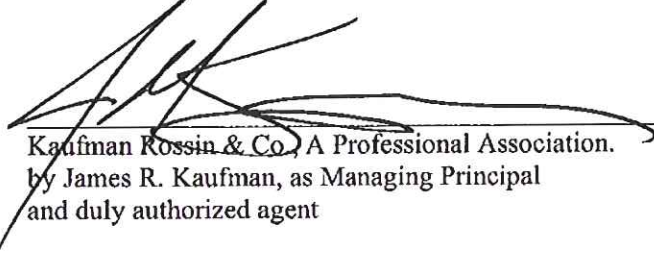



Kaufman Rossin & Co. Cayman, by Gerald A. Michelson,  
as Managing Principal and duly authorized agent

STIPULATED AND AGREED TO THIS \_\_\_\_ DAY OF JUNE, 2010, BY:

\_\_\_\_\_  
Barry E. Mukamal, as Chapter 11 Trustee for  
Palm Beach Finance Partners, L.P. and  
Palm Beach Finance II, L.P.

  
\_\_\_\_\_  
Geoffrey Varga, as Joint Official Liquidator for  
Palm Beach Offshore, Ltd. (in Official Liquidation) and  
Palm Beach Offshore II, Ltd. (in Official Liquidation)

  
\_\_\_\_\_  
Kaufman Rossin & Co., A Professional Association.  
by James R. Kaufman, as Managing Principal  
and duly authorized agent

  
\_\_\_\_\_  
Kaufman Rossin & Co. Cayman, by Gerald A. Michelson,  
as Managing Principal and duly authorized agent

**EXHIBIT 1**

**KRC Partners, Managers and Staff**

Geoffrey	Adams
Pilar	Almeida
Roberto	Alonso
Joshua	Altchek
Janet	Altman
Rolston	Anglin
Sheena	Anglin
Carlos I	Angulo
Evy Marie	Antorcha
John R	Anzivino
Vivian	Aponte
Lydializ	Areizaga
Hosana	Armenteros
Leslie A.	Bacallao
Brian L.	Baker
Leandro	Barbuscio
Paul D.	Barron
Robert	Basham, R
Joy A.	Batteen
Lori S	Baumwell
Matthew	Bell
Cathy	Benton
Scott F	Berger
Aaron	Bernstein
Steven M	Berwick
Paul	Blackwell
Maria G	Brenes
Lori	Bucci
Timothy P	Burrows
Michael J	Cahill
Susan	Cahill
Alfredo	Castaneda
Joseph	Castro
Carlos	Celorio
Gabriel	Chipy
Alan J	Chosed
Howard P.	Cohen
Mary	Cox
Diana	Cuare
Michael	Custer
Jeffrey A	Daich





Marianne	Daniels
Christian	Daulong
Steven A	Davis
Eric L.	De Armas
Brian	de la Fe
Albertina	De la Guera
Jorge	Decardenas
Denia	DeCespedes
Robin S	Dechert
Suzanne J	Delgado
Steven M	Demar
Alfredo	Dezayas
Keith	Diamond
Kenneth S	Dubow
Jeana Y.	Ebanks
Christine	Egan
Michael Paul	Elkin
Keith E	Ellenburg
Michelle	Elsner
Lazaro	Escandel
Manuel	Farello
Marc	Feigelson
Raul	Feraud
Tanya	Ferreiro
Janet	Fifer
Kimberly	Fishman
Dennis	Fitzpatrick
Glenda	Flores
Yara	Flores
Mark	Francis
Deborah	Frishman
Patrick F	Gannon
Edward V	Gannon
Ivan	Garces
Raul	Garcia
Anthony J.	Garcia
David	Garcia
Robert B	Glick
Jessica	Godbey
Chauntel	Gomez-Montes
Frances	Gonzalez
Craig	Goodman
Barry	Goodman
Alicia	Grande
Richard	Gray
Lisa	Grossman



Michael	Hanna
Blain L	Heckaman
Mayra	Herrera
Edward P	Hirschberg
Lauren B.	Hollander
Luciano	Humberto
Shibu	Idichandy
Angel	Iglesias
Amir A.	Isaiah
Adam	Jablonski
Andrew	Jacobs
Yaury	Jattin
Gregory	Katsikas
James R	Kaufman
Robert	Kaufman
William G	Klinck - Shearman
Martin J	Kurtz
Jessa	Lagon
Susanna L	Laslett
Timothy	Lebrun
Gregory M	Levy
Larry	Levy
Karen	Lewis
Daniel	Liss
Brett M	Logan
Elizabeth	Mackey
Rafael	Macnamara
Phyllis	Mamuyac
Eileen G	Martin
January	Martin, J.
Manuel	Martinez De Murga Jr
Lia L.	Martinez
Gregory M.	Mathieu
Jessica M.	Mayers-Williams
Michael V.	McCuin
Lisa	Melendrez
Scott	Merriam
David A	Merzel
Sarah S.	Merzel
Lee	Meyers
Gerald	Michelson
Lauren	Milian
Jimmy	Miller
Michael	Montejo
Evan S.	Morgan
Deborah	Morrison



Roger	Mulchansingh
Gregory	Muzii
Annette	Nunez
Roger	Otano
Russ	Panks
Maximiliano	Pascuali
Lizette	Pena
Elizabeth	Pendel
Michael Anthony	Perez
Krista D.	Pfeiffer
Jesus A.	Ponz
Julian	Preston
Albert	Primo
Nathan N.	Puritz
Robert B.	Rafferty II
Richard	Ramler
Philip A.	Rankin
James	Reto
Jorge	Rey
Robert	Reyes
Mary Theresa	Richards
Carl N.	Richie
Leticia M.	Rivero
Jerry	Rodriguez
Annette	Rodriguez
Stacy	Romero
Avi	Rosenblatt
Jay H.	Rossin
Eduardo	Sanchez
Natalie B.	Sands
Henry W.	Schade
Jill L.	Schlecter
Leslie A.	Schuyler
Mark	Scott
Keith	Sharkey
Kara	Sharp
Barbara M.	Shepherd
Richard	Shore
Denise	Shweky
Michael	Sidnam
James E.	Silvey
Adam A.	Simms
Elizabeth	Smith
Samantha	Snyder
Joshua	Stern
Robert A.	Stone



Jacqueline	Straziuso
Lionel L.	Suarez
Orlando	Tejedor
Nick P	Tootle
Gregory	Torroella
John D.	Trammell, J
Herbert	Trowbridge
Meredith D.	Tucker
Maite M.	Valdes
Marshall	Van Smith
Marcela	Varela
Omara	Velazquez
Lori	Viens
Daniel M.	Wagner Jr
Michael	Weil
Mark A.	Wilkinson
Carolina	Wright-Verges
Joseph	Yoh
Deborah	Young
Miguel	Zablah
Antonio	Zamora
Ilan	Zarmon
Paul	Zavaliy
Ye	Zhang

#### **KRC Affiliates**

Anglin, Ltd.  
Ebanks Ltd.  
Rankin Berkower (Cayman) Ltd.  
KR Cayman  
Kaufman Rossin Fund Services LLC  
Kaufman Rossin Fund Services (Mass) LLC  
Kaufman Rossin Fund Services (Cayman) Ltd  
Kaufman Rossin Fund Services (Bahamas) Ltd  
KR Tiburon Holdings, LLC  
KRFS Holdings Inc.  
K&R Partnership LLP

#### **KRC Attorneys**

DeMahy Labrador Drake Payne & Cabeza  
Rice Pugatch Robinson & Schiller, P.A.  
Thompson Coe Cousins & Irons LLP  
Wilson Elser Moskowitz Edelman & Dicker LLP





**KRC Insurer**

Interstate Fire & Casualty Company

8A

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)

In re:

PALM BEACH FINANCE PARTNERS,  
L.P., a Delaware limited partnership, *et al.*,

Chapter 11

Debtors,

CASE NO. 09-36379-BKC-PGH  
(Jointly Administered)

**ORDER GRANTING [INSERT]**

**THIS CAUSE** came before the Court upon the [INSERT] (the "*Motion*").<sup>1</sup> The Court heard argument of counsel, finds that the appropriate parties have been properly noticed, and for the reasons stated on the record, which are incorporated here by reference, it is:

**ORDERED** as follows:

1. The Motion is **GRANTED**.

---

<sup>1</sup>All capitalized terms not defined herein shall have the meaning ascribed to such term as set forth in the Motion.

(Firm Clients\4189\4189-9H\00714922.DOC.)

2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, and authority to enter this Order pursuant to 11 U.S.C. § 105(a).

3. The form and means of the notice of the Bar Order and the Motion are determined to have been the best notice practicable under the circumstances and to be good and sufficient notice to all persons whose interests would or could be affected by this Order, including, but not limited to, (1) all creditors of either of the Debtors; (2) the Liquidator, on behalf of himself and the Offshore Entities; (3) all shareholders and creditors of the Offshore Entities; (4) all limited partners of either of the Debtors; (5) all general partner(s) of either of the Debtors; and (6) all entities that acted or are acting for or on behalf of the limited and general partners of the Debtors.

4. The Court finds that entry of this Order is appropriate in order to achieve the finality and repose that is contemplated as a term of the Proposed Settlement and that good cause therefore exists for the entry of this Order, and that this Order is fair and equitable. *See In re U.S. Oil & Gas Litigation*, 967 F.2d 489, 495 96 (11th Cir. 1992); *In re Munford, Inc.*, 97 F.3d 449, 454 55 (11th Cir. 1996); *In re Jiffy Lube Securities Litigation*, 927 F.2d 155 (4th Cir. 1991); *Eichenholtz v. Brennan*, 52 F.3d 478 (3d Cir. 1995). This Order shall be interpreted as broadly as possible so as to effectuate the purposes stated herein.

5. The following additional definitions apply to the provisions of this Order barring certain claims as set forth in paragraph 6 below:

"**Releasors**" shall mean the Debtors; the Trustee; the Liquidator, the Offshore Entities; any successor or assigns of the Debtors; any and all creditors of the Debtors and their successors and assigns; any and all limited and general partners of the Debtor and their successors and assigns; any and all shareholders and creditors of the Offshore Entities; and any affiliate of any of the Debtors and their successors and assigns;

{Firm Clients\4189\4189-9H\00714922.DOC.}

"**KRC**" shall mean Kaufman Rossin & Co., A Professional Association, Kaufman Rossin & Co. Cayman, and their respective present and former officers, directors, members, partners, representatives, managers, agents, employees, attorneys, subsidiaries, affiliates and other related entities, indemnitors, and insurers as set forth on Exhibit 1;

"**Barred Claims**" shall mean any and all direct, indirect and/or derivative claims, whether known or unknown, by any and all Releasors against KRC that: (i) were alleged in the Litigation or Offshore Litigation; (ii) were threatened by the Releasors; (iii) relate to or arise from the transactions and occurrences alleged in the Litigation or Offshore Litigation; (iv) relate to or arise from KRC's duties to any of the Releasors, if any; or (v) that could have been brought in the Litigation or Offshore Litigation.

6. Releasors are permanently barred and enjoined from commencing, prosecuting, or asserting either directly or in any other capacity, against KRC, any and all liabilities, judgments, rights, claims, cross claims, counterclaims, third party claims, demands, suits, matters, obligations, damages, debts, losses, costs, actions and causes of action, of every kind and description, arising under common law, rule, regulation or statute, whether arising under state or federal law, whether presently known or unknown that any Releasor now has, ever had or may claim to have in the future that is a Barred Claim; provided that (a) this Bar Order does not release or enjoin any of Releasors from commencing, prosecuting, or asserting any claims to interpret or enforce the terms of the Agreement or this Order; (b) this Bar Order does not release or enjoin any of Releasors from



commencing, prosecuting, or asserting any claims against any party other than KRC; and (c) this Bar Order does not release or enjoin any of Releasors from commencing, prosecuting, or asserting any claims against the KRC Affiliated Parties other than those based upon or directly related to the professional services provided by KRC to the Debtors or the Offshore Entities.

7. The Court retains jurisdiction to enforce or interpret this Order.

###

**Submitted By:**

JONATHAN S. FELDMAN  
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Attorneys for the Committee

**Copies to:**

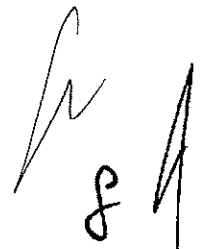
Jonathan S. Feldman, Esq.

(Attorney Feldman is directed to mail a conformed copy of this Order upon all interested parties and to file a certificate of service.)

**EXHIBIT 1**

**KRC Partners, Managers and Staff**

Geoffrey	Adams
Pilar	Almeida
Roberto	Alonso
Joshua	Altchek
Janet	Altman
Rolston	Anglin
Sheena	Anglin
Carlos I	Angulo
Evy Marie	Antorcha
John R	Anzivino
Vivian	Aponte
Lydializ	Areizaga
Hosana	Armenteros
Leslie A.	Bacallao
Brian L.	Baker
Leandro	Barbuscio
Paul D.	Barron
Robert	Basham, R
Joy A.	Batteen
Lori S	Baumwell
Matthew	Bell
Cathy	Benton
Scott F	Berger
Aaron	Bernstein
Steven M	Berwick
Paul	Blackwell
Maria G	Brenes
Lori	Bucci
Timothy P	Burrows
Michael J	Cahill
Susan	Cahill
Alfredo	Castaneda
Joseph	Castro
Carlos	Celorio
Gabriel	Chipy
Alan J	Chosed
Howard P.	Cohen
Mary	Cox
Diana	Cuare
Michael	Custer
Jeffrey A	Daich

Handwritten signature and initials in the bottom right corner of the page.

Marianne	Daniels
Christian	Daulong
Steven A	Davis
Eric L.	De Armas
Brian	de la Fe
Albertina	De la Guera
Jorge	Decardenas
Denia	DeCespedes
Robin S	Dechert
Suzanne J	Delgado
Steven M	Demar
Alfredo	Dezayas
Keith	Diamond
Kenneth S	Dubow
Jeana Y.	Ebanks
Christine	Egan
Michael Paul	Elkin
Keith E	Ellenburg
Michelle	Elsner
Lazaro	Escandel
Manuel	Farello
Marc	Feigelson
Raul	Feraud
Tanya	Ferreiro
Janet	Fifer
Kimberly	Fishman
Dennis	Fitzpatrick
Glenda	Flores
Yara	Flores
Mark	Francis
Deborah	Frishman
Patrick F	Gannon
Edward V	Gannon
Ivan	Garces
Raul	Garcia
Anthony J.	Garcia
David	Garcia
Robert B	Glick
Jessica	Godbey
Chauntel	Gomez-Montes
Frances	Gonzalez
Craig	Goodman
Barry	Goodman
Alicia	Grande
Richard	Gray
Lisa	Grossman



Michael	Hanna
Blain L	Heckaman
Mayra	Herrera
Edward P	Hirschberg
Lauren B.	Hollander
Luciano	Humberto
Shibu	Idichandy
Angel	Iglesias
Amir A.	Isaiah
Adam	Jablonski
Andrew	Jacobs
Yaury	Jattin
Gregory	Katsikas
James R	Kaufman
Robert	Kaufman
William G	Klinck - Shearman
Martin J	Kurtz
Jessa	Lagon
Susanna L	Laslett
Timothy	Lebrun
Gregory M	Levy
Larry	Levy
Karen	Lewis
Daniel	Liss
Brett M	Logan
Elizabeth	Mackey
Rafael	Macnamara
Phyllis	Mamuyac
Eileen G	Martin
January	Martin, J.
Manuel	Martinez De Murga Jr
Lia L.	Martinez
Gregory M.	Mathieu
Jessica M.	Mayers-Williams
Michael V.	McCuin
Lisa	Melendrez
Scott	Merriam
David A	Merzel
Sarah S.	Merzel
Lee	Meyers
Gerald	Michelson
Lauren	Milian
Jimmy	Miller
Michael	Montejo
Evan S.	Morgan
Deborah	Morrison



Roger	Mulchansingh
Gregory	Muzii
Annette	Nunez
Roger	Otano
Russ	Panks
Maximiliano	Pascuali
Lizette	Pena
Elizabeth	Pendel
Michael Anthony	Perez
Krista D.	Pfeiffer
Jesus A.	Ponz
Julian	Preston
Albert	Primo
Nathan N.	Puritz
Robert B	Rafferty II
Richard	Ramler
Philip A.	Rankin
James	Reto
Jorge	Rey
Robert	Reyes
Mary Theresa	Richards
Carl N.	Richie
Leticia M	Rivero
Jerry	Rodriguez
Annette	Rodriguez
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Kaufman Rossin Fund Services (Bahamas) Ltd  
KR Tiburon Holdings, LLC  
KRFS Holdings Inc.  
K&R Partnership LLP

#### **KRC Attorneys**

DeMahy Labrador Drake Payne & Cabeza  
Rice Pugatch Robinson & Schiller, P.A.  
Thompson Coe Cousins & Irons LLP  
Wilson Elser Moskowitz Edelman & Dicker LLP

**KRC Insurer**

Interstate Fire & Casualty Company

8A

**Schedule 1.52**

**Potential Litigation Claims to be Pursued by Liquidating Trustee**

To be provided at least two (2) Business Days prior to the hearing to consider approval of the Disclosure Statement.



**Schedule 1.60**

**PBF Liquidating Trust Agreement**

LIQUIDATING TRUST AGREEMENT  
for the  
Palm Beach Finance Partners Liquidating Trust

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## LIQUIDATING TRUST AGREEMENT

This Liquidating Trust Agreement (the “Liquidating Trust Agreement”), dated as of [\_\_\_\_], 2010, by and between Barry Mukamal, as Chapter 11 Trustee of Palm Beach Finance Partners, L.P. (“Trustee”) and Barry Mukamal, as Liquidating Trustee (“Liquidating Trustee”), is made and executed in connection with the *Joint Plan of Liquidation of Barry Mukamal, as Chapter 11 Trustee of Palm Beach Finance Partners, L.P. and Palm Beach Finance II, L.P., and Geoffrey Varga, as Joint Official Liquidator for Palm Beach Offshore, Ltd. and Palm Beach Offshore II, Ltd.*, under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§101, et seq. (the “Bankruptcy Code”), dated [\_\_\_\_], 2010 (as may thereafter be amended, the “Plan”), in the United States Bankruptcy Court for the Southern District of Florida (West Palm Beach Division) (the “Bankruptcy Court”), which Plan was confirmed by Order of the Bankruptcy Court dated [\_\_\_\_], 2010. The Plan provides for the establishment of the liquidating trust evidenced hereby (which liquidating trust shall formally be known as the “PBF Liquidating Trust”) to liquidate the assets and property of debtor Palm Beach Finance Partners, L.P. (“PBF” or the “Debtor”, and together with Palm Beach Finance II, L.P., the “Debtors”) in accordance with the terms and conditions of the Plan and to resolve and realize upon certain of the Debtor’s rights, claims and causes of action through enforcement by the Liquidating Trustee.

## RECITALS

**WHEREAS**, on November 30, 2009 (the “Petition Date”), the Debtors each filed a voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code; and,

**WHEREAS**, on February 2, 2010 the Bankruptcy Court entered an order appointing Barry Mukamal as Chapter 11 Trustee of the Debtors; and,

**WHEREAS**, on [\_\_\_\_], 2010, the Trustee and Geoffrey Varga, as Joint Official Liquidator of Palm Beach Offshore, Ltd. and Palm Beach Offshore II, Ltd. (the “JOL”), filed their Plan with the Bankruptcy Court; and,

**WHEREAS**, on [\_\_\_\_], 2010, the Bankruptcy Court entered an order confirming the Plan (the “Confirmation Order”); and,

**WHEREAS**, the Plan provides for, among other things: (i) distributions to the holders of Allowed Administrative Claims in accordance with the terms of the Plan and in full satisfaction of such Allowed Administrative Claims, and (ii) periodic distributions of Cash from the PBF Liquidating Trust to the holders of Allowed Claims and Interests against the Debtor as specifically provided for herein and in the Plan, which holders comprise one hundred percent (100%) of the holders of beneficial interests of the trust created hereby; and,

**WHEREAS**, the Plan provides for the creation of a liquidating trust to hold the Trust Assets in trust for the benefit of all Beneficiaries pursuant to the terms of this Liquidating Trust Agreement and the Plan; and,

**WHEREAS**, this Liquidating Trust Agreement is executed to establish the Liquidating Trust (as defined in Section 2 hereof) and to facilitate implementation of the Plan; and,

**WHEREAS**, the primary purpose of the Liquidating Trust is to liquidate the Trust Assets for the benefit of the Beneficiaries in accordance with Treasury Regulation Section 301.7701-4(d) and the Liquidating Trust will not be operated with the objective of continuing or engaging in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidating Trust; and,

**WHEREAS**, the Liquidating Trust is intended to qualify as a liquidating trust that is treated as a “grantor trust” for federal income tax purposes and the Liquidating Trustee shall operate and maintain the Liquidating Trust in compliance with Internal Revenue Service Revenue Procedure 94-45, 1994-2 C.B. 684, and Treasury Regulation Sections 1.671-4(a) and 301.7701-4(d) and all subsequent guidelines regarding liquidating trusts issued by the Internal Revenue Service; and

**WHEREAS**, the Beneficiaries desire to exchange their Allowed Claims or Interests under the Plan for Beneficial Interests in the Liquidating Trust.

## **A G R E E M E N T S**

**NOW THEREFORE**, for and in consideration of the premises, and the mutual promises and agreements contained herein and in the Plan, the receipt and sufficiency of which are hereby expressly acknowledged, the Trustee and Liquidating Trustee hereby agree as follows:

### **SECTION I.     *DEFINITIONS***

**1.1     Terms Defined in Recitals.** As used in this Liquidating Trust Agreement, each of the terms “Liquidating Trust Agreement,” “PBF,” “Debtor,” “Debtors,” “Trustee,” “Liquidating Trustee,” “Bankruptcy Code,” “Plan,” “Bankruptcy Court,” “Petition Date,” “JOL,” and “Confirmation Order” shall have the meanings set forth above.

**1.2     Terms Defined in the Plan.** Capitalized terms used in this Liquidating Trust Agreement without definition shall have the meanings assigned to them in the Plan. Terms defined in the Bankruptcy Code and not otherwise specifically defined in the Plan or herein shall, when used herein, have the meanings attributed to them in the Bankruptcy Code.

### **SECTION II.     *AUTHORITY OF AND CERTAIN DIRECTIONS TO LIQUIDATING TRUSTEE: DECLARATION OF TRUST***

**2.1     Creation of Liquidating Trust.** Pursuant to Section 7.1.1 of the Plan and the Confirmation Order, and effective as of the Effective Date of the Plan, the Beneficiaries and the Trustee hereby create the Liquidating Trust, to be formally known as the “PBF Liquidating Trust,” for the benefit of the Beneficiaries. Pursuant to the terms of the Plan, the Trustee executes this Liquidating Trust Agreement and irrevocably transfers, absolutely assigns, conveys, sets over, and delivers to the Liquidating Trust, and its successors and assigns, all right, title and interest of the Debtor in and to the Assets, in trust, to and for the benefit of the Beneficiaries for the uses and purposes stated herein and in the Plan, except as may otherwise be specifically provided by the Plan. The Trustee shall execute and deliver such other instruments of sale, transfer, conveyance, assignment and confirmation, and will cooperate and take such

other actions as the Liquidating Trustee may deem reasonably necessary or desirable in order to more effectively transfer, convey and assign all rights, title and interests in and to the Assets to the Liquidating Trust.

**2.2 Purpose of Liquidating Trust.** This Liquidating Trust is created and organized for the sole purposes of collecting, holding, liquidating, and distributing the Trust Assets and administering, compromising, settling, withdrawing, objecting to, or litigating the Litigation Claims as they pertain to PBF and objections to the Claims under the Plan, with no objective to engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidating Trust. In accordance with such express and limited purposes, as of the Effective Date, the Liquidating Trust is hereby authorized and directed: (i) to take any and all steps necessary to maintain the Liquidating Trust as a liquidating trust for federal income tax purposes in accordance with Treasury Regulation § 301.7701-4(d) and as a “grantor trust” subject to the provisions of Subchapter J, Subpart E of the IRC unless otherwise required; (ii) to take all reasonable and necessary actions to conserve and protect the Trust Estate; (iii) to administer, compromise, settle, and litigate the Litigation Claims and any other claims or causes of action belonging to the Liquidating Trust subject to the provisions of Section 4.12 hereof; (iv) to the extent necessary and appropriate, object to any Claims asserted against the Debtor’s Estate and the Liquidating Trust; and (v) to maintain, operate or lease (for purposes of holding for sale), or sell or otherwise liquidate or dispose of the Trust Assets, in accordance with the terms of this Liquidating Trust Agreement, the Plan and the Confirmation Order, and to distribute the net proceeds of such disposition to the Beneficiaries, in as prompt, efficient and orderly a fashion as possible in accordance with the provisions of Section 5 hereof.

**2.3 Title to Litigation Claims of the Debtors.** Upon the transfer of the Litigation Claims and all other Assets of PBF to the Liquidating Trust, the Liquidating Trustee shall succeed to all of the Debtor’s right, title and interest in the Litigation Claims and other Assets and the Debtor and Trustee will have no further interest in or with respect to the Litigation Claims, and other Assets, or the Liquidating Trust.

**2.4 Tax Treatment of Transfer of the Assets to the Liquidating Trust.** For all federal income tax purposes, all parties (including, without limitation, the Debtor, the Trustee, the Liquidating Trustee, and the Beneficiaries) shall treat the transfer of the Assets to the Liquidating Trust, as set forth in Sections 2.1, and 2.3 of this Liquidating Trust Agreement and in accordance with the Plan, as a transfer of such Assets to the Beneficiaries and a transfer by the Beneficiaries of such Assets to the Liquidating Trust. In all events, the Beneficiaries of the Liquidating Trust shall be treated as the grantors and deemed owners of the Liquidating Trust.

The Liquidating Trustee shall not be permitted to receive or retain Cash or Cash equivalents in excess of a reasonable amount to meet distributions as provided herein and the Plan or to maintain the value of the Trust Assets during liquidation.

For the avoidance of any doubt, following the contribution of Assets to the Liquidating Trusts pursuant to Section 7.1.3 of the Plan and Sections 2.1 and 2.3 hereof, the Liquidating Trustee shall have standing to pursue Litigation Claims on behalf of the Liquidating Trusts subject only to any limitations set forth in this Liquidating Trust Agreement.

**2.5 Assignment and Assumption of Claims.** In accordance with Section 1141 of the Bankruptcy Code and Section 2.1 hereof, the Debtor hereby transfers and assigns the Assets to the Liquidating Trust free and clear of any Liens, Claims, interests, encumbrances or any liability of any kind and the Liquidating Trustee on behalf of the Liquidating Trust hereby assumes and agrees that all such Assets will be transferred to the Liquidating Trust free and clear of any Liens, Claims, interests, encumbrances or any liability of any kind.

**2.6 Reserved.**

**2.7 Property in the Liquidating Trust.** The Liquidating Trust shall hold the legal title to all property at any time constituting a part of the Trust Estate and shall hold such property in trust to be administered and disposed of by it pursuant to the terms of this Liquidating Trust Agreement, the Plan, and the Confirmation Order for the benefit of the Beneficiaries. The Liquidating Trustee is authorized to make disbursements and payments from the Trust Estate in accordance with the provisions of Sections 5 and 6 of this Liquidating Trust Agreement and pursuant to the Plan.

**2.8 Valuation of Trust Assets.** As soon as possible after the Effective Date, and within the time frame required by applicable Treasury Regulations, the Liquidating Trustee, based upon his good faith determination after consultation with his counsel, shall inform the Beneficiaries in writing solely as to his estimate of the value of the Assets transferred to the Liquidating Trust. The valuation shall be used consistently by all parties (including, without limitation, the Debtor, the Trustee, the Liquidating Trustee, and the Beneficiaries) for federal income tax purposes, provided, however, that such valuation shall not be binding on the Liquidating Trustee or any other party for any other purposes, including without limitation in regard to the liquidation of the Trust Assets, whether by disposition, liquidation, litigation, settlement, or otherwise.

**2.9 Continuation of the Automatic Stay.** In furtherance of the implementation of the Plan, except as otherwise provided in the Plan, all injunctions or stays provided for in the Chapter 11 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 and apply to all creditors and Beneficiaries holding claims against the Debtor, the Debtor's Estate, the Assets, the Trustee, the Liquidating Trustee, the Liquidating Trust and the Trust Assets until the Final Distribution Date.

**SECTION III. *BENEFICIAL INTERESTS.***

**3.1 No Transfer or Exchange.** Unless the Liquidating Trustee determines otherwise, Beneficial Interests in the Liquidating Trust shall not be transferable. In the event the Liquidating Trustee does authorize the transfer of Beneficial Interests, the Liquidating Trustee, with the advice and consent of counsel, shall establish procedures to govern the registration and transfer of Beneficial Interests ("Permitted Transfer"). Once such procedures have been established, if ever, the Liquidating Trustee shall notify all holders of Beneficial Interests of such procedures. Notwithstanding the foregoing, a transfer of a Beneficial Interest shall be not be permitted by the Liquidating Trustee if such transfer would be contrary to maintaining the Liquidating Trust as a liquidating trust for federal income tax purposes in accordance with



Treasury Regulation § 301.7701-4(d) and as a “grantor trust” subject to the provisions of Subchapter J, Subpart E of the IRC.

**3.2 No Certification.** Unless the Liquidating Trustee determines otherwise, the Beneficial Interests will not be certificated and no security of any sort will be distributed to the Beneficiaries with respect to their interest in the Liquidating Trust. In the event the Liquidating Trustee does permit the certification of the Beneficial Interests, the Liquidating Trustee, with the advice of counsel, shall establish procedures to govern such certification. Once such procedures have been established, if ever, the Liquidating Trustee shall notify all Beneficiaries of such procedures.

**3.3 Absolute Owners.** The Liquidating Trustee may deem and treat the persons who are Beneficiaries (as determined in accordance with the Plan) as the absolute owners of the Beneficial Interests in the Liquidating Trust for the purpose of receiving distributions and payments thereof, or on account thereof, and for all other purposes whatsoever. Unless the Liquidating Trustee receives actual written notice of a Permitted Transfer from the duly authorized transferee not less than thirty (30) days prior to a distribution made pursuant to the terms of this Liquidating Trust Agreement, and subject to the applicable provisions of Bankruptcy Rule 3001(e), the Liquidating Trustee shall have no duty or obligation to make or direct any distributions or payments to such transferee of a Permitted Transfer.

**3.4 Means of Payment.** Cash payable to Beneficiaries pursuant to Section 5 hereto will be paid by checks drawn on a domestic bank account maintained by the Liquidating Trust or by wire transfer from a domestic bank account maintained by the Liquidating Trust at the option of the Liquidating Trustee.

**3.5 Amount of Payment.** The amount of Cash payments and distributions to Beneficiaries shall be made and calculated in accordance with the Plan.

**3.6 Acceptance of Conveyance.** The Liquidating Trustee is hereby directed to, and the Liquidating Trustee agrees that he will: (a) accept delivery of the Assets on behalf of the Liquidating Trust; (b) accept all bills of sale, deeds, assumptions and assignments, and all other instruments of conveyance required to be delivered by the Debtor or the Trustee with respect to the Assets transferred to the Liquidating Trustee on behalf of the Liquidating Trust pursuant to or in connection with the Plan, the Confirmation Order, or this Liquidating Trust Agreement; and (c) take such other action as may be required of the Liquidating Trust hereunder, including the receipt and acceptance as part of the Trust Estate of any property or rights, including, without limitation, notes, other negotiable instruments, claims, Litigation Claims, and other choses-in-action belonging to the Debtor or its Estate.

**3.7 Title.** On the Effective Date, legal title to all Assets of the Debtor, shall be vested in the Liquidating Trust in accordance with and pursuant to the terms of the Plan and this Liquidating Trust Agreement. Without limiting the foregoing, on the Effective Date, the Liquidating Trustee, on behalf of the Liquidating Trust, shall be: (i) authorized to act as representative of the Debtor’s Estate in respect of any and all claims or causes of action that constitute Litigation Claims; and (ii) substituted as successor to the Trustee (a) in all actions and proceedings pending or thereafter commenced in the Bankruptcy Court or elsewhere in regard to

the Litigation Claims, (b) in all actions and proceedings pending or thereafter commenced in the Bankruptcy Court or elsewhere in connection with or regarding all Claims, and (c) in any agreement respecting the Trust Assets to which the Debtor is a party.

#### **SECTION IV. ADMINISTRATION OF TRUST ESTATE.**

##### **4.1 Claims Reserves.**

a. The Liquidating Trustee shall establish a reserve fund (the “Disputed Claims Reserve”) for the payment by the Liquidating Trustee of all Disputed Claims. Each time a distribution is made to any Class of Claims, the Liquidating Trustee shall deposit into the Disputed Claims Reserve an amount equal to the distribution each holder of a Disputed Claim in such Class would have received were the Face Amount (as defined in Section 9.5 of the Plan) of its Disputed Claim in such Class an Allowed Claim. At the time a Person’s Disputed Claim is allowed, in whole or in part, such Person shall receive from the Disputed Claims Reserve, a distribution equal to the distributions such Person would have received on account of its Allowed Claim had it been an Allowed Claim at the time of such prior distributions, with any surplus Cash held in the Disputed Claims Reserve on account of such Disputed Claim becoming generally available for use by the Liquidating Trustee. Such Person shall also become a new Beneficiary of the Liquidating Trust and such Person shall be deemed, at such time, to have received a distribution of assets of the Trust Estate equal to the amount of the Allowed Claim immediately followed by a transfer by such Person to the Liquidating Trust of such assets and said new Beneficiary shall be treated, at such time, as a new grantor and deemed owner and Beneficiary of the Liquidating Trust to the extent of his Allowed Claim.

**4.2 Administrative Powers of the Liquidating Trustee.** During the Liquidating Trustee’s administration of the Liquidating Trust, and subject to: (i) all the other provisions of this Liquidating Trust Agreement (including, but not limited to, Sections 4.3 and 4.4) and (ii) the Plan, the Liquidating Trustee may exercise the power:

(i) To receive and hold all the assets of the Trust Estate and to have exclusive possession and control thereof as permissible under applicable law;

(ii) To manage, sell and convert all or any portion of the assets in the Trust Estate to Cash and distribute the net distributable proceeds as specified in the Plan and this Liquidating Trust Agreement;

(iii) To enter into, perform and exercise rights under contracts binding upon the Liquidating Trust (but not upon the Liquidating Trustee in his respective individual or corporate capacity) which are reasonably incident to the administration of the Liquidating Trust and which the Liquidating Trustee, in the exercise of his best business judgment, reasonably believes to be in the best interests of the Liquidating Trust;

(iv) To delegate his authority under this Liquidating Trust to other persons, provided that such delegation must be made pursuant to a written agreement that has been approved by the Bankruptcy Court in conjunction with the confirmation of the Plan;

(v) To establish and maintain accounts at banks and other financial institutions, in a clearly specified fiduciary capacity, into which Cash and property of the Liquidating Trust may be deposited, and draw checks or make withdrawals from such accounts, and to pay or distribute such amounts of the Trust Estate as permitted or required under the Plan and this Liquidating Trust Agreement;

(vi) To employ attorneys, accountants, appraisers, expert witnesses, insurance adjusters or other persons whose services may be reasonably necessary or advisable in the sole judgment of the Liquidating Trustee to advise or assist him in the discharge of his duties as Liquidating Trustee, or otherwise in the exercise of any powers vested in the Liquidating Trustee, and to pay reasonable compensation to such attorneys, accountants, appraisers, expert witnesses, insurance adjusters or other persons;

(vii) Pursuant to Section 1123(a)(5)(D) of the Bankruptcy Code, to sell or otherwise dispose of, and liquidate or convert to Cash, any assets of the Trust Estate, either subject to or free of any Lien, or distribute all or any part of the property of the Trust Estate among those having an interest in such property of the Trust Estate;

(viii) To pay any and all reasonable and necessary expenses attributable or relating to the management, maintenance, operation, preservation or liquidation of the Trust Estate;

(ix) To investigate, file, compromise, settle, withdraw or litigate in the Bankruptcy Court or on appeal (or pursuant to a withdrawal of the reference of jurisdiction) objections to Claims filed against the Debtor's Estate, the Trust Estate or the Liquidating Trust;

(x) To investigate, analyze, compromise, adjust, arbitrate, sue on or defend, pursue, prosecute, abandon, or otherwise deal with and settle, in accordance with the terms set forth in this Liquidating Trust Agreement, all Litigation Claims and claims in favor of or against the Liquidating Trust as the Liquidating Trustee shall deem advisable;

(xi) To avoid and recover transfers of the Debtor's property as may be permitted by the Bankruptcy Code or applicable state law, including, without limitation, those transfers identified in the Disclosure Statement;

(xii) To take all appropriate action with respect to the Trust Estate, including, without limitation, the filing, prosecution, settlement or other resolution of claims and Litigation Claims;

(xiii) To sue or be sued in connection with any matter arising from or related to the Plan or this Liquidating Trust Agreement that affects in any way the rights or obligations of the Liquidating Trust, the Liquidating Trustee or the Beneficiaries;

(xiv) To represent the interests of the Beneficiaries with respect to any matters relating to the Plan, this Liquidating Trust Agreement, or the Liquidating Trust affecting the rights of such Beneficiaries;

(xv) If the Liquidating Trust shall become subject to federal or state income tax, the Liquidating Trustee shall have the power, exercisable at his reasonable discretion, to take any action reasonably necessary to minimize any adverse federal or state income tax consequences to the Beneficiaries resulting from any distribution made by the Liquidating Trust to such Beneficiaries;

(xvi) In general, without in any manner limiting any of the foregoing or the following, to deal with the Trust Assets or any part or parts thereof in all other ways as would be lawful for any person owning the same to deal therewith; provided, however, that the investment powers of the Liquidating Trustee, other than those reasonably necessary to maintain the value of the Trust Assets of the Liquidating Trust and to further the liquidating purpose of the Liquidating Trust, are limited by the terms herein;

(xvii) To do any and all other things, not in violation of any other terms of the Plan, the Confirmation Order, and this Liquidating Trust Agreement, which, in the reasonable business judgment of the Liquidating Trustee, are necessary or appropriate for the proper liquidation, management, investment and distribution of the assets of the Trust Estate in accordance with the provisions of this Liquidating Trust Agreement and the Plan;

(xviii) Seek complete or partial substantive consolidation of any non-Debtor Entity with or into either or both of the Liquidating Trust or the liquidating trust created pursuant to the Plan to liquidate the assets of debtor Palm Beach Partners II, L.P. (together, the "Liquidating Trusts") *nunc pro tunc* to November 30, 2009 or otherwise;

(xix) Seek the imposition of a bar order in favor of any entity entering into a compromise with the Liquidating Trustee with identical scope, breadth and reach as that provided in connection with the Kaufman Rossin Settlement Agreement;

(xx) To file final tax returns for the Debtor; and

(xxi) At the appropriate time, to request that the Bankruptcy Court enter a final decree closing the Debtor's Chapter 11 Case.

#### **4.3 Limitations on Liquidating Trustee; Investments.**

a. **No Trade or Business.** The Liquidating Trustee shall carry out the purposes of the Liquidating Trust and the directions contained herein and shall not at any time cause the Liquidating Trust to enter into or engage in any business (except as may be consistent with the limited purposes of the Liquidating Trust), including, without limitation, the purchase of any assets or property (other than such assets or property as are reasonably necessary to carry out the purposes of the Liquidating Trust Agreement, on behalf of the Liquidating Trust or the Beneficiaries). The Liquidating Trustee is directed to take all reasonable and necessary actions to dispose of the Trust Estate in as prompt, efficient and orderly a fashion as possible, to make timely distributions of the proceeds of the Trust Estate, and to otherwise not unduly prolong the duration of the Liquidating Trust.

b. **Investments.** The Liquidating Trustee shall invest any monies held at any time as part of this Trust Estate, and every other reserve or escrow fund established pursuant to

the terms of this Liquidating Trust Agreement, only in interest-bearing deposits or certificates of deposit issued by any federally insured banking institution or short-term investments, including short-term obligations of, or unconditionally guaranteed as to payment by, the United States of America and its agencies or instrumentalities, pending the need for the disbursement thereof in payment of costs, expenses, and liabilities of the Liquidating Trust or in making distributions pursuant to Section 5 of this Liquidating Trust Agreement. The Liquidating Trustee shall be restricted to the collection and holding of such monies and any income earned on such monies and to the payment and distribution thereof (at least annually if such monies are not necessary to maintain the value of the Trust Estate or to satisfy Claims against the Trust Estate) for the purposes set forth in the Plan and this Liquidating Trust Agreement, and to the conservation and protection of the Trust Estate in accordance with the provisions hereof.

**4.4 Limitations on Liquidating Trustee – Bankruptcy Court Approval of Settlements Required.**

a. Unless otherwise set forth herein, the Liquidating Trustee is authorized to compromise or settle an action without any advanced notice or consent if the Liquidating Trustee reasonably believes such settlement or compromise to be in the best interests of the Liquidating Trust, and shall be held harmless by the Beneficiaries in taking such action.

b. Any compromise or settlement of an action by the Liquidating Trustee pursuant to this Section 4.4 shall be subject to approval of the Bankruptcy Court pursuant to Bankruptcy Rule 9019.

**4.5 Transferee Liabilities.** If any liability shall be asserted against the Liquidating Trust as transferee of the Trust Estate on account of any claimed liability of or through the Debtor, the Liquidating Trustee may use such part of the Trust Assets as may be necessary in contesting any such claimed liability and in payment, compromise, settlement and discharge thereof on terms reasonably satisfactory to the Liquidating Trustee. In no event shall the Liquidating Trustee be required or obligated to use his own property, funds or assets for any such purposes.

**4.6 Administration of Trust.** In administering the Liquidating Trust, the Liquidating Trustee, subject to the express limitations contained herein, is authorized and directed to do and perform all such acts, to execute and deliver such deeds, bills of sale, instruments of conveyance, and other documents as he may deem reasonably necessary or advisable to carry out the purposes of the Liquidating Trust.

**4.7 Payment of Expenses and Other Liabilities.** The Liquidating Trustee shall pay all reasonable expenses, charges, liabilities and obligations of the Liquidating Trust, including without limiting the generality of the foregoing, such debts, liabilities, or obligations as may be payable from the Trust Estate, interest, taxes, assessments, and public charges of every kind and nature, and the costs, charges and expenses in connection with or arising out of the execution or administration of the Liquidating Trust and the Trust Estate, and such other payments and disbursements as are provided for in this Liquidating Trust Agreement or which may be reasonably determined by the Liquidating Trustee to be proper charges against the Liquidating Trust and the Trust Estate, and the Liquidating Trustee, in his reasonable discretion and business



judgment may determine to be necessary or advisable to meet or satisfy unascertained, unliquidated or contingent liabilities of the Liquidating Trust. The Liquidating Trustee shall make such payments without application to or order of the Bankruptcy Court, except as otherwise herein provided.

**4.8 Payment of U.S. Trustee's Fees.** After the occurrence of the Effective Date, fees payable to the Office of the United States Trustee during the administration of the Plan and until the case is converted, dismissed or closed, shall be paid by the Liquidating Trustee.

**4.9 Liquidating Trustee Fees.** The Liquidating Trustee is entitled to reasonable compensation for services performed pursuant to the terms of and in accordance with the terms of this Liquidating Trust Agreement. The Liquidating Trustee will be paid pursuant to Section 326 of the Bankruptcy Code.

**4.10 Fiscal Year.** The Liquidating Trust's fiscal year shall end on December 31 of each year, unless the Liquidating Trustee deems it advisable to establish some other date on which the fiscal year of the Liquidating Trust shall end.

**4.11 Reports.** The Liquidating Trustee shall:

a. Prepare and file unaudited interim financial reports as may be required by regulatory authorities, applicable laws, rules or regulations or as the Liquidating Trustee deems advisable during the fiscal year;

b. Prepare, file and mail, within the time required by applicable law or regulation, necessary income tax information, tax returns or reports to the Beneficiaries and applicable taxing authorities, including, on an annual basis, the manner and calculation of the Liquidating Trust's taxable gain or loss which the Liquidating Trust would recognize if it were a separate taxable entity. In this connection, the Liquidating Trustee shall file returns for the Liquidating Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a); and

c. As soon as practicable after each calendar quarter, and in no event later than thirty (30) days after the end of each quarter, the Liquidating Trustee shall submit to the United States Trustee, and any Beneficiary who requests copies of such quarterly report after the Confirmation Date, an unaudited written report and account showing:

(i) the assets and liabilities of the Liquidating Trust;

(ii) any distributions made and expenses paid pursuant to the Plan and the Liquidating Trust Agreement during that calendar quarter;

(iii) any changes in the Trust Assets that have not been previously reported;  
and,

(iv) any material action taken by the Liquidating Trustee in the performance of his or her duties under the Liquidating Trust Agreement that has not been previously reported.

**4.12 Reserved.**

## **SECTION V. *PAYMENTS AND DISTRIBUTIONS.***

### **5.1 Distributions to Beneficiaries.**

a. As often as in the reasonable discretion and judgment of the Liquidating Trustee there shall be Available Cash in an amount sufficient to render feasible a distribution of Cash to the Beneficiaries, the Liquidating Trustee shall transfer and pay, or cause to be transferred and paid, to the Beneficiaries (subject to the provisions of Section 3 hereof) such aggregate amount of Available Cash, if any, as shall then be held in the Liquidating Trust, excluding reasonable amounts of Cash needed to pay the expenses, debts, charges, liabilities and obligations of the Liquidating Trust (the "Distribution Amount"). The aggregate amounts required to be distributed to the Beneficiaries shall be determined by the Liquidating Trustee pursuant to and in accordance with the terms of the Plan and this Liquidating Trust Agreement. The Distribution Amount(s) shall be paid to the Beneficiaries at least annually so long as there are sufficient funds to make distributions and shall be determined by the Liquidating Trustee in his reasonable discretion and his determination shall be final and conclusive on all persons, in the absence of gross negligence or willful misconduct on the part of the Liquidating Trustee, and shall not be reviewed by the Bankruptcy Court. In determining the amount of any such distribution, the Liquidating Trust may rely and shall be fully protected in relying upon the advice and opinion of independent public accountants or of counsel to the Liquidating Trust.

b. Notwithstanding the foregoing, Allowed Interests are subordinated to Allowed Claims such that holders of Allowed PBF Interests shall not receive any distribution from the PBF Liquidating Trust on account of their Allowed PBF Interest unless and until holders of Allowed Class 1A and Class 2A Claims have been satisfied in full. Upon satisfaction of all Allowed Class 1A and 2A Claims, the Liquidating Trustee shall make distributions, if any, to Holders of Allowed Interests in PBF pursuant to this Section 5.

c. All payments to be made hereunder to the Beneficiaries shall be made only from the Available Cash, and income and proceeds thereof, and only to the extent that the Liquidating Trustee shall have received sufficient Available Cash, income or proceeds thereof to make such payments in accordance with the terms of this Section 5. Each Beneficiary shall look solely to the assets, income and proceeds of the Liquidating Trust available for distribution to such Beneficiary as herein provided.

**5.2 Establishment of the Claim Accounts.** The Liquidating Trustee will establish on the Liquidating Trust's books and records an account representing each Allowed or Disputed Claim as set forth on the official claims register maintained by the Clerk of the Bankruptcy Court (each, a "Claim Account"). It is expressly understood that the establishment of the Claim Accounts by the Liquidating Trustee or his agents is solely for administrative convenience, and that amounts allocable to such Claim Accounts need not be segregated and may be commingled for investment purposes as specified herein. The Liquidating Trustee may rely on the official claims register as correct.

**5.3 Distributions from Trust Estate.** Distributions will be made to the Beneficiaries in accordance with the terms of the Plan and the Claim Accounts will be adjusted by the Liquidating Trustee to reflect such distributions.

**5.4 Fractional Distributions.** No distribution in fractions of cents shall be issued. If the Distribution Amount allocated to an Allowed Claim or Interest at the time of a distribution hereunder would include fractions of cents, the amount to be distributed shall be rounded down to the highest integral number of cents in the applicable Claim Account, but such rounding down shall not affect such allocation. The aggregate amount of the retained fractional distributions from the Distribution Amount shall be retained in the Liquidating Trust by the Liquidating Trustee and shall remain part of the Trust Estate.

**5.5 Final Distribution.** Upon the final collection or liquidation of all of the assets, rights and interests comprising the Trust Estate, and in any event prior to the Termination Date (as defined in Section 5.6 hereof), the Liquidating Trustee shall prepare a final accounting of any and all monies remaining in any accounts maintained by the Liquidating Trustee on behalf of the Liquidating Trust (the “Final Cash”). Once the amount of the Final Cash has been determined, the Liquidating Trustee shall make the Final Distribution, in accordance with the Plan and this Liquidating Trust Agreement.

**5.6 Termination Date.** The Liquidating Trust shall terminate on such date that: (a) a final decree has been entered closing the Chapter 11 Cases and (b) all assets in the Trust Estate have been distributed and (c) all Litigation Claims have been pursued or abandoned pursuant to, and in accordance with, the Plan and this Liquidating Trust Agreement (the “Termination Date”). However, the term of the Liquidating Trust shall not exceed five (5) years from the Effective Date, provided that, upon a finding that an extension is necessary to the liquidating purpose of the Liquidating Trust and upon approval by the Bankruptcy Court, the term may be extended for a finite term based on the particular facts and circumstances. Each such extension must be approved by the Bankruptcy Court within six (6) months of the beginning of the extended term. The Liquidating Trustee shall be released of all liabilities and discharged from his or her obligations under the Plan or this Liquidating Trust Agreement once the Liquidating Trust has terminated.

## **SECTION VI. *OTHER DUTIES OF THE LIQUIDATING TRUSTEE.***

**6.1 Management of Trust Estate.** With respect to the assets of the Trust Estate, the Liquidating Trustee may purchase and maintain in existence such insurance as the Liquidating Trustee deems reasonable and necessary or appropriate from time to time to protect the Liquidating Trust, the Trust Assets, the Liquidating Trustee, and the Beneficiaries’ interests in the assets of the Trust Estate or from any potential claims or liabilities relating thereto or the distribution thereof.

**6.2 Tax and Related Matters.** Pursuant to and in accordance with the Plan, the Liquidating Trustee shall be responsible for all tax matters of the Trust Estate, including, but not limited to, the filing of all tax returns and other filings with governmental authorities on behalf of the Trust Estate, the Debtor’s Estate and any subsidiaries (whether organized as a corporation, limited liability company or partnership and whether owned in whole or in part) for time periods ending on or before the Final Tax Day, including the filing of tax returns for the Liquidating Trust as a grantor trust pursuant to § 1.671-4(a) of the United States Income Tax Regulations, the filing of determination requests under Section 505(b) of the Bankruptcy Code, and responding to any tax audits of the Trust Estate. The Liquidating Trustee shall provide such information to the

Beneficiaries as will enable them to properly file their separate tax returns and withhold and pay over any amounts required by tax law. The Liquidating Trustee is authorized to act as agent for the Trust Estate in withholding or paying over any amounts required by law (including tax law) to be withheld or paid with respect to the Trust Estate. Except as otherwise set forth in this Liquidating Trust Agreement or the Plan, any items of income, deduction, credit, or loss of the Liquidating Trust not allocable to the Disputed Claims Reserve shall be allocated for federal income tax purposes among the Class 1A and 2A Claims Pro Rata. The Liquidating Trust shall file all income tax returns with respect to any income attributable to the Disputed Claims Reserve and shall pay the federal, state and local income taxes attributable to the Disputed Claims Reserve, based on the items of income, deduction, credit or loss allocable thereto. The Liquidating Trustee shall be entitled to deduct any federal or state withholding taxes from any payments made with respect to Allowed Claims, as appropriate, and shall otherwise comply with Section 346 of the Bankruptcy Code.

**6.3 No Implied Duties.** The Liquidating Trustee shall not manage, control, use, sell, dispose, collect or otherwise deal with the Trust Estate or otherwise take any action hereunder except as expressly provided herein, and no implied duties or obligations whatsoever of the Liquidating Trustee shall be read into this Liquidating Trust Agreement.

## **SECTION VII. *CONCERNING THE LIQUIDATING TRUSTEE.***

**7.1 Acceptance by Liquidating Trustee.** The Liquidating Trustee accepts the Liquidating Trust hereby created for the benefit of the Beneficiaries and agrees to act as Liquidating Trustee of the Liquidating Trust pursuant to the terms of this Liquidating Trust Agreement and the Plan. The Liquidating Trustee shall have and exercise the rights and powers herein granted and shall be charged solely with the performance of the duties herein declared on the part of Liquidating Trustee. The Liquidating Trustee also agrees to receive and disburse all monies actually received by him constituting part of the Trust Estate pursuant to the terms of this Liquidating Trust Agreement and the Plan.

**7.2 Discretionary Submission of Questions.** Subject to the provisions of this Section 7, the Liquidating Trustee, in his sole discretion and reasonable business judgment, may, but shall not be required to, submit to the Bankruptcy Court, from time to time, any question or questions with respect to which the Liquidating Trustee may desire to have explicit approval of the Bankruptcy Court for the taking of any specific action proposed to be taken by the Liquidating Trustee with respect to the Trust Estate, or any part thereof, and the administration and distribution of the Trust Estate. The written authorization of the Bankruptcy Court set forth in a Final Order shall constitute approval by the Bankruptcy Court of the proposed action to be taken by the Liquidating Trustee. All costs and expenses incurred by the Liquidating Trust in the exercise of any right, power, authority conferred by this Section 7.2 shall be costs and reasonable expenses of the Trust Estate.

### **7.3 Liability of the Liquidating Trustee.**

a. **Limitation on Liability.** No provision of this Liquidating Trust Agreement shall be construed to impart any liability upon the Liquidating Trustee unless it shall be proven that the Liquidating Trustee's actions or omissions constituted gross negligence or

willful misconduct in the exercise of or failure to exercise any right or power vested in the Liquidating Trustee under this Liquidating Trust Agreement.

b. **Reliance on Certificates or Opinions.** In the absence of gross negligence or willful misconduct on the part of the Liquidating Trustee, the Liquidating Trust may conclusively rely on the truth of the statements and correctness of the opinions expressed upon any certificates or opinions furnished to the Liquidating Trustee and conforming to the requirements of this Liquidating Trust Agreement.

c. **Discretion of Liquidating Trustee.** The Liquidating Trustee, within the limitations and restrictions expressed and imposed by this Liquidating Trust Agreement, may act freely under all or any of the rights, powers and authority conferred hereby, in all matters concerning the Trust Estate, after forming his best reasonable business judgment based upon the circumstances of any particular question or situation as to the best course to pursue, without the necessity of obtaining the consent or permission or authorization of the Beneficiaries, the Bankruptcy Court, or of any official or officer; and the rights, powers and authority conferred on the Liquidating Trustee by this Liquidating Trust Agreement are conferred in contemplation of such freedom of reasonable business judgment and action within the limitations and restrictions so expressed and imposed; provided, however, that the Liquidating Trustee shall not be liable for any error or exercise of judgment, unless it shall be proved that such Liquidating Trustee was grossly negligent or acted in a manner which constituted willful misconduct.

#### **7.4 Reliance by Liquidating Trustee.**

a. **Genuineness of Documents.** The Liquidating Trustee may rely and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, objection, order, judgment, decree, or other paper or document reasonably believed by him to be genuine and to have been signed, made, entered or presented by the proper party, parties, official, officials, entity or entities.

b. **Retention of Counsel.** The Liquidating Trustee may retain and consult with legal counsel, independent public accountants and other experts. The Liquidating Trustee shall not be liable for any action taken or suffered by him or omitted to be taken by him without gross negligence or willful misconduct in reliance on any opinion or certification of such accountants or in accordance with the advice of such counsel or experts, provided that such accountants, counsel and experts were selected and retained with reasonable care.

**7.5 Reliance on Liquidating Trustee.** No person dealing with the Liquidating Trustee shall be obligated to see to the application of any monies, securities, or other property paid or delivered to them or to inquire into the expediency or propriety of any transaction or the right, power, or authority of the Liquidating Trustee to enter into or consummate the same upon such terms as the Liquidating Trustee may deem advisable. Persons dealing with the Liquidating Trustee shall look only to the Trust Estate to satisfy any liability incurred by the Liquidating Trustee to such persons in carrying out the terms of this Liquidating Trust Agreement, and, except as otherwise expressly provided herein, the Liquidating Trustee shall have no personal, individual or corporate obligation to satisfy any such liability.



## 7.6 Indemnification.

a. **Indemnification of Liquidating Trustee and Agents.** The Liquidating Trustee hereby agrees that the Liquidating Trust will indemnify to the full extent of the Trust Estate any person or entity who was or is a party, or is threatened to be made a party to any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative by reason of the fact that such person or entity is or was a Liquidating Trustee or an employee, attorney or agent of the Liquidating Trust or Liquidating Trustee, from and against any and all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person or entity in connection with such action, suit or proceeding, including appeals thereof, if such person or entity acted without gross negligence and willful misconduct in the exercise and performance of any power or duties of such person or entity in accordance with this Liquidating Trust Agreement.

b. **Payment of Expenses.** Expenses (including attorneys' fees) incurred in defending any action, suit or proceeding referred to in this Section 7.6 may be paid by the Liquidating Trust from the Trust Assets in advance of the final disposition of such action, suit or proceeding, upon an undertaking by the Liquidating Trustee or an employee or agent of the Liquidating Trust entitled to be indemnified.

c. **Insurance.** The Liquidating Trust may maintain insurance during its existence and after its termination, at its expense, to protect itself and the Liquidating Trustee, and each of their officers, employees or agents of and from any liability, whether or not the Liquidating Trust would have the legal power to directly indemnify the Liquidating Trustee and each of its officers, employees, or agents against such liability. The terms "Liquidating Trustee," "employer" or "agent" as used herein, where applicable, include the heirs, successors, executors, administrators, personal representatives, or estates of such persons or entities.

d. **Bond.** As a condition to serving as Liquidating Trustee hereunder, the Liquidating Trustee and any successor trustee is required to and shall post a bond in favor of the Liquidating Trust in an amount not less than the amount of Cash held by the Liquidating Trust, which bond shall be in substantially the form as that required by the United States Trustee's Office for trustees serving in bankruptcy cases within the Southern District of Florida. For the avoidance of any doubt, the Liquidating Trust shall post and be responsible for all costs associated with the posting of the bond contemplated under this Section 7.6(d) including costs associated with such bond.

e. **Costs and Expenses of Liquidating Trustee.** Except as set forth in subsection c, the Liquidating Trustee shall pay out of the Trust Assets, on a monthly basis and without notice or application to the Bankruptcy Court, all reasonable costs, expenses and obligations incurred by the Liquidating Trustee in carrying out his duties under the Liquidating Trust Agreement or in any manner connected, incidental or related to the administration of the Liquidating Trust, including, without limitation:

- (1.) Any reasonable, documented fees and out-of-pocket expenses of attorneys, accountants, investment advisors, expert witnesses, insurance

adjusters, professionals or other persons whom the Liquidating Trustee may reasonably deem advisable to employ in connection with the Liquidating Trust in accordance with the terms of this Liquidating Trust Agreement; and

(2.) Any taxes, charges and assessments which may be owed by, or levied or assessed against, the Trust Estate or any property held in trust pursuant to the Liquidating Trust Agreement.

After the Effective Date, any professionals who have received reimbursement of fees and expenses from the Liquidating Trust shall apply to the Bankruptcy Court for approval of such fees and expenses no less than once every four (4) months.

## **7.7 Resignation and Removal.**

a. **Resignation.** The Liquidating Trustee may resign and be discharged from any future obligations and liabilities hereunder by giving written notice thereof to the Bankruptcy Court at least thirty (30) days prior to the effective date of such resignation. Such resignation shall become effective on the date specified in such notice.

b. **Removal.** The Liquidating Trustee may be removed at any time by order of the Bankruptcy Court upon motion by any party in interest, pursuant to the standard under applicable law for removal of a Chapter 7 trustee. Upon any such removal, such removed Liquidating Trustee shall be entitled to any reimbursement and indemnification set forth in this Liquidating Trust Agreement which remain due and owing to such Liquidating Trustee at the time of such removal.

c. **Appointment of a Successor Liquidating Trustee.** If, at any time, the Liquidating Trustee shall give notice of his intent to resign pursuant to Section 7.7 hereof or be removed or shall become incapable of acting, counsel to the Liquidating Trustee shall provide notice thereof to the Bankruptcy Court. The United States Trustee, with the approval of the Bankruptcy Court, shall designate a successor Liquidating Trustee to act under this Liquidating Trust Agreement.

d. **Acceptance of Appointment by Successor Liquidating Trustee.** Any successor Liquidating Trustee appointed hereunder shall execute an instrument accepting such appointment hereunder and shall deliver counterparts thereof to the Bankruptcy Court. Thereupon, such successor Liquidating Trustee shall, without any further act, become vested with all of the estates, properties, rights, powers, trusts and duties of his predecessor in the Liquidating Trust hereunder with like effect as if originally named herein.

e. **Trust Continuance.** The death, resignation, incompetency or removal of the Liquidating Trustee shall operate neither to terminate the Liquidating Trust created by this Liquidating Trust Agreement nor to revoke any existing agency created pursuant to the terms of this Liquidating Trust Agreement or invalidate in any action theretofore taken by such Liquidating Trustee. In the event of the resignation or removal of the Liquidating Trustee, such Liquidating Trustee shall (i) promptly execute and deliver any such documents, instruments, and other writing as maybe necessary to effect the termination of such Liquidating Trustee's capacity

under this Liquidating Trust Agreement and the conveyance of the Trust Estate then held by such Liquidating Trustee to the temporary or successor trustee; (ii) deliver to the temporary or successor trustee all documents, instruments, records, and other writings relating to the Liquidating Trust or Trust Estate as may be in the possession of such Liquidating Trustee; and (iii) otherwise assist and cooperate in effecting the transfer and assumption of his obligations and functions by the temporary or successor trustee.

## **SECTION VIII. *SUPPLEMENTS AND AMENDMENTS TO THIS LIQUIDATING TRUST AGREEMENT.***

**8.1 Supplements and Amendments.** Subject to the provisions of Sections 2, 8.2 and 8.3 hereof, at any time and from time to time, and subject to approval by the Bankruptcy Court if sought by the Liquidating Trustee pursuant to Section 7.2 of this Liquidating Trust Agreement, the Liquidating Trustee may execute a supplement or amendment hereto for the purpose of adding provisions to, or changing or eliminating provisions of, this Liquidating Trust Agreement, or amendments thereto, provided, however, that no such supplement or amendment shall (i) require any Beneficiary to furnish or advance funds to the Liquidating Trustee or shall entail any additional personal liability or the surrender of any individual right on the part of any Beneficiary except with the written consent of such Beneficiary, or (ii) without the consent of those Beneficiaries holding not less than seventy-five percent (in aggregate dollar amount) of the Beneficial Interests, change or modify any other provisions for distribution of the Trust Estate. In no event shall this Liquidating Trust Agreement be amended so as to change the purposes of the Liquidating Trust as set forth in Section 2 or the treatment of Claims under the Plan and this Liquidating Trust Agreement.

**8.2 Liquidating Trustee, Declining to Execute Documents.** If, in the reasonable opinion of the Liquidating Trustee, any document required to be executed pursuant to Section 8.1 hereof materially and adversely affects any immunity or indemnity in favor of the Liquidating Trustee under this Liquidating Trust Agreement, the Liquidating Trustee may in his discretion decline to execute such document.

**8.3 Notice of Form of Supplement and Amendments Requiring Vote or Consent.** A copy of each amendment or supplement (or a fair summary thereof) shall be furnished to the Beneficiaries, promptly after the execution thereof, except that with respect to any proposed amendment or supplement for which the consent of the Beneficiaries is required, the form of such proposed supplement or amendment (or a fair summary thereof) shall be furnished to the applicable Beneficiaries prior to the Liquidating Trustee seeking the approval thereof by vote or consent of such necessary parties.

**8.4 Notice and Effect of Executed Amendment.** Upon the execution of any declaration of amendment or supplement, this Liquidating Trust Agreement shall be deemed to be modified and amended in accordance therewith and the respective rights, limitations of rights, obligations, duties and immunities under this Liquidating Trust Agreement of the Liquidating Trustee and the Beneficiaries shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any such amendment or supplement shall be thereby deemed to be part of the terms and conditions of this Liquidating Trust Agreement for any and all purposes.

## **SECTION IX. MISCELLANEOUS.**

**9.1 Title to Trust Estate.** No Beneficiary or any other party other than the Liquidating Trust shall have title to any part of the Trust Estate.

**9.2 Sales of Assets of the Trust Estate.** Any sale or other conveyance of any assets of the Trust Estate, or part thereof, by the Liquidating Trustee made in accordance with the terms of this Liquidating Trust Agreement shall bind the Beneficiaries and shall be effective to transfer or convey all right, title and interest of the Liquidating Trustee and the Beneficiaries in and to such asset of the Trust Estate.

**9.3 Notices.** Unless otherwise expressly specified or permitted by the terms of the Plan or this Liquidating Trust Agreement, all notices shall be in writing and delivered by registered or certified mail, return receipt requested, or by a hand or facsimile transmission (and confirmed by mail), in any such case addressed as follows:

If to the Liquidating Trustee:

Michael S. Budwick, Esq.  
MELAND RUSSIN & BUDWICK, P.A.  
3000 Wachovia Financial Center  
200 South Biscayne Boulevard  
Miami, Florida 33131  
Facsimile: (305) 358-1221

and if to any Beneficiary, addressed to its latest mailing address reflected on the Claims List.

**9.4 Severability.** Any provision of this Liquidating Trust Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**9.5 Counterparts.** This Liquidating Trust Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument.

**9.6 Binding Agreement.** All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the Liquidating Trustee and his respective successors and assigns and any successor Liquidating Trustee provided for in Section 7, his respective successors and assigns, and the Beneficiaries, and their respective personal representatives, successors and assigns. Any request, notice, direction, consent, waiver or other instrument or action by any party hereto or any Beneficiary shall bind their respective heirs, personal representatives, successors and assigns.

**9.7 No Personal Liability of Beneficiaries.** The Beneficiaries will not incur any personal liability through their ownership or possession of their Beneficial Interests, except for taxes imposed on the Beneficiaries pursuant to applicable provisions of federal, state or local law with respect to the receipt of such Beneficial Interests or distributions from or transactions of the Liquidating Trust and other charges specified herein. Liabilities of the Liquidating Trust are to be satisfied in all events (including the exhaustion of the Trust Estate) exclusively from the Trust Estate and such liabilities are not to attach to or be paid from any amounts distributed to the Beneficiaries, regardless of the time at which such distribution took place, or from the assets of the Beneficiaries.

**9.8 Headings.** The headings of the various Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

**9.9 Construction.** Except where the context otherwise requires, words importing the masculine gender shall include the feminine and the neuter, if appropriate; words importing the singular number shall include the plural number and vice versa; and words importing persons shall include partnerships, associations, and corporations.

**9.10 Governing Law.** This Liquidating Trust Agreement, including all matters of construction, validity and performance hereof, shall in all respects be governed by, and construed and interpreted in accordance with the internal laws of the State of Florida.

**9.11 Construction with the Plan.** The Plan is hereby incorporated fully by reference and is made a part hereof for all purposes. In the event of any inconsistency or conflict between the terms, conditions, definitions and provisions of this Liquidating Trust Agreement and the terms, conditions and provisions of the Plan, the terms, conditions, definitions and provisions of the Plan shall control.

**9.12 Subject to Bankruptcy Court's Jurisdiction.** The Bankruptcy Court shall retain jurisdiction over this Liquidating Trust, the Trust Estate, the Liquidating Trustee and the Debtor to issue any and all orders and to take other actions necessary to the implementation of this Liquidating Trust Agreement, such jurisdiction to include, without limitation, the jurisdiction contemplated by Section 1142 of the Bankruptcy Code.

**9.13 Intention of the Parties.** The Debtor, the Beneficiaries and the Liquidating Trustee hereby express their intent to create and maintain the Liquidating Trust as a liquidating trust for Federal income tax purposes in accordance with Treasury Regulation §301.7701-4(d) and as a "grantor trust" subject to the provisions of Subchapter J, Subpart E of the IRC, and the Liquidating Trustee further represents that the Liquidating Trust shall not: (a) receive transfers of listed stocks or securities, any readily-marketable assets (other than those constituting the Trust Estate), or any assets of a going business; or (b) receive and will not retain Cash in excess of a reasonable amount to meet claims and contingent liabilities, determined in the reasonable discretion of the Liquidating Trustee in accordance with the provisions of Section 4 and 5 hereof.



**IN WITNESS WHEREOF**, the parties have executed and have hereunto caused this Liquidating Trust Agreement to be duly executed, as of the day and year first written above.

**Chapter 11 Trustee of Palm Beach  
Finance Partners, L.P**

**Liquidating Trustee of the Palm  
Beach Finance Partners Liquidating Trust**

By: \_\_\_\_\_  
Name:  
Title:

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

**Schedule 1.65**

**PBF II Liquidating Trust Agreement**

LIQUIDATING TRUST AGREEMENT

for the

Palm Beach Finance II Liquidating Trust

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## LIQUIDATING TRUST AGREEMENT

This Liquidating Trust Agreement (the "Liquidating Trust Agreement"), dated as of [\_\_\_\_], 2010, by and between Barry Mukamal, as Chapter 11 Trustee of Palm Beach Finance II, L.P. ("Trustee") and Barry Mukamal, as Liquidating Trustee ("Liquidating Trustee"), is made and executed in connection with the *Joint Plan of Liquidation of Barry Mukamal, as Chapter 11 Trustee of Palm Beach Finance Partners, L.P. and Palm Beach Finance II, L.P., and Geoffrey Varga, as Joint Official Liquidator for Palm Beach Offshore, Ltd. and Palm Beach Offshore II, Ltd.*, under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§101, et seq. (the "Bankruptcy Code"), dated [\_\_\_\_], 2010 (as may thereafter be amended, the "Plan"), in the United States Bankruptcy Court for the Southern District of Florida (West Palm Beach Division) (the "Bankruptcy Court"), which Plan was confirmed by Order of the Bankruptcy Court dated [\_\_\_\_], 2010. The Plan provides for the establishment of the liquidating trust evidenced hereby (which liquidating trust shall formally be known as the "PBF II Liquidating Trust") to liquidate the assets and property of debtor Palm Beach Finance II, L.P. ("PBF II" or the "Debtor", and together with Palm Beach Finance Partners, L.P., the "Debtors") in accordance with the terms and conditions of the Plan and to resolve and realize upon certain of the Debtor's rights, claims and causes of action through enforcement by the Liquidating Trustee.

## RECITALS

**WHEREAS**, on November 30, 2009 (the "Petition Date"), the Debtors each filed a voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code; and,

**WHEREAS**, on February 2, 2010 the Bankruptcy Court entered an order appointing Barry Mukamal as Chapter 11 Trustee of the Debtors; and,

**WHEREAS**, on [\_\_\_\_], 2010, the Trustee and Geoffrey Varga, as Joint Official Liquidator of Palm Beach Offshore, Ltd. and Palm Beach Offshore II, Ltd. (the "JOL"), filed their Plan with the Bankruptcy Court; and,

**WHEREAS**, on [\_\_\_\_], 2010, the Bankruptcy Court entered an order confirming the Plan (the "Confirmation Order"); and,

**WHEREAS**, the Plan provides for, among other things: (i) distributions to the holders of Allowed Administrative Claims in accordance with the terms of the Plan and in full satisfaction of such Allowed Administrative Claims, and (ii) periodic distributions of Cash from the PBF II Liquidating Trust to the holders of Allowed Claims and Interests against the Debtor as specifically provided for herein and in the Plan, which holders comprise one hundred percent (100%) of the holders of beneficial interests of the trust created hereby; and,

**WHEREAS**, the Plan provides for the creation of a liquidating trust to hold the Trust Assets in trust for the benefit of all Beneficiaries pursuant to the terms of this Liquidating Trust Agreement and the Plan; and,

**WHEREAS**, this Liquidating Trust Agreement is executed to establish the Liquidating Trust (as defined in Section 2 hereof) and to facilitate implementation of the Plan; and,

**WHEREAS**, the primary purpose of the Liquidating Trust is to liquidate the Trust Assets for the benefit of the Beneficiaries in accordance with Treasury Regulation Section 301.7701-4(d) and the Liquidating Trust will not be operated with the objective of continuing or engaging in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidating Trust; and,

**WHEREAS**, the Liquidating Trust is intended to qualify as a liquidating trust that is treated as a “grantor trust” for federal income tax purposes and the Liquidating Trustee shall operate and maintain the Liquidating Trust in compliance with Internal Revenue Service Revenue Procedure 94-45, 1994-2 C.B. 684, and Treasury Regulation Sections 1.671-4(a) and 301.7701-4(d) and all subsequent guidelines regarding liquidating trusts issued by the Internal Revenue Service; and

**WHEREAS**, the Beneficiaries desire to exchange their Allowed Claims or Interests under the Plan for Beneficial Interests in the Liquidating Trust.

## **A G R E E M E N T S**

**NOW THEREFORE**, for and in consideration of the premises, and the mutual promises and agreements contained herein and in the Plan, the receipt and sufficiency of which are hereby expressly acknowledged, the Trustee and Liquidating Trustee hereby agree as follows:

### **SECTION I.     *DEFINITIONS***

**1.1     Terms Defined in Recitals.** As used in this Liquidating Trust Agreement, each of the terms “Liquidating Trust Agreement,” “PBF II,” “Debtor,” “Debtors,” “Trustee,” “Liquidating Trustee,” “Bankruptcy Code,” “Plan,” “Bankruptcy Court,” “Petition Date,” “JOL,” and “Confirmation Order” shall have the meanings set forth above.

**1.2     Terms Defined in the Plan.** Capitalized terms used in this Liquidating Trust Agreement without definition shall have the meanings assigned to them in the Plan. Terms defined in the Bankruptcy Code and not otherwise specifically defined in the Plan or herein shall, when used herein, have the meanings attributed to them in the Bankruptcy Code.

### **SECTION II.     *AUTHORITY OF AND CERTAIN DIRECTIONS TO LIQUIDATING TRUSTEE: DECLARATION OF TRUST***

**2.1     Creation of Liquidating Trust.** Pursuant to Section 7.1.1 of the Plan and the Confirmation Order, and effective as of the Effective Date of the Plan, the Beneficiaries and the Trustee hereby create the Liquidating Trust, to be formally known as the “PBF II Liquidating Trust,” for the benefit of the Beneficiaries. Pursuant to the terms of the Plan, the Trustee executes this Liquidating Trust Agreement and irrevocably transfers, absolutely assigns, conveys, sets over, and delivers to the Liquidating Trust, and its successors and assigns, all right, title and interest of the Debtor in and to the Assets, in trust, to and for the benefit of the Beneficiaries for the uses and purposes stated herein and in the Plan, except as may otherwise be specifically provided by the Plan. The Trustee shall execute and deliver such other instruments of sale, transfer, conveyance, assignment and confirmation, and will cooperate and take such

other actions as the Liquidating Trustee may deem reasonably necessary or desirable in order to more effectively transfer, convey and assign all rights, title and interests in and to the Assets to the Liquidating Trust.

**2.2 Purpose of Liquidating Trust.** This Liquidating Trust is created and organized for the sole purposes of collecting, holding, liquidating, and distributing the Trust Assets and administering, compromising, settling, withdrawing, objecting to, or litigating the Litigation Claims as they pertain to PBF II and objections to the Claims under the Plan, with no objective to engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidating Trust. In accordance with such express and limited purposes, as of the Effective Date, the Liquidating Trust is hereby authorized and directed: (i) to take any and all steps necessary to maintain the Liquidating Trust as a liquidating trust for federal income tax purposes in accordance with Treasury Regulation § 301.7701-4(d) and as a “grantor trust” subject to the provisions of Subchapter J, Subpart E of the IRC unless otherwise required; (ii) to take all reasonable and necessary actions to conserve and protect the Trust Estate; (iii) to administer, compromise, settle, and litigate the Litigation Claims and any other claims or causes of action belonging to the Liquidating Trust subject to the provisions of Section 4.12 hereof; (iv) to the extent necessary and appropriate, object to any Claims asserted against the Debtor’s Estate and the Liquidating Trust; and (v) to maintain, operate or lease (for purposes of holding for sale), or sell or otherwise liquidate or dispose of the Trust Assets, in accordance with the terms of this Liquidating Trust Agreement, the Plan and the Confirmation Order, and to distribute the net proceeds of such disposition to the Beneficiaries, in as prompt, efficient and orderly a fashion as possible in accordance with the provisions of Section 5 hereof.

**2.3 Title to Litigation Claims of the Debtors.** Upon the transfer of the Litigation Claims and all other Assets of PBF II to the Liquidating Trust, the Liquidating Trustee shall succeed to all of the Debtor’s right, title and interest in the Litigation Claims and other Assets and the Debtor and Trustee will have no further interest in or with respect to the Litigation Claims, and other Assets, or the Liquidating Trust.

**2.4 Tax Treatment of Transfer of the Assets to the Liquidating Trust.** For all federal income tax purposes, all parties (including, without limitation, the Debtor, the Trustee, the Liquidating Trustee, and the Beneficiaries) shall treat the transfer of the Assets to the Liquidating Trust, as set forth in Sections 2.1, and 2.3 of this Liquidating Trust Agreement and in accordance with the Plan, as a transfer of such Assets to the Beneficiaries and a transfer by the Beneficiaries of such Assets to the Liquidating Trust. In all events, the Beneficiaries of the Liquidating Trust shall be treated as the grantors and deemed owners of the Liquidating Trust.

The Liquidating Trustee shall not be permitted to receive or retain Cash or Cash equivalents in excess of a reasonable amount to meet distributions as provided herein and the Plan or to maintain the value of the Trust Assets during liquidation.

For the avoidance of any doubt, following the contribution of Assets to the Liquidating Trusts pursuant to Section 7.1.3 of the Plan and Sections 2.1 and 2.3 hereof, the Liquidating Trustee shall have standing to pursue Litigation Claims on behalf of the Liquidating Trusts subject only to any limitations set forth in this Liquidating Trust Agreement.

**2.5 Assignment and Assumption of Claims.** In accordance with Section 1141 of the Bankruptcy Code and Section 2.1 hereof, the Debtor hereby transfers and assigns the Assets to the Liquidating Trust free and clear of any Liens, Claims, interests, encumbrances or any liability of any kind and the Liquidating Trustee on behalf of the Liquidating Trust hereby assumes and agrees that all such Assets will be transferred to the Liquidating Trust free and clear of any Liens, Claims, interests, encumbrances or any liability of any kind.

**2.6 Reserved.**

**2.7 Property in the Liquidating Trust.** The Liquidating Trust shall hold the legal title to all property at any time constituting a part of the Trust Estate and shall hold such property in trust to be administered and disposed of by it pursuant to the terms of this Liquidating Trust Agreement, the Plan, and the Confirmation Order for the benefit of the Beneficiaries. The Liquidating Trustee is authorized to make disbursements and payments from the Trust Estate in accordance with the provisions of Sections 5 and 6 of this Liquidating Trust Agreement and pursuant to the Plan.

**2.8 Valuation of Trust Assets.** As soon as possible after the Effective Date, and within the time frame required by applicable Treasury Regulations, the Liquidating Trustee, based upon his good faith determination after consultation with his counsel, shall inform the Beneficiaries in writing solely as to his estimate of the value of the Assets transferred to the Liquidating Trust. The valuation shall be used consistently by all parties (including, without limitation, the Debtor, the Trustee, the Liquidating Trustee, and the Beneficiaries) for federal income tax purposes, provided, however, that such valuation shall not be binding on the Liquidating Trustee or any other party for any other purposes, including without limitation in regard to the liquidation of the Trust Assets, whether by disposition, liquidation, litigation, settlement, or otherwise.

**2.9 Continuation of the Automatic Stay.** In furtherance of the implementation of the Plan, except as otherwise provided in the Plan, all injunctions or stays provided for in the Chapter 11 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 and apply to all creditors and Beneficiaries holding claims against the Debtor, the Debtor's Estate, the Assets, the Trustee, the Liquidating Trustee, the Liquidating Trust and the Trust Assets until the Final Distribution Date.

**SECTION III. *BENEFICIAL INTERESTS.***

**3.1 No Transfer or Exchange.** Unless the Liquidating Trustee determines otherwise, Beneficial Interests in the Liquidating Trust shall not be transferable. In the event the Liquidating Trustee does authorize the transfer of Beneficial Interests, the Liquidating Trustee, with the advice and consent of counsel, shall establish procedures to govern the registration and transfer of Beneficial Interests ("Permitted Transfer"). Once such procedures have been established, if ever, the Liquidating Trustee shall notify all holders of Beneficial Interests of such procedures. Notwithstanding the foregoing, a transfer of a Beneficial Interest shall be not be permitted by the Liquidating Trustee if such transfer would be contrary to maintaining the Liquidating Trust as a liquidating trust for federal income tax purposes in accordance with Treasury Regulation §



301.7701-4(d) and as a “grantor trust” subject to the provisions of Subchapter J, Subpart E of the IRC.

**3.2 No Certification.** Unless the Liquidating Trustee determines otherwise, the Beneficial Interests will not be certificated and no security of any sort will be distributed to the Beneficiaries with respect to their interest in the Liquidating Trust. In the event the Liquidating Trustee does permit the certification of the Beneficial Interests, the Liquidating Trustee, with the advice of counsel, shall establish procedures to govern such certification. Once such procedures have been established, if ever, the Liquidating Trustee shall notify all Beneficiaries of such procedures.

**3.3 Absolute Owners.** The Liquidating Trustee may deem and treat the persons who are Beneficiaries (as determined in accordance with the Plan) as the absolute owners of the Beneficial Interests in the Liquidating Trust for the purpose of receiving distributions and payments thereof, or on account thereof, and for all other purposes whatsoever. Unless the Liquidating Trustee receives actual written notice of a Permitted Transfer from the duly authorized transferee not less than thirty (30) days prior to a distribution made pursuant to the terms of this Liquidating Trust Agreement, and subject to the applicable provisions of Bankruptcy Rule 3001(e), the Liquidating Trustee shall have no duty or obligation to make or direct any distributions or payments to such transferee of a Permitted Transfer.

**3.4 Means of Payment.** Cash payable to Beneficiaries pursuant to Section 5 hereto will be paid by checks drawn on a domestic bank account maintained by the Liquidating Trust or by wire transfer from a domestic bank account maintained by the Liquidating Trust at the option of the Liquidating Trustee.

**3.5 Amount of Payment.** The amount of Cash payments and distributions to Beneficiaries shall be made and calculated in accordance with the Plan.

**3.6 Acceptance of Conveyance.** The Liquidating Trustee is hereby directed to, and the Liquidating Trustee agrees that he will: (a) accept delivery of the Assets on behalf of the Liquidating Trust; (b) accept all bills of sale, deeds, assumptions and assignments, and all other instruments of conveyance required to be delivered by the Debtor or the Trustee with respect to the Assets transferred to the Liquidating Trustee on behalf of the Liquidating Trust pursuant to or in connection with the Plan, the Confirmation Order, or this Liquidating Trust Agreement; and (c) take such other action as may be required of the Liquidating Trust hereunder, including the receipt and acceptance as part of the Trust Estate of any property or rights, including, without limitation, notes, other negotiable instruments, claims, Litigation Claims, and other choses-in-action belonging to the Debtor or its Estate.

**3.7 Title.** On the Effective Date, legal title to all Assets of the Debtor, shall be vested in the Liquidating Trust in accordance with and pursuant to the terms of the Plan and this Liquidating Trust Agreement. Without limiting the foregoing, on the Effective Date, the Liquidating Trustee, on behalf of the Liquidating Trust, shall be: (i) authorized to act as representative of the Debtor’s Estate in respect of any and all claims or causes of action that constitute Litigation Claims; and (ii) substituted as successor to the Trustee (a) in all actions and proceedings pending or thereafter commenced in the Bankruptcy Court or elsewhere in regard to

the Litigation Claims, (b) in all actions and proceedings pending or thereafter commenced in the Bankruptcy Court or elsewhere in connection with or regarding all Claims, and (c) in any agreement respecting the Trust Assets to which the Debtor is a party.

#### **SECTION IV. ADMINISTRATION OF TRUST ESTATE.**

##### **4.1 Claims Reserves.**

a. The Liquidating Trustee shall establish a reserve fund (the “Disputed Claims Reserve”) for the payment by the Liquidating Trustee of all Disputed Claims. Each time a distribution is made to any Class of Claims, the Liquidating Trustee shall deposit into the Disputed Claims Reserve an amount equal to the distribution each holder of a Disputed Claim in such Class would have received were the Face Amount (as defined in Section 9.5 of the Plan) of its Disputed Claim in such Class an Allowed Claim. At the time a Person’s Disputed Claim is allowed, in whole or in part, such Person shall receive from the Disputed Claims Reserve, a distribution equal to the distributions such Person would have received on account of its Allowed Claim had it been an Allowed Claim at the time of such prior distributions, with any surplus Cash held in the Disputed Claims Reserve on account of such Disputed Claim becoming generally available for use by the Liquidating Trustee. Such Person shall also become a new Beneficiary of the Liquidating Trust and such Person shall be deemed, at such time, to have received a distribution of assets of the Trust Estate equal to the amount of the Allowed Claim immediately followed by a transfer by such Person to the Liquidating Trust of such assets and said new Beneficiary shall be treated, at such time, as a new grantor and deemed owner and Beneficiary of the Liquidating Trust to the extent of his Allowed Claim.

**4.2 Administrative Powers of the Liquidating Trustee.** During the Liquidating Trustee’s administration of the Liquidating Trust, and subject to: (i) all the other provisions of this Liquidating Trust Agreement (including, but not limited to, Sections 4.3 and 4.4), (ii) the Plan and (iii) the Liquidating Trustee’s delegation of certain rights and powers to the PBF II Liquidating Trust Monitor, the Liquidating Trustee may exercise the power:

(i) To receive and hold all the assets of the Trust Estate and to have exclusive possession and control thereof as permissible under applicable law;

(ii) To manage, sell and convert all or any portion of the assets in the Trust Estate to Cash and distribute the net distributable proceeds as specified in the Plan and this Liquidating Trust Agreement;

(iii) To enter into, perform and exercise rights under contracts binding upon the Liquidating Trust (but not upon the Liquidating Trustee in his respective individual or corporate capacity) which are reasonably incident to the administration of the Liquidating Trust and which the Liquidating Trustee, in the exercise of his best business judgment, reasonably believes to be in the best interests of the Liquidating Trust;

(iv) To delegate his authority under this Liquidating Trust to other persons, provided that such delegation must be made pursuant to a written agreement that either has been approved by the Bankruptcy Court in conjunction with the confirmation of the Plan or is approved by the PBF II Liquidating Trust Monitor;

(v) To establish and maintain accounts at banks and other financial institutions, in a clearly specified fiduciary capacity, into which Cash and property of the Liquidating Trust may be deposited, and draw checks or make withdrawals from such accounts, and to pay or distribute such amounts of the Trust Estate as permitted or required under the Plan and this Liquidating Trust Agreement;

(vi) To employ attorneys, accountants, appraisers, expert witnesses, insurance adjusters or other persons whose services may be reasonably necessary or advisable in the sole judgment of the Liquidating Trustee to advise or assist him in the discharge of his duties as Liquidating Trustee, or otherwise in the exercise of any powers vested in the Liquidating Trustee, and to pay reasonable compensation to such attorneys, accountants, appraisers, expert witnesses, insurance adjusters or other persons;

(vii) Pursuant to Section 1123(a)(5)(D) of the Bankruptcy Code, to sell or otherwise dispose of, and liquidate or convert to Cash, any assets of the Trust Estate, either subject to or free of any Lien, or distribute all or any part of the property of the Trust Estate among those having an interest in such property of the Trust Estate;

(viii) To pay any and all reasonable and necessary expenses attributable or relating to the management, maintenance, operation, preservation or liquidation of the Trust Estate;

(ix) To investigate, file, compromise, settle, withdraw or litigate in the Bankruptcy Court or on appeal (or pursuant to a withdrawal of the reference of jurisdiction) objections to Claims filed against the Debtor's Estate, the Trust Estate or the Liquidating Trust;

(x) To investigate, analyze, compromise, adjust, arbitrate, sue on or defend, pursue, prosecute, abandon, or otherwise deal with and settle, in accordance with the terms set forth in this Liquidating Trust Agreement, all Litigation Claims and claims in favor of or against the Liquidating Trust as the Liquidating Trustee shall deem advisable;

(xi) To avoid and recover transfers of the Debtor's property as may be permitted by the Bankruptcy Code or applicable state law, including, without limitation, those transfers identified in the Disclosure Statement;

(xii) To take all appropriate action with respect to the Trust Estate, including, without limitation, the filing, prosecution, settlement or other resolution of claims and Litigation Claims;

(xiii) To sue or be sued in connection with any matter arising from or related to the Plan or this Liquidating Trust Agreement that affects in any way the rights or obligations of the Liquidating Trust, the Liquidating Trustee or the Beneficiaries;

(xiv) To represent the interests of the Beneficiaries with respect to any matters relating to the Plan, this Liquidating Trust Agreement, or the Liquidating Trust affecting the rights of such Beneficiaries;

(xv) If the Liquidating Trust shall become subject to federal or state income tax, the Liquidating Trustee shall have the power, exercisable at his reasonable discretion, to take any action reasonably necessary to minimize any adverse federal or state income tax consequences to the Beneficiaries resulting from any distribution made by the Liquidating Trust to such Beneficiaries;

(xvi) In general, without in any manner limiting any of the foregoing or the following, to deal with the Trust Assets or any part or parts thereof in all other ways as would be lawful for any person owning the same to deal therewith; provided, however, that the investment powers of the Liquidating Trustee, other than those reasonably necessary to maintain the value of the Trust Assets of the Liquidating Trust and to further the liquidating purpose of the Liquidating Trust, are limited by the terms herein;

(xvii) To do any and all other things, not in violation of any other terms of the Plan, the Confirmation Order, and this Liquidating Trust Agreement, which, in the reasonable business judgment of the Liquidating Trustee, are necessary or appropriate for the proper liquidation, management, investment and distribution of the assets of the Trust Estate in accordance with the provisions of this Liquidating Trust Agreement and the Plan;

(xviii) Seek complete or partial substantive consolidation of any non-Debtor Entity with or into either or both of the Liquidating Trust or the liquidating trust created pursuant to the Plan to liquidate the assets of debtor Palm Beach Finance Partners, L.P. (together, the "Liquidating Trusts") *nunc pro tunc* to November 30, 2009 or otherwise;

(xix) Seek the imposition of a bar order in favor of any entity entering into a compromise with the Liquidating Trustee with identical scope, breadth and reach as that provided in connection with the Kaufman Rossin Settlement Agreement;

(xx) To file final tax returns for the Debtor; and

(xxi) At the appropriate time, to request that the Bankruptcy Court enter a final decree closing the Debtor's Chapter 11 Case.

#### **4.3 Limitations on Liquidating Trustee; Investments.**

a. **No Trade or Business.** The Liquidating Trustee shall carry out the purposes of the Liquidating Trust and the directions contained herein and shall not at any time cause the Liquidating Trust to enter into or engage in any business (except as may be consistent with the limited purposes of the Liquidating Trust), including, without limitation, the purchase of any assets or property (other than such assets or property as are reasonably necessary to carry out the purposes of the Liquidating Trust Agreement, on behalf of the Liquidating Trust or the Beneficiaries). The Liquidating Trustee is directed to take all reasonable and necessary actions to dispose of the Trust Estate in as prompt, efficient and orderly a fashion as possible, to make timely distributions of the proceeds of the Trust Estate, and to otherwise not unduly prolong the duration of the Liquidating Trust.

b. **Investments.** The Liquidating Trustee shall invest any monies held at any time as part of this Trust Estate, and every other reserve or escrow fund established pursuant to

the terms of this Liquidating Trust Agreement, only in interest-bearing deposits or certificates of deposit issued by any federally insured banking institution or short-term investments, including short-term obligations of, or unconditionally guaranteed as to payment by, the United States of America and its agencies or instrumentalities, pending the need for the disbursement thereof in payment of costs, expenses, and liabilities of the Liquidating Trust or in making distributions pursuant to Section 5 of this Liquidating Trust Agreement. The Liquidating Trustee shall be restricted to the collection and holding of such monies and any income earned on such monies and to the payment and distribution thereof (at least annually if such monies are not necessary to maintain the value of the Trust Estate or to satisfy Claims against the Trust Estate) for the purposes set forth in the Plan and this Liquidating Trust Agreement, and to the conservation and protection of the Trust Estate in accordance with the provisions hereof.

**4.4 Limitations on Liquidating Trustee – Approval of PBF II Liquidating Trust Monitor Required.**

a. The Liquidating Trustee shall, prior to taking any action with respect to the compromise or settlement of a Litigation Claim or claim in which PBF II has an interest, consult with the PBF II Liquidating Trust Monitor whose approval of such compromise or settlement shall be required. In all other events, unless otherwise set forth herein, the Liquidating Trustee is authorized to compromise or settle an action without any advanced notice or consent (other than any consent required to be received from the PBF II Liquidating Trust Monitor), if the Liquidating Trustee reasonably believes such settlement or compromise to be in the best interests of the Liquidating Trust, and shall be held harmless by the Beneficiaries in taking such action.

b. Any compromise or settlement of an action by the Liquidating Trustee pursuant to this Section 4.4 shall be subject to approval of the Bankruptcy Court pursuant to Bankruptcy Rule 9019.

c. Notwithstanding anything herein to the contrary, after the Effective Date, and without providing notice to or obtaining the approval of any party, the Liquidating Trustee shall be authorized pursuant to Section 7.6(e) herein to pay on a monthly basis: (i) the reasonable fees and expenses for services rendered the Liquidating Trustee by his professionals, and (ii) the reasonable fees and expenses incurred by the PBF II Liquidating Trust Monitor and his retained professionals; provided, however, if the fees and expenses incurred by such professionals after the Effective Date are attributable in any degree to the PBF II Liquidating Trust, the Liquidating Trustee shall obtain the approval of the PBF II Liquidating Trust Monitor prior to making such payments or else be required to seek leave of the Bankruptcy Court.

**4.5 Transferee Liabilities.** If any liability shall be asserted against the Liquidating Trust as transferee of the Trust Estate on account of any claimed liability of or through the Debtor, the Liquidating Trustee may use such part of the Trust Assets as may be necessary in contesting any such claimed liability and in payment, compromise, settlement and discharge thereof on terms reasonably satisfactory to the Liquidating Trustee. In no event shall the Liquidating Trustee be required or obligated to use his own property, funds or assets for any such purposes.



**4.6 Administration of Trust.** In administering the Liquidating Trust, the Liquidating Trustee, subject to the express limitations contained herein, is authorized and directed to do and perform all such acts, to execute and deliver such deeds, bills of sale, instruments of conveyance, and other documents as he may deem reasonably necessary or advisable to carry out the purposes of the Liquidating Trust.

**4.7 Payment of Expenses and Other Liabilities.** The Liquidating Trustee shall pay all reasonable expenses, charges, liabilities and obligations of the Liquidating Trust, including without limiting the generality of the foregoing, such debts, liabilities, or obligations as may be payable from the Trust Estate, interest, taxes, assessments, and public charges of every kind and nature, and the costs, charges and expenses in connection with or arising out of the execution or administration of the Liquidating Trust and the Trust Estate, and such other payments and disbursements as are provided for in this Liquidating Trust Agreement or which may be reasonably determined by the Liquidating Trustee to be proper charges against the Liquidating Trust and the Trust Estate, and the Liquidating Trustee, in his reasonable discretion and business judgment may determine to be necessary or advisable to meet or satisfy unascertained, unliquidated or contingent liabilities of the Liquidating Trust. The Liquidating Trustee shall make such payments without application to or order of the Bankruptcy Court, except as otherwise herein provided.

**4.8 Payment of U.S. Trustee's Fees.** After the occurrence of the Effective Date, fees payable to the Office of the United States Trustee during the administration of the Plan and until the case is converted, dismissed or closed, shall be paid by the Liquidating Trustee.

**4.9 Liquidating Trustee Fees.** The Liquidating Trustee is entitled to reasonable compensation for services performed pursuant to the terms of and in accordance with the terms of this Liquidating Trust Agreement. The Liquidating Trustee will be paid pursuant to Section 326 of the Bankruptcy Code.

**4.10 Fiscal Year.** The Liquidating Trust's fiscal year shall end on December 31 of each year, unless the Liquidating Trustee deems it advisable to establish some other date on which the fiscal year of the Liquidating Trust shall end.

**4.11 Reports.** The Liquidating Trustee shall:

a. Prepare and file unaudited interim financial reports as may be required by regulatory authorities, applicable laws, rules or regulations or as the Liquidating Trustee deems advisable during the fiscal year;

b. Prepare, file and mail, within the time required by applicable law or regulation, necessary income tax information, tax returns or reports to the Beneficiaries and applicable taxing authorities, including, on an annual basis, the manner and calculation of the Liquidating Trust's taxable gain or loss which the Liquidating Trust would recognize if it were a separate taxable entity. In this connection, the Liquidating Trustee shall file returns for the Liquidating Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a); and

c. As soon as practicable after each calendar quarter, and in no event later than thirty (30) days after the end of each quarter, the Liquidating Trustee shall submit to the

United States Trustee, and any Beneficiary who requests copies of such quarterly report after the Confirmation Date, an unaudited written report and account showing:

- (i) the assets and liabilities of the Liquidating Trust;
  - (ii) any distributions made and expenses paid pursuant to the Plan and the Liquidating Trust Agreement during that calendar quarter;
  - (iii) any changes in the Trust Assets that have not been previously reported;
- and,
- (iv) any material action taken by the Liquidating Trustee in the performance of his or her duties under the Liquidating Trust Agreement that has not been previously reported.

#### **4.12 PBF II Liquidating Trust Monitor.**

a. **Powers.** Geoffrey Varga, as Joint Official Liquidator for Palm Beach Offshore, Ltd. and Palm Beach Offshore II, Ltd., shall be the PBF II Liquidating Trust Monitor, with the power and authority set forth in this Liquidating Trust Agreement. Notwithstanding anything in this Liquidating Trust Agreement or the Plan to the contrary, with respect to any PBF II Litigation Claims, the PBF II Liquidating Trust Monitor shall, in his sole discretion: (1) determine which PBF II Litigation Claims should be pursued, (2) approve of the retention of professionals other than Meland Russin & Budwick, P.A., if any, to pursue such PBF II Litigation Claims, and (3) determine the terms on which any such PBF II Litigation Claims should be resolved by settlement or otherwise. In any event, any compromise or settlement of any PBF II Litigation Claims shall be subject to the approval of the Bankruptcy Court pursuant to Bankruptcy Rule 9019.

The Liquidating Trustee and the PBF II Liquidating Trust Monitor shall coordinate the analysis of potential Litigation Claims of the PBF II Liquidating Trust. Any communications between the Liquidating Trustee and the PBF II Liquidating Trust Monitor related to any third party litigation or the Petters Bankruptcy Cases shall be subject to a common interest privilege.

Pursuant to Section 1123(b)(3) of the Bankruptcy Code, except as otherwise provided in the Plan or the Confirmation Order, after transfer of the Assets to the Liquidating Trust pursuant to Section 7.1.3 of the Plan, the Liquidating Trustee will have the exclusive right to enforce any and all Litigation Claims against any Entity and any and all rights of the Debtor that arose before or after the Petition Date, including but not limited to the rights and powers of a trustee and debtor-in-possession, against any Entity whatsoever.

Notwithstanding the foregoing, in the event the Liquidating Trustee opts not to pursue a Litigation Claim on behalf of the Liquidating Trust, the PBF II Liquidating Trust Monitor may make a written demand upon the Liquidating Trustee that the Liquidating Trustee pursue such Litigation Claim. In the event the Liquidating Trustee refuses to pursue such Litigation Claim, the PBF II Liquidating Trust Monitor shall be authorized to pursue such Litigation Claim on behalf of the Liquidating Trust with the same rights possessed by the Liquidating Trustee. The PBF II Liquidating Trustee shall be kept informed as to the progress of

the action and any compromise shall be subject to Bankruptcy Court approval pursuant to Rule 9019.

b. **Compensation.** Notwithstanding anything herein to the contrary, after the Effective Date, and without providing notice to or obtaining the approval of any party, the Liquidating Trustee shall be authorized pursuant to Sections 4.4(c) and 7.6(e) of the PBF II Liquidating Trust Agreement to pay on a monthly basis the reasonable fees and expenses incurred by the PBF II Liquidating Trust Monitor. The PBF II Liquidating Trust Monitor shall submit an application to the Bankruptcy Court no later than every four (4) months starting from the Effective Date for final approval of the fees and expenses paid to the PBF II Liquidating Trust Monitor in connection with carrying out its duties consistent with the Plan and this Liquidating Trust Agreement. Any such payments shall be payable from the Trust Assets of the Liquidating Trusts.

c. **Professionals.** The PBF II Liquidating Trust Monitor may exercise the power to employ and pay reasonable compensation to attorneys, accountants, appraisers, expert witnesses, insurance adjusters or other persons whose services, in the sole judgment of the PBF II Liquidating Trust Monitor, may be reasonably necessary or advisable to advise or assist him in the discharge of his duties, or otherwise in the exercise of any powers vested in the PBF II Liquidating Trust Monitor.

d. **Resignation or Removal.** The PBF II Liquidating Trust Monitor may resign and be discharged from any future obligations and liabilities hereunder by giving written notice thereof to the Bankruptcy Court at least thirty (30) days prior to the effective date of such resignation. Such resignation shall become effective on the date specified in such notice. If, at any time, the PBF II Liquidating Trust Monitor shall give notice of his intent to resign or shall become incapable of acting, counsel to the PBF II Liquidating Trust Monitor shall provide notice thereof to the Bankruptcy Court. The PBF II Liquidating Trust Monitor, in his sole discretion, shall designate a successor liquidating trust monitor to act under this Liquidating Trust Agreement.

Any successor PBF II Liquidating Trust Monitor appointed hereunder shall execute an instrument accepting such appointment hereunder and shall deliver counterparts thereof to the Bankruptcy Court. Thereupon, such successor PBF II Liquidating Trust Monitor shall, without any further act, become vested with all of the estates, properties, rights, powers, trusts and duties of his predecessor in the Liquidating Trust hereunder with like effect as if originally named herein.

The PBF II Liquidating Trust Monitor may be removed at any time by order of the Bankruptcy Court upon motion by any party in interest pursuant to the standard under applicable law for removal of a Chapter 7 trustee.

## **SECTION V. *PAYMENTS AND DISTRIBUTIONS.***

### **5.1 Distributions to Beneficiaries.**

a. As often as in the reasonable discretion and judgment of the Liquidating Trustee there shall be Available Cash in an amount sufficient to render feasible a distribution of

Cash to the Beneficiaries, the Liquidating Trustee shall transfer and pay, or cause to be transferred and paid, to the Beneficiaries (subject to the provisions of Section 3 hereof) such aggregate amount of Available Cash, if any, as shall then be held in the Liquidating Trust, excluding reasonable amounts of Cash needed to pay the expenses, debts, charges, liabilities and obligations of the Liquidating Trust (the "Distribution Amount"). The aggregate amounts required to be distributed to the Beneficiaries shall be determined by the Liquidating Trustee pursuant to and in accordance with the terms of the Plan and this Liquidating Trust Agreement. The Distribution Amount(s) shall be paid to the Beneficiaries at least annually so long as there are sufficient funds to make distributions and shall be determined by the Liquidating Trustee in his reasonable discretion and his determination shall be final and conclusive on all persons, in the absence of gross negligence or willful misconduct on the part of the Liquidating Trustee, and shall not be reviewed by the Bankruptcy Court. In determining the amount of any such distribution, the Liquidating Trust may rely and shall be fully protected in relying upon the advice and opinion of independent public accountants or of counsel to the Liquidating Trust.

b. Notwithstanding the foregoing, Allowed Interests are subordinated to Allowed Claims such that holders of Allowed PBF II Interests shall not receive any distribution from the PBF II Liquidating Trust on account of their Allowed PBF II Interest unless and until holders of Allowed Class 1B and Class 2B Claims have been satisfied in full. Upon satisfaction of all Allowed Class 1B and 2B Claims, the Liquidating Trustee shall make distributions, if any, to Holders of Allowed Interests in PBF II pursuant to this Section 5.

c. All payments to be made hereunder to the Beneficiaries shall be made only from the Available Cash, and income and proceeds thereof, and only to the extent that the Liquidating Trustee shall have received sufficient Available Cash, income or proceeds thereof to make such payments in accordance with the terms of this Section 5. Each Beneficiary shall look solely to the assets, income and proceeds of the Liquidating Trust available for distribution to such Beneficiary as herein provided.

**5.2 Establishment of the Claim Accounts.** The Liquidating Trustee will establish on the Liquidating Trust's books and records an account representing each Allowed or Disputed Claim as set forth on the official claims register maintained by the Clerk of the Bankruptcy Court (each, a "Claim Account"). It is expressly understood that the establishment of the Claim Accounts by the Liquidating Trustee or his agents is solely for administrative convenience, and that amounts allocable to such Claim Accounts need not be segregated and may be commingled for investment purposes as specified herein. The Liquidating Trustee may rely on the official claims register as correct.

**5.3 Distributions from Trust Estate.** Distributions will be made to the Beneficiaries in accordance with the terms of the Plan and the Claim Accounts will be adjusted by the Liquidating Trustee to reflect such distributions.

**5.4 Fractional Distributions.** No distribution in fractions of cents shall be issued. If the Distribution Amount allocated to an Allowed Claim or Interest at the time of a distribution hereunder would include fractions of cents, the amount to be distributed shall be rounded down to the highest integral number of cents in the applicable Claim Account, but such rounding down shall not affect such allocation. The aggregate amount of the retained fractional distributions

from the Distribution Amount shall be retained in the Liquidating Trust by the Liquidating Trustee and shall remain part of the Trust Estate.

**5.5 Final Distribution.** Upon the final collection or liquidation of all of the assets, rights and interests comprising the Trust Estate, and in any event prior to the Termination Date (as defined in Section 5.6 hereof), the Liquidating Trustee shall prepare a final accounting of any and all monies remaining in any accounts maintained by the Liquidating Trustee on behalf of the Liquidating Trust (the “Final Cash”). Once the amount of the Final Cash has been determined, the Liquidating Trustee shall make the Final Distribution, in accordance with the Plan and this Liquidating Trust Agreement.

**5.6 Termination Date.** The Liquidating Trust shall terminate on such date that: (a) a final decree has been entered closing the Chapter 11 Cases and (b) all assets in the Trust Estate have been distributed and (c) all Litigation Claims have been pursued or abandoned pursuant to, and in accordance with, the Plan and this Liquidating Trust Agreement (the “Termination Date”). However, the term of the Liquidating Trust shall not exceed five (5) years from the Effective Date, provided that, upon a finding that an extension is necessary to the liquidating purpose of the Liquidating Trust and upon approval by the Bankruptcy Court, the term may be extended for a finite term based on the particular facts and circumstances. Each such extension must be approved by the Bankruptcy Court within six (6) months of the beginning of the extended term. The Liquidating Trustee and the PBF II Liquidating Trust Monitor shall be released of all liabilities and discharged from his or her obligations under the Plan or this Liquidating Trust Agreement once the Liquidating Trust has terminated.

## **SECTION VI. *OTHER DUTIES OF THE LIQUIDATING TRUSTEE.***

**6.1 Management of Trust Estate.** With respect to the assets of the Trust Estate, the Liquidating Trustee may purchase and maintain in existence such insurance as the Liquidating Trustee deems reasonable and necessary or appropriate from time to time to protect the Liquidating Trust, the Trust Assets, the Liquidating Trustee, and the Beneficiaries’ interests in the assets of the Trust Estate or from any potential claims or liabilities relating thereto or the distribution thereof.

**6.2 Tax and Related Matters.** Pursuant to and in accordance with the Plan, the Liquidating Trustee shall be responsible for all tax matters of the Trust Estate, including, but not limited to, the filing of all tax returns and other filings with governmental authorities on behalf of the Trust Estate, the Debtor’s Estate and any subsidiaries (whether organized as a corporation, limited liability company or partnership and whether owned in whole or in part) for time periods ending on or before the Final Tax Day, including the filing of tax returns for the Liquidating Trust as a grantor trust pursuant to § 1.671-4(a) of the United States Income Tax Regulations, the filing of determination requests under Section 505(b) of the Bankruptcy Code, and responding to any tax audits of the Trust Estate. The Liquidating Trustee shall provide such information to the Beneficiaries as will enable them to properly file their separate tax returns and withhold and pay over any amounts required by tax law. The Liquidating Trustee is authorized to act as agent for the Trust Estate in withholding or paying over any amounts required by law (including tax law) to be withheld or paid with respect to the Trust Estate. Except as otherwise set forth in this Liquidating Trust Agreement or the Plan, any items of income, deduction, credit, or loss of the



Liquidating Trust not allocable to the Disputed Claims Reserve shall be allocated for federal income tax purposes among the Class 1B and 2B Claims Pro Rata. The Liquidating Trust shall file all income tax returns with respect to any income attributable to the Disputed Claims Reserve and shall pay the federal, state and local income taxes attributable to the Disputed Claims Reserve, based on the items of income, deduction, credit or loss allocable thereto. The Liquidating Trustee shall be entitled to deduct any federal or state withholding taxes from any payments made with respect to Allowed Claims, as appropriate, and shall otherwise comply with Section 346 of the Bankruptcy Code.

**6.3 No Implied Duties.** The Liquidating Trustee shall not manage, control, use, sell, dispose, collect or otherwise deal with the Trust Estate or otherwise take any action hereunder except as expressly provided herein, and no implied duties or obligations whatsoever of the Liquidating Trustee shall be read into this Liquidating Trust Agreement.

## **SECTION VII. *CONCERNING THE LIQUIDATING TRUSTEE.***

**7.1 Acceptance by Liquidating Trustee.** The Liquidating Trustee accepts the Liquidating Trust hereby created for the benefit of the Beneficiaries and agrees to act as Liquidating Trustee of the Liquidating Trust pursuant to the terms of this Liquidating Trust Agreement and the Plan. The Liquidating Trustee shall have and exercise the rights and powers herein granted and shall be charged solely with the performance of the duties herein declared on the part of Liquidating Trustee. The Liquidating Trustee also agrees to receive and disburse all monies actually received by him constituting part of the Trust Estate pursuant to the terms of this Liquidating Trust Agreement and the Plan.

**7.2 Discretionary Submission of Questions.** Subject to the provisions of this Section 7, the Liquidating Trustee, in his sole discretion and reasonable business judgment, may, but shall not be required to, submit to the Bankruptcy Court, from time to time, any question or questions with respect to which the Liquidating Trustee may desire to have explicit approval of the Bankruptcy Court for the taking of any specific action proposed to be taken by the Liquidating Trustee with respect to the Trust Estate, or any part thereof, and the administration and distribution of the Trust Estate. The written authorization of the Bankruptcy Court set forth in a Final Order shall constitute approval by the Bankruptcy Court of the proposed action to be taken by the Liquidating Trustee. All costs and expenses incurred by the Liquidating Trust in the exercise of any right, power, authority conferred by this Section 7.2 shall be costs and reasonable expenses of the Trust Estate.

### **7.3 Liability of the Liquidating Trustee.**

a. **Limitation on Liability.** No provision of this Liquidating Trust Agreement shall be construed to impart any liability upon the Liquidating Trustee unless it shall be proven that the Liquidating Trustee's actions or omissions constituted gross negligence or willful misconduct in the exercise of or failure to exercise any right or power vested in the Liquidating Trustee under this Liquidating Trust Agreement.

b. **Reliance on Certificates or Opinions.** In the absence of gross negligence or willful misconduct on the part of the Liquidating Trustee, the Liquidating Trust may

conclusively rely on the truth of the statements and correctness of the opinions expressed upon any certificates or opinions furnished to the Liquidating Trustee and conforming to the requirements of this Liquidating Trust Agreement.

c. **Discretion of Liquidating Trustee.** The Liquidating Trustee, within the limitations and restrictions expressed and imposed by this Liquidating Trust Agreement, may act freely under all or any of the rights, powers and authority conferred hereby, in all matters concerning the Trust Estate, after forming his best reasonable business judgment based upon the circumstances of any particular question or situation as to the best course to pursue, without the necessity of obtaining the consent or permission or authorization of the Beneficiaries, the Bankruptcy Court, or of any official or officer; and the rights, powers and authority conferred on the Liquidating Trustee by this Liquidating Trust Agreement are conferred in contemplation of such freedom of reasonable business judgment and action within the limitations and restrictions so expressed and imposed; provided, however, that the Liquidating Trustee shall not be liable for any error or exercise of judgment, unless it shall be proved that such Liquidating Trustee was grossly negligent or acted in a manner which constituted willful misconduct.

#### **7.4 Reliance by Liquidating Trustee.**

a. **Genuineness of Documents.** The Liquidating Trustee may rely and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, objection, order, judgment, decree, or other paper or document reasonably believed by him to be genuine and to have been signed, made, entered or presented by the proper party, parties, official, officials, entity or entities.

b. **Retention of Counsel.** The Liquidating Trustee may retain and consult with legal counsel, independent public accountants and other experts. The Liquidating Trustee shall not be liable for any action taken or suffered by him or omitted to be taken by him without gross negligence or willful misconduct in reliance on any opinion or certification of such accountants or in accordance with the advice of such counsel or experts, provided that such accountants, counsel and experts were selected and retained with reasonable care.

**7.5 Reliance on Liquidating Trustee.** No person dealing with the Liquidating Trustee shall be obligated to see to the application of any monies, securities, or other property paid or delivered to them or to inquire into the expediency or propriety of any transaction or the right, power, or authority of the Liquidating Trustee to enter into or consummate the same upon such terms as the Liquidating Trustee may deem advisable. Persons dealing with the Liquidating Trustee shall look only to the Trust Estate to satisfy any liability incurred by the Liquidating Trustee to such persons in carrying out the terms of this Liquidating Trust Agreement, and, except as otherwise expressly provided herein, the Liquidating Trustee shall have no personal, individual or corporate obligation to satisfy any such liability.

#### **7.6 Indemnification.**

a. **Indemnification of Liquidating Trustee, PBF II Liquidating Trust Monitor and Agents.** The Liquidating Trustee hereby agrees that the Liquidating Trust will indemnify to the full extent of the Trust Estate any person or entity who was or is a party, or is

threatened to be made a party to any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative by reason of the fact that such person or entity is or was a Liquidating Trustee, the PBF II Liquidating Trust Monitor or an employee, attorney or agent of the Liquidating Trust, Liquidating Trustee or PBF II Liquidating Trust Monitor, from and against any and all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person or entity in connection with such action, suit or proceeding, including appeals thereof, if such person or entity acted without gross negligence and willful misconduct in the exercise and performance of any power or duties of such person or entity in accordance with this Liquidating Trust Agreement.

b. **Payment of Expenses.** Expenses (including attorneys' fees) incurred in defending any action, suit or proceeding referred to in this Section 7.6 may be paid by the Liquidating Trust from the Trust Assets in advance of the final disposition of such action, suit or proceeding, upon an undertaking by the Liquidating Trustee or an employee or agent of the Liquidating Trust entitled to be indemnified.

c. **Insurance.** The Liquidating Trust may maintain insurance during its existence and after its termination, at its expense, to protect itself and the Liquidating Trustee, as well as the PBF II Liquidating Trust Monitor, and each of their officers, employees or agents of and from any liability, whether or not the Liquidating Trust would have the legal power to directly indemnify the Liquidating Trustee, the PBF II Liquidating Trust Monitor and each of their officers, employees, agents against such liability. The terms "Liquidating Trustee," "PBF II Liquidating Trust Monitor," "employer" or "agent" as used herein, where applicable, include the heirs, successors, executors, administrators, personal representatives, or estates of such persons or entities.

d. **Bond.** As a condition to serving as Liquidating Trustee hereunder, the Liquidating Trustee and any successor trustee is required to and shall post a bond in favor of the Liquidating Trust in an amount not less than the amount of Cash held by the Liquidating Trust, which bond shall be in substantially the form as that required by the United States Trustee's Office for trustees serving in bankruptcy cases within the Southern District of Florida. For the avoidance of any doubt, the Liquidating Trust shall post and be responsible for all costs associated with the posting of the bond contemplated under this Section 7.6(d) including costs associated with such bond.

e. **Costs and Expenses of Liquidating Trustee.** Except as set forth in subsection c, the Liquidating Trustee shall pay out of the Trust Assets, on a monthly basis and without notice or application to the Bankruptcy Court, all reasonable costs, expenses and obligations incurred by the Liquidating Trustee in carrying out his duties under the Liquidating Trust Agreement or in any manner connected, incidental or related to the administration of the Liquidating Trust, including, without limitation:

(1.) Any reasonable, documented fees and out-of-pocket expenses of attorneys, accountants, investment advisors, expert witnesses, insurance adjusters, professionals or other persons whom the Liquidating Trustee may reasonably deem advisable to employ in connection with the

Liquidating Trust in accordance with the terms of this Liquidating Trust Agreement; and

(2.) Any taxes, charges and assessments which may be owed by, or levied or assessed against, the Trust Estate or any property held in trust pursuant to the Liquidating Trust Agreement.

The PBF II Liquidating Trust Monitor and the Liquidating Trustee shall, no less frequently than once every four (4) months, submit applications to the Bankruptcy Court for final approval of reimbursement of fees and expenses paid to their professionals.

## **7.7 Resignation and Removal.**

a. **Resignation.** The Liquidating Trustee may resign and be discharged from any future obligations and liabilities hereunder by giving written notice thereof to the Bankruptcy Court at least thirty (30) days prior to the effective date of such resignation. Such resignation shall become effective on the date specified in such notice.

b. **Removal.** The Liquidating Trustee may be removed at any time by order of the Bankruptcy Court upon motion by any party in interest, pursuant to the standard under applicable law for removal of a Chapter 7 trustee. Upon any such removal, such removed Liquidating Trustee shall be entitled to any reimbursement and indemnification set forth in this Liquidating Trust Agreement which remain due and owing to such Liquidating Trustee at the time of such removal.

c. **Appointment of a Successor Liquidating Trustee.** If, at any time, the Liquidating Trustee shall give notice of his intent to resign pursuant to Section 7.7 hereof or be removed or shall become incapable of acting, counsel to the Liquidating Trustee shall provide notice thereof to the Bankruptcy Court. The PBF II Liquidating Trust Monitor, with the approval of the Bankruptcy Court, shall designate a successor Liquidating Trustee to act under this Liquidating Trust Agreement.

d. **Acceptance of Appointment by Successor Liquidating Trustee.** Any successor Liquidating Trustee appointed hereunder shall execute an instrument accepting such appointment hereunder and shall deliver counterparts thereof to the Bankruptcy Court. Thereupon, such successor Liquidating Trustee shall, without any further act, become vested with all of the estates, properties, rights, powers, trusts and duties of his predecessor in the Liquidating Trust hereunder with like effect as if originally named herein.

e. **Trust Continuance.** The death, resignation, incompetency or removal of the Liquidating Trustee shall operate neither to terminate the Liquidating Trust created by this Liquidating Trust Agreement nor to revoke any existing agency created pursuant to the terms of this Liquidating Trust Agreement or invalidate in any action theretofore taken by such Liquidating Trustee. In the event of the resignation or removal of the Liquidating Trustee, such Liquidating Trustee shall (i) promptly execute and deliver any such documents, instruments, and other writing as maybe necessary to effect the termination of such Liquidating Trustee's capacity under this Liquidating Trust Agreement and the conveyance of the Trust Estate then held by such Liquidating Trustee to the temporary or successor trustee; (ii) deliver to the temporary or

successor trustee all documents, instruments, records, and other writings relating to the Liquidating Trust or Trust Estate as may be in the possession of such Liquidating Trustee; and (iii) otherwise assist and cooperate in effecting the transfer and assumption of his obligations and functions by the temporary or successor trustee.

## **SECTION VIII. *SUPPLEMENTS AND AMENDMENTS TO THIS LIQUIDATING TRUST AGREEMENT.***

**8.1 Supplements and Amendments.** Subject to the provisions of Sections 2, 8.2 and 8.3 hereof, at any time and from time to time, and subject to approval by the Bankruptcy Court if sought by the Liquidating Trustee pursuant to Section 7.2 of this Liquidating Trust Agreement, the Liquidating Trustee may execute a supplement or amendment hereto for the purpose of adding provisions to, or changing or eliminating provisions of, this Liquidating Trust Agreement, or amendments thereto, provided, however, that no such supplement or amendment shall (i) require any Beneficiary to furnish or advance funds to the Liquidating Trustee or shall entail any additional personal liability or the surrender of any individual right on the part of any Beneficiary except with the written consent of such Beneficiary, or (ii) without the consent of those Beneficiaries holding not less than seventy-five percent (in aggregate dollar amount) of the Beneficial Interests, change or modify any other provisions for distribution of the Trust Estate. In no event shall this Liquidating Trust Agreement be amended so as to change the purposes of the Liquidating Trust as set forth in Section 2 or the treatment of Claims under the Plan and this Liquidating Trust Agreement.

**8.2 Liquidating Trustee, Declining to Execute Documents.** If, in the reasonable opinion of the Liquidating Trustee, any document required to be executed pursuant to Section 8.1 hereof materially and adversely affects any immunity or indemnity in favor of the Liquidating Trustee under this Liquidating Trust Agreement, the Liquidating Trustee may in his discretion decline to execute such document.

**8.3 Notice of Form of Supplement and Amendments Requiring Vote or Consent.** A copy of each amendment or supplement (or a fair summary thereof) shall be furnished to the Beneficiaries, promptly after the execution thereof, except that with respect to any proposed amendment or supplement for which the consent of the Beneficiaries is required, the form of such proposed supplement or amendment (or a fair summary thereof) shall be furnished to the applicable Beneficiaries prior to the Liquidating Trustee seeking the approval thereof by vote or consent of such necessary parties.

**8.4 Notice and Effect of Executed Amendment.** Upon the execution of any declaration of amendment or supplement, this Liquidating Trust Agreement shall be deemed to be modified and amended in accordance therewith and the respective rights, limitations of rights, obligations, duties and immunities under this Liquidating Trust Agreement of the Liquidating Trustee and the Beneficiaries shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any such amendment or supplement shall be thereby deemed to be part of the terms and conditions of this Liquidating Trust Agreement for any and all purposes.



**SECTION IX. MISCELLANEOUS.**

**9.1 Title to Trust Estate.** No Beneficiary or any other party other than the Liquidating Trust shall have title to any part of the Trust Estate.

**9.2 Sales of Assets of the Trust Estate.** Any sale or other conveyance of any assets of the Trust Estate, or part thereof, by the Liquidating Trustee made in accordance with the terms of this Liquidating Trust Agreement shall bind the Beneficiaries and shall be effective to transfer or convey all right, title and interest of the Liquidating Trustee and the Beneficiaries in and to such asset of the Trust Estate.

**9.3 Notices.** Unless otherwise expressly specified or permitted by the terms of the Plan or this Liquidating Trust Agreement, all notices shall be in writing and delivered by registered or certified mail, return receipt requested, or by a hand or facsimile transmission (and confirmed by mail), in any such case addressed as follows:

If to the Liquidating Trustee:

Michael S. Budwick, Esq.  
MELAND RUSSIN & BUDWICK, P.A.  
3000 Wachovia Financial Center  
200 South Biscayne Boulevard  
Miami, Florida 33131  
Facsimile: (305) 358-1221

If to the PBF II Liquidating Trust Monitor:

Edward J. Estrada, Esq.  
REED SMITH LLP  
599 Lexington Avenue, 22<sup>nd</sup> Floor  
New York, New York 10022  
Facsimile: (212) 521-5450

-and-

Robin J. Rubens, Esq.  
LEVINE KELLOGG LEHMAN SCHNEIDER & GROSSMAN LLP  
201 South Biscayne Boulevard  
Miami Center – 34<sup>th</sup> Floor  
Miami, Florida 33131  
Facsimile: (305) 403-8789

and if to any Beneficiary, addressed to its latest mailing address reflected on the Claims List.

**9.4 Severability.** Any provision of this Liquidating Trust Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions

thereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**9.5 Counterparts.** This Liquidating Trust Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument.

**9.6 Binding Agreement.** All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the Liquidating Trustee and his respective successors and assigns and any successor Liquidating Trustee provided for in Section 7, his respective successors and assigns, and the Beneficiaries, and their respective personal representatives, successors and assigns. Any request, notice, direction, consent, waiver or other instrument or action by any party hereto or any Beneficiary shall bind their respective heirs, personal representatives, successors and assigns.

**9.7 No Personal Liability of Beneficiaries.** The Beneficiaries will not incur any personal liability through their ownership or possession of their Beneficial Interests, except for taxes imposed on the Beneficiaries pursuant to applicable provisions of federal, state or local law with respect to the receipt of such Beneficial Interests or distributions from or transactions of the Liquidating Trust and other charges specified herein. Liabilities of the Liquidating Trust are to be satisfied in all events (including the exhaustion of the Trust Estate) exclusively from the Trust Estate and such liabilities are not to attach to or be paid from any amounts distributed to the Beneficiaries, regardless of the time at which such distribution took place, or from the assets of the Beneficiaries.

**9.8 Headings.** The headings of the various Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

**9.9 Construction.** Except where the context otherwise requires, words importing the masculine gender shall include the feminine and the neuter, if appropriate; words importing the singular number shall include the plural number and vice versa; and words importing persons shall include partnerships, associations, and corporations.

**9.10 Governing Law.** This Liquidating Trust Agreement, including all matters of construction, validity and performance hereof, shall in all respects be governed by, and construed and interpreted in accordance with the internal laws of the State of Florida.

**9.11 Construction with the Plan.** The Plan is hereby incorporated fully by reference and is made a part hereof for all purposes. In the event of any inconsistency or conflict between the terms, conditions, definitions and provisions of this Liquidating Trust Agreement and the terms, conditions and provisions of the Plan, the terms, conditions, definitions and provisions of the Plan shall control.

**9.12 Subject to Bankruptcy Court's Jurisdiction.** The Bankruptcy Court shall retain jurisdiction over this Liquidating Trust, the Trust Estate, the Liquidating Trustee and the Debtor to issue any and all orders and to take other actions necessary to the implementation of this Liquidating Trust Agreement, such jurisdiction to include, without limitation, the jurisdiction contemplated by Section 1142 of the Bankruptcy Code.

**9.13 Intention of the Parties.** The Debtor, the Beneficiaries and the Liquidating Trustee hereby express their intent to create and maintain the Liquidating Trust as a liquidating trust for Federal income tax purposes in accordance with Treasury Regulation §301.7701-4(d) and as a “grantor trust” subject to the provisions of Subchapter J, Subpart E of the IRC, and the Liquidating Trustee further represents that the Liquidating Trust shall not: (a) receive transfers of listed stocks or securities, any readily-marketable assets (other than those constituting the Trust Estate), or any assets of a going business; or (b) receive and will not retain Cash in excess of a reasonable amount to meet claims and contingent liabilities, determined in the reasonable discretion of the Liquidating Trustee in accordance with the provisions of Section 4 and 5 hereof.

**IN WITNESS WHEREOF**, the parties have executed and have hereunto caused this Liquidating Trust Agreement to be duly executed, as of the day and year first written above.

**Chapter 11 Trustee of Palm Beach  
Finance II, L.P**

**Liquidating Trustee of the Palm  
Beach Finance II Liquidating Trust**

By: \_\_\_\_\_  
Name:  
Title:

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

**Schedule 3.2.1**

**Class 1A: PBF Limited Partner Unsecured Claims**

**Schedule 3.2.1**  
**Class 1A: PBF Limited Partner Unsecured Claims**

Except as set forth herein, the Plan specifically reserves the right of the Liquidating Trustee, the PBF II Liquidating Trust Monitor and any Creditor to object to any Claim or Interest and litigate to judgment any objection to such Claim or Interest pursuant to applicable procedures established by the Bankruptcy Code, the Bankruptcy Rules, the Liquidating Trust Agreements and this Plan. Therefore, the listing of any Claim or Interest on this schedule should not be construed as an indication that the Claim or Interest may become an Allowed Claim or an Allowed Interest.

Claim Number Assigned on Claims Register	Name of Claimant	Amount of Claim Asserted
2	VAS Partners, LLC	\$43,386.48
3	Albert Liguori	\$150,000.00
7	LAB Investments Fund, L.P.	\$6,500,000.00
8	Mosaic Capital Fund LLC	\$5,023,937.00
9	Steven Bakaysa	\$500,000.00
12	Special Situations Investment Fund, L.P., c/o MIO Partners, Inc.	\$2,849,531.00
13	Compass Special Situation Fund, LP c/o MIO Partners, Inc.	\$6,333,506.00
14	McKinsey Master Retirement Trust c/o MIO Partners, Inc.	\$30,669,652.00
16	Bruce Prevost	\$300,581.55
17	David Harrold	\$170,718.93
26	West Capital Management, Christopher J. Topolewski	\$500,000.00



**Schedule 3.2.2**

**Class 1B: PBF II Limited Partner Unsecured Claims**

**Schedule 3.2.2**  
**Class 1B: PBF II Limited Partner Unsecured Claims**

Except as set forth herein, the Plan specifically reserves the right of the Liquidating Trustee, the PBF II Liquidating Trust Monitor and any Creditor to object to any Claim or Interest and litigate to judgment any objection to such Claim or Interest pursuant to applicable procedures established by the Bankruptcy Code, the Bankruptcy Rules, the Liquidating Trust Agreements and this Plan. Therefore, the listing of any Claim or Interest on this schedule should not be construed as an indication that the Claim or Interest may become an Allowed Claim or an Allowed Interest.

Claim Number Assigned on Claims Register	Name of Claimant	Amount of Claim Asserted
1	Hillcrest Properties	\$2,241,790.00
2	Table Mountain Capital, LLC	\$2,602,137.00
3	Strategic Stable Return Fund II, LP	\$1,970,000.00
4	Strategic Stable Return Fund (ID), LP	\$5,000,000.00
5	SSR Capital Partners, LP	\$6,970,000.00
6	LAB Investments Fund, LP	\$6,500,000.00
7	ARIS Multi-Strategy Fund, LP	\$15,704,786.26
8	Mosaic Capital Fund LLC	\$6,105,913.00
10	McKinsey Master Retirement Trust	\$18,637,184.00
11	Compass Offshore Special Situations PCC Ltd.	\$7,008,617.72
12	Bruce Prevost	\$511,983.64
13	David Harrold	\$156,342.07
14	Maxine Adler	\$1,000,000.00
17	Scott Schneider	\$1,485,932
18	JamiScott, LLC	\$1,660,585

19	Leslie Schneider	\$60,303
20	JamiScott, LLC	\$3,600,005
21	BayRoc Associates, L.L.C.	\$1,107,057
22	Clarridge Associates, L.L.C.	\$2,214,114
25	Maxine Adler	\$1,000,000.00
26	Blackpool Partners, LLC	\$1,505,434.00
27	Blackpool Absolute Return Fund, LLC	\$1,816,990.00
28	Kenneth A. Ralston	\$500,000.00
29	Raymond G. Feldman Family Ventures, L.P.	\$530,247.71

**Schedule 3.2.3**

**Class 2A: Other PBF General Unsecured Claims**

**Schedule 3.2.3**  
**Class 2A: Other PBF General Unsecured Claims**

Except as set forth herein, the Plan specifically reserves the right of the Liquidating Trustee, the PBF II Liquidating Trust Monitor and any Creditor to object to any Claim or Interest and litigate to judgment any objection to such Claim or Interest pursuant to applicable procedures established by the Bankruptcy Code, the Bankruptcy Rules, the Liquidating Trust Agreements and this Plan. Therefore, the listing of any Claim or Interest on this schedule should not be construed as an indication that the Claim or Interest may become an Allowed Claim or an Allowed Interest.

Claim Number Assigned on Claims Register	Name of Claimant	Amount of Claim Asserted
1	Fortis Prime Fund Solutions Custodial Services (Ire) Ltd. re KBC ac Eden Rock Finance Fund LP; Attn: Daniel Kermode; Fortis Prime Fund Solutions (IOM) Ltd.	\$11,116,591.00
4	Strategic Stable Return Fund II, LP	\$1,100,000.00
5	Strategic Stable Return Fund (ID), LP	\$4,400,000.00
6	SSR Capital Partners, LP	\$5,500,000.00
10	U.S. Bank National Association	unliquidated
11	Sumnicht Money Masters Fund LP, c/o Sumnicht Hedge Fund Advisors LLC	\$590,000.00
15	Security Benefit Life Insurance Company Variable Annuity Account IX (SBL-DIF), c/o MIO Partners, Inc.	\$1,052,434.00
18	Lionheart Insurance Fund Series Interests of the SALI Multi-Fund Series Fund, LP	\$2,845,300.53
19	Scott Schneider c/o JamiScott LLC	\$1,485,932.00
20	Leonard & Lillian Schneider c/o JamiScott LLC	\$1,660,585.00
21	JamiScott LLC	\$3,600,005.00
22	BayRoc Associates, L.C. c/o JamiScott LLC	\$1,107,057.00
23	Claridge Associates, L.L.C. c/o JamiScott LLC	\$2,214,114.00
24	Petters Company, Inc.,	\$5,589,780.09



	Douglas A. Kelley, as C11 Trustee	
25	Palm Beach Finance Holdings, Inc., Douglas A. Kelley, as C11 Trustee	\$5,589,780.09
27	Blackpool Absolute Return Fund, LLC	\$818,899.00
Scheduled Unsecured Claim	Fulbright & Jaworski	\$750,000.00
Scheduled Unsecured Claim	Kaufman Rossin & Co.	\$50,320.00
Scheduled Unsecured Claim	Palm Beach Capital Management, LLC	\$87,167.11

**Schedule 3.2.4**

**Class 2B: Other PBF II General Unsecured Claims**

**Schedule 3.2.4**  
**Class 2B: Other PBF II General Unsecured Claims**

Except as set forth herein, the Plan specifically reserves the right of the Liquidating Trustee, the PBF II Liquidating Trust Monitor and any Creditor to object to any Claim or Interest and litigate to judgment any objection to such Claim or Interest pursuant to applicable procedures established by the Bankruptcy Code, the Bankruptcy Rules, the Liquidating Trust Agreements and this Plan. Therefore, the listing of any Claim or Interest on this schedule should not be construed as an indication that the Claim or Interest may become an Allowed Claim or an Allowed Interest.

Claim Number Assigned on Claims Register	Name of Claimant	Amount of Claim Asserted
9	U.S. Bank National Association	Unliquidated Amount
15	Geoff Varga, as Liquidator of Palm Beach Offshore II Ltd.	\$140,507,868.06
16	Geoff Varga, as Liquidator of Palm Beach Offshore Ltd.	\$578,319,885.06
23	Petters Company, Inc.	\$5,000,000.00
24	Palm Beach Finance Holdings, Inc.	\$5,589,780.09
Scheduled	Fulbright & Jaworski	\$750,000
Scheduled	Kaufman Rossin & Co.	\$50,199
Scheduled	Palm Beach Capital Management, LLC	\$91,597.74

**Schedule 3.2.5**

**Class 3A: PBF Interests**

***SEE ATTACHED LIST OF EQUITY SECURITY HOLDERS [D.E. 49], WHICH ARE THE SCHEDULED INTERESTS IN PBF. NO PROOFS OF INTERESTS HAVE BEEN FILED WITH THE COURT.***

Except as set forth herein, the Plan specifically reserves the right of the Liquidating Trustee, the PBF II Liquidating Trust Monitor and any Creditor to object to any Claim or Interest and litigate to judgment any objection to such Claim or Interest pursuant to applicable procedures established by the Bankruptcy Code, the Bankruptcy Rules, the Liquidating Trust Agreements and this Plan. Therefore, the listing of any Claim or Interest on this schedule should not be construed as an indication that the Claim or Interest may become an Allowed Claim or an Allowed Interest.



**United States Bankruptcy Court  
Southern District of Florida**

In re Palm Beach Finance Partners, L.P.

Debtor

Case No. 09-36379-BKC-PGHChapter 11

**LIST OF EQUITY SECURITY HOLDERS**

Following is the list of the Debtor's equity security holders which is prepared in accordance with Rule 1007(a)(3) for filing in this chapter 11 case.

Name and last known address or place of business of holder	Security Class	Number of Securities	Kind of Interest
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SEE ATTACHED

**DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF CORPORATION OR PARTNERSHIP**

I, the Chief Restructuring Officer of the corporation named as the debtor in this case, declare under penalty of perjury that I have read the foregoing List of Equity Security Holders and that it is true and correct to the best of my information and belief.

Date December 15, 2009Signature /s/ Kenneth A. Welt

**Kenneth A. Welt**  
Chief Restructuring Officer

*Penalty for making a false statement or concealing property:* Fine of up to \$500,000 or imprisonment for up to 5 years or both.  
18 U.S.C §§ 152 and 3571.

Last Name	First Name	% Ownership	Company	Address	Address2	Address3	City	State	Postal Code
Allegre	Vincent	0.0236%		449 S Evergreen St			Bensenville	IL	60106
Bakaysa	Steve	0.2482%		2251 Wigwam Parkway #1921			Henderson	NV	89074
Bancroft	Janette	0.0852%		9052 SW 103 Ave			Ocala	FL	34481
Beal	Barry	4.0473%		104 S Pecos St			Midland	TX	79701
Beal	Kelly	0.1715%		104 S Pecos St			Midland	TX	79701
Beal	Lynda	0.4689%		104 S Pecos St			Midland	TX	79701
Beal	Nancy	0.1936%		104 S Pecos St			Midland	TX	79701
Beal	Spencer	3.3364%		104 S Pecos St			Midland	TX	79701
Bergman	John	0.4623%		303 W Wall, #1501			Midland	TX	79701
Bonebrake	Janet	0.1113%		7169 150th Ct N			Palm Beach Gardens	FL	33418
Carruth	Frank	1.1454%		5407 S Flagler Dr			West Palm Beach	FL	33405
Casdagli	Martin	0.4244%		554 E Coronado Rd			Santa Fe	NM	87505
Davenport	Amy	0.2257%		3 Greenwch Dr			Midland	TX	79705
Davenport	Robert	0.4836%		3 Greenwch Dr			Midland	TX	79705
Dobrinich	Dennis	0.0553%		3860 Dogwood Ave			Palm Beach Gardens	FL	33410
Dobrinich	Nancy	0.0236%		3860 Dogwood Ave			Palm Beach Gardens	FL	33410
Goldsmith	Judith	0.2835%		3 Water Ln			Manhasset	NY	11030
Goldsmith	Ted	0.1538%		3 Water Ln			Manhasset	NY	11030
Harrold	David	0.0833%		963 Evergreen Dr			Delray Beach	FL	33483
Hobgood	Wilbur	0.0423%		2189 Radnor Ct			North Palm Beach	FL	33408
Lestage	Claude	0.0145%		4893 N Kay			Palm Beach Gardens	FL	33418
Liguori	Albert	0.0448%		16590 Crownbury Way, #201			Ft. Myers	FL	33908
Linkous	Randall	0.0254%		1174 SW 27 Ave			Boynton Beach	FL	33426
Linkous	Sandra	0.0199%		1174 SW 27 Ave			Boynton Beach	FL	33426
Markel	Jeffrey	0.2847%		US Bank (Custodian)	515 N Flagler Dr, #2100		West Palm Beach	FL	33401
Opitz	Alton	0.0707%		16 K&L Ln			Butler	PA	16001
Prevost	Bruce	0.1466%		8292 Nashua Dr			Palm Beach Gardens	FL	33418
Prevost	Mark	0.0213%		2510 Oakridge Dr			Jasper	AL	35504
Priestley	Ron	0.1215%		5565 N Espina Rd			Tucson	AZ	85718
Slain	George & Nancy	0.1695%		59-1089 Maluhi Pl			Kamuela	HI	96743
Toothman	M. Lee	0.0414%		216 Barbados Dr			Jupiter	FL	33458
Vennes	Frank	3.5688%		PO Box 3412			Tequesta	FL	33469
		12.8912%	AGILE Safety Group, LLC	4909 Pearl East Cir, #300			Boulder	CO	80301
		0.2584%	Armadillo Fund	40 Random Farms Cir			Chappaqua	NY	10514
		1.0100%	Beacon Partners, Ltd	3030 McKinney Ave, #305			Dallas	TX	75204
		0.3986%	Blackpool Partners, LP	701 Harger Rd, #190			Oak Brook	IL	60523
		0.1638%	BTA Oil Producers	104 S Pecos St			Midland	TX	79701
Davenport	Robert	0.1244%	Calhoun Asset Management, LLC	8770 W Bryn Mawr Ave, #1300			Chicago	IL	60631
		0.4111%	Cannonball Funds/Globefin Asset Management	c/o Globefin European Advisors Ltd.	8 Chesterfield Hill		London	England	W1J5BW
		3.0721%	Compass Special Situations Fund LP	55 E 52 St, 29th Fl			New York	NY	10055
				Red Bird Farm			Sherborn	MA	01770
		0.1059%	Deer Island, LP	89 Nason Hill Rd			London	England	W1K 7HU
		5.4111%	Eden Rock Capital Management	39 Park St			Palm Beach Garden	FL	33418
		0.0351%	Father's Heart Family Foundation Inc. (The)	8292 Nashua Dr			Seattle	WA	98101
		5.6603%	Freestone Capital Management, Inc	1191 Second Ave, #2100			Boston	MA	02109
		12.1939%	GMB Capital Management	10 Post Office Sq, #1210			San Francisco	CA	94133-2132
		0.6094%	Golden Gate Financial Group LLC	50 Francisco St, #203			Sherborn	MA	01770
		0.3021%	Harvest Investments LP	Red Bird Farm	89 Nason Hill Rd		Wilmette	IL	60091
		4.8643%	K&K Capital Management, Inc.	3545 Lake St, #201			San Mateo	CA	94402
		3.9693%	LAB Investments Fund, LP	1875 S Grant St, #600			Los Angeles	CA	90046
		0.3158%	Marder Investment Advisors Corp.	8033 Sunset Blvd, #830					

Last Name	First Name	% Ownership	Company	Address	Address2	Address3	City	State	Postal Code
		15.6990%	MIO Partners Inc.	55 E 52 St, 29th Fl			New York	NY	10055
		2.4455%	Mosaic Capital Fund LLC	680 Fifth Ave, 8th Fl			New York	NY	10019
		0.8536%	NetWide Capital LLC	14362 N Frank Lloyd Wright Blvd, #1240			Scottsdale	AZ	85260
		1.2638%	Palm Beach Diversified Income, LP	3601 PGA Blvd, Suite 301			Palm Beach Gardens	FL	33410
		1.3542%	Pemco Partners, LP	8 Lyman St, #204			Westborough	MA	01581
		1.3850%	SALI Fund Services, LLC	6850 Austin Center Blvd, #350			Austin	TX	78731
		0.2220%	Second City Alternatives	801 Park Ave			Wilmette	IL	60091
		1.0810%	Skybell Asset Management	450 Knights Run Ave, #1906			Tampa	FL	33602
		1.1605%	Sonata Funds	3300 E First Ave, #490			Denver	CO	80206-5807
		3.5864%	SSR Capital Management LLC	4514 Cole Ave, #1000			Dallas	TX	75205
		0.3253%	Sterling Management Inc.	160 White Oaks Ln			Vadnais Heights	MN	55127
		0.4776%	Sumnicht & Associates	W6240 Communication Ct, #1			Appleton	WI	54914-8549
		0.6276%	Tradex Global Advisors	35 Mason St, 4th Fl			Greenwich	CT	06830
		0.0236%	VAS Partners, LLC	Attn: Vincent P Allegra	4401 W Roosevelt Rd		Hillside	IL	60162
		0.2482%	West Capital Management	1818 Market St, #3323			Philadelphia	PA	19103

**Schedule 3.2.6**

**Class 3B: PBF II Interests**

***SEE ATTACHED LIST OF EQUITY SECURITY HOLDERS [D.E. 21], WHICH ARE THE SCHEDULED INTERESTS IN PBF II. NO PROOFS OF INTERESTS HAVE BEEN FILED WITH THE COURT.***

Except as set forth herein, the Plan specifically reserves the right of the Liquidating Trustee, the PBF II Liquidating Trust Monitor and any Creditor to object to any Claim or Interest and litigate to judgment any objection to such Claim or Interest pursuant to applicable procedures established by the Bankruptcy Code, the Bankruptcy Rules, the Liquidating Trust Agreements and this Plan. Therefore, the listing of any Claim or Interest on this schedule should not be construed as an indication that the Claim or Interest may become an Allowed Claim or an Allowed Interest.



**United States Bankruptcy Court**  
**Southern District of Florida**

In re Palm Beach Finance II, L.P.

Debtor

Case No. 09-36396-BKC-PGHChapter 11

**LIST OF EQUITY SECURITY HOLDERS**

Following is the list of the Debtor's equity security holders which is prepared in accordance with Rule 1007(a)(3) for filing in this chapter 11 case.

Name and last known address or place of business of holder	Security Class	Number of Securities	Kind of Interest
---	-------------------	-------------------------	---------------------

SEE ATTACHED

**DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF CORPORATION OR PARTNERSHIP**

I, the Chief Restructuring Officer of the corporation named as the debtor in this case, declare under penalty of perjury that I have read the foregoing List of Equity Security Holders and that it is true and correct to the best of my information and belief.

Date December 15, 2009Signature /s/ Kenneth A. Welt

**Kenneth A. Welt**  
**Chief Restructuring Officer**

*Penalty for making a false statement or concealing property:* Fine of up to \$500,000 or imprisonment for up to 5 years or both.  
 18 U.S.C §§ 152 and 3571.

Last Name	First Name	% of Ownership	Company	Address	Address2	Address3	City	State	Postal Code
Adler	Maxine	0.4644%		109 Los Patios			Los Gatos	CA	95032
Beal	Barry	0.9551%		104 S Pecos St			Midland	TX	79701
Corydon	James	0.2995%		6650 N Tower Circle Dr			Lincolnwood	IL	60712
Daniel	John	0.6868%		225 Wellington Ln			Cape Girardeau	MO	63701
Feldman	Raymond	0.2532%		4644 Balboa Ave			Encino	CA	91316
Goldsmith	Judith	0.1374%		3 Water Ln			Manhasset	NY	11030
Goldsmith	Ted	0.1645%		3 Water Ln			Manhasset	NY	11030
Harrold	David	0.0697%		963 Evergreen Dr			Delray Beach	FL	33483
Prevost	Bruce	0.2284%		8292 Nashua Dr			Palm Beach Gardens	FL	33418
Ralston	Kenneth	0.2380%		666 Riford Rd			Glen Ellyn	IL	60137
Vennes	Frank	3.7917%		PO Box 3412			Tequesta	FL	33469
		0.0929%	ABR Capital, LLC	120 East Ave			Norwalk	CT	06851
		8.8272%	AGILE Safety Group, LLC	4909 Pearl East Cir, #300			Boulder	CO	80301
		7.1907%	ARIS Capital Management	152 W 57 St, 19th Fl			New York	NY	10019
		0.5203%	Barnett Capital Ltd.	450 Skokie Blvd, #604			Northbrook	IL	60062
Barnett	Joel	1.4784%	Blackpool Partners, LP	701 Harger Rd, #190			Oak Brook	IL	60523
		1.6076%	Centermark Asset Management	21320 Baltic Dr			Cornellus	NC	28031
		0.1005%	Gantcher Group (The)	c/o EXOP Management Company, LLC	888 7th Ave, 40th Fl		New York	NY	10019
		13.2562%	Genesis Capital	5202 Olympic Dr NW, #101			Gig Harbor	WA	98335
		3.0494%	Golden Sun Capital Management, LLC	885 Arapahoe Avenue			Boulder	CO	80302
		2.3533%	Guardian Capital, LLC	3225 Aviation Ave, #601			Miami	FL	33133
		0.6933%	Harborlight Capital Management, LLC	5002 W Waters Ave			Tampa	FL	33634
Williams	Stephen	1.0264%	Hillcrest Properties	59 Damonte Ranch Pkwy, #B-360			Reno	NV	89521
Walchek	Scott	0.0662%	Integrity Partners	1499 Danville Blvd, #202			Alamo	CA	94507
		3.4524%	Jamiscott, LLC	15 W 53 St, #24-B			New York	NY	10019
Schneider	Leonard & Lillian	0.8283%	Jamiscott, LLC	1089 S Ocean Blvd			Palm Beach	FL	33480
Schneider	Scott	0.7412%	Jamiscott, LLC	15 W 53 St, #24-B			New York	NY	10019
		3.2419%	LAB Investments Fund, LP	1875 S Grant St, #600			San Mateo	CA	94402
		1.2470%	Laulima Partners, LP	C/O Smithfield Trust Co.	Attn: Robert Kopf Jr.	20 Stanwix St, #650	Pittsburgh	PA	15222
		0.3755%	Marder Investment Advisors Corp.	8033 Sunset Blvd, #830			Los Angeles	CA	90046
		0.0916%	Mondiale Partners	630 Fifth Ave, #442			New York	NY	10011
Mishkin	Nancy	2.7169%	Mosaic Capital Fund LLC	680 Fifth Ave, 8th Fl			New York	NY	10019
		2.2958%	Ocean Gate Capital Management, LP	40 South St, #300			Marblehead	MA	01945
		0.6193%	Palm Beach Diversified Income, LP	3601 PGA Blvd, Suite 301			Palm Beach Gardens	FL	33410
		1.9004%	Pemco Partners, LP	8 Lyman St, #204			Westborough	MA	01581
		0.6868%	Quantum Family Office Group, LLC	1001 Brickell Bay Dr, #1710			Miami	FL	33131
		1.3506%	Santa Barbara Investment Capital	2220 Santiago Rd			Santa Barbara	CA	93103
		6.5766%	Scotia Capital	The Bank of Nova Scotia	Global Alternative Asset Group	40 King St W, 68th Fl	Toronto	Ontario	M5W 2X6
		0.4179%	Select Access Management	15 Valley Dr			Greenwich	CT	06831
		2.8394%	Skybell Asset Management	450 Knights Run Ave, #1906			Tampa	FL	33602
		3.8395%	SSR Capital Management LLC	4514 Cole Ave, #1000			Dallas	TX	75205
		1.2858%	Table Mountain Capital, LLC	850 Quince Ave			Boulder	CO	80304
		0.2241%	Tremont Group Holdings, Inc.	555 Theodore Fremd Ave, #C-300			Rye	NY	10580
Sandlow	Thomas	16.3444%	Umbach Financial Group, LLC	250 Royal Palm Way, #201			Palm Beach	FL	33480
		1.3735%	Zimmer Lucas Capital	535 Madison Ave, 6th Fl			New York	NY	10022

**Schedule 6.1**

**List of Executory Contracts and Unexpired Leases to be Assumed**

None.